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President Marybel Batjer
Office of the President of the California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Response of SoCalGas to August 14, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request – CalAdvocates – SC-SCG-2019-04

Dear President Batjer:

Pursuant to Rule 11.3 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), Southern California Gas Company (“SoCalGas”) hereby timely responds to the Public Advocates Office’s (“Cal Advocates”) Motion to Compel Further Responses from Southern California Gas Company to Data Request – CalAdvocates-SC-SCG-2019-04 (“Motion”). Although the factual background presented by the Motion is complicated, the issues are simple:

- The Motion seeks an order from the President of the Commission to compel SoCalGas to un-redact employee names in one document, which was *already produced* prior to the Motion’s submission. SoCalGas confirmed Cal Advocates’ receipt of that information via email at 3:48 p.m. on August 13. Despite receiving what was requested the day before the Motion’s submission, the Motion makes no mention of this fact, which renders the request moot.

- There remains only one genuine issue in the Motion related to a second document: whether SoCalGas should un-redact dollar figures for shareholder funded information in a Work Order Authorization (“WOA”).¹ As explained in a meet-and-confer on August 12, (a) the redacted information is not responsive to the question posed, and (b) the redacted information is not necessary for Cal Advocates to perform its statutory duties; thus, the Motion should be denied.
- While Cal Advocates does have broad discovery authority, it is not unfettered, and Cal Advocates should not be permitted to circumvent the Commission’s processes and procedures. For example, Cal Advocates submitted the Motion pursuant to Rule 11.3, yet provided no valid basis for its request to deny the due process rights afforded by that same rule for SoCalGas to respond. Cal Advocates’ troubling attempt to meet and confer “in good faith” to satisfy Rule 11.3(a)’s requirement before bringing this Motion is another example.

SoCalGas made reasonable attempts to accommodate Cal Advocates’ requests in good faith by providing information requested. Where there was disagreement, it was for limited information and SoCalGas’ positions were reasonable and consistent with the Commission’s procedures and practice. Accordingly, Cal Advocates’ request to compel an un-redacted shareholder-funded dollar figure should be denied.

I. BACKGROUND

A. SoCalGas Has Dealt with Cal Advocates in Good Faith.

SoCalGas has made every effort to work with Cal Advocates to provide the requested information necessary for Cal Advocates to perform its statutory duties. The data request that is the subject of the Motion was issued in a fourth data request in a series on a topic concerning Californians for Balanced Energy Solutions (“C4BES”). The data request series has been served outside of any pending proceeding, but was initiated based on activity in the Building Decarbonization rulemaking (R.19-01-011). Within that proceeding, Sierra Club issued data requests concerning C4BES. SoCalGas objected to the data requests on the ground that the

¹ Although not clear in the Motion, to the extent the Motion seeks to have the employee name on the WOA un-redacted, on August 26, 2019 SoCalGas provided an updated WOA to Cal Advocates with the employee name un-redacted and marked confidential, accompanied by a confidentiality declaration. SoCalGas redacts the names of employees in order to protect their privacy when the name of the employee is not responsive to the inquiry. In this proceeding, it was determined it was particularly important to redact the names of employees given that employee names have already been published on Twitter, in addition to other related matters. See Attachment “A,” Twitter publications.

subject matter was not relevant to the proceeding,² and Sierra Club filed a *Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery* (“Sierra Club Motions”).³ While Sierra Club’s Motions asking the assigned Administrative Law Judges (“ALJ”), *inter alia*, to determine whether the sought discovery was relevant to the proceeding were pending, Cal Advocates issued the first of its data requests (“DR-01”) on the same topic that was the subject of Sierra Club’s discovery and Motions. In R.19-01-011, Cal Advocates stated in response to Sierra Club’s Motions:

In the interest of shedding additional light on Sierra Club’s allegations *and protecting ratepayer interests*, the Public Advocates Office is conducting discovery on SoCalGas regarding these allegations. SoCal Gas’ [sic] response to this discovery is due June 6, 2019. Therefore, the Public Advocates Office hereby requests leave to supplement this filing with the data request responses, if pertinent, in order to assist in determining the veracity of Sierra Club’s allegations.⁴

Based on this response, and concern about Cal Advocates’ stated intention to circumvent the role of the ALJs to rule on Sierra Club’s Motions, SoCalGas requested a meet-and-confer with Cal Advocates. At the June 4, 2019 meet-and-confer, SoCalGas requested Cal Advocates to agree to allow SoCalGas to delay responses to DR-01 until there was a ruling on Sierra Club’s Motions. When Cal Advocates declined, SoCalGas requested that Cal Advocates not introduce the requested information into the Building Decarbonization proceeding until there was a ruling on Sierra Club’s Motions. Cal Advocates declined this request as well. Nevertheless, SoCalGas provided written responses to DR-01 on June 14, 2019.

