

SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALADVOCATES-TB-SCG-2020-05)

Date Received: July 16, 2020

Date Submitted: July 30, 2020

GENERAL OBJECTIONS AND OBJECTIONS TO “INSTRUCTIONS”

1. SoCalGas objects to the Instructions and Definitions submitted by Cal Advocates on the grounds that they are overbroad and unduly burdensome. Special interrogatory instructions of this nature are expressly prohibited by California Code of Civil Procedure Section 2030.060(d). SoCalGas further objects to the Instructions to the extent they purport to impose requirements exceeding that required by CPUC General Order 66-D or the Discovery Custom and Practice Guidelines provided by the CPUC.
2. SoCalGas objects to the Request’s characterization of what Public Utilities Code § 581 requires (as stated in the first paragraph under “General”) and disclaims any obligation to respond “in the form and detail that we request” to the extent the request exceeds that required by Public Utilities Code § 581, the Commission’s Rules of Practice and Procedure, or the Discovery Custom and Practice Guidelines provided by the CPUC.
3. The highlighted sentence in the second paragraph under “General” states that if SoCalGas “acquire[s] additional information after providing an answer to any request, [it] must supplement [its] response following the receipt of such additional information.” SoCalGas objects to this instruction on the grounds that it is a continuing interrogatory expressly prohibited by Code of Civil Procedure § 2030.060(g), has no basis in the Commission’s Rules of Practice and Procedure, and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.
4. The highlighted paragraph under “Responses” purports to require SoCalGas identify “the person providing the answer to each question and his/her contact information.” SoCalGas objects to this instruction because it has no basis in the Commission’s Rules of Practice and Procedure and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.
5. The highlighted portion of the paragraph under “Requests for Clarification” purports to require SoCalGas to notify Cal Advocates “within five (5) business days” if “a request, definition, or an instruction is unclear”; the highlighted paragraph under “Objections” purports to require SoCalGas to “submit specific objections, including the specific legal basis to the objection . . . within five (5) business days”; and the highlighted portion of the paragraph under “Assertions of Privilege” in the “Instructions” section of this Request further purports to require SoCalGas to “assert any privilege for documents responsive to this data request . . . within five (5) business days.” SoCalGas objects to these requirements as unduly burdensome and unreasonable as SoCalGas cannot determine which aspects of the Request need clarification, formulate objections or identify privileged information and documents until SoCalGas has otherwise completed its investigation and prepared its response to the Request.
6. The highlighted paragraph under “Assertions of Confidentiality” purports to require SoCalGas, “[i]f it assert[s] confidentiality for any of the information provided,” to “please identify the information that is confidential with highlights and provide a specific explanation of the basis for each such assertion.” SoCalGas objects to this request the extent it purports to impose requirements exceeding the process for submitting confidential information to the Commission outlined in GO 66-D § 3, has no

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basis in the Code of Civil Procedure or the Commission's Rules of Practice and Procedure, and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.

7. The first highlighted paragraph under "Signed Declaration" purports to require SoCalGas to provide "a signed declaration from a responsible officer or an attorney under penalty of perjury that [SoCalGas has] used all reasonable diligence in preparation of the data response, and that to the best of [his or her] knowledge, it is true and complete." SoCalGas objects to this instruction because it has no basis in the Code of Civil Procedure or the Commission's Rules of Practice and Procedure and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC. SoCalGas further objects to the extent it purports to limit SoCalGas from amending its responses should additional information be later discovered. SoCalGas reserves its right to amend its responses to these requests should additional information relevant to SoCalGas's responses is discovered at a later date.
8. SoCalGas objects to the second highlighted paragraph under "Signed Declaration" to the extent it purports to impose requirements exceeding the process for submitting confidential information to the Commission outlined in GO 66-D § 3, has no basis in the Code of Civil Procedure or the Commission's Rules of Practice and Procedure, and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.
9. SoCalGas objects to the definition of "you," "your(s)," "Company," "SCG," and "SoCalGas" to the extent it seeks information from Sempra Energy. The responses below are made on behalf of SoCalGas only. SoCalGas objects to the definition of "you," "your(s)," "Company," "SCG," and "SoCalGas" to the extent it seeks information from Sempra Energy. The responses below are made on behalf of SoCalGas only.

