

**Data Request Number:** CEJA-SEU-009

**Proceeding Name:** A2205015\_016 - SoCalGas and SDGE 2024 GRC

**Publish To:** California Environmental Justice Alliance

**Date Received:** 10/28/2022 **Date**

**Responded:** 11/16/2022 **Date**

**Supplemented:** 1/20/2023

**Date 2<sup>nd</sup> Supplemental:** 2/17/2023

**Date 3<sup>rd</sup> Supplemental:** 4/17/2023

5. The response to Data Request CEJA-SEU-08, Q.12 states that the \$1,143,592 listed under account number 923 for the law firm Reichman Jorgensen LLP is considered a ratepayer cost.

b. Do any of these costs include legal services related to potential federal preemption of local ordinances banning gas connections in new construction and/or legal challenges to local gas bans for new construction such as in *Cal. Restaurant Ass'n v. City of Berkeley* (Docket Nos. 3:19-cv-07668, N.D.Cal and 21-16278, 9<sup>th</sup> Cir.)

**SoCalGas Response 5b:**

SoCalGas objects to this question to the extent it seeks communications or other materials that are subject to the attorney-client privilege and/or the work product doctrine. *See So Cal Gas Co. v. Pub. Util. Comm'n*, 50 Cal.3d 31, 39 (1990) (“[w]e conclude that the commission’s powers pursuant to the state Constitution in this context are subject to the statutory limitation of the attorney-client privilege.”). SoCalGas also objects on the grounds that it requests information that is irrelevant, outside the scope of the testimony, and/or is unlikely to lead to the discovery of admissible evidence.

**Supplemental SEU Response 5b:**

Please see the objection and responses to Question 5a and Supplemental Response 5a.

**Second Supplemental SEU Response 5b:**

SoCalGas reaffirms its objections and responses to Question 5a and Supplemental Response 5a. SoCalGas further incorporates the additional objection and explanation provided in response to Question 4.

Subject to and notwithstanding these objections, SoCalGas further responds as follows:

Please note that the information provided in the GO-77M report is not generated in the same manner as the data supporting Applicants’ TY 2024 GRC forecasts. Please see SEU Privilege Log.

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**Third Supplemental SEU Response 5b:**

SoCalGas reaffirms its objections and responses to Question 5a and Supplemental Response 5a. SoCalGas further incorporates the additional objection and explanation provided in response to Question 4.

SoCalGas provides this additional supplemental response in compliance with the April 11, 2023 Administrative Law Judge's Ruling Granting California Environmental Justice Alliance's Motion to Compel ("Ruling"). The Ruling requires SoCalGas to "respond to Data Request CEJA-SEU-09, Question 5(b) with matter descriptions that are sufficiently detailed to determine whether these expenses may be reasonably charged to ratepayers."<sup>1</sup>

Question 5(b) above is prefaced by the statement: "The response to Data Request CEJA-SEU-08, Q.12 states that the \$1,143,592 listed under account number 923 for the law firm Reichman Jorgensen LLP is considered a ratepayer cost."

As previously disclosed in SoCalGas's second supplemental response to CEJA-SEU-009, Request 4 (dated February 17, 2023), "one or more errors in the underlying data [on outside counsel costs] were identified while responding to discovery." The discovered errors revealed the fact that certain costs identified in the 2021 General Order (GO)-77 Report were unintentionally categorized as costs attributable to account 923 that should not have been categorized as such. Applicants' February 22, 2023 Response to CEJA's Motion (at 2) also noted "an error in the underlying data, which led them to expend significant additional efforts to review the underlying data for quality control/assurance purposes and determine what information could be provided in a privilege log (without waiving privilege)."<sup>2</sup> To resolve the disputed issue and correct the error while a thorough review of the data was underway, while protecting privileged information, SoCalGas committed to remove all Reichman Jorgensen costs identified in the response from the underlying data supporting its GRC forecast.<sup>3</sup>

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<sup>1</sup> Administrative Law Judge's Ruling Granting California Environmental Justice Alliance's Motion to Compel (April 11, 2023) at 3 – 4.

<sup>2</sup> Response in Opposition of Southern California Gas Company and San Diego Gas & Electric Company to Motion to Compel (February 22, 2023) (Response) at 2. Further, the Response stated:

Applicants are continuing to review the data and assess impacts of corrections to the underlying data supporting the TY 2024 outside legal forecast. Applicants will correct this forecast, which is anticipated as a downward adjustment, at their next opportunity for revisions to testimony and workpapers.

<sup>3</sup> See Response at 3 ("Despite CEJA's lack of agreement, Applicants will remove all Reichman Jorgensen costs from the costs supporting Applicants' forecast, which renders the Motion to Compel with respect to Question 5(b) moot.").

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SoCalGas thereafter reviewed and corrected the underlying data supporting its original legal forecast, and accordingly corrected its legal forecast, including corrections to ensure that the erroneously identified Reichman Jorgensen costs would not inform the forecasting methodology. SoCalGas described this review and correction process in an Introductory Statement to its Second Supplemental Response to CEJA-SEU-009 dated March 20, 2023, which is appended to this response. Thus, the Reichman Jorgensen costs identified in CEJA-SEU-08, Q.12, like other legal costs removed that should not form the basis for SoCalGas's GRC forecast, are not ratepayer costs. As part of SoCalGas's response to the Ruling, SoCalGas is therefore also issuing a correction to CEJA-SEU-08, Q.12.

