

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application for Rehearing of Resolution  
ALJ-391.

---

A.20-12-011  
(Filed December 21, 2020)

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) RESPONSE TO PUBLIC  
ADVOCATES OFFICE NOVEMBER 23, 2023 PETITION FOR MODIFICATION OF  
RESOLUTION ALJ-391 AND DECISION 21-03-001**

Johnny Q. Tran  
SOUTHERN CALIFORNIA GAS  
COMPANY  
555 West Fifth Street, Suite 1400, GT14E7  
Los Angeles, California 90013  
Telephone: (213) 244-2981  
Facsimile: (213) 629-9620  
Email: [JQTran@SoCalGas.com](mailto:JQTran@SoCalGas.com)

Patrick M. Rosvall  
BRB LAW LLP  
436 14<sup>th</sup> Street, Suite 1205  
Oakland, California 94612  
Telephone: (510) 955-1081  
Email: [patrick@brblawgroup.com](mailto:patrick@brblawgroup.com)

*Counsel for Southern California Gas Company*

*Counsel for Southern California Gas Company*

December 21, 2023

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION. ....	1
II. CAL ADVOCATES’ PETITION FAILS TO LINK ITS PROPOSED RELIEF TO THE COURT OF APPEAL OPINION OR ANY “NEW OR CHANGED FACTS” THAT ARE WITHIN THE SCOPE OF RESOLUTION ALJ-391. ....	3
III. CAL ADVOCATES’ ATTEMPTS TO INFUSE RESOLUTION ALJ-391 WITH ADDITIONAL JUSTIFICATIONS INAPPROPRIATELY RE-LITIGATE THE DISPUTE RESOLVED BY THE COURT OF APPEAL. ....	7
IV. CAL ADVOCATES’ PETITION IS AN IMPROPER COLLATERAL ATTACK ON DETERMINATIONS IN SOCALGAS’S ONGOING GENERAL RATE CASE. ....	9
V. CAL ADVOCATES’ PETITION MISCHARACTERIZES APPLICABLE ACCOUNTING AND RATEMAKING STANDARDS TO MANUFACTURE FALSE GROUNDS FOR PENALIZING SOCALGAS.....	12
VI. CONCLUSION.....	15

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application for Rehearing of Resolution  
ALJ-391.

---

A.20-12-011  
(Filed December 21, 2020)

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) RESPONSE TO PUBLIC  
ADVOCATES OFFICE NOVEMBER 23, 2023 PETITION FOR MODIFICATION OF  
RESOLUTION ALJ-391 AND DECISION 21-03-001**

Pursuant to Rule 16.4(f) of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure (“Rules”),<sup>1</sup> Southern California Gas Company (“SoCalGas”) hereby submits its Response to the Public Advocates Office’s (“Cal Advocates”) Petition for Modification of Resolution ALJ-391 and Decision 21-03-001 filed on November 22, 2023 (the “Petition”).

**I. INTRODUCTION.**

Rather than presenting a legitimate basis for modifying Resolution ALJ-391 or Decision (“D.”) 21-03-001, Cal Advocates’ Petition is a frivolous attempt to once again relitigate the issues resolved by the Court of Appeal in *Southern California Gas Company v. Public Utilities Commission*, 87 Cal.App.5<sup>th</sup> 324 (2023) (“Court of Appeal Opinion”), collaterally attack outcomes in SoCalGas’s ongoing General Rate Case (“GRC”), and infuse Resolution ALJ-391 with extraneous matters to advance Cal Advocates’ own shadow agenda. These are not appropriate uses of a petition for modification under Rule 16.4. Cal Advocates seeks wide-ranging changes to the Commission’s prior determinations, including 14 different items that far exceed the scope and subject matter of Resolution ALJ-391.<sup>2</sup> None of these proposed modifications are supported by “new or changed facts” or compelling justifications. Indeed, Cal Advocates fails to comply with the basic procedural requirements to explain “why the petition

---

<sup>1</sup> Rule 16.4(f).

<sup>2</sup> *Petition* at 4-5.

could not have been brought within one year of the effective date of the decision” and to supply a “declaration or affidavit” supporting its factual allegations.<sup>3</sup>

Cal Advocates’ Petition is based on two alleged developments. First, one of the cornerstones of Cal Advocates’ position is the unremarkable proposition that the expenses associated with the “Balanced Energy Contracts” were originally “booked to ratepayer accounts” and later moved to shareholder accounts.<sup>4</sup> Far from being a “false” or “misleading” revelation,<sup>5</sup> this fact is well known to the Commission, and was raised at every stage of the “non-proceeding” from the discovery and initial motion practice,<sup>6</sup> to SoCalGas’s interlocutory appeal,<sup>7</sup> to additional subsequent motion practice,<sup>8</sup> all leading to Resolution ALJ-391. It was also raised in the application for rehearing proceeding resulting in D.21-03-001.<sup>9</sup> This reclassification was similarly acknowledged at the appellate level by the Court of Appeal and then dispensed as irrelevant to its Opinion.<sup>10</sup>

The second cornerstone of Cal Advocates’ position is Resolution ALJ-391 has been interpreted in SoCalGas’s current GRC proceeding “in a manner that abridges Cal Advocates’ attorney work-product privilege.”<sup>11</sup> This legal argument concerning Cal Advocates’ attorney work-product privilege was not raised in any of the numerous filings by Cal Advocates leading

---

<sup>3</sup> Rules 16.4(b), 16.4(d). Without citation, Cal Advocates suggests the requirements of Rule 16.4 do not apply here because the implementation of Resolution ALJ-391 was administratively stayed. *Petition* at 2, n.9. No precedent supports this interpretation, and the plain language of Rule 16.4 refers to the “effective date” of the decision or resolution at issue, not the date on which its specific requirements might be implemented. Rule 16.4(d). Resolution ALJ-391 contains a certification that it was “duly introduced, passed, and adopted” on December 17, 2020. *Res. ALJ-391* at 34. It has a “date of issuance of December 21, 2020” and states unequivocally that it is “effective today.” *Id.* at 1, 34.