Cal Advocates thereafter provided the responses to DR-01 to Sierra Club,⁵ and Sierra Club and Cal Advocates both attached the responses to pleadings filed in the Building Decarbonization

² The proceeding is to broadly address “all policy framework issues, including programs, rules, and rates, that will help accomplish building decarbonization, as part of the state’s GHG reduction goals.” R.19-01-011, *Assigned Commissioner’s Scoping Memo and Ruling* at 3-4.

³ R.19-01-011, *Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery*.

⁴ Response of the Public Advocates Office 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 at 2 (emphasis added).

⁵ The Commission’s recommended practice is that parties within the same proceeding may request copies of data requests responses within that proceeding. *See* Discovery: Custom and Practice Guidelines at 2 (“...a party to a proceeding may request copies of data requests/responses propounded by and on other parties in the same proceeding”) (available at: http://docs.cpuc.ca.gov/word_pdf/REPORT/117475.pdf). Sierra Club indicates it received the documents from Cal Advocates in response to a data request it issued in the Building Decarbonization proceeding. *See* Sierra Club’s Response to Southern California Gas Company’s Motion to Strike Sierra Club’s Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery at 1. Cal Advocates’ providing data requests it issued *outside* a proceeding pursuant to its broad authority

proceeding.⁶ Moreover, without complying with Pub. Util. Code § 309.5(h), in its *Response of the Public Advocates Office to Southern California Gas Company's Motion to Strike Sierra Club's Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery*, Cal Advocates accused SoCalGas of a Rule 1.1 violation.^{7, 8} Although the basis for Cal Advocates' allegation is unclear,⁹ because of the introduction of this issue into the Building Decarbonization proceeding, SoCalGas determined to re-allocate all the subject costs (which included contract costs as well as certain labor costs) to be paid fully with shareholder funds.¹⁰ This resulted in an over-allocation to shareholder funds, because the majority of the labor and a portion of the contract expenses were for customer education and outreach work that appropriately is, and historically has been, ratepayer funded. Nevertheless, SoCalGas believes this was the right decision because, in this circumstance (involving a fixed-price monthly contract for consulting services and untracked labor), the hindsight review of the allocation of time and/or costs between ratepayer funds and shareholder funds is necessarily subjective. Because of the retroactive application of subjectivity, as SoCalGas indicated to Cal Advocates,¹¹ SoCalGas is working on augmenting its accounting policy so a similar circumstance does not occur again.¹² Such a policy was not needed historically and thus does not exist.

under Pub. Util. Code 309.5, in response to a data request within a proceeding, runs afoul of the Commission's guidance.

⁶ Sierra Club's Response to Southern California Gas Company's Motion to Strike Sierra Club's Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery at Attachment 1.

⁷ Response of the Public Advocates Office to Southern California Gas Company's Motion to Strike Sierra Club's Reply to Responses to Motion to Deny Party Status to Californians For Balanced Energy Solutions, or, in the Alternative to Grant Motion to Compel Discovery filed July 5, 2019 ("Public Advocates Office July 2019 Response") at 2-6.

⁸ Public Utilities Code § 309.5(h) states: "The office shall meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the office in a complaint. The meet and confer process shall be utilized in good faith to reach agreement on issues raised by the office regarding any regulated entity in the complaint proceeding."

⁹ Public Advocates Office July 2019 Response at 2-6.

¹⁰ See Attachment "B," SoCalGas Amended Response to CALPA-SCG-051719 dated August 13, 2019 (amended response originally submitted July 12, 2019) at 3-5.

¹¹ See *id.*

¹² See Motion at Attachment 2, SoCalGas Response to CALADVOCATES-SC-SCG-2019-04 dated August 2, 2019.

B. Cal Advocates' Continuing Data Requests.

SoCalGas anticipated its over-allocation of *all* the subject contract and labor costs to be shareholder funded would resolve the issue for Cal Advocates as ratepayer funds were no longer implicated. Instead, Cal Advocates continued to ask questions regarding the original allocation and the broader topic of the shareholder-funded internal order (“IO”) to which the costs were booked: the Balanced Energy IO. An IO is a tool that can be used to track costs associated with particular departments, projects, initiatives, etc. It provides capabilities for planning, monitoring, and allocation of costs. While all IOs are different, the Balanced Energy IO is a broad IO that provides the mechanism for *shareholder* funding of advocacy related to the elimination of natural gas. Based on its initial comments in the Building Decarbonization proceeding, Cal Advocates supports the exploration of renewable natural gas in order to meet the State’s building decarbonization strategy, which is part of the balanced energy approach SoCalGas supports.¹³

