

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In The Matter Of The Public Advocates  
Office Investigation Pertaining To Southern  
California Gas Company's Accounting  
Practices, Use Of Ratepayer Monies To  
Fund Activities Related To Anti-  
Decarbonization And Gas Throughput  
Policies, And Related Matters

Not In A Proceeding

**PUBLIC ADVOCATES OFFICE MOTION TO COMPEL  
CONFIDENTIAL DECLARATIONS SUBMITTED IN SUPPORT  
OF SOUTHERN CALIFORNIA GAS COMPANY'S DECEMBER 2, 2019  
MOTION FOR RECONSIDERATION OF FIRST AMENDMENT ASSOCIATION  
ISSUES AND REQUEST FOR MONETARY FINES FOR THE UTILITY'S  
INTENTIONAL WITHHOLDING OF THIS INFORMATION;  
[PROPOSED] ORDER**

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July 9, 2020

## I. INTRODUCTION

Pursuant to Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702,<sup>1</sup> and Rule 1.1 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure (Rules) the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) moves for the California Public Utilities Commission (Commission) to compel Southern California Gas Company (SoCalGas) to produce to Cal Advocates the confidential versions of the declarations submitted in support of SoCalGas' December 2, 2020 Motion for Reconsideration of First Amendment association issues.<sup>2</sup> Cal Advocates also moves for daily monetary fines to be imposed on SoCalGas for its intentional withholding of this information from Cal Advocates. A proposed order to this effect is attached hereto.

Since May 2019, Cal Advocates has been investigating SoCalGas' use of ratepayer monies to fund anti-decarbonization campaigns through "astroturf" organizations,<sup>3</sup> including efforts to both promote the use of natural and renewable gas, and to defeat state and local laws and ordinances proposed to limit the use of these resources. Cal Advocates has pursued this investigation pursuant to its statutory authority and obligation under Public Utilities Code § 309.5 to represent the interests of public utility customers. This motion is related to that investigation.

## II. FACTUAL BACKGROUND

On October 7, 2019, in response to SoCalGas' failure to comply with discovery requests in the investigation, Cal Advocates submitted to the Commission a Motion to

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<sup>1</sup> All section references are to the California Public Utilities Code unless otherwise stated.

<sup>2</sup> The SoCalGas December 2, 2019 Motion for Reconsideration is entitled: "*Southern California Gas Company's (U 904 G) Motion For Reconsideration/Appeal To The Full Commission Regarding 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).*"

<sup>3</sup> "Astroturfing" is the practice of masking the sponsors of a message or organization to make it appear as though it originates from and is supported by grassroots participants. For a comedic explanation of what astroturfing is and why it is problematic, see John Oliver, Last Week Tonight, at <https://www.youtube.com/watch?v=Fmh4RdlwswE>

Compel SoCalGas to produce responses to certain data requests.<sup>4</sup> That Motion to Compel was granted by Administrative Law Judge (ALJ) DeAngelis on November 1, 2019 (ALJ Ruling).<sup>5</sup>

SoCalGas then sought a stay of the ALJ Ruling,<sup>6</sup> and when that was not granted it did two things. Given that it would be subject to fines of up to \$100,000 per day for failure to comply with the ALJ Ruling, it provided the documents to Cal Advocates that were subject to the Motion to Compel.<sup>7</sup> It also sought authorization from the ALJ on November 22, 2019, to submit a Motion for Reconsideration challenging the ALJ Ruling. Even though its request to file such a motion was not granted, SoCalGas nevertheless submitted its Motion for Reconsideration of First Amendment association issues for the Commission's consideration on December 2, 2019.<sup>8</sup> It also submitted four redacted declarations in support<sup>9</sup> of that motion, and purported to submit confidential versions of those four declarations to the Commission's Docket Office with its Motion to File Under Seal.<sup>10</sup>

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<sup>4</sup> That Cal Advocates October 7, 2019 Motion to Compel is entitled: "*Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request—CalAdvocates-SC-SCG-2019-05.*"

<sup>5</sup> Exhibit 1, November 1, 2019 ALJ Ruling.

<sup>6</sup> SoCalGas' motion to stay, submitted November 4, 2019, is entitled: "*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).*"

<sup>7</sup> See SoCalGas May 22, 2020 Substitute Motion to Quash, p. 13 ("On November 4, 2019, SoCalGas filed an Emergency Motion to Stay the ALJ Ruling. But with no ruling on that motion and facing significant potential fines of up to \$100,000 a day (see Pub. Util. Code § 2107), SoCalGas produced under protest the 100% shareholder-funded contracts at issue on November 5, 2019 but reserved its rights to appeal the decision. (Henry Decl., Exh. M [Motion for Reconsideration/Appeal], at p.8).")