<sup>4</sup> *Petition* at 4.

<sup>5</sup> *Petition* at 2.

<sup>6</sup> *See Cal Advocates Motion to Compel* (Oct. 7, 2019) at 9, n.28.

<sup>7</sup> *Cal Advocates Response to Motion for Reconsideration* (Dec. 17, 2019) at 6-7, 11, 14.

<sup>8</sup> *Cal Advocates Response to SoCalGas Motion to Quash Subpoena* (June 1, 2020) at 24, n.91.

<sup>9</sup> *Cal Advocates Response to Application for Rehearing* (Jan. 11, 2021) at 1 and n.3.

<sup>10</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, at 346 (“The Commission argues that sometimes SCG misclassifies expenditures, and has at times moved expenditures from ratepayer to shareholder accounts. But this just shows that a less invasive discovery process is working, and the PAO can confirm that no funds have been misclassified to ratepayer accounts by reviewing above-the-line accounts.”).

<sup>11</sup> *Petition* at 3.

up to Resolution ALJ-391 nor in its application for rehearing. It was first raised in SoCalGas's GRC and has already been disposed of by the ALJ in that proceeding multiple times. The Commission should not condone Cal Advocates' continued tactic of continually relitigating matters where the outcome is one with which Cal Advocates disagrees.

Instead of entertaining Cal Advocates' unnecessary Petition or embarking on an examination of the baseless and irrelevant allegations that it contains, the Commission should grant SoCalGas's pending Petition for Modification that seeks focused modifications to Resolution ALJ-391 and D.21-03-001 to reflect the results of the Court of Appeal Opinion.<sup>12</sup> The narrow relief that SoCalGas has presented in its own Petition for Modification is necessary to secure the return or destruction of the shareholder contracts whose First Amendment-protected status was vindicated by the Court of Appeal.<sup>13</sup> None of the tangential matters that Cal Advocates seeks to modify through its Petition are appropriate for inclusion in Resolution ALJ-391 or D.21-03-001. Attachment A, attached hereto, summarizes the reasons for denying each of Cal Advocates' requested modifications.

## **II. CAL ADVOCATES' PETITION FAILS TO LINK ITS PROPOSED RELIEF TO THE COURT OF APPEAL OPINION OR ANY "NEW OR CHANGED FACTS" THAT ARE WITHIN THE SCOPE OF RESOLUTION ALJ-391.**

Cal Advocates fails to satisfy the basic standards governing a petition for modification under Public Utilities Code Section 1708 and Rule 16.4. While the Commission has the statutory authority to "rescind, alter, or amend any order or decision made by it,"<sup>14</sup> petitions for modification are an "extraordinary remedy that must be sparingly and carefully applied."<sup>15</sup> To sustain a petition for modification, a party must demonstrate that there are "new or changed facts" and support those facts with a declaration.<sup>16</sup> Unless a party can show "a persuasive indication of a major change in material facts and circumstances" and establish a "strong expectation" that the Commission would make a different decision based on those facts and

---

<sup>12</sup> *SoCalGas Petition for Modification of ALJ -391 and D.21-03-001* at 1.

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> Pub. Util. Code § 1708.

<sup>15</sup> D.20-12-013 at 4.

<sup>16</sup> Rule 16.4(b).

circumstances,” the Commission will leave “settled expectations . . . undisturbed.”<sup>17</sup> This narrow standard for petitions for modification ensures that parties are “insulated from re-litigation of decided matters.”<sup>18</sup> Just because a party “belatedly thought of an argument it could have made earlier does not weigh in favor of disturbing a settled order.”<sup>19</sup>

Cal Advocates not only ignores the declaration requirement on the face of Rule 16.4,<sup>20</sup> it fails to allege any facts that are “new or changed” to justify its requested relief. The Petition includes repeated references to the fact that the expenses associated with the “Balanced Energy Contracts (Contracts) at issue in the Resolution were booked to ratepayer accounts” and later reclassified.<sup>21</sup> This fact is not new. However, Cal Advocates’ rendition of the facts as presented in Proposed Modifications 1 and 2 is factually inaccurate. Contrary to Cal Advocates’ assertions, the record demonstrates that SoCalGas acknowledged and initiated the accounting reclassification *before* the November 1, 2019 ALJ Ruling ordering SoCalGas to provide the contracts. The accounting adjustments had an *effective date* of November 1, 2019, the same date as the ruling, but SoCalGas had already initiated the change as early as September 21, 2019 and effectuated the reclassification of the account from an above-the-line account to a below-the-line account on October 30, 2019.<sup>22</sup>

Cal Advocates also falsely claims that this issue was not presented to or addressed by the Commission.<sup>23</sup> Cal Advocates presented this information as part of its motion to compel that gave rise to Resolution ALJ-391.<sup>24</sup> It raised the issue again in its reply to SoCalGas’s motion for

---

<sup>17</sup> D.18-05-023 at 14 (*citing* D.15-12-053 at 5 and D.09-02-032 at 8-9).

