

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

**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)**

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I. INTRODUCTION

Pursuant to the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure (the Rules), the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) submits this Response to the *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)* (Motion for Reconsideration/Appeal).¹

On October 7, 2019, the Public Advocates Office² submitted a *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)* (October 7, 2019 Motion to Compel).³ Administrative Law Judge (ALJ) Regina DeAngelis granted the Public Advocates Office's motion on November 1, 2019, ordering Southern California Gas Company (SoCalGas) to produce the requested documents within two business days (November 1, 2019 Ruling).⁴ SoCalGas requested permission to file an appeal of the November 1, 2019 Ruling, which was not ruled upon.⁵ SoCalGas submitted its Motion for Reconsideration/Appeal on December 2, 2019 requesting that ALJ DeAngelis' November 1, 2019 Ruling be overturned by the full Commission.

SoCalGas' primary argument is that by allowing the Public Advocates Office to investigate SoCalGas' lobbying activity, the November 1, 2019 Ruling has had a

¹ The Commission's Rules do not directly apply because this matter is outside of a formal proceeding. However, the Public Advocates Office has adhered to the Rules in the litigation of this ongoing discovery dispute.

² Sometimes referred to by SoCalGas as "CalPA."

³ See Attachment A. SoCalGas subsequently submitted an emergency motion to stay Administrative Law Judge (ALJ) DeAngelis' ruling, indicating that it intended to appeal the ruling to the full Commission (Attachment B). ALJ DeAngelis did not rule upon the motion to stay and SoCalGas submitted the requested documents on November 5, 2019, in compliance with the November 1, 2019 Ruling.

⁴ See Attachment C.

⁵ The Public Advocates Office requested permission to respond to SoCalGas' appeal, should permission to file an appeal be granted. This request was also not ruled upon.

“chilling effect on SoCalGas’ and others’⁶ exercise of their constitutional rights to associate with each other, petition the government, and engage in free speech”⁷

SoCalGas argues that the requested contracts are entitled to First Amendment protection, that it has made a prima facie showing of First Amendment infringement, and that the Public Advocates Office has not shown a requisite compelling interest in the documents nor has it narrowly tailored its requests. SoCalGas also argues that the Public Advocates Office’s interpretation of Pub. Util. Code §§ 309.5 and 314 is unconstitutionally overbroad and vague. Further, SoCalGas argues, because this dispute arises outside of a proceeding, there are insufficient procedural safeguards afforded to protect its due process rights.

SoCalGas seeks an order from the Commission:

- (1)** Striking Question 8 of CalPA’s data requests [sic] CalAdvocates-SC-SCG-2019-05 in this “non-proceeding,” to the extent it seeks SoCalGas’ 100% shareholder-funded contracts;
- (2)** Requiring CalPA to return or destroy all originals and copies of all materials that SoCalGas produced under protest in response to Question 8 of CalAdvocates-SC-SCG-2019-05;
- (3)** Striking Question 1 of PubAdv-SDG&E-001-SCS to SDG&E and PubAdv-SCG-001-SCS to SoCalGas, to the extent it seeks 100% shareholder-funded contracts from SoCalGas and SDG&E;
- (4)** Requiring CalPA to return or destroy all originals and copies of all materials that SoCalGas and SDG&E have produced or will produce under protest in response to Question 1 of PubAdv-SDG&E-001-SCS to SDG&E and PubAdv-SCG-001-SCS to SoCalGas;
- (5)** Requiring CalPA to prove to a neutral decisionmaker that any pending or future demands for materials impinging on constitutional freedoms

⁶ SoCalGas also seeks a Commission order on a separate data request served on San Diego Gas & Electric Company (SDG&E), to which SDG&E objected because the requested documents allegedly related to 100% shareholder-funded contracts. *See* Motion for Reconsideration/Appeal at 4, n.5-6. SoCalGas requests that the Commission not only reverse ALJ DeAngelis’ ruling on the matter at hand, but also strike the Public Advocates Office’s requests of SDG&E and return any materials it may have produced. *Id.* SoCalGas’ attempt to seek such relief in a Motion for Reconsideration/Appeal of a completely separate discovery dispute is inappropriate. Nevertheless, even if the Commission were to consider this request here, SoCalGas’ request regarding the data request to SDG&E should be denied on same grounds that its request to reverse ALJ DeAngelis’ ruling should be denied—SoCalGas’ First Amendment and procedural arguments are without merit.

