

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



**FILED**

12/06/19  
04:59 PM

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)

**REPLY OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) TO THE SAFETY  
AND ENFORCEMENT DIVISION'S RESPONSE TO SOUTHERN CALIFORNIA GAS  
COMPANY'S MOTION TO QUASH SUBPOENA**

F. JACKSON STODDARD  
PEJMAN MOSHFEGH  
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](mailto:fjackson.stoddard@morganlewis.com)  
[pejman.moshfegh@morganlewis.com](mailto:pejman.moshfegh@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](mailto:APatel@semprautilities.com)  
[SMortazavi@semprautilities.com](mailto:SMortazavi@semprautilities.com)

Attorneys for:  
SOUTHERN CALIFORNIA GAS COMPANY

December 6, 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)

**REPLY OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) TO THE SAFETY  
AND ENFORCEMENT DIVISION'S RESPONSE TO SOUTHERN CALIFORNIA GAS  
COMPANY'S MOTION TO QUASH SUBPOENA**

**I. INTRODUCTION**

Pursuant to Rule 11.1(f) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), and the Administrative Law Judge's ("ALJ") November 20 email ruling ("Email Ruling"), Southern California Gas Company ("SoCalGas") submits this reply ("Reply") to the Safety and Enforcement Division's ("SED") late-filed Response to SoCalGas' Motion for Order to Quash the Subpoena of SED ("Response").<sup>1</sup> This Reply is filed concurrently with SoCalGas' Motion to Strike Portions of SED's Response to SoCalGas' Motion to Quash Subpoena.<sup>2</sup>

SED's Response fails to refute any of the arguments in the Motion of Southern California Gas Company for Order to Quash the Subpoena of the Safety and Enforcement Division

---

<sup>1</sup> ALJ Kenney's November 20 Email Ruling rejected SED's initial response as untimely pursuant to Rule 11.3(b).

<sup>2</sup> SED's Response references declarations that were improperly emailed to the service list of this proceeding on October 29, 2019 by the Parris Law Firm. On November 7, 2019, the ALJs to this proceeding declared the filing a prohibited *ex parte* communication, and ruled that the prohibited *ex parte* communication was excluded from the evidentiary record for I.19-06-016. Therefore, SoCalGas does not address in this Reply any of the assertions that SED makes on the basis of the Parris Law Firm's excluded declarations. SoCalGas notes however that SED misstates in its Response the date on which the Parris Law Firm emailed its prohibited *ex parte* communication to the service list.

(“Motion”). SED argues that the Commission has broad authority to issue subpoenas—even though this issue is not in dispute—and that therefore the subpoena is valid. In fact, the subpoena itself was procured contrary to the Commission’s rules governing discovery in Commission proceedings. SED further argues that the subpoena is not premature, even though it is undisputed that SoCalGas’ discovery efforts regarding the SED investigator’s apparent conflict of interest is ongoing and, in part, has been impacted by the delay in receiving relevant documents in response to SoCalGas’ request to the Commission pursuant to the California Public Records Act (“PRA”). Finally, SED’s assertion that SoCalGas’ Motion was untimely is incorrect. The Motion was timely and proper and SoCalGas notified SED that it would be filing the Motion in advance.<sup>3</sup> Accordingly, as detailed below, SoCalGas’ Motion should be granted. In addition, SED’s baseless Rule 1.1 allegations should be rejected.

## II. ARGUMENT

### A. SED’s Response Acknowledges the Misstatement in the Declaration Supporting the Subpoena, and Thus the Subpoena Should Be Quashed.

SED acknowledges that the Commission’s Executive Director issued the subpoena “based on the declaration of [SED’s] counsel,”<sup>4</sup> and confirms SoCalGas’ argument in the Motion that part of its declaration does in fact misstate SoCalGas’ position. SED seeks to minimize the inaccuracy by emphasizing that it made another subsequent statement that was correct: “Even though the declaration does not use the word ‘may’ in paragraph 5 of the declaration, it does so in paragraph 6; though, if it did not, such is irrelevant as to the validity of the Commission’s subpoena.”<sup>5</sup>

Paragraphs 5 and 6 of SED’s declaration state:

5. In a number of instances, ***SoCalGas has alleged*** that the Safety and Enforcement Division’s (SED) “lead investigator”, due to a conflict of interest, ***improperly interfered*** with Blade Energy Partner’s Root Cause Analysis (RCA) of the gas leak. ***For example***, but not limited to, SoCalGas’ response regarding reimbursement of CPUC investigation costs, SoCalGas’ opening response to the OII, and SoCalGas’ prehearing conference statement.

