

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



FILED

11/01/19
08:00 AM

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).

I.19-06-016
(Filed June 27, 2019)

**MOTION OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) FOR ORDER TO
QUASH THE SUBPOENA OF THE SAFETY AND ENFORCEMENT DIVISION**

F. JACKSON STODDARD
MORGAN, LEWIS & BOCKIUS, LLP
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: (415) 442-1153
Facsimile: (415) 442-1000
Email: fjackson.stoddard@morganlewis.com

AVISHA A. PATEL
SETAREH MORTAZAVI
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Telephone: (213) 244-2954
Facsimile: (213) 629-9620
Email: APatel@semprautilities.com
SMortazavi@semprautilities.com

Attorneys for:
SOUTHERN CALIFORNIA GAS COMPANY

October 31, 2019

**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).

I.19-06-016
(Filed June 27, 2019)

**MOTION OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) FOR ORDER TO
QUASH THE SUBPOENA OF THE SAFETY AND ENFORCEMENT DIVISION**

I. INTRODUCTION

Pursuant to Rules 11.1 and 11.3(a) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Southern California Gas Company ("SoCalGas") moves for an order to quash the subpoena served on SoCalGas by the Commission's Safety and Enforcement Division ("SED") on October 22, 2019 (the "Subpoena"). SED's Subpoena seeks the attendance of a person or persons most knowledgeable ("PMK") in connection with SoCalGas' statements at the prehearing conference and in filings before the Commission regarding the apparent conflict of interest involving SED's former Program Manager and investigator into the Aliso Canyon incident. SED's Subpoena is unreasonable and inappropriate for a number of reasons. First, because it asks for the PMK in connection with statements made by counsel, it necessarily calls for the deposition of opposing counsel. Second, it is premised on a mischaracterization of SoCalGas' position regarding the SED investigator's apparent conflict of interest. Third, even if a PMK deposition on this issue

were otherwise appropriate, it would be premature given that SoCalGas' discovery on this issue is ongoing. This last point is significant in light of the fact that it is SED and the Commission, not SoCalGas, that possesses most documents and information relevant to this issue. Finally, the PMK deposition is unnecessary because SoCalGas has already agreed to produce to SED documents that it has identified to date that it believes are relevant to this issue.

SoCalGas has met and conferred with SED in accordance with Rule 11.3(a), and SED declined to retract the Subpoena, or delay the deposition.¹ For the reasons described below, SoCalGas respectfully requests that the Commission issue an order quashing SED's Subpoena.

FACTUAL BACKGROUND

On June 4, 2019, SoCalGas learned through a press release that SED's Program Manager, and investigator of the SS-25 leak, had filed a personal injury lawsuit against SoCalGas related to the leak. The SED investigator's complaint asserts a claim for damages due to health issues related to his visits to Aliso Canyon during the leak.² As part of his role, he oversaw both SED's investigation and Blade Energy Partners' (Blade) root cause analysis (RCA) investigation into the SS-25 incident, and, SoCalGas understands, was in regular contact with Blade personnel, including as recently as May 17, 2019. This raised serious concerns about whether, and to what degree, the SED investigator may have improperly influenced Blade's and SED's investigations.

On June 13, 2019, SoCalGas sent a letter to the Commission's General Counsel raising these concerns and seeking the Commission's assurance that it would fully investigate the scope and impact of the apparent conflict of interest.³ SoCalGas has since raised this issue in multiple

¹ The Subpoena commands appearance of a PMK at the same date and time as the ALJ-ordered webinar in this proceeding.

² See Compl., *Bruno v. Semptra Energy*, (L.A. Super. Ct. June, 3, 2018) (No. 19STCV19104).

³ Opening Response of SoCalGas to Order Instituting Investigation I.19-06-016, July 29, 2019, (Ex. A) (June 13, 2019 Letter from SoCalGas' General Counsel to the Commission's General Counsel). To date, the Commission has indicated neither whether it has investigated this apparent conflict nor whether it intends to do so.

filings with the Commission. Having received no response from the Commission, on June 26, 2019 SoCalGas issued a Public Records Act (“PRA”) request to the Commission, seeking documents related to the SED investigator’s apparent conflict of interest.⁴ As of the date of this filing, the Commission has yet to produce any documents in response.