The Balanced Energy IO was identified by SoCalGas in DR-01 as the account to which the shareholder-funded portion of the contract and labor was allocated.¹⁴ Follow-up questions were asked about the Balanced Energy IO in the third and fourth data requests issued by Cal Advocates on this topic. SoCalGas continued to respond to the data requests on time (even when responses to the third data request were requested within 2 days,¹⁵ contrary to the Commission’s discovery guidance which prescribes 10 days¹⁶) and in good faith. In the fourth data request (“DR-04”), Cal Advocates requested:

1. For the period covering January 1, 2017 to present, provide all internal control documents for each of the accounts referenced in response to Data Request (No. CalAdvocates-SC-SCG-2019-03).
 - a. Please provide the documents in reverse chronological order, starting from the present, so that the currently controlling document is first, followed by the internal control document that preceded it, and so on, until reaching the document in effect as of January 1, 2017. Clearly provide date that each of these documents was put into effect.¹⁷

¹³ R.19-01-011, Comment of the Public Advocates Office Responding to the Commission’s Order Instituting Rulemaking Regarding Building Decarbonization, March 11, 2019, at 11-13 (“Given the findings from these studies, the Public Advocates Office recommends that the Commission examine the potential of renewable gas as part of building decarbonization strategy to meet the State’s GHG emissions reduction goals.”).

¹⁴ SoCalGas response to CALPA-SCG-051719, submitted June 14, 2019, at 3-5.

¹⁵ See Attachment “C,” E-mail dated July 16, 2019.

¹⁶ Discovery: Custom and Practice Guidelines at 1 (“The customary response time for data requests is 10 business days.”) (available at: http://docs.cpuc.ca.gov/word_pdf/REPORT/117475.pdf).

¹⁷ See Motion at Attachment 1, Data Request CALADVOCATES-SC-SCG-2019-04, dated July 19, 2019 at 1.

SoCalGas did not understand what was meant by “internal control documents,” so requested a meet-and-confer to understand what Cal Advocates was seeking. A telephonic meet-and-confer was held on July 25, 2019 and SoCalGas understood the reference to “internal control documents” to refer to internal documents providing instructions as to how the company controls for accounting costs, e.g., policies and procedures. Even with this clarification, no responsive documents existed with regard to the Balanced Energy IO.¹⁸ Systematic controls responsive to Cal Advocates’ request cannot be demonstrated as such policy is not documented in SAP *per se*; however, several key business controls are systematic in SAP in order to ensure compliance. Thus, in order to provide Cal Advocates with sufficient comfort that the Balanced Energy IO existed, SoCalGas sought to evidence the creation of the account and accordingly produced the Work Order Authorization (“WOA”) that is the subject of Cal Advocates’ Motion. The WOA shows the date prepared, job scope/description of work, and approvals. The WOA also shows the multi-year budget authorization for the account. As plainly evident from the question posed by Cal Advocates, this shareholder-funded budget authorization information is not responsive to its questions and furthermore is not necessary for Cal Advocates to perform its statutory duties as laid out in Public Utilities Code § 309.5(a). Accordingly, SoCalGas redacted the dollar figures.

C. It is Questionable Whether Efforts by Cal Advocates to Resolve Its Concerns Meet the “Good Faith” Standard of Rule 11.3(a).

Rule 11.3 of the Commission’s Rules of Practice and Procedure requires a party to meet-and-confer “in a good faith effort to informally resolve the dispute” prior to filing a motion to compel discovery. The Commission’s *Discovery: Custom and Practice Guidelines* elaborates:

The conduct of the Commission’s business is facilitated by the smooth exchange of information among the parties. Thus, as a general principle, discovery should proceed in a cooperative and efficient manner, differences should be resolved as much as possible among the parties, and a discovery dispute should be brought before the assigned Administrative Law Judge only as a last resort, after the parties’ good faith efforts at resolution of the dispute have failed.¹⁹

¹⁸ SoCalGas’ Approval and Commitment Policy was determined to be responsive to the request and thus was produced. However, this policy did not demonstrate creation of the Balanced Energy IO.

¹⁹ *Discovery: Custom and Practice Guidelines* at 1 (available at: http://docs.cpuc.ca.gov/word_pdf/REPORT/117475.pdf).

Cal Advocates and SoCalGas conducted the meet-and-confer preceding this Motion on August 12, 2019.²⁰ Among other things during the meet-and-confer,²¹ with respect to the document provided in response to Question 5 of DR-04 which is one of the two subjects of the Motion,²² SoCalGas agreed to provide a privilege log and to mark as confidential employee names that were previously redacted.²³ At 3:42 p.m. on August 13, 2019, SoCalGas provided the re-marked email, a privilege log, and a confidentiality declaration to justify the designation of confidentiality on the email and privilege log. The email remitting these documents was acknowledged by Cal Advocates at 3:48 p.m. on the same day as having been received.²⁴ Nevertheless, Cal Advocates' Motion seeks an order to obtain a document it already has in a format which it deemed acceptable.²⁵

²⁰ SoCalGas agreed to the requested meet-and-confer even before Cal Advocates identified the subject of the meet-and-confer. Thereafter, Cal Advocates indicated it desired a meeting with SoCalGas' whole team who had worked on the data request responses, which was not feasible given the late request. See Attachment "D," Email dated August 9, 2019.

