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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 GRANTING
SOUTHER CALIFORNIA GAS COMPANY'S MOTION TO STRIKE CERTAIN
PARTS OF THE SAFETY AND ENFORCEMENT DIVISION'S RESPONSE**

Summary

This ruling grants Southern California Gas Company's (SoCalGas) motion to strike certain parts of the Safety and Enforcement Division's (SED) response to SoCalGas's motion to quash SED's subpoena. This ruling does not preclude SED from seeking to admit the Bruno Declaration into the evidentiary record of this proceeding at a later time.

1. Background

SoCalGas claims that a Commission employee who worked on the SED investigation of the Aliso Canyon gas leak has a conflict of interest. The Commission employee, Kenneth Bruno, has filed a personal injury lawsuit against SoCalGas that seeks damages for health issues allegedly attributable to Mr. Bruno's visits to Aliso Canyon during the leak. SoCalGas states that

Mr. Bruno may have improperly influenced SED's and Blade Energy Partners' (Blade) investigations of the Aliso Canyon gas leak.¹

On October 29, 2019, Rex Parris of the Parris Law Firm sent an email to the service list for Investigation (I.) 19-06-016 (the Parris E-mail). The Parris Law Firm represents Mr. Bruno in his personal injury lawsuit against SoCalGas. Attached to the Parris E-mail were three signed declarations, including one signed by Mr. Bruno (the Bruno Declaration). In general, the Bruno Declaration contests SoCalGas's position that Mr. Bruno may have improperly influenced SED's and Blade's investigations.

On November 7, 2019, the assigned Administrative Law Judges (ALJs) issued a ruling which held that the Parris E-mail and its three attached declarations are an *ex parte* communication prohibited by Rule 8.2(b) of the Commission's Rules of Practice and Procedure (Rule). The November 7th Ruling directed the Parris Law Firm to report the prohibited *ex parte* communication pursuant to Rule 8.2(h). The November 7th Ruling also determined that the prohibited *ex parte* communication (*i.e.*, the Parris E-mail and its attached declarations) are excluded from the evidentiary record for I.19-06-016 pursuant to Rule 8.2(m).²

¹ *Response of Southern California Gas Company (U904G) Regarding Reimbursement of CPUC Investigation Costs* filed on July 12, 2019, at page 6. (See also *Opening Response of Southern California Gas Company (U904G) to Order Instituting Investigation I.19-06-016* filed on July 29, 2019, at 2-3, 13-14, and 15.)

² *E-mail Ruling Directing Rex Parris to Report a Prohibited Ex Parte Communication* dated November 7, 2019.

On October 22, 2019, SED served a subpoena on SoCalGas. SED's subpoena ordered the person(s) most knowledgeable at SoCalGas to appear in San Francisco on November 1, 2019, to provide testimony under oath (SED's Subpoena). 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 to quash SED's Subpoena. SED filed a response on November 26, 2019 (SED's Response). SED's Response cites and attaches the Bruno Declaration. SoCalGas filed a reply on December 6, 2019. On December 30, 2019, the assigned ALJs issued a ruling that denied SoCalGas's motion to quash.³ The Bruno Declaration was not mentioned in the ruling and had no bearing on the ruling.

On December 6, 2019, SoCalGas also filed a motion to strike the following parts of SED's Response: (A) all references to the Bruno Declaration, and (B) the Bruno Declaration attached to SED's Response. SoCalGas argues these parts of SED's Response should be stricken because they reference a prohibited *ex parte* communication that was excluded from the evidentiary record by the November 7, 2019 Ruling. SoCalGas also states that because the Parris Law Firm and Mr. Bruno are not parties to this proceeding, they are not available to respond to discovery or be cross-examined in this proceeding.

On December 23, 2019, SED filed a response to SoCalGas's motion to strike wherein SED states that the motion should be denied for the following reasons.

³ *Administrative Law Judges' Ruling Denying Southern California Gas Company's Motion for an Order to Quash the Subpoena of the Safety and Enforcement Division* dated December 30, 2019.

First, SED contends that although the Bruno Declaration was included in a prohibited *ex parte* communication, the facts contained in the declaration are not excluded from the record of this proceeding in perpetuity. SED avers that because it is a party to this proceeding, it is permissible for SED's Response to reference the Bruno Declaration.

