

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION ONE

SOUTHERN CALIFORNIA GAS  
COMPANY,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA,

Respondent.

Case No. B310811

Commission Decision  
No. D.21-03-001 &  
Resolution ALJ-391

**OPPOSITION TO SOUTHERN CALIFORNIA GAS COMPANY'S  
REQUEST FOR EMERGENCY STAY**

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## I. INTRODUCTION

The California Public Utilities Commission (Commission) hereby opposes Southern California Gas Company's (SoCalGas) Motion for Emergency Stay filed with this Court on March 8, 2021. The Commission respectfully asks the Court to deny SoCalGas' Motion for Emergency Stay because it fails to adequately demonstrate that SoCalGas will suffer irreparable damage as a result of Commission Resolution ALJ-391 (Res. ALJ-391 or Resolution) and/or Commission Decision (D.) 21-03-001.

SoCalGas has refused to provide documents and privilege logs requested by the Commission and the Commission's Public Advocates Office (Cal Advocates) since May 2019.<sup>1</sup> (Res. ALJ-391, p. 2.) These documents and privilege logs relate to a discovery inquiry initiated by Cal Advocates regarding SoCalGas' "funding of anti-decarbonization campaigns using 'astroturfing' groups." (Res. ALJ-391, p. 2.) "Astroturfing" refers to "a practice in which corporate sponsors of a

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<sup>1</sup> SoCalGas has recently engaged in a similar pattern of discovery abuse in litigation pending in Los Angeles County Superior Court. (See, e.g., *Gandsey v. Southern California Gas Company et al.*, Los Angeles County Superior Court, Civil Division, Central District, Department 12, Case No. BC601844 (Minute Order February 20, 2020); *Southern California Gas Leak Cases*, Los Angeles County Superior Court, Civil Division, Central District, Department 12, Case No. JCCP4861 (Minute Order August 3, 2020).) The Court in *Gandsey* required SoCalGas to file an attorney declaration in support of its privilege logs after determining that SoCalGas' initial privilege claims were unsupported or withdrawn an average of 94 percent of the time. (*Gandsey* Minute Order, Feb. 20, 2020, p. 3 (Commission Exhibit A).) The Court noted that such behavior was "unprecedented in this court's 24 years of experience on the bench (including more than 12 years in a complex civil litigation assignment)." (*Gandsey* Minute Order, Feb. 20, 2020, p. 6 (Commission Exhibit A).) The Court in *Gandsey* concluded: "It is disturbing, to say the least, that the court only can obtain legally compliant litigation conduct by making outside trial counsel individually responsible in a posture that could support sanctions against counsel personally." (*Gandsey* Minute Order, Feb. 20, 2020, p. 13 (Commission Exhibit A).)

message mask their identity by establishing separate organizations to state a position or make it appear as though the movement originates from and has grassroots support.” (Res. ALJ-391, p. 2, fn. 1.) The Commission, as the primary regulator of SoCalGas, with wide-ranging constitutional and statutory jurisdiction over SoCalGas, has ample authority to require SoCalGas to provide the documents and privilege logs requested by Cal Advocates. *The Resolution explicitly provides that SoCalGas may utilize Commission processes to file these documents confidentially with the Commission.* (Res. ALJ-391, p. 29 [Finding 9], emphasis added.) For this reason, and for the reasons discussed below, SoCalGas’ allegations of irreparable harm absent a stay are entirely without merit. As such, the Commission respectfully asks the Court to deny SoCalGas’ stay request.

## II. FACTUAL AND PROCEDURAL BACKGROUND

In May 2019, Cal Advocates<sup>2</sup> initiated a discovery inquiry into SoCalGas’ funding of anti-decarbonization campaigns using “astroturfing” groups. Cal Advocates initiated this discovery inquiry “outside of a proceeding” pursuant to its statutory authority.<sup>3</sup> Cal Advocates’ inquiry focused on the extent to which SoCalGas was using ratepayer funds to support organizations presenting themselves to the

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<sup>2</sup> Pub. Util. Code, § 309.5(a) states: “There is within the commission an independent Public Advocate’s Office of the Public Utilities Commission to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the office shall primarily consider the interests of residential and small commercial customers.”