<sup>8</sup> The Commission has not yet ruled on either SoCalGas' December 2, 2019 Motion for Reconsideration or its concurrently submitted Motion to File Under Seal.

<sup>9</sup> See Exhibit 2, Redacted Declarations Submitted In Support of SoCalGas' 12-2-19 Motion for Reconsideration.

<sup>10</sup> SoCalGas' December 2, 2019 Motion to File Under Seal is entitled: "*Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations Numbers 3, 4, 5, and 6 In Support of Its Motion For Reconsideration/Appeal to the*

Relevant here is the fact that while SoCalGas appears to have made the confidential versions of the declarations available to other Commission offices and divisions, it did not provide them to Cal Advocates. Cal Advocates did not realize this until May 19, 2020, when SoCalGas sought to use nearly identical redacted declarations to support its Motion to Quash a validly-issued Commission subpoena<sup>11</sup> and its Motion to Supplement its Motion for Reconsideration.<sup>12</sup> At that time, Cal Advocates' newly assigned counsel realized that the confidential versions of the declarations were necessary to respond to SoCalGas' May 2020 motions, and that SoCalGas had not provided confidential versions of those supporting declarations to Cal Advocates with its May 2020 motions. The email exchange that followed confirms that SoCalGas intended to withhold the documents supporting its May 2020 motions from Cal Advocates, and suggests that SoCalGas had intentionally withheld from Cal Advocates the confidential declarations submitted with its December 2, 2019 Motion for Reconsideration.<sup>13</sup>

On May 22, 2020, ALJ DeAngelis ordered SoCalGas to provide the confidential declarations accompanying its May 2020 motions to Cal Advocates. Rather than comply with the ALJ's order, SoCalGas obtained ALJ permission to instead submit "substituted"

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*Full Commission Regarding Administrative Law Judge's Ruling In the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 [PROPOSED] Order (Not in a Proceeding)."*

<sup>11</sup> The final version of SoCalGas' Motion to Quash submitted on May 22, 2020 is entitled: "*Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena To Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29<sup>th</sup> Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding).*"

<sup>12</sup> The final version of SoCalGas' Motion to Supplement submitted on May 22, 2020 is entitled: "*Southern California Gas Company's (U 904 G) Motion To Supplement The Record And Request For Expedited Decision By The Full Commission On Motion For Reconsideration/Appeal Regarding Administrative Law Judge's Ruling In The Discovery Dispute Between The Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding) If The Motion Is Not Granted To Quash Portion Of The Subpoena To Produce Access To Certain Materials In Accounting Databases And To Stay Compliance Until The May 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases (Not In A Proceeding).*"

<sup>13</sup> See, e.g., Exhibit 3, E.Henry/T.Bone Emails re Confidential Declarations - May 19-22, 2020. See also Exhibit 4, SoCalGas Motion for Reconsideration Transmittal EMail - 12-2-19.

public motions. Those substituted motions relied upon declarations from SoCalGas employees reciting the same claims made in the original declarations, without naming the declarants.<sup>14</sup>

After determining that the confidential versions of the declarations supporting SoCalGas' December 2, 2019 Motion for Reconsideration were necessary for Cal Advocates to perform its duties in the investigation of SoCalGas' astroturf activities, Cal Advocates attempted to obtain the documents from SoCalGas:

- On June 23, 2020, Cal Advocates asked SoCalGas to confirm that the confidential versions of the declarations in support of its Motion for Reconsideration had not been provided to Cal Advocates.<sup>15</sup>
- On June 25, 2020, absent a substantive response from SoCalGas, Cal Advocates demanded that the confidential versions of the declarations be provided to it no later than June 29, 2020.<sup>16</sup>
- On June 29, 2020, SoCalGas informed Cal Advocates – in an extended letter - that it would not provide the confidential versions of the declarations to Cal Advocates on the basis that the request was not timely, was procedurally inappropriate, and that the information was properly withheld from Cal Advocates based on SoCalGas' First Amendment association claims.<sup>17</sup>

In sum, Cal Advocates is entitled to the confidential versions of the declarations, consistent with the determination made by ALJ DeAngelis on May 22, 2020 that SoCalGas “provide electronic copies of the confidential information to *all* Commission staff on the above service list, including the Cal Advocates Office.”<sup>18</sup> It is also entitled to

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<sup>14</sup> Cal Advocates reserves the right to file a motion to strike those declarations, which are quintessential hearsay offered for the truth of the matter asserted. While this Commission may allow hearsay in some circumstances, it is not appropriate as used by SoCalGas here.