---

<sup>3</sup> SoCalGas informally and respectfully sought SED’s cooperation to withdraw its subpoena on two occasions. Motion of Southern California Gas Company for Order to Quash the Subpoena of the Safety and Enforcement Division (“Motion”), pp. 5-6.

<sup>4</sup> SED Response, p.3.

<sup>5</sup> SED Response, p.4.

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.<sup>6</sup>

The SoCalGas pleadings identified in Paragraph 5 of SED's declaration do not include any allegation that improper interference occurred.<sup>7,8</sup> Instead, SoCalGas' statements reveal only

---

<sup>6</sup> Emphasis added; internal citations omitted.

<sup>7</sup> As described in SoCalGas' Motion to Quash, SoCalGas is not alleging that SED's former investigator "improperly interfered" with Blade's RCA investigation. The citations SED provides as "examples" in paragraph 5 misrepresent SoCalGas' position. To correct the record, SoCalGas excerpts below its *actual* position from each of the submissions that SED cites to as "examples" of SoCalGas' allegations:

- SoCalGas has alerted the Commission of the serious conflict presented by the lead investigator's significant role in the Aliso Canyon investigation, while potentially pursuing his own suit against SoCalGas in parallel. SoCalGas has further urged the Commission to fully investigate the circumstances related to the conflict. In the interim, SoCalGas cannot agree to reimburse the Commission for any expenditures attributable to SED's lead investigator *until the Commission has fully investigated the apparent conflict of interest*. (Response of SoCalGas Regarding Reimbursement of CPUC Investigation Costs, I.19-06-016, July 12, 2019, p.6. (Emphasis added; internal citation omitted.)
- 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.

\*\*\*

SoCalGas has serious concerns *about whether, and to what degree*, the SED lead investigator improperly *may have influenced* Blade's and SED's investigations. SoCalGas has asked that the Commission fully investigate the scope and impact of the SED lead investigator's conflict of interest. . . . *In the event appropriate investigation reveals that SED's lead investigator did not improperly influence Blade's investigation or the Blade Report*, the Commission can order, at that time, that the Blade Report may be considered for purposes of this proceeding. (Opening Response of SoCalGas to Order Instituting Investigation, I.19-06-016, July 29, 2019, pp. 2-3, 13-14. (Emphasis added; internal citation omitted.)

- As discussed in greater detail in SoCalGas' Opening Response, SoCalGas has legitimate concerns that SED's lead investigator *may have inappropriately influenced or directed Blade's investigation* as a result of a personal conflict of interest. See SoCalGas' Opening Response, pp. 13-14. As further discussed below, SoCalGas intends to further discuss this issue at the August 30, 2019 Prehearing Conference.

\*\*\*

The Program Manager's role as both the CPUC's lead investigator and a private personal injury plaintiff presents a profound conflict of interest *that may have undermined*, among other things, the Blade Report. As part of his role as lead investigator he oversaw Blade's RCA investigation and, SoCalGas understands, was in regular contact with Blade personnel. *SoCalGas has serious concerns about whether and to what degree* the lead investigator, due to his perceived conflict of interest and bias, *may have improperly influenced* Blade's investigation. (Prehearing Conference Statement of SoCalGas, I.19-06-016, Aug. 23, 2019, p. 5 (fn. 8), p. 10. (Emphasis added.)

These excerpts demonstrate that SoCalGas simply had concerns for what appears to be a conflict of interest: SED's lead investigator is also a personal injury plaintiff against SoCalGas and has an interest in the outcome of the Blade report. SoCalGas's concern does not arise to formal allegations of actual wrongdoing, as SED suggested in its declaration. Instead, SoCalGas' statements reveal only a legitimate concern involving an apparent conflict of interest under circumstances which are, to SoCalGas' knowledge, unprecedented.

<sup>8</sup> The Response also continues the misstatements. At page 4, it states, "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." No words are quoted, but a citation is made

a legitimate concern involving an apparent conflict of interest under circumstances which are, to SoCalGas' knowledge, unprecedented.

It is undisputed that the declaration upon which the subpoena was issued is, at least in part, inaccurate. The subpoena therefore should be quashed.

