

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

**RESPONSE OF PUBLIC ADVOCATES OFFICE TO SOUTHERN CALIFORNIA
GAS COMPANY MOTION TO QUASH PORTION OF SUBPOENA, FOR AN
EXTENSION, AND TO STAY COMPLIANCE**

(NOT IN A PROCEEDING)

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I. INTRODUCTION

Pursuant to Public Utilities (PU.) Code §§ 309.5(e) and 314, and Rule 11.3 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) submits this Response to Southern California Gas Company’s (SoCalGas’) Motion to Quash¹ part of a subpoena executed by the Commission’s Executive Director. That subpoena ordered SoCalGas to provide Cal Advocates with “access to all databases associated in any manner with the company’s accounting systems.”² SoCalGas’ Motion to Quash was served on May 19, 2020, and a substituted Motion was served May 22, 2020.³

SoCalGas’ Motion to Quash represents a direct attack on the Commission’s authority to regulate. It should be met with swift and decisive Commission action not only rejecting SoCalGas’s Motion, but also imposing sanctions on both the company and its representatives for its persistent waste of limited Commission resources during these – as SoCalGas describes them – “challenging circumstances.”⁴

In sum, there is no question that the Commission, be it through Safety and Enforcement Division, Energy Division, Cal Advocates, or otherwise, has not only the authority, but in fact an obligation to audit SoCalGas’ accounts and records as Cal Advocates is attempting to do.⁵ These accounts and records must be made available “at

¹ The Motion to Quash 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 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding).”

² The subpoena served May 5, 2020, is provided in the SoCalGas Motion to Quash, Declaration of Elliott S. Henry, Attachment A.

³ This Response is timely filed consistent with a May 29, 2020, email from ALJ DeAngelis confirming that the Response could be filed on June 1, 2020 based on the date of the filing of the Substitute Motion.

⁴ SoCalGas Motion to Quash, p. 16.

⁵ See, e.g., PU Code §§ 314 & 314.5.

any time,”⁶ and neither the Commission nor its staff have an obligation to explain the reasons why they seek access to the accounts and records or to defer access to a time more convenient to the utility.⁷ Indeed, the very purpose of the Commission’s broad authority in this regard is clearly, in part, because if the Commission were required to explain itself, the utility could modify its accounts and records prior to Commission review in order to hide or otherwise make relevant information unavailable.

Well-aware of this broad authority, and the reasons for it, SoCalGas nevertheless moves this Commission to: (1) modify its validly-issued subpoena and allow SoCalGas the discretion to exclude accounts of its own choosing from Cal Advocates’ review; (2) grant it an extension to implement a method to withhold this information; and (3) allow SoCalGas to withhold information from Cal Advocates until the Commission rules on its appeal of claims that have already been rejected by an Administrative Law Judge (ALJ).⁸ In support of its proposal, SoCalGas misrepresents the facts,⁹ claims that the access ordered by the subpoena is not needed,¹⁰ chastises Cal Advocates for demanding immediate access without explanation,¹¹ and blatantly states that it will defy both Commission rules and the governing statutes as it see fit.¹² In addition, it is now

⁶ PU Code § 314(a).

⁷ This is especially true here, where, as described in more detail below, SoCalGas has the ability to provide almost immediate remote access to its SAP system where its accounts and records are housed.

⁸ The November 1, 2019 ALJ Ruling rejecting SoCalGas’ First Amendment Claims is available at SoCalGas Motion to Quash, Declaration of Elliott Henry, Exhibit L.

⁹ For example, the discussion in ¶ 13 of the Declaration of Elliott Henry, attached to the SoCalGas Motion to Quash does not accurately represent Cal Advocates statements during the May 18, 2020 conference call. Among other things, Cal Advocates representatives never used the word “impasse” and were clear that SoCalGas’ request for an extension needed to be considered by Cal Advocates management. That request was not in any way denied on that call. Nevertheless, SoCalGas sought authorization from ALJ DeAngelis to file its Motion to Quash at 12:23 p.m. the next day – less than 24 hours after the conference call ended. Given the length and breadth of that Motion, it is clear SoCalGas had been planning to file it for many days.

¹⁰ SoCalGas Motion to Quash, p. 16.

¹¹ SoCalGas Motion to Quash, p. 16.

¹² SoCalGas Motion to Quash, pp. 15-16, footnote 11 notifies the Commission that it will not

evident that SoCalGas has wrongly withheld information from Cal Advocates in the filings it made last week, as well as in prior filings, without clearly acknowledging what it was doing.¹³ Once again, SoCalGas has opted to flout well-settled Commission rules and state laws to do exactly as it chooses.

As Cal Advocates explained in an email response to SoCalGas' service of the Motion, it should be rejected as inappropriate and untimely.¹⁴ Indeed, any substantive ruling on the Motion would only serve to encourage SoCalGas' non-compliance with

provide information contained in its accounts and records regarding its opposition to "Reach Codes" to Cal Advocates except as requested in the open proceeding on those issues, R.13-11-005.

¹³ Exhibit 1, E.Henry-ALJ DeAngelis 5-19-20 EMail re Request to File Motions, which explains that SoCalGas would not provide hard copies of the confidential documents with its motions for a week because of COVID-19 related staffing issues. What SoCalGas did not say is that it intended to withhold all confidential versions of its filings from the Cal Advocates:

In light of the ongoing pandemic and stay-at-home orders, SoCalGas does not have its legal staff at the office or in a position to effectively handle a confidential hard copy filing the same day as the public version is served to the service list. We therefore also request permission to file a hard copy within one week of today (consistent with the Commission guidance).

SoCalGas only acknowledged its intent to withhold the confidential versions of its filings from Cal Advocates the next day, after Cal Advocates insisted that SoCalGas immediately provide electronic versions of the confidential documents to the Commission, including itself and the ALJ. When caught, SoCalGas had the nerve to chastise Cal Advocates for including the ALJ and Commissioners on its emails insisting on its rights to review the information. SoCalGas also misrepresented that the reason for its withholding was "discussed in the brief." See Exhibit 2, E.Henry-ALJ DeAngelis 5-20-20 EMail Clarifying Withholding From CalAdvocates:

Ms. Bone,

With respect to the confidential versions of the documents, as noted in our email to Judge DeAngelis yesterday which you were copied on, we will tender a confidential hard copy for filing within a week. As shown by what is discussed in the brief, because the confidential information in the declarations overlaps with information we are requesting not to disclose to Cal Advocates in response to the Subpoena, the confidential versions will not be provided to Cal Advocates.

If you have further questions of this nature, please feel free to contact me directly instead of the entire service list.

¹⁴ Exhibit 3 - T.Bone-ALJ DeAngelis 5-19-20 EMail re Untimely Motion

Commission orders and state laws and, arguably, revitalize its rights to appeal the subpoena, which were waived when it sat on those rights.¹⁵

To the extent the Commission determines that it, or ALJ Division, should rule on the merits of the SoCalGas Motion to Quash, it should reject all three of SoCalGas' requests in the Motion for the following reasons:

- (1) As a Commission-regulated utility, the law requires SoCalGas to provide the Commission and its staff with unfettered access to its books and accounts,¹⁶ as well as those of its unregulated subsidiaries and affiliates.¹⁷ The ability to review a regulated utility's accounts and records to ensure that the resulting rates will be just and reasonable is a fundamental component of the regulatory compact.¹⁸ Deviating from this requirement would set troubling precedent that has the potential to undermine the Commission's authority.
- (2) SoCalGas' First Amendment claims have no merit. Among other things, there is no protected First Amendment right to "associate" with hired lobbyists and consultants. Indeed, such activities are routinely subject to comprehensive reporting requirements, such as California's Political Reform Act.¹⁹
- (3) As the record makes clear, SoCalGas has intentionally and routinely engaged in sharp litigation practices, bad faith discovery, and clear violations of law to obstruct this investigation and other related proceedings. Sanctions against both the company and its representatives are needed to correct this continuing pattern of abuse.

Each of these issues is addressed in detail below.

¹⁵ Id.

¹⁶ See, e.g., California Public Utilities (PU) Code §§ 311, 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771.

¹⁷ See PU Code § 314(b).

¹⁸ The "Regulatory Compact" as it relates to just and reasonable rates is discussed in the Commission's recent "Decision Modifying The Commission's Rate Case Plan For Energy Utilities," D.20-01-002 (January 2020).

¹⁹ The Political Reform Act is codified at California Government Code §§ 81000-91014.