²¹ The meet-and-confer also pertained to data request responses other than DR-04, which is the subject of the present Motion. SoCalGas agreed to remove confidentiality designations from certain vendor names. The documents which required the removal were voluminous (8 MB at the time they were served by email). The documents were demanded by close of business the same day, even after SoCalGas indicated the employee responsible for updating the documents was out sick that day, and that time would be required in order to find the appropriate persons to prepare and sign the confidentiality declarations. Cal Advocates finally concluded that it was their "expectation" that all documents would be remitted by noon the next day. Although SoCalGas did not agree based on the aforementioned unknowns, Cal Advocates insisted on a response by then. Accordingly, at 11:32 a.m. on August 13, 2019, an email was sent by SoCalGas to Cal Advocates indicating it anticipated providing all agreed-upon responses by close of business that day. Responses ultimately were provided at 4:42 p.m. See Attachment "E," Email dated August 13, 2019.

²² The Motion itself is unclear to the extent it references facts (see, e.g., references to April 14, 2019 emails at p. 6) and arguments (see, e.g., discussion regarding confidentiality of vendor pricing of electric procurement contracts at pp. 8-9) that do not appear to be germane to the requests identified in the Proposed Order. For this reason, SoCalGas understands Cal Advocates' request in the Motion to be as identified in the Proposed Order: "provide the unredacted responses to Items 1 and 5 of the Public Advocates Office's DR SC-SCG-2019-04."

²³ See Motion at Attachment 3 at 2-3.

²⁴ See Attachment "F," E-mail dated August 13, 2019.

²⁵ The Motion does not appear to seek an order determining SoCalGas' assertion of the attorney-client privilege over the rest of the email string should not be respected, and Cal Advocates has cited no legal or other justification to support such a request. If, however, Cal Advocates indicates this was its intention, SoCalGas requests an opportunity to respond.

Moreover, the meet-and-confer itself was not conducted by Cal Advocates in good faith. Cal Advocates insisted on being provided the redacted shareholder information, without providing any discussion whatsoever on how the redacted shareholder funding authorization on the IO was responsive to the question posed or how that information pertained to Cal Advocates performing its statutory duties. Cal Advocates also did not justify its request for an extremely short turnaround time,²⁶ notwithstanding SoCalGas' explanations for the need for additional time. Indeed, Cal Advocates maintained repeatedly that no explanations were required from it.

Had Cal Advocates made a sincere attempt to engage in a good faith discussion rather than issuing demands, progress might have been made. Cal Advocates invokes Pub. Util. Code § 314 in its Motion (albeit misleadingly and without relevant discussion)²⁷ for the first time. As discussed further below, while Cal Advocates has neither satisfied nor attempted to satisfy the criteria for an inspection pursuant to § 314, nevertheless, had Cal Advocates indicated an intention to meet the requirements of § 314 (and actually met them), the Motion might not have been necessary. Furthermore, even before the Motion was filed, on August 13, 2019, Cal Advocates served a fifth related data request ("DR-05") with over twenty questions (and additional sub-questions); however, not one of those questions seeks the information that was redacted from the WOA. The shareholder-funded authorization depicted on the WOA is not responsive to any data request that has been posed by Cal Advocates.

Cal Advocates requested a ruling on its Motion even before SoCalGas had an opportunity to respond,²⁸ which would have deprived SoCalGas of due process. Cal Advocates' cited reason is "urgency,"²⁹ although there is no elaboration on the urgency itself. While Cal Advocates' rights are indeed broad, they are not this broad.

II. DISCUSSION

A. Cal Advocates Has Not Established It Requires the Requested Information to Perform Its Statutory Duties.

The Motion devotes significant time arguing that Cal Advocates need not establish relevance of its inquiries to a proceeding.³⁰ However, SoCalGas has not made any argument based on

²⁶ The references in the Motion to Cal Advocates having provided SoCalGas 24 hours to provide responses are incorrect. (Motion at 2.) Cal Advocates initially demanded updated responses by close of business the same day (i.e., within 7 hours) and later demanded updated responses by noon the next day. Although not particularly relevant to the Motion, the repetition of the misstatement is curious and, when combined with the whole of the activities pertaining to these data requests, emblematic of a larger and more concerning disregard for facts, processes, and procedures.

²⁷ Motion at 2-3.

²⁸ Motion at 10.

²⁹ Motion at 10.

