

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 5 OF 10 (PAGES 1023 TO 1286 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

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MICHAEL H. DORE, SBN 227442, MDORE@GIBSONDUNN.COM
ANDREW T. BROWN, SBN 311734, ATBROWN@GIBSONDUNN.COM
DANIEL M. RUBIN, SBN 319962, DRUBIN@GIBSONDUNN.COM
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Document received by the CA 2nd District Court of Appeal.

Chronological Index Volume 5

Ex.	<u>Document Description</u>	<u>File Date</u>	<u>Volume</u>	<u>Page</u>
19	Declaration of Jason H. Wilson in Support of SoCalGas's (U 904 G) Response to Public Advocates Office's Motion to Find SoCalGas in Contempt of This Commission in Violation of Commission Rule 1.1 for Failure to Comply With a Commission Subpoena Issued 5/5/20, and Fined for Those Violations From the Effective Date of the Subpoena (Not in a Proceeding)	07/02/20	5	1027
	Ex. D – 5/20/20 Emails from Corinne Siervant Transmitting Excel spreadsheets		5	1029
	Ex. F – 5/12/20 Email from Bone to Henry re SAP Qestions		5	1032
	Ex. H – 5/18/20 Email From Bone re Data Related to Subpoena		5	1039
	Ex. I – 5/18/20 Henry Email re NDA draft		5	1042
	Ex. J – 5/28/20 Wilson Email to Bone re NDA draft		5	1052
	Ex. K - 5/29/20 Wilson Email to Bone re NDA Draft		5	1063
	Ex. N – 5/28/20 Bone Email re Meet & Confer		5	1081
	Ex. O – 6/5/20 Bone Email to Wilson re Meet & Confer		5	1085
	Ex. P – 6/30/20 Data Request		5	1087
20	Declaration of Dennis Enrique in Support of SoCalGas's (U 904 G) Response to Public Advocates Office's Motion to Find SoCalGas 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) Dated 7/1/20	07/02/20	5	1100

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

Chronological Index Volume 5

Ex.	<u>Document Description</u>	<u>File Date</u>	<u>Volume</u>	<u>Page</u>
21	Declaration of Kelly Contratto in Support of SoCalGas's (U 904 G) Response to Public Advocates Office's Motion to Find SoCalGas in Contempt of This Commission in Violation of Commission Rule 1.1 for Failure to Comply With a Commission Subpoena Issued 5/5/20, and Fined for Those Violations From the Effective Date of the Subpoena (Not in a Proceeding) Dated 7/1/20	07/02/20	5	1103
22	Public Advocates Office Motion to Compel Confidential Declarations Submitted in Support of SoCalGas's December 2, 2019 Motion for Reconsideration of First Amendment Association Issues And Request for Monetary Fines for the Utility's Intentional Withholding of This Information; [Proposed] Order	07/09/20	5	1107
	Ex. 3 – May 19-22, 2020 E.Henry/T.Bone Emails re Confidential Declarations		5	1125
	Ex. 4 – 12/2/19 SoCalGas's Motion for Reconsideration Transmittal Email		5	1134
	Ex. 5 – June 23-25, 2020 E. Henry/T. Bone Emails re Demand for Confidential Declarations		5	1136
	Ex. 6 – 6/29/20 J. Wilson Letter to T. Bone Declining to Provide Confidential Declarations		5	1139
	Ex. 7 – May 19-22, 2020 Emails with ALJ re Confidential Declarations & Substituted Motions		5	1143

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

Chronological Index Volume 5

Ex.	<u>Document Description</u>	<u>File Date</u>	<u>Volume</u>	<u>Page</u>
23	SoCalGas's (U 904 G) Response to Public Advocates Office Motion to Compel Confidential Declarations Submitted in Support of SoCalGas's December 2, 2019 Motion for Reconsideration of First Amendment Association Issues and Request for Monetary Fines for the Utility's Intentional Withholding of This Information (Not in a Proceeding)	07/17/20	5	1150
24	SoCalGas Letter to CPUC Requesting Lobbying OII-OIR	07/17/20	5	1182
25	Public Advocates Office Reply to SoCalGas's Opposition to Motion to Compel and for Fines Related to the Utility's Intentional Withholding of Confidential Declarations Ex. 1 – 7/17/20 Letter from J. Wilson to T. Bone re Expected Timing of Remaining Data Requests Ex. 2 – July 17, 2020 Letter from Dan Skopec to CPUC Commissioners and Executives	07/24/20	5 5	1185 1195 1198
26	Public Advocates Office Response to Dan Skopec Letter for OII, dated 7/17/20	07/28/20	5	1203
27	Draft Resolution Denying SoCalGas's Motion for Reconsideration/Appeal of the 11/1/19 Administrative Law Judge's Ruling	10/29/20	5	1205
28	Comments of SoCalGas to Draft Resolution ALJ-391	11/19/20	5	1245

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

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

**DECLARATION OF JASON H. WILSON IN SUPPORT OF SOUTHERN CALIFORNIA
GAS COMPANY'S 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)**

I, Jason H. Wilson, declare and state 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 a partner with Willenken LLP, outside counsel employed by Southern California Gas Company (SoCalGas).
3. On May 5, 2020, I received an email from Traci Bone, counsel for the Public Advocates Office, attached to which was a "Subpoena to Produce Access to Company Accounting Databases." (A true and correct copy of this email and the attached subpoena is attached to this declaration as Exhibit A.)
4. On May 7, 2020, I sent a letter to Ms. Bone regarding a meet and confer held on Wednesday, May 6, 2020. (A true and correct copy of this letter is attached as Exhibit B.)
5. On May 8, 2020, I was copied on an email from Ms. Bone addressed to Elliot S. Henry. (A true and correct copy of this email is attached as Exhibit C.)
6. On May 20, 2020, I was copied on two emails from Corinne Siervant to Ms. Bone, Alec Ward, and Stephen Castello transmitting Excel spreadsheets. (A true and correct copy of these emails is attached as Exhibit D.)
7. On May 11, 2020, I sent a letter to Ms. Bone regarding a meet and confer held on Friday, May 8, 2020. (A true and correct copy of this letter is attached as Exhibit E.)
8. On May 12, 2020, I was copied on an email from Ms. Bone addressed to Elliott S. Henry. (A true and correct copy of this email is attached as Exhibit F.)

9. On May 18, 2020, I sent a letter to Ms. Bone regarding a meet and confer held on Wednesday, May 13, 2020. (A true and correct copy of this letter is attached as Exhibit G.)

10. On May 18, 2020, I received an email from Ms. Bone addressed also to Elliot S. Henry. (A true and correct copy of this email is attached as Exhibit H.)

11. On May 18, 2020, I was copied on an email from Elliott S. Henry to Ms. Bone, attached to which was a draft non-disclosure agreement. (A true and correct copy of this email with its attachment is attached as Exhibit I.)

12. On May 28, 2020, I sent an email to Ms. Bone regarding the draft non-disclosure agreement. (A true and correct copy of this email is attached as Exhibit J.)

13. On May 29, 2020, I sent an email to Ms. Bone, attached to which was a revised draft non-disclosure agreement. (A true and correct copy of this email with its attachment is attached as Exhibit K.)

14. On May 29, 2020, I sent an email to Ms. Bone, Alec Ward, and Stephen Castello regarding remote access to SoCalGas's SAP database. (A true and correct copy of this email is attached as Exhibit L.)

15. On May 22, 2020, I received an email from Ms. Bone canceling a previously scheduled meet and confer. (A true and correct copy of this email is attached as Exhibit M.)

16. On May 28, 2020, I received an email from Ms. Bone canceling a previously scheduled meet and confer. (A true and correct copy of this email is attached as Exhibit N.)

17. On June 5, 2020, I received an email from Ms. Bone canceling a previously scheduled meet and confer. (A true and correct copy of this email is attached as Exhibit O.)

18. On June 30, 2020, I received an email from Ms. Bone, attached to which was a copy of Cal Advocates' data request CalAdvocates-TB-SCG-2020-04. (A true and correct copy of this email with its attachment is attached as Exhibit P.)

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

Executed on July 2, 2020 at Los Angeles, California.



JASON H. WILSON
Willenken LLP

Exhibit D

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

From: [Sierzant, Corinne M](#)
To: [Sherin Varghese](#)
Subject: SoCalGas Response - CalAdvocates-TB-SCG-2020-03 - Excel Files 2016-2017
Date: Wednesday, May 20, 2020 12:53:21 PM

Sender : Sierzant, Corinne M

Link : <https://edt.sempira.com/bds/Login.do?id=A06125721222&p1=naj17absbhcdgidcdddlggbkejj20>

Sent To : alec.ward@cpuc.ca.gov; Stephen Castello; Traci Bone

Cc : Henry, Elliott S; jwilson@willenken.com; Sherin Varghese; tariffs@socalgas.com

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

From: [Sierzant, Corinne M](#)
To: [Sherin Varghese](#)
Subject: CalAdvocates-TB-SCG-2020-04 (14th in series) - SAP Excel File for 2015
Date: Wednesday, May 20, 2020 1:34:06 PM

Sender : Sierzant, Corinne M

Link : <https://edt.sempira.com/bds/Login.do?id=A06125985663&p1=z9j1248sbhcdgkjghhelggbkckj20>

Sent To : alec.ward@cpuc.ca.gov; james.wuehler@cpuc.ca.gov; michael.campbell@cpuc.ca.gov; Stephen Castello; Traci Bone

Cc : Henry, Elliott S; jwilson@willenken.com; Sherin Varghese; tariffs@socalgas.com

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Exhibit F

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

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Tuesday, May 12, 2020 8:21 AM
To: Henry, Elliott S
Cc: Ward, Alec; Castello, Stephen; Tran, Johnny Q; Jason Wilson; Sierzant, Corinne M; Holland, Brooke; Campbell, Michael; Sherin Varghese
Subject: RE: SAP questions - Follow Up Regarding Read-Only Remote Access

Elliott:

Thank you for the detailed update. A few thoughts/responses to your questions:

1. Cal Advocates would like SoCalGas to provide remote access no later than next Tuesday, May 19. Remote access has been made available to third parties before, is available to SoCalGas employees, and should be made available to Cal Advocates' auditor. The law requires SoCalGas to make access to all of its accounts available to its regulator.
2. Walling off access to all attachments is not acceptable. While SoCalGas need not provide access to law firm invoices, which could contain privileged information, there is no other information in its SAP that should be privileged. We understand that SoCalGas has claimed that certain accounting instructions are privileged, but, presumably, attorneys do not give accounting instructions, and having an attorney simply repeat what an accountant has instructed does not transform the instructions into a privileged communication. If SoCalGas has legitimate claims of privilege, we would be happy to address them.
3. 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.
4. SoCalGas' contracts with lobbyists, and the entities that support them, are not privileged, so our auditor should have full access to them. To the extent SoCalGas is concerned about our auditor seeing the payments made to such parties, all utility payments are subject to regulator review. There is nothing special about payments to lobbyists and those who support them; indeed, lobbying reporting laws require disclosure of such payments. The law on lobbying is clear that the public interest is in disclosure.
5. To the extent there are 100% shareholder contracts – a claim which is not supported by any evidence - those contracts are not in any way privileged and so Cal Advocates should have full access to them.
6. Regarding the de-designated confidential markings: Claims of confidentiality are currently shown by yellow highlights on the text that SoCalGas claims is confidential. As SoCalGas "de-designates" information, Cal Advocates requests that the yellow highlights be turned to green highlights, so that we can see clearly what SoCalGas is de-designating. This should not be difficult. Instead of deleting the yellow highlights, SoCalGas will simply change them to green. This request was made previously, and ignored by prior counsel. Given that the 40+ pages of "de-designated" materials that I forwarded to you yesterday continue to claim confidentiality for SoCalGas employee names, and the names of registered lobbyists who work for SoCalGas (for example, nearly every Marathon employee is a registered lobbyist in Los Angeles, among other places), it appears that those materials should be reviewed again, and can be marked properly to show the de-designations in green when that it done.
7. This issue of how the documents will be de-designated raises a fundamental concern. In our experience, SoCalGas has refused to comply with nearly every direction provided – such as requests that it identify the person responding to a particular data request, and that it mark attachments to data responses so that we can track the source of the document. This is compounded by SoCalGas' continued baseless claims of confidentiality for information that it knows is readily available in the public domain. We ask that SoCalGas begin to take its

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discovery responsibilities seriously, and that it (1) comply with Cal Advocates instructions going forward; and (2) provide a declaration from its attorneys that it claims of confidentiality have a good faith basis in the law.

8. We look forward to our receiving some of the fixed database records on Wednesday. However, as I explained previously, the focus should be on providing remote access as soon as possible as the attachments to those records, as we all understand that those attachments are likely to be precisely the information that will be most relevant to our inquiry. If this is going to be a problem, please let me know as soon as possible.

Honestly, the concerns and objections raised in your email – which seem to rehash prior communications - suggest that SoCalGas is not going to provide the access to its accounts required by the subpoena, and instead intends to delay access for as long as it can. Do I have reason to be concerned?

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: Tuesday, May 12, 2020 7:10 AM
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: RE: SAP questions - Follow Up Regarding Read-Only Remote Access

Traci,

We are moving forward with getting the SAP access while we also prepare the static data. I am still waiting to hear how long it will take to get the SAP access, but I can't imagine we will be able to provide it this week for at least a couple reasons. Most significantly, having access to SAP allows access to invoices and other details without giving us the ability to review them before you are able to see them. This could potentially disclose information that is similar to that which is the subject of the appeal, such as 100% shareholder funded contracts. Moreover, the access could also disclose privileged information. Full access to SAP would allow access to detailed bills received from outside counsel, which would be privileged. We are trying to determine if access can be granted while walling off certain categories of information or if there is some other workaround, but until we determine that I am not sure what the exact timeline will be. We are looking into walling off all attachments which could be separately requested, but it is possible that information separate from the attachments that would fall into the two sensitive categories above would be visible. We have IT folks looking into these issues and workarounds. To clarify a possible misunderstanding from your below email, the prior audit was *not* conducted by the SEC. It was done by an outside company that we contracted with in relation to certain SEC matters. Therefore, these issues were not present because an auditor that we contracted with stood in a fundamentally different position from Cal Advocates' position here.

The name of the point of contact for you on SAP questions will be Ping Ng (PNg@socalgas.com). There may be another contact to assist Ping – we'll provide that name if/when we get it.

We will be able to provide the files for the discrete data through an email as we have done for larger productions in this matter. We will use that method to send the data, as you requested.

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

For the discrete sets of data we are trying to push out more quickly, my initial understanding was the information substantially overlapped with what was made available in the GRC before. That would have meant less internal review and QC would have been required. However that's not necessarily the case, so we need to confirm what was previously made available and for those pieces that weren't we need to at least briefly review them before producing them (to check for the above privilege / legal issues and other potential issues). I am optimistic that we will be able to produce some of the categories to you by Wednesday and will update you when I have new information – hopefully later today if not at the meet and confer Wednesday. I believe you mentioned 5 years of data for all the SAP info (2015-2019), but if I am recalling incorrectly let us know. I will note that 2019 is taking longer to collect because it is being extracted via VPN since employees are working remotely, so the transfer speeds are slower than they would otherwise be. I will note that there may be overlap with data for different categories when you get these sets of data, but the handler can help with that (and when you get the SAP data you will be able to clarify as well).

We need to have a written agreement on confidentiality. As we discussed previously, an agreement that all materials would be branded confidential if copied/printed/etc. and that nothing would be disclosed prior to notifying us and allowing us to mark for confidentiality should be in place before we produce. I'm not certain how that is impacted by General Order 66-D and if Cal Advocates can essentially contract around that – let me know if you've dealt with such a situation before as I have not had any luck finding an answer on my end.

On other issues, we will convert the PDF to a searchable document. I'm confused by your request for multiple highlights. You have our new designations and we don't have a document like the one you are requesting.

Best,
Elliott

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Friday, May 8, 2020 1:31 PM
To: Henry, Elliott S <EHenry@socalgas.com>
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: [EXTERNAL] RE: SAP questions - Follow Up Regarding Read-Only Remote Access

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

Elliott:

Re-reading my email below, I can understand how SoCalGas got the impression that Cal Advocates was no longer seeking remote access. My apologies for any misunderstanding.

As both Stephen Castello and I clarified on the call today, we anticipate that the procedure described below is only interim, and that Cal Advocates will be provided read-only remote access to SAP as soon as practicable.

We have confirmed that read-only access is a standard feature of SAP and you have represented to us that SoCalGas provided it to the SEC previously (also referred to as "token access"), so we expect that it should not be difficult to implement.

To the extent remote access can be made available next week, we propose that it would be unnecessary to move forward with the first delivery request set forth below.

However, if there is some reason that such remote access cannot be made available next week, we ask that you let us know no later than Tuesday, May 12, and sooner if possible, when remote read-only access can be made available, why it requires more time, and what technical requirements are involved, if any.

We look forward to your timely attention to this matter,

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

From: Bone, Traci
Sent: Friday, May 08, 2020 9:45 AM
To: Henry, Elliott S <EHenry@socalgas.com>
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: RE: SAP questions

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.

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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 different aspects of SAP, it would be helpful and most efficient to know what clarifications you are looking to find out ahead of time.

Thank you,

Elliott

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West 5th Street GT14E7 | Los Angeles, CA 90013
Tel: 213-244-8234 | Fax: 213-629-9620
E-Mail: EHenry@socalgas.com



A Sempra Energy utility

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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.

Exhibit H

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

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Monday, May 18, 2020 10:12 AM
To: Henry, Elliott S; Jason Wilson
Cc: Sierzant, Corinne M; Holland, Brooke; Willenken-CalPA; Ward, Alec; Castello, Stephen
Subject: RE: Update on Data Related to Subpoena

Elliott:

Thanks for the update. Can you please confirm that this email is related to the accounting information that was requested pursuant to the subpoena?

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, rather than creating unnecessary work and delays to production of this material?

It is possible there may be nothing here we care about. That's the nature of an accounting audit.

Traci Bone, Attorney
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Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Henry, Elliott S <EHenry@socalgas.com>
Sent: Friday, May 15, 2020 8:59 PM
To: Jason Wilson <jwilson@willenken.com>; Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Willenken-CalPA <willenken-calpa@willenken.com>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>
Subject: RE: Update on Data Related to Subpoena

Good evening,

We were planning on providing these two years to you today but ran into last minute confidentiality issues with some of the information. We are working hard to resolve them and get these two years to you as soon as possible.

Thanks,
Elliott

From: Jason Wilson <jwilson@willenken.com>
Sent: Thursday, May 14, 2020 5:24 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Henry, Elliott S <EHenry@socalgas.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Willenken-CalPA <willenken-calpa@willenken.com>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>
Subject: [EXTERNAL] Update on Data Related to Subpoena

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

Traci:

I hope all is well. SoCalGas will be able to provide the data from 2016 and 2017 tomorrow.

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

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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.

Exhibit I

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

From: [Henry, Elliott S](#)
To: [Bone, Traci](#)
Cc: [Jason Wilson](#)
Subject: NDA
Date: Monday, May 18, 2020 4:50:33 PM
Attachments: [CalPA Non-Proceeding NDA \(Draft\).docx](#)

Traci,

Attached is the NDA we discussed on our last couple calls. We have not had to use an NDA like this before (since we have not had these circumstances before) so quite a bit had to be drafted. Based on the conversation today, I'm sure you will have some suggestions or revisions which we will be happy to discuss.

Best,
Elliott

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West 5th Street GT14E7 | Los Angeles, CA 90013
Tel: 213-244-8234 | Fax: 213-629-9620
E-Mail: EHenry@socalgas.com



This e-mail may contain privileged, attorney-client communications and confidential information intended only for the use of the recipient(s) named above. Reading, disclosure, discussion, dissemination, distribution, or copying of this information by anyone other than the intended recipient or their employees or agents is strictly prohibited. If you have received this message in error, please immediately notify me by telephone and return the original message at the above address via the U.S. postal service. Thank you.

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

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

NON-DISCLOSURE AND PROTECTIVE AGREEMENT

This Non-Disclosure and Protective Agreement (the Agreement) is effective as of the last date of the signatures below, by and between Southern California Gas Company (SoCalGas) and the Public Advocates Office at the California Public Utilities Commission (CalPA) (collectively, the Parties).

WHEREAS, certain information that SoCalGas may produce or disclose in the non-proceeding investigation, before or after the date of this Agreement, may constitute confidential, proprietary, or otherwise protected materials, including, but not limited to, information constituting trade secrets, proprietary and financial information, competitively sensitive documents, personal/private information such as employee or customer data, geographic information systems (GIS) data, and/or sensitive security or critical energy infrastructure information (CEII) (*see, e.g.*, 18 C.F.R. § 388.113(c)(1); 6 U.S.C. §131(3); 49 C.F.R. § 1520.5) (all collectively, the Protected Materials); and

WHEREAS, the level and type of real-time immediate access to SoCalGas's internal financial accounting system requested by CalPA would make it impossible for SoCalGas to mark information as confidential before being reviewed or copied by CalPA; and

WHEREAS, the Parties hereto believe that this Agreement will facilitate prompt discovery, protect legitimate confidentiality concerns, and preserve the rights of the Parties;

ACCORDINGLY, the Parties hereto agree that the following terms and conditions shall govern the use of information made available by SoCalGas to CalPA in the context of this non-proceeding investigation:

1. This Agreement shall govern access to and the use of all SAP data made available or produced by or on behalf of SoCalGas for purposes of the non-proceeding investigation or any other confidential information the Parties agree will be covered by this Agreement. The term of the Agreement shall be perpetual for CalPA to protect any Protected Materials. CalPA shall destroy copies of Protected Materials in accordance with the terms of this Agreement.

2. For purposes of this Agreement:

(a)(1) The term “Protected Materials” means the SAP information SoCalGas makes accessible to CalPA, whether or not reduced to other written or electronic form, any information contained in or obtained from such designated materials, hardcopy or electronic notes of Protected Materials, and any other hardcopy or electronic copies of Protected Materials.

(2) Because CalPA has requested remote access to SoCalGas’s SAP system, and there is no practical method of marking such information as confidential prior to providing it to CalPA, and CalPA is seeking access to the information without delay, the Parties agree that:

(a) All information on SoCalGas’s SAP system or derived from SAP that is accessed, received, or viewed by CalPA shall be preliminarily deemed confidential under Public Utilities Code § 583, General Order 66-D (GO 66-D), and D.17-09-023. Any electronic or hard copies or Notes of Protected Materials made by CalPA will be marked “PROTECTED MATERIALS” or words of similar import, such as “Confidential and Protected Materials Pursuant to PUC Section 583, GO 66-D, and D.17-09-023,” as long as the term “Protected Materials” or “Confidential” is included in that designation to indicate that there are Protected Materials on each page. If the Protected Materials are produced in electronic form, the “PROTECTED MATERIALS” designation shall be inserted on each page as a header or footer. To the extent CalPA is unable to mark Protected Materials accordingly, CalPA will identify the information as Confidential in some other reasonable manner.

(b) Prior to any disclosure of Protected Materials to anyone other than those who have signed the Non-Disclosure Certificate, CalPA shall provide to SoCalGas the documents it intends to disclose and allow SoCalGas at least 10 business days to review the documents and mark them in compliance with GO 66-D. In the event CalPA identifies more than 100 pages of documents, the 10 business days will be expanded to a number of days that is reasonable, but at least 20 business days. CalPA reserves its right to oppose confidentiality designations through an appropriate procedure.

(c) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Protected Materials. Protected Materials produced or converted into electronic form that are copied onto a computer network, computer hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, DVDs, data sticks/cards, mini-discs, diskettes, zip drives, and other storage devices) shall be regarded as “Electronic Notes of

Protected Materials.” Notes of Protected Materials and Electronic Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which the Parties shall certify their understanding that access to Protected Materials is provided pursuant to the terms and restrictions of this Agreement, and that such Parties have read the Agreement and agree to be bound by it.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) An attorney acting on behalf of CalPA;
- (2) Attorneys, paralegals, analysts, and other employees associated for purposes of the investigation with an attorney described in (1); or
- (3) An expert or an employee of an expert retained by CalPA for the purpose of advising, preparing for, or testifying in this Proceeding.

This Agreement does not constitute a waiver of SoCalGas’s right to refuse to provide CalPA access to Protected Materials if grounds exist for refusing to provide such information. If CalPA disagrees with SoCalGas’s refusal to provide Protected Material, the Parties may seek a resolution of the dispute in the appropriate venue.

3. Protected Materials shall be made available under the terms of this Agreement only to CalPA and only through their Reviewing Representative(s). Reviewing Representatives may not share Protected Materials with persons within their organization who are not Reviewing Representatives.

4. Protected Materials may be retained by CalPA for one year from the date of this Agreement. At that time, CalPA shall destroy all Protected Materials (including Notes of Protected Materials and Electronic Notes of Protected Materials), except that any information CalPA has provided to SoCalGas pursuant to paragraph 2(b) may be retained. Electronic Notes of Protected Materials shall be deemed to have been destroyed at the time they have been deleted from the computer network, hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, DVDs, data sticks/cards, mini-discs, diskettes, zip drives, and other storage devices) on which they were maintained. If requested to do so, upon completion of the destruction of all such Protected Materials, CalPA

shall submit to SoCalGas an affidavit by an authorized representative stating that, to the best of their knowledge all Protected Materials (including Notes of Protected Materials and Electronic Notes of Protected Materials) have been destroyed. Until they are destroyed, all Protected Materials shall remain subject to this Agreement.

5. All Protected Materials shall be maintained by CalPA in a secure place, and stored on a secured password protected device and/or network if electronic. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to this Agreement. CalPA represents, warrants, and covenants that security procedures and practices appropriate to the nature of confidential information are in place and will be used at all times with respect thereto to protect it from unauthorized access, destruction, use, modification, or disclosure. Those security procedures and practices shall be no less protective than those under which CalPA operates.

6. Protected Materials, Notes of Protected Materials, and Electronic Notes of Protected Materials, shall be treated as confidential by CalPA and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 8. Protected Materials shall not be used except as necessary for the conduct of the investigation of the use of ratepayer funds for lobbying, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this investigation and who needs to know the information in order to carry out that person's responsibilities in the investigation. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall become Notes of Protected Materials.

7. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate and a copy of such executed Non-Disclosure Certificate has been provided to SoCalGas.

8. Any disputes arising under this Agreement must be resolved through the Commission ADR process or through presenting the dispute to the Chief ALJ. Prior to

presenting any dispute under this Agreement to the Chief ALJ, the Parties shall use their best efforts to resolve such dispute.

9. Except where an ALJ has indicated otherwise, all documents filed or served in a proceeding that reflect or contain Protected Materials (other than Protected Materials within data request responses and related correspondence from one party to another), including without limitation all motions, testimony, exhibits, briefs, and hearing transcripts, shall be filed or served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Agreement. Such documents shall be marked as protected materials pursuant to Section 2(a) above, and shall be filed and/or served under seal.

10. If CalPA desires to include, utilize, or refer to any Protected Materials or information derived from Protected Materials in testimony, workpapers, or exhibits at hearing in a proceeding, CalPA shall first notify both counsel for SoCalGas and the assigned ALJ of such desire. If the Designating Party and the Assigned ALJ do not object to said use of Protected Materials, or upon a ruling by the Assigned ALJ or Commission granting said use of Protected Materials, thereafter during the hearing, presentation of such Protected Materials will be governed by procedures determined by the Commission or the Assigned ALJ.

11. Nothing in this Agreement shall be construed as precluding SoCalGas from objecting to the use of Protected Materials on any legal grounds.

12. Nothing in this Agreement shall be construed as waiving the Parties' rights or obligations under Rule 11.3 of the Commission's Rules of Practice and Procedure.

13. Neither of the Parties waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials. Neither of the Parties waives the right to seek additional administrative or judicial remedies after a decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. In particular, any actual or attempted release or use of Protected Materials or Notes of Protected Materials other than as contemplated under this Agreement may lead to irreparable injury which could not adequately be compensated through Commission remedies or monetary damages, and may therefore be enjoined.

14. The inadvertent disclosure of any information or documents which are subject to a claim of work product or the attorney-client privilege or materials entitled to protection under the 1st Amendment (such as those discussed in SoCalGas's December 2, 2019 Motion for Reconsideration / Appeal) shall not waive the protection of such information or documents. If CalPA becomes aware that it may have accessed such information, it will immediately notify SoCalGas. Upon written request, CalPA shall return to SoCalGas any such information or documents inadvertently disclosed, together with all copies and any notes pertaining to such information or documents.

15. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Agreement.

16. This Agreement shall be governed and construed according to the laws of the State of California.

17. This Agreement sets forth the complete understanding of the Parties hereto with respect to the subject matter hereof and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the provisions hereof must be written, executed by both Parties, and shall not be implied by any usage of trade or course of conduct.

18. The provisions of this Agreement shall be severable, and in case any provision of this Agreement is ruled to be invalid, illegal, or unenforceable, all remaining provisions of this Agreement shall remain valid, legal, and enforceable.

19. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated: _____ By: _____
[SIGNATORY NAME]
[TITLE]
Southern California Gas Company

Dated: _____ By: _____

NON-DISCLOSURE CERTIFICATE

I have been provided a copy of and have read the Non-Disclosure and Protective Agreement (the Agreement) between Southern California Gas Company (SoCalGas) and CalPA, executed in connection with the above-captioned non-proceeding investigation before the California Public Utilities Commission (the Proceeding). I agree to be bound by the Agreement and I certify my understanding that access to the Protected Materials, as that term is defined in the Agreement, is provided to me pursuant to the terms and restrictions of the Agreement. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information which copy or disclose the Protected Materials shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only in the context of the Proceeding. I will not use Protected Materials, Notes of Protected Materials, Electronic Notes of Protected Materials, and information contained therein for any other purpose or in any other regulatory proceeding, non-proceeding investigation, or judicial context. I agree to honor the confidentiality of the Protected Materials in perpetuity. Within one year of the date of the Agreement, I will destroy all Protected Materials and destroy all Notes of Protected Materials and Electronic Notes of Protected Materials and notify SoCalGas accordingly.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Business Address: _____

Date: _____

Exhibit J

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

From: [Jason Wilson](#)
To: [Bone, Traci](#)
Cc: [Willenken-CalPA](#)
Subject: RE: NDA
Date: Thursday, May 28, 2020 5:35:02 PM
Attachments: [CalPA Non-Proceeding NDA \(Draft\).docx](#)
[image003.jpg](#)

Traci:

SoCalGas is on track to provide remote access to its SAP system tomorrow. However, to provide access we need Cal Advocates to sign the attached NDA and provide the non-disclosure certificates from the parties actually receiving the remote SAP access. All the best.

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

From: Henry, Elliott S <EHenry@socalgas.com>
Sent: Monday, May 18, 2020 4:50 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Jason Wilson <jwilson@willenken.com>
Subject: NDA

Traci,

Attached is the NDA we discussed on our last couple calls. We have not had to use an NDA like this before (since we have not had these circumstances before) so quite a bit had to be drafted. Based on the conversation today, I'm sure you will have some suggestions or revisions which we will be happy to discuss.

Best,
Elliott

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West 5th Street GT14E7 | Los Angeles, CA 90013
Tel: 213-244-8234 | Fax: 213-629-9620
E-Mail: EHenry@socalgas.com



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

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

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

NON-DISCLOSURE AND PROTECTIVE AGREEMENT

This Non-Disclosure and Protective Agreement (the Agreement) is effective as of the last date of the signatures below, by and between Southern California Gas Company (SoCalGas) and the Public Advocates Office at the California Public Utilities Commission (CalPA) (collectively, the Parties).

WHEREAS, certain information that SoCalGas may produce or disclose in the non-proceeding investigation, before or after the date of this Agreement, may constitute confidential, proprietary, or otherwise protected materials, including, but not limited to, information constituting trade secrets, proprietary and financial information, competitively sensitive documents, personal/private information such as employee or customer data, geographic information systems (GIS) data, and/or sensitive security or critical energy infrastructure information (CEII) (*see, e.g.*, 18 C.F.R. § 388.113(c)(1); 6 U.S.C. §131(3); 49 C.F.R. § 1520.5) (all collectively, the Protected Materials); and

WHEREAS, the level and type of real-time immediate access to SoCalGas's internal financial accounting system requested by CalPA would make it impossible for SoCalGas to mark information as confidential before being reviewed or copied by CalPA; and

WHEREAS, the Parties hereto believe that this Agreement will facilitate prompt discovery, protect legitimate confidentiality concerns, and preserve the rights of the Parties;

ACCORDINGLY, the Parties hereto agree that the following terms and conditions shall govern the use of information made available by SoCalGas to CalPA in the context of this non-proceeding investigation:

1. This Agreement shall govern access to and the use of all SAP data made available or produced by or on behalf of SoCalGas for purposes of the non-proceeding investigation or any other confidential information the Parties agree will be covered by this Agreement. The term of the Agreement shall be perpetual for CalPA to protect any Protected Materials. CalPA shall destroy copies of Protected Materials in accordance with the terms of this Agreement.

2. For purposes of this Agreement:

(a)(1) The term “Protected Materials” means the SAP information SoCalGas makes accessible to CalPA, whether or not reduced to other written or electronic form, any information contained in or obtained from such designated materials, hardcopy or electronic notes of Protected Materials, and any other hardcopy or electronic copies of Protected Materials.

(2) Because CalPA has requested remote access to SoCalGas’s SAP system, and there is no practical method of marking such information as confidential prior to providing it to CalPA, and CalPA is seeking access to the information without delay, the Parties agree that:

(a) All information on SoCalGas’s SAP system or derived from SAP that is accessed, received, or viewed by CalPA shall be preliminarily deemed confidential under Public Utilities Code § 583, General Order 66-D (GO 66-D), and D.17-09-023. Any electronic or hard copies or Notes of Protected Materials made by CalPA will be marked “PROTECTED MATERIALS” or words of similar import, such as “Confidential and Protected Materials Pursuant to PUC Section 583, GO 66-D, and D.17-09-023,” as long as the term “Protected Materials” or “Confidential” is included in that designation to indicate that there are Protected Materials on each page. If the Protected Materials are produced in electronic form, the “PROTECTED MATERIALS” designation shall be inserted on each page as a header or footer. To the extent CalPA is unable to mark Protected Materials accordingly, CalPA will identify the information as Confidential in some other reasonable manner.

(b) Prior to any disclosure of Protected Materials to anyone other than those who have signed the Non-Disclosure Certificate, CalPA shall provide to SoCalGas the documents it intends to disclose and allow SoCalGas at least 10 business days to review the documents and mark them in compliance with GO 66-D. In the event CalPA identifies more than 100 pages of documents, the 10 business days will be expanded to a number of days that is reasonable, but at least 20 business days. CalPA reserves its right to oppose confidentiality designations through an appropriate procedure.

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Protected Materials.” Notes of Protected Materials and Electronic Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which the Parties shall certify their understanding that access to Protected Materials is provided pursuant to the terms and restrictions of this Agreement, and that such Parties have read the Agreement and agree to be bound by it.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) An attorney acting on behalf of CalPA;
- (2) Attorneys, paralegals, analysts, and other employees associated for purposes of the investigation with an attorney described in (1); or
- (3) An expert or an employee of an expert retained by CalPA for the purpose of advising, preparing for, or testifying in this Proceeding.

This Agreement does not constitute a waiver of SoCalGas’s right to refuse to provide CalPA access to Protected Materials if grounds exist for refusing to provide such information. If CalPA disagrees with SoCalGas’s refusal to provide Protected Material, the Parties may seek a resolution of the dispute in the appropriate venue.

3. Protected Materials shall be made available under the terms of this Agreement only to CalPA and only through their Reviewing Representative(s). Reviewing Representatives may not share Protected Materials with persons within their organization who are not Reviewing Representatives.

4. Protected Materials may be retained by CalPA for one year from the date of this Agreement. At that time, CalPA shall destroy all Protected Materials (including Notes of Protected Materials and Electronic Notes of Protected Materials), except that any information CalPA has provided to SoCalGas pursuant to paragraph 2(b) may be retained. Electronic Notes of Protected Materials shall be deemed to have been destroyed at the time they have been deleted from the computer network, hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, DVDs, data sticks/cards, mini-discs, diskettes, zip drives, and other storage devices) on which they were maintained. If requested to do so, upon completion of the destruction of all such Protected Materials, CalPA

shall submit to SoCalGas an affidavit by an authorized representative stating that, to the best of their knowledge all Protected Materials (including Notes of Protected Materials and Electronic Notes of Protected Materials) have been destroyed. Until they are destroyed, all Protected Materials shall remain subject to this Agreement.

5. All Protected Materials shall be maintained by CalPA in a secure place, and stored on a secured password protected device and/or network if electronic. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to this Agreement. CalPA represents, warrants, and covenants that security procedures and practices appropriate to the nature of confidential information are in place and will be used at all times with respect thereto to protect it from unauthorized access, destruction, use, modification, or disclosure. Those security procedures and practices shall be no less protective than those under which CalPA operates.

6. Protected Materials, Notes of Protected Materials, and Electronic Notes of Protected Materials, shall be treated as confidential by CalPA and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 8. Protected Materials shall not be used except as necessary for the conduct of the investigation of the use of ratepayer funds for lobbying, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this investigation and who needs to know the information in order to carry out that person's responsibilities in the investigation. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall become Notes of Protected Materials.

7. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate and a copy of such executed Non-Disclosure Certificate has been provided to SoCalGas.

8. Any disputes arising under this Agreement must be resolved through the Commission ADR process or through presenting the dispute to the Chief ALJ. Prior to

presenting any dispute under this Agreement to the Chief ALJ, the Parties shall use their best efforts to resolve such dispute.

9. Except where an ALJ has indicated otherwise, all documents filed or served in a proceeding that reflect or contain Protected Materials (other than Protected Materials within data request responses and related correspondence from one party to another), including without limitation all motions, testimony, exhibits, briefs, and hearing transcripts, shall be filed or served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Agreement. Such documents shall be marked as protected materials pursuant to Section 2(a) above, and shall be filed and/or served under seal.

10. If CalPA desires to include, utilize, or refer to any Protected Materials or information derived from Protected Materials in testimony, workpapers, or exhibits at hearing in a proceeding, CalPA shall first notify both counsel for SoCalGas and the assigned ALJ of such desire. If the Designating Party and the Assigned ALJ do not object to said use of Protected Materials, or upon a ruling by the Assigned ALJ or Commission granting said use of Protected Materials, thereafter during the hearing, presentation of such Protected Materials will be governed by procedures determined by the Commission or the Assigned ALJ.

11. Nothing in this Agreement shall be construed as precluding SoCalGas from objecting to the use of Protected Materials on any legal grounds.

12. Nothing in this Agreement shall be construed as waiving the Parties' rights or obligations under Rule 11.3 of the Commission's Rules of Practice and Procedure.

13. Neither of the Parties waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials. Neither of the Parties waives the right to seek additional administrative or judicial remedies after a decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. In particular, any actual or attempted release or use of Protected Materials or Notes of Protected Materials other than as contemplated under this Agreement may lead to irreparable injury which could not adequately be compensated through Commission remedies or monetary damages, and may therefore be enjoined.

14. The inadvertent disclosure of any information or documents which are subject to a claim of work product or the attorney-client privilege or materials entitled to protection under the 1st Amendment (such as those discussed in SoCalGas's December 2, 2019 Motion for Reconsideration / Appeal) shall not waive the protection of such information or documents. If CalPA becomes aware that it may have accessed such information, it will immediately notify SoCalGas. Upon written request, CalPA shall return to SoCalGas any such information or documents inadvertently disclosed, together with all copies and any notes pertaining to such information or documents.

15. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Agreement.

16. This Agreement shall be governed and construed according to the laws of the State of California.

17. This Agreement sets forth the complete understanding of the Parties hereto with respect to the subject matter hereof and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the provisions hereof must be written, executed by both Parties, and shall not be implied by any usage of trade or course of conduct.

18. The provisions of this Agreement shall be severable, and in case any provision of this Agreement is ruled to be invalid, illegal, or unenforceable, all remaining provisions of this Agreement shall remain valid, legal, and enforceable.

19. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated: _____ By: _____
[SIGNATORY NAME]
[TITLE]
Southern California Gas Company

Dated: _____ By: _____

NON-DISCLOSURE CERTIFICATE

I have been provided a copy of and have read the Non-Disclosure and Protective Agreement (the Agreement) between Southern California Gas Company (SoCalGas) and CalPA, executed in connection with the above-captioned non-proceeding investigation before the California Public Utilities Commission (the Proceeding). I agree to be bound by the Agreement and I certify my understanding that access to the Protected Materials, as that term is defined in the Agreement, is provided to me pursuant to the terms and restrictions of the Agreement. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information which copy or disclose the Protected Materials shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only in the context of the Proceeding. I will not use Protected Materials, Notes of Protected Materials, Electronic Notes of Protected Materials, and information contained therein for any other purpose or in any other regulatory proceeding, non-proceeding investigation, or judicial context. I agree to honor the confidentiality of the Protected Materials in perpetuity. Within one year of the date of the Agreement, I will destroy all Protected Materials and destroy all Notes of Protected Materials and Electronic Notes of Protected Materials and notify SoCalGas accordingly.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Business Address: _____
Date: _____

Exhibit K

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

From: [Jason Wilson](#)
To: [Bone, Traci](#)
Cc: [Ward, Alec](#); [Castello, Stephen](#); [Sierzant, Corinne M](#); [Holland, Brooke](#); [Willenken-CalPA](#)
Subject: FW: NDA--small revision
Date: Friday, May 29, 2020 11:27:46 AM
Attachments: [CalPA Non-Proceeding NDA \(clean\).docx](#)
[CalPA Non-Proceeding NDA \(redline\).docx](#)

Traci:

We made one minor change to make clear that non-public financial information is covered by the NDA. Please use this version of the NDA. If you have any questions, please let me know.

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.

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

NON-DISCLOSURE AND PROTECTIVE AGREEMENT

This Non-Disclosure and Protective Agreement (the Agreement) is effective as of the last date of the signatures below, by and between Southern California Gas Company (SoCalGas) and the Public Advocates Office at the California Public Utilities Commission (CalPA) (collectively, the Parties).

