

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

(Not In A Proceeding)
Pub. Utils. Code § 309.5(e)

**PUBLIC ADVOCATES OFFICE REPLY IN SUPPORT OF MOTION TO COMPEL
SOUTHERN CALIFORNIA GAS COMPANY TO PROVIDE REMOTE ACCESS TO SAP
DATABASE TO AUDIT RATEPAYER ACCOUNTS**

**IN THE DISCOVERY DISPUTE BETWEEN PUBLIC ADVOCATES OFFICE AND
SOUTHERN CALIFORNIA GAS COMPANY
OCTOBER 2021**

TRACI BONE
Attorney for the

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2048
Email: traci.bone@cpuc.ca.gov

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I. INTRODUCTION

On April 1, 2021, as part of its regular and statutory duties, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) requested to review limited and specific, ratepayer funded accounts maintained by Southern California Gas Company (SoCalGas).¹ Contrary to its repeated representations to the Court of Appeals - that it has “repeatedly offered to provide [Cal Advocates] with complete access to all of SoCalGas’s ratepayer and shareholder accounts ...”² including “live access to its SAP database”³ -SoCalGas objected to Cal Advocates’ requests and refused to allow Cal Advocates to review the ratepayer funded accounts at issue. After attempts to resolve this dispute failed, on October 21, 2021, Cal Advocates filed a motion to compel SoCalGas to allow review of specific ratepayer funded accounts (Motion). SoCalGas’ November 2, 2021 response to Cal Advocates’ Motion raises new issues, distorts facts, and conflicts with SoCalGas’ other statements. Accordingly, pursuant to Public Utilities Code Sections 309.5(e) and 314, Cal Advocates sought and, on November 4, 2021, obtained permission to reply to, SoCalGas’ response from Administrative Law Judge DeAngelis.

II. DISCUSSION

At issue is whether SoCalGas will be required to comply with the simple statutory obligation to make its accounting records available for review by its regulator.⁴ SoCalGas has told the Appellate Court that it is more than willing to make its ratepayer accounts available for

¹ As described in the *Public Advocates Office Motion to Compel Southern California Gas Company To Provide Remote Access To SAP Database To Audit Ratepayer Accounts*, served October 21, 2021 (Motion), these accounts are, consistent with the provisions of the FERC Uniform System of Accounts, ratepayer funded. See 18 CFR Subchapter C – Accounts, Federal Power Act. In particular, 18 CFR Pt. 201, § 901 *et seq.* which shows the types of costs properly allocated to the FERC 900 series accounts. This is in contrast to 18 CFR Pt. 201, §§ 426.1-426.5 which specifies accounts for booking donations, executive life insurance, penalties, expenses for certain civic, political and related activities, and other deductions which are not typically recovered in rates.

² *Southern California Gas Company v. Public Utilities Commission of the State of California*, Court of Appeal for the Second Appellate District, Division One, Case No. B310811, *Southern California Gas Company’s Reply In Support of Its Petition for Writ of Review, Mandate, and/or Other appropriate Relief*, July 16, 2021, p. 13.

³ *Id.*, p. 44.

⁴ See, e.g., California Public Utilities Code §§ 309.5 and 314. All further sections references are to the California Public Utilities Code unless otherwise noted.

Cal Advocates' review.⁵ However, it tells this Commission that SoCalGas will only provide a selection of accounts and information. SoCalGas thus seeks to determine and limit Cal Advocates' review of its ratepayer accounts. SoCalGas's proposal is wholly inconsistent with the law, which requires a utility to make its accounts available for review "at any time,"⁶ and is at odds with SoCalGas' representations to the Appellate Court that:

"...SoCalGas has not taken, and still does *not* take, issue with CalPA inspecting its ratepayer (i.e., above-the-line) accounts to determine whether any of those funds have been improperly allocated to support SoCalGas's political and public-policy efforts."⁷

"... SoCalGas has repeatedly offered to produce through live access to its SAP database (and CalPA has tellingly declined): *access to ratepayer accounts.*"⁸

"SoCalGas has ... repeatedly offered to provide [Cal Advocates] with complete access to all of SoCalGas's ratepayer and shareholder accounts ..."⁹

As demonstrated by the utility's representations to the Appellate Court, nothing in its appeal of Resolution ALJ-391 is intended to reach to ratepayer funded accounts. The utility's appeal is limited to the Commission's determination that the utility must make its shareholder accounts available to Cal Advocates. Nonetheless, the utility now falsely claims that a stay of the Appellate Court litigation by the Executive Director somehow applies to its ratepayer accounts.¹⁰ The Executive Director's letter speaks for itself. It grants an extension of time to the utility to comply with Resolution ALJ-391 pending resolution of its appellate litigation.¹¹

⁵ See Cal Advocates' Motion, pp. 3-4 and FNs 2 and 3 above.