Second, SED states that the reason for prohibiting *ex parte* communications in adjudicatory proceedings is to prevent inappropriate communications with decisionmakers. It is the *ex parte* communications that are at issue, not the facts contained in said communications. SED contends that SoCalGas's logic would lead to the absurd outcome that any record evidence referenced in a prohibited *ex parte* communication would be stricken from record.

Finally, SED disputes SoCalGas's claim that Mr. Bruno is not available to respond to discovery. SED represents that SoCalGas has had an opportunity to question Mr. Bruno. Regardless, SED contends that SoCalGas's ability to question Mr. Bruno is irrelevant to whether SED's Response can cite facts in the Bruno Declaration.

2. Ruling

SoCalGas moves to strike the parts of SED's Response that reference the Bruno Declaration. The November 7th Ruling deemed the Bruno Declaration to be part of a prohibited *ex parte* communication and, therefore, excluded the Bruno Declaration from the evidentiary record pursuant to Rule 8.2(m).

Heretofore, the contents of the Bruno Declaration have not been recognized as facts or evidence in this proceeding. SED's attaching the Bruno Declaration to SED's Response does not confer any factual or evidentiary value to the contents of the declaration. If SED wants the Commission to rely on the purported facts in the Bruno Declaration, then SED (or another party) must

sponsor the declaration as its own testimony/evidence in this proceeding, or provide an offer of proof that the Bruno Declaration is admissible evidence, or take some other appropriate action that shows the contents of the Bruno Declaration are true and correct and, therefore, may be relied upon by the Commission.

For the preceding reasons, SoCalGas’s motion to strike is granted. This ruling does not prohibit SED or another party from seeking to admit the Bruno Declaration into the evidentiary record at a later time.⁴

SED shall file within 15 days an amended SED’s Response that excludes the following material that is stricken by today’s ruling:

SED’s Response	Stricken Text Identified in SoCalGas’s Motion to Strike at Page 4
Page 6, Lines 15-17	Q: Have you read the response of the ‘lead investigator’ to SoCalGas’ commentary regarding this OII (served on October 24, 2019 – a week prior to SoCalGas’ Motion)?
Page 7, Lines 11-16	SoCalGas knew or should have known that the October 24, 2019 declaration of SED’s ‘lead investigator’ clearly sets forth that he became the Program Manager in the Commission’s Consumer Protection and Enforcement Division on July 8, 2019. ²⁶ That declaration also clearly sets forth that “Blade proceeded to complete the root cause report without my involvement. I did not participate in the drafting or commenting on the Blade report issued by the CPUC on May 17, 2019.” ²⁷
Page 7, Footnote 26	Entire Footnote 26.

⁴ This ruling does not prejudice whether the Bruno Declaration would be admitted into the evidentiary record.

SED's Response	Stricken Text Identified in SoCalGas's Motion to Strike at Page 4
Page 7, Footnote 27	Entire Footnote 27.
Attachment D	Entire Attachment D.

The first paragraph of the amended SED's Response shall state that it is being filed pursuant to this ruling. The amended SED's Response shall not show any strikethrough or blank space where the stricken material was removed.

IT IS RULED that:

1. The *Motion of Southern California Gas Company (U904G) to Strike Portions of the Safety and Enforcement Division's Response to Southern California Gas Company's Motion to Quash Subpoena* that was filed on December 6, 2019, is granted.

2. Within 15 days from the date of this ruling, the Commission's Safety and Enforcement Division shall file and serve an amended *Safety and Enforcement Division's Response to Southern California Gas Company's Motion for Order to Quash the Subpoena of the Safety and Enforcement Division*. The amended document shall (A) include in the first paragraph a statement that it is being filed pursuant to this ruling; (B) exclude the stricken material identified in the body of this ruling; and (C) not show any strikethrough or blank space where the stricken material was removed.

3. This ruling does not prohibit any party from seeking to admit the Bruno Declaration into the evidentiary record at a later time.

Dated January 14, 2020, at San Francisco, California.

/s/ MARCELO POIRIER
 Marcelo Poirier
 Administrative Law Judge

/s/ TIMOTHY KENNEY
 Timothy Kenney
 Administrative Law Judge