

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-391
Administrative Law Judge Division

**DECLARATION OF JASON H. WILSON IN SUPPORT OF COMMENTS OF
SOUTHERN CALIFORNIA GAS COMPANY TO DRAFT RESOLUTION ALJ-391**

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Attorneys for:
SOUTHERN CALIFORNIA GAS
COMPANY

Dated: November 19, 2020

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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ALJ-391**

I, Jason H. Wilson, do declare as follows:

1. I am Jason H. Wilson, a partner in Willenken LLP, counsel of record for Southern California Gas Company (“SoCalGas”). I am personally familiar with the facts and representations in this declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or information and belief.

2. In meet and confer discussions with Cal Advocates on this issue, SoCalGas noted that its accounting systems contained twenty-one years of data. *See* Exhibit 1 hereto, Email from Traci Bone to Jason Wilson dated September 22, 2020. Cal Advocates agreed to narrow the date range of the privilege log to January 1, 2015 to the present. *Id.* On September 28, 2020, SoCalGas accepted this date range. *See* Exhibit 2, Email from Jason Wilson to Traci Bone dated September 28, 2020. However, SoCalGas noted that it would have to review documents from many cases that have nothing to do with Cal Advocates’ inquiry about the alleged use of ratepayer funds for lobbying (such as employment cases or personal injury cases) and therefore SoCalGas asked for a further narrowing of the scope of the log. *Id.* Moreover, SoCalGas estimates that at least 10,000 documents will have to be reviewed for attorney client privilege or

attorney work product privilege. *See* Exhibit 3 hereto, a September 25, 2020 email from Jason Wilson to Traci Bone. Cal Advocates refused to make any further concession.

3. Attached as Exhibit 4 hereto, is a true and correct copy of the August 30, 2019 Common Interest, Joint Prosecution, and Confidentiality Agreement between Cal Advocates and Sierra Club.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this November 19, 2020, at Los Angeles, California.



Jason H. Wilson

EXHIBIT 1

From: [Bone, Traci](#)
To: [Sierzant, Corinne M](#); [Castello, Stephen](#); [Ward, Alec](#)
Cc: [Jason Wilson](#); [Sherin Varghese](#)
Subject: Meet and Confer re: SoCalGas Response - CalAdvocates-TB-SCG-2020-05
Date: Tuesday, September 22, 2020 4:54:36 PM

Jason:

Cal Advocates notes that in response to data request CalAdvocates-TB-SCG-2020-05, SoCalGas objected to providing a privilege log for those portions of its SAP system that it claims are privileged, but that it proposed a meet and confer to discuss a “sufficiently narrowed request.” Specifically:

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.

Cal Advocates would like to meet and confer via this email.

Cal Advocates proposes that SoCalGas provide the privilege log as set forth in the original data request for all documents that SoCalGas claims are privileged in its SAP system from 2015 to the present. Cal Advocates also proposes that the privilege log be provided no later than October 5, 2020.

We note that SoCalGas appeared to object to providing the log for information going as far back as 1999, and so this proposal addresses that concern.

We also note that SoCalGas asserted in its May 22, 2020 Motion to Quash that law firm invoices were privileged if they “communicate information for the purpose of legal consultation or risk exposing information that was communicated for such a purpose.” We also note that the declaration supporting the utility’s claim that the law firm invoices contained potentially confidential information was executed by a SoCalGas “Financial Systems and Client Support Manager.” (This declaration accompanied the May 22, 2020 Motion to Quash.) Clearly, such an individual has no expertise to make a legal determination regarding whether a document is privileged under the law.

Because utility books and records are open to regulator inspection pursuant to numerous statutes, SoCalGas law firm invoices should not contain such information as a matter of course. In my experience managing over 20 law firms, the invoices did not contain legal consultation. In addition, to Cal Advocates’ knowledge, this issue

has never been raised before to prevent CPUC staff from fully auditing a utility's books and records. Consequently, we anticipate that there will be very few legitimate claims of privilege. Further, given that such invoices, and how the costs of those invoices are booked, are directly relevant to the issue of Cal Advocates' AstroTurf Funding Investigation, it is necessary for Cal Advocates to have access to all of the non-privileged information in those invoices. In the unlikely event that privileged information is contained in a law firm invoice, SoCalGas should propose a process for providing redacted versions of those invoices to Cal Advocates.

