

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



FILED
08/23/19
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)

**PREHEARING CONFERENCE STATEMENT OF
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)**

F. JACKSON STODDARD
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Tower
San Francisco, California 94105
Telephone: (415) 442-1153
Facsimile: (415) 442-1001
Email:
fjackson.stoddard@morganlewis.com

AVISHA A. PATEL
SABINA CLORFEINE
SOUTHERN CALIFORNIA GAS COMPANY
555 West Fifth Street, Suite 1700
Los Angeles, CA 90013
Telephone: (213) 244-2954
Facsimile: (213) 629-9620
Email: APatel@semprautilities.com

Attorneys for:
SOUTHERN CALIFORNIA GAS COMPANY

August 23, 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)

**PREHEARING CONFERENCE STATEMENT OF
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)**

Pursuant to the Administrative Law Judge's ("ALJ") July 19, 2019 Ruling setting a Prehearing Conference ("PHC") and directing parties to file and serve written PHC statements, Southern California Gas Company ("SoCalGas") hereby submits this PHC statement. The ALJ's PHC Ruling asked parties to address eight (8) issues identified therein; SoCalGas provides responses to each issue below.

- 1. A description of the party's planned participation in this proceeding, including whether the party intends to submit prepared written testimony, cross examine other parties, and file written briefs (if a hearing is held).**

SoCalGas is the respondent in this proceeding and, therefore, will participate fully in all aspects of the proceeding, including the submission of written testimony, cross-examination of SED's and other parties' witnesses, and submission of written briefs.

2. A list and detailed explanation for any objections the party may have to the preliminary scoping memo contained in Order Instituting Investigation (OII) 19-06-016 regarding the need for hearings, issues to be considered, and/or schedule.

As detailed in SoCalGas' July 29, 2019 Opening Response to the Order Instituting Investigation ("OII") in this proceeding, and further referenced in SoCalGas' Response to the Safety Culture OII¹ opened the same day as this one, the Commission should clearly distinguish from other proceedings the scope of issues to be considered in this proceeding. The scope of issues considered here should be narrowly focused on the SS-25 incident. For example, consideration of SoCalGas' recordkeeping practices in this proceeding should be limited to records directly relevant to the leak that occurred at SS-25. The Commission should also reframe the issues identified in the preliminary scoping memo to remove the inappropriate inference that SoCalGas "allowed" the uncontrolled release of natural gas from SS-25.² Contrary to the suggestion made by the current framing of issues in the OII, SoCalGas invested substantial resources to mitigate the SS-25 leak, beginning on the day the leak was discovered. For example, SoCalGas spent over \$80 million on well control, leak stoppage, relief wells, and methane recapture.

Further, consistent with SoCalGas' Opening Response in this proceeding, the issues identified in the OII do not include any sufficiently specific violations to support an Order to Show Cause ("OSC") in this proceeding.³ The OSC is procedurally deficient insofar as it does

¹ See SoCalGas' July 29, 2019 Response to the Commission's *Order Instituting Investigation on the Commission's Own Motion to Determine Whether Southern California Gas Company's and Sempra Energy's Organizational Culture and Governance Prioritize Safety (U904G)*, Investigation ("I.") 19-06-014, pp. 10-11.

² See, e.g., Investigation 19-06-016 ("OII") pp. 1, 11-12; the same language appears in the caption of this proceeding.

³ See SoCalGas' July 29, 2019 Opening Response to the Commission's *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*

not identify any sufficiently specific potential violations to enable SoCalGas to respond at this time. An OSC is appropriate only where the Commission alleges specific violations based on specific facts.⁴ The Commission has recognized that due process restricts the Commission from imposing sanctions for violations that were not adequately noticed in an OSC.⁵ Ultimately, because there have been no specific violations alleged to support the OSC, the Commission should clarify that this proceeding will proceed as an OII, not an OSC. If the OSC is not removed, then it should remain only as an order to show cause why the Commission should not further investigate.

SoCalGas further notes that the Commission’s failure to identify discrete facts and violations also departs from the Commission’s typical process for initiating an enforcement OII—which is to do so only after Commission staff alleges specific violations in a staff investigative report.⁶ Indeed, SED customarily identifies in its staff report the allegedly

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) (“SoCalGas’ Opening Response”), I.19-06-016, pp. 1, 3-6.