⁷ Motion for Reconsideration/Appeal at 3.

further a compelling interest and are narrowly tailored to achieve that interest; and

(6) If necessary, setting a briefing schedule for any further filings the Commission deems necessary or appropriate before SoCalGas petitions the California Court of Appeal for a writ of review and seeks other appropriate judicial relief.⁸

As discussed below, each argument is without merit and SoCalGas' requests for relief should be denied in their entirety. The Public Advocates Office, both as a statutorily created entity and as Commission staff, has the right to inspect any of SoCalGas' records in the course of its duties, whether such records relate to shareholder- or ratepayer-funded activities. SoCalGas is obligated under the Pub. Util. Code to make its records available for inspection and cannot sequester certain records by claiming they are purely related to shareholder funds. The Public Advocates Office is not infringing on SoCalGas' First Amendment rights by carrying out its statutorily mandated duty of regulating a public utility to protect the interest of ratepayers as it is not prohibiting SoCalGas from using shareholder funds to pursue its lobbying activities.

Further, even if SoCalGas' First Amendment rights were implicated by the Public Advocates Office's data requests, the Public Advocates Office and the Commission, in general, have a compelling interest in being able to review regulated utilities' records. The Public Advocates Office has not interpreted the Pub. Util. Code in an impermissibly broad or vague manner as it has relied on to the clear, plain language of the statute and Commission decisions in its interpretation. Finally, the procedural safeguards afforded SoCalGas are sufficient to protect its due process rights, as evidenced by the protections provided in statute and the process of adjudication for this ongoing dispute. Accordingly, SoCalGas' motion and requests for relief should be denied.

⁸ *Id.* at 25-26.

II. FACTUAL BACKGROUND²

The Public Advocates Office is currently investigating SoCalGas' funding of political lobbying activities, including, among other things, whether and to what extent ratepayer money was used to found and support Californians for Balanced Energy Solutions (C4BES).¹⁰ On May 13, 2019, C4BES filed a Motion for Party Status in Rulemaking (R.)19-01-011 in which C4BES represented that it is "a coalition of natural and renewable natural gas users."¹¹ C4BES did not disclose that it has any affiliation with SoCalGas in its Motion for Party Status. On May 14, 2019, Sierra Club filed a *Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery*, in which it alleged that SoCalGas founded and funded C4BES.¹² On May 29, 2019, the Public Advocates Office, C4BES, and SoCalGas separately filed responses to Sierra Club's motion to deny party status to C4BES. In its response to Sierra Club's motion to deny party status, the Public Advocates Office stated that it would be investigating the allegations raised by Sierra Club.¹³

On May 23, 2019, the Public Advocates Office issued Data Request Number Public Advocates Office-SCG051719 to SoCalGas regarding its involvement with C4BES. This data request was issued outside of R.19-01-011. SoCalGas' response to the Public Advocates Office's data request provides evidence that SoCalGas had been using

² A similar but more detailed factual background is provided in the Public Advocates Office's *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)*, provided here in Attachment A. This brief recounting of the factual background is provided for convenience and context.

¹⁰ In Rulemaking (R.) 19-01-011, Sierra Club alleged that SoCalGas found and funded C4BES. This led to an investigation by the Public Advocates Office into the veracity of Sierra Club's allegation and whether ratepayer funding was used to found and fund C4BES. *See* 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* Public Advocates Office's *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* filed (May 29, 2019).

¹¹ *See C4BES Motion for Party Status in R.19-01-011 filed* (May 13, 2019).

¹² *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* (filed May 14, 2019).

¹³ *See R.19-01-011, Response of the Public Advocates Office 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* (filed May 29, 2019), at 2.

ratepayer money to start and fund C4BES.¹⁴ The Public Advocates Office issued additional data requests to further investigate this matter. Each of these data requests has also been issued outside of R.19-01-011 and are not within the scope of any current proceeding.

On July 19, 2019, the Public Advocates Office issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. SoCalGas refused to provide a full unredacted response, which led to the Public Advocates Office to submit a *Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-04* to then-Commission President Picker's office. The Public Advocates Office's Motion sought unredacted documents pursuant to the Public Advocates Office's ability to seek information from entities regulated by the Commission under Pub. Util. Code §§ 309.5(e) and 314. SoCalGas argued that the information sought by the Public Advocates Office was "not responsive to [the] questions and furthermore is not necessary for Cal Advocates to perform its statutory duties as laid out in Public Utilities Code § 309.5(a)[¹⁵]" because it was allegedly related to shareholder funds, not ratepayer funds. On September 10, 2019, ALJ DeAngelis granted the Public Advocates Office's motion to compel.

On August 13, 2019, prior to the filing of the first motion to compel in this matter, the Public Advocates Office served SoCalGas with DR CalAdvocates-SC-SCG-2019-05.¹⁶ This Data Request included a question requesting all contracts (and contract

¹⁴ See R.19-01-011, *Response of the Public Advocates Office to Southern California Gas Company's Motion to Strike Sierra Club's Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (filed July 5, 2019), at 2.

