

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

**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)**

JOHNNY Q. TRAN

Attorney for:
SOUTHERN CALIFORNIA GAS COMPANY
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Telephone: (213) 244-2981
Facsimile: (213) 629-9620
Email: JQTran@socalgas.com

November 4, 2019

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION.....	1
II. BACKGROUND AND PROCEDURAL HISTORY	3
III. DISCUSSION	3
A. LEGAL STANDARD OF REVIEW FOR MOTION TO STAY	3
1. SoCalGas Will Suffer Serious or Irreparable Harm if the ALJ Does Not Stay Production.	4
2. SoCalGas Will Likely Prevail on the Merits.	5
3. The Harm to SoCalGas if the Stay is not Granted Outweighs the Harm to Cal Advocates if the Stay is Granted.	7
4. Requiring SoCalGas to Produce the Contracts Without Providing SoCalGas Adequate Time to Have its Appeal Heard by the Full Commission Violates SoCalGas’ Due Process and Contravenes Commission Precedent in Preserving a Utility’s Right of Appeal.....	8
IV. CONCLUSION.....	9

TABLE OF AUTHORITIES

Cases

<i>California Rest. Ass’n v. Henning</i> , 173 Cal. App. 3d 1069, 1075 (1985)	7
<i>Consolidated Edison Co. of N.Y. v. Pub. Serv. Comm’n of N.Y.</i> , 447 U.S. 530, 534 n.1	4
<i>Fed. Trade Comm’n v. Qualcomm Inc.</i> , 935 F.3d 752, 756 (9th Cir. 2019).....	5
<i>Pacific Gas & Elec. Co. v. Pub. Utilities Comm’n of California</i> , 475 U.S. 1, 17, n. 14 (1986)	4
<i>Pacific Gas & Elec. Co. v. Pub. Utilities Comm’n</i> , 85 Cal. App. 4th 86, 93 (2000).....	4
<i>People v. Cornett</i> 53 Cal.4th 1261, 1265 (2012)	6
<i>Poole v. Orange Cty. Fire Auth.</i> , 61 Cal. 4th 1378, 1384–85 (2015).....	6
<i>See v. City of Seattle</i> , 387 U.S. 541, 544-45 (1967).	7
<i>White v. Lee</i> , 227 F.3d 1214, 1228 (9 th Cir. 2000).....	4

Statutes

PUC § 314.....	3
PUC § 309.5.....	3
PUC § 309.5(e)	5

Commission Decisions

D.08-04-044	4, 9
D.11-05-050	3
D.12-12-036.....	6, 7
D.16-10-043	2, 4, 8
D.19-09-051	6

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

**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)**

Pursuant to Chief Administrative Law Judge Simon’s instructions¹ and consistent with Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission” or “CPUC”) Southern California Gas Company (“SoCalGas”) respectfully submits this Emergency Motion to Stay 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 (“Emergency Motion to Stay”).

The 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) (“ALJ Ruling”) requires that SoCalGas produce certain 100 percent shareholder funded contracts within two business days, which is no later than Tuesday, November 5, 2019. As such, SoCalGas respectfully requests that the Administrative Law Judge (“ALJ”) provide an expedited ruling on this Emergency Motion to Stay by no later than November 5, 2019 to avoid serious or irreparable harm to SoCalGas.

I. INTRODUCTION

The discovery dispute at issue is whether California Public Advocates Offices (“Cal Advocates”) has the unfettered discovery authority to demand production of SoCalGas’ 100 percent shareholder funded contracts. In granting Cal Advocates Motion to Compel Responses from SoCalGas to Question 8 of Data Request—Cal Advocates-SC-SCG-2019-05 (“Motion”) and requiring SoCalGas to produce its 100 percent shareholder funded contracts, the ALJ Ruling

¹ Chief Administrative Law Judge Anne Simon’s October 29, 2019 e-mail designating Administrative Law Judge DeAngelis to handle this discovery dispute states that since this discovery dispute is outside of any formal proceeding, the Commission’s Rules of Practice and Procedures and filing requirements do not directly apply.