**B. A PMK Deposition is Premature: SoCalGas' Discovery Related to the Apparent Conflict of Interest Is Ongoing.**

SED appears to argue that its subpoena is not premature because SoCalGas has had months to review certain emails it received from Blade. It is true that SoCalGas has attempted to conduct discovery on the issue of the apparent conflict of interest. From the time it learned of the issue, SoCalGas has attempted to ascertain, through outreach to the Commission and lawful discovery, whether and to what degree SED's former Aliso Canyon investigator may have improperly influenced Blade's RCA investigation. SED complains that SoCalGas has "failed to produce a single fact that supports its contention."<sup>9</sup> However, this fails to acknowledge that: SoCalGas has consistently maintained that both the Commission and SoCalGas have a legitimate interest in understanding whether a conflict of interest was improperly acted upon; SoCalGas has requested that the Commission (as the employer of the former Aliso Canyon investigator, and the entity with access to his communications and documents) perform its own internal investigation of this issue; and SoCalGas *did* bring to SED's attention certain email communications that it believes warrant further discovery.<sup>10</sup>

SoCalGas' discovery efforts on this topic include a June 26, 2019 request to the Commission, pursuant to the PRA, seeking documents related to the former SED Aliso Canyon investigator's apparent conflict of interest.<sup>11</sup> While SoCalGas awaited a response from the Commission, SoCalGas issued its first set of data requests on SED, seeking information that would further help SoCalGas evaluate whether SED's investigator acted improperly with respect to Blade's investigations into the Aliso Canyon incident. During this period, SoCalGas also worked to evaluate a partial production of records received from Blade. While SED's Response

---

to page 13 of SoCalGas' Opening Comments in this proceeding, which does not support the statement in any fashion. Rather, the citation affirms that SoCalGas requested an investigation of facts based on the apparent conflict of interest.

<sup>9</sup> SED Response, p. 7.

<sup>10</sup> Moshfegh Decl., ¶ 5, Exh. 3.

<sup>11</sup> SoCalGas' Motion to Quash Subpoena, p. 4; CPUC Public Records Act Request #19-331, June 26, 2019, available at: <https://publicrecords.cpuc.ca.gov/requests/19-331>.

states that “SoCalGas has had months to go through approximately 4,000 emails obtained from Blade, of which Commission emails are but a subset,”<sup>12</sup> the record is clear that the production included over 13,000 documents, including over 4,000 email communications involving Blade and SED’s former investigator.<sup>13</sup>

On November 1, 2019, more than four months after SoCalGas submitted its June 26, 2019 PRA request, SoCalGas received a partial production from the Commission.<sup>14</sup> The Commission’s production included approximately 360 records that reflect email communications between Blade and SED’s former Aliso Canyon investigator.<sup>15</sup> The letter accompanying the Commission’s PRA submission states that the Commission is “still reviewing some [documents] for confidentiality,” although the volume is unclear, and that it has “attached most documents” in response to SoCalGas’ request for communications between Blade and SED’s former Aliso Canyon investigator.<sup>16, 17</sup>

The following week, on November 6, SED responded to SoCalGas’ first set of data requests with objections and otherwise non-responsive answers to each of SoCalGas’ requests.<sup>18</sup> Notwithstanding SED’s apparent reluctance to look into the conflict of interest, SoCalGas continued to cooperate with SED and, on November 7, 2019, provided a set of email communications between Blade and SED’s former Aliso Canyon investigator which may warrant further discovery.<sup>19</sup>

The PMK deposition is premature because the Commission has provided only a partial response to SoCalGas’ PRA request, SED has provided only objections and non-responsive statements to SoCalGas’ first set of data requests to SED, and SoCalGas has not yet had the opportunity to depose SED’s former investigator. SED’s Response ignores all of this, as well as the fact that SoCalGas already produced communications to SED that SoCalGas believes warrant

---

<sup>12</sup> SED Response, p. 7.

<sup>13</sup> Prehearing Conference Transcript, I.19.06-016, Aug. 30, 2019, pp. 89-90. SoCalGas notes that SED misstates the PHC Transcript in this regard. See, SED Response, p. 7 (“SoCalGas has had months to go through approximately 4,000 emails obtained from Blade, of which Commission emails are but a subset.” (Internal citation omitted)).

<sup>14</sup> Moshfegh Decl. ¶2.