<sup>18</sup> D.15-12-053 at 5.

<sup>19</sup> Res. T-17796 at 4.

<sup>20</sup> Rule 16.4(b).

<sup>21</sup> *See Petition* at 4, 9, 17.

<sup>22</sup> *Petition*, Attachment E at 13-14. In addition, Cal Advocates ignores the documents concerning the contract that SoCalGas produced under protest to a second data request “PubAdv-SCG-001-SCS,” which was not booked to an above-the-line account.

<sup>23</sup> *See Petition* at 10.

<sup>24</sup> *See Cal Advocates Motion to Compel* (Oct. 7, 2019) at 9, n.28 (“Only after the Public Advocates Office discovered via data requests that these costs were being booked to ratepayer accounts did SoCalGas direct their accounting department to move these costs to a shareholder funded account.”).

reconsideration, which Cal Advocates filed on Dec. 17, 2019.<sup>25</sup> Cal Advocates’ response to SoCalGas’s motion to quash contained the same references,<sup>26</sup> as did Cal Advocates’ response to SoCalGas’s application for rehearing.<sup>27</sup> The reclassification of the account from an above-the-line account (which is colloquially referred to as a “ratepayer account” but does not dictate ratemaking) to a below-the-line account (which is colloquially referred to as a “shareholder account” but also does not dictate ratemaking) was extensively referenced on the record before the Commission when it decided Resolution ALJ-391 and D.21-03-001. In addition, the Commission presented the argument before the Court of Appeal where the Court considered and rejected it.<sup>28</sup>

Instead of identifying new or changed facts, Cal Advocates repackages existing facts to make different policy and legal arguments, a practice that the Commission expressly disfavors in

---

<sup>25</sup> *Cal Advocates Response to Motion for Reconsideration* (Dec. 17, 2019) at 7-8 (“In part, the Public Advocates Office sought these contracts because there was evidence from SoCalGas’ 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.”), 12 (“SoCalGas asserts it is being targeted because of the content of these contracts, 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.”), 15 (“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.”).

<sup>26</sup> *Cal Advocates Response to SoCalGas Motion to Quash Subpoena* (June 1, 2020) at 24, n.91 (“Balanced Energy internal order (IO) 300796601 was created in March 2019 for tracking all costs associated with Balanced Energy activities and the intent was to make it a shareholder funded IO. However, an incorrect settlement rule was set up for this IO to FERC 920.0 A&G Salaries, consequently, the costs initially settled to the incorrect FERC account. On September 21, 2019, the SoCalGas Accounting Controller and Accounting Director met with the Strategy, Engagement & Chief Environmental Officer, and confirmed that the Balanced Energy activities should be classified as FERC 426.4 - Expenditures-Civic & Related Activities/Lobbying Costs.”).

<sup>27</sup> *Cal Advocates Response to Application for Rehearing* (Jan. 11, 2021) at 1 and n.3 (“Cal Advocates found that SoCalGas had allocated over \$27 million to operations and maintenance in an “above-the-line” ratepayer account to fund its advocacy organization, Californians for Balanced Energy Solutions (C4BES). While SoCalGas subsequently asserts that this was an accounting “mistake” that has been “corrected,” Cal Advocates has a legitimate concern that this is not the case, and a statutory right and obligation to investigate.”).

<sup>28</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, at 346.

considering petitions for modification.<sup>29</sup> Cal Advocates now suggests that any SoCalGas accounting misclassification or reclassification is a “violation of law” that should be the basis for finding that SoCalGas has misled the Commission under Rule 1.1.<sup>30</sup> If Cal Advocates believed the Commission should have reached those conclusions in Resolution ALJ-391, the appropriate remedy was to include these arguments in the application for rehearing it filed in 2021, not a petition for modification in 2023.<sup>31</sup>

Cal Advocates also advances new arguments about *ratepayers’* alleged First Amendment rights—which are not at issue<sup>32</sup>—but Cal Advocates had ample opportunity to present its arguments on the underlying record and it did not. Again, the Commission does not permit petitions for modification to act as applications for rehearing in disguise, especially in a fully-litigated matter on which the Court of Appeal recently opined and the California Supreme Court denied rehearing.<sup>33</sup>

Similarly, Cal Advocates appears to argue that the Commission committed legal error by violating Cal Advocates’ attorney work product doctrine and ignoring the official information privilege when it prescribed the confidentiality process for Cal Advocates’ access to SoCalGas’s SAP in Resolution ALJ-391. Neither of these arguments were raised by Cal Advocates in its numerous filings leading up to Resolution ALJ-391 nor did Cal Advocates raise it in their application for rehearing. Therefore, it is procedurally improper for Cal Advocates to raise these legal arguments for the first time in a petition for modification nearly three years after the fact.