could implicate SoCalGas' shareholders' First Amendment rights. The two-day production deadline effectively deprives SoCalGas of a fundamental due process opportunity to appeal on the basis of a constitutionally protected right. Due to the invasiveness of Cal Advocates' data request and the potential First Amendment right issues, SoCalGas requests that the ALJ stay the ALJ Ruling to permit SoCalGas an opportunity to file an appeal to the full Commission. Failing to stay the ALJ Ruling would deny SoCalGas' constitutional right before it is able to appeal and be heard by the full Commission. SoCalGas would be forced to choose between producing the documents or following Commission precedent on how to preserve its appellate rights via an appeal to the full Commission.²

In addition, the ALJ Ruling could have broader implications regarding Cal Advocates' overall discovery authority and whether there are any limitations at all on what Cal Advocates can demand and inspect from regulated utilities. Cal Advocates asserts that SoCalGas does not have unfettered right to lobby the government, regardless of whether that lobbying is ratepayer or shareholder funded, when such lobbying, in Cal Advocates' opinion, is harmful to ratepayers.³ In essence, Cal Advocates wants to be able to tell SoCalGas' shareholders what they can and cannot say. As part of Cal Advocates investigation, Cal Advocates asserts that it has the unfettered authority to conduct discovery into SoCalGas' shareholder activities and that **no one**, other than Cal Advocates themselves, can decide what information and documents Cal Advocates can and cannot access.⁴

This important issue should not be precluded from consideration by the full Commission, or the Court of Appeal, by virtue of an ALJ directing SoCalGas to produce the contracts within two business days. SoCalGas would be contravening prior Commission precedent on how to preserve its appellate rights if it were to comply with the ALJ Ruling's production deadline. Further, Cal Advocates will likely continue to assert this position and cite to the ALJ Ruling as well as the ALJ's September 10, 2019 Ruling,⁵ as it already has,⁶ as justification for its

² See e.g. D.16-10-043.

³ *Reply of the Public Advocates Office to Response of SoCalGas in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (Not in a Proceeding)* (filed October 31, 2019) ("Reply"), at 7-8.

⁴ Reply, at 4, 7-8.

⁵ *Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates office and Southern California Gas Company, August 2019 (Not in a Proceeding)* (issued on September 10, 2019).

⁶ For example, Cal Advocates has argued that SoCalGas is collaterally estopped from objecting to Cal Advocates discovery into SoCalGas' 100 percent shareholder funded activities. Reply, at 8-9.

unfettered discovery authority. Without a clear reasoned decision as to whether Cal Advocates has unfettered discovery authority into SoCalGas' 100 percent shareholder funded activities and whether there are any limitations to Cal Advocates' authority, this issue will likely arise again as part of Cal Advocates' ongoing Public Utilities Code ("PUC") §§ 309.5 and 314 data requests that effectively deprive SoCalGas of due process rights that would otherwise be afforded during a CPUC proceeding.

II. BACKGROUND AND PROCEDURAL HISTORY

On October 7, 2019, Cal Advocates filed its Motion asserting that PUC §§ 309.5 and 314 provide Cal Advocates with broad discovery authority that extends to SoCalGas' shareholder funded activities. On October 17, 2019, SoCalGas filed its response stating that while SoCalGas does not dispute that Cal Advocates has broad discovery authority, it is not without limits. SoCalGas asserts that Cal Advocates' discovery authority is limited to information that is necessary to perform its statutory duties and that Cal Advocates cannot rely on PUC § 314 because it has not been delegated authority pursuant to said code section. SoCalGas also requested that should the ALJ grant Cal Advocates' Motion, SoCalGas be given at least two weeks to file an appeal with a concurrent motion to stay enforcement of the ruling due to the invasiveness of Cal Advocates data request and the potential chilling effect on SoCalGas' shareholders' First Amendment rights. On October 31, 2019, Cal Advocates filed its Reply. On November 1, 2019, ALJ DeAngelis granted Cal Advocates' Motion and ordered SoCalGas to produce the 100 percent shareholder funded contracts within two (2) business days.

