

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application for Rehearing of Resolution
ALJ-391.

Application 20-12-011

**PUBLIC ADVOCATES OFFICE PETITION FOR MODIFICATION
OF RESOLUTION ALJ-391 AND DECISION 21-03-001**

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November 23, 2023

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I. INTRODUCTION

Pursuant to Rule 16.4 of the California Public Utilities Commission (Commission or CPUC) Rules of Practice and Procedure (Rules) and Section 8.2 of General Order (GO) 96-B,¹ the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this petition for modification of Resolution ALJ-391 issued December 17, 2020, and modified January 6, 2021, by Decision (D.) 21-03-001 (together “Resolution”).²

The Resolution affirmed the November 1, 2019 Administrative Law Judge (ALJ) Ruling directing SoCalGas to produce the Balanced Energy Contracts³ and denied SoCalGas’ May 22, 2020, Motion to Quash a Commission-issued subpoena.⁴ ⁵ These determinations were consistent with numerous statutes requiring regulated utilities to make their accounts fully available to their regulators.⁶

SoCalGas sought review of the Resolution in the Court of Appeal, alleging that Cal Advocates’ efforts to review shareholder accounts and contracts that the utility claimed were booked to shareholder accounts violated SoCalGas’ freedom of speech and association, and its right to petition the government.⁷ The court vacated the Resolution

¹ GO 96-B provides: “The General Rules also govern applications for rehearing and petitions for modification of a resolution regardless of whether the resolution was initiated by advice letter.”

² *Resolution ALJ-391*, Administrative Law Judge Division, December 17, 2020, as modified by Decision (D.) 21-03-001, *Order Modifying Resolution ALJ-391 and, as Modified, Denying Rehearing of Resolution ALJ-391*, March 1, 2021.

³ *See 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)*, November 1, 2019 at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/4---alj-ruling-11-1-19.pdf>.

⁴ *Southern California Gas Company’s 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)*, May 22, 2020 at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---socialgas-substitute-motion-to-quash-pdfa-5-22-2020.pdf>.

⁵ *See* Resolution at 2.

⁶ *See, e.g.*, Resolution at 9-12.

⁷ *See Southern California Gas Company v. Public Utilities Commission of the State of California, Petition for Writ of Review, Mandate, and/or other Appropriate Relief*, B310811, March 8, 2021 (SoCalGas Writ Petition) at 28 and 38, available at

“with respect to shareholder data sought by the Commission for which petitioner asserts its First Amendment right of association,”⁸ but otherwise did not vacate or revise the Resolution, and did not order any further action by the Commission.

Cal Advocates files this Petition for Modification of the Resolution based on two developments.² First, evidence shows that SoCalGas’ claims that the Balanced Energy Contracts (Contracts) at issue in the Resolution¹⁰ were booked to shareholder accounts were false and misleading. Specifically, while SoCalGas insisted that the Contracts were booked to shareholder accounts more than a dozen times between August 27, 2019 and October 17, 2019,¹¹ evidence the utility subsequently provided shows that the Contracts

<https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---socialgas-writ-of-review-et-seq.pdf>

⁸ *Southern California Gas Company v. Public Utilities Commission of the State of California*, 87 Cal App. 5th 324, issued January 23, 2023 and modified February 3, 2023, Cal. App. LEXIS 78 (*SoCalGas v. CPUC*).

² Rule 16.4(d) requires in part: “Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified.” While the Resolution was initially issued on December 21, 2021, it was modified, and then stayed in response to SoCalGas’ appeal to the courts. *See, e.g.*, Attachment A, February 24, 2023 SoCalGas letter to Executive Director regarding February 27, 2023 Compliance Date (reflecting history of extensions provided for compliance with the Resolution). Because the effective date of the Resolution was delayed to address the litigation related to the Resolution, this Petition is timely filed.

¹⁰ The contracts at issue in both the Resolution and *SoCalGas v. CPUC* are the Balanced Energy Contracts that SoCalGas was ordered to produce pursuant to the November 1, 2019 ALJ Ruling identified at FN 3 above. The Balanced Energy Contracts are comprised of agreements between SoCalGas and five different vendors hired to engage in political activities on behalf of the utility.

Note that SoCalGas has not asserted First Amendment claims for one of the five vendors, Marathon Communications Group. The utility’s relationship with this vendor was identified and publicly disclosed through investigative work performed by other entities. *See 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 available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---sierra-club-motion-to-deny-party-status-to-c4bes---5-14-19--1.pdf>.

¹¹ In response to 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)* served October 7, 2019 and available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---caladvocates-motion-to-compel-responses-to-dr5-q8---10-7-19.pdf> SoCalGas told the Commission that the Balanced Energy Contracts were “100% shareholder funded” on nearly every page of its pleading. *See 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)*, October 17, 2019, available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates->

were *not* booked to shareholder accounts until issuance of the ALJ Ruling ordering production of the Contracts on November 1, 2019.¹² The Resolution should be modified to reflect these facts.

Second, specific provisions of the Resolution have been interpreted in SoCalGas' current General Rate Case (GRC)¹³ in a manner that abridges Cal Advocates' attorney work-product privilege and imposes additional requirements on Cal Advocates' discovery. For example, in response to a SoCalGas motion for protective order, an Administrative Law Judge (ALJ) interpreted the Resolution as requiring Cal Advocates to forfeit its attorney work-product privilege and reveal the focus of its litigation position.¹⁴ In the same proceeding, the Resolution was also interpreted to require confidentiality protections beyond those required by statute.¹⁵ These outcomes were neither intended by, nor essential to, the Resolution. To prevent further misconstructions, Cal Advocates proposes that the Resolution be modified to eliminate the misinterpreted provisions, as the SoCalGas concerns that prompted those provisions are addressed by the Official Information Privilege provided at California Evidence Code Section 1040.¹⁶

[website/files/legacy3/2---scg-response-to-cal-advocates-motion-to-compel---10-17-19.pdf](#). See also Attachment F - SoCalGas Aug. 27, 2019 Response to SC-SCG-2019-05 Q.8 (“The Balanced Energy IO is shareholder funded, not ratepayer funded. Thus, knowing this information will not assist the Public Advocates Office in performing its statutory duties.”); and Cal Advocates’ October 7, 2019 *Motion to Compel* at 7 and 8 (identifying at least two meet and confers wherein the utility again claimed the Balanced Energy Contracts were booked to shareholders).

¹² See Attachment L – Timeline of SCG Accounting Claims re: Balanced Energy Contracts and related Attachments E, F, I and J.

¹³ A June 8, 2022 ALJ ruling consolidated A.22-05-015, *Application of Southern California Gas Company (U904G) for Authority, Among Other Things, to Update its Gas Revenue Requirement and Base Rates Effective on January 1, 2024*, and A.22-05-016, *Application of San Diego Gas & Electric Company (U 902 M) for Authority, Among Other Things, to Update its Electric and Gas Revenue Requirement and Base Rates Effective on January 1, 2024*. This Petition refers collectively to the consolidated proceeding as A.22-05-015 or the “GRC.” Because this Petition discusses issues in A.22-05-015, Cal Advocates served the Petition on the service list for that proceeding, as well as on the service list for the Resolution pursuant to Rules 8.1(b)(1) and 8.2(c)(3)(A).

¹⁴ See discussion at FN 35 below.

¹⁵ See discussion at FN 35 below.

¹⁶ See *Public Advocates Office Reply Supporting Reconsideration of the April 21, 2023 Administrative Law Judge Ruling*, May 19, 2023 in A.22-05-015 at 4-5 (explaining that the Public Records Act includes an “official information” privilege so that the screen shots may be

Consistent with the above, and for the reasons set forth below, Cal Advocates urges the Commission to modify the Resolution to:

- 1) Find as a matter of fact that the Balanced Energy Contracts (Contracts) at issue in the Resolution were booked to ratepayer accounts until November 1, 2019.¹⁷
- 2) Find as a matter of fact that the record evidence shows that, contrary to SoCalGas' claims, prior to issuance of the November 1, 2019 ALJ Ruling, the Contracts were booked to ratepayer accounts.
- 3) Order that Cal Advocates may retain the Contracts at issue in the Resolution.¹⁸
- 4) Conclude that a utility's booking of political activity costs to ratepayer accounts at any time is unlawful.¹⁹
- 5) Conclude that providing Cal Advocates or any part of the Commission with false or misleading information at any time is a violation of Rule 1.1.
- 6) Conclude that intent to mislead is not required to find a violation of Rule 1.1.

withheld from public review, which was the gravamen of SoCalGas's *Motion for a Protective Order*).

¹⁷ See Attachment E - SCG Resp. SK-SCG-2020-01, 2-7-20 (GRC Ex. CA-23-WP 159 PDF 347) ("The settlement rule was corrected on October 30, 2019 with an effective date of November 1, 2019").

¹⁸ See FN 10 above (identifying the contracts at issue).

¹⁹ The Federal Energy Regulatory Commission's Uniform System of Accounts requires all political activities to be booked to Account 426.4. See 18 C.F.R. Sec. 367.4264:

This account *must include* expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials. (*Emphasis added*).

Note also prior Commission determinations requiring utilities to book certain costs to below-the-line accounts, such as the determination in D.67369 "that it shall be the policy of this Commission henceforth to exclude from operating expenses for rate-fixing purposes all amounts claimed for dues, donations and contributions." See also D. 84902 (1975), 1975 Cal. PUC LEXIS 949 at 104-105 ("We see nothing improper in PG&E's looking out for its interests in Washington and Sacramento, but we do believe that the cost of such lobbying activities should be borne by PG&E's stockholders.").

- 7) Find as a matter of fact that both Rule 1.1 and its imposition of a duty to ensure accuracy, reflect the fact that providing false, inaccurate, or misleading information compromises ratepayer interests and both Cal Advocates' and the Commission's ability to fulfill their regulatory mandate.
- 8) Conclude that a Writ Petition that includes facts other than those leading to the underlying decision fails to provide an accurate basis for a court's review.
- 9) Conclude that exhaustion of administrative remedies is a jurisdictional prerequisite to a Petition for Writ of Review of a Commission decision.
- 10) Conclude that a party cannot be said to have exhausted its administrative remedies where the facts supporting its fundamental cause of action are other than as its petition claimed.
- 11) Conclude that ratepayers' have a First Amendment interest in being free from compelled speech and that protecting this interest justifies some intrusion into the First Amendment rights of regulated utilities.
- 12) Find as a matter of fact and law that the Commission, its staff, and Cal Advocates, represent ratepayers' First Amendment interests in being free from compelled speech and that this interest justifies some intrusion into the First Amendment rights of regulated utilities.
- 13) Find as a matter of fact that the Commission and its staff's authority to inspect an investor-owned utility's books "at any time" would be meaningless if utilities were allowed to report accounting entries as "preliminary" and subject to change.
- 14) Conclude that existing statutory protections obviate the need for Cal Advocates to identify the documents it captures in discovery from systems such as the SoCalGas SAP accounting system.²⁰

II. BACKGROUND AND PROCEDURAL HISTORY

On October 29, 2020, the ALJ assigned to resolve discovery disputes related to Cal Advocates' not-in-a-proceeding review of SoCalGas' accounting activities²¹ issued

²⁰ All of these recommendations are independent of, but not incompatible with, the recommendations in Cal Advocates' November 1, 2023 Response to SoCalGas petition for modification in this docket.

²¹ On September 5, 2019, the President of the Commission referred this dispute to the Chief ALJ for resolution. See *Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, August 2019 (Not In A Proceeding)*, issued on September 10, 2019. Available at: https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1_4---alj-ruling-resolving-discovery-dispute---9-10-

Draft Resolution ALJ-391.²² That Draft Resolution denied both SoCalGas’ December 2, 2019 motion for reconsideration/appeal related to the Balanced Energy Contracts,²³ and SoCalGas’ May 22, 2020 motion to quash the Commission’s subpoena ordering the utility to make its SAP system available to Cal Advocates.²⁴ Among other things, the Draft Resolution explained that the statutory discovery provisions of the Public Utilities Code “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.”²⁵

The Commission circulated the Draft Resolution for public review and comment and revised the document to address some of those comments, including SoCalGas’ “unique concerns about having sufficient time to designate as confidential the documents and information in the ‘live’ database via remote access.”²⁶ The Draft Resolution’s treatment of the First Amendment issues and its denial of SoCalGas’ request for reconsideration regarding the Balanced Energy Contracts and the subpoena’s reach, remained essentially the same. The revised Draft Resolution was unanimously approved at the Commission’s December 17, 2020 voting meeting, issued on December 21, 2020, and effective 30 days later.²⁷

[2019-1.pdf \(ca.gov\).](#)

²² See *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* (Draft Resolution), available at https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1__1--draft-resolution-alj391-issued-102920docx.pdf (ca.gov).

²³ *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), December 2, 2019 available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1--motion-for-reconsiderationappeal-with-declarationscombined-final11.pdf>.

²⁴ See FN 4 above.

²⁵ Draft Resolution at 13.

²⁶ Resolution at 28.

²⁷ Resolution at 1.

Both Cal Advocates and SoCalGas sought rehearing of the Resolution. In response to the applications for rehearing, the Commission eliminated the requirement that SoCalGas submit attorney declarations attesting to the accuracy of its responses to Cal Advocates data requests.²⁸ The Commission also revised the rationale for its determination that SoCalGas had not demonstrated that responding to the data requests violated its First Amendment rights, but the Resolution was otherwise unchanged.²⁹

SoCalGas sought Appellate Court review of the Resolution, alleging that Cal Advocates was attempting to review shareholder information, which violated the utility's First Amendment rights, including its rights of free speech and association.³⁰ The Court of Appeal considered the subpoena ordering access to the utility's SAP accounting system, as well as Cal Advocates' data request seeking the Balanced Energy Contracts that the utility claimed were "100% shareholder funded."³¹

The Court of Appeal issued *SoCalGas v. CPUC* on January 6, 2023.³² While *SoCalGas v. CPUC* acknowledges that "regulation of the utility requires understanding whether [SoCalGas] provides accurate information regarding the allocation of its advocacy costs between ratepayer and shareholder accounts," the court concluded that the data requests seeking access to information the utility characterized as "shareholder" were "not carefully tailored to avoid unnecessary interference with [SoCalGas'] protected activities."³³

²⁸ Denial of Rehearing, D.21-03-001 at 27.