Finally, any privilege log should specifically identify where the document can be found in the SAP system, as specified in the privilege log template provided with the original data request.

Please respond to this email at your earliest convenience. To the extent any proposal herein is not acceptable to SoCalGas, please propose a counter-proposal.

To the extent you believe that a telephonic meet and confer would be productive, please identify a date and time no later than September 25 for such a meeting.

We look forward to your prompt response to this proposal,

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Sierzant, Corinne M <CSierzant@socalgas.com>

Sent: Thursday, July 30, 2020 4:01 PM

To: Bone, Traci <traci.bone@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>

Cc: Jason Wilson <jwilson@willenken.com>; Sherin Varghese <svarghese@willenken.com>

Subject: SoCalGas Response - CalAdvocates-TB-SCG-2020-05

Good Afternoon,

Attached is SoCalGas' response to CalAdvocates-TB-SCG-2020-05 (DR-16). This includes documents in response to question 1 with a confidentiality declaration. As these are sensitive documents, we appreciate you treating them as such.

Sincerely,

Corinne Sierzant, Regulatory Affairs
213-244-5354 (Office); 215-290-3144 (Cell)
csierzant@socalgas.com

EXHIBIT 2

From: [Jason Wilson](#)
To: [Bone, Traci](#); [Ward, Alec](#); [Castello, Stephen](#)
Cc: [Willenken-CalPA](#); [Sierzant, Corinne M](#)
Subject: DR 16, Privilege Log Issue: Meet and Confer
Date: Monday, September 28, 2020 11:23:01 AM

Traci:

We do not see an impasse and we believe that motion practice is unnecessary and premature at this point. We believe that this dispute can be resolved with further meet and confer. To be clear, SoCalGas is willing to do a privilege log consistent with the scope of your investigation, which you say is related to astroturfing. SoCalGas is not insisting on any further date limitation. Your proposed starting date of January 1, 2015 is fine.

The problem with your current position is that the vast majority of the law firms that SoCalGas retains cannot possibly have worked on matters related to the stated scope of your investigation. For example, SoCalGas retains law firm to handle employment matters. What does an employment lawsuit have to do with "astroturfing?" SoCalGas retains law firms represent them in personal injury matters. What does "astroturfing" have to do with personal injury matters? SoCalGas retains law firms to litigate commercial disputes with vendors. Again, what does a commercial dispute have to do with "astroturfing?" Does Cal Advocates really want to bring a motion to compel to force SoCalGas to do a privilege log on invoices from a personal injury case?

Why can't Cal Advocates exclude unrelated legal matters from the privilege log exercise? We understand that this dispute has grown contentious. However, in our view, distrust should not replace common sense. Can we talk on Friday to find common ground?

For the record, there are four statements we would like to dispute.

First, SoCalGas was not required by so-called "basic rules of Civil Procedure" to produce a log "months ago." Rather, on July 30, 2020, SoCalGas stated its objections to Cal Advocates' unduly burdensome request, and offered to meet and confer about reasonable means of narrowing the scope of the requested privilege log. Cal Advocates first responded on September 22, 2020, and SoCalGas believes the parties are still meeting and conferring on the scope of the requested log. After waiting 54 days to engage a meet and confer, Cal Advocates is now declaring an impasse in three days. This position is untenable.

Second, we disagree that SoCalGas's objections to the privilege log request are "legally infirm." We provided several relevant citations cited in our email that have gone unaddressed.

Third, your email states that SoCalGas did not "provid[e] a counter proposal." We counter-proposed that "if Cal Advocates is able to identify particular law firms in which it is interested, we believe this would be a fruitful area for the parties to explore in meet and confer to narrow the scope of the log." You have not responded to this proposal.

