

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

Application for Rehearing of Resolution  
ALJ-391.

A.20-12-011  
(Filed December 21, 2020)

**PETITION OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) FOR  
MODIFICATION OF RESOLUTION ALJ-391 AND D.21-03-001**

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**I. INTRODUCTION.**

Pursuant to Rule 16.4 of the California Public Utilities Commission’s (“Commission’s”) Rules of Practice and Procedure (“Rules”), Southern California Gas Company (“SoCalGas”) respectfully submits this Petition for Modification (“Petition”) of Resolution ALJ-391 and Decision (D.) 21-03-001.<sup>1</sup> These two Commission orders concern the Commission’s directive to SoCalGas that it produce First Amendment protected materials reflecting political and associational activities in response to data requests from the Public Advocates Office (“Cal Advocates”). SoCalGas complied with the Commission’s instructions, and produced the materials under protest, lodging objections under the First Amendment of the United States Constitution.<sup>2</sup> In a published Opinion issued on January 6, 2023, the California Court of Appeal, Second District, upheld SoCalGas’s constitutional objections and vacated Resolution ALJ-391 and D.21-03-001 “with respect to shareholder data sought by the Commission for which petitioner asserts its First Amendment right of association.”<sup>3</sup> SoCalGas brings this Petition to address the changed circumstances presented by the Opinion and to conform the Commission’s orders to the Court’s holding by requiring the return or destruction of the First Amendment-protected materials, and removing the mooted suggestion that SoCalGas might be subject to contempt, sanctions, or fines in connection with these events.

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<sup>1</sup> See Res. ALJ-391 (issued on December 21, 2020); D.21-03-001 (issued on March 2, 2021).

<sup>2</sup> 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 (Not in a Proceeding) (December 2, 2019) (“Motion for Reconsideration”) at 4 (confirming that contracts were “produced under protest” and that SoCalGas asked the Commission to “issue an order . . . requiring the return or destruction of constitutionally protected materials.”); Res. ALJ-391 at 4; D.21-03-001 at 4.

<sup>3</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, 87 Cal.App.5<sup>th</sup> 324, 346 (2023).

Good cause exists to grant this Petition because, despite SoCalGas’s numerous efforts Cal Advocates has refused to relinquish the protected materials. In the underlying dispute that led to the Court of Appeal’s determination, SoCalGas asserted its First Amendment rights and requested “return or destruction of constitutionally protected materials that SoCalGas . . . [has] already produced under protest.”<sup>4</sup> The Court of Appeal’s determination vindicates SoCalGas’s position and sustains its protest. Therefore, this Petition seeks to modify both Resolution ALJ-391 and the subsequent decision on rehearing, D.21-03-001, to state expressly what is inherent in the Court of Appeal’s Opinion—*Cal Advocates must return or destroy the documents*. Likewise, removing the references to potential contempt, sanctions, or fines will avoid confusion by aligning with the Court’s finding that “no basis for sanctions exists.”<sup>5</sup> Modifying the underlying orders will bring an end to this longstanding matter and clarify the status of Resolution ALJ-391 and D.21-03-001 following these changed circumstances.

## **II. FACTUAL AND PROCEDURAL BACKGROUND.**

The First Amendment dispute underlying this Petition has a tortuous procedural history. Since May 2019, Cal Advocates has been engaged in an informal investigation of SoCalGas’s associational and advocacy activities.<sup>6</sup> As part of Cal Advocates’ investigatory efforts, in August 2019, it posed Data Request “CalAdvocates-SC-SCG-2019-05,” Question 8 of which sought all contracts for the “BALANCED ENERGY IO,” including material that was strictly “shareholder funded.”<sup>7</sup> SoCalGas declined to provide the information requested, noting that the request was outside of Cal Advocates’ statutory duties under Public Utilities Code Section 309.5, which concern only “ratepayer” issues. Cal Advocates filed a motion to compel outside of any proceeding. Cal Advocates’ motion to compel was assigned to Administrative Law Judge DeAngelis, who granted the motion.<sup>8</sup> Based on that ruling, SoCalGas provided the requested materials, but presented them under protest, subject to further adjudication of the constitutional objections attendant to the documents. After producing the documents, SoCalGas filed a motion

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<sup>4</sup> See Motion for Reconsideration at 4.