²⁹ Denial of Rehearing, D.21-03-001 at 25-27.

³⁰ SoCalGas Writ Petition at 34 and 35 ("The Commission's rulings imperil SoCalGas' rights under the First and Fourteenth Amendments to the United States Constitution and Article I of the California Constitution, and its due-process and other rights." SoCalGas' Writ Petition further noted that its First Amendment and Article I rights include "freedoms of speech and association, along with the right to petition the government for redress of grievances." Available at https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1_1---socialgas-writ-of-review-et-seq.pdf.

³¹ See FN 11 above describing Attachment F - GRC Ex. CA-23-WP at PDF p. 496, SoCalGas Aug. 27, 2019 Response to SC-SCG-2019-05 Q.8.

³² The decision was amended to address a limited number of factual errors on February 3, 2023.

³³ *SoCalGas v. CPUC*, 87 Cal App. 5th at 345.

In its subsequent GRC, SoCalGas relied on its reading of *SoCalGas v. CPUC* to withhold evidence and limit Cal Advocates’ access to the utility’s SAP accounting system.³⁴ And, as urged by the utility, the ALJ in the GRC issued a ruling interpreting the Resolution as requiring Cal Advocates to forfeit its attorney work-product privilege and reveal the focus of its litigation position.³⁵

³⁴ See, e.g. Attachment D - SCG Resp. PAO-SCG-071-TBO (GRC Ex. CA-116) –at 5-6 (declining to grant Cal Advocates access to the ratepayer portions of its SAP system on First Amendment grounds: “SoCalGas also objects to the extent this request requires SoCalGas to disclose information protected by the First Amendment, SoCalGas is excluding that information pending the resolution of its appeal, Case No. B310811 and pursuant to Executive Director’s March 19, 2021 Rule 16.6 stay of Resolution ALJ-391); and Attachment G – Excerpt of PubAdv-SCG-BKZ-019 (GRC Ex. CA-130) at 47 (refusing to identify FERC account numbers for costs moved from above-the-line accounts to below-the-line accounts) and 56 (refusing to even identify lobbying costs booked to above-the-line accounts and SoCalGas employee time spent on such activities).

³⁵ *Administrative Law Judge’s Ruling on Two Pending Motions*, issued April 21, 2023 in A.22-05-015. Though specifically provided with legal authority to address the legal issues on the merits (see *Public Advocates Office Response to Southern California Gas Company Motion for Protective Order*, filed April 3, 2023 in A.22-05-015 at 2-3) the ALJ declined to do so, noting, without citation to any legal authority, that:

Cal Advocates cannot mark the SAP downloaded documents as attorney-client privileged to avoid sharing the downloaded data. The SAP database is the underlying fact and information and cannot be considered attorney-client privileged. Ensuing analysis based on the data, after Cal Advocates reviews it, may be attorney-client privileged, but not the facts that underlie the analysis.

The ALJ also denied Cal Advocates’ May 19, 2023 *Motion for Reconsideration*, notwithstanding the fact that Cal Advocates identified a solution for SoCalGas’ claimed concern that the screen shots would have to be produced pursuant to a Public Records Act request. In sum, the Public Records Act includes an “official information” privilege so that the screen shots may be withheld from public review, which was the gravamen of SoCalGas’ *Motion for a Protective Order*.

III. DISCUSSION

A. The Resolution should be modified to reflect that the Balanced Energy Contracts requested by Cal Advocates were, at all relevant times, booked to ratepayer rather than shareholder accounts.

The Commission issued the Resolution in large part to address SoCalGas claims in its December 2, 2019 motion for reconsideration.³⁶ That motion claimed that the November 1, 2019 ALJ Ruling to produce the Balanced Energy Contracts³⁷ violated the utility's First Amendment rights of speech and association because the Balanced Energy Contracts were booked to shareholder accounts.³⁸ The utility first claimed that “[r]atepayer funds have not been used to support the founding or launch of Californians for Balanced Energy Solutions (C4BES)” in response to Cal Advocates’ initial May 23, 2019 data request into SoCalGas’ accounting for its Balanced Energy campaign.³⁹ This was just the start of SoCalGas’ oft repeated claim that the costs associated with the contracts at issue were booked to shareholder rather than ratepayer accounts.⁴⁰ Contrary to these claims, subsequently obtained evidence shows that all costs associated with the Balanced Energy campaigns were booked to a ratepayer account until November 1,

³⁶ See FN 23 above.

³⁷ See FN 3 above.

³⁸ Note that on May 22, 2022, SoCalGas moved to supplement its December 2, 2019 motion for reconsideration with new arguments that Cal Advocates review of its shareholder accounts in SAP would violate the utility's First Amendment rights. See *Southern California Gas Company's 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)*, May 22, 2020 at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---substitute-socalgas-motion-to-supplement-pdf-5-22-2020.pdf>.

³⁹ See Attachment H - GRC Ex. CA-100 - SCG DR Resp. SCG051719, issued June 14, 2019, Response to Qs. 1 and 2 at (large type) 2-3, 8-9 and 14-15.

⁴⁰ See FN 11 above.

2019.⁴¹ Thus, SoCalGas repeatedly claimed that the contracts at issue were booked to shareholder accounts, when in truth the costs were booked to a single ratepayer account. It was not until the ALJ Ruling ordered SoCalGas to produce the Contracts that SoCalGas actually moved the costs of those Contracts from a ratepayer to a shareholder funded account.⁴²

The timing of SoCalGas' movement of the contracts from ratepayer to shareholder accounts is important for three reasons. First, it shows that the Contracts at issue were, when requested and throughout the dispute, booked to a ratepayer account. Thus, SoCalGas had no legitimate First Amendment claim when it refused to provide the Contracts to Cal Advocates.

Second, it identifies a significant infirmity that may undermine the *SoCalGas v. CPUC* decision. Specifically, this evidence suggests that the Court of Appeal lacked jurisdiction to hear *SoCalGas v. CPUC*. If the costs of the Contracts were booked to a ratepayer account until the November 1, 2019 ALJ Ruling ordering SoCalGas to provide the Contracts to Cal Advocates, the question becomes not whether Cal Advocates' discovery intruded on SoCalGas' First Amendment rights, but rather, whether such an intrusion can be found where the costs of the contracts are subsequently moved to a shareholder funded account. As this was not the issue presented to or addressed by the Commission, SoCalGas lacks a Commission decision on the merits, and has failed to exhaust its administrative remedies – two prerequisites to an appeal of a Commission decision.^{43, 44}

⁴¹ See Attachment E - SCG Resp. SK-SCG-2020-01, 2-7-20 (GRC Ex. CA-23-WP 159 PDF 347) (“The settlement rule was corrected on October 30, 2019 with an effective date of November 1, 2019”).

⁴² In response to a data request in its 2019 GRC SoCalGas admitted that the Contracts had been booked to ratepayers until November 1, 2019. See Attachment E - SCG Resp. SK-SCG-2020-01, 2-7-2020 (GRC Ex. CA-23-WP 159 PDF 347).

⁴³ California courts have long held that exhaustion of administrative remedies is a jurisdictional prerequisite to resort to the courts. See, e.g., *Campbell v. Regents of Univ. of Calif.* (2005) 35 Cal.4th 311 at 321.

⁴⁴ Notably, had SoCalGas wished to obtain a decision addressing the actual facts presented (i.e. whether its First Amendment claims have merit where charges to ratepayer accounts that are being investigated are shifted shareholder accounts) rather than petition the Court of Appeal for

Finally, though SoCalGas stops short of acknowledging that the facts it presented to the Commission and the Court of Appeal were misleading, in its GRC proceeding the utility argues that *SoCalGas v. CPUC* allows it to do the very thing it previously failed to disclose to the Commission – move contracts it has billed to ratepayer accounts which are the subject of discovery, to shareholder accounts to avoid their production in discovery.⁴⁵

Consistent with the above, modifying the Resolution to include the proposed modifications 1 through 4⁴⁶ will establish facts that support finding that SoCalGas’ Writ Petition misstated the foundational facts supporting its First Amendment claims,⁴⁷ and that there is no basis for interpreting *SoCalGas v. CPUC* as allowing regulated utilities to avoid discovery by shifting costs from ratepayer to shareholder accounts.

B. The Resolution should be modified to clearly and fully articulate the compelling governmental interests that outweigh the burden on SoCalGas’ First Amendment rights.

As noted in *SoCalGas v. CPUC*:

When compelled disclosure is challenged on First Amendment grounds, we apply a standard of “exacting scrutiny” to the government’s action. “Under

review, it could and should have petitioned the Commission for modification of the Resolution based on the actual facts. While SoCalGas did file a petition for modification of the Resolution, its petition reiterated its First Amendment claims and false contention that the contracts were booked to shareholder accounts when they were sought by Cal Advocates.

⁴⁵ See, e.g., *Reply to Responses to Petition of Southern California Gas Company for Modification of Resolution ALJ-391 and D.21-03-001*, November 13, 2023 in A.20-12-011 at 5 (In response to Cal Advocates’ position that a utility cannot withhold evidence from disclosure by shifting it to a shareholder account, the utility stated: “This argument was specifically raised and rejected by the Court of Appeal. The Court stated: ‘But this just shows that a less invasive discovery process is working, and the PAO can confirm that no funds have been misclassified to ratepayer accounts by reviewing above-the-line accounts.’”).

⁴⁶ See page 4 above.

⁴⁷ See *SoCalGas v. CPUC*, 87 Cal. App. 5th at 339 (*numerous citations omitted*):

We do not conduct a trial de novo, nor weigh nor exercise independent judgment on the evidence. ... The Commission’s findings of fact ‘are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence. ‘When conflicting evidence is presented from which conflicting inferences can be drawn, the PUC’s findings are final.’

that standard, there must be ‘a substantial relation between the disclosure requirement and a sufficiently important governmental interest.’ ‘To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.’ ...”⁴⁸

The Court of Appeal granted SoCalGas’ Writ Petition based on its finding that the Commission failed to show that its interest in determining whether SoCalGas’ political efforts were impermissibly funded outweighed the impact on the utility’s First Amendment rights.

Consistent with the Appellate Court’s legal analysis, the Commission should modify the Resolution to more fully and clearly articulate the important governmental interests at hand, which more than justify discovery regarding the utility’s political activities. As set forth below, these important governmental interests include protecting ratepayers’ First Amendment right against compelled speech, the obligation to ensure just and reasonable rates, and the need to obtain accurate information in response to all Commission inquiries.

- 1. The Resolution should be modified to make clear that the Commission and Cal Advocates represent Ratepayers’ competing First Amendment interest in not subsidizing compelled speech.**

SoCalGas v. CPUC readily acknowledges that: “A regulated utility may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.”⁴⁹ The Court of Appeal also cited with approval the Commission’s finding in a 1993 decision related to SoCalGas 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

⁴⁸ *SoCalGas v. CPUC*, 87 Cal App. 5th at 342 (*citations omitted*).

⁴⁹ *SoCalGas v. CPUC*, 87 Cal App. 5th at 344, citing Commission D.12-11-051.

government leaders.”⁵⁰ What *SoCalGas v. CPUC* failed to acknowledge is the equally well established principle affirmed by the California Supreme Court that:

Dues, donations and contributions, if included as an expense for rate-making purposes, become an involuntary levy on ratepayers, who, because of the monopolistic nature of utility service, are unable to obtain service from another source and thereby avoid such a levy.⁵¹

Consistent with this California Supreme Court opinion, the Commission (as a ratemaking body), and Cal Advocates (given its statutory charge to ensure that ratepayers are not subject to unjust or unreasonable rates) have a duty to protect ratepayers from involuntary utility levies that are used for political activities with which ratepayers may not agree.⁵²

In light of Cal Advocates’ statutory mandate “to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission”⁵³ the Commission should modify the Resolution to include proposed modifications 11 and 12 set forth in Section I of this petition. These modifications will make clear that the Commission and Cal Advocates represent ratepayers’ competing First Amendment interest to be free from compelled speech, and that this interest justifies some intrusion into the First Amendment rights of regulated utilities.

2. The Resolution should be modified to make clear that utilities are required to provide the Commission and Cal Advocates accurate information whenever requested.

Section 451 of the Public Utilities Code requires that “[e]very unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.”⁵⁴ Consistent with its efforts to protect consumers, the California Legislature

⁵⁰ *SoCalGas v. CPUC*, 87 Cal App. 5th at 345, citing Commission D.93-12-043.

⁵¹ *Pacific Telephone and Telegraph Co. v. CPUC*, 62 Cal. 2d 634 (1965) at 668. California Supreme Court *quoting with approval* from CPUC Decision No. 67369.

⁵² See Cal Advocates’ 2024 GRC Opening Brief in A.22-05-015 at 387-388.

⁵³ Cal. Pub. Utils. Code Section 309.5(a).

⁵⁴ Cal. Pub. Utils. Code Section 451.

has routinely supplemented the Commission’s obligation and authority to ensure utility rates are “just and reasonable.” For example:

- When the Legislature adopted the Public Utilities Commission Accountability Act of 2015 it stated its intent “that the commission reduce rates for electricity and natural gas to the lowest amount possible.”⁵⁵
- “The commission *shall* disallow, for purposes of setting the rates to be charged by any electrical, gas, or heat corporation for the services or commodities furnished by it, *all expenses for advertising which encourage increased consumption of such services or commodities.*”⁵⁶
- “[A]n electrical corporation or gas corporation shall not recover, through a rate approved by the commission, a fine or penalty.”⁵⁷
- “[A]n electrical corporation or gas corporation shall not recover, through a rate approved by the commission, costs arising directly from new or additional activities expressly agreed to by the corporation, or any direct payment, fine, or penalty paid by the corporation, in a settlement agreement resolving a criminal or civil inquiry, investigation, or prosecution for a violation of law, conducted by the Attorney General or a district attorney, county counsel, city attorney, or city prosecutor, and in exchange for the inquiry, investigation, or prosecution to be terminated or concluded” unless “the commission determines that those costs were just and reasonably incurred.”⁵⁸

In addition, the Legislature ordered the creation of Cal Advocates in 1985 to ensure ratepayer interests would be represented in Commission proceedings.⁵⁹ The

⁵⁵ Cal. Pub. Utils. Code Section 747.