<sup>15</sup> See Exhibit 5, E.Henry/T.Bone Emails re Demand for Confidential Declarations - June 23-25, 2020.

<sup>16</sup> Id.

<sup>17</sup> See Exhibit 6, Letter from J. Wilson to T. Bone Declining to Provide Confidential Declarations – 6-29-20.

<sup>18</sup> See Exhibit 7, ALJ Emails to ALJ Re Declarations & Substituted Motions - May 19-22, 2020 (emphasis added).

these documents consistent with the November 1, 2019 ALJ Ruling rejecting SoCalGas' First Amendment Association Claims.

More than six months have passed since SoCalGas filed its Motion for Reconsideration. Since this time, SoCalGas has failed to respond to data requests outstanding more than three months, has refused to comply with the Commission Supoena, and now refuses to provide Cal Advocates with the same confidential documents it provided to other parts of the Commission, based on the First Amendment claims raised in its yet-to-be-decided Motion for Reconsideration. Contrary to its oft-repeated claims, the fact that SoCalGas disagrees with the ALJ's ruling and has submitted a motion for reconsideration – that was not authorized by the ALJ or any Commission rule identified by SoCalGas – does not stay the effect of the underlying ruling and does not justify SoCalGas' withholding of the confidential declarations. Indeed, if SoCalGas believes that the November 1, 2019 ALJ Ruling has improperly rejected its First Amendment claims, as the party seeking relief from the Ruling, it is incumbent upon SoCalGas' to take further action to obtain relief.

### **III. REQUEST FOR ORDER TO COMPEL AND MONETARY FINES**

#### **A. The Undisputed Facts Justify An Order To Compel And Monetary Fines**

The discussion in Section II above establishes the following undisputed facts:

- (1) SoCalGas has intentionally withheld information from Cal Advocates that it should have provided on December 2, 2019 when it submitted its Motion for Reconsideration to the Commission.
- (2) SoCalGas made the information available to other divisions within the Commission in December, but has withheld the information from Cal Advocates.
- (3) SoCalGas intentionally refuses to comply with Cal Advocates June 26, 2020 demand to provide the information on the basis of its First Amendment association claims which were rejected in the November 1, 2019 ALJ Ruling..

- (4) By its own admission, SoCalGas has been on notice of the possibility of substantial fines for its refusal to provide discovery to Cal Advocates.<sup>19</sup>

**B. The Law Requires A Commission Order That SoCalGas Provide The Confidential Versions Of The Declarations To Cal Advocates Immediately And Supports The Imposition Of Substantial Fines**

Application of the applicable law to the undisputed facts set forth above establishes the following:

- (1) Because SoCalGas' withholding of the information from Cal Advocates was intentional, and was not clearly communicated with its submission of the Motion for Reconsideration, SoCalGas is in contempt of this Commission, which is a violation of Rule 1.1
- (2) SoCalGas' refusal to comply with Cal Advocates June 26, 2020 demand to provide the information is a further contempt of this Commission, in violation of Rule 1.1 and compounds its December 2, 2019 decision to withhold the information.
- (3) Cal Advocates has express statutory rights to "information that it deems necessary to perform its duties"<sup>20</sup> "at any time"<sup>21</sup> and therefore SoCalGas' claims that Cal Advocates June 26, 2020 request for the information was "untimely" or "procedurally inappropriate" are poorly made and irrelevant.<sup>22</sup>
- (4) SoCalGas' intentional withholding of information in the Cal Advocates investigation of its astroturfing activities is a violation of law and harms the regulatory process by, among other things, needlessly delaying the production of information that Cal Advocates has determined is necessary to perform its duties.
- (5) SoCalGas' determination to dictate the terms under which it will release information to the Commission and the Cal Advocates is unlawful and challenges not only Cal Advocates' authority, but also that of the Commission, therefore disrespecting the Commission in violation of Rule 1.1.

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<sup>19</sup> See footnote 7 above.

<sup>20</sup> Public Utilities Code § 309.5(e).