II. BACKGROUND

A. Cal Advocates' Investigation Into SoCalGas' Use Of Ratepayer Monies To Fund Lobbying And Other Activities Related To Its Anti-Decarbonization Campaigns

For approximately 12 months, Cal Advocates has been investigating SoCalGas' funding and other activities related to its promoting the use of natural and renewable gas, and defeating state and local laws and ordinances proposed to limit the use of these fossil resources. This Cal Advocates investigation has attempted to identify, among other things, the extent to which SoCalGas has used ratepayer money to fund these efforts, including SoCalGas' creation, funding, recruitment for, and participation in the organization Californians for Balanced Energy Solutions (C4BES). SoCalGas' pivotal role in creating and funding C4BES came to light last year in the Commission's "Building Decarbonization" proceeding (Rulemaking (R.) 19-01-011, when Sierra Club filed a Motion to Deny Party Status to C4BES based on its intimate relationship to SoCalGas, which C4BES had not disclosed.²⁰ Sierra Club explained: "Because utility-created front groups have no place in Commission proceedings, the Commission should grant Sierra Club's Motion, and deny party status to C4BES."²¹

As part of this investigation, Cal Advocates has served SoCalGas with 14 data requests that seek to identify SoCalGas' role in numerous anti-decarbonization campaigns, and the source of funding for that work. For example, this discovery has sought consulting contracts associated with those efforts,²² the ratepayer cost of those contracts,²³ the ratepayer cost of SoCalGas employee time spent managing the work

²⁰ The Sierra Club Motion is entitled "Sierra Club's Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery." It was filed May 14, 2019 in R.19-01-011.

²¹ Sierra Club Motion to Deny Party Status, May 14, 2019, R.19-01-011, p. 2.

²² See, e.g., Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 4; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Questions 3, 10, 15, 18, and 21.

²³ See Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 5; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Questions 2, 4, 5, 9, 11, 12, 14, 16, 17, 19, and 22.

under those contracts and communicating with state and local officials,²⁴ and access to SoCalGas' accounts and records for audit purposes.²⁵

The evidence adduced thus far goes to, among other things, whether SoCalGas paid people to appear and speak during the public comment portion of Commission voting meetings, without disclosing that they were acting on the behalf of SoCalGas. Cal Advocates has found evidence that invoices from SoCalGas consulting contracts have been allocated to accounts traditionally funded by ratepayers, suggesting that the contracts are not "100% shareholder funded," which is the foundation of SoCalGas's First Amendment argument. There is also evidence that SoCalGas may have modified documents provided in response to Cal Advocates' data requests, but this cannot be confirmed absent answers to the currently outstanding data requests.

SoCalGas' determination to flout the Commission's regulatory authority and undermine Cal Advocates' investigation has been well-documented. It has required over fifteen and confer discussions,²⁶ resulted in two Motions to Compel granted in favor of Cal Advocates,²⁷ and most recently SoCalGas' March 25, 2020 motion to stay all investigation discovery for an indefinite period of time, which was denied.²⁸ Similar to the instant Motion to Compel, that motion to stay, comprising over 50 pages, including five declarations with exhibits, was prepared while SoCalGas engaged Cal Advocates in numerous meet and confers where it sought extension after extension.

The Motion to Stay claimed that SoCalGas would "suffer irreparable harm" "[i]f left unable to defend itself in response to Cal Advocates' demands."²⁹ That frivolous

²⁴ See Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 3; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Question 2, 9, 14, and 24.

²⁵ See Exhibit 6 hereto, Data Request CalAdvocates-TB-2020-03.

²⁶ Ex. 7, Declaration of Stephen Castello, ¶ 8.

²⁷ See Exhibits 8 and 9, the ALJ Orders granting those Motions to Compel

²⁸ See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

²⁹ See Exhibit 11 SoCalGas Motion to Stay, p. 2.

motion was summarily denied before Cal Advocates could serve a response. As the Administrative Law Judge's April 6, 2020 Order (ALJ Order) stated:

SoCalGas' Emergency Motion for a Protective Order Staying all Pending and Future Data Requests from California Public Office of Advocates is asking the Commission to act contrary to California law both in substance and form. No further consideration of SoCalGas' motion is warranted.³⁰

That same ALJ Order "ask[ed] the parties to work together to find a schedule that is mutually agreeable and accommodates the additional demands resulting from the COVID-19 shelter-in-place directive."³¹

B. Events Following Denial Of SoCalGas' Frivolous Motion To Stay All Investigation Discovery Until The End Of The Stay-At-Home Orders

Since denial of SoCalGas' Motion to Stay, and consistent with the ALJ's request to "work together" to determine a mutually agreeable discovery schedule, Cal Advocates has participated in at least seven meet and confers to address its outstanding discovery requests. Notwithstanding these efforts, Cal Advocates still does not have complete responses to *any* of its outstanding data requests.

Faced with SoCalGas' continuing intransigence to discovery, and recognizing that a forensic audit of SoCalGas' accounts would be the most direct way for Cal Advocates to understand the breadth of SoCalGas' apparent misuse of ratepayer funds, on May 1, 2020, Cal Advocates issued a data request to SoCalGas seeking access to all of its accounts and records in order to undertake such an audit.³² Further, given SoCalGas' history of intransigence and Cal Advocates' limited window to use existing accounting staff to begin the audit,³³ Cal Advocates requested and obtained a subpoena from the

³⁰ See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

³¹ See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

³² SoCalGas' May 15, 2020 response to that data request is available in the SoCalGas Motion to Quash, Declaration of Elliott Henry, Attachment B.

³³ Cal Advocates had access to a retired annuitant that was available to immediately assist with the audit, but his time was limited. This internal time limitation was one of the many reasons Cal

Commission’s Executive Director requiring SoCalGas to provide the requested access within three business days.³⁴ That subpoena was electronically served on SoCalGas on May 5, 2020.

SoCalGas did not timely move to quash the subpoena, never asked Cal Advocates for an extension to quash the subpoena, and never suggested that it was reserving its rights to do so in the future. Instead, SoCalGas repeatedly stated, both in writing and on the numerous conference calls intended to establish a “mutually agreeable” schedule for production of discovery,³⁵ that it was “taking its obligations under the subpoena extremely seriously.”³⁶

After service of the subpoena, SoCalGas and Cal Advocates participated in four conference calls related to: (1) the details of SoCalGas providing access under the subpoena; and (2) identifying dates SoCalGas would provide responses to data requests issued in December, February, and March. During those calls, SoCalGas confirmed that all SoCalGas accounting staff were working from home and had remote access to the utility’s accounts and records through its SAP system.³⁷ SoCalGas also confirmed that it had previously made full remote access available to an auditor.³⁸ Thus, by the time of the last conference call on May 18, 2020, it was clear that SoCalGas could provide nearly immediate remote access to Cal Advocates’ auditors, but that it would continue to withhold remote access from Cal Advocates based on its meritless First Amendment

Advocates sought a subpoena to reinforce its companion data request issued May 1.

³⁴ The subpoena served May 5, 2020, is provided in the SoCalGas Motion to Quash, Declaration of Elliott S. Henry, Attachment A.

³⁵ See Exhibit 10, April 6, 2020 ALJ Order denying SoCalGas’ Motion for Emergency Stay.

³⁶ See e.g. SoCalGas Motion to Quash, p. 2; and Exhibit 12, May 18, 2020 Letter from J. Wilson to T.Bone.

³⁷ Exhibit 7, Declaration of Stephen Castello, ¶¶ 9-10.

³⁸ Exhibit 7, Declaration of Stephen Castello, ¶ 10.

claims, and concerns regarding the disclosure of attorney/client communications or attorney work product.³⁹

At no time did SoCalGas suggest on any of those calls that it sought an extension from Cal Advocates of its right to quash the subpoena, which clearly would not have been granted.⁴⁰ And contrary to the repeated claims in the Motion to Quash,⁴¹ while Cal Advocates readily conceded that it should not and would not seek to review attorney-client or attorney work product information, at no time did Cal Advocates concede that such information would actually be available in SoCalGas' accounts and books, or that it could only review SoCalGas' accounts and books once such material was "walled off."⁴²

During the last call on these matters, on Monday, May 18, 2020, SoCalGas requested that Cal Advocates give it an extension to comply with the subpoena until May 29, 2020, so that it could implement a form of "custom" computer program to wall off its law firm invoices and information it asserts is "protected" by the First Amendment. Cal Advocates did not refuse to provide the extension; rather, it replied that such an extension would need to be considered by its management.⁴³ Cal Advocates observed, among other things, that had its auditors appeared at SoCalGas' offices to review its accounts and records, SoCalGas would have been obligated under the law to provide the auditors immediate on-site access to all of these materials.⁴⁴

Cal Advocates was hesitant to accept any "wall" for access to accounts associated with vendors and consultants that SoCalGas claimed were "protected" by the First Amendment because, among other things, such a wall would prevent Cal Advocates from determining for itself whether these accounts anticipate ratepayer or shareholder funding

³⁹ Exhibit 7, Declaration of Stephen Castello, ¶ 11.

⁴⁰ Exhibit 7, Declaration of Stephen Castello, ¶ 12.

⁴¹ See, e.g. SoCalGas Motion to Quash, pp. 3, 5 & 15.

⁴² Exhibit 7, Declaration of Stephen Castello, ¶ 13.

⁴³ Exhibit 7, Declaration of Stephen Castello, ¶ 14.

⁴⁴ Exhibit 7, Declaration of Stephen Castello, ¶ 15.

of those activities. Indeed, as SoCalGas clearly understood, those are precisely the types of accounts, among others, that Cal Advocates intends to audit.⁴⁵

SoCalGas filed the instant motion the next day, May 19, 2020, before its proposal for “walls” could even be submitted to Cal Advocates management, with no notice to Cal Advocates other than the same notice received by the Commission.

