

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.

**APPLICATION FOR LEAVE TO FILE UNDER SEAL VOLUMES 9-10
OF THE EXHIBITS TO THE PETITION FOR WRIT OF REVIEW,
MANDATE, AND/OR OTHER APPROPRIATE RELIEF; SUPPORTING
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION
OF MICHAEL H. DORE; [PROPOSED] ORDER**

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

Southern California Gas Company (“SoCalGas”) hereby applies for an order sealing Volumes 9–10 of the Exhibits that SoCalGas submits concurrently in support of its Petition for Writ of Review, Mandate, and/or Other Appropriate Relief.

On December 2, 2019, SoCalGas submitted to the California Public Utilities Commission (“Commission”) a Motion for Leave to File Under Seal Confidential Versions of Declaration Numbers 3, 4, 5, and 6 in Support of Its Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019. The Commission granted SoCalGas’s sealing motion on December 17, 2020, as part of Resolution ALJ-391, while at the same time confirming via the March 2, 2021 modified Resolution that SoCalGas must provide access to the unredacted versions of the declarations to CalPA by March 17, 2021. (App. 1469, 1843, 1852.)

As to those declarations (i.e., the Volume 10 exhibits), SoCalGas submits this application pursuant to California Rules of Court, Rule 8.46, on the grounds that the material SoCalGas seeks to seal is confidential and that disclosing the material (*including* to CalPA) would both infringe on SoCalGas’s constitutional rights and jeopardize the privacy of third parties. In an abundance of caution, SoCalGas also seeks to seal the material in Volume 9 pursuant to Rule 8.47 on the grounds that the SoCalGas identifying and contact information therein is confidential and that disclosing it to the public would jeopardize the privacy rights of nonparty individuals.

This application is based on the attached Memorandum of Points and Authorities and the Declaration of Michael H. Dore.

DATED: March 8, 2021

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

By: Michael H. Dore
Michael H. Dore

*Attorneys for Petitioner,
Southern California Gas Company*

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner Southern California Gas Company (“SoCalGas”) requests that the Court file under seal Volumes 9–10 of SoCalGas’s Exhibits to the Petition for Writ of Review, Mandate, and/or Other Appropriate Relief (“Petition”). These exhibits consist of four declarations filed in support of SoCalGas’s motion for reconsideration/appeal in a discovery dispute (which SoCalGas submitted to the California Public Utilities Commission (“CPUC”) with a motion to seal), a Work Order Authorization form, and various documents containing identifying and contact information for SoCalGas and CalPA employees, as well as Commission ALJs. All of these exhibits contain information that is protected from public disclosure by the United States and California Constitutions, is private and personal information that should be shielded from public view, or both.

Because the exhibits in Volumes 9–10 relate to a discovery dispute, there is no presumptive constitutional public right of access to them, and Rule 2.550’s strict requirements to seal records do not apply. (See Cal. R. Ct., r. 2.550, subd. (a)(3) [“These rules do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings.”].)

At the same time, the documents at issue are extremely sensitive and their public disclosure would cause significant tangible harm.

1. Some of the documents contain confidential and sensitive information concerning SoCalGas’s 100% shareholder-funded activities to promote natural-gas, renewable-natural-gas, and green-gas solutions in California. As detailed below in the Declaration of Michael H. Dore, the public filing of these exhibits would reveal the identities and work of third parties with whom SoCalGas has engaged to conduct public-policy advocacy on its behalf. And as detailed in Exhibits 62–65, the disclosure would

drastically alter how political consultants engaged by SoCalGas would communicate, and even cause them to reconsider whether to associate with SoCalGas in the future regarding various political activities. (See *Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 855–856 [even highly relevant information may be shielded from discovery when it would impair a person’s right to privacy under the California Constitution].)

In addition, the public filing of the exhibits in Volume 10 would disclose the content of 100% shareholder-funded associational activities and private political speech of SoCalGas. Requiring the disclosure of this information to CalPA or the public at large would reveal SoCalGas’s plans and strategies in furtherance of achieving its public-policy objectives. As SoCalGas explains further in its Petition, that information is protected from disclosure by the First Amendment of the U.S. Constitution, as well as Article I of the California Constitution. (See, e.g., *NAACP v. Alabama* (1958) 357 U.S. 449, 460; *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1162–1163.)

On December 2, 2019, SoCalGas submitted to the Commission a motion to seal Exhibits 62–65, for largely the same reasons as explained above. On December 17, 2020, the Commission granted SoCalGas’s motion for leave to file these declarations under seal as part of Resolution ALJ-391, although it directed SoCalGas to provide unredacted, confidential versions of the declarations to Commission staff (including CalPA), which SoCalGas must do by March 17, 2021. (App. 1469, 1705, 1843.) Given the highly sensitive and confidential nature of the material at issue and SoCalGas’s good-faith efforts to have Exhibits 62–65 filed under seal in the Commission’s “non-proceeding” below—which included efforts to shield the declarations from CalPA, not just the public—SoCalGas submits that these exhibits in Volume 10 should be

treated as filed under seal in the Commission and accepted as such under Rule 8.46.

As explained above, the constitutional rights of both SoCalGas and those professionals with whom it associates to advocate for shared public-policy goals will be severely prejudiced by the public revelation of certain language contained in Exhibits 62–65,¹ and protecting those constitutional interests thus overrides any interest the public or CalPA may have in their disclosure.

