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

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# SOUTHERN CALIFORNIA GAS COMPANY'S (U904G) MOTION TO DISMISS ALLEGED VIOLATIONS RELATED TO OPERATIONS AND MAINTENANCE, LEAK RESPONSE, AND RECORDKEEPING

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# SOUTHERN CALIFORNIA GAS COMPANY'S (U904G) MOTION TO DISMISS ALLEGED VIOLATIONS RELATED TO OPERATIONS AND MAINTENANCE, LEAK RESPONSE, AND RECORDKEEPING

Pursuant to Rules 11.1 and 11.2 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC"), Southern California Gas Company ("SoCalGas") respectfully submits this motion to dismiss the operations and maintenance, leak response, and recordkeeping violations (Violations 1-79; 83-87; 327-330) alleged in the Safety and Enforcement Division's ("SED") Opening Testimony.[1] The October 15, 2020 *Administrative Law Judges' Ruling Amending Proceeding Schedule and Requiring Parties to Begin Hearing Preparation Activities* ("October 15 Ruling"), as modified from time to time, requires the parties to meet and confer to prepare and file a joint case management statement that should, *inter alia*, "list any issues covered in testimony that parties have settled or on which parties have reached a stipulation, removing them from consideration at evidentiary hearings."[2] At the first meet-and-confer held on January 7, 2021, SED informed the parties that it did not have sufficient time to

[1] SED has withdrawn Allegations 80-82 and 88 from its list of substantive charges in the Opening Testimony. SED has also added a 331st violation in its Sur-Reply Testimony. SED Sur-Reply (Felts), Ch. 8 at pp. 1-2.

[2] Administrative Law Judges' Ruling Amending Proceeding Schedule and Requiring Parties to Begin Hearing Preparation Activities dated October 15, 2020 at 7. The ALJs also required SoCalGas to post the parties' testimonies on a public website, which is available at https://www.socalgas.com/regulatory/i19-06-016.

devote to attempting to reach stipulations or settlement of issues.[3] Accordingly, SoCalGas hereby attempts to narrow the issues that proceed to evidentiary hearings. As detailed below, SED's allegations in the Order Instituting Investigation that address the historical operation and management of Aliso Canyon, SoCalGas' leak response, and recordkeeping are, as a matter of law and fact, without merit and thus need not be the subject of hearings.[4]

## INTRODUCTION

The leak that occurred at the SS-25 well on October 23, 2015 at SoCalGas' Aliso Canyon gas storage facility (the "Incident") was unprecedented. But the mere fact that an unprecedented leak occurred does not in and of itself mean that any law was violated. Yet this is the premise of the violations addressed in this Motion. Unable to establish that SoCalGas' conduct was unreasonable, SED adopts a 20/20 hindsight approach by charging SoCalGas with violations based on an *ex post* assessment of what SoCalGas *could have* done differently to *possibly* avoid the Incident. The law does not permit such a hindsight assessment to serve as the basis for violations of Section 451 of the Public Utilities Code, which is the sole statutory basis for SED's alleged violations.[5]

Section 451 requires a utility's conduct to be reasonable. The Commission has held, for purposes of Section 451, that utilities are held to a standard of reasonableness "*in light of facts and circumstances that were known or should be known at the time*."[6] What should be known to a reasonable manager can be established by pointing to specific applicable rules, regulations,

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[3] Declaration of F. Jackson Stoddard ("Stoddard Decl.") ¶ 2, Ex. A (January 13, 2021 email from Avisha Patel to counsel for other parties).

[4] SoCalGas requests dismissal of discovery-related charges—stemming from SED's investigation—in a separate motion.

[5] SED's alleged violations of Rule 1.1 of the Commission's Rules of Practice and Procedure are not addressed herein.

[6] *Order Instituting Rulemaking on the Commissions Own Motion to Adopt New Safety & Reliability Regulations for Nat. Gas Transmission & Distribution Pipelines & Related Ratemaking Mechanisms* (Feb. 24, 2014) ("*In re New Safety & Reliability Regulations*") No. D. 14-02-046, 2014 WL 880908, at *4; see, e.g., *Flamingo Mobile Lodge v. Pacific Bell* ("*Flamingo*") (Mar. 27, 2001) No. 00-05-055, 2001 WL 604376 (Mar. 27, 2001) [noting because "Pacific knew or should have known that telephone cable and lines lying on the ground or stretched at knee level between deteriorating posts constituted an unsafe and unreasonable facility," "Complainant has established a *prima facie* violation by Pacific of Pub. Util. Code § 451."].

Commission decisions or orders, industry standards, or internal company standards to which a gas storage operator should reasonably be expected to conform its conduct. Here, however, SED does not identify any violations of specific rules, regulations, Commission decisions or orders, industry standards, or internal company standards applicable to gas storage operators—let alone offer evidence that SoCalGas violated any safety rules or standards. In fact, SED repeatedly asserts in its responses to data requests and testimonies that it is altogether irrelevant whether any safety rules or standards were even implicated. SED applies Section 451 as an all-encompassing strict liability statute with no limitation. But SED completely ignores settled law that a violation of Section 451 requires evidence that a utility's conduct was unreasonable.