<sup>3</sup> The pleadings submitted to the Commission related to this discovery dispute “outside of a proceeding” are available on the Commission’s website at the Cal Advocates’ webpage at: <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.

Commission as independent grassroots community organizations that also support anti-decarbonization positions held by SoCalGas, such as Californians for Balanced Energy Solutions (C4BES) and other similar organizations.

Cal Advocates' discovery inquiry was prompted by allegations initially raised in Rulemaking (R.) 19-01-011<sup>4</sup> when C4BES filed a motion for party status on May 13, 2019, and Sierra Club challenged the motion on May 14, 2019, claiming that, unbeknownst to the public, SoCalGas founded and funded C4BES.<sup>5</sup> Cal Advocates responded to Sierra Club's motion to deny party status and stated that Cal Advocates would investigate the allegations raised by Sierra Club.<sup>6</sup>

On May 23, 2019, Cal Advocates initiated its inquiry by issuing Data Request (DR) SCG051719 to SoCalGas regarding its involvement with C4BES. Cal Advocates issued this data request outside of R.19-01-011, as the scope of R.19-01-011 was limited to decarbonization matters. In contrast, Cal Advocates' inquiry focused on SoCalGas' financial relationship with C4BES and the use of ratepayer funds to support lobbying efforts by C4BES. In addition, Cal Advocates initiated this discovery outside of a proceeding because no other Commission proceeding encompassed this specific issue. SoCalGas

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<sup>4</sup> R.19-01-011 *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

<sup>5</sup> See R.19-01-011, Sierra Club's *Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 14, 2019). See also Cal Advocates' *Response to Sierra Club's Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 29, 2019).

<sup>6</sup> See R.19-01-011, Cal Advocates' *Response to Sierra Club's Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 29, 2019) at 2.

responded to the DR. Based on this response, Cal Advocates alleged that justification existed to continue its inquiry.

On July 19, 2019, Cal Advocates issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. In response, SoCalGas refused, in part, to comply with the DR. At this point, Cal Advocates and SoCalGas began the instant dispute regarding the lawfulness of the ongoing discovery.

With this discovery dispute still unresolved, on August 13, 2019, Cal Advocates served SoCalGas with another data request, DR No. CalAdvocates-SC-SCG-2019-05, which consisted of multiple questions built upon previous DRs. On August 27, 2019, SoCalGas responded to the DR with an objection to Question 8 based on the grounds that the requested production of its 100% shareholder-funded contracts related to C4BES fell outside the scope of Cal Advocates' statutory authority set forth in Public Utilities Code (Pub. Util. Code) §§ 309.5(a) and 314.<sup>7</sup> Cal Advocates and SoCalGas engaged in discussions regarding Question 8 of the DR and after multiple attempts the parties agreed that they were at an impasse.

On October 7, 2019, Cal Advocates submitted a motion to compel responses from SoCalGas to the President of the Commission pursuant to Pub. Util. Code § 309.5(e).<sup>8</sup> SoCalGas responded in opposition to Cal

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<sup>7</sup> See SoCalGas' *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 [PROPOSED] Order (Not In A Proceeding)* (December 2, 2019) at 6.

<sup>8</sup> Cal Advocates' *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05 (Not In A Proceeding)* submitted October 7, 2019.

Advocates' motion on October 17, 2019.<sup>9</sup> SoCalGas again argued that because the information sought was 100% shareholder funded, it fell beyond Cal Advocates' statutory purview. The President referred this discovery dispute to the Commission's Chief Administrative Law Judge.

On October 29, 2019, the Chief Administrative Law Judge assigned the dispute to Administrative Law Judge Regina DeAngelis (ALJ) and informed the parties in writing of certain procedural rules to follow since this discovery dispute was outside of any formal proceeding and, therefore, the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) (herein "Rules") did not directly apply.

On October 31, 2019, Cal Advocates filed a reply to SoCalGas' response.<sup>10</sup> On November 1, 2019, the ALJ issued a ruling granting Cal Advocates' motion to compel responses to DR No. CalAdvocates-SC-SCG-2019-05.<sup>11</sup> On November 4, 2019, SoCalGas submitted an emergency motion for stay of the November 1, 2019 ALJ ruling but,

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<sup>9</sup> *Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-05 (Not In A Proceeding)* submitted October 17, 2019.