<sup>5</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, 87 Cal.App.5th 324, 346 (2023).

<sup>6</sup> See Res. ALJ-391 at 2-3 (summarizing Cal Advocates inquiry “outside of a proceeding”).

<sup>7</sup> See *Id.* at 3.

<sup>8</sup> Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in Proceeding) (issued November 1, 2019 outside of any formal proceeding); see also Res. ALJ-391 at 2-9 (outlining procedural background underlying motion to compel).

for reconsideration to the Commission re-asserting its First Amendment rights and requesting “the return or destruction of constitutionally protected materials.”<sup>9</sup> The Commission rejected SoCalGas’s arguments relating to turning over the First Amendment protected materials in Resolution ALJ-391 and affirmed this result on rehearing in D.21-03-001.<sup>10</sup>

SoCalGas challenged these Commission determinations through a petition for writ of review to the Second District Court of Appeal, which resulted in a published Opinion vacating Resolution ALJ-391 and D.21-03-001, “with respect to shareholder data sought by the Commission for which petitioner asserts its First Amendment right of association.”<sup>11</sup> The Second District’s Opinion addressed the materials, among others, sought by Data Request “CalAdvocates-SC-SCG-2019-05” pertaining to “shareholder funding of [SoCalGas]’s decarbonization campaign, which constitutes political activity.”<sup>12</sup> As of January 2023, Cal Advocates no longer had a right to retain the materials produced in response to Question 8 of Data Request “CalAdvocates-SC-SCG-2019-05” or Question 1 of Data Request “PubAdv-SCG-001-SCS.” The Commission then sought review from the California Supreme Court, which was denied on April 19, 2023.<sup>13</sup>

On April 20, 2023, SoCalGas’s appellate counsel, Mr. Poon, sent a letter to the Commission’s General Counsel and Cal Advocates’ General Counsel requesting return of all materials produced under protest in response to Data Request “CalAdvocates-SC-SCG-2019-05” and “PubAdv-SCG-001-SCS.” Mr. Poon sent a follow-up email to Cal Advocates’ General Counsel on April 25, 2023, reiterating the request that Cal Advocates return the protected materials. On July 5, 2023, Mr. Poon sent another letter to the Commission’s Executive Director and the Commission’s General Counsel, copying Cal Advocates’ Executive Director and General Counsel, requesting that Cal Advocates take immediate steps to return or destroy all protected

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<sup>9</sup> See SoCalGas Motion for Reconsideration at 4, 25, 26. Specifically for SoCalGas, the motion requested the Commission order Cal Advocates “to return or destroy all originals and copies of all materials that SoCalGas produced under protest” in response to two data requests: (1) Question 8 of CalAdvocates-SC-SCG-2019-05; and (2) Question 1 of PubAdv-SCG-001-SCS.

<sup>10</sup> Res. ALJ-391 at 31-33 (rejecting SoCalGas motion for reconsideration and motion to quash and ordering compliance with data request within 30 days of effective date of resolution); D.21-03-001 at 30-32.

<sup>11</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, 87 Cal.App.5th 324, 346 (2023).

<sup>12</sup> *Id.* at 343.

<sup>13</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, 2023 Cal. LEXIS 2095 (2023) (denying petition for review).

material in their possession. To date, Cal Advocates has refused to return the protected materials.

In addition, in connection with the underlying “non-proceeding,” Cal Advocates filed motions on June 23, 2020 and July 9, 2020 requesting that the Commission hold in contempt, sanction, or fine SoCalGas in connection with its refusal to produce information during the informal investigation. As stated above, the Court of Appeal decision vindicates SoCalGas’s actions during Cal Advocates’ investigation and expressly finds that “no basis for sanctions exists.”<sup>14</sup> Accordingly, the Commission should explicitly deny any request for contempt, sanctions or fines filed by Cal Advocates.