SED also ignores the perspective from which the utility's conduct is examined. Whether a utility's conduct is reasonable or not is determined by what a reasonable manager would have done based on what was known or should have been known *at the time of the incident*. It is for good reason that the Commission avoids the application of hindsight in reviewing the reasonableness of a utility decision.[7] Relying on hindsight, without consideration of the circumstances present at the time of a given act or decision (including applicable regulations and standards, and what was known or should have been known then), would result in the arbitrary and capricious charging of violations that violate constitutional due process protections regarding notice. The law is clear that utilities are to be governed by discernable standards that provide notice as to the standard of reasonableness (*i.e.*, expectations set forth in applicable rules, regulations, Commission decisions or orders, industry standards, or internal company standards) by which the regulated entities' conduct may be judged. SED's failure to identify any such standards or other evidence of notice here warrants the dismissal of SED's violations as a matter of law.

"In an enforcement proceeding, the party seeking the penalty bears the burden to show a violation of a law, rule or order."[8] It therefore falls to SED to provide evidence that would support the violations of Section 451 alleged here (*i.e.*, evidence that SoCalGas did not act as a reasonable manager). Rather than seeking to establish that SoCalGas' conduct before and after the Incident was unreasonable based on what it knew or should have known at the time, SED largely supports

[7] *Ibid.*

[8] *In Re Pac. Gas & Elec. Co.* (Nov. 18, 1999) No. 99-11-055, 1999 WL 33588638.

its violations by referring to the Blade Report. That report, however, which was issued after more than three years of investigation, was commissioned to determine the technical root causes of the Incident, not to identify the things that a reasonable operator should have done based on applicable law, rules, or industry standards (and it should be noted that, in Blade Energy Partners' analysis of applicable regulations and standards as part of its root cause analysis, Blade did not find that SoCalGas violated any laws or regulations).[9] In other words, Blade's "root cause analysis" was a process to discover the causes of the Incident and to identify potential, forward-looking solutions to prevent similar incidents from occurring again.[10] The Blade Report offers suggestions for preventing future similar occurrences based on the benefit of hindsight; this analysis can then inform future changes to regulations and practices.[11] Indeed, California lawmakers and agencies, including the Geologic Energy Management Division (CalGEM) implemented regulatory changes following the incident and are now considering implementation of additional recommendations from the Blade Report for *future application* to the gas storage industry.[12]

At the time Blade was retained to conduct its technical analysis, the Commission indicated that SED would conduct its own investigation and prepare a separate report.[13] Typically, SED's

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[9] See Stoddard Decl. ¶ 3, Ex. B (Blade's Response to SoCalGas' January 23, 2020 Data Request); *id.* ¶ 4, Ex. C (Blade's Response to SoCalGas' December 12, 2019 Data Request); Blade Report at 202, 216, 231-232, 237 ("DOGGR approved the use of static temperature surveys to satisfy compliance of the requirements for mechanical integrity."): *id*., Vol. 4, *Gas Storage Well Regulations* at 18 ("SoCalGas' monitoring and static temperature surveys, as approved by DOGGR in 1995, fulfilled the requirements for mechanical integrity found in Section 1724.10 (j) and (j)(1) of the 2015 regulations."), available at: ftp://ftp.cpuc.ca.gov/News_and_Outreach/SS 25%20RCA%20Final%20Report%20May%2016,%202019.pdf

[10] See Blade Report at 22.

[11] See CPUC Press Release, *Root Cause Analysis For Aliso Canyon Finalized; California To Continue Strengthening Safeguards For Natural Gas Storage Facilities* (May 17, 2019), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M292/K947/292947433.PDF.

[12] Stoddard Decl. ¶ 12, Ex. K.

[13] CPUC/DOGGR Joint Statement on Investigations, *Key State Investigations into Southern California Gas Company Natural Gas Leak at Aliso Canyon*, December 15, 2015 (noting that SED had launched its investigation and citing Appendix B for additional information regarding the scope of SED's investigation); see also *Appendix B: Scope of CPUC Investigation Into Well Failure at Aliso Canyon* at 1 ("SED will release its official investigation report upon completion of all aspects of its investigation."; available at: https://www.cpuc.ca.gov/aliso/.).

investigation and report would specify the ways in which SoCalGas' conduct was allegedly not reasonable and identify violations of specific applicable rules and requirements. Here, perhaps for the first time in an Order Instituting Investigation before the Commission, SED chose not to prepare a Staff Report—notwithstanding the Commission's and SED's stated intent to do so in December 2015.[14, 15] Instead, SED utilizes the Blade Report's findings and conclusions regarding the causes of the accident as though they were rules, regulations, or industry standards by which SoCalGas should have abided many years prior. SED's use of the Blade Report's *ex post* findings as the applicable standard of reasonableness is obviously wrong. Thus SED cannot meet its burden and its allegations must be dismissed.

