No. _____

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ___

SOUTHERN CALIFORNIA GAS COMPANY,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF, MOTION FOR EMERGENCY STAY OR OTHER INJUNCTIVE RELIEF, DECLARATION OF JULIAN W. POON, AND PROPOSED ORDER, AND MEMORANDUM OF POINTS AND AUTHORITIES; IMMEDIATE RELIEF REQUESTED BY TUESDAY, MARCH 16, 2021 OF ORDER BY CALIFORNIA PUBLIC UTILITIES COMMISSION TO PRODUCE CONSTITUTIONALLY PROTECTED MATERIAL

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

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Sempra Energy has an interest in this proceeding because it is the corporate parent of Petitioner Southern California Gas Company ("SoCalGas").

There are no other interested entities or persons that need to be disclosed pursuant to California Rules of Court, rule 8.208.

DATED: March 8, 2021

Respectfully submitted,

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By: 

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

PRELIMINARY STATEMENT

This case presents a stark abuse of state power necessitating this Court's intervention. Outside any formal proceeding, with no clear procedural safeguards, one arm of the California Public Utilities Commission ("Commission" or "CPUC")—the Public Advocates Office ("CalPA")—has persuaded the Commission to order Petitioner Southern California Gas Company ("SoCalGas") to produce—within 15 days—information protected from disclosure by the First and Fourteenth Amendments to the United States Constitution and Article I of the California Constitution. Taking CalPA's cue, the Commission has adopted a boundless rationale grounded in little more than its general regulatory oversight authority to effectively strip regulated utilities such as SoCalGas of any meaningful First Amendment protection from the Commission or its staff (including CalPA). This Court's prompt review is needed to protect against the irreparable harm SoCalGas will otherwise suffer from this imminent violation of its constitutional rights. The Commission has left CalPA unrestrained to trample on the rights of regulated utilities, based on a flawed interpretation under which no information would ever be constitutionally off-limits to CalPA. In adopting CalPA's reasoning and going even further to put all those who associate with regulated utilities on notice that there is no constitutional protection to freely advance policy positions, even where 100% funded by shareholders, centuries-old legal protections melt away based on nothing more than its say-so.

CalPA's unconstitutional demands are being enforced by the CPUC against SoCalGas under the threat of staggering daily fines as a result of SoCalGas's political activities and the positions and viewpoints it has taken or supported to decarbonize California. In keeping with its statutory

mandate to advocate on behalf of ratepayers for lower utility rates, CalPA's stated aim is to investigate SoCalGas's use of *ratepayer* money to fund efforts to promote the use of natural gas, renewable gas, and other clean fuels such as hydrogen. But CalPA's discovery efforts are hardly focused on investigating SoCalGas's use of ratepayer funds. Instead, CalPA seeks information regarding SoCalGas's use of *shareholder* funds to support its expressive and associational activities—and that has nothing to do with protecting ratepayer interests. That lays bare what is really going on: CalPA is investigating SoCalGas because SoCalGas seeks to "promot[e] natural gas, renewable gas, and other clean fuels as an integral part of the State's decarbonization plans"—a stance with which CalPA disagrees. (App. 1515.)

Equally concerning, CalPA is invoking the unbounded authority it claims in order to help a private civil entity opposed to SoCalGas's objectives circumvent the discovery rules and procedures by which that entity would otherwise be bound. Specifically, CalPA is apparently funneling information obtained from SoCalGas to the interest group Sierra Club, which is currently involved—along with SoCalGas—in formal proceedings regarding decarbonization. The entire extent to which CalPA has deployed its governmental investigation authority in support of a non-governmental entity whose political viewpoint it agrees with remains unclear. What is clear, however, is that CalPA is funneling information to and aiding Sierra Club, which is itself on the board of the Building Decarbonization Coalition (the "Coalition"), an influential advocate in CPUC proceedings actively engaged with state and local governmental entities in a "comprehensive" effort to "wind down [] the gas system" (App. 1822–1823), which would make "retail gas prices ... skyrocket and gas company stock prices [] plummet" (Building Decarbonization Coalition, Momentum: Accelerating Building

Decarbonization (Dec. 2019) p. 4). After nearly a year, CalPA disclosed that it had entered into a Common Interest, Joint Prosecution, and Confidentiality Agreement ("Joint Prosecution Agreement") with Sierra Club in August 2019. Through this agreement, Sierra Club can obtain material from SoCalGas pursuant to authority delegated *solely* to CalPA.

That CalPA's and the CPUC's authority should not be used in this way was recently recognized by California legislators in a letter to the Commission's President. (App. 1605–1607.) Those legislators correctly questioned the legitimacy of the "shocking" Joint Prosecution Agreement, as well as CalPA's focus on "aid[ing] the Sierra Club in their effort to seek the ban of natural gas usage in California even though it is proven to be favored by customers as a fuel source because of the affordable cost." (App. 1605–1606.) As the legislators pointed out, this "new focus" of CalPA is flatly inconsistent with CalPA's statutory mandate to "advocate[] solely on behalf of utility customers" to ensure "the lowest possible rate[s]." (App. 1605.) Indeed, as the Commission itself recognized, the path to building decarbonization is "not yet clear," particularly in light of the "financial impacts of building electrification on customers." (App. 1822.)

Quite plainly, CalPA's focus is not on protecting ratepayer interests. Instead, CalPA seeks to obtain and have publicly released information concerning SoCalGas's political strategy and messaging in order to chill and suppress those efforts. (App. 1336.) While SoCalGas shares CalPA's commitment to decarbonization, it believes California must take a different, more diverse path to get there because of its concern for affordability and energy reliability. SoCalGas works to educate consumers and policymakers about new clean energy technology and fuel options. An arm of the government like CalPA may not constitutionally misuse its investigatory

powers to try to stifle SoCalGas's efforts to express constitutionally protected political and public-policy views with which CalPA disagrees. CalPA also may not misuse its investigatory powers by exercising them on behalf of a private entity.

SoCalGas has repeatedly asked the Commission to intervene. On December 21, 2020, the Commission finally issued Resolution ALJ-391 (the "Resolution"), which it affirmed and modified on March 1, 2021, and issued the next day. The Commission asserts that its "regulatory scheme" grants CalPA "expansive authority to gather information that may infringe First Amendment rights." (App. 1861–1862.) According to the Commission, the mere fact that the CPUC has "general supervisory authority over all regulated utilities" is enough to compel disclosure of "*all* records" held by SoCalGas, and to put all lobbyists and consultants who associate with regulated utilities such as SoCalGas on notice that the Commission and its staff (including CalPA) can demand whatever information they deem necessary bearing on the details of their work. (App. 1866, italics added.) This ruling threatens to eviscerate SoCalGas's (and every other regulated utility's) associational, expressive, and petitioning rights.

Arms of the state do not have "freewheeling authority" to circumvent longstanding constitutional protections. (*IMDb.com Inc. v. Becerra* (9th Cir. 2020) 962 F.3d 1111, 1121, quoting *United States v. Stevens* (2010) 559 U.S. 460, 472.) And "the First Amendment is plainly offended" where the "suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people." (*First Nat. Bank of Bos. v. Bellotti* (1978) 435 U.S. 765, 785–786.) Because of the imminent threat to SoCalGas's rights, this Court should grant SoCalGas's emergency stay request and, following briefing and oral

argument, SoCalGas's petition for a writ of review, mandate, or other appropriate relief. The Commission has ordered SoCalGas to produce constitutionally protected materials by Wednesday, March 17. Given that impending deadline, SoCalGas requests an immediate temporary stay by no later than Tuesday, March 16, 2021—followed by a long-term stay pending at least this Court's decision on the merits of SoCalGas's Petition.

PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF

I. Jurisdiction

1. This Court has original jurisdiction pursuant to section 1756(a) and section 1759(b) of the Public Utilities Code.[1] These statutes authorize an aggrieved party to petition for a writ of review of "order[s] or decision[s]" of the Commission in the Court of Appeal within 30 days after denial of an application for rehearing. (§ 1756, subd. (a).)

2. A petition for writ of review "shall be preferred over, and shall be heard and determined in preference to, all other civil business … irrespective of position on the calendar." (§ 1767.) Unlike other writ petitions that may be dismissed summarily, petitions for writs of review should be decided on the merits because they "function as [an] appeal[] from the administrative decision[] of the Commission and are the exclusive means of judicial review of such decisions." (*San Pablo Bay Pipeline Co., LLC v. P.U.C.* (2015) 243 Cal.App.4th 295, 309; *Pacific Bell Wireless, LLC v. P.U.C.* (2006) 140 Cal.App.4th 718, 728–729.) Finally, where a petition for writ of review raises constitutional challenges, the Court "shall exercise independent judgment on the law and the facts." (§ 1760.)

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[1] Unless otherwise noted, statutory references are to the Public Utilities Code.

II. Parties

3. Petitioner SoCalGas is a corporation formed and existing under the laws of the State of California. SoCalGas's mission is to build the cleanest, safest, and most innovative energy company in America. SoCalGas is a "gas corporation" within the meaning of section 222, and therefore a "public utility" within the meaning of section 216.

4. Respondent California Public Utilities Commission is the administrative agency charged with regulating public utilities such as SoCalGas.

5. The Real Party in Interest in this action is the Public Advocates Office ("CalPA").

III. Venue

6. Venue is proper in the Second Appellate District under section 1756(d), because SoCalGas's principal place of business is in Los Angeles.

IV. Authenticity of Exhibits

7. All exhibits cited here and in the accompanying Appendix of Exhibits to the Petition ("App.") are true copies of original documents submitted for filing with the Commission or of which the Court may take judicial notice.[2] The exhibits are incorporated by reference as though fully set forth herein.

[2] Based on information and belief, the CPUC's docket office may not have formally "filed" all of these documents because CalPA's discovery demands have been made "not in a proceeding."

V. Statement of the Case

A. CalPA Requests Information Protected by the First Amendment.

8. CalPA's statutory mandate is to "obtain the lowest possible rate for service," primarily for residential and small commercial customers. (§ 309.5, subd. (a).) CalPA may compel regulated entities to produce or disclose "information it deems necessary *to perform its duties*"—i.e., information relating to "rate[s] for service." (*Id.*, subds. (a), (e), italics added; see § 314.) As an investor-owned utility, SoCalGas differentiates between "shareholder funds" ("below-the-line accounts") and "ratepayer funds" ("above-the-line accounts").[3] (App. 322, 336.) This distinction is important, because SoCalGas may use its 100%-shareholder-funded accounts to engage in, among other things, constitutionally protected activity to advocate for natural gas, renewable gas, and other clean-fuel (e.g., hydrogen) solutions to benefit customers and other Californians. (*Ibid.*)

1. The July Data Request and the ALJ's September Ruling

9. SoCalGas, CalPA, and Sierra Club are parties in various CPUC proceedings regarding decarbonization, including a formal proceeding regarding building decarbonization, R.19-01-011. On May 13, 2019, Californians for Balanced Energy Solutions (C4BES), a coalition of natural and renewable gas suppliers and users, filed a motion for party status that omitted SoCalGas's interest in C4BES. (App. 180–181.) Sierra Club filed a Motion to Compel, which ALJ Jeanne McKinney granted for the purpose of

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[3] SoCalGas generally seeks cost recovery at the general rate case proceeding ("GRC") for "above-the-line" accounts. Its "below-the-line" accounts are expenditures not recovered from ratepayers at the GRC (i.e., shareholder-funded accounts). Activities or contracts are preliminarily booked to an above-the-line or below-the-line account, with the final ratemaking decision settled at a GRC.

providing "information on the relationship between SoCalGas and C4BES." (App. 977–978.) CalPA filed a response supporting Sierra Club. (App. 973.)

10. On July 19, CalPA issued a data request, pursuant to sections 309.5 and 314 (CalAdvocates-SC-SCG-2019-04) ("July Data Request"), to SoCalGas. (App. 189.) Like 150 other data requests (not including subparts) issued since May 2019 (App. 1547 fn. 109), the July Data Request was not issued in any Commission proceeding, but it appeared to relate to the building decarbonization proceeding. SoCalGas made a good-faith effort to produce documents (App. 194, 324).

11. SoCalGas did, however, redact dollar figures reflecting expenditures for shareholder-funded information in a Work Order Authorization ("WOA"). (App. 324.) The WOA created the Balanced Energy Internal Order ("IO")—a 100% below-the-line account. SoCalGas objected to producing the shareholder-dollar figures because the information was neither responsive nor necessary for CalPA to discharge its duties. (*Ibid.*)

12. On August 14, CalPA sought the unredacted WOA via a Motion to Compel Further Responses to Commission President Marybel Batjer (because the data requests were not issued in "any open Commission proceeding"). (App. 178–187, 758). President Batjer referred the dispute to Chief ALJ Anne Simon, who in turn assigned it to ALJ Regina DeAngelis. (App. 758.) ALJ DeAngelis granted that motion without explanation on September 10 ("ALJ's September Ruling"). (App. 324, 758–760.)

2. The August Data Request and the ALJ's November Ruling

13. On August 13, CalPA served SoCalGas (again, outside any proceeding) with CalAdvocates-SC-SCG-2019-05 ("August Data Request"), which sought "all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO." (App. 445, 448.) SoCalGas produced contracts funded by both ratepayers (above-the-line) and

shareholders (below-the-line), but objected to producing its 100%-shareholder-funded contracts. (App. 324.)

14. These contracts reflect relationships between, and strategic choices made by, SoCalGas and others with whom it consults to advance natural gas, renewable gas, and other clean-fuel solutions without the ratemaking restrictions that apply when—unlike here—ratepayer funds are at issue. (App. 349, 373, 376–377, 380, 383.) Although such advocacy can create ratepayer benefits and provide information to the public and regulators, SoCalGas avoided using above-the-line accounts *because* it wished to freely associate and express its views without the restrictions on ratepayer-funded activity. But CalPA's discovery demands, and the ALJ's later ruling ordering SoCalGas to produce such materials, infringe on the constitutional rights of SoCalGas (and others) to do so.

15. In August 2019—unbeknownst to SoCalGas at the time—CalPA entered into a Joint Prosecution Agreement with Sierra Club, which was litigating discovery disputes against SoCalGas in the building decarbonization proceeding. (App. 1515.) The existence of that Agreement suggests CalPA has used its unique discovery authority to aid Sierra Club by funneling material obtained from SoCalGas to it and the media during this ongoing non-proceeding. CalPA entered into this agreement despite the fact that the Commission itself—of which CalPA is a part—has recognized that decarbonization, including building decarbonization, "will take many paths" and that building decarbonization may have adverse impacts on customers, particularly from low-income areas. (App. 1593.)

16. On October 7, 2019, CalPA moved to compel production under sections 309.5 and 314. (App. 413–426 ("Motion to Compel").) Having first contended CalPA was seeking to determine whether the contracts were

ratepayer-funded (App. 419), and subsequently asserting it sought to determine whether SoCalGas's political expression was consistent with state "policy" (App. 325), CalPA claimed it was justified in demanding this production to determine how the contracts "may have affected ratepayers' interests in issues such as achieving a least-cost path to meeting the state's decarbonization goals" (App. 301, 308). While its justifications evolved, CalPA asserted "[t]he Public Advocates Office need not disclose to SoCalGas the need for its requests during the course of an investigation." (App. 425.) CalPA repeatedly asserted during meet-and-confers and in its motion that the ALJ's September Ruling had already decided this issue and "implicitly rejected SoCalGas' reasoning for withholding information related to shareholder funds." (App. 325–326, 422.)

17. According to CalPA, sections 309.5(e) and 314 entitle it to "seek '*any*' information it deems necessary, whether that be information related to ratepayer funded activities or shareholder funded activities." (App. 294, italics added; *ibid.* [§ 309.5(e) "contains no limitation on the type of information that may be sought by the Public Advocates Office once it has determined that the information is necessary to perform its duties"].) CalPA further contended that its assertedly unbounded authority extends to investigating constitutionally protected activities. It claimed "SoCalGas does not have an unfettered right to lobby the government when such lobbying is harmful to ratepayers" (App. 297)—despite the fact that the disputed information is from *non*-ratepayer, below-the-line accounts. CalPA also contended that "[i]f SoCalGas shareholders are undermining the interests of ratepayers, [CalPA] has the duty to investigate that conduct and the authority to compel the production of documents deemed necessary in the course of such an investigation." (App. 297–298.)

18. CalPA submitted its Motion to Compel to Commission President Batjer, who again referred it to Chief ALJ Simon. On October 29, Chief ALJ Simon notified the parties that "[s]ince this discovery dispute occur[red] outside any formal proceeding, the Commission's Rules of Practice and Procedure and filing requirements for formal proceedings d[id] not directly apply." (App. 351.) She also designated ALJ DeAngelis to handle the matter.

19. ALJ DeAngelis granted the motion—without explanation—on November 1, ordering SoCalGas to produce the documents within two business days (App. 309–311), and denying SoCalGas's request to have "at least two weeks to file an appeal with a concurrent motion to stay enforcement of the ruling." (App. 327, 481.)

3. Emergency Motion to Stay and Motion for Reconsideration/Appeal

20. SoCalGas submitted an Emergency Motion to Stay on November 4. (App. 428.) But with no ruling on that motion and facing significant potential fines of up to $100,000 a day (§ 2107), SoCalGas timely produced the contracts at issue under protest the next day.

21. SoCalGas submitted a Motion for Reconsideration/Appeal of the ALJ Ruling on December 2, 2019, explaining that forcing compliance with CalPA's data requests infringed on its constitutional rights and would have significant ramifications for other proceedings (or non-proceedings, as in this case). (App. 313–345.) Although that motion was fully briefed in late 2019 (App. 392–412, 498–517), the Commission only recently issued its final ruling. In the meantime, CalPA seized on the Commission's inaction by asserting ever-more unreasonable demands on SoCalGas's constitutionally protected and privileged information.

B. CalPA Seeks Information From SoCalGas's SAP Accounting System That Is Protected by the First Amendment, as Well as the Attorney-Client and Attorney-Work-Product Privileges.