WHEREAS, certain information that SoCalGas may produce or disclose in the non-proceeding investigation, before or after the date of this Agreement, may constitute confidential, proprietary, or otherwise protected materials, including, but not limited to, nonpublic financial information (such as audited and unaudited financial information, regarding Sempra Energy and its subsidiaries and affiliates), other financial information, proprietary information, information constituting trade secrets, competitively sensitive documents, personal/private information such as employee or customer data, geographic information systems (GIS) data, and/or sensitive security or critical energy infrastructure information (CEII) (*see, e.g.*, 18 C.F.R. § 388.113(c)(1); 6 U.S.C. §131(3); 49 C.F.R. § 1520.5) (all collectively, the Protected Materials); and

WHEREAS, the level and type of real-time immediate access to SoCalGas's internal financial accounting system requested by CalPA would make it impossible for SoCalGas to mark information as confidential before being reviewed or copied by CalPA; and

WHEREAS, the Parties hereto believe that this Agreement will facilitate prompt discovery, protect legitimate confidentiality concerns, and preserve the rights of the Parties;

ACCORDINGLY, the Parties hereto agree that the following terms and conditions shall govern the use of information made available by SoCalGas to CalPA in the context of this non-proceeding investigation:

1. This Agreement shall govern access to and the use of all SAP data made available or produced by or on behalf of SoCalGas for purposes of the non-proceeding investigation or any other confidential information the Parties agree will be covered by this Agreement. The term of the Agreement shall be perpetual for CalPA to protect any Protected Materials. CalPA shall destroy copies of Protected Materials in accordance with the terms of this Agreement.

2. For purposes of this Agreement:

(a)(1) The term “Protected Materials” means the SAP information SoCalGas makes accessible to CalPA, whether or not reduced to other written or electronic form, any information contained in or obtained from such designated materials, hardcopy or electronic notes of Protected Materials, and any other hardcopy or electronic copies of Protected Materials.

(2) Because CalPA has requested remote access to SoCalGas’s SAP system, and there is no practical method of marking such information as confidential prior to providing it to CalPA, and CalPA is seeking access to the information without delay, the Parties agree that:

(a) All information on SoCalGas’s SAP system or derived from SAP that is accessed, received, or viewed by CalPA shall be preliminarily deemed confidential under Public Utilities Code § 583, General Order 66-D (GO 66-D), and D.17-09-023. Any electronic or hard copies or Notes of Protected Materials made by CalPA will be marked “PROTECTED MATERIALS” or words of similar import, such as “Confidential and Protected Materials Pursuant to PUC Section 583, GO 66-D, and D.17-09-023,” as long as the term “Protected Materials” or “Confidential” is included in that designation to indicate that there are Protected Materials on each page. If the Protected Materials are produced in electronic form, the “PROTECTED MATERIALS” designation shall be inserted on each page as a header or footer. To the extent CalPA is unable to mark Protected Materials accordingly, CalPA will identify the information as Confidential in some other reasonable manner.

(b) Prior to any disclosure of Protected Materials to anyone other than those who have signed the Non-Disclosure Certificate, CalPA shall provide to SoCalGas the documents it intends to disclose and allow SoCalGas at least 10 business days to review the documents and mark them in compliance with GO 66-D. In the event CalPA identifies more than 100 pages of documents, the 10 business days will be expanded to a number of days that is reasonable, but at least 20 business days. CalPA reserves its right to oppose confidentiality designations through an appropriate procedure.

(c) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Protected Materials. Protected Materials produced or converted into electronic form that are copied onto a computer network, computer hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, DVDs, data sticks/cards, mini-

discs, diskettes, zip drives, and other storage devices) shall be regarded as “Electronic Notes of Protected Materials.” Notes of Protected Materials and Electronic Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which the Parties shall certify their understanding that access to Protected Materials is provided pursuant to the terms and restrictions of this Agreement, and that such Parties have read the Agreement and agree to be bound by it.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) An attorney acting on behalf of CalPA;
- (2) Attorneys, paralegals, analysts, and other employees associated for purposes of the investigation with an attorney described in (1); or
- (3) An expert or an employee of an expert retained by CalPA for the purpose of advising, preparing for, or testifying in this Proceeding.

This Agreement does not constitute a waiver of SoCalGas’s right to refuse to provide CalPA access to Protected Materials if grounds exist for refusing to provide such information. If CalPA disagrees with SoCalGas’s refusal to provide Protected Material, the Parties may seek a resolution of the dispute in the appropriate venue.

3. Protected Materials shall be made available under the terms of this Agreement only to CalPA and only through their Reviewing Representative(s). Reviewing Representatives may not share Protected Materials with persons within their organization who are not Reviewing Representatives.

4. Protected Materials may be retained by CalPA for one year from the date of this Agreement. At that time, CalPA shall destroy all Protected Materials (including Notes of Protected Materials and Electronic Notes of Protected Materials), except that any information CalPA has provided to SoCalGas pursuant to paragraph 2(b) may be retained. Electronic Notes of Protected Materials shall be deemed to have been destroyed at the time they have been deleted from the computer network, hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, DVDs, data sticks/cards, mini-discs, diskettes, zip drives, and other storage devices) on which they were maintained. If

requested to do so, upon completion of the destruction of all such Protected Materials, CalPA shall submit to SoCalGas an affidavit by an authorized representative stating that, to the best of their knowledge all Protected Materials (including Notes of Protected Materials and Electronic Notes of Protected Materials) have been destroyed. Until they are destroyed, all Protected Materials shall remain subject to this Agreement.

5. All Protected Materials shall be maintained by CalPA in a secure place, and stored on a secured password protected device and/or network if electronic. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to this Agreement. CalPA represents, warrants, and covenants that security procedures and practices appropriate to the nature of confidential information are in place and will be used at all times with respect thereto to protect it from unauthorized access, destruction, use, modification, or disclosure. Those security procedures and practices shall be no less protective than those under which CalPA operates.

6. Protected Materials, Notes of Protected Materials, and Electronic Notes of Protected Materials, shall be treated as confidential by CalPA and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 8. Protected Materials shall not be used except as necessary for the conduct of the investigation of the use of ratepayer funds for lobbying, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this investigation and who needs to know the information in order to carry out that person's responsibilities in the investigation. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall become Notes of Protected Materials.

7. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate and a copy of such executed Non-Disclosure Certificate has been provided to SoCalGas.

8. Any disputes arising under this Agreement must be resolved through the Commission ADR process or through presenting the dispute to the Chief ALJ. Prior to

presenting any dispute under this Agreement to the Chief ALJ, the Parties shall use their best efforts to resolve such dispute.

9. Except where an ALJ has indicated otherwise, all documents filed or served in a proceeding that reflect or contain Protected Materials (other than Protected Materials within data request responses and related correspondence from one party to another), including without limitation all motions, testimony, exhibits, briefs, and hearing transcripts, shall be filed or served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Agreement. Such documents shall be marked as protected materials pursuant to Section 2(a) above, and shall be filed and/or served under seal.

10. If CalPA desires to include, utilize, or refer to any Protected Materials or information derived from Protected Materials in testimony, workpapers, or exhibits at hearing in a proceeding, CalPA shall first notify both counsel for SoCalGas and the assigned ALJ of such desire. If the Designating Party and the Assigned ALJ do not object to said use of Protected Materials, or upon a ruling by the Assigned ALJ or Commission granting said use of Protected Materials, thereafter during the hearing, presentation of such Protected Materials will be governed by procedures determined by the Commission or the Assigned ALJ.

11. Nothing in this Agreement shall be construed as precluding SoCalGas from objecting to the use of Protected Materials on any legal grounds.

12. Nothing in this Agreement shall be construed as waiving the Parties' rights or obligations under Rule 11.3 of the Commission's Rules of Practice and Procedure.

13. Neither of the Parties waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials. Neither of the Parties waives the right to seek additional administrative or judicial remedies after a decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. In particular, any actual or attempted release or use of Protected Materials or Notes of Protected Materials other than as contemplated under this Agreement may lead to irreparable injury which could not adequately be compensated through Commission remedies or monetary damages, and may therefore be enjoined.

14. The inadvertent disclosure of any information or documents which are subject to a claim of work product or the attorney-client privilege or materials entitled to protection under the 1st Amendment (such as those discussed in SoCalGas's December 2, 2019 Motion for Reconsideration / Appeal) shall not waive the protection of such information or documents. If CalPA becomes aware that it may have accessed such information, it will immediately notify SoCalGas. Upon written request, CalPA shall return to SoCalGas any such information or documents inadvertently disclosed, together with all copies and any notes pertaining to such information or documents.

15. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Agreement.

16. This Agreement shall be governed and construed according to the laws of the State of California.

17. This Agreement sets forth the complete understanding of the Parties hereto with respect to the subject matter hereof and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the provisions hereof must be written, executed by both Parties, and shall not be implied by any usage of trade or course of conduct.

18. The provisions of this Agreement shall be severable, and in case any provision of this Agreement is ruled to be invalid, illegal, or unenforceable, all remaining provisions of this Agreement shall remain valid, legal, and enforceable.

19. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated: _____ By: _____
[SIGNATORY NAME]
[TITLE]
Southern California Gas Company

Dated: _____ By: _____

NON-DISCLOSURE CERTIFICATE

I have been provided a copy of and have read the Non-Disclosure and Protective Agreement (the Agreement) between Southern California Gas Company (SoCalGas) and CalPA, executed in connection with the above-captioned non-proceeding investigation before the California Public Utilities Commission (the Proceeding). I agree to be bound by the Agreement and I certify my understanding that access to the Protected Materials, as that term is defined in the Agreement, is provided to me pursuant to the terms and restrictions of the Agreement. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information which copy or disclose the Protected Materials shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only in the context of the Proceeding. I will not use Protected Materials, Notes of Protected Materials, Electronic Notes of Protected Materials, and information contained therein for any other purpose or in any other regulatory proceeding, non-proceeding investigation, or judicial context. I agree to honor the confidentiality of the Protected Materials in perpetuity. Within one year of the date of the Agreement, I will destroy all Protected Materials and destroy all Notes of Protected Materials and Electronic Notes of Protected Materials and notify SoCalGas accordingly.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Business Address: _____

Date: _____

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

NON-DISCLOSURE AND PROTECTIVE AGREEMENT

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WHEREAS, the level and type of real-time immediate access to SoCalGas's internal financial accounting system requested by CalPA would make it impossible for SoCalGas to mark information as confidential before being reviewed or copied by CalPA; and

WHEREAS, the Parties hereto believe that this Agreement will facilitate prompt discovery, protect legitimate confidentiality concerns, and preserve the rights of the Parties;

ACCORDINGLY, the Parties hereto agree that the following terms and conditions shall govern the use of information made available by SoCalGas to CalPA in the context of this non-proceeding investigation:

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- (2) Attorneys, paralegals, analysts, and other employees associated for purposes of the investigation with an attorney described in (1); or
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4. Protected Materials may be retained by CalPA for one year from the date of this Agreement. At that time, CalPA shall destroy all Protected Materials (including Notes of Protected Materials and Electronic Notes of Protected Materials), except that any information CalPA has provided to SoCalGas pursuant to paragraph 2(b) may be retained. Electronic Notes of Protected Materials shall be deemed to have been destroyed at the time they have been deleted from the computer network, hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, DVDs, data sticks/cards, mini-discs, diskettes, zip drives, and other storage devices) on which they were maintained. If

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5. All Protected Materials shall be maintained by CalPA in a secure place, and stored on a secured password protected device and/or network if electronic. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to this Agreement. CalPA represents, warrants, and covenants that security procedures and practices appropriate to the nature of confidential information are in place and will be used at all times with respect thereto to protect it from unauthorized access, destruction, use, modification, or disclosure. Those security procedures and practices shall be no less protective than those under which CalPA operates.

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8. Any disputes arising under this Agreement must be resolved through the Commission ADR process or through presenting the dispute to the Chief ALJ. Prior to

presenting any dispute under this Agreement to the Chief ALJ, the Parties shall use their best efforts to resolve such dispute.

9. Except where an ALJ has indicated otherwise, all documents filed or served in a proceeding that reflect or contain Protected Materials (other than Protected Materials within data request responses and related correspondence from one party to another), including without limitation all motions, testimony, exhibits, briefs, and hearing transcripts, shall be filed or served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Agreement. Such documents shall be marked as protected materials pursuant to Section 2(a) above, and shall be filed and/or served under seal.

10. If CalPA desires to include, utilize, or refer to any Protected Materials or information derived from Protected Materials in testimony, workpapers, or exhibits at hearing in a proceeding, CalPA shall first notify both counsel for SoCalGas and the assigned ALJ of such desire. If the Designating Party and the Assigned ALJ do not object to said use of Protected Materials, or upon a ruling by the Assigned ALJ or Commission granting said use of Protected Materials, thereafter during the hearing, presentation of such Protected Materials will be governed by procedures determined by the Commission or the Assigned ALJ.

11. Nothing in this Agreement shall be construed as precluding SoCalGas from objecting to the use of Protected Materials on any legal grounds.

12. Nothing in this Agreement shall be construed as waiving the Parties' rights or obligations under Rule 11.3 of the Commission's Rules of Practice and Procedure.

13. Neither of the Parties waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials. Neither of the Parties waives the right to seek additional administrative or judicial remedies after a decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. In particular, any actual or attempted release or use of Protected Materials or Notes of Protected Materials other than as contemplated under this Agreement may lead to irreparable injury which could not adequately be compensated through Commission remedies or monetary damages, and may therefore be enjoined.

14. The inadvertent disclosure of any information or documents which are subject to a claim of work product or the attorney-client privilege or materials entitled to protection under the 1st Amendment (such as those discussed in SoCalGas's December 2, 2019 Motion for Reconsideration / Appeal) shall not waive the protection of such information or documents. If CalPA becomes aware that it may have accessed such information, it will immediately notify SoCalGas. Upon written request, CalPA shall return to SoCalGas any such information or documents inadvertently disclosed, together with all copies and any notes pertaining to such information or documents.

15. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Agreement.

16. This Agreement shall be governed and construed according to the laws of the State of California.

17. This Agreement sets forth the complete understanding of the Parties hereto with respect to the subject matter hereof and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the provisions hereof must be written, executed by both Parties, and shall not be implied by any usage of trade or course of conduct.

18. The provisions of this Agreement shall be severable, and in case any provision of this Agreement is ruled to be invalid, illegal, or unenforceable, all remaining provisions of this Agreement shall remain valid, legal, and enforceable.

19. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated: _____ By: _____
[SIGNATORY NAME]
[TITLE]
Southern California Gas Company

Dated: _____ By: _____

NON-DISCLOSURE CERTIFICATE

I have been provided a copy of and have read the Non-Disclosure and Protective Agreement (the Agreement) between Southern California Gas Company (SoCalGas) and CalPA, executed in connection with the above-captioned non-proceeding investigation before the California Public Utilities Commission (the Proceeding). I agree to be bound by the Agreement and I certify my understanding that access to the Protected Materials, as that term is defined in the Agreement, is provided to me pursuant to the terms and restrictions of the Agreement. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information which copy or disclose the Protected Materials shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only in the context of the Proceeding. I will not use Protected Materials, Notes of Protected Materials, Electronic Notes of Protected Materials, and information contained therein for any other purpose or in any other regulatory proceeding, non-proceeding investigation, or judicial context. I agree to honor the confidentiality of the Protected Materials in perpetuity. Within one year of the date of the Agreement, I will destroy all Protected Materials and destroy all Notes of Protected Materials and Electronic Notes of Protected Materials and notify SoCalGas accordingly.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Business Address: _____

Date: _____

Exhibit N

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

From: [Bone, Traci](#)
To: [Jason Wilson](#); [Sierzant, Corinne M](#); [Ward, Alec](#); [Castello, Stephen](#); [Henry, Elliott S](#); [Holland, Brooke](#); [Sherin Varghese](#); [Willenken-CalPA](#)
Subject: RE: Meet & Confer
Date: Thursday, May 28, 2020 8:11:41 AM

Jason:

Thank you for your inquiry regarding this Friday's pre-scheduled conference call between SoCalGas and CalAdvocates. Given the current situation, wherein SoCalGas moved without notice to CalAdvocates, and out of time, to partially quash the subpoena and supplement its 1st Amendment Motion for Reconsideration, we understandably feel that the conference calls were merely a way for SoCalGas to obtain additional extensions and ultimately delay its discovery production indefinitely. Indeed, SoCalGas has failed to fully response to data requests that have been pending since December and February, among other deficiencies.

Given these concerns, CalAdvocates proposes that SoCalGas provide the "comprehensive list of where we stand on outstanding discovery matters" to CalAdvocates in writing in lieu of the scheduled conference call.

CalAdvocates proposes to hold next Friday's pre-scheduled call on our calendars, and we can determine whether or not to continue with the call later 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: Jason Wilson <jwilson@willenken.com>
Sent: Tuesday, May 26, 2020 11:17 AM
To: Bone, Traci <traci.bone@cpuc.ca.gov>; Sierzant, Corinne M <CSierzant@socalgas.com>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Henry, Elliott S <EHenry@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Sherin Varghese <svarghese@willenken.com>; Willenken-CalPA <willenken-calpa@willenken.com>
Subject: RE: Meet & Confer

Traci:

We hope you had a good holiday weekend. SoCalGas is disappointed that you canceled the meet and confer scheduled for last Friday. We believe these meet and confer telephonic conferences have been useful. They have resolved some disputes and allowed the parties to move forward on many issues. For example, your decision to ask for specific LATS entries related to particular parties has allowed a faster turnaround of the information you appear to be most interested in.

We plan to provide you with a comprehensive list of where we stand on outstanding discovery

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

matters later this week in advance of our meet and confer scheduled for this Friday, assuming it is still on. Please let us know if it is.

All the best,

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

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

Sent: Friday, May 22, 2020 7:59 AM

To: Sierzant, Corinne M <CSierzant@socalgas.com>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Henry, Elliott S <EHenry@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Jason Wilson <jwilson@willenken.com>; Sherin Varghese <svarghese@willenken.com>

Subject: RE: Meet & Confer

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).

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

Where: Skype Meeting

[Join Skype Meeting](#)

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Join by phone

Toll number: +1 (858) 284-1506,,641365348# (Dial-in Number)

English (United States)

[Find a local number](#)

Conference ID: 641365348

[Forgot your dial-in PIN?](#) | [Help](#)

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

Exhibit O

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

From: [Bone, Traci](#)
To: [Jason Wilson](#)
Cc: [Ward, Alec](#); [Castello, Stephen](#); [Holland, Brooke](#); [Sierzant, Corinne M](#)
Subject: RE: Meet and Confer Today at 11:30 am
Date: Friday, June 5, 2020 10:51:25 AM

Jason: Thanks for the reminder about our pre-scheduled meet and confer. Given the parties' litigation positions and inability to resolve them over the last seven meetings, we do not believe a meet and confer is appropriate or necessary at this time.

My apologies for the late notice.

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: Friday, June 05, 2020 10:08 AM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Holland, Brooke <AHolland@socalgas.com>; Sierzant, Corinne M <CSierzant@socalgas.com>
Subject: Meet and Confer Today at 11:30 am

Traci:

We assume our meet and confer at 11:30 am is still on schedule. We look forward to talking to you then.

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

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Willenken LLP. Unauthorized use, disclosure, or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email and destroy this communication and all copies thereof, including all attachments.

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

Exhibit P

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-2020-04
Not In A Proceeding

Date Issued: June 30, 2020

Date Due: July 10, 2020

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

Elliott S. Henry Phone: (213) 244-8234
Attorney for SoCalGas Email: EHenry@socalgas.com

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

Jason H. Wilson Email: jwilson@willenken.com
Outside Counsel for SoCalGas Phone: 213.955.8020

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

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

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

INSTRUCTIONS¹

General:

You are instructed to answer the following Data Requests with written, verified responses pursuant to, without limitation, Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702 and Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure within ten (10) business days. Note that Public Utilities Code § 581 requires you to provide the information in the form and detail that we request and failure to do so may result in fines or other penalties.

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.

¹ Because SoCalGas has routinely failed to comply with the Instructions provided in the data requests in this investigation, portions of these Instructions are highlighted to bring your attention to the Instructions. Cal Advocates' expects that you will comply with all of the Instructions, including those that are highlighted.

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 notify Cal Advocates of your intent to make such claims within five (5) business days, and provide a privilege log no later than the due date of this data request, including: (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. No confidential information should be blacked out. Assertions of confidentiality will be carefully scrutinized and are likely to be challenged absent a strong showing of the legal basis and need for confidentiality.

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 under penalty of perjury 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” and 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, including its parent, Sempra Energy Company.
- 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 described in the Sempra Energy Political Activities Policy (Policy) and the training materials related to the Policy.²

² 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.”

DATA REQUEST

1. For every SoCalGas or Sempra Energy Company (Sempra) account identified in response to the questions below, please provide all journal entries and Journal Entry Request Forms from January 1, 2015 to the present. Because this data request is continuing in nature pursuant to the General Instructions above, going forward, as new Journal Entries are made to any of these accounts, or Journal Entry Request Forms are created, they should be provided to Cal Advocates pursuant to this data request within 10 business days of the journal entry being made. To the extent you claim attorney/client communication or attorney work product privilege for the Journal Entries or the Journal Entry Request Forms, please provide a privilege log consistent with the Instructions set forth above and no later than the due date of this data request.
2. Please provide the confidential version of SoCalGas' 2019 GO77-M report, which should have been submitted to the CPUC on or before May 31, 2020. As this was an outstanding data request, please explain why it has not already been provided to Cal Advocates consistent with the continuing nature of data requests in this investigation.
3. Please list all account names and numbers that were excluded from Cal Advocates review of SoCalGas' SAP system through the "custom software solution" described on pages 1 and 2 in SoCalGas' May 22, 2020 substitute Motion to Quash.³

SOCALGAS/SEMPRA FINANCIAL SUPPORT OF THIRD PARTIES

4. Please provide the following information available to Sempra and/or SoCalGas regarding the entity Bracewell LLP - <https://bracewell.com/>
 - a. A narrative of the relationship between or among Sempra, SoCalGas, and the entity;
 - b. The date and amount of any payments or donations made to the entity by Sempra and/or SoCalGas between January 1, 2015 and today.
 - c. The Sempra and/or SoCalGas identification number for the entity;
 - d. All contracts in effect at any time between January 1, 2015 and today between or among Sempra, SoCalGas and the entity, and all amendments and requisition requests;
 - e. All invoices submitted by the entity and/or paid by Sempra and/or SoCalGas at any time between January 1, 2015 and today;

³ 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).*"

- f. All Work Order Authorizations related to payments made to the entity;
 - g. If the entity is/was a subcontractor to any Sempra and/or SoCalGas vendor, provide the name of that vendor and all of the information set forth in subsections (a) through (f) above.
 - h. If the entity is/was a charitable organization, please provide the date and amount of any donations made to the entity by Sempra and/or SoCalGas between January 1, 2015 and today.
 - i. For any payments to the entity:
 - The accounts where the payments were booked;
 - Identification of which portion of the payment is or will be booked to an above-the-line account (i.e. ratepayer funded) and which portion is or will be booked to a below-the-line account (i.e. shareholder funded); and
 - A narrative explanation for why the payments were assigned in the manner identified above.
5. Please provide the same information requested in Question 4 for each of the following entities:
- a. LB Consulting, Inc. – <https://www.lbstrategicconsulting.com/>
 - b. Method Campaign Services - <https://www.methodcampaigns.com/>
 - c. Act Now Los Angeles – previously at the website actnowla.org
 - d. BizFed - <https://bizfedlacounty.org/>
 - e. Willenken LLP - <https://willenken.com/>
 - f. We Expect Clean Air Now (WECAN) – formerly linked to the COFEM website
 - g. Council of Mexican Federations in North America (COFEM) - <https://www.cofem.org/>
 - h. California Community Builders – <https://www.ccbuilders.org/about/>
 - i. The Two Hundred - <https://www.thetwohundred.org/>
 - j. California Natural Gas Vehicle Coalition - <https://cngvc.org/>
 - k. Coalition for Clean Air - <https://www.ccair.org/>
 - l. Clean Energy Fuels - <https://www.cleanenergyfuels.com/>
 - m. Western States Petroleum Association - <https://www.wspa.org/>
 - n. Californians for Affordable and Reliable Energy (CARE) - <https://www.careaboutenergy.org/about-us>
 - o. Californians for Balanced Energy Solutions (C4BES) - <https://c4bes.org/>
 - p. Coalition for Renewable Natural Gas - <http://www.rngcoalition.com/>

ACCOUNTING & ACCOUNTING POLICIES

- 6. Please provide a chart of all SoCalGas accounts that shows how each account is tracked to the FERC Uniform System of Accounts.

7. Please provide the instructions for IO_Form_503.xls, which prior SoCalGas data responses reflect are located on the SoCalGas and/or Sempra “Manuals & Forms” page of the Accounting and Finance Intranet website.
8. Please provide SoCalGas and/or Sempra documentation, including any policies or procedures, that explains what a Work Order Authorization is, what its purpose is, when one should be requested, and who approves one.
9. Please provide SoCalGas and/or Sempra documentation, including any policies or procedures, that explains what an Internal Order (IO) is, what its purpose is, when one should be requested, who approves one, and how an IO differs from a Work Order Authorization.
10. Explain whether it is common to have a Work Order Authorization effective date on a date before the Work Order Authorization is prepared and authorized, and if so, why.
11. Do SoCalGas and/or Sempra policies permit work to be performed without an approved Work Order Authorization? If so, please provide supporting documentation for this policy.

BALANCED ENERGY WORK ORDER AUTHORIZATION

12. In reference to the attached Balanced Energy Work Order Authorization provided to Cal Advocates, please:
 - a. Explain what the number in the upper left hand corner represents – 300796601.
 - b. Explain what the number in the upper right hand corner represents - 28322.000.
 - c. Explain what the number under “FERC Account” – F920000G – means.
 - d. Provide whatever SoCalGas and/or Sempra employee guidance exists that explains the types of activities or costs that are charged to “nonrefundable O&M.”
 - e. Provide whatever SoCalGas and/or Sempra employee guidance exists that explains the types of activities or costs that are charged to FERC Account F920000G.
 - f. Explain what “Operating Area/District” and the term “GCT” means.
 - g. Explain why the Balanced Energy Work Order Authorization was made effective 1/1/2019 but not created or approved until 3/21/2019.
 - h. Explain how the “Company Labor” of \$3,504,030 was calculated.

- i. Provide any documents that were presented in support of the approval of the Balanced Energy Work Order Authorization.
- j. Provide all updated versions of the Balanced Energy Work Order Authorization or any successors.
- k. Provide all accounting instructions associated with the Balanced Energy Work Order Authorization.
- l. Provide all Journal Entry Request Forms in which the Balanced Energy IO (IO 300796601) appears as either a debit or credit.

13. The “Job Scope Summary” of the attached Balanced Energy Work Order Authorization refers to an “Energy Policy and Strategy team.” Regarding the Energy Policy and Strategy team:

- a. Please provide any SoCalGas or Sempra documentation that describes this team.
- b. Please identify the members of the team by year for each year from January 1, 2015 to the present.
- c. Please identify all budgets allocated to the team by year for each year from January 1, 2015 to the present.
- d. Please identify all cost centers where work performed by or for the team is booked.

100% SHAREHOLDER-FUNDED CONTRACTS AND ACTIVITIES

14. For each “100% shareholder-funded” contract (as that term is used in SoCalGas’ Motion for Reconsideration⁴) please provide:

- a. The contract and any amendments and requisition requests;
- b. The Work Order Authorization;
- c. All account numbers where costs of the contract are booked;
- d. The name and identification number of all vendors whose costs are charged to SoCalGas or Sempra under the contract;
- e. Any other legal agreements between or among SoCalGas and/or Sempra and the vendors who costs are charged to the contract.

⁴ That Motion for Reconsideration was served December 2, 2019 and 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).*”

15. For all 100% shareholder-funded activities that are the subject of SoCalGas First Amendment arguments in its Motion for Reconsideration (Activities) please provide:
- a. Any contract, amendments or requisition requests relating to the Activities;
 - b. The Work Order Authorization;
 - c. If no contract exists, a narrative description of the Activities;
 - d. All account numbers where costs for the Activities are booked;
 - e. The name and identification number of all vendors paid for the activities by either SoCalGas or Sempra;
 - f. Any other legal agreements between or among SoCalGas and/or Sempra and the vendors who perform the Activities.

GEORGE MINTER AND KENNETH CHAWKINS

16. When did George Minter begin working for SoCalGas and/or Sempra and when did his employment terminate?
17. Please identify Mr. Minter's titles and explain his duties while employed for SoCalGas and/or Sempra between January 1, 2015 and his termination.
18. Please provide Mr. Minter's current contact information, including home address, phone number, and email.
19. CalAdvocates-AW-SCG-2020-01 Q21 asked "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:..." SoCalGas responded "No." However, Cal Advocates was advised that Mr. Minter represented himself as a consultant to SoCalGas as recently as May, 2020. Please confirm Mr. Minter's current employment status with SoCalGas.
20. When did Kenneth Chawkins begin working for SoCalGas and/or Sempra and when did his employment terminate?
21. Please identify Mr. Chawkins' titles and explain his duties while employed for SoCalGas and/or Sempra between January 1, 2015 and his termination.
22. Identify all SoCalGas and Sempra employees who were briefed by either George Minter or Ken Chawkins between January 1, 2015 and today on the creation or purpose of Californians For Balanced Energy Solutions (C4BES) or SoCalGas' relationship to C4BES.

23. Please provide the names and titles of the persons who are now performing the work previously performed by George Minter and Ken Chawkins.

BATES STAMPED DOCUMENTS PROVIDED TO SOCALGAS 3/11/20

24. Refer to PAO-0000001 and 0000002, which are the first two pages of the collection of 209 pages of Bates-stamped documents provided to SoCalGas by Cal Advocates on March 11, 2020, for removal of all unsupported confidentiality designations.

Regarding those two pages (referred to as “Document” here), please provide:

- a. A narrative explanation of what the Document represents.
- b. The date that that the Document was created. If a specific date is not available, please provide an approximation.
- c. All versions of the Document that exist from both before and after the date of the version in the 209 pages of Cal Advocates documents.
- d. Explain whether the Document is an excerpt from a larger document. If so, please provide all other information that comprised the entire document.
- e. Define the term “PAM” which is the heading for the second to last column of the Document.
- f. For each SoCalGas employee identified under the "PAM" column in the Document, please provide:
 - The full name of the employee and their title at the time the Document was created;
 - The amount of time the employee spent on activities related to C4BES, including discussion of C4BES with members of the business community and any supporting documentation, such as accounting or time entry documentation.
 - Explain whether work performed by a PAM would be allocated to above-the-line or below-the-line accounts, or a combination, and the rationale for such allocations.
 - Identify if any employee time was recorded to shareholder accounts (at any point) for activities related to C4BES for any of these employee, and if so, the accounts where the time is recorded.

IMPRENDA COMMUNICATIONS GROUP

25. SoCalGas’ April 24, 2020, response to Question 3 of Data Request CalAdvocates-SC-SCG-2019-11 states that Imprennda Communications’ invoices that SoCalGas produced in response to the data request as “Exhibit A” “were not paid by SoCalGas,

and it is unclear whether or not SoCalGas is even ultimately responsible for payment.” Please:

- a. Explain why SoCalGas believed that it was “unclear whether or not SoCalGas is even ultimately responsible for payment;”
- b. Provide documentation that supports SoCalGas’ claim that it was not responsible for payment of the invoices, including any documentation provided to Imprenta to support SoCalGas’ claim;
- c. Identify who, if anyone, paid these Imprenta Invoices; and
- d. If these invoices were not paid, was Imprenta compensated in any other manner for the work described in the invoices?

END OF REQUEST

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

**DECLARATION OF DENNIS ENRIQUE IN SUPPORT OF SOUTHERN CALIFORNIA
GAS COMPANY'S 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)**

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

DECLARATION OF DENNIS ENRIQUE

I, Dennis Enrique, declare and state as follows:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.

2. I am employed by San Diego Gas & Electric Company (SDG&E) as a Financial Systems and Client Support Manager. I have worked for Sempra Energy (SoCalGas's parent company) since 1999, and for SoCalGas since 2010. In my current position, my responsibilities include managing SoCalGas's financial accounting system, which utilizes the SAP enterprise software. I am familiar with the types of information and records which are accessible through the SAP financial accounting system.

3. I am submitting this Declaration in Support of Southern California Gas Company's (SoCalGas) Opposition to the 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.

4. On or about May 18, 2020 I was tasked with working with SoCalGas's IT Software Development team to help build, design, test and implement a custom software solution in connection with a subpoena issued by the Public Advocates Office to access SoCalGas's SAP financial system.

5. For this project I worked with a team of two other individuals from my Financial Systems unit.

6. As of the date of this declaration, SoCalGas's SAP accounting system references and contains information relating to approximately 2,300 unique vendors. The custom software solution that my team assisted on excluded the ability to access and view transactions for 13 of SoCalGas's vendors that are 100% shareholder-funded, and for 73 outside law firms retained by SoCalGas.

7. From approximately May 18, 2020 to May 28, 2020, I estimate that my Financial System team spent a total of approximately 120 hours to assist in designing, building, testing and implementing the software solution.

8. My Financial System unit, including myself, also assisted SoCalGas in

responding to the Public Advocates Office’s request of May 8, 2020, wherein they asked for “fixed databased copies” of eleven (11) “accounts” – identified by specific internal order numbers, cost center numbers, or other descriptions – for the years 2015 to present. In response to that request, my unit queried the SAP system based on the information they provided, and then identified information responsive to their request. We then downloaded all of the responsive data, for the years 2015, 2016 and 2017, into multiple Excel spreadsheets for production to the Public Advocates Office.

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

Executed on July 1, 2020 at Porter Ranch, California.



DENNIS ENRIQUE

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

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

**DECLARATION OF KELLY CONTRATTO IN SUPPORT OF SOUTHERN
CALIFORNIA GAS COMPANY'S 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)**

DECLARATION OF KELLY CONTRATTO

I, Kelly Contratto, declare and state as follows:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.

2. I am employed by San Diego Gas & Electric Company (SDG&E) as its IT Software Development Manager in the Utility Operations and Financial Applications organization. I am a shared employee with Southern California Gas Company (SoCalGas), an affiliate of SDG&E. As such, I provide support to both SoCalGas and SDG&E. I have been employed by Sempra Energy (the parent company of SoCalGas and SDG&E) or one of its companies since 1991. In my current role, I, along with my team, are responsible for, amongst other things, supporting SoCalGas's accounting system, which utilize the SAP enterprise software. I also oversee a team of security professionals relating to developing and granting access roles to users in SAP.

3. I am submitting this Declaration in Support of Southern California Gas Company's (SoCalGas) Opposition to the 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.

4. On May 17, 2020 I was asked to create a custom software solution in connection with a subpoena issued by the Public Advocates Office to access SoCalGas's SAP financial system. SoCalGas's SAP system is a vast financial system which I understand includes nearly all financial transactions made by the company. It captures a wide variety of transactions, including payments to contractors and other third parties, worker compensation payments, and individual employee reimbursements. In that connection, it also references or contains payees' names, social security numbers and bank information. The purpose of the software solution is to filter and exclude the ability to access and view transactions related to certain 100% shareholder-funded vendors of SoCalGas and outside law firms retained by SoCalGas.

5. For this project I assigned a team consisting of myself, two technical leads, and one programmer. We worked with a team of at least two individuals from the Environmental Policy business unit team ("Business Unit") to identify the relevant transactions. We additionally

worked with three members of the Financial Systems team in Accounting to customize the solution and test the software.

6. This team (comprising of at least 9 people) compiled a list of relevant vendor identification numbers based on the names (and variations thereof) of certain 100% shareholder-funded vendors and outside law firms identified by the Business Unit. We then built, developed and programmed a custom software solution to exclude the ability to access or view the transactions of these identified vendors and law firms, based on their corresponding Vendor Identification Number, which is a field in the SAP database. This solution also excluded the ability to access or view certain records, attachments, and documents associated with these vendor and law firm transactions. The Business Unit manually identified additional transactions to exclude by reviewing thousands of journal entries to exclude transactions containing protected information.. Each of these particular records, attachments and documents was excluded by its unique SAP Reference Document Number, which is also a field in the SAP system.

7. In addition to compiling relevant Vendor ID Numbers and SAP Reference Document Numbers, and building, developing and programming the custom software, this team also conducted multiple tests of the software to identify and redress any deficiencies or vulnerabilities.

8. The above-described process required the dedicated efforts of all members of the team, from approximately May 18, 2020 to May 28, 2020, when the custom software was completed. Speaking strictly for my technical team, comprised of two technical leads, one programmer and myself, I estimate that we spent a total of approximately 200 hours during the May 18, 2020 to May 28, 2020 time frame, to design, build, test and implement the solution. During that time, my technical team members dedicated all or substantially all of their workday hours on this project, and I spent approximately 20% to 25% of my work day hours managing them.

9. The SAP system contains millions of accounting records. For example, the SAP system contains millions of records called “accounting documents.” An accounting document reflects postings of financial transactions in the SAP system, and the document contains fields or includes hyperlinks to other fields including but not limited to those which reveal sensitive information such as social security numbers, banking accounting numbers and information, pricing information, amongst others. Further, through the accounting document a user can access

or link through to underlying records such as invoices, which itself may contain additional sensitive information. For the period January 1, 2015 to April 30, 2020, SoCalGas's SAP system contains approximately 13 million accounting documents.

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

Executed on July 1, 2020 at Escondido, California.



KELLY CONTRATTO

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

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 COMPEL
CONFIDENTIAL DECLARATIONS SUBMITTED IN SUPPORT
OF SOUTHERN CALIFORNIA GAS COMPANY'S DECEMBER 2, 2019
MOTION FOR RECONSIDERATION OF FIRST AMENDMENT ASSOCIATION
ISSUES AND REQUEST FOR MONETARY FINES FOR THE UTILITY'S
INTENTIONAL WITHHOLDING OF THIS INFORMATION;
[PROPOSED] ORDER**

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July 9, 2020

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

I. INTRODUCTION

Pursuant to Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702,¹ and Rule 1.1 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure (Rules) the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) moves for the California Public Utilities Commission (Commission) to compel Southern California Gas Company (SoCalGas) to produce to Cal Advocates the confidential versions of the declarations submitted in support of SoCalGas' December 2, 2020 Motion for Reconsideration of First Amendment association issues.² Cal Advocates also moves for daily monetary fines to be imposed on SoCalGas for its intentional withholding of this information from Cal Advocates. A proposed order to this effect is attached hereto.

Since May 2019, Cal Advocates has been investigating SoCalGas' use of ratepayer monies to fund anti-decarbonization campaigns through "astroturf" organizations,³ 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. This motion is related to that investigation.

II. FACTUAL BACKGROUND

On October 7, 2019, in response to SoCalGas' failure to comply with discovery requests in the investigation, Cal Advocates submitted to the Commission a Motion to

¹ All section references are to the California Public Utilities Code unless otherwise stated.

² 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).*"

³ "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=Fmh4RdlwswE>

Compel SoCalGas to produce responses to certain data requests.⁴ That Motion to Compel was granted by Administrative Law Judge (ALJ) DeAngelis on November 1, 2019 (ALJ Ruling).⁵

SoCalGas then sought a stay of the ALJ Ruling,⁶ and when that was not granted it did two things. Given that it would be subject to fines of up to \$100,000 per day for failure to comply with the ALJ Ruling, it provided the documents to Cal Advocates that were subject to the Motion to Compel.⁷ It also sought authorization from the ALJ on November 22, 2019, to submit a Motion for Reconsideration challenging the ALJ Ruling. Even though its request to file such a motion was not granted, SoCalGas nevertheless submitted its Motion for Reconsideration of First Amendment association issues for the Commission's consideration on December 2, 2019.⁸ It also submitted four redacted declarations in support⁹ of that motion, and purported to submit confidential versions of those four declarations to the Commission's Docket Office with its Motion to File Under Seal.¹⁰

⁴ That Cal Advocates October 7, 2019 Motion to Compel is entitled: "*Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request—CalAdvocates-SC-SCG-2019-05.*"

⁵ Exhibit 1, November 1, 2019 ALJ Ruling.

⁶ SoCalGas' motion to stay, submitted November 4, 2019, is entitled: "*Southern California Gas Company's (U 904 G) Emergency Motion To Stay Pending Full Commission Review Of 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).*"

⁷ See SoCalGas May 22, 2020 Substitute Motion to Quash, p. 13 ("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 (see Pub. Util. Code § 2107), SoCalGas produced under protest the 100% shareholder-funded contracts at issue on November 5, 2019 but reserved its rights to appeal the decision. (Henry Decl., Exh. M [Motion for Reconsideration/Appeal], at p.8).")

⁸ The Commission has not yet ruled on either SoCalGas' December 2, 2019 Motion for Reconsideration or its concurrently submitted Motion to File Under Seal.

⁹ See Exhibit 2, Redacted Declarations Submitted In Support of SoCalGas' 12-2-19 Motion for Reconsideration.

¹⁰ SoCalGas' December 2, 2019 Motion to File Under Seal is entitled: "*Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations Numbers 3, 4, 5, and 6 In Support of Its Motion For Reconsideration/Appeal to the*

Relevant here is the fact that while SoCalGas appears to have made the confidential versions of the declarations available to other Commission offices and divisions, it did not provide them to Cal Advocates. Cal Advocates did not realize this until May 19, 2020, when SoCalGas sought to use nearly identical redacted declarations to support its Motion to Quash a validly-issued Commission subpoena¹¹ and its Motion to Supplement its Motion for Reconsideration.¹² At that time, Cal Advocates' newly assigned counsel realized that the confidential versions of the declarations were necessary to respond to SoCalGas' May 2020 motions, and that SoCalGas had not provided confidential versions of those supporting declarations to Cal Advocates with its May 2020 motions. The email exchange that followed confirms that SoCalGas intended to withhold the documents supporting its May 2020 motions from Cal Advocates, and suggests that SoCalGas had intentionally withheld from Cal Advocates the confidential declarations submitted with its December 2, 2019 Motion for Reconsideration.¹³

On May 22, 2020, ALJ DeAngelis ordered SoCalGas to provide the confidential declarations accompanying its May 2020 motions to Cal Advocates. Rather than comply with the ALJ's order, SoCalGas obtained ALJ permission to instead submit "substituted"

Full Commission Regarding Administrative Law Judge's Ruling In the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 [PROPOSED] Order (Not in a Proceeding)."