⁴ See, e.g., *Application of Pac. Gas & Elec. Co. Proposing Cost of Serv. & Rates for Gas Transmission & Storage Services for the Period of 2015-2017. (U39G) & Related Matter.* (Nov. 20, 2014), D.14-11-041, 2014 WL 6791604, at *3 (citing California Rule of Court 2.30(c); Cal. R. Ct. 2.30(c) (California civil rules provide that an order to show cause why sanctions should not be imposed must “state the applicable rule that has been violated” and “describe the specific conduct that appears to have violated the rule.”)); See also, SoCalGas’ Opening Response at pp. 3-7.

⁵ *Id.*, D.14-11-041, 2014 WL 6791604, at *3.

⁶ See, e.g., *Order Instituting Investigation on the Commissions Own Motion into the Operations & Practices of Pac. Gas & Elec. Co. with Respect to Facilities Records for Its Nat. Gas Transmission Sys. Pipelines.* (Feb. 24, 2011), I.11-02-016, p. 9. (“[o]rordinarily, the Commission issues an ‘order instituting investigation’ after completion of a report by Commission staff. In such cases, the staff report typically comes after an extensive investigation by staff into the underlying facts, and based on allegations by staff of a violation of law revealed by such facts.”); *Order Instituting Investigation Into Pacific Gas and Electric Company’s (U-39-E) Failure to Provide a 24-hour Notice Prior to Residential Electric Service Disconnections Between July 1 and July 18, 2016 and the Adequacy of its Remedy Going Forward* (July 20, 2018), I.18-07-008, p. 3 (“[b]ased on staff’s investigation, the Commission finds it reasonable to investigate the allegations and admissions identified in the Staff Report, to determine whether any violations of statute or this Commission’s rules or orders occurred, and whether penalties and/or other remedies shall be imposed.”); *Order Instituting Investigation on the Commission’s Own Motion into the Operations and Practices of Southern California Edison Company Regarding the Acacia Avenue Triple*

inappropriate action(s) that resulted in specific violations of law.⁷ It is not clear why the Commission departed from its usual process in this instance.

3. The need for evidentiary hearings.

As noted above and in SoCalGas' Response to the OII in this proceeding, there are currently no specific violations tied to specific facts alleged against SoCalGas. If specific violations are ultimately alleged, SoCalGas anticipates that evidentiary hearings will be needed.

- 4. A detailed schedule for completing this proceeding within the 12-month statutory deadline established by Public Utilities Code Section 1701.2(i). The detailed schedule shall include dates or timeframes for all major events and milestones, including:**
- a. The deadline for parties to submit (i) specific alleged violations of Public Utilities (Pub. Util.) Code Section 451, other provisions of the Pub. Util. Code, Commission General Orders, Commission decisions, or any other applicable regulation regarding Southern California Gas Company's (SoCalGas) operation, maintenance, and recordkeeping practices for the Aliso Canyon storage facility and/or the uncontrolled release of natural gas from the Aliso Canyon storage facility; and (ii) the factual and legal justification for each alleged violation.**
 - b. The deadline for parties to submit (i) specific and quantified proposed penalties in the form of fines, remedies, and other corrective actions for any proven violations identified in Item a, above; and (ii) the factual and legal justification for each proposed penalty.**

Electrocution Incident in San Bernardino County and the Windstorm of 2011, (March 19, 2014), I.14-03-004, p. 3 (“[t]he Acacia Avenue Incident Report concludes that SCE violated the California Public Utilities Code and provisions of the Commission’s General Orders, especially considering that similar violations had previously occurred on the electric circuit involved in the Acacia Avenue Incident.”); *Order Instituting Investigation on the Commission’s Own Motion into the Maintenance, Operations and Practices of Pacific Gas and Electric Company (U39E) with Respect to its Electric Facilities; and Order to Show Cause Why the Commission Should not Impose Penalties and/or Other Remedies for the Role PG&E’s Electrical Facilities had in Igniting Fires in its Service Territory in 2017* (June 27, 2019), I.19-06-015, pp. 2-3 (“This Order is in response to investigative reports issued by the Commission’s Safety and Enforcement Division and the California Department of Forestry and Fire Protection (CAL FIRE) and addresses 15 of the 17 fire incidents investigated by both SED and CAL FIRE ... SED finds that PG&E violated the Commission General Orders and Resolution E-4148, and failed to follow industry best practices.”)