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QUESTION 1:

Please provide any form of non-disclosure agreement between SoCalGas or Sempra Energy Company and the following former SoCalGas employees:

Confidential and Protected Material pursuant to PUC Section 583, GO 66-D, D.17-09-023

- a.
- b. George Minter

RESPONSE 1:

See attached documents titled:
Staff A_Agreement_Confidential
Staff A_NDA_Confidential
Staff B_NDA_Confidential

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QUESTION 2:

Please provide a privilege log for all information in its SAP system that SoCalGas seeks to exclude from Commission review on the basis of privilege claims

Consistent with the Instructions above, the privilege log should be similar to the following sample and contain, at a minimum, all of the information identified in this sample so that the validity of the privilege claim is evident from the log:

<i>Doc No.</i>	<i>Doc Location</i>	<i>Date</i>	<i>Author</i>	<i>Recipient</i>	<i>Privileges</i>	<i>Description</i>
1-2		1/1/2015	John Doe, Sales Mgr.	Sally Smith, CEO Jane Roe, General Counsel	Atty-Client	Portion of email to in-house counsel seeking advice on contract negotiations redacted.
15-20		7/1/2018	Jane Roe, General Counsel	Sally Smith, CEO	Atty-Client, Work Product	Memorandum from in-house counsel to CEO regarding options for litigation

RESPONSE 2:

SoCalGas objects to this Request as overbroad and unduly burdensome, in that seeks on its face a log covering data on the SAP system since 1999, which is not reasonable or practicable. SoCalGas further objects to this Request as harassing and oppressive in that Cal Advocates explicitly declared in meet and confer discussions and in the declaration of Stephen Castello that “it had no desire to review any privileged information in the SAP database[.]” (Decl. of Stephen Castello, ¶ 13, May 28, 2020.)

SoCalGas is willing to meet and confer regarding a sufficiently narrowed request.

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QUESTION 3:

Please provide a declaration signed under penalty of perjury by a SoCalGas attorney affirming that there is a good faith basis in the law for all of the privilege claims asserted in the discovery log provided pursuant to Data Request 2 above.

RESPONSE 3:

SoCalGas objects to this Request as overbroad, unduly burdensome, harassing and oppressive because it has no basis in the Code of Civil Procedure or the Commission's Rules of Practice and Procedure and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC. SoCalGas further objects to this Request in that it purports to require SoCalGas to create documents not already produced in the ordinary course of business, on the grounds that it exceeds SoCalGas's discovery obligations under the California Code of Civil Procedure.

SoCalGas further objects to this Request because it calls for information that is protected by the attorney-client privilege or the attorney work product doctrine. Indeed, this question seeks a forced waiver of the attorney-client privilege or the attorney work product doctrine. When an attorney verifies a discovery request (which is what this question seeks), the opposing party can claim that the attorney has waived attorney client privilege and attorney work product doctrine regarding the identity of the sources of the information contained in the response. *Melendrez v. Superior Court*, 215 Cal. App. 4th 1343, 1349 (2013) ("However, when an attorney verifies the response, the party "waives any lawyer-client privilege and any protection for work product ... during any subsequent discovery from that attorney *concerning the identity of the sources of the information contained in the response.*"); see also Cal. Civ. Proc. Code § 2030.250 (attorney verification of interrogatories causes limited waiver); Cal. Civ. Proc. Code § 2033.240 (same for requests for admission).

Furthermore, this question seeks to make counsel for SoCalGas a material witness in this matter. Depositions of counsel are highly disfavored, *Spectra-Physics, Inc. v. Superior Court*, 198 Cal.App.3d 1487, 1493 (1988) ("The practice of taking the deposition of opposing counsel should be severely restricted") (citation omitted), yet this question seeks to make counsel for SoCalGas a witness in this case.

Finally, this question is completely contrary to black letter California law on privilege. "The party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an

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attorney-client relationship. [Citations omitted.] Once that party establishes facts necessary to support a prima facie claim of privilege, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply.” *Costco Wholesale Corp. v. Superior Court*, 47 Cal.4th 725, 733 (2009). Now, Cal Advocates claims that its investigator powers enable it to change California law and add an additional requirement—which is unsupported by California law. (Nor can the ALJ or a court force a waiver of a privilege after an objection has been duly made. *Catalina Island Yacht Club v. Superior Court*, 242 Cal.App.4th 1116, 1126 (2015).)