On August 21, 2019, SED propounded on SoCalGas SED Data Request (“DR”) 41, which asks, in part, for SoCalGas to identify communications between Blade and the SED investigator that “SoCalGas contend[s] influenced Blade/Blade Report.” See Declaration of Pejman Moshfegh in Support of the Motion of SoCalGas for Order to Quash (“Moshfegh Decl” ¶4, Exh. 1). SED DR 41 further asks SoCalGas which questions asked by the SED investigator during SED’s preliminary investigation were “asked with the intent of benefiting [the SED investigator’s] legal action.” *Id.* On August 29, 2019, SoCalGas responded to SED’s data request and described, in part, that while SoCalGas had received and was reviewing email communications that it had received from Blade, SoCalGas would not “be able to discover whether and to what degree Mr. Bruno may have inappropriately influenced the Blade investigation until after it has received and reviewed all relevant information.” (Moshfegh Decl. ¶5, Exh. 2). As SoCalGas further described, it was informed and believed that Blade and SED’s investigator communicated frequently, not only by email, but in person, telephonically, and by text message. SoCalGas further noted that the Commission had not yet responded to SoCalGas’ June 26 PRA request, which is specifically probative of this issue. *Id.*

On October 14, 2019, SoCalGas issued its first set of data requests on SED, which asked SED for information that would further help SoCalGas evaluate whether SED’s investigator acted improperly with respect to his role with SED’s and Blade’s investigations into the Aliso

⁴ CPUC Public Records Act Request #19-331, June 26, 2019, available at: <https://publicrecords.cpuc.ca.gov/requests/19-331>.

Canyon incident. (Moshfegh Decl. ¶6, Exh. 3; *see, e.g.*, Questions 13-21, 23-24). SoCalGas requested that SED provide its response to SoCalGas' first set of data requests by October 28, 2019. On October 29, 2019, SED requested an extension of time, through November 6, 2019, to provide responses.

Notwithstanding SoCalGas' reasoned response to SED's DR 41, and its efforts—through lawful discovery—to ascertain *whether* SED's investigator acted improperly, SED propounded further discovery on this issue. On October 18, 2019, SED requested, via email, that SoCalGas produce its person or persons most knowledgeable ("PMK") on November 1, apparently based on SED's continued misunderstanding that SoCalGas has alleged wrongdoing on the part of SED's investigator. (Moshfegh Decl. ¶7, Exh. 4). On October 22, 2019, SED issued a subpoena in support of its October 18 PMK request. (Moshfegh Decl. ¶8, Exh. 5). The Subpoena demands that SoCalGas produce "the Person or Persons Most Knowledgeable [who] may have 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." *Id.*

In a good-faith effort to resolve the parties' dispute, counsel for SoCalGas and SED met and conferred regarding the Subpoena on October 24, 2019. (Moshfegh Decl. ¶9). Despite SoCalGas' clear position that it is not, at this time, alleging any improper conduct by SED's investigator, SED refused SoCalGas' request to withdraw the Subpoena, or delay the deposition until SoCalGas has received and had an opportunity to review responses to all outstanding discovery. *Id.* On October 28, SoCalGas requested a second meet and confer to further discuss the dispute prior to filing a motion to quash. (Moshfegh Decl. ¶10, Exh. 6). SoCalGas further noted that it would agree to produce documents in response to SED DR 41, as clarified during the October 24th meeting. In response, counsel for SED advised that an additional meet and

confer would not resolve the dispute and stated that SoCalGas was free to file a motion to quash SED's subpoena. *Id.* As a result of the parties' impasse, SoCalGas hereby brings this motion to quash SED's Subpoena.

II. ARGUMENT

Rule 11.3(a) of the Commission's Rules of Practice and Procedure permits parties to file motions to limit discovery. However, neither the Commission's Rules of Practice and Procedure nor the California Public Utilities Code address the standard for motions to quash. Accordingly, the Commission has relied on the Code of Civil Procedure as instructive authority.⁵ Pursuant to the Code of Civil Procedure, "upon motion reasonably made" by any party, a court may issue an "order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders." Code Civ. Proc., § 1987.1. An order quashing a deposition subpoena is appropriate to protect a deponent against "unwarranted annoyance, embarrassment, or oppression, or undue burden and expense."⁶

SED's Subpoena should be quashed because it is unreasonable, constitutes an unwarranted annoyance, and is unduly burdensome. First, as described above, the Subpoena is improper because it is premised entirely on SED's mischaracterization of SoCalGas' position. For example, the Subpoena seeks testimony concerning SED's mischaracterization that "[i]n a number of instances, SoCalGas has alleged that SED's 'lead investigator,' due to a conflict of interest, improperly interfered" with Blade's investigation of the gas leak at Aliso Canyon. *See*, Declaration of Nicholas Sher in Support of Subpoena ¶ 5. To the contrary, SoCalGas is not

⁵ *Pac-W. Telecomm, Inc. (U5266C) v. Comcast Phone of California, LLC (U5698C)* (Feb. 12, 2015), D.15-02-011, 2015 WL 781078, at *1 ("Particularly with respect to procedural matters that are not the subject of specific rules under the Public Utilities Code, the Commission has historically looked to the Civil Code and/or the Code of Civil Procedure for guidance.").