¹¹ The final version of SoCalGas' Motion to Quash submitted on May 22, 2020 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).*"

¹² The final version of SoCalGas' Motion to Supplement submitted on May 22, 2020 is entitled: "*Southern California Gas Company's (U 904 G) Motion To Supplement The Record And Request For Expedited Decision By The Full Commission On Motion For Reconsideration/Appeal Regarding Administrative Law Judge's Ruling In The Discovery Dispute Between The Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding) If The Motion Is Not Granted To Quash Portion Of The Subpoena To Produce Access To Certain Materials In Accounting Databases And To Stay Compliance Until The May 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases (Not In A Proceeding).*"

¹³ See, e.g., Exhibit 3, E.Henry/T.Bone Emails re Confidential Declarations - May 19-22, 2020. See also Exhibit 4, SoCalGas Motion for Reconsideration Transmittal EMail - 12-2-19.

public motions. Those substituted motions relied upon declarations from SoCalGas employees reciting the same claims made in the original declarations, without naming the declarants.¹⁴

After determining that the confidential versions of the declarations supporting SoCalGas' December 2, 2019 Motion for Reconsideration were necessary for Cal Advocates to perform its duties in the investigation of SoCalGas' astroturf activities, Cal Advocates attempted to obtain the documents from SoCalGas:

- On June 23, 2020, Cal Advocates asked SoCalGas to confirm that the confidential versions of the declarations in support of its Motion for Reconsideration had not been provided to Cal Advocates.¹⁵
- On June 25, 2020, absent a substantive response from SoCalGas, Cal Advocates demanded that the confidential versions of the declarations be provided to it no later than June 29, 2020.¹⁶
- On June 29, 2020, SoCalGas informed Cal Advocates – in an extended letter - that it would not provide the confidential versions of the declarations to Cal Advocates on the basis that the request was not timely, was procedurally inappropriate, and that the information was properly withheld from Cal Advocates based on SoCalGas' First Amendment association claims.¹⁷

In sum, Cal Advocates is entitled to the confidential versions of the declarations, consistent with the determination made by ALJ DeAngelis on May 22, 2020 that SoCalGas “provide electronic copies of the confidential information to *all* Commission staff on the above service list, including the Cal Advocates Office.”¹⁸ It is also entitled to

¹⁴ Cal Advocates reserves the right to file a motion to strike those declarations, which are quintessential hearsay offered for the truth of the matter asserted. While this Commission may allow hearsay in some circumstances, it is not appropriate as used by SoCalGas here.

¹⁵ See Exhibit 5, E.Henry/T.Bone Emails re Demand for Confidential Declarations - June 23-25, 2020.

¹⁶ Id.

¹⁷ See Exhibit 6, Letter from J. Wilson to T. Bone Declining to Provide Confidential Declarations – 6-29-20.

¹⁸ See Exhibit 7, ALJ Emails to ALJ Re Declarations & Substituted Motions - May 19-22, 2020 (emphasis added).

these documents consistent with the November 1, 2019 ALJ Ruling rejecting SoCalGas' First Amendment Association Claims.

More than six months have passed since SoCalGas filed its Motion for Reconsideration. Since this time, SoCalGas has failed to respond to data requests outstanding more than three months, has refused to comply with the Commission Supoena, and now refuses to provide Cal Advocates with the same confidential documents it provided to other parts of the Commission, based on the First Amendment claims raised in its yet-to-be-decided Motion for Reconsideration. Contrary to its oft-repeated claims, the fact that SoCalGas disagrees with the ALJ's ruling and has submitted a motion for reconsideration – that was not authorized by the ALJ or any Commission rule identified by SoCalGas – does not stay the effect of the underlying ruling and does not justify SoCalGas' withholding of the confidential declarations. Indeed, if SoCalGas believes that the November 1, 2019 ALJ Ruling has improperly rejected its First Amendment claims, as the party seeking relief from the Ruling, it is incumbent upon SoCalGas' to take further action to obtain relief.

III. REQUEST FOR ORDER TO COMPEL AND MONETARY FINES

A. The Undisputed Facts Justify An Order To Compel And Monetary Fines

The discussion in Section II above establishes the following undisputed facts:

- (1) SoCalGas has intentionally withheld information from Cal Advocates that it should have provided on December 2, 2019 when it submitted its Motion for Reconsideration to the Commission.
- (2) SoCalGas made the information available to other divisions within the Commission in December, but has withheld the information from Cal Advocates.
- (3) SoCalGas intentionally refuses to comply with Cal Advocates June 26, 2020 demand to provide the information on the basis of its First Amendment association claims which were rejected in the November 1, 2019 ALJ Ruling..

- (4) By its own admission, SoCalGas has been on notice of the possibility of substantial fines for its refusal to provide discovery to Cal Advocates.¹⁹

B. The Law Requires A Commission Order That SoCalGas Provide The Confidential Versions Of The Declarations To Cal Advocates Immediately And Supports The Imposition Of Substantial Fines

Application of the applicable law to the undisputed facts set forth above establishes the following:

- (1) Because SoCalGas’ withholding of the information from Cal Advocates was intentional, and was not clearly communicated with its submission of the Motion for Reconsideration, SoCalGas is in contempt of this Commission, which is a violation of Rule 1.1
- (2) SoCalGas’ refusal to comply with Cal Advocates June 26, 2020 demand to provide the information is a further contempt of this Commission, in violation of Rule 1.1 and compounds its December 2, 2019 decision to withhold the information.
- (3) Cal Advocates has express statutory rights to “information that it deems necessary to perform its duties”²⁰ “at any time”²¹ and therefore SoCalGas’ claims that Cal Advocates June 26, 2020 request for the information was “untimely” or “procedurally inappropriate” are poorly made and irrelevant.²²
- (4) SoCalGas’ intentional withholding of information in the Cal Advocates investigation of its astroturfing activities is a violation of law and harms the regulatory process by, among other things, needlessly delaying the production of information that Cal Advocates has determined is necessary to perform its duties.
- (5) SoCalGas’ determination to dictate the terms under which it will release information to the Commission and the Cal Advocates is unlawful and challenges not only Cal Advocates’ authority, but also that of the Commission, therefore disrespecting the Commission in violation of Rule 1.1.

¹⁹ See footnote 7 above.

²⁰ Public Utilities Code § 309.5(e).

²¹ Public Utilities Code § 314(a).

²² See Exhibit 6, June 29, 2020 Letter from J.Wilson to T.Bone.

- (6) SoCalGas' intentional withholding of information also harms the regulatory process by requiring the Commission to expend limited resources to obtain compliance with fundamental requirements – such as the production of information - imposed by law on regulated utilities like SoCalGas.²³
- (7) SoCalGas' ability to respond to Cal Advocates' Motion to Compel and for Fines is adequate process to impose fines on SoCalGas.
- (8) Cal Advocates' proposed fine of \$100,000 for each day starting June 30, 2020 that SoCalGas has failed to comply with its document request should be adopted because it is consistent with the criteria adopted by the Commission and applied to other utilities.

Based on the undisputed facts and the conclusions of law set forth above, Cal Advocates moves this Commission to order SoCalGas to: (1) immediately provide the requested documents to Cal Advocates; (2) pay a fine to the General Fund of \$100,000 per day for each day starting on June 30, 2020 that SoCalGas fails to provide the requested documents to Cal Advocates; and (3) immediately comply with all Commission discovery requests or face additional substantial fines.

C. Commission Precedent Supports Fines Of \$100,000 Per Day

Public Utilities Code § 2107 provides that the Commission shall impose a penalty of not less than \$500 and no more than \$100,000 for violations or failures to comply with Commission rules or requirements. Cal Advocates asks the Commission to impose fines of \$100,000 per day on SoCalGas for its willful withholding from Cal Advocates of the confidential versions of the declarations supporting its Motion for Reconsideration starting June 30, 2020.

Commission Decision 98-12-075²⁴ and Public Utilities Code §§ 2107 and 2108 provide guidance on the application of fines and support this request. Two general

²³ See, e.g., Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702.

²⁴ 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 and Appendix A – Adopted Rules, starting at *63.

factors are considered in setting fines: (1) the severity of the offense and (2) the conduct of the utility.²⁵ 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.²⁶ The Commission also considers the sophistication, experience and size of the utility; the number of victims and economic benefit received from the unlawful acts; and the continuing nature of the offense.²⁷ The following discussion addresses each of these criteria in turn, demonstrating that Cal Advocates' proposal for a fine of \$100,000 per day starting June 30, 2020 is appropriate.

1. 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. That decision also recognized that the Commission has consistently accorded a high level of severity to violations of reporting or compliance requirements such as the ones that have occurred here - because of their harm to the regulatory process.²⁸ The California Court of Appeal recognized that the Commission "takes a very dim view of denying it information, treating it as a factor in aggravation when it comes to fixing penalty."²⁹ 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."³⁰

²⁵ D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *71.

²⁶ Id. at *71-77.

²⁷ Id. at *73-*77.

²⁸ Id. at *73-*77.

²⁹ *Pacific Gas & Electric Co. v. Public Utilities Com.*, 237 Cal. App. 4th 812, 865 (2015).

³⁰ *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.

2. 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, among other things, the utility's actions to disclose and rectify a violation.³¹ The Commission has found that utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations and that the utility's past record of compliance may be considered in assessing any penalty.³² It has also found that steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty and that deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor.³³ The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.³⁴

Here, SoCalGas had the ability to comply with Commission requirements, but has engaged in a calculated decision not to comply with state laws and Commission rules and requirements for as long as possible. In addition, SoCalGas' refusal to comply with discovery requests is ongoing in this investigation and other proceedings,³⁵ and is consistent with a pattern and practice of behavior that disrespects the Commission, Commission staff, and the regulatory process.

³¹ D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *73-*75.

³² Id.

³³ Id.

³⁴ Id.

³⁵ 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 a Commission subpoena issued on behalf of the Safety and Enforcement Division is described in § I.C of the June 23, 2020 "*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.*"

3. 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 need for deterrence and the constitutional limits on excessive fines.³⁶

The need for deterrence is a primary factor driving this Motion to Compel. As demonstrated in this and other pleadings submitted to this Commission,³⁷ SoCalGas is determined to violate state laws and Commission requirements to achieve its objectives, whether related to the Commission's investigation of its Aliso Canyon activities,³⁸ or its astroturfing activities that undermine state and local decarbonization efforts. Only substantial fines imposed for each day of its failure to comply will have the deterrent effect needed to curb SoCalGas' determination to defy its obligations to the Commission as a regulated utility.

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 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.³⁹

³⁶ D.98-12-075, 1998 Cal. PUC LEXIS 1016, *75-*76.

³⁷ See footnote 35 above.

³⁸ 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; and *E-Mail Ruling Denying, Without Prejudice, the Motion of The Safety and Enforcement Division For an Order to Show Cause*, filed April 28, 2020.

³⁹ 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>

Given SoCalGas' significant resources and prior violations of two Commission subpoenas and numerous other discovery requests,⁴⁰ a fine of \$100,000 per day for the instant withholding of the confidential declarations is appropriate.

In conjunction with the fine, this Commission should also unequivocally communicate to SoCalGas that that it will take swift and decisive action for every violation that SoCalGas commits.⁴¹ No other strategy will affect the change SoCalGas needs to undertake.

4. 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 degree of wrongdoing and the public interest.⁴²

As described in the sections above, SoCalGas' has willfully 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 the totality of circumstances and degree of wrongdoing, a fine of \$100,000 starting June 30, 2020 for each day that SoCalGas has withheld the confidential declarations from Cal Advocates is justified.

5. 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.⁴³ As precedent for considering

⁴⁰ See, e.g., footnotes 35 and 38 above.

⁴¹ 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, and was a contributing factor in reducing overall crime in the city.

⁴² D.98-12-075, 1998 Cal. PUC LEXIS 1016, *76.

⁴³ D.98-12-075, 1998 Cal. PUC LEXIS 1016, *77.

the level of fines against SoCalGas, the Commission should consider the following Commission decisions involving Rule 1.1 violations that occurred over multiple days:

- 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;
- 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;⁴⁴ and
- In D. 15-08-032 the Commission imposed a \$210,500 penalty on the San Francisco Municipal Transportation Agency (SFMTA) for its intentional refusal to comply with an SED discovery request for over a year based on First Amendment confidentiality claims. In imposing that fine, the Commission 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 fine is admittedly modest in comparison to the fines assessed against the utilities, presumably because of SFMTA's more limited resources, its public agency status, and the determination that the amount was a sufficient deterrent.⁴⁵ Here, given SoCalGas' significant financial resources, the totality of the circumstances – which reflect SoCalGas' ongoing determination to defy Commission requirements - prior Commission decisions, and what “is significant enough to serve as an incentive to deter

⁴⁴ 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.

⁴⁵ As explained in D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *76: “What is accounting rounding error to one company is annual revenue to another.”

future violations,” a daily fine of \$100,000 for a total of roughly \$1 million is appropriate.⁴⁶, ⁴⁷

IV. CONCLUSION

For all of the reasons set forth above, Cal Advocates request that the Commission grant this Motion to Compel and For Fines consistent with the proposed order attached hereto.

Respectfully submitted,

/s/ TRACI BONE

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July 9, 2020

⁴⁶ The total grows each day that SoCalGas fails to produce the confidential declarations to Cal Advocates.

⁴⁷ 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

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

[PROPOSED] ORDER

Having reviewed the “*Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information (Not in a Proceeding)*,” we make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Southern California Gas Company (SoCalGas) has intentionally withheld information from the Advocates Office at the California Public Utilities Commission (Cal Advocates) that it should have provided on December 2, 2019 when it submitted its Motion for Reconsideration to the Commission.
2. SoCalGas made the information available to other divisions within the Commission in December, but has withheld the information from Cal Advocates.
3. SoCalGas intentionally refuses to comply with Cal Advocates June 26, 2020 demand to provide the information on the basis of its First Amendment association claims which were rejected in the November 1, 2019 ALJ Ruling..
4. By its own admission, SoCalGas has been on notice of the possibility of substantial fines for its refusal to provide discovery to Cal Advocates.

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

CONCLUSIONS OF LAW

1. Because SoCalGas' withholding of the information from Cal Advocates was intentional, and was not clearly communicated with its submission of the Motion for Reconsideration, SoCalGas is in contempt of this Commission, which is a violation of Rule 1.1
2. SoCalGas' refusal to comply with Cal Advocates June 26, 2020 demand to provide the information is a further contempt of this Commission, in violation of Rule 1.1 and compounds its December 2, 2019 decision to withhold the information.
3. Cal Advocates has express statutory rights to "information that it deems necessary to perform its duties" "at any time" and therefore SoCalGas' claims that Cal Advocates June 26, 2020 request for the information was "untimely" or "procedurally inappropriate" are poorly made and irrelevant.
4. SoCalGas' intentional withholding of information in the Cal Advocates investigation of its astroturfing activities is a violation of law and harms the regulatory process by, among other things, needlessly delaying the production of information that Cal Advocates has determined is necessary to perform its duties.
5. SoCalGas' determination to dictate the terms under which it will release information to the Commission and the Cal Advocates is unlawful and challenges not only Cal Advocates' authority, but also that of the Commission, therefore disrespecting the Commission in violation of Rule 1.1.
6. SoCalGas' intentional withholding of information also harms the regulatory process by requiring the Commission to expend limited resources to obtain compliance with fundamental requirements – such as the production of information - imposed by law on regulated utilities like SoCalGas.
7. SoCalGas' ability to respond to Cal Advocates' Motion to Compel and for Fines is adequate process to impose fines on SoCalGas.
8. Cal Advocates' proposed fine of \$100,000 for each day starting June 30, 2020 that SoCalGas has failed to comply with its document request should be adopted because it is consistent with the criteria adopted by the Commission and applied to other utilities.

Based on these findings of fact and conclusions of law, IT IS HEREBY ORDERED, that Southern California Gas Company shall:

1. Provide unredacted versions of Declarations 3 through 6 in support of its December 2, 2019 motion 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)” to the Public Advocates Office at the California Public Utilities Commission within one business day.

2. Pay a fine to the general fund of \$100,000 per day for each day starting June 30, 2020 that it has not provided the unredacted declarations to Cal Advocates.
3. Demonstrate its respect for the Commission and Cal Advocates through immediate going-forward compliance with all Commission discovery requests – including those from any office or division, and in formal proceedings or “not in a proceeding” - or be prepared to face substantial daily sanctions for its unlawful behavior.

Dated July ___, 2020 at San Francisco, California

Administrative Law Judge
Regina DeAngelis

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

LIST OF EXHIBITS

- EXHIBIT 1 – November 1, 2019 ALJ Ruling
- EXHIBIT 2 – Redacted Declarations Submitted in Support of SoCalGas’ December 2, 2019 Motion for Reconsideration
- EXHIBIT 3 – E.Henry/T.Bone Emails May 19-22, 2020 re Confidential Declarations
- EXHIBIT 4 – SoCalGas Motion for Reconsideration Transmittal Email – 12-2-19.
- EXHIBIT 5 – E.Henry/T.Bone Emails June 23-25, 2020 re Demand for Confidential Declarations
- EXHIBIT 6 – J.Wilson Letter to T.Bone Declining to Provide Confidential Declarations – 6-29-20
- EXHIBIT 7 –Emails with ALJ re Confidential Declarations & Substituted Motions – May 19-22, 2020

EXHIBIT 3

E.Henry/T.Bone Emails re Confidential Declarations - May 19-22, 2020

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

From: [Henry, Elliott S](#)
To: [Bone, Traci](#); [DeAngelis, Regina](#)
Cc: [Carman, Teresa A](#); [Batjer, Marybel](#); [Simon, Anne](#); [Ward, Alec](#); [Castello, Stephen](#); [Sierzant, Corinne M](#); [Tran, Johnny Q](#); [Prusnek, Brian C](#); jwilson@willenken.com; [Farrar, Darwin](#); [Serizawa, Linda](#); [Campbell, Michael](#); [DeAngelis, Regina](#); [Randolph, Liane](#); [Guzman Aceves, Martha](#); [Rechtschaffen, Cliff](#); [Shiroma, Genevieve](#); [Hovsepian, Melissa A](#)
Subject: RE: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal
Date: Friday, May 22, 2020 10:36:54 AM

Commissioners and ALJ DeAngelis,

As SoCalGas indicated in its 10:45 a.m. email on Wednesday, these issues raised by Cal Advocates through email would be better stated in a brief or some other more fulsome and formal response. However, as Cal Advocates continues to raise its issues in this manner, SoCalGas finds it imperative to address at least some of the issues briefly.

First, the manner of service and tendering for filing was done in the same manner that SoCalGas submitted its December 2, 2019 appeal. That document was submitted without any opposition from the docket office, the ALJ, or even Cal Advocates stating that the filing was done improperly. The December 2 filing similarly had confidential materials that were redacted and not provided to Cal Advocates – again, without any issue raised by the docket office, ALJ, or Cal Advocates. With no issue raised with the previous filing, SoCalGas deemed it appropriate to file and serve in the same manner. The one minor deviation from the December filing is that SoCalGas is sending the hard copies of the confidential materials the week following their service. As we explained when making the filing request, we are sending the confidential materials a week later to allow additional time in light of the current stay-at-home orders. We determined that mailing the paper copies next week is more than appropriate, as the current hard copy submission protocol in formal proceedings would allow for a paper submittal as late as June 17. See <https://www.cpuc.ca.gov/COVID19practitioneralert/>.

Second, as stated in our 10:45 a.m. email on Wednesday, if your Honors find this submittal would be better made in another manner, we appreciate your guidance in clarifying the procedural path that should be followed in this non-proceeding to preserve our rights as appropriate. Far from being a “challenge[] [to] not only the authority of the Public Advocates Office, but also the Commission's authority, rules, and rulings,” SoCalGas instead has proceeded in a manner most befitting this situation, but is open to submitting and serving the filing in a different manner if deemed more appropriate. Simply rejecting the filing outright without allowing for recourse would constitute a serious deprivation of the constitutional and other rights (including the right to due process) SoCalGas seeks to protect in its filings. As SoCalGas notes in its filings, a key difficulty here is that Cal Advocates is demanding constitutionally protected (and privileged) materials in a non-proceeding that lacks most formal “rules and procedures.” Cal Advocates’ multiple demands for sanctions in just the email below buttresses SoCalGas’s position that it is being unduly pressured under the threat of huge fines and other penalties to waive core rights.

This is not the entirety of SoCalGas’s response on these issues, but is being provided in the interest of responding promptly.

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

Respectfully,
Elliott Henry

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

Sent: Thursday, May 21, 2020 4:56 PM

To: Henry, Elliott S <EHenry@socalgas.com>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>

Cc: Carman, Teresa A <TCarman@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>; Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; jwilson@willenken.com; 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>; Randolph, Liane <Liane.Randolph@cpuc.ca.gov>; Guzman Aceves, Martha <Martha.GuzmanAceves@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Shiroma, Genevieve <Genevieve.Shiroma@cpuc.ca.gov>; Hovsepian, Melissa A <MHovsepian@socalgas.com>

Subject: [EXTERNAL] RE: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal

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

Commissioners and ALJ DeAngelis:

Please be advised that SoCalGas has refused to provide electronic versions of the confidential materials referenced in its Motions to either the Commissioners, ALJ Division, or the Public Advocates Office. SoCalGas has proposed instead to provide only hard copies of its confidential materials within the next week. SoCalGas has also stated that the hard copies of the confidential materials will not be made available to the Public Advocates Office. Please see the email below and another that is attached hereto confirming these facts.

Notably, SoCalGas does not claim that this information is privileged, only that it may be confidential. SoCalGas has failed to provide any sustainable legal basis for its withholding of this potentially confidential information. If claimed to be confidential, it should simply be designated as such consistent with GO 66-D requirements, and provided to all parties immediately. Its rationale for entirely withholding the information from Public Advocates Office is similarly deficient. It simply claims that "there is a history of names and contact information being shared with the public and/or media." See May 19, 2020 Motion to File Under Seal, p. 2. SoCalGas' "self-help" justification is not only erroneous, it is inappropriate; SoCalGas has failed to avail itself of the statutory remedies

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

available for allegedly unlawful disclosures of confidential information. To the extent they have not occurred, SoCalGas' claims are subject to sanction under Rule 1.1.

Ultimately, the fact that SoCalGas' makes no attempt to provide a lawful explanation for its unilateral decision to provide only hard copies of the confidential versions of its documents, and only to Commission staff of its choosing, demonstrates that SoCalGas has determined that it will create, rather than follow, Commission rules and procedures.

Confidential or not, the Public Advocates Office is entitled to review the same information provided to the Commissioners and ALJ Division. SoCalGas' refusal to provide the Public Advocates Office access to this information prejudices Public Advocates Offices' ability to respond to SoCalGas' motions. Indeed, if this matter were in a formal proceeding, SoCalGas' attempted filing would have been rejected as incomplete.

In sum, SoCalGas' attempt to dictate the terms under which it will release information to the Commission and the Public Advocates Office is in violation of the Public Utilities Code and challenges not only the authority of the Public Advocates Office, but also the Commission's authority, rules, and rulings.

For these reasons, the Public Advocates Office moves that SoCalGas' motions be rejected for filing as incomplete unless and until it provides electronic copies of the confidential versions to all Commission staff served, including the Public Advocates Office. In addition, the Public Advocates Office supports the imposition of additional penalties against SoCalGas to address its intentional decision to violate both Commission rules and state laws.

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: Wednesday, May 20, 2020 10:45 AM

To: Bone, Traci <traci.bone@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>

Cc: Carman, Teresa A <TCarman@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>; Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; jwilson@willenken.com; 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>; Randolph, Liane <Liane.Randolph@cpuc.ca.gov>; Guzman Aceves, Martha <Martha.GuzmanAceves@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Shiroma, Genevieve <Genevieve.Shiroma@cpuc.ca.gov>; Hovsepian, Melissa A <MHovsepian@socalgas.com>

Subject: RE: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal

ALJ DeAngelis,

We would initially note that litigation and argument via email is improper and inadequate. Any legal arguments Cal Advocates wishes to make should be raised in a responsive brief. In the interest of at least briefly addressing Ms. Bone's comments, we request that you please consider the following.

Because Cal Advocates has chosen to act outside of any proceeding, there are no clear procedural rules, which is why SoCalGas is seeking leave to file two motions so that it can preserve fundamental attorney-client and attorney work product privileges and First Amendment rights. As you are aware, the non-proceeding procedures for the CPUC are largely undefined, but we have consulted Chief ALJ Simon's instructions dated October 29, 2019 for this non-proceeding. If Your Honor deems this the inappropriate procedure for resolution of such matter, we appreciate your guidance in clarifying the procedural path to preserve our rights as appropriate. The motion has already been tendered and states that "SoCalGas has no recourse but to seek the Commission's intervention" (p.4 of Motion to Quash), which does not specify who should ultimately rule on it from the Commission. The second motion to supplement the record for the December 2 appeal and request an expedited ruling if the first motion is not granted is explicitly addressed to the full Commission. Either of these motions can be readily provided to the appropriate decisionmakers (the full Commission is included on the service list).

With respect to whether your Honor has authority to rule on the motion to quash itself, as mentioned above, Commission President Batjer referred this matter to Chief ALJ Simon who designated your Honor to handle this matter going forward. Thus, beyond seeking leave to file from your Honor for purposes of submission to the Docket Office, you have authority to rule on these matters through that authority conferred on you. Furthermore, the propriety of a motion in these circumstances is, coincidentally, supported by comments Ms. Bone has made several times in meet and confers. Ms. Bone has stated more than once that if SoCalGas would not provide access in the manner Cal Advocates wanted, then Cal Advocates would file a motion to compel (which is discussed in the motion served yesterday). If a motion to compel could be brought to your Honor, then surely a motion to modify or interpret a subpoena must also be appropriate for your consideration – because the power to deny a motion to compel for a subpoena is tantamount to the power to modify or quash a subpoena.

As for the claim that the motion is untimely, as an initial matter, SoCalGas not only raised the issues in the motion in a meet and confer by even the initial deadline for the subpoena, but SoCalGas also

timely made these objections in response to the companion data request sent for the subpoena. Moreover, Cal Advocates again cites no authority to support its contention that where compliance with a subpoena is extended all potential objections are implicitly waived. Nor did Cal Advocates provide any such instruction to SoCalGas. Such a rule would certainly be problematic, would force premature and unnecessary motions to quash, and discourage the informal resolution of disputes. Perhaps more importantly, Cal Advocates never stated that SoCalGas had to waive its right to quash in exchange for additional time to comply.

The issues raised in the motion are serious. They concern fundamental rights concerning attorney client privileges and protections afforded by the First Amendment. SoCalGas requests that the motion (and the companion motion being to be filed) be considered and ruled on.

Thank you for your consideration.

Ms. Bone,

With respect to the confidential versions of the documents, as noted in our email to Judge DeAngelis yesterday which you were copied on, we will tender a confidential hard copy for filing within a week. As shown by what is discussed in the brief, because the confidential information in the declarations overlaps with information we are requesting not to disclose to Cal Advocates in response to the Subpoena, the confidential versions will not be provided to Cal Advocates.

If you have further questions of this nature, please feel free to contact me directly instead of the entire service list.

Respectfully,
Elliott Henry

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West 5th Street GT14E7 | Los Angeles, CA 90013
Tel: 213-244-8234 | Fax: 213-629-9620
E-Mail: EHenry@socalgas.com



This e-mail may contain privileged, attorney-client communications and confidential information intended only for the use of the recipient(s) named above. Reading, disclosure, discussion, dissemination, distribution, or copying of this information by anyone other than the intended recipient or their employees or agents is strictly prohibited. If you have received this message in error, please immediately notify me by telephone and return the original message at the above address via the U.S. postal service. Thank you.

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Tuesday, May 19, 2020 6:22 PM
To: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Cc: Hovsepian, Melissa A <MHovsepian@socalgas.com>; Carman, Teresa A <TCarman@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>; Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>; jwilson@willenken.com; 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>; Randolph, Liane <Liane.Randolph@cpuc.ca.gov>; Guzman Aceves, Martha <Martha.GuzmanAceves@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Shiroma, Genevieve <Genevieve.Shiroma@cpuc.ca.gov>
Subject: [EXTERNAL] RE: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal

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

Judge DeAngelis:

Southern California Gas Company's (SoCalGas') motion to partially quash and for extension provided in the email below is in response to a subpoena signed by the Executive Director on May 4, 2020 and issued May 5, 2020, requiring SoCalGas to provide remote or onsite access to all of its accounts no later than May 8, 2020. A copy of that subpoena is attached hereto. Rather than address the numerous and significant misrepresentations made by SoCalGas in its motion, this email serves to draw your attention to two significant legal issues that warrant consideration and argue against any ruling being issued.

Because the subpoena is an order of the Commission issued pursuant to the Executive Director's statutory authority, it is not clear, and SoCalGas has made no attempt to establish, that the Administrative Law Judge Division has the authority to either quash the subpoena or grant an extension of the subpoena. This significant legal question does not address the equally important policy question of whether the Administrative Law Division should act in contravention of an Executive Director's order. In addition, any SoCalGas objections to the subpoena must be deemed waived as untimely. SoCalGas should have raised any such objections prior to the date it was required to perform under the subpoena, which was more than ten days ago. While the Public Advocates Office (Cal Advocates) has agreed to several extensions that SoCalGas requested in order to comply with the subpoena, at no point did Cal Advocates agree to extend the time for SoCalGas to raise substantive objections to the subpoena. At this point, any ruling on SoCalGas' instant motion would serve only to

encourage non-compliance with Commission orders and revitalize the right to appeal the subpoena which SoCalGas has otherwise already waived.

For these reasons, Cal Advocates proposes that you reserve action on the SoCalGas motion. Cal Advocates will inform SoCalGas that it must comply with the Commission's subpoena and make unrestricted remote read-only access fully available no later than this Friday, May 22, 2020. Should SoCalGas fail to do so, Cal Advocates will file a request for penalties and sanctions against SoCalGas shortly thereafter.

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: Carman, Teresa A <TCarman@socalgas.com>

Sent: Tuesday, May 19, 2020 5:00 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>; Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>; jwilson@willenken.com; 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>; Randolph, Liane <Liane.Randolph@cpuc.ca.gov>; Guzman Aceves, Martha <Martha.GuzmanAceves@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Shiroma, Genevieve <Genevieve.Shiroma@cpuc.ca.gov>

Cc: Hovsepian, Melissa A <MHovsepian@socalgas.com>

Subject: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal

Judge DeAngelis,

Pursuant to my email to you earlier today requesting approval to file a Motion to Quash in Part / Motion to Stay Cal Advocates' May 5 subpoena (Subpoena), Southern California Gas Company (SoCalGas) is tendering the attached Motion (with several attachments and accompanying Motion To File Under Seal) for service to the service list today. As noted in my prior email, Chief ALJ Simon's instructions related to the DISCOVERY DISPUTE BETWEEN THE PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA GAS COMPANY, OCTOBER 7, 2019 (NOT IN A PROCEEDING) instructed to request such leave to file. The Subpoena at issue compels SoCalGas to provide unrestricted remote access to SoCalGas's financial database which includes information covered by SoCalGas' Motion for Reconsideration/Appeal (Appeal)

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

filed on December 2, 2019. Based on meet and confers with Cal Advocates, the deadline for SoCalGas to comply with the Cal Advocates subpoena is today. To meet this unprecedented request, SoCalGas has explained that it needs until May 29 to create a custom program that will give access to all of the database other than materials protected by attorney client and attorney work product privileges, as well as materials implicating the same First Amendment issues currently on Appeal related to the October 2019 discovery dispute. Overall, Cal Advocates has indicated that it is unwilling to agree to these limitations, and is prepared to file a motion to compel (in particular with respect to protecting the issues on Appeal). Because SoCalGas currently must comply by today or potentially be in violation of the subpoena, and because of Cal Advocates' position, SoCalGas must seek relief to preserve its rights.

As indicated in my earlier email today, we are also requesting permission to file a motion to supplement the record for the Appeal that is still pending before the Commission based on the overlapping legal and factual issues that have arisen since the briefing was completed.

This transmission is being sent in several parts. This is part 1.

The service list has been updated to reflect current counsel for Cal Advocates and SoCalGas.

Terri Carman
Senior Legal Administrative Associate
Southern California Gas Company / Law Department
555 West Fifth Street, GT-14E7
Los Angeles, CA 90013
Ph: 213.244.2967; Fax: 213.629.9620
Email: tcarman@socalgas.com

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

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

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EXHIBIT 4

SoCalGas Motion for Reconsideration Transmittal Email – 12-2-19

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

From: [Trujillo, Leslie A](#)
To: [Buch, Daniel](#); [Castello, Stephen](#); [Tran, Johnny Q](#); [Sierzant, Corinne M](#); [Vorpe, Rebecca M.](#); [Lee, Shawane L](#); [DeAngelis, Regina](#); [Randolph, Liane](#); [Guzman Aceves, Martha](#); [Rechtschaffen, Cliff](#); [Shiroma, Genevieve](#); [Batjer, Marybel](#)
Subject: Southern California Gas Company's Motion for Reconsideration/Appeal and Motion to File Under Seal in the Discovery Dispute Between Public Advocates Office and SoCalGas Company
Date: Monday, December 02, 2019 12:43:46 PM
Attachments: [image001.png](#)
[Motion for Reconsideration-Appeal with Declarations combined \(FINAL\)-1.pdf](#)
[COS Motion for Reconsideration .pdf](#)
[Motion to File Under Seal and Order \(Executed\) a.pdf](#)
[COS MFUS a.pdf](#)
[Tomkins Dec MFUS a.pdf](#)

Attached hereto please find the 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) – PUBLIC VERSION (Declaration Numbers 3, 4, 5 and 6 Confidential) and MOTION OF SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) FOR LEAVE TO FILE UNDER SEAL CONFIDENTIAL VERSIONS OF DECLARATION NUMBERS 3, 4, 5 AND 6 IN SUPPORT OF ITS 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; [PROPOSED] ORDER (NOT IN A PROCEEDING), and the DECLARATION OF SHARON TOMKINS IN SUPPORT OF MOTION TO FILE UNDER SEAL are concurrently being filed with the CPUC Docket Office in order to timely preserve SoCalGas' appellate rights. I attach a copy hereto, along with the Certificates of Service.

A hard copy of the document is being delivered by overnight mail to ALJ DeAngelis.

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@semprautilities.com



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

EXHIBIT 5

E.Henry/T.Bone Emails re Demand for Confidential Declarations June 23-25, 2020

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

From: [Bone, Traci](#)
To: [Henry, Elliott S](#); [Sierzant, Corinne M](#)
Cc: [Ward, Alec](#); [Castello, Stephen](#); [Tran, Johnny Q](#); "jwilson@willenken.com"
Subject: RE: Declarations included with SoCalGas" December 2, 2019 Motion for Reconsideration?
Date: Thursday, June 25, 2020 5:03:00 PM

Elliott:

To Cal Advocates knowledge, the confidential versions of the declarations provided to the Commission in support of SoCalGas' December 2, 2019 Motion for Reconsideration were never provided to Cal Advocates.

Cal Advocates requests that SoCalGas provide the confidential versions of those declarations no later than close of business on Monday, June 29, 2020.

In the event SoCalGas does not provide the unredacted versions of the declarations to Cal Advocates, it will move for sanctions for withholding this information from Cal Advocates.

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: Wednesday, June 24, 2020 6:57 AM
To: Bone, Traci <traci.bone@cpuc.ca.gov>; Sierzant, Corinne M <CSierzant@socalgas.com>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; 'jwilson@willenken.com' <jwilson@willenken.com>
Subject: Re: Declarations included with SoCalGas' December 2, 2019 Motion for Reconsideration?

Hi Traci,

We will get back to you.

Thanks.

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Wednesday, June 24, 2020 6:45 AM
To: Henry, Elliott S; Sierzant, Corinne M
Cc: Ward, Alec; Castello, Stephen
Subject: [EXTERNAL] Declarations included with SoCalGas' December 2, 2019 Motion for Reconsideration?

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

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

Elliott:

It appears that Cal Advocates never received the unredacted (i.e. “confidential”) versions of the declarations that were included in support of SoCalGas’ December 2, 2019 Motion for Reconsideration of the ALJ ruling requiring SoCalGas to provide the contracts to Cal Advocates that were associated with the “Balanced Energy” Internal Order.

It appears from your email of May 22, 2020 that SoCalGas intentionally withheld these documents from Cal Advocates. See attached.

Could you please confirm that these documents were not provided to Cal Advocates, and if so, the reasons they were not provided?

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.

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

EXHIBIT 6

J.Wilson Letter to T.Bone Declining to Provide Confidential Declarations – 6-29-20

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

June 29, 2020

VIA E-MAIL

Traci Bone
Public Advocates Office
505 Van Ness Ave.
San Francisco, CA 94102
Email: tbo@cpuc.ca.gov

Re: *Demand for Unredacted Declarations Filed with December 2, 2019 Motion for Reconsideration*

Dear Traci:

Please direct any correspondence on this issue to my attention.

Your demand for the unredacted declarations is inappropriate for four reasons.

First, your demand is untimely. In December 2019, SoCalGas filed a Motion for Leave to File under Seal the declarations now in dispute at the time it filed its Motion for Reconsideration. Under Rule 11.3(b), “Responses to motions to file pleadings, or portions of pleading, under seal shall be filed and served within 10 days of the date that the motion was served.” Cal Advocates did not file a timely opposition to this motion. Accordingly, it cannot complain seven months later that SoCalGas seeks to redact information and seeks to seal that information as confidential.

Second, the California Supreme Court has made it clear that a motion to seal is the proper means to protect a constitutionally protected right. In Garcia v. Superior Court (2007) 42 Cal.4th 63, the Supreme Court noted: “Indeed, a trial court has inherent discretion to allow documents to be filed under seal in order to protect against revelation of privileged information.” (Id. at pp. 71–72.) The Garcia Court went on to observe that: “declarations and other supporting evidence may be submitted to the trial court for in camera examination” to protect a defendant’s constitutional rights.” (Id. at p. 72.) Garcia, who was in a dispute with a police department, had filed an attorney declaration under seal as part of a Pitchess motion. (Id. at 68.) Counsel for the police department demanded that the declaration be unsealed. (Ibid.) The California Supreme Court upheld the sealing. (Id. at 78.) Similarly, the California Supreme Court has recognized in criminal proceedings that a prosecutor may sometimes seal records to protect the identity of an informant from a criminal defense attorney under the informant privilege. (People v. Hobbs (1994) 7 Cal. 4th 948, 976 (“We are satisfied that the trial court acted within its sound discretion in conducting its own in camera review of the sealed materials, affirming the magistrate’s determination that the sealing of the entirety of Exhibit C was necessary to implement the People’s assertion of the informant’s privilege, and in thereafter denying defendant’s motions to



traverse and quash the search warrant.”). General Order 66-D also makes clear that a Motion for Leave to File Under Seal is appropriate to obtain confidential treatment of information to be filed in the docket. (GO 66-D, Section 3.3)

Third, even if Cal Advocates had filed a timely opposition, it would be meritless. As you know, SoCalGas contends that the CPUC is not entitled to compel the disclosure of its private political affiliations. The California Supreme Court has made clear that compelled disclosure is improper:

As we explain, for more than two decades decisions of both the United States Supreme Court and this court, recognizing that compelled disclosure of private associational affiliations or activities will inevitably deter many individuals from exercising their constitutional right of association, have established that such intrusion into associational privacy may be sanctioned only upon the demonstration of a very important, indeed “compelling,” state interest which necessitates the disclosure.

(Britt v. Super. Ct. (1978) 20 Cal. 3d 844, 848–849.)

Applying Britt to the declarations at hand demonstrates that your position is not well taken. The redacted portions of the declaration reveal: who SoCalGas has associated with and what political work was done on SoCalGas’s behalf. This is the type of information protected by the right of association under the First Amendment. Your email does not identify any compelling state interest that compels the disclosure of this information. In addition, not having the unredacted versions of the declarations plainly did not impede Cal Advocate’s ability to oppose the motion for reconsideration.

Finally, your demand is procedurally improper. The Motion for Leave to File Under Seal has been filed with the Full Commission. Thus, this motion is now ripe for the Full Commission to decide it. We know of no authority that permits Cal Advocates to obtain the information subject to the Motion for Leave to File Under Seal before the Full Commission decides the motion to seal.

In fact, your claim that SoCalGas did something wrong by just serving a redacted declaration on Cal Advocates is at odds with the sealing procedure that the California Supreme Court set forth in Garcia:

Counsel should give “proper and timely notice” of the privilege, and provide the court with the affidavit the defense seeks to file under seal, along with a proposed redacted version. The proposed redacted version should be served on opposing counsel.



June 29, 2020

Page 3

(Garcia, 42 Cal. 4th at 73(citations omitted). Here, SoCalGas followed the directions of Garcia. SoCalGas gave Cal Advocates notice of its First Amendment claim, and it served a redacted copy of the declarations on Cal Advocates. Despite following the procedures set forth in Garcia, Cal Advocates is threatening sanctions.

SoCalGas is open to reviewing any authority you may have to support your demand. However, at this junction, SoCalGas declines your demand to provide the unredacted declarations.

Very truly yours,



Jason H. Wilson

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EXHIBIT 7

**Emails with ALJ re Confidential Declarations & Substituted Motions –
May 19-22, 2020**

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

From: [DeAngelis, Regina](#)
To: [Hovsepien, Melissa A](#); [Carman, Teresa A](#); [Batjer, Marybel](#); [Ward, Alec](#); [Castello, Stephen](#); [Sierzant, Corinne M](#); [Henry, Elliott S](#); [Tran, Johnny Q](#); [Prusnek, Brian C](#); jwilson@willenken.com; [Farrar, Darwin](#); [Serizawa, Linda](#); [Campbell, Michael](#); [Bone, Traci](#); [O'Rourke, Shannon](#)
Subject: RE: SoCalGas Request to file motion to quash, motion to stay, motion to supplement appeal in the Discovery Dispute between Public Advocates Office and SoCalGas (not in a proceeding).
Date: Friday, May 22, 2020 1:54:27 PM

To Service List:

Mr. Elliott, your request is approved.