C. SoCalGas’ Claims That Its Delays Are Related To COVID-19 Constraints Must Be Carefully Scrutinized

Significantly, contrary to SoCalGas suggestions that its compounded discovery delays are due to COVID-19 challenges, this is simply not the case. SoCalGas is intentionally flouting this Commission’s prior discovery orders, while casting Cal Advocates as the bad actor committing “invasive” “assaults” on its First Amendment Rights.⁴⁶

Cal Advocates served almost all of the outstanding discovery requests from which SoCalGas continues to withhold responses in December and February, well before the various stay-at-home orders were issued. In addition, during a March 19, 2020 meet and confer, SoCalGas committed to provide information it claimed it already had, but still has not produced.⁴⁷ Instead, of providing this or any other information, SoCalGas filed its

⁴⁵ Exhibit 7, Declaration of Stephen Castello, ¶ 17.

⁴⁶ For example, see its use of the following terms to describe Cal Advocates’ work in its Motion to Supplement: “Cal Advocates’ latest incursion into SoCalGas’s First Amendment rights” at p. 3; “emboldened Cal Advocates” at p. 4, “increasingly invasive efforts by Cal Advocates to pry into SoCalGas’s protected materials” and “emboldened” at p. 5; “ongoing assault” on p. 6.

⁴⁷ See SoCalGas Motion to Stay, Declaration No. 2, Exhibit C, March 24, 2020 email from Ms. Bone to Mr. Tran:

“There is a significant amount of work that SoCalGas employees can perform remotely in response to Cal Advocate’s investigation – and such work should not be unduly burdensome. For example, Ms. Lee has stated that she has a list she could send us of which confidential designations could be lifted. Indeed, she obtained a one week extension for the meet and confer on this issue based on her prior representations that she would be consulting with her clients to identify those portions of the documents which would not require the confidential designations. At this point, review of those documents, lifting the confidential designations, and identifying the legal basis for any remaining confidential designations, can be easily performed remotely, and only requires the review of a

Motion to Stay on March 25, 2020, claiming that it had insufficient resources to answer questions posed by Cal Advocates.

The denial of that Motion to Stay has not improved matters. As described above, heeding the ALJ's instructions to "work together," the Cal Advocates has participated in at least seven conference calls with SoCalGas, which initially represented its desire to "reset" the relationship.⁴⁸ In retrospect, it is evident that SoCalGas made a number of misrepresentations to the Cal Advocates during those calls in an effort to continue to delay its discovery responses, and to prepare the instant motions to further grant itself *more time* to stall the Cal Advocates' investigation of its use of ratepayer monies to fund its anti-decarbonization campaigns.⁴⁹

For example, on the last call on May 18, 2020, when directly asked whether SoCalGas was "slow rolling" responses to the Cal Advocates' outstanding requests, SoCalGas representatives assured Cal Advocates that SoCalGas *was not* slow rolling its responses.⁵⁰ Rather, SoCalGas explained that it was working hard to respond to the data requests and that many things that seemed simple were much more time consuming and were absorbing staff's time.⁵¹ SoCalGas also represented that it was prioritizing compliance with the subpoena so that it was unable to provide other information at the same time, such as the removal of unsupported confidentiality designations that the Cal Advocates had requested more than two months ago, on March 10, 2020.^{52, 53}

single attorney. Similarly, the majority of the questions in data request CalAdvocates-TB-SCG-2020-02 ask SoCalGas to explain how certain procedures work internally, or to provide documents, such as its GO77 filings. This type of information should be readily available and easily obtained through remote communications."

⁴⁸ Exhibit 7, Declaration of Stephen Castello, ¶ 22.

⁴⁹ Exhibit 7, Declaration of Stephen Castello, ¶ 21.

⁵⁰ Exhibit 7, Declaration of Stephen Castello, ¶ 23.

⁵¹ Exhibit 7, Declaration of Stephen Castello, ¶ 23.

⁵² Exhibit 7, Declaration of Stephen Castello, ¶ 23.

⁵³ Exhibit 13 – CalAdvocates-SoCalGas March 10-20, 2020 Emails re: Removal of Unwarranted

The length and breadth of the motions filed in the days immediately following this conference call unequivocally demonstrate that many of the SoCalGas representations made on Monday, May 18, 2020, were false statements intended to mislead Commission staff into providing additional, unnecessary extensions.⁵⁴ Specifically, motions of the type it filed the next day – with multiple declarations – are not prepared overnight. They require many days and many levels of review and coordination. Thus, at the same time that SoCalGas was assuring Cal Advocates that it was working hard to provide responses to the outstanding data requests and subpoena, and seeking extensions to provide outstanding materials, SoCalGas knew that it had instead been delaying discovery to prepare a lengthy Motion to Quash the subpoena and Motion to Supplement its appeal, as well as numerous declarations in support of both motions.

Cal Advocates will not belabor these and other misrepresentations that it is now evident SoCalGas made during the extensive conference calls held between April 16, 2020 and May 18, 2020. Instead, it reserves its rights to submit a motion for sanctions.

III. DISCUSSION

A. SoCalGas’ Motion To Quash Should Be Rejected As Untimely and Invalid

1. SoCalGas Waived Its Rights To File A Motion To Quash

On May 5, 2020, the Commission issued a valid subpoena to SoCalGas to provide “access to all databases associated in any manner with the company’s accounting systems” no later than May 8, 2020. As described in the “Background” section above, Cal Advocates and SoCalGas had four conference calls after issuance

Confidentiality Designations.

⁵⁴ See the Commission’s Rules of Practice and Procedure, Rule 1.1, Ethics, which provides:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

of the subpoena to discuss how access would be provided, and SoCalGas represented on nearly every one of those calls that it was “taking its obligations under the subpoena extremely seriously.”⁵⁵

Relying on these SoCalGas representations, and consistent with the ALJ’s request that the parties “work together,”⁵⁶ Cal Advocates granted SoCalGas several extensions to the May 8, 2020 due date. None of those extensions were for SoCalGas to move to quash at some later date, and SoCalGas never suggested that they were. SoCalGas now moves – 14 days after issuance of the subpoena, and 11 days after its compliance was due – to quash the subpoena. The Commission has stated that motions to quash “must be filed at the earliest opportunity.”⁵⁷ To the extent that SoCalGas proposes that the Commission rely upon the California Code of Civil Procedure (CCP) “as instructive authority,”⁵⁸ the Motion to Quash must be rejected. Section 1987.1 of that code requires that such a motion must be “reasonably made.” A motion to quash made *well after* the date that compliance was due is clearly not “reasonably made.” As described in Section III.D below, in retrospect – and based on the timing and breadth of the motions filed – it is now clear that SoCalGas never had any intention of complying with the subpoena, and instead sat on its rights to delay compliance for as long as possible. Through these delays, SoCalGas has, once again, granted itself a reprieve from discovery in this investigation.⁵⁹

⁵⁵ See, e.g. SoCalGas Motion to Quash, p. 2 and Exhibit 12, May 18, 2020 Ltr from J.Wilson to T.Bone.

⁵⁶ See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas’ Motion for Emergency Stay.

⁵⁷ See, e.g., 60 CPUC 2d 326, *mimeo* at 7, Decision (D.) 95-06-021 (June 8, 1995) and 61 CPUC 2d 515, *mimeo* at 3-4, D.95-09-076 (September 7, 1995).

⁵⁸ SoCalGas Motion to Quash, p. 13.

⁵⁹ SoCalGas filed a frivolous Motion to Stay all discovery due to the COVID-19 situation. That Motion was denied. See Exhibit 10, ALJ April 6, 2020 Order denying SoCalGas’ Motion for Emergency Stay.

2. SoCalGas' Email Arguments Do Not Change The Fact That It Waived Its Rights To Move To Quash

On May 20, 2020, SoCalGas offered three additional reasons why its Motion to Quash is not untimely in an email to Administrative Law Judge (ALJ) DeAngelis. None have any merit.

(a) Meet and Confer Discussions Do Not Toll The Obligation To Timely File A Motion to Quash

SoCalGas first claimed that its Motion to Quash is timely because SoCalGas “raised the issues” in both a meet and confer discussion before “the initial deadline for the subpoena” and in objections to the companion data request that preceded the subpoena.⁶⁰ Vague claims of having “raised the issues” aside, what SoCalGas does not say in either its Motion to Quash, its Motion to Supplement,⁶¹ or in the multiple declarations and exhibits attached to those Motions, is that it never asked for an extension of time to file its motion to quash or suggested to Cal Advocates that it would file a motion to quash if an extension wasn’t granted. Instead, as SoCalGas acknowledges, discussions between the parties focused on SoCalGas’ “working as quickly as practicable to grant Cal Advocates access promptly.”⁶² SoCalGas also fails to acknowledge in any of its motions or declarations filed last week that:

- (1) The parties were engaged in multiple meet and confers because ALJ DeAngelis asked the parties to “work together” on a discovery production schedule after SoCalGas lost its Motion to Stay all Cal

⁶⁰ See SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

⁶¹ SoCalGas served a Motion to Supplement on May 20, 2020, and a substitute for that motion on May 22, 2020. That Motion to Supplement 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).”

⁶² See SoCalGas Motion to Supplement, p. 2.