⁵⁶ Cal. Pub. Utils. Code Section 796(a) (*emphases added*).

⁵⁷ Cal. Pub. Utils. Code Section 748.1.

⁵⁸ Cal. Pub. Utils. Code Section 748.2.

⁵⁹ The entity now called the Public Advocates Office was created in 1985 when the Legislature added Section 309.5 to the Public Utilities Code pursuant to Assembly Bill (AB) 476 of the Stats 1985 ch 562 § 1. AB 476 provided:

The commission shall create an organization or division within the commission to represent the interests of public utility customers and subscribers in commission proceedings. The commission shall, by rule or order, provide for the assignment of personnel to and the functioning of the organization or division.

Legislature has significantly expanded Cal Advocates' authority since that time.⁶⁰ Unlike other consumer advocates who intervene in CPUC proceedings, Cal Advocates has a mandate to represent the interests of ratepayers in virtually all CPUC proceedings. This mandate reflects the Legislature's desire to ensure ratepayer interests are protected.

To facilitate the legislative mandate to protect ratepayers, the law expressly provides extensive authority to the Commission and its staff to review a utility's accounts.⁶¹ Specifically included in this authority is the right to review utility accounts "at any time."⁶² As the Resolution explains:

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.⁶³

⁶⁰ In 2005, the Legislature amended Section 309.5 of the Cal. Pub. Utils. Code, renamed the Office of Ratepayer Advocates as the Division of Ratepayer Advocates and strengthened the division by providing it with autonomy over its budget and staffing resources and by authorizing the appointment of a full-time Chief Counsel.

⁶¹ See e.g., Decision 04-02-010, *In Re Citizens Telecommunications Co. of California, Inc.* (Feb. 11, 2004) 2004 WL 359967:

Consistent with [Cal. Pub. Utils. Code] §§ 309.5, 314, 582, 583, 584, and 797 (among others), as well as D.01-08-062, we expect Citizens to fully cooperate with ORA and its consultants as they conduct the audit. Citizens is obligated to respond to ORA's data requests and those of its consultants. Citizens cannot refuse to respond to ORA's or its consultants' requests for information simply because Citizens considers these outside the scope of the audit. Pursuant to § 314, Citizens may not refuse to allow the Commission's staff or its consultants to inspect Citizens' records. Pursuant to § 309.5(e), ORA "may compel the production or disclosure of any information it deems necessary to perform its duties from the entities 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."

⁶² Cal. Pub. Utils. Code Section 314(a) ("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 testimony or statement so given under oath shall be made and filed with the commission.").

⁶³ Resolution at 11. See also Resolution at 31, Finding 27: "A significant element of the regulatory framework for utilities in California, such as SoCalGas, is the utility's obligation to

Access to utility books and records is necessary because the utility controls all the information its regulators need to determine whether rates are just and reasonable. Thus, the Legislature recognized that the authority to review *all* of the utility's accounts *at any time* was necessary to ensure that all costs received by the utility are just and reasonable over 100 years ago when it created the Public Utilities Code:

Every public utility shall furnish such reports to the commission at such time and in such form as the commission may require in which the utility shall specifically answer all questions propounded by the commission. The commission may require any public utility to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter about which the commission is authorized by any law to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission.”⁶⁴

Consistent with the above, the Commission should modify the Resolution to include proposed modifications 4, 5, 6, 7, and 13 set forth in Section I of this petition. First, these findings and conclusions make clear that, rather than being tethered to a general rate case, the utility's obligation to maintain accurate books and records, and to provide accurate information to the Commission and Cal Advocates is, of necessity, ongoing. Second, these findings and conclusions make clear that the notion that “activities or contracts are preliminarily booked to an above-the-line or below-the-line account” and corrections can be deferred until a general rate case is *contrary to law*. Finally, these findings and conclusions make clear that the Commission and its staff's authority to inspect an investor-owned utility's books “at any time” that was acknowledged in *SoCalGas v. CPUC*⁶⁵ would be meaningless if utilities were allowed to report accounting entries as “preliminary” and subject to change.

provide the Commission and its staff, such as Cal Advocates, with requested information pertaining to regulatory oversight.”

⁶⁴ Cal. Pub. Utils. Code Section 584.

⁶⁵ *SoCalGas v. CPUC* at 337.

3. The Resolution should be modified to make clear that providing false accounting information undermines the regulatory process.

As an initial matter, the Federal Energy Regulatory Commission’s Uniform System of Accounts requires all political activity costs to be booked to Account 426.4. The Code of Federal Regulations provides:

This account *must include* expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials.⁶⁶

This simple rule to sequester the costs of political activities to a single specific below-the-line (i.e. shareholder funded) account exists to, among other things, ensure such costs are not recovered from ratepayers.

Compliance with such accounting requirements is fundamental to the regulatory process. Given the massive number of accounts implicated in a utility business, no regulator has the ability to conduct the type of detailed review required to catch all or even most accounting errors in the time provided by law to conduct a general rate case.⁶⁷ Accordingly, the Commission, like many other auditors of large corporations, must rely on spot checks, both within the general rate case and as occurred here – in Cal Advocates’ outside-of-a-proceeding review – to ensure that costs are properly booked to the correct accounts. Thus, contrary to the representations made to the Court of Appeal, political activities must be booked to below-the-line accounts immediately, rather than being “preliminarily booked” to an above-the-line account and then “settled” in a general rate case.⁶⁸

⁶⁶ 18 C.F.R. Sec. 367.4264 (*emphasis added*).

⁶⁷ In relevant part, Cal. Pub. Utils. Code Section 1701.2(i) requires that “[a]djudication cases shall be resolved within 12 months of initiation”

⁶⁸ *SoCalGas v. CPUC* at 330.

Also notable is that both the Commission and Court of Appeal acknowledged the need for the utility to timely provide accurate information to facilitate the regulatory process. Citing California Public Utilities Code Section 581, *SoCalGas v. CPUC* acknowledged that: “Every public utility receiving from the commission any blanks with directions to fill them shall answer fully and correctly each question propounded therein, and if it is unable to answer any question, it shall give a good and sufficient reason for such failure.”⁶⁹

For its part, the Commission has made clear, and should reiterate here, that providing false or misleading information is neither inconsequential nor mere error. As Rule 1.1 states:⁷⁰

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Specifically, the Commission has held, and the Resolution should reiterate, that the purpose of Rule 1.1 is to preserve the integrity of the Commission’s process.⁷¹ Consistent with this objective, the Resolution should be modified to make clear that receipt of accurate information is so fundamental to the functioning of the regulatory process (since the utility controls all the information), that intent to mislead is not required to find a violation of Rule 1.1:

As we have noted in previous decisions, there is no “intent, recklessness or gross negligence” requirement to a Rule 1.1 violation, either implicitly or explicitly. We have previously held that Rule 1.1 violations have occurred where there has been a lack of candor, withholding of information, or failure to correct information or respond fully to data requests. As further explained in D.13-12-005, the question of intent to deceive merely goes to

⁶⁹ *SoCalGas v. CPUC* at 337-338.

⁷⁰ A finding that Rule 1.1 was violated is a factual determination which is distinct from imposing penalties and requires no hearing or Order to Show Cause.

⁷¹ D.15-04-008 at 7.

the question of how much weight to assign to any penalty that may be assessed.⁷²

Modifying the Resolution to include a reference to Rule 1.1 establishes that, rather than mere error, SoCalGas' misrepresentations regarding its booking practices are a violation of law that threatens the Commission's ability to accomplish its regulatory mandate and further justifies a potential infringement on SoCalGas' First Amendment rights. Accordingly, the Resolution should be modified to make clear that both Rule 1.1 and its imposition of a duty to ensure accuracy, reflect the fact that providing false, inaccurate, or misleading information (here, about which account costs are booked to) is neither inconsequential nor mere error.⁷³

C. The Resolution should be modified to address SoCalGas' history of improperly booking political activities to ratepayer accounts.

In D.18-05-041, following a showing by Cal Advocates that SoCalGas had been using ratepayer funds to advocate against energy efficiency standards before the Department of Energy since at least 2014,⁷⁴ the Commission made clear that the utility could not use ratepayer funds for such advocacy:

[W]e are not prohibiting SoCalGas from advocating against or in favor of codes and standards, on whatever basis SoCalGas determines is reasonable, which SoCalGas acknowledges. We are prohibiting SoCalGas from using *ratepayer funds* to conduct codes and standards advocacy, which we find reasonable based on the Commission's clear policy intent for such funds and on evidence submitted by [Cal Advocates] of SoCalGas' past contravention of that policy intent.⁷⁵

⁷² D.15-04-008 at 10-11 (*internal citations omitted; emphasis added*).

⁷³ While claims of "error" have no bearing on the question of *whether* a violation of Rule 1.1 occurred, Cal Advocates readily acknowledges that claims of error may relate to the question of what, if any, punishment is appropriate where a Rule 1.1 violation has occurred.

⁷⁴ See *Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications*, filed September 25, 2017 in A.17-01-013 at Section II.B.

⁷⁵ D.18-05-041, at 150-151 (*emphasis added*).

Nevertheless, the utility continued to charge ratepayers for its codes and standards advocacy and provided misleading information in response to Cal Advocates' data requests. Specifically, SoCalGas claimed that it did not engage in any advocacy related to statewide energy efficiency codes and standards following the Commission's directive in D.18-05-041 with the exception of "transitional activities as [SoCalGas] came into compliance with the Decision."⁷⁶ The Commission disagreed.

After granting Cal Advocates' Motion for an Order to Show Cause (OSC),⁷⁷ the Commission found that:

- SoCalGas spent ratepayer funds on codes and standards activities following the issuance of D.18-05-041, which prohibited such activity;⁷⁸
- SoCalGas violated D.18-05-041, and therefore Section 2107, by charging expenditures to ratepayer-funded accounts for codes and standards advocacy activities after the effective date of D.18-05-041;⁷⁹ and
- The violations were numerous and substantive.⁸⁰

⁷⁶ *Response of Southern California Gas Company (U904G) to the Motion of the Public Advocates Office for an Order to Show Cause Why Southern California Gas Company Should Not be Sanctioned for Violating a Commission Order and Rule 1.1 of the Commission's Rules of Practice and Procedure*, filed July 30, 2019, in R.13-11-005, at 1.

⁷⁷ *See Administrative Law Judge's Ruling Granting the Motion of the Public Advocate's Office of The Public Utilities Commission and Directing Southern California Gas Company to Show Cause Why It Should Not Be Sanctioned by the Commission for Violation of California Public Utilities Code Sections 702, 2107 or 2108 or Rule 1.1 Of The Commission's Rules of Practice and Procedure*, filed October 3, 2019, in R.13-11-005.

⁷⁸ D.22-03-010 at 1.

⁷⁹ D.22-03-010 at 47, Finding of Fact 2.

⁸⁰ D.22-03-010 at 47, Finding of Fact 2.

In the decision issued in the companion OSC, opened on December 17, 2019 pursuant to Resolution E-5007,⁸¹ the Commission made clear that SoCalGas knew or should have known that “charging customers for arguments against efforts to adopt more stringent codes and standards or adopt reach codes ... was unlawful under a number of clear legal principles.⁸² Most notably, the Commission rejected the utility’s arguments that its charges to ratepayers were “merely a good-faith misunderstanding,” stating:

It was amply clear that use of any ratepayer funds to advocate against adoption of reach codes in 2019 and 2020 was not just and reasonable. Accordingly, we do not agree with SoCalGas’ assertion that its use of ratepayer funds for advocacy against reach codes was merely a good-faith misunderstanding.⁸³

This decisive rejection of the utility’s claims of misunderstanding makes clear that SoCalGas had willingly violated the law in order to access ratepayer funds to support its lobbying activities and that the Commission typically considers penalties for such actions in a separate, subsequent Order to Show Cause proceeding.⁸⁴

Accordingly, the Commission should modify the Resolution to find as a matter of fact that SoCalGas has a demonstrated practice of unlawfully booking the costs of its political activities to ratepayer accounts, despite prior penalties, that justifies some level of intrusion into SoCalGas’ First Amendment rights.

⁸¹ The Commission separately pursued SoCalGas to refund ratepayer monies spent on codes and standards advocacy in 2016 and 2017. *See* Resolution E-5007 finding at 2:

There is a serious question whether SoCalGas merits recovery for its Codes and Standards advocacy. To answer that question, the Commission will issue an Order to Show Cause in the ongoing Energy Efficiency proceeding, R.13-11-005, directing SoCalGas to explain whether it is entitled to recover the costs of its 2016-2017 Codes and Standards (C&S) advocacy from ratepayers, and whether its activities warrant any other remedies.

See also Order to Show Cause Directing Southern California Gas Company to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures, December 17, 2019, R.13-11-005.

⁸² D.22-04-034 at 54, Conclusion of Law (COL) 12.

⁸³ D.22-04-034 at 42.

⁸⁴ Notably, in addition to refunds, the Commission ordered SoCalGas to provide for an audit of its books and the “appropriate tracking of employee time.” *See* D.22-03-010 at 48-51, Ordering Paragraphs (OPs) 1, 4, 7 & 9 and D.22-04-034 at 55-58, OPs 1-3, 5, 7 & 10.

D. The Commission should modify the Resolution to clarify that Cal Advocates need not disclose to SoCalGas documents Cal Advocates copies from the SAP system.