Alongside its untimely reinterpretations of existing facts and shifting arguments, Cal Advocates seeks to inject Resolution ALJ-391 with a series of improper inferences about “exhaustion of remedies.”<sup>34</sup> These suggestions are misguided because SoCalGas plainly

---

<sup>29</sup> D.11-10-034 at 5 (confirming that “[t]he Commission has consistently stated that a Petition for Modification is not a substitute for the legal issues which may be raised in an Application for Rehearing” and rejecting “issues which are simply re-litigation of issues that were decided” in the underlying proceeding).

<sup>30</sup> *Petition* at 10, 17-19.

<sup>31</sup> None of the arguments presented in Cal Advocates’ Petition depend on facts that were discovered or events that transpired after the issuance of Resolution ALJ-391, so the arguments could have been presented in Cal Advocates’ Application for Rehearing which it did not do.

<sup>32</sup> *Petition* at 12-13.

<sup>33</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, (denying petition for review).

<sup>34</sup> *Petition* at 5, 10.



satisfied the statutory prerequisites to its 2021 petition for writ of review by filing an application for rehearing of Resolution ALJ-391.<sup>35</sup> In any event, Cal Advocates’ musings about exhaustion of remedies are pure legal arguments on matters of appellate justiciability.<sup>36</sup> These subjects are the province of the appellate courts,<sup>37</sup> not topics for retrospective determination by the underlying administrative agency whose resolution is subjected to judicial review.

The only pertinent “new or changed facts” that have occurred since Resolution ALJ-391 was adopted are the facts presented in SoCalGas’s October 2, 2023 Petition for Modification, which is a direct response to the Court of Appeal Opinion and Cal Advocates’ refusal to return or destroy the contracts that contain First Amendment-protected material.<sup>38</sup> SoCalGas’s narrowly-focused petition alleges “new facts” derived from the Second District’s Opinion—backed by a supporting declaration—that compel specific relief in Resolution ALJ-391.<sup>39</sup> Cal Advocates’ failure to meet these basic requirements is fatal to its requested relief.<sup>40</sup> As discussed herein, Cal Advocates’ Petition is also improper to the extent it is the proffered vehicle for seeking advisory opinions on unrelated topics, establishing legal or policy positions not covered by Resolution ALJ-391, or interfering with SoCalGas’s ongoing GRC.

### **III. CAL ADVOCATES’ ATTEMPTS TO INFUSE RESOLUTION ALJ-391 WITH ADDITIONAL JUSTIFICATIONS INAPPROPRIATELY RE-LITIGATE THE DISPUTE RESOLVED BY THE COURT OF APPEAL.**

Cal Advocates’ Petition includes a variety of requests that seek to retrospectively augment Resolution ALJ-391 with new alleged justifications for overlooking SoCalGas’s First Amendment rights. These proposals are not a legitimate response to any new information that might necessitate a petition for modification, but an attempt to relitigate the dispute presented to

---

<sup>35</sup> See Pub. Util. Code §§ 1731(b)(1), 1732; see also, *San Pablo Bay Pipeline Co. LLC v. Pub. Util. Comm’n*, 221 Cal.App.4<sup>th</sup> 1436, 1443 (2014) (explaining that applications for rehearing are the vehicle for a party to “exhaust its administrative remedies” in connection with a petition for writ of review).

<sup>36</sup> See, e.g., *Evans v. City of San Jose*, 3 Cal.App.4<sup>th</sup> 728, 732 (1992) (exhaustion of remedies is “not a matter of judicial discretion, but a jurisdictional prerequisite to resort to the courts”).

<sup>37</sup> *Rittiman v. Pub. Util. Comm’n*, 80 Cal.App.5<sup>th</sup> 1018, 1028-1038 (2022) (rejecting Commission argument that plaintiff had failed to exhaust administrative remedies).

<sup>38</sup> *SoCalGas Petition for Modification of ALJ -391 and D.21-03-001* (Oct. 02, 2023) at 2-4.

<sup>39</sup> *Id.*, Attachment A.

<sup>40</sup> Cal Advocates should not be allowed to remedy this failure in its reply.

the Court of Appeal on different terms. As the Commission has consistently affirmed, “a petition for modification is not an alternative means for re-litigation.”<sup>41</sup>

First, Cal Advocates seeks three modifications to imply incorrectly that SoCalGas failed to “exhaust[]” its “administrative remedies.”<sup>42</sup> Cal Advocates does not even attempt to mask its motive for these changes, suggesting that they “may undermine the *SoCalGas v. CPUC* decision.”<sup>43</sup> Cal Advocates’ argument is predicated on the notion that the “[c]ontracts at issue were . . . booked to a ratepayer account . . . throughout the dispute” that led to the Court of Appeal Opinion.<sup>44</sup> This characterization is both inaccurate and irrelevant. As explained above, the record demonstrates that the reclassification of the account from an above-the-line account to a below-the-line account was extensively referenced and was already part of the factual underpinnings of Resolution ALJ-391 and D.21-03-001 when they reached the Court of Appeal. In addition, Cal Advocates’ fixation on the reclassification issue is meaningless because the Court of Appeal Opinion expressly noted the concern and found that it had no impact on the result.<sup>45</sup> It is simply not true that SoCalGas “failed to exhaust its administrative remedies,” so Proposed Modifications 8 through 10 are inaccurate and inappropriate.

