

ALJ/ML2/jnf 5/25/2023



**FILED**

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

Application of Southern California Gas Company (U904G) for Authority, Among Other Things, to Update its Gas Revenue Requirement and Base Rates Effective on January 1, 2024.

Application 22-05-015

And Related Matter.

Application 22-05-016

**ADMINISTRATIVE LAW JUDGE’S RULING DENYING THE PUBLIC ADVOCATES OFFICE OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION’S MOTION FOR RECONSIDERATION**

This ruling denies the Public Advocates Office of the California Public Utilities Commission’s (Cal Advocates’) Motion for Reconsideration (Motion).

On April 24, 2023, Cal Advocates filed the Motion stating, inter alia, that the April 21, 2023 Administrative Law Judge Ruling (ALJ Ruling) denied Cal Advocates’ work-product privilege claims,<sup>1</sup> and arguing that the Ruling must address the tension between confidentiality and work-product privilege.<sup>2</sup> On May 10, 2023, Southern California Gas Company (SoCalGas) filed a Response stating that the ALJ Ruling addressed Cal Advocates’ claims of work-product protections, and arguing that they apply to Cal Advocates’ annotations (derivate materials) of SoCalGas’s documents, not to SoCalGas’s documents themselves.<sup>3</sup>

<sup>1</sup> Cal Advocates Motion at 1.

<sup>2</sup> Cal Advocates Motion at 2-4.

<sup>3</sup> SoCalGas Response at 2.

SoCalGas's Response cited appellate precedent for the proposition that information "cannot be brought within the work product privilege simply by transmitting it to the attorney."<sup>4</sup> On May 19, 2023, Cal Advocates filed a Reply claiming work-product privilege "on the basis that identifying to the utility the specific screen shots it has taken, will improperly provide SoCalGas information about the nature and extent of Cal Advocates' inquiry, strategy, and findings to date"<sup>5</sup> because merely selecting screen shots required Cal Advocates' "analytical judgment."<sup>6</sup>

This ruling finds that the ALJ Ruling is consistent with the law and Commission precedent on adjudicating data requests.

Pursuant to Public Utilities Code (PUC) §583, the Commission must keep utility data confidential, subject to exceptions. Downloads from the SAP database are potentially available for public access pursuant to the California Public Records Act (CPRA),<sup>7</sup> which requires state agencies, including the Commission, to disclose publicly documents "relating to the conduct of the public's business" subject to various exceptions, including PUC §583.<sup>8</sup>

Pursuant to General Order (GO) 66-D, an information submitter is allowed to assert a preliminary claim of confidentiality and is granted a period during which the submitter may attempt to prove why the Commission should withhold information from the public. Consistent with GO 66-D, the ALJ Ruling

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<sup>4</sup> SoCalGas Response at 4, citing *Mack v. Superior Court of Sacramento County*, 259 Cal.App.2d 7, 10 (1968).

<sup>5</sup> Cal Advocates Reply at 5.

<sup>6</sup> Cal Advocates Reply at 6.

<sup>7</sup> See [Cal. Gov. §7920 et seq.](#)

<sup>8</sup> See [Cal. Gov. §7930.185.](#)

allows SoCalGas to mark documents, including downloads from the SAP database, as confidential so that the Commission can review them without disclosing them to the public.<sup>9</sup> Therefore, Cal Advocates must inform SoCalGas of the data it has downloaded from SoCalGas's SAP database.

Cal Advocates' arguments that this data is protected under the attorney work-product privilege is unconvincing. Pursuant to PUC §1822 and Rule 10.4 of the Commission's Rules of Practice and Procedure, SoCalGas's SAP database is potentially discoverable. Downloaded screenshots from the database containing journal entries and other accounting information is an electronic copy of a data request, which Cal Advocates would have requested access to (or a print version of) if Cal Advocates did not have direct access to the SAP database. The downloaded data itself is not a work-product of Cal Advocates attorneys. To the extent that Cal Advocates has created notes or other work-product derived from SoCalGas's documents, the ALJ Ruling does not require Cal Advocates to disclose its attorneys' work-product – annotations or other derivative materials – to SoCalGas.

This ruling is limited to this rate case.

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<sup>9</sup> GO 66-D, §3.3 sets the burden in formal proceedings: "To obtain confidential treatment of information to be filed in the docket of a formal proceeding, the information submitter must file a motion pursuant to Rule 11.4 of the Commission's Rules, or comply with a process established by the Administrative Law Judge for that specific proceeding."

**IT IS RULED** that the Public Advocates Office of the California Public Utilities Commission's motion for reconsideration of the Administrative Law Judge's ruling issued on April 21, 2023 denied.

Dated May 25, 2023, at San Francisco, California.

/s/ MANISHA LAKHANPAL

Manisha Lakhanpal  
Administrative Law Judge