¹⁵ 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.

¹⁶ See Attachment D, Data Request (DR) CalAdvocates-SC-SCG-2019-05, dated August 13, 2019, at 4.

amendments) related to a “Balanced Energy Internal Order (IO).”¹⁷ SoCalGas objected to the request on the grounds it sought information “outside the statutory authority delegated to the Public Advocates Office by Pub. Util. Code § 309.5” because the Balanced Energy IO was allegedly shareholder funded, not ratepayer funded.¹⁸ Thus, SoCalGas contended, “knowing this information will not assist the Public Advocates Office in performing its statutory duties.”¹⁹ SoCalGas did not object on First Amendment grounds, nor was this reasoning offered during any of the subsequent meet and confer conferences. SoCalGas first asserted such a defense in its response to the October 7, 2019 Motion to Compel.²⁰

The Public Advocates Office attempted to resolve the issue informally, noting to SoCalGas that ALJ DeAngelis’s September 10, 2019 ruling implicitly rejected SoCalGas’ grounds for refusing to answer Question 8. The Public Advocates Office sought to avoid the extreme waste of Commission resources in seeking judicial intervention on a legal issue that had already been decided. SoCalGas disagreed, and although the Public Advocates Office met with SoCalGas three times in an attempt to resolve the dispute, the Public Advocates Office had no other option but to file the October 7, 2019 Motion to Compel.²¹

As previously communicated to SoCalGas, the Public Advocates Office sought the contracts that are the subject of Question 8 for a number of reasons.²² In part, the Public Advocates Office sought these contracts because there was evidence from SoCalGas’

¹⁷ The Balanced Energy IO is an account set up to track the costs of SoCalGas’ Energy Policy and Strategy team associated with “balanced energy.”

¹⁸ See Attachment E, Southern California Gas Company’s Responses to Data Request CalAdvocates-SC-SCG-2019-05, dated August 27, 2019, at 8.

¹⁹ *Ibid.*

²⁰ See Attachment F, *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)*, at 6-8.

²¹ The parties met on September 16, 2019, September 27, 2019, and October 2, 2019. See Attachment A at 7-8 for a more detailed description of the meet and confer sessions.

²² Although, as noted in the October 7, 2019 Motion to Compel, the Public Advocates Office in general is not required to divulge the purpose of its discovery because it is entitled to these documents per statute and Commission decision.

responses to the Public Advocates Office’s other data requests that other such contracts associated with the Balanced Energy IO were at one point ratepayer funded.²³ Further, regardless of whether these contracts were shareholder-funded, the Public Advocates Office and ratepayers have an interest in the cost and non-cost aspects of SoCalGas’ activities, such as whether the contracted-for activities are consistent with statutory and Commission requirements. The Public Advocates Office also explained to SoCalGas that, among other things, the investigation was seeking information on how the activities related to the contracts in Question 8 may have affected ratepayers’ interests in issues such as achieving a least-cost path to meeting the state’s decarbonization goals.

The Public Advocates Office required the information in response to Question 8 in order to perform its duties and considered SoCalGas’ non-response to be in violation of SoCalGas’ duty to comply with its obligations under Pub. Util. Code §§ 309.5(e)²⁴ and 314.²⁵ SoCalGas opposed the October 7, 2019 Motion to Compel, but ALJ DeAngelis

²³ See Attachment G, Southern California Gas Company’s Responses to Data Request CALPA-SCG-051719, dated June 14, 2019 (redacted), at 5 (while SoCalGas designated certain information on page 4 as confidential, it later agreed that the information was not confidential; however, the information has been redacted in an abundance of caution); see also Attachment H, Southern California Gas Company’s Updated Responses to Data Request CALPA-SCG-051719, dated August 13, 2019, at 5 (demonstrating SoCalGas changed the funding of the contracts from 50% ratepayer funding to 100% shareholder funding).

²⁴ Pub. Util. Code § 309.5(e) states: “The office may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.”

²⁵ Pub. Util. Code §314 states:

(a) 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. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation, or a water corporation that has 2,000 or more service connections, with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.

again granted the Public Advocates Office’s motion and ordered SoCalGas to produce the requested contracts. SoCalGas then filed its Motion for Reconsideration/Appeal.