### **III. RELINQUISHMENT OF THE PROTECTED MATERIALS IS REQUIRED TO IMPLEMENT THE COURT OF APPEAL’S OPINION.**

Based on the Court of Appeal’s holding, both the Commission and Cal Advocates are obligated to return or destroy the First Amendment-protected materials. The materials at issue were provided under protest and subject to SoCalGas’s First Amendment objections. The Court of Appeal has ruled in favor of SoCalGas on its First Amendment objections, which includes the issue of whether Cal Advocates must “return or destroy” the contracts.<sup>15</sup> The Opinion finds unequivocally that a “threat to [SoCalGas’s] constitutional rights exists” because “disclosure to the [Public Advocates Office] itself would chill third parties from associating with the utility.”<sup>16</sup> The Opinion likewise finds that Cal Advocates’ “requests . . . are not carefully tailored to avoid unnecessary interference with [SoCalGas’s] protected activities.”<sup>17</sup> The Court’s holding necessarily means that SoCalGas’s constitutional objections are sustained and Cal Advocates has lost its right to retain these documents. Cal Advocates has no more right to retain them than it would to request them anew, yet Cal Advocates continues to actively and repeatedly utilize these

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<sup>14</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, 87 Cal.App.5th 324, 346 (2023).

<sup>15</sup> See Motion for Reconsideration at 25 (expressly requesting an “order . . . (2) Requiring CalPA to return or destroy all originals and copies of all materials that SoCalGas produced under protest in response to Question 8 of CalAdvocates-SC-SCG-2019-05”) and at 26 (expressly requesting an order “(4) Requiring CalPA to return or destroy all originals and copies of all materials that SoCalGas . . . produced or will produce under protest in response to Question 1 of . . . PubAdv-SCG-001-SCS . . .”).

<sup>16</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, 87 Cal.App.5th 324, 344 (2023).

<sup>17</sup> *Id.* at 345.

barred materials to support its advocacy before this Commission.<sup>18</sup> The continued exposure of these protected materials through Cal Advocates' actions is exactly what the Court's holding was targeted to prevent. This Petition is an efficient mechanism to complete the implementation of the Court's Opinion and foreclose Cal Advocates' wrongful refusal to comply with the logical and necessary consequences of the Court's conclusion.

#### **IV. MODIFICATIONS REQUIRED TO PROVIDE REQUESTED RELIEF.**

To avoid further injuries to SoCalGas's First Amendment rights from Cal Advocates' wrongful retention of these materials, the Commission should provide an explicit directive to Cal Advocates to return or destroy the protected materials. The most efficient vehicle to do so is to modify Resolution ALJ-391 and D.21-03-001 to reflect the Court of Appeal's determination that the SoCalGas materials produced in response to Question 8 of "CalAdvocates-SC-SCG-2019-05" and Question 1 of "PubAdv-SCG-001-SCS" are protected by the First Amendment and to include explicit language directing Cal Advocates to act consistent with that determination.

##### **A. Modifications to Resolution ALJ-391.**

The Commission should modify Resolution ALJ-391 by adding the following Findings of Fact and Ordering Paragraphs, which are intended to update these orders to implement the Court of Appeal's Opinion:

###### New Finding of Fact 29

29. On January 6, 2023, the California Court of Appeal issued its Opinion in *Southern California Gas. Co. v. Pub. Util. Comm'n*, 87 Cal.App.5th 324 (2023) granting SoCalGas's petition for writ of mandate. The Opinion vacated Resolution ALJ-391 and D.21-03-001 with respect to shareholder data for which SoCalGas asserts its First Amendment rights. The Opinion also held that because it vacated Resolution ALJ-391, no basis for sanctions exists.

###### New Ordering Paragraph 9

9. In compliance with the Court of Appeal's Opinion in *Southern California Gas. Co. v. Pub. Util. Comm'n*, 87 Cal.App.5th 324 (2023), this Resolution is vacated with respect to all shareholder data for which SoCalGas asserts its First Amendment

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<sup>18</sup> See, e.g., A.22-05-015 (SoCalGas GRC), Administrative Law Judge's Ruling Granting in Part SoCalGas's Motion to Strike Portions of Public Advocates' Testimony and Workpapers and Clarifying the Process to Identify Accounting Errors in this Proceeding at 2.