Second, Cal Advocates attempts to divert attention from the First Amendment rights of SoCalGas’s shareholders by injecting new arguments into Resolution ALJ-391 about alleged ratepayer rights. Cal Advocates argues that “ratepayers’ have a First Amendment interest in being free from compelled speech” and that this alleged interest “justifies some intrusion into the First Amendment rights of regulated utilities.” In addition to being flagrantly beyond the scope of the “non-proceeding,” Cal Advocates ratepayer-focused formulation of the First Amendment issue is misguided because SoCalGas has not included any of the below-the-line political activities at issue in its rate forecasts in its GRC. Therefore, even if Cal Advocates could support a First Amendment interest on behalf of ratepayers in this context, it is not implicated here because there is no “involuntary levy on ratepayers” relating to these political activities. To the extent that Cal Advocates seeks to retrospectively enhance the government interests behind

---

<sup>41</sup> D.23-05-004 at 10.

<sup>42</sup> *Petition* at 5 (Proposed Modifications 8-10).

<sup>43</sup> *Petition* at 10.

<sup>44</sup> *Id.*

<sup>45</sup> *Southern California Gas Co. v. Pub. Util. Comm’n.*

Resolution ALJ-391 through its Petition, this effort is also meaningless because the Court of Appeal *already found* that the Commission has a compelling government interest in ensuring that utilities do not “use ratepayers funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.”<sup>46</sup> Resolution ALJ-391 failed constitutional scrutiny based on the other prong of the analysis—the data requests that it endorsed were “not carefully tailored to avoid unnecessary interference with [SoCalGas’s] protected activities.”<sup>47</sup> Therefore, adding Cal Advocates’ modifications regarding ratepayers’ First Amendment rights would have no impact on the ultimate outcome. Proposed Modifications 11 and 12 are therefore unjustified, untimely, and irrelevant.<sup>48</sup>

Third, Proposed Modifications 4 and 13 are just a recapitulation of Cal Advocates’ view that reclassification of “preliminary” accounting entries undermines its investigative efforts.<sup>49</sup> As further explained in Section V below, this represents Cal Advocates continued failure to understand the difference between ratemaking and accounting. The Court of Appeal already considered and rejected this claim, explaining that “[Cal Advocates] can confirm that no funds have been misclassified to ratepayers accounts by reviewing the above-the-line accounts.”<sup>50</sup> Rather than conforming Resolution ALJ-391 to the Court of Appeal Opinion, this proposal would effectuate a further departure from the Court’s findings.

The Commission should not modify Resolution ALJ-391 in a manner that will generate additional disputes and encourage further litigation. Cal Advocates is unsatisfied with the outcome of the Court of Appeal Opinion, but it should not be permitted to invite the Commission to violate the law or to re-write the Court of Appeal Opinion.

#### **IV. CAL ADVOCATES’ PETITION IS AN IMPROPER COLLATERAL ATTACK ON DETERMINATIONS IN SOCALGAS’S ONGOING GENERAL RATE CASE.**

Cal Advocates not only fails to provide a factual basis for its proposed modifications, it seeks relief that would interfere with determinations in SoCalGas’s ongoing GRC regarding the confidential treatment of SoCalGas’s accounting records. Specifically, Cal Advocates’ Proposed

---

<sup>46</sup> *Id.* at 344.

<sup>47</sup> *Id.* at 345.

<sup>48</sup> *Petition* at 5.

<sup>49</sup> *Id.*

<sup>50</sup> *See Southern California Gas Co. v. Pub. Util. Comm’n.*

Modification No. 14 asks the Commission to modify Resolution ALJ-391 to “[c]onclude that existing statutory protections obviate the need for Cal Advocates to identify the documents it captures in discovery from systems such as the SoCalGas [Systems Applications & Products] accounting system.”<sup>51</sup> In SoCalGas’s GRC proceeding, the assigned ALJ reached the exact opposite conclusion in her February 14, 2023 Ruling, “we direct Cal Advocates to provide a list to SoCalGas of the documents that Cal Advocates seeks to print or copy from the SAP database....documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas under the provisions of Pub. Util. Code Section 583 and General Order 66-D.”<sup>52</sup> Notably, Cal Advocates did not challenge the confidentiality procedures detailed in the February 14<sup>th</sup> Ruling until after it had accessed SoCalGas’s SAP database and took screenshots of SoCalGas’s confidential information without notifying SoCalGas in violation of the ruling. Cal Advocates’ violation and continued refusal to comply with the February 14<sup>th</sup> Ruling necessitated SoCalGas’s filing of a Motion for Protective Order in the GRC. The ALJ’s April 21, 2023 Ruling confirmed that Cal Advocates must “inform [SoCalGas] of copying the [SAP] material through screenshots, cell phone cameras, or other electronic means at the close of each business day that it accesses and downloads the documents.”<sup>53</sup> With reference to Resolution ALJ-391, the ALJ reasoned that “Cal Advocates needs to provide SoCalGas with information on the downloaded documents” to honor the “additional protections” necessary to “provide SoCalGas with time to review and designate confidential information” from the “‘live’ SAP database.”<sup>54</sup>

Unsatisfied with the ALJ’s conclusion, Cal Advocates took another bite at the apple by filing a Motion for Reconsideration in the GRC proceeding, but the ALJ again rebuffed Cal Advocates’ argument,<sup>55</sup> affirming the requirement that “Cal Advocates must inform SoCalGas of the data it downloaded from SoCalGas’s SAP database” to facilitate appropriate marking and

---

<sup>51</sup> *Petition* at 5 (Proposed Modification No. 14).