The Section 451 violations addressed in this Motion, presented in a table in Appendix A, generally fall into eight categories: (1) Violations 1-60 all address the alleged lack of investigation of prior well failures that SED alleges might have alerted SoCalGas to the potential Incident ("Lack of Investigation Violations"); (2) Violations 61-73 concern an alleged failure to complete testing to check the casing of thirteen wells for metal loss, as recommended in a 1988 internal company memo ("1988 Proposal Violations"); (3) Violations 74-76 and 78 concern the alleged lack of a formal risk management or assessment program for inspecting well casing ("Formal Risk Assessment Program Violations"); (4) Violation 77 concerns SoCalGas' alleged failure to operate

[14] CPUC/DOGGR Joint Statement on Investigations, *Key State Investigations into Southern California Gas Company Natural Gas Leak at Aliso Canyon*, December 15, 2015 (noting that SED had launched its investigation and citing Appendix B for additional information regarding the scope of SED's investigation); see also *Appendix B: Scope of CPUC Investigation Into Well Failure at Aliso canyon* at 1 ("SED will release its official investigation report upon completion of all aspects of its investigation."), available at: https://www.cpuc.ca.gov/aliso/.

[15] SED further chose to shield from testimony and discovery the ***24*** SED engineers and personnel who participated in SED's investigation, including its pre-formal investigation (*i.e.*, SED's investigation prior to the commencement of this proceeding). Stoddard Decl. ¶ 5, Ex. D (SED's Second Supplemental Response to SoCalGas Data Request 21.) SoCalGas notes that certain of SED's personnel, namely, SED's engineer Randy Holter, worked on SED's investigation beginning on October 25, 2015—two days after SoCalGas discovered the leak at well SS-25—but is still being withheld from questioning. (See *id*., SED's response to Question 11: "Mr. Holter was assigned to work for SED on the Aliso Canyon incident on October 25, 2015.") In doing so, SED has divorced the findings and conclusions of its investigators from the violations ultimately sponsored at the last minute by a non-SED consultant who was completely unfamiliar with SED's investigation. Stoddard Decl. ¶ 6, Ex. E (Deposition of Margaret Felts (February 5, 2020) at Tr. 86:23-89:13).

well SS-25 without a "backup mechanical barrier" ("Mechanical Barrier Violation"); (5) Violations 79 and 83 concern SoCalGas' alleged failure to execute the well control efforts properly ("Well Control Violations"); (6) Violations 84-86 relate to SoCalGas' alleged failure to implement measures to prevent groundwater from causing corrosion ("Groundwater Corrosion Violations"); (7) Violation 87 concerns SoCalGas' alleged failure to have a continuous pressure monitoring system on well SS-25 ("Pressure Monitoring Violation"); and (8) Violations 327-330 are related to SoCalGas' recordkeeping practices ("Recordkeeping Violations").

In alleging these violations, SED ignores the fact that SoCalGas was operating the Aliso Canyon facility in compliance with applicable law and consistent with any contemporaneous industry standards existing at the time. The Commission has decisively concluded that Section 451 requires a utility to have adequate notice of the expected conduct for purposes of determining the reasonableness of its conduct.[16] But Section 451 does not provide an independent standard of care for assessing the reasonableness of SoCalGas' conduct in relation to the violations now alleged. Because SED does not (and cannot) point to any violation of applicable rules, regulations, industry standards, Commission decision, or internal SoCalGas company standard that would have provided SoCalGas notice that its conduct was unreasonable and in violation of Section 451, all of the violations addressed herein fail as a matter of law.

Additionally, certain violations also fail for other legal reasons detailed below: (i) due process prohibits the assertion of multiple violations of the same statute for the same conduct (Violations 61-76, 78, 330); (ii) SED has long had notice of the facts underlying certain of the violations (Violations 1-6, 74-78, 84-86, 327, 330); and (iii) the Commission lacks jurisdiction over below-ground gas storage matters (Violations 1-79, 84-87).

[16] *Order Instituting Investigation on the Commissions Own Motion into the Fatal Accident on the Bay Area Rapid Transit Districts Line Between the Walnut Creek & Pleasant Hill Stations in the Cty. of Contra Costa, California on Oct. 19, 2013.* ("*BART*") (Oct. 11, 2018) No. D. 18-10-020, 2018 WL 5631631, at *52-54.

## BACKGROUND

### I. The Aliso Canyon Natural Gas Storage Facility.

SoCalGas, a public utility, owns and operates systems supplying natural gas to more than 21 million people throughout Central and Southern California.[17] To meet this important mission, SoCalGas has three operational divisions: transmission (transporting natural gas into the service territory); storage (operating and maintaining underground storage facilities); and distribution (distributing natural gas to customers). SoCalGas operates four underground storage facilities, the largest of which is Aliso Canyon. It was opened after the need for additional natural gas supply was explained to the Commission in 1972 in the application for a Certificate of Public Convenience and Necessity.[18] As the Commission has previously recognized, "Aliso Canyon plays a critical role in providing natural gas to the LA Basin."[19]

Aliso Canyon was used as an oil field by its prior owner(s). In the 1940s, wells were drilled and completed in order to remove the oil from beneath the "caprock" deep underground that was holding it in place. Once the oil was removed, the space in the porous rock formation that previously held oil became available for storing natural gas. This allowed the oil field to be repurposed into a gas storage facility. In this common practice, the storage operator uses the wells previously drilled for oil extraction as the conduit for injecting and removing natural gas that is held in place in the underground formation that used to hold oil. SoCalGas acquired portions of the Aliso Canyon site and began converting the field to natural gas storage in 1972.[20]

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[17] Key State Investigations into Southern California Gas Company Natural Gas Leak at Aliso Canyon, Dec. 15, 2015. *Available at* https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/News_and_Updates/DOGGR%20CPUC%20Joint%20Statement%20on%20Aliso%20%20Investigations%2012-15-2015%20v1-1.pdf ("Key State Investigations").