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

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From: Henry, Elliott S <EHenry@socalgas.com>
Sent: Friday, May 22, 2020 1:40 PM
To: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Hovsepien, Melissa A <MHovsepien@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>; jwilson@willenken.com; farrar.darwin@cpuc.ca.gov; linda.serizawa@cpuc.ca.gov; michael.campbell@cpuc.ca.gov; traci.bone@cpuc.ca.gov; shannon.o'rourke@cpuc.ca.gov
Subject: RE: SoCalGas Request to file motion to quash, motion to stay, motion to supplement appeal in the Discovery Dispute between Public Advocates Office and SoCalGas (not in a proceeding).

ALJ DeAngelis,

Thank you for your below response. SoCalGas greatly appreciates that its concerns on these issues will be heard. Because of SoCalGas's and the declarants' concerns about providing to CalPA the information that has been marked as confidential, SoCalGas is not in a position to provide the confidential materials to CalPA. This is explained further in the pending motions.

SoCalGas believes the best course of action in light of this and your below request is for SoCalGas to re-tender and re-serve today the two filings without the confidential information. We will remove Declarations 1-4 from both filings, and revise the motions and other materials only to remove references to the specific declarations and to explain their absence. We believe this will address the confidentiality concerns of all interested parties, while still preserving SoCalGas's rights at issue and providing the filing in a timely manner. We will make these filings as "substitute" filings for the two

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pending motions which were submitted Tuesday and Wednesday. This course will make the filings simpler, will address CalPA's concerns regarding confidentiality, and will not change the substance of the motions.

Given the timing of your Honor's below request, we will begin moving ahead with the above plan. We request that your Honor approve of this approach, and, again, greatly appreciate your attention in this matter.

Respectfully,
Elliott Henry

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West 5th Street GT14E7 | Los Angeles, CA 90013
Tel: 213-244-8234 | Fax: 213-629-9620
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From: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Sent: Friday, May 22, 2020 11:09 AM
To: 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>; 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: [EXTERNAL] SoCalGas Request to file motion to quash, motion to stay, motion to supplement appeal in the Discovery Dispute between Public Advocates Office and SoCalGas (not in a proceeding).

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

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To Service List:

Mr. Elliott:

This email grants permission to file the Motion to Quash in Part and the Motion to Stay Cal Advocates' May 5 subpoena.

This email also grants SoCalGas' request to file the motion to supplement the December 2, 2019 appeal.

SoCalGas also seeks permission to file hard copies of the confidential material within one week, citing to the Commission recent guidance on filings during the stay-at-home orders. SoCalGas explains that in light of the ongoing pandemic and stay-at-home orders, SoCalGas does not have its legal staff at the office or in a position to effectively handle a confidential hard copy filing the same day as the public version is served to the service list. Hard copy filings may be made within one week. In the meantime, today provide electronic copies of the confidential information to all Commission staff on the above service list, including the Cal Advocates Office.

Your request to be added to the service list of this matter is also granted.

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

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From: Henry, Elliott S <FHenry@socalgas.com>
Sent: Tuesday, May 19, 2020 12:23 PM
To: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Cc: Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Bone, Traci <traci.bone@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>
Subject: SoCalGas Request to file motion to quash / motion to stay, motion to supplement appeal

Judge DeAngelis,

Pursuant to Chief ALJ Simon's instructions related to the DISCOVERY DISPUTE BETWEEN THE PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA GAS COMPANY, OCTOBER 7, 2019 (NOT IN A PROCEEDING), Southern California Gas Company (SoCalGas) requests approval to file a Motion to Quash in Part / Motion to Stay Cal Advocates' May 5 subpoena to compel SoCalGas to provide unrestricted remote access to SoCalGas's financial database which includes information covered by SoCalGas' Motion for Reconsideration/Appeal (Appeal) filed on December 2, 2019. Based on meet

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and confers with Cal Advocates, the deadline for SoCalGas to comply with the Cal Advocates subpoena is today. To meet this unprecedented request, SoCalGas has explained that it needs until May 29 to create a custom program that will give access to all of the database other than materials protected by attorney client and attorney work product privileges, as well as materials implicating the same First Amendment issues currently on Appeal related to the October 2019 discovery dispute. Overall, Cal Advocates has indicated that it is unwilling to agree to these limitations, and is prepared to file a motion to compel (in particular with respect to protecting the issues on Appeal). Because SoCalGas currently must comply by today or potentially be in violation of the subpoena, and because of Cal Advocates' position, SoCalGas must seek relief to preserve its rights.

We are also requesting permission to file a motion to supplement the record for the Appeal that is still pending before the Commission based on the overlapping legal and factual issues that have arisen since the briefing was completed.

In light of the ongoing pandemic and stay-at-home orders, SoCalGas does not have its legal staff at the office or in a position to effectively handle a confidential hard copy filing the same day as the public version is served to the service list. We therefore also request permission to file a hard copy within one week of today (consistent with the Commission guidance).

Also, pursuant to Chief ALJ Simon's instructions, I am requesting your approval to be added to this service list.

I have cc'd representatives for CalPA.

Respectfully,
Elliott Henry

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
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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 COMPEL CONFIDENTIAL DECLARATIONS SUBMITTED IN SUPPORT OF SOUTHERN CALIFORNIA GAS COMPANY’S DECEMBER 2, 2019 MOTION FOR RECONSIDERATION OF FIRST AMENDMENT ASSOCIATION ISSUES AND REQUEST FOR MONETARY FINES FOR THE UTILITY’S INTENTIONAL WITHHOLDING OF THIS INFORMATION (NOT IN A PROCEEDING)**” to the following persons by electronic mail:

rmd@cpuc.ca.gov
MHovsepian@socalgas.com
TCarman@socalgas.com
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Executed on **July 9, 2020** at San Francisco, California.

/s/ TRACI BONE

TRACI BONE

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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 MOTION TO COMPEL
CONFIDENTIAL DECLARATIONS SUBMITTED IN SUPPORT
OF SOUTHERN CALIFORNIA GAS COMPANY'S DECEMBER 2, 2019 MOTION FOR
RECONSIDERATION OF FIRST AMENDMENT ASSOCIATION ISSUES AND
REQUEST FOR MONETARY FINES FOR THE UTILITY'S INTENTIONAL
WITHHOLDING OF THIS INFORMATION**

(NOT IN A PROCEEDING)

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July 17, 2020

Attorneys for:
SOUTHERN CALIFORNIA GAS COMPANY

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	4
A. SoCalGas Submitted Confidential Declarations Under Seal to the Commission in December 2019, Which Cal Advocates Chose Not to Oppose.....	4
B. SoCalGas Attempted to Submit, and then Substituted Out, New Declarations in Support of its May 2020 Motion to Quash, Which the ALJ Approved.....	6
C. Cal Advocates Requests the Confidential Declarations Anew.	7
D. Cal Advocates Misrepresents SoCalGas’s Record on Providing Data.	7
III. ARGUMENT	8
A. Cal Advocates Has Waived its Objections to the Motion to Seal.....	8
B. SoCalGas Followed the Proper Procedure By Filing a Motion to Seal And Not Giving The Confidential Declarations to Cal Advocates.....	9
C. The Motion to Compel Should Be Denied Because Cal Advocates Is Not Entitled to the Confidential Declarations Under the First Amendment.	12
1. Cal Advocates’ Statutory Authority to Inspect SoCalGas’s Books and Records is Limited by the First Amendment.....	12
2. Cal Advocates’ Demand for the Confidential Declarations Is Subject to Strict Scrutiny, Which It Fails to Meet.....	14
D. Fining SoCalGas Under Rule 1.1 for Filing its Motion to Seal Would Run Afoul of the Litigation Privilege and <i>Noerr-Pennington</i> Doctrine.	15
E. Due Process Requires Cal Advocates Seek and Obtain Recategorization of this Matter as an Adjudicatory Proceeding with Evidentiary Hearing Prior to Contempt Findings and Assessment of Fines.....	18
1. Before Cal Advocates’ Motion Can Be Heard, This Non-Proceeding Matter Must Be Recategorized as Adjudicatory Under Rule 7.	19
2. Current Process is Inadequate Because There is No Notice and An Evidentiary Hearing Is Required Where, As Here, Material Factual Disputed Issues Exist. ..	22
3. Cal Advocates’ Demand for \$1 Million in Fines Is Excessive.....	25
IV. CONCLUSION.....	26

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Adams v. Superior Court</i> , (1992) 2 Cal.App.4th 521	17
<i>American Federation of Labor and Cong. of Industrial Organizations v. Federal Election Com.</i> , (D.C. Cir. 2003) 333 F.3d 168.....	13
<i>Annex British Cars, Inc. v. Parker-Rhodes</i> , (1988) 198 Cal.App.3d 788	20
<i>BE & K Construction Co. v. National Labor Relations Board</i> , (2002) 536 U.S. 516.....	18
<i>Britt v. Superior Court</i> , (1978) 20 Cal.3d 844	14, 15
<i>Buckley v. Valeo</i> , (1976) 424 U.S. 1.....	13
<i>California Transport v. Trucking Unlimited</i> , (1972) 404 U.S. 508.....	17
<i>Citizens United v. Federal Elections Com.</i> , (2010) 558 U.S. 310.....	15
<i>City of Alhambra v. Superior Court</i> , (1988) 205 Cal.App.3d 1118	11
<i>Cooper Indus., Inc. v. Leatherman Tool Grp.</i> , (2001) 532 U.S. 424.....	25
<i>Garcia v. Superior Court</i> , (2007) 42 Cal.4th 63	11
<i>Golden Gateway Center v. Golden Gateway Tenants Assn.</i> , (2001) 26 Cal.4th 1013	13
<i>Governor Gray Davis Com. v. American Taxpayers Alliance</i> , (2002) 102 Cal.App.4th 449	13, 15
<i>In re Marriage of Flaherty</i> , (1982) 31 Cal.3d 637	20
<i>In re S. Pacific Trans. Co.</i> , (Feb. 18, 1999) 85 Cal.P.U.C.2d 117	20
<i>Kashian v. Harriman</i> , (2002) 98 Cal.App.4th 892	17
<i>Mullane v. Central Hanover Tr. Co.</i> , (1950) 339 U.S. 306.....	19
<i>National Assn. for Advancement of Colored People v. State of Ala. ex rel. Patterson</i> , (1958) 357 U.S. 449.....	13

<i>New York Times Co. v. Sullivan</i> , (1964) 376 U.S. 254.....	13
<i>Pacific Gas & Elec. Co. v. Public Utilities Com.</i> , (1986) 475 U.S. 1.....	12
<i>Pacific Gas & Elec. Co. v. Public Utilities Com.</i> , (2000) 85 Cal.App.4th 86	13
<i>Pacific Gas & Elec. Co. v. Public Utilities Com.</i> , (2015) 237 Cal.App.4th 812	19, 20, 23
<i>People ex rel. Gallegos v. Pacific Lumber Co.</i> , (2008) 158 Cal.App.4th 950	16, 17
<i>People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.</i> , (2005) 37 Cal.4th 707	25
<i>People v. Western Air Lines, Inc.</i> , (1954) 42 Cal.2d 621	19, 23
<i>Perry v. Schwarzenegger</i> , (9th Cir. 2010) 591 F.3d 1147	13, 14
<i>Pollock v. Univ. of Southern Cal.</i> , (2003) 112 Cal.App.4th 1416	17
<i>Ramona Unified School Dist. v. Tskinas</i> , (2005) 135 Cal.App.4th 510	17
<i>Roberts v. U.S. Jaycees</i> , (1984) 468 U.S. 609.....	13
<i>Rusheen v. Cohen</i> , (2006) 37 Cal.4th 1048	15, 17
<i>Silberg v. Anderson</i> , (1990) 50 Cal.3d 205	16, 17
<i>State ex rel. Dept. of Pesticide Regulation v. Pet Food Express</i> , (2008) 165 Cal.App.4th 841	20
<i>United States v. Bajakajian</i> , (1998) 524 U.S. 321.....	25
 Statutes	
Cal. Civil Code § 283.....	8
Cal. Civil Code § 47(b).....	16, 17
Cal. Code of Civil Proc. § 2018.030(a)	10
Cal. Evid. Code § 915(a).....	10
Cal. Evid. Code § 915(b)	10
Cal. Pub. Util. Code § 309.5	4, 12

Cal. Pub. Util. Code § 1701.2	19, 22
Cal. Pub. Util. Code § 1701.3	19
Cal. Pub. Util. Code § 314	4, 12
Cal. Pub. Util. Code § 851	21

Other Authorities

53 Cal. Jur. 3d, Public Utilities, § 95	19
---	----

Constitutional Provisions

Cal. Const. Article XII	22
Cal. Const. Article XII, § 2	10, 23
Cal. Const., Article I	12
Cal. Const., Article I, § 17	25
Cal. Const., Article I, § 7	19
U.S. Const., 14th Amend.	19
U.S. Const., 5th Amend.	19
U.S. Const., 8th Amend	25

CPUC Rules of Practice and Procedure

Rule 1.1	passim
Rule 1.3(a).....	20
Rule 11.4	passim
Rule 11.4(b)	2, 5, 8
Rule 11.5	9
Rule 15.5	22
Rule 7	18, 19, 20
Rule 7.2	22
Rule 7.3	22
Rule 7.6	22
Rules 7.1	22

CPUC Decisions

A.08-05-036	9
-------------------	---

A.08-09-011	9
A.18-02-019	9
D.01-05-0161	21
D.01-06-043	21
D.01-08-019	24
D.03-11-011	23
D.05-04-020	23
D.13-12-012	23
D.15-08-032	21, 22, 24, 25
D.18-04-014	19
D.20-04-036	21
D.95-07-054	23
D.98-12-075	24, 25

CPUC General Orders

CPUC General Order No. 66-D	10
CPUC General Order No. 66-D § 3.3	10
CPUC General Order No. 69-C	21

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

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) RESPONSE TO
PUBLIC ADVOCATES OFFICE MOTION TO COMPEL
CONFIDENTIAL DECLARATIONS SUBMITTED IN SUPPORT
OF SOUTHERN CALIFORNIA GAS COMPANY’S DECEMBER 2, 2019 MOTION FOR
RECONSIDERATION OF FIRST AMENDMENT ASSOCIATION ISSUES AND
REQUEST FOR MONETARY FINES FOR THE UTILITY’S INTENTIONAL
WITHHOLDING OF THIS INFORMATION**

(NOT IN A PROCEEDING)

Southern California Gas Company (“SoCalGas”) hereby files this response to Public Advocates Office’s Motion to Compel Confidential Declarations Submitted in Support of Southern California Gas Company’s December 2, 2019 Motion for Reconsideration of First Amendment Association Issues and Request for Monetary Fines for the Utility’s Intentional Withholding of this Information (Not in a Proceeding) (the “Motion to Compel”).¹

I. INTRODUCTION

The Motion to Compel is Cal Advocates’ *third* attempt in the past three months to compel SoCalGas to disclose information related to its 100% shareholder-funded political activities—information which is protected from compelled disclosure under the First Amendment of the United States Constitution (and its California Constitution counterpart), as well as longstanding United States Supreme Court and California Supreme Court precedent. As SoCalGas argued regarding Cal Advocates’ two earlier attempts—its overbroad and unconstitutional subpoena dated May 5, 2020, which should be partially quashed; and its motion for contempt and fines filed three weeks ago, which should be denied—this Motion to Compel

¹ This briefing is connected with the Docket related to SoCalGas’s Motion for Reconsideration/Appeal, and as such, subject to Chief ALJ Anne Simon’s October 29, 2019 email instructions to the parties that they must request permission before filing. SoCalGas notes that Cal Advocates requested no such permission prior to filing its frivolous Motion to Compel.

improperly seeks information to which it is not entitled under the U.S. and California Constitutions, and should therefore be denied.

On December 2, 2019—that is, over seven months ago—SoCalGas filed a motion to seal four confidential declarations submitted to the Commission in support of SoCalGas’s Motion for Reconsideration/Appeal² (the “Confidential Declarations”), which seeks reversal of an ALJ ruling erroneously compelling the production of First Amendment-protected documents.³ The Confidential Declarations contain the identities of consultants and vendors who have performed work in furtherance of SoCalGas’s 100% shareholder-funded political activities and the descriptions of those activities. As the declarations attest, the disclosure of that information to Cal Advocates will have a chilling effect on SoCalGas’s First Amendment rights. Instead of opposing the motion to seal at the time it was filed, Cal Advocates filed its response to SoCalGas’s Motion for Reconsideration/Appeal addressing the substance of the Confidential Declarations, then waited seven months before seeking to compel production of the Confidential Declarations and \$1 million in fines against SoCalGas for filing them conditionally under seal.

The Motion to Compel fails for five reasons.

First, Cal Advocates has waived its right to compel production of the Confidential Declarations because it failed to oppose SoCalGas’s duly filed Motion to Seal. Under Commission Rules of Practice and Procedure Rule 11.4(b), Cal Advocates had ten days to oppose the Motion to Seal. It didn’t. The Commission should reject Cal Advocates’ eleventh-hour attempt to deflect onto SoCalGas the consequences of its own delay via a frivolous motion for fines.

Second, SoCalGas followed the correct procedure in filing a Motion to Seal and withholding the Confidential Declarations from Cal Advocates. This procedure, albeit

² The full name of this motion is SoCalGas’s 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).

³ The full name of the motion is Motion of Southern California Gas Company’s (U 904 G) For Leave to File Under Seal Confidential Versions of Declaration Numbers 3, 4, 5, and 6 in Support of its 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). It shall be referred to hereinafter as the “Motion to Seal.” The Commission has not yet ruled on either motion.

uncommon, is necessary here because the harm SoCalGas seeks to protect against is precisely disclosure of its information to Cal Advocates.

Third, even if Cal Advocates had timely filed an opposition to the December Motion to Seal, which it did not, Cal Advocates is not entitled to compel disclosure of SoCalGas’s private political associations. The Motion to Compel invites the Commission to openly defy the U.S. and California Constitutions and California Supreme Court precedent. The Commission should decline to do so and deny the motion.

Fourth, the Motion to Compel improperly treats SoCalGas’s Motion to Seal as an abuse of process and seeks to impose fines on SoCalGas for engaging in protected activity—petitioning the Commission. This runs afoul of the litigation privilege and *Noerr-Pennington* doctrine. The Commission cannot assess liability on SoCalGas in the form of enormous fines for engaging in the adjudicatory process. The due process protections afforded by the United States and California Constitutions, which apply in full force to proceedings and “non-proceedings” alike before this Commission, mean that SoCalGas may not be forced to waive or forfeit its rights and privileges without basic adjudication of those rights and privileges.

Finally, this Commission should not assess fines outside of a proceeding and without notice and an evidentiary hearing on issues of disputed material facts. (Indeed, Cal Advocates’ Motion to Compel suffers from the same fundamental flaw as the Contempt Motion it filed three weeks ago.⁴)

To be clear, Cal Advocates is simply attempting to gin up a controversy for which it can threaten millions of dollars of fines and sanctions, because at least once before, it succeeded in forcing SoCalGas to turn over First Amendment-protected information under protest to avoid them. This is improper, and the Motion should be denied.

⁴ The full name of the Contempt Motion is the 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).

II. FACTUAL BACKGROUND

The Motion to Compel raises a familiar refrain: the same constitutional issues present in the pending Motion for Reconsideration/Appeal, SoCalGas's Motion to Quash,⁵ and Cal Advocates' Contempt Motion.

A. SoCalGas Submitted Confidential Declarations Under Seal to the Commission in December 2019, Which Cal Advocates Chose Not to Oppose.

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."⁶ In response, SoCalGas produced contracts funded by both SoCalGas ratepayers and shareholders, but it objected to producing its 100% shareholder-funded contracts on the grounds that it exceeded the scope of Cal Advocates' duties under Public Utilities Code §§ 309.5 and 314. On October 7, 2019, Cal Advocates moved to compel production of the 100% shareholder-funded contracts. In opposition, SoCalGas argued that production of those contracts would have a chilling effect on its First Amendment rights.⁷

On November 1, 2019, the ALJ granted Cal Advocates' motion, ordering SoCalGas to produce the contested contracts within two business days.⁸ SoCalGas disagreed with that ruling, which compelled it to turn over information subject to protection under the First Amendment of the U.S. Constitution and the corresponding articles of the California Constitution, and accordingly it filed a motion to stay the ruling.⁹ But with no ruling on the stay motion and facing

⁵ 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).

⁶ 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 pp. 2, 6.

⁷ See Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request—Cal Advocates-SC-SCG-2019-05 (Not in a Proceeding).

⁸ Motion to Compel, Ex. 1.

⁹ The full name of that motion is Southern California Gas Company's (U 904 G) Emergency Motion to Stay Pending Full Commission Review of 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, dated Nov. 4, 2019).

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.¹⁰

On December 2, 2019, SoCalGas filed its Motion for Reconsideration/Appeal seeking reversal of the ALJ’s November 1 ruling. In support of that Motion, SoCalGas attached six declarations attesting to the chilling effect that disclosure to Cal Advocates would cause to its private political activity. Four of these declarations—the Confidential Declarations—redacted identifying information that would reveal precisely the information SoCalGas seeks to protect: the identity of third-party consultants and vendors with whom SoCalGas associates, and the descriptions of its associational activities and speech. At the same time, SoCalGas also filed a Motion to Seal the unredacted versions of the Confidential Declarations. Electronic copies of the Motion for Reconsideration and Motion to Seal were served on several Cal Advocates personnel.¹¹

The Motion to Seal clearly states that SoCalGas filed the unredacted versions of the Confidential Declarations with the Commission. The Motion to Seal’s concluding paragraph requests the Commission grant the motion “designating the redacted portions of Declaration Numbers 3, 4, 5, and 6 *filed directly with the Docket Office in connection with the Motion for Reconsideration/Appeal* as confidential and protect the material under seal.”¹²

Under Rule 11.4(b) of the Commission’s Rules of Practice and Procedure, Cal Advocates’ opposition to the Motion to Seal was due on December 10, 2019. Cal Advocates did not file a response to the Motion to Seal. On December 17, 2019, Cal Advocates, through its attorney Rebecca Vorpe, filed a response to the Motion for Reconsideration/Appeal.¹³ In that response, Cal Advocates addressed the Confidential Declarations on the merits, arguing that the

¹⁰ See Motion for Reconsideration/Appeal, p.8. Cal Advocates appears to suggest the November 1 Ruling applied to the Confidential Declarations as well, Motion to Compel p. 5—but this would be impossible, since the Confidential Declarations post-date that ruling by more than one month.

¹¹ Motion to Compel, Ex. 4.

¹² Motion to Seal, p. 3 (emphasis added).

¹³ See Public Advocates Office’s Response to 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), dated Dec. 17, 2019.

“declarations from [SoCalGas’s] contracting partners” failed to “establish a prima facie case of probable First Amendment infringement.”¹⁴ At no point did Cal Advocates claim that not having the Confidential Declaration prejudiced their Response. Instead, Cal Advocates addressed the merits of the Confidential Declarations in its Response.

B. SoCalGas Attempted to Submit, and then Substituted Out, New Declarations in Support of its May 2020 Motion to Quash, Which the ALJ Approved.

On May 5, 2020, Cal Advocates served a subpoena on SoCalGas seeking access to SoCalGas’s SAP accounting database—which includes information implicating SoCalGas’s First Amendment rights, not to mention attorney-client and attorney work product privileges. On May 19, 2020, SoCalGas filed its Motion to Quash. There, SoCalGas sought an order quashing the portion of the Subpoena that would permit access to SoCalGas’s material protected from disclosure, 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.¹⁵

As support for its Motion to Quash, SoCalGas also filed a motion to seal new confidential declarations from its vendors (the “New Declarations”) demonstrating the chilling effect Cal Advocates’ unmitigated access to SoCalGas’s 100% shareholder-funded political activities would have. But, due to the COVID-19 pandemic, SoCalGas lacked the capacity to file the hard copies of the New Declarations that same day. SoCalGas’s counsel requested permission to file the New Declarations with the Docket Office the next week, which was granted by the ALJ on May 22, 2020.¹⁶ The ALJ ordered that electronic copies of the New Declarations (not the Confidential Declarations filed in December) should be provided to the Commission staff, “including the Cal Advocates office.”¹⁷ Counsel for SoCalGas explained in a follow up email that it was “not in a position to provide the confidential materials to CalPA,” as “explained further in the pending motions.”¹⁸ SoCalGas proposed that it instead file substituted motions and

¹⁴ *Id.* at pp. 13-14.

¹⁵ Motion to Quash, p. 3.

¹⁶ Motion to Compel, Ex. 7 [Email from E. Henry dated May 19, 2020].

¹⁷ *Id.* [Email from R. DeAngelis dated May 22, 2020].

¹⁸ *Id.* [Email from E. Henry dated May 22, 2020].

declarations that did not contain **any** confidential information.¹⁹ ALJ DeAngelis responded that SoCalGas’s “request is approved,” and SoCalGas made that filing the same day.²⁰ Accordingly, Cal Advocates’ suggestion that SoCalGas is currently in violation of some kind of “determination” by the ALJ that it is “entitled” to the Confidential Declarations is wrong.²¹ The ALJ made no reasoned determination that Cal Advocates was entitled to the Confidential Declarations as they were not at issue (the New Declarations were), *and* the ALJ approved of SoCalGas’s proposal to file substituted, non-confidential declarations in any event.

C. Cal Advocates Requests the Confidential Declarations Anew.

In late June, in an attempt to cure its earlier waiver of its objection to the Motion to Seal, Cal Advocates inexplicably demanded the Confidential Declarations from the December motion in a meet and confer email.²² By letter, SoCalGas rejected Cal Advocates’ untimely and unjustified request.²³ Cal Advocates threatened to move for sanctions—and filed the instant motion.

D. Cal Advocates Misrepresents SoCalGas’s Record on Providing Data.

Cal Advocates attempts to paint this dispute as part of a long-running campaign by SoCalGas to “disrespect” the Commission. To briefly correct the remaining factual record:

- SoCalGas is not withholding information from the Commission. The Confidential Declarations were provided to the Commission in hard-copy form filed with the Docket Office. Cal Advocates’ suggestion to the contrary is inapposite.²⁴

¹⁹ *Id.*

²⁰ *Id.* [Email from R. DeAngelis dated May 22, 2020].

²¹ Motion to Compel, p. 4 [“Cal Advocates is entitled to the confidential versions of the declarations, consistent with the determination made by ALJ DeAngelis on May 22, 2020 that SoCalGas ‘provide electronic copies of the confidential information to *all* Commission staff on the above service list, including the Cal Advocates office.”].

²² Motion to Compel, Ex. 5 [Email of T. Bone to E. Henry dated June 24, 2020].

²³ Motion to Compel, Ex. 6 [Ltr. of J. Wilson to T. Bone dated June 29, 2020].

²⁴ Motion to Compel, p. 8. Cal Advocates equivocates on this point, but, as an adversarial body whose mission is to advocate for ratepayers’ interests within the Commission, it is positioned differently toward SoCalGas than the full Commission.

- SoCalGas is not in violation of the November 1, 2019 Order. It complied with that order in turning over the contracts under protest. The Confidential Declarations were not at issue at the time the order was released—indeed, they post-date that order by a month.
- There are no Data Requests that have been outstanding for three months. As of June 25, 2020, SoCalGas had responded to all fourteen of Cal Advocates’ data requests, consisting of 110 questions. In meet and confers during May, SoCalGas agreed to revise certain responses it had previously provided. This process is ongoing. Five amended responses have been provided as of June 15, 2020. On June 30, 2020, Cal Advocates served an extensive fifteenth data request including 25 questions. On July 10, 2020, SoCalGas responded to 15 of the 25 questions, and it is in the process of preparing its responses to the remainder.
- SoCalGas has offered Cal Advocates access to 96% of the data contained in its SAP database, as soon as it executes a non-disclosure agreement it itself committed to signing before inexplicably reversing its position on that issue.
- Cal Advocates’ reference to the SED’s Aliso Canyon Motion for Sanctions is inapt, as that motion was denied.

The factual record does not support the imposition of fines.

III. ARGUMENT

A. Cal Advocates Has Waived its Objections to the Motion to Seal.

Cal Advocates waived its objections to filing the Confidential Declarations under seal because it failed to respond within the ten-day deadline under Commission procedures. As discussed above, SoCalGas filed the Confidential Declarations in hard copy with the full Commission on December 2, 2019, along with a Motion to Seal, and served redacted versions of those declarations on opposing counsel. Under Rule 11.4(b), “[r]esponses to motions to file pleadings, or portions of pleading, under seal shall be filed and served within 10 days of the date that the motion was served.”²⁵ Cal Advocates’ response was therefore due on December 12, 2019. Cal Advocates did not file any response to the Motion to Seal on or before that date.²⁶ Cal

²⁵ Com. Rule of Practice and Procedure Rule, rule 11.4(b).

²⁶ Cal Advocates is bound by the actions of its then-counsel under Cal. Civ. Code § 283.

Advocates’ belated Motion to Compel—filed seven months after its opposition was due—is untimely and should be disregarded on that basis alone.²⁷

Cal Advocates claims that it “did not realize” the Confidential Declarations were provided to the Commission in December, until “newly assigned counsel realized that the confidential versions of the declarations were necessary to respond to SoCalGas’s May 2020 motions[.]”²⁸ This is patently false—Cal Advocates, including its attorney Rebecca Vorpe, were notified that the Confidential Declarations were hard-copy filed with the Docket Office through the Motion to Seal, which says so explicitly. And clearly the Confidential Declarations were not necessary to respond to the Motion for Reconsideration/Appeal, which Cal Advocates opposed addressing the Confidential Declarations on the merits. Cal Advocates is therefore barred from bringing its motion now because it waived its opposition when the ten-day deadline passed.²⁹

B. SoCalGas Followed the Proper Procedure By Filing a Motion to Seal And Not Giving The Confidential Declarations to Cal Advocates.

Cal Advocates’ assertion that SoCalGas wrongfully withheld the Confidential Declarations when it moved to file them under seal is incorrect. Commission procedures as well as analogous procedures in the court system provide that sealing confidential information is proper when opposing counsel as well as the public must be excluded from viewing it.

²⁷ The Commission routinely grants unopposed motions to seal. *See Application of San Diego Gas & Elec. Co. (U902E) for Approval of: (i) Contract Admin., Least Cost Dispatch & Power Procurement Activities; & (II) Costs Related to Those Activities Recorded to the Elec. Res. Recovery Account, Incurred During the Record Period Jan. 1, 2007 Through Dec. 31, 2007.*, A.08-05-036, 2009 WL 254790, at *3 (Jan. 29, 2009) [“Pursuant to Rules 11.4 and 11.5, SDG&E also filed a motion to seal a portion of the evidentiary record. There is no opposition to the motions. Accordingly, the motions are granted, as requested.”]; see also *Application of NRG Energy Ctr. San Francisco LLC (U909H), NRG Energy, Inc., NRG Repowering Holdings LLC, & GIP III Zephyr Acquisition Partners, L.P. for Auth. to Sell & Transfer Indirect Control of NRG Energy Ctr. San Francisco LLC to GIP III Zephyr Acquisition Partners, L.P.*, A.18-02-019, 2018 WL 3753822, at *6 (July 12, 2018) [same outcome]; *Application of S. California Edison Co. (U 338-E) for Approval of Its Forecast 2009 ERRRA Proceeding Revenue Requirement, to Increase Its ERRRA Proceeding Revenue Requirement by \$341.9 Million Beginning Jan. 1, 2009, to Consolidate All Comm'n-Authorized Revenue Requirements, & to Set Unbundled Rate Components Beginning Jan. 1, 2009.*, A.08-09-011, 2009 WL 254786 (Jan. 29, 2009) [same].

²⁸ Motion to Compel, p. 3.

²⁹ Cal Advocates’ argument that it is not bound by Commission Rules confirms that this “non-proceeding” fails to provide basic due process to SoCalGas.

Article XII, section 2 of the California Constitution allows the Commission to establish its own procedures “subject to . . . due process.”³⁰ Procedural due process requires SoCalGas be allowed to adjudicate its rights without waiving them in the process. The Commission has provided for confidential treatment of information to be filed in the docket pursuant to a motion under Rule 11.4 of the Commission Rules.³¹ That Rule provides for parties to file a motion for leave to file under seal.³² Nothing in General Order 66-D or Rule 11.4 require SoCalGas to serve the Confidential Declarations on opposing counsel—particularly when (as explained in the motions) to do so would violate SoCalGas’s rights.

Analogous situations in California courts confirm that a motion to seal is proper to keep confidential information from an adversary pending adjudication of rights or privileges. The California State Legislature has recognized that protecting rights and privileges requires that in certain circumstances the opposing party is not entitled to see privileged information. For example, for most attorney client privilege claims or attorney work product privilege claims, opposing counsel is forbidden to view the information—and for the attorney-client privilege, even “the presiding officer may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (a) of Section 2018.030 of the Code of Civil Procedure in order to rule on the claim of privilege.”³³

Similarly, Evidence Code section 915(b) provides that in other cases, such as in trade secret matters:

[T]he court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither the judge nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers.³⁴

³⁰ Cal. Const., art. XII, § 2.

³¹ Cal.P.U.C., General Order No. 66-D (Feb. 1, 2019) § 3.3.

³² Com. Rules of Practice and Procedure, rule 11.4.

³³ Evid. Code, § 915, subd. (a).

³⁴ Evid. Code, § 915, subd. (b).

In addition, defendants often have constitutional rights against disclosure of certain information from the adverse party. In those instances, the California Supreme Court has made it clear that a motion to seal is an appropriate procedure to protect a constitutionally protected right. For example, in *Garcia v. Superior Court* (2007) 42 Cal.4th 63, Garcia, who was in a dispute with a police department, filed an attorney declaration under seal as part of a Pitchess motion.³⁵ Counsel for the police department demanded that the declaration be unsealed.³⁶ The California Supreme Court upheld the sealing, noting that “‘declarations and other supporting evidence may be submitted to the trial court for in camera examination’ to protect a defendant’s constitutional rights.”³⁷ Similarly, in *City of Alhambra v. Superior Court* (1988) 205 Cal.App.3d 1118, , the Court of Appeal condoned a procedure exactly analogous to what SoCalGas here:

To preserve a defendant’s claim of confidentiality at the time of any discovery motion, declarations and other supporting evidence may be submitted to the trial court for in camera examination so that the court may decide if the claim of confidentiality is justified and, if so, to what extent.³⁸

The trial court should, “in light of all the facts and circumstances,” make the information available to the party opposing the motion only when “consistent with [the] protection of the defendant’s constitutional rights[.]”³⁹

Here, Cal Advocates’ assertion that SoCalGas did something wrong by serving only redacted versions of the Confidential Declarations on Cal Advocates is at odds with the sealing procedure that the California Supreme Court set forth in *Garcia*:

Counsel should give “proper and timely notice” of the privilege, and provide the court with the affidavit the defense seeks to file under seal, along with a proposed redacted version. The proposed redacted version should be served on opposing counsel.⁴⁰

³⁵ *Garcia v. Superior Court* (2007) 42 Cal.4th 63, 68.

³⁶ *Ibid.*

³⁷ *Id.* at p. 78.

³⁸ *City of Alhambra v. Superior Court* (1988) 205 Cal.App.3d 1118, 1130, as mod. (Dec. 1, 1988) (superseded by statute on other grounds).

³⁹ *Ibid.*

⁴⁰ *Garcia v. Superior Court, supra*, 42 Cal.4th at p. 73 [citations omitted].

This is precisely the process SoCalGas followed. SoCalGas gave Cal Advocates notice of its First Amendment claim, and it served a redacted copy of the declarations on Cal Advocates. Thus, the procedure SoCalGas followed when it filed the Motion to Seal and Confidential Declarations before the Commission was proper.

C. The Motion to Compel Should Be Denied Because Cal Advocates Is Not Entitled to the Confidential Declarations Under the First Amendment.

Even if Cal Advocates' Motion to Compel was timely (which it is not), it should be denied. Although Cal Advocates has broad investigatory powers under the Public Utilities Code, those powers are necessarily curtailed by the rights afforded by the First Amendment of the U.S. Constitution and Article I of the California Constitution. Therefore, its claim that "undisputed facts" support an order to compel here⁴¹ rests on a fundamentally false premise: Cal Advocates is not entitled to the underlying information it seeks. The only authority on which Cal Advocates relies to demand the Confidential Declarations is its statutory authority under Public Utilities Code §§ 309.5(e) and 314.⁴² This is insufficient. As SoCalGas has argued in its earlier Motion for Reconsideration/Appeal, Motion to Quash, and opposition to the Contempt Motion, Cal Advocates' statutory authority is limited by the U.S. and California Constitutions.

1. Cal Advocates' Statutory Authority to Inspect SoCalGas's Books and Records is Limited by the First Amendment

The United States Supreme Court has confirmed that regulated utilities such as SoCalGas enjoy the full protections of the First Amendment—including as against this Commission. In *Pacific Gas & Elec. Co. v. Public Utilities Com.*, 475 U.S. 1 (1986), the Commission argued before the Supreme Court that regulated utilities had fewer free speech rights than private entities. The Supreme Court rejected the argument.⁴³ More recently, the Court of Appeal reiterated that Commission authority is necessarily curtailed by utilities' First Amendment rights, stating, "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

⁴¹ Motion to Compel, pp. 5-6.

⁴² Motion to Compel, p. 6.

⁴³ *Pacific Gas & Elec. Co. v. Public Utilities Com.* (1986) 475 U.S. 1, 17, fn. 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."].

does not depend upon the identity of its source, whether corporation, association, union, or individual.”⁴⁴ Therefore, Cal Advocates’ authority to review SoCalGas’s books and records is limited by SoCalGas’s First Amendment rights.

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.”⁴⁵ Accordingly, 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.⁴⁶ Demands for the production of materials furthering political association and expression encroach on constitutionally protected activity because of its deterrent effect on those activities. The California Supreme Court has made clear that such compelled disclosure is improper:

As we explain, for more than two decades decisions of both the United States Supreme Court and this court, recognizing that compelled disclosure of private associational affiliations or activities will inevitably deter many individuals from exercising their constitutional right of association, have established that such intrusion into associational privacy may be sanctioned only upon the demonstration of a very important, indeed “compelling,” state interest which necessitates the disclosure.⁴⁷

⁴⁴ *Pacific Gas & Elec. Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 86, 93.

⁴⁵ *Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 617; 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)]; *National Assn. for Advancement of Colored People v. State of Ala. ex rel. Patterson*, (1958) 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*, (1976) 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 Co. v. Sullivan* (1964) 376 U.S. 254, 270)]; *Governor Gray Davis Com. v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 464 [the right to free association is “fundamental”].

⁴⁶ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1162-1163; see *American Federation of Labor and Cong. of Industrial Organizations v. Federal Election Com.* (D.C. Cir. 2003) 333 F.3d 168, 170 [substantial First Amendment interests implicated by forcing release of “political groups’ strategic documents and other internal materials”].

⁴⁷ *Britt v. Superior Court* (1978) 20 Cal.3d 844, 848–849.

2. Cal Advocates' Demand for the Confidential Declarations Is Subject to Strict Scrutiny, Which It Fails to Meet

Cal Advocates' demand for the Confidential Declarations falls squarely within *Britt's* description of a "compelled disclosure of private associational affiliations or activities."⁴⁸ The redacted portions of the Confidential Declarations reveal precisely with whom SoCalGas has associated and what political work was done on SoCalGas's behalf. This is the type of information protected by the right of association under the First Amendment.

Disclosure of the Confidential Declarations would impermissibly chill SoCalGas's ability to engage in its constitutionally protected rights. Ironically, *this is precisely the harm to which the Confidential Declarations attest.*⁴⁹ As discussed at length in the Motion for Reconsideration/Appeal, in Declaration 6, the head of one government relations and public-affairs firm attested that, "I can unequivocally state that if the non-public contract I have with SoCalGas regarding the public affairs work I am doing with the company is ordered to be disclosed in response to the demand of the California Public Advocates Office, it will drastically alter how I communicate in the future."⁵⁰ Another government relations professional stated that disclosures to Cal Advocates "have made me reconsider whether I want to work and associate with SoCalGas in the future," and that "[a]s a result of the disclosures to the California Public Advocates Office (and likelihood of its additional demands for disclosure), I am reluctant to continue associating with SoCalGas and am seriously considering limiting my association with SoCalGas in the future."⁵¹ Yet another public affairs professional confirms that the disclosure to Cal Advocates of that professional's contract with SoCalGas "has made me less willing to work and associate with SoCalGas in the future."⁵² Disclosure of the Confidential Declarations would consist of the same harm described in the declarations themselves.

⁴⁸ *Britt v. Superior Court, supra*, 20 Cal.3d. at pp. 848–849.

⁴⁹ The redacted Confidential Declarations are attached to the Motion to Compel as Exhibit 2. *Perry v. Schwarzenegger, supra*, 591 F.3d. at p. 1163 discusses at length the propriety of using declarations to attest to the impact compelled disclosure would have on associational rights, as part of a *prima facie* showing of infringement on the First Amendment.

⁵⁰ Motion to Compel, Ex. 2 [Declaration 6, ¶ 4].

⁵¹ Motion to Compel, Ex. 2 [Declaration 4, ¶¶ 5, 8].

⁵² Motion to Compel, Ex. 2 [Declaration 5, ¶ 4].

Because compelled disclosure of the Confidential Declarations to Cal Advocates would have a chilling effect on SoCalGas’s exercise of its rights, the law requires exacting scrutiny of the disclosure. This means Cal Advocates is not entitled to compel the disclosure of SoCalGas’s private political affiliations unless it can demonstrate that it furthers a “compelling interest” that is “narrowly tailored” to achieve that interest.⁵³ Cal Advocates cannot meet this test. Cal Advocates does not identify *any* compelling state interest that compels the disclosure of this information—not in its meet and confer correspondence from June, and not in its Motion to Compel. Cal Advocates identifies only that it has the right to seek these materials under its statutory powers, in order to further its investigation into alleged use of ratepayer monies to fund anti-decarbonization “astroturf” organizations.⁵⁴ But obviously, this is not enough—as discussed above, those statutory powers are subject to SoCalGas’s constitutional rights. And, Cal Advocates cannot demonstrate that it needs to know the identities of 100% *shareholder-funded* consultants in order to investigate *ratepayer-funded* contracts.