<sup>10</sup> *Reply of the Public Advocates Office to Response of SoCalGas to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request-CalAdvocates-SC-SCG-2019-05 (Not In A Proceeding)* submitted on October 31, 2019.

<sup>11</sup> *Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding)* issued on November 1, 2019.

with its motion for stay pending, on November 5, 2019, SoCalGas also submitted the DR responses to Cal Advocates under protest.<sup>12</sup>

On December 2, 2019, SoCalGas submitted a motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling.<sup>13</sup> SoCalGas' motion sought the Commission's review of that ruling and reversal. In support of its motion, SoCalGas raised several constitutional arguments. SoCalGas alleged: (1) the materials sought by Cal Advocates unlawfully infringed on SoCalGas' First Amendment rights to association and (2) that, because the discovery dispute was occurring outside of a proceeding, the lack of procedural safeguards to govern the dispute violated SoCalGas' procedural due process rights.<sup>14</sup> SoCalGas also sought an order from the Commission directing Cal Advocates to return or destroy the constitutionally protected materials provided to Cal Advocates on November 5, 2019. SoCalGas subsequently supplemented this December 2, 2019 motion by a separate motion dated May 22, 2020.

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<sup>12</sup> *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)* submitted on November 4, 2019.

<sup>13</sup> *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)* submitted on December 2, 2019. On December 2, 2019, SoCalGas also submitted a motion to file documents under seal.

<sup>14</sup> SoCalGas also contended that if the Commission did not stop Cal Advocates from invoking its statutory right to compel production of information, Cal Advocates would continue with the data requests that allegedly infringe on SoCalGas' First Amendment rights.

SoCalGas also filed a motion to file under seal certain declarations.<sup>15</sup>  
On December 17, 2019, Cal Advocates submitted a response.<sup>16</sup>

On March 25, 2020, SoCalGas filed an emergency motion for a protective order staying all pending and future data requests from Cal Advocates served outside of any proceeding related to this dispute, and any motions and meet and confers related thereto, during the Governor of California's Covid-19 emergency "safer at home" executive orders.<sup>17</sup>

Before Cal Advocates had an opportunity to respond, the ALJ, via an email on April 6, 2020, reminded SoCalGas of Cal Advocates' statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time and found that its request was contrary to California law. The ALJ advised parties to work together during these extraordinary times.

On May 1, 2020, Cal Advocates served SoCalGas with another data request, DR CalAdvocates-TB-SCG-2020-03, seeking access to SoCalGas' accounting database, as Cal Advocates continued its inquiry

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<sup>15</sup> On December 2, 2019, SoCalGas concurrently filed *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 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>16</sup> *Public Advocates Office's Response to 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)* submitted December 17, 2019.

<sup>17</sup> *Southern California Gas Company's (U 904 G) emergency motion for a protective order staying all pending and future data requests from the California Public Advocates Office served outside of any proceeding (relating to the Building Decarbonization matter), and any motions and meet and confers related thereto, during California government Covid-19 emergency "safer at home" orders*, submitted on March 25, 2020.

into SoCalGas' use of ratepayer monies to fund an anti-decarbonization campaign through astroturf organizations. On May 5, 2020, Cal Advocates served a subpoena, signed by the Commission's Executive Director, on SoCalGas seeking the same information as set forth in DR CalAdvocates-TB-SCG-2020-03, access to SoCalGas' accounting databases.<sup>18</sup>

SoCalGas delayed responding to the subpoena and, instead, on May 22, 2020, SoCalGas submitted a motion to quash the subpoena and to stay the subpoena until May 29, 2020, to allow it an opportunity to implement software solutions to exclude what it deemed as materials protected by attorney-client and attorney work product privileges, as well as materials implicating the same First Amendment issues raised in SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.<sup>19</sup>

On May 22, 2020, SoCalGas also submitted a motion to supplement the record of its December 2, 2019 motion for reconsideration/appeal and to request an expedited Commission decision (in the event SoCalGas' May 22, 2020 motion for a stay of the

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<sup>18</sup> The Public Utilities Commission of the State of California's *Subpoena to Produce Access to Company Accounting Databases* dated May 4, 2020 and served on May 5, 2020.