³⁰ Motion at 7-8.

relevance, nor has it withheld information from Cal Advocates based on relevance.³¹ As the email following the meet-and-confer indicates,³² SoCalGas redacted information from the WOA because it is not *responsive* to the question posed.³³ The question asks:

1. For the period covering January 1, 2017 to present, provide all internal control documents for each of the accounts referenced in response to Data Request (No. CalAdvocates-SC-SCG-2019-03).
 - a. Please provide the documents in reverse chronological order, starting from the present, so that the currently controlling document is first, followed by the internal control document that preceded it, and so on, until reaching the document in effect as of January 1, 2017. Clearly provide date that each of these documents was put into effect.³⁴

The redacted information Cal Advocates now seeks is the amount of shareholder funding authorized for the Balanced Energy IO. That information is not responsive to the question posed and, moreover, does not pertain to Cal Advocates' stated line of inquiry:

[T]he information requested in DR SC-SCG-2019-04 is necessary for the Public Advocates Office to perform its duty in investigating this matter, including, among other things, whether and to what extent ratepayer money was used to found and support C4BES.³⁵

The *amount* of funding authorized and paid for by shareholders—not ratepayers—does not in any way inform “whether and to what extent ratepayer money was used to found and support C4BES.” Cal Advocates' argument that it needs this information to properly execute its duties is untenable.

The same analysis also fails when applied beyond Cal Advocates' specified interest to Cal Advocates' broader statutory duties and concomitant authority. Under Pub. Util. Code § 309.5(a), Cal Advocates' duties are described as follows:

³¹ The fact that SoCalGas has responded to all of Cal Advocates data requests, even though they are not relevant to any proceeding, belies Cal Advocates' assertion that SoCalGas has made arguments based on relevance.

³² See Motion at Attachment 3.

³³ The attachment response to Question 5 of DR-04 was also provided to the extent responsive. The employee names on the email were not responsive to the question asked, and the portions of the email string that were protected by the attorney-client privilege also were not responsive to the question. See Motion at Attachment 2.

³⁴ See Motion at Attachment 1, Data Request CALADVOCATES-SC-SCG-2019-04, dated July 19, 2019 at 1.

³⁵ Motion at 6-7.

There is within the commission an independent Office of Ratepayer Advocates³⁶ 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.

Knowing the shareholder-funded authorization limit for the Balanced Energy IO will not help Cal Advocates “represent and advocate on behalf of the interests of public utility customers” or “obtain the lowest possible rate for service consistent with reliable and safe service levels.”³⁷ Cal Advocates has not argued that balanced energy policies in general are contrary to the interests of ratepayers.

Cal Advocates too quickly dismisses the *Administrating Law Judge’s Ruling Granting in Part and Denying in Part Pacific Gas and Electric Company’s Motion to Strike Portions of Greenlining Institute’s Testimony* in A.05-12-002/I.06-03-003 (Application of Pacific Gas and Electric Company for Authorization, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2007, consolidated with Order Instituting Investigation on the Commission’s Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company) as inapplicable to Cal Advocates.³⁸ In PG&E’s consolidated general rate case and investigation, it was ruled that testimony pertaining to costs borne by PG&E’s shareholders should be stricken because they explicitly were excluded from the scope of the proceeding.³⁹ In support, the ruling cites to Southern California Edison’s general rate case—one of the broadest proceedings a public utility participates in, and in which almost all utility activities are considered—where it was held the Commission “has ‘no jurisdiction to order a change’” in the utility’s philanthropic giving practices since they are shareholder funded.⁴⁰ It is SoCalGas’ understanding that the Commission historically does not delve into matters that are shareholder funded and have no adverse impact on ratepayers.

³⁶ Now known as Public Advocates Office.

³⁷ Pub. Util. Code § 309.5.

³⁸ Motion at 9.

³⁹ A.05-12-002/I.06-03-003 (Application of Pacific Gas and Electric Company for Authorization, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2007, consolidated with Order Instituting Investigation on the Commission’s Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company), *Administrating Law Judge’s Ruling Granting in Part and Denying in Part Pacific Gas and Electric Company’s Motion to Strike Portions of Greenlining Institute’s Testimony* at 2 (pdf).

⁴⁰ *Id.* at 2 (pdf) (citing D.06-05-016 at 183-84).

Cal Advocates can establish no credible reason to justify its request to know the amount of shareholder funding authorized for the IO. If anything, Cal Advocates' unreasonable request begs the question of why the Commission would want to gather information that is not necessary to fulfilling its duties. If the Commission is known for gathering extraneous data—including non-ratepayer funded information—the Commission is likely to become a repository of first-resort targeted by public records act requests when anyone seeks any information related to a public utility. Rather than be bogged down with unnecessary information and requests, the Commission should ensure it remains focused on gathering only the data that is necessary to performing its (and the Public Advocates Office's) statutory duties.