22. SoCalGas's System Applications & Products ("SAP") accounting system is a vast network which includes material related to nearly all of SoCalGas's financial transactions, including accounting and invoice information on approximately 2,000 vendors. (App. 616.) It captures a broad range of documents, including vendor invoices, third-party payments, workers-compensation payments, employee reimbursements, and other attachments related to SoCalGas's work with vendors and other parties. (*Ibid.*) The SAP system includes a great deal of sensitive financial and non-financial information. (*Ibid.*) It contains fields which may identify specific vendors, such as law firms or shareholder-funded consultants. (*Ibid.*)

1. The May Data Request and CalPA's Subpoena

23. On May 1, 2020, CalPA served SoCalGas with another data request seeking "[r]emote access to the SoCalGas SAP system to a Cal Advocates auditor no later than May 8, and sooner if possible." (App. 639 ("May Data Request").) The May Data Request also sought "[t]raining and assistance for the auditor" to, among other things, "access all SoCalGas accounts" and "information regarding all contracts, invoices, and payments made to third parties." (App. 640.) The request demanded a meet-and-confer on May 6—three business days after service. (App. 635.)

24. On May 5, before SoCalGas had a chance to respond, CalPA's counsel emailed a subpoena to SoCalGas. (App. 643–644.) The subpoena commanded SoCalGas to provide CalPA (and "staff and consultants working on its behalf") "access to all databases associated in any manner with the company's accounting systems," including "both on-site and remote access … at the times and locations requested by Cal[PA]," "no later than three

business days after service," i.e., by May 8. (App. 627.) The subpoena demanded on-site access notwithstanding the ongoing stay-at-home orders in effect at the outset of the pandemic. It contained no substantive limit on the material CalPA could access. (*Ibid.*) And it was issued based on a one-page declaration, with a boilerplate one-sentence explanation of "good cause." (App. 628–629 ["SoCalGas' responses to data requests in the investigation have been incomplete and untimely."].)

25. In a May 8 email, CalPA demanded the production of fixed databases (i.e., copies of data contained in the SAP system) for all "100% shareholder funded" accounts that "house[] costs for activities related to influencing public opinion on decarbonization policies," and "for lobbying activities related to decarbonization policies." (App. 651–652.) In other words, CalPA sought to obtain information on *100% below-the-line accounts* related to SoCalGas's gas-and-clean-fuel advocacy—content protected under the Federal and California Constitutions.

26. To protect against privilege waiver, SoCalGas proposed that "access to attachments and invoices [in the SAP system] would be shut off [by default] but could be requested by Cal[PA]'[s] auditor," and "[a]n attorney would then be able to quickly review requested invoices and provide nonprivileged … materials to the auditor." (App. 543, 667.) Although CalPA's counsel conceded CalPA was not entitled to access attorney-client privileged material, she nonetheless rejected this proposed solution, stating CalPA's "auditor needed instantaneous access to all attachments and invoices." (App. 667, 954.) CalPA also refused SoCalGas's offer to provide access to approximately 96% of the information related to SoCalGas's accounts—shielding just constitutionally protected and/or privileged

material—provided CalPA agreed to a non-disclosure agreement or confidentiality protocol. (App. 988, 990, 996, 1001.)

27. During a May 18 meet-and-confer, CalPA's counsel refused SoCalGas's request to extend the compliance deadline to May 29, and stated that failure to provide remote access by the next day would put SoCalGas in violation of the subpoena. (App. 624.) CalPA also refused to wait for the Commission to resolve SoCalGas's pending appeal. On May 18, SoCalGas produced fixed copies of two years' worth of SAP data (2016–2017) for accounts specifically identified by CalPA. (*Ibid.*)

2. SoCalGas's Motion to Quash and Motion to Supplement

28. On May 22, 2020, SoCalGas submitted a Motion to Quash portions of CalPA's subpoena, because its SAP accounting system contains privileged and First-Amendment-protected material. (App. 581.) Moreover, noting its efforts to develop a software solution that would provide CalPA access to all other material, SoCalGas requested an extension of the compliance deadline. (App. 582.) CalPA opposed on June 1, demanding the imposition of sanctions on SoCalGas and its attorneys. (App. 695.)

29. In light of CalPA's latest incursion into SoCalGas's constitutional rights, on May 22, SoCalGas urged the Commission to expedite its ruling on the Motion for Reconsideration/Appeal. (App. 537, 547–551.)

3. CalPA's Motions to Find SoCalGas in Contempt

30. On June 23, CalPA submitted a "Motion to Find [SoCalGas] in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations from the Effective Date of the Subpoena." (App. 904.) CalPA contended SoCalGas was not entitled to further process once the Commission's Executive Director signed the May 5 subpoena, since this was "not" taking place "in a proceeding." (App. 909–910, 913.) CalPA's motion

constituted a transparent attempt to intimidate SoCalGas into abandoning further efforts to protect its rights and advance its views on decarbonization.

31. Indeed, CalPA contended that once the subpoena was signed, SoCalGas had to immediately comply and give up its rights and privileges. CalPA branded SoCalGas's efforts to defend those rights as "disrespect[] [of] the Commission, Commission staff, and the regulatory process." (App. 926–927.) Because SoCalGas (supposedly) "willfully and remorselessly" "disrespected the Commission and its regulatory process" in trying to protect its constitutional rights, CalPA asked the Commission to impose the highest possible fines of $100,000 per day, *retroactive* to May 5. (App. 909, 928.) CalPA warned the "total" requested fine "grows each day that SoCalGas fails to comply." (App. 930 fn. 83.)

32. CalPA went further. On July 9, it submitted a "Motion to Compel Confidential Declarations [from December 2, 2019] ... and Request for Monetary Fines." (App. 1107.) Seven months after CalPA submitted its opposition to SoCalGas's motion for reconsideration and chose *not* to oppose SoCalGas's motion to seal certain declarations, CalPA demanded SoCalGas turn over the unredacted versions, and claimed SoCalGas's unwillingness to immediately comply warranted another round of $100,000-a-day fines, retroactive to June 30. (App. 1113–1114.) CalPA reiterated that SoCalGas's refusal "disrespects the Commission, Commission staff, and the regulatory process" (App. 1116), even though SoCalGas made the unredacted declarations available to the Commission (but not CalPA) in December 2019 (App. 386–388).

33. In response, SoCalGas explained that CalPA's latest motion was its third attempt in three months to compel disclosure of constitutionally protected information. (App. 1156.) It also noted that CalPA had waived the

opportunity to oppose SoCalGas's sealing motion by waiting over seven months. (App. 1163–1164.)

34. In its reply, CalPA argued it is typically able to access documents where a motion to seal has been granted (App. 1189), conveniently ignoring the fact—which it had previously acknowledged (e.g., App. 953)—that SoCalGas is attempting to protect this constitutionally protected information *from CalPA*. In trying to justify imposing onerous, retroactive fines, CalPA doubled down on its view that further (i.e., any) notice and process was unnecessary. (App. 1192–1193.)

35. SoCalGas has requested this dispute be brought within a formal proceeding (by issuance of a Commission Order Instituting Rulemaking (OIR) or Order Instituting Investigation (OII)), which would entail more transparency and due process (App. 1199–1201), but CalPA opposed that request (App. 1203–1204).

36. On October 29, 2020, ALJ DeAngelis issued Draft Resolution ALJ-391, which denied SoCalGas's Motion for Reconsideration/Appeal, denied SoCalGas's Motion to Quash the May 5 Subpoena, deemed moot SoCalGas's May 22 motion to stay compliance with that subpoena, and deferred consideration of CalPA's motions for contempt and sanctions. (App. 1205–1206, 1209.) The ALJ stated SoCalGas's contention that its First Amendment rights will be chilled if it is forced to comply with CalPA's document requests is "primarily hypothetical," and concluded CalPA's requests are rationally related to a compelling government interest and narrowly tailored. (App. 1223–1228.)

37. Before the Draft Resolution could be adopted by the Commission, the parties were given 20 days to comment. (App. 1205, 1235.) SoCalGas submitted comments explaining that the Draft Resolution erred in dispensing

with SoCalGas's First Amendment concerns and ordering the production of information regarding its political activities funded fully by non-ratepayer accounts. (App. 1248.) SoCalGas noted the Draft Resolution would not only set a dangerous precedent in empowering CalPA to punish entities for their political views but also by permitting interest groups like Sierra Club to coopt CalPA's investigatory powers to obtain information from entities they disagree with. (App. 1250–1251.)

38. In its comments, CalPA agreed with the Draft Resolution's denial of SoCalGas's Motion for Reconsideration/Appeal (and argued any information withheld previously should be made publicly available), but it contended that the Draft "d[id] not go far enough" by not imposing sanctions on SoCalGas. (App. 1316–1318.)

39. Sierra Club and Earthjustice also submitted comments, contending that SoCalGas should not be able to assert the attorney-client privilege, and should be sanctioned for seeking to safeguard its constitutional rights. (App. 1381.) They also requested that the Draft Resolution be revised to clarify that any documents CalPA has obtained thus far pursuant to its investigation "Can Be Publicized." (App. 1384–1385.)

40. After the Commission went through two more rounds of limited revisions to the Draft Resolution (App. 1388, 1428), it adopted Resolution ALJ-391, finalizing and formally issuing it on December 21, 2020. (App. 1466.)

41. That same day (the first day it was permitted to do so), SoCalGas filed an Application for Rehearing ("AFR") with the CPUC of Resolution ALJ-391 and Request for Oral Argument. (App. 1508.) That AFR explained the Resolution erred in forcing SoCalGas to turn over protected material. (App. 1514.) It also noted that the existence of a Joint Prosecution Agreement

between CalPA and Sierra Club, which CalPA failed to disclose for over a year, strongly suggests CalPA has moved beyond its stated justification of investigating SoCalGas's ratepayer-funded activities, and is instead seeking the requested material in an ongoing effort to "single out and punish SoCalGas for the viewpoint it holds regarding promoting natural gas, renewable gas, and other clean fuels as an integral part of the State's decarbonization plans." (App. 1515–1516.)

42. That same day, SoCalGas also submitted its Motion to Stay Resolution ALJ-391, which CalPA opposed. (App. 1566–1587, 1614–1616.)

43. On December 30, SoCalGas sought an extension of time to comply with the Resolution, to give the Commission time to consider SoCalGas's AFR. (App. 1620–1621.)

44. On December 30, CalPA filed a Motion for Expedited Ruling, seeking an order forcing SoCalGas to produce constitutionally protected declarations by January 6 and for another extension of time for itself to respond to SoCalGas's AFR. (App. 1673–1676.) After the Resolution was issued, an emboldened CalPA issued four *additional*, harassing Data Requests to SoCalGas. One set—one of two issued late on New Year's Eve—came with a three-business-day deadline, although CalPA had previously asked for an extension of time for itself to oppose SoCalGas's AFR "so that [its] staff may spend the remaining days of this difficult year with family." (App. 1642, 1649, 1662, 1669, 1799.)

45. On January 4, SoCalGas opposed the Motion for Expedited Ruling, explaining how it seeks to circumvent SoCalGas's ability to obtain meaningful review of the Resolution by demanding the premature disclosure of protected material. (App. 1628–1630.)

46. On January 6, 2021, the Commission granted SoCalGas's December 30 request, extending the time for compliance until 15 days from the issuance of the Commission's ruling on SoCalGas's AFR. (App. 1705.)

47. On January 11, CalPA responded to SoCalGas's AFR, arguing that because SoCalGas "is a *regulated utility* whose revenues are derived from *captive* ratepayers," CalPA has carte blanche to investigate its accounts and records "at any time." (App. 1713.) It also contended that its discovery requests "need not be 'narrowly tailored.'" (App. 1718.) That same day Sierra Club responded to SoCalGas's AFR, arguing in tandem that CalPA has "clear statutory authority" to inspect whatever SoCalGas records it wants "at any time," and asserting there is a compelling state interest in *public* disclosure. (App. 1758.)

48. CalPA went further and submitted its own AFR on January 20 to "preserve its rights on appeal." (App. 1773, 1777.) CalPA reiterated its earlier views of the unbounded scope of its discovery authority, and contended that the Resolution did not go far enough in recognizing that the Public Utilities Code's grant of inspection authority to "Commission staff, including [CalPA]," *ipso facto* "establish[es] a compelling government interest." (App. 1780.)

49. On February 4, SoCalGas responded to CalPA's AFR, explaining that CalPA is less interested in (properly) investigating SoCalGas's use of ratepayer funds than (improperly) punishing speech with which CalPA (and its partner, Sierra Club) disagrees. (App. 1821.) SoCalGas refuted CalPA's view that its statutory and regulatory authority somehow trumps SoCalGas's constitutional rights. (App. 1826–1829.)

50. On March 2, 2021, the Commission issued its Order modifying the Resolution, denying the AFRs, and denying SoCalGas's motion for a stay

("Order"). (App. 1843; see Declaration of Julian W. Poon ("Poon Decl.") filed concurrently herewith, ¶ 6 & Exh. 2 [redline showing how the Resolution now reads as modified].) As modified, the Resolution provides that CalPA is part of the Commission, that a "utility may [not] unilaterally designate certain topics off-limits to Commission oversight," and that CalPA's discovery is the "least restrictive means of obtaining the desired information." (App. 1866–1868.) The Order and modified Resolution also repeatedly warns of, but reserves for "the future," the imposition of "possible sanctions." (App. 1869.)

VI. Allegation of Error

51. The Commission and its ALJ have exceeded their powers or jurisdiction and failed to proceed in a manner required by law.

First, the Commission demonstrably erred in failing to recognize that certain material demanded by CalPA is shielded from disclosure under both the Federal and California Constitutions. CalPA seeks documents that pertain to SoCalGas's strategies and communications meant to further its public-policy agenda, along with detailed information relating to entities with which SoCalGas associates to promote policy goals regarding natural-gas, renewable-gas, and other clean-fuel (e.g., hydrogen) solutions. Requiring SoCalGas to turn that material over to CalPA infringes on SoCalGas's freedom of speech and association, and its right to petition the government. (See *AFL-CIO v. Fed. Elec. Com.* (D.C. Cir. 2003) 333 F.3d 168, 170, 177–178; *Buckley v. Am. Constitutional Law Foundation, Inc.* (1999) 525 U.S. 182, 203–204 ("*ACLF*").) In addition, CalPA cannot bear its "particularly heavy" burden of justifying those demands, which are subject to exacting scrutiny. (*Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 856.) CalPA's data requests and subpoena, which demand unrestricted access to SoCalGas's contracts, invoices, and SAP accounting system, are hardly the "least restrictive means"

to serve CalPA's stated interest in protecting ratepayers. (See, e.g., *Buckley v. Valeo* (1976) 424 U.S. 1, 68.) The same is true of CalPA's belated demand for the unredacted declarations provided by SoCalGas's political consultants in support of its December 2019 motion for reconsideration. While SoCalGas provided ample support for its First Amendment arguments, CalPA's arguments were entirely *un*supported. (App. 720 [admitting to an "absen[ce] [of] any clear law" in support of CalPA's argument that association with consultants is not protected].) CalPA's data requests and subpoena do not pass constitutional muster, and should have been quashed.

52. *Second*, the Commission erred in failing to recognize that CalPA's unreasonable demands—made in a procedural "no man's land" where the Commission and CalPA are apparently one and the same (App. 1867)—violate SoCalGas's due-process rights. Working outside the confines of a Commission proceeding, CalPA has leveraged the threat of multiple sets of fines, each totaling $100,000 a day (§ 2107)—a threat the Commission recently warned of and left dangling over SoCalGas (App. 1469, 1869, 1871)—along with other sanctions, to pressure SoCalGas into complying with onerous and unreasonable production deadlines for sensitive documents and information. These demands run afoul of the longstanding notion that "freedom from arbitrary adjudicative procedures is a substantive element of one's liberty." (*People v. Ramirez* (1979) 25 Cal.3d 260, 268.) Here, however, the Commission has allowed CalPA to exploit the absence of meaningful procedural protections to impermissibly chill SoCalGas's constitutionally protected speech, associations, and petitioning, in violation of its due-process rights.

53. *Third*, the Commission and its ALJ clearly erred in failing to quash CalPA's subpoena. CalPA demands access to SoCalGas's SAP

accounting system. (App. 627–628.) Pursuant to Resolution ALJ-391, CalPA must provide a list to SoCalGas of any documents in the accounting system it seeks to print or copy, and limited confidentiality protections attach to that material for a 20-day period thereafter. (App. 1479.) That protection, however, does not change the fact that the Resolution mandates the disclosure of certain material in a manner that contravenes SoCalGas's constitutional rights. Because the Resolution gives CalPA largely unfettered access to protected information, it is plainly erroneous as a matter of law.

VII. Request for Emergency Temporary Stay and Hearing on Long-Term Stay Pending This Court's Consideration of the Merits of the Petition

54. Because the Commission's ruling requires the production of constitutionally protected material by Wednesday, March 17, 2021, SoCalGas requests that the Court grant an immediate temporary stay of (or other injunctive relief with respect to) that order, without the need for any bond to be posted or, in the alternative, approve the $50,000 suspending bond SoCalGas has secured and tendered with this Petition to effectuate the stay, pursuant to section 1764. (See Poon Decl., Ex. 1 [attaching copy of bond]; § 1764.) Courts may order a temporary stay of a CPUC order whenever "it clearly appears from specific facts shown by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant" before a hearing can be held under section 1762(a) to determine the propriety of a long-term stay pending final resolution of a petition for writ of review. (§§ 1762, subd. (c); 1763, subd. (a).) Alternatively, the Court may enjoin the Resolution by issuing an "auxiliary writ[] ... to preserve [its] own jurisdiction"—i.e., to preserve the Court's ability to provide SoCalGas with effectual relief. (*People ex rel. San Francisco Bay Conservation and Development Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 538–539.)

55. The standard for a stay or injunction is manifestly met here. The Resolution requires SoCalGas to grant CalPA access to constitutionally protected material. Disclosing that material would cause immediate and irreparable harm to SoCalGas. Further, despite repeated attempts by SoCalGas for well over a year to seek relief from the Commission to avoid or at least minimize this irreparable harm, SoCalGas faces the repeated threat of substantial monetary fines of up to $100,000 per day and other sanctions for noncompliance, even while seeking judicial review of the Resolution. This Court should therefore grant an emergency temporary stay of the Resolution and underlying orders, followed by a long-term stay pending at least this Court's disposition of the merits of this Petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Southern California Gas Company respectfully requests that the Court grant relief as follows:

1. Grant a temporary stay or injunction of Resolution ALJ-391 (as modified) by no later than Tuesday, March 16, 2021.

2. If necessary, approve the $50,000 bond to cover any potential damages (although there will be none) in connection with a stay delaying enforcement of the Commission's decision, pursuant to section 1764.