[18] Blade Report at 160.

[19] Testimony of CPUC Safety and Enforcement Director, Elizaveta Malashenko, Jan. 21, 2016, at 2, https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/News_and_Updates/Malashenko%20Testimony%20Final.pdf ("Malashenko Testimony").

[20] Blade Report at 160.

## II. CPUC's And DOGGR's Oversight Of Aliso Canyon.

Since taking over Aliso Canyon, SoCalGas has been subject to regulation by both the CPUC and the California Department of Conservation's Division of Oil, Gas, and Geothermal Resources ("DOGGR").[21] The Commission has previously identified the ground's surface as the jurisdictional boundary delineating the CPUC's and DOGGR's respective authority over the safety and operation of underground gas storage wells.[22] For its part, the Commission's jurisdiction covers "the above-ground infrastructure beginning where the storage facility connects to the pipeline, or at the wellhead"[23] or, said differently, the "above ground pipes, which interconnect to the pipes and valves which inject and withdraw the gas from the underground storage fields."[24] At the same time, the Commission has jurisdiction over cost recovery issues related to the operation and maintenance of the whole of the facilities, including underground gas storage facilities.[25] In its role as a regulated utility, SoCalGas is responsible for presenting the CPUC with reports detailing conditions at Aliso Canyon as well as general safety plans that must be approved by the CPUC.[26] As a former SED Director testified previously, "CPUC has broad authority over . . . SoCalGas. We review their costs, approve their rates, and oversee their safety programs."[27] The

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[21] DOGGR's name has since been changed to the California Geologic Energy Management Division ("CalGEM").

[22] *Application of San Diego Gas & Elec. Co. (U902m) for Auth., Among Other Things, to Increase Rates & Charges for Elec. & Gas Serv. Effective on January 1, 2016. & Related Matter.* (June 23, 2016) 2016 WL 3913385, at *137. See also *Order Instituting Investigation on the Commissions Own Motion to Determine Whether the Aliso Canyon Nat. Gas Storage Facility Has Remained Out of Serv. for Nine Consecutive Months Pursuant to Pub. Utilities Code Section 455.5(a) & Whether Any Expenses Associated with Out of Serv. Plant Should Be Disallowed from S. California Gas Company's Rates.* Sept. 27, 2018) 2018 WL 5303854, at *4 ("DOGGR has primary jurisdiction over the Aliso Canyon well and focused an investigation on the mechanical and operational condition of the well to determine the cause of well failure and the subsequent natural gas leak.").

[23] *Id.*, 2018 WL 5303854, at *4.

[24] *Id*., 2016 WL 3913385, at *137.

[25] *Ibid*.

[26] See, e.g., Natural Gas System Operatory Safety Plan ("Safety Plan") [SoCalGas Sur-Reply Testimony Ch. III (Kitson), Exs. III-1–3].

[27] Malashenko Testimony at 1.

Safety and Reliability Branch of the CPUC has previously audited Aliso Canyon and its records on multiple occasions to ensure compliance with applicable General Orders.[28]

Prior to 2007, SoCalGas assessed risk at Aliso Canyon as part of ongoing operations, though it was not formally labeled a risk assessment program."[29] Then, around 2007, SoCalGas began a risk assessment program—a replace-and-inspect initiative—modifying its well integrity program to inspect wells during workovers, replacing any parts that could be replaced.[30] Generally, a workover would be conducted on a well if the well required maintenance, repair, or upgrades. A well workover includes removal of the wellhead assembly and the well tubing.[31] Well control is managed throughout the workover by maintaining a column of fluid in the wellbore that over-balances the pressure of the gas storage zone. SoCalGas used the removal of the tubing during a workover to perform certain kinds of integrity tests on the well's production casing that are not possible when the tubing is in place. This practice continued until implementation of an integrity management program for underground storage wells, *i.e.*, the "Storage Integrity Management Program" (SIMP), which was modeled after PHMSA's transmission integrity monitoring program.[32] This safety, system integrity, and risk management initiative was ahead of its time, was not required by law or industry standard, and was modeled after similar programs applicable to pipelines.[33]

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[28] See, e.g., Letter from Matthewson Epuna to Hal Snyder, Nov. 29, 2007 [finding no violations after reviewing records and facilities at Aliso Canyon], https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/News_and_Updates/Nov%2029%202007%20CPUC%20Letter%20to%20SoCalGas.pdf; Letter from Matthewson Epuna to Hal Snyder, Oct. 18, 2006, [same], https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/News_and_Updates/Oct%2018%202006%20CPUC%20Letter%20to%20SoCalGas.pdf.

[29] Hower and Stinson Reply Testimony, at 28-30.

[30] *Ibid.*

[31] Because workovers are complicated operations that come with certain risks, gas storage operators do not undertake them unless it is necessary. MHA Testimony, Ch. 1, at 32-35.