Subject to and without waiving the foregoing objections and background facts, SoCalGas responds, under protest with respect to whether information may be attorney-client privileged, as follows:

The costs referenced in Question 5(b) include legal services rendered to SoCalGas that were intended to be recorded below-the-line, and included matters related to liability risk management, land use and environmental matters, and existing and proposed federal, state and local laws, and other government actions potentially affecting natural gas service, including the legality of such laws and actions, such as whether they might be preempted by federal law. These costs do not include "legal challenges to local gas bans for new construction such as in *Cal. Restaurant Ass'n v. City of Berkeley* (Docket Nos. 3:19-cv-07668, N.D.Cal and 21-16278, 9th Cir.)."

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## **APPENDIX**

CEJA-SEU-009 Introductory Statement, dated March 20, 2023

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**Introductory Statement**

Consistent with the Companies’ statement in the joint *Response in Opposition Of Southern California Gas Company and San Diego Gas & Electric Company to Motion to Compel*, filed on February 22, 2023 (Response), SoCalGas and SDG&E (Applicants) explained that errors had been discovered in the underlying data that will impact the “TY 2024 forecast for outside legal, as shown in Exhibit SCG-23-R/SDG&E-27-R and supporting workpapers.”<sup>1</sup> SoCalGas and SDG&E committed to “correct this forecast, which is anticipated as a downward adjustment, at their next opportunity for revisions to testimony and workpapers.”<sup>2</sup>

In accordance with Applicants’ Response, the following, accessible to all parties to the proceeding via the Applicant’s Discovery Portal, revises the TY 2024 forecast for outside legal costs in Exhibit SCG-23-R/SDG&E-27-R and the supporting workpapers.

The Applicants’ forecast for the TY 2024 outside legal costs in this GRC, consistent with the approach utilized and approved in prior GRCs, begins with paid invoices.<sup>3</sup> The forecast is “based on a trend method that uses recorded expense levels going back five years through the 2021 base year, adjusted for any non-recoverable matters or those considered significant and non-recurring.”<sup>4</sup> Because five years of historical aggregated data was utilized in the forecasting method for outside legal costs, the Applicants reviewed costs for individual matters for SoCalGas, SDG&E, and Sempra (to the extent such data was allocated to the Applicants) for each of the years 2017-2021 and 2022, and additional adjustments were made.

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<sup>1</sup> Response in Opposition of Southern California Gas Company and San Diego Gas & Electric Company to Motion to Compel (February 22, 2023) at 2.

<sup>2</sup> *Id.*

<sup>3</sup> See D.19-09-051 at 504-505 and 508-509.

<sup>4</sup> Exhibit SCG-23-R/SDG&E-27-R, Revised Prepared Direct Testimony of Derick R. Cooper (Corporate Center – General Administration) (August 2022) at DRC-54.

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**Introductory Statement (Continued)**

Starting with the adjusted recorded data in 2017-2021, the Applicants recreated their forecasts for 2022-2024, as provided in the testimony and workpapers associated with Exhibit SCG-23-R/SDG&E-27-R. The table below provides a summary of the resulting TY 2024 forecast and constitutes a decrease compared to the request in Exhibit SCG-23-R/SDG&E-27-R:

	<u>3/20/2023 Update <sup>1</sup></u>		<u>Outside Legal (2021 \$ - 000's)</u>		<u>Difference</u>	
	<u>Base Year</u>	<u>Forecast</u>	<u>Ex. SCG-23-R/SDG&amp;E-27-R <sup>2</sup></u>	<u>Forecast</u>	<u>Base Year</u>	<u>Forecast</u>
	<u>2021</u>	<u>2024</u>	<u>Base Year</u>	<u>2024</u>	<u>2021</u>	<u>2024</u>
	<u>2021</u>	<u>2024</u>	<u>2021</u>	<u>2024</u>	<u>2021</u>	<u>2024</u>
<b>SDG&amp;E</b>	7,598	9,254	9,943	10,691	(2,345)	(1,437)
<b>SoCalGas</b>	11,877	10,277	15,856	13,148	(3,980)	(2,871)
<b>Total Utility</b>	<b>19,475</b>	<b>19,531</b>	<b>25,800</b>	<b>23,839</b>	<b>(6,325)</b>	<b>(4,308)</b>

<sup>1</sup> Submitted in CEJA-SEU-009 Introductory Statement  
<sup>2</sup> Submitted in August 2022

In the separately attached Excel spreadsheet, “CEJA-SEU-009\_ATTCH\_Introductory Statement\_Testimony Table Updates”, the Applicants’ have revised the applicable tables from Exhibit SCG-23-R/SDG&E-27-R to reflect the corrected forecast. As indicated in their Response, the Applicants will also correct Exhibit SCG-23-R/SDG&E-27-R and workpapers, as necessary, in rebuttal testimony and capture the resulting reduction in the revenue requirement during the update testimony phase.

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*Please note the following two questions reference joint SCG/SDG&E Testimony*

3. Refer to Exhibit SCG-R/SDG&E-27-R at DRC-51:17. Please identify the matter(s) that counsel worked on related to “Natural Gas Vehicle development” and the cost of each matter that was booked to an account that contributes to the revenue requirement request in this case.
4. Refer to Exhibit SCG-R/SDG&E-27-R at DRC-45. Please identify all matters for which SoCalGas, SDG&E or Sempra retained outside counsel in 2021 that contribute to the revenue requirement request, and the costs incurred related to each matter.