III. DISCUSSION

A. LEGAL STANDARD OF REVIEW FOR MOTION TO STAY

The Commission considers a number of factors in determining whether there is good cause to grant a stay pending rehearing of its own decisions. Those factors include: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits; (3) a balance of the harm to the moving party if the stay is not granted and the decision reversed, against the harm to the other parties if the stay is granted and the decision affirmed; and (4) other factors relevant to a particular case.⁷

⁷ D.11-05-050, at 2-3.

The Commission has determined that it believes a “due process allegation is a unique ‘other factor’ ...which merits preliminary and independent consideration.”⁸ As a matter of equity, the Commission has granted a Motion for Stay given the circumstances of a case and procedural issues involved without ruling on the merits of the stay.⁹ As set forth below, SoCalGas has established the essential prerequisites to obtain a Motion to Stay and is entitled to the relief requested.

1. SoCalGas Will Suffer Serious or Irreparable Harm if the ALJ Does Not Stay Production.

Even as a regulated utility, SoCalGas is entitled to the full protection of the First Amendment of the United States Constitution, including the right to free speech and the right to petition.¹⁰ To permit Cal Advocates to conduct discovery on SoCalGas’ shareholders, not ratepayers, lobbying activities could have an unconstitutional chilling affect or silence a person of ordinary firmness from engaging in future First Amendment activities.¹¹ Due to the broader implications of the ALJ Ruling, SoCalGas intends to appeal the ALJ Ruling to the full Commission.¹²

If the ALJ Ruling is not stayed pending the result of SoCalGas’ appeal, SoCalGas will suffer serious and irreparable harm because once SoCalGas produces the contracts to Cal Advocates, it cannot be undone.¹³ Cal Advocates will be forever privy to the information contained in those contracts. This is true even if the Commission ultimately agrees with

⁸ D.08-04-044, at 3.

⁹ *Id.* at 1.

¹⁰ *Pacific Gas & Elec. Co. v. Pub. Utilities Comm’n of California*, 475 U.S. 1, 17, n. 14 (1986) (plurality opinion); *Consolidated Edison Co. of N.Y. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 530, 534 n.1; *Pacific Gas & Elec. Co. v. Pub. Utilities Comm’n*, 85 Cal. App. 4th 86, 93 (2000).

¹¹ *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

¹² *See* D.16-10-043, at 28-29 (where the Commission “made clear that where an ALJ’s evidentiary ruling may present possible ramifications in other proceedings and/or the issue concerns constitutional rights...the proper procedure is to bring the issue before the full Commission for resolution, including during the pendency of the proceeding.”)

¹³ *Fed. Trade Comm’n v. Qualcomm Inc.*, 935 F.3d 752, 756 (9th Cir. 2019) (finding that there is a probability of irreparable harm where the injunction requires a party to enter new contractual relationships and renegotiate existing ones on a large scale and imposes fundamental business changes that cannot be easily undone should party prevail on appeal).

SoCalGas that Cal Advocates has exceeded its authority in demanding SoCalGas' 100 percent shareholder funded contracts and are not entitled to the contracts.

2. SoCalGas Will Likely Prevail on the Merits.

Cal Advocates asserts that it has unfettered discovery authority pursuant to PUC §309.5(e) and that **no one**, other than Cal Advocates themselves, can decide what information and documents Cal Advocates can and cannot access.¹⁴ However, that position directly conflicts with the language of the code. PUC §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 commissioner or by the president of the commission, if there is no assigned commissioner. (Emphasis added.)