3. Grant a long-term stay, after conducting any hearing the Court may deem necessary pursuant to section 1762(a), lasting at least until 21 days following this Court's disposition of this Petition to allow the Court sufficient time to adequately consider the Petition and any further briefing and argument, as well as time to potentially seek any appropriate relief and/or review by the Supreme Court;

4. Set, in connection with this Court's consideration of the Petition, a hearing and oral argument regarding the issues raised in the Petition, once

the merits of the Petition have been fully briefed and at the Court's earliest convenience;

5. Issue a writ of review or other appropriate relief to inquire into and determine the lawfulness of Resolution ALJ-391;

6. Direct the Commission to certify its record in the subject proceedings to this Court;

7. After review, set aside Resolution ALJ-391, and order the Commission to prohibit disclosure of the constitutionally protected material at issue in this matter;

8. Award Petitioner its costs pursuant to Rule 8.493 of the Rules of Court;

9. Grant such other relief as may be just and proper.

DATED: March 8, 2021

Respectfully submitted,
Gibson, Dunn & Crutcher LLP

By: 
Julian W. Poon

VERIFICATION

I, Andy Carrasco, declare as follows:

I am Vice President, Communications, Local Government and Community Affairs for Petitioner Southern California Gas Company, and I make this verification for and on behalf of said corporation. I have read the foregoing Petition for Writ of Review, Mandate, Prohibition, and/or Other Appropriate Relief (and accompanying stay requests) and know the contents thereof, and the facts therein stated are true to my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on March 5, 2021, at Glendale, California.

Andy Carrasco

MEMORANDUM OF POINTS AND AUTHORITIES

The Commission's rulings imperil SoCalGas's 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. Indeed, the production mandated by Wednesday, March 17, 2021, threatens to eviscerate those constitutional protections and substantially prejudice SoCalGas. Consequently, this Court should grant the prayed-for relief, including issuance of a temporary stay by no later than Tuesday, March 16, pending this Court's review.

I. STANDARD OF REVIEW

This Court should review the merits of SoCalGas's Petition for a writ of review and/or other appropriate relief. (§§ 1756, subd. (a); 1759, subd. (b).) Unlike other writ petitions, "[p]etitions for a writ of review function as appeals from the administrative decisions of the Commission, and are the exclusive means of judicial review of such decisions." (*San Pablo Bay Pipeline Co., LLC v. P.U.C.* (2015) 243 Cal.App.4th 295, 309.) Accordingly, "an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters." (*Pacific Bell Wireless, LLC v. P.U.C.* (2006) 140 Cal.App.4th 718, 728–729, citation omitted.)

Where a petition for writ of review raises *constitutional* challenges, this Court "*shall* exercise independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall *not* be final." (§ 1760, italics added.) For non-constitutional issues, this Court should determine whether "[t]he order

or decision of the commission was an abuse of discretion," and whether "[t]he commission has not proceeded in the manner required by law." (§ 1757.1, subd. (a).) Courts "generally review a trial court's determination on a motion to compel discovery for abuse of discretion, but [courts] independently review issues of law." (*Edwards Wildman Palmer LLP v. Super. Ct.* (2014) 231 Cal.App.4th 1214, 1224.)

II. ARGUMENT

A. The Commission Has Manifestly Erred in Failing to Recognize That CalPA's Data Requests and Subpoena Infringe on SoCalGas's First Amendment and Article I Rights.

The United States and California Constitutions secure to SoCalGas and others the freedoms of speech and association, along with the right to petition the government for redress of grievances. (U.S. Const. amends. I, XIV; Cal. Const., art. I, §§ 2(a), 3(a).)[4] That SoCalGas is a regulated utility does not "lessen[] its right to be free from state regulation that burdens its speech" (*Pacific Gas & Electric Co. v. P.U.C. of Cal.* (1986) 475 U.S. 1, 17 fn. 14, plurality opinion), nor does it "decrease the informative value of its opinions on critical public matters" (*Consolidated Edison Co. of N.Y., Inc. v. Pub.*

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[4] The California Supreme Court has recognized that Article I is generally "broader and more protective than the free speech clause of the First Amendment." (*L.A. Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352, 366.) Although Article I provides independent free-speech rights, California courts typically "consider federal First Amendment [cases]" in analyzing Article I issues. (*Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 481.) Accordingly, although this subsection employs the federal analytical framework and uses "First Amendment" as shorthand, the arguments apply equally under the Federal and California Constitutions, except where cases highlight areas in which Article I may be "broader and more protective." (*L.A. Alliance for Survival*, *supra*, 22 Cal.4th at p. 366.)

Service Com. of N.Y. (1980) 447 U.S. 530, 534 fn. 1). Indeed, as the Commission recognized, SoCalGas "enjoys the same First Amendment rights as any other person or entity." (App. 1480–1481.)

When a party asserts that information the government is demanding is protected under the First Amendment, the government may only prevail if it can satisfy its "particularly heavy" burden of showing the "narrow specificity" of the demand for disclosure and the "compelling" state purpose served by such disclosure. (*Britt*, *supra*, 20 Cal.3d at pp. 855–856, citations omitted.) Courts evaluate First Amendment privilege claims in two steps. First, "[t]he party asserting the privilege 'must demonstrate ... a prima facie showing of arguable first amendment infringement.'" (*Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160, internal quotation marks and citation omitted.) "This *prima facie* showing requires appellants to demonstrate that enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights." (*Ibid.*, citation omitted.) Second, if the objector can make a prima facie showing, "the evidentiary burden ... shift[s] to the government ... [to] demonstrate that the information sought through the [discovery] is rationally related to a compelling government interest ... [and] the 'least restrictive means of obtaining the desired information." (*Id.* at p. 1161, citation omitted.)

The Commission erred in applying that standard here. SoCalGas submitted unrebutted evidence that, if required to produce the requested information, it would be less likely to engage in political expression. (App. 372–374.) It also produced several declarations from third parties, who stated they would be less likely to engage in political communications with

SoCalGas. (App. 375–384.) In response, the Commission asserted that SoCalGas must "clearly demonstrate[]" a "threat to [its] constitutional rights," and that it could not do so because the evidence was "primarily hypothetical." (App. 1223.) That, however, misstates the governing legal standard: SoCalGas "need show only a reasonable probability" that the disclosure will "chill" constitutionally protected activity, and such a showing is not limited to events that have already occurred. (*Buckley*, *supra*, 424 U.S. at p. 74.)

The Commission also erred in claiming that, assuming SoCalGas did make a prima facie showing of First Amendment infringement, CalPA's requests were rationally related to a compelling government interest. (App. 1224–1228.) First, the Commission found a compelling interest in its *own* authority to "regulate and oversee utilities," although it acknowledged that CalPA is only authorized to advocate for the "lowest possible rate[s]." (App. 1224, 1226.) Next, the Commission contended that CalPA's demands were "necessary ... to evaluate the potential use of ratepayer funds for lobbying activity," ignoring the fact that CalPA sought information regarding shareholder, *not* ratepayer, accounts. (App. 1226.) Last, rather than articulate a way in which CalPA's demands were the "least restrictive means" of achieving CalPA's stated interests, the Commission merely suggested that disclosure of *all* accounts was necessary for CalPA to determine whether ratepayer and shareholder money are "truly separate." (App. 1228.) According to the Commission, all of SoCalGas's constitutionally protected activity must be disclosed so that CalPA can evaluate the "tru[e]" source of the funds in each account—an evisceration of the First Amendment rights that public utilities and others enjoy. (See App. 1221 ["[SoCalGas's] status as

a regulated public utility does not impair or lessen [its] rights [under the First Amendment]."].)

The Commission's application of an erroneous legal standard, and misapplication of the correct legal standard, warrants this Court's issuance of a writ and/or other appropriate relief to set aside the rulings below.

1. SoCalGas Has Made a Prima Facie Showing of First-Amendment Infringement.

The materials related to 100%-shareholder-funded political activity that CalPA has demanded from SoCalGas are constitutionally protected. (See *NAACP v. Alabama* (1958) 357 U.S. 449, 460 ["[F]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by [the Constitution]."]) The demanded materials include, among other things, the identities of consultants SoCalGas has contracted with, specifically tied to the scope of detailed activity contemplated by the contracts and shown in invoices, the duration of those agreements, and the amount and specific nature of SoCalGas's expenditures on political activities. (App. 616–617.)

The Commission's enforcement of CalPA's demands strikes at the heart of SoCalGas's First Amendment rights. (See *Citizens United v. Fed. Election Com.* (2010) 558 U.S. 310, 339 [ban on corporation's independent expenditures was a "ban on speech" because restricting money spent on political communications "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached" (citation omitted)].) In the August Data Request, CalPA demanded "all contracts (and contract amendments)" related to the 100% shareholder-funded account used, among other things, to advance SoCalGas's public-policy goals. (App. 445, 448.) And in the

May Data Request CalPA sought "[r]emote access to the SoCalGas SAP system [by] a Cal[PA] auditor" (App. 639)—followed four days later by a subpoena demanding "access to all databases associated in any manner with the company's accounting systems" (App. 627). This SAP system includes descriptive information about financial transactions with over 2,000 vendors, including those SoCalGas has contracted with using 100% shareholder-funded accounts to promote its public-policy goals. (App. 616–617.)

Disclosure of this information—including consultants' identities, the amounts SoCalGas paid them, and the strategies employed to influence public policy—will impermissibly chill SoCalGas's constitutional rights. As SoCalGas's former Vice President explained, "[f]orcing SoCalGas to provide [contracts with consultants] under the threat of penalties has had a chilling effect on SoCalGas['s] ... ability to engage in activities which are lawful." (App. 373.) The same is true of compelled disclosure of the SAP accounting system, which would make SoCalGas "less willing to engage in contracts and [public-policy] communications knowing that its non-public association ... may be subject to compulsory disclosure." (*Ibid.*) This appears to be the point: CalPA has demanded immediate disclosure of the protected information and threatened steep daily fines because it *seeks to deter and suppress* SoCalGas's expressive activity. (See *NAACP v. Button* (1963) 371 U.S. 415, 433 ["The threat of sanctions may deter [speech] almost as potently as the actual application of sanctions."].)

This chilling effect is not limited to SoCalGas. Third-party government-relations professionals have similarly sworn that disclosure of the information CalPA demands—the production of which has now been compelled by the CPUC—will cause *them* to seriously reconsider whether to associate with SoCalGas in future initiatives, or any other political processes

at all. (App. 376–384.) The chilling and harassing effect of disclosure is amplified by the way that CalPA has used information SoCalGas has already turned over—including apparently funneling it to other litigants opposing SoCalGas in formal proceedings (e.g., Sierra Club) and the media. (App. 38, 48–52, 329 fn. 11.)

Courts have repeatedly held that organizations may not be forced to disclose "strategy and messages" that advance a political viewpoint, because those organizations have a right to exchange such ideas in private. (*Perry*, *supra*, 591 F.3d at pp. 1162–1163; see also *AFL-CIO v. FEC* (D.C. Cir. 2003) 333 F.3d 168, 170, 177–178.) In fact, beyond such "strategy and messages," even the fact that an organization is associating with another entity or person for political purposes is worthy of protection, including when there is a financial relationship between that organization and the entity promoting its policy message. (*ACLF*, *supra*, 525 U.S. at pp. 203–204 [shielding the names of persons paid to disseminate political messages and collect petition signatures, as well as the specific amounts paid to each of them].) In short, "[p]olitical expenditures and contributions are forms of political speech at the core of ... First Amendment freedoms." (*Barnes v. State Farm Mutual Automobile Insurance Co.* (1993) 16 Cal.App.4th 365, 372, citation omitted.)

Forcing SoCalGas to produce the material at issue, with the recently-reiterated threat of staggering daily fines dangling over SoCalGas, undoubtedly infringes on SoCalGas's and others' constitutional freedoms. Accordingly, SoCalGas has satisfied the requirement to show an "arguable" violation in support of a prima-facie case at the first stage of the First Amendment analysis. In concluding otherwise, the Commission made two fundamental legal errors.

First, the Commission held SoCalGas to an artificially high standard: it claimed that SoCalGas must "clearly demonstrate[]" a "threat to [its] constitutional rights." (App. 1223.) That is not the law. Rather, "[t]he evidence offered need show only a *reasonable probability* that the compelled disclosure" will have a chilling effect (*Buckley*, 424 U.S. at p. 74, italics added), which requires a "showing of *arguable* first amendment infringement," not a "clear demonstration" (*Perry*, 591 F.3d at p. 1160, italics added and citations omitted). That makes sense: ultimately, "the government bears the burden of demonstrating the justification for compelling disclosure," which, in the First Amendment context, "is a particularly heavy one." (*Britt*, 20 Cal. 3d at p. 855; see *Governor Gray Davis Com. v. Am. Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 464 [because "[t]he right to free speech and association is fundamental," "any governmental restraint 'is subject to the closest scrutiny'" (citation omitted)].) The Commission's novel "clear[] demonstration" test has no basis in law.

Second, in applying its erroneous standard, the Commission improperly found that the declarations SoCalGas submitted in support of its First Amendment claims were "unconvincing" because they were "primarily hypothetical" and not "concrete." (App. 1222–1223.) As an initial matter, that is simply untrue: SoCalGas *did* submit evidence of past, "concrete" harm. One declaration stated that after SoCalGas was forced to produce contracts to CalPA in November 2019, SoCalGas "altered how [it] and its consultant[s]" and "partner[s]" communicated about SoCalGas's "position relating to natural gas, renewable natural gas, and green gas solutions." (App. 609–610.) And after that same disclosure, a consultant "indicated to SoCalGas that it has serious concerns about its business" and

"would not have done business with SoCalGas if it had known its information and contract details would [be] disclosed." (App. 613.)

More important, however, the Commission is wrong on the law. It has never been the case that a party must show *past* harm in order to establish that the disclosure of constitutionally protected activity would have a "chilling" effect. The test is simply whether the government's actions "would chill or silence a person of ordinary firmness from *future* First Amendment activities." (*Smith v. Novato Unified School Dist.* (2007) 150 Cal.App.4th 1439, 1459, italics added, quoting *Mendocino Environmental Center v. Mendocino County* (9th Cir. 1999) 192 F.3d 1283, 1300.) In support of its claim, the Commission compared the declarations submitted by SoCalGas to the evidence in *NAACP v. Alabama*, *supra*, 357 U.S. at p. 462, where the petitioners relied on the chilling effects of past disclosures to make an "uncontroverted showing" of future harm. But *NAACP* is just one example of how such a showing can be made; no court has articulated limits on the *type* of evidence that demonstrates a "chilling" effect.

In fact, the California Supreme Court has found a sufficient showing of First Amendment infringement where petitioners made *no* demonstration of past harm. In *Britt*, a group of residents sued the San Diego Unified Port District for damages related to airport operations. (*Britt*, *supra*, 20 Cal.3d at pp. 849–851.) The District sought extensive discovery of plaintiffs' local political activities, including membership in organizations opposed to the District's operations, meetings attended, content of discussion, and financial contributions to these organizations. The Supreme Court readily concluded that the residents had established that the disclosure of such information would result in a chilling effect; indeed, the court did not require evidentiary support *at all*. Rather, the court held the associational information to be

"without question[] constitutionally protected activity which, under both our state and federal Constitutions, enjoys special safeguard from governmental interference." (*Id.* at p. 852.) In other words, such "[p]rivate associational affiliations and activities" are "*presumptively* immune from inquisition." (*Id.* at p. 855, italics added and citation omitted.) Where the government seeks disclosure of the "names of all [associated] persons," "subject matter" of communication, and "finances and contributions" of a political association, the infringement on its members' First Amendment rights is self-evident. (*Id.* at p. 861.) And that threat "may be more severe in a discovery context, since the party directing the inquiry is a litigation adversary who may well attempt to harass his opponent and gain strategic advantage by probing deeply into areas which an individual may prefer to keep confidential." (*Id.* at 857.)

In its Order modifying the Resolution, the Commission acknowledged that *Britt* "may have assumed that the specific information identified in that case was privileged." (App. 1854.) But it defended its decision by stating that *Britt* did not hold "more broadly that 'disclosure alone' in any context is sufficient to establish a *prima facie* case" (*ibid.*)—an argument SoCalGas never made. What *Britt* shows—and what SoCalGas has consistently argued—is that the Commission was wrong to demand that SoCalGas produce evidence of *past* harm. In demanding "concrete" and non-"hypothetical" evidence (App. 1855, 1857), the Commission erected a bar for First Amendment claims that the prevailing plaintiffs in *Britt* could not meet and did not have to.

Britt is not the only case in which courts have found a prima facie showing of First Amendment infringement without any evidence of past harm. In *Perry*, plaintiffs sought disclosure of an anti-same-sex-marriage

campaign committee's "internal campaign communications concerning strategy and messaging," including its communications with third parties. (*Supra*, 591 F.3d at p. 1153.) The campaign committee filed a motion for a protective order, and in support, provided several declarations from its members. Those declarations stated that members would be "less willing to engage" in "political" communications if those "communications ... are ordered to be disclosed." (*Id.* at p. 1163.) That was sufficient to establish a prima facie showing: while the court acknowledged that the evidence was "lacking in particularity," it held that the "conclusion that important First Amendment interests are implicated by the ... discovery request" was "self-evident." (*Ibid.*)

Very little daylight exists between this case and *Perry*. Indeed, in its Order modifying the Resolution, all the Commission offered to try to distinguish *Perry* was the unexplained assertion that the campaign committee in *Perry* "may" have been "differently situated" than SoCalGas. (App. 1857.) Why the opponents of same-sex marriage had a "self-evident" First Amendment interest in their "internal campaign communications" (*Perry*, *supra*, 591 F.3d at p. 1163), while SoCalGas apparently has none, is hard to fathom, and something the Commission never explains. Apparently, political speech and associational activity lose their First Amendment protections when uttered or engaged in by a regulated utility.

