



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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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

**MOTION OF THE SAFETY AND ENFORCEMENT DIVISION
REQUESTING THE COMMISSION ISSUE AN ORDER TO SHOW CAUSE
AGAINST SOUTHERN CALIFORNIA GAS COMPANY
AS TO WHY IT SHOULD NOT BE SANCTIONED
FOR BEING IN CONTEMPT OF A COMMISSION SUBPOENA AND
VIOLATING RULE 1.1 OF THE COMMISSION'S RULES
OF PRACTICE AND PROCEDURE**

I. INTRODUCTION

Pursuant to Rule 11.1(b) of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure (Rules), the Safety and Enforcement Division (SED) submits this motion requesting that the Commission issue an Order to Show Cause (OSC) as to why Southern California Gas Company (SoCalGas) should not be sanctioned for being in contempt of a Commission subpoena (failing to appear for a properly noticed deposition) and violating Rule 1.1 of the Commission's Rules of Practice and Procedure.^{1 2}

¹ On November 18, 2019, SED filed a response to SoCalGas' motion seeking to quash the subpoena. In its motion SED requested that the Commission sanction SoCalGas for violating Rule 1.1. The sanctions sought in this motion are separate and distinct from those sought in SED's November 18, 2019 motion, which has yet to be ruled on by the Commission.

² Rule 10.2(f) states: Anyone who disobeys a subpoena issued pursuant to this rule may be found to be in contempt of superior court and punished accordingly, as provided in Public Utilities Code Sections 1792 and 1793. In appropriate circumstances, such disobedience may be found to be a violation of Rule 1.1, punishable as contempt of the Commission under Public Utilities Code Section 2113.

II. BACKGROUND

On June 27, 2019, the Commission opened *Order Instituting Investigation 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* (OII).

Since the issuance of the OII, SoCalGas has raised numerous times, without factual support, a concern/allegation that a member of SED's team investigating the Aliso Canyon Storage Facility (Aliso Canyon) gas leak may have improperly interfered with the investigation.³

In an attempt to address and finally put to rest the allegations raised by SoCalGas, SED served SoCalGas on October 22, 2019, with a Commission subpoena to have appear for deposition at the Commission's San Francisco offices, the person or persons most knowledgeable about SoCalGas' allegation that due to an apparent conflict of interest, SED's 'lead investigator' may have improperly interfered with Blade Energy Partners' (Blade) Root Cause Analysis (RCA) of the gas leak at SoCalGas' Aliso Canyon.

On October 24, 2019, SED and SoCalGas met and conferred to discuss, amongst other matters, whether SED would seek to have the Commission's subpoena withdrawn; SED declined to seek such.

On October 28, 2019, SoCalGas requested that SED meet and confer as SoCalGas continued to object to SED's subpoena "insofar as it is based on a mischaracterization of SoCalGas' position, is inappropriate, and premature."⁴ SED responded that the issue had already been addressed at the October 24, 2019, meet and confer. SED therefore informed SoCalGas that there was no point in meeting on this issue again and that SoCalGas could file a motion to quash.⁵

³ As set forth in the declaration attached to the October 22, 2019 subpoena, see SoCalGas' response regarding reimbursement of CPUC investigation costs (Response of SoCalGas regarding reimbursement of CPUC investigation costs, p. 6.), SoCalGas' opening response to the OII (Opening Response of SoCalGas to OII I.19-06-016, pp. 2-3, 13-15), and SoCalGas' prehearing conference statement (Prehearing Conference Statement of SoCalGas, pp. 5, 10-11).

⁴ See, Attachment A.

⁵ See, Attachment B.

On October 30, 2019, in response to a voice message from SoCalGas, SED in no uncertain terms told SoCalGas: “Short of the ALJ granting the motion to quash the subpoena, it is SED’s position that SoCalGas is still required to attend the deposition.”⁶

On October 31, 2019, SoCalGas emailed SED, stating in part, “To confirm your understanding: we are filing the motion to quash today and we will not be attending the deposition tomorrow.”⁷

On November 1, 2019, the day the subpoena required SoCalGas to appear for the deposition, SoCalGas filed⁸ a motion seeking an order quashing the subpoena and failed to appear at the deposition.⁹

On December 30, 2019, SoCalGas’ motion seeking an order quashing the subpoena was denied.¹⁰ The December 30, 2019 Ruling, found that SED did not mischaracterize SoCalGas’s position.¹¹

III. DISCUSSION

SED requests that the Commission issue an OSC ordering SoCalGas to appear and demonstrate why it should not be sanctioned for being in contempt of a Commission subpoena and violating Rule 1.1 of the Commission’s Rules of Practice and Procedure for failing to appear at a noticed deposition.