2. The documents in Volume 9 contain confidential, personal identifying, and contact information of SoCalGas employees not readily available to the public. As detailed below in the Declaration of Michael H. Dore, SoCalGas believes that the public filing of Exhibits 56–61—which contain names, email addresses, and telephone numbers—could pose a risk to the safety of those individuals by prominently disclosing their identities and contact information (which SoCalGas believes is either not publicly available at all or, at least, is not readily available). Additionally, disclosure of such information could increase the risk that those individuals are subject to cyber-attacks, robo-calls, and/or malicious and harassing emails. (See Cal. Gov’t Code § 6254, subd. (c).) Protecting the privacy rights of those individuals justifies preserving the confidentiality of this information to the extent possible and overrides any minimal interest of the public in its disclosure.

¹ While the identity of one of these declarants is in the public domain, that is not dispositive of the First Amendment issue with respect to the declaration, which *also* contains information pertaining to the work that declarant performs for SoCalGas.

* * *

SoCalGas therefore respectfully requests that the Court grant its application to file under seal Volumes 9–10 of the exhibits to the Petition.

DATED: March 8, 2021

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

By: Michael H. Dore
Michael H. Dore

*Attorneys for Petitioner,
Southern California Gas Company*

**DECLARATION OF MICHAEL H. DORE IN SUPPORT OF
APPLICATION OF PETITIONER SOUTHERN CALIFORNIA GAS
COMPANY FOR LEAVE TO FILE UNDER SEAL VOLUMES 9–10 OF
THE EXHIBITS TO THE PETITION FOR WRIT OF REVIEW,
MANDATE, AND/OR OTHER APPROPRIATE RELIEF**

I, Michael H. Dore, 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, and counsel for Petitioner Southern California Gas Company (“SoCalGas”) in this proceeding. I submit this declaration in support of the Application of SoCalGas for Leave to File Under Seal Volumes 9–10 of exhibits to the Petition for Writ of Review, Mandate, and/or Other Appropriate Relief (“Petition”). I am personally familiar with the representations herein, unless the context indicates otherwise, and if called upon to testify, I could and would testify to the following based on personal knowledge.

2. Exhibits 62–65 contain information that discloses the identities of third parties that SoCalGas has engaged to conduct public-policy advocacy on its behalf, as well as the type of political advocacy work in which SoCalGas engages with these third parties.

4. The exhibits also contain information that I am informed by SoCalGas discloses 100% shareholder-funded associational activities and private political speech by SoCalGas. (See App. 390.) This information includes the scope of public-policy advocacy in which SoCalGas engages with 100% shareholder funds, as well as its plans and strategies in furtherance of its political association and expression.

5. Exhibits 62–65 are sworn declarations that contain the confidential information described above. SoCalGas submitted these exhibits

to the Commission pursuant to a motion to seal, which CalPA did not timely oppose.

6. While, pursuant to Resolution ALJ-391, the Commission *granted* that motion to seal on December 17, 2020, it nonetheless ordered that SoCalGas provide unredacted, confidential versions of the declarations to Commission staff, including CalPA, by March 17, 2021. By this Petition and Application, SoCalGas seeks to keep these declarations shielded from CalPA.

7. Redacted versions of Exhibits 62–65 are contained in Volume 2 of the Exhibits to the Petition for Writ of Review, Mandate, and/or Other Appropriate Relief, within Exhibit 6, at App. 371–384.

8. As detailed in the attached Petition, the information contained in the Volume 10 exhibits is protected from disclosure by the First and Fourteenth Amendments to the United States Constitution and by Article I of the California Constitution. Accordingly, and for the reasons stated in the Application filed herewith, Exhibits 62–65 should be filed under seal, and made available in their unredacted form to neither the public nor CalPA.

9. Exhibits 56–61—the Volume 9 exhibits—contain the private identifying and contact information for SoCalGas employees. This identifying and contact information is not relevant to the substance of SoCalGas’s Petition.

10. Revealing the names, email addresses, and telephone numbers of those individuals in a public filing by SoCalGas poses a potential safety risk. Shielding that information from public view lessens the risk of potential cyber-attacks, robo-calls, and the possibility of harassing and malicious emails.

11. SoCalGas believes the contact information is confidential or not readily available to the public. Out of an abundance of caution, the redacted contact information in these exhibits should be kept confidential.

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

Executed this 7h day of March, 2021, at Los Angeles, California.



Michael H. Dore

*Attorneys for Petitioner,
Southern California Gas Company*

No. _____

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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 APPLICATION FOR LEAVE TO
FILE UNDER SEAL VOLUMES 9–10 OF THE EXHIBITS TO THE
PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER
APPROPRIATE RELIEF**

Judicial Review Sought 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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WHEREAS Petitioner Southern California Gas Company (“SoCalGas”) has applied to file under seal Volumes 9–10 of the exhibits to its Petition for Writ of Review, Mandate, and/or Other Appropriate Relief (“Application”), and good cause appearing, SoCalGas’s Application is hereby **GRANTED**—the exhibits in Volume 9 shall remain sealed, while the exhibits in Volume 10 shall be sealed and not served on CalPA.

ORDERED on this _____ day of March, 2021.

Justice of the Court of Appeal

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

PROOF OF SERVICE

I, Ashley Moser, declare as follows:

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

**APPLICATION FOR LEAVE TO FILE UNDER SEAL
VOLUMES 9-10 OF THE EXHIBITS TO THE PETITION
FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER
APPROPRIATE RELIEF; SUPPORTING MEMORANDUM
OF POINTS AND AUTHORITIES; DECLARATION OF
MICHAEL H. DORE; [PROPOSED] ORDER**

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

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