[32] See generally SoCalGas Reply Testimony Ch. VI (Kitson); Hower and Stinson Reply Testimony at 28-30.

[33] Kitson Reply Testimony at 2

## III. The Incident And SoCalGas' Response.

SoCalGas discovered a leak on well SS-25 (one of approximately 114 wells located at Aliso Canyon) on the afternoon of Friday, October 23, 2015.[34] SoCalGas promptly contacted government agencies—including the Los Angeles County Fire Department, the CPUC, and DOGGR—to inform them about the Incident and made an initial effort at stopping the leak.[35]

Immediately after discovering the leak, SoCalGas personnel stopped injecting gas into well SS-25, but could still hear gas moving through the wellhead assembly.[36] This was reported to the drilling manager, and preparations were made to "kill" the well—a common practice that entails pumping a weighted liquid solution down the well to bring the release of gas under control with the increased weight of the fluid in the well.[37] As Blade acknowledged, this type of response had always worked before whenever there were leaks in any of the wells at Aliso Canyon.[38] SoCalGas attempted to "top kill" the well on Saturday, October 24, 2015 by following the normal protocol of pumping fluid down the tubing in the well. When pressure began to rise (presumably due to a blockage in the tubing), fluid was pumped down the annular space between the tubing and the casing to bypass the blockage and get the leak under control.[39] The leak continued, however, and workers observed fractures in the ground spreading out from the wellhead and gas flowing up through those cracks. Personnel on the scene immediately shut down the well kill attempt and evacuated to a safe location.[40] Though unsuccessful, SoCalGas' initial efforts at stopping the leak were deemed a "reasonable response" by investigators examining the incident given what was known to SoCalGas at the time.[41]

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[34] Blade Report at 16.

[35] SoCalGas Opening Testimony Ch. II (Schwecke Testimony) at 2.

[36] *Ibid.*

[37] *Ibid.*

[38] Blade Report at 220.

[39] Schwecke Opening Testimony at 2.

[40] *Id.* at 2-3.

[41] Blade Report at 148.

When the well could not be controlled, Boots & Coots—one of the world's leading well-control experts—was hired for assistance.[42] Boots & Coots is particularly well known in the oil and gas industry for controlling oil well fires (including those set by Iraqi soldiers during the Persian Gulf War).[43] Boots & Coots arrived the following day—Sunday, October 25, 2015—to bring SS-25 under control.[44] Beginning on November 13, 2015, Boots & Coots made six separate attempts to control the well.[45] Additionally, two days earlier, and prior to being directed to do so by the CPUC or DOGGR, SoCalGas began withdrawing gas from the field through other wells in order to decrease the pressure in SS-25 and make the control efforts more likely to succeed.[46]

Safety was paramount, rendering the well-kill process complex and challenging. It was a constant priority to ensure that the gas leaking from the well did not ignite. Among other things, this required the elimination of ignition sources such as vehicle engines, cell phones, cameras, and other electronics.[47] This also meant that a specialized piece of machinery needed to clear the well for additional top-kill attempts—a coiled tubing unit—had to be brought in from Louisiana because there were none more locally available that did not operate with combustion engines.[48] Day-to-day activities were slowed and hindered by the need to complete all work during daylight hours and having to take extra precautions (even with small details such as lowering wireline downhole) in order to avoid ignition of the gas flowing from the well.[49] At the same time, the weather during that period exacerbated the difficulties faced by the well-control team. Rain and heavy fog impacted safety, stability, and visibility in the mountain location.[50] Additionally, wind

[42] Schwecke Opening Testimony at 3.

[43] *Ibid*.

[44] *Ibid.*

[45] Blade Report at 148-53.

[46] Schwecke Opening Testimony at 12.

[47] *Id.* at 8.

[48] *Id.* at 10.

[49] *Id.* at 8.

[50] *Id.* at 7.

speeds regularly reaching 60-70 miles per hour (some days reaching 90 miles per hour) further hampered the ability to work on the well.[51]

Ultimately, SoCalGas stopped the leak on February 11, 2016 through a relief well that intersected the SS-25 well bore.[52] SoCalGas had contemplated that eventuality from the beginning of the Incident, and at the early date of October 25, 2015 directed rig operators who had just finished the workover of another well at Aliso Canyon to keep the rig on site for the purpose of drilling a relief well—and that rig was the one used to drill the relief well that eventually intersected with the SS-25 wellbore below the leak, more than a mile-and-a-half underground.[53] Regulators confirmed that the SS-25 well was permanently sealed on February 18, 2016.[54] Both during and after the leak, SoCalGas worked with regulators and the surrounding community to provide information about the situation, temporary relocation housing to area residents who chose to move, and air filtration/purification systems to those who requested them. Numerous SED personnel were on site at Aliso Canyon during and following the Incident.

## IV. The Blade Report And Recommendations For Operator Standards In The Future.

On December 14, 2015, the CPUC and DOGGR directed SoCalGas to engage an independent third-party contractor to complete a root cause analysis investigation into the leak on well SS-25.[55] Blade Energy Partners ("Blade") was ultimately selected by the agencies as the independent third-party contractor, and it began work on its technical root cause analysis ("Blade Report") in January of 2016.[56] The Blade Report was issued on May 16, 2019, offering Blade's findings, opinions, and analysis as to the causes of the incident, which Blade defines as follows:

> Direct causes, including contributing ones, are those that, if identified and prevented, would eliminate the occurrence of an SS-25 type of incident (or similar).