Advocates' investigation discovery until the end of the COVID-19 shelter in place directives;⁶³

- (2) At the same time that SoCalGas was seeking discovery extensions from Cal Advocates, it was preparing both its 27 page Motion to Quash, and 20 page Motion to Supplement, both with multiple declarations;
- (3) SoCalGas filed its Motion to Quash the day after it requested the extension that the Public Advocates Office staff agreed to take to its management; and
- (4) Cal Advocates only sought the subpoena after SoCalGas lodged numerous objections to various data requests, repeatedly lost subsequent motions to compel filed by Cal Advocates, and then continued to make the same type of objections to the same type of data requests.⁶⁴

Under these circumstances, SoCalGas' argument that objections raised in the meet and confers somehow toll the time allowed for it to file a motion to quash is nothing short of preposterous. Indeed, taken to its logical conclusion, SoCalGas' argument would allow a utility to refuse to comply with a subpoena through an objection, leaving Commission staff no recourse other than to file a motion to compel, or to seek another subpoena that the utility could again ignore after objections. Current requirements rightly put pressure on the parties to perform or seek relief, and endorsing the approach SoCalGas argues for would only encourage the type of frivolous objections, stalling, and bad faith negotiations experienced here.

(b) SoCalGas Bears The Burden Of Showing That Its Motion To Quash Complies With Applicable Rules

SoCalGas also argued in its email to ALJ DeAngelis that "Cal Advocates cites no authority to support its contention that where compliance with a subpoena is extended all potential objections are implicitly waived."⁶⁵ This SoCalGas argument wrongly attempts to shift its burden as the moving party to show that its Motion to Quash complies with the applicable rules to the Commission. SoCalGas misstates the issue. Cal Advocates does

⁶³ See Exhibit 10, ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

⁶⁴ See discussion in Sections II.B & C and III.C.3.

⁶⁵ SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

not contend that “where compliance with a subpoena is extended all potential objections are implicitly waived.” What Public Advocates Office contends is that neither SoCalGas’ boilerplate objections nor its discussions about “working as quickly as practicable to grant Cal Advocates access promptly” toll or extend the deadline for filing a motion to quash. Indeed, as explained above, the Commission has stated that motions to quash “must be filed at the earliest opportunity”⁶⁶ and that a motion to quash made *well after* the date that compliance was due is clearly not “reasonably made” as required by CCP § 1987.1. The burden is on SoCalGas, the moving party, to identify the authority for its claims that the deadline for filing a motion to quash is extended by objections and production discussion.

(c) SoCalGas Was On Notice That Motions To Quash Must Be Timely Filed

Finally, SoCalGas argued in its email to ALJ DeAngelis that Cal Advocates “never stated that SoCalGas had to waive its right to quash in exchange for additional time to comply.”⁶⁷ In addition to wrongly assuming that Cal Advocates was somehow obliged to advise SoCalGas on the law and its obligations, and ignoring the fact that SoCalGas was the party requesting the extension, the fact is that SoCalGas was on notice that it could not wait to file a motion to quash a Commission subpoena until the day of performance, or thereafter.

Just a few months ago, counsel for the Commission’s Safety and Enforcement Division (SED) informed SoCalGas that, regardless of its objections and meet and confers, it needed to either perform under a subpoena that had been validly issued by the Commission’s Executive Director, or file a motion to quash by the stated deadline for performance.⁶⁸ SED and Cal Advocates are bound by the same Commission rules in this

⁶⁶ See, e.g., 60 CPUC 2d 326, *mimeo* at 7, Decision (D.) 95-06-021 (June 8, 1995) and 61 CPUC 2d 515, *mimeo* at 3-4, D.95-09-076 (September 7, 1995).

⁶⁷ SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

⁶⁸ See I.19-06-016, “Safety and Enforcement Division’s Response to Southern California Gas Company’s Motion for Order to Quash the Subpoena of the Safety and Enforcement Division,”

regard. So, while Cal Advocates did not tell SoCalGas that regardless of its objections and meet and confers, it needed to either perform or file a timely motion to quash by the stated deadline for performance, SoCalGas knew or should have known of this requirement. Cal Advocates cannot be expected to advise SoCalGas on litigation strategy.

As explained above and in Cal Advocates' email response to the Motion to Quash, a Commission determination that SoCalGas' Motion to Quash was untimely is appropriate and will defeat SoCalGas' efforts to resurrect any claims that the subpoena was improper.⁶⁹

B. Nothing Allows SoCalGas To Unilaterally “Exclude” Portions Of Its Accounts And Records From The Commission Or Its Staff; Concluding Otherwise Would Undermine The Commission’s Authority

SoCalGas seeks to “wall off” two types of information from Cal Advocates review: (1) what SoCalGas describes as “information and documents for SoCalGas’s 100% shareholder-funded activities that are protected under the First Amendment, such as those related to its advocacy for natural gas, renewable natural gas, and green gas as a part of the solution to achieving the State’s decarbonization goals,”⁷⁰ and (2) law firm invoices and other information in its accounts and records that *might* include privileged attorney/client communications or attorney work product.⁷¹

SoCalGas proposes to establish a “custom software solution” to prevent Cal Advocates from accessing this information that it has unilaterally determined should not

Nov. 19, 2019; and “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,” February 21, 2020, pp 1-2.

⁶⁹ Cal Advocates does not intend to suggest that SoCalGas should be barred from seeking notice of the fact that the subpoena was issued.

⁷⁰ SoCalGas Motion to Quash, pp. 3-4.

⁷¹ SoCalGas Motion to Quash, p.3.

be made available to Cal Advocates. There are multiple reasons why this proposal must be rejected.

As described above, the law provides the Commission and its staff with broad authority to review regulated utilities' accounts and records, including those of their unregulated subsidiaries and affiliates.⁷² Thus, contrary to SoCalGas' claims that "100% shareholder-funded activities" are somehow protected from disclosure to its regulator, the law does not make such distinctions. Rather, it expressly gives the Commission and its staff authority to review *all* aspects of a utility's business, regulated or unregulated, and ratepayer or shareholder funded.⁷³ Further, there is nothing in those laws that allow a utility to unilaterally exclude portions of its accounts and records from Commission or staff review. Instead, the law provides meaningful protections against unauthorized disclosure of a utility's confidential information.⁷⁴

Also problematic is that notwithstanding a 26 page motion and 3 declarations including over 100 pages of attachments, SoCalGas has failed to identify with specificity any of the materials it seeks to "wall off" from Cal Advocates review. Instead, as discussed more fully below, SoCalGas provides the Commission with vague speculation about information that only it possesses. For example, SoCalGas does not identify a single instance of an attorney/client communication or attorney work product in its SAP system and it does not identify a single account where the costs for "100% shareholder-funded" activities are booked. Instead, the Motion to Quash merely refers to the *possibility of* attorney/client communications, attorney work product, and only generally describes the materials it claims are protected by the First Amendment. Thus, SoCalGas proposes to exercise its own discretion to determine which materials fall into these

⁷² See, e.g., PU Code §§ 311, 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771.

⁷³ See, e.g., PU Code § 314.

⁷⁴ See, e.g. PU Code § 583. It is important to note that the Motion to Quash does not suggest that the Commission has improperly released any of the information that it is withholding, and SoCalGas has evidently been willing to provide the information to other parts of the Commission. Instead, SoCalGas specifically objects to providing the information to Cal Advocates.

general categories. Such a proposal would be unacceptable for any utility, but is especially problematic given the current history of SoCalGas discovery abuses and other sharp practices it has deployed in multiple forums, as described in Section III.C below.

1. It Is Not Evident That Any Of SoCalGas’ Accounts Or Records Contain Attorney/Client Communications Or Attorney Work Product And Those Privileges Are Not Absolute

SoCalGas urges that “[t]he Subpoena should be quashed to the extent that it encompasses [] clearly privileged information.”⁷⁵ However, SoCalGas does not assert that attorney/client communications or attorney work product is actually contained in the materials SoCalGas seeks to “wall off” from Cal Advocates review. For example, while the Motion to Quash asserts that SoCalGas’ law firm invoices “contain, among other things, detailed descriptions of legal work performed for SoCalGas”⁷⁶ it does not assert that these materials are *actually* attorney/client communications or attorney work product. The declaration cited as support for this claim only explains that an invoice “*may include* the vendor’s description of the services provided and other narrative information about the work they performed for SoCalGas.”⁷⁷ Similarly, that declaration explains that the “‘Line Item Text’ field” allows for “narrative descriptions” to be entered and “*may contain* information reflecting the name of the vendor as well as descriptive information about the nature of its relationship with SoCalGas or the services it provides.”⁷⁸

Not every communication between an attorney and a client is a privileged communication. Rather, an attorney/client communication is generally understood to be a communication between an attorney and a client *relating to the purpose of giving or*

⁷⁵ SoCalGas Motion to Quash at 15.

⁷⁶ SoCalGas Motion to Quash at 14.

⁷⁷ SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 6 (emphasis added).

⁷⁸ SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 7 (emphasis added).

