

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

Application for Rehearing of Resolution
ALJ-391.

A.20-12-011
(Filed December 21, 2020)

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G)
REPLY TO SIERRA CLUB RESPONSE TO PUBLIC ADVOCATES OFFICE
PETITION FOR MODIFICATION OF RESOLUTION ALJ-391
AND DECISION 21-03-001**

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January 2, 2024

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In accordance with the Assistant Chief Administrative Law Judge (“ALJ”) Patrick Doherty’s December 22, 2023 email authorizing Southern California Gas Company (“SoCalGas”) to file a reply, SoCalGas respectfully submits its Reply to Sierra Club Response to Public Advocates Office Petition for Modification (“Petition”) of Resolution ALJ-391 and Decision (“D.”) 21-03-001 (“Response”). This Reply focuses on the specific issues raised in Sierra Club’s Response and explains why Sierra Club’s support for the Public Advocates Office’s (“Cal Advocates”) does not provide any basis for granting Cal Advocates’ Petition.

I. INTRODUCTION.

Sierra Club’s Response underscores its alignment with Cal Advocates¹ and reflects their common goal of relitigating the issues that were resolved in *SoCalGas v. Pub. Util. Comm’n*,² but Sierra Club provides no pertinent information or legitimate grounds for granting the Petition. The Response is infused with inflammatory rhetoric and attempts to leverage information outside the scope of this proceeding, but it does not resolve the fundamental flaws in Cal Advocates’ Petition. In fact, Sierra Club’s Response deepens the harm from Cal Advocates’ continued retention of the shareholder-funded contracts, as Sierra Club references specific First Amendment-protected information that would not have been known absent Cal Advocates’ unlawful assertion of discovery authority over these contracts. Sierra Club’s Response also further interferes with determinations in SoCalGas’s ongoing General Rate Case (“GRC”), which

¹ Cal Advocates and Sierra Club have been jointly investigating and variously prosecuting SoCalGas for what they perceive to be “anti-electrification” activities. *See Common Interest, Joint Prosecution, and Confidentiality Agreement* between Cal Advocates and Sierra Club attached as Exhibit 4 to the Declaration of Jason H. Wilson submitted in support of Comments of Southern California Gas Company to Draft Resolution ALJ-391 (November 19, 2020).

² *Southern California Gas Co. v. Pub. Util. Comm’n* 87 Cal.App.5th 374 (2023).

cannot be collaterally attacked here. Rather than continue to entertain Cal Advocates' attempts to side-step the Court of Appeal's determinations or allowing this "non-proceeding" to be the prism for Cal Advocates' and Sierra Club's broader investigatory agenda and media campaign against SoCalGas, the Commission should grant SoCalGas's petition, order a return or destruction of the contracts, and close this matter.

II. SIERRA CLUB RESPONSE INCLUDES INFORMATION THAT THE COURT OF APPEAL RULED IS PROTECTED BY SOCALGAS'S FIRST AMENDMENT RIGHTS AND THE ADMINISTRATIVE LAW JUDGE STRUCK FROM THE GRC RECORD.

Disturbingly, Sierra Club's response cites to and discusses the exact information that the Court of Appeal has ruled was protected by SoCalGas's First Amendment rights and the ALJ in SoCalGas's GRC has stricken from the GRC's record.³ The information was taken directly from one of the First Amendment-protected contracts that were at issue in Resolution ALJ-391 and D.21-03-001, which were also the subject of the Court of Appeal's Opinion. The contract was part of the data request response that SoCalGas produced under protest and which SoCalGas has requested to be returned or destroyed in its own Petition for Modification.

In SoCalGas's ongoing GRC, Cal Advocates put forth SoCalGas's First Amendment protected information in arguing that the reclassified lobbying expenses should be excluded from the Court of Appeal's determinations, and both Cal Advocates and Sierra Club have now repeated these same arguments in connection with Cal Advocates' and SoCalGas's Petitions for Modification. After extensive litigation in the GRC and multiple rulings and clarifications by the GRC's ALJ, on October 19, 2023, the ALJ clearly ruled that "[g]uided by the Court of Appeal's decision on this very issue, the names of vendors that have entered shareholder-funded contracts with SoCalGas and the scope of such contracts are not being admitted."⁴ The ALJ ordered Cal Advocates to resubmit its witness' written testimony (Exhibit 23-C-E-R (CONF) (Castello Testimony) and CA-23-E-R (PUBLIC) (Castello Testimony)) without Section II(A)(5) contained on pages 23-24.⁵ Despite the ALJ's Ruling striking those portions of Cal Advocates' testimony, the information now appears again in Sierra Club's response.

³ *Sierra Club's Response* at 4 (first full paragraph).

⁴ *Administrative Law Judge's Ruling Granting in Part Public Advocates Motion to Enter Testimony, Workpapers, and Other Evidence Regarding Southern California Gas Company's Pattern of booking Political Activities to Ratepayer Accounts*, at 7 (Oct. 19, 2023) (emphasis added).

