April 1, 2021

Hon. Frances Rothschild, Presiding Justice
Hon. Victoria Gerrard Chaney, Associate Justice
Hon. Helen I. Bendix, Associate Justice
California Court of Appeal
Second Appellate District, Division One
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, California 90013

Re:  *Southern California Gas Company v. Public Utilities Commission of the State of California*

Second Appellate District, Division One, Case No.
B310811

*Sierra Club Response to Erroneous Allegations by Southern California Gas Company on Common Interest Agreement and Disclosure of Confidential Information*
Honorable Justices,

Sierra Club writes to respond to attempts by Southern California Gas Company (“SoCalGas”) to depict Sierra Club’s coordination with the California Public Advocates Office (“CalPA”) on areas of common interest as improper and to its unsupported allegations that PAO is “funneling” confidential information to Sierra Club.¹ Far from being unusual or untoward, the California Public Utilities Commission (“CPUC” or “Commission”) explicitly encourages parties to work with CalPA on areas of mutual concern. In addition, CalPA has shared no confidential information with Sierra Club as part of its investigation into SoCalGas’ misuse of customer funds and SoCalGas has provided absolutely no evidence any such disclosure has occurred.

Sierra Club’s coordination with CalPA to investigate SoCalGas’ misuse of customer money to obstruct California clean energy and climate objectives is exactly what is called for under Commission rules. Under its intervenor compensation program, the Commission provides parties like Sierra Club with the opportunity to recover costs of participating in Commission

proceedings. As a part of any claim for intervenor compensation, a party must indicate whether CalPA was a participant and explain how it avoided duplicating the efforts of CalPA and other intervening parties. This can be demonstrated through “working agreements among the parties, lead counsel arrangements on certain issues, sharing of expert witnesses, filing joint documents, or other arrangements.” Coordination with CalPA is a routine aspect of practice before the CPUC.

Similarly, parties with aligned interests routinely execute common interest agreements to enable communications that might otherwise waive applicable attorney-client, work-product, or other privileges. As has been widely reported, Sierra Club uncovered SoCalGas’ role in forming and financing the front group Californians for Balanced Energy Solutions to further its interest in opposing policies that would reduce climate pollution in the building sector through electrification. Another example

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of SoCalGas’ misuse of ratepayer funds was using efficiency funding intended for advocacy for stronger efficiency standards to instead push for weaker appliance rules to avoid a transition from natural gas to more efficient electric alternatives.\(^5\) A common interest agreement is appropriate because Sierra Club and CalPA have a common interest in ensuring SoCalGas’ customers do not bear the costs of the company’s tactics to maintain dependency on fossil fuels.

Finally, contrary to SoCalGas’ unsubstantiated claims that CalPA is “funneling” information to Sierra Club, CalPA has not disclosed confidential material to Sierra Club.\(^6\) As the CPUC noted in its denial of SoCalGas’ Petition for Rehearing of ALJ-391, “[w]hether or not Cal Advocates has a ‘joint prosecution’ agreement with the Sierra Club, it is not relieved of its confidentiality obligations.”\(^7\) Accordingly, SoCalGas’ claim that a common interest agreement enables Sierra Club to “obtain material from SoCalGas pursuant to authority delegated solely to

\(^5\) D.18-05-041, *Decision Addressing Energy Efficiency Business Plans*, at 139, 141–144 (June 5, 2018), [http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M215/K706/215706139.PDF](http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M215/K706/215706139.PDF).

\(^6\) SoCalGas Petition for Review at 10.

\(^7\) D.21-03-001, *Order Modifying Resolution ALJ-391 and, As Modified, Denying Rehearing of Resolution ALJ-391*, at 13 (Mar. 2, 2021), [https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M368/K860/368860809.PDF](https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M368/K860/368860809.PDF).
CalPA” is false. A common-interest agreement does not entitle Sierra Club to confidential information obtained by CalPA. Non-confidential responses to CalPA discovery are a matter of public record and can be obtained through a Public Records Act request. SoCalGas’ efforts to manufacture concerns over potential disclosure of confidential information by CalPA are without factual basis and do not withstand scrutiny.

Thank you,

/s/ Matthew Vespa

Matthew Vespa
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Earthjustice
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Representing Sierra Club

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8 SoCalGas Petition for Review at 11 (emphasis in original).
PROOF OF SERVICE

I, Matthew Vespa, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years old, and am not a party to this action; my business address is 50 California Street, Suite 500, San Francisco, in said County and State. On April 1, 2021, I served the following document(s):

Sierra Club Response to Erroneous Allegations by Southern California Gas Company on Common Interest Agreement and Disclosure of Confidential Information

on the parties stated below, by the following means of service:

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☑️ BY ELECTRONIC SERVICE THROUGH TRUEFILING: I caused the documents to be electronically served through TrueFiling.

☑️ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 1, 2021.

/[s/] Matthew Vespa

Matthew Vespa