*obtaining legal advice.*⁷⁹ Information in a law firm invoice regarding a law firm's name, its relationship to SoCalGas, how much it is paid, and a *general* description of the services it provided (which should not include advice or strategy) is unlikely to be privileged information.⁸⁰

The definition of attorney work product is similarly limited. As a general rule, it applies primarily to materials prepared in the course of legal representation, especially in preparation for litigation.⁸¹ And even that rule is limited. For example, under Rule 26(b)(3) of the Federal Rules of Civil Procedure, an adverse party may discover or compel disclosure of work product upon a showing of "substantial need" and "undue hardship." And the U.S. Supreme Court has clarified that while it is presumed that an adverse party may not have access to materials prepared by a party's lawyers in anticipation of litigation, this presumption may be overcome when a party has relevant and non-privileged facts which would be essential to the preparation of the adverse party's case.⁸²

Further, in the unlikely event SoCalGas could demonstrate that its accounts and records actually contain something that might qualify under the law as an attorney-client communication or attorney work product, there is the possibility that any privilege has been waived through disclosure to third parties. Indeed, SoCalGas' so-called "association" with contractors, including Marathon Communications (Marathon) and

⁷⁹ For a related but more expansive definition see 8 John Henry Wigmore, *Evidence In Trials At Common Law* § 2292, at 554 (McNaughton 1961 & Supp. 1991).

⁸⁰ See, e.g., *USA v. Keystone Sanitation Co.*, 885 F. Supp. 672 ("there is general agreement that attorney billing statements and time records are protected by the attorney-client privilege *only* to the extent that they reveal litigation strategy and/or the nature of services performed. See, e.g., *Gonzalez Crespo v. The Wella Corp.*, 774 F. Supp. 688, 690 (D.P.R. 1991); *Colonial Gas Co. v. Aetna Cas. & Sur. Co.*, 144 F.R.D. 600, 607 (D. Mass. 1992); *Real v. Continental Group, Inc.*, 116 F.R.D. 211, 213-14 (N.D. Cal. 1986).").

⁸¹ For more information about the attorney work product doctrine see, e.g., Florida State University Law Review, Volume 31, Issue 1, Article 3 (2003) pp. 67-100, "Pulling Skeletons from the Closet: A Look into the Work-Product Doctrine as Applied to Expert Witnesses," by Charles W. Ehrhardt and Matthew D. Schultz.

⁸² *Hickman v. Taylor*, 329 U.S. 495 (1947).

Imprenta Communications Group (Imprenta), may well have waived any pre-existing privilege claims through sharing of information.⁸³ If an attorney/client communication from a law firm was shared with employees at either of these companies, the privilege would be waived. In addition, SoCalGas has admitted that it permitted a contractor full “external access” to its SAP systems,⁸⁴ so that contractor was able to review the SoCalGas law firm invoices, thereby potentially waiving any privilege.

In sum, given the Commission’s clear regulatory authority to audit a regulated utilities’ accounts and records, the absence of any proof that privileged information actually exists in its accounts and records, the fact that the privileges are not absolute under the law, and SoCalGas’ history of improper privilege and confidentiality claims, as discussed in Sections II.B and C above and III.C.1 below, approving SoCalGas’ proposal to implement a “custom software solution” that prevents access to the accounts and books of its choosing is improper. In addition, approving SoCalGas’ “solution” will undermine the Commission’s authority, and waste further Commission resources because SoCalGas’ implementation of this “solution” will likely be overbroad and provide further opportunities to stall discovery. Among other things, SoCalGas’ “solution” would require it to provide a privilege log, and SoCalGas would take months to review and prepare such a log as it has done since before the COVID-19 situation. Then, given SoCalGas’ history of unwarranted privilege claims, the Commission will necessarily be required to perform an *en camera* review of the materials designated as privileged to confirm the validity of SoCalGas’ claims. SoCalGas’ unsupported claims of privilege do not merit such attention, and therefore its proposal to wall off its law firm invoices from Cal Advocates should be rejected.

⁸³ While SoCalGas has routinely marked the names of these two companies as “confidential,” as explained in III.B.2 below, SoCalGas’ association with these companies has been publicly known about since at least May 16, 2019 as a result of a Sierra Club Motion to Deny Party Status in R.10-01-001.

⁸⁴ SoCalGas Motion to Quash, Declaration of Elliott Henry, ¶ 11.

2. SoCalGas’ First Amendment Claims Have No Merit So That A “Custom Software Solution” To Prevent Review Of Its Vendor And Consultant Contracts Is Unnecessary

In parallel with the instant Motion to Quash, SoCalGas also served a Motion to Supplement its December 2, 2019, Motion for Reconsideration to the Commission of the November 1, 2019 ALJ Order denying its First Amendment claims.⁸⁵ Through this Motion to Supplement, SoCalGas now seeks to supplement its fatally flawed Motion for Reconsideration on claims that “the issues present[ed] in the accounting database dispute mirror the issues already before the Commission.”⁸⁶ The issues before the Commission have not changed; they relate to SoCalGas’ use of ratepayer money for its anti-decarbonization campaigns. The subpoena’s focus on accounting will inform this inquiry, providing insight into how or even whether SoCalGas is properly tracking these costs for both ratepayer recovery and lobbying disclosure purposes.

While SoCalGas has endeavored to make this inquiry a First Amendment freedom of association issue to avoid scrutiny on these issues, it has failed to do so. Nothing that SoCalGas proposes to add to its pending Motion for Reconsideration raises new First Amendment concerns or will change the fact that SoCalGas’ First Amendment claims have no merit. However, given SoCalGas’ resurrection of these issues in the instant Motion to Quash, and notwithstanding Cal Advocates’ December 17, 2019 response setting forth the deficiencies in SoCalGas’ original Motion for Reconsideration, it will reiterate and elaborate on some of the key positions requiring rejection of SoCalGas’ claims.

As an initial matter, SoCalGas has failed to make the requisite *prima facie* showing required to claim First Amendment protection. As SoCalGas acknowledges, *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160, and other cases it relies on, require the entity claiming the First Amendment privilege to “demonstrate that

⁸⁵ See footnote 61 above.

⁸⁶ Motion to Supplement, p. 14.

enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.”⁸⁷ SoCalGas fails to make this showing, as described in more detail below. However, even if SoCalGas had been able to make the requisite prima facie showing of an intrusion into its First Amendment rights of association – which it has not done – the U.S. Supreme Court has found that the right to association is not absolute, and that compelling governmental interests, such as the need for substantial government regulation of the election process, take precedence over the burden they impose on the freedom to associate.⁸⁸ The Cal Advocates’ legislative mandate, its mission statement, and facts of record establish the Cal Advocates’ has a compelling interest in the purported intrusion.

(a) SoCalGas Fails To Make The *Prima Facie* Showing Required To Claim First Amendment Protection

SoCalGas asserts that it has made a *prima facie* showing on claims that the materials Cal Advocates’ seeks relate to 100% shareholder-funded activity that is constitutionally protected. While often and vociferously stated, the issue SoCalGas presents is not the subject of this dispute.

The record of the dispute makes two things abundantly clear. First, Cal Advocates is focused on “following the money” by asking how much has SoCalGas spent on its anti-decarbonization campaigns, where the money has been booked, and how Cal Advocates can be sure that the activities are 100% shareholder-funded, as SoCalGas has claimed. However, Cal Advocates has not received even remotely complete information to any of these questions. Rather, contrary to SoCalGas’ frequent claims that the accounts at issue are 100% shareholder funded, the investigation discovery thus far suggests there is no evidence for this claim. Though such accounts are needed for tracking purposes – there is, unfortunately for ratepayers, no evidence that SoCalGas

⁸⁷ SoCalGas Motion for Reconsideration, December 2, 2019, p. 11.

⁸⁸ See, e.g., *Buckley v. Valeo*, 424 U.S. 1 (1976).

routinely creates accounts for “100% shareholder-funded activities.”⁸⁹ This explains why SoCalGas has not provided a list of its 100% shareholder funded accounts, even though it has been asked to do so on many occasions, and as recently as May 8, 2020.⁹⁰ Instead, while SoCalGas attorneys stress that these are 100% shareholder funded accounts, the evidence Cal Advocates has obtained shows that the known costs associated with some of SoCalGas’ anti-decarbonization activities were originally recorded to a traditionally ratepayer-funded account and as a result of Cal Advocates inquiries, subsequently moved to a new “shareholder-funded” account on September 21, 2019.⁹¹

SoCalGas also fails to make its *prima facie* showing because SoCalGas is not claiming that the Cal Advocates’ discovery infringes on its right to associate with people, such as members of organizations that share its views. Instead, as the declarations in its Motion for Reconsideration demonstrate,⁹² SoCalGas claims a First Amendment right to protect its ability to “associate” with paid lobbyists, and other consultants and vendors in order to develop a grass roots campaign that will communicate SoCalGas’ message to legislators and the public. SoCalGas thus turns the law on its head in an effort to keep secret the full extent of the money it is spending on hired lobbyists and communications companies. However, SoCalGas has failed to provide any legal support for its position that spending money for “hired guns” to do its bidding is the type of “association”

⁸⁹ SoCalGas Motion to Quash, p. 3.

⁹⁰ Exhibit 14 - T.Bone-E.Henry 5-8-20 EMail re Accounts to Access.