A. SoCalGas’s Failure to Comply with A Commission Subpoena Constitutes Contempt

The Commission subpoena states that SoCalGas’s Person or Persons Most Knowledgeable was or were, “Ordered to appear in person on November 1, 2019, at 10:00 a.m. at 505 Van Ness Avenue, San Francisco, CA 94102.”¹² Moreover, the subpoena is signed by the Commission’s Executive Director, showing that it is an order of the Commission. SoCalGas

⁶ See, Attachment C.

⁷ Id.

⁸ SoCalGas emailed its Motion after business hours on October 31, 2019. The docket card in this proceeding shows that the Motion was filed/accepted on November 1, 2019.

⁹ See Attachment D, Reporter’s Transcript demonstrating that SoCalGas did not appear.

¹⁰ See, *Administrative Law Judges’ Ruling Denying Southern California Gas Company’s Motion for an Order to Quash the Subpoena of the Safety and Enforcement Division*, issued December 30, 2019.

¹¹ Id, p. 5.

¹² Subpoena of Southern California Gas Company Person or Persons Most Knowledgeable, dated October 22, 2019.

received service of the subpoena from SED’s counsel, and acknowledged receipt of service through later correspondence with SED’s counsel. SoCalGas is in contempt of a Commission Order because it did not comply with the subpoena’s directive that it provide the person or person(s) most knowledgeable appear to be deposed. The Commission has stated that a contempt proceeding “is quasi-criminal in nature, and therefore the procedural and evidentiary requirements are the most rigorous and exacting of all matters handled by the Commission.”¹³ In order to find a regulated entity in contempt, and in light of the heightened evidentiary standard, the Commission has required that the:

- Conduct must have been willful in the sense that the conduct was inexcusable; or
- [Those] accused of the contempt had an indifferent disregard of the duty to comply; and
- Proof must be established beyond a reasonable doubt.¹⁴

As further discussed below, the facts show that these factors for a finding of contempt against SoCalGas have been established beyond a reasonable doubt. Accordingly, the Commission must find SoCalGas to be in contempt of a Commission Order.¹⁵

1. SoCalGas’ Failure to Comply with the Subpoena Was Willful and Inexcusable

SoCalGas was served with the subpoena on October 22, 2019. SoCalGas and SED met and conferred on the issue and communicated via email on the issue. SED was clear that SoCalGas had to comply with the Commission’s subpoena and had to appear for the noticed deposition.¹⁶ The day before the deposition, SoCalGas wrote to SED that it would not appear

¹³ Decision 15-08-032, p. 9.

¹⁴ *Id.*

¹⁵ California courts have found, where a witness refused to answer questions when ordered by the court, he was held in direct contempt, punishable by misdemeanor, fine, and sentence to jail time. See, *In Re Keller*, 49 Cal.App. 3d, 663, 665, 669, 670. See also, Cal. Penal Code Section 166 for criminal contempt.

¹⁶ Further guidance as to the need for Commission authorization to not comply with a subpoena is found in Rule 11.1(f), where a party may not file a response to a motion until “the Administrative Law Judge has authorized its filing and must state the date and the manner in which the authorization was given”. Clearly if a party is required to obtain permission to file a response to a motion, a party is required to obtain permission to not appear as required by a Commission subpoena. Furthermore, the Commission has stated that motions to quash must be filed as soon as possible (60 CPUC 2d 326, 332) and it is beyond question that SoCalGas did not do so in this instance. In fact, it could be argued that SoCalGas was attempting to game the Commission’s Rules by filing its motion the morning of the noticed deposition.

and that it would file a motion to quash.¹⁷ SoCalGas's writing responded to an SED email reminding SoCalGas that SoCalGas was still required to attend the deposition unless the ALJ granted the motion to quash the subpoena.¹⁸ SoCalGas did not actually make such a filing until the morning of the noticed deposition.

In sum, the correspondence (see Attachments A through C) establishes that SoCalGas received and was fully aware of the subpoena and its obligation to comply with it, but chose not to do so.

2. SoCalGas Had the Ability to Comply with the Subpoena But Showed Indifferent Disregard of Its Duty to Comply.

The subpoena demanded that SoCalGas provide the person or persons most knowledgeable (PMK) about its concern that SED's lead investigator may have improperly interfered with the Aliso Canyon investigation. SoCalGas knows who this person is or who these persons are. While SoCalGas has claimed that the PMK is an attorney and that depositions of attorneys are presumptively improper,¹⁹ it was completely up to SoCalGas as to who to provide. This fact was noted by the ALJs in their December 30, 2019 Ruling denying SoCalGas' motion to quash:

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."²⁰

SoCalGas clearly had the ability to produce a non-lawyer PMK and yet decided to disregard the subpoena, and instead filed its motion to quash the morning of the deposition.²¹

¹⁷ See, Attachment C

¹⁸ Id.