<sup>19</sup> *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)* submitted May 22, 2020.

subpoena was not granted).<sup>20</sup>

On June 23, 2020, Cal Advocates submitted a motion to find SoCalGas in contempt and to impose fines on SoCalGas for noncompliance with the May 5, 2020 subpoena.<sup>21</sup> More specifically, Cal Advocates asserted that SoCalGas was continuing to avoid complying with the May 5, 2020 subpoena and that SoCalGas' conduct following the issuance of the subpoena constituted a violation of Rule 1.1 and Pub. Util. Code §§ 309.5, 311, 314, 314.5, 314.6, which warrants the imposition of daily penalties. Cal Advocates also sought an order requiring SoCalGas to, among other things, provide Cal Advocates with access to financial databases on a read-only basis and to provide additional information from its accounting and vendor records systems showing which of its accounts are 100% shareholder funded, which accounts have costs booked to them associated with activities that are claimed to be subject to First Amendment privileges or are shareholder funded and other information about vendors of SoCalGas.

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<sup>20</sup> *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 29<sup>th</sup> Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding)* submitted on May 20, 2020. SoCalGas originally submitted this motion on May 20, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the motion on May 22, 2020.

<sup>21</sup> *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 (Not In A Proceeding)* submitted on June 23, 2020.

On July 2, 2020, SoCalGas submitted a response challenging Cal Advocates' motion for contempt and sanctions, alleging that: (1) the underlying premise of the motion, Cal Advocates' authority to inspect SoCalGas' books and records, lacked a legal basis; (2) the motion was premature and should not be decided before SoCalGas' motion to quash the subpoena; (3) that if Cal Advocates' June 23, 2020 motion for contempt and sanctions was to be considered, then further procedural safeguards would be required under due process rights; and (4) the motion failed on its merits.<sup>22</sup> On July 10, 2020, Cal Advocates submitted a reply addressing SoCalGas' arguments.<sup>23</sup>

The requests for Commission action discussed above were reviewed together by the Commission for reasons of administrative efficiency. All four motions address information sought by either DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena; and all four motions rely on arguments related to the scope of Cal Advocates' statutory authority to engage in discovery of information from SoCalGas under the Public Utilities Code and the application of the First Amendment right to association and procedural due process rights to protect SoCalGas from disclosure of shareholder-related information sought by Cal Advocates.

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<sup>22</sup> *Southern California Gas Company's (U 904 G) Response to Public Advocates Office's 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 (Not In A Proceeding)* submitted on July 2, 2020.

<sup>23</sup> *Public Advocates Office Reply to Southern California Gas Company's Response to Motion for Findings of Contempt and Fines for the Utility's Failure to Comply with a Commission Subpoena Issued May 5, 2020*, submitted on July 10, 2020.

On December 21, 2020, the Commission issued Resolution ALJ-391. The Resolution resolved SoCalGas' December 2, 2019 motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling together with the other related motions, all pertaining to DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 Commission subpoena.<sup>24</sup> The Resolution denied SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denied SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena. In denying these motions, the Commission rejected SoCalGas' argument that Cal Advocates' discovery rights, as set forth in the Public Utilities Code, are limited by SoCalGas' First Amendment right to association, and also rejected SoCalGas' argument that the Commission violated its procedural due process rights.

The Resolution granted SoCalGas' December 2, 2019 motion for leave to file under seal confidential versions of certain declarations but,

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<sup>24</sup> Cal Advocates also submitted a motion to compel SoCalGas to produce the confidential versions of the declarations submitted in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal and for daily monetary fines. See *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*, submitted on July 9, 2020.

On July 17, 2020, SoCalGas filed a response, *Response to 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*.

On July 24, 2020, Cal Advocates filed a reply, *Public Advocates Office Reply to Southern California Gas Company's Opposition to Motion to Compel and for Fines Related to the Utility's Intentional Withholding of Confidential Declarations*.

in doing so, confirmed that SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, such as Cal Advocates, under existing protections.

