IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

SOUTHERN CALIFORNIA GAS COMPANY, Petitioner, vs. PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, Respondent.	Case No. B310811 Commission Resolution ALJ-391 & Decision D.21-03-001

ANSWER OF RESPONDENT CALIFORNIA PUBLIC UTILITIES COMMISSION TO AMICUS BRIEFS

AROCLES AGUILAR, SBN 94753
MARY McKENZIE, SBN 99940
CARRIE G. PRATT, SBN 186038
EDWARD MOLDAVSKY, SBN 239267

Attorneys for Respondent
California Public Utilities Commission

505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2742
Facsimile: (415) 703-2262

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TO THE HONORABLE PRESIDING JUSTICE FRANCES ROTHSCHILD AND ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE:

Pursuant to Rule 8.200(c)(6) of the California Rules of Court and this Court's order of August 5, 2021, Respondent California Public Utilities Commission (Commission) respectfully submits its answer to the amicus briefs filed in this proceeding by Sierra Club, Consumer Watchdog/Public Citizen, and San Diego Gas & Electric Company (SDG&E). The amicus briefs filed by Sierra Club and Consumer Watchdog/Public Citizen argue that

the Court should deny the writ petition filed by Southern California Gas Company (SoCalGas) as without merit. The Commission concurs.

The amicus brief filed by SDG&E concedes that the company "understands and deeply respects the regulatory authority possessed by the CPUC and [Cal Advocates], including authority to inspect IOU documents." (SDG&E amicus brief, p. 2.) SDG&E also acknowledges its relationship with SoCalGas in that they "are affiliates and share the same corporate parent, Sempra Energy." (SDG&E amicus brief, p. 2, n. 1.) However, SDG&E's attempt to give the appearance of a broader concern that the Resolution went further than the Commission's authority should be given no weight.

SDG&E recites baldly that the Commission has "infring[ed] upon the constitutional rights of an investor-owned utility," but fails to show that there is a credible controversy as to whether the subject utility vendor expenditures could lawfully be audited by the Commission and its staff. (SDG&E amicus brief, p. 2; *see also* Pub. Util. Code, §§ 451, 701.) And SDG&E does not contest that the expenditures documented in the SAP database and the SoCalGas contracts are directly related to the audit. SDG&E's invitation for this Court to clarify the impact of utility shareholder funding designations in relation to "First Amendment activity" should be rejected. (SDG&E amicus brief, p. 3.) SoCalGas' funding source designations in the underlying investigation here were inconsistent and do not give rise to that question. Beyond that, if such issues warranted review, they are more appropriately examined through a Rulemaking proceeding at the Commission, where all stakeholders could participate. (*See* Pub. Util. Code, § 1708.5.)

As noted in the Sierra Club amicus brief, the Commission found in Resolution ALJ-391 that questions existed regarding SoCalGas' funding of Californians for Balanced Energy Solutions (C4BES). (Sierra Club amicus

brief, pp. 6, 9.) The Commission determined in the Resolution that "there was no transparency as to the source of C4BES' funding as either shareholder or ratepayer" (Resolution, p. 20), and specifically found that the Commission data requests were initiated "after discovering that SoCalGas might have used ratepayer funds to support lobbying activity" (Resolution, p. 28 [Finding 3].). These Commission determinations form the basis of the underlying Commission investigation into whether SoCalGas has improperly funded its advocacy efforts with ratepayer funds.

As discussed in the Commission's answer to SoCalGas' writ petition filed with this Court on June 1 (at pp. 25-29), such Commission determinations are entitled to substantial deference. The presumption in favor of the validity of Commission decisions is a "strong" one. (*Pacific Gas & Elec. Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 838, quoting *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410.) The Court does not exercise its independent judgment on evidence or on the Commission's determinations made on the basis of evidence. (Pub. Util. Code, § 1757, subd. (b); *see also Eden Hospital Dist. v. Belshe* (1998) 65 Cal.App.4th 908, 915.) "When conflicting evidence is presented from which conflicting inferences can be drawn, the PUC's findings are final." (*Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal.App.4th 641, 649; *see also Toward Utility Rate Normalization v. Public Utilities Commission* (1978) 22 Cal.3d 529, 537-538.) It should also be emphasized that this Court's review under Public Utilities Code section 1756 is *discretionary*, and the Court "need not grant a writ if the petitioning party fails to present a convincing argument that the decision should be annulled." (*Southern Cal. Edison Co. v. Public Utilities Com.* (2005) 128 Cal.App.4th 1, 13-14.)

The Sierra Club amicus brief also notes that SoCalGas has resisted turning over information responsive to Commission data requests. (Sierra Club amicus brief, p. 9.) This concern is echoed by the Consumer Watchdog/Public Citizen amicus brief, which accurately points out that SoCalGas claims "to have *offered* to allow access to the great majority of the records sought, though not, evidently, to have actually *provided* such access in response to the Public Advocates Office's data requests and subpoena." (Consumer Watchdog/Public Citizen amicus brief, p. 25 (emphasis in original).) The Consumer Watchdog/Public Citizen amicus brief further notes: "Given the utility's admission that the Public Advocates Office is entitled to access to 96% of its vendor accounts, including 'nearly every *shareholder* account,' SoCalGas Reply 31, SoCalGas's request that the Commission's order be set aside in its entirety is, even on its own terms, grossly overbroad." (Consumer Watchdog/Public Citizen amicus brief, p. 25.)

The argument referenced above from the Sierra Club and Consumer Watchdog/Public Citizen amicus briefs highlights an inaccuracy contained in SoCalGas' reply brief, filed with this Court on July 16, 2021. In its reply brief, SoCalGas alleges that it has repeatedly offered to make ratepayer account information available to the Commission and to Cal Advocates. (SoCalGas Reply at pp. 44-45, 47.) As noted above and in the Consumer Watchdog/Public Citizen amicus brief at p. 25, there is a significant difference between offering to provide information, and actually providing such information to the Commission. As a practical and logical matter, there would have been no need for the Commission to issue Resolution ALJ-391 in the first place had SoCalGas demonstrated the level of compliance alleged in its reply brief.

For the reasons discussed above, as well as the arguments presented in the amicus briefs of the Sierra Club and Consumer Watchdog/Public Citizen, the Commission respectfully submits that claims raised in the writ petition have no merit. The Commission respectfully requests that the Court deny the relief requested by SoCalGas in its petition for writ of review.

Respectfully submitted,

AROCLES AGUILAR, SBN 94753
MARY McKENZIE, SBN 99940
CARRIE G. PRATT, SBN 186038
EDWARD MOLDAVSKY, SBN 239267

By: /s/ CARRIE G. PRATT
CARRIE G. PRATT

Attorneys for Respondent
California Public Utilities Commission
505 Van Ness Avenue
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