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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

**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**

I. INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Kenney's November 20 Email Ruling, and Rule 11.3(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 response to Southern California Gas Company's (SoCalGas) Motion For Order To Quash The Subpoena Of The Safety And Enforcement Division (Motion).¹ As demonstrated below, (a) the Commission's subpoena was valid and (b) SoCalGas' Motion was untimely and invalid. Accordingly, SoCalGas's Motion should be denied.

¹ ALJ Kenney's Email Ruling required that (1) SED refile this motion pursuant to Rule 11.3(b) and (2) SED file concurrently a motion seeking an extension of time pursuant to Rule 11.6, which SED has done. As set forth in SED's motion seeking an extension to file SED believes that Rule 11.1 addresses motions to quash and responses thereto, and not Rule 11.3.

II. BACKGROUND

On October 22, 2019, SoCalGas was served a Commission subpoena to have appear 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'² may have improperly interfered with Blade Energy Partner's (Blade) Root Cause Analysis (RCA) of the gas leak at SoCalGas' Aliso Canyon gas storage facility (Aliso Canyon).

On October 24, 2019, SED and SoCalGas met and conferred to discuss SoCalGas' inadequate response to SED's data request (DR) 41, and whether SED would seek to have the Commission's subpoena withdrawn; SED declined to seek such.

On November 1, 2019, the day of the subpoena, SoCalGas filed its Motion and failed to appear at the deposition.³

III. DISCUSSION

The Commission issued a valid subpoena to SoCalGas company on October 22, 2019. As opposed to complying with the Commission's subpoena, SoCalGas failed to appear and instead filed an untimely motion seeking to quash the Commission's subpoena. As detailed below, SoCalGas' Motion should be denied and SoCalGas should be sanctioned for violating Rule 1.1.

A. The Commission has broad subpoena power and issued a valid subpoena

The Public Utilities Code (PU Code) grants the Commission the ability and authority to issue subpoenas to aid the Commission in its work. Specifically, PU Code section 311 states that

The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all

² SoCalGas uses the term 'lead investigator' to describe a member of SED's investigative team. As stated elsewhere, SED does not have a 'lead investigator' with regards to SED's investigation of Aliso Canyon gas leak. However, for ease and privacy, SED will use SoCalGas' term.

³ 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.

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.

In this instance, based on the declaration of counsel, the Commission issued a subpoena to SoCalGas to have it produce the person or persons most knowledgeable who could answer questions about SoCalGas' concern that SED's 'lead investigator' may have improperly interfered with Blade's RCA.⁴ Instead of complying with the Commission's subpoena, SoCalGas failed to appear for the deposition.

In its Motion, SoCalGas claims that the Commission's subpoena is "unreasonable, constitutes an unwarranted annoyance, and is unduly burdensome"⁵ because (1) the basis for the subpoena is incorrect; (2) SED "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"⁶; and (3) the 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."⁷

1. The Commission's subpoena is valid

As stated at the Prehearing Conference,⁸ SoCalGas has engaged in launching spurious and baseless allegations that SED's 'lead investigator', due to an apparent conflict of interest may have interfered with Blade's RCA into the Aliso Canyon gas leak. In its Motion, SoCalGas tries to undermine the validity of the subpoena by stating

⁴ For some reason, SoCalGas misleadingly refers to the Commission's subpoena as SED's subpoena (the subpoena is entitled PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SUBPOENA TO APPEAR AND PROVIDE TESTIMONY UNDER OATH).

⁵ SoCalGas Motion, p. 6.

⁶ Id at 8.

⁷ Id.

⁸ See, Prehearing Conference Transcripts, pp. 86-88.

that “it is premised entirely on SED’s mischaracterization of SoCalGas’ position ... SoCalGas is not 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.”² SoCalGas’ statements are without merit.