Cal Advocates also argues that it needed the Confidential Declarations to properly respond to the Motion to Quash—but obviously, it did not. First, the Motion to Quash involved the New Declarations—a different set of declarations than those submitted in December. Second, SoCalGas substituted the New Declarations out and did not rely on them in its Motion to Quash, to which Cal Advocates—through the very same counsel who filed this Motion—submitted a response without incident.⁵⁵ Cal Advocates’ demand to turn over the Confidential Declarations wholesale is not “narrowly tailored” to meet *any* compelling state interest, and therefore should be rejected.

D. Fining SoCalGas Under Rule 1.1 for Filing its Motion to Seal Would Run Afoul of the Litigation Privilege and *Noerr-Pennington* Doctrine.

Rather than attack SoCalGas’s Motion to Seal on its merits before the full Commission, Cal Advocates’ treats SoCalGas’s Motion to Seal like it is some sort of abuse of process.⁵⁶ Thus,

⁵³ *Citizens United v. Federal Elections Com.* (2010) 558 U.S. 310, 339; see also *Governor Gray Davis Com.v. Am. Taxpayers Alliance, supra*, 102 Cal.App.4th at p. 464 [same]; *Britt v. Superior Court, supra*, 20 Cal.3d at p. 864 [same].

⁵⁴ Motion to Compel, p. 6; see also *id.* at pp. 1,4.

⁵⁵ Motion to Compel, p. 3.

⁵⁶ The “tort of abuse of process arises when one uses the court’s process for a purpose other than that for which the process was designed.” *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056. The elements a

the essence of Cal Advocates’ argument for fines is that, because it is entitled to the Confidential Declarations (which it is not), SoCalGas’s Motion to Seal those declarations was not proper and a violation of Rule 1.1 through an unlawful “withholding of information” from Cal Advocates.⁵⁷ But regardless whether SoCalGas ultimately prevails on its First Amendment arguments in the Motion for Reconsideration/Appeal, it was absolutely proper for it to file the Confidential Declarations conditionally under seal pending adjudication of its rights. Fining it for exercising those rights would run afoul of the litigation privilege and the *Noerr-Pennington* doctrine, which precludes liability for actions taken in petitioning the Commission.

It bears noting in the first instance that the Commission has not even ruled on the Motion to Seal, which Cal Advocates concedes.⁵⁸ Demanding fines in a motion directed to the ALJ, when the Commission has not even ruled on the merits of the Motion to Seal (which Cal Advocates did not oppose), is procedurally improper. Moreover, Cal Advocates cannot seek fines on SoCalGas for filing its Motion to Seal on the theory that the filing is an abuse of process because that activity was absolutely privileged under the litigation privilege, and seeking relief from the full Commission is protected by the *Noerr-Pennington* doctrine.

The litigation privilege applies to “any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.”⁵⁹ “Judicial or quasi-judicial” proceedings “are defined broadly to include ‘all kinds of truth-seeking proceedings,’ including administrative, legislative and other official proceedings.”⁶⁰ Though originally enacted with reference to defamation, the privilege “is now held applicable to

litigant must prove are “that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings.” *Id.* at p. 1057. Cal Advocates’ motion is short on explanations but clearly views the Motion to Seal as an improper attempt to withhold information from Cal Advocates and thus an abuse of process. SoCalGas’s motion is not an abuse of process because, as discussed in the motion itself, it has a clear and valid basis in the First Amendment.

⁵⁷ Motion to Compel, pp. 6-7.

⁵⁸ Motion to Compel, p. 2, fn. 8.

⁵⁹ *Silberg v. Anderson* (1990) 50 Cal.3d 205, 212, as mod. (Mar. 12, 1990); Civ. Code, § 47, subd. (b).

⁶⁰ *People ex rel. Gallegos v. Pacific Lumber Co.* (2008) 158 Cal.App.4th 950, 958, as mod. (Feb. 1, 2008).

any communication . . . and all torts except malicious prosecution.”⁶¹ This includes an abuse of process claim, as long as it is based on communicative conduct.⁶²

Communicative conduct includes declarations⁶³ as well as “motions filed by persons seeking relief from a court,”⁶⁴ and communications before a governmental agency to spur agency action.⁶⁵ SoCalGas’s Motion to Seal the Confidential Declarations before the full Commission is just such a protected communication. Because Civil Code section 47(b) creates a safe harbor for such communications, Rule 1.1 cannot be used like an abuse of process claim to “assault that harbor” via a collateral attack by creating liability for such conduct in a separate motion before the ALJ.⁶⁶ Further, “[a]ny doubt about whether the privilege applies is resolved in favor of applying it.”⁶⁷ Therefore, the litigation privilege applies to absolutely bar a Rule 1.1 violation premised on the notion that the filing of the Motion to Seal was some sort of wrongful abuse of process—before the Commission has even ruled upon it.

Similarly, the *Noerr-Pennington* doctrine “preclude[s] virtually all civil liability for a defendant’s petitioning activities before not just courts, but also before administrative and other governmental agencies.”⁶⁸ “It is only when efforts to influence government action are a ‘sham’

⁶¹ *Rusheen v. Cohen*, *supra*, 37 Cal.4th at p.1057 [quoting *Silberg v. Anderson*, *supra*, 50 Cal.3d at p. 212].

⁶² *Id.* at p. 1065.

⁶³ *Pollock v. Univ. of Southern Cal.* (2003) 112 Cal.App.4th 1416, 1431 [declaration “functions as written testimony,” is a “communication, not conduct,” and “is exactly the sort of communication the privilege is designed to protect”].

⁶⁴ *Ramona Unified School Dist. v. Tskinas* (2005) 135 Cal.App.4th 510, 522, fn. 7; *see also Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529-532 [filing of motion for reconsideration fell within the litigation privilege; “There should be an actionable tort [of abuse of process] only when the attempt is so misguided that there is no rational connection to the lawsuit; otherwise attempts to invoke judicial jurisdiction are privileged.”].

⁶⁵ *People ex rel. Gallegos v. Pacific Lumber Co.*, *supra*, 158 Cal.App.4th at pp. 958-959. In *People ex rel. Gallegos v. Pacific Lumber Co.*, the litigation privilege applied to bar an unfair competition claim brought by the State against a lumber company that had communicated fraudulent information to government agencies during CEQA administrative proceedings. *Id.* The court found that “Pacific Lumber’s communications, whether fraudulent or not, fall squarely within the scope of the litigation privilege.” *Id.* .

⁶⁶ *Id.* at p. 959 [with respect to UCL claim].

⁶⁷ *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 913.

⁶⁸ *People ex rel. Gallegos v. Pacific Lumber*, *supra*, 158 Cal.App.4th at pp. 964-965 [citing among other cases *California Transport v. Trucking Unlimited* (1972) 404 U.S. 508, 510-511].

that they fall outside the protection of the *Noerr-Pennington* doctrine[.]”⁶⁹ For a petitioning activity to fall within this “sham” exception, it must meet both prongs of a strict two-part test: “first, it ‘must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits’; second, the litigant’s subjecting motivation must ‘conceal an attempt to interfere directly with the business relationships of a competitor . . . through the use of the governmental *process*—as opposed to the *outcome* of that process—as an anticompetitive weapon.’”⁷⁰ This test is strictly applied, and improper tactics or even false statements do not render a petitioner’s activities to be “less genuine” with respect to the exception.⁷¹

The Motion to Seal was clearly a proper procedure for protecting SoCalGas’s First Amendment rights.⁷² Therefore, under the *Noerr-Pennington* doctrine, SoCalGas cannot be held liable under for a Rule 1.1 violation on that basis.

E. Due Process Requires Cal Advocates Seek and Obtain Recategorization of this Matter as an Adjudicatory Proceeding with Evidentiary Hearing Prior to Contempt Findings and Assessment of Fines.

As discussed above, without citing any legal authority, Cal Advocates claims that SoCalGas is in contempt of the Commission and in violation of Rule 1.1 because it appropriately withheld its First Amendment-protected Confidential Declarations when it filed them conditionally under seal.⁷³ Those unsupported allegations should be rejected. But, as extensively argued in SoCalGas’s prior response to Cal Advocates’ earlier unfounded claims of contempt, this motion cannot be heard in the first instance because this matter has not been categorized as an adjudicatory matter under Rule 7. Due process guaranteed by the United States and California Constitutions, applicable case law, and Commission precedent requires that the Commission recategorize this as an adjudicatory proceeding, and to provide SoCalGas the due process required for such proceedings, including among other things an evidentiary hearing on

⁶⁹ *Id.* at p. 965.

⁷⁰ *Ibid.*

⁷¹ *Id.* at p. 968 [citing *BE & K Construction Co. v. National Labor Relations Board* (2002) 536 U.S. 516, 526].

⁷² Even Cal Advocates acknowledges in a footnote that SoCalGas’s First Amendment arguments might “be upheld” by the Commission. Motion to Compel, p. 13, fn. 47.

⁷³ Motion to Compel, pp. 6-7.

issues of disputed material fact. Moreover, Cal Advocates' demand for \$1 million in fees exceeds due process as an excessive fine.

SoCalGas expressly demands that the Commission protect its rights to be heard prior to a determination of Cal Advocates' 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.

1. Before Cal Advocates' Motion Can Be Heard, This Non-Proceeding Matter Must Be Recategorized as Adjudicatory Under Rule 7.

Under the United States and California Constitutions, the government may not deprive a person of property without due process of law.⁷⁴ "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."⁷⁵ 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."⁷⁶ 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."⁷⁷

An agency "cannot impose administrative penalties unless an administrative hearing is held if such a hearing is requested."⁷⁸ Thus, "[a] case where the Commission considers imposing

⁷⁴ U.S. Const., 5th & 14th Amends.; Cal. Const., art. I, § 7.

⁷⁵ *Pacific Gas & Elec. Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 859 [*PG&E*] [citing *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314].

⁷⁶ *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 632; see also *PG&E, supra*, 237 Cal.App.4th at p. 859 [the PUC's power to establish its own procedures is "subject, of course, to the constitutional obligation to satisfy due process[.]"].

⁷⁷ *Order Instituting Investigation & Ordering Pacific 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.* (Cal.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."].

⁷⁸ *State ex rel. Dept. of Pesticide Regulation v. Pet Food Express* (2008) 165 Cal.App.4th 841, 852; see also *In re S. Pacific Trans. Co.* (Feb. 18, 1999) 85 Cal.P.U.C.2d 117 [utility claimed "penalties were

monetary penalties is an adjudicatory matter.”⁷⁹ 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 violated Rule 1.1 of the Commission’s Rules and Procedures.

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. Further, to the extent that the Motion to Compel seeks a contempt finding (as it appears to request in the Proposed Order), 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.”⁸⁰ 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.”⁸¹

The Commission examined the recategorization issue in *Order Instituting Investigation whether Pacific 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

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.”].)

⁷⁹ *PG&E, supra*, 237 Cal.App.4th at p. 829, fn. 9.

⁸⁰ Pub. Util. Code, § 2113.

⁸¹ *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”].

violated the law and we opt to make final findings on such violations and settle on remedies.”⁸² 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.”⁸³ 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.”⁸⁴

The example in *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 (Aug. 27, 2015) [“SFMTA”] demonstrates the process due SoCalGas before the Commission may assess fines and penalties. 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.⁸⁵ The Commission held a prehearing conference, and set forth a Scoping Memo and Ruling identifying

⁸² *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.”].)

⁸³ *In Re Application of Pacific Gas & Elec. Co.* (Cal.P.U.C. Sept. 20, 2001) No. D.01-06-043, 2001 WL 1287503.

⁸⁴ 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* (Cal.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].)

⁸⁵ *SFMTA, supra*, at *5.

specific issues for resolution.⁸⁶ 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.⁸⁷ After the evidentiary hearing, the parties filed concurrent post-hearing briefs and reply briefs, the record was reopened and further briefing was submitted.⁸⁸ Finally, the matter was submitted and a reasoned decision was issued.⁸⁹ SF MTA was also permitted to file an appeal.⁹⁰ All of this process was issued 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.

Thus, before any adjudication of the motion “on the merits” can be made, the Commission should open a proceeding similar to the SFMTA matter to ensure SoCalGas is provided its constitutionally mandated due process.

2. Current Process is Inadequate Because There is No Notice and An Evidentiary Hearing Is Required Where, As Here, Material Factual Disputed Issues Exist.

Cal Advocates baldly claims in its Motion to Compel that “SoCalGas’ ability to respond to Cal Advocates’ Motion to Compel and For Fines is adequate process to impose fines on SoCalGas.”⁹¹ This, again, invites the Commission to commit reversible error, which the Commission should decline to do.

In the first instance, Cal Advocates cites no authority for the position that due process requires any less of the Commission when assessing a fine in a “non-proceeding” rather than a “proceeding.” Article XII of the California Constitution and the California Supreme Court are

⁸⁶ *Id.* at *1-2.

⁸⁷ *Id.* at *2-3.

⁸⁸ *Id.*

⁸⁹ *Id.* at *4.

⁹⁰ *Id.* at *26.

⁹¹ Motion to Compel, p. 7.

clear that every action of this Commission, including that of Cal Advocates, must comply with basic notice and hearing requirements.⁹²

Second, Cal Advocates is wrong that SoCalGas's understanding of various statutory schemes that provide for fines supplies sufficient "notice" under due process that fines may be assessed.⁹³ It does not—if it did, then no notice of the possibility of levying fines in *any* proceeding would ever be necessary. And yet, as the Commission acknowledged in *Application of Pacific Gas & Elec. Co. Proposing Cost of Serv. & Rates for Gas Transmission & Storage Servs. for the Period of 2015-2017. (U39g) & Related Matter* (Cal.P.U.C. Nov. 20, 2014) No. D.13-12-012, "[D]ue process restricts the Commission from imposing sanctions at this juncture for violations that were not noticed in the order to show cause."⁹⁴ That is, due process requires *specific* notice of the fines threatened to be assessed.

Third, an evidentiary hearing is required for the disputed issues of fact raised by Cal Advocates. Cal Advocates submits no evidence in support of its motion; only conclusory statements that are insufficient to form a basis to assess fines. Consistent with the requirements of due process, a full evidentiary hearing is required to adjudicate the Motion to Compel. Evidentiary hearings are required when "there are material factual disputed issues."⁹⁵ 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."⁹⁶

The Motion to Compel and this Response present several "material factual disputed issues" going to "motive, intent, or credibility." As discussed extensively above, SoCalGas

⁹² Cal. Const., art. XII, § 2; *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 632; see also *PG&E, supra*, 237 Cal.App.4th at p. 859 [the PUC's power to establish its own procedures is "subject, of course, to the constitutional obligation to satisfy due process[.]"].

⁹³ Motion to Compel, p. 6; p. 2, fn. 7.

⁹⁴ *Application of Pacific Gas & Elec. Co. Proposing Cost of Serv. & Rates for Gas Transmission & Storage Servs. for the Period of 2015-2017. (U39g) & Related Matter* (Cal.P.U.C. Nov. 20, 2014) No. D.13-12-012, 2014 WL 6791604, at *3, fn. 2; see also *ibid.* ["While the California Rules of Court do not govern, they are instructive."].

⁹⁵ *In Re in Touch Commc'ns, Inc.* (Cal.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].)

⁹⁶ *In Re Verizon Commc'ns, Inc.* (Cal.P.U.C. Nov. 18, 2005) No. D.05-04-020, 2005 WL 3355225.

vehemently disputes the misleading factual record presented by Cal Advocates,⁹⁷ which is unsupported by any declarations. Cross-examination is required to assess the credibility of Cal Advocates' account of what transpired, including the cross-examination of Cal Advocates' staff who were involved in the apparently deliberate decision not to challenge the Motion to Seal during the statutory period. Further, Cal Advocates does not support with any facts its contention that the identity of the declarants is needed for its investigation into ratepayer funding of anti-decarbonization campaigns.⁹⁸ This would need to be explored in an evidentiary hearing.

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."⁹⁹ 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."¹⁰⁰ An evidentiary hearing would be required to resolve disputed issues of fact between the parties on these issues.

The list of exemplary cases cited by Cal Advocates on page 12 of its Motion to Compel merely highlight the need for a full evidentiary hearing here. None of these cases are analogous to the instant case. Indeed, Cal Advocates appears to have copied-and-pasted this list from other motions, as it protests in a footnote that "[N]one of these cases involved loss of life, which can result in significantly higher penalties."¹⁰¹ Is Cal Advocates comparing SoCalGas's Motion to Seal to a loss of life event? That seems an exaggeration, at best, or a farce, at worst.

To be clear, as explained above, the Motion to Compel 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

⁹⁷ Section II.A-D, *supra*.

⁹⁸ Motion to Compel, pp. 1, 4, 6.

⁹⁹ *SFMTA*, *supra*, 2015 WL 5159113, at *20 (citing D.01-08-019).

¹⁰⁰ *Id.* at *23 (citing D.98-12-075, mimeo at 34-39).

¹⁰¹ Motion to Compel, p. 12, fn. 44.

taken place, and if so whether fines should be assessed similar to what it did in the SF MTA matter.

3. Cal Advocates' Demand for \$1 Million in Fines Is Excessive.

Cal Advocates' request for a fine of \$1 million for SoCalGas's lawful protection of its First Amendment rights is unreasonable on its face and exceeds constitutional limits. The United States and California Constitutions prohibit the imposition of "excessive fines."¹⁰² The Excessive Fines Clause places a constitutional limit on the Commission's power to punish, including imposing civil fines or penalties.¹⁰³ The "touchstone of the constitutional inquiry . . . is the principle of proportionality."¹⁰⁴ In assessing whether a 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."¹⁰⁵ The Commission, too, has its own set of factors to determine the reasonableness of a penalty.¹⁰⁶

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 "determination to defy its obligations to the Commission as a regulated utility."¹⁰⁷ What Cal Advocates actually seeks to "deter" is clear: it would like to prevent SoCalGas from asserting its rights under the First Amendment in the future. But deterring such protected activity not only inappropriate—it runs afoul of SoCalGas' fundamental due process rights.

As with its earlier Contempt Motion seeking \$4.5 million in fines, this Motion to Compel and its demand for \$1 million are part of Cal Advocates' broader effort to bully SoCalGas into

¹⁰² U.S. Const., 8th Amend.; Cal. Const., art. I, § 17.

¹⁰³ *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707, 727-728.

¹⁰⁴ *United States v. Bajakajian* (1998) 524 U.S. 321, 334

¹⁰⁵ *Cooper Indus., Inc. v. Leatherman Tool Grp.* (2001) 532 U.S. 424, 434-445.

¹⁰⁶ See generally *In re Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, D. 98-12-075, 84 Cal.P.U.C.2d 155 (1998) [i.e., severity of the offense, conduct of the utility, and the totality of the circumstances].

¹⁰⁷ Motion to Compel, p. 10.

waiving its First Amendment rights for fear of excessive fines. These tactics are highly improper and should be rejected.

IV. CONCLUSION

The Commission should deny the Motion to Compel outright because it is procedurally improper—the time has long passed when Cal Advocates could properly oppose SoCalGas’s Motion to Seal. If it is inclined to consider the Motion on the merits, it must open 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. In the alternative, the Commission should deny the motion, conclude that SoCalGas has not violated Rule 1.1.

Respectfully submitted on behalf of SoCalGas,

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July 17, 2020

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July 17, 2020

Sent Via Email

Dear President Batjer and Commissioners:

This letter is to request that the California Public Utilities Commission (CPUC or Commission) open two proceedings with respect to the tracking, accounting, and ratemaking treatment for costs associated with education, lobbying, and advocacy activities.

First, SoCalGas respectfully requests that the CPUC open a statewide Order Instituting Rulemaking (OIR) to:

- (1) Establish clarity for SoCalGas and the other investor-owned utilities (IOUs) on the ratemaking treatment for lobbying and other advocacy activity;
- (2) Establish clear definitions of lobbying for accounting purposes; and
- (3) Create the structure for cost allocation studies of lobbying to be used in future General Rate Cases (GRCs).

Second, SoCalGas requests that the Commission open a formal investigation of SoCalGas through an Order Instituting Investigation (OII), to be performed concurrent with the statewide OIR. While such a request is unprecedented, an inquiry is vital for achieving clarity on compliance with Commission rules regarding how costs are allocated to ratepayers, in particular before such activities inform rates in SoCalGas's next GRC cycle.

Specifically, there is a lack of clarity in how the CPUC approves costs for education, lobbying and advocacy, particularly for local level activity when multiple utilities work simultaneously to meet the State's climate goals and educate customers about emerging clean energy technology and fuel options.

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

For decades, SoCalGas has relied on the Federal Energy Regulatory Commission's (FERC) definition of lobbying for accounting above or "below the line." The CPUC itself has applied this definition for decades in IOUs' GRCs. Most recently, SoCalGas relied upon this definition in SoCalGas's Test Year (TY) 2019 GRC, concluded in September 2019, and the CPUC did not disallow such advocacy activities.

It is evident, however, that gray areas exist in ratemaking treatment for lobbying activity. GRC decisions have varied depending on the IOU or facts litigated during a formal 3- to 4-year proceeding. SoCalGas believes it is beneficial for all IOUs to gain clarity on ratemaking treatment going forward.¹

Additionally, to enhance transparency and efficiency, SoCalGas will have an independent, third-party review performed of its accounting of the costs in question. As with every GRC cycle in which accounting is reviewed and adjusted if necessary and as appropriate to charge to below-the-line FERC accounts, such costs would be removed from SoCalGas's next GRC TY 2024 forecast, so as to not be recovered in rates.² SoCalGas will share the results of this review with the Public Advocates Office (Cal Advocates), the Energy Division, and the Commission.

Because GRCs are further out in the future and can vary in Commission guidance, we ask the Commission to turn its attention to this important issue at the earliest possible opportunity. Rapidly evolving decarbonization policies and local advocacy in support of them throughout the state present unique challenges for SoCalGas and other entities working in this sector. SoCalGas's request for an inquiry would help achieve both clarity on compliance with Commission rules as well as ensuring proper cost allocation to ratepayers prior to the next GRC cycle.

¹ For example, on June 25, 2020, in Rulemaking 19-01-011, the Administrative Law Judge brought within scope of that proceeding the issue of whether funding of Californians for Balanced Energy Solutions (C4BES) is eligible for cost recovery from ratepayers. The scope of inquiry in R.19-01-011 is limited to ratepayer funding of C4BES. Given the importance for all IOUs to gain clarity on ratemaking treatment and the limited scope of inquiry in R.19-01-011, SoCalGas believes that a statewide OIR is still needed to address the issue more broadly to avoid additional piecemeal litigation.

² SoCalGas's TY 2019 GRC sets a total revenue requirement for the test year in 2019, and "attrition" years thereafter. Attrition years approved in the final Decision (D.) 19-09-051 were 2020 and 2021. Furthermore, D.20-01-002 adopting 4-year GRC cycles for IOUs moved SoCalGas's current cycle to 5 years (2019-2023) and extends our next GRC filing date to May 2022 for the TY 2024 cycle. In SoCalGas's GRCs, the historical years up to the "base year" are considered, typically a 5-year historical period. Thus, in its TY 2019 GRC, the base year was 2016 and SoCalGas's forecasts incorporated data from 2012-2016. As such, incurred costs from 2017 onward will be assessed to inform future GRC rates for the TY 2024 cycle when those GRC forecasts are prepared leading up to SoCalGas's May 2022 Application and a final decision at the end of 2023 (according to the revised Rate Case Plan schedule) is issued to set SoCalGas's revenue requirement.

We respectfully submit that timely clarity from the Commission in a formal proceeding with an evidentiary record best serves the public interest. For stakeholders to know that SoCalGas and other IOUs work in the best interest of the State and their customers, an open forum governed by rules of practice and procedure, while not without cost, delivers the greatest possible transparency.

SoCalGas looks forward to working with the Commission on this important matter.

Sincerely,



Dan Skopec
Vice President – Regulatory Affairs

cc: Alice Stebbins
Arocles Aguilar
Edward Randolph

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 REPLY TO SOUTHERN CALIFORNIA GAS
COMPANY'S OPPOSITION TO MOTION TO COMPEL AND FOR FINES
RELATED TO THE UTILITY'S INTENTIONAL WITHHOLDING OF
CONFIDENTIAL DECLARATIONS**

TRACI BONE
Attorney for the
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July 24, 2020

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

I. INTRODUCTION

Pursuant to Public Utilities Code §§ 309.5(e), 311, 314, 314.5(a), 581, 582, 584, 701, 702, and 771¹ and Administrative Law Judge (ALJ) DeAngelis' approval granted July 21, 2020, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) provides this Reply to Southern California Gas Company's (SoCalGas') July 17, 2020 "*Response To Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information*" (SoCalGas Response).

In its response, SoCalGas continues to argue that the utility may withhold information of its choosing on claims of First Amendment rights of association, regardless of the fact that those First Amendment claims are not applicable here and have already been considered, and rejected, by Administrative Law Judge DeAngelis' November 1, 2019 ruling (ALJ Ruling).²

SoCalGas justifies its refusal to comply with state law and the ALJ Ruling by faulting the Commission for the fact that it has not ruled on SoCalGas' unauthorized Motion to Seal filed "over seven months ago."³ In so doing, SoCalGas fails to acknowledge the improper nature of that December 2, 2019 submission, and the fact that a motion has no impact unless or until it is granted.

SoCalGas' recalcitrance is unprecedented and contrary to law; even in a formal proceeding involving a Commission decision, a rehearing application does not stay the effect of the decision.⁴ By withholding the requested information based on a Motion to Seal that has never been granted, and the same First Amendment grounds that were

¹ All section references are to the California Public Utilities Code unless otherwise stated.

² The November 1, 2019 ALJ Ruling is Exhibit 1 to the instant Motion to Compel.

³ SoCalGas Response, p. 2.

⁴ California Public Utilities Code § 1735.

rejected by the November 1, 2019 ALJ Ruling, SoCalGas continues to demonstrate its contempt for this Commission.

The fines and other relief requested in Cal Advocates’ instant Motion to Compel and For Fines are more than justified; they are needed to incentivize SoCalGas’ compliance with state laws and the November 1, 2019 ALJ Ruling, and to dissuade other utilities from adopting similar obstructionist tactics.⁵

Contrary to SoCalGas’ implications, there is no grand First Amendment right at stake in these proceedings; rather what is at stake is whether SoCalGas will be regulated, or not, by this Commission.

II. DISCUSSION

A. The Commission Must Deny SoCalGas’ Motion To Seal And Make The Confidential Declarations Available to Cal Advocates

1. SoCalGas’ Rationale for Withholding the Requested Information has Already Been Rejected

Once again, SoCalGas refuses to provide information that it alleges is confidential to Cal Advocates based on the erroneous proposition that there is a difference between Cal Advocates and the rest of Commission staff. SoCalGas singles out Cal Advocates, claiming that while other offices or divisions of the Commission can review the confidential declarations, “the disclosure of that information to Cal Advocates will have a chilling effect on SoCalGas’ First Amendment rights” and “the harm SoCalGas seeks to protect against is precisely disclosure of its information to Cal Advocates.”⁶ SoCalGas claims that the declarations attached to its Motion for Reconsideration attest to the “chilling effect that disclosure to Cal Advocates would cause to its private political activity.”⁷ SoCalGas quotes the declarants, who assert that disclosure of their identities to Cal Advocates would have a chilling effect on their future communications with the utility and would cause them to seriously consider limiting their associations with

⁵ Evidently aware of SoCalGas’ thus far successful stalling tactics, two other utilities have recently filed notably similar motions to quash Cal Advocates’ discovery in other proceedings.

⁶ SoCalGas Response, pp. 2-3.

⁷ SoCalGas Response p. 5.

SoCalGas.⁸ Significantly, none of the declarants express a concern with the confidential declarations' availability to any other Commission staff.

As an initial matter, Cal Advocates has the same discovery rights to review the declarations,⁹ and the same obligation to keep the declarations confidential, as any other Commission staff.¹⁰ SoCalGas' arguments impose a false distinction between Cal Advocates and other Commission staff. Nothing in the Public Utilities Code permits the Commission to single out Cal Advocates for the special, discriminatory treatment that SoCalGas advocates. Indeed, ALJ DeAngelis effectively acknowledged this in her May 22, 2020 email ruling dismissing SoCalGas's similar efforts to withhold this type of information from Cal Advocates when the utility submitted its May 19, 2020 Motion to Quash.¹¹

2. SoCalGas' Rationale for Withholding the Requested Information Lacks Factual Support

Also significant is that SoCalGas and its declarants provide no factual context to support their claims that Cal Advocates' access to their identities will have a "chilling effect" on association that is protected by the First Amendment. By SoCalGas' own admission, all of the declarants are vendors and consultants hired by SoCalGas.¹² Thus, the declarants are not speaking for themselves – they are being paid to speak for SoCalGas, and to make it appear that the speech is from grass roots or public sources, rather than the utility. This is not the type of "association" protected by the First Amendment.¹³

⁸ SoCalGas Response p. 14.

⁹ See, e.g., California Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701, 702, and 771.

¹⁰ See, e.g., California Public Utilities Code § 583. Improper disclosure is a misdemeanor.

¹¹ See the ALJ's May 22, 2020 11:09 a.m. Email Ruling that SoCalGas "today provide electronic copies of the confidential information to all Commission staff on the above service list, including the Cal Advocates Office," which is Exhibit 7 of the instant Motion to Compel.

¹² SoCalGas Response, p. 2.

¹³ The right of association protects members of a group that share common goals. As SoCalGas acknowledges, *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160, and other cases it

3. Due Process Requires the Release of the Information to Cal Advocates

If the Commission intends to rely on the declarations in any manner, due process requires – consistent with any confidentiality rules established by the Commission – that Cal Advocates be able to know who made those claims and inquire into the reasons and validity of the claims. For example, the Commission would certainly consider the declarations differently if Cal Advocates could establish that the claims were made by paid lobbyists that have not complied with reporting obligations to disclose their relationships with SoCalGas.

4. Neither the Motion to Seal, Nor the Fact That Cal Advocates Did Not Oppose It, Is Controlling Here

Once again, SoCalGas assumes that merely filing a motion allows it to circumvent Commission rules; once again, SoCalGas is wrong. As an initial matter, it is not the filing of a motion to seal that limits access, but rather the judge’s ruling granting said motion. With no ruling on its Motion to Seal, filed some seven months ago, SoCalGas has no legal basis to claim that its Motion to Seal bars Cal Advocates’ access to the declarations. Second, while motions to seal are both common and appropriately filed at the Commission, Cal Advocates is not aware of, and SoCalGas identifies, no instance where, as is the case here, such a motion has been filed in an attempt to stop an office or division within the Commission from accessing the information. Rather, such motions almost exclusively seek to protect confidential information from disclosure to the public and the filing entity’s competitors. Thus, Cal Advocates is routinely and appropriately able to access documents where a motion to file under seal has been granted. Finally,

relies on, require the entity claiming the First Amendment privilege to “demonstrate that enforcement of the [discovery requests] will result in (1) harassment, *membership* withdrawal, or discouragement of new *members*, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the *members*’ associational rights.” SoCalGas Motion for Reconsideration, December 2, 2019, p. 11 (emphases added). SoCalGas provides no legal support for its position that employing “hired guns” to do its bidding is the type of “association” protected by the First Amendment.

nowhere in its Motion to Seal does SoCalGas make clear that it believed or intended the motion would bar Cal Advocates access to the subject information.¹⁴

SoCalGas's contention that its Motion to File Under Seal would (even if granted) preclude Cal Advocates' access to the subject documents is rebutted by statutes such as 309.5 and 314, which allow Cal Advocates, and other Commission offices and divisions, to seek the same documents from SoCalGas at any time. Indeed, given the fact that Cal Advocates asked for the documents on June 25, 2020, and SoCalGas now refuses to provide them on the basis of its having filed a Motion to Seal, the reviewing ALJ may and should deny the Motion to Seal.¹⁵

Finally, in arguing that Cal Advocates is not entitled to the confidential declarations, SoCalGas ignores the fundamental distinction between privileged information, which is protected from disclosure, and "confidential" information, which must be made available to all offices and divisions of the Commission pursuant to law, regardless of claims of confidentiality.¹⁶ These requirements exist because SoCalGas is a regulated utility and its business is necessarily open to inspection "at any time" so that Commission staff, including Cal Advocates, can perform their job of regulating the utility.¹⁷

¹⁴ SoCalGas' suggestion that prior Cal Advocates' counsel was "notified that the Confidential Declarations were hard-copy filed with the Docket Office through the Motion to Seal, which says so explicitly" is a non-sequitur. Cal Advocates' counsel did not realize that the confidential declarations were not going to be provided to Cal Advocates. There is nothing in the Motion to Seal which reflects that the information would not be made available to Cal Advocates.

¹⁵ The ALJ may reject SoCalGas' motion in light of SoCalGas' current argument without Cal Advocates having filed any opposition when the Motion to Seal was filed.

¹⁶ SoCalGas has not claimed that the information withheld in the declarations is "privileged"; rather, it claims that the information is "confidential" or "protected." As such, the information must be provided to SoCalGas' regulators, including Cal Advocates, when requested. If that information is legitimately "confidential," and the utility has complied with the requirements of General Order (GO) 66-D, the information will be held by the Commission as confidential until the Commission rules otherwise pursuant to the same GO. In the event that the Commission determines that the information need not be maintained as confidential, GO 66-D provides that the utility will receive notice and an opportunity to comment, and to appeal any decision by the Commission on the matter. See Go 66-D, §§ 5.5 & 6.

¹⁷ See, e.g., California Public Utilities Code §§ 314 and 771.

For all of these reasons, SoCalGas' arguments that Cal Advocates has "waived" its rights to the confidential declarations because it did not protest the Motion to Seal,¹⁸ or that the Commission should apply various rules of court, are simply irrelevant here.¹⁹

B. The Proposed Fines Are More Than Justified

The over \$1 million in fines Cal Advocates seeks for SoCalGas' intentional refusal to provide the confidential declarations to Cal Advocates is not – as SoCalGas wrongly claims²⁰ – “for filing [the declarations] conditionally under seal” on December 2, 2019.²¹ Rather, as expressly stated in Cal Advocates' Motion to Compel and for Fines, the fine is proposed for each day that SoCalGas has withheld the information since June 29, 2020, the date SoCalGas expressly refused to provide the confidential affidavits demanded by Cal Advocates on June 25, 2020.

C. SoCalGas' Activities In The Aliso Canyon Investigation Are Appropriately Referenced In This Investigation

SoCalGas claims that “Cal Advocates' reference to the SED's Aliso Canyon Motion for Sanctions is inapt, as that motion was denied.”²² SoCalGas is wrong. The fact that the Administrative Law Judges denied SED's February 21, 2020 Motion for An Order to Show Cause is the very point that Cal Advocates sought to make.²³ As Cal Advocates explained:

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

¹⁸ SoCalGas Response, pp. 8-12

¹⁹ SoCalGas Response, pp. 15-18.

²⁰ This is another Rule 1.1 violation.

²¹ SoCalGas Response, p. 2. See also SoCalGas Response, p. 3, which perpetuates the mischaracterization that Cal Advocates request for the confidential documents is tied to the Motion for Reconsideration.

²² SoCalGas Response, p. 8.

²³ Cal Advocates also notes that SED's request for an Order to Show cause was not denied on the merits. It was denied on procedural grounds, and without prejudice to SED raising the issues later.

should SoCalGas comply with Commission orders when there are no consequences for violations?²⁴

As emphasized in Cal Advocates' instant motion:

The need for deterrence is a primary factor driving this Motion to Compel. As demonstrated in this and other pleadings submitted to this Commission, SoCalGas is 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 will have the deterrent effect needed to curb SoCalGas' determination to defy its obligations to the Commission as a regulated utility.²⁵

It is critical for the Commission to understand that SoCalGas is engaged in a strategy across multiple forums to fight the Commission, and others, through refusal to comply with long-standing state laws critical for the Commission and Courts to perform their work, and that the Commission needs to assert its authority.

D. A Formal Proceeding Is Not Needed To Fine SoCalGas

Similar to its arguments in response to Cal Advocates' June 23, 2020 Motion for Contempt and Fines, SoCalGas insists that the Commission must open formal proceedings before sanctioning it for its violations of state law and discovery orders.²⁶ For the same reasons set forth in Cal Advocates Reply regarding that motion for Contempt and Fines, no further "notice" or "process" is needed.²⁷ Indeed, the recent

²⁴ *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* (June 23, 2020 Motion for Contempt and Fines), p. 4.

²⁵ *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, submitted July 9, 2020, p. 10.

²⁶ SoCalGas Response, pp. 19-26.

²⁷ See July 10, 2020 "*Public Advocates Office Reply To Southern California Gas Company's Response To Motion For Findings Of Contempt And Fines For The Utility's Failure To Comply With A Commission Subpoena Issued May 5, 2020*," pp. 5-8.

discovery fine imposed by the Los Angeles Superior Court in the Aliso Canyon civil litigation demonstrates that additional process is not required, and that fines are necessary to prompt SoCalGas to comply with fundamental discovery requirements.²⁸ Finally, contrary to SoCalGas claims, there are no material factual issues in dispute, as the only material facts are that Cal Advocates requested SoCalGas to provide the confidential declarations, and the utility has refused to do so.²⁹

III. CONCLUSION

For the reasons set forth above, Cal Advocates moves for this Commission:

- (1) To sanction SoCalGas for its flagrant violations of state laws and Commission requirements as set forth in the instant Motion to Compel and Proposed Order;³⁰
- (2) To put SoCalGas on notice that the Commission may determine that no SoCalGas costs associated with this Cal Advocates investigation may be recovered in rates, including, without limitation, SoCalGas' outside counsel and consultant costs;
- (3) To put SoCalGas on notice that the Commission may require SoCalGas shareholders to reimburse all Cal Advocates costs, including staff costs, associated with this Cal Advocates investigation; and

²⁸ SoCalGas' discovery abuses in the Los Angeles Superior Court case *Gandsey v. SoCalGas* (civil litigation related to Aliso Canyon) are described at pages 30-31 of Cal Advocates June 1, 2020, "Response Of Public Advocates Office To Southern California Gas Company Motion To Quash Portion Of Subpoena, For An Extension, And To Stay Compliance." Among other things, the Minute Order in that case – which is Exhibit 16 in the June 1, 2020 Cal Advocates' pleading - found that "[b]ased on the prior history of this case, [SoCalGas'] initial claims of privilege are unsupportable and/or are withdrawn an average of 94 percent of the time." *Gandsey* February 20, 2020 Minute Order, pp. 2-3.

²⁹ SoCalGas Response, pp. 22-23.

³⁰ SoCalGas' claim that "[t]here are no Data Requests that have been outstanding for three months" is false. If that were the case, there would be no reason for SoCalGas to continue to amend and revise its data responses, which were not accurate or complete when provided to Cal Advocates, notwithstanding that SoCalGas set its own schedule for production of the responses. See attached Exhibit 1, July 17, 2020 Letter from J.Wilson to T.Bone.

- (4) To order SoCalGas to include Cal Advocates on any communications even remotely related to the Cal Advocates investigation that are shared with any Commission decisionmaker.³¹

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

July 24, 2020

³¹ See attached Exhibit 2, July 17, 2020 Letter from D.Skopec to CPUC Commissioners and Executives. Cal Advocates only learned of this letter on Monday, July 20, 2020 through a Commissioner' office. SoCalGas did not share this letter with Cal Advocates when it was sent on July 17, 2020, and, as of the date of this Reply, has not provided a copy of the letter to Cal Advocates, notwithstanding the fact that it advocates for formal Commission proceedings to address the same issues being addressed in this Cal Advocates investigation.

EXHIBIT 1

July 17, 2020 Letter from J.Wilson to T.Bone

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

July 17, 2020

VIA E-MAIL

Traci Bone
Public Advocates Office
505 Van Ness Ave.
San Francisco, CA 94102
Email: tbo@cpuc.ca.gov

Re: *Expected Timing of Remaining Data Requests in DR 15 and the Amended Lobbying Responses*

Dear Traci:

I am writing to provide you with an update regarding our timetable for responses to Cal Advocates' DR 15 as well as provide a further update on the amendments to the lobbying responses.

As you know, we have provided responses for 15 out of the 25 questions in DR 15 as of last week Friday, July 10, 2020. With respect to the remaining responses, we are trying to meet the following schedule:

Questions 1, 6, 12, 13, 14, 15. SoCalGas hopes to have these responses completed by Friday, July 24, 2020.

Questions 4, 5, 22 and 24. SoCalGas hopes to have these responses completed by Friday, August 7, 2020.

With respect to amendments to the lobbying responses, we experienced an unexpected delay. SoCalGas now hopes to get out the amended lobbying responses related to LA Metro, which are DR 11, Questions 1 to 6, and DR 12, Questions 13 to 17 and 19, out by the middle of the next week. We do not currently have a time estimate of the Long Beach lobbying responses. However, we are hopeful that we can give you an estimate by next week Wednesday.

We realize that you wanted all of the amended responses on lobbying by today. However, as you know, SoCalGas has been busy on many fronts, including responding to Cal

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///



July 17, 2020
Page 2

Advocates' motions seeking \$5.5 million in fines in the last month. Understandably, SoCalGas had to defend itself against these demands for fines which, in SoCalGas's view, are both unjustified and violations of due process.

Very truly yours,



Jason H. Wilson

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



EXHIBIT 2

July 17, 2020 Letter from D.Skopec to CPUC Commissioners and Executives

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



Dan Skopec
Vice President, Regulatory Affairs
8330 Century Park Court
San Diego, CA 92123

DSkopec@semprautilities.com

July 17, 2020

Sent Via Email

Dear President Batjer and Commissioners:

This letter is to request that the California Public Utilities Commission (CPUC or Commission) open two proceedings with respect to the tracking, accounting, and ratemaking treatment for costs associated with education, lobbying, and advocacy activities.

First, SoCalGas respectfully requests that the CPUC open a statewide Order Instituting Rulemaking (OIR) to:

- (1) Establish clarity for SoCalGas and the other investor-owned utilities (IOUs) on the ratemaking treatment for lobbying and other advocacy activity;
- (2) Establish clear definitions of lobbying for accounting purposes; and
- (3) Create the structure for cost allocation studies of lobbying to be used in future General Rate Cases (GRCs).