A February 14, 2023 ALJ Ruling in SoCalGas' Test Year 2024 General Rate Case provided the following instructions regarding the procedure for Cal Advocates to access SoCalGas' SAP accounting database:

Given the burdensome nature of accessing and storing information from the accounting databases, we direct Cal Advocates to provide a list to SoCalGas of the documents that Cal Advocates seeks to print or copy from the SAP database. These documents will be confidential for 20 days from Cal Advocates' request to copy or print. After that, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas under the provisions of Pub. Util. Code Section 583 and General Order 66-D.⁸⁵

These instructions were largely based on the ALJ's reading of the Resolution and its discussion of SoCalGas' "unique concerns ... regarding protecting confidential information remotely available to Cal Advocates while reviewing its 'live' SAP database..."⁸⁶

Cal Advocates proceeded with its limited March 2023 review of the ratepayer accounts in the SAP system, and quickly discovered that it could take its own screen shots without the need to burden SoCalGas with downloading and printing documents for Cal Advocates. Upon learning that Cal Advocates was copying documents without sending SoCalGas a list of those documents, the utility filed a motion for a protective order directing Cal Advocates to comply with "the advance notice and document identification process adopted by the ALJ in this proceeding."⁸⁷

⁸⁵ *Administrative Law Judge's Ruling on the Discovery Dispute between the Public Advocates Office of the California Public Utilities Commission and Southern California Gas Company*, issued February 14, 2023 in A.22-05-015 at 12-13.

⁸⁶ Resolution at 11.

⁸⁷ *Southern California Gas Company (U 904 G) Motion for Protective Order to Enforce Compliance with Administrative Law Judge's Ruling on the Discovery Dispute between the Public Advocates Office of the California Public Utilities Commission and Southern California Gas Company [Expedited Ruling Requester]*, filed March 27, 2023 in A.22-05-015 (March 27, 2023 Motion for Protective Order) at 2 (The March 27, 2023 Motion for Protective Order contains the date March 23, 2023, although the motion is shown as filed on March 27, 2023 in

SoCalGas' motion claimed that without a list of the documents that Cal Advocates downloaded or printed, SoCalGas would be unable to maintain the confidentiality of those documents pursuant to the requirements of General Order (GO) 66-D.⁸⁸ According to SoCalGas, in the event the Commission received a Public Records Act request, the Commission would have no recourse but to make the screen shots publicly available pursuant to GO 66-D.⁸⁹

Notably, prior to issuance of the Draft Resolution, SoCalGas had never raised the issue of keeping its SAP system documents confidential. On the contrary, the utility repeatedly represented that it was prepared to make all ratepayer account information fully available to Cal Advocates.⁹⁰ After issuance of the Resolution, SoCalGas represented to the Court of Appeal an unqualified willingness to make its ratepayer accounts available to Cal Advocates, including via remote access to its SAP database.^{91 92} ⁹³ It was only after the February 14, 2023 ALJ Ruling directing SoCalGas to provide access to its SAP system that SoCalGas demanded that Cal Advocates send a daily list of

the docket card for the proceeding..

⁸⁸ March 27, 2023 Motion for Protective Order at 2.

⁸⁹ March 27, 2023 Motion for Protective Order at 2-3.

⁹⁰ For example, SoCalGas' May 20, 2020 Motion to Quash emphasized that aside from information protected by privileges or related to 100% shareholder funded activities "SoCalGas ...is working to provide the requested access as quickly at practicable." See Motion to Quash at 3; *see also* Motion to Quash at 5-6 ("SoCalGas recognizes Cal Advocates' authority to inspect its SAP database, but the subpoena as enforced by Cal Advocates infringes SoCalGas attorney client/attorney work privileges and rights under the First Amendment.")

⁹¹ "...SoCalGas has not taken, and still does *not* take, issue with [Cal Advocates] inspecting its ratepayer (i.e., above-the-line) accounts to determine whether any of those funds have been improperly allocated to support SoCalGas' political and public-policy efforts." *Southern California Gas Company's Reply in Support of Its Petition for Writ of Review, Mandate, and/or Other appropriate Relief; and Declaration of Michael H. Dore*, July 16, 2021 at 21 (*emphasis in original*), available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/in-the-news/32---socialgas---reply-iso-petition-for-writ-of-review---7-16-21.pdf>

⁹² *Id.* at 44 ("... SoCalGas has repeatedly offered to produce through live access to its SAP database (and [Cal Advocates] has tellingly declined): *access to ratepayer accounts.*" (*emphasis in original*)).

⁹³ A more complete list of SoCalGas' claims regarding its readiness to provide SAP access to Cal Advocates is provided in *Public Advocates Office Motion To Compel Information Related To Southern California Gas Company's Booking Of Unauthorized Costs To Ratepayer Accounts And [Proposed] Ruling* at 13-14, filed January 12, 2023 in A.22-05-015.

documents copied from its ratepayer accounts in order to protect the confidentiality of SAP documents.²⁴

SoCalGas' subsequent motion for a protective order should have been denied for at least three reasons. First, SoCalGas' demand failed to acknowledge that the language in the Resolution calling for the identification of documents of interest envisioned a scenario where Cal Advocates *was not able to copy documents without the assistance of SoCalGas*.²⁵ Thus, there was no evidence that the Resolution intended to impose an obligation to tell SoCalGas what documents were of interest to Cal Advocates.

Second, SoCalGas' claimed need to ensure confidentiality fails to recognize the Commission's authority to determine which documents to produce in response to a Public Records Act (PRA) request.²⁶ Pursuant to the "official information" privilege of Evidence Code Section 1040, the Commission can withhold information, like the screen shots taken by Public Advocates, from public review, even if those documents are not marked as confidential by SoCalGas. Evidence Code Section 1040 defines "official information" as "information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made." Evidence Code Section 1040 provides that:

A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and either of the following apply: ...

²⁴ See, e.g., *Southern California Gas Company (U 904 G) Motion For Protective Order To Enforce Compliance With Administrative Law Judge's Ruling On The Discovery Dispute Between The Public Advocates Office Of The California Public Utilities Commission And Southern California Gas Company*, filed March 23, 2023 in A.22-05-015.

²⁵ Cal Advocates' April 3, 2023 Response to SoCalGas' Motion for Protective Order at 5 quoted the following language from the Resolution:

In response to unique concerns raised by SoCalGas regarding protecting confidential information remotely available to Cal Advocates while reviewing its "live" SAP database, we direct Cal Advocates to provide a list to SoCalGas of the documents it seeks to print or copy from the SAP database and these documents will be treated as confidential for 20 days from the date of Cal Advocates' request to copy or print." Resolution at 11 (emphasis added).

²⁶ See FN 105 below.

Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice....

The “necessity for preserving the confidentiality” provision would allow the Commission to withhold Cal Advocates’ screenshots of SoCalGas’ SAP documents until SoCalGas had the opportunity to review those screenshots prior to any release pursuant to a PRA request.

Third, as noted in Cal Advocates’ April 3, 2023 Response in the GRC, the requirement that Cal Advocates identify specific documents that it sought to use in litigation, from among the thousands of documents in the SAP system, violated its attorney-client and/or attorney work-product privileges.⁹⁷

On April 21, 2023, the ALJ overseeing the SoCalGas GRC granted SoCalGas’ request that Cal Advocates be required to provide SoCalGas a list of any material copied from the SAP.⁹⁸ The ruling recognized that, in contrast to the scenario envisioned in the Resolution, Cal Advocates was able to copy documents without the assistance of SoCalGas,⁹⁹ but found, without any legal analysis of Cal Advocates’ official information and attorney-client and work product privilege arguments, that SoCalGas’ requirement that Cal Advocates identify each document copied from the SAP system was consistent with the Resolution.¹⁰⁰

The ALJ’s April 21, 2023 ruling required Cal Advocates to “inform SoCalGas of copying the SAP material through screenshots, cell phone cameras, or other electronic means at the close of the business day it accesses and downloads the SAP database” and

⁹⁷ *Public Advocates Office Response to Southern California Gas Company Motion for Protective Order*, filed April 3, 2023 at 2 (“In addition to requiring Cal Advocates to ‘tip its hand’ and provide SoCalGas advanced notice of Cal Advocates’ key evidence, investigation areas, and findings – a clear and unwarranted advantage - this would violate Cal Advocates’ attorney-client and/or attorney work-product privilege(s).”).

⁹⁸ *Administrative Law Judge’s Ruling on Two Pending Motions*, issued April 21, 2023 in A.22-05-015 (April 21, 2023 Ruling).

⁹⁹ April 21, 2023 Ruling at 8.

¹⁰⁰ April 21, 2023 Ruling at 8.

to timestamp each downloaded document.¹⁰¹ This ruling also required Cal Advocates to send SoCalGas a list of documents already downloaded from the SAP within three days of issuance of the ruling.¹⁰²

Cal Advocates filed a motion for reconsideration of that ruling the next business day – on April 25, 2023¹⁰³ – and provided the documents to the ALJ, but not to SoCalGas. Cal Advocates’ motion for reconsideration observed that the requirement to send a list of the few documents it copied from the thousands of documents on the SAP system violated Cal Advocates’ attorney work product privilege.¹⁰⁴ Cal Advocates’ reply in support of the motion for reconsideration further explained that the requirement to produce the documents to SoCalGas was unduly burdensome, unnecessary, and contrary to the official information and attorney work product privileges.¹⁰⁵

The ALJ denied Cal Advocates’ motion for reconsideration.^{106 107} That ruling rejected the contention that the list of the few documents Cal Advocates copied was

¹⁰¹ April 21, 2023 Ruling at 9, ruling paragraphs 2 and 3 at 12.

¹⁰² April 21, 2023 Ruling at 9, ruling paragraph 5 at 12-13.

¹⁰³ *Public Advocates Office Motion for Reconsideration of Administrative Law Judge’s April 21, 2023 Ruling on Two Separate Motions (Public Version)*, filed April 25, 2023 in A.22-05-015 (although the document states it was filed April 24, 2023) (Cal Advocates’ Motion for Reconsideration of April 21, 2023 Ruling).

¹⁰⁴ Cal Advocates’ Motion for Reconsideration of April 21, 2023 Ruling at 2-3.

¹⁰⁵ *Public Advocates Office Reply Supporting Reconsideration of the April 21, 2023 Administrative Law Judge Ruling*, filed May 19, 2023 in A.22-05-015:

1. Cal Advocates has a right to review the utility’s SAP system “at any time” and is not required to provide information related to that review to the utility;
2. The Public Records Act (PRA) includes an “official information” privilege that is relevant here so that the screen shots may be withheld from public review; and
3. Given the protective markings Cal Advocates placed on the screen shots, the Commission’s ability to assert the official information privilege, and Cal Advocates’ privilege claims and statutory rights to review the utility’s records, Cal Advocates has no obligation to produce the screen shots to SoCalGas.

¹⁰⁶ *Administrative Law Judge’s Ruling Denying the Public Advocates Office of the California Public Utilities Commission’s Motion for Reconsideration*, issued May 25, 2023 in A.22-05-015 (May 25, 2023 ALJ Ruling Denying Motion for Reconsideration).

¹⁰⁷ Cal Advocates provided the screen shots to SoCalGas on June 5, 2023, under protest, and reserved the right to appeal the ALJ rulings on the matter. *See* Attachment K - Cal PA Provides Screen Shots to SCG, June 5, 2023 (PUBLIC) (“Cal Advocates’ position is that the ALJ Ruling, and denial of reconsideration are in error. Consequently, Cal Advocates provides these screen

protected by the attorney work product privilege, because the documents were in the SAP system.¹⁰⁸ According to the ALJ Ruling:

Cal Advocates' arguments that this data is protected under the attorney work-product privilege is unconvincing. ... Downloaded screenshots from the database containing journal entries and other accounting information is an electronic copy of a data request, which Cal Advocates would have requested access to (or a print version of) if Cal Advocates did not have direct access to the SAP database. The downloaded data itself is not a work-product of Cal Advocates attorneys.¹⁰⁹

The conclusion in the ALJ Ruling that “[t]he downloaded data itself is not a work product of Cal Advocates’ attorneys” relies on an unreasonably narrow view of the attorney work product privilege. The privilege is not limited to notes made by or at the direction of an attorney. Indeed, the plain language of the law expressly provides that the attorney work product privilege is *not* limited to a written document by the attorney.¹¹⁰ This provision of the privilege protects the ability of an attorney to prepare their case by assembling information and sifting relevant from irrelevant documents to develop their legal strategy, free from unwarranted interference.¹¹¹ As the United States Court of Appeal for the Third Circuit has observed:

shots from its review of SoCalGas' SAP system that occurred between March 13-24 under protest, and reserves the right to appeal the ALJ's determinations on these matters as it deems appropriate.”).

¹⁰⁸ was silent on the application of the official information privilege. See May 25, 2023 ALJ Ruling Denying Motion for Reconsideration at 3.

¹⁰⁹ May 25, 2023 ALJ Ruling Denying Motion for Reconsideration at 3.

¹¹⁰ See e.g., Cal. Code of Civ. Pro Section 2018.030:

- (a) A writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.
- (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in an injustice.

¹¹¹ *Hickman v. Taylor*, 329 U.S. 495, 511 (1947)

[T]he selection process itself represents [the attorney's] mental impressions and legal opinions as to how the evidence in the documents relates to the issues and defenses in the litigation. Because identification of the documents as a group will reveal [the attorney's] selection process, and thus [the attorney's] mental impressions... the documents as a group must be prevented to protect [the attorney's] work product.¹¹²

The ALJ Ruling directing Cal Advocates to disclose its SAP screen shots to SoCal Gas failed to recognize that the small subset of documents that Cal Advocates selected to support its case, out of the thousands of documents in the SAP, would offer a window into Cal Advocates' litigation strategy and hence, its attorney work product.

To prevent further confusion regarding the procedures for documents copied from SoCalGas' SAP system, and preserve Cal Advocates' attorney work product privilege, the Commission should modify the Resolution in a manner consistent with Cal Advocates' proposed modification 14 set forth in Section I of this petition. This modification is required to make clear that Cal Advocates need not provide SoCalGas copies of documents selected from the SAP accounting system.