The Resolution also deemed moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020, granted SoCalGas' May 22, 2020 motion to supplement the December 2, 2019 motion for reconsideration/appeal, and deferred consideration of Cal Advocates' June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena. By granting SoCalGas' December 2, 2019 motion for leave to file under seal and directing it to provide unredacted, confidential versions to Commission staff, including Cal Advocates, the Resolution also deemed moot Cal Advocates' July 9, 2020 motion to compel and deferred consideration of Cal Advocates' request therein for monetary fines.

The Resolution directed SoCalGas to produce the information and documents requested by Cal Advocates in DR No. CalAdvocates-SC-SCG-2019-05, including the confidential declarations submitted under seal in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal, and in the May 5, 2020 Commission subpoena within 30 days of the effective date of the Resolution.

On December 21, 2020, SoCalGas filed a motion for stay and an application for rehearing (SCG App. Rhrng.) of Res. ALJ-391, challenging the Resolution on the following grounds: (1) the Resolution errs in concluding that Cal Advocates' discovery does not infringe on SoCalGas's First Amendment rights; and (2) the Resolution commits legal error in requiring an attorney declaration accompanying the privilege log. SoCalGas also requested oral argument on its rehearing

application. On January 11, 2021, responses to the rehearing application were filed by Cal Advocates and Sierra Club.

On January 6, 2021, the Commission's Executive Director extended the time for SoCalGas to comply with Res. ALJ-391 until 15 days from the date the Commission disposes of the rehearing applications.

On January 20, 2021, Cal Advocates filed an application for rehearing (CA App. Rhrng.) of Res. ALJ-391, challenging the Resolution on the following grounds: (1) Res. ALJ-391 errs by failing to recognize the black letter case law affirming the Commission's right to fully investigate the utilities it regulates; (2) Res. ALJ-391 errs by articulating the wrong standard for permissible discovery where a *prima facie* case is made; (3) Res. ALJ-391 errs by failing to recognize the due process principles set forth in *Mathews v. Eldridge* regarding the limited applicability of trial-type hearings; (4) Res. ALJ-391 errs by failing to recognize all of the factors showing that the confidential declarations offered in support of SoCalGas' *prima facie* case are insufficient; and (5) Res. ALJ-391 errs by failing to recognize that SoCalGas' attorney/client and other privilege claims associated with its SAP accounting system have been waived. SoCalGas filed a response to Cal Advocates' rehearing application on February 4, 2021.

On March 2, 2021, the Commission issued D.21-03-001, disposing of the rehearing applications filed by SoCalGas and Cal Advocates. In D.21-03-001, the Commission modified Res. ALJ-391 in several respects and also eliminated the attorney declaration requirement originally contained in Res. ALJ-391. These modifications do not relieve SoCalGas of its obligation to comply with the Commission's directive of

January 6, 2021, which requires SoCalGas to comply with Res. ALJ-391 no later than 15 days from the date the Commission disposes of the rehearing applications.

On March 8, 2021, SoCalGas filed with this Court its Petition for Writ of Review, Motion for Emergency Stay, and accompanying exhibits.

### III. ARGUMENT

#### A. Standard for Granting a Temporary Stay of the Commission's Orders.

A court may issue two types of court stays of Commission decisions: a temporary stay<sup>25</sup> and a longer-term stay.<sup>26</sup> In either case, the statutory standard for a court stay of a Commission order is stringent. (*North Shuttle Service, Inc. v. Public Utilities Com.* (1998) 67 Cal.App.4th 386, 395.) Public Utilities Code sections 1761 and 1762 require that a petitioner demonstrate “great or irreparable damage would otherwise result,” before a court can issue a stay of a Commission order. In discussing the section 1762 standard, *North Shuttle* explains, “the Legislature demonstrated an intent that a stay would be an atypical event, not a routine activity.”<sup>27</sup> Thus, in *North Shuttle*, even though petitioner had demonstrated that it would suffer serious financial harm in the absence of stay, it was not a sufficient justification for a stay to be issued. Therefore, a petitioner seeking a stay of a Commission decision must make an explicit showing of the severity of the impact, and the irreparable harm that would result.<sup>28</sup>

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<sup>25</sup> § 1764.

<sup>26</sup> § 1762.

<sup>27</sup> *North Shuttle, supra*, at p. 395.