Second, SoCalGas requests that the Commission open a formal investigation of SoCalGas through an Order Instituting Investigation (OII), to be performed concurrent with the statewide OIR. While such a request is unprecedented, an inquiry is vital for achieving clarity on compliance with Commission rules regarding how costs are allocated to ratepayers, in particular before such activities inform rates in SoCalGas's next GRC cycle.

Specifically, there is a lack of clarity in how the CPUC approves costs for education, lobbying and advocacy, particularly for local level activity when multiple utilities work simultaneously to meet the State's climate goals and educate customers about emerging clean energy technology and fuel options.

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

For decades, SoCalGas has relied on the Federal Energy Regulatory Commission’s (FERC) definition of lobbying for accounting above or “below the line.” The CPUC itself has applied this definition for decades in IOUs’ GRCs. Most recently, SoCalGas relied upon this definition in SoCalGas’s Test Year (TY) 2019 GRC, concluded in September 2019, and the CPUC did not disallow such advocacy activities.

It is evident, however, that gray areas exist in ratemaking treatment for lobbying activity. GRC decisions have varied depending on the IOU or facts litigated during a formal 3- to 4-year proceeding. SoCalGas believes it is beneficial for all IOUs to gain clarity on ratemaking treatment going forward.¹

Additionally, to enhance transparency and efficiency, SoCalGas will have an independent, third-party review performed of its accounting of the costs in question. As with every GRC cycle in which accounting is reviewed and adjusted if necessary and as appropriate to charge to below-the-line FERC accounts, such costs would be removed from SoCalGas’s next GRC TY 2024 forecast, so as to not be recovered in rates.² SoCalGas will share the results of this review with the Public Advocates Office (Cal Advocates), the Energy Division, and the Commission.

Because GRCs are further out in the future and can vary in Commission guidance, we ask the Commission to turn its attention to this important issue at the earliest possible opportunity. Rapidly evolving decarbonization policies and local advocacy in support of them throughout the state present unique challenges for SoCalGas and other entities working in this sector. SoCalGas’s request for an inquiry would help achieve both clarity on compliance with Commission rules as well as ensuring proper cost allocation to ratepayers prior to the next GRC cycle.

¹ For example, on June 25, 2020, in Rulemaking 19-01-011, the Administrative Law Judge brought within scope of that proceeding the issue of whether funding of Californians for Balanced Energy Solutions (C4BES) is eligible for cost recovery from ratepayers. The scope of inquiry in R.19-01-011 is limited to ratepayer funding of C4BES. Given the importance for all IOUs to gain clarity on ratemaking treatment and the limited scope of inquiry in R.19-01-011, SoCalGas believes that a statewide OIR is still needed to address the issue more broadly to avoid additional piecemeal litigation.

² SoCalGas’s TY 2019 GRC sets a total revenue requirement for the test year in 2019, and “attrition” years thereafter. Attrition years approved in the final Decision (D.) 19-09-051 were 2020 and 2021. Furthermore, D.20-01-002 adopting 4-year GRC cycles for IOUs moved SoCalGas’s current cycle to 5 years (2019-2023) and extends our next GRC filing date to May 2022 for the TY 2024 cycle. In SoCalGas’s GRCs, the historical years up to the “base year” are considered, typically a 5-year historical period. Thus, in its TY 2019 GRC, the base year was 2016 and SoCalGas’s forecasts incorporated data from 2012-2016. As such, incurred costs from 2017 onward will be assessed to inform future GRC rates for the TY 2024 cycle when those GRC forecasts are prepared leading up to SoCalGas’s May 2022 Application and a final decision at the end of 2023 (according to the revised Rate Case Plan schedule) is issued to set SoCalGas’s revenue requirement.

We respectfully submit that timely clarity from the Commission in a formal proceeding with an evidentiary record best serves the public interest. For stakeholders to know that SoCalGas and other IOUs work in the best interest of the State and their customers, an open forum governed by rules of practice and procedure, while not without cost, delivers the greatest possible transparency.

SoCalGas looks forward to working with the Commission on this important matter.

Sincerely,



Dan Skopec
Vice President – Regulatory Affairs

cc: Alice Stebbins
Arocles Aguilar
Edward Randolph

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of “*Public Advocates Office Reply To Southern California Gas Company’s Opposition To Motion To Compel And For Fines Related To The Utility’s Intentional Withholding Of Confidential Declarations*” to the following persons 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
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Michael.Campbell@cpuc.ca.gov
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Shannon.O’Rourke@cpuc.ca.gov
Mariam.Sleiman@cpuc.ca.gov

Executed on **July 24, 2020** at San Francisco, California.

/s/ TRACI BONE
TRACI BONE

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



Public Advocates Office
California Public Utilities Commission
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Tel: 415-703-1584
www.publicadvocates.cpuc.ca.gov

July 28, 2020

VIA EMAIL

**To: President Batjer
Commissioners Randolph, Shiroma
Guzman-Aceves and Rechtschaffen**

**From: Darwin E. Farrar
Chief Counsel, Public Advocates Office**

Subject: Response to Dan Skopec letter for OII, dated July 17, 2020

Dear President Batjer and Commissioners Randolph, Shiroma, Guzman-Aceves, and Rechtschaffen:

This letter responds to the request you received from Dan Skopec, Vice President of Regulatory Affairs for Southern California Gas Company, dated July 17, 2020 (SoCalGas Letter). The SoCalGas Letter is prompted by the Public Advocates Office's investigation of SoCalGas' use of ratepayer monies to fund lobbying and other activities focused on undermining California's clean energy policies.

In its letter, SoCalGas recommends that the Commission investigate and clarify who should pay for SoCalGas' activities related to meeting "the State's climate goals" - goals that SoCalGas is actively thwarting as demonstrated by evidence the Public Advocates Office has uncovered. The SoCalGas Letter asserts that "there is a lack of clarity" regarding how it should account for such activities, and so a rulemaking is appropriate.¹ SoCalGas' request is unnecessary as the law makes clear that its customers should not pay for the utility's lobbying and other activities.

As California seeks to decrease reliance on polluting fossil fuels such as natural gas, SoCalGas is working to undermine state policy through lobbying and other efforts to misinform the public and encourage the continued use of natural gas – and, as our investigation suggests, have its customers pay for it.

It is a basic regulatory principle that rates may not include costs that are not necessary to provide utility service. In 1978, federal law codified specific principles regarding promotional and political advertising. These principles were officially adopted by this Commission in a 1980 filing with the Department of Energy. The federal law, codified at 15 U.S.C §§ 3203 and 3204, provides:

¹ Sempra Letter, p. 1.

No gas utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 304(b).

The same law defines promotional and political advertising broadly to encompass the types of activities that SoCalGas has undertaken in an effort to perpetuate the use of natural gas. Such expenditures at ratepayer expense – whether direct or indirect – are expressly prohibited under the law.

Because the law is already clear, there is no need for the investigation or rulemaking to “clarify” the rules SoCalGas requests. Rather than open such a proceeding, the Commission, SoCalGas’ customers, and the state’s policy goals would be better served by the Commission enforcing the Administrative Law Judge’s multiple discovery orders that SoCalGas has unlawfully disobeyed and granting the relief requested² in the Public Advocates Office’s pending motions.³

Sincerely,

Darwin E. Farrar
Chief Counsel, Public Advocates Office

Cc: Alice Stebbins
Arocles Aguilar
Ed Randolph

² Cal Advocates has been attempting to audit SoCalGas’ accounts and records since May 2019, as part of its investigation into SoCalGas’ use of ratepayer monies to fund anti-decarbonization campaigns through “astroturf” organizations, 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 fossil resources.

³ As a result of SoCalGas’ systematic failure to comply with Cal Advocates’ discovery requests, multiple orders to compel issued by the Commission’s Administrative Law Judge Division on President Batjer’s behalf, and a validly issued Commission subpoena, on June 23, and July 7, 2020 Cal Advocates filed motions seeking fines and penalties against SoCalGas. (See *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*; and *Public Advocates Office Motion to Compel Confidential Declarations Submitted in Support of Southern California Gas Company’s December 2, 2019 Motion for Reconsideration of First Amendment Association Issues and Request for Monetary Fines for the Utility’s Intentional Withholding of This Information*.) These requests are still pending.

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 29, 2020

Agenda ID #18923

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-391:

This is the draft Resolution of Administrative Law Judge (ALJ) Regina DeAngelis regarding Denial of Southern California Gas Company's December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 Administrative Law Judge's Ruling and Addresses Other Related Motions. It will appear on the Commission's agenda no sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You must serve your comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution is noticed in the Commission's Daily Calendar, <http://docs.cpuc.ca.gov/SearchRes.aspx?DocTypeID=9&Latest=1>, as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served via electronic mail upon all persons on the attached service list.

Comments must be served on ALJ DeAngelis at rmd@cpuc.ca.gov. No paper copies are required at this time.

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:sgu
Attachment

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

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-391
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-391 Denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena; grants SoCalGas' May 22, 2020 motion to supplement its December 2, 2019 motion for reconsideration/appeal; deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020; defers consideration of the Public Advocates Office at the California Public Utilities Commission's June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena; and addresses other related motions.

TABLE OF CONTENTS

Title	Page
SUMMARY	2
BACKGROUND.....	3
1. Rulemaking 19-01-011 and Cal Advocates’ Data Requests to SoCalGas - Outside of a Proceeding.....	3
2. SoCalGas’ December 2, 2019 Motion for Reconsideration/Appeal Requesting the Full Commission’s Review of the November 1, 2019 ALJ Ruling	4
3. SoCalGas’ May 22, 2020 Motion to Quash/Stay the May 5, 2020 Subpoena Seeking Access to SoCalGas’ Accounting System and May 22, 2020 Motion to Supplement its December 2, 2019 Motion	8
4. Cal Advocates’ June 23, 2020 Motion for Contempt and Sanctions Related to SoCalGas’ Failure to Comply with the May 5, 2020 Subpoena.....	9
DISCUSSION	10
1. Commission Staff’s Statutory Right to Obtain Information to Exercise its Regulatory Oversight Over California’s Investor-Owned Utilities	10
2. SoCalGas’ December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 ALJ Ruling to the Full Commission.....	12
a. First Amendment Privilege.....	12
i. SoCalGas fails to establish that its First Amendment rights will be infringed by complying with Cal Advocates’ Data Request, DR No. CalAdvocates-SC-SCG-2019-05 14	
ii. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in disclosure of this information to Cal Advocates 16	
iii. DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest	17
iv. DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to that compelling government interest	19
b. Due Process Rights.....	20
3. SoCalGas’ May 22, 2020 Motions to Quash Portions of/Stay the May 5, 2020 Subpoena and Motion to Supplement Record and Request for Expedited Decision by the Full Commission	23
4. Attorney-Client or Attorney Work Product Privileges.....	25
5. Cal Advocates’ June 23, 2020 Motion for the Commission to Find SoCalGas in Contempt and to Levy a Fine	25
Conclusion	26

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

COMMENTS26
FINDINGS.....27
ORDER.....29

Attachment – Service List

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

SUMMARY

This Resolution denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena. In denying these motions, the Commission rejects SoCalGas' argument that the Public Advocates Office at the California Public Utilities Commission's (Cal Advocates') discovery rights, set forth in the Public Utilities Code, are limited by SoCalGas' First Amendment rights to association, assuming that such a right exists, and rejects SoCalGas' argument that the Commission has violated its procedural due process rights.

In addition, this Resolution grants SoCalGas' December 2, 2019 motion for leave to file under seal confidential versions of certain declarations but, in doing so, confirms that SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, such as Cal Advocates, under existing protections.

This Resolution also deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020, grants SoCalGas' May 22, 2020 motion to supplement the December 2, 2019 motion for reconsideration/appeal, and defers consideration of Cal Advocates' June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena. By granting SoCalGas' December 2, 2019 motion for leave to file under seal and directing it to provide unredacted, confidential versions to Commission staff, including Cal Advocates, this Resolution also deems moot Cal Advocates' July 9, 2020 motion to compel and defers consideration of Cal Advocates' request therein for monetary fines.

Other related motions are also addressed.

SoCalGas is directed to produce the information and documents requested by Cal Advocates in DR No. CalAdvocates-SC-SCG-2019-05, including the confidential declarations submitted under seal in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal, and in the May 5, 2020 Commission subpoena within 15 days of the effective date of this Resolution.

BACKGROUND

1. Rulemaking 19-01-011 and Cal Advocates' Data Requests to SoCalGas - Outside of a Proceeding

In May 2019, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) initiated a discovery inquiry into Southern California Gas Company's (SoCalGas') funding of anti-decarbonization campaigns using "astroturfing" groups.¹ Cal Advocates initiated this discovery inquiry "outside of a proceeding" pursuant to its statutory authority and for reasons more fully addressed below.² In particular, Cal Advocates' inquiry focused on the extent to which SoCalGas was using ratepayer funds to support organizations presenting themselves to the Commission as independent grassroots community organizations that also support anti-decarbonization positions held by SoCalGas, such as Californians for Balanced Energy Solutions (C4BES) and other similar organizations.

Cal Advocates' discovery inquiry was prompted by allegations initially raised in Rulemaking (R.) 19-01-011³ when C4BES filed a motion for party status on May 13, 2019, and Sierra Club challenged the motion on May 14, 2019, claiming that, unbeknownst to the public, SoCalGas founded and funded C4BES.⁴

¹ Astroturfing is a practice in which corporate sponsors of a message mask their identity by establishing separate organizations to state a position or make it appear as though the movement originates from and has grassroots support.

² All pleadings submitted to the Commission related to this discovery dispute "outside of a proceeding" are available on the Commission's website at the Cal Advocates' webpage at: <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.

³ R.19-01-011 *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

⁴ See R.19-01-011, *Sierra Club's Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 14, 2019). See also *Cal Advocates' Response to Sierra Club's Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 29, 2019).

Cal Advocates responded to Sierra Club's motion to deny party status and stated that Cal Advocates would investigate the allegations raised by Sierra Club.⁵

On May 23, 2019, Cal Advocates initiated this inquiry by issuing Data Request (DR) SCG051719 to SoCalGas regarding its involvement with C4BES. Cal Advocates issued this data request outside of R.19-01-011, as the scope of R.19-01-011 was limited to de-carbonization matters. In contrast, Cal Advocates' inquiry focused on SoCalGas' financial relationship with C4BES and the use of ratepayer funds to support lobbying efforts by C4BES. In addition, Cal Advocates initiated this discovery outside of a proceeding because no other Commission proceeding encompassed this issue. SoCalGas responded to the DR. Based on this response, Cal Advocates alleged that justification existed to continue its inquiry.

On July 19, 2019, Cal Advocates issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. In response, SoCalGas refused, in part, to comply with the DR. At this point, Cal Advocates and SoCalGas began to dispute the lawfulness of the ongoing discovery.

2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal Requesting the Full Commission's Review of the November 1, 2019 ALJ Ruling

With this discovery dispute still unresolved, on August 13, 2019, Cal Advocates served SoCalGas with another data request, DR No. CalAdvocates-SC-SCG-2019-05, which consisted of multiple questions built upon previous DRs. On August 27, 2019, SoCalGas responded to the DR with an objection to Question 8 based on the grounds that the requested production of its 100% shareholder-funded contracts related to C4BES fell outside the scope of Cal Advocates' statutory authority set forth in Public Utilities Code (Pub. Util. Code) §§ 309.5(a)⁶ and 314.⁷ Cal Advocates and SoCalGas engaged in discussions

⁵ See R.19-01-011, Cal Advocates' *Response to Sierra Club's Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 29, 2019) at 2.

⁶ Pub. Util. Code § 309.5(a) states: "There is within the commission an independent Public Advocate's Office of the Public Utilities Commission to represent and advocate on behalf of the

regarding Question 8 of the DR and after multiple attempts the parties agreed that they were at an impasse.

On October 7, 2019, Cal Advocates submitted a motion to compel responses from SoCalGas to the President of the Commission pursuant to Pub. Util. Code § 309.5(e).⁸ SoCalGas responded in opposition to Cal Advocates' motion on October 17, 2019.⁹ SoCalGas again argued that because the information sought was 100% shareholder funded, it fell beyond Cal Advocates' statutory purview. The President referred this discovery dispute to the Commission's Chief Administrative Law Judge.

On October 29, 2019, the Chief Administrative Law Judge assigned the dispute to Administrative Law Judge Regina DeAngelis (ALJ) and informed the parties in writing of certain procedural rules to follow since this discovery dispute was outside of any formal proceeding and, therefore, the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) (herein "Rules")¹⁰ did not directly apply.

On October 31, 2019, Cal Advocates filed a reply to SoCalGas' response.¹¹ On November 1, 2019, the ALJ issued a ruling granting Cal Advocates' motion to

interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the office shall primarily consider the interests of residential and small commercial customers."

⁷ See SoCalGas' *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 [PROPOSED] Order (Not in a Proceeding)* (December 2, 2019) at 6.

⁸ Cal Advocates' *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05 (Not In A Proceeding)* submitted October 7, 2019.

⁹ *Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates -SC-SCG-2019-05 (Not in a Proceeding)* submitted October 17, 2019.

¹⁰ All references to "Rules" are to the Commission's Rules of Practice and Procedure.

¹¹ *Reply of the Public Advocates Office to Response of SoCalGas to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request-CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)* submitted on October 31, 2019.

compel responses to DR No. CalAdvocates-SC-SCG-2019-05.¹² On November 4, 2019, SoCalGas submitted an emergency motion for stay of the November 1, 2019 ALJ ruling but, with its motion for stay pending, on November 5, 2019, SoCalGas also submitted the DR responses to Cal Advocates under protest.¹³

On December 2, 2019, SoCalGas submitted a motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling.¹⁴ SoCalGas' motion sought the Commission's review of that ruling and reversal.

In support of its motion, SoCalGas raised several constitutional arguments. SoCalGas alleged: (1) the materials sought by Cal Advocates unlawfully infringed on SoCalGas' First Amendment rights to association and (2) that, because the discovery dispute was occurring outside of a proceeding, the lack of procedural safeguards to govern the dispute violated SoCalGas' procedural due process rights.¹⁵ SoCalGas also sought an order from the Commission directing Cal Advocates to return or destroy the constitutionally protected materials provided to Cal Advocates on November 5, 2019. (As noted below, SoCalGas subsequently supplemented this December 2, 2019 motion by a separate motion (dated May 22, 2020), discussed in more detail below). SoCalGas also filed a

¹² *Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding)* issued on November 1, 2019.

¹³ *Southern California Gas Company's (U 904 G) Emergency Motion to Stay Pending Full Commission Review of 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)* submitted on November 4, 2019.

¹⁴ *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)* submitted on December 2, 2019. On December 2, 2019, SoCalGas also submitted a motion to file documents under seal.

¹⁵ SoCalGas also contended that if the Commission did not stop Cal Advocates from invoking its statutory right to compel production of information, then it will continue with the data requests that allegedly infringe on SoCalGas' First Amendment rights.

motion to file under seal certain declarations.¹⁶ On December 17, 2019, Cal Advocates submitted a response.¹⁷

On March 25, 2020, SoCalGas filed an emergency motion for a protective order staying all pending and future data requests from Cal Advocates served outside of any proceeding related to this dispute, and any motions and meet and confers related thereto, during the Governor of California's Covid-19 emergency "safer at home" executive orders.¹⁸

Before Cal Advocates had an opportunity to respond, the ALJ, via an email on April 6, 2020, reminded SoCalGas of Cal Advocates' statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time and found that its request was contrary to California law. The ALJ advised parties to work together in these extraordinary times. We consider this March 25, 2020 SoCalGas motion resolved and do not address it further here.

This Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling together with the other related motions, all pertaining to DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 Commission subpoena, described below.¹⁹

¹⁶ On December 2, 2019, SoCalGas concurrently filed *Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations Numbers 3, 4, 5, and 6 In Support of Its 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 [PROPOSED] Order (Not in a Proceeding)*.

¹⁷*Public Advocates Office's Response To 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)* submitted December 17, 2019.

¹⁸ *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*, submitted on March 25, 2020.

¹⁹ Further addressed below and related to SoCalGas' December 2, 2019 motions, on July 9, 2020, Cal Advocates submitted a motion to compel SoCalGas to produce the confidential versions of

3. SoCalGas' May 22, 2020 Motion to Quash/Stay the May 5, 2020 Subpoena Seeking Access to SoCalGas' Accounting System and May 22, 2020 Motion to Supplement its December 2, 2019 Motion

On May 1, 2020, Cal Advocates served SoCalGas with another data request, DR CalAdvocates-TB-SCG-2020-03, seeking access to SoCalGas' accounting database, as Cal Advocates continued its inquiry into SoCalGas' use of ratepayer monies to fund an anti-decarbonization campaign through astroturf organizations. On May 5, 2020, Cal Advocates served a subpoena, signed by the Commission's Executive Director, on SoCalGas seeking the same information as set forth in DR CalAdvocates-TB-SCG-2020-03, access to SoCalGas' accounting databases.²⁰

SoCalGas delayed responding to the subpoena and, instead, on May 22, 2020, SoCalGas submitted a motion to quash the subpoena and to stay the subpoena until May 29, 2020, to allow it an opportunity to implement software solutions to exclude what it deemed as materials protected by attorney-client and attorney work product privileges, as well as materials implicating the same First

the declarations submitted in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal and for daily monetary fines, *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, submitted on July 9, 2020.

On July 17, 2020, SoCalGas filed response, *Response to Public Advocates Office Motion to Compel Confidential Declarations Submitted in Support of Southern California Gas Company's December 2, 2019 Motion for Reconsideration of First Amendment Association Issues and Request for Monetary Fines for the Utility's Intentional Withholding of this Information*. SoCalGas argues that Cal Advocates' Statutory Authority to inspect SoCalGas's books and records – including the confidential material in question - is limited by the First Amendment. Information includes: 100% shareholder-funded political activities.

On July 24, 2020, Cal Advocates filed a reply, *Public Advocates Office Reply to Southern California Gas Company's Opposition to Motion to Compel and for Fines Related to the Utility's Intentional Withholding of Confidential Declarations*.

²⁰ The Public Utilities Commission of the State of California's *Subpoena to Produce Access to Company Accounting Databases* dated May 4, 2020 and served on May 5, 2020.

Amendment issues raised in SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.²¹

On May 22, 2020, SoCalGas also submitted a motion to supplement the record of its December 2, 2019 motion for reconsideration/appeal and to request an expedited Commission decision (in the event SoCalGas' May 22, 2020 motion for a stay of the subpoena was not granted).²²

This Resolution resolves SoCalGas' May 22, 2020 motion to quash/stay the May 5, 2020 subpoena and May 22, 2020 Motion to Supplement its December 2, 2019 Motion.

4. Cal Advocates' June 23, 2020 Motion for Contempt and Sanctions Related to SoCalGas' Failure to Comply with the May 5, 2020 Subpoena

On June 23, 2020, Cal Advocates submitted a motion to find SoCalGas in contempt and to impose fines on SoCalGas for noncompliance with the May 5, 2020 subpoena.²³ More specifically, Cal Advocates asserted that

²¹ *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)* submitted May 22, 2020. SoCalGas originally submitted this motion on May 19, 2020 with redacted declarations. The ALJ 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.

²² *Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expedited Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding)* submitted on May 20, 2020. SoCalGas originally submitted this motion on May 20, 2020 with redacted declarations. The ALJ 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 on May 22, 2020.

²³ *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*

SoCalGas was continuing to avoid complying with the May 5, 2020 subpoena and that SoCalGas' conduct following the issuance of the subpoena constituted a violation of Rule 1.1 and Pub. Util. Code §§ 309.5, 311, 314, 314.5, 314.6, which warrants the imposition of daily penalties. Cal Advocates also sought an order requiring SoCalGas to, among other things, provide Cal Advocates with access to financial databases on a read-only basis and to provide additional information from its accounting and vendor records systems showing which of its accounts are 100% shareholder funded, which accounts have costs booked to them associated with activities that are claimed to be subject to First Amendment privileges or are shareholder funded and other information about vendors of SoCalGas.

On July 2, 2020, SoCalGas submitted a response challenging Cal Advocates' motion for contempt and sanctions, alleging that: (1) the underlying premise of the motion, Cal Advocates' authority to inspect SoCalGas' books and records, lacked legal basis (2) the motion was premature and should not be decided before SoCalGas' motion to quash the subpoena, (3) that if the Cal Advocates' June 23, 2020 motion for contempt and sanctions was to be considered, then further procedural safeguards would be required under due process rights, and (4) the motion failed on its merits.²⁴

On July 10, 2020, Cal Advocates submitted a reply addressing SoCalGas' arguments.²⁵

In resolving SoCalGas' two May 22, 2020 motions related to the May 5, 2020 subpoena (the motion to quash/stay and the motion to supplement), this Resolution also addresses Cal Advocates' June 23, 2020 motion for contempt and sanctions. In addition, and as already stated above, this Resolution resolves

Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding) submitted on June 23, 2020.

²⁴ *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) submitted on July 2, 2020.*

²⁵ *Public Advocates Office Reply to Southern California Gas Company's Response to Motion for Findings of Contempt and Fines for the Utility's Failure to Comply with a Commission Subpoena Issued May 5, 2020, submitted on July 10, 2020.*

SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.

All these requests for Commission action are reviewed together for reasons of administrative efficiency: all four motions address information sought by either DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena; and all four motions rely on arguments related to the scope of Cal Advocates' statutory authority to engage in discovery of information from SoCalGas under the Pub. Util. Code and the application of the First Amendment right to association and procedural due process rights to protect SoCalGas from disclosure of shareholder-related information sought by Cal Advocates.

DISCUSSION

1. Commission Staff's Statutory Right to Obtain Information to Exercise its Regulatory Oversight Over California's Investor-Owned Utilities

There is clear statutory authority granting Commission staff the right to access the information at issue in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission, as a constitutionally-established state agency, is tasked with regulating public utilities under its jurisdiction.²⁶ The Pub. Util. Code grants broad authority to Commission staff to inspect the books and records of investor-owned utilities. The Pub. Util. Code states:

The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the

²⁶ Cal. Const., art. XII.

testimony or statement so given under oath shall be made and filed with the commission.²⁷

These broad powers apply:

to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation, or a water corporation that has 2,000 or more service connections, with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.²⁸

This authority applies to all Commission staff without limitation, including Cal Advocates.

In addition to this statutory authorization for all Commission staff, an additional statutory provision allows Cal Advocates to issue subpoenas and data requests to regulated utilities.

The office [Cal Advocates] may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, 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.²⁹

The statutory scheme also recognizes that information provided to the Commission staff by utilities might sometimes involve sensitive and confidential material. Section 583 of the Pub. Util. Code provides ample protection for such

²⁷ Pub. Util. Code § 314(a).

²⁸ Pub. Util. Code § 314(b).

²⁹ Pub. Util. Code § 309.5(e).

information.³⁰ Further, General Order 66-D provides a process for submitting confidential information to the Commission staff. Information collected pursuant to a books and record request is used as part of the staff's internal review process and, if properly designated as confidential by utilities, will not be publicly disclosed until a process is followed where the Commission as a body determines that the information should be open to public inspection.³¹

These statutory provisions have been part of the regulatory scheme since 1951 and in similar form since 1911. These provisions represent a clear legislative determination that the exercise of the power to review material by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities.

We find that, under the authority provided by the Pub. Util. Code, Cal Advocates is entitled to the information sought in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. We now address SoCalGas' argument that Cal Advocates' statutory authority is limited by SoCalGas' First Amendment and due process rights.

2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 ALJ Ruling to the Full Commission

a. First Amendment Privilege

In SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling directing it to respond to DR No. CalAdvocates-SC-SCG-2019-05, SoCalGas argues that the Commission staff's statutory right to obtain information from a regulated utility does not apply because the DR, which seeks information about the utility's, its affiliates', or its contractors' activities taking positions on decarbonization, jeopardizes SoCalGas' First Amendment rights to association. SoCalGas makes the argument that the utility's ability to freely associate with others for political expression and to petition the government for political redress would be chilled if it provided the requested shareholder-related information to its regulator using normal procedures (a data request) as authorized by existing statutory provisions.

³⁰ Pub. Util. Code § 583.

³¹ *Ibid.*

SoCalGas makes similar arguments in its May 22, 2020 motions opposing the May 5, 2020 subpoena seeking access to SoCalGas' accounting database. We address all these motions below.

We find that SoCalGas' arguments pertaining to the First Amendment lack merit. The First Amendment to the U.S. Constitution protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances.³² The First Amendment applies to the states, such as California, and state entities, such as the Commission, through the Fourteenth Amendment to the U.S. Constitution.³³ Under current case law, these protections apply to private organizations and corporations.³⁴ These rights are also contained in the California Constitution.³⁵ SoCalGas enjoys the same First Amendment rights as any other person or entity. Its status as a regulated public utility does not impair or lessen these rights.³⁶

However, the right to associate for political expression is not absolute. If an action amounts to an infringement it may, nevertheless, "be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms."³⁷

Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement,³⁸ which can be intentional or indirect.³⁹ If this showing is made, the burden shifts to the government to demonstrate that

³² U.S. Const. amends I., XIV.

³³ *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Com.* (1980) 447 U.S. 557, 561.

³⁴ *Citizens United v. FEC* (2010) 558 U.S. 310, 342 (*Citizens United*).

³⁵ Cal. Const., art. I, §§ 2(a), 3(a).

³⁶ *Pac. Gas & Elec. Co. v. Public Utilities Com.* (1986) 475 U.S. 1, 17; *see also Pac. Gas & Elec. Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 86, 93.

³⁷ *Roberts v. Jaycees* (1984) 468 U.S. 609, 623 (*Roberts*).

³⁸ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160 (*Perry*).

³⁹ *National Assn. for Advancement of Colored People v. Ala. ex rel. Patterson* (1958) 357 U.S. 449, 461-62 (*NAACP*).

the information sought is rationally related to a compelling state interest.⁴⁰ The Commission's analysis of SoCalGas' alleged infringement and the existence of a compelling state interest follow.

i. SoCalGas fails to establish that its First Amendment rights will be infringed by complying with Cal Advocates' Data Request, DR No. CalAdvocates-SC-SCG-2019-05

We first review whether SoCalGas made a showing of First Amendment infringement. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas argues that DR No. CalAdvocates-SC-SCG-2019-05 seeks information about its political activity and, in doing so, chills its First Amendment rights. SoCalGas points out, and we agree, that the DR requests information on the topics of how SoCalGas funds its decarbonization campaign.⁴¹ In support of its infringement claim, SoCalGas relies on a declaration from Sharon Tomkins, SoCalGas' Vice President of Strategy and Engagement and Chief Environmental Officer, stating that she would be less likely to engage in certain communications and contracts if required to produce the requested information and stating her belief that other entities would be less likely to associate with SoCalGas if information about SoCalGas' political efforts are disclosed to the Commission.⁴² SoCalGas submitted additional declarations from private organizations specializing in government relations and public affairs, outside of SoCalGas, including statements that disclosure to the Commission would dissuade them from communicating or contracting with SoCalGas.⁴³

Meeting the initial showing of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure "is

⁴⁰ *Perry, supra*, 591 F.3d at p. 1161.

⁴¹ The May 5, 2020 subpoena contains a broader request that nevertheless focuses on determining, by way of partial example, what accounts are used to track shareholder-funded activity, what payments are made from those accounts, and what invoices were submitted in support of those payments.

⁴² December 2, 2019 Motion for Reconsideration/Appeal, Declaration 3, ¶¶ 8-10.

⁴³ December 2, 2019 Motion for Reconsideration/Appeal, Declarations 4, 5, 6.

itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization.”⁴⁴ The initial showing has been established where, for example, the state of Alabama sought the National Association for the Advancement of Colored People’s (NAACP’s) membership list during the civil rights movement.⁴⁵ The NAACP proved that this disclosure would subject its members to economic reprisals as well as threats of physical coercion.⁴⁶ On the other hand, if the threat to constitutional rights is not clearly demonstrated, there is no need to consider the state agency’s compelling interest.⁴⁷

SoCalGas assertion that its First Amendment rights to association were or will be chilled by DR No. CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign is unconvincing. Although its declarations attempt to link the disclosure to the Commission of the political activity with repercussions — SoCalGas contends that if it responds to these DRs, it will discourage certain communications and contracts with outside entities⁴⁸ — these contentions are primarily hypothetical. Such threatened harm in communications and partnerships falls short of the palpable fear of harassment and retaliation in recognized instances of First Amendment infringement, such as that in *NAACP*.⁴⁹

We find no infringement on SoCalGas’ First Amendment rights by disclosing to the Commission, including Cal Advocates, responses to DR No.

⁴⁴ *Dole v. Local Union 375, Plumbers Int’l Union* (9th Cir. 1990) 921 F.2d 969, 973-974 (*Dole*).

⁴⁵ *NAACP, supra*, 357 U.S. at p. 462.

⁴⁶ *Ibid.*

⁴⁷ In *McLaughlin*, a court rejected a union’s attempt to block a Labor Management Reporting and Disclosure Act subpoena by submitting a declaration containing “argument – not facts – concerning the impact of an unrestricted administrative review” of meeting records. (*McLaughlin v. Service Employees Union, Local 208* (9th Cir. 1989) 888 F.2d 170, 175 (*McLaughlin*)). Similarly, in *Dole v. Local Union 375*, the court rejected claim that disclosing information about union’s operating fund, alone, would chill First Amendment rights. (*Dole, supra*, 921 F.2d at pp. 973-74.)

⁴⁸ SoCalGas’s December 2, 2019 Motion for Reconsideration/Appeal, Declaration 3, ¶¶ 8-10 and Declarations 4 - 6.

⁴⁹ *NAACP, supra*, 357 U.S. at p. 462.

CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign.

ii. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in disclosure of this information to Cal Advocates

In its December 2, 2019 motion for reconsideration/appeal, SoCalGas claims that because DR No. CalAdvocates-SC-SCG-2019-05 seeks information about political activities and activities that are “100% shareholder-funded,” the information does not need to be disclosed because such activities are not subject to Cal Advocates’ oversight. As shown above in this Resolution, this position advanced by SoCalGas has not met the threshold showing of First Amendment infringement. The Pub. Util. Code grants broad authority to Commission staff, including Cal Advocates, to inspect the books and records of investor-owned utilities. Therefore, even if SoCalGas had met the threshold showing, the compelling government interest in obtaining this data outweighs the potential infringement on First Amendment rights

Legal doctrine also permits government action that indirectly might impair First Amendment rights when the government has a compelling governmental interest, also described as a proper interest in fulfilling its mandate.⁵⁰ We find a compelling government interest here, Cal Advocates’ requests for information about SoCalGas’ decarbonization campaign are consistent with its broad statutory authority to inspect the books and records of investor-owned utilities in furtherance of its proper interest in fulfilling the Commission’s mandate to regulate and oversee utilities.

After establishing a compelling governmental interest, the courts have applied a two-step analysis for evaluating whether government actions that arguably infringe on First Amendment rights may lawfully proceed as a compelling governmental interest. First, the action must be “rationally related to a compelling governmental interest” and second, the action must be narrowly

⁵⁰ See *e.g.*, *Roberts, supra*, 468 U.S. at p. 623 (finding the state’s interest in “eradicating discrimination against female citizens” justified any infringement of the associational freedoms in requiring all-male club to admit women).

tailored, such “that the least restrictive means of obtaining the desired information” have been used.⁵¹

Cal Advocates’ discovery pursuant to DR No. CalAdvocates-SC-SCG-2019-05 satisfies these two requirements.

iii. DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest

We now review the first step of the analysis for evaluating the constitutionality of the Cal Advocate’s DR: whether the DR is rationally related to a compelling interest. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas does not refute Cal Advocates’ compelling interest in the data request beyond a broad assertion that, because its political activities are “100% shareholder-funded,” they are not subject to Cal Advocates’ oversight. SoCalGas’ position is incorrect.

It is well-settled that state regulatory agencies, such as the Commission, can request information to fulfill their regulatory mandate, even where doing so may potentially impact First Amendment rights.⁵² Indeed, this DR arises from the Commission’s mandate to regulate investor-owned public utilities. This mandate includes ensuring that consumers have safe and reliable utility service at reasonable rates, protecting against fraud, and promoting the health of

⁵¹ *Perry, supra*, 591 F.3d at p. 1161.

⁵² *See e.g., Citizens United* (2010) 558 U.S. 310, 369 (upholding federal funding disclosure and disclaimer rules because the “public has an interest in knowing who is speaking about a candidate shortly before the election.”); *Ams. for Prosperity Found. v. Becerra (Prosperity Found.)* (9th Cir. 2018) 903 F.3d 1000, 1004 (holding that the California Attorney General’s requirement that regulated charities disclose information about large donors withstood exacting scrutiny because of the important state interest in regulating charitable fraud); *Dole, supra*, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records authorized by statute over objections that the disclosure violated the union’s free association rights); *United States v. Comley* (1st Cir 1989) 890 F.2d 539 (upholding an federal investigation subpoena seeking tape recordings and transcripts of telephone conversation and rejecting arguments that disclosure violated right to freedom of association rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (upholding IRS third-party summons in tax fraud investigation over right of free association objections); *United States v. Duke Energy Corp.* (M.D.N.C. 2003) 218 F.R.D. 468, 473 (allowing discovery request for energy company’s communications with trade association despite their potential to chill First Amendment rights).

California's economy. Within the Commission, Cal Advocates is statutorily authorized to represent and advocate:

on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the office shall primarily consider the interests of residential and small commercial customers.⁵³

The briefing materials submitted by Cal Advocates show that the information sought by DR No. CalAdvocates-SC-SCG-2019-05 is necessary for Cal Advocates to evaluate the potential use of ratepayer funds for lobbying activity. Cal Advocates issued the DR after discovering that SoCalGas might have used ratepayer funds to support lobbying activity. It is well-established that regulated utilities may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.⁵⁴ Regulated utilities carry the burden of demonstrating that their activities are eligible for cost recovery.⁵⁵ A statement of counsel for SoCalGas describing certain activities as “100% shareholder-funded” does not, in and of itself, deprive Cal Advocates of its statutory authority to review and make its own determinations regarding financial information from a regulated utility.⁵⁶

As such, we find Cal Advocates’ DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest.

⁵³ Pub. Util. Code § 309.5(a).

⁵⁴ *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 funding should not be permitted under 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”).

⁵⁵ *Pac. Gas & Elec. Co.*, 2007 Cal. PUC LEXIS 173, *66 (D.07-03-011) (requiring utility to keep records showing that program costs include funding for lobbying activities).

⁵⁶ December 2, 2019 SoCalGas Motion for Reconsideration/Appeal, Declaration of Johnny Q. Tran, Senior Counsel, Regulatory, SoCalGas.

iv. DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to that compelling government interest

We now turn to the second steps of the analysis for evaluating the constitutionality of Cal Advocates DR No. CalAdvocates-SC-SCG-2019-05: whether the DR is narrowly tailored to a compelling governmental interest. SoCalGas again relies on its maxim that activities involving “100% shareholder-funded” activities are off limits to the Commission, including Cal Advocates, to assert that this DR is not narrowly tailored. This argument suggests, incorrectly, that a utility may unilaterally designate certain topics off-limits to Commission oversight.

In circumstances where the First Amendment privilege is involved, a government entity must ensure that its requests are narrowly tailored to achieve a compelling government interest. This means that the government request should not place a burden on more of the First Amendment right of associational privileges than necessary to achieve its interest.⁵⁷

Cal Advocates’ DR is straightforward and attempts to clearly define the information needed for its inquiry. The scope of the DR is consistent with numerous disclosure requirements upheld by other courts. For example, in *Duke Energy*, the court allowed a government request for a utility company’s communications with a third-party, even though the disclosure infringed on First Amendment associational rights, because it was relevant to the subject matter of the litigation.⁵⁸ DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to

⁵⁷ *United States v. Baugh* (9th Cir. 1999) 187 F.3d 1037, 1043. See also *Frisby v. Schultz* (1988) 487 U.S. 474, 485 (a regulation is “narrowly tailored if it targets and eliminates no more than the exact source of the ‘evil’ it seeks to remedy”); *City of Cincinnati v. Discovery Network, Inc.* (1993) 507 U.S. 410, 417 n. 13. (a statute or regulation “need not be the least restrictive means of furthering [the government’s] interests, but the restriction may not burden substantially more speech than necessary to further the interests”).

⁵⁸ *Duke Energy, supra*, 218 F.R.D. at p. 473 (allowing discovery request for energy company’s communications with trade association despite their potential to chill First Amendment rights). See also *Prosperity Found.*, 903 F.3d 1000, 1011 (finding state interest in regulating charities was sufficient to allow Attorney General to require disclosure of sensitive donor information despite potential to infringe First Amendment rights); *Dole, supra*, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records despite possible infringement on First Amendment associational rights); *Comley* (1st Cir 1989) 890 F.2d 539 (allowing disclosure of transcripts and

seek specific contracts and information about SoCalGas' potential use of ratepayer funds for lobbying activities. Indeed, it arose as part of an inquiry that escalated after SoCalGas did not disclose its affiliation with an entity that sought party status in a rulemaking proceeding before the Commission.⁵⁹ SoCalGas refused to provide information about its affiliation, thereby leading to this series of data requests by Cal Advocates.

The Commission has the right to inspect all records necessary as part of its general supervisory authority over all regulated utilities. Statements asserting the conclusion that certain activities are "exclusively shareholder funded" do not deprive the Commission of its statutorily granted authority to review a utility's books and records to ensure compliance with applicable regulatory laws and standards. Moreover, SoCalGas' argument is circular and begs the question, since SoCalGas has not proven, but merely asserts, that the funds in question are truly separate. Taken to the logical conclusion, a utility might opt out of regulation at any time, at its own discretion, based on its self-serving description of its activities. SoCalGas' position that it may curtail Commission staff's ability to conduct its regulatory function of ensuring proper use of ratepayer funds – by making unsupported assertions - is fundamentally inconsistent with its status as a regulated public utility.