In the end, CalPA has demanded communications relating to SoCalGas's political advocacy of natural gas, renewable gas, and other clean fuels. It has made no secret that it disagrees with SoCalGas's views (App. 786), and even signed a Joint Prosecution Agreement with the Sierra Club to investigate SoCalGas's alleged "anti-electrification activities." (App. 1515.) CalPA's demands for the disclosure of the identities of

third parties SoCalGas has worked with, the content of its agreements, and the nature of SoCalGas's expenditures on political activities are indistinguishable from the information demanded in both *Britt* and *Perry*. Even without examining the evidence in the record, the infringement on SoCalGas's First Amendment rights is "self-evident." Once that evidence is considered, there can be no doubt that SoCalGas has made more than a prima facie showing under the First Amendment.

2. CalPA Has Not Demonstrated, and Cannot Demonstrate, That Its Data Requests Are the Least Restrictive Means to Meet a Compelling State Interest.

Because SoCalGas has made a prima-facie showing that CalPA's data requests and subpoena chill the exercise of its constitutional rights, CalPA bears the "particularly heavy" burden of justifying those demands, which are subject to exacting scrutiny. (*Britt*, *supra*, 20 Cal.3d at p. 855; see *NAACP v. Alabama*, *supra*, 357 U.S. at pp. 460–461 [governmental actions curtailing freedom of association are "subject to the closest scrutiny"].) To survive that scrutiny, CalPA must prove its demands (1) further a compelling interest, and (2) are the least restrictive means of achieving that interest. (*Buckley*, *supra*, 424 U.S. at p. 68.) CalPA has failed to submit *any* evidence, and has come nowhere close to satisfying its burden of justifying its demands.

Throughout the proceedings below, CalPA contended that it is not even required to show *any* "legitimate interest"—let alone a "compelling" one—in exercising its authority under sections 309.5 and 314. (App. 335.) The closest CalPA has come to articulating such an interest was in its response to SoCalGas's Motion to Quash, where CalPA argued that unfettered access to the SAP system—and presumably SoCalGas's contracts and invoices too—is "necessary to fully investigate" "SoCalGas'[s] role and funding in lobbying activities, whether such activities are shareholder or ratepayer funded, and

the historical financial data regarding whether such activities have been ratepayer funded." (App. 722; see also App. 295 fn. 7, 301 [contending CalPA was entitled to see contracts to determine how they "may have affected ratepayers' interests in issues such as achieving a least-cost path to meeting the state's decarbonization goals"].) The Commission, for its part, found a different "compelling interest" in its ruling: "the Commission's mandate to regulate and oversee utilities." (App. 1484.) Yet such a boundless and circular theory advanced by CalPA and the Commission cannot suffice to justify intruding on First Amendment rights.

As an initial matter, the Commission's general oversight authority is not at issue here. What is at issue is CalPA's distinct statutory mandate. CalPA's statutorily-defined purpose is to "obtain the lowest possible rate for service constituents with reliable and safe service levels." (§ 309.5, subd. (a).) CalPA's statutory authority is much narrower than that of the Commission, to which it must turn for enforcement purposes. That CalPA is a "part of the Commission's regulatory scheme" (App. 1862) does not broaden the authority granted to CalPA by statute. The Department of Pesticide Regulation does not have the authority to set emissions standards simply because it is part of California's Environmental Protection Agency.

Moreover, even if the Commission's general oversight authority were at issue, that *statutory* authority cannot possibly empower the CPUC to intrude upon SoCalGas' *constitutional* rights. CalPA asserts that it need not demonstrate a compelling interest because the Commission's "regulatory framework speaks for itself." (App. 1728, 1780.) The Commission echoes this breathtaking argument, claiming that it "does not need to show more than its statutory framework to establish a compelling government interest" because it has "more expansive authority to gather information that may infringe

First Amendment rights than other agencies." (App. 1861.) And it went even further, purporting to put on notice all lobbyists and consultants who associate with SoCalGas that the details of their work could be demanded by the Commission and its staff (including CalPA) at any time. (App. 1855.) In support, CalPA and the Commission cite *Federal Election Commission v. Machinists Non-Partisan Political League* (D.C. Cir. 1981) 655 F.2d 380, and *Brock v. Local 375* (9th Cir. 1988) 860 F.2d 346, for the proposition that the Commission may "gather information that may infringe First Amendment rights ... based on 'mere official curiosity.'" (App. 1728, 1781, 1861.) Those cases say nothing of the sort.

In fact, *Machinists* held that "the highly deferential attitude ... appl[ied] to *business* related subpoena enforcement requests ... has no place where political activity and association" are the "subject matter being investigated." (*Supra*, 655 F.2d at p. 387, italics added.) It also warned against extending an agency's "investigative authority" into areas of "constitutional significance" such as "the behavior of individuals and groups ... insofar as they act, speak and associate for political purposes." (*Ibid.*) Similarly, in *Brock*, the Ninth Circuit held that the Secretary of Labor did *not* have the authority to subpoena constitutionally protected information from a charity simply by virtue of his regulatory authority. (*Supra*, 860 F.2d at p. 350.) Instead, the court demanded that the Secretary "demonstrate ... a compelling governmental interest," and that disclosure is the "'least restrictive means' of obtaining the desired information." (*Ibid.*)

It is impossible to square the Commission's unbounded, circular assertion of "expansive authority to gather information that may infringe First Amendment rights" (App. 1861) with the principle that a "regulated utility company" has an equal "right to be free from state [action] that

burdens its speech" (*Pacific Gas & Electric*, *supra*, 475 U.S. at p. 17 fn. 14, plurality opinion). If SoCalGas "enjoys the same First Amendment rights as any other person or entity"—as the Commission itself acknowledges (App. 1480–1481)—then CalPA must show *some* compelling governmental interest beyond the mere fact that a regulatory scheme exists.

CalPA must also satisfy the "least restrictive means" requirement, which it cannot. CalPA has claimed that its wide-ranging requests are geared towards "'following the money' by asking how much has SoCalGas spent on its anti-decarbonization campaigns, where the money has been booked, and how [CalPA] can be sure that the activities are 100% shareholder-funded." (App. 717.) In making this claim, CalPA has relied heavily on a previous disclosure from SoCalGas that, as of August 2019, it had re-classified invoices and contracts related to C4BES into shareholder accounts. (E.g., App. 396.) This reliance on C4BES is a red herring, as SoCalGas is not asserting First Amendment protection regarding C4BES contracts and has produced those contracts to CalPA. (See App. 1825 fn. 19.) If CalPA were truly interested in whether SoCalGas used ratepayer money to fund political activity, it need only examine SoCalGas's *above-the-line*, ratepayer accounts. *That* is the "least restrictive means"—indeed, the most direct and logical one—of achieving CalPA's stated objective. (*Bd. of Trustees of State Univ. of N.Y. v. Fox* (1989) 492 U.S. 469, 476 [under the "least-restrictive-means" test, "if the governmental interest could be served as well by a more limited restriction ... the excessive restrictions cannot survive." (citation omitted)].) Notably, SoCalGas has offered CalPA access to the above-the-line accounts, which CalPA has tellingly refused.

In both the Resolution and Order, the Commission did not even analyze how providing CalPA with access to all of SoCalGas's above-the-line accounts

(as SoCalGas has proposed) would not be the least restrictive and more appropriate means of advancing CalPA's asserted objectives here. Instead, the Commission relied on its broad oversight authority to justify unbounded access to all of SoCalGas's accounts—a dangerous and limitless rationale that could be used for even patently illegitimate demands that extend well beyond those at issue here. The Commission suggested that access to all accounts was necessary because SoCalGas has only "assert[ed]," not "proven," that "the funds in question are truly separate." (App. 1486–1487.) But examining the above-the-line accounts would enable CalPA to see whether political activity has been misclassified in the above-the-line accounts. In other words, even assuming that CalPA and the Commission should not accept SoCalGas's sworn declaration that protected First Amendment activity is not being funded by ratepayer accounts, CalPA's demands are *still* not the "least restrictive means" of achieving their stated objective. CalPA may not inspect all of SoCalGas's constitutionally protected activity under the guise of double-checking that it is not ratepayer-funded—particularly when a less intrusive (and more direct and sensible) means of doing so exists.

Further evidence that CalPA's demands are not the "least restrictive means" of accomplishing its stated goals can be found in the broad nature of the information requested. The data requests and subpoena enforced by the Commission require nearly unrestricted access to SoCalGas's accounts. Thus, SoCalGas would be forced to reveal the *content* of SoCalGas's communications with third parties, the *identity* of those third parties tied to those specific communications, and *how much* those third parties are paid for that detailed activity. That information is central to SoCalGas's expressive and associational rights, but it will do nothing to help CalPA confirm whether SoCalGas used ratepayer money to fund political activities.

In *Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, the Court of Appeal held that a shopping mall's rules prohibiting speech on topics unrelated to the mall were not the least restrictive means of achieving the mall's stated interests of safety, convenience, and neutrality. "Considering the facial breadth of the Rules," *Snatchko* concluded that "the Rules do prohibit a substantial amount of protected speech," including "political, social, environmental, [and] religious views." (*Id.* at p. 494.) *Snatchko* thus held that the mall's prohibition on speech unrelated to the mall "substantially burdens far more protected speech than is necessary to meet Westfield's safety and convenience concerns." (*Id.* at p. 495.)

Courts have reached similar results where the issue was not the specific content of a given message, but who was disseminating it. For example, the Tenth Circuit—addressing whether ballot-initiative proponents could be forced to disclose the names of, and amounts paid to, persons supporting that initiative by collecting signatures—held the requirement could not survive exacting scrutiny because "compromis[ing] the expressive rights" of those paid to spread a political message "sheds little light on the relative merit" of a given issue. (*Am. Constitutional Law Foundation, Inc. v. Meyer* (10th Cir. 1997) 120 F.3d 1092, 1105; see *Wash. Initiatives Now v. Rippie* (9th Cir. 2000) 213 F.3d 1132, 1134 [similar requirement "chill[ed] political speech protected by the First Amendment, and d[id] not significantly advance any substantial state interest"].) It is unsurprising then that CalPA failed to cite *any* caselaw in support of its argument that there is "no protected First Amendment right to 'associate' with hired lobbyists and consultants." (App. 720 [admitting to an "absen[ce] [of] any clear law on this issue"].)

Like the discovery order in *Britt*, "[i]nstead of carefully delimiting the areas of private associational conduct as to which [CalPA] has demonstrated a compelling need for disclosure," the challenged rulings here "open[] virtually all of [SoCalGas's] most intimate information to wholesale disclosure." (*Britt*, *supra*, 20 Cal.3d at p. 861.) "The very breadth of the required disclosure establishes that [the Commission] did not apply traditional First Amendment analysis in passing on the validity of [CalPA]'s inquir[i]es into the private associational realm, and in particular did not heed the constitutional mandate that '[p]recision of [disclosure] is required so that the exercise of our most precious freedoms will not be unduly curtailed.'" (*Ibid*., quoting *Vogel v. County of Los Angeles* (1967) 68 Cal.2d 18, 22.)

The breadth of CalPA's demands suggests SoCalGas is being targeted because CalPA disagrees with its political advocacy. As the United States Supreme Court has explained, where the state's actions are "overinclusive[]"—that is, where the government inhibits more speech than necessary to achieve its stated goals—the "likelihood of a genuine [state] interest" is "undermine[d]." (*Fed. Communications Com. v. League of Women Voters of Cal.* (1984) 468 U.S. 364, 396, citation omitted.) "It suggests instead that the legislature may have been concerned with silencing [a] corporation[] on a particular subject" (*Bellotti*, *supra*, 435 U.S. at p. 793)—here, the use of natural gas, renewable gas, and other clean fuels (e.g., hydrogen) as part of the solution to achieving the State's decarbonization goals. Such viewpoint discrimination is patently unconstitutional: "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." (*Police Dept. of City of Chicago v. Mosley* (1972) 408 U.S. 92, 95.)

The overbreadth of CalPA's demands is not the only thing suggesting viewpoint discrimination is afoot. CalPA and Sierra Club have made no secret they disagree with SoCalGas's proposed pathway to meet the State's climate goals. They signed an unprecedented Joint Prosecution Agreement to investigate SoCalGas's alleged "anti-electrification activities"—something they had ample opportunity for nearly a year to disclose, but failed to. (App. 1515.) Moreover, the Building Decarbonization Coalition (of which Sierra Club is a board member) is actively engaged in a "comprehensive strategy for the wind down of the gas system" (App. 1822–1823), an effort that if successful would lead to "retail gas prices ... skyrocket[ing] and gas company stock prices [] plummet[ing]" (Momentum, *supra*, at p. 4)—outcomes CalPA seemingly supports. As the letter from two legislators to the Commission recently explained, the Joint Prosecution Agreement codifies CalPA and Sierra Club's "pact to essentially do everything in their collective power to fight Southern California Gas Company ... [in] the battle over whether natural [gas] is allowed to be used by California residential and business customers." (App. 1605.) Indeed, information disclosed to CalPA has apparently been passed to Sierra Club for use in a separate rulemaking regarding building decarbonization. (App. 38, 48–52.)

Those actions belie the notion that CalPA is only interested in "following the money." It *opposed* SoCalGas's request for a statewide Order Instituting Rulemaking (OIR) to establish clarity for all investor-owned utilities on ratemaking treatment for lobbying and other advocacy. (App. 1203–1204.) It refused SoCalGas's offers to grant access to all above-the-line, ratepayer accounts. (App. 581.) And it made broad demands on SoCalGas's political and strategic communications that have no bearing on either its statutorily defined mandate or its investigation's stated purpose. "[T]he First

Amendment is plainly offended" where the "suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people." (*Bellotti*, *supra*, 435 U.S. at pp. 785–786.) Because that is precisely what is happening here, this Court should intervene to protect fundamental rights guaranteed by the First Amendment.

B. The Commission Demonstrably Erred in Failing to Recognize That Enforcing CalPA's Data Requests and Subpoena Outside an Actual Proceeding Violates SoCalGas's Due-Process Rights.

There must be procedural safeguards in place to protect against the administrative proceedings below, where the Commission has upheld CalPA's exercise of apparently unbounded discovery authority it has arrogated to itself. CalPA's submission seeking to treat opposition to CalPA's positions as punishable "disrespect" toward the Commission erases *any* real distinction between CalPA (SoCalGas's litigation adversary) and the Commission (the judge in the first instance), in rejecting the "erroneous proposition that there is a difference between [CalPA] and the rest of Commission staff." (App. 1187.) The Commission's modified Resolution confirms as much, now that it asserts "Cal Advocates is part of the Commission's regulatory scheme," and that the Commission considers Cal Advocates to be CPUC "staff." (App. 1862, 1867.)

CalPA's attempts to bully SoCalGas into submission run afoul of the California Constitution's mandate, for example, that the Commission's establishment of its procedures are "[s]ubject to statute and due process." (Cal. Const. art. XII, § 2; see U.S. Const. amends. V, XIV; Cal. Const. art. I, § 7.) The Commission's Code of Conduct likewise states the Commission's rules "are intended to ensure due process and fairness for all interested parties and the public, and encourage all others to do the same." (CPUC,

Strategic Directives, Governance Process Policies, and Commission-Staff Linkage Policies (Feb. 20, 2019) p. 21; see *Waters v. Churchill* (1994) 511 U.S. 661, 669 [substantive First Amendment standards must be "applied through reliable procedures"].) Despite these due-process mandates, everything that has transpired below occurred outside the confines of any proceeding, unbounded by rules that would normally apply. As the Chief ALJ made plain, "[s]ince this discovery dispute occurs outside any formal proceeding, the Commission's Rules of Practice and Procedure and filing requirements for formal proceedings do not directly apply." (App. 351.) SoCalGas requested this dispute be brought within a larger formal proceeding (by issuance of a Commission OIR or Order Instituting Investigation (OII)), which would entail more transparency and due process. (App. 1199–1201.) Tellingly, CalPA has opposed that request: CalPA and Sierra Club, with which it improperly partnered, have gained an unfair "advantage in expressing its views to the people" by continuing to suppress the speech of its adversary on a debatable public question. (*Bellotti*, *supra*, 435 U.S. at p. 785.) By allowing CalPA to obtain, outside any proceeding, constitutionally protected information with no connection to what ratepayers pay, the Resolution fails to protect SoCalGas's due-process rights. CalPA's intrusive demands have been made and enforced by the Commission in a procedural "no-man's land" to force SoCalGas to comply with unreasonable (e.g., two-business-day) production deadlines for constitutionally protected materials.[5]

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[5] In the modified Resolution, the Commission incorrectly stated "SoCalGas does not raise a due process argument in its rehearing application. Its sole focus is on alleged First Amendment violations." (App. 1870.) But in its AFR, SoCalGas explained CalPA had "unjustifiably demand[ed] the discovery at issue and threaten[ed] SoCalGas … for exercising its *due*

(Cont'd on next page)

Behind those demands lies the still-looming threat, reiterated by the Commission in its latest ruling of heavy fines and other sanctions. (§ 2107.) CalPA has sought the imposition of multiple sets of staggering *retroactive* penalties in excess of $100,000 per day. (App. 909, 928, 1114–1120.) "[O]ne of the primary factors driving [CalPA's] Motion for Sanctions" is to "punish" SoCalGas for the offense of "disrespect[ing] the Commission and its staff" (i.e., CalPA), which SoCalGas has apparently done by challenging the lawfulness of the subpoena and data requests in a "non-proceeding" with no established rules, despite the staggering monetary and other chilling consequences at stake. (App. 920, 925.) In its initial ruling, the Commission "deferred" the issue of fines but invited CalPA to "resubmit[]" its motion for sanctions "at a later date." (App. 1493.) And in its latest Order modifying that Resolution, the Commission made sure to dangle the sanctions sword over SoCalGas no less than four times. (E.g., App. 1869, 1871 ["expressly reserv[ing] the option of imposing sanctions on SoCalGas at a later time"]; see also App. 1863, 1870.) Thus, the specter of steep, steadily increasing fines hangs over SoCalGas. That the Commission (or this Court) may "ultimately rescue" SoCalGas by denying CalPA's motion for sanctions "is not enough." (*In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 49 fn. 10.) "[T]he value of a sword of Damocles is that it hangs—not that it drops."