<sup>21</sup> Public Utilities Code § 314(a).

<sup>22</sup> See Exhibit 6, June 29, 2020 Letter from J.Wilson to T.Bone.

- (6) SoCalGas' intentional withholding of information also harms the regulatory process by requiring the Commission to expend limited resources to obtain compliance with fundamental requirements – such as the production of information - imposed by law on regulated utilities like SoCalGas.<sup>23</sup>
- (7) SoCalGas' ability to respond to Cal Advocates' Motion to Compel and for Fines is adequate process to impose fines on SoCalGas.
- (8) Cal Advocates' proposed fine of \$100,000 for each day starting June 30, 2020 that SoCalGas has failed to comply with its document request should be adopted because it is consistent with the criteria adopted by the Commission and applied to other utilities.

Based on the undisputed facts and the conclusions of law set forth above, Cal Advocates moves this Commission to order SoCalGas to: (1) immediately provide the requested documents to Cal Advocates; (2) pay a fine to the General Fund of \$100,000 per day for each day starting on June 30, 2020 that SoCalGas fails to provide the requested documents to Cal Advocates; and (3) immediately comply with all Commission discovery requests or face additional substantial fines.

**C. Commission Precedent Supports Fines Of \$100,000 Per Day**

Public Utilities Code § 2107 provides that the Commission shall impose a penalty of not less than \$500 and no more than \$100,000 for violations or failures to comply with Commission rules or requirements. Cal Advocates asks the Commission to impose fines of \$100,000 per day on SoCalGas for its willful withholding from Cal Advocates of the confidential versions of the declarations supporting its Motion for Reconsideration starting June 30, 2020.

Commission Decision 98-12-075<sup>24</sup> and Public Utilities Code §§ 2107 and 2108 provide guidance on the application of fines and support this request. Two general

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<sup>23</sup> See, e.g., Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702.

<sup>24</sup> D.98-12-075, 1998 Cal. PUC LEXIS 1016 distills the essence of numerous Commission decisions concerning penalties in a wide range of cases, and states that the Commission expects to look to these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings. See D.98-12-075, 1998 Cal. PUC LEXIS 1016 at \*52-\*53 and Appendix A – Adopted Rules, starting at \*63.

factors are considered in setting fines: (1) the severity of the offense and (2) the conduct of the utility.<sup>25</sup> In addition, the Commission considers the financial resources of the utility, the totality of the circumstances in furtherance of the public interest, and the role of precedent.<sup>26</sup> The Commission also considers the sophistication, experience and size of the utility; the number of victims and economic benefit received from the unlawful acts; and the continuing nature of the offense.<sup>27</sup> The following discussion addresses each of these criteria in turn, demonstrating that Cal Advocates' proposal for a fine of \$100,000 per day starting June 30, 2020 is appropriate.

### **1. Criterion 1: Severity of the Offense**

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. That decision also recognized that the Commission has consistently accorded a high level of severity to violations of reporting or compliance requirements such as the ones that have occurred here - because of their harm to the regulatory process.<sup>28</sup> The California Court of Appeal recognized that the Commission "takes a very dim view of denying it information, treating it as a factor in aggravation when it comes to fixing penalty."<sup>29</sup> The Court of Appeal cited the Commission's own words to support this conclusion: "The withholding of relevant information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times. ... [T]his criterion weighs in favor of a significant fine."<sup>30</sup>

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<sup>25</sup> D.98-12-075, 1998 Cal. PUC LEXIS 1016 at \*71.

<sup>26</sup> Id. at \*71-77.

<sup>27</sup> Id. at \*73-\*77.

<sup>28</sup> Id. at \*73-\*77.

<sup>29</sup> *Pacific Gas & Electric Co. v. Public Utilities Com.*, 237 Cal. App. 4th 812, 865 (2015).

<sup>30</sup> *Pacific Gas & Electric Co. v. Public Utilities Com.*, 237 Cal. App. 4th 812, 865 (2015), quoting D.13-09-028, 2013 Cal.P.U.C. Lexis 514 at pp. \*51-\*52.