III. DISCUSSION

A. Pub. Util. Code §§ 309.5(e) and 314 Entitle the Public Advocates Office to the Information It Seeks

The Public Advocates Office, and Commission staff in general, enjoy broad discovery power to inquire into any aspect of regulated utilities’ records in the pursuit of its statutory duties. Under the Pub. Util. Code, the Public Advocates Office has a duty to represent and advocate on behalf of the interests of ratepayers.²⁶ In pursuit of this duty, the Public Advocates Office has been granted the authority to “compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission.”²⁷ Additionally, as staff of the Commission, the Public Advocates Office is entitled to, at any time, “inspect the accounts, books, papers, and documents of any public utility” as well as “any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in” any public utility²⁸ Commission staff, therefore, has a right to inspect the books and records of all regulated entities, regardless of the category of the funds.

The right, and the statutory duty, to inspect the accounts of a regulated utility is not qualified and includes all accounts—whether such accounts, books, or documents relate to shareholder- or ratepayer-funded activities. This is part of the basic regulatory compact that underlies public utility operation. The Pub. Util. Code provides that the Public Advocates Office and the staff of the Commission have lawful oversight over the entire utility, including any “shareholder portion” of the utility. As part of this oversight,

²⁶ Pub. Util. Code § 309.5(a).

²⁷ Pub. Util. Code § 309.5(e).

²⁸ Pub. Util. Code § 314(a). *See also*, Decision (D.) 01-08-062 at 6: “[The Public Advocates Office’s] rights to seek information from entities regulated by this Commission . . . principally arise from two statutes—Pub. Util. Code. §§ 314 and 309.5.” The Public Advocates Office’s “scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners” and is “constrained solely by a statutory provision that provides a mechanism unique to [the Public Advocates Office] for addressing discovery disputes.” *Ibid.*

the Commission has broad discovery powers. Were the Public Advocates Office and Commission staff to be restricted from looking at shareholder-funded activities or activities the utilities claim to be shareholder-funded, the ability of the Commission to inspect documents and records would be severely curtailed. Such a restriction is not consistent with the Commission's duty to effectively regulate utilities and determine whether any ratepayers were harmed to the benefit of the shareholders. The Public Advocates Office likewise is empowered to advocate on behalf of the interests of public utility customers. Were regulated utilities able to shield activities from disclosure because they are presently (allegedly) shareholder-funded, the Public Advocates Office could not carry out its statutory duties with any kind of certainty or thoroughness.

Furthermore, the authority of the Commission to inspect all records and books of a utility is well established. For example, the Commission has repeatedly affirmed that Commission staff, and by inclusion, the Public Advocates Office, has the right to inspect the books and records of a utility holding company.²⁹ Commission staff perform audits of utilities' books and records, and staff is not restricted to merely looking at above the line transactions. Additionally, the entirety of a utility's funds come from ratepayers apart from any original investor or lender funding. Ratepayers pay the utilities for their services and the utilities can then operate their businesses as well as pay dividends and interest to shareholders. Further, by affirming that the Commission may inspect the books and records of holding companies, the Commission has indicated that the distribution of the funds to shareholders remains within the Commission's interest.

SoCalGas argues that there is no basis for the Public Advocates Office to "delve into SoCalGas' political affiliations and communications when it may not do so for any unregulated individual or entity with a political interest in California energy policy."³⁰ To the contrary, Pub. Util. Code §§ 314 and 309.5(e) grant that authority: as a *regulated utility*, Commission staff and the Public Advocates Office may inspect SoCalGas' records

²⁹ See, e.g., D.06-12-029, *Order Instituting Rulemaking Concerning Relationship Between California Energy Utilities and their Holding Companies and Non-Regulated Affiliates*.

³⁰ Motion for Reconsideration/Appeal at 20-21.

and its records are clearly distinguished from an “unregulated individual or entity.” That such activity may be shareholder funded at some point does not shield it from inspection.

B. The Public Advocates Office’s Lawful Oversight of SoCalGas As A Regulated Entity Has Not Infringed on Its First Amendment Rights.

SoCalGas maintains that the Public Advocates Office has infringed its First Amendment rights to free association by requesting contracts relating to its lobbying activities.³¹ SoCalGas argues that it has shown a prima facie case of arguable First Amendment infringement and that the Public Advocates Office has not demonstrated that it has a compelling interest in the contracts.³² Any allegation that the Public Advocates Office is restricting SoCalGas’ ability to enter into lobbying contracts is unripe. SoCalGas has also not established a prima facie case of probable First Amendment infringement. However, even if it had, the Public Advocates Office has a compelling interest in the contracts and has narrowly tailored its requests.