⁷ See *id.*, I.14-03-004, *Incident Investigation Report of The Consumer Protection and Safety Division* (identifying specific conduct associated with specific violations of the Commission’s General Order), available at: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K158/89158507.pdf>.

- c. **The deadline for parties to submit (i) specific proposed sanctions on SoCalGas for allowing the uncontrolled release of natural gas from its Aliso Canyon storage facility; and (ii) the factual and legal justification for each proposed sanction.**
- d. **Discovery cutoff.**
- e. **Service or prepared written testimony and reply testimony.**
- f. **Evidentiary hearings.**
- g. **Briefs and reply briefs.**
- h. **Submission.**
- i. **Service of the presiding officer's decision (POD).**
- j. **Deadline for parties to file an appeal of the POD and for Commissioners to file requests to review the POD.**
- k. **Deadline for parties to file responses to appeals and requests for review.**
- l. **Deadline for a final Commission decision.**

Pursuant to the ALJ's Ruling, SoCalGas proposes the below schedule in order to complete this proceeding within 12 months. As further detailed in the below schedule, SoCalGas believes the deadline for alleging specific violations should be no more than 45 days after the initial PHC. This 45-day period for identifying violations is particularly appropriate here where, after more than three years of investigation, neither the Blade Report nor SED have identified a single violation. This is sufficient time given that the Blade Report includes more than 2,500 pages of data and analysis regarding a technical root cause of the leak and many other matters that Blade decided, or was directed,⁸ to investigate beyond the leak itself. While SoCalGas has questions about, and concerns with many of Blade's conclusions, and the expansion of the scope of the Report, the Blade Report contains information that is more than sufficient for SED and other parties to determine whether there is any basis for alleging specific violations.

⁸ 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.

Regarding the deadlines requested in items 4b. and 4c. of the ALJ’s Ruling, SoCalGas believes that any discussion of penalties and/or sanctions is premature. At this time, neither the Blade Report nor SED have stated any facts or allegations demonstrating that SoCalGas has violated any provision of law or regulation. Until such time that specific and discrete violations are identified, it is premature to establish a procedural schedule for submission of proposed penalties and/or sanctions. Moreover, it is inappropriate and procedurally irregular for the Commission to ask parties, aside from SED, to propose penalties and sanctions in this proceeding. As the enforcement branch of the Commission, it is SED’s role and responsibility to prosecute potential violations, which includes proposing specific penalties.⁹ SoCalGas is not aware of any other OII in which the Commission has invited all parties—at the outset of a proceeding—to submit specific and quantified proposed penalties.

As further detailed below, the remainder of the procedural schedule is consistent with the milestones included in the procedural schedules of other OIIs.

Proposed Schedule for I.19-06-016

Pre-Hearing Conference	August 30, 2019
Opening Testimony (SED and Intervenors) [Including specific, alleged violations with factual and legal justification]	~ 45 days after PHC (October 14, 2019)
Opening Testimony (SoCalGas)	~ 45 days after SED / Intervenor testimony (November 28, 2019)
Concurrent Rebuttal Testimony	~ 30 days after SoCalGas testimony (December 30, 2019)
Discovery cutoff	30 days before evidentiary hearings
Evidentiary Hearings	February 5-7, 2020

⁹ See e.g., *Administrative Law Judge’s Ruling Setting A New Date For The Prehearing Conference, Directing Parties to Confer With One Another, and Requiring Parties to Submit Prehearing Conference Statements*, (Sept. 26, 2011), I.09-01-018 at p. 2 (requiring CPSD, and *only* CPSD, to submit a list and brief description of each alleged violation of statute, Commission decision, regulation, rule, or tariff, and/or other law, and to list and provide a brief description of the dollar amount (if applicable) of each fine, penalty, and/or remedy proposed by CPSD); see also, CPSD’s Prehearing Conference Statement Identifying a Total Estimated Fine, (Oct. 21, 2011), pp. 4-8; see also, D.13-09-028, and D13-09-026 (approving settlement agreements regarding same).