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process rights." (App. 1519, italics added.) SoCalGas also explained that Chief ALJ Simon confirmed "disputes in this non-proceeding w[ere] not subject to the Commission's rules," that SoCalGas has "no established procedural safeguards to protect itself" against CalPA's "coercive threats," and that not providing such protection "is an improper denial of *due process* that undermines the legitimacy of any 'non-proceeding' order." (App. 1533 fn. 69, italics added.) Further, SoCalGas already briefed its due-process concerns to the CPUC (App. 341–342), and CalPA extensively discussed those concerns in its AFR (App. 1779, 1784–1785).

(*Ibid.*, quoting *Arnett v. Kennedy* (1974) 416 U.S. 134, 231, Marshall, J., dissenting.)

This lack of established procedures has severe consequences. In the November 2019 ruling, the ALJ denied (without explanation) SoCalGas's request to stay enforcement of the order for two weeks pending its appeal to the Commission. (App. 309–311, 327.) Three days later, SoCalGas submitted an Emergency Motion to Stay, but received no ruling. (App. 327, 428.) SoCalGas was therefore faced with a Hobson's choice: pay $100,000 a day while awaiting a ruling that might not arrive in time, or produce the contracts under protest. While the mechanism to appeal the decision is opaque, the consequences of non-compliance are crystal clear.

These procedural uncertainties conflict with "the principle that freedom from arbitrary adjudicative procedures is a substantive element of one's liberty." (*People v. Ramirez* (1979) 25 Cal.3d 260, 268.) They also violate well-established due-process requirements (U.S. Const. amend. V, XIV; Cal. Const. art. I, § 7), not to mention the Excessive Fines Clause (U.S. Const. amends. V, VIII, XIV; Cal. Const., art. I, §§ 7, 17; see, e.g., *United States v. Mackby* (9th Cir. 2001) 261 F.3d 821, 829). Because CalPA is targeting protected speech, even greater procedural protections are needed. (*Button*, *supra*, 371 U.S. at p. 438 ["Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms."].) Here, however, the Commission allowed CalPA to exploit the absence of meaningful procedural protections to chill SoCalGas's and others' right to speak, associate, and petition the government, in violation of the First Amendment and Due Process Clause.

III. MOTION FOR EMERGENCY STAY OR OTHER INJUNCTIVE RELIEF

Absent this Court's issuance of an emergency temporary stay, SoCalGas's First Amendment rights will be eviscerated by Resolution ALJ-391 (as modified), which compels SoCalGas to provide CalPA access to constitutionally protected material by March 17.

This Court may order a temporary stay based on a clear showing "that immediate and irreparable injury, loss, or damage will result to the applicant" before a hearing can be held under section 1762(a) to determine the propriety of a long-term stay pending the resolution of the petition. (§§ 1762(c); 1763(a).) A petitioner must show "that irreparable injury would result." (*North Shuttle Service, Inc. v. P.U.C.* (1998) 67 Cal.App.4th 386, 392.) The Court may order a longer-term stay after a hearing, held on at least five days' notice, based on a "specific finding ... certify[ing] that great or irreparable damage would otherwise result to the petitioner." (*Id.* § 1762, subds. (a)–(b).) Any such hearing should be held "at the earliest possible time" after issuance of a temporary stay. (*Id.* § 1763, subd. (c).)

As detailed herein, SoCalGas has a privilege to refuse to disclose First-Amendment-protected materials. The damage resulting from disclosure would be immediate and irreparable. (*Edwards Wildman Palmer LLP v. Super. Ct.* (2014) 231 Cal.App.4th 1214, 1224 ["Extraordinary review of a discovery order will be granted when a ruling threatens immediate harm, such as a loss of privilege against disclosure, for which there is no other adequate remedy" (citation omitted)]; *Maldonado v. Super. Ct.* (2012) 53 Cal.4th 1112, 1137 [holding if constitutionally protected material is disclosed, "the disclosure itself breaches the privilege, the 'cat is out of the bag,' and the damage cannot be undone"].)

Alternatively, the Court may enjoin the Resolution's enforcement through issuance of an "auxiliary" writ of supersedeas. (*Town of Emeryville*, *supra*, 69 Cal.2d at pp. 538–539.)[6] The Supreme Court recognized courts have the inherent power to act to preserve their own jurisdiction, or their ability to provide effective relief. (*Ibid*. ["[N]o explicit constitutional grant is necessary to authorize issuance of such auxiliary writs as supersedeas, long recognized to be an attribute of the inherent power of the courts to preserve their own jurisdiction."].)

As explained above, a stay preventing disclosure of the constitutionally protected material is necessary to preserve the Court's ability to grant SoCalGas effectual relief—i.e., to keep the cat in the bag. The non-statutory requirements for issuance of a writ of supersedeas have also been satisfied, including "a convincing[] show[ing] that substantial questions will be raised on appeal." (*Smith v. Selma Community Hospital* (2010) 188 Cal.App.4th 1, 18.) SoCalGas has certainly raised "substantial questions" about the orders challenged herein—as explained above, SoCalGas should prevail on the merits of its Petition because the order requiring disclosure of protected material is clearly erroneous as a matter of law and demonstrably prejudicial. And because the Commission will not suffer any damages resulting from a stay, the balance of harms tips sharply in SoCalGas's favor.

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[6] This was the approach taken by the Court of Appeal regarding a writ petition in 2018. (Order, *Pacific Gas & Electric Company v. P.U.C.* (Cal.Ct.App. Mar. 7, 2018) A153642 [granting stay of enforcement of Commission order, filed in conjunction with petition for writ of review, pending resolution of underlying proceedings]; see Petitioner's Motion For Calendar Preference And, If Necessary, An Injunction, *Pacific Gas & Electric Company v. P.U.C.* (Cal.Ct.App. Feb. 16, 2018) A153642.)

If the Court is inclined to issue a statutory stay—as opposed to an injunction through a writ of supersedeas—execution of the stay may call for the posting of a "suspending bond" sufficient to cover "all damages caused by the delay in the enforcement of the order or decision." (§ 1764.) Section 1764 does not provide much guidance on how to calculate the bond amount outside the rate-setting context, especially at the temporary-stay stage. (*North Shuttle*, *supra*, 67 Cal.App.4th at p. 393 fn. 5 [noting the statute appears to require courts to make a "shot in the dark" estimation].) But no bond is required here, under the terms of section 1764, because the Commission will not suffer damages from delayed enforcement of the Resolution. First, there is no open proceeding to be delayed. The May 5, 2020 Subpoena was issued outside any proceeding. (Petition ¶ 24.) The Commission thus has no urgent need for the information it has demanded: no statutory deadline will be missed, for example, and the Commission would not have to undertake any extra effort if this Court grants a stay. Second, the Resolution wrongly compels production of protected information—no damage to the Commission can flow from a delay in unlawfully compelling disclosure of such information.

If, however, the Court believes a bond is required, SoCalGas has already secured a $50,000 bond—an amount more than sufficient to cover any "damages" CalPA or the Commission could conceivably suffer from a temporary stay—and has tendered a bond herewith. (See Poon Decl., ¶ 4; Ex. 1 [attaching copy of bond]; ¶ 5 [offering to promptly increase the bond amount if necessary].) This Court should approve this bond (if one is needed) as more than sufficient to effectuate the temporary stay, pending "a proper showing by those who would be harmed by the stay." (*North Shuttle*, *supra*, 67 Cal.App.4th at p. 393 fn. 5.)

In sum, this Court should issue an immediate temporary stay, and then, pursuant to section 1762(a), determine the propriety of a long-term stay lasting at least until 21 days following this Court's disposition of this Petition, to leave sufficient time to seek Supreme Court review if necessary. (§§ 1762, subds. (a)–(c); 1763, subd. (b).) Alternatively, this Court should exercise its inherent authority to enjoin the Resolution's enforcement through issuance of an auxiliary writ. (*Town of Emeryville*, *supra*, 69 Cal.2d at pp. 538–539.)

IV. CONCLUSION

This Court should grant an immediate temporary stay or other appropriate injunctive relief, a long-term stay pending at least its consideration of this Petition's merits, and the prayed-for writs of review, mandate, and/or other appropriate relief. (§ 1756, subd. (a).) Following full briefing and oral argument, the Court should vacate the Commission's rulings regarding these discovery disputes, including Resolution ALJ-391, and enjoin the Commission and its staff from engaging in further attempts at forcing the disclosure of SoCalGas's constitutionally protected material.

DATED: March 8, 2021

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

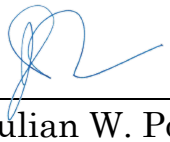
By: _____
Julian W. Poon

Attorneys for Petitioner Southern California Gas Company

CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this Petition for Writ of Review, Mandate, Prohibition, and/or Other Appropriate Relief, Motion for Temporary Stay or Other Injunctive Relief, and Memorandum of Points and Authorities contains 13,996 words, excluding the tables and this certificate, according to the word count generated by the computer program used to produce this document.

Dated: March 8, 2021



Julian W. Poon

Attorneys for Petitioner Southern California Gas Company

DECLARATION OF JULIAN W. POON

I, Julian W. Poon, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and am a partner of Gibson, Dunn & Crutcher LLP, counsel of record for Petitioner Southern California Gas Company ("SoCalGas") in this proceeding. I submit this declaration in support of SoCalGas's Petition for Writ of Review, Mandate, and/or Other Appropriate Relief, Motion for Emergency Stay or Other Injunctive Relief. I have personal knowledge of the matters set forth herein, unless the context indicates otherwise, and, if called as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of an executed suspending bond that SoCalGas has secured in the amount of $50,000, if needed to effectuate a temporary stay of Resolution ALJ-391; I am tendering a copy of this bond to this Court with this Petition and Emergency Stay/Other Injunctive Relief Motion.

3. The original copy of the bond is being held by my staff at the offices of Gibson, Dunn & Crutcher LLP in downtown Los Angeles, California, and can be produced to the Court in original form at the Court's request.

4. Although, for the reasons set forth in the Memorandum of Points and Authorities attached to this Petition, neither the Commission nor CalPA will suffer any real damages resulting from a temporary stay of the enforcement of the Resolution, this $50,000 bond is calculated to be more than sufficient to cover any damages caused thereby.

5. SoCalGas stands ready to promptly increase the bond in any additional amount the Court may determine to be necessary to effectuate or extend the prayed-for stay.

6. Attached hereto as **Exhibit 2** is a true and correct copy of a computer-generated redline, showing how the Commission's Resolution ALJ-391 would read as modified by the Commission's Order issued on March 2, 2021.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration has been executed by me in Pasadena, California on this 7th day of March, 2021.

Julian W. Poon

EXHIBIT 1

Suspending Appeal Bond

Southern California Gas Company ("SoCalGas")
Petitioner(s)

-against-

Public Utilities Commission of the State of California
Respondent(s)

Bond No. 107242077
Premium: $188.00 per annum
Cause Title/No. Discovery Dispute Related to Data Request CALADVOCATES-SC-SCG-2019-05

KNOW ALL MEN BY THESE PRESENTS, that we **Southern California Gas Company**, as Principal, and Travelers Casualty and Surety Company of America, authorized to do business in the State of California, as Surety, are held and firmly bound unto **The People of the State of California** as Obligee, in the maximum penal sum of **Fifty Thousand Dollars ($50,000)**, lawful money of the United States of America, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, pursuant to Cal. Pub. Util. Code § 1764. (See Exh. A.)

WHEREAS, the Principal has appealed to the Court of Appeal of the State of California, Second Appellate District from an Order entered on the _____ day of _____, _____.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall diligently prosecute its appeal to a final decision, and shall promptly comply with any court order regarding payment of damages caused by the delay in enforcement of the Order appealed, pursuant to Cal. Pub. Util. Code § 1764, then this obligation will be void; otherwise to remain in full, force and effect.

SIGNED, SEALED, AND DATED this 12th day of June, 2020.

Southern California Gas Company

By: _____, Principal

Travelers Casualty and Surety Company of America

By: _____
Tracy Aston, Attorney-in-Fact

Exhibit A

West's Annotated California Codes
Public Utilities Code (Refs & Annos)
Division 1. Regulation of Public Utilities (Refs & Annos)
Part 1. Public Utilities Act (Refs & Annos)
Chapter 9. Hearings and Judicial Review
Article 3. Judicial Review (Refs & Annos)

West's Ann.Cal.Pub.Util.Code § 1764

§ 1764. Suspending bond; impounding of disputed collections

Currentness

In case the order or decision of the commission is stayed or a temporary stay granted, the order of the Supreme Court or court of appeal shall not become effective until a suspending bond is executed and filed with and approved by the court, payable to the people of the State of California and sufficient in amount and security to insure the prompt payment by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission and of all money which any person or corporation may be compelled to pay pending the review of the proceedings for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case the order or decision is sustained.

Credits

(Stats.1951, c. 764, p. 2092, § 1764. Amended by Stats.1996, c. 855 (S.B.1322), § 16.)

Editors' Notes

OPERATIVE EFFECT

<Stats.1996, c. 855 (S.B.1322), applies to review of orders or decisions the effective date of which is on or after Jan. 1, 1998, pursuant to § 25 of that Act. For text of section prior to amendment by Stats.1996, c. 855, see Historical and Statutory Notes, under this section.>

Notes of Decisions (2)

West's Ann. Cal. Pub. Util. Code § 1764, CA PUB UTIL § 1764
Current with urgency legislation through Ch. 3 of 2020 Reg.Sess

End of Document

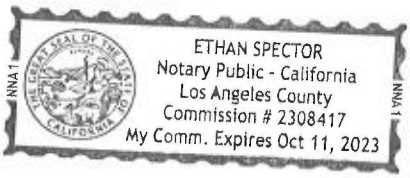
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles
JUN 12 2020

On _____ before me, Ethan Spector, Notary Public, personally appeared Tracy Aston who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

TRAVELERS

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Tracy Aston,** of **Los Angeles, California**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February, 2017.**

State of Connecticut

City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February, 2017**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2021**

Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this day of JUN 12 2020

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On June 15, 2020 before me, Joyce Ruiz Jeffers, Notary Public
(insert name and title of the officer)

personally appeared David Judson Barrett,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joyce Ruiz Jeffers
COMM. #2273602
NOTARY PUBLIC • CALIFORNIA
SAN DIEGO COUNTY
Commission Expires Jan. 27, 2023

Signature _____ (Seal)

EXHIBIT 2

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-391
Administrative Law Judge Division
December 17, 2020

R E S O L U T I O N

RESOLUTION ALJ-391 Denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena; grants SoCalGas' May 22, 2020 motion to supplement its December 2, 2019 motion for reconsideration/appeal; deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020; defers consideration of the Public Advocates Office at the California Public Utilities Commission's June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena; and addresses other related motions.

TABLE OF CONTENTS

SUMMARY

This Resolution denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena. In denying these motions, the Commission rejects SoCalGas' argument that the Public Advocates Office at the California Public Utilities Commission's (Cal Advocates') discovery rights, set forth in the Public Utilities Code, are limited by SoCalGas' First Amendment rights to association, assuming that such a right exists, and rejects SoCalGas' argument that the Commission has violated its procedural due process rights.

In addition, this Resolution grants SoCalGas' December 2, 2019 motion for leave to file under seal confidential versions of certain declarations but, in doing so, confirms that SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, such as Cal Advocates, under existing protections.

This Resolution also deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020, grants SoCalGas' May 22, 2020 motion to supplement the December 2, 2019 motion for reconsideration/appeal, and defers consideration of Cal Advocates' June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena. By granting SoCalGas' December 2, 2019 motion for leave to file under seal and directing it to provide unredacted, confidential versions to Commission staff, including Cal Advocates, this Resolution also deems moot Cal Advocates' July 9, 2020 motion to compel and defers consideration of Cal Advocates' request therein for monetary fines.

Other related motions are also addressed.

SoCalGas is directed to produce the information and documents requested by Cal Advocates in DR No. CalAdvocates-SC-SCG-2019-05, including the confidential declarations submitted under seal in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal, and in the May 5, 2020 Commission subpoena within 30 days of the effective date of this Resolution.

BACKGROUND

1. Rulemaking 19-01-011 and Cal Advocates' Data Requests to SoCalGas - Outside of a Proceeding

In May 2019, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) initiated a discovery inquiry into Southern California Gas Company's (SoCalGas') funding of anti-decarbonization campaigns using "astroturfing" groups.[1] Cal Advocates initiated this discovery inquiry "outside of a proceeding" pursuant to its statutory authority and for reasons more fully addressed below.[2] In particular, Cal Advocates' inquiry focused on the extent to which SoCalGas was using ratepayer funds to support organizations presenting themselves to the Commission as independent grassroots community organizations that also support anti-decarbonization positions held by SoCalGas, such as Californians for Balanced Energy Solutions (C4BES) and other similar organizations.

Cal Advocates' discovery inquiry was prompted by allegations initially raised in Rulemaking (R.) 19-01-011[3] when C4BES filed a motion for party status on May 13, 2019, and Sierra Club challenged the motion on May 14, 2019, claiming that, unbeknownst to the public, SoCalGas founded and funded C4BES.[4] Cal Advocates responded to Sierra Club's motion to deny party status and stated that Cal Advocates would investigate the allegations raised by Sierra Club.[5]

On May 23, 2019, Cal Advocates initiated this inquiry by issuing Data Request (DR) SCG051719 to SoCalGas regarding its involvement with C4BES. Cal Advocates issued this data request outside of R.19-01-011, as the scope of R.19-01-011 was limited to de-carbonization matters. In contrast, Cal Advocates' inquiry focused on SoCalGas' financial relationship with C4BES and the use of ratepayer funds to support lobbying efforts by C4BES. In addition, Cal Advocates initiated this discovery outside of a proceeding because no other Commission proceeding encompassed this issue.

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[1] Astroturfing is a practice in which corporate sponsors of a message mask their identity by establishing separate organizations to state a position or make it appear as though the movement originates from and has grassroots support.

[2] All pleadings submitted to the Commission related to this discovery dispute "outside of a proceeding" are available on the Commission's website at the Cal Advocates' webpage at: https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444.