Even though the declaration does not use the word “may” in paragraph 5 of the declaration, it does so in paragraph 6; though even if it did not, such is irrelevant as to the validity of the Commission’s subpoena. Rather than citing to any authority to support its claims, SoCalGas engages in a game of semantics. The issue of the missing word “may” is simply another classic SoCalGas red herring. Per SoCalGas’ quoted words, it is irrelevant to SoCalGas as to whether there was actual versus potential interference with the investigation, because regardless, SoCalGas does not want the Commission to rely on the Blade report.¹⁰ The failure to include the word “may” (in paragraph 5 of the Declaration) does not make the Commission’s subpoena invalid.

Not only is SoCalGas’ argument over the missing word “may” a red herring, it is entirely misleading and runs afoul of the Commission’s Rule 1.1, which requires that any person “never to mislead the Commission or its staff by an artifice or false statement of fact or law.”¹¹ SoCalGas’ argument is misleading because it fails to acknowledge the wording of paragraph 6 of the declaration, which reads:

6. 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 RCA of the Aliso Canyon gas leak.¹² (Emphasis added).

² SoCalGas Motion at pp. 6-7.

¹⁰ Opening Response of SoCalGas to I.19-06-016, p. 13.

¹¹ Rule 1.1 of the California Public Utilities Commission’s Rules of Practice and Procedure.

¹² See, Attachment A, a true and correct copy of the Commission’s subpoena.

While it is possible that SoCalGas failed to fully read the Commission’s subpoena and attached declaration, it is entirely unlikely and therefore the only conclusion one can draw is that SoCalGas was and is attempting to mislead the Commission into finding that the attached declaration mischaracterized SoCalGas’ position and was somehow deficient.¹³ As the words of the declaration clearly show, nothing could be further from the truth.

2. The Commission has the authority to issue subpoenas seeking information from the person or persons most knowledgeable on an issue

SoCalGas alleges that the subpoena improperly seeks “in part”¹⁴ information regarding statements made by “counsel at the August 30, 2019 pre-hearing conference and work conducted by and/or at the direction of counsel.”¹⁵ It states that depositions of opposing counsel are “are presumptively improper, severely restricted, and require ‘extremely’ good cause—a high standard.”¹⁶ SoCalGas misrepresents the information being sought by SED.

Contrary to its claims, (1) SED is seeking information regarding statements and filings made on behalf of SoCalGas; (2) other than SoCalGas, no one knows who at SoCalGas can answer factual questions about SoCalGas’s unsupported allegations, which is exactly why the subpoena seeks the person or persons most knowledgeable to appear;¹⁷ and (3) if the subpoena seeks “in part” statements made by counsel, then, “in part”

¹³ While SED believes that SoCalGas is intentionally attempting to mislead the Commission, intent is not required in order to be found in violation of Rule 1.1. See, *Pacific Gas & Electric Company v. California Public Utilities Commission*, 237 Cal.App.4th 812, 854.

¹⁴ SoCalGas Motion at p. 8.

¹⁵ Id.

¹⁶ Id.

¹⁷ Without a basis in fact, SoCalGas assumes that the subpoena rests in part on comments made by counsel. SoCalGas, in pleadings and at the prehearing conference has made comments through counsel, but there has been no indication that the comments were counsel’s and not on behalf of SoCalGas. Nor is there any indication that counsel came up with the unsupported concern that SED’s ‘lead investigator’ may have improperly interfered with Blade’s RCA. This is exactly why the subpoena requested that

there are other non-counsel person or persons with information and knowledge of this issue and SoCalGas must present this person or these persons for deposition.

It is completely up to SoCalGas to decide who to produce. It is irrelevant that the person or persons most knowledgeable may or may not be an attorney, as attorney-client communications are not being sought. For example, one of the questions that would have been asked had SoCalGas complied with the Commission's subpoena, would have been,

Q: Do you agree with the statement: "SoCalGas has not made any factual statements or allegations that could serve as a reasonable basis for a deposition or examination under oath."¹⁸ But yet there is enough information for SoCalGas to tell the Commission that the "credibility of the Blade report has come into question"¹⁹ and that the Blade report "should not be relied upon for any purpose."²⁰?

In addition, another potential question would have been,

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)?