¹¹² *Sporck v. Peil*, 759 F.2d at 315; see also *Kalter v. Keyfactor, Inc.*, 2022 U.S. Dist. LEXIS 208353, citing *Sporck v. Peil* at 316 (“the selection and compilation of documents by counsel ... in preparation for pretrial discovery falls within the highly-protected category of opinion work product”) and *James Julian, Inc. v. Raytheon Co.*, 93 F.R.D. 138, 144 (“In selecting and ordering a few documents out of thousands counsel could not help but reveal important aspects of his understanding of the case. Indeed, in a case such as this, involving extensive document discovery, the process of selection and distillation is often more critical than pure legal research. There can be no doubt that at least in the first instance the binders were entitled to protection as work product. See *Berkey Photo, Inc. v. Eastman Kodak Co.*, 74 F.R.D. 613 (S.D.N.Y.1977).”).

IV. CONCLUSION

For the reasons stated above, the Public Advocates Office requests that the Commission modify the Resolution as set forth herein and in Appendix A hereto.

Respectfully submitted,

/s/ *DARWIN E. FARRAR*

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November 23, 2023

APPENDIX A

Proposed Modifications to the Findings and Ordering Paragraphs of Resolution 391, as modified by D.21-03-001¹

FINDINGS:²

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' statutory mandate takes many forms, including the obligation to ensure that ratepayer funds are not unreasonably spent.
3. Allowing an Investor-Owned Utility to spend ratepayer funds on activities that are political or do not otherwise benefit ratepayers violates ratepayers' First Amendment rights and is unreasonable.
4. 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.
5. 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.
6. Cal Advocates initiated a discovery inquiry outside of a proceeding after discovering that SoCalGas might have used ratepayer funds to support lobbying activity.
7. Regulated utilities, such as SoCalGas, may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.
8. The Uniform System of Accounts requires regulated utilities, such as SoCalGas, to book all political activities to Account 426.4.
9. A utility's booking of political activity costs to ratepayer accounts at any time is improper.

¹ Cal Advocates recommended findings appear in underlined text. Changes to prior Commission findings are in strike through and underlined.

² Cal Advocates' recommended findings are independent of, but not incompatible with, the recommendations in Cal Advocates' November 1, 2023 Response to SoCalGas petition for modification in this docket.

10. 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.
11. The Pub. Util. Code grants broad authority to the Commission to inspect the books and records of investor-owned utilities, such as SoCalGas.
12. The Commission's authority to inspect books and records of investor-owned utilities applies to all Commission staff without limitation, including Cal Advocates.
13. 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.
14. 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, however, additional protections are adopted here to provide SoCalGas with time to review, and designate as confidential, information and documents sought by Cal Advocates via remote access from the "live" SAP database.
15. 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.
16. The Legislature recognized that the authority to review all of the utility's accounts at any time was necessary to ensure that all costs received by the utility are just and reasonable over 100 years ago when it created the Public Utilities Code.
17. The Commission's authority to inspect a regulated utility's books "at any time" would be meaningless if regulated utilities were allowed to avoid scrutiny by shifting costs to a shareholder funded account or reporting accounting entries as "preliminary" and subject to change.
18. Providing Cal Advocates or any part of the Commission with false or misleading information at any time is a violation of Rule 1.1.
19. The intent to mislead is not required to find a violation of Rule 1.1.
20. Both Rule 1.1 and its imposition of a duty to ensure accuracy, reflect the fact that providing false, inaccurate, or misleading information compromises ratepayer interests and both Cal Advocates' and the Commission's ability to fulfill their regulatory mandate.

21. 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.
22. 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.
23. The First Amendment protections apply to private organizations and corporations, such as SoCalGas.
24. First Amendment protections also apply to a regulated utility’s captive ratepayers.
25. Charges to ratepayers for compelled speech that primarily benefits shareholders are unreasonable.
26. The Commission, its staff, and Cal Advocates, represent captive ratepayers’ interests in being free from unreasonable charges.
27. Under the First Amendment, SoCalGas’ right to associate for political expression is not absolute.
28. The obligation to ensure that a utility does not violate the First Amendment rights of its ratepayers to be free from compelled speech is at least as important, if not more so, than the utility’s right to keep its political activities secret from the Commission and its staff.
29. The Commission’s obligation to represent captive ratepayers justifies some intrusion into the First Amendment rights of Investor-Owned Utilities such as SoCalGas.
30. The Commission has previously put SoCalGas on notice that claims of accounting mistake or misunderstanding do not excuse its improper use of ratepayer funds to support its advocacy efforts.
31. The Balanced Energy Contracts were ratepayer funded when they were requested by Cal Advocates on August 13, 2019.
32. The Balanced Energy Contracts were moved from a ratepayer to a shareholder funded account on November 1, 2019, after SoCalGas was ordered to provide them in response to Cal Advocates’ DR No. CalAdvocates-SC-SCG-2019-05.
33. 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.

34. Because the Contracts at issue in Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 were being billed to ratepayer accounts when requested by Cal Advocates, rather than to shareholder accounts as SoCalGas claimed, there was no First Amendment infringement.
35. SoCalGas has not asserted a First Amendment claim based on its moving the charges to shareholder accounts after Cal Advocates requested them in discovery.
36. It is reasonable to require proof that charges are being billed to shareholder accounts where there is a withholding on First Amendment grounds.
37. Exhaustion of administrative remedies is a jurisdictional prerequisite to a Petition for Writ of Review of a Commission decision.
38. A party cannot be said to have exhausted its administrative remedies where the facts supporting its fundamental cause of action are other than as its petition claimed.
39. A Writ Petition that includes facts other than those leading to the underlying decision fails to provide an accurate basis for a court's review.
40. 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."
41. 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.
42. 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.
43. 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.
44. 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.

45. 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.
46. Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.
47. Regulatory agencies, such as the Commission, have flexibility in fashioning the form of procedural due process provided in exercising their regulatory responsibilities and oversight.
48. 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.
49. 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.
50. No merit exists to SoCalGas' assertion that the Commission did not provide an appropriate level of procedural due process.
51. 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.
52. 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.
53. Existing statutory protections obviate the need for Cal Advocates to provide a utility a list of the documents it captures in discovery from systems such as the SoCalGas SAP accounting system.

ORDERING PARAGRAPHS

1. Cal Advocates may retain the Balanced Energy Contracts produced pursuant to DR No. CalAdvocates-SC-SCG-2019-05.
2. If Cal Advocates takes screen shots or otherwise makes direct copies from systems such as SoCalGas' SAP, Cal Advocates need only mark those documents as "Not reviewed for potential confidentiality" in order to assert any applicable privilege in response to a Public Records Act request after it sends the documents to the Legal Division.
3. 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.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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 30 days of the effective date of this Resolution. SoCalGas must follow all of the below directives when asserting privileges:
 - (1) SoCalGas must provide a privilege log to Cal Advocates concurrent with the production of documents.
 - (2) SoCalGas must provide sufficient information in any privilege log to enable Cal Advocates to evaluate the merits of the privilege claim. At a

- minimum, the privilege log must include the following: (a) summary description of the document (b) date of the document (c) the name of each author or preparer (d) the name of each person who received the document (e) legal basis for withholding the document, and (f) the document number.
- (3) If providing a privilege log, SoCalGas must concurrently provide Cal Advocates with a declaration under penalty of perjury by a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claim and that such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.³
- (4) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

³ This requirement was removed from the final version of the Resolution, but should be re-instated given the findings set forth in Cal Advocate's Petition for Modification.

SUPPORTING ATTACHMENTS A-L
(B and C Intentionally Omitted)

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Attachment A

SoCalGas's Compliance Letter to Executive Director 2-24-23



Dan Skopec
Senior Vice President,
State Government Affairs &
Chief Regulatory Officer

8330 Century Park Court
San Diego, CA 92123

DSkopec@sdge.com

February 24, 2023

Ms. Rachel Peterson
Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: SoCalGas's Compliance with Executive Director's March 19, 2021 Rule 16.6 Extension and Resolution ALJ-391, as modified by Decision 21-03-001

Dear Ms. Peterson,

This letter is a follow-up to my February 13, 2023 letter and to update you on SoCalGas's compliance with your March 19, 2021 Rule 16.6 Extension of Time to Comply with Resolution ALJ-391 (as modified by D.21-03-001 and the California Court of Appeal's Opinion in Case No. B310811). SoCalGas is prepared to provide Cal Advocates' auditors onsite training and access to SoCalGas's SAP database on February 27, 2023.¹

Since the Court of Appeal's issuance of the Opinion on January 6, 2023, which set the February 27 deadline in accordance with your Rule 16.6 extension, SoCalGas has been diligently preparing to meet that deadline, including but not limited to:

- Preparing and testing the custom SAP environment for Cal Advocates' auditors;
- Scheduling resources to travel to San Francisco on February 27 to conduct an in-person kick-off meeting and to provide training on how to log into and navigate SAP;
- Scheduling a dedicated resource to be available in-person in San Francisco for the week of February 27 to help with SAP navigational questions;
- Logistical arrangements for Cal Advocates' auditors to be onsite in SoCalGas's San Francisco office;
- Finalizing the privilege log; and

¹ This access would fulfill SoCalGas's obligations to provide SAP access under: (1) Subpoena issued May 5, 2020 (Subpoena); (2) the still-pending Cal Advocates Motion to Compel Remote Access to SAP Database filed on October 21, 2021 in the non-proceeding; and (3) the Administrative Law Judge's Ruling on the Discovery Dispute Between Cal Advocates and SoCalGas issued on February 14, 2023 in A.22-05-015.

- Requesting from Cal Advocates on February 14, 2023, that it confirm the identity of its auditors by no later than February 16 so that SoCalGas can set them up in its system.

SoCalGas takes compliance with your February 27 deadline and the associated subpoena seriously and thus onsite and remote SAP access will be available for Cal Advocates' auditors on February 27, 2023 in compliance with the Commission's March 19, 2021 Rule 16.6 Extension of Time to Comply. SoCalGas strongly encourages Cal Advocates to attend the training and review SAP as soon as possible to avoid any potential delays. Similarly, we have not yet received the identity of Cal Advocates' auditors, including name, email, and contact telephone number, which was requested ten (10) days ago. Cal Advocates should provide this information as soon as possible to avoid any further delay in accessing SAP.

On February 16, 2023, Cal Advocates requested a two-week extension for SAP access with training beginning March 13, 2023, onsite access at SoCalGas's San Francisco office for the week of March 13, and remote access on the week of March 20. SoCalGas reiterates that onsite and remote SAP access will be available on February 27, 2023 and strongly encourages Cal Advocates to take the necessary steps to gain access as early as possible. If Cal Advocates continues with its stated intent to delay accessing SAP until no earlier than March 13, SoCalGas will accommodate the request by keeping SAP access open and available until the close of business March 24, 2023 and will consider our obligations under the subpoena to be met. If Cal Advocates continues to decline earlier training, SoCalGas will also accommodate Cal Advocates' request to move the training to March 13 and to be onsite in SoCalGas's San Francisco office during the week of March 13. At the latest, Cal Advocates must provide the accountant's or other reviewing staff's information by the close of business March 2, 2023 in order to be able to access on March 13, 2023. If needed, SoCalGas will have a dedicated resource present at its San Francisco office during the week of March 13 to help with SAP navigational questions between business hours and a resource that can be contacted remotely for SAP navigational questions for the week of March 20 between business hours.

Should you have questions on how SoCalGas intends to comply with the Subpoena issued by your office, please let us know as soon as possible.

Sincerely,

Dan Skopec

Dan Skopec
Senior Vice President, State Government Affairs & Chief Regulatory Officer

cc: Christine J. Hammond, CPUC General Counsel
Dale Holzschuh, CPUC Counsel
Carrie G. Pratt, CPUC Counsel
Edward Moldavsky, CPUC Counsel
Matt Baker, Executive Director, Cal Advocates
Darwin Farrar, Chief Counsel, Cal Advocates
Linda Serizawa, Deputy Director for Energy, Cal Advocates
Traci Bone, Counsel, Cal Advocates

**Attachments B and C
Intentionally Deleted**

Attachment D

**SCG Resp. PAO-SCG-TBO-071
GRC Ex. CA-116
(PUBLIC)**



Public Advocates Office
California Public Utilities Commission

505 Van Ness Avenue
San Francisco, CA 94102

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

DATA REQUEST
Southern California Gas Company 2024 General Rate Case
A.22-05-015

Origination Date: 7 December 2022

Originated by: Traci Bone
Phone: (415) 703-2048
Email: traci.bone@cpuc.ca.gov

Exhibit Reference: SCG-16 Customer Services Information
SCG Witness: Brian C. Prusnek
Subject: Various

From: Stacey Hunter, Project Coordinator
Public Advocates Office (PAO)
Stacey.Hunter@cpuc.ca.gov

To: Jamie York, Project Coordinator
Sempra Utilities
jyork@semprautilities.com

Public Advocates No: PubAdv-SCG-TBO-071

Please provide the following:

Access To SAP Database

1. Please do all things necessary to provide full and complete remote access to the utility's SAP (System Application and Product in Processing) database so that Cal Advocates may audit all above the line accounts. Please confirm that SoCalGas is prepared to provide such access no later than December 19, and when such access will be available. If such access cannot be made available within this time frame, please identify the SoCalGas office closest to the Commission's San Francisco location where Cal Advocates can access the SAP database.

Errors in SoCalGas Testimony:

2. SoCalGas noted in response to PAO-SCG-019-BKZ, Q.3 that "one or more errors were identified while responding to discovery. The attachment to this response reflects the corrected information and related adjustments will be made at the next opportunity for revisions to testimony and workpapers."
 - (a) Please describe each of the errors SoCalGas identified in its testimony and workpapers;
 - (b) Please provide journal entries showing when and how the errors were corrected; and

- (c) Please identify when Cal Advocates can expect to see revisions to the testimony and workpapers to correct the errors.

SoCalGas Approval and Commitment Policy:

3. Please describe what SoCalGas understands to be the differences between the SoCalGas Approval and Commitment Policy effective November 30, 2020 and the CAU Approval and Commitment Policy previously in effect.