⁹¹ Exhibit 15 - R.13-11-005 -Data Response CalAdvocates-SK-SCG-2020-01 Q4:

Balanced Energy internal order (IO) 300796601 was created in March 2019 for tracking all costs associated with Balanced Energy activities and the intent was to make it a shareholder funded IO. However, an incorrect settlement rule was set up for this IO to FERC 920.0 A&G Salaries, consequently, the costs initially settled to the incorrect FERC account. On September 21, 2019, the SoCalGas Accounting Controller and Accounting Director met with the Strategy, Engagement & Chief Environmental Officer, and confirmed that the Balanced Energy activities should be classified as FERC 426.4 - Expenditures-Civic & Related Activities/Lobbying Costs.

⁹² Cal Advocates never received the confidential versions of the Motion for Reconsideration, but the fact that the declarations are made by vendors to SoCalGas is evident even in the redacted versions.

protected by the First Amendment. Indeed, its own Motion for Reconsideration reiterates that the right to associate, and the harms that must be demonstrate relate to “members” of “associations,” not hired contractors.²³

**(b) The Information SoCalGas Seeks To Hide Is
Similar To The Lobbying And Election Activities
That Are Required To Be Publicly Reported**

As explained above, SoCalGas’ attempts to characterize its funding of lobbyists and consultants hired to develop and convey its anti-decarbonization activities as “associations” protected by the First Amendment. However, these “associations” appear to be more akin to the lobbying and election activities that the Supreme Court has recognized require regulation, and that local, state, and federal election laws require to be tracked and publicly reported. Specifically, SoCalGas explains that it “engages and contracts with consultants, partners, and vendors to, among other things, formulate strategies for effective lobbying, communications and messaging.”²⁴ Indeed, every one of the consultants referred to in SoCalGas’ declarations is a hired consultant. Those consultants are not claiming a right to free speech and association with others who share their views. Rather, they are seeking to protect their business interests by maintaining a cloak of confidentiality over their work for SoCalGas. Their claims of a “chilling effect” are not First Amendment claims; they are concerned their employment opportunities will be “chilled” if their work in support of SoCalGas’ anti-decarbonization message is made public.²⁵

There is also a significant question regarding whether SoCalGas and its consultants have been complying with their lobbying reporting obligations, among others. Consider, for example, California’s Political Reform Act (Act), which applies to lobbying

²³ SoCalGas Motion for Reconsideration, December 2, 2019, p. 11, citing *Perry v. Schwarzenegger*.

²⁴ SoCalGas Motion to Quash, Declaration of Andy Carrasco, ¶ 5 (emphasis added).

²⁵ SoCalGas Motion to Quash, Declaration of Andy Carrasco, ¶ 8.

at the state level, including both the legislature and state agencies like the Commission.⁹⁶ All lobbying information reported under that Act is publicly available on the Secretary of State’s website at <http://cal-access.sos.ca.gov/Lobbying/>. That website succinctly reflects that the purpose of the Act is to require “disclosure of the role of money in California politics.” This includes the disclosure of contributions and expenditures in connection with campaigns supporting or opposing state and local candidates and ballot measures as well as the disclosure of expenditures made in connection with lobbying the State Legislature and attempting to influence administrative decisions of state government, such as the Commission.⁹⁷

Mandated public reporting by both lobbyists and their employers under the Act includes disclosure of lobbyist names, pictures, contact information, and how much they were paid.⁹⁸ The Act also requires reporting from lobbying “coalitions” and the reporting of “grass-roots” lobbying. For example, the Fair Political Practices Commission, which is responsible for enforcing the Act, specifically advises in its lobbying disclosure manual that reporting is required for “grass- roots” lobbying, such as soliciting others to urge this Commission to act in a certain way.⁹⁹

The City of Los Angeles and other jurisdictions have similar, if less comprehensive, requirements. And while these laws may not explicitly require disclosure regarding the consultants SoCalGas has hired to support its anti-decarbonization efforts, absent any clear law on this issue, there no reason to conclude that SoCalGas’ association with such paid consultants is protected as free speech by the First Amendment.

⁹⁶ California Government (Gov’t) Code §§ 81000 – 91014.

⁹⁷ See the Secretary of State’s website at <https://www.sos.ca.gov/campaign-lobbying/> (emphasis added)

⁹⁸ Gov’t Code §§ 86100-86118.

⁹⁹ See the November 2019 Lobbying Disclosure Information Manual, Chapter 5.22, California Fair Political Practices Commission, available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Lobbying/Lobbyist-Manual-Folder/Lobbying%20Manual.pdf>

Finally, as explained in Cal Advocates’ December 17, 2019, response to SoCalGas’ appeal of the November 1, 2019 ALJ Ruling, the Supreme Court has held that the disclosure of names of contributors and recipients of campaign funds is valid because such disclosure makes it easier to detect violations of the Federal Election Campaign Act.¹⁰⁰ Similarly here, the inspection of documents related to SoCalGas’ allegedly shareholder-funded activity enables Commission staff to ensure regulated utilities are not violating various state laws or Commission rules, including the Political Reform Act. It also ensures that the Commission and its staff have the ability to thoroughly inspect a regulated entities’ accounts and records, thus permitting the Commission to fulfill its constitutionally-mandated responsibilities.

(c) Some Of The Information SoCalGas Seeks To Protect From Disclosure Is Already In The Public Domaine

Cal Advocates also notes that much of the “First Amendment” information that SoCalGas seeks to protect is already in the public domain. For example, over a year ago, Sierra Club filed a motion to deny party status to C4BES in Rulemaking 19-01-001.¹⁰¹ That Motion to Deny identified both Marathon Communications and Imprenta Communications Group as working with SoCalGas on the activities SoCalGas claims are protected by the First Amendment.¹⁰² Thus, it is already publicly known that SoCalGas has “associated” with these companies for political purposes related to its anti-decarbonization campaigns. Other information, which does not appear to be in the public domain, has already been produced to Cal Advocates,¹⁰³ and to the extent that it has not

¹⁰⁰ *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

¹⁰¹ That motion is entitled: “Sierra Club’s Motion To Deny Party Status To Californians For Balanced Energy Solutions or, In the Alternative, To Grant Motion to Compel Discovery” (Sierra Club Motion to Deny).

¹⁰² Sierra Club Motion to Deny, May 16, 2019, R. 19-01-001, pp. 4-5.

¹⁰³ Exhibit 7, Declaration of Stephen Castello, ¶ 8.

been produced, it should have been. Consequently, there is no basis to now wall off such information from Cal Advocates' review.

(d) The Commission and Cal Advocates Both Have A Foundational, Statutory, And Compelling Interest In Ensuring That Ratepayer Funds Are Spent Lawfully

The Public Advocates Office is an independent organization within the Commission that advocates on behalf of utility ratepayers. Its statutory mission is to obtain the lowest possible rate for service consistent with reliable and safe service levels. As the only State entity charged with this responsibility, Cal Advocates has a critical role in ensuring that consumers are represented at the Commission on matters that affect how much they must pay for utility services and the quality of those services.

Here, Cal Advocates is investigating SoCalGas' role and funding in lobbying activities, whether such activities are shareholder or ratepayer funded, and the historical financial data regarding whether such activities have been ratepayer funded. The utility's financial records related to such activities are necessary to fully investigate the utility's actions. This type of investigation, to ensure that ratepayers are not harmed, is clearly within the scope of the Cal Advocates' Mission Statement, founding legislation, and Pub. Util. Code § 309.5(e).

Rather than show that there is a firewall between ratepayer and shareholder funded accounts or offer any evidence to show that the accounts actually are 100% shareholder-funded, SoCalGas seeks the cover of the First Amendment right to association and insists that both Cal Advocates and the Commission must 'trust without verifying' that ratepayer funds are not being used improperly. This approach is at odds with SoCalGas documented history of deception in this and other proceedings,¹⁰⁴ and would preclude both Cal Advocates and the Commission from fulfilling their statutory obligations.

¹⁰⁴ See, e.g., Section III.C below.

**(e) The Harm SoCalGas Alleges Is Both Self-Inflicted
And *De Minimis***

The record shows that Cal Advocates has gone to great lengths and tried multiple strategies to obtain information regarding SoCalGas’s use of ratepayer funds to support its anti-decarbonization advocacy. SoCalGas has routinely asserted frivolous objections and provided incomplete answers when Cal Advocates has attempted to obtain proof that the accounts at issue were not ratepayer funded. SoCalGas has objected to the use of its own definition of lobbying; continued to object and not provide full and complete answers even after losing motions to compel answers to this question; and agreed to provide Cal Advocates with the requested information then subsequently refused to do so on more than one occasion. Having failed to perform as promised or as required by less intrusive approaches, SoCalGas cannot now be heard on claims that Cal Advocates failed to consider less intrusive means of obtaining information about SoCalGas use of ratepayer funds other than the forensic accounting Cal Advocates now seeks to undertake.

Moreover, existing law requires both Cal Advocates’ and Commission staff to maintain the confidentiality of any information that SoCalGas properly identifies as confidential. Therefore, any harm to SoCalGas or others will be *de minimis*.¹⁰⁵ SoCalGas fails to acknowledge this protection, let alone provide compelling explanations of how it will be harmed by Cal Advocates Office and the rest of the Commission obtaining confidential information that it must keep confidential.