<sup>52</sup> A.22-05-015, *ALJ’s Ruling on Discovery Dispute between Public Advocates Office of the California Public Utilities Commission and Southern California Gas Company* (February 14, 2023) at 12.

<sup>53</sup> A.22-05-015, *ALJ’s Ruling on Two Pending Motions* (April 21, 2023) at 12.

<sup>54</sup> *Id.* at 9.

<sup>55</sup> A.22-05-015, *ALJ’s Ruling Denying the Public Advocates Office of the California Public Utilities Commission’s Motion for Reconsideration* (May 25, 2023) at 1-3.

protection of the data.<sup>56</sup> As part of its Motion for Reconsideration, Cal Advocates raised the same arguments that it now recycles in its Petition regarding alleged “attorney work product privilege” and “official information privilege.”<sup>57</sup> The ALJ properly rejected the characterization of SoCalGas’s accounting data as Cal Advocates’ work product, noting that “[t]he downloaded data itself is not a work-product of Cal Advocates’ attorneys” and the identification of materials downloaded or copied does not implicate “annotations or derivative materials” developed by Cal Advocates’ attorneys.<sup>58</sup> The ALJ also disregarded Cal Advocates’ attempts to portray its SAP review activities as subject to the “official information privilege,” a frivolous claim that Cal Advocates advanced only in its reply brief on the Motion for Reconsideration.<sup>59</sup> Notably, Cal Advocates did not raise either of these claims at any time in this “non-proceeding” culminating in the Court of Appeal Opinion nor did it raise these claims until after it had already accessed SoCalGas’s financial information and taken screenshots. It was only after SoCalGas discovered that Cal Advocates had taken screenshots without notifying SoCalGas of the screenshots in violation of Resolution ALJ-391 and the ALJ’s February 14<sup>th</sup> Ruling did Cal Advocates raise the attorney work product privilege and official information privilege. Regardless, these arguments were already raised to the ALJ in the GRC and the ALJ rejected them.<sup>60</sup>

The Commission should not permit Cal Advocates to relitigate the outcomes in SoCalGas’s GRC—which Cal Advocates has already extensively and exhaustively litigated—by attempting an end run on Resolution ALJ-391. The Commission should also reject Cal Advocates’ revisionist claim that “SoCalGas had never raised the issue of keeping its SAP

---

<sup>56</sup> *Id.* at 3.

<sup>57</sup> A.22-05-015, *Cal Advocates Motion for Reconsideration of Administrative Law Judge’s April 21, 2023 Ruling on Two Separate Motions* (April 25, 2023) at 2 (suggesting that SoCalGas’s materials are Cal Advocates’ work product because Cal Advocates has reviewed “thousands . . . of documents and selected those it finds most useful in litigation”); A.22-05-015, *Cal Advocates Reply Supporting Reconsideration of the April 21, 2023 Administrative Law Judge Ruling* (May 19, 2023) at 4 (raising “official information privilege” argument as a basis for refusing to disclose material downloaded from SAP database).

<sup>58</sup> A.22-05-015, *ALJ’s Ruling Denying the Public Advocates Office of the California Public Utilities Commission’s Motion for Reconsideration* (May 25, 2023) at 3.

<sup>59</sup> A.22-05-015, *Cal Advocates Reply Supporting Reconsideration of the April 21, 2023 Administrative Law Judge Ruling* (May 19, 2023) at 4.

<sup>60</sup> *See* A.22-05-015, *ALJ’s Ruling Denying the Public Advocates Office of the California Public Utilities Commission’s Motion for Reconsideration* (May 25, 2023).

system documents confidential . . . prior to the issuance of the Draft Resolution.”<sup>61</sup> This assertion is blatantly false. SoCalGas raised concerns about the confidential treatment of its SAP accounting records in a meet and confer call with Cal Advocates on May 6, 2020, *one day* after Cal Advocates’ subpoena was issued.<sup>62</sup> In Cal Advocates response to SoCalGas’s motion to quash, Cal Advocates discussed the confidentiality issue when it discussed its offer to sign a non-disclosure agreement which it then refused to sign.<sup>63</sup> SoCalGas repeated its confidentiality concerns in its response to Cal Advocates’ Motion for Contempt.<sup>64</sup> Both of these filings predated the issuance of Draft Resolution ALJ-391.

Cal Advocates’ efforts to endlessly revisit the determinations in SoCalGas’s rate case are improper and cannot support its Proposed Modification No. 14. To avoid a further waste of resources and a distraction from the established confidentiality protocols in the GRC, the Commission should reject Cal Advocates’ proposal to leverage its Petition to manipulate the confidentiality rules and protocols that are necessary to protect SoCalGas’s confidential data.

**V. CAL ADVOCATES’ PETITION MISCHARACTERIZES APPLICABLE ACCOUNTING AND RATEMAKING STANDARDS TO MANUFACTURE FALSE GROUNDS FOR PENALIZING SOCALGAS.**

Rather than pointing to any new or changed facts that could justify a change to Resolution ALJ-391, Cal Advocates asks the Commission to re-interpret the existing facts to suggest that SoCalGas has violated Rule 1.1 through its internal accounting practices.<sup>65</sup> Nothing in the record or in the materials referenced by Cal Advocates suggests that SoCalGas is “providing false, inaccurate or misleading information” about its accounting practices.<sup>66</sup> Rather, as both SoCalGas and the Court of Appeal have already acknowledged, “sometimes [SoCalGas] misclassifies expenditures, and has at times moved expenditures from ratepayer to shareholder

---

<sup>61</sup> *Petition* at 23.