rights. Cal Advocates must return or destroy all originals and copies of all materials that SoCalGas produced under protest in response to DR No. CalAdvocates-SC-SCG-2019-05 and DR No. PubAdv-SCG-001-SCS to SoCalGas and confirm their return or destruction within 15 days of the effective date of this modified Resolution. Cal Advocates must also destroy any summaries, paraphrases, or notes reflecting the contents of these materials. Cal Advocates shall submit a sworn affidavit to the Commission's Executive Director attesting that Cal Advocates has returned and/or destroyed these materials within 15 days of the effective date of this modified Resolution. In compliance with the Court of Appeal's Opinion in *Southern California Gas. Co. v. Pub. Util. Comm'n*, 87 Cal.App.5th 324 (2023), Cal Advocates' requests for contempt, sanctions, and fines are denied.

**B. Modifications to D.21-03-001.**

The Commission should modify D.21-03-001 as follows:

Replace Existing Ordering Paragraph 11 With New Ordering Paragraph 11

11. In compliance with the Court of Appeal's Opinion in *Southern California Gas. Co. v. Pub. Util. Comm'n*, 87 Cal.App.5th 324 (2023), this Decision is vacated to the extent that it affirms and requires SoCalGas to produce shareholder data for which SoCalGas asserts its First Amendment rights. Cal Advocates must return or destroy all originals and copies of all materials that SoCalGas produced under protest in response to DR No. CalAdvocates-SC-SCG-2019-05 and DR No. PubAdv-SCG-001-SCS to SoCalGas and confirm their return or destruction within 15 days of the effective date of this modified Decision. Cal Advocates must also destroy any summaries, paraphrases, or notes reflecting the contents of these materials. Cal Advocates shall submit a sworn affidavit to the Commission's Executive Director attesting that Cal Advocates has returned and/or destroyed these materials within 15 days of the effective date of this modified Decision. In compliance with the Court of Appeal's Opinion in *Southern California Gas. Co. v. Pub. Util. Comm'n*, 87 Cal.App.5th 324 (2023), Cal Advocates' requests for contempt, sanctions, and fines are denied.

Renumber Ordering Paragraph 11, as follows:

12. The proceeding is closed.





**ATTACHMENT A**  
**DECLARATION OF JOHNNY Q. TRAN**

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

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**DECLARATION OF JOHNNY Q. TRAN IN SUPPORT OF PETITION OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) FOR MODIFICATION OF RESOLUTION ALJ-391 AND D.21-03-001**

I, Johnny Q. Tran, declare as follows:

1. I am currently employed by Southern California Gas Company (“SoCalGas”) as Senior Counsel – Regulatory.
2. I have reviewed the Petition of Southern California Gas Company (U904 G) for Modification (“PFM”) of Resolution ALJ-391 and D.21-03-001.
3. On January 6, 2023, the Court of Appeal issued its opinion, *Southern California Gas Company v. Public Utilities Commission*, 87 Cal.App.5<sup>th</sup> 324 (2023) (“Opinion”). The Opinion granted SoCalGas’s petition for writ of mandate and vacated Resolution ALJ-391 and D.21-03-001 with respect to shareholder data sought by the Commission for which SoCalGas asserts its First Amendment rights.
4. After the Court of Appeal issued its Opinion, SoCalGas engaged with Cal Advocates to seek the return or destruction of the First Amendment protected materials. On April 20, 2023, SoCalGas’s appellate counsel sent a letter to the Commission’s General Counsel and Cal Advocates’ General Counsel requesting return of all materials produced under protest in response to Data Request “CalAdvocates-SC-SCG-2019-05” and “PubAdv-SCG-001-SCS.” SoCalGas’s appellate counsel sent a follow-up email to Cal Advocates’ General Counsel on April 25, 2023, reiterating the request that Cal Advocates return the protected materials. On July 5, 2023, SoCalGas’s appellate counsel sent another letter to the Commission’s Executive Director and the Commission’s General Counsel, copying Cal Advocates’ Executive Director and General Counsel, requesting that Cal Advocates take immediate steps to return or destroy all

protected material in their possession. To date, Cal Advocates has refused to comply with the Opinion.

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

Executed this 2<sup>nd</sup> day of October, 2023, at Los Angeles, California.

*/s/ Johnny Q. Tran*

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JOHNNY Q. TRAN