Opening Briefs	March 5, 2020
Reply Briefs	March 20, 2020 (15 days after opening)
Submission	Following briefing
Service of POD	May 1, 2020
Deadline for Appeals/Request for Review	May 15, 2020
Deadline for Replies to Appeals/Request for Review	June 1, 2020 (15 days from appeals)
Final Commission Decision	June 26, 2020

5. **A description of the effects, if any, that the document filed by SoCalGas on July 12, 2019, may have on the scope and schedule for this proceeding. In its document filed on July 12, SoCalGas objected to reimbursing the state for the cost of the Commission investigation that is the subject of this proceeding.**

SoCalGas’ objection to the request to reimburse the Commission for the costs of SED’s investigation does not affect the scope or schedule of this proceeding. First, as detailed in the ALJ’s August 2, 2019 Ruling, the process for addressing and resolving SoCalGas’ objection will be separate from the Commission’s consideration of other issues in I.19-06-016.¹⁰ Second, the Commission’s determination of this issue will have no bearing on the scope of this proceeding. Whether or not SoCalGas ultimately reimburses the Commission for the costs of SED’s investigation does not limit the issues SED is able to investigate, nor will it impact SoCalGas’ continued cooperation with SED’s investigation.

¹⁰ See *Administrative Law Judge’s Ruling Establishing the Procedure for Addressing Southern California Gas Company’s Objection to Reimbursing the State for Investigation-Related Costs*, Aug. 2, 2019, p.5. On August 16, 2019, following the filing of a joint motion by SoCalGas and the Commission’s Safety and Enforcement Division for an extension of the schedule established by the August 2 Ruling, ALJ Kenney stayed the schedule established by the August 2 Ruling. The August 16, 2019 Ruling indicates another ruling will be issued in due course that establishes a revised schedule for addressing SoCalGas’ objection to the request to reimburse the State for investigation-related costs.

6. A description of the effects, if any, that Pub. Util. Code Section 2104.7 may have on the scope of the sanctions and penalties that may be considered in this proceeding.

SoCalGas does not believe that Public Utilities Code section 2104.7 will impact the scope of any sanctions or penalties considered in this proceeding. This statute directs that “all moneys collected” by the Commission pursuant to an administrative enforcement or legal proceeding relating to the October 2015 Aliso Canyon well failure must be deposited in the Aliso Canyon Recovery Account.¹¹ The statute is otherwise silent as to the legal basis for the money collected (i.e., whether by settlement, order, fine, or penalty). Therefore, the scope of sanctions and penalties that may be considered in this proceeding should not be affected by where the moneys collected, if any, will ultimately be deposited and later allocated.

7. A description of Blade Energy Partners Limited’s (Blade) participation in this proceeding. The description should include (i) whether Blade will submit prepared written testimony; (ii) whether and how Blade’s *Main Report - Root Cause Analysis of the Uncontrolled Hydrocarbon Release from Aliso Canyon SS-25* and Blade’s four *Supplementary Reports* will be admitted into the evidentiary record of this proceeding; (iii) whether Blade will offer one or more witnesses to appear at an evidentiary hearing (if one is held); and (iv) whether Blade will be represented in this proceeding by its own counsel, counsel provided by the Commission’s Safety and Enforcement Division, or other counsel.

Blade’s participation in this proceeding will depend on the degree to which SED relies on the facts and findings in the Blade Report to assert violations, if any, and whether SoCalGas contests the facts and findings relied upon.¹² Because the Blade Report does not assert any violations, and SED has not submitted a staff report which evaluates and relies upon the Blade Report’s findings, it is premature to consider whether, and the extent to which, it may be

¹¹ Pub. Util. Code § 2104.7.

¹² Moreover, as stated in SoCalGas’ Opening Response, until the conflict of interest affecting both SED’s and Blade’s investigations as well as the Blade Report are fully investigated to resolution, the Blade Report should not be relied upon for any purpose.

appropriate for Blade to submit prepared written testimony in this proceeding. Significantly, the Blade Report was authored with input from twenty-two (22) contributors,¹³ and SoCalGas does not know at this time which of these individuals are responsible for findings in the Blade Report with which SoCalGas disagrees. To the extent SED ultimately relies on the findings of any of these contributors to assert violations against SoCalGas, SoCalGas expects that it may become necessary for certain of these contributors to prepare written testimony in this proceeding.