Base Business:

4. Please provide examples of “non-base business” as that term is defined in the SoCalGas Approval and Commitment Policy effective November 30, 2020.
5. Please identify the types of lobbying or other advocacy activities would qualify as “non-base business” and those that would qualify as base business. The term “lobbying” shall include all activities defined or identified as lobbying in the Uniform System of Accounts 426.4 as well as activities defined or identified as lobbying in Sempra Energy’s Political Activities Policy.
6. Please provide all policies, procedures, or guidance available to SoCalGas employees or consultants to help them understand whether a cost should be categorized as base business or non-base business.
7. For the following activities, please identify whether the activity would qualify as non-base business or base business for purposes of SoCalGas accounting. If the response is “both” please cite to any available guidance and provide examples of specific types of activities that SoCalGas has booked as both base business and non-base business:
- (a) Activities that promote the use of natural gas;
 - (b) Activities that encourage others to promote the use of natural gas;
 - (c) Advocating before elected officials against policies that would limit the installation of gas infrastructure in new construction;
 - (d) Activities that encourage customers to advocate for the use of natural gas;
 - (e) Activities that promote the Sempra and/or SoCalGas name or brand;
 - (f) Payments that encourage third parties to advocate in favor of SoCalGas positions at Commission meetings; and
 - (g) Payments that encourage third parties to advocate in favor of SoCalGas positions before elected officials.

Reach Codes:

8. For the years 2015-2022, please identify all cities where SoCalGas representatives (including both employees and contractors) advocated against adoption of building codes that would have limited the installation of natural gas infrastructure (aka “Reach Codes”).¹
9. Please provide all Work Order Authorizations (WOA), Authorizations for Expenditures (AFE), or any other authorizing document issued at any time between 2010 and 2021, authorizing costs related to advocacy regarding Reach Codes

¹ Among other things, SoCalGas’ historic spending related to Reach Codes is relevant to determining whether the Test Year, which is based on historical spending, has been improperly inflated by costs that should have been booked below-the-line in prior GRCs.

10. Please identify all costs associated with SoCalGas' advocacy against Reach Codes for the years 2015-2022 and the amount of those costs, by year, allocated to above-the-line accounts, including the costs of employee involvement in that advocacy.

Electric Vehicles:

11. Please provide evidence that SoCalGas has advocated for the use of all-electric vehicles at any time between 2015 and today. Such advocacy includes any efforts to educate customers about the benefits of all-electric vehicles.²

END OF REQUEST

INSTRUCTIONS

You are instructed to answer the Data Requests in the above-captioned proceeding, with written, verified responses pursuant to Public Utilities Code §§ 309.5, 314, 314.5, 581 and 582, and Rules 1.1 and 10.1 of the California Public Utilities Commission's Rules of Practice and Procedure. Restate the text of each request prior to providing the response. If you have any questions regarding this data request, please contact the Originator at the email address or phone number above.

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

Identify the person providing the answer to each data request and his/her contact information. All data responses need to have each page numbered, referenced, and indexed so worksheets can be followed. If any numbers are calculated, include a copy of all supporting electronic files, with data and formulas intact and functioning, so that the formula and their sources can be reviewed. Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word or Excel format, send the Word document or Excel file and do not send the information only 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.

Documents produced in response to the data requests should be numbered, and indexed if voluminous. Responses to data requests that refer to or incorporate documents should identify the particular documents referenced by page numbers.

If a request, definition, or an instruction, is unclear, notify the data request Originator and the Project Coordinator(s) as soon as possible. In any event, answer the request to the fullest extent possible, specifying the reason for your inability to answer the remaining portion of the Data Request.

² For purposes of this data request, all-electric vehicles do not include vehicles which are hybrid or rely on fuel cells.

Provide two copies of the above information as it becomes available but no later than the due date identified above. Provide electronic responses and set of hard copy responses with your submittal to the data request Originator and the Project Coordinator(s).

Data Request Number: PAO-SCG-071-TBO

Proceeding Name: A2205015_016 - SoCalGas and SDGE 2024 GRC

Proceeding Number: A2205015_016 2024 GRC

Publish To: Public Advocates Office

Date Received: 12/7/2022

Date Responded:12/21/2022

Access To SAP Database

1. Please do all things necessary to provide full and complete remote access to the utility's SAP (System Application and Product in Processing) database so that Cal Advocates may audit all above the line accounts. Please confirm that SoCalGas is prepared to provide such access no later than December 19, and when such access will be available. If such access cannot be made available within this time frame, please identify the SoCalGas office closest to the Commission's San Francisco location where Cal Advocates can access the SAP database.

SoCalGas Response 1:

SoCalGas objects to this request under Rule 10.1 of the Commission's Rules of Practice and Procedure on the grounds that this request seeks access that is not relevant to the subject matter involved in the pending General Rate Case ("GRC") proceeding and therefore, the burden, expense and intrusiveness of this request outweighs the likelihood that the information sought will lead to the discovery of relevant and admissible evidence.

SoCalGas also objects to this request on the grounds that it is overbroad as to time and therefore outside the scope of this proceeding as it does not limit the timeframe to the relevant time period of the test year 2024 GRC application. SoCalGas further objects to this Request to the extent it calls for the disclosure of information that is protected by the attorney-client privilege or the attorney work product doctrine. SoCalGas also objects to the extent this request requires SoCalGas to disclose information protected by the First Amendment, SoCalGas is excluding that information pending the resolution of its appeal, Case No. B310811 and pursuant to Executive Director's March 19, 2021 Rule 16.6 stay of Resolution ALJ-391. Subject to and without waiving the foregoing objections, SoCalGas responds as follows:

The Company's financial records are maintained in SAP. The financial information included in SAP is used as the basis for the Company's financial reporting, whether for financial statements under United States Generally Accepted Accounting Principles ("US GAAP") and the FERC Uniform System of Accounts ("USoA"), or regulatory reporting that occurs in a proceeding such as a general rate case. Although the transactions are initially recorded in SAP, in order to be utilized in a regulatory proceeding such as the GRC, that data must be processed through a Business Warehouse ("BW") reporting system that applies hundreds of "rules" to prepare the relevant financial data for use in the GRC. The first process, as required by D.08-07-046 Ordering Paragraph 22,

Data Request Number: PAO-SCG-071-TBO

Proceeding Name: A2205015_016 - SoCalGas and SDGE 2024 GRC

Proceeding Number: A2205015_016 2024 GRC

Publish To: Public Advocates Office

Date Received: 12/7/2022

Date Responded:12/21/2022

SoCalGas Response 1:-Continued

“SDG&E and SoCalGas shall file the next GRC using the then-current “cost center” system of internal accounting and control rather than convert and allocate the data to approximate the Federal Energy Regulatory Commission’s Uniform System of Accounts.” This is why the GRC witness areas and workpaper scope change in every GRC cycle. The second process includes an automatic process for analyzing the data to categorize costs as GRC or non-GRC based upon over 800 unique accounting attributes such as FERC accounts and non-GRC regulatory filings. This process has previously been identified as the companywide exclusions process. Following these automated steps, the data is available for GRC teams to manually analyze the data and perform another review to determine whether costs should be further adjusted. This starting point appears in the Determination of Adjusted-Recorded (Incurred Costs) section of the workpapers as the Recorded (Nominal \$). Any additional adjustments that are made by GRC teams are the adjustments that appear in the GRC workpapers and are referred to as manual adjustments. For these reasons, remote access to SAP is not indicative of how costs appear or are presented in a general rate case.

Please see the attachment “Ch32-Q7C-E-SCG_2021.xlsx” within Section D, Chapter 32 of the Master Data Request (“MDR”) showing the 2021 Company-wide Adjustments and the Manual Adjustments made by planners that are referenced herein.

Attachment E

**SCG Resp. SK-SCG-2020-01, 2-7-2020
(GRC Ex. CA-23-WP 159 PDF 347)**

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

QUESTION 4:

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

RESPONSE 4:

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

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

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

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

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

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

Attachment F

**SCG Resp. SC-SCG-2019-05 Q.8, 8-27-19
(GRC Ex. CA-23-WP PDF 496)**

SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)
Date Received: August 13, 2019
Date Submitted: August 27, 2019

QUESTION 8:

Provide all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO.

RESPONSE 8:

SoCalGas objects to this request as seeking information that is outside the statutory authority delegated to the Public Advocates Office by Pub. Util. Code § 309.5. The Balanced Energy IO is shareholder funded, not ratepayer funded. Thus, knowing this information will not assist the Public Advocates Office in performing its statutory duties.

Attachment G

Excerpt of GRC Ex. CA-130

PubAdv-SCG-BKZ-019

SCG Withholding Of Evidence Based On

SoCalGas v. CPUC

Data Request Number: PAO- SCG-019-BKZ

Proceeding Name: A2205015_016 - SoCalGas and SDGE 2024 GRC

Proceeding Number: A2205015_016 2024 GRC

Publish To: Public Advocates Office

Date Received: 8/12/2022

Date Responded:8/31/2022

11. Where SoCalGas has moved costs from an above-the-line account to a below-the-line account between 2017 and 2021, please provide an Excel spreadsheet identifying:
- a. The Vendor name and ID number;
 - b. The date(s) the move(s) occurred;
 - c. The account(s) - by FERC number - the costs were originally booked to;
 - d. All account(s) - by FERC number - the costs were moved to; and
 - e. The document authorizing the expenditure, such as a Work Order or Internal Order number, or any other authorization and provide a copy of that authorization.

SoCalGas Response 11:

SoCalGas objects to this request pursuant to Rule 10.1 of the Commission's Rules of Practice and Procedure on the grounds that the burden, expense and intrusiveness of this request outweighs the likelihood that the information sought will lead to the discovery of relevant and admissible evidence. SoCalGas objects to the request as it seeks information not relevant to the subject matter involved in the pending proceeding and therefore, the burden, expense and intrusiveness of this request outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Specifically, SoCalGas is not seeking rate recovery of below-the-line costs in its TY 2024 GRC Application. Such costs are beyond the scope of any issue relevant to the TY 2024 GRC Application. SoCalGas also objects to the extent this request requires SoCalGas to disclose information protected by the First Amendment, SoCalGas is excluding that information pending the resolution of its appeal, Case No. B310811 and pursuant to Executive Director's March 19, 2021 Rule 16.6 stay of Resolution ALJ-391.

Data Request Number: PAO- SCG-019-BKZ

Proceeding Name: A2205015_016 - SoCalGas and SDGE 2024 GRC

Proceeding Number: A2205015_016 2024 GRC

Publish To: Public Advocates Office

Date Received: 8/12/2022

Date Responded:8/31/2022

21. For all payments for Lobbying Services between January 1, 2015 and July 31, 2022, please identify, by year and FERC account number, the total costs booked to above-the-line accounts and the total costs booked to below-the-line accounts, including the costs associated with SoCalGas employee time spent on such activities.

SoCalGas Response 21:

SoCalGas objects to this request under Rule 10.1 of the Commission's Rules of Practice and Procedure on the grounds that the timeframe encompassed in this request is not relevant to the subject matter involved in the pending proceeding and therefore, the burden, expense and intrusiveness of this request outweighs the likelihood that the information sought will lead to the discovery of relevant and admissible evidence. In particular, this request seeks historical information going back seven years, which is outside the scope of the relevant five-year historic time period used by SoCalGas in developing its forecasts for the TY 2024 GRC Application. SoCalGas further objects to this request on the grounds that the request seeks information not relevant to the subject matter involved in the pending proceeding and therefore, the burden, expense and intrusiveness of this request outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Specifically, SoCalGas is not seeking recovery of costs for lobbying services, which is beyond the scope of any issue relevant to the TY 2024 GRC Application. In addition, to the extent this request requires SoCalGas to disclose information protected by the First Amendment, SoCalGas is excluding that information pending the resolution of its appeal, Case No. B310811 and pursuant to Executive Director's March 19, 2021 Rule 16.6 stay of Resolution ALJ-391. See also responses to Questions 7, 16 and 17.

Attachment H

**SCG DR Resp. SCG051719
(GRC Ex. CA-100)**

**CONFIDENTIALITY FOR
MARATHON AND IMPENTA
VENDOR NAMES WAIVED**

FIRST RESPONSE

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019

QUESTION 1:

Did SoCalGas use any ratepayer funding to support the founding and launch of Californians for Balanced Energy Solutions (C4BES)? If yes,

- a. Please give a full accounting of all ratepayer funding sources.
- b. Please give a full accounting of how any ratepayer funds were used.

RESPONSE 1:

Ratepayer funds have not been used to support the founding or launch of Californians for Balanced Energy Solutions (C4BES).

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019

QUESTION 2:

Does SoCalGas continue to use any ratepayer funding to support C4BES? If yes,
a. Please give a full accounting of all ratepayer funding sources.
b. Please give a full accounting of how any ratepayer funds were used.

RESPONSE 2:

Ratepayer funds are not used to support C4BES.

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019

QUESTION 3:

Please provide accounting of all SoCalGas staff who spent work hours on the founding, launch, and continued activities of C4BES.

- a. List all names of SoCalGas staff who spent work hours on C4BES activities.
- b. Provide an estimate of the number of hours spent on C4BES activities by each staff member listed in Question 3b.
- c. Provide the funding source(s) for all staff time, including specification of ratepayer or shareholder funding and the account the time was booked to (balancing account, shareholder account, GRC line item, etc.).

RESPONSE 3:

a. George Minter, Regional Vice President, External Affairs and Environmental Strategy; Ken Chawkins, Public Policy Manager.

b. For purposes of this response, “C4BES-related activities” refers to the “founding, launch, and continued activities of C4BES,” as queried in the question. From August 1, 2018 – December 31, 2018, George Minter spent approximately 2.5% of his time on C4BES-related activities, and Ken Chawkins spent approximately 10% of his time on C4BES-related activities. In 2019, through the date of this response, George Minter spent approximately 3 hours on C4BES-related activities, and Ken Chawkins spent approximately 10% of his time on C4BES-related activities.

c. The above-described time is shareholder funded (i.e., it is booked to a distinct invoice/order (I/O) that is not ratepayer funded).

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019

QUESTION 4:

Please provide all invoices and contracts to which SoCal Gas is a party for work which relates to the creation or support of C4BES. These include, but are not limited to contracts and invoices related to:

- a. Retention of **Imprenta Communications** in developing C4BES objectives and talking points.
- b. Compensation provided to C4BES board member Matt Rahn.