1. The Public Advocates Office Has Not Restricted SoCalGas’ Ability to Enter Into Contracts

First, any alleged concerns regarding a restriction placed on SoCalGas’ contracting efforts is premature and unripe. The Public Advocates Office is merely requesting access to documents that it is entitled to review under the Pub. Util. Code in connection with an investigation in the interest of ratepayers. The Public Advocates Office has a number of reasons for requesting the information as part of its investigation of SoCalGas’ funding of its lobbying efforts.³³ The Public Advocates Office is not

³¹ *Id.* at 10-17.

³² *Id.* at 15-18.

³³ The Public Advocates Office again objects to SoCalGas’ characterization that these reasons are “shifting.” *See* Motion for Reconsideration/Appeal at 3. As explained in the October 7, 2019 Motion to Compel, the Public Advocates Office has various reasons for seeking this information. What is more appropriately characterized as “shifting” are SoCalGas’ objections. First, SoCalGas stated that responsive documents were not in fact “responsive” to the Public Advocates Office’s request. SoCalGas then tried to argue the documents are irrelevant to the Public Advocates Office’s statutory duties. SoCalGas also argued that the Public Advocates Office could not assert discovery authority under Pub. Util. Code § 314. Once these arguments did not take hold, SoCalGas belatedly argued that the request infringed on its First Amendment rights.

asserting that it is improper to use shareholder funds to lobby for certain issues. SoCalGas asserts it is being targeted because of the content of these contracts,³⁴ but the underlying message of the contracts is not the potentially problematic issue—it is the funding of such contracts and SoCalGas’ shifting of the funding between ratepayer and shareholder accounts, as well as whether the content of these contracts reveals any potential wrongdoing.

However, it is not appropriate for SoCalGas to potentially engage in Rule 1 violations,³⁵ which it may have done when it first asserted that ratepayers were not funding these activities or when it failed to disclose it established C4BES. The Public Advocates Office’s investigation may reveal improprieties regarding SoCalGas’ propagating of these contracts, and without further investigation into the *allegedly* 100% shareholder funded contracts, Commission staff would not be able to effectively regulate SoCalGas. Further, if SoCalGas were allowed to shield portions of its accounts and records by simply claiming they were shareholder funded, SoCalGas would evade effective regulation in the future. As explained above, the Public Advocates Office and Commission staff has the right to look at all of SoCalGas’ books and records to ensure ratepayers are not being harmed.

2. SoCalGas’ First Amendment Rights Have Not Been Infringed

SoCalGas asserts that the Public Advocates Office’s requests for these contracts “has had a chilling effect on SoCalGas and [its] ability to engage in activities which are lawful” and that it will be less willing to engage in such contracts and communications “knowing that SoCalGas’ non-public association and communication with consultants, business partners and others on SoCalGas’ political interests may be required to be

³⁴ Motion for Reconsideration at 20.

³⁵ Rule 1.1 states:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

disclosed.”³⁶ SoCalGas also cites declarations from its contracting partners asserting they are less willing to engage in such contracts if they are disclosed.³⁷ These self-serving declarations do not establish a prima facie case of probable First Amendment infringement. Again, the Public Advocates Office has not stated that such contracts and communications, if actually shareholder-funded, are necessarily improper or prohibited. SoCalGas can protect any confidential information by designating it as such. Further, while SoCalGas is entitled to First Amendment protections, SoCalGas’ status as a regulated, public entity mandates that its records and books be subject to inspection.

SoCalGas also objects to the Public Advocates Office’s sharing of certain information with the Sierra Club and the media.³⁸ The Public Advocates Office has in no way abused its discovery rights in sharing non-confidential information. If SoCalGas is concerned about confidential information, there is a well-established procedure for protecting such information from disclosure to those outside the Commission. No information protected by Pub. Util. Code § 583 or General Order 66-D was disclosed.³⁹ The Public Advocates Office has not pursued its advocacy goals in any manner that has violated Commission rules or statute. SoCalGas implied that the Public Advocates Office has violated Rule 10.1’s bar on a party obtaining privileged and irrelevant information by providing information to Sierra Club that it has used in a formal proceeding.⁴⁰ Contrary to SoCalGas’ accusations, the Public Advocates Office has not provided any privileged or irrelevant information to Sierra Club or the media.

SoCalGas argues that the Public Advocates Office cannot establish a compelling interest in seeking this information nor that the data request are narrowly tailored.⁴¹ However, since SoCalGas has failed to demonstrate a prima facie case of probable First

³⁶ Motion for Reconsideration at 14, citing Declaration of SoCalGas Vice President Sharon Tomkins.

³⁷ *Id.*, Declarations 4, 5, and 6.

³⁸ *Id.* at 9-10, 24-25.

³⁹ *See* Attachment I, Declaration of Stephen Castello.

⁴⁰ *Id.* at 10.

⁴¹ *Id.* at 15-16.