**3. Granting SoCalGas’ Motion Will Harm The
Commission And The Public Interests It Has A
Constitutional Obligation To Protect**

Given the relevant facts and law, what is evident is that SoCalGas will not suffer “irreparable harm” if its Motion to Quash is rejected or denied. And while SoCalGas

¹⁰⁵ SoCalGas has no “members” as contemplated under the First Amendment right to association, and fails to identify a single shareholder claim of harm.

claims “no harm” will reach Cal Advocates,¹⁰⁶ this is not the case. Neither this Commission nor Cal Advocates has access to the type of resources that are available to SoCalGas. However, both this Commission and Cal Advocates have been required to spend innumerable hours over the past twelve months either drafting, responding to, reviewing, or deciding motions in an attempt to require discovery from SoCalGas that should have been provided without objection many months ago.

The discovery received, while useful in some instances, has often been non-responsive and heavily marked with confidentiality claims that cannot be sustained, requiring more motions and further reviews by Commission staff. As the Los Angeles County Superior Court recognized in the Aliso Canyon proceeding before it: “... [SoCalGas], through their counsel, stonewalled over an extended period of this litigation by misusing claims of privilege to attempt to throw Plaintiffs’ counsel off the track with respect to documents to which they were entitled. As a result, Plaintiffs’ counsel were delayed in obtaining documents at a time when they could have been used in deposing Defendants’ current and former employees.”¹⁰⁷

SoCalGas’ continued flaunting of Commission rules and state laws cannot be sustained without further injury to the Commission, its limited resources, and the ratepayers it serves.

C. SoCalGas’ Record Of Discovery Abuses And Sharp Litigation Practices In Multiple Forums Reveals the Need for Decisive Action By The Commission, Including Sanctions

1. SoCalGas Discovery Abuses In The Los Angeles Superior Court’s Aliso Canyon Case Show That SoCalGas Is Well-Versed In Sharp Litigation Practices And Is More Than Willing To Use Them

A February 20, 2020 Minute Order from a Los Angeles Superior Court Judge in the case *Gandsey v. SoCalGas* (civil litigation related to Aliso Canyon) reveals that

¹⁰⁶ SoCalGas Motion to Quash, p. 15.

¹⁰⁷ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 18.

SoCalGas is well-versed in discovery abuse, and only complies when its attorneys are faced with sanctions. That order, Exhibit 16 hereto, found that “[b]ased on the prior history of this case, [SoCalGas’] initial claims of privilege are unsupported and/or are withdrawn an average of 94 percent of the time.”¹⁰⁸ The Court found that SoCalGas’ “(1) abusive misconduct in discovery; (2) repeated, unmeritorious objections to discovery by assertion of unsubstantiated claims of privilege; (3) repeated failure to provide opposing counsel and the court with legally required information to permit opposing counsel and the court to evaluate Defendants’ claims of privilege; and (4) willful violation of court orders addressing these issues, when taken together, warrant sanctions”¹⁰⁹ The Court observed: “In many ways, what is most upsetting about the litigation tactics of Defendants is that they have only asserted good faith objections when threatened with sanctions or when this court required trial counsel to declare under penalty of perjury that there was a good faith basis for the privilege claims asserted.”¹¹⁰

The Court rejected SoCalGas’ claims that the conduct was unintentional: “The sheer number of privilege assertions that ultimately were unsupported is evidence that [SoCalGas’] conduct is the result of a concerted policy, and not the hapless mistakes of a few document review attorneys.”¹¹¹ The Court awarded monetary sanctions of \$525,610 against SoCalGas and their counsel jointly for these discovery abuses, among other remedies.¹¹²

¹⁰⁸ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, pp. 2-3 (emphasis added).

¹⁰⁹ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 10.

¹¹⁰ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, pp. 12-13 (emphases added).

¹¹¹ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 20.

¹¹² Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 1.

2. Extreme Lobbying Tactics Used To Stall Adoption Of San Luis Obispo’s Energy Code Leads To Mayor’s Request For The Commission To Stop SoCalGas’ Schoolyard Bullying

On May 6, 2020, the Los Angeles Times reported that Eric Hofmann, the Chair of C4BES – the anti-decarbonization organization that the Sierra Club Motion to Deny claims SoCalGas created with assistance from Marathon and Imprenta¹¹³ – threatened officials in the City of San Luis Obispo out of voting on a new energy code limiting the installation of new gas facilities.¹¹⁴ That article is attached as Exhibit 17. It explains that the City Council had previously voted in favor of the code, and that a second vote planned for April 7, 2020, would have finalized adoption of the code. The vote was “scrapped” and had not been rescheduled as of May 6, 2020, due, in part, to Mr. Hofmann’s threats to Michael Codron, the City’s Community Development Director, that if the City Council moved forward with the final vote, Mr. Hofmann would “bus[] in hundreds and hundreds of pissed off people potentially adding to this pandemic.” He assured Mr. Codron that “there will be no social distancing in place.”¹¹⁵ While it remains to be seen whether SoCalGas had a hand in this matter – it appears that the individuals and organizations that SoCalGas has funded and supports are willing to use any tactic necessary to further their anti-decarbonization agenda.

In response to Mr. Hofmann’s threats, CalMatters published a commentary by San Luis Obispo Mayor, Heidi Harmon, attached here as Exhibit 18. Among other things, Mayor Harmon chided the Commission for failing to sanction SoCalGas regarding its association with C4BES; she asserted that the Commission’s failure to act “allowed my

¹¹³ Sierra Club Motion to Deny, pp. 1-7.

¹¹⁴ In addition to being Chair of C4BES, the Los Angeles Times reports that Mr. Hofmann is President of the Utility Workers Union of America, Local 132, representing thousands of SoCalGas employees, and that he is on leave from his job at SoCalGas during his tenure as President of the Union.

¹¹⁵ A screen shot of the full text of the email is available on the article print out, Exhibit 17, p. 7.

city to continue to be bullied.”¹¹⁶ She concluded her commentary by “call[ing] on state leadership to be part of [the] vision for a prosperous California by ensuring that SoCalGas leaves their schoolyard bullying behind and joins us in creating a better world where – in times of crisis – we turn toward each other and not on each other.”¹¹⁷

3. SoCalGas Has Engaged In Discovery Abuse Throughout The Cal Advocates’ Investigation

In its motions and responses to motions, SoCalGas characterizes itself as a hapless victim suffering at the hands of the Cal Advocates unreasonable discovery requests. For Example, SoCalGas’ Motion for Stay served on March 25, 2020 claimed that it has “diligently responded” to each of Cal Advocates’ data requests and has “met and conferred in good faith with Cal Advocates on disputes arising out of those requests.”¹¹⁸ Nothing could be further from the truth. As the litany of sharp practices SoCalGas has recently engaged in demonstrate, it is familiar with those practices and willing to use them.

SoCalGas’ attempts to slow-roll Cal Advocates’ investigation into its apparent misuse of ratepayer monies to fund its anti-decarbonization campaigns has resulted in two Cal Advocates Motions to Compel, both of which were granted, SoCalGas’ frivolous First Amendment appeal which was denied by the ALJ, its equally frivolous Motion to Stay, which was summarily denied before Cal Advocates could file its Response,¹¹⁹ and now its Motion to Quash a validly issued subpoena and Motion to Supplement its First Amendment appeal. The evidence of SoCalGas’ withholding of discovery described in these various motions reveals just the tip of the iceberg of SoCalGas’ intransigence. The utility has routinely engaged in a “cat and mouse” form of discovery abuse which has successfully delayed Cal Advocates’ investigation for the past year.

¹¹⁶ Exhibit 18 - Mayor Harmon CalMatters Commentary, p. 3.

¹¹⁷ Exhibit 18 - Mayor Harmon CalMatters Commentary, p. 4.

¹¹⁸ SoCalGas Motion to Stay, p. 3.

¹¹⁹ See Exhibits 8 and 9, Orders granting Cal Advocates’ Motions to Compel.

For example, Question 4 of data request CalAdvocates-SC-SCG-2019-07 asked SoCalGas to identify the costs associated with lobbying local municipalities that have adopted SoCalGas-prepared “Balanced Energy Resolutions.” SoCalGas responded there were no costs associated with such lobbying, evidently taking the position that “outreach” to local governments to encourage adoption of such resolutions was not “lobbying”:

There are no lobbying costs associated with the municipalities in attachment B that have adopted Balanced Energy Resolutions. It is appropriate for SoCalGas to present our, and our customers’, view with respect to what is happening from an energy perspective in the state. Such discussion allows local governments to take those views into consideration in making informed and balanced decisions.¹²⁰

Question 1 of the next data request - CalAdvocatesSC-SCG-2019-08 - asked for the same information, but omitted the word “lobbying.” This time, SoCalGas objected that the question was “overbroad and unduly burdensome” and declined to answer it on the basis that it does not track such costs and that employees talking to local governments are “salaried”:

SoCalGas objects to this question as overbroad and unduly burdensome, as well as vague with respect to the phrases “total costs to SoCalGas associated with” and “costs associated with.” Subject to and without waiving its objection, SoCalGas responds as follows:

SoCalGas did not track the costs associated with communications between Regional Public Affairs employees and municipalities. The Regional Public Affairs employees who communicated with the municipalities are all salaried employees.¹²¹

While SoCalGas has since identified a small handful of employees working on these matters, it has significantly understated their time committed to these efforts. Among other things, it is clear from recent discovery that SoCalGas has not been tracking and

¹²⁰ Exhibit 19, SoCalGas Response to CalAdvocates-SC-SCG-2019-07, Q 4.