<sup>62</sup> *SoCalGas Response to Motion for Contempt* (July 2, 2020) at 11.

<sup>63</sup> *Response of Public Advocates Office to Southern California Gas Company Motion to Quash Portion of Subpoena, for an Extension, and to Stay Compliance* at 38, n.131 (June 1, 2020).

<sup>64</sup> *See SoCalGas Motion to Quash* (June 1, 2020) at 3, n.131; *SoCalGas Response to Motion for Contempt* (July 2, 2020) at 10-12.

<sup>65</sup> *Petition* at 17-19.

<sup>66</sup> *Id.* at 5 (Proposed Modification No. 5).

accounts.”<sup>67</sup> These reclassifications are part of a normal process of isolating the legitimate costs of utility service in advance of **any** rate case proposal before the Commission. Cal Advocates’ proposed modification would equate accounting errors and accounting reclassifications to “false accounting.” These are not the same and ignore the real-world practicalities of accounting. For example, SoCalGas’s SAP contains millions of accounting records.<sup>68</sup> Proposed Modifications 4 and 13 would impose an impossible requirement that SoCalGas (and all other Commission regulated entities) must be 100% perfect on every single one of these millions of accounting entries or be subject to Rule 1.1 violations. Accounting errors and reclassifications may occur for many reasons but those reasons have not been presented or discussed in this record further highlighting why these proposed modifications are not appropriate in this case.

Cal Advocates’ argument relies on the erroneous premise that “political activities must be booked to below-the-line accounts immediately” otherwise it would be misleading to the Commission.<sup>69</sup> There is no support for this premise. No accounting rule or ratemaking standard supports such a draconian requirement. These ill-advised proposed modifications further highlight Cal Advocates’ failure to understand the ratemaking process and underscores Cal Advocates’ misguided non-proceeding investigation. For example, when explaining the purpose of FERC Account 426.4, Cal Advocates states, without citation, that “[t]his simple rule to sequester the costs of political activities to a single specific below-the-line (*i.e.* shareholder funded) account exists to, among other things, ensure such costs are not recovered from ratepayers.”<sup>70</sup> This is simply incorrect. FERC has stated that “[t]he purpose of classifying expenditures in Account 426.4 is to highlight them for scrutiny in rate proceedings and require the utility to justify their rate recovery.”<sup>71</sup> Similarly, courts have recognized that while “[a]ccounts may be used for convenience and organization,” the “recoverability of expenditures does not depend on the identity of the account to which the expenditures are assigned.”<sup>72</sup> In setting SoCalGas’s rates, the relevant regulatory inquiry is not where an expense was initially

---

<sup>67</sup> *Southern California Gas Co. v. Pub. Util. Comm’n*, at 346.

<sup>68</sup> *SoCalGas Response to Cal Advocates Motion for Contempt* at 10.

<sup>69</sup> *Petition* at 17.

<sup>70</sup> *Id.*

<sup>71</sup> *ISO New England Inc.*, 118 FERC P 61105, 61550-61551 (2007).

<sup>72</sup> *See Newman v. FERC*, 27 F.4th 690, 703 (D.C. Cir. 2022).

recorded, but whether or not it is used to inform the utility's forecasts of revenue requirement.<sup>73</sup> In other words, the mere recording of an expense to a specific account has no impact on ratepayers. Only the costs that are included as part of the forecast of revenue requirements *may* impact ratepayers and only those costs that are adopted as reasonable following the Commission's review *will* impact ratepayers.<sup>74</sup> Therefore, even if political activities costs were initially booked to an above-the-line account, if they were not included in a utility's GRC forecast, they do not impact ratepayers. The Commission should resist Cal Advocates' attempt to establish a new regulatory "gotcha" under Rule 1.1 that would apply to all Commission regulated entities through a petition for modification.

Further, there is no basis for adopting Cal Advocates' proposed modifications relating to Rule 1.1. Proposed Modification No. 5 is an imprecise paraphrase of Rule 1.1 and an improper attempt to expand the reach of the rule by adding the phrase "at any time."<sup>75</sup> Proposed Modification No. 6 merely restates the established proposition, not at issue here, that "intent to mislead is not required to find a violation of Rule 1.1" in all situations.<sup>76</sup> This premise was already recognized in *PG&E v. Pub. Util. Comm'n*,<sup>77</sup> and it need not be restated in Resolution ALJ-391. For the same reason, there is no reason to include the additional references to "ratepayer interests" and the Commission's "regulatory mandate" suggested in Proposed

---

<sup>73</sup> See D.90-11-031 at 191-193 (Section D(c)), ("[w]hile the Uniform System of Accounts for gas utilities serves a useful purpose in assuring consistency in utility bookkeeping, it is important to remember that ratemaking drives accounting, and not vice versa.").

