



March 29, 2023

Chief Justice Patricia Guerrero and
Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
Via TrueFiling

RE: Amicus Curiae Letter in Support of Petition for Review
Supreme Court Case No. S278642
Southern California Gas Company v. Public Utilities Commission, 87 Cal. App. 5th 324
(2023) (Court of Appeal Case No. B310811)

Dear Chief Justice Guerrero and Associate Justices:

The Center for Biological Diversity respectfully submits this letter urging the Court to grant review in the above-titled matter. This Court’s review is necessary to settle important questions of law concerning effective oversight of state regulated monopoly utility companies.

I. Statement of interest

The Center for Biological Diversity (“the Center”) is a non-profit environmental organization with over 1.7 million members and online activists dedicated to protecting endangered species and wild places through rigorous science, advocacy, and environmental law. The Center’s Energy Justice Program implements campaigns to address utility obstacles to renewable energy; to advance a democratic energy future fueled by distributed solar and other clean energy; and to protect communities and wildlife most impacted by the climate emergency and systemic inequities.

In 2021, the Energy Justice Program submitted to the Federal Energy Regulatory Commission a Rulemaking Petition seeking amendments to the Uniform System of Accounts (“USofA”) that would increase transparency for utility political advocacy. *See* Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses, 86 Fed. Reg. 72,958, 72,960 (Dec. 23, 2021). The Petition focused on the appropriate accounting treatment of industry association membership dues, which utilities typically divide between above-the-line and below-the-line accounts. *Id.* In response to the Petition, FERC has issued a Notice of Inquiry to further explore issues concerning the transparency of utility advocacy activities. *Id.*

II. Review is necessary to settle important questions of law

Regulated utilities may not use customer funds for political activities that benefit shareholders rather than consumers. *See, e.g., Sw. Elec. Power Co. v. Fed. Power Comm’n*, 304 F.2d 29, 41 (5th Cir. 1962); 15 U.S.C. § 3203(b)(2). However, utilities are abusing these restrictions by improperly recording advocacy spending in above-the-line accounts presumptively recoverable from ratepayers. *See* Dave Anderson, *FirstEnergy charged Pennsylvania customers \$2.4 million for ‘inappropriate costs’ related to Ohio investigation*, Energy & Pol’y Inst. (Dec. 15, 2022); Kate Aronoff, *Your huge winter heating bill could be funding fossil fuel lobbyists*, The New Republic (Dec. 6, 2022); Nick Tabor, *Meet the group lobbying against climate regulations — using your utility bill*, Salon (June 8, 2022); Sammy Roth, *How should utility companies spend your money? A debate rages*, L.A. Times (May 13, 2021).¹

In the case under review, Southern California Gas Company (“SoCalGas”) also recorded certain political advocacy expenses above-the-line, later claiming it was an accounting error. *S. Cal. Gas Co. v. Pub. Util. Comm’n*, 87 Cal. App. 5th 324, 331 (2023). In subsequent data requests, the Public Utilities Commission (“Commission”) ordered the for-profit company to provide information to verify how certain advocacy expenses are being treated. *Id.* at 331-36. However, the Court of Appeal ruled that SoCalGas has a First Amendment right to conceal its advocacy spending, rejecting the argument that reviewing below-the-line shareholder spending may be necessary to confirm that a utility is not booking advocacy costs to ratepayers above-the-line. *Id.* at 345-46.

We urge this Court to review the Court of Appeal’s ruling for two reasons.

First, contrary to the Court of Appeal’s presumption, numerous utility expenses include both recoverable and non-recoverable aspects. For example, in a pending Notice of Inquiry (“NOI”) before the Federal Energy Regulatory Commission (“FERC”) over how utilities record political advocacy activities under the Uniform System of Accounts (“USofA”), FERC is considering the appropriate accounting treatment of industry association membership dues, only a portion of which is recorded above-the-line. 86 Fed. Reg. 72,958 (Dec. 23, 2021); *see also Unif. Sys. of Accts. for Gas Corps.*, 1987 Cal. PUC LEXIS 887 (Cal. P.U.C. Mar. 25, 1987) (Commission adoption of the FERC USofA). As the FERC NOI explains, utilities record a separate portion of these industry association dues below-the-line to reflect their associations’

¹ Available at <https://www.energyandpolicy.org/firstenergy-pennsylvania-inappropriate-costs/>; <https://newrepublic.com/article/169306/winter-heating-bill-lobbying>; https://www.salon.com/2022/06/08/meet-the-group-lobbying-against-climate-regulations--using-your-utility-bill_partner/; <https://www.latimes.com/environment/newsletter/2021-05-13/utilities-power-industry-groups-debate-boiling-point> (last visited Mar 28, 2023).

political advocacy activities, but it is frequently difficult to determine the accuracy of this apportionment. 86 Fed. Reg. at 72,960-61.

Similarly, as the Commission explains here, utilities often pay individual bills that must be allocated between ratepayer funded and shareholder funded accounts, such as staff salaries, or bills from outside law firms. *See* Public Utilities Commission Petition for Review, No. S278642 (Feb. 15, 2023) at 26; *see also* California Utilities Commission General Order No. 77-M (“Order 77-M”) (requiring disclosure of total fees paid to attorneys).

Reviewing each portion of these expenses that get divided between above and below-the-line accounts is vital to verifying whether a utility is making these allocations properly. Accordingly, this Court’s review is necessary to resolve an important question of law concerning whether reviewing below-the-line shareholder spending may be appropriate and necessary for effective oversight of utility spending.

Second, the expenses recorded in above-the-line accounts are often considerably more opaque than the Court of Appeal assumed. State utility commissions — including in California — require utilities to disclose below-the-line data precisely because they need information concerning shareholder spending to confirm the accuracy of above-the-line spending disclosures. *See, e.g., id.* (requiring disclosure of all outside dues and donation payments); North Carolina Utilities Commission Rule 1-32(g) (requiring annual disclosure of below-the-line account information); Texas Utilities Commission Rules Chapter 25, § 25.77 (requiring annual disclosure of certain advocacy expenses). For similar reasons, nine States submitted joint comments in the pending FERC NOI explaining the importance of utility spending transparency, and discussing how above-the-line accounts may embed advocacy expenses that are not readily apparent. *See* Comments of the State Agencies in RM22-5 at 9-14 (FERC Feb. 22, 2022)². In opening the NOI, FERC itself also explained that above-the-line disclosures alone may not be sufficient to resolve these issues. 86 Fed. Reg. at 72,959 (“where the line between public outreach and educational expenses and lobbying expenses is drawn has not been clearly delineated”).

This Court’s review is therefore also necessary to settle an important question of law regarding whether limiting transparency to above-the-line account information is sufficient to protect consumers’ interests.

² Available at https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220222-5380&optimized=false (last visited Mar 28, 2023).

Chief Justice Patricia Guerrero and Associate Justices
March 29, 2023
Page 4

In accordance with California Rule of Court 8.500(g)(1), a copy of this letter was served on all parties to the case.

Sincerely,

/s/ Howard M. Crystal

Howard M. Crystal
Energy Justice Program Legal Director
hcrystal@biologicaldiversity.org
(202) 809-6926

/s/ Roger Lin

Roger Lin
Senior Attorney
rlin@biologicaldiversity.org
(510) 759-5246
SBN: 248144

Center for Biological Diversity
1212 Broadway #800,
Oakland, CA 94612

Document received by the CA Supreme Court.