<sup>15</sup> Moshfegh Decl. ¶3.

<sup>16</sup> Moshfegh Decl. ¶3, Exh. 1.

<sup>17</sup> While SoCalGas awaits further production(s) from the Commission, it seeks to reconcile the wide disparity between the number of communications received by Blade (approximately 4,000) and those received from the Commission (approximately 360).

<sup>18</sup> Moshfegh Decl. ¶4, Exh. 2.

<sup>19</sup> Moshfegh Decl. ¶5, Exh. 3.

further investigation and discovery. SED has failed to demonstrate the PMK deposition would not be premature, and therefore the subpoena should be quashed.

**C. SoCalGas Timely Challenged SED’s Subpoena.**

SED argues that SoCalGas’ Motion was untimely because motions to quash “must be filed at the earliest opportunity.”<sup>20</sup> However, neither the Commission’s Rules, nor the Code of Civil Procedure, provide a date certain by which a party wishing to quash a subpoena must serve and file its motion. The Code of Civil Procedure provides only that a motion to quash a subpoena must be “reasonably made.”<sup>21</sup> As further explained below, SoCalGas’ Motion was reasonably made given the short window in which SoCalGas could act, and the timing of the parties’ intervening meet and confer.

First, SoCalGas’ Motion was reasonably made given that the subpoena was served on October 22—only ten days prior to the date of deposition.<sup>22</sup> During that period, SoCalGas worked to resolve its dispute with SED informally. In a good-faith effort to resolve the parties’ dispute, counsel for SoCalGas and SED met and conferred regarding discovery (SED DR 41) and SED’s subpoena on October 24, 2019.<sup>23</sup> Because the October 24 meet-and-confer focused principally on resolving issues related to SED DR 41, on October 28 SoCalGas requested a second meet-and-confer to specifically discuss the propriety of SED’s subpoena before SoCalGas moved to quash.<sup>24</sup> In response, on October 29, 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.<sup>25</sup> Just two days later, on October 31, SoCalGas served its Motion.

SoCalGas’ Motion was timely given the short window SoCalGas was afforded between the subpoena’s service, the intervening meet-and-confer through which SoCalGas hoped to resolve the issue, and the requested date of appearance. SoCalGas further acted in good faith to informally resolve the issue. Indeed, SED responded to SoCalGas’ meet and confer request as

---

<sup>20</sup> SED Response, p. 8 (quoting 60 CPUC 2d 326, 332).

<sup>21</sup> Code Civ. Proc., § 1987.1.

<sup>22</sup> SED’s counsel emailed SoCalGas about the upcoming subpoena two business days prior to service of the subpoena.

<sup>23</sup> Motion, p. 5.

<sup>24</sup> Motion, pp. 5-6.

<sup>25</sup> *Id.*

late as October 29, only two days before SoCalGas served its Motion, and three days before the subpoena demanded SoCalGas' appearance.

Second, while the civil rules do not state the filing deadline for, or procedural effect of, a motion to quash subpoena, civil rules governing motions for protective orders, and motions to quash depositions, are instructive. For example, a motion for a protective order may be filed on the date of the deposition. *See* Code Civ. Proc. § 2025.420(a) (motions for protective order can be made “[b]efore, during, or after a deposition”). Further, a motion to quash a deposition notice stays the taking of a deposition. *See* Code Civ. Proc. § 2025.410(c) (motions to quash deposition notice stays deposition “pending the determination of this motion”). While these code sections may not be binding on the present issue, they are instructive for purposes of determining the timing and effect of a motion to quash subpoena.<sup>26</sup>

Ultimately, SoCalGas' Motion was reasonably made under the circumstances.

**D. It is Undisputed that the Commission Has Broad Subpoena Power; However, SED Did Not Comply with Commission Discovery Rules.**

In opposing the Motion, SED argues that the Commission has “broad subpoena power and issued a valid subpoena” under Public Utilities Code § 311.<sup>27</sup> However, SoCalGas did not, and does not, dispute the subpoena authority bestowed upon the Commission by § 311. Rather, SoCalGas contends SED did not follow the Commission's rules for deposing a party in the course of a formal Commission proceeding.