¹²¹ Exhibit 20, SoCalGas Response to CalAdvocates-SC-SCG-2019-08, Q 1.

reporting its lobbying of local governments, in violation of Sempra Energy’s Political Activities Policy. That Policy defines lobbying broadly on page 3 as:

any action intended to influence legislative or administrative action, including activities to influence government officials, political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.”¹²²

More recently, SoCalGas has taken to objecting to the definitions provided in Cal Advocates’ data requests and refusing to apply them in its responses.¹²³ For example, when Cal Advocates instructed SoCalGas to use the definition of lobbying provided in the Sempra Energy Political Activities Policy, SoCalGas objected to its own definition of lobbying on claims that the term is “vague and ambiguous.”¹²⁴ SoCalGas also objected that the definition does not apply because it has many other definitions of lobbying for reporting purposes.¹²⁵

As Cal Advocates has repeatedly admonished on its conference calls with SoCalGas – and which SoCalGas already knows – a term in a data request is defined to provide clarity, and can be defined however the requester decides. Thus, SoCalGas objections to using a specific definition because “it does not apply” have no legal basis and simply make no sense, again evidencing SoCalGas’ bad faith when responding to Cal Advocates’ investigation discovery. SoCalGas and Cal Advocates both know what lobbying is for purposes of this investigation, and it is not one definition confined to a

¹²² Exhibit 21, Sempra Energy Political Activities Policy, Revised July 23, 2018, p. 3.

¹²³ In addition to making many spurious objections, it waits to make these objections until the day the responses are due, rather than within the five business days Cal Advocates has requested in its data request instructions.

¹²⁴ See Exhibit 5, SoCalGas Response to CALADVOCATES-AW-SCG-2020-01, Q 1.

¹²⁵ *Id.* The data response explains: “For CPUC accounting purposes, the Federal Energy Regulatory Commission (FERC) definition of lobbying applies. ... Cal Advocates’ request for lobbying activity and costs relate to accounting information and the treatment of costs attributable to ratepayers. Accordingly, the FERC definition is the appropriate definition for the purposes of responding to the data request in question. ... For reporting purposes, SoCalGas uses the definition of lobbying that is consistent with Sempra’s Political Activities Policy...”

specific legal application. To borrow a famous phrase from United States Supreme Court Justice Stewart – “I know it when I see it.”¹²⁶ With regard to lobbying, we all know what is meant.

Unfortunately, while SoCalGas’ motions are ultimately denied, they are nonetheless achieving their goals of distracting Cal Advocates from the real work of following up on, and analyzing, discovery. Indeed, discovery requests issued in December, February, and March remain pending, with little hope that, absent strong and swift action by the Commission, they will ever be honestly responded to. For example, SoCalGas has declined to provide complete responses to CALADVOCATES SC-SCG-2019-11, which was issued on December 11, 2019. Among other things, SoCalGas’ responses failed to include all costs associated with influencing public opinion on the type of buses the Los Angeles County Metropolitan Transportation Authority should acquire, failed to break down those costs by year, failed to disaggregate those costs by requested categories, and perhaps most notably, failed to identify the accounts where those costs were charged.¹²⁷ Most of this information should have been recorded in its Lobbying Activities Tracking System (LATS) consistent with the training manuals SoCalGas has provided. However, all of this information appears to be missing.

SoCalGas has also unreasonably delayed its responses to the Cal Advocates data request issued February 14, 2020. Notwithstanding numerous discussions regarding this data request – the utility insisted on using its own definition of lobbying to answer the questions – Cal Advocates has been waiting more than three months for complete responses.¹²⁸

D. Alternatives To SoCalGas’ Demands

Notwithstanding the fact that the Commission has broad statutory authority to review a utility’s accounts and records, to the extent the Commission seeks to further

¹²⁶ *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

¹²⁷ See Exhibit 7, Declaration of Stephen Castello, ¶ 19.

¹²⁸ See Exhibit 7, Declaration of Stephen Castello, ¶ 20.

protect attorney/client communications or attorney work product that *might* reside in SoCalGas’ law firm invoices, Cal Advocates notes that the Commission has two options. The most straightforward option would be to prohibit SoCalGas from installing any “custom software solution” and acknowledge that any Commission review shall not waive SoCalGas’ ability to assert such privileges at a later date. This option would ensure that the Commission has access to all information needed to perform its audits without lengthy proceedings to determine what is and what is not privileged information.

The alternative – which Cal Advocates does not believe is needed – would be to allow SoCalGas to install a “custom software solution” solely to block Commission access to the law firm invoices – called “records attachments” – that would allow the Commission to access a record of the law firm invoice for a particular payment made.¹²⁹ This alternative would require additional undertakings by the utility, including, without limitation:

- (1) A declaration under penalty of perjury from SoCalGas’ Chief Financial Officer that all other access to the law firm information, such as who was paid, how much they were paid, when they were paid, and line item text fields containing narrative descriptions,¹³⁰ would continue to be transparent through the accounting system and that *no other modifications* were made to SoCalGas systems to limit the Commission’s access to its accounts and records.
- (2) SoCalGas’ identification of every law firm it has contracted with over the past five years, including the law firm name, the vendor number, and the nature of the law firm’s work for SoCalGas.
- (3) For any law firms that the Cal Advocates seeks to know more about, SoCalGas would need to provide the invoices within ten business days, but could redact those portions of the invoices that it has a good faith basis in the law to claim a privilege for, and provide a privilege log for each claim of privilege. Similar to the *Gandsey* Court’s solution, for any such claim of privilege, a SoCalGas attorney should be required to provide a declaration under penalty of perjury that the attorney has

¹²⁹ See SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 6.

¹³⁰ See SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 7.

personally reviewed all of the claims of privilege and that each one has a good faith basis in the law.

For the reasons set forth in more herein, Public Advocates prefers the first option because it is consistent with the statutory law providing the Commission full access to all utility accounts and records, and because the alternative potentially establishes an troubling precedent and provides opportunities for utility abuse of process.

IV. CONCLUSION

For all of the reasons set forth above, the Cal Advocates requests that the Commission swiftly reject the SoCalGas Motion to Quash as untimely and order SoCalGas to, within 24 hours, provide remote read-only access to the Cal Advocates with no filters or walls and no requirements such as execution of a non-disclosure agreement¹³¹. Such an order should also require SoCalGas to:

- (1) Identify every 100% shareholder-funded account;
- (2) Identify every account where costs are booked that are associated with the activities that are the subject of its First Amendment appeal;
- (3) Provide a list of all vendors and their identifying numbers;
- (4) Identify all vendors performing shareholder-funded activities, including those activities that are the subject of its First Amendment appeal;
- (5) Provide full access to all Work Orders and identify all of the Work Orders associated with the activities that are the subject of its First Amendment appeal; and
- (6) Provide any other information related to its accounts and records that Cal Advocates requests in no later than five business days.

Only with full access to SoCalGas accounts and records, including this specific information, will the Commission, including the Cal Advocates, be able to determine whether SoCalGas is funding its anti-decarbonization activities with shareholder or ratepayer monies.

¹³¹ While Cal Advocates has previously discussed signing a Non-Disclosure Agreement (NDA) with SoCalGas in order to speed its release of information, such an NDA is unnecessary given the statutory protections provided and Cal Advocates no longer proposes to sign one given that the purpose of the NDA has been defeated by the instant Motion to Quash.

Finally, given SoCalGas' continued intransigence in responding to discovery in this investigation, and its reliance on aggressive litigation tactics that include violations of Commission rules and state law, the Commission should order that SoCalGas: (1) shall respond clearly and completely to all outstanding discovery in the next ten business days; (2) has no more than five business days to object to the publication of any documents obtained through discovery in this investigation based on privilege or confidentiality claims; and (3) in addition to complying with GO-66 to support any privilege or confidentiality claim, SoCalGas shall provide a declaration under penalty of perjury from a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege or confidentiality claims and that such claims have a good faith basis in the law.

Respectfully submitted,

/s/ TRACI BONE

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June 1, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE ON THIS DATE SERVED A COPY OF “**RESPONSE OF PUBLIC ADVOCATES OFFICE TO SOUTHERN CALIFORNIA GAS COMPANY MOTION TO QUASH PORTION OF SUBPOENA, FOR AN EXTENSION, AND TO STAY COMPLIANCE (NOT IN A PROCEEDING)**” TO THE FOLLOWING BY ELECTRONIC MAIL:

rmd@cpuc.ca.gov
MHovsepian@socalgas.com
TCarman@socalgas.com
Marybel.Batjer@cpuc.ca.gov
Alec.Ward@cpuc.ca.gov
Stephen.Castello@cpuc.ca.gov
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Shannon.O'Rourke@cpuc.ca.gov

Executed on **June 1, 2020** at San Francisco, California.

/s/ TRACI BONE

TRACI BONE