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[51] *Ibid.*

[52] Blade Report at 160.

[53] Schwecke Opening Testimony at 1, 14.

[54] Blade Report at 229.

[55] Letter from SED and DOGGR to Jimmie Cho, Senior Vice-President of SoCalGas, Dec. 14, 2015, *available at* https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/News_and_Updates/Letter%20dated%20December%2014%202015.pdf.

[56] Blade Report at 160.

> Root causes are those that, if identified and prevented, would avert an SS-25 type of incident and all other types of well integrity incidents through the use of procedures, best practices, design, management systems, and regulations. The investigation of the SS-25 incident identified direct causes and root causes.[57]

The "direct" causes identified were a rupture of the wellbore casing due to microbial corrosion caused by groundwater and unsuccessful top-kill efforts caused by a lack of both transient kill modeling and gas flow rate estimations.[58] The "root" causes noted by Blade were lack of detailed investigations into prior leaks, lack of risk assessment focused on wellbore integrity management, the lack of a dual mechanical barrier, the lack of an internal policy or a State-mandated regulation requiring casing wall thickness inspections, no well control plan that considered transient kill modeling, a lack of understanding of groundwater depth, no systematic practices for external corrosion protection, and the lack of a continuous pressure monitoring system.[59] In order to present solutions to avoid similar incidents in the future, Blade included its hypotheses on what might be done differently from a technical standpoint to prevent a similar incident from re-occurring. This is consistent with the Blade Report's stated intent for "identifying root causes and implementable solutions" "to prevent reoccurrence of similar or other well integrity issues."[60] Blade made 12 forward-looking recommendations in its report for mitigating the risk of another similar incident taking place: (1) production casing should be cemented to the surface; (2) regulations should require wall thickness inspections; (3) internal policy should require casing wall thickness inspection; (4) a risk-based well integrity management system should be implemented; (5) conduct a casing corrosion study; (6) conduct a casing failure analysis; (7) regulations requiring Level 1 (per API RP 585) analysis of all failures; (8) a well-specific detailed well-control plan; (9) a tubing-packer completion for dual barrier system; (10) implement cathodic protection, as appropriate; (11) ensure surface casings are cemented to surface for new wells; and (12) well surveillance through surface pressure.[61]

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[57] *Id.* at 4.

[58] *Id.*at 237.

[59] *Id.* at 237-38.

[60] *Id.* at 208.

[61] See *id.* at 231-34.

Blade's findings and conclusions were also based, in part, on a review of regulations and standards applicable to SoCalGas' operation and maintenance of SS-25 and the Aliso Canyon gas storage facility.[62] None of Blade's recommendations were required by statute, regulations, or industry standards at the time of the Incident (although SED alleges 89 violations of Section 451 based on those recommendations). For example, the Blade Report notes that, while there were pipeline integrity management programs in place prior to the SS-25 incident, "[n]o comparable regulations were in place that mandated integrity programs for gas storage wells, and such programs . . . had not yet become industry recommended practices."[63]

## APPLICABLE LAW

### I. Standard Of Review.

CPUC Rule 11.2 provides: "A motion to dismiss a proceeding based on the pleadings . . . shall be made no later than five days prior to the first day of hearing." "The Commission treats such motions as a court would treat motions for summary judgment in civil practice. A motion for summary adjudication is appropriate where the evidence presented indicates there are no triable issues as to any material fact and that the moving party is entitled to judgment as a matter of law."[64] "An issue of fact can only be created by a conflict of evidence."[65] In other words, a party cannot survive a summary judgment motion by "speculation, conjecture, imagination or guess work," "by cryptic, broadly phrased, and conclusory assertions," or by "mere possibilities."[66] Though the court in determining a motion for summary judgment does not "try" the case, "the court is bound to consider the competency of the evidence presented."[67] Moreover, "[t]he interpretation of a statute or regulation is generally seen to be a pure legal issue."[68] Such motions, for dismissal and

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[62] *Id.* at 160; *id*., Vol. 4, *Analysis of Aliso Canyon Wells with Casing Failures*.

[63] *Id.* at 183.

[64] *Maria Lawrence v. Pacific Gas and Electric Company* (C.P.U.C. Mar. 21, 2013) No. 11-04-018, 2013 WL 1345461, at *3.

[65] *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 525.

[66] *Ibid.*

[67] *Ibid.*

[68] *Lawrence*, 2013 WL 1345461, at *3.

summary judgment, "'promote and protect the administration of justice and expedite litigation by the elimination of needless trials.'"[69]

## II. Public Utilities Code Section 451 Requires A Utility's Conduct To Be Reasonable.

Section 451 of the Public Utilities Code provides:

**§ 451. Just and reasonable charges, service, and rules**

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.
>
> Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.
>
> All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.[70]

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[69] *Abeloe v. Spreckels Water Co., Inc.* (Feb. 8, 1995) 58 CPUC 2d 613.