⁶ Code. Civ. Proc. § 2025.420(b); See also, Code. Civ. Proc. § 2031.060 ("The court, for good cause shown, may make any order that justice requires to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.").

alleging that Mr. Bruno in fact acted to improperly influence either the Blade or SED investigations. As such, the stated basis in the declaration supporting SED's Subpoena is incorrect.

SoCalGas' position is that the SED investigator's simultaneous dual roles as a private plaintiff claiming personal injury as a result of the leak at Aliso Canyon and a lead investigator for SED regarding the same incident present an apparent conflict of interest. Indeed, these dual roles constitute a conflict of interest by definition. *See*, CONFLICT OF INTEREST, Black's Law Dictionary (11th ed. 2019) (“[a] real or *seeming incompatibility* between one's private interests and one's public or fiduciary duties.”) (Emphasis added); *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1171 (“[T]he common law doctrine against conflicts of interest ... prohibits public officials from placing themselves *in a position* where their private, personal interests *may* conflict with their official duties.”) (Emphasis added).⁷ A conflict of interest does not necessarily mean that there has been improper conduct or wrongdoing; it means only that there exists an incompatibility between an individual's personal interests and his official duties on behalf of the public. Here, in light of the highly unusual circumstances of the situation at issue, and based on facts from the public record and information provided by the Commission, SoCalGas has merely stated the obvious—that there is an apparent conflict of interest.⁸

⁷ *See, also*, Gov't Code § 19990 (a state employee “shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee,” including “using state time, facilities, or supplies for private gain or advantage” or “using, or having *or having access to*, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized”) (emphasis added); Gov't Code § 87100 (“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”).

⁸ Moreover, by removing the SED investigator from his role in SED's investigation of the Aliso Canyon matter, the Commission, too, has apparently recognized his apparent conflict of interest.

SoCalGas has publicly stated its position as follows:

Finally, SoCalGas requests that the OII be stayed pending completion of a separate investigation into the recently discovered conflict of interest of SED's lead investigator to determine *whether* and to what degree the lead investigator improperly may have influenced the scope or findings of Blade's and SED's investigations or the Blade Report.

Opening Response of SoCalGas to Order Instituting Investigation I.19-06-016, July 29, 2019, pp. 2-3 (emphasis added).⁹

SoCalGas has not stated that SED's lead investigator committed an improper act with respect to Blade's or SED's investigation into the Aliso Canyon incident. Rather, SoCalGas has identified a serious concern regarding an apparent conflict of interest: the lead investigator who directed and oversaw the Aliso Canyon investigation for over three years filed, the next business day after the final of Blade's supplemental reports were issued, a personal injury lawsuit against SoCalGas for injuries he allegedly sustained as a result of his involvement in the Aliso Canyon investigation. SoCalGas has not prejudged the issue—only stated a fact that warrants further inquiry.

Reply Comments of SoCalGas in Response to ALJ's Ruling Regarding Reimbursement of the State's Investigation-Related Costs, Sept. 11, 2019, pp. 6-7.

Second, SED's Subpoena seeks, in part, information regarding statements made by SoCalGas' counsel at the August 30, 2019 pre-hearing conference and work conducted by and/or at the direction of counsel.¹⁰ Therefore, the PMK for purposes of SED's deposition would necessarily be SoCalGas' counsel. However, “[d]epositions of opposing counsel are presumptively improper, severely restricted, and require ‘extremely’ good cause—a high standard.”¹¹ SED has not shown good cause demonstrating why the deposition of SoCalGas' counsel is appropriate here.

Third, the SED Subpoena is premature because SoCalGas is still in the process of collecting information as to whether SED's investigator did in fact engage in any inappropriate conduct related to Blade's or SED's investigations into the Aliso Canyon gas leak. SoCalGas'

⁹ See also Prehearing Conference Statement of SoCalGas, Aug. 23, 2019, pp. 10-11.

¹⁰ SoCalGas apprised SED's counsel that the discovery was being conducted by SoCalGas's counsel during the parties' meet and confer.

¹¹ *Carehouse Convalescent Hosp. v. Superior Court* (2006) 143 Cal.App.4th 1558, 1562.