⁶ See, e.g., Public Utilities Code § 314(a).

⁷ *Southern California Gas Company v. Public Utilities Commission of the State of California*, Court of Appeal for the Second Appellate District, Division One, Case No. B310811, *Southern California Gas Company's Reply In Support of Its Petition for Writ of Review, Mandate, and/or Other appropriate Relief*, July 16, 2021, p. 21 (emphasis in original).

⁸ *Id.*, p. 44 (emphasis in original).

⁹ *Id.*, p. 13.

¹⁰ SoCalGas Response, p. 2 (remote access "is currently stayed based on a compromise reached between SoCalGas and the Commission...").

¹¹ See SoCalGas Response, Attachment A - March 19, 2021 Executive Director Letter ("This letter extends SoCalGas' time to comply with the Resolution until twenty-one (21) days

However, contrary to SoCalGas' claims here, it does not purport to stay SoCalGas' compliance with a Commission subpoena, SoCalGas' "obligation to provide remote, live access to its accounting systems,"¹² or to limit Cal Advocates' discovery on SoCalGas beyond the issues on appeal.

SoCalGas has a statutory obligation to make its accounts available for review by Cal Advocates, in person if necessary, and should be ordered to do so consistent with Cal Advocates' Motion.¹³ The Commission should be deeply concerned that the utility claims to have co-mingled purportedly privileged attorney/client communications and First Amendment protected information into ratepayer funded accounts.¹⁴ SoCalGas' attempt to shield these ratepayer funded accounts from regulatory scrutiny by injecting privileged and/or confidential information into them is inconsistent with the laws governing privilege and confidentiality,¹⁵ is contrary to

following the Court of Appeal's final disposition of SoCalGas's Petition for Writ of Review and Request for Stay currently pending before the California Court of Appeal (Case No. B310811)."

¹² SoCalGas Response, p. 2.

¹³ Cal Advocates notes that SoCalGas' representations here regarding the availability of remote access are wholly inconsistent with SoCalGas representations to the Appellate Court and to Cal Advocates in multiple meet and confer discussions. Cal Advocates understood all of the utility's offers of limited remote access to be available at the time the offer was made – not some distant time in the future. During those discussions SoCalGas never suggested that remote access would take months to provide. The utility represented that access was available when it was offered.

¹⁴ See, e.g., SoCalGas Response, pp. 3-6.

¹⁵ As the California Court of Appeals has explained: "Evidence Code section 952 extends the privilege to confidential communications shared with 'those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted' ... 'The key concept here is need to know. While involvement of an *unnecessary* third person in attorney/client communications destroys confidentiality, involvement of third persons to whom disclosure is reasonably *necessary* to further the purpose of the legal consultation preserves confidentiality of communication'." *Zurich American Ins. Co. v. Superior Court*, 155 Cal. App. 4th 1485, 1503 (2007) quoting *Insurance Co. of North America v. Superior Court*, 108 Cal. App. 3d 758 (1980) and *F.T.C. v. GlaxoSmithKline*, 294 F.3d 141 (D.C. Cir. 2002). Similar rules apply to federal agencies. See *Maine v. D.O.I.*, 298 F.3d 60, 71-72 (1st Cir. 2002) (holding DOI was not entitled to attorney-client privilege because its documents were not maintained in a confidential manner); *Lacefield v. United States*, 1993 U.S. Dist. LEXIS 4521, *9, No. 92-N-1680 (D. Colo. March 10, 1993) (if circulated to a larger group of individuals, the privilege does not apply because the agency did not maintain the confidentiality of the information).

the regulatory compact,¹⁶ is wholly at odds with SoCalGas' representations to the Appellate Court,¹⁷ and is unsupported by the Executive Director's agreement to stay the Appellate Court litigation.

III. CONCLUSION

Cal Advocates asks that the Commission grant the relief requested in its Motion to Compel. If a utility were able to simply remove accounts or records from regulatory oversight by inserting privileged or confidential information into them, there would be no means to ensure utility compliance with state statutes or Commission orders.

Respectfully submitted,

/s/ *Traci Bone*

Traci Bone
Attorney for the

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Telephone: (415) 703-2048
Email: traci.bone@cpuc.ca.gov

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¹⁶ Recognizing that the utilities have been required to provide access to their accounts “at any time” for over a century, and that this requirement is a critical component of the regulatory compact, it is axiomatic that utility accounts should not include such information.

¹⁷ See *Southern California Gas Company v. Public Utilities Commission of the State of California*, Court of Appeal for the Second Appellate District, Division One, Case No. B310811, *Southern California Gas Company's Reply In Support of Its Petition for Writ of Review, Mandate, and/or Other appropriate Relief*, July 16, 2021, pp. 13, 21, and 44.