As such, we find Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored, such that the least restrictive means of obtaining the desired information has been used.

b. Due Process Rights

SoCalGas alleges that its due process rights have been violated because there are no "procedural guardrails [as the discovery dispute falls outside of a formal proceeding] in place to protect parties against the excesses of the unlimited discovery authority" of Cal Advocates. This is not correct.

tape recordings despite possibility of infringing on First Amendment associational rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (allowing summons in tax fraud investigation despite possible infringement on First Amendment associational rights).

⁵⁹ R.19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.⁶⁰ Regulatory commissions have flexibility in fashioning the form of due process provided in exercising their regulatory responsibilities.⁶¹ Here, the Commission is deciding whether SoCalGas has presented sufficient justification to avoid the application of state statutes that specifically require regulated utilities to provide information to Commission staff (and specifically to Cal Advocates). The process involved has been extensive.

SoCalGas and Cal Advocates have presented their views on these questions in extensive pleadings and responsive rounds of pleadings, as described in this Resolution. SoCalGas has not identified any right or claim at issue here that would require any more specific form of process or any aspect of the process thus far relied upon by the Commission to receive pleadings that was insufficient.

To briefly review the process involved, this dispute started when, in a formal Commission proceeding, R.19-01-011, a potential financial relationship between SoCalGas and C4BES, the entity seeking party status in the proceeding, came to light in a pleading filed by Sierra Club. Based on the record of that proceeding, there was no transparency as to the source of C4BES' funding, as either shareholder or ratepayer, or the legitimacy of Sierra Club's claims about ratepayers funding C4BES. Cal Advocates then submitted a series of discreet DRs outside of any proceeding, as permitted by statute, which led to the DR in question, DR No. CalAdvocates-SC-SCG-2019-05. The DRs were focused to get to the root of the issue at hand. Cal Advocates exercised its oversight as allowed

⁶⁰ *Morrissey v. Brewer* (1982) 408 U.S. 471, 481. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite." *Board of Regents v. Roth* (1972) 408 U.S. 564, 569-71.

⁶¹ *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292 (if a proceeding is quasi-legislative, as opposed to quasi-judicial, there are no vested interests being adjudicated, and therefore, there is no due process right to a hearing). See [United States v. Florida East Coast R. Co.](#) (1973) 410 U.S. 22; [Western Oil & Gas Ass'n v. Air Resources Bd.](#) (1984) 37 Cal.3d 502 (an administrative agency's proceedings in which guidelines, regulations, and rules for a class of public utilities are developed have consistently been considered quasi-legislative proceedings).

under California law and would have been entitled to propound these DRs outside of a proceeding even if these issues had not been raised by Sierra Club in R.19-01-011.

However, after encountering multiple instances where, despite frequent discussions, SoCalGas simply did not provide the specific information needed to get to the root of its inquiry, Cal Advocates invoked Pub. Util. Code § 309.5(e) which initiated a procedural process to address this DR dispute. Pub. Util. Code § 309.5(e) allows Cal Advocates to compel “production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission” and to bring any resulting discovery disputes to the President of the Commission, if the discovery dispute is occurring outside of any proceeding.

Soon after the President’s receipt of Cal Advocates’ motion to compel on October 7, 2019,⁶² the President referred this matter to the Chief Administrative Law Judge to provide for a process and procedural path to address the dispute. On October 29, 2019, the Chief Administrative Law Judge assigned an ALJ to preside over the dispute and provided the parties with certain procedural rules to follow.

At each step of this process and prior to any decision or ruling, SoCalGas had an opportunity to submit responses to Cal Advocates’ motions, submit motions itself, and even further, submit motions for the full Commission to act on its requests, such as its December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling, which is one of the bases of this Resolution. Except regarding the Commission’s consideration of contempt and sanctions (which are not resolved here), SoCalGas did not request evidentiary hearings and did not contest relying on written pleadings to resolve the issues set forth herein.

In addition, Cal Advocates exercised its statutory oversight discreetly in initial requests and in all cases focused on the information it needed to perform its statutory duties. SoCalGas had multiple opportunities and continues to have

⁶² Cal Advocates’ *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05* (Not In A Proceeding) submitted October 7, 2019.

opportunities to challenge these discovery requests. Further, as a result of SoCalGas' repeated submissions challenging Cal Advocates' statutory authority, a simple request for information has turned into an extensive inquiry. Delays in the release of information often frustrate this agency's regulatory purposes. In this case, SoCalGas has had more, not less, due process than is necessary under the law.

Moreover, SoCalGas bases its claim of a violation of due process on a false premise. SoCalGas' claim that a certain amount of process is due rests on its assertion that requests for information made by Commission staff amount to "excesses of ... unlimited discovery authority" that are so significant that they require constitutional protection.⁶³ This is a rhetorical complaint that attempts to imply that some harm occurs when regulatory staff gather information to assist them in performing their regulatory duties. That is not the case. Cal Advocates has broad discovery rights, conferred by statute, because its staff are regulators. As a regulated public utility, SoCalGas is guaranteed certain privileges that are subject to the oversight of the Commission and its staff. Cal Advocates rightfully exercised that oversight in the manner allowed by statute, the U.S. Constitution, and the California Constitution. The exercise of clear statutory authority is not an improper "excess" that needs to be constrained.

We therefore find that Cal Advocates' request for information, as set forth in DR No. CalAdvocates-SC-SCG-2019-05, and the process relied upon by the Commission to resolve this discovery dispute outside of a proceeding, do not violate SoCalGas' procedural due process rights.

Therefore, SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling is denied.

3. SoCalGas' May 22, 2020 Motions to Quash Portions of/Stay the May 5, 2020 Subpoena and Motion to Supplement Record and Request for Expedited Decision by the Full Commission

⁶³ *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)* submitted on December 2, 2019 at 22.

This discovery dispute continued into 2020 and centered around Cal Advocates' May 5, 2020 subpoena. The May 5, 2020 subpoena, which related to the same information as DR CalAdvocates-TB-SCG-2020-03, required SoCalGas to give Cal Advocates access to its accounting database. In response to the subpoena, on May 22, 2020, SoCalGas concurrently submitted two motions, a motion to quash portions of and stay the May 5, 2020 subpoena, and a motion to supplement the record of its previously filed December 2, 2019 motion for reconsideration/appeal. In the May 22, 2020 motion to quash/stay, SoCalGas made several requests. We address each of these requests below.

First, SoCalGas requested a stay of complying with the subpoena until May 29, 2020, to complete software solutions to bar Cal Advocates' access to what it deemed protected materials and to quash the subpoena, asserting the same arguments previously presented, that Cal Advocates' statutory discovery rights were limited by the First Amendment and by laws governing protected materials. SoCalGas defined protected materials as documents and information protected under attorney-client privilege and attorney work-product doctrine.

The crux of SoCalGas' May 22, 2020 motion to stay is to obtain additional time to place a firewall to limit Cal Advocates' access to certain "protected" records in its database. Cal Advocates gave SoCalGas the additional time it requested to create that firewall. The May 22, 2020 motion to stay is deemed moot since the time requested has passed and relief requested, an opportunity to provide screening to remote users of the accounting systems Cal Advocates requested to review, has occurred.

Second, SoCalGas requests to quash the subpoena to exclude information and records based on its First Amendment privilege and other privileges. We find that, to the extent the information and records relate to Cal Advocates' inquiry into specific contracts and information about SoCalGas' potential use of ratepayer funds for political activities, it was improper for SoCalGas to block access to those records. Cal Advocates has statutory authority to access those records. Furthermore, as laid out above, SoCalGas has failed to demonstrate its First Amendment rights have been infringed, and even assuming, *arguendo*, it made such an initial showing, the request for access to accounting information maintained by SoCalGas is in furtherance of Commission staff review of potential use of ratepayer funds for political activities and is, therefore, designed

to allow staff to accomplish a compelling government interest. In addition, SoCalGas may not unilaterally designate information as being not subject to inspection by Commission staff by asserting that the information relates to activities that are shareholder, not ratepayer, funded.

Therefore, SoCalGas' May 22, 2020 motion to quash is denied. The other privileges asserted by SoCalGas in this May 22, 2020 motion to prevent disclosure of the information to Cal Advocates, including the attorney-client and attorney work-product privileges, are addressed below.

Lastly, we address the remaining May 22, 2020 motion. In the May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal, SoCalGas requested permission to supplement its December 2, 2019 motion and an expedited resolution of that motion in the event its motion to quash is denied. This May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal is granted. Furthermore, because we resolve the December 2, 2019 motion for reconsideration/appeal herein, SoCalGas' request for expedited consideration is moot.

4. Attorney-Client or Attorney Work Product Privileges

To the extent SoCalGas seeks to assert attorney-client or attorney work product privileges, it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials not subject to these privileges.

5. Cal Advocates' June 23, 2020 Motion for the Commission to Find SoCalGas in Contempt and to Levy a Fine

This Resolution does not resolve Cal Advocates' June 23, 2020 motion for the Commission to find SoCalGas in contempt and to levy a fine. This Resolution only addresses those claims that may be resolved as a matter of law based upon the submitted pleadings. This Resolution, and more specifically, the underlying process, is not the proper means for the Commission to consider such fines and contempt.

This does not mean that Cal Advocates' claims must fall by the wayside. As described in detail above, a regulated utility's obligation to provide the Commission's staff with requested information is a significant element of the regulatory framework for utilities in California. If a utility does not comply with the requests from the Commission's staff or more formal injunctions from the Commission, such as subpoenas, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties. Indeed, Cal Advocates cites to past instances where the Commission has applied such sanctions to situations similar to the dispute presented here.⁶⁴

As described herein and set forth in Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities. The Pub. Util. Code grants Cal Advocates broad authority to compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of those duties. Accordingly, Cal Advocates' inquiry into whether SoCalGas' funding of its activities relating to decarbonization was proper, and this ongoing inquiry can also include the question of whether SoCalGas' responses to discovery requests were proper and met appropriate legal requirements.

Any further investigation of SoCalGas' conduct will be referred to an appropriate enforcement division within the Commission. In its referral, Cal Advocates may include instances where it found SoCalGas improperly responded or failed to timely provide information in response to Cal Advocates' discovery requests and should be penalized.

The appropriate enforcement division then will be tasked with investigating the alleged violations and recommending fines and penalties, should the Director of that division deem it appropriate.

⁶⁴ See *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 (Not In A Proceeding)* submitted on June 23, 2020 at 16-22.

CONCLUSION

Pursuant to this Resolution, SoCalGas shall provide, with exceptions only based on attorney-client and attorney work product privileges, the information Cal Advocates has requested in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission may at another time consider if sanctions or penalties are appropriate, after undertaking a thorough and comprehensive review of all the facts regarding SoCalGas' activities and its responses to Cal Advocates' discovery requests.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.⁶⁵

The 30-day comment period was provided.

Regarding comments in response to the draft resolution, Rule 14.5 specifies that "Any person may comment on a draft or alternate draft resolution by serving (but not filing) comments on the Commission within 20 days of the date of its notice in the Commission's Daily Calendar and in accordance with the instructions accompanying the notice."

Pursuant to Rule 14.5, comments on this draft resolution are due within 20 days of the date notice this draft resolution was posted in the Commission's Daily Calendar.⁶⁶

Regarding service of a draft resolution, Rule 14.2 (d) further specifies that, a draft resolution shall not be filed with the Commission but shall be served on other persons as the Commission deems appropriate.

⁶⁵ Pub. Util. Code § 311 (g) states, in relevant part, as follows: "Before voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. . . . For purposes of this subdivision, 'decision' also includes resolutions, including resolutions on advice letter filings."

⁶⁶ The Daily Calendar is available on the Commission's website.

The Commission served this draft resolution on the attached service list. Parties are directed to serve their comments regarding this draft Resolution, which resolves a discovery dispute “outside of a proceeding,” on Administrative Law Judge Regina DeAngelis on the attached service list, and on the President of the Commission. Service shall be performed in accordance with the Commission’s Rules of Practice and Procedure. Service shall be performed by electronic mail only.

To be added to the service list of this discovery dispute, send an email to the Administrative Law Judge at regina.deangelis@cpuc.ca.gov.

FINDINGS

1. Pursuant to Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities.
2. Cal Advocates may compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of its duty to represent customers of public utilities and consistent with the rights of Commission staff.
3. Cal Advocates initiated a discovery inquiry outside of a proceeding after discovering that SoCalGas might have used ratepayer funds to support lobbying activity.
4. Regulated utilities, such as SoCalGas, may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.
5. SoCalGas’ statement describing certain activities as “100% shareholder-funded” does not, in and of itself, deprive Cal Advocates of its statutory authority to obtain, review, and make its own determinations regarding documents and financial information from a regulated utility, such as SoCalGas.
6. The Pub. Util. Code grants broad authority to the Commission to inspect the books and records of investor-owned utilities, such as SoCalGas.
7. The Commission’s authority to inspect books and records of investor-owned utilities applies to all Commission staff without limitation, including Cal Advocates.

8. The statutory scheme regarding the Commission's discovery authority recognizes that information provided to the Commission, including Cal Advocates, by utilities might involve sensitive and confidential materials.
9. Pub. Util. Code § 583 and General Order 66-D provide ample protection and processes for utilities to submit confidential information to the Commission, including Cal Advocates.
10. The statutory provisions regarding discovery authority in the Pub. Util. Code have been part of the regulatory scheme since 1951 and in similar form since 1911. As such, these provisions represent a clear legislative determination that the exercise of the authority to review materials by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities.
11. SoCalGas may assert attorney-client or attorney work product privileges in response to the information sought by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena but it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials, including confidential information, not subject to privilege.
12. The First Amendment protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances and applies to states and state entities, such as the Commission, through the Fourteenth Amendment.
13. The First Amendment protections apply to private organizations and corporations, such as SoCalGas.
14. Under the First Amendment, SoCalGas' right to associate for political expression is not absolute.
15. Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement, which can be intentional or indirect. If this showing is made, the burden shifts to the government entity to demonstrate that the information sought is rationally related to a compelling state interest and narrowly tailored.

16. Meeting the initial threshold of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure “is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization.”
17. SoCalGas failed to demonstrate that its First Amendment rights to associate would be chilled, or infringed upon, by responding to Cal Advocates’ DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena seeking documents and financial information related to 100% shareholder funded activities about its decarbonization campaign.
18. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in fulfilling the Commission’s mandate to regulate and oversee utilities in SoCalGas’ disclosure of the information requested by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena to the Commission.
19. Cal Advocates’ requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are straightforward, and Cal Advocates attempts to clearly define the information needed for its discovery inquiry.
20. Cal Advocates’ requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, do not place a burden on more First Amendment rights of associational privileges than necessary to achieve its interest.
21. Cal Advocates’ requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are narrowly tailored to achieve a compelling government interest under the First Amendment privilege.
22. Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.

23. Regulatory agencies, such as the Commission, have flexibility in fashioning the form of procedural due process provided in exercising their regulatory responsibilities and oversight.
24. Cal Advocates exercised its statutory oversight discreetly in initial requests and in all requests, including DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, which focused on the information needed to perform Cal Advocates' regulatory duties set forth in statute.
25. In extensive rounds of pleadings, SoCalGas has had multiple opportunities and continues to have opportunities to challenge Cal Advocates' requests for information set forth in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena.
26. No merit exists to SoCalGas' assertion that the Commission did not provided an appropriate level of procedural due process.
27. A significant element of the regulatory framework for utilities in California, such as SoCalGas, is the utility's obligation to provide the Commission and its staff, such as Cal Advocates, with requested information pertaining to regulatory oversight.
28. If a utility, such as SoCalGas, does not comply with the requests for information, such as DR No. CalAdvocates-SC-SCG-2019-05, from the Commission or its staff, including Cal Advocates, or more formal injunctions from the Commission, such as the May 5, 2020 subpoena, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties.

THEREFORE, IT IS ORDERED that:

1. Southern California Gas Company's December 2, 2019 motion, *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)*, requesting the full Commission's review of the ALJ's November 1, 2019 ruling based on violations of its constitutional rights and the limits of the Commission's discovery rights under the Public Utilities Code, is denied.

2. Southern California Gas Company's (SoCalGas') December 2, 2019 motion, *Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations Numbers 3, 4, 5, and 6 In Support of Its 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 [PROPOSED] Order (Not in a Proceeding)*, is granted but SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, the Public Advocates Office at the California Public Utilities Commission, under existing protections.
3. Southern California Gas Company's (SoCalGas') May 22, 2020 motion, *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)*, requesting to quash portions of the May 5, 2020 Commission subpoena that requires SoCalGas to produce certain materials in and access to its accounting databases, is denied and, to the extent the motion requests to stay compliance with the May 5, 2020 subpoena until May 29, 2020, the motion is deemed moot.
4. Southern California Gas Company's May 22, 2020 motion, *Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expediated 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)*, is granted.
5. Southern California Gas Company's March 25, 2020 motion, *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, was resolved by the Administrative Law Judge's email of April 6, 2020.

6. The Public Advocates Office at the California Public Utilities Commission 's June 23, 2020 motion, *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 (Not In A Proceeding)*, requesting that the Commission provide relief in the form of a contempt ruling and the levying of sanctions against Southern California Gas Company, is deferred and may be resubmitted at a later date.
7. The Public Advocates Office at the California Public Utilities Commission's July 9, 2020 motion, *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, is deemed moot to the extent it requests the disclosure of information already addressed here and, to the extent the motion requests monetary fines against Southern California Gas Company, the motion is deferred and may be resubmitted at a later date.
8. Southern California Gas Company shall produce the information and documents requested by Public Advocates Office at the California Public Utilities Commission, including all confidential information not otherwise privileged as attorney-client or attorney work product, in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, with any related privilege log, within 15 days of the effective date of this Resolution.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

Rachel Peterson
Acting Executive Director

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ATTACHMENT

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-391
Administrative Law Judge Division

**COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY TO
DRAFT RESOLUTION ALJ-391**

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Dated: November 19, 2020

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TABLE OF CONTENTS

	Page
I. Introduction.....	3
II. Discussion.....	11
A. The Draft Resolution Erred in Concluding the Discovery Does Not Infringe on SoCalGas’s First Amendment Rights.....	11
1. The Draft Resolution Committed Legal Error in Applying an Incorrect Heightened Standard to SoCalGas’s Evidence of Harm.....	13
2. The Draft Resolution Erred in Not Appropriately Considering the Declaration of Sharon Tomkins, the Confidential Declarations, and the Declaration of Andy Carrasco.	15
3. The Draft Resolution Committed Legal Error by Misidentifying the “Compelling Government Interest” As the CPUC’s General Investigatory Power Rather than Cal Advocates’ Authority Under Pub. Util. Code §309.5.	19
4. The Draft Resolution Fails to Establish that Compelling the Discovery is “Rationally Related” to Cal Advocates’ Need for the Information to Further its Investigation.....	22
5. The Draft Resolution Erred In Adopting Cal Advocates’ Deficient Arguments that its Investigation is Narrowly Tailored.	25
6. The Draft Resolution Erred in Failing to Analyze Why SoCalGas’s Custom Software Solution For SAP Access Is Not An Appropriate Least Restrictive Means for Cal Advocates to Achieve Its Investigation.	27
7. The Draft Resolution Erred in Relying on <i>Duke Energy</i> to Justify Cal Advocates’ Discovery.	28
B. SoCalGas Supports the Draft Resolution’s Affirmation of its Due Process Rights and the Deferral of Fines and Sanctions.....	30
C. SoCalGas Supports the Draft Resolution’s Referral of any Further Investigation into SoCalGas’s Alleged Misuse of Ratepayer Funds for Political Purposes to an Appropriate Enforcement Division Within the Commission.	31
D. SoCalGas Supports Protection of its Attorney-Client Privilege and Attorney Work Product Privilege.	32
E. The Draft Resolution Erred in Concluding GO 66-D Provided Ample Protection for SoCalGas’s Live SAP Database, and Should Order Cal Advocates to Enter Into an NDA or Alternatively Issue a Protective Order to Allow SoCalGas to Mark Entries for Confidentiality.	34
F. The Draft Resolution Should Stay Enforcement of the Portion of the Resolution that Requires SoCalGas to Produce Information Protected by its First Amendment Rights	

Until the Commission Issues a Final Decision on the AFR (and Final Resolution of a Subsequent Appeal to the Court of Appeal). 38

III. Conclusion 41

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

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-391
Administrative Law Judge Division

**COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY TO
DRAFT RESOLUTION ALJ-391**

Pursuant to Rule 14.5 of the California Public Utilities Commission’s Rules of Practice and Procedure, Southern California Gas Company (SoCalGas), hereby submits its Comments to Draft Resolution ALJ-391 (Draft Resolution).

I. Introduction

The Draft Resolution committed legal and factual error when it determined that Cal Advocates’ investigation into SoCalGas’s 100% shareholder funded First Amendment-protected political activities, contracts, and the identities of its consultants —via its consultant contracts (“DR-05 Contracts”), confidential declarations from its consultants (“Confidential Declarations”), and unfettered access to its SAP system (“SAP Database”)—met the strict scrutiny applied by courts when a fundamental First Amendment right is at stake. As a preliminary matter, it is important to clarify the exact nature of what SoCalGas has asserted as First Amendment protected material in its motions denied by the Draft Resolution – information about a small set of consultants that would reveal SoCalGas’s political thinking and associations that are 100% *shareholder funded*. The vast and unprecedented live access that Cal Advocates has sought in SoCalGas’s financial system of record for millions of entries and thousands of vendors over 21 years of data was not in dispute.

The Draft Resolution correctly concludes that “SoCalGas enjoys the same First Amendment rights as any other person or entity.”¹ However, the Draft Resolution erroneously discounted SoCalGas’s evidence of harm for this limited scope of First Amendment claims, and by doing so, afforded no actual First Amendment protection for a utility when faced with choosing between pursuing protection of its rights under threat of harm that cannot be undone. SoCalGas’ evidence of harm was documented in declarations mirroring those the Ninth Circuit ruled met the required *prima facie* showing of infringement in *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147.

Second, it misidentified the “compelling government interest” for the discovery here, which is Cal Advocates’ ratepayer protection mandate, not the Commission’s regulatory oversight powers. Cal Advocates’ statutory mandate “to obtain the lowest possible rate for service consistent with reliable and safe service levels”² simply does not empower it to investigate the content of SoCalGas’s political thinking and associations that are 100% *shareholder funded*.

Third, the Draft Resolution failed to demonstrate how each separate discovery request and the subpoena are “rationally related” to Cal Advocates’ investigation of “ratepayer monies.” Most egregiously, it fails to articulate the necessary connection between Cal Advocates’ purported investigation, and the discovery it seeks. Cal Advocates describes its investigation as “SoCalGas’ **use of ratepayer monies** to fund anti-decarbonization campaigns through ‘astroturf’ organizations, including efforts to both promote the use of natural and renewable gas, and to

¹ Draft Resolution ALJ-391 [“D. Res.”], at p. 14.

² Pub. Util. Code § 309.5(a).

defeat state and local laws and ordinances proposed to limit the use of these resources.”³ The Draft Resolution confirms Cal Advocates’ scope of investigation.⁴ However, neither Cal Advocates nor the Draft Resolution has articulated how examining 100% shareholder-funded political activities—the subject of the discovery at issue here—has any nexus to Cal Advocates’ investigation into the “use of ratepayer monies.” If Cal Advocates was really interested in whether SoCalGas inappropriately used ratepayer monies to fund political activity, it need examine only SoCalGas’s above-the-line accounts (the accounts for which SoCalGas generally seeks cost recovery at the general rate case (GRC)). SoCalGas made these available to Cal Advocates approximately six months ago: SoCalGas created a custom software solution in its SAP database that would have provided Cal Advocates access to all of its above-the-line accounts, with the exception of invoices from law firms or other records of legal expenditures that might reflect attorney-client privileged or attorney work product information. Instead, Cal Advocates refused this access and admitted that SoCalGas’s shareholder accounts are precisely the types of accounts Cal Advocates wanted to examine.⁵

The dangerous precedent that this Draft Resolution would set in empowering Cal Advocates in this manner should cause the Commission to pause and reflect on the broader, unintended implications that could result. Cal Advocates, particularly as an advocacy division of

³ 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 [hereinafter “Motion for Contempt and Fines”], June 23, 2020, p. 3 (emphasis added); *see also* Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company’s December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility’s Intentional Withholding Of This Information [hereinafter “Motion to Compel and for Fines”], July 9, 2020, p. 1.

⁴ D. Res. pp. 3, 8, 25.

⁵ Response Of Public Advocates Office To Southern California Gas Company Motion To Quash Portion Of Subpoena, For An Extension, And To Stay Compliance (Not In A Proceeding) [hereinafter “Response to Motion to Quash”], June 1, 2020 (“Response to Motion to Quash”), at pp. 9-10 [accounts protected by the First Amendment are “precisely the types of accounts . . . that Cal Advocates intends to audit”].

a governmental agency with no enforcement authority, should not be allowed to misuse its investigatory power to expose and punish entities with fines and sanctions merely for the content of their political views. Such a scheme would be ripe for abuse, particularly in situations similar to here where the party has a differing (but valid) viewpoint than Cal Advocates. And yet, because SoCalGas does not endorse the same pathway to decarbonization as Cal Advocates (and the Sierra Club), Cal Advocates has chosen to investigate SoCalGas’s political activities and threaten it with fines and sanctions. This fails to meet the “strict scrutiny” required by courts when a fundamental right is at stake and the CPUC should not empower Cal Advocates by adopting this Draft Resolution.

For instance, as evident in a Common Interest⁶ Agreement between Cal Advocates and Sierra Club to investigate SoCalGas’s “use of customer funds for anti-electrification activities,”⁷ the Commission should be asking why a CPUC division is sharing investigation information and strategies with a non-governmental organization like Sierra Club. If the Draft Resolution is not modified to protect SoCalGas’s rights, there are open questions as to what this Common Interest Agreement means in the context of the Executive Director’s SAP subpoena. Will that mean that now Sierra Club, by possibly coopting Cal Advocates’ investigative authority, also will get access to SoCalGas’s live SAP information, let alone the First Amendment protected material that SoCalGas asserts? This is why we support the Draft Resolution’s referral of this matter to

⁶ The Common Interest Agreement provides indication that Sierra Club may be improperly co-opting Cal Advocates investigative authority. In a proceeding, Sierra Club’s discovery rights are limited by the scope of that proceeding. However, if Sierra Club is co-opting Cal Advocates’ investigatory power, then Sierra Club is able to obtain information to which it is not otherwise entitled. If this is occurring, it would be an abuse of Pub. Util. Code § 309.5 and §314. This Common Interest Agreement is attached as Exhibit 4 to the Declaration of Jason H. Wilson, Nov. 19, 2020 (served concurrently herewith).

⁷ Publicly, however, Cal Advocates has characterized its investigation as an investigation into SoCalGas alleged anti-decarbonization campaign

an appropriate enforcement division so that any further investigation can be conducted in a transparent manner and consistent with our request for formal proceedings in an OII and OIR.

Fourth, the Draft Resolution erred in concluding that allowing the discovery to go forward is the “least restrictive means of obtaining the information” without analyzing the least restrictive means that SoCalGas proposed that would have provided Cal Advocates with the information it needed to continue its investigation.⁸ The Draft Resolution failed to consider that the undisputed, wide access to the millions of entries in SAP that SoCalGas made available since May 29, 2020 was the less restrictive means for Cal Advocates to pursue its validation of expenditure classifications. Thus, the Draft Resolution must correct its errors of fact and law to conclude that Cal Advocates’ investigation impermissibly infringes on SoCalGas’s First Amendment rights under the U.S. and California Constitutions.

Moreover, the Draft Resolution also erred in concluding that General Order (GO) 66-D is sufficient to protect the confidentiality of financial and other sensitive information, when providing Cal Advocates with live, remote access to SoCalGas’s SAP database. It is not possible for SoCalGas to review and mark ahead of time 13 million live data entries, and so there is effectively no means for SoCalGas to protect confidential information through the traditional marking process under GO 66-D. SoCalGas requests the Commission order Cal Advocates to execute a Non-Disclosure Agreement prior to accessing the database (which Cal Advocates had already offered to do back in May before SoCalGas brought its motions), or enter the attached Protective Order, to allow SoCalGas to interpose its confidentiality designations based on the information Cal Advocates chooses to view. SoCalGas further requests the Commission place a

⁸ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1161.

reasonable time limit (e.g., 15 days, 30 days, 60 days) on the period of Cal Advocates' remote access.

In its Motion for Reconsideration/Appeal, SoCalGas pointed out that absent the full Commission's intervention, Cal Advocates' increasing incursion onto the constitutional rights of not just SoCalGas, but also others, would continue.⁹ Unfortunately, this has come to fruition, not only with other discovery at issue here, but also in discovery it has continued to serve.¹⁰ The discovery at issue violates SoCalGas's First Amendment rights of freedom of association and freedom of speech, and has no nexus to Cal Advocates' investigation of SoCalGas's alleged misuse of ratepayer funds for political activity.

As such, SoCalGas respectfully requests the following modifications to the Draft Resolution:

1. *Grant* the Motion for Reconsideration/Appeal, *grant* the Motion to Quash as to SoCalGas's First Amendment-protected information, and *deny* the Motion to Compel the Confidential Declarations, on the following grounds:
 - SoCalGas has demonstrated a sufficient *prima facie* showing of First Amendment harm caused by Cal Advocates' investigation;
 - Cal Advocates' alleged "compelling government interest" (and thus the First Amendment's limitations on inquiry outside of that interest) should

⁹ 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), Dec. 2, 2019, at p. 4.

¹⁰ Cal Advocates continued to serve extensive discovery requests on SoCalGas throughout the Summer of 2020. On June 30, 2020, Cal Advocates served Public Advocates Office Data Request No. CalAdvocates-TB-SCG-2020-04 ("DR-15") on SoCalGas, which contained 25 questions with dozens of subparts. This data request expressly called for information protected by the First Amendment as well as the attorney-client privilege, as it requested information on SoCalGas's relationships and financial support of third parties, including vendors, lobbying groups, consulting and communications groups, and, inexplicably, its outside counsel Willenken LLP.

be framed as its investigation into the alleged misuse of ratepayer funds, and not the Commission’s general regulatory oversight power;

- Cal Advocates’ discovery into 100% shareholder-funded political activities is not “rationally related” to its interest in the use of *ratepayer* funding;
 - Cal Advocates’ discovery is not “narrowly tailored” to achieve the goals of its investigation, as SoCalGas’ SAP solution available since May 29, 2020 provides a “least restrictive means” of accessing information in a way that does not violate First Amendment protections.
2. In addition to the Resolution’s direction that any further investigation into SoCalGas’s alleged misuse of ratepayer funds for political activities will be referred to an enforcement division within the Commission, affirm that the Commission will open an Order Instituting Rulemaking (OIR) to establish clarity for all investor-owned utilities on ratemaking treatment for lobbying and other advocacy activity, to establish clear definitions for lobbying for accounting purposes, and to create a structure for cost allocation studies of lobbying to be used in future GRCs.
3. *Grant* the Motion to Quash as to SoCalGas’s attorney-client privilege and work product privileged information, consistent with Finding No. 11 that SoCalGas “may assert” its attorney-client privileges.
- Revise the requirement in Order Paragraph 8 that SoCalGas produce a privilege log to be consistent with the Parties’ most recent agreement in

meet and confer discussions to log only from 2015 to the present and extend SoCalGas's deadline to produce the privilege log to 30 days.¹¹

4. Order the parties to enter into a Non-Disclosure Agreement to allow SoCalGas to assert its GO 66-D confidentiality rights on any document Cal Advocates chooses to print or copy off SoCalGas's SAP database. In the alternative, enter the attached protective order incorporating that process.¹² Clarify that Cal Advocates' unprecedented access to SoCalGas's SAP Database is not indefinite and provide for a reasonable time when the access will end (e.g., 15 days, 30 days, 60 days).
5. Because of the important constitutional rights at issue, if the Commission does not modify the Draft Resolution as requested in this Comment, SoCalGas intends to file an application for rehearing (AFR) and, if necessary, a petition for writ of review with the Court of Appeal. As such, SoCalGas respectfully requests that the Commission stay enforcement of at least the portion of the Resolution that requires SoCalGas to produce information protected by its First Amendment rights while still providing Cal Advocates with access to 100% of SoCalGas's above-the-line accounts. The Commission may do so by: (1) modifying the Draft Resolution to grant Cal Advocates access pursuant to SoCalGas's custom software solution which excludes the information SoCalGas asserts is protected under its First Amendment rights until the Commission issues a final decision on the AFR (and final resolution of a subsequent appeal to the Court of Appeal); or,

¹¹ D. Res. p. 26, p. 30 ¶ 11.

¹² See [Proposed] Protective Order Concerning Financial Data Related to Draft Resolution ALJ-391, Attachment 1.

in the alternative, (2) modifying Order Paragraph 8 to extend SoCalGas's compliance date from 15 days to 45 days as to the information SoCalGas asserts is protected under its First Amendment rights. Cal Advocates will still receive access to 100% of SoCalGas's above-the-line accounts, excluding information protected by the attorney client privilege and work product, within 15 days of the approval of the Resolution.

II. Discussion

A. The Draft Resolution Erred in Concluding the Discovery Does Not Infringe on SoCalGas's First Amendment Rights.

SoCalGas supports the Draft Resolution's conclusion that it "enjoys the same First Amendment rights as any other person or entity," which are not diminished by the fact that it is a regulated public entity.¹³ Nor does SoCalGas dispute that Cal Advocates' statutory mandate to "obtain the lowest possible rate for service consistent with reliable and safe service levels" under Pub. Util. Code § 309.5(a) can be a compelling government interest in certain circumstances. However, the Draft Resolution erred in concluding that the discovery sought by Cal Advocates did not infringe on SoCalGas's First Amendment rights.

To be clear, the discovery dispute at issue in the Draft Resolution is whether Cal Advocates has met its burden of showing that the information it is seeking (information about a small set of consultants that would reveal SoCalGas's political thinking and associations that are 100% *shareholder funded*) is rationally related to a compelling governmental interest and is the "least restrictive means" of obtaining the information. This current dispute is not about the founding and alleged funding of C4BES with ratepayer funds. Cal Advocates has that

¹³ D. Res. p. 14.

information, and as a result, SoCalGas has already voluntarily recategorized certain expenses that had erroneously been booked to above-the-line accounts (e.g., generally accounts recovered from ratepayers) to below-the-line accounts (e.g., generally accounts that are **not** recovered from ratepayers).¹⁴ This dispute is not about the Commission’s broad authority to review SoCalGas’s below-the-line accounts. SoCalGas’s custom software solution would provide Cal Advocates with access to SoCalGas’s below-the-line accounts except for information protected by the First Amendment.

The Draft Resolution committed legal and factual errors in finding that Cal Advocates has met its heavy burden. First, SoCalGas has met its *prima facie* burden showing arguable First Amendment infringement. The Draft Resolution erroneously discounted and ignored SoCalGas’s declarations, which mirror ones the Ninth Circuit ruled were sufficient in *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, and further, it applied the wrong standard in assessing those declarations. Second, once this *prima facie* showing is made, First Amendment protection is presumed, and no purported governmental inquiry can pierce that right unless it meets strict scrutiny. Cal Advocates has failed to meet this heavy burden. The Draft Resolution commits legal error by misidentifying the “compelling government interest” for the discovery sought, which is Cal Advocates’ ratepayer protection mandate, not the Commission’s general regulatory oversight powers. Third, the Draft Resolution simply accepted Cal Advocates statements without analyzing how each separate request for SoCalGas’s 100% **shareholder funded** First Amendment protected information is “rationally related” to Cal Advocates’ investigation into SoCalGas’s alleged misuse of **ratepayer funds**. Fourth, the Draft Resolution

¹⁴ See Response to Q3-Q5, Amended Submission to Data Request CALPA-SCG-051719, July 12, 2019; R.13-11-005 Data Response CalAdvocates-SK-SCG-2020-01 Q4.

erred in concluding that allowing the discovery is the “least restrictive means of obtaining the information,”¹⁵ particularly with respect to the request for access to SoCalGas’s entire SAP Database, where the Draft Resolution did not even consider whether SoCalGas’s custom software solution for SAP access was the least restrictive means for Cal Advocates to obtain the information needed for its investigation. Thus, Cal Advocates’ requests for the DR-05 Contracts, Confidential Declarations, and full SAP Database impermissibly infringe on SoCalGas’s First Amendment rights under the U.S. and California Constitutions.

1. The Draft Resolution Committed Legal Error in Applying an Incorrect Heightened Standard to SoCalGas’s Evidence of Harm.

The Draft Resolution erroneously read *National Assn. for Advancement of Colored People v. Ala. ex rel. Patterson* (1958) 357 U.S. 449, 461-62 (*NAACP*) to require a heightened standard—one requiring a “palpable fear of harassment and retaliation.”¹⁶ *NAACP* does not require such a showing. In *NAACP*, the Court found that the members showed that they would suffer economic reprisal, loss of employment, threat of physical coercion, and other manifestation of public hostility. However, the Court did not set that as a standard that has to be met to invoke First Amendment protection.

Instead, the appropriate legal standard is set by *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160-61:

In this circuit, a claim of First Amendment privilege is subject to a two-part framework. The party asserting the privilege “must demonstrate . . . a ‘prima facie showing of arguable first amendment infringement.’” [Citations.] “This prima facie showing requires appellants to demonstrate that enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.”

¹⁵ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1161.

¹⁶ D. Res. p. 16.

[Citation.] “If appellants can make the necessary prima facie showing, the evidentiary burden will then shift to the government . . . [to] demonstrate that the information sought through the [discovery] is rationally related to a compelling governmental interest . . . [and] the ‘least restrictive means’ of obtaining the desired information.” [Citation.]¹⁷

The Ninth Circuit has stated, “chilling” occurs “when governmental action ‘would have the practical effect of discouraging the exercise of constitutionally protected political rights.’”¹⁸

“The compelled disclosure of political associations can have just such a chilling effect.”¹⁹

Indeed, the United States Supreme Court has “repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First

Amendment.”²⁰ Similarly, as the Tenth Circuit has explained, “[T]he First Amendment privilege

. . . generally ensures privacy in association when exposure of that association will make it less likely that association will occur in the future, or when exposure will make it more difficult for members of an association to foster their beliefs. These are the ‘chilling effects,’ or consequences of disclosure, that the First Amendment privilege seeks to avoid.”²¹

Thus, based on the appropriate legal standard, SoCalGas need only show a “chilling” of its First Amendment-protected associational rights, which can be caused by the disclosure of the information itself; it need not demonstrate an additional threat of outside harassment or physical coercion. As such, the Draft Resolution committed legal error in concluding that SoCalGas must show some harm above or beyond the disclosure of First Amendment protected information itself, if that disclosure chills its political rights.

¹⁷ *Perry, supra*, 591 F.3d at p. 1161.

¹⁸ *Perry, supra*, 591 F.3d at p. 1160 [quoting *Am. Comm’n Ass’n v. Douds* (1950) 339 U.S. 382, 393].

¹⁹ *Id.*

²⁰ *Buckley v. Valeo* (1976) 424 U.S. 1, 64 [collecting cases].

²¹ *In re Motor Fuel Temperature Sales Practices Litigation* (10th Cir. 2011) 641 F.3d 470, 489.

2. The Draft Resolution Erred in Not Appropriately Considering the Declaration of Sharon Tomkins, the Confidential Declarations, and the Declaration of Andy Carrasco.

Based on the Draft Resolution’s reliance on an erroneous reading of *NAACP*, the Draft Resolution summarily dismissed the Declaration of Sharon Tomkins and Confidential Declarations as “hypothetical.”²² Further, in its analysis of whether SoCalGas made a *prima facie* showing, the Draft Resolution failed to consider or even cite to the Declaration of Andy Carrasco, submitted in support of the May 22, 2020 Motion to Quash.²³ This oversight is particularly puzzling given that the Draft Resolution grants SoCalGas’s motion to supplement the record of the December 2, 2019 Motion for Reconsideration/Appeal,²⁴ which cites the Carrasco Declaration at length at pp. 15-17. These declarations clearly demonstrated “a ‘prima facie showing of arguable first amendment infringement’” under *Perry v. Schwarzenegger*.²⁵ They describe the chilling effect that compelled disclosure of the DR-05 Contracts has *already* had, and that the SAP database discovery will continue to have, on SoCalGas’s First Amendment associational rights.

The Tomkins Declaration, the Confidential Declarations, and the Carrasco Declaration are nearly word-for-word equivalent to those in *Perry*. In *Perry*, the Ninth Circuit quoted at length from one of the declarations that it found sufficient in supporting a *prima facie* case of arguable First Amendment infringement. The declarant testified:

I can unequivocally state that if the personal, non-public communications I have had regarding this ballot initiative—communications that expressed my personal political and moral views—are ordered to be disclosed through discovery in this matter, it will drastically alter how I communicate in the future

²² D. Res. p. 16.

²³ Declaration of Andy Carrasco in support of Motion to Quash, May 22, 2020 [hereinafter “Carrasco Decl.”].

²⁴ D. Res. p. 26.

²⁵ *Perry, supra*, 591 F.3d at p. 1160-61 [citations omitted].

I will be less willing to engage in such communications knowing that my private thoughts on how to petition the government and my private political and moral views may be disclosed simply because of my involvement in a ballot initiative campaign. I also would have to seriously consider whether to even become an official proponent again.²⁶

The Ninth Circuit reasoned that “[a]lthough the evidence presented by Proponents is lacking in particularity, it is consistent with the self-evident conclusion that important First Amendment interests are implicated by the plaintiffs’ discovery request. The declaration creates a reasonable inference that disclosure would have the practical effects of discouraging political association and inhibiting internal campaign communications that are essential to effective association and expression.”²⁷

The Draft Resolution describes the Tomkins and Confidential Declarations SoCalGas submitted as follows:

In support of its infringement claim, SoCalGas relies on a declaration from Sharon Tomkins, SoCalGas’ Vice President of Strategy and Engagement and Chief Environmental Officer, stating that she **would be less likely to engage in certain communications and contracts if required to produce the requested information and stating her belief that other entities would be less likely to associate with SoCalGas if information about SoCalGas’ political efforts are disclosed to the Commission.** SoCalGas submitted additional declarations [the Confidential Declarations] from private organizations specializing in government relations and public affairs, outside of SoCalGas, including statements that disclosure to the Commission would **dissuade them from communicating or contracting with SoCalGas.**²⁸

More specifically, in Confidential Declaration No. 6, the declarant testifies that

I can unequivocally state that if the non-public contract I have with SoCalGas regarding the public affairs work I am doing with the company is ordered to be disclosed in response to the demand of the California Public Advocates Office, **it will drastically alter how I communicate in the future.**²⁹

²⁶ *Perry, supra*, 591 F.3d at p. 1163.