<sup>28</sup> *North Shuttle, supra*, at p. 395.

**B. SoCalGas Has Failed to Demonstrate that the Commission Orders at Issue Will Cause Irreparable Harm.**

SoCalGas' stay request should be denied because SoCalGas has failed to show that irreparable harm will occur. As explained in *North Shuttle, supra*, there is a high bar set by statute for staying Commission decisions.<sup>29</sup>

The California Court of Appeal has stated that a party seeking a stay of the Commission's decision from an appellate court must present, by verified petition or sworn declaration, specific evidence showing that "immediate and irreparable injury, loss, or damage will result" if the decision is not stayed.<sup>30</sup> The Court noted that some injury, loss, or damage is inherent in any adverse decision by the Commission; for example, a certificate revocation decision is almost certain to cause some measure of financial loss.<sup>31</sup>

In *North Shuttle*, the Court reviewed the statutes governing stays of Commission decisions by the appellate courts. Public Utilities Code section 1761 states that any stay of a Commission decision shall be granted only in accordance with this article and the rules of court. Pursuant to section 1762, the Court may grant a stay if after hearing it

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<sup>29</sup> SoCalGas asks this Court to follow the example of the First Appellate District in *Pacific Gas & Electric Company v. Public Utilities Commission*, Case No. A153642 (*PG&E*) and grant its stay request. (See SoCalGas Petition for Writ of Review, p. 58, fn. 6.) SoCalGas omits the significant fact that the Court in *PG&E* vacated the stay it had originally issued, after the Commission filed its request for reconsideration of the stay request explaining that the stay had been issued in error. (See *PG&E, supra*, Case No. A153642 (Stay Issued March 7, 2018; Commission Request for Reconsideration of Stay filed March 19, 2018; Stay Vacated by Court April 11, 2018).)

<sup>30</sup> § 1763(a).

<sup>31</sup> *Ibid.*

finds that great or irreparable damage would otherwise result to the petitioner and specifies the nature of the damage. Section 1763 sets forth rules for temporary stays. Section 1764 imposes a requirement that the party seeking a stay post a suspending bond to protect the public from damages in case the order in question is sustained.

In *North Shuttle*, the Court started with the presumption that the Commission’s decision is correct and will probably be implemented.<sup>32</sup> The Court noted that the Legislature appeared to have started with this presumption as well in light of its detailed statutory scheme for stays and its requirement of express findings based on specific facts for both temporary and long-term stays of Commission decisions. In doing so, the Legislature demonstrated its intent that a stay of a Commission decision would be atypical.<sup>33</sup> In addition, as the Court observed in *North Shuttle*, an appellate court cannot order a long-term stay of a Commission decision without following the process outlined in section 1762(a), including a hearing.<sup>34</sup> On the other hand, as the Court in *North Shuttle* also noted, an appellate court may summarily deny the stay request without explaining its reasons.<sup>35</sup>

The Court in *North Shuttle* further explained that the Legislature has erected “substantial barriers” to granting temporary stays, citing sections 1763(a) and (b).<sup>36</sup> The Court noted that while

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<sup>32</sup> *North Shuttle, supra* at p. 395.

<sup>33</sup> *Ibid.*

<sup>34</sup> *North Shuttle, supra*, at p. 394.

<sup>35</sup> *Ibid.*

<sup>36</sup> *North Shuttle, supra*, at p. 392.

North Shuttle provided figures showing lost revenue, it did not show that such financial loss would cause irreparable injury.<sup>37</sup>

In the present instance, SoCalGas cannot and has not demonstrated irreparable harm sufficient to overcome the substantial barriers to granting a stay of Commission decisions outlined by statute and by the Court in *North Shuttle*. The sole basis for SoCalGas' stay request is that compliance with the Resolution and D.21-03-001 would require it to divulge constitutionally protected material. (SoCalGas Petition for Writ of Review, p. 58.) Its explicit goal in seeking a stay is "to keep the cat in the bag." (*Id.*) This argument is easily disposed of for two reasons.

