

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

**REPLY OF THE PUBLIC ADVOCATES OFFICE TO 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 IN
THE DISCOVERY DISPUTE BETWEEN PUBLIC ADVOCATES OFFICE AND
SOUTHERN CALIFORNIA GAS COMPANY, AUGUST 2019
(NOT IN A PROCEEDING)**

I. INTRODUCTION

Pursuant to Rule 11.1(f) the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the September 5, 2019 email Ruling of Chief Administrative Law Judge Anne Simon granting permission to submit a reply, the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) hereby submits this *Reply to 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* (Public Advocates Office’s Reply).

The factual background for the pending matter has been thoroughly discussed in the previous submissions in this matter, and therefore need not be repeated in this Reply. These facts are generally not in dispute, and the sole issue to be addressed is the extent of the Public Advocates Office’s authority under Public Utilities (Pub. Util.) Code §§ 309.5(e) and 314 to conduct discovery outside of a formal proceeding. Briefly, the Public Advocates Office had served a series of data requests on Southern California Gas Company (SoCalGas) outside of any formal proceeding but associated with activity in the Building Decarbonization proceeding, Rulemaking (R.) 19-01-011. In response to Items 1 and 5 of Data Request SC-SCG-2019-04, SoCalGas produced documents with redacted

information and failed to provide any explanations, declarations, or privilege logs explaining why this information could not be disclosed to the Public Advocates Office in an unredacted format.

On August 14, 2019, after previously meeting in good faith to resolve the discovery dispute, the Public Advocates Office filed its *Motion to Compel Further Responses from Southern California Gas Company to Data Request – CalAdvocates-SC-SCG-2019-04* (Public Advocates Office’s Motion). The Public Advocates Office’s Motion sought unredacted documents in response to Data Request Items 1 and 5.¹ The Motion sought further response from SoCalGas pursuant to the Public Advocates Office’s ability to seek information from entities regulated by the Commission pursuant to Pub. Util. Code §§309.5(e) and 314. On August 26, 2019, SoCalGas submitted *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* (SoCalGas Response).

In this Reply, the Public Advocates Office will not address each of the contentions put forward in the SoCalGas Response, but focuses on SoCalGas’ arguments regarding its obligations to provide information related to shareholder funds.² If the Commission were to adopt certain of SoCalGas’ contentions, the Public Advocates Office’s abilities to

¹ In response to Item 1, SoCalGas provided documents with redacted employee names and redacted amounts of shareholder funding. *See* Motion, Attachment 2. On August 26, 2019, SoCalGas provided an updated document in response to Item 1 with the employee name un-redacted and marked confidential, accompanied by a confidentiality declaration. Therefore, the Public Advocates Office is no longer seeking this information. However, the information related to shareholder funds was still redacted, and the Public Advocates Office still seeks this information. Additionally, the Public Advocates Office is no longer seeking an unredacted response to Item 5, as SoCalGas submitted an amended response with employee names marked as confidential, a privilege log, and a confidentiality declaration on August 13, 2019. *See* Response, Attachment E.

² For example, the Public Advocates Office categorically disagrees with SoCalGas’ contention that the Public Advocates Office attempted to “circumvent the Commission’s processes and procedures” or the role of the Administrative Law Judge assigned to proceeding R.19-01-011. *See* Response at 2-4, 15-16. However, in the interest of brevity, not every erroneous contention will be addressed as the pressing reason for this Reply is to address SoCalGas’ legally deficient argument that the Public Advocates Office, and through extension of such logic, Commission staff in general, do not enjoy broad discovery power to inquire into any aspect of regulated utilities’ records in the pursuit of its statutory duties.

inspect documents in order to perform its statutory duties would be severely limited in a manner that the law does not permit. The Public Advocates Office maintains that its Motion should be granted, consistent with its broad authority to seek information from any regulated entity for any purpose related to the scope of its work. The information sought in the instant Data Request is clearly encompassed within this broad authority. SoCalGas does not have the discretion nor the authority to decide that it does not have to provide certain information to the Public Advocates Office because doing so would not be consistent with SoCalGas' narrow construction of the Public Advocates Office's statutory authority.

II. DISCUSSION

A. The Requested Information is Responsive to the Question Asked Because the Public Advocates Office Has Broad Authority to Seek Such Information Pursuant to Pub. Util. Code §§ 309.5(e) and 314.

In its response to Item 1 of the Public Advocate Office's Data Request SC-SCG-2019-04, SoCalGas redacted the information relating to shareholder funds. The Public Advocates Office seeks an unredacted response to Item 1 of its Data Request SC-SCG-2019-04. SoCalGas argues that the information sought in the Public Advocates Office's Motion in response to Item 1 is not responsive to the question posed.³ The question posed was:

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.
 - b. Please indicate portions of the internal control documents (and accounting instructions) that were changed associated with how to record costs from invoices related to Standard Services

³ Response at 9.

