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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Southern California Gas Company with Respect to the Aliso Canyon storage facility and the release of natural gas, and Order to Show Cause Why Southern California Gas Company Should Not Be Sanctioned for Allowing the Uncontrolled Release of Natural Gas from its Aliso Canyon Storage Facility. (U904G.)

Investigation 19-06-016

ADMINISTRATIVE LAW JUDGES' RULING DENYING SOUTHERN CALIFORNIA GAS COMPANY'S MOTION FOR AN ORDER TO QUASH THE SUBPOENA OF THE SAFETY AND ENFORCEMENT DIVISION

Summary

This ruling denies Southern California Gas Company's (SoCalGas) motion to quash the subpoena of the Commission's Safety and Enforcement Division (SED). This ruling also limits SED's subpoena at this time to the person(s) most knowledgeable at SoCalGas other than SoCalGas' legal counsel.

1. Background

On October 22, 2019, the SED served a subpoena on SoCalGas. SED's subpoena ordered persons or persons most knowledgeable at SoCalGas to appear in San Francisco on November 1, 2019 (SED's Subpoena) to provide testimony under oath. The declaration attached to SED's Subpoena states, in part, that "SED believes that the Person or Persons Most Knowledgeable may

have information that will help determine SoCalGas' basis for alleging that SED's 'lead investigator' may have improperly interfered with Blade's [root cause of analysis] of the Aliso Canyon gas leak."

On November 1, 2019, SoCalGas filed a motion for an order to quash SED's Subpoena (Motion to Quash). In its Motion to Quash, SoCalGas argues that SED's Subpoena is "unreasonable, constitutes an unwarranted annoyance, and is unduly burdensome" because SED's Subpoena (1) calls for the deposition of SoCalGas' legal counsel; (2) is premised on a mischaracterization of SoCalGas' position on the alleged conflict of interest involving SED's "lead investigator;" (3) is premature because SoCalGas' discovery on this "lead investigator" issue is ongoing; and (4) is unnecessary because SoCalGas has agreed to produce documents that SoCalGas believes are relevant to this issue.¹ As required by Rule 11.3(a) of the Commission's Rules of Practice Procedure (Rules), SoCalGas' Motion to Quash states facts showing a good faith attempt at an informal resolution of the discovery dispute presented by the motion.

On November 26, 2019, SED filed (1) a late response to SoCalGas' Motion to Quash (SED's Response), and (2) a motion for an extension of time to file its late Response. SED's motion to file its late Response was granted in a ruling issued on December 4, 2019.

In its Response, SED argues that its subpoena is valid, is not premature, and that the Commission has authority to issue subpoenas seeking information from person(s) most knowledgeable on an issue. SED states that while its subpoena orders the appearance of SoCalGas person(s) most knowledgeable about SoCalGas' allegation of a conflict of interest involving SED's "lead

¹ Motion to Quash at 2-3 and 6-9.

investigator,” SED’s Subpoena does not specifically order SoCalGas’ legal counsel to appear.² SED also claims that SoCalGas’s Motion to Quash is untimely because it was filed on November 1, 2019, the same day that SoCalGas person(s) were ordered to appear by SED’s Subpoena.

On December 6, 2019, SoCalGas filed a reply to SED’s Response (SoCalGas Reply). In its Reply, SoCalGas reiterates its argument that SED’s Subpoena is premature because SoCalGas’ discovery on the “lead investigator” issue is ongoing. SoCalGas also asserts that (1) its Motion to Quash was timely, and (2) SED should have sought depositions of SoCalGas persons pursuant to Commission Rule 10.1 (discovery) and not Rule 10.2 (subpoenas).

2. Discussion

The standard for ruling on SoCalGas’ Motion to Quash is set forth in Rule 10.1, which states as follows:

Without limitation to the rights of the Commission or its staff under Pub. Util. Code Sections 309.5 and 314, any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

Rule 10.1 cites Public Utilities (Pub. Util.) Code Section 314, which states as follows:

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**

² Consistent with SED’s Response at 2, fn.2, today’s ruling uses the term “lead investigator.”

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. (Underline and bold font added.)

We find that SED's Subpoena, which was signed by the Commission's Executive Director, provides SED with authority under Pub. Util. Code Section 314(a) to examine under oath the SoCalGas person(s) most knowledgeable.

Rule 10.1 provides that any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter appears reasonably calculated to lead to the discovery of admissible evidence. The *Assigned Commissioner's Scoping Memo and Ruling* determined that SoCalGas' allegation of a conflict of interest involving SED's "lead investigator" may be relevant to the evidentiary weight accorded the Blade Report.³ SED's Subpoena states that the subpoena is intended to gather "information that will help determine [SoCalGas'] basis for alleging that SED's 'lead investigator' may have improperly interfered with Blade's RCA of the Aliso Canyon gas leak."⁴ We find that SED's Subpoena is relevant to the subject matter of this proceeding and appears reasonably calculated to lead to the discovery of admissible evidence.

³ *Assigned Commissioner's Scoping Memo and Ruling* (September 26, 2019) at 6.

⁴ SED Response, Attachment A, *Declaration in Support of Subpoena*, Paragraph 6.

We find that SoCalGas' Motion to Quash raises a valid concern regarding the potential deposition of SoCalGas' legal counsel.⁵ However, SED's Subpoena did not specifically order the appearance of SoCalGas' legal counsel, but the person(s) most knowledgeable regarding SoCalGas' allegation of a conflict of interest involving SED's "lead investigator." Therefore, we limit SED's Subpoena at this time to the SoCalGas person(s) most knowledgeable other than SoCalGas' legal counsel.

We find that SoCalGas' other arguments for quashing SED's Subpoena are unpersuasive. First, with respect to SoCalGas' argument that SED's Subpoena is premised on a mischaracterization of SoCalGas' position, we find that SED has reasonably characterized SoCalGas' position in Paragraph 6 of SED's *Declaration in Support of Subpoena*.

Second, with respect to SoCalGas' contention that SED's Subpoena is premature because SoCalGas is still conducting discovery, we find that SoCalGas has not demonstrated that the burden, expense, or intrusiveness of SED's Subpoena clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

Third, with respect to SoCalGas' claim that SED's Subpoena is unnecessary because SoCalGas has agreed to produce documents that SoCalGas believes are relevant to the "lead investigator" issue, we find that SoCalGas has not demonstrated that the burden, expense, or intrusiveness of SED's Subpoena clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

⁵ SoCalGas Motion to Quash at 8.

Finally, with respect to SoCalGas' argument that SED's Subpoena is procedurally improper because SED should have requested the deposition of SoCalGas persons pursuant to Rule 10.1 instead of issuing a subpoena pursuant to Rule 10.2, we find that SoCalGas should not have waited until its reply to present this argument for the first time because doing so denied SED an opportunity to respond. In any event, Rule 10.1 does not prohibit SED from serving subpoenas on public utilities.⁶

IT IS RULED that:

1. Southern California Gas Company's Motion to Quash that was filed on November 1, 2019, is denied.
2. The subpoena of the Commission's Safety and Enforcement Division is limited at this time to the Southern California Gas Company (SoCalGas) person(s) most knowledgeable other than SoCalGas' legal counsel.

Dated December 30, 2019, at San Francisco, California.

/s/ MARCELO POIRIER

Marcelo Poirier
Administrative Law Judge

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge

⁶ Rule 10.1 does not mention the word "subpoena" and does not override Pub. Util. Code Section 311(a), which states as follows: "The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state." SED's Subpoena was signed by the Commission's Executive Director.