¹⁹ See, October 31, 2019, Motion Of Southern California Gas Company For Order to Quash The Subpoena Of The Safety And Enforcement Division, p. 8.

²⁰ December 30, 2019, Administrative Law Judges' Ruling Denying Southern California Gas Company's Motion for an Order to Quash the Subpoena of the Safety and Enforcement Division, p. 5. SED does note that the Ruling limited SED's subpoena to the PMK other than SoCalGas' counsel.

²¹ The fact that SoCalGas told SED that it would not appear, that it would file a motion to quash should be afforded no weight. SED told SoCalGas that it would not seek to withdraw the subpoena. Therefore, unless SoCalGas obtained Commission permission to not appear, SoCalGas had an obligation to appear.

3. SED Has Established Beyond a Reasonable Doubt That SoCalGas' Conduct Constitutes Contempt

The Commission issued a valid subpoena to SoCalGas on October 22, 2019. Instead of complying with the Commission's subpoena and knowing that it could be found in contempt,²² SoCalGas failed to appear and filed an untimely motion seeking to quash the Commission's subpoena; leaving neither SED nor the Commission an ability to address the Motion prior to the noticed deposition.²³

Moreover, SoCalGas' voicemail(s) and email(s) to SED's counsel that it would not comply with the subpoena show that SoCalGas knew it was not complying with the subpoena. Although SoCalGas had signaled its intention to file a motion to quash, it was not filed until the morning of the noticed deposition. By then, SED and the Commission's court reporters had no choice but to prepare and appear for the deposition; thus, wasting Commission resources.

B. SoCalGas Violated Rule 1.1 For Being in Contempt of and Failing to Comply with a Commission Subpoena.

Rule 1.1 states:

Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission or its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

The burden of proof for finding a violation of Rule 1.1 is not as stringent as that required for a finding of contempt.²⁴ For a Rule 1.1 violation the party alleging the violation must prove it "by a preponderance of the evidence".²⁵ Here, the facts show that SoCalGas violated Rule 1.1

²² See, Rule 10.2(f) of the Commission's Rules of Practice and Procedure: Anyone who disobeys a subpoena issued pursuant to this rule may be found to be in contempt of superior court and punished accordingly, as provided in Public Utilities Code Sections 1792 and 1793. In appropriate circumstances, such disobedience may be found to be a violation of Rule 1.1, punishable as contempt of the Commission under Public Utilities Code Section 2113.

²³ While the Commission has acknowledged that entities have a right to object to a Commission subpoena to have its objections heard and resolved, the objections must be made in a proper and respectful manner. D.16-03-032, mimeo, p. 6. Here, SoCalGas did not make its objection in a proper and respectful manner. Instead, SoCalGas waited until the morning of the deposition to file its motion to quash, wasting court reporter and staff time.

²⁴ D.15-08-032, p. 5.

²⁵ Id at p. 36.

when it disobeyed and failed to comply with a valid Commission subpoena. By disobeying the Commission's subpoena, SoCalGas is subject to penalties pursuant to Public Utilities Code section 2107.²⁶ Section 2107 states:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.

The same preponderance of evidence standard applies as the one for a violation of Rule 1.1.²⁷ This lesser standard is easily met as it is beyond dispute that SoCalGas failed to comply with a valid Commission subpoena. This failure violated Rule 1.1 which, in turn, has triggered the Commission's authority to issue fines and penalties.

C. SoCalGas Should Be Sanctioned for Contempt and for Violating Rule 1.1

A finding of contempt is punishable pursuant to Public Utilities Code Section 2113, which requires in part that:

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record.

Upon completion of the OSC, SED recommends that the Commission consider imposing sanctions pursuant to Public Utilities Code Sections 2107, 2108, 2113 and whatever other relief the Commission deems appropriate pursuant to Public Utilities Code Section 701. At a minimum, SED requests that the Commission impose sanctions of \$100,000 per day upon SoCalGas for failing to appear for a noticed deposition, including the day they did not appear for the deposition, and each day they have not appeared following the ALJ's ruling requiring them to do so.

²⁶ Id at pp. 37-38.

²⁷ Id at p. 39.

Lastly, the Commission should make it clear that SoCalGas' shareholders and not its ratepayers bear the cost for SoCalGas' contemptible behavior.

IV. CONCLUSION

For the foregoing reasons, SED respectfully requests that the Commission issue an OSC as to why SoCalGas should not be sanctioned for being in contempt of a valid Commission subpoena and Rule 1.1 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,

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