Agreement No. 5660052135 (between SoCalGas and Marathon Communication) following the Amendment No. 1 to Standard Services Agreement No. 5660052135.

- c. Please include any sign off sheets associated with the internal control documents.
- d. If no personnel are identified as approving the internal control documents, please indicate that is the case.⁴

In response, SoCalGas produced a Work Order Authorization (WOA) that showed the date prepared, the description of the work, approvals, and multi-year budget authorization for the account.⁵ However, SoCalGas redacted the dollar figures, arguing in its Response that such information is “not responsive to [the] questions and furthermore is not necessary for Cal Advocates to perform its statutory duties as laid out in Public Utilities Code § 309.5(a)[⁶]” because it is related to shareholder funds, not ratepayer funds.⁷

Contrary to SoCalGas’ contention, inclusion of the unredacted dollar figures is clearly responsive to the question posed. The question is not limited to only information related to ratepayer funds, but asked for “all internal control documents for each of the accounts referenced” Additionally, the question specifically asks for information on the contract between SoCalGas and Marathon. SoCalGas should not be allowed to provide a redacted responsive document under the logic that certain information in the document can be redacted because SoCalGas deems that information to be “not responsive.” If the document is responsive, it should be produced in its entirety unless

⁴ Motion, Attachment 1.

⁵ Motion, Attachment 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 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 Response at 5-6, 9-10.

there is a valid privilege justifying the redaction or a valid concern regarding confidentiality.

Further, and more importantly, SoCalGas' assertion that the Public Advocates Office may not inquire into shareholder funds is based on a fundamentally flawed interpretation of the applicable portions of the Public Utilities Code. SoCalGas asserts that information related solely to shareholder funds will not assist the Public Advocates Office in performing its statutory duties and that inquiring into such funds does not pertain to its "stated line of inquiry."⁸

Firstly, the Public Advocates Office's line of inquiry is not limited only to whether and what extent ratepayer money was used to establish and support C4BES, but encompasses the broad investigation of SoCalGas' funding of C4BES and C4BES's political lobbying activities in general. As stated in the Public Advocates Office's Motion:

[T]he Public Advocates Office is investigating SoCalGas' funding of C4BES and C4BES' political lobbying activities. Therefore, the 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.⁹

Secondly, Advocates Office's authority to obtain information from regulated entities related to the scope of its work is broad and two-fold.¹⁰ The Public Advocates Office is authorized by Pub. Util. Code § 309.5(e) to compel production of any information it deems necessary to perform its duties from any entity regulated by the Commission.¹¹ Pub. Util. Code § 309.5(e) contains no limitation on the type of

⁸ Response at 9.

⁹ Motion at 6 (emphasis added).

¹⁰ See D.01-08-062 at 6: "[The Public Advocates Offices'] rights to seek information from entities regulated by this Commission . . . principally arise from two statutes—Pub. Util. Code. §§ 314 and 309.5."

¹¹ Pub. Util. Code § 309.5(e) states: "The office 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

information that may be sought by the Public Advocates Office in the pursuit of its statutory duties. Further, there is no suggestion whatsoever that the *regulated entities* may decide what is responsive or necessary for the Public Advocates Office to perform its duties, as SoCalGas has attempted to do in this instance. Pub. Util. Code § 309.5(e) clearly allows for discovery of information *the Public Advocates Office* deems necessary. The Public Advocates Office is not limited to only reviewing information related to ratepayer accounts, and Section 309.5(e) contains no such limitation.

SoCalGas argues that Section 309.5(e) is limited by Section 309.5(a), which states that the Public Advocates Office’s role is to “represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission” and “to obtain the lowest possible rate for service consistent with reliable and safe service levels.”¹² However, while Section 309.5(a) delineates the Public Advocates Office’s goals, Section 309.5(e) authorizes the Public Advocates Office to pursue these goals through the production of any information it deems necessary. That the Public Advocates Office advocates for ratepayers does not mean that it may only inquire into ratepayer-funded accounts. The Public Advocates Office’s role is to protect ratepayer interests, and it may pursue that goal without being subject to such an illogical and statutorily unsupported restraint as only being allowed to look at above-the-line transactions.

Additionally, as staff of the Commission, the Public Advocates Office has broad authority under Pub. Util. Code § 314 to inspect the accounts and documents of any public utility.¹³ As explained in Decision (D.) 01-08-062, cited in the Public Advocates Office’s Motion:

commissioner or by the president of the commission, if there is no assigned commissioner.” (emphasis added).

¹² See Response at 10.

¹³ Pub. Util. Code §314 states:

(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

[The Public Advocates Office’s] 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 [the Public Advocates Office] for addressing discovery disputes.¹⁴

Pub. Util. Code §314 states that “[t]he 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” and 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.” SoCalGas argues that the Public Advocates Office has not “(a) requested to inspect 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.”¹⁵ Additionally, SoCalGas suggests that it is “unclear whether the right to ‘inspect’ is distinct from the production of documents Cal Advocates seeks by its Motion.”¹⁶

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.