B. Cal Advocates Has Not Met the Requirements of § 314.

Although not raised during the meet-and-confer, Cal Advocates contends in the Motion that it is entitled to the redacted shareholder information under Pub. Util. Code § 314. Cal Advocates quotes a selected portion of § 314 to suggest it has unfettered rights to demand production of any information.⁴¹ However, the provisions of § 314 impose requirements that Cal Advocates has neither satisfied nor indicated any intention to satisfy.

Section 314 of the Public Utilities Code provides:

(a) 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 testimony or statement so given under oath shall be made and filed with the commission.

(b) Subdivision (a) also applies 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.⁴²

⁴¹ Motion at 7.

⁴² Pub. Util. Code § 314 (emphasis added).

There are two reasons why this section of the Public Utilities Code is not properly invoked here:⁴³

- i. Section 314(a) states that “[a]ny 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.”⁴⁴ Cal Advocates has not (a) requested to inspect⁴⁵ the information that was redacted, (b) presented an authorization under hand and seal of the Commission to make the inspection, or (c) indicated it intends to request to inspect the information and present the required authorization.
- ii. Section 314(b) pertains to extending the record inspection rights of § 314(a) to the records of, *inter alia*, “a corporation that holds a controlling interest in” a public utility, in which case it imposes the additional requirement that the request pertain to a “matter that might adversely affect the interests of the ratepayers of the... gas... corporation.”⁴⁶ Here, Cal Advocates seeks to know the amount of *shareholder* funding, so neither ratepayer funds nor ratepayers are implicated. In addition to not complying with the requirements of § 314(a), which also apply to § 314(b), Cal Advocates has made no effort whatsoever to explain how ratepayers might be adversely affected, and how Cal Advocates’ knowledge of the amount of shareholder funding for the IO might affect ratepayers.

⁴³ It is unclear whether the right to “inspect” is distinct from the production of documents Cal Advocates seeks by its Motion. Section 314 pertains to the *inspection* of records, not the production of records. Pub. Util. Code § 313 pertains to the *production* of records: “The commission may require, by order served on any public utility, the production within this State at such time and place as it designates, of any books, account, papers, or records kept by the public utility in any office or place without this State, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction.” Section 314’s reference to inspection of records differs from § 313’s reference to production of records, suggesting the Legislature intended there to be a distinction. D.01-08-062 states, “By historical evolution, the statutory right to inspect the ‘accounts, books, papers, and documents’ has come to include the right to propound data requests by which the holders of these accounts, books, papers, and documents can be compelled to search for and provide these materials or analyze them in such fashion.” D.01-08-062 at 7. However, it remains unclear whether this refers to production or mere assemblage of materials. In any event, Cal Advocates has not satisfied the other prongs required to invoke § 314.

⁴⁴ Pub. Util. Code § 314(a).

⁴⁵ Nor has Cal Advocates requested production of the information that was redacted. As indicated previously, the information that was redacted is *not responsive* to the question posed.

⁴⁶ Pub. Util. Code § 314(b).

Cal Advocates argues, “SoCalGas must be compelled to comply with the law”⁴⁷ while Cal Advocates itself has not satisfied the requirements of the law it seeks to invoke.

C. Cal Advocates’ Rights Are Not Unfettered.

In support of its unlimited rights and authority, Cal Advocates argues:

The Public Advocates Office has the same authority to access information as other Commission staff. In D.01-08-062, the Commission affirms that the Public Advocates Offices’ [sic] rights to discovery makes no reference to the need for a proceeding to exist, but is intended to provide access to undertake audits or investigations, or obtain information, and ask questions at any time and for any purpose related to their scope of work on behalf of the Commission and the people of the State of California. In D.01-08-062, the Commission further states: “ORA’s [now Public Advocates Office] scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners. It is constrained solely by a statutory provision that provides a mechanism unique to ORA for addressing discovery disputes.”⁴⁸

It is important to review Cal Advocates’ cited authority in context. Decision 01-08-062 granted a petition for modification by the Office of Ratepayer Advocates (“ORA”) in order to clarify “the information request and discovery prerogatives of ORA.”⁴⁹ The underlying decision pertained to the transfer of audit responsibility from ORA to the Commission’s Telecommunications Division and included language stating ORA’s discovery rights when the audit was produced would be as expansive as those for any other party.⁵⁰ ORA filed a petition for modification “so that ORA’s discovery rights in this matter are clearly set forth.”⁵¹ In response, Pacific Bell “contends § 309.5 directs ORA to carry out its customer representation

⁴⁷ Motion at 3.

⁴⁸ Motion at 9-10.

⁴⁹ D.01-08-062.