[3] R.19-01-011 *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

[4] See R.19-01-011, Sierra Club's *Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery (May 14, 2019). See also Cal Advocates' Response to Sierra Club's Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 29, 2019).

[5] *See R.19-01-011, Cal Advocates' Response to Sierra Club's Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 29, 2019) at 2.

SoCalGas responded to the DR. Based on this response, Cal Advocates alleged that justification existed to continue its inquiry.

On July 19, 2019, Cal Advocates issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. In response, SoCalGas refused, in part, to comply with the DR. At this point, Cal Advocates and SoCalGas began to dispute the lawfulness of the ongoing discovery.

2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal Requesting the Full Commission's Review of the November 1, 2019 ALJ Ruling

With this discovery dispute still unresolved, on August 13, 2019, Cal Advocates served SoCalGas with another data request, DR No. CalAdvocates-SC-SCG-2019-05, which consisted of multiple questions built upon previous DRs. On August 27, 2019, SoCalGas responded to the DR with an objection to Question 8 based on the grounds that the requested production of its 100% shareholder-funded contracts related to C4BES fell outside the scope of Cal Advocates' statutory authority set forth in Public Utilities Code (Pub. Util. Code) §§ 309.5(a)[6] and 314.[7] Cal Advocates and SoCalGas engaged in discussions regarding Question 8 of the DR and after multiple attempts the parties agreed that they were at an impasse.

On October 7, 2019, Cal Advocates submitted a motion to compel responses from SoCalGas to the President of the Commission pursuant to Pub. Util. Code § 309.5(e).[8] SoCalGas responded in opposition to Cal Advocates' motion on October 17, 2019.[9] SoCalGas again argued that because the information sought was 100% shareholder funded, it fell beyond Cal Advocates' statutory purview. The President referred this discovery dispute to the Commission's Chief Administrative Law Judge.

On October 29, 2019, the Chief Administrative Law Judge assigned the dispute to Administrative Law Judge Regina DeAngelis (ALJ) and informed the parties in writing

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[6] Pub. Util. Code § 309.5(a) states: "There is within the commission an independent Public Advocate's Office of the Public Utilities Commission to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the office shall primarily consider the interests of residential and small commercial customers."

[7] *See SoCalGas' Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling In the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 [PROPOSED] Order (Not In A Proceeding)* (December 2, 2019) at 6.

[8] Cal Advocates' *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05 (Not In A Proceeding)* submitted October 7, 2019.

[9] *Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates -SC-SCG-2019-05 (Not In A Proceeding)* submitted October 17, 2019.

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of certain procedural rules to follow since this discovery dispute was outside of any formal proceeding and, therefore, the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) (herein "Rules") [10] did not directly apply.

On October 31, 2019, Cal Advocates filed a reply to SoCalGas' response.[11] On November 1, 2019, the ALJ issued a ruling granting Cal Advocates' motion to compel responses to DR No. CalAdvocates-SC-SCG-2019-05.[12] On November 4, 2019, SoCalGas submitted an emergency motion for stay of the November 1, 2019 ALJ ruling but, with its motion for stay pending, on November 5, 2019, SoCalGas also submitted the DR responses to Cal Advocates under protest.[13]

On December 2, 2019, SoCalGas submitted a motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling.[14] SoCalGas' motion sought the Commission's review of that ruling and reversal.

In support of its motion, SoCalGas raised several constitutional arguments. SoCalGas alleged: (1) the materials sought by Cal Advocates unlawfully infringed on SoCalGas' First Amendment rights to association and (2) that, because the discovery dispute was occurring outside of a proceeding, the lack of procedural safeguards to govern the dispute violated SoCalGas' procedural due process rights.[15] SoCalGas also sought an order from the Commission directing Cal Advocates to return or destroy the constitutionally protected materials provided to Cal Advocates on November 5, 2019. (As noted below, SoCalGas subsequently supplemented this December 2, 2019 motion by a separate motion (dated May 22, 2020), discussed in more detail below). SoCalGas

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[10] All references to "Rules" are to the Commission's Rules of Practice and Procedure.

[11] *Reply of the Public Advocates Office to Response of SoCalGas to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request-CalAdvocates-SC-SCG-2019-05 (Not In A Proceeding)* submitted on October 31, 2019.

[12] *Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding)* issued on November 1, 2019.

[13] *Southern California Gas Company's (U 904 G) Emergency Motion to Stay Pending Full Commission Review of Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding)* submitted on November 4, 2019.

[14] *Southern California Gas Company's (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding)* submitted on December 2, 2019. On December 2, 2019, SoCalGas also submitted a motion to file documents under seal.

[15] SoCalGas also contended that if the Commission did not stop Cal Advocates from invoking its statutory right to compel production of information, then it will continue with the data requests that allegedly infringe on SoCalGas' First Amendment rights.

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also filed a motion to file under seal certain declarations.[16] On December 17, 2019, Cal Advocates submitted a response.[17]

On March 25, 2020, SoCalGas filed an emergency motion for a protective order staying all pending and future data requests from Cal Advocates served outside of any proceeding related to this dispute, and any motions and meet and confers related thereto, during the Governor of California's Covid-19 emergency "safer at home" executive orders.[18]

Before Cal Advocates had an opportunity to respond, the ALJ, via an email on April 6, 2020, reminded SoCalGas of Cal Advocates' statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time and found that its request was contrary to California law. The ALJ advised parties to work together in these extraordinary times. We consider this March 25, 2020 SoCalGas motion resolved and do not address it further here.

This Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling together with the other related motions, all pertaining to DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 Commission subpoena, described below.[19]

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[16] On December 2, 2019, SoCalGas concurrently filed *Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations Numbers 3, 4, 5, and 6 In Support of Its Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling In the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 [PROPOSED] Order (Not In A Proceeding)*.

[17] *Public Advocates Office's Response to Southern California Gas Company's (U 904 G) Motion for Reconsideration/Appeal To The Full Commission Regarding Administrative Law Judge's Ruling In The Discovery Dispute Between Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding)* submitted December 17, 2019.

[18] *Southern California Gas Company's (U 904 G) emergency motion for a protective order staying all pending and future data requests from the California Public Advocates Office served outside of any proceeding (relating to the Building Decarbonization matter), and any motions and meet and confers related thereto, during California government Covid-19 emergency "safer at home" orders*, submitted on March 25, 2020.

[19] Further addressed below and related to SoCalGas' December 2, 2019 motions, on July 9, 2020, Cal Advocates submitted a motion to compel SoCalGas to produce the confidential versions of the declarations submitted in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal and for daily monetary fines, *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, submitted on July 9, 2020.

On July 17, 2020, SoCalGas filed response, *Response to Public Advocates Office Motion to Compel Confidential Declarations Submitted in Support of Southern California Gas Company's December 2, 2019 Motion for Reconsideration of First Amendment Association Issues and Request for Monetary Fines for the*

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3. SoCalGas' May 22, 2020 Motion to Quash/Stay the May 5, 2020 Subpoena Seeking Access to SoCalGas' Accounting System and May 22, 2020 Motion to Supplement its December 2, 2019 Motion

On May 1, 2020, Cal Advocates served SoCalGas with another data request, DR CalAdvocates-TB-SCG-2020-03, seeking access to SoCalGas' accounting database, as Cal Advocates continued its inquiry into SoCalGas' use of ratepayer monies to fund an anti-decarbonization campaign through astroturf organizations. On May 5, 2020, Cal Advocates served a subpoena, signed by the Commission's Executive Director, on SoCalGas seeking the same information as set forth in DR CalAdvocates-TB-SCG-2020-03, access to SoCalGas' accounting databases.[20]

SoCalGas delayed responding to the subpoena and, instead, on May 22, 2020, SoCalGas submitted a motion to quash the subpoena and to stay the subpoena until May 29, 2020, to allow it an opportunity to implement software solutions to exclude what it deemed as materials protected by attorney-client and attorney work product privileges, as well as materials implicating the same First Amendment issues raised in SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.[21]

On May 22, 2020, SoCalGas also submitted a motion to supplement the record of its December 2, 2019 motion for reconsideration/appeal and to request an expedited Commission decision (in the event SoCalGas' May 22, 2020 motion for a stay of the subpoena was not granted).[22]

Utility's Intentional Withholding of this Information. SoCalGas argues that Cal Advocates' Statutory Authority to inspect SoCalGas's books and records - including the confidential material in question - is limited by the First Amendment. Information includes: 100% shareholder-funded political activities.

On July 24, 2020, Cal Advocates filed a reply, *Public Advocates Office Reply to Southern California Gas Company's Opposition to Motion to Compel and for Fines Related to the Utility's Intentional Withholding of Confidential Declarations*.

[20] The Public Utilities Commission of the State of *California's Subpoena to Produce Access to Company Accounting Databases* dated May 4, 2020 and served on May 5, 2020.

[21] *Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude those Protected Materials in The Databases (Not In A Proceeding)* submitted May 22, 2020. SoCalGas originally submitted this motion on May 19, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the Motion to Quash on May 22, 2020.

[22] *Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for 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*

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This Resolution resolves SoCalGas' May 22, 2020 motion to quash/stay the May 5, 2020 subpoena and May 22, 2020 Motion to Supplement its December 2, 2019 Motion.

4. Cal Advocates' June 23, 2020 Motion for Contempt and Sanctions Related to SoCalGas' Failure to Comply with the May 5, 2020 Subpoena

On June 23, 2020, Cal Advocates submitted a motion to find SoCalGas in contempt and to impose fines on SoCalGas for noncompliance with the May 5, 2020 subpoena.[23] More specifically, Cal Advocates asserted that SoCalGas was continuing to avoid complying with the May 5, 2020 subpoena and that SoCalGas' conduct following the issuance of the subpoena constituted a violation of Rule 1.1 and Pub. Util. Code §§ 309.5, 311, 314, 314.5, 314.6, which warrants the imposition of daily penalties. Cal Advocates also sought an order requiring SoCalGas to, among other things, provide Cal Advocates with access to financial databases on a read-only basis and to provide additional information from its accounting and vendor records systems showing which of its accounts are 100% shareholder funded, which accounts have costs booked to them associated with activities that are claimed to be subject to First Amendment privileges or are shareholder funded and other information about vendors of SoCalGas.

On July 2, 2020, SoCalGas submitted a response challenging Cal Advocates' motion for contempt and sanctions, alleging that: (1) the underlying premise of the motion, Cal Advocates' authority to inspect SoCalGas' books and records, lacked legal basis (2) the motion was premature and should not be decided before SoCalGas' motion to quash the subpoena, (3) that if the Cal Advocates' June 23, 2020 motion for contempt and sanctions was to be considered, then further procedural safeguards would be required under due process rights, and (4) the motion failed on its merits.[24]

Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding) submitted on May 20, 2020. SoCalGas originally submitted this motion on May 20, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the motion on May 22, 2020.

[23] *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)* submitted on June 23, 2020.

[24] *Southern California Gas Company's (U 904 G) Response to Public Advocates Office's Motion to find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for those Violations from the Effective Date of the Subpoena (Not In A Proceeding)* submitted on July 2, 2020.

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On July 10. 2020, Cal Advocates submitted a reply addressing SoCalGas' arguments.[25]

In resolving SoCalGas' two May 22, 2020 motions related to the May 5, 2020 subpoena (the motion to quash/stay and the motion to supplement), this Resolution also addresses Cal Advocates' June 23, 2020 motion for contempt and sanctions. In addition, and as already stated above, this Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.

All these requests for Commission action are reviewed together for reasons of administrative efficiency: all four motions address information sought by either DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena; and all four motions rely on arguments related to the scope of Cal Advocates' statutory authority to engage in discovery of information from SoCalGas under the Pub. Util. Code and the application of the First Amendment right to association and procedural due process rights to protect SoCalGas from disclosure of shareholder-related information sought by Cal Advocates.

DISCUSSION

1. Commission Staff's Statutory Right to Obtain Information to Exercise its Regulatory Oversight Over California's Investor-Owned Utilities

There is clear statutory authority granting Commission staff the right to access the information at issue in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission, as a constitutionally-established state agency, is tasked with regulating public utilities under its jurisdiction.[26] The Pub. Util. Code grants broad authority to Commission staff to inspect the books and records of investor-owned utilities. The Pub. Util. Code states:

> The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the

[25] *Public Advocates Office Reply to Southern California Gas Company's Response to Motion for Findings of Contempt and Fines for the Utility's Failure to Comply with a Commission Subpoena Issued May 5, 2020*, submitted on July 10, 2020.

[26] Cal. Const., art. XII.

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> 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.[27]

These broad powers apply:

> to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation, or a water corporation that has 2,000 or more service connections, with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.[28]

This authority applies to all Commission staff without limitation, including Cal Advocates.

In addition to this statutory authorization for all Commission staff, an additional statutory provision allows Cal Advocates to issue subpoenas and data requests to regulated utilities.

> The office [Cal Advocates] may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.[29]

The statutory scheme also recognizes that information provided to the Commission staff by utilities might sometimes involve sensitive and confidential material. Section 583 of the Pub. Util. Code provides ample protection for such information.[30] Further, General Order 66-D provides a process for submitting confidential information to the Commission staff. Information collected pursuant to a books and record request is used as part of the staff's internal review process and, if properly designated as confidential by utilities, will not be publicly disclosed until a process is followed where the

[27] Pub. Util. Code § 314(a).

[28] Pub. Util. Code § 314(b).

[29] Pub. Util. Code § 309.5(e).

[30] Pub. Util. Code § 583.

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Commission as a body determines that the information should be open to public inspection.[31]

These statutory provisions have been part of the regulatory scheme since 1951 and in similar form since 1911. These provisions represent a clear legislative determination that the exercise of the power to review material by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities. 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. Thereafter, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas in accordance with the provisions of Pub. Util. Code § 583 and General Order 66-D.

For these reasons, we find that, under the authority provided by the Pub. Util. Code, Cal Advocates is entitled to the information sought in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. We now address SoCalGas' argument that Cal Advocates' statutory authority is limited by SoCalGas' First Amendment and due process rights.

2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 ALJ Ruling to the Full Commission

a. First Amendment Privilege

In SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling directing it to respond to DR No. CalAdvocates-SC-SCG-2019-05, SoCalGas argues that the Commission staff's statutory right to obtain information from a regulated utility does not apply because the DR, which seeks information about the utility's, its affiliates', or its contractors' activities taking positions on decarbonization, jeopardizes SoCalGas' First Amendment rights to association. SoCalGas makes the argument that the utility's ability to freely associate with others for political expression and to petition the government for political redress would be chilled if it provided the requested shareholder-related information to its regulator using normal procedures (a data request) as authorized by existing statutory provisions.

SoCalGas makes similar arguments in its May 22, 2020 motions opposing the May 5, 2020 subpoena seeking access to SoCalGas' accounting database. We address all these motions below.

[31] *Ibid.*

We find that SoCalGas' arguments pertaining to the First Amendment lack merit. The First Amendment to the U.S. Constitution protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances.[32] The First Amendment applies to the states, such as California, and state entities, such as the Commission, through the Fourteenth Amendment to the U.S. Constitution.[33] Under current case law, these protections apply to private organizations and corporations.[34] These rights are also contained in the California Constitution.[35] SoCalGas enjoys the same First Amendment rights as any other person or entity. Its status as a regulated public utility does not impair or lessen these rights.[36]

However, the right to associate for political expression is not absolute. If an action amounts to an infringement it may, nevertheless, "be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms."[37]

Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement,[38] which can be intentional or indirect.[39] If this showing is made, the burden shifts to the government to demonstrate that the information sought is rationally related to a compelling state interest.[40] The Commission's analysis of SoCalGas' alleged infringement and the existence of a compelling state interest follow.

i. SoCalGas fails to establish that its First Amendment rights will be infringed by complying with Cal Advocates' Data Request, DR No. CalAdvocates-SC-SCG-2019-05

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[32] U.S. Const. amends I., XIV.

[33] *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Com.* (1980) 447 U.S. 557, 561.

[34] *Citizens United v. FEC* (2010) 558 U.S. 310, 342 (*Citizens United*).

[35] Cal. Const., art. I, §§ 2(a), 3(a).

[36] *Pac. Gas & Elec. Co. v. Public Utilities Com.* (1986) 475 U.S. 1, 17; *see also Pac. Gas & Elec. Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 86, 93.

[37] *Roberts v. Jaycees* (1984) 468 U.S. 609, 623 (*Roberts*).

[38] *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160 (*Perry*).

[39] *National Assn. for Advancement of Colored People v. Ala. ex rel. Patterson* (1958) 357 U.S. 449, 461-62 (*NAACP*).

[40] *Perry*, *supra*, 591 F.3d at p. 1161.

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We first review whether SoCalGas made a showing of First Amendment infringement. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas argues that DR No. CalAdvocates-SC-SCG-2019-05 seeks information about its political activity and, in doing so, chills its First Amendment rights. SoCalGas points out, and we agree, that the DR requests information on the topics of how SoCalGas funds its decarbonization campaign.[41] In support of its infringement claim, SoCalGas relies on a declaration from Sharon Tomkins, SoCalGas' Vice President of Strategy and Engagement and Chief Environmental Officer, stating that she would be less likely to engage in certain communications and contracts if required to produce the requested information and stating her belief that other entities would be less likely to associate with SoCalGas if information about SoCalGas' political efforts are disclosed to the Commission.[42] SoCalGas submitted additional declarations from private organizations specializing in government relations and public affairs, outside of SoCalGas, including statements that disclosure to the Commission would dissuade them from communicating or contracting with SoCalGas. [43]

Meeting the initial showing of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure "is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization."[44] The initial showing has been established where, for example, the state of Alabama sought the National Association for the Advancement of Colored People's (NAACP's) membership list during the civil rights movement.[45] The NAACP proved that this disclosure would subject its members to economic reprisals as well as threats of physical coercion.[46] On the other hand, if the threat to constitutional rights is not clearly demonstrated, there is no need to consider the state agency's compelling interest.[47]

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41 The May 5, 2020 subpoena contains a broader request that nevertheless focuses on determining, by way of partial example, what accounts are used to track shareholder-funded activity, what payments are made from those accounts, and what invoices were submitted in support of those payments.