Finally, you claim you have properly met and conferred. We do not believe you have attempted to meet and confer in good faith. You have refused our offer to speak over the phone and to try to settle our

differences. You have ignored our counterproposal. Instead, you just want SoCalGas to comply with your latest demand without providing any legal justification for your position or addressing the issues we have raised. The idea that further meet and confer would be pointless (as you claim) is contradicted by the fact that the parties have narrowed their differences. And our most recent counter proposal further narrows the gap.

Jason



Jason H. Wilson

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EXHIBIT 3

From: [Jason Wilson](#)
To: [Bone, Traci](#)
Cc: [Sierzant, Corinne M](#); [Willenken-CalPA](#); [Ward, Alec](#); [Castello, Stephen](#)
Subject: DR 16, Privilege Log Issue: Meet and Confer
Date: Friday, September 25, 2020 10:28:19 AM

Dear Traci,

Thank you for narrowing your request to cover documents only from 2015 to the present. While that is a step in the right direction to alleviate the extreme burden associated with Cal Advocates' original request, it still consists of nearly five years' of transactions and therefore does not entirely resolve our objections. Therefore, we would suggest we meet and confer via telephone. Would you be available next week Friday, October 2 at 11:30 am?

In addition, we would dispute certain characterizations in your email regarding the nature and scope of privilege of legal invoices, and their relevance to this matter.

First, you seem to cast doubt on the validity of having the manager in charge of the database to which Cal Advocates is seeking access testify about the contents of that database, because "such an individual has no expertise to make a legal determination regarding whether a document is privileged under the law." This argument is misplaced. Cal Advocates has demanded unfettered access to SoCalGas's database, which contains material that is likely privileged. SoCalGas has stated its legal objections, and provided evidence that potentially privileged information is contained in the database. Now the parties are meeting and conferring about a privilege log, which will establish "the preliminary facts necessary to support" the privilege. *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.

It is true that that the determination of privilege requires a document-by-document review. As the California Supreme Court has explained, "[T]he information contained within certain [billing] invoices may be within the scope of the [attorney-client] privilege." *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal. 5th 282, 298. For example, "[t]o the extent that billing information is conveyed 'for the purpose of legal representation'—perhaps to inform the client of the nature or amount of work occurring in connection with a pending legal issue—such information lies in the heartland of the attorney-client privilege." *Id.* Even amounts paid for legal services "may come close enough to this heartland to threaten the confidentiality of information directly relevant to the attorney's distinctive professional role." *Id.* Thus, as SoCalGas cited in its Motion to Quash, law firm invoices can be privileged "if they either communicate information for the purpose of legal consultation or risk exposing information that was communicated for such a purpose." *Id.* at 300.

This is precisely why Cal Advocates' request for a log on an entire database, or even five years' of entries in that database, is incredibly burdensome. Determining whether a legal invoice threatens the heartland of the attorney-client privilege will take time and resources. Our preliminary rough estimate is that even limited to five years, there could be more than 10,000 entries to log. That is not reasonable or feasible, and requires additional narrowing via meet and confer.

Second, you also seem to be taking the incorrect position that SoCalGas may not even assert its privilege, because utility books and records "are open to regulator inspection pursuant to numerous statutes." But inspection rights do not obviate a utility's claim of legal privilege. SoCalGas and the Commission

have litigated this very issue all the way to the California Supreme Court, and the Court has explicitly held that the Commission's power to inspect SoCalGas's books and records is "tempered by the attorney-client privilege" and that "no provision exempts [the Commission] from complying with the statutory attorney-client privilege." *Southern California Gas Co. v. Public Utilities Com.* (1990) 50 Cal. 3d 31, 38-39. The US Supreme Court has also rejected this very argument. *United States v. Louisville & Nashville Railroad Co.* (1915) 236 U.S. 318, 336.

Finally, contrary to your office's prior representation that "it had no desire to review any privileged information in the SAP database," Decl. of Stephen Castello, ¶ 13, May 28, 2020, you now seem to suggest that such information is "directly relevant to the issue of Cal Advocates' Astroturf Funding Investigation." We dispute this characterization, as certainly it is not the case that every law firm utilized by SoCalGas works on issues relevant to Cal Advocates' Astroturfing investigation. However, if Cal Advocates is able to identify particular law firms in which it is interested, we believe this would be a fruitful area for the parties to explore in meet and confer to narrow the scope of the log.

