
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

October 29, 2020

Agenda ID #18923

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-391:

This is the draft Resolution of Administrative Law Judge (ALJ) Regina DeAngelis regarding Denial of Southern California Gas Company's December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 Administrative Law Judge's Ruling and Addresses Other Related Motions. It will appear on the Commission's agenda no sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You must serve your comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution is noticed in the Commission's Daily Calendar, <http://docs.cpuc.ca.gov/SearchRes.aspx?DocTypeID=9&Latest=1>, as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served via electronic mail upon all persons on the attached service list.

Comments must be served on ALJ DeAngelis at rmd@cpuc.ca.gov. No paper copies are required at this time.

 /s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:sgu

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-391
Administrative Law Judge Division
[Date]

RESOLUTION

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

Title	Page
SUMMARY	2
BACKGROUND.....	3
1. Rulemaking 19-01-011 and Cal Advocates’ Data Requests to SoCalGas - Outside of a Proceeding.....	3
2. SoCalGas’ December 2, 2019 Motion for Reconsideration/Appeal Requesting the Full Commission’s Review of the November 1, 2019 ALJ Ruling	4
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	8
4. Cal Advocates’ June 23, 2020 Motion for Contempt and Sanctions Related to SoCalGas’ Failure to Comply with the May 5, 2020 Subpoena.....	9
DISCUSSION	10
1. Commission Staff’s Statutory Right to Obtain Information to Exercise its Regulatory Oversight Over California’s Investor-Owned Utilities	10
2. SoCalGas’ December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 ALJ Ruling to the Full Commission	12
a. First Amendment Privilege.....	12
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 14	
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 16	
iii. DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest	17
iv. DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to that compelling government interest	19
b. Due Process Rights.....	20
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	23
4. Attorney-Client or Attorney Work Product Privileges.....	25
5. Cal Advocates’ June 23, 2020 Motion for the Commission to Find SoCalGas in Contempt and to Levy a Fine	25
Conclusion	26

COMMENTS26
FINDINGS.....27
ORDER.....29

Attachment – Service List

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 15 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.) 19-01-011³ 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

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).

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. 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

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.

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

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 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

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.

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.

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 also filed a

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.

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

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

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

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 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.

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

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

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 Expedited Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding)* 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*

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

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

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.*

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.*

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 commission, authorization to make the inspection. A written record of the

²⁶ Cal. Const., art. XII.

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

²⁷ Pub. Util. Code § 314(a).

²⁸ Pub. Util. Code § 314(b).

²⁹ Pub. Util. Code § 309.5(e).

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 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.

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.

³⁰ Pub. Util. Code § 583.

³¹ *Ibid.*

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.

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

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*).

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

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

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

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.

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

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 entities⁴⁸ — 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.

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, supra*, 921 F.2d at pp. 973-74.)

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.

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 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

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).

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 against fraud, and promoting the health of

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).

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.

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.

iv. DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to that compelling government interest

We now turn to the second steps of the analysis for evaluating the constitutionality of Cal Advocates DR No. CalAdvocates-SC-SCG-2019-05: whether the DR is narrowly tailored to a compelling governmental interest. 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

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 was relevant to the subject matter of the litigation.⁵⁸ DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to

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 statute 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”).

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

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.

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).

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

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, 569–71.

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). See [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).

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 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

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.

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 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

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.

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.

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 Resolution, and more specifically, the underlying process, is not the proper means for the Commission to consider such fines and contempt.

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.

Any further investigation of SoCalGas' conduct will be referred to an appropriate enforcement division within the Commission. In its referral, Cal Advocates may include instances where it found SoCalGas improperly responded or failed to timely provide information in response to Cal Advocates' discovery requests and should be penalized.

The appropriate enforcement division then will be tasked with investigating the alleged violations and recommending fines and penalties, should the Director of that division deem it appropriate.

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.

CONCLUSION

Pursuant to this Resolution, SoCalGas shall provide, 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.

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.

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.

To be added to the service list of this discovery dispute, send an email to the Administrative Law Judge at regina.deangelis@cpuc.ca.gov.

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

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 _____, the following Commissioners voting favorably thereon:

Rachel Peterson
Acting Executive Director

ATTACHMENT

Service List

Regina DeAngelis	rmd@cpuc.ca.gov
Batjer, Marybel	Marybel.Batjer@cpuc.ca.gov
Bone, Traci	Traci.Bone@cpuc.ca.gov
Campbell, Michael	Michael.Campbell@cpuc.ca.gov
Carman, Teresa A.	Tcarman@SoCalGas.com
Castello, Stephen	Stephen.Castello@cpuc.ca.gov
Farrar, Darwin	Darwin.Farrar@cpuc.ca.gov
Henry, Elliott S.	Ehenry@SoCalGas.com
Hovsepian, Melissa A.	Mhovsepian@SoCalGas.com
J Wilson	Jwilson@Willenken.com
O'Rourke, Shannon	Shannon.O'Rourke@cpuc.ca.gov
Prusnek, Brian C.	BPrusne@SoCalGas.com
Serizawa, Linda	Linda.Serizawa@cpuc.ca.gov
Sierzant, Corinne M.	SCSierzant@SoCalGas.com
Simon, Anne	Anne.Simon@cpuc.ca.gov
Sleiman, Mariam	Mariam.Sleiman@cpuc.ca.gov
Tran,Johnny Q.	JQTran@SoCalGas.com
Trujillo, Leslie	Ltrujillo@SoCalGas.com
Ward, Alex	Alec.Ward@cpuc.ca.gov
Pouneh Ghaffarian	pouneh.ghaffarian@cpuc.ca.gov
Theresa Buckley	Theresa.Buckley@cpuc.ca.gov