Similarly, the Blade Report¹⁴ should be admitted into the evidentiary record of this proceeding, if at all, only to the extent that the report's findings are relied upon by SED to allege violations against SoCalGas. Assuming SED does rely on at least certain findings contained in the Blade Report, the report should be admitted into the evidentiary record during evidentiary hearings, and only by a Blade representative who is familiar with the contents of the report and is subject to cross-examination by SoCalGas. Relatedly, Blade's participation at evidentiary hearings will be necessary only to the extent that a Blade witness has authored written testimony and/or for purposes of admitting the Blade Report into the evidentiary record of this proceeding.

¹³ Blade Energy Partners, *Root Cause Analysis of the Uncontrolled Hydrocarbon Release from Aliso Canyon SS-25*, Main Report, May 16, 2019, p. 241.

¹⁴ The Blade Report constitutes an accident report that was prepared pursuant to Public Utilities Code § 315. The February 10, 2017 joint letter from the Commission and the Division of Oil, Gas, and Geothermal Resources states expressly that the CPUC "is conducting an investigation" pursuant to "Public Utilities Code Section (PU Code Section) 315," which "mandates that the CPUC 'investigate the cause of all accidents occurring within this State upon the property of any public utility.'" The joint letter further states that a "key component of the [CPUC's] investigation is the technical root cause analyses (RCA) which is being performed by an independent third party, Blade." See Joint Letter by DOGGR and CPUC to SoCalGas, *Well Standard Sesnon 25 – Review of Proposed Operations*, February 10, 2017, available at:

https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/News_and_Updates/2017.2.10_Ltr_SoCalGas_SS25_Review.pdf; See also, Pub. Util. Code, § 315 ("Neither the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property.").

To the extent any personnel from Blade testifies at evidentiary hearings, the witness should be made available for cross-examination by SoCalGas regarding any fact or conclusion contained in the Blade Report or testimony.

To the extent Blade engages in this proceeding and seeks legal representation, Blade should be represented by its own counsel. Blade's investigation, which was conducted pursuant to contract with SoCalGas, was ordered to be independent. As such, Blade should retain its own counsel and should not be represented by SED.

8. A list and description of other matters that parties wish to address at the PHC.

In addition to the issues identified above, SoCalGas proposes that the parties be prepared to discuss the following matters, which will necessarily impact the scope and timing of this proceeding:

a) The Apparent Conflict of Interest Involving SED's Lead Investigator.

As described in SoCalGas' July 29, 2019 Opening Response to this proceeding, on June 4, 2019, SoCalGas learned that a Program Manager in SED's Gas Safety and Reliability branch, and the CPUC's lead investigator for the October 23, 2015 Aliso Canyon gas leak—had filed a personal injury lawsuit against SoCalGas, alleging his current health issues are a result of the time he spent at Aliso Canyon during the leak. 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. SoCalGas has asked that the CPUC fully investigate the scope

and impact of the lead investigator's conflict of interest. The Commission has not yet indicated whether, and the extent to which, it has investigated this apparent conflict of interest. As requested in SoCalGas' Opening Response, this OII should be stayed pending completion of the Commission's investigation into this issue.¹⁵

b) The Propriety of the Commission Appending an Order to Show Cause to this OII before the Commission Has Alleged Any Discrete Violations. As discussed above, and as further detailed in SoCalGas' July 29, 2019 Opening Response in this proceeding, it was improper and unprecedented for the Commission to add an Order to Show Cause to the initiation of this proceeding. Neither Blade nor SED have alleged any facts or violations of law that establish a rebuttable presumption that SoCalGas should be sanctioned here. To the contrary, the Blade Report confirms that SoCalGas complied with all regulations in effect at the time of the leak. Until SED has made allegations tying specific facts to discrete violations, it is improper for the Commission to deprive SoCalGas of due process by shifting onto SoCalGas the burden of rebutting violations that have not been alleged with sufficient specificity.

¹⁵ See SoCalGas' Opening Response, pp. 2, 13, 15.