We look forward to discussing these issues with you further and are hopeful we can negotiate a resolution.

All the best,

Jason



Jason H. Wilson

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EXHIBIT 4

**Confidential Legal Materials, Subject To Joint Prosecution Privilege,
Attorney-Client Privilege and Attorney Work Product**

**COMMON INTEREST, JOINT PROSECUTION,
AND CONFIDENTIALITY AGREEMENT**

This Common Interest, Joint Prosecution, and Confidentiality Agreement (“Agreement”) is made and effective as of the 30th day of August 2019, by and among the following entities: the Public Advocates Office and the Sierra Club (“Party” individually and “Parties” collectively).

WHEREAS, the Public Advocates Office and Sierra Club are investigating tactics by Southern California Gas Company (“SoCalGas”) to perpetuate reliance on gas in buildings and whether these the costs of these activities are borne by SoCalGas customers.

WHEREAS, each Party has been granted party status in the California Public Utilities Commission’s (CPUC) Rulemaking Regarding Decarbonization (R. 19-01-011), wherein both the Public Advocates Office and Sierra Club have investigated SoCalGas’s role in the creation of Californians for Balanced Energy Solutions, an entity that also intervened in R.19-01-011 with no disclosure in its Motion for Party Status of its relationship with SoCalGas.

WHEREAS, the Public Advocates Office has investigated and continues to investigate SoCalGas’s activities related to undermining efficiency codes and standards in CPUC Rulemaking Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues (R.13-11-005).

WHEREAS, Sierra Club has investigated SoCalGas’s use of customer funds for a range of anti-electrification activities in SoCalGas’s Application for Authority, Among Other Things, to Update its General Revenue Requirement and Base Rates Effective on January 1, 2019 (A.17-10-008).

WHEREAS, each Party is in agreement that there are many unanswered questions regarding the full scope of SoCalGas’s activities to obstruct progress on the transition from gas to electric end uses in buildings and the extent to which SoCalGas has passed the cost of these activities to its customers.

NOW, THEREFORE, in consideration of the mutual representations, covenants, and agreements hereinafter set forth, including the foregoing paragraphs, which are part of this Agreement and not mere recitals, the Parties hereto agree as follows:

1. The Parties acknowledge that they have a common interest in connection with R.19-01-011 before the CPUC, as noted above, as well as further investigations into SoCalGas use of customer funds for anti-electrification activities, as noted above, and that they will cooperate in the joint pursuit of their common interests to the extent permitted by law pursuant to the common interest doctrines recognized by the various state and federal courts.
2. To that end, the Parties recognize that facts and information known by one Party may assist the other in development of discovery that will assist in obtaining relief in

**Confidential Legal Materials, Subject To Joint Prosecution Privilege,
Attorney-Client Privilege and Attorney Work Product**

currently pending proceedings as well as the development of future actions, such as a Motion for an Order to Show Cause. The Parties acknowledge and agree that their interests will be best served if the Parties can exchange information subject to the continued protection of any applicable privileges. In sharing information, documents, strategies, and resources with each other, the Parties expressly preserve and retain the privilege conferred by the work-product doctrine, the attorney-client privilege, rules of protection from disclosure, and all other privileges during any proceeding that may arise in relation to those matters listed in the recitals. Nothing contained herein, however, will obligate a Party to provide any confidential information to any other Party.