Amendment infringement, the Public Advocates Office is not required to demonstrate a compelling interest or that its data request is narrowly tailored to achieve such an interest. Moreover, even if SoCalGas were to have made a prima facie case of probable First Amendment infringement, which it has not, the Public Advocates Office and the Commission have a compelling interest in being able to examine these records from SoCalGas to ensure that the contracts are in fact shareholder funded, and that the entities created by SoCalGas such as C4BES were not created to advocate against ratepayer interests, and that all relevant statutes and Commission rules have been followed. The Public Advocates Office has identified a potential abuse of ratepayer funds and various potential improper activities by a regulated entity. Upon discovery of SoCalGas' actions, the Public Advocates Office began an investigation into these potential abuses, in keeping with its statutory-mandated duties.⁴² The Supreme Court has held that the disclosure of names and contributors of recipients of campaign funds was valid because the disclosure made it easier to detect violations of the Federal Election Campaign Act.⁴³ Similarly here, inspection of documents related to this allegedly shareholder-funded activity enables Commission staff to ensure regulated utilities are not violating various portions of the Pub. Util. Code as well as Commission Rules, such as Rule 1. It also ensures the public accountability of the Commission and its staff—the ability to thoroughly inspect a regulated entities' records and books ensures the Commission is fulfilling its constitutionally-mandated responsibilities.

SoCalGas also contends that shareholder-funded activity “bears no rational relationship to any compelling interest within the scope of CalPA’s statutory authority” and that the Public Advocates Office’s position that it has the right to look into such records could be used, for example, to inquire into which political candidates SoCalGas

⁴² See also *Pacific Tel. & Tel. Co. v. Public Utilities Com.*, 62 Cal. 2d 634, 647 (1965): “[T]he primary purpose of the Public Utilities Act is to insure the public adequate service at reasonable rates without discrimination.”

⁴³ *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

employees voted for.⁴⁴ SoCalGas argues that allowing ALJ DeAngelis' rulings to stand would "empower CalPA to subjectively and arbitrarily investigate and dictate what investor-owned utilities may and may not say and who they may and may not associate with, regardless of any nexus to ratepayer funding."⁴⁵

SoCalGas' argument is both hyperbolic and specious. Inquiring into contracts entered into by a regulated utility is entirely different from inquiring into individual employee's personal voting record. Further, the Public Advocates Office is not "dictating" what utilities may say or associate with. As explained above, the Public Advocates Office is not investigating the message of the contracts, but SoCalGas' activities related to the funding of those contracts and any potential improprieties resulting from the propagating of those contracts. Additionally, as demonstrated by statute and Commission decision, the Public Advocates Office's broad discovery powers are not limited to inquiring into the use of ratepayer funds.⁴⁶ The Public Advocates Office has a compelling interest, based on its statutory duty, to protect ratepayer interests. Its broad discovery powers enable it to compel any information it deems necessary to perform those duties.

The Public Advocates Office's request for contracts was also narrowly tailored. The Public Advocates Office did not seek, for example, all contracts SoCalGas entered into regarding all lobbying activities, but tailored its request to ask for specific contracts in which it had already uncovered issues regarding shareholder and ratepayer funds related to the Balanced Energy IO.

In sum, SoCalGas has failed to make a prima facie case of probable infringement of its First Amendment Rights. Moreover, even if it had not failed in its prima facie case, the Public Advocates Office has a compelling interest in the contracts and the request for the contracts was narrowly tailored.

⁴⁴ Motion for Reconsideration/Appeal at 17.

⁴⁵ *Ibid.*

⁴⁶ *See* Pub. Util. Code §§ 309.5(e), 314; D.01-08-062 at 6.

C. The Public Advocates Office’s Interpretation of Pub. Util. Code §§ 309.5 and 314 Are Not Unconstitutionally Overbroad or Vague

SoCalGas contends that the Public Advocates Office’s contention it is entitled to “‘any’ material,” including information related to shareholder-funded activities, is unconstitutionally overbroad.⁴⁷ SoCalGas argues that the Public Advocates Office has claimed “unlimited authority” that “substantially exceeds the statute’s legitimate sweep” and “punishes a ‘substantial’ amount of protected free speech.”⁴⁸

The Public Advocates Office has consistently relied on the plain language of Pub. Util. Code § 309.5(e) that it is entitled to any information it deems necessary to perform its duties, and Pub. Util. Code § 314 that staff of the Commission may inspect all records. These contentions are grounded in the plain language of statute and the Public Advocates Office is not broadening the interpretation of the statute beyond this plain language. Here, the Public Advocates Office is investigating the SoCalGas’ role and funding in lobbying activities; whether such activities are shareholder or ratepayer funded, and the historical financial data regarding whether such activities were ever ratepayer funded. The utility’s financial records related to such activities are necessary to fully investigate the utility’s actions. This type of investigation, to ensure that ratepayers are not harmed, is clearly within the scope of Pub. Util. Code § 309.5(e).