<sup>74</sup> *Los Angeles v. Pub. Util. Comm'n*, 7 Cal.3d 331, 346 (1972) ("[t]he basic approach of the [C]ommission in rate making . . . is to take a test year and determine the revenues, expenses, and investment for the test year"); *San Francisco v. Pub. Util. Comm'n*, 39 Cal.3d 523, 531 (1985) (in rate cases, "the commission determines the revenue requirement, and then fixes the rates for the consumers to produce sufficient income to meet the revenue requirement. . ."). The ALJ assigned to SoCalGas's current GRC has acknowledged that accounting designations are a predicate to ratemaking proposals, but not equivalent to requests for cost recovery. See A.22-05-015, *ALJ Ruling on the Discovery Dispute Between the Public Advocates Office of the California Public Utilities Commission and Southern California Gas Company* (Feb. 14, 2023) at 11 ("It is within the scope of this proceeding to know how SoCalGas decides the basis of recovering advocacy expenses and what percentage of advocacy expenses are being recovered as operating expenses via ratepayer accounts.").

<sup>75</sup> *Petition* at 4 (Proposed Modification No. 5).

<sup>76</sup> *Id.* (Proposed Modification No. 6).

<sup>77</sup> See *PG&E v. Pub. Util. Comm'n*, 237 Cal.App.4<sup>th</sup> 812, 854 (2015) (upholding the Commission's interpretation that Rule 1.1 does not have a "scienter requirement").





## Attachment A – Reasons for Denial

	<b>Cal Advocates' Proposed Modification</b>	<b>Reasons for Denial</b>
1.	Find as a matter of fact that the Balanced Energy Contracts (Contracts) at issue in the Resolution were booked to ratepayer accounts until November 1, 2019.	<ul style="list-style-type: none"> <li>• Not a new or changed fact.</li> <li>• Inaccurate and misleading as worded.</li> </ul>
2.	Find as a matter of fact that the record evidence shows that, contrary to SoCalGas' claims, prior to issuance of the November 1, 2019 ALJ Ruling, the Contracts were booked to ratepayer accounts.	<ul style="list-style-type: none"> <li>• Not a new or changed fact.</li> <li>• Inaccurate and misleading as worded.</li> </ul>
3.	Order that Cal Advocates may retain the Contracts at issue in the Resolution.	<ul style="list-style-type: none"> <li>• Inconsistent with Court of Appeal. Opinion. See SoCalGas's Petition for Modification (dated Oct. 2, 2023).</li> </ul>
4.	Conclude that a utility's booking of political activity costs to ratepayer accounts at any time is unlawful.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Petition for Modification is not the proper vehicle for considering a new proposed accounting standard.</li> <li>• Re-litigating Resolution ALJ-391 with new argument.</li> </ul>
5.	Conclude that providing Cal Advocates or any part of the Commission with false or misleading information at any time is a violation of Rule 1.1.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Unnecessary: Imprecise paraphrase of an existing standard.</li> </ul>
6.	Conclude that intent to mislead is not required to find a violation of Rule 1.1.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Unnecessary: Standard already recognized by <i>PG&amp;E v. Pub. Util. Comm'n</i>, 237 Cal.App.4<sup>th</sup> 812, 854.</li> </ul>
7.	Find as a matter of fact that both Rule 1.1 and its imposition of a duty to ensure accuracy, reflect the fact that providing false, inaccurate, or misleading information compromises ratepayer interests and both Cal Advocates' and the Commission's ability to fulfill their regulatory mandate.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Unnecessary: Imprecise paraphrase of an existing standard.</li> </ul>

	<b>Cal Advocates' Proposed Modification</b>	<b>Reasons for Denial</b>
8.	Conclude that a Writ Petition that includes facts other than those leading to the underlying decision fails to provide an accurate basis for a court's review.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Appellate Court jurisdiction.</li> </ul>
9.	Conclude that exhaustion of administrative remedies is a jurisdictional prerequisite to a Petition for Writ of Review of a Commission decision.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Appellate Court jurisdiction.</li> </ul>
10.	Conclude that a party cannot be said to have exhausted its administrative remedies where the facts supporting its fundamental cause of action are other than as its petition claimed.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Appellate Court jurisdiction.</li> </ul>
11.	Conclude that ratepayers' have a First Amendment interest in being free from compelled speech and that protecting this interest justifies some intrusion into the First Amendment rights of regulated utilities.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Re-litigating Court of Appeal Opinion.</li> </ul>
12.	Find as a matter of fact and law that the Commission, its staff, and Cal Advocates, represent ratepayers' First Amendment interests in being free from compelled speech and that this interest justifies some intrusion into the First Amendment rights of regulated utilities.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Re-litigating Court of Appeal Opinion.</li> </ul>
13.	Find as a matter of fact that the Commission and its staff's authority to inspect an investor-owned utility's books "at any time" would be meaningless if utilities were allowed to report accounting entries as "preliminary" and subject to change.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Re-litigating Resolution ALJ-391 and Court of Appeal Opinion.</li> <li>• Petition for Modification is not the proper vehicle for considering a new proposed accounting standard.</li> </ul>
14.	Conclude that existing statutory protections obviate the need for Cal Advocates to identify the documents it captures in discovery from systems such as the SoCalGas SAP accounting system.	<ul style="list-style-type: none"> <li>• Outside the scope.</li> <li>• Re-litigating Resolution ALJ-391 and GRC Rulings.</li> </ul>