RESPONSE 4:

The attachments include Confidential and Protected Material pursuant to PUC Section 583, GO 66-D, D.17-09-023, and the accompanying declaration.

- a. SoCalGas does not have a direct contractual relationship with **Imprenta Communications** pertaining to C4BES. SoCalGas has a contractual relationship with **Marathon Communications Incorporated, who** contracts with **Imprenta Communications**. See the folder "Response 4A_Confidential Information" for responsive invoices through May 31, 2019 and underlying contract, as amended from time to time. **Marathon Communications Incorporated** has performed and continues to perform routine services for SoCalGas outside of those performed with respect to C4BES. To account for all the work done on behalf of C4BES, fifty-percent of each invoice is booked to the invoice/order referenced in the response to Question 3.c above, i.e., fifty-percent of each responsive invoice is not ratepayer funded.
- b. Matt Rahn volunteers his time as C4BES' Chair. Neither Rahn nor the organizations with which he is affiliated have received any funding from SoCalGas as compensation for his work with C4BES.

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019

QUESTION 5:

For each invoice and contract provided in response to Question 5, identify:

- a. Whether ratepayer or shareholder funded (and proportions if necessary)
- b. The funding source used (e.g. GRC funds, specific balancing accounts, etc.).

RESPONSE 5:

SoCalGas interprets the question to refer to the documents and responses provided in response to Question 4 (rather than Question 5). With the following understanding, SoCalGas responds as follows:

- a. As noted in response to Question 4 above, the invoices provided reflect both routine work done for SoCalGas as well as some work done on behalf of C4BES. As such, in order to fully account for the work done for C4BES, fifty-percent of each invoice is funded by shareholders as described in response to Question 3.c. The remaining fifty-percent of each invoice is funded as described in response to Question 5.b.
- b. The ratepayer-funded portion of each invoice is billed to the internal Cost Center 2200-2441 in SoCalGas' General Rate Case.

SECOND RESPONSE

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019

QUESTION 1:

Did SoCalGas use any ratepayer funding to support the founding and launch of Californians for Balanced Energy Solutions (C4BES)? If yes,

- a. Please give a full accounting of all ratepayer funding sources.
- b. Please give a full accounting of how any ratepayer funds were used.

RESPONSE 1:

Ratepayer funds have not been used to support the founding or launch of Californians for Balanced Energy Solutions (C4BES).

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019

QUESTION 2:

Does SoCalGas continue to use any ratepayer funding to support C4BES? If yes,
a. Please give a full accounting of all ratepayer funding sources.
b. Please give a full accounting of how any ratepayer funds were used.

RESPONSE 2:

Ratepayer funds are not used to support C4BES.

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019

QUESTION 3:

Please provide accounting of all SoCalGas staff who spent work hours on the founding, launch, and continued activities of C4BES.

- a. List all names of SoCalGas staff who spent work hours on C4BES activities.
- b. Provide an estimate of the number of hours spent on C4BES activities by each staff member listed in Question 3b.
- c. Provide the funding source(s) for all staff time, including specification of ratepayer or shareholder funding and the account the time was booked to (balancing account, shareholder account, GRC line item, etc.).

RESPONSE 3:

a. George Minter, Regional Vice President, External Affairs and Environmental Strategy; Ken Chawkins, Public Policy Manager.

b. ~~For purposes of this response, "C4BES-related activities" refers to the "founding, launch, and continued activities of C4BES," as queried in the question. From August 1, 2018—December 31, 2018, George Minter spent approximately 2.5% of his time on C4BES-related activities, and Ken Chawkins spent approximately 10% of his time on C4BES-related activities. In 2019, through the date of this response, George Minter spent approximately 3 hours on C4BES-related activities, and Ken Chawkins spent approximately 10% of his time on C4BES-related activities~~ See response to 3.c below.

c. ~~The above-described time is~~ SoCalGas determined that, in order to prevent further distraction from the important issues in R. 19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization*, that all of George Minter's and Ken Chawkins's time from May 1, 2018 through the present would be shareholder funded (i.e., ~~it is~~ this time is booked to a distinct invoice/order (I/O) that is not ratepayer funded).

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019

QUESTION 4:

Please provide all invoices and contracts to which SoCal Gas is a party for work which relates to the creation or support of C4BES. These include, but are not limited to contracts and invoices related to:

- a. Retention of **Imprenta Communications** in developing C4BES objectives and talking points.
- b. Compensation provided to C4BES board member Matt Rahn.

RESPONSE 4:

The attachments include Confidential and Protected Material pursuant to PUC Section 583, GO 66-D, D.17-09-023, and the accompanying declaration.

a. SoCalGas does not have a direct contractual relationship with **Imprenta Communications** pertaining to C4BES. SoCalGas has a contractual relationship with **Marathon Communications Incorporated**, who contracts with **Imprenta Communications**. See the folder "Response 4A_Confidential Information" for responsive invoices through May 31, 2019 and underlying contract, as amended from time to time. **Marathon Communications Incorporated** has performed and continues to perform routine services for SoCalGas outside of those performed with respect to C4BES. Work for C4BES was never intended to be ratepayer funded; thus, the invoices had previously been allocated between ratepayer and shareholder funding. SoCalGas recently determined that, in order to prevent further distraction from the important issues in R. 19-01-011, Order Instituting Rulemaking Regarding Building Decarbonization, none of these invoices would be subject to ratepayer funding. For sake of clarity, all work done pursuant to the contracts provided herein is paid for by shareholders. To account for all the work done on behalf of C4BES, fifty percent of each invoice is booked to the invoice/order referenced in the response to Question 3.c above, i.e., fifty percent of each responsive invoice is not ratepayer funded.

b. Matt Rahn volunteers his time as C4BES' Chair. Neither Rahn nor the organizations with which he is affiliated have received any funding from SoCalGas as compensation for his work with C4BES.

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019

QUESTION 5:

For each invoice and contract provided in response to Question 5, identify:

- a. Whether ratepayer or shareholder funded (and proportions if necessary)
- b. The funding source used (e.g. GRC funds, specific balancing accounts, etc.).

RESPONSE 5:

SoCalGas interprets the question to refer to the documents and responses provided in response to Question 4 (rather than Question 5). With the following understanding, SoCalGas responds as follows:

~~a. As noted in response to Question 4 above, the invoices provided reflect both routine work done for SoCalGas as well as some work done on behalf of C4BES. As such, in order to fully account for the work done for C4BES, fifty percent of each invoice is funded by shareholders as described in response to Question 3.c. The remaining fifty percent of each invoice is funded as described in response to Question 5.b.~~

a. SoCalGas recently determined that, in order to prevent further distraction from the important issues in R. 19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization*, none of these invoices or other work performed under the contracts provided in response to Question 4 would be subject to ratepayer funding. For sake of clarity, all work done pursuant to the contracts provided in response to Question 4 is paid for by shareholders.

~~b. The ratepayer-funded portion of each invoice is billed to the internal Cost Center 2200-2441 in SoCalGas' General Rate Case. funding source is the distinct shareholder-funded I/O described in response to Question 3.c.~~

THIRD RESPONSE

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019
Date of Modified Submission: August 13, 2019

QUESTION 1:

Did SoCalGas use any ratepayer funding to support the founding and launch of Californians for Balanced Energy Solutions (C4BES)? If yes,

- a. Please give a full accounting of all ratepayer funding sources.
- b. Please give a full accounting of how any ratepayer funds were used.

RESPONSE 1:

Ratepayer funds have not been used to support the founding or launch of Californians for Balanced Energy Solutions (C4BES).

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019
Date of Modified Submission: August 13, 2019

QUESTION 2:

Does SoCalGas continue to use any ratepayer funding to support C4BES? If yes,

- a. Please give a full accounting of all ratepayer funding sources.
- b. Please give a full accounting of how any ratepayer funds were used.

RESPONSE 2:

Ratepayer funds are not used to support C4BES.

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019
Date of Modified Submission: August 13, 2019

QUESTION 3:

Please provide accounting of all SoCalGas staff who spent work hours on the founding, launch, and continued activities of C4BES.

- a. List all names of SoCalGas staff who spent work hours on C4BES activities.
- b. Provide an estimate of the number of hours spent on C4BES activities by each staff member listed in Question 3b.
- c. Provide the funding source(s) for all staff time, including specification of ratepayer or shareholder funding and the account the time was booked to (balancing account, shareholder account, GRC line item, etc.).

RESPONSE 3:

- a. George Minter, Regional Vice President, External Affairs and Environmental Strategy; Ken Chawkins, Public Policy Manager.
- b. See response to 3.c below.
- c. SoCalGas determined that, in order to prevent further distraction from the important issues in R. 19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization*, that all of George Minter's and Ken Chawkins's time from May 1, 2018 through the present would be shareholder funded (i.e., this time is booked to a distinct invoice/order (I/O) that is not ratepayer funded).

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019
Date of Modified Submission: August 13, 2019

QUESTION 4:

Please provide all invoices and contracts to which SoCal Gas is a party for work which relates to the creation or support of C4BES. These include, but are not limited to contracts and invoices related to:

- a. Retention of Imprenta Communications in developing C4BES objectives and talking points.
- b. Compensation provided to C4BES board member Matt Rahn.

RESPONSE 4:

The attachments include Confidential and Protected Material pursuant to PUC Section 583, GO 66-D, D.17-09-023, and the accompanying declaration.

- a. SoCalGas does not have a direct contractual relationship with Imprenta Communications pertaining to C4BES. SoCalGas has a contractual relationship with Marathon Communications Incorporated, who contracts with Imprenta Communications. See the folder "Response 4A_Confidential Information" for responsive invoices through May 31, 2019 and underlying contract, as amended from time to time. Marathon Communications Incorporated has performed and continues to perform routine services for SoCalGas outside of those performed with respect to C4BES. Work for C4BES was never intended to be ratepayer funded; thus, the invoices had previously been allocated between ratepayer and shareholder funding. SoCalGas recently determined that, in order to prevent further distraction from the important issues in R. 19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization*, none of these invoices would be subject to ratepayer funding. For sake of clarity, all work done pursuant to the contracts provided herein is paid for by shareholders.
- b. Matt Rahn volunteers his time as C4BES' Chair. Neither Rahn nor the organizations with which he is affiliated have received any funding from SoCalGas as compensation for his work with C4BES.

QUESTIONS ON C4BES
SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALPA-SCG-051719)
Date Received: May 23, 2019
Date Submitted: June 14, 2019
Date of Amended Submission: July 12, 2019
Date of Modified Submission: August 13, 2019

QUESTION 5:

For each invoice and contract provided in response to Question 5, identify:

- a. Whether ratepayer or shareholder funded (and proportions if necessary)
- b. The funding source used (e.g. GRC funds, specific balancing accounts, etc.).

RESPONSE 5:

SoCalGas interprets the question to refer to the documents and responses provided in response to Question 4 (rather than Question 5). With the following understanding, SoCalGas responds as follows:

- a. SoCalGas recently determined that, in order to prevent further distraction from the important issues in R. 19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization*, none of these invoices or other work performed under the contracts provided in response to Question 4 would be subject to ratepayer funding. For sake of clarity, all work done pursuant to the contracts provided in response to Question 4 is paid for by shareholders.

- b. The funding source is the distinct shareholder-funded I/O described in response to Question 3.c.

Attachment I

Email Directing Change To BEIO Accounting (Staff Ex. 184) (PUBLIC)

[REDACTED]

From: [REDACTED]
Sent: Wednesday, October 30, 2019 3:37 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Update WOA Form

Hi April,

We had a meeting with Ed Reyes regarding the Balanced Energy IO# 300796601 (B28322.000) and he was able to obtain the correct FERC settlement for this order. Can you please update the WOA form and write in the correct FERC account# F426400G? Please also include a note on the WOA form as follows, "On Sept 21st, Ed Reyes and Sandra Hrna met with Sharon Tomkins and Sharon confirmed that the Balanced Energy activities should be classified as F426400G - EXPENDITURES-CIVIC & RELATED ACTIVITIES/LOBBYING COSTS.

Thanks.

Mark Diancin
Principal Accountant
Affiliate Billing & Costing
Work: (213) 244-3194
Cell: (949) 922-5408
Mail: GT15B1

Attachment J

**Accounting Change to BEIO
SCG Resp. AW-SCG-2020-01, 3-3-20
(GRC Ex. CA-23-WP PDF 63-64)**

SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALADVOCATES-AW-SCG-2020-01)

12th in a Series

Date Received: February 14, 2020

Date Submitted: March 3, 2020

QUESTION 22:

In response to Data Request CalAdvocates-SK-SCG-2020-01 Question 4, SoCalGas stated, “an incorrect settlement rule was set up for this IO to FERC 920.0 A&G Salaries, consequently, the costs initially settled to the incorrect FERC account. On September 21, 2019, the SoCalGas Accounting Controller and Accounting Director met with the Strategy, Engagement & Chief Environmental Officer, and confirmed that the Balanced Energy activities should be classified as FERC 426.4 - Expenditures-Civic & Related Activities/Lobbying Costs.”

Please:

- a. Describe how SoCalGas came to be aware that an incorrect settlement rule was set up for IO 300796601.
- b. Provide all accounting instructions/forms that lead to the incorrect settlement of the costs.
- c. Provide all accounting instructions/forms that lead to the change described above being effectuated.
- d. Provide documentation showing that the change described above has been effectuated.

RESPONSE 22:

The intent of opening the Work Order Authorization (“WOA”) was to track the cost as shareholder funded and excludable from GRC. This IO was provided to the GRC team for exclusion on June 19, 2019. Exclusion means that the costs will not be included as part of the future GRC request. As noted in the TY2019 GRC workpapers, not all recorded costs are requested for recovery from ratepayers. During the development of the GRC forecasts, it is sometimes necessary to remove incurred costs to further ensure that ratepayers are not funding activities that should be borne by shareholders. Upon further review of the FERC account used for this IO, it was determined that FERC 426.4 would better reflect the activities being charged. Expenses recorded to FERC account 426.4 are automatically excluded from GRC financial analysis by the GRC team.

SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALADVOCATES-AW-SCG-2020-01)

12th in a Series

Date Received: February 14, 2020

Date Submitted: March 3, 2020

- a. A standard WOA form was completed on 3/28/19. See attached request e-mail titled – WOA-New IO Needed for Balanced Energy. Note that the attachment in this e-mail was previously provided on September 4, 2019 per a request from Stephen Castello on August 29, 2019 regarding CalAdvocates-SC-SCG-2019-05. The original Balanced Energy WOA was part of SoCalGas’ response to question 1 in CALADVOCATES-SC-SCG-2019-04.

- b. On 9/21/2019, Strategy & Engagement described the activities being charged to this IO and Accounting confirmed that FERC 426.4 should be the proper settlement rule as described in the Code of Federal Regulations (“CFR”). Subsequent to that meeting, by Oct 2019, this IO was changed to FERC 426.4. See the attached document – Updated Balanced Energy WOA, which reflects this change.

- c. In October 2019, this IO was updated to reflect FERC 426 within SAP.

Display Settlement Rule: Overview

Actual settlement Other Version

Order BALANCED ENERGY

Plan settlement Version 2 Plan version 2 - FERC Dist

Plan - Settlement Rules												
Cat	Settlement Receiver	Receiver Short Text	%	Equivalence no.	Se...	No.	Fro...	From...	To ...	To Fl...	First Used	Last Used
CTR	200000G	A&G SALARIES	100.00	0	PER	1	3	2019	9	2019	009/2019	009/2019
CTR	F426400G	EXP-CIVIC & RELATED	100.00	0	PER	2	10	2019	16	9999	001/2020	001/2020

Attachment K

**Cal PA Provides Screen Shots to SCG
June 5, 2023 (PUBLIC)**

From: [Bone, Traci](#)
To: [Patrick Rosvall](#)
Cc: [Sean Beatty](#); [Peleo, Marion](#); [Hunter, Stacey](#); [Sharon L. Cohen \(slcohen@sdge.com\)](#); [Henry, Elliott S](#)
Subject: RE: [EXTERNAL] A.22-05-015 (SoCalGas GRC) -- SAP Materials Required by February 14, 2023 Ruling - CONFIDENTIAL AND PRIVILEGED
Date: Monday, June 5, 2023 5:20:00 PM
Attachments: [1 - \[REDACTED\]](#)
[2 - \[REDACTED\]](#)
[3 - \[REDACTED\]](#)
[4 - \[REDACTED\]](#)
[5 - \[REDACTED\]](#)
[6 - \[REDACTED\]](#)
[7 - \[REDACTED\]](#)
[8 - \[REDACTED\]](#)
[9 - \[REDACTED\]](#)
[10 - \[REDACTED\]](#)
[11 - \[REDACTED\]](#)
[12 - \[REDACTED\]](#)
[13 - \[REDACTED\]](#)
[14 - \[REDACTED\]](#)
[15 - \[REDACTED\]](#)
[16 - \[REDACTED\]](#)

Patrick:

My apologies for the delay in sending these to you. I've been out of the office to address family issues; in addition, my client was considering an interlocutory appeal to the full Commission.

Cal Advocates' position is that the ALJ Ruling, and denial of reconsideration are in error. Consequently, Cal Advocates provides these screen shots from its review of SoCalGas' SAP system that occurred between March 13-24 under protest, and reserves the right to appeal the ALJ's determinations on these matters as it deems appropriate.

Traci Bone
Attorney for the Public Advocates Office
at the California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Cell: (415) 713-3599
traci.bone@cpuc.ca.gov

From: Patrick Rosvall <patrick@brblawgroup.com>
Sent: Friday, May 26, 2023 4:39 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>

Cc: Sean Beatty <sean@brblawgroup.com>

Subject: [EXTERNAL] A.22-05-015 (SoCalGas GRC) -- SAP Materials Required by February 14, 2023 Ruling

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Traci,

On behalf of SoCalGas, I am following up on the status of Cal Advocates' compliance with Resolution ALJ-391, the ALJ's February 14, 2023 Ruling, and the ALJ's April 21, 2023 Ruling requiring Cal Advocates to "provide a list of the documents or references that can identify the electronic copy" of each item "already downloaded or copied" from the SAP database "within three days of the issuance of the ruling." See A.22-05-015, *April 21, 2023 Ruling* at 12-13 (OP 5). As you know, the motion for reconsideration on this subject was denied yesterday. Please confirm when SoCalGas can expect to receive the materials covered by the above directives.

We ask that Cal Advocates provide the required materials by no later than close of business Tuesday, May 30th. Please direct correspondence on this subject to me and my colleague, Sean Beatty, who is copied here. Thank you in advance for your attention to this matter.

Best,

Patrick

PATRICK M. ROSVALL | Partner



BRB Law LLP
C: 415.518.4813

BRB LAW O: 530.231.5208

patrick@brblawgroup.com

www.brblawgroup.com

CONFIDENTIALITY NOTICE

This message, including any attachments, contains information from the law firm of BRB Law LLP that may be privileged and/or confidential. If you received this message in error, you may not distribute this information; please notify our office immediately and delete all copies.

Attachment L

Timeline of SCG Accounting Claims Regarding Balanced Energy Contracts

Timeline Of Southern California Gas Company Accounting Claims Regarding The Balanced Energy Contracts

- 1. August 13, 2019** - Cal Advocates asks SoCalGas for all contracts associated with the Balanced Energy Internal Order (BEIO), the order directing the accounting treatment for the Balanced Energy Contracts.¹
- 2. August 27, 2019** - SoCalGas refuses to provide the Balanced Energy Contracts claiming that the “[t]he Balanced Energy IO is shareholder funded, not ratepayer funded. Thus, knowing this information will not assist the Public Advocates Office in performing its statutory duties.”²
- 3. September 16, 2019** – SoCalGas represents in a meet and confer with Cal Advocates that the contracts that are the subject of Question 8 of the data request – the Balanced Energy Contracts – are 100% shareholder funded.³
- 4. October 2, 2019** – During another meet and confer with Cal Advocates, SoCalGas repeats its assertion that because the Balanced Energy Contracts are fully shareholder funded, reviewing the Contracts would not assist the Public Advocates Office in its statutory duty.⁴
- 5. October 7, 2019** – Cal Advocates submits a motion to compel SoCalGas to produce the Balanced Energy Contracts.⁵
- 6. October 17, 2019** – SoCalGas claims throughout its pleading in response to Cal Advocates’ motion to compel that the Balanced Energy Contracts are “100 percent

¹ See Attachment F: SCG Resp. SC-SCG-2019-05 Q.8, 8-27-19 (GRC Ex. CA-23-WP PDF 496).

² See Attachment F: SCG Resp. SC-SCG-2019-05 Q.8, 8-27-19 (GRC Ex. CA-23-WP PDF 496) (*emphasis added*).

³ See 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)* at 7, served October 7, 2019 and available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---caladvocates-motion-to-compel-responses-to-dr5-q8---10-7-19.pdf>.

⁴ *Id.* at 8.

⁵ *Id.*

shareholder funded” and argues that production of the contracts may chill the utility’s First Amendment rights.⁶

7. **October 30, 2019** – SoCalGas issues email instructions for the BEIO to be moved from FERC Account 920 – a ratepayer account – to FERC Account 426.4 – a shareholder account for political activities.⁷
 - That email requests that the following note be made “on the WOA form as follows, ‘On Sept 21st, Ed Reyes and Sandra Hrna met with Sharon Tomkins and Sharon confirmed that the Balanced Energy activities should be classified as F426400G - EXPENDITURES-CIVIC & RELATED ACTIVITIES/LOBBYING COSTS.[.]’”
8. **November 1, 2019** – Unbeknownst to Cal Advocates, SoCalGas moves the Balanced Energy Contracts from FERC ratepayer Account 920 to FERC Account shareholder account 426.4.
9. **November 1, 2019** – ALJ Ruling grants Cal Advocates’ October 7, 2019 *Motion To Compel* and orders SoCalGas to provide the Balanced Energy Contracts to Cal Advocates within two business days.⁸
10. **November 5, 2019** – Under protest, SoCalGas provides portions of five Balanced Energy contracts to Cal Advocates with a supporting declaration from Sharon Tomkins that the information is confidential.⁹
11. **December 2, 2019** – SoCalGas submits a motion for reconsideration/appeal of the November 1, 2019 ALJ Ruling ordering the utility to produce the Balanced

⁶ See *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)*, October 17, 2019, available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/2---scg-response-to-cal-advocates-motion-to-compel--10-17-19.pdf>.

⁷ Attachment I – Email Changing BEIO Accounting, Staff Ex. 184

⁸ See *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)*, November 1, 2019 at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/4---alj-ruling-11-1-19.pdf>.

⁹ The contract information appeared to be incomplete in some cases. For example, at least two of the “contracts” did not include the utility’s standard services agreement.

Energy Contracts to Cal Advocates. SoCalGas argues that the ALJ Ruling violates its First Amendment rights.¹⁰

12. February 7, 2020 – SoCalGas provides documentation in response to Cal Advocates’ discovery in its 2019 General Rate Case showing that the Balanced Energy contracts *were not booked to a shareholder account until November 1, 2019* – the same day the ALJ ordered SoCalGas to produce the Balanced Energy Contracts to Cal Advocates. That data response explained that “an incorrect settlement rule was set up for this IO to FERC 920.0 A&G Salaries, consequently, the costs initially settled to the incorrect FERC account.”¹¹

13. February 14, 2020 – Cal Advocates issues Data Request AW-SCG-2020-01 Q. 22 asking for additional information regarding SoCalGas’ claims that there had been an “incorrect settlement rule” for the BEIO. SoCalGas responds on March 3, 2020:

The intent of opening the Work Order Authorization (“WOA”) was to track the cost as shareholder funded and excludable from GRC. This IO was provided to the GRC team for exclusion on June 19, 2019. Exclusion means that the costs will not be included as part of the future GRC request. As noted in the TY2019 GRC workpapers, not all recorded costs are requested for recovery from ratepayers. During the development of the GRC forecasts, it is sometimes necessary to remove incurred costs to further ensure that ratepayers are not funding activities that should be borne by shareholders. Upon further review of the FERC account used for this IO, it was determined that FERC 426.4 would better reflect the activities being charged. Expenses recorded to FERC account 426.4 are automatically excluded from GRC financial analysis by the GRC team.

a. A standard WOA form was completed on 3/28/19. See attached request e-mail titled – WOA-New IO Needed for Balanced Energy. Note that the

¹⁰ *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), December 2, 2019 at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1--motion-for-reconsiderationappeal-with-declarationscombined-final11.pdf>.

¹¹ Attachment E - Data Response Q. 4 to CALADVOCATES-SK-SCG-2020-01 dated February 7, 2020 (“The settlement rule was corrected on October 30, 2019 with an effective date of November 1, 2019. Accounting booked retroactive adjustments in November and December 2019 to correct the FERC account balances.”).

attachment in this e-mail was previously provided on September 4, 2019 per a request from Stephen Castello on August 29, 2019 regarding CalAdvocates-SC-SCG-2019-05. The original Balanced Energy WOA was part of SoCalGas' response to question 1 in CALADVOCATES-SC-SCG-2019-04.

b. On 9/21/2019, Strategy & Engagement described the activities being charged to this IO and Accounting confirmed that FERC 426.4 should be the proper settlement rule as described in the Code of Federal Regulations ("CFR"). Subsequent to that meeting, by Oct 2019, this IO was changed to FERC 426.4. See the attached document – Updated Balanced Energy WOA, which reflects this change.

c. In October 2019, this IO was updated to reflect FERC 426 within SAP.¹²

¹² See Attachment J - SCG Resp. AW-SCG-2020-01, 3-3-20 (GRC Ex. CA-23-WP PDF 63-64).

**DECLARATION IN SUPPORT OF
PETITION PER RULE 16.4(b)**

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

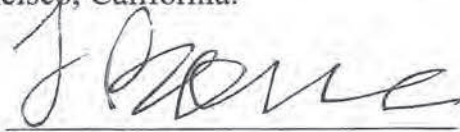
**DECLARATION OF TRACI BONE
IN SUPPORT OF PUBLIC ADVOCATES OFFICE PETITION FOR
MODIFICATION OF RESOLUTION ALJ-391 AND DECISION 21-03-001**

I, TRACI BONE, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California and am employed as an attorney for the Public Advocates Office at the California Public Utilities Commission (Cal Advocates). My business address is 505 Van Ness Avenue, San Francisco, California, 94102.
2. Cal Advocates initiated a not-in-a-proceeding review of Southern California Gas Company's (SoCalGas') accounting practices regarding its use of ratepayer monies to fund political activities in support of anti-decarbonization and related activities in May of 2019.
3. Cal Advocates' requested information related to these practices via data request No. CalAdvocates-SC-SCG-2019-05 on August 14, 2019.
4. At all times prior to the issuance of an Order directing the production of these documents on November 1, 2019, SoCalGas claimed that documents related to data request No. CalAdvocates-SC-SCG-2019-05 were being billed to shareholder accounts.
5. On February 7, 2020, in response to data request CALADVOCATES-SK-SCG-2020-01 issued on January 24, 2020 in its General Rate Case (GRC), SoCalGas responded that costs associated with these contracts were moved from ratepayer to shareholder accounts on November 1, 2019. This response is Attachment E to Cal Advocates' instant Petition for Modification.
6. Based on the above information, I believe the contracts at issue here – also known as the Balanced Energy Contracts – were, at all times relevant to the dispute, billed to ratepayer rather than shareholder accounts.
7. As a result of a ruling issued in the GRC requiring Cal Advocates to

provide SoCalGas with a list of screenshots that Cal Advocates made while reviewing SoCalGas SAP accounting system, I also believe it is necessary for the Commission to modify Resolution ALJ-391 to take into account existing Commission confidentiality protections and the relevant law related to attorney-work product privilege.

Executed under penalty of perjury under the laws of the State of California, on this 22nd day of November, 2023, at San Francisco, California.

A handwritten signature in black ink, appearing to read "Traci Bone", written over a horizontal line.

Traci Bone
Attorney for the
Public Advocates Office
California Public Utilities Commission