None of these questions seeks attorney-client communications, they only seek facts and are thus appropriate questions, regardless whether the deponent is an attorney or not.²¹

3. The Commission's subpoena was not premature

Lastly, SoCalGas claims that the Commission's subpoena is premature because SoCalGas is still collecting information as to whether there was any inappropriate

SoCalGas provide the person or persons most knowledgeable about this issue as all the facts surrounding such are in SoCalGas' control.

¹⁸ See, Attachment B, October 28, 2019, 10:25 p.m. email from Pejman Moshfegh.

¹⁹ Opening Response of SoCalGas to I.19-06-016, p. 13.

²⁰ Id.

²¹ It is also important to note that these questions are a small sample of those that SED would have asked that are different and additional to what was asked in SED data request 41. Also, SED may have needed to follow up on the answers given to test their veracity and timely glean additional context, and thus data request 41 cannot not stand for or be a substitute for the deposition.

conduct related to the Blade or SED's investigations into the Aliso Canyon gas leak; and that the Commission has failed to timely respond to SoCalGas' Public Records Act (PRA) request.²²

The Commission's subpoena was not premature because SoCalGas has had months to go through approximately 4,000 emails obtained from Blade,²³ of which Commission emails are but a subset. As of yet, SoCalGas has failed to produce a single fact that supports its contention that SED's 'lead investigator' may have "undermined the Commission's entire Aliso Canyon investigation."²⁴ Furthermore, SoCalGas' example of a request it is seeking from the Commission that could not be responded to by Blade,²⁵ does not support SoCalGas' contention that the Commission's subpoena is or was premature. 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 SoCalGas' claims are therefore meritless and misleading and should be accorded zero weight.²⁸

²² SoCalGas Motion, p. 8.

²³ See, Prehearing Conference Transcripts, p. 89.

²⁴ See, Attachment C, June 13, 2019 letter from SoCalGas VP and GC, David Barret.

²⁵ SoCalGas' request to the Commission that it provide SoCalGas with documentation that SED's 'lead investigator' has been walled off from the Aliso investigation (SoCalGas Motion, p. 9).

²⁶ See, Attachment D, Kenneth Bruno's Response To Commentary By Southern California Gas Company and SEMPRAs Energy Regarding Orders Instituting Investigation I.19-06-016.

²⁷ Id. Also, it is clear from the declaration that there was no conflict of interest because SED's lead investigator was diagnosed with cancer on April 10, 2019, approximately one month prior to the release of Blade's report.

²⁸ In addition, the Commission provided to SoCalGas, in response to its PRA request a June 20, 2019, memorandum from Elizaveta Malashenko, Deputy Executive Director that sets forth the removal of SED's 'lead investigator' from the Aliso investigation. See, Attachment E.

In addition, as SED informed SoCalGas prior to the deposition, the date of the deposition was dictated by extremely limited Commission court reporter availability.²⁹

B. SoCalGas’ Motion was untimely and invalid

The Commission has stated that motions to quash “must be filed at the earliest opportunity”³⁰. SoCalGas’ Motion was filed the day of the deposition, November 1, 2019. The subpoena to appear for deposition was served on SoCalGas on October 22, 2019. SoCalGas had plenty of time to timely file its Motion and yet chose not to, leaving the Commission no ability to address the Motion prior to the noticed deposition. SoCalGas’ actions show a disregard for Commission process and have resulted in SoCalGas being in contempt of an authorized and valid Commission subpoena. SoCalGas’ Motion should be deemed untimely and thus invalid.

IV. CONCLUSION

For the foregoing reasons, SED respectfully requests that (1) SoCalGas’ Motion be denied and SoCalGas be required to produce the person or persons most knowledgeable as to SoCalGas’ basis for alleging that SED’s ‘lead investigator’ may have improperly interfered with Blade’s RCA of the Aliso Canyon gas leak on December 17, the next date Commission court reporters are available; and (2) SoCalGas be sanctioned the maximum penalty possible for violating the Commission’s Rule 1.1.³¹

²⁹ SED was informed that Commission court reporters were available for one day on November 1, but not available again until mid-December.

³⁰ 60 CPUC 2d 326, 332.

³¹ California Public Utilities Code Section 2107 currently allows a maximum penalty of \$100,000 per day.

Respectfully submitted,

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