⁵⁰ *Id.* at 1-2. Specifically, the decision stated, “It is important to note, furthermore, that our transferring of the Pacific Bell audit responsibility to the Telecommunications Division does not mean that ORA no longer has the right to inspect or review Pacific Bell account data or other information. Pursuant to section 309.5, ORA has the duty to represent customer interests in Commission proceedings.... In addition, the transfer of the audit responsibility does not relieve Pacific Bell of its obligation to fully answer any and all data requests received from all Commission staff....” *Id.* at 2.

⁵¹ *Id.* at 2.

role in “*proceedings*” and, seemingly, not before such proceedings are initiated. [Citation omitted.] Pacific Bell also contends that ORA is endeavoring to conduct a second audit, contrary to the Commission’s intent in transferring the audit responsibility to the Telecommunications Division.”⁵² In the decision, the Commission discussed “Pacific Bell’s belief that with such a reassignment ORA has no role relative to the audit nor authority to seek related information from Pacific Bell until the audit is completed and presented in a formal Commission proceeding.”⁵³ The Commission conceded that the language in the prior decision “may have allowed an inference to be made that ORA’s on-going broad discovery rights, as both a statutory organization and a unit of the Commission’s staff, were diminished in some fashion and did not commence until the audit was completed and became the subject of review in a formal proceeding”⁵⁴ and thus issued D.01-08-062 “to dispel this unreasonable inference.”⁵⁵ The Commission disagreed with Pacific Bell’s interpretation of the prior decision as limiting “the how and when” of ORA’s information-seeking authority.⁵⁶ It is noteworthy that at the time D.01-08-062 was issued, Pub. Util. Code § 309.5(a) limited ORA’s authority to represent customers “in commission proceedings;”⁵⁷ thus, in recognizing ORA’s broad rights of discovery with respect to audits and investigations, the Commission also relied on Pub. Util. Code § 314, noting § 314 “makes no reference to the need for a proceeding to exist.”⁵⁸ This, however, does not obviate the need for Cal Advocates to still satisfy the requirements of § 314 in order to invoke it.

There are three important points to consider in determining the reach of D.01-08-062. First, in the 18 years following its issuance, D.01-08-062 has not been cited in *any* Commission decisions or orders available on Westlaw. Second, since this decision was issued, § 309.5 has been modified *six* times, including to remove the constraint that Cal Advocates was to represent the interests of customers and subscribers only “in commission proceedings.” However, none of these amendments has expanded the scope of Cal Advocates’ statutory duties, which are “to represent and advocate on behalf of the interests of public utility customers and subscribers

⁵² *Id.* at 4 (emphasis added) (internal citations omitted).

⁵³ *Id.* at 4. Pacific Bell’s underlying argument was: “What is at issue in this matter is not ORA’s general responsibilities, but the degree and extent to which it can or should participate in the audit.” *Id.* Further, Pacific Bell argued, “The decision specifically tells ORA when [and how] it can participate in the audit.” *Id.* at 4-5.

⁵⁴ *Id.* at 5.

⁵⁵ *Id.* at 5-6.

⁵⁶ *Id.* at 5.

⁵⁷ *Id.* at 5.

⁵⁸ *Id.* at 6-7.

within the jurisdiction of the commission.”⁵⁹ This underscores the third point: the decision acknowledges that ORA’s (now Cal Advocates’) discovery rights extend only so far as its statutory duties: “ORA [may] obtain all information *necessary to carry out its responsibilities* as a unit of the Commission’s staff and *as the organization designated with the responsibilities set out in § 309.5*,”⁶⁰ and, further, “ORA’s rights to obtain information... may be exercised at any time for any purpose *related to its scope of work*.”⁶¹ Here, Cal Advocates cannot demonstrate that the authorized amount of shareholder funding for the Balanced Energy IO pertains to its defined statutory duties “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.”⁶²

Cal Advocates also argues that it has the same rights granted to the Commission in Pub. Util. Code § 701.⁶³ This notion is untenable on its face. If Cal Advocates’ rights stem from Pub. Util. Code § 701, there would be no purpose in prescribing Cal Advocates’ rights more narrowly in Pub. Util. Code § 309.5. The Commission’s application of the laws of statutory construction does not support that Cal Advocates’ duties stem from § 701 rather than § 309.5.⁶⁴ It is the Commission that may “do all things... which are necessary and convenient in the exercise of [its] power and jurisdiction;”⁶⁵ not Cal Advocates.

D. Cal Advocates Is Circumventing the Commission’s Processes and Procedures.

Cal Advocates very well may have a genuine question about the SoCalGas activities it states it is investigating, but that inquiry is not advanced by Cal Advocates’ Motion. The Motion seeks to compel SoCalGas to disclose the amount of *shareholder* funding that has been authorized for an

⁵⁹ Pub. Util. Code § 309.5(a).