⁵*Id.* at 5, 7.

Sierra Club’s further disclosure and dissemination of SoCalGas’s protected information further compounds the harm and evidences the urgent and growing need for Cal Advocates to return or destroy SoCalGas’s First Amendment protected information as requested in SoCalGas’s Petition for Modification. Even though the ALJ struck Cal Advocates’ use of SoCalGas’s First Amendment protected information from the GRC record, the information is still in the public domain as a result of Cal Advocates’ actions. These data are now available for any party who has access to prior versions of Cal Advocates’ testimony and neither SoCalGas nor Cal Advocates has the ability to reverse that disclosure. The Commission should take decisive action to avoid these recurring harms by ordering the immediate return or destruction of these protected materials.

III. SIERRA CLUB’S RESPONSE RELIES ON DISPUTED FACTUAL PROPOSITIONS AND ARGUMENTS PRESENTED IN SOCALGAS’S PENDING GENERAL RATE CASE.

Sierra Club offers nothing to cure the fatal procedural and substantive shortcomings of Cal Advocates’ Petition. Like the Petition itself, Sierra Club’s assertions do not comply with the Commission’s Rule of Practice and Procedure (“Rules”) 16.4, which requires that “[a]ny factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.” To the extent Sierra Club contends that these are “new or changed facts”—which Sierra Club’s Response does not even claim in its response—those allegations “must be supported by an appropriate declaration or affidavit.”⁶ No such factual support was submitted.

Sierra Club’s response relies entirely on factual propositions that Cal Advocates presented in SoCalGas’s GRC, a separate ongoing proceeding. Sierra Club’s entire factual background section cites to either Cal Advocates’ witness’ testimony or California Environmental Justice Alliances’ (“CEJA”) Opening Brief, both of which were submitted in SoCalGas’s GRC and are not part of this “non-proceeding’s” record.⁷ Sierra Club’s response does not contain a single citation to the record of the “non-proceeding” underlying the Petition,

⁶ Rule 16.4(b).

⁷ *Sierra Club’s Response* at 2-5. Notably, Sierra Club’s counsel in this “non-proceeding” is the same counsel that represents CEJA in SoCalGas’s GRC.

nor does it contain an appropriate declaration or affidavit to support the additional alleged facts.⁸ In fact, many of the alleged facts are disputed in the GRC and have not been fully adjudicated in that proceeding. It would be legal error to treat these disputed facts as truth for the purposes of Cal Advocates' Petition.

To the extent Sierra Club claims that the Commission may take official notice of SoCalGas's testimony or CEJA's Opening Brief, which it has not requested or justified, Sierra Club nevertheless cannot request that the Commission take official notice of the truth of the matters asserted in the materials. Even if a tribunal may otherwise "take judicial notice of the *existence* of [a] document in a court file, . . . they may not take judicial notice of the truth of *hearsay* statements in decision and court files."⁹ The Commission has recognized this same principle, noting that litigants cannot "attempt to circumvent admissibility issues with official notice."¹⁰ Sierra Club should not be permitted to pollute the record with hearsay statements that distract from the weight of the *actual* evidence in the record.

IV. CONCLUSION.

Sierra Club's Response recapitulates Cal Advocates' arguments and relies on extra-record materials whose evidentiary status is being addressed in SoCalGas's GRC, but the Response does not provide any basis for granting the Petition. While the Commission has now been presented with two petitions for modification in this "non-proceeding," only SoCalGas's petition is based on new facts and only SoCalGas's petition is necessary to implement the determinations of the Court of Appeal. The Commission should not follow Sierra Club and Cal Advocates down the path of expanding and further convoluting this "non-proceeding;" it should grant the narrow relief that SoCalGas has requested and end this matter.

⁸ To the extent that Sierra Club claims the facts presented in its Response are not new and are in the "non-proceeding" record, then those facts are admittedly not "new or changed facts" supporting a petition for modification. Unless a party can show "a persuasive indication of a major change in material facts and circumstances" and establish a "strong expectation" that the Commission would make a different decision based on those facts and circumstances," the Commission will leave "settled expectations . . . undisturbed." D.18-05-023 at 14 (*citing* D.15-12-053 at 5; D.09-02-032 at 8-9).

⁹ See *Barri v. Workers' Comp Appeals Bd.*, 28 Cal.App.5th 428, 437 (2018) (*citing* *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort*, 91 Cal.App.4th 875, 882 (2001) (emphasis in original); see also *TURN v. Pub. Util. Comm'n*, 223 Cal.App.4th 945, 962 (2014) ("uncorroborated hearsay cannot constitute substantial evidence to support an agency's decision absent specific statutory authorization").

¹⁰ D.23-02-041 at 19.

Respectfully submitted this 2nd of January 2024.

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