The Public Advocates Office has argued, successfully, that SoCalGas cannot decide what is necessary for the Public Advocates Office to perform its duties. Additionally, and as explained in multiple rounds of briefing, the statute, as written and as interpreted by the Commission, does not limit the Public Advocates Office to only inquiring into ratepayer-funded activities.⁴⁹ Further, SoCalGas has failed to demonstrate how the Commission’s inspection of allegedly shareholder-funded contracts “punishes a

⁴⁷ Motion for Reconsideration/Appeal at 18-19.

⁴⁸ *Id.* at 18, citing *Virginia v. Hicks* (2003) 539 U.S. 113, 118-19.

⁴⁹ D.01-08-062 at 6, noting that the Public Advocates Office’s rights to seek information from regulated entities is “as broad as that of any other units of [Commission] staff, including the offices of the Commissioners” and is “constrained solely by a statutory provision that provides a mechanism unique to [the Public Advocates Office] for addressing discovery disputes.”

‘substantial’ amount of protected free speech,” as the examination of such records is firmly within the purview of Commission staff and is related to the specific contracts at issue.

SoCalGas also argues that the Public Advocates Office’s interpretation of Pub. Util. Code §§ 309.5 and 314 are “unconstitutionally vague as interpreted and applied here because they do not provide fair notice of what material CalPA may demand in discovery and because they also invite arbitrary and discriminatory enforcement.”⁵⁰ This argument wholly lacks merit. Section 309.5(e) clearly allows the Public Advocates Office to request any information it deems necessary to perform its duties from any entity regulated by the commission.”⁵¹ Staff of the Commission may, at any time, “inspect the accounts, books, papers, and documents of any public utility.”⁵² These statutes contain no qualifications regarding shareholder funded activity and provide notice to all regulated utilities that their books and records, *in their entirety*, are subject to inspection by the regulator. SoCalGas’ suggestion otherwise is disingenuous, at best. The Public Advocates Office’s requests are not arbitrary, but in keeping with its statutory mandate.

D. The Procedural Safeguards Afforded SoCalGas in this Matter Are Sufficient to Protect Its Due Process Rights

SoCalGas argues that due to the “lack of procedural safeguards” present since this matter arises outside of a current proceeding, the Public Advocates Office has been given “free rein to demand any material it wants, in violation of SoCalGas’ Due Process rights.”⁵³ However, the Pub. Util. Code and the fact that extensive process has been

⁵⁰ Motion for Reconsideration/Appeal at 19.

⁵¹ Pub. Util. Code § 309.5(e).

⁵² Pub. Util. Code § 314(a). *See also*, Decision (D.) 01-08-062 at 6: “[The Public Advocates Office’s] rights to seek information from entities regulated by this Commission . . . principally arise from two statutes—Pub. Util. Code. §§ 314 and 309.5.” The Public Advocates Office’s “scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners” and is “constrained solely by a statutory provision that provides a mechanism unique to [the Public Advocates Office] for addressing discovery disputes.” *Ibid.*

⁵³ Motion for Reconsideration/Appeal at 22-23.

provided to SoCalGas to argue its position demonstrate that adequate due process has at all times been provided.

First, the Public Advocates Office has requested documents that it is entitled to obtain under Pub. Util. Code §§ 314 and 309.5(e), not simply “any material it wants” beyond what it is entitled to under the Pub. Util. Code, as suggested by SoCalGas. Second, § 309.5(e) specifically provides a procedure for resolution of discovery disputes that occur outside of a proceeding. Section 309.5(e) provides that “any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.” At each instance that SoCalGas objected to the data requests in the current investigation, the Public Advocates Office has engaged in a good faith effort to meet and confer to resolve the issue. If the issue could not be resolved, and in keeping with the clear procedural protections due SoCalGas under § 309.5(e), the Public Advocates Office properly submitted a motion to the Commission President’s Office. The Commission President then referred the matter to the Chief ALJ, who provided further process and procedures for the adjudication of the dispute, before referring the matter to an ALJ to decide.

Further, despite the fact that the formal Rules do not apply, the adjudication of this matter has employed the procedural Rules consistently, providing the procedural structure and safeguards that SoCalGas claims are lacking. Indeed, SoCalGas has now sought to pursue this matter before the full Commission, citing Commission precedent regarding interlocutory appeals, demonstrating that it has been afforded proper and full due process. The Public Advocates Office also has not moved to restrict SoCalGas’ ability to object to these requests. As demonstrated through the ongoing litigation of these issues, SoCalGas has been given ample opportunity to object. Importantly, if SoCalGas believes that any information it has been compelled to provide is confidential, there are well-established procedures by which to protect that information.