First, the Resolution clearly outlines a process for SoCalGas to comply with the relevant Commission orders and still "keep the cat in the bag." The Resolution states at Page 29, Finding 9:

Pub. Util. Code § 583 and General Order 66-D provide ample protection and processes for utilities to submit confidential information to the Commission, including Cal Advocates, however, additional protections are adopted here to provide SoCalGas with time to review, and designate as confidential, information and documents sought by Cal Advocates via remote access from the "live" SAP database.

(Res. ALJ-391, p. 29 [Finding 9].)

Like this Court, the Commission routinely receives materials that are asserted to be confidential in nature, and has in place processes to maintain the confidentiality of such materials. In particular, the Commission regularly receives filings by public utilities throughout the State that include financial and technological data and

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<sup>37</sup> *North Shuttle, supra* at p. 392.

proprietary information. The Commission treats such materials in a manner consistent with its statutory obligations and consistent with the rules set forth in its General Orders. SoCalGas offers no reason why it cannot follow the Commission’s guidance and submit any allegedly confidential materials with the Commission pursuant to its established processes for receiving and reviewing such confidential materials. This fact alone provides a sufficient basis for the Court to find that SoCalGas has failed to demonstrate irreparable harm.

A second basis for the Court to deny the stay request can be found in SoCalGas’ status as a regulated public utility subject to the Commission’s extensive constitutional and statutory oversight responsibilities.<sup>38</sup> It is not a private corporation in the traditional sense; it has chosen to do business as a regulated entity providing essential services to the citizens of the State of California. Its status as a public utility comes with both benefits and responsibilities. It has the benefit of serving a largely captive customer base, most of whom have few if any options for an alternate source of gas service. However, one of the many corresponding responsibilities that SoCalGas shoulders includes making its accounts and records available to inspection by the Commission, as required by statute, so that the Commission can carry out its oversight functions.

For example, among the many sources of the Commission’s discovery rights is Public Utilities Code section 313, which provides

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<sup>38</sup> The California Supreme Court has described the Commission as “a state agency of constitutional origin with far-reaching duties, functions and powers’ whose ‘power to fix rates [and] establish rules’ has been ‘liberally construed.’ [Citations].” (*Southern California Edison v. Peevey* (2003) 31 Cal. 4th 781, 792.) The Commission has extensive authority over public utility practices and facilities pursuant to the California Constitution and the Public Utilities Code. (*See* Cal. Const. art. XII; Pub. Util. Code, § 701.)

that: “[t]he commission may require, by order served on any public utility, the production within this State at such time and place as it designates, of *any books, accounts, papers, or records* kept by the public utility in any office or place without this State[.]”<sup>39</sup>

Likewise, Public Utilities Code section 314(a) provides that:

The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs.<sup>40</sup>

These are broad discovery rights, premised on the sound policy of protecting the public. Simply put, a utility is not vested with the authority to designate which expenditures its regulators can know about, as urged by SoCalGas. And there is no way for the Commission to oversee and regulate SoCalGas’ activities if SoCalGas refuses to comply with Commission directives, as it has done in the present case. SoCalGas’ protestation that these records and accounts would show nothing improper is akin to telling the Commission there is “nothing to see here” and asking the Commission to take SoCalGas at its word. That is not how responsible regulatory oversight works.

Finally, the subject discovery is not unbounded, as SoCalGas suggests. How a utility spends its time and money is at the core of the

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<sup>39</sup> Pub. Util Code, § 313, emphasis added.

<sup>40</sup> Pub. Util Code, § 314(a); see also Pub. Util Code § 309.5(e).

Commission's function in regulating public utilities.<sup>41</sup> The discovery necessary for the Commission to conduct its important oversight functions cannot reasonably be held to be a harm, where there are measures in place to protect confidential material.

#### IV. CONCLUSION

Based on the foregoing, SoCalGas' Motion for Emergency Stay has no merit. Therefore, the Commission respectfully requests that the motion be denied.

Respectfully submitted,

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By: /s/ *CARRIE G. PRATT*

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<sup>41</sup> See Pub. Util Code, § 451.

**CERTIFICATE OF WORD COUNT**

I certify this answer of Respondent California Public Utilities Commission to the Petition for Writ of Review contains 5512 words. In completing this word count, I relied on the “word count” function of the Microsoft Word program.

March 11, 2021

/s/ *CARRIE G. PRATT*

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