Cal Advocates argues that because the code section includes the language, “it deems necessary,” that Cal Advocates has sole discretion to determine what information is necessary for it to perform its duties.¹⁵ Once Cal Advocates determines, at its sole discretion, that certain information is necessary to perform its duties, then there is no limitation to the type of information it can seek.¹⁶ This position is in direct conflict with PUC § 309.5(e) and improperly reads out entire portions of PUC §309.5(e). First, it reads out the language that the information must be “necessary to perform its duties.” While Cal Advocates is able to deem what it considers to be “necessary to perform its duties,” the information still must be “necessary to perform its duties.” Second, simply because Cal Advocates may compel production or disclosure of information that it deems necessary to perform its duties, it is not the sole decision maker. Clearly, PUC § 309.5(e) permits parties such as SoCalGas to disagree with Cal Advocates position by allowing parties to object to the disclosure. The Commission would decide whether to grant or deny the discovery, not Cal Advocates. Cal Advocates interpretation of PUC § 309.5(e) would in essence re-write the section to read:

“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~~

¹⁴ Reply, at 4, 7-8.

¹⁵ *Id.*, at 4.

¹⁶ *Id.*

~~writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.”~~

It is black letter law in California that when interpreting a statute, “[w]e begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent.’ The plain meaning controls if there is no ambiguity in the statutory language.”¹⁷ It is clear from the plain language of the statute that there are limitations on Cal Advocates’ rights. That is not ambiguous. Cal Advocates cannot simply read out the limitations of the statute.

In addition, Cal Advocates provide no argument to refute that its overbroad discovery could have a chilling effect on SoCalGas’ First Amendment rights. Cal Advocates only states that it has authority to conduct its investigation into SoCalGas’ shareholder activity, which SoCalGas disagrees, and cites to Decision (D.12-12-036) for the proposition that SoCalGas does not have unfettered right to lobby the government when such lobbying is harmful to ratepayers.¹⁸ However, D.12-12-036 is completely distinguishable as that Decision prohibits ratepayer funded lobbying activities, not shareholder funded lobbying activities. In fact, D.12-12-036 clearly permits lobbying that is supported by shareholder funds.¹⁹

Moreover, the full Commission has already weighed in on the appropriate scope of investigation and procedural avenue as part of SoCalGas’ 2019 General Rate Case (“GRC”) Decision (D.19-09-051) for the further exploration of SoCalGas’ funding of political lobbying activities beyond what was already litigated in that GRC proceeding: “To the extent that SoCalGas *utilizes ratepayer funds* on expenditures that go beyond providing information about natural gas and constitute inappropriate political activity, the Commission will address such activities *in the appropriate proceeding.*”²⁰ Cal Advocates’ discovery into non-ratepayer funded

¹⁷ *Poole v. Orange Cty. Fire Auth.*, 61 Cal. 4th 1378, 1384–85 (2015) citing to *People v. Cornett* 53 Cal.4th 1261, 1265 (2012).

¹⁸ Reply, at 7-8.

¹⁹ D.12-12-036, at 39 (Conclusion of Law 3) (“It is reasonable and consistent with SB 790 to require that marketing or lobbying against CCAs is supported by shareholder funds, not ratepayer funds.”)

²⁰ D.19-09-051, at 379 (emphasis added). It is worth noting that in this same section of D.19-09-051, the Commission examined the evidentiary record and did not reduce ratepayer funds for the activities challenged by Sierra Club and UCS as inappropriate political activity: “Some of the letters include information on the benefits of natural and renewable gas options or suggest consideration of these options but we find that these are generally informational as opposed to what Sierra Club and UCS suggest.” *Id.*

activity and the ALJ Ruling's unexplained affirmation of that right of discovery contradict the Commission's directive. Cal Advocates' continuation to submit data requests outside of a proceeding, despite multiple proceedings where they could bring requests related to its own investigation (e.g., Building Decarbonization OIR, Energy Efficiency Order to Show Cause) would deprive SoCalGas of any appellate review of the ALJ Ruling and similar future rulings outside of a proceeding. The Commission's GRC language should be respected and discovery should conform to due process protections intended to preserve SoCalGas' appellate rights.

3. The Harm to SoCalGas if the Stay is not Granted Outweighs the Harm to Cal Advocates if the Stay is Granted.

If the ALJ does not grant a stay of the ALJ Ruling, SoCalGas will be required to produce its 100 percent shareholder funded contracts. Once SoCalGas produces these contracts to Cal Advocates, it cannot be undone.²¹ Even if the full Commission rules in favor of SoCalGas, Cal Advocates would have already seen the contracts.