E. The Public Advocates Office’s Continuing Discovery Is Not Improper

SoCalGas also contends that the Public Advocates Office is infringing its First Amendment rights by submitting further data requests and citing ALJ DeAngelis’ ruling as part of the justification.⁵⁴ The Public Advocates Office is not “continu[ing] to demand constitutionally protected material” from SoCalGas, but merely requesting materials that SoCalGas is required to present under the Pub. Util. Code.⁵⁵ The Public Advocates Office is also not asserting that SoCalGas is barred from “raising any objection”⁵⁶ to its discovery requests, but instead maintains that SoCalGas’ repeated argument that shareholder-funded activity is protected from disclosure is legally infirm and has been repeatedly rejected. As explained in the October 8, 2019 Motion to Compel, ALJ DeAngelis implicitly rejected SoCalGas’ argument that it did not have to turn over documents related to allegedly 100% shareholder funded activity. It is entirely appropriate to continue to cite that ruling as SoCalGas continues to regurgitate the same (rejected) objections. Additionally, the Public Advocates Office has not merely relied on ALJ DeAngelis’ ruling, but has repeatedly cited the statutory authority that entitles it to the requested information—§§ 309.5(e) and 314. That SoCalGas continues to refuse to comply with its obligations under the Pub. Util. Code and continues its obstructionist tactics does not render the Public Advocates Office’s requests for statutorily required disclosures improper. The Public Advocates Office is entitled to the information requested, and SoCalGas’ refusal to provide it despite clear statutory authority, prior Commission decisions, and ALJ DeAngelis’ rulings, do not transform the Public Advocates Office’s insistence on disclosure into a due process violation.

⁵⁴ *Id.* at 23-24.

⁵⁵ The Public Advocates Office also objects to SoCalGas’ characterization that it is claiming “unchecked power” in its discovery requests. *See Motion to Reconsider/Appeal* at 23. The Public Advocates Office’s authority to request information in order to perform its duties is firmly grounded in the Pub. Util. Code, as the Public Advocates Office has consistently explained to SoCalGas.

⁵⁶ *Motion for Reconsideration/Appeal* at 3, 23-24.

Additionally, SoCalGas argues that the discovery into “non-ratepayer-funded activity” and ALJ DeAngelis’ rulings “appear to contradict the Commission’s own directives to explore SoCalGas’ use of any *ratepayer funding* of political lobbying activities in *formal* proceedings that are already open.”⁵⁷ SoCalGas cites to D.19-09-051, the Decision in SoCalGas’ 2019 General Rate Case, for support of this contention. However, the Commission did not prohibit any investigation into SoCalGas’ funding of lobbying activities or imply that any such investigation is improper, merely that the Commission will address any utilization of ratepayer funds on inappropriate political activities in the appropriate proceeding.⁵⁸ The Public Advocates Office maintains the statutory right to compel production from SoCalGas regarding any information it deems necessary to perform its duties, and the Commission’s statement in dicta in D.19-09-051 does not contradict that right.

F. CONCLUSION

For the foregoing reasons, SoCalGas’ Motion for Reconsideration/Appeal and requests for relief should be denied in their entirety. The Public Advocates Office, both as its own statutorily created entity and as Commission staff, has the right to inspect any of SoCalGas’ records in the course of its duties, whether such records relate to shareholder- or ratepayer-funded activities. The Public Advocates Office is not infringing on SoCalGas’ First Amendment rights by carrying out its statutorily mandated duty of protecting the interest of ratepayers because not only has SoCalGas failed to make a prima facie case of probable First Amendment infringement, but the Public Advocates office has a compelling interest in the contracts and the request was narrowly tailored. The Public Advocates Office has also not interpreted the Pub. Util. Code in an impermissibly broad or vague manner as it has relied on to the clear, plain language of

⁵⁷ *Id.* at 24.

⁵⁸ *Application of SDG&E (U902M) for Authority, Among Other Things, to Update Its Electric and Gas Revenue Requirement and Base Rates Effective on Jan. 1, 2019* (Cal.P.U.C. Sept. 26, 2019) 2019 WL 5079235 (D. 19-09-051) at p. *205.

the statute and Commission decisions in its interpretation. Additionally, the procedural safeguards afforded SoCalGas are sufficient to protect its due process rights, as evidenced by the protections provided in statute and the process of adjudication for this ongoing dispute.

Respectfully submitted,

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