3. The Parties agree that they intend to, and will, maintain the confidentiality of the shared materials unless authorized by the other Party. Each Party agrees that it will protect confidential information from disclosure to non-Parties, other than counsel or consultants to any of the Parties, using the same degree of care used to protect its own confidential or proprietary information of like importance. Moreover, each Party will, on a best efforts basis, mark hard copies and e-mails or other electronic data containing confidential information provided to any other Party with some or all of the following words: "Confidential Legal Materials, Subject To Common Interest Privilege, Attorney-Client Privilege and Attorney Work Product." Failure to so mark the materials, however, will not be treated as waiving the common interest privilege. The inadvertent disclosure of such information or materials contrary to this provision shall not waive any privilege or confidentiality of such information or materials relative to any person or entity not a Party to this Agreement, *i.e.*, such disclosure shall not be considered a public or privilege-waiving disclosure of the information or materials
4. Confidential information shared in furtherance of this agreement shall not be used by any receiving Party(ies) against the Party(ies) sharing the information. Upon termination of this agreement the Parties will return or destroy any confidential information received in accordance with this Agreement if so requested by the original sharing Party.
5. Each Party shall bear its own costs, and no Party shall have authority to incur costs on behalf of any other.
6. Nothing contained in this Agreement is intended to create an attorney-client relationship for the purposes of conflicts or otherwise, and the fact that any counsel has entered into this Agreement shall not in any way preclude the counsel from representing any interest that may be construed to be adverse to any other Party to this Agreement, during the term hereof or after expiration or any earlier termination of the Agreement. The terms and conditions contained herein, and the fact that any counsel has entered into this Agreement, shall not in any way be used as a basis for seeking to disqualify any counsel from representing any other Party in the above identified discussions.

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7. Any Party may provide written notice to the other Parties of its intent to withdraw from this Agreement. Subsequent to such withdrawal, this Agreement shall continue to protect all shared materials disclosed by the Parties prior to the withdrawal. All Parties will continue to be bound by this Agreement with regard to any shared materials provided, disclosed, received, learned, or obtained through this Agreement. Moreover, a withdrawing Party shall not disclose to any third-party information pertaining to legal strategies developed in furtherance of this Agreement. Regardless of whether a Party withdraws from the Agreement, should any Party cease to have a common interest with the other Parties to this Agreement, it is the intent of the Parties that the Agreement will remain in effect as to those Parties who continue to have a common interest.
8. No Party acting alone may waive the Common Interest/Joint Prosecution Privilege; the Common/Interest/Joint Prosecution Privilege may be waived only by the unanimous consent of all the Parties as expressed in writing.
9. This Agreement may be amended or modified only by a written instrument executed by all Parties that states specifically that it is intended to amend or modify this Agreement.
10. This Agreement supersedes any other agreement, whether written or oral, that may have been made or entered into collectively by and between all of the Parties relating to the matters contemplated hereby. This Agreement constitutes the entire agreement by and among all of the Parties and there are no agreements or commitments except as expressly set forth herein. However, this provision does not in any way supersede any previous agreements between individual Parties or any subgroups of the Parties.
11. If any person or entity, requests or demands, by subpoena or otherwise, any materials subject to this Agreement, the Party who received (or whose attorneys received) the request or demand will advise the person or entity seeking the materials that such materials are privileged and may not be disclosed without the consent of the Party(ies) who furnished them, unless ordered by a court of competent jurisdiction or the CPUC. Unless and until written notice is received from the affected Party(ies) that all applicable rights and privileges are waived, the recipient of the request or demand will take all reasonable steps to permit the assertion of all applicable rights and privileges with respect to the materials and will cooperate fully with the affected Party(ies) and its (their) attorneys in any judicial or administrative proceeding relating to the disclosure of such materials.
12. If, at any time, the Commission, or any other federal, state, or local governmental authority, or any court or arbitration tribunal having jurisdiction determines that any provision of this Agreement is illegal, void, invalid, or unenforceable, in any respect, then the terms of this Agreement will, if possible, be modified, and this Agreement will be reformulated to the extent necessary to be deemed valid or enforceable in compliance with all Commission or other rules, regulations, order, and policies, and to preserve each Party's privilege, benefits, and equities hereunder.

**Confidential Legal Materials, Subject To Joint Prosecution Privilege,
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13. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.
14. The validity and enforceability of the terms of this Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, counsel to the Parties have executed this Agreement as of the date first above written.

s/ MATTHEW VESPA

MATTHEW VESPA
Attorney for Sierra Club
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Office: (415) 217-2123
Cell: (415) 310-1549

/s/ DIANA L. LEE

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California Public Utilities Commission
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