42 December 2, 2019 Motion for Reconsideration/Appeal, Declaration 3, ¶¶ 8-10.

43 December 2, 2019 Motion for Reconsideration/Appeal, Declarations 4, 5, 6.

44 *Dole v. Local Union 375, Plumbers Int'l Union* (9th Cir. 1990) 921 F.2d 969, 973-974 (*Dole*).

45 *NAACP, supra,* 357 U.S. at p. 462.

46 *Ibid*.

47 In *McLaughlin*, a court rejected a union's attempt to block a Labor Management Reporting and Disclosure Act subpoena by submitting a declaration containing "argument - not facts - concerning the impact of an unrestricted administrative review" of meeting records. *(McLaughlin v. Service Employees Union, Local 208* (9th Cir. 1989) 888 F.2d 170, 175 (*McLaughlin*).) Similarly, in *Dole v. Local Union 375*, the court rejected claim that disclosing information about union's operating fund, alone, would chill First Amendment rights. (*Dole, supr*a, 921 F.2d at pp. 973-74.)

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SoCalGas assertion that its First Amendment rights to association were or will be chilled by DR No. CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign is unconvincing. Although its declarations attempt to link the disclosure to the Commission of the political activity with repercussions -- SoCalGas contends that if it responds to these DRs, it will discourage certain communications and contracts with outside entities[48] -- these contentions are primarily hypothetical. Such threatened harm in communications and partnerships falls short of the palpable fear of harassment and retaliation in recognized instances of First Amendment infringement, such as that in *NAACP*.[49]

We find no infringement on SoCalGas' First Amendment rights by disclosing to the Commission, including Cal Advocates, responses to DR No. CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign.

ii. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in disclosure of this information to Cal Advocates

In its December 2, 2019 motion for reconsideration/appeal, SoCalGas claims that because DR No. CalAdvocates-SC-SCG-2019-05 seeks information about political activities and activities that are "100% shareholder-funded," the information does not need to be disclosed because such activities are not subject to Cal Advocates' oversight. As shown above in this Resolution, this position advanced by SoCalGas has not met the threshold showing of First Amendment infringement. The Pub. Util. Code grants broad authority to Commission staff, including Cal Advocates, to inspect the books and records of investor-owned utilities. Therefore, even if SoCalGas had met the threshold showing, the compelling government interest in obtaining this data outweighs the potential infringement on First Amendment rights

Legal doctrine also permits government action that indirectly might impair First Amendment rights when the government has a compelling governmental interest, also described as a proper interest in fulfilling its mandate.[50] We find a compelling government interest here, Cal Advocates' requests for information about SoCalGas' decarbonization campaign are consistent with its broad statutory authority to inspect

[48] SoCalGas's December 2, 2019 Motion for Reconsideration/Appeal, Declaration 3, ¶¶ 8-10 and Declarations 4 - 6.

[49] *NAACP, supra*, 357 U.S. at p. 462.

[50] *See e.g., Roberts, supra*, 468 U.S. at p. 623 (finding the state's interest in "eradicating discrimination against female citizens" justified any infringement of the associational freedoms in requiring all-male club to admit women).

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the books and records of investor-owned utilities in furtherance of its proper interest in fulfilling the Commission's mandate to regulate and oversee utilities.

After establishing a compelling governmental interest, the courts have applied a two-step analysis for evaluating whether government actions that arguably infringe on First Amendment rights may lawfully proceed as a compelling governmental interest. First, the action must be "rationally related to a compelling governmental interest" and second, the action must be narrowly tailored, such "that the least restrictive means of obtaining the desired information" have been used.[51]

Cal Advocates' discovery pursuant to DR No. CalAdvocates-SC-SCG-2019-05 satisfies these two requirements.

iii. DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest

We now review the first step of the analysis for evaluating the constitutionality of the Cal Advocate's DR: whether the DR is rationally related to a compelling interest. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas does not refute Cal Advocates' compelling interest in the data request beyond a broad assertion that, because its political activities are "100% shareholder-funded," they are not subject to Cal Advocates' oversight. SoCalGas' position is incorrect.

It is well-settled that state regulatory agencies, such as the Commission, can request information to fulfill their regulatory mandate, even where doing so may potentially impact First Amendment rights.[52] Indeed, this DR arises from the Commission's mandate to regulate investor-owned public utilities. This mandate includes ensuring that consumers have safe and reliable utility service at reasonable rates, protecting

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[51] *Perry, supra*, 591 F.3d at p. 1161.

[52] *See e.g., Citizens United* (2010) 558 U.S. 310, 369 (upholding federal funding disclosure and disclaimer rules because the "public has an interest in knowing who is speaking about a candidate shortly before the election."); *Ams. for Prosperity Found. v. Becerra (Prosperity Found.)* (9th Cir. 2018) 903 F.3d 1000, 1004 (holding that the California Attorney General's requirement that regulated charities disclose information about large donors withstood exacting scrutiny because of the important state interest in regulating charitable fraud); *Dole, supra*, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records authorized by statute over objections that the disclosure violated the union's free association rights); *United States v. Comley* (1st Cir 1989) 890 F.2d 539 (upholding an federal investigation subpoena seeking tape recordings and transcripts of telephone conversation and rejecting arguments that disclosure violated right to freedom of association rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (upholding IRS third-party summons in tax fraud investigation over right of free association objections); *United States v. Duke Energy Corp.* (M.D.N.C. 2003) 218 F.R.D. 468, 473 (allowing discovery request for energy company's communications with trade association despite their potential to chill First Amendment rights).

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against fraud, and promoting the health of California's economy. Within the Commission, Cal Advocates is statutorily authorized to represent and advocate:

> on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the office shall primarily consider the interests of residential and small commercial customers.[53]

The briefing materials submitted by Cal Advocates show that the information sought by DR No. CalAdvocates-SC-SCG-2019-05 is necessary for Cal Advocates to evaluate the potential use of ratepayer funds for lobbying activity. Cal Advocates issued the DR after discovering that SoCalGas might have used ratepayer funds to support lobbying activity. It is well-established that regulated utilities may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.[54] Regulated utilities carry the burden of demonstrating that their activities are eligible for cost recovery.[55] A statement of counsel for SoCalGas describing certain activities as "100% shareholder-funded" does not, in and of itself, deprive Cal Advocates of its statutory authority to review and make its own determinations regarding financial information from a regulated utility.[56]

As such, we find Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest.

iv. DR No. CalAdvocates-SC-SCG-2019-05 is ~~narrowly tailored to that compelling government interest~~the least restrictive means of obtaining the requested information

[53] Pub. Util. Code § 309.5(a).

[54] *Southern California Edison Co.*, 2012 Cal. PUC LEXIS 555, *765 (D.12-11-051) (finding that membership subscriptions to organizations that advance tax reduction policies are inherently political and funding should not be permitted under rate recovery); *Southern California Gas Co.*, 1993 Cal. PUC LEXIS 728, *103 (D.93-12-043) (finding that "ratepayers should not have to bear the costs of public relations efforts in this area, which according to SoCalGas, are designed primarily to increase load by promoting natural gas use to business and government leaders").

[55] *Pac. Gas & Elec. Co.*, 2007 Cal. PUC LEXIS 173, *66 (D.07-03-011) (requiring utility to keep records showing that program costs include funding for lobbying activities).

[56] December 2, 2019 SoCalGas Motion for Reconsideration/Appeal, Declaration of Johnny Q. Tran, Senior Counsel, Regulatory, SoCalGas.

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We now turn to the second ~~steps~~step of the analysis for evaluating the constitutionality of Cal Advocates DR No. CalAdvocates-SC-SCG-2019-05: ~~whether~~Whether the DR is ~~narrowly tailored~~the least restrictive means to ~~a compelling governmental interest.~~ obtain the requested information. SoCalGas again relies on its maxim that activities involving "100% shareholder-funded" activities are off limits to the Commission, including Cal Advocates, to assert that this DR is not narrowly tailored. -This argument suggests, incorrectly, that a utility may unilaterally designate certain topics off-limits to Commission oversight.

~~In circumstances where the First Amendment privilege is involved, a government entity must ensure that its requests are narrowly tailored to achieve a compelling government interest. This means that the government request should not place a burden on more of the First Amendment right of associational privileges than necessary to achieve its interest.[57]~~

In circumstances in which the First Amendment right of association is claimed with respect to a government request for discovery, Perry indicates that the discovery request at issue must be the "least restrictive means" of obtaining the desired information. (*Perry, supra*, 591 F.3d at p. 1140; see also *Dole v. Serv. Employees Union, AFL-CIO, Local 280*, 950 F.2d 1456, 1459-61 (9th Cir. 1991).) This is the second step of part two of the Perry analysis, after determining that the information sought through the requested discovery is rationally related to a compelling governmental interest. (*Perry, supra*, 591 F.3d at p. 1140.) The party seeking the discovery must show that the information sought is "highly relevant to the claims or defenses in the litigation," and the request must be "carefully tailored to avoid unnecessary interference with protected activities, and the information must be otherwise unavailable." (*Perry, supra*, 591 F.3d at p. 1141.) The purpose in seeking the requested discovery "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." (*Brock v. Local* 375 (9th Cir. 1988) 860 F.2d 346, 350, citing *Shelton v. Tucker* (1960) 364 U.S. 479, 488.)

Cal Advocates' DR is straightforward and attempts to clearly define the information needed for its inquiry. The scope of the DR is consistent with numerous disclosure requirements upheld by other courts. For example, in *Duke Energy*, the court allowed a government request for a utility company's communications with a third-party, even though the disclosure infringed on First Amendment associational rights, because it

~~[57] *United States v. Baugh* (9th Cir. 1999) 187 F.3d 1037, 1043. See also *Frisby v. Schultz* (1988) 487 U.S. 474, 485 (a regulation is "narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy"); *City of Cincinnati v. Discovery Network, Inc.* (1993) 507 U.S. 410, 417 n. 13.(a statue or regulation "need not be the least restrictive means of furthering [the government's] interests, but the restriction may not burden substantially more speech than necessary to further the interests").~~

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was relevant to the subject matter of the litigation.[58] DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to seek specific contracts and information about SoCalGas' potential use of ratepayer funds for lobbying activities. Indeed, it arose as part of an inquiry that escalated after SoCalGas did not disclose its affiliation with an entity that sought party status in a rulemaking proceeding before the Commission.[59] SoCalGas refused to provide information about its affiliation, thereby leading to this series of data requests by Cal Advocates.

The Commission has the right to inspect all records necessary as part of its general supervisory authority over all regulated utilities. Statements asserting the conclusion that certain activities are "exclusively shareholder funded" do not deprive the Commission of its statutorily granted authority to review a utility's books and records to ensure compliance with applicable regulatory laws and standards. Moreover, SoCalGas' argument is circular and begs the question, since SoCalGas has not proven, but merely asserts, that the funds in question are truly separate. Taken to the logical conclusion, a utility might opt out of regulation at any time, at its own discretion, based on its self-serving description of its activities. SoCalGas' position that it may curtail Commission staff's ability to conduct its regulatory function of ensuring proper use of ratepayer funds - by making unsupported assertions - is fundamentally inconsistent with its status as a regulated public utility.

As such, we find Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored, such that the least restrictive means of obtaining the desired information has been used.

b. Due Process Rights

SoCalGas alleges that its due process rights have been violated because there are no "procedural guardrails [as the discovery dispute falls outside of a formal proceeding] in place to protect parties against the excesses of the unlimited discovery authority" of Cal Advocates. This is not correct.

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[58] *Duke Energy, supra*, 218 F.R.D. at p. 473 (allowing discovery request for energy company's communications with trade association despite their potential to chill First Amendment rights*). See also Prosperity Found.*, 903 F.3d 1000, 1011 (finding state interest in regulating charities was sufficient to allow Attorney General to require disclosure of sensitive donor information despite potential to infringe First Amendment rights); *Dole, supra*, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records despite possible infringement on First Amendment associational rights); *Comley* (1st Cir 1989) 890 F.2d 539 (allowing disclosure of transcripts and tape recordings despite possibility of infringing on First Amendment associational rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (allowing summons in tax fraud investigation despite possible infringement on First Amendment associational rights).

[59] R.19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

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Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.[60] Regulatory commissions have flexibility in fashioning the form of due process provided in exercising their regulatory responsibilities.[61] Here, the Commission is deciding whether SoCalGas has presented sufficient justification to avoid the application of state statutes that specifically require regulated utilities to provide information to Commission staff (and specifically to Cal Advocates). The process involved has been extensive.

SoCalGas and Cal Advocates have presented their views on these questions in extensive pleadings and responsive rounds of pleadings, as described in this Resolution. SoCalGas has not identified any right or claim at issue here that would require any more specific form of process or any aspect of the process thus far relied upon by the Commission to receive pleadings that was insufficient.

To briefly review the process involved, this dispute started when, in a formal Commission proceeding, R.19-01-011, a potential financial relationship between SoCalGas and C4BES, the entity seeking party status in the proceeding, came to light in a pleading filed by Sierra Club. Based on the record of that proceeding, there was no transparency as to the source of C4BES' funding, as either shareholder or ratepayer, or the legitimacy of Sierra Club's claims about ratepayers funding C4BES. Cal Advocates then submitted a series of discreet DRs outside of any proceeding, as permitted by statute, which led to the DR in question, DR No. CalAdvocates-SC-SCG-2019-05. The DRs were focused to get to the root of the issue at hand. Cal Advocates exercised its oversight as allowed under California law and would have been entitled to propound these DRs outside of a proceeding even if these issues had not been raised by Sierra Club in R.19-01-011.

However, after encountering multiple instances where, despite frequent discussions, SoCalGas simply did not provide the specific information needed to get to the root of its inquiry, Cal Advocates invoked Pub. Util. Code § 309.5(e) which initiated a procedural process to address this DR dispute. Pub. Util. Code § 309.5(e) allows Cal Advocates to compel "production or disclosure of any information it deems necessary to perform its

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[60] *Morrissey v. Brewer* (1982) 408 U.S. 471, 481. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite." *Board of Regents v. Roth* (1972) 408 U.S. 564, 5690-571.

[61] *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292 (if a proceeding is quasi-legislative, as opposed to quasi-judicial, there are no vested interests being adjudicated, and therefore, there is no due process right to a hearing). S*ee United States v. Florida East Coast R. Co*. (1973) 410 U.S. 22; *Western Oil & Gas Ass'n v. Air Resources Bd*. (1984) 37 Cal.3d 502 (an administrative agency's proceedings in which guidelines, regulations, and rules for a class of public utilities are developed have consistently been considered quasi-legislative proceedings).

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duties from any entity regulated by the commission" and to bring any resulting discovery disputes to the President of the Commission, if the discovery dispute is occurring outside of any proceeding.

Soon after the President's receipt of Cal Advocates' motion to compel on October 7, 2019,[62] the President referred this matter to the Chief Administrative Law Judge to provide for a process and procedural path to address the dispute. On October 29, 2019, the Chief Administrative Law Judge assigned an ALJ to preside over the dispute and provided the parties with certain procedural rules to follow.

At each step of this process and prior to any decision or ruling, SoCalGas had an opportunity to submit responses to Cal Advocates' motions, submit motions itself, and even further, submit motions for the full Commission to act on its requests, such as its December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling, which is one of the bases of this Resolution. Except regarding the Commission's consideration of contempt and sanctions (which are not resolved here), SoCalGas did not request evidentiary hearings and did not contest relying on written pleadings to resolve the issues set forth herein.

In addition, Cal Advocates exercised its statutory oversight discreetly in initial requests and in all cases focused on the information it needed to perform its statutory duties. SoCalGas had multiple opportunities and continues to have opportunities to challenge these discovery requests. Further, as a result of SoCalGas' repeated submissions challenging Cal Advocates' statutory authority, a simple request for information has turned into an extensive inquiry. Delays in the release of information often frustrate this agency's regulatory purposes. In this case, SoCalGas has had more, not less, due process than is necessary under the law.

Moreover, SoCalGas bases its claim of a violation of due process on a false premise. SoCalGas' claim that a certain amount of process is due rests on its assertion that requests for information made by Commission staff amount to "excesses of …unlimited discovery authority" that are so significant that they require constitutional protection.[63] This is a rhetorical complaint that attempts to imply that some harm occurs when regulatory staff gather information to assist them in performing their regulatory duties. That is not the case. Cal Advocates has broad discovery rights, conferred by statute, because its staff are regulators. As a regulated public utility, SoCalGas is guaranteed certain privileges that are subject to the oversight of the Commission and its staff. Cal

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[62] Cal Advocates' *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data* Request CALADVOCATES-SC-SCG-2019-05 (Not In A Proceeding) submitted October 7, 2019.

[63] *Southern California Gas Company's (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding)* submitted on December 2, 2019 at 22.

Advocates rightfully exercised that oversight in the manner allowed by statute, the U.S. Constitution, and the California Constitution. The exercise of clear statutory authority is not an improper "excess" that needs to be constrained.

We therefore find that Cal Advocates' request for information, as set forth in DR No. CalAdvocates-SC-SCG-2019-05, and the process relied upon by the Commission to resolve this discovery dispute outside of a proceeding, do not violate SoCalGas' procedural due process rights.

Therefore, SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling is denied.

3. SoCalGas' May 22, 2020 Motions to Quash Portions of/Stay the May 5, 2020 Subpoena and Motion to Supplement Record and Request for Expedited Decision by the Full Commission

This discovery dispute continued into 2020 and centered around Cal Advocates' May 5, 2020 subpoena. The May 5, 2020 subpoena, which related to the same information as DR CalAdvocates-TB-SCG-2020-03, required SoCalGas to give Cal Advocates access to its accounting database. In response to the subpoena, on May 22, 2020, SoCalGas concurrently submitted two motions, a motion to quash portions of and stay the May 5, 2020 subpoena, and a motion to supplement the record of its previously filed December 2, 2019 motion for reconsideration/appeal. In the May 22, 2020 motion to quash/stay, SoCalGas made several requests. We address each of these requests below.