## 2. Criterion 2: The Utility's Conduct

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the utility. When assessing the conduct of the utility, the Commission stated that it would consider, among other things, the utility's actions to disclose and rectify a violation.<sup>31</sup> The Commission has found that utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations and that the utility's past record of compliance may be considered in assessing any penalty.<sup>32</sup> It has also found that steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty and that deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor.<sup>33</sup> The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.<sup>34</sup>

Here, SoCalGas had the ability to comply with Commission requirements, but has engaged in a calculated decision not to comply with state laws and Commission rules and requirements for as long as possible. In addition, SoCalGas' refusal to comply with discovery requests is ongoing in this investigation and other proceedings,<sup>35</sup> and is consistent with a pattern and practice of behavior that disrespects the Commission, Commission staff, and the regulatory process.

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<sup>31</sup> D.98-12-075, 1998 Cal. PUC LEXIS 1016 at \*73-\*75.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> SoCalGas' practice of slow rolling or otherwise withholding responses to data requests is described in the Cal Advocates June 1, 2020 Response to SoCalGas' Motion to Quash at § III.C.3. SoCalGas' prior refusal to comply with a Commission subpoena issued on behalf of the Safety and Enforcement Division is described in § I.C of the June 23, 2020 "*Public Advocates Office Motion To Find Southern California Gas Company In Contempt Of This Commission In Violation Of Commission Rule 1.1 For Failure To Comply With A Commission Subpoena Issued May 5, 2020, And Fined For Those Violations From The Effective Date Of The Subpoena.*"

### 3. Criterion 3: The Utility's Financial Resources

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the utility. When assessing the financial resources of the utility, the Commission stated that it would consider the need for deterrence and the constitutional limits on excessive fines.<sup>36</sup>

The need for deterrence is a primary factor driving this Motion to Compel. As demonstrated in this and other pleadings submitted to this Commission,<sup>37</sup> SoCalGas is determined to violate state laws and Commission requirements to achieve its objectives, whether related to the Commission's investigation of its Aliso Canyon activities,<sup>38</sup> or its astroturfing activities that undermine state and local decarbonization efforts. Only substantial fines imposed for each day of its failure to comply will have the deterrent effect needed to curb SoCalGas' determination to defy its obligations to the Commission as a regulated utility.

SoCalGas is a large company with the resources to pay a substantial fine. Sempra Energy Company's most recently filed Form 10-K reflects that SoCalGas supplies natural gas to approximately 22 million people over a 24,000 square mile service territory in Southern California. SoCalGas' operating revenues have increased every year for the past five years from \$3.489 billion in 2015 to \$4.525 billion in 2019. Its assets have increased in value over the past five years from \$12.104 billion in 2015 to \$17.077 billion in 2019. It had earnings of \$641 million in 2019, an increase of \$216 million from the prior year.<sup>39</sup>

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<sup>36</sup> D.98-12-075, 1998 Cal. PUC LEXIS 1016, \*75-\*76.

<sup>37</sup> See footnote 35 above.

<sup>38</sup> See *Motion Of The Safety And Enforcement Division Requesting The Commission Issue An Order To Show Cause Against Southern California Gas Company As To Why It Should Not Be Sanctioned For Being In Contempt Of A Commission Subpoena And Violating Rule 1.1 Of The Commission's Rules Of Practice And Procedure*, filed February, 21, 2020 in I.19-06-016; and *E-Mail Ruling Denying, Without Prejudice, the Motion of The Safety and Enforcement Division For an Order to Show Cause*, filed April 28, 2020.

<sup>39</sup> SoCalGas is a subsidiary of Sempra Energy Company (Sempra). Sempra's most recent Form 10-K, filed February 27, 2020, is available at <https://investor.sempra.com/financial-information>

Given SoCalGas' significant resources and prior violations of two Commission subpoenas and numerous other discovery requests,<sup>40</sup> a fine of \$100,000 per day for the instant withholding of the confidential declarations is appropriate.

In conjunction with the fine, this Commission should also unequivocally communicate to SoCalGas that that it will take swift and decisive action for every violation that SoCalGas commits.<sup>41</sup> No other strategy will affect the change SoCalGas needs to undertake.

#### **4. Criterion 4: Totality of the Circumstances**

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case considering the degree of wrongdoing and the public interest.<sup>42</sup>

As described in the sections above, SoCalGas' has willfully engaged in a pattern and practice of violations of state laws and Commission rules and orders. In the process, these actions have disrespected the Commission and its regulatory process, have wasted the Commission's limited resources, and have prevented the Commission from meeting its obligations to protect the public interest. In considering the totality of circumstances and degree of wrongdoing, a fine of \$100,000 starting June 30, 2020 for each day that SoCalGas has withheld the confidential declarations from Cal Advocates is justified.