As evidenced by the caption on the cover of the subpoena, SED obtained the deposition in connection with this proceeding.<sup>28</sup> A subpoena is unnecessary to obtain a deposition from a party to a proceeding.<sup>29</sup> Because SED and SoCalGas are both parties to this proceeding, the

---

<sup>26</sup> SoCalGas notes that while SoCalGas did challenge the deficiencies in SED's subpoena by a motion to quash, California appellate court precedent indicates that SoCalGas may not have been obligated to do so in order to challenge the deficiencies therein. Instead, at least one decision indicates that SoCalGas could have waited until after SED moved to enforce the subpoena to raise its objections. *See, e.g., People v. Warburton* (1970) 7 Cal.App.3d 815, 824 (“If the person having custody of the papers believes the subpoena is defective, and he is unwilling to waive the defect by his voluntary compliance, he may make a motion to quash the subpoena (see *Southern Pacific Co. v. Superior Court* (1940) 15 Cal.2d 206, 209, 100 P.2d 302) or he may refuse to comply and present his excuse when enforcement is attempted against him (*C. S. Smith Metropolitan Market Co. v. Superior Court* (1940) 16 Cal.2d 226, 105 P.2d 587).”) (Emphasis added; internal citations in original).

<sup>27</sup> SED Response, p. 2-3.

<sup>28</sup> Motion, p. 5.

<sup>29</sup> The Commission's comments in opening the 2006 Rulemaking to amend the Commission's Rules: “[w]e also propose amendments to clarify that discovery of parties does not require subpoenas, and that subpoenas shall be

appropriate process here would have been for SED to request a deposition from SoCalGas pursuant to Rule 10.1 of the Commission's Rules. The process established by Rules 10.1 and 10.2 is consistent with the process laid out by the Code of Civil Procedure, which provides that the proper process for deposing a party to an action is simply to serve a notice of deposition.<sup>30</sup>

Regarding subpoenas issued in Commission proceedings, Rule 10.2 provides:

A party may request the issuance of a subpoena to direct the attendance of a *non-party witness* or to direct the production of documents or other things under the *non-party witness's* control. Requests may be made *to the Administrative Law Judge assigned to the proceeding*. If no Administrative Law Judge is assigned to the proceeding, requests may be made to the Executive Director.<sup>31</sup>

SED's subpoena is contrary to this rule. SoCalGas is a *party* to this proceeding, not a *non-party*, and thus a subpoena was neither required nor appropriate.<sup>32</sup> Moreover, this proceeding has two assigned Administrative Law Judges; if a subpoena in this proceeding is necessary, it should be obtained from the ALJs, *not* the Executive Director of the Commission. Since the subpoena was not obtained in accordance with the Commission's rules, it should be quashed.

### III. CONCLUSION

SoCalGas has been, and will continue to be, cooperative with the reasonable discovery requests of all Commission personnel. However, the subpoena at issue here (a) is the wrong discovery tool, (b) appears to have been issued based on a misstatement of SoCalGas' position, and (c) is premature in light of the facts of the case. SoCalGas notes that it takes seriously its

---

issued *only to compel the appearance of, or production of documents from, a non-party.*" *In Re Rulemaking to Update, Clarify, Recodify Rules of Practice, Procedure*, R.06-02-011 (Feb. 23, 2006) 2006 WL 623577.

<sup>30</sup> Code Civ. Proc., § 2025.280(a): "[t]he service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection and copying."

<sup>31</sup> Rule 10.2, California Public Utilities Commission's Rules of Practice and Procedure (emphasis added).

<sup>32</sup> A subpoena is unnecessary to command the presence of a party to a proceeding. Rule 10.2 is consistent with the Commission's comments in opening the 2006 Rulemaking to amend the Commission's Rules: "[w]e also propose amendments to clarify that discovery of parties does not require subpoenas, and that subpoenas shall be issued *only to compel the appearance of, or production of documents from, a non-party.*" *In Re Rulemaking to Update, Clarify, Recodify Rules of Practice, Procedure*, R.06-02-011 (Feb. 23, 2006) 2006 WL 623577. Because SED and SoCalGas are both parties to this proceeding, the appropriate process here would have been for SED to seek discovery from SoCalGas pursuant to Rule 10.1 of the Commission's Rules. The process established by Rules 10.1 and 10.2 is consistent with the process laid out by the Code of Civil Procedure, which provides that the proper process for deposing a party to an action is simply to serve a notice of deposition. Code Civ. Proc., § 2025.280(a): "[t]he service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection and copying."