[70] At its core, Section 451 is a ratemaking statute, but SED applies it as a generalized safety statute. Although the CPUC has previously held that Section 451 may serve as a standalone safety-enforcement provision—provided the utility had adequate notice (see *Carey* and *Cingular*, *infra*)—that interpretation is at odds with a subsequent ruling by the California Supreme Court. (See *Monterey Peninsula Water Management District v. Public Utilities Commission* ("*MPWMD*") (2016) 62 Cal.4th 693, 699–700.) In *MPWMD*, the California Supreme Court confirmed that Section 451's focus is ratemaking, instructing that guidelines concerning "safety," like those concerning "comfort" or "convenience," are read only as directions for justifying utility rates. Reading the statute in that manner is logical since taking Section 451 as a general safety enforcement provision does not offer a limiting factor for what might be a "safety" (or "comfort"/"convenience") violation. Moreover, the California Supreme Court explained that Section 451 is not a grant of authority to the Commission; indeed, it "does not mention the [C]PUC at all." *Id*. at 699. Thus, while Section 451 recognizes the Commission's supervisory powers for assuring that utilities' *rates* are "just and reasonable," it does not provide a standalone avenue for *penalty assessment*. The California legislature's recent enactments to Section 451 bolster this point. In 2019, following a series of wildfires, the legislature added Sections 451.1, 451.2, and 451.3 to govern the standard for "an electrical corporation to recover costs and expenses arising from a catastrophic wildfire." The legislature made clear that "the commission may allow *cost recovery if the costs and expenses are just and reasonable*, after consideration of the conduct of

The Commission has held that, in examining the reasonableness of any actions of a California utility, there are "general principles" that apply, namely that the company must be held to a standard of reasonableness "in light of facts and circumstances that were known or should have been known at the time."[71] Section 451 is therefore not a strict liability statute.

## III. Section 451 Violations Require Adequate Notice Of An Expected Standard Of Care For Reasonableness Ahead Of Time.

Under settled U.S. Supreme Court precedent, "[a] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."[72] "This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause."[73] Without due notice, a regulated entity is without guidance or intelligible standards as to what conduct may violate a statute—here, Section 451. "Traditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule."[74]

The Commission's decision in *Carey v. Pac. Gas & Elec. Co.* ("*Carey*") is instructive because, as here, it involves use of only Section 451 to charge a utility with an unreasonable practice.[75] There, PG&E had recently rescinded a policy that helped ensure that exterminators properly turned off gas lines prior to fumigation. After a gas explosion and fire destroyed an apartment complex tented for fumigation, the Commission found that it was unreasonable (under Section 451) to rescind the prior policy. Critically, the utility had actual notice: an earlier fire that

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the utility." (§ 451.1(a).) These additions all relate to the "recovery of costs and expenses" and confirm that Section 451 itself is a ratemaking statute only.

[71] *In re New Safety & Reliability Regulations*, 2014 WL 880908, at *4; see, e.g., *Flamingo*, 2001 WL 604376.

[72] *FCC v. Fox Television Stations, Inc.* (2012) 132 S. Ct. 2307, 2317.

[73] *Ibid*.; see also *Rollins Envtl. Servs. Inc. v. EPA*, 937 F.2d 649, 652 n.2 (D.C. Cir. 1991) ("[A] regulation carrying penal sanctions must give fair warning of the conduct it prohibits or requires.").

[74] *Satellite Broad. Co. v. FCC* (D.C. Cir. 1987) 824 F.2d 1, 3.

[75] *In re New Safety & Reliability Regulations*, 2014 WL 880908, at *4; see also *Carey*, *supra*, 85 Cal.P.U.C.2d 682.

happened under the same circumstances "originally prompted PG&E to establish [the rescinded] safety protocols" in the first place.[76] Moreover, another residential fire had taken place during a tented fumigation just one month after the policy was rescinded and little more than a year before the one for which the Commission sanctioned PG&E. The multiple instances of fires caused by a failure to turn off gas prior to fumigation alerted the utility that its change in policy could welcome the exact danger that continued to take place. According to the decision, PG&E knew this, but "made a conscious decision not to reinstate its policy and safety protocols."[77] Thus the Commission held that Section 451 could be applied by itself without violating PG&E's due process rights because PG&E "possessed information sufficient to put a reasonable person on notice that its practices were unsafe and in violation of Section 451."[78] In other words, the standard of care by which PG&E's reasonableness would be judged was comprehensible and known to PG&E prior to the incident for which it was held to have violated Section 451.

Likewise, in *Order Instituting Investigation on the Commissions Own Motion into the Fatal Accident on the Bay Area Rapid Transit Districts Line Between the Walnut Creek & Pleasant Hill Stations in the Cty. of Contra Costa, California on Oct. 19, 2013.* ("*BART*") No. D. 18-10-020, 2018 WL 5631631 (Oct. 11, 2018), the Commission found the public transportation agency liable under Section 451 following an accident where a BART train struck and killed two workers on the BART tracks because "BART knew or should have known that these internal safety rule violation allegations were being identified to evidence SED's claims of BART's unsafe practice and culture."[79] BART's internal rules—*i.e.*, official policies of the transportation agency—served as a basis for Section 451 fines because they provided a standard of care for the public transportation operator and were "mandated and/or approved expressly or tacitly during SED's ongoing oversight and monitoring of BART, pursuant to Commission's and SED's state and

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[76] *Ibid.*

[77] *Ibid.*

[78] *Ibid*. While there is good reason to not allow standalone violations under Section 451 at all, see *MPWMD*, 62 Cal.4th at 699–700 ["The PUC's authority to enforce the 'just and reasonable' standard with respect to public utilities is not rooted in section 451."].), the facts of *Carey* demonstrate a level of notice not present here.