#### **5. Criterion 5: The Role of Precedent in Setting the Fine Amount**

In D.98-12-075, the Commission held that any decision that imposes a fine should (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.<sup>43</sup> As precedent for considering

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<sup>40</sup> See, e.g., footnotes 35 and 38 above.

<sup>41</sup> In his book *The Tipping Point – How Little Things Can Make a Big Difference*, Malcolm Gladwell describes in Chapter 4 how a similar strategy was used to significantly diminish years of unchecked graffiti and fare evasions on New York City subways, and was a contributing factor in reducing overall crime in the city.

<sup>42</sup> D.98-12-075, 1998 Cal. PUC LEXIS 1016, \*76.

<sup>43</sup> D.98-12-075, 1998 Cal. PUC LEXIS 1016, \*77.

the level of fines against SoCalGas, the Commission should consider the following Commission decisions involving Rule 1.1 violations that occurred over multiple days:

- In D.08-09-038 the Commission imposed a \$30 million penalty on Southern California Edison Company (SCE) for Rule 1.1 and other violations associated with seven years of false reporting of data in connection with its performance based ratemaking mechanism, *taking into consideration SCE's good faith cooperation with the CPUC once the violations were identified*;
- In D.02-10-059 the Commission imposed a \$20.34 million penalty on Qwest Communications Corporation for slamming and unauthorized billings that occurred over approximately a year;
- In D.04-09-062 the Commission imposed a \$12.14 million penalty on Cingular Wireless for collecting early termination fees over a period of more than two years;<sup>44</sup> and
- In D. 15-08-032 the Commission imposed a \$210,500 penalty on the San Francisco Municipal Transportation Agency (SFMTA) for its intentional refusal to comply with an SED discovery request for over a year based on First Amendment confidentiality claims. In imposing that fine, the Commission considered the City of San Francisco's budget situation, the surplus available, and the amount necessary to serve as an incentive to deter future violations.

The SFMTA fine is admittedly modest in comparison to the fines assessed against the utilities, presumably because of SFMTA's more limited resources, its public agency status, and the determination that the amount was a sufficient deterrent.<sup>45</sup> Here, given SoCalGas' significant financial resources, the totality of the circumstances – which reflect SoCalGas' ongoing determination to defy Commission requirements - prior Commission decisions, and what “is significant enough to serve as an incentive to deter

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<sup>44</sup> In each of these cases, restitution to consumers was addressed separately and was not a component of the penalty described here. In addition, none of these cases involved loss of life, which can result in significantly higher penalties.

<sup>45</sup> As explained in D.98-12-075, 1998 Cal. PUC LEXIS 1016 at \*76: “What is accounting rounding error to one company is annual revenue to another.”

future violations,” a daily fine of \$100,000 for a total of roughly \$1 million is appropriate.<sup>46</sup>, <sup>47</sup>

#### IV. CONCLUSION

For all of the reasons set forth above, Cal Advocates request that the Commission grant this Motion to Compel and For Fines consistent with the proposed order attached hereto.

Respectfully submitted,

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<sup>46</sup> The total grows each day that SoCalGas fails to produce the confidential declarations to Cal Advocates.

<sup>47</sup> To the extent the Commission is concerned that SoCalGas’ First Amendment arguments will be upheld – which is unlikely – the Commission can require that the funds be sequestered until such time as a final ruling resolves those issues

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Not In A Proceeding

**[PROPOSED] ORDER**

Having reviewed the “*Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information (Not in a Proceeding)*,” we make the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Southern California Gas Company (SoCalGas) has intentionally withheld information from the Advocates Office at the California Public Utilities Commission (Cal Advocates) that it should have provided on December 2, 2019 when it submitted its Motion for Reconsideration to the Commission.
2. SoCalGas made the information available to other divisions within the Commission in December, but has withheld the information from Cal Advocates.
3. SoCalGas intentionally refuses to comply with Cal Advocates June 26, 2020 demand to provide the information on the basis of its First Amendment association claims which were rejected in the November 1, 2019 ALJ Ruling..
4. By its own admission, SoCalGas has been on notice of the possibility of substantial fines for its refusal to provide discovery to Cal Advocates.