²⁷ *Id.* at p. 1163.

²⁸ D. Res. p. 15.

²⁹ Decl. No. 6 i/s/o Mot. for Reconsideration/Appeal, ¶ 4.

It continues,

In the future, **I will be less willing to engage in communications knowing my non-public association with SoCalGas and private discussions and views may be (and have been) disclosed simply because of my association with SoCalGas** in connection with its efforts to petition the government on political matters related to, among other things, rulemaking. **I am also seriously considering whether to associate with SoCalGas in [the] future regarding ballot initiatives, rulemaking, or any other political process** due to the breach of privacy that comes with disclosure of my thoughts, processes, decisions, and strategies.³⁰

The other Confidential Declarations state similar concerns. These alone meet the standard set by the Ninth Circuit.

The Draft Resolution, however, erroneously dismissed these declarations as “primarily hypothetical.” As described above, this is the not appropriate standard. The harm need not have occurred before a party can enforce their First Amendment rights. To hold otherwise would allow a party’s First Amendment rights to be trounced upon before a party can assert First Amendment protection. This is not the law. As the United States Supreme Court has held, the evidence of *prima facie* harm must simply show “**a reasonable probability** that the compelled disclosure . . . **will subject** them to threats, harassment, or reprisals from either Government officials or private parties.”³¹ Further, the Ninth Circuit has stated in *White v. Lee* that “[i]n making their First Amendment claim, the plaintiffs were obligated to prove only that the officials’ actions would have chilled or silenced ‘a person of ordinary firmness from **future** First Amendment activities’”³² Second, even if the law requires SoCalGas show “concrete” harm—which it does not—SoCalGas has done so. In November 2019, SoCalGas was forced to

³⁰ *Id.* ¶ 5.

³¹ *Buckley v. Valeo* (1976) 424 U.S. 1, 74 [emphasis added].

³² *White v. Lee* (9th Cir. 2000) 227 F.3d 1214, 1241 [emphasis added] [citation omitted].

produce the DR-05 Contracts to Cal Advocates under protest. As a result, SoCalGas, and its consultants, in fact suffered harm. The Carrasco Declaration explains the chilling effect that the production of the DR-05 Contracts had on SoCalGas’s associational rights:

As a result of even the December disclosures of several 100% non-ratepayer funded Balanced Energy IO contracts, the information regarding these associations disclosed to Cal Advocates **has altered how SoCalGas and its consultant, partner or vendor associates with each other, and it has had a chilling effect on these associations.** Such a result has (and would further) unduly impinge upon SoCalGas’s constitutional right to free association, and to associate with organizations and individuals of its choosing in exercise of its right to petition the government and advocate its position relating to natural gas, renewable natural gas, and green gas solutions.³³

Further, “due to the compelled contract disclosures that SoCalGas previously made, and the specter of additional compelled disclosures [of the SAP Database], SoCalGas is being forced to reconsider its decisions relating to political activities and associations.”³⁴ And “SoCalGas will be less willing to engage in contracts and communications knowing that its non-public association and communications with consultants, business partners and others on SoCalGas’s political interests may be subject to compulsory disclosure.”³⁵

In addition to the evidence in the record, SoCalGas intended to file additional declarations from its consultants in support of its Motion to Compel. However, ALJ DeAngelis ordered SoCalGas to serve the unredacted versions of the consultants’ declarations on Cal Advocates, and as such, SoCalGas had to withdraw the declarations in order to preserve its First Amendment rights at issue in the pending motions.³⁶ As evidenced in the Carrasco Declaration,

³³ Carrasco Decl., ¶ 6.

³⁴ *Id.* ¶ 9.

³⁵ *Id.*

³⁶ This is explained in SoCalGas’s Response to Cal Advocates’ Motion to Compel, Southern California Gas Company’s (U 904 G) Response To Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company’s December 2, 2019 Motion For Reconsideration Of

those consultant declarations attested to further concerns. One firm stated a fear that disclosure of its relationship with SoCalGas to Cal Advocates would cause “negative consequences—including financial and strategic information being released to its competitors, the breach of confidentiality its clients require for its services, the cost of responding to inquiries, and the breach of privacy that comes with disclosure of its contract.”³⁷ Another consultant, which also works with government entities, “indicated to SoCalGas that it has serious concerns about its business,” and “even indicated that it would not have done business with SoCalGas if it had known its information and contract details would have been disclosed.”³⁸ Thus, SoCalGas has amply shown a chilling effect on its own political speech and its political associations as required by *Perry*.

3. The Draft Resolution Committed Legal Error by Misidentifying the “Compelling Government Interest” As the CPUC’s General Investigatory Power Rather than Cal Advocates’ Authority Under Pub. Util. Code §309.5.

Once SoCalGas met its *prima facie* burden, First Amendment protection is presumed. No statutory power can overcome the supreme constitutional protection the First Amendment affords, unless the governmental entity can meet the heavy burden of strict scrutiny: “demonstrat[ing] that the information sought . . . is rationally related to a compelling governmental interest . . . [and] the ‘least restrictive means’ of obtaining the desired information.”³⁹

First Amendment Association Issues And Request For Monetary Fines For The Utility’s Intentional Withholding Of This Information, July 17, 2020, at pp. 6-7; *see also* Exhibit 7 [Email from R. DeAngelis dated May 22, 2020] attached to Cal Advocates’ Motion to Compel.

³⁷ Carrasco Decl. ¶ 8.

³⁸ *Id.*

³⁹ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160-61 [citations omitted].

The Draft Resolution asserts that the “compelling government interest” here is the Commission’s “broad statutory authority to inspect the books and records of investor-owned utilities in furtherance of its proper interest in fulfilling the Commission’s mandate to regulate and oversee utilities.”⁴⁰ This is error. First, the Commission’s mandate to regulate and oversee utilities is not implicated here. For example, the Confidential Declarations at issue have been filed with the Commission conditionally under seal. The Commission itself has access to the Confidential Declarations. SoCalGas has sought to protect disclosure of the Confidential Declarations to Cal Advocates, not to the Commission.

Second, the Commission’s mandate to regulate and oversee utilities is not tied to the existing need for the First Amendment protected information. As the United States Supreme Court has held, “Lawmaking at the investigatory stage may properly probe historic events for any light that may be thrown on present conditions and problems. But the First Amendment prevents use of the power to investigate enforced by the contempt power to probe at will and without relation to existing need.”⁴¹ To overcome First Amendment protection, any compelling government interest must be clearly defined and tied to the existing need for the First Amendment protected information.⁴² Indeed, as the Ninth Circuit has explained, the Supreme Court has “concluded that ‘an adequate foundation for inquiry must be laid before proceeding in such a manner as will substantially intrude upon and severely curtail or inhibit . . . protected associational rights.’”⁴³ If the Commission’s “broad statutory authority to inspect the books and

⁴⁰ D. Res. p. 17.

⁴¹ *DeGregory v. Attorney General of State of N.H.* (1966) 383 U.S. 825, 829 [ruling general investigatory power was not a “compelling state interest”]; *id.* at p. 830 [holding general investigatory power was “too remote and conjectural to override the guarantee of the First Amendment . . .”].

⁴² *Id.*

⁴³ *U.S. v. Mayer* (9th Cir. 2007) 503 F.3d 740, 748.

records of investor-owned utilities in furtherance of its proper interest in fulfilling the Commission’s mandate to regulate and oversee utilities,”⁴⁴ was a compelling government interest to permit Cal Advocates to inspect any and all books and records, it would swallow up any and all constitutional protections, as well as any other privileges or rights.⁴⁵ If that were the case, there would literally be no area into which Cal Advocates could not probe relating to SoCalGas’s First Amendment protected associations and political strategies. Such a broad articulation of a “compelling government interest” is legal error and must be rejected.

Instead, the existing need here is Cal Advocates’ desire to obtain information in order to investigate SoCalGas’s alleged misuse of ratepayer funds for political activity. In its own words, Cal Advocates relies on its authority under Pub Util. Code § 309.5(a) for its investigation. Cal Advocates states that it is investigating “SoCalGas’ **use of ratepayer monies** to fund anti-decarbonization campaigns through ‘astroturf’ organizations, 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.”⁴⁶ Pub Util. Code § 309.5(a) states that Cal Advocates’ goal is to “obtain the lowest possible rate for service consistent with reliable and safe service levels.” The Draft Resolution similarly understood the scope of Cal Advocates’ investigation to be focused on ratepayer funding issues: “the extent to which SoCalGas was using *ratepayer funds* to support organizations . . . that also support anti-decarbonization positions held by SoCalGas . . .”⁴⁷

⁴⁴ D. Res. p. 17.

⁴⁵ See *Gibson v. Florida Leg. Invest. Com.* (1963) 372 U.S. 539, 541 (The Supreme Court held that the broad investigatory power was insufficient, because it lacked a nexus with the proposed information sought).

⁴⁶ Motion for Contempt and Fines, June 23, 2020, p. 3; *see also* Motion to Compel and for Fines, July 9, 2020, p. 1.

⁴⁷ D. Res. p. 3 (emphasis added); *see also id.* p. 8 [“Cal Advocates continued its inquiry into SoCalGas’ use of *ratepayer monies* to fund an anti-decarbonization campaign through astroturf organizations.” (Emphasis added.)]

Therefore, the compelling government interest here is Cal Advocates investigation into SoCalGas’s alleged misuse of ratepayer funds for political purposes under Pub. Util. Code § 309.5(a). SoCalGas does not dispute that Cal Advocates’ mandate under Pub Util. Code § 309.5(a) could qualify as a “compelling government interest.” However, Cal Advocates’ mandate (and its investigation) is much narrower than the Commission’s general broad oversight authority. The Draft Resolution committed legal error by failing to recognize this distinction and applying the incorrect compelling government interest.

In the alternative, even if the Commission’s broad authority to regulate and oversee utilities is a compelling government interest, it does not extend to the Commission’s regulation of SoCalGas’s use of shareholder funds for social, political, or corporate image-enhancement purposes.⁴⁸

4. The Draft Resolution Fails to Establish that Compelling the Discovery is “Rationally Related” to Cal Advocates’ Need for the Information to Further its Investigation.

The Draft Resolution committed legal error in failing to find a “nexus” between the compelling government interest (Cal Advocates’ investigation into the use of *ratepayer* funds), and Cal Advocates’ alleged need for discovery into SoCalGas’s First Amendment-protected *political* activities.⁴⁹ Cal Advocates’ discovery would reveal the identity of, amounts spent on,

and p. 25 [“ . . . Cal Advocates’ inquiry into specific contracts and information about SoCalGas’ potential use of *ratepayer funds* for political activities . . .” (Emphasis added.)]

⁴⁸ Even if the Draft Resolution relies on the Commission’s broad authority to regulate and oversee utilities, the Commission has made clear that “[t]he only commitment of shareholder earnings enforced by the Commission is the overarching requirement that the shareholders maintain sufficient invested capital to sustain the authorized capital structure of the company to finance its used and useful plant and equipment necessary to serve the ratepayers.” *In Re S. California Gas Co.*, No. 02-12-027, 2004 WL 2963807, at *1 (Dec. 2, 2004).

⁴⁹ *See Gibson, supra*, 372 U.S. at p. 546 [“We understand this to mean—regardless of the label applied, be it ‘nexus,’ ‘foundation,’ or whatever—that it is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest.”].

and the activities undertaken by SoCalGas’s partners, consultants and vendors in connection with its non-public, below-the-line, shareholder-funded political activities. Importantly, this discovery would not provide information concerning whether ratepayer funds were used for political activities, which is the crux of Cal Advocates’ stated investigation. The Draft Resolution failed to address the record on this argument in the motions and simply accepted Cal Advocates’ irrational and insufficient claim that access to SoCalGas’s below-the-line accounts will allow it to verify misclassifications inappropriately charged to *above-the-line* accounts.

The proper scope of Cal Advocates’ investigation is SoCalGas’s alleged misuse of ratepayer funds to support its political activities. The way to confirm that no ratepayer funds were improperly used is to investigate SoCalGas’s above-the-line accounts. As discussed further below, those are all currently available to Cal Advocates (once it signs an NDA) in the SAP database (with the exception of information protected by the attorney-client privilege and work product). If there were any inappropriate lobbying or political activities charged to above-the-line accounts, Cal Advocates would be able to find those inappropriate charges in the above-the-line accounts. Cal Advocates will not find any inappropriate charges to above-the-line accounts by examining below-the-line accounts, because they are simply not in the below-the-line accounts.

Instead, in seeking the DR-05 Contracts, the SAP Database, and the Confidential Declarations, Cal Advocates wants to investigate SoCalGas’s 100% shareholder-funded political activities, including the identity of who engaged in those activities and the details of the underlying First Amendment-protected activity. This intrusive discovery goes far beyond an accounting exercise of whether SoCalGas used ratepayer funds to pay for political activities. The discovery is not geared towards actually investigating the alleged wrongful use of ratepayer

funds, but instead, the content and manifestation of SoCalGas’s political opinions and ideas, including the identities and activities protected by the First Amendment. This is in no way rationally related to Cal Advocates’ mandate.

The Draft Resolution further erred in essentially flipping the burden from Cal Advocates to SoCalGas, reasoning that “[a] statement of counsel for SoCalGas describing certain activities as ‘100% shareholder-funded’ does not, in and of itself, deprive Cal Advocates of its statutory authority to review and make its own determinations regarding financial information from a regulated utility.”⁵⁰ To be clear, it is Cal Advocates’ evidentiary burden to justify its need for the discovery under *Perry*, which it has not done.⁵¹ Otherwise, Cal Advocates at any time can assert that it wishes to “make its own determination” as to any fact and trample upon any and all First Amendment rights. Further, there is no discretionary “determination” to be made here—it is a factual statement by Cal Advocates that the discovery at issue seeks information that is solely booked to below-the-line accounts. That is the nature of what gave rise to this dispute, as Cal Advocates refused to be satisfied with investigating ratepayer monies and has stated point blank that the accounts protected by the First Amendment are precisely the types of accounts that Cal Advocates intends to access.⁵² Further, that SoCalGas has the burden to prove its activities are eligible for cost recovery,⁵³ has nothing to do with activities booked to 100% shareholder funded accounts for which SCG is *not* seeking cost recovery.

⁵⁰ D. Res. p. 19.

⁵¹ *Perry*, *supra*, 591 F.3d at p. 1161.

⁵² Response Of Public Advocates Office To Southern California Gas Company Motion To Quash Portion Of Subpoena, For An Extension, And To Stay Compliance (Not In A Proceeding) [hereinafter “Response to Motion to Quash”], June 1, 2020 (“Response to Motion to Quash”), at pp. 9-10 [accounts protected by the First Amendment are “precisely the types of accounts . . . that Cal Advocates intends to audit”].

⁵³ D. Res. p. 19.

Therefore, the Draft Resolution has failed to demonstrate that the discovery into SoCalGas’s 100% shareholder funded political activity is rationally related to Cal Advocates’ investigation into whether SoCalGas misused ratepayer monies.

5. The Draft Resolution Erred In Adopting Cal Advocates’ Deficient Arguments that its Investigation is Narrowly Tailored.

As the Draft Resolution recognizes, a governmental request for First Amendment-protected information must be narrowly tailored, “such ‘that the least restrictive means of obtaining the desired information’ have been used.”⁵⁴ As clear from the above discussion, Cal Advocates’ investigation can in fact be “achieved through means significantly less restrictive.”⁵⁵ Cal Advocates should investigate the above-the-line accounts to find out whether political activity has been misclassified. There is simply no need for Cal Advocates to investigate 100% shareholder-funded First Amendment protected political activity, or to compel the identities of SoCalGas’s political partners and vendors. The Draft Resolution erred in simply adopting Cal Advocates’ deficient conclusions to the contrary.

Cal Advocates has failed to meet its burden to demonstrate the discovery is narrowly tailored. In its response to SoCalGas’s Motion for Reconsideration/Appeal, Cal Advocates argued that seeking the DR-05 Contracts was narrowly tailored because it “did not seek, for example, all contracts SoCalGas entered into regarding all lobbying activities, . . . [but only those] related to the Balanced Energy IO.”⁵⁶ As noted in SoCalGas’s reply brief, even at the time it was made, this argument was belied by the breadth of Cal Advocates’ other requests, including PubAdv-SCG-001-SCS, which (as Cal Advocates clarified in meet and confer)

⁵⁴ D. Res. p. 18 [citing *Perry, supra*, 591 F.3d at p. 1161].
⁵⁵ *Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 623.
⁵⁶ Cal Advocates Response to Mot. for Reconsideration/Appeal, p. 15.

requests “contracts related to Communications, Advocacy and Public Outreach aimed at local, state and federal government audiences.”⁵⁷ If Cal Advocates was interested in C4BES-related contracts, it should have narrowly tailored its request to only include contracts related to C4BES (which, incidentally, it already has). Instead, Cal Advocates demanded broadly the production of *all* contracts that were charged to the Balanced Energy IO (a below-the-line account). In fact, none of the contracts at issue are charged to above-the-line accounts. Therefore, DR-05 Question 8 is not narrowly tailored for Cal Advocates to obtain the information it needs for its investigation.

The Subpoena seeking access to SoCalGas’s entire SAP database is even more tenuous. Cal Advocates does not even argue that its request for SoCalGas’s entire SAP database was narrowly tailored⁵⁸—because it cannot. Instead, it argued that SoCalGas had no First Amendment rights in its political activities at all. Since the Draft Resolution rejected this position in affirming SoCalGas does, in fact, enjoy First Amendment rights the same as any other entity,⁵⁹ it must find that Cal Advocates failed to prove up this element.

Similarly, Cal Advocates does not put forth any justification as to how obtaining the Confidential Declarations will further its investigation.⁶⁰ Again, this is because it cannot do so. The unredacted versions of the Confidential Declarations would only reveal the identity of SoCalGas’s associations and scope of the First Amendment political activity in which it

⁵⁷ Southern California Gas Company’s (U 904 G) Reply In Support Of Its 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), Dec. 27, 2019, p. 12 and n. 9.

⁵⁸ Cal Advocates’ Response to Mot. to Quash.

⁵⁹ D. Res. p. 14.

⁶⁰ Nor could Cal Advocates make the argument that they needed the Confidential Declarations in order to respond to SoCalGas’s Motion for Reconsideration/Appeal since Cal Advocates had already filed its response seven (7) months before it filed its Motion to Compel.

engaged—nothing about how the contracts are funded. The Draft Resolution similarly fails to specifically analyze how obtaining the Confidential Declarations is narrowly tailored to further Cal Advocates’ investigation.

6. The Draft Resolution Erred in Failing to Analyze Why SoCalGas’s Custom Software Solution For SAP Access Is Not An Appropriate Least Restrictive Means for Cal Advocates to Achieve Its Investigation.

The Draft Resolution committed legal error by failing to specifically analyze how the Subpoena for SoCalGas’s entire SAP database is narrowly tailored or the “least restrictive means” to obtain the needed information to inform Cal Advocates investigation into SoCalGas’s alleged misuse of ratepayer funds. Instead, the Draft Resolution summarily dismisses SoCalGas’s First Amendment rights by simply referring back to its discussion related to the DR-05 Contracts. The Draft Resolution fails to explain, and cannot explain, how access to all of SoCalGas’s accounts (above-the-line and below-the-line) in the SAP database is the least restrictive means of investigating the use of ratepayer funds.

SoCalGas has proposed a solution to Cal Advocates that would allow it to investigate all its above-the-line accounts for any misclassification of political activities: a custom software solution in its SAP database that would have provided Cal Advocates access to 100% of its above-the-line accounts, with the exception of invoices from law firms or other records of legal expenditures that are protected by the attorney-client privileged or attorney work product information. This is a least restrictive means that would provide Cal Advocates the ability to examine all of the above-the-line accounts to determine whether SoCalGas improperly charged any inappropriate political activity to ratepayers while still protecting SoCalGas’s First

Amendment information. The Draft Resolution fails to discuss or analyze this solution at all. This is clear error.

7. The Draft Resolution Erred in Relying on *Duke Energy* to Justify Cal Advocates’ Discovery.

The Draft Resolution erred in relying on *United States v. Duke Energy Corp.* (M.D.N.C. 2003) 218 F.R.D. 468 to conclude the discovery was appropriate. First, *Duke Energy* is not a strict scrutiny case; it applies a mere “relevance” standard and expressly states it is not “employ[ing] a higher level of scrutiny” reserved for discovery that directly implicates First Amendment concerns.⁶¹ The Draft Resolution committed legal error in applying this lower “relevance” standard.⁶² The Court in *Duke Energy* determined the discovery sought did not go “to the heart of the group’s associational activities.”⁶³ Here, it does: Cal Advocates seeks information expressly about the identity and content of its political and associational activities. As such, the Commission must apply the strict scrutiny standard established by the Ninth Circuit in *Perry* and the California Supreme Court in *Britt v. Super. Ct.*⁶⁴

Second, the discovery requests in *Duke Energy* were very different factually from those here. In that case, the information sought was restricted to communications between the defendant utility company and an advocacy group “which would tend to show whether Duke Energy had actual or constructive notice of the meaning of National Source Review (“NSR”)

⁶¹ See *Duke Energy, supra*, 218 F.R.D. at p. 473 [applying “relevance” standard]; see also *id.* [“Of course, if the scope of the lawsuit and the discovery goes to the heart of the group’s associational activities, then the Court will employ a higher level of scrutiny.”].

⁶² D. Res. p. 20 [applying *Duke Energy* to conclude Cal Advocates’ discovery is permitted “because it was relevant to the subject matter of the litigation.”].

⁶³ *Duke Energy, supra*, at p. 473.

⁶⁴ *Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 865 [government’s burden is “particularly heavy” to show demands are “precisely tailored” to serve a “compelling state interest”].

regulations and interpretations.”⁶⁵ It did not seek *all* communications between Duke Energy and the advocacy group—only those tending to show whether Duke Energy had knowledge of a particular fact. The court found that the government was not engaged in a “general fishing expedition” because the discovery order was “limited to a specific purpose” separate from the organization’s “associational activities.”⁶⁶ Unlike *Duke Energy*, Cal Advocates’ investigation is not targeted, and does go to the heart of SoCalGas’s associational activities. The discovery seeks *all* of SoCalGas’s financial information in SAP, including SoCalGas’s 100% shareholder-funded political activities, which Cal Advocates has admitted is the precise information it wants to audit. Cal Advocates discovery demand is akin to the fishing expedition referenced in *Duke Energy*. Instead of limiting its discovery to above-the-line account to determine whether ratepayer funds were improperly used, Cal Advocates is going on a fishing expedition for information that goes to the heart of SoCalGas’s associational activities (SoCalGas’s association with organizations and individuals in exercising its right to petition the government and advocate its position relating to natural gas, renewable natural gas, and green gas solutions).⁶⁷

Third, in *Duke Energy*, the parties failed “to offer any proposal for protection less than suppression.”⁶⁸ Here, SoCalGas has offered and enabled since May 29 a less restrictive means for Cal Advocates to obtain information it needs for its investigation: access to its *above-the-line* accounts, which is all Cal Advocates needs to investigate the use of *ratepayer* funds.

SoCalGas’s custom software solution would provide Cal Advocates access to 100% of the above-the-line accounts, excluding information protected by the attorney-client privilege and

⁶⁵ *Duke Energy, supra*, 218 F.R.D. at p. 472.

⁶⁶ *Id.* at p. 473.

⁶⁷ Carrasco Decl., ¶ 6.

⁶⁸ *Id.* at p. 473.

work product. As discussed above, the Draft Resolution fails to explain why this is not an appropriate lesser restrictive means that provides Cal Advocates with the information it needs to conduct its investigation.

As these points make clear, the Draft Resolution’s analysis of the First Amendment issue is riddled with legal and factual error. The Commission should correct these errors before approving the Resolution.

B. SoCalGas Supports the Draft Resolution’s Affirmation of its Due Process Rights and the Deferral of Fines and Sanctions.

Because Cal Advocates’ investigation has taken place outside any proceeding, no clear scope was initially defined, and due process guardrails have not always been assured. SoCalGas appreciates the Draft Resolution’s post-hoc reaffirmance of its due process rights, including its right to bring motions and submit evidence on discovery disputes, including “an opportunity to submit responses to Cal Advocates’ motions, submit motions itself, and even further, submit motions for the full Commission to act on,” “prior to any decision or ruling.”⁶⁹ As the Draft Resolution affirms, “SoCalGas had multiple opportunities and continues to have opportunities to challenge [Cal Advocates’] discovery requests.”⁷⁰ Indeed, as the Draft Resolution recognizes, SoCalGas does have First Amendment rights, and (as discussed below) a right to protect its attorney-client privileged and work product information. Due process thus requires that SoCalGas have the opportunity to assert and request adjudication of those rights and privileges, and for those rights and privileges to actually be adjudicated by a neutral decisionmaker. This

⁶⁹ D. Res. p. 23.

⁷⁰ D. Res. pp. 23-24.

adjudication must occur before it can be deprived of those rights via compelled production, or be fined or found in contempt for seeking to adjudicate those rights.

SoCalGas also supports the Draft Resolution’s conclusion that “[t]his Resolution, and more specifically, the underlying process, is not the proper means for the Commission to consider [Cal Advocates’ requests for] fines and contempt.”⁷¹ As argued at length in SoCalGas’s response to Cal Advocates’ Motion for Contempt, and in response to its motion to compel, due process guaranteed by the United States and California Constitutions, applicable case law, and Commission precedent clearly requires that the Commission provide SoCalGas adjudicatory due process, including among other things an evidentiary hearing on issues of disputed material facts, prior to assessing fines and penalties.⁷²

C. SoCalGas Supports the Draft Resolution’s Referral of any Further Investigation into SoCalGas’s Alleged Misuse of Ratepayer Funds for Political Purposes to an Appropriate Enforcement Division Within the Commission.

SoCalGas further supports the Draft Resolution’s conclusion that any further investigation of SoCalGas’s alleged misuse of ratepayer funds for political purposes will be referred to an appropriate enforcement division within the Commission.⁷³ On July 17, 2020, SoCalGas submitted a letter to Commission President, Marybel Batjer, to request that the Commission open a statewide Order Instituting Rulemaking (OIR) to establish clarity for all

⁷¹ D. Res. p. 26.

⁷² 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, July 2, 2020, pp. 19-25; Southern California Gas Company’s (U 904 G) Response To Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company’s December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility’s Intentional Withholding Of This Information (Not In A Proceeding), July 17, 2020, pp. 18-26

⁷³ D. Res. p. 27.

investor-owned utilities on ratemaking treatment for lobbying and other advocacy activity, to establish clear definitions for lobbying for accounting purposes, and to create a structure for cost allocation studies of lobbying to be used in future general rate cases. In the letter, SoCalGas pointed out that there is a lack of clarity in how the Commission approves costs for education, lobbying and advocacy and that gray areas exist. SoCalGas takes its obligation to comply with Commission rules seriously and as such also requested that the Commission open an Order Instituting Investigation (OII) of SoCalGas to be performed concurrently with the OIR in an open forum governed by established rules of practice and procedure. In furtherance of its July 17, 2020 letter, SoCalGas requests that the Commission modify the Draft Resolution to not only refer the investigation of SoCalGas’s alleged misuse of ratepayer funds for political activity to an enforcement division of the Commission but to also open a statewide OIR to provide all stakeholders clarity on how the Commission approves costs for education, lobbying and advocacy.

D. SoCalGas Supports Protection of its Attorney-Client Privilege and Attorney Work Product Privilege.

The Draft Resolution states that SoCalGas’s May 22, 2020 Motion to Quash Portions of the Subpoena is denied in full, when in fact, it was granted in part as to SoCalGas’s attorney-client privileged and attorney work product-protected information.⁷⁴ This should be clarified in the Draft Resolution, consistent with Finding No. 11 that SoCalGas “may assert” its attorney-client and work product privileges.⁷⁵ SoCalGas understands the Draft Resolution to approve of its software solution to shield its attorney-client privileged and work product-protected materials

⁷⁴ D. Res. p. 26.

⁷⁵ D. Res. p. 30.

from Cal Advocates in its SAP database. SoCalGas further requests that the Draft Resolution revise its order that SoCalGas provide a privilege log to encompass SoCalGas’ agreement to Cal Advocates’ offer of a privilege log consisting only of entries from 2015 to the present, and extend the compliance date to thirty (30) days from the date of entry of the Resolution.

SoCalGas maintains that it should not have to provide a log because Cal Advocates initially agreed it was not seeking attorney-client privileged or attorney-work product documents and conceded that such matters are not related in any way to its investigation.⁷⁶ In fact, Cal Advocates noted in writing: “Cal Advocates readily acknowledges that it has no desire to review any privileged information in the SAP database[.]”⁷⁷

Nevertheless, SoCalGas has always been willing to do a privilege log of an appropriate scope. In meet and confer discussions with Cal Advocates on this issue, SoCalGas noted that its accounting systems contained twenty-one years of data.⁷⁸ Cal Advocates therefore agreed to narrow the date range of the privilege log to January 1, 2015 to the present.⁷⁹ While SoCalGas appreciates the narrower date range, SoCalGas noted in response that it would have to review documents from many cases that have nothing to do with Cal Advocates’ inquiry about the alleged use of ratepayer funds for lobbying (such as employment cases or personal injury cases).⁸⁰ Moreover, SoCalGas estimates that at least 10,000 documents will have to be reviewed for attorney client privilege or attorney work product.⁸¹ Nevertheless, SoCalGas agrees to limiting the privilege log starting on January 1, 2015. SoCalGas requests the Draft Resolution

⁷⁶ Henry Dec. ¶ 9.

⁷⁷ Declaration of Stephen Castillo dated May 28, 2020 filed in support of Cal Advocates’ Opposition to Motion to Quash, ¶ 13

⁷⁸ Declaration of Jason H. Wilson, Nov. 19, 2020 (served concurrently herewith), ¶ XX.

⁷⁹ *Id.* ¶ XX

⁸⁰ *Id.* ¶ XX

⁸¹ *Id.* ¶ XX.

codify this scope of a privilege log and revise its order to SoCalGas to provide a log accordingly.⁸² Even such a narrowed scope, however, takes time, and thus, SoCalGas requests an extension from fifteen (15) days as provided in the Draft Resolution,⁸³ to thirty (30) days. SoCalGas is making diligent progress on the log, but the number of entries requires additional time for such an extensive time period.

E. The Draft Resolution Erred in Concluding GO 66-D Provided Ample Protection for SoCalGas’s Live SAP Database, and Should Order Cal Advocates to Enter Into an NDA or Alternatively Issue a Protective Order to Allow SoCalGas to Mark Entries for Confidentiality.

The Draft Resolution concludes that Pub. Util. Code § 583 and General Order 66-D (GO 66-D) “provide ample protection and processes for utilities to submit confidential information to the Commission, including Cal Advocates.”⁸⁴ GO 66-D provides that “[i]f 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.”⁸⁵ It must then specify the basis on which it claims confidential treatment,⁸⁶ and submit a declaration to that effect.⁸⁷ However, GO 66-D is impracticable given Cal Advocates’ request for live, remote access to SoCalGas’s full SAP database containing millions of entries.

In the May 5, 2020 Subpoena, Cal Advocates requested live, remote access to SoCalGas’s SAP database. The breadth of this request is unprecedented, as SoCalGas has never before provided live remote access to Cal Advocates or anyone at the Commission. To be clear,

⁸² D. Res. p. 26, p. 30 ¶ 11.

⁸³ D. Res. p. 34, ¶ 8.

⁸⁴ D. Res. p. 30, ¶ 9; *see also id.* pp. 12-13.

⁸⁵ GO 66-D ¶ 3.2(a).

⁸⁶ *Id.* ¶ 3.2(b).

⁸⁷ *Id.* ¶ 3.2(c).

the Subpoena’s demand for SAP access is different than from prior fixed database that SoCalGas typically provides Cal Advocates in the GRC.

In addition to information protected by the First Amendment and the attorney-client and work product privileges, SoCalGas’s SAP database contains sensitive information which merits confidential treatment under GO 66-D, such as financial and private information like vendor bank account numbers, social security numbers, contract prices, information about employee reimbursements, and workers’ compensation payments.⁸⁸ Information that the Commission has regularly agreed is confidential. It is particularly important here since Cal Advocates has a Common Interest Agreement with Sierra Club and would likely share non-confidential information under that agreement.

GO 66-D does not provide for an adequate mechanism to assert confidentiality protection for remote access to a live database. SoCalGas is unable to review ahead of time the information Cal Advocates wishes to investigate, and cannot “mark” a live database. The database displays data in multiple fields, making “live” designation simply impossible.

Even if SoCalGas can somehow mark a live database, it would be unreasonably burdensome to require SoCalGas to review the entire database (millions of entries) ahead of time for confidential treatment. SoCalGas presented uncontroverted evidence about it would be unduly burdensome to mark the confidential information in the SAP financial database due the volume of records in that database alone. One declarant noted:

The SAP system contains millions of accounting records. For example, the SAP system contains millions of records called “accounting documents.” An accounting document reflects postings of financial transactions in the SAP system, and the document contains fields including but not limited to those which

⁸⁸ Decl. of Dennis Enrique ISO Mot. to Quash (May 22, 2020), ¶¶ 4-5; Declaration of Kelly Contratto dated July 1, 2020 filed in opposition to Cal Advocates’ Motion for Contempt, ¶ 9

reveal sensitive information such as social security numbers, banking accounting numbers and information, pricing information, amongst others. Further, through the accounting document a user can access or link through to underlying records such as invoices, which itself may contain additional sensitive information. **For the period from approximately January 1, 2015 to April 30, 2020, SoCalGas’s SAP system contains approximately 13 million accounting documents.**⁸⁹

No doubt recognizing the difficulty of complying with Section 3.2 of GO 66-D during meet and confer discussions, Cal Advocates suggested that the parties enter into an NDA to protect the confidentiality of information in the SAP system that would allow SoCalGas to interpose its confidentiality designations on any document the auditor sought to copy or print.⁹⁰

On May 12, 2020, Cal Advocates sent SoCalGas an email stating in the relevant part:

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, provide that it does not limit Cal Advocates’ rights to see a Commission determination to de-designate information it concludes is not confidential. Please provide a draft NDA for Cal Advocates’ review and approval.⁹¹

SoCalGas provided Cal Advocates a draft NDA incorporating this process on May 18, 2020.⁹²

These procedures are similar to those found in Section 7 of GO 66-D. The process is a slight modification from Section 7 of GO 66-D since Section 7 also does not address this situation where remote access to a live database is requested.

However, when SoCalGas asserted its rights to protect *other* information in its SAP database via the Motion to Quash, Cal Advocates abruptly reneged on its earlier agreement,

⁸⁹ Declaration of Kelly Contratto dated July 1, 2020 filed in opposition to Cal Advocates’ Motion for Contempt, ¶ 9 [emphasis added].

⁹⁰ Henry Dec., Ex. J (Letter of Jason Wilson to Traci Bone, May 18, 2020, re: Meet and Confer re Cal Advocates’ Data Request and Subpoena for SAP Access).

⁹¹ Declaration of Jason H. Wilson ISO Response to Motion to Contempt (July 2, 2020), Ex. F [Email of Traci Bone to Elliott S. Henry, , Re: SAP questions – Follow Up Regarding Read-Only Remote Access, May 12, 2020.]

⁹² *Id.* at Ex. I [Email of Elliot S. Henry to Traci Bone, Re: NDA (May 18, 2020)].

claiming for the first time that statutory protections were adequate to protect the confidentiality of SoCalGas’s SAP database and that “the purpose of the NDA has been defeated by the instant Motion to Quash.”⁹³ Unfortunately, ALJ DeAngelis denied SoCalGas the right to file a reply, which deprived SoCalGas of the ability to respond to this argument. In fact, the purpose of the NDA was not “defeated” by the Motion to Quash. The NDA was designed to protect financial information and other non-public information that was *not otherwise protected* by the attorney-client or work product privileges or the First Amendment.

SoCalGas successfully implemented its custom software solution to make the SAP database available to Cal Advocates on May 29, 2020. Instead of signing the NDA to obtain access to 100% of SoCalGas’s above-the-line accounts, which would have allowed Cal Advocates to continue its investigation into SoCalGas’s alleged misuse of ratepayer funds for political activities, Cal Advocates filed a motion to find SoCalGas in contempt of the Subpoena.⁹⁴

The fact remains that GO 66-D is not sufficient to protect the confidentiality of private and financial information via remote access to the live SAP database. The Draft Resolution should order SoCalGas and Cal Advocates to enter into an NDA to allow SoCalGas 20 days to mark any document Cal Advocates chooses to print or copy off SoCalGas’s SAP database and assert confidentiality protection under GO 66-D. In the alternative, the Draft Resolution should enter the attached protective order (Attachment 1) incorporating that process.

⁹³ *Id.* p. 38, n. 131.

⁹⁴ Public Advocates Office Motion to Find SoCalGas in Contempt of the 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, June 23, 2020.

Furthermore, SoCalGas request that the Commission put a reasonable time limit on Cal Advocates’ remote access based upon the May 5, 2020 subpoena for several reasons. As discussed above, the access being provided here (live access to all of SoCalGas’s financial information) is unprecedented and should not last indefinitely. Cal Advocates access should be limited to a reasonable amount of time that it needs to conduct its investigation into whether SoCalGas’s misused ratepayer funds for political activity. Once Cal Advocates completes its review (e.g., 15 days, 30 days, 60 days), this unprecedented access should end. Further, there are expenses involved with permitting Cal Advocates ongoing remote access; for example, SoCalGas has to provide a technical support team for Cal Advocates. To the extent, Cal Advocates require additional information, Cal Advocates can serve further data requests in accordance with its discovery powers for the information.

F. The Draft Resolution Should Stay Enforcement of the Portion of the Resolution that Requires SoCalGas to Produce Information Protected by its First Amendment Rights Until the Commission Issues a Final Decision on the AFR (and Final Resolution of a Subsequent Appeal to the Court of Appeal).

Due to the important Constitutional rights at issue, if the Commission does not modify the Draft Resolution as requested in this Comment, SoCalGas intends to file an application for rehearing (AFR) and, if necessary, a petition for writ of review with the Court of Appeal. However, Rule 16.1 and Pub. Util. Code §1735 states that an application for rehearing (AFR) does not excuse compliance with the Resolution. As such, SoCalGas would be required to produce the discovery on December 18, 2020 (15 days after the Commission voting meeting on December 3) while the AFR is pending.⁹⁵ Given the important Constitutional issues at stake, SoCalGas respectfully requests that the Commission stay enforcement of at least the portion of

⁹⁵ The Draft Resolution is currently scheduled to be voted on at the Commission’s December 3, 2020 meeting.

the Resolution that requires SoCalGas to produce information protected by its First Amendment while still providing Cal Advocates with access to 100% of SoCalGas’s above-the-line account. The Commission can grant this very narrow stay in one of two ways: (1) modify this Resolution to grant Cal Advocates access pursuant to SoCalGas’s custom software solution which excludes the information SoCalGas asserts is protected under its First Amendment rights until the Commission issues a final decision on the AFR (and final resolution of a subsequent appeal to the Court of Appeal); or (2) modify Order Paragraph 8 to extend SoCalGas’s compliance date from 15 days to 45 days as to the information SoCalGas asserts is protected under its First Amendment rights. Cal Advocates will still receive access to 100% of SoCalGas’s above-the-line account, excluding information protected by the attorney client privilege and work product, within 15 days of the approval of the Resolution.

This very narrow stay of the Resolution will serve several purposes:

First, it protects SoCalGas’s First Amendment rights as well as SoCalGas’s confidential information while the Commission considers SoCalGas’s AFR. If SoCalGas is required to produce the discovery as required by the Draft Resolution, SoCalGas will suffer serious and irreparable harm as described in the Carrasco Declaration and Confidential Declarations. This harm cannot be undone. Once SoCalGas’s First Amendment protected information has been turned over to Cal Advocates, that bell cannot be unrung.⁹⁶ Based on the Draft Resolution’s legal errors that SoCalGas discussed above, SoCalGas is likely to prevail on the merits of the AFR.

⁹⁶ *Fed. Trade Comm’n v. Qualcomm Inc.*, 935 F.3d 752, 756 (9th Cir. 2019) (finding that there is a probability of irreparable harm where the injunction requires a party to enter new contractual relationships and renegotiate existing ones on a large scale and imposes fundamental business changes that cannot be easily undone should party prevail on appeal).

Second, it will conserve the parties', the Commission's, and potentially the Court of Appeal's resources in not having to address additional motions to stay on an expedited basis. If the Commission does not modify the Draft Resolution to provide for the requested limited stay, SoCalGas will have to immediately file a motion to stay the Resolution with a concurrent AFR and request an expedited ruling on the motion to stay. This will require additional briefing by the parties and expend Commission resources to consider and rule on the motion to stay on an expedited basis. Further, if the Commission does not rule on SoCalGas's motion to stay before SoCalGas must comply with the Resolution, SoCalGas will have to seek emergency relief from the Court of Appeal. This will necessitate further expedited briefing by the parties and the Commission to the Court of Appeal potentially in a very compressed span of time in or around major end-of-year public holidays.

Third, the balance of harm here overwhelmingly favors modifying the Draft Resolution to provide SoCalGas with a stay as to the narrow category of information that is protected by SoCalGas's First Amendment rights. Cal Advocates and the Commission will not be prejudiced by the narrow stay of the Resolution. Cal Advocates will still be able to access 100% of SoCalGas's above-the-line account while the stay is in place. Moreover, the Draft Resolution ordered that any further investigation into SoCalGas's use of ratepayer funds for political activities will be referred to an appropriate enforcement division within the Commission. This has yet to occur. Therefore, there is no procedural schedule that will be affected by a narrow stay of the Resolution.

III. Conclusion

SoCalGas respectfully requests the Commission adopt the Proposed Changes suggested herein.

Respectfully submitted,

/s/ Jason Wilson

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

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