First, SoCalGas requested a stay of complying with the subpoena until May 29, 2020, to complete software solutions to bar Cal Advocates' access to what it deemed protected materials and to quash the subpoena, asserting the same arguments previously presented, that Cal Advocates' statutory discovery rights were limited by the First Amendment and by laws governing protected materials. SoCalGas defined protected materials as documents and information protected under attorney-client privilege and attorney work-product doctrine.

The crux of SoCalGas' May 22, 2020 motion to stay is to obtain additional time to place a firewall to limit Cal Advocates' access to certain "protected" records in its database. Cal Advocates gave SoCalGas the additional time it requested to create that firewall. The May 22, 2020 motion to stay is deemed moot since the time requested has passed and relief requested, an opportunity to provide screening to remote users of the accounting systems Cal Advocates requested to review, has occurred.

Second, SoCalGas requests to quash the subpoena to exclude information and records based on its First Amendment privilege and other privileges. We find that, to the extent the information and records relate to Cal Advocates' inquiry into specific contracts and information about SoCalGas' potential use of ratepayer funds for political activities, it

was improper for SoCalGas to block access to those records. Cal Advocates has statutory authority to access those records. Furthermore, as laid out above, SoCalGas has failed to demonstrate its First Amendment rights have been infringed, and even assuming, arguendo, it made such an initial showing, the request for access to accounting information maintained by SoCalGas is in furtherance of Commission staff review of potential use of ratepayer funds for political activities and is, therefore, designed to allow staff to accomplish a compelling government interest. In addition, SoCalGas may not unilaterally designate information as being not subject to inspection by Commission staff by asserting that the information relates to activities that are shareholder, not ratepayer, funded.

Therefore, SoCalGas' May 22, 2020 motion to quash is denied. The other privileges asserted by SoCalGas in this May 22, 2020 motion to prevent disclosure of the information to Cal Advocates, including the attorney-client and attorney work-product privileges, are addressed below.

Lastly, we address the remaining May 22, 2020 motion. In the May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal, SoCalGas requested permission to supplement its December 2, 2019 motion and an expedited resolution of that motion in the event its motion to quash is denied. This May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal is granted. Furthermore, because we resolve the December 2, 2019 motion for reconsideration/appeal herein, SoCalGas'request for expedited consideration is moot.

4. Attorney-Client or Attorney Work Product Privileges

To the extent SoCalGas seeks to assert attorney-client or attorney work product privileges, it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials not subject to these privileges. Specifically, SoCalGas must follow the below directives when asserting these 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.~~

~~(4)~~(3) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

5. Cal Advocates' June 23, 2020 Motion for the Commission to Find SoCalGas in Contempt and to Levy a Fine

This Resolution does not resolve Cal Advocates' June 23, 2020 motion for the Commission to find SoCalGas in contempt and to levy a fine. This Resolution only addresses those claims that may be resolved as a matter of law based upon the submitted pleadings.

This does not mean that Cal Advocates' claims must fall by the wayside. As described in detail above, a regulated utility's obligation to provide the Commission's staff with requested information is a significant element of the regulatory framework for utilities in California. If a utility does not comply with the requests from the Commission's staff or more formal injunctions from the Commission, such as subpoenas, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties. Indeed, Cal Advocates cites to past instances where the Commission has applied such sanctions to situations similar to the dispute presented here.[64]

As described herein and set forth in Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities. The Pub. Util. Code grants Cal Advocates broad authority to compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of those duties. Accordingly, Cal Advocates' inquiry into whether SoCalGas' funding of its activities relating to decarbonization was proper, and this ongoing inquiry can also include the question of whether SoCalGas' responses to discovery requests were proper and met appropriate legal requirements.

The Commission may conduct a further investigation of SoCalGas' conduct through the appropriate enforcement division within the Commission and, based on any resulting

[64] *See Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)* submitted on June 23, 2020 at 16-22.

recommendation by such enforcement division, the Commission may elect to initiate an order instituting investigation. If so, Cal Advocates may decide to participate in such a proceeding and include instances where it found SoCalGas improperly responded or failed to timely provide information in response to Cal Advocates' discovery requests and recommend penalties.

CONCLUSION

Pursuant to this Resolution, SoCalGas shall provide within 30 days from the effective date, with exceptions only based on attorney-client and attorney work product privileges, the information Cal Advocates has requested in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission may at another time consider if sanctions or penalties are appropriate, after undertaking a thorough and comprehensive review of all the facts regarding SoCalGas' activities and its responses to Cal Advocates' discovery requests.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.[65]

The 30-day comment period was provided.

Regarding comments in response to the draft resolution, Rule 14.5 specifies that "Any person may comment on a draft or alternate draft resolution by serving (but not filing) comments on the Commission within 20 days of the date of its notice in the Commission's Daily Calendar and in accordance with the instructions accompanying the notice."

Pursuant to Rule 14.5, comments on this draft resolution are due within 20 days of the date notice this draft resolution was posted in the Commission's Daily Calendar.[66]

Regarding service of a draft resolution, Rule 14.2 (d) further specifies that, a draft resolution shall not be filed with the Commission but shall be served on other persons as the Commission deems appropriate.

The Commission served this draft resolution on the attached service list. Parties are directed to serve their comments regarding this draft Resolution, which resolves a discovery dispute "outside of a proceeding," on Administrative Law Judge Regina DeAngelis on the attached service list, and on the President of the Commission. Service shall be performed in accordance with the Commission's Rules of Practice and Procedure. Service shall be performed by electronic mail only.

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[65] Pub. Util. Code § 311 (g) states, in relevant part, as follows: "Before voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. . .. For purposes of this subdivision, 'decision' also includes resolutions, including resolutions on advice letter filings."

[66] The Daily Calendar is available on the Commission's website.

SoCalGas, Cal Advocates, and Earthjustice jointly with Sierra Club filed comments to the draft resolution on November 19, 2020. Based on these comments, the following modifications were made to the draft resolution consistent with the law:

In response to comments by SoCalGas, the Commission's process for initiating a possible investigation into SoCalGas' discovery practices is clarified.

In response to comments by Cal Advocates, Sierra Club, and Earthjustice, specific directives are added to the resolution should SoCalGas assert a privilege to protect the disclosure of information or document so that the exchange of information proceeds in an orderly fashion consistent with the law.

In response to comments by SoCalGas regarding its unique concerns about having sufficient time to designate as confidential the documents and information in the "live" database via remote access, 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 and these documents will be treated as confidential for 20 days from the date of Cal Advocates' request to copy or print. Thereafter, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas in accordance with the provisions of Pub. Util. Code § 583 and General Order 66-D.

In response to SoCalGas' request that the Commission stay enforcement of at least the portion of the resolution that requires SoCalGas to produce information "protected by its First Amendment rights" while SoCalGas pursues an application for rehearing before the Commission and, if needed, a petition for writ of review with the Court of Appeals, we deny this request. As set forth in Pub. Util. Code § 1735 "An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs."[67] As such, SoCalGas is directed to comply with the discovery requests, as set forth herein.

Lastly, in response to SoCalGas' request that the Commission order Cal Advocates to execute a non-disclosure agreement prior to accessing its SAP database or, in the alternative, enter into a protective order, we deny this request. Existing law and regulations, as discussed herein, provide SoCalGas with sufficient protections for confidential information. To the extent SoCalGas has specific concerns regarding remote access to its "live" SAP database, additional protections are required herein.

[67] Pub. Util. Code § 1735.

The deadline for compliance with this resolution is modified from 15 days to 30 days from the effective date due to the intervening holidays.

FINDINGS

1. Pursuant to Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities.

2. Cal Advocates may compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of its duty to represent customers of public utilities and consistent with the rights of Commission staff.

3. Cal Advocates initiated a discovery inquiry outside of a proceeding after discovering that SoCalGas might have used ratepayer funds to support lobbying activity.

4. Regulated utilities, such as SoCalGas, may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.

5. SoCalGas' statement describing certain activities as "100% shareholder-funded" does not, in and of itself, deprive Cal Advocates of its statutory authority to obtain, review, and make its own determinations regarding documents and financial information from a regulated utility, such as SoCalGas.

6. The Pub. Util. Code grants broad authority to the Commission to inspect the books and records of investor-owned utilities, such as SoCalGas.

7. The Commission's authority to inspect books and records of investor-owned utilities applies to all Commission staff without limitation, including Cal Advocates.

8. The statutory scheme regarding the Commission's discovery authority recognizes that information provided to the Commission, including Cal Advocates, by utilities might involve sensitive and confidential materials.

9. Pub. Util. Code § 583 and General Order 66-D provide ample protection and processes for utilities to submit confidential information to the Commission, including Cal Advocates, 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.

10. The statutory provisions regarding discovery authority in the Pub. Util. Code have been part of the regulatory scheme since 1951 and in similar form since

1911. As such, these provisions represent a clear legislative determination that the exercise of the authority to review materials by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities.

11. SoCalGas may assert attorney-client or attorney work product privileges in response to the information sought by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena but it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials, including confidential information, not subject to privilege.

12. The First Amendment protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances and applies to states and state entities, such as the Commission, through the Fourteenth Amendment.

13. The First Amendment protections apply to private organizations and corporations, such as SoCalGas.

14. Under the First Amendment, SoCalGas' right to associate for political expression is not absolute.

15. Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement, which can be intentional or indirect. If this showing is made, the burden shifts to the government entity to demonstrate that the information sought is rationally related to a compelling state interest and narrowly tailored.

16. Meeting the initial threshold of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure "is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization."

17. SoCalGas failed to demonstrate that its First Amendment rights to associate would be chilled, or infringed upon, by responding to Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena seeking documents and financial information related to 100% shareholder funded activities about its decarbonization campaign.

18. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in fulfilling the

Commission's mandate to regulate and oversee utilities in SoCalGas' disclosure of the information requested by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena to the Commission.

19. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are straightforward, and Cal Advocates attempts to clearly define the information needed for its discovery inquiry.

20. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, do not place a burden on more First Amendment rights of associational privileges than necessary to achieve its interest.

21. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are narrowly tailored to achieve a compelling government interest under the First Amendment privilege.

22. Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.

23. Regulatory agencies, such as the Commission, have flexibility in fashioning the form of procedural due process provided in exercising their regulatory responsibilities and oversight.

24. Cal Advocates exercised its statutory oversight discreetly in initial requests and in all requests, including DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, which focused on the information needed to perform Cal Advocates' regulatory duties set forth in statute.

25. In extensive rounds of pleadings, SoCalGas has had multiple opportunities and continues to have opportunities to challenge Cal Advocates' requests for information set forth in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena.

26. No merit exists to SoCalGas' assertion that the Commission did not provided an appropriate level of procedural due process.

27. A significant element of the regulatory framework for utilities in California, such as SoCalGas, is the utility's obligation to provide the Commission and its staff, such as Cal Advocates, with requested information pertaining to regulatory oversight.

28. If a utility, such as SoCalGas, does not comply with the requests for information, such as DR No. CalAdvocates-SC-SCG-2019-05, from the Commission or its staff, including Cal Advocates, or more formal injunctions from the Commission, such as the May 5, 2020 subpoena, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties.

THEREFORE, IT IS ORDERED that:

1. Southern California Gas Company's December 2, 2019 motion, Southern *California Gas Company's (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding*), requesting the full Commission's review of the ALJ's November 1, 2019 ruling based on violations of its constitutional rights and the limits of the Commission's discovery rights under the Public Utilities Code, is denied.

2. Southern California Gas Company's (SoCalGas') December 2, 2019 motion, *Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations Numbers 3, 4, 5, and 6 In Support of Its Motion For Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling In the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 [PROPOSED] Order (Not In A Proceeding)*, is granted but SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, the Public Advocates Office at the California Public Utilities Commission, under existing protections.

3. Southern California Gas Company's (SoCalGas') May 22, 2020 motion, *Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude those Protected Materials In The Databases (Not In A Proceeding)*, requesting to quash portions of the May 5, 2020 Commission subpoena that requires SoCalGas to produce certain materials in and access to its accounting databases, is denied and, to the extent the motion requests to stay compliance with the May 5, 2020 subpoena until May 29, 2020, the motion is deemed moot.

4. Southern California Gas Company's May 22, 2020 motion, *Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expediated Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion*

of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding), is granted.

5. Southern California Gas Company's March 25, 2020 motion, *Southern California Gas Company's (U 904 G) Emergency Motion for a Protective Order Staying All Pending and Future Data Requests from the California Public Advocates Office Served Outside of Any Proceeding (Relating to the Building Decarbonization Matter), and Any Motions and Meet and Confers Related Thereto, During California Government Covid-19 Emergency "Safer at Home" Orders*, was resolved by the Administrative Law Judge's email of April 6, 2020.

6. The Public Advocates Office at the California Public Utilities Commission 19 June 23, 2020 motion, *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation Of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)*, requesting that the Commission provide relief in the form of a contempt ruling and the levying of sanctions against Southern California Gas Company, is deferred and may be resubmitted at a later date.

7. The Public Advocates Office at the California Public Utilities Commission's July 9, 2020 motion, *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, is deemed moot to the extent it requests the disclosure of information already addressed here and, to the extent the motion requests monetary fines against Southern California Gas Company, the motion is deferred and may be resubmitted at a later date.

8. Southern California Gas Company shall produce the information and documents requested by Public Advocates Office at the California Public Utilities Commission, including all confidential information not otherwise privileged as attorney-client or attorney work product, in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, with any related privilege log, within 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. All privilege claims must be supported by a good faith basis for asserting the privilege.

   (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, with citation to authority, 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.~~

~~(4)~~(3) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 2020, the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON
Rachel Peterson
Acting Executive Director

MARYBEL BATJER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

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Bone, Traci	Traci.Bone@cpuc.ca.gov
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Ward, Alex	Alec.Ward@cpuc.ca.gov

No. _____

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ___

SOUTHERN CALIFORNIA GAS COMPANY,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

[PROPOSED] ORDER GRANTING PETITIONER'S MOTION FOR EMERGENCY INJUNCTION OR STAY

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

GIBSON, DUNN & CRUTCHER LLP
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IT IS HEREBY ORDERED THAT, FOR GOOD CAUSE SHOWN:

Petitioner Southern California Gas Company's motion to immediately enjoin enforcement of Resolution ALJ-39—adopted by the Public Utilities Commission of the State of California ("Commission") on December 17, 2020, issued on December 21, and modified by order issued on March 2, 2021—and all orders related thereto, by issuance of an auxiliary writ of supersedeas, is hereby **GRANTED**.

ORDERED at __:___ [AM/PM] on this ____ day of March, 2021.

_____

Justice of the Court of Appeal

IT IS HEREBY ORDERED THAT, FOR GOOD CAUSE SHOWN:

Petitioner Southern California Gas Company's motion for an emergency stay of Resolution ALJ-391—which was approved by the Public Utilities Commission of the State of California ("Commission") on December 17, 2020, issued on December 21, and modified by order issued on March 2, 2021—and all orders related thereto, is hereby **GRANTED**.

The Court finds that the requirements of Public Utilities Code sections 1762, subdivision (c) and 1763, subdivision (b) are satisfied because it appears that imminent and irreparable injury will occur if the data requests and subpoena at issue in the Resolution are enforced. This is because enforcement would force Petitioner to disclose material that may be protected by the United States and California Constitutions, as explained in more detail in the Petition.

The enforcement of the Resolution and all related orders identified above is hereby stayed until such time as this Court's decision, after a hearing pursuant to Public Utilities Code section 1762, subdivision (a), on Petitioner's request for a stay pending final determination of the Petition by this Court. Pursuant to Public Utilities Code section 1763, subdivision (b), this temporary stay will expire 10 days after issuance, unless during that time the Court has not held a hearing on Petitioner's request for a long-term stay, in which case the stay will be extended for an additional 10 days, and will continue to be extended for additional 10-day periods until at least said hearing is conducted, for good cause shown, as set forth above.

[Because the Court has determined that no damages will result from a temporary delay in enforcement of the Resolution, the Court finds that no

bond is necessary, and the temporary stay herein ordered is deemed immediately effective.] / [The bond that Petitioner secured in the amount of $50,000 is hereby approved and deemed more than sufficient, and pursuant to the requirements of Public Utilities Code section 1764, the temporary stay herein ordered is deemed immediately effective.]

ORDERED at __:___ [AM/PM] on this ____ day of March, 2021.

_____

Justice of the Court of Appeal

PROOF OF SERVICE

I, Ashley Moser, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105-0921, in said County and State. On March 8, 2021, I served the following document(s):

PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF, MOTION FOR EMERGENCY STAY OR OTHER INJUNCTIVE RELIEF, DECLARATION OF JULIAN W. POON, AND PROPOSED ORDER, AND MEMORANDUM OF POINTS AND AUTHORITIES; IMMEDIATE RELIEF REQUESTED BY TUESDAY, MARCH 16, 2021 OF ORDER BY CALIFORNIA PUBLIC UTILITIES COMMISSION TO PRODUCE CONSTITUTIONALLY PROTECTED MATERIAL

EXHIBITS TO THE PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF (VOLUMES 1–10)*

on the parties stated below, by the following means of service:

California Public Utilities Commission	**California Advocates**
Rachel Peterson Executive Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-3808 Rachel.Peterson@cpuc.ca.gov Arocles Aguilar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2015 Arocles.Aguilar@cpuc.ca.gov	Elizabeth Echols Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2588 elizabeth.echols@cpuc.ca.gov Darwin Farrar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-1599 darwin.farrar@cpuc.ca.gov Traci Bone Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2048 traci.bone@cpuc.ca.gov

*Volume 10 was not served on California Advocates for reasons discussed in Petitioner's Application for Leave to File Under Seal, but was served by messenger service to the California Public Utilities Commission and the Court of Appeal.

☑ **BY MESSENGER SERVICE**: I placed a true copy in a sealed envelope or package addressed to the persons at the addresses listed above and provided them to a professional messenger service for delivery before 5:00 p.m. on the above-mentioned date.

☑ **BY ELECTRONIC SERVICE THROUGH TRUEFILING**: I caused the documents to be electronically served through TrueFiling.

☑ **BY ELECTRONIC SERVICE**: On the above-mentioned date at _____ [a.m./p.m] , I caused the documents to be sent to the persons at the electronic notification addresses as shown above.

☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2021.

Ashley Moser

Ashley Moser