## CONCLUSIONS OF LAW

1. Because SoCalGas' withholding of the information from Cal Advocates was intentional, and was not clearly communicated with its submission of the Motion for Reconsideration, SoCalGas is in contempt of this Commission, which is a violation of Rule 1.1
2. SoCalGas' refusal to comply with Cal Advocates June 26, 2020 demand to provide the information is a further contempt of this Commission, in violation of Rule 1.1 and compounds its December 2, 2019 decision to withhold the information.
3. Cal Advocates has express statutory rights to "information that it deems necessary to perform its duties" "at any time" and therefore SoCalGas' claims that Cal Advocates June 26, 2020 request for the information was "untimely" or "procedurally inappropriate" are poorly made and irrelevant.
4. SoCalGas' intentional withholding of information in the Cal Advocates investigation of its astroturfing activities is a violation of law and harms the regulatory process by, among other things, needlessly delaying the production of information that Cal Advocates has determined is necessary to perform its duties.
5. SoCalGas' determination to dictate the terms under which it will release information to the Commission and the Cal Advocates is unlawful and challenges not only Cal Advocates' authority, but also that of the Commission, therefore disrespecting the Commission in violation of Rule 1.1.
6. SoCalGas' intentional withholding of information also harms the regulatory process by requiring the Commission to expend limited resources to obtain compliance with fundamental requirements – such as the production of information - imposed by law on regulated utilities like SoCalGas.
7. SoCalGas' ability to respond to Cal Advocates' Motion to Compel and for Fines is adequate process to impose fines on SoCalGas.
8. Cal Advocates' proposed fine of \$100,000 for each day starting June 30, 2020 that SoCalGas has failed to comply with its document request should be adopted because it is consistent with the criteria adopted by the Commission and applied to other utilities.

Based on these findings of fact and conclusions of law, IT IS HEREBY ORDERED, that Southern California Gas Company shall:

1. Provide unredacted versions of Declarations 3 through 6 in support of its December 2, 2019 motion entitled *Southern California Gas Company's (U 904 G) Motion For Reconsideration/Appeal To The Full Commission Regarding*

*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)*” to the Public Advocates Office at the California Public Utilities Commission within one business day.

2. Pay a fine to the general fund of \$100,000 per day for each day starting June 30, 2020 that it has not provided the unredacted declarations to Cal Advocates.
3. Demonstrate its respect for the Commission and Cal Advocates through immediate going-forward compliance with all Commission discovery requests – including those from any office or division, and in formal proceedings or “not in a proceeding” - or be prepared to face substantial daily sanctions for its unlawful behavior.

Dated July \_\_\_\_, 2020 at San Francisco, California

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Administrative Law Judge  
Regina DeAngelis

## **LIST OF EXHIBITS**

EXHIBIT 1 – November 1, 2019 ALJ Ruling

EXHIBIT 2 – Redacted Declarations Submitted in Support of SoCalGas' December 2, 2019 Motion for Reconsideration

EXHIBIT 3 – E.Henry/T.Bone Emails May 19-22, 2020 re Confidential Declarations

EXHIBIT 4 – SoCalGas Motion for Reconsideration Transmittal Email – 12-2-19.

EXHIBIT 5 – E.Henry/T.Bone Emails June 23-25, 2020 re Demand for Confidential Declarations

EXHIBIT 6 – J.Wilson Letter to T.Bone Declining to Provide Confidential Declarations – 6-29-20

EXHIBIT 7 –Emails with ALJ re Confidential Declarations & Substituted Motions – May 19-22, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date served a copy of “**PUBLIC ADVOCATES OFFICE MOTION TO COMPEL CONFIDENTIAL DECLARATIONS SUBMITTED IN SUPPORT OF SOUTHERN CALIFORNIA GAS COMPANY’S DECEMBER 2, 2019 MOTION FOR RECONSIDERATION OF FIRST AMENDMENT ASSOCIATION ISSUES AND REQUEST FOR MONETARY FINES FOR THE UTILITY’S INTENTIONAL WITHHOLDING OF THIS INFORMATION (NOT IN A PROCEEDING)**” to the following persons by electronic mail:

[rmd@cpuc.ca.gov](mailto:rmd@cpuc.ca.gov)  
[MHovsepian@socalgas.com](mailto:MHovsepian@socalgas.com)  
[TCarman@socalgas.com](mailto:TCarman@socalgas.com)  
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[Alec.Ward@cpuc.ca.gov](mailto:Alec.Ward@cpuc.ca.gov)  
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Executed on **July 9, 2020** at San Francisco, California.

/s/ TRACI BONE  
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TRACI BONE