¹⁴ D.01-08-062 at 6.

¹⁵ Response at 12.

¹⁶ Response at 11-12.

SoCalGas’ attempt to distinguish between the meaning of “inspect” and “produce” are specious, as are its arguments that the Public Advocates Office has not met the “requirements” of Section 314.

Firstly, despite SoCalGas’ attempt to obfuscate the issue, it is clear that the modern meaning of the right to “inspect” is not distinct from the production of documents in the normal course of discovery.¹⁷ SoCalGas’ attempt to distinguish the use of “inspect” in Section 314 from “production” referred to in Section 313 is misguided. Section 313 is directed at the fact that some regulated utilities may have records outside of California.¹⁸ It obligates utilities subject to the Commission’s jurisdiction to bring those records to California.

Secondly, the Public Advocates Office staff, as employees of the Commission, is clearly authorized to seek information under Section 314. Thirdly, the Public Advocates Office unambiguously requested the information—it is unnecessary to present any formal request to inspect the information or any formal authorization beyond the information provided in the data requests.¹⁹

¹⁷ See D.01-08-062 at 7:

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 some fashion. In fact, it is for mutual convenience that data requests are utilized. The statutory authority allows staff acting within the scope of their Commission responsibilities to arrive at a utility unannounced to undertake such an inspection of records.

¹⁸ See Pub. Util. Code § 313, titled “Out of state records; order for production.”

¹⁹ See I. 15-08-019, *Order Instituting Investigation on the Commissions Own Motion to Determine Whether Pac. Gas & Elec. Co. & PG&E Corps. Organizational Culture & Governance Prioritize Safety*, (Sept. 2, 2015) at 21: “Further, the Commission hereby confirms that under Pub. Util. Code §§ 313, 314, 314.5, 315, 581, 582, 584, 701, 702, 771, 1794, and 1795, the Commission staff may obtain information from utilities and is already deemed to have the general investigatory authority of the Commission.”; see also D.04-09-061, *Interim Opinion Regarding Phase 2B Audit Issues, Order Instituting Investigation on the Commission’s Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated*, (Sept. 23, 2004), at 113: “The authority of the Commission, its divisions, its staff and its contract auditors is plenary under § 314.”

Additionally, SoCalGas repeats its argument that “neither ratepayer funds nor ratepayers are implicated” by the amount of shareholder funding.²⁰ As explained above, the ability of Public Advocates Office and the Commission, in general, to access information is not so restricted—indeed were such a restriction read into the broad authority to seek information granted by Section 314, the ability of the Commission to inspect documents and records would be severely curtailed. Such a restriction is not consistent with the Commission’s duty to effectively regulate utilities and determine whether any ratepayers were harmed to the benefit of the shareholders.

B. The Public Advocates Office Has Acted in Good Faith

As discussed in the Motion, the Public Advocates Office has met and conferred with SoCalGas in good faith in order to resolve these issues prior to seeking intervention by the President.²¹ The Public Advocates Office disputes SoCalGas’ contention that we have not attempted to resolve these issues in good faith.²²

C. SoCalGas’ Continued Refusal to Cooperate

Since filing the Motion to Compel, SoCalGas filed its responses and objections to a fifth set of data requests served on SoCalGas by the Public Advocates Office. In response to one of those questions, (“Provide all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO”), SoCalGas responded:

SoCalGas objects to this request as seeking information that is outside the statutory authority delegated to the Public Advocates Office by Pub. Util. Code § 309.5. The Balanced Energy IO is shareholder funded, not ratepayer funded. Thus,

²⁰ Response at 12, citing Section 314(b), which states that it Section 314(a) “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” a public utility with respect to any transaction “on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.”

²¹ Motion, Attachment 3, 4.

²² See Response at 6-8.

knowing this information will not assist the Public Advocates Office in performing its statutory duties.²³

While this Data Request is not the subject of the pending Public Advocates Office's Motion, this objection demonstrates that SoCalGas continues to rely on legally unjustified objections. Further, while SoCalGas asserts that it has dealt with the Public Advocates Office in good faith, such responses suggest otherwise.²⁴

III. CONCLUSION

In conclusion, the Public Advocates Office's Motion should be granted, and SoCalGas should be compelled to produce complete and unredacted documents in response to Item 1 in the Data Request SC-SCG-2019-04. Neither Pub. Util. Code §§ 309.5(e) nor 314 is limited in the manner suggested by SoCalGas, and therefore its argument that the Public Advocates Office does not have authority to seek information into shareholder funds should be rejected as inconsistent with the broad discovery authority granted by statute to the Public Advocates Office and Commission staff.

Respectfully submitted,

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²³ Attachment A at 8.

²⁴ See Response at 2-4.