On the other hand, if the stay is granted and the Commission resolves the appeal in favor of Cal Advocates, Cal Advocates will simply be delayed in examining the contracts. Cal Advocates has not presented any pressing need for the contracts in its Motion or Reply to the Motion. While Cal Advocates states that it is investigating SoCalGas, it has not stated why it cannot wait until after SoCalGas' appeal is resolved to examine the contracts. Cal Advocates reasoning that it is entitled to the contracts immediately because it served the data request on August 13, 2019²² is outweighed by the harm to SoCalGas. The ALJ Ruling does not address how it avoids the extreme prejudice to SoCalGas in requiring a two-business-day production.

²¹ See e.g. *California Rest. Ass'n v. Henning*, 173 Cal. App. 3d 1069, 1075 (1985) ("The Fourth Amendment also requires that there exists a mechanism by which validation, modification, or nullification of a subpoena can be judicially resolved, without penalty, before compliance with the subpoena can be exacted.") citing to *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967).

²² Reply, at 9-10.

4. Requiring SoCalGas to Produce the Contracts Without Providing SoCalGas Adequate Time to Have its Appeal Heard by the Full Commission Violates SoCalGas' Due Process and Contravenes Commission Precedent in Preserving a Utility's Right of Appeal.

If the ALJ does not grant a stay of the ALJ Ruling, SoCalGas will be deprived of the ability to have its appeal heard by the full Commission before it has to produce the contracts violating SoCalGas' due process.

The Commission has “made clear that where an ALJ’s evidentiary ruling may present possible ramifications in other proceedings and/or the issue concerns constitutional rights...the proper procedure is to bring the issue before the full Commission for resolution...”²³ This “can be accomplished through the mechanism of an interlocutory appeal or pursuant to a party’s motion, though there is no requirement that that any particular process is utilized; and...a presiding ALJ or Assigned Commissioner may...bring such an issue to the full Commission’s attention for resolution.”²⁴ In D.16-01-043, following an ALJ’s denial of Pacific Gas and Electric Company’s (“PG&E”) motion to file confidential information under seal, PG&E complied with the ALJ’s ruling by filing public unredacted versions of the agreements and filed another motion contesting the ALJ’s rulings and preserving its rights to seek rehearing of the ALJ ruling upon issuance of a final decision in the proceeding.²⁵ On rehearing, the Commission faulted PG&E for not filing an interlocutory appeal and filing the unredacted agreements.²⁶ The Commission stated PG&E is requesting that the Commission issue a decision that would essentially undo the outcome of the ALJ’s ruling,²⁷ which it cannot do. At best, the Commission could order the un-redacted version of the agreement be removed from its formal files, but any error would be entirely harmless at that point.²⁸ SoCalGas is in a similar position in that if it produces the documents on November 5, the Commission would be unable to undo the effects of the ALJ Ruling. Cal Advocates would already have seen SoCalGas’ 100 percent shareholder

²³ D.16-10-043, at 16.

²⁴ *Id.*

²⁵ *Id.*, at 3, 10.

²⁶ *Id.*, at 16-17.

²⁷ *Id.*, at 17.

²⁸ *Id.*

[PROPOSED] ORDER

On November 4, 2019, Southern California Gas Company (SoCalGas) filed an Emergency Motion to Stay (“Emergency Motion to Stay”) 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 (“ALJ Ruling”) requesting that the Administrative Law Judge stay the ALJ Ruling to permit SoCalGas an opportunity to file an appeal to the full Commission and preserve its rights. Having considered SoCalGas’ Emergency Motion to Stay and given the urgency of this request, SoCalGas’ Emergency Motion to Stay is Granted.

ORDER

The ALJ Ruling is hereby stayed pending full Commission review.

SO ORDERED.

Dated: November ____, 2019

Regina M. DeAngelis
Administrative Law Judge