⁶⁰ D.01-08-062 at 11 (COL 2) (emphasis added).

⁶¹ *Id.* at 11 (COL 3) (emphasis added).

⁶² Pub. Util. Code § 309.5(a).

⁶³ Motion at 10. Cal Advocates cites D.07-05-032 (intended to be I.07-05-032), which merely modifies D.06-06-066, which is applicable only to electric procurement contracts. Notwithstanding Cal Advocates’ extensive argument to the contrary, D.06-06-066 applies only to electric procurement contracts, and its holding cannot be extended to other commercial contracts. In any event, Cal Advocates’ reference to D.06-06-066 is unclear since, based on the Proposed Order submitted with the Motion, Cal Advocates is not challenging any confidentiality designation (and, even if it were, this is not the appropriate process prescribed by General Order 66-D to do so).

⁶⁴ The Commission has stated, “The law of statutory construction clearly prohibits such an alteration. ‘If the words of the statute are clear, [one] should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from the legislative history.’ However, in its rehearing application, TURN nevertheless alleges a conflict between these two statutory provisions. If, assuming *arguendo*, there is a conflict, the laws of statutory construction govern. In such a situation, the latest and more specific statute controls.” D.97-11-086 at 3. Here, § 309.5 is the latest and more specific statute.

⁶⁵ Pub. Util. Code § 701.

IO. This information will not inform Cal Advocates' inquiry in any way, nor will it allow Cal Advocates to fulfill its statutory mandate.⁶⁶

The underlying data request follows significant data request responses from SoCalGas, as well as a meeting initiated by SoCalGas senior executives with Cal Advocates. SoCalGas has produced contracts, invoices, and internal policies in addition to responding to numerous questions (another 21 of which were served the day before the Motion was filed). SoCalGas has been cooperative and provided information beyond the scope of the requests in an effort to provide sufficient information to resolve Cal Advocates' questions.

For its part, Cal Advocates will not meet-and-confer in good faith with SoCalGas on this issue, but has discussed the matter with multiple media outlets,⁶⁷ has introduced SoCalGas' data request responses in a proceeding where they are irrelevant, has provided the same data request responses to a party while that party's motion to the ALJs seeking the same information is pending, accused SoCalGas of a Rule 1.1 violation without first complying with Pub. Util. Code § 309.5(h)'s requirement to meet and confer in good faith, and, now, has filed a Rule 11.3 Motion without satisfying discovery prerequisites. A sincere effort at good faith discussion could have avoided a lot of the back-and-forth and likely resolved the issue.

⁶⁶ Note SoCalGas' August 13, 2019 email to Cal Advocates following the meet-and-confer: "I indicated that we had redacted that information because the WOA was *not* funded with ratepayer funds but rather shareholder funds (although you declined to discuss this further) and, furthermore, the information was not responsive to the question posed. I suggested that if the intent was to determine whether the WOA was sufficiently funded to cover the contract and labor costs referenced in the prior data request responses, you might ask that question; however, since the WOA is funded by shareholders, not ratepayers, we do not believe ascertaining the actual amounts stated on the WOA to be within the scope of Public Advocates Office's authority under Pub. Util. Code section 309.5, as disclosing shareholder activity is not necessary for Public Advocates Office to perform its duties." See Motion at Attachment 3.

⁶⁷ See, e.g., "Column: SoCal Gas accused of setting up an 'astro-turf' group to plead its case to regulators," *LA Times*, August 8, 2019, available at: <https://www.latimes.com/business/story/2019-08-07/socal-gas-astroturf-group-allegations>; "SoCalGas Admits Funding 'Front' Group in Fight for Its Future," KQED, July 31, 2019, available at: <https://www.kqed.org/science/1945910/socalgas-admits-funding-front-group-in-fight-for-its-future>; and "Column: An Alleged SoCalGas Front Group Withdraws from A PUC Proceeding--but Questions Remain," *LA Times*, August 21, 2019, available at: <https://www.latimes.com/business/story/2019-08-21/californians-for-balanced-energy-solutions-socal-gas-puc>.

III. CONCLUSION

SoCalGas has made every effort to accommodate Cal Advocates' requests and to ameliorate a supposed wrong by over-allocating costs to be borne by shareholders. All the while, Cal Advocates has not appropriately followed the Commission's processes and procedures. SoCalGas welcomes a good faith effort to resolve discovery and broader issues through discussion rather than through this unnecessary and procedurally deficient appeal to the Office of the President of the Commission. For the reasons stated in this response, the amount of shareholder funding authorization is not responsive to any inquiry made by Cal Advocates and is not necessary for Cal Advocates to perform its statutory duties as prescribed in Pub. Util. Code § 309.5(a). For these reasons, and because the Commission's processes and procedures must be respected, Cal Advocates' Motion should be denied.

Sincerely,

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Attachments A-F