[79] *BART*, *supra*, 2018 WL 5631631, at *54.

federal safety oversight."[80] In other words, BART had notice of the applicable standard of care based on its own internal safety rule.[81]

The Commission's decision in *Order Instituting Investigation on the Commissions Own Motion into the Operations & Practices of Pac. Gas & Elec. Co. to Determine Violations of Pub. Utilities Code Section 451, Gen. Order 112, & Other Applicable Standards, Laws, Rules & Regulations in Connection with the San Bruno Explosion & Fire on Sept. 9, 2010* ("*San Bruno*"), No. D. 15-04-023, 2015 WL 1687681 (Apr. 9, 2015), is an instructive contrast to SED's prosecution in this case. There, the Commission held that "PG&E has been on notice for several decades that its operation and maintenance of its gas transmission system was potentially unsafe."[82] The Commission permitted application of Section 451 as a standalone violation because it found that PG&E had ample notice that its conduct was unsafe. The Commission specifically referenced the NTSB's investigations of PG&E's gas pipeline leak in 1981 and 2008, PG&E's audit of its integrity management risk algorithm in 2005, and the Commission's prior investigation against PG&E based on electrical safety violations under Section 451.[83]

Taken together, these decisions reiterate that to comply with due process requirements, a utility must have notice of a standard of care that it subsequently violated. In the Section 451 context, the Commission has described this as a standard of reasonableness based upon the "facts and circumstances that were known or should have been known at the time."[84] Because Section 451 does not provide an independent standard of care for assessing the reasonableness of a utility's conduct, application of the statute typically requires evidence of violations of applicable regulations, industry-wide standards of conduct, or internal company standards or policies. A separate statutory violation need not be alleged, but there must be a specific indication to the utility

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[80] *Id.* at *57.

[81] To the extent SED relies on the 1988 memo, that cannot form the basis of a Section 451 safety violation. The 1988 memo was a special project, recommended by a staff engineer. It was not—as in *BART*—a formal or official policy of SoCalGas. An employee's recommendation is just that—a recommendation. It neither represents SoCalGas' policy nor constitute industry standard. Otherwise, any staff recommendation could form the basis of a Section 451 violation.

[82] *San Bruno*, 2015 WL 1687681, at *21.

[83] *Ibid.*

[84] *In re New Safety & Reliability Regulations*, 2014 WL 880908, at *4.

ahead of time that its conduct was unreasonable (such as the realization of the precise danger that is sought to be avoided because a utility purposefully did not follow a requirement, rule, or policy that it knew would prevent the danger).[85]

## IV. Imposing Duplicative Violations For The Same Conduct Violates Due Process.

Due process also dictates that SED cannot make duplicative allegations based on the same conduct: "[a] defendant has a due process right to be protected against unlimited multiple punishment for the same act."[86] "[O]verlapping damage awards violate that sense of 'fundamental fairness' which lies at the heart of constitutional due process."[87] Thus, due process principles prohibit imposition of "double penalties for the same conduct."[88] Calculating and alleging multiple violations for the same conduct, seeking redundant penalties for those same actions, violates this principle.

## V. Failure To Timely Raise Charges Violates Both The Doctrine Of Laches And The Doctrine Of Stale Demands.

The principle of laches keeps parties from sleeping on their rights. According to the California Supreme Court, laches applies when there is "unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay."[89] Delay is assessed from the point when a complainant has actual or constructive notice of the defendant's activities.[90] The Commission recognizes that the doctrine of laches "is not merely an affirmative defense but a fundamental defect in the cause of action."[91] Related, but separately, a stale demand is "one that has for a long time remained unasserted; one that is first

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[85] *Carey*, *supra*, 85 Cal.P.U.C.2d 682.

[86] *Troensegaard v. Silvercrest Industries, Inc.* (1985) 175 Cal.App.3d 218, 227.

[87] *Ibid.*

[88] *De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890, 912.

[89] *Conti v. Bd. of Civil Serv. Commissioners* (1969) 1 Cal.3d 351, 359.

[90] See AM. JUR. EQUITY (2d ed.) § 139.

[91] *California All. for Util. Safety & Educ*. ("*CAUSE*"), 78 CPUC 2d 218 (Dec. 16, 1997), citing *In re Alternative Regulatory Frameworks* (1994) 55 Cal.P.U.C.2d 681, 687.

asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied."[92]

## ARGUMENT

### I. SED Has Failed To Allege Any Facts That Would Demonstrate That SoCalGas' Conduct Was Unreasonable Under Section 451.

In this OII, SED's testimony fails to allege any facts that would satisfy its burden of proof that SoCalGas' conduct was unreasonable; SED's case is based on speculation and conclusory allegations. But to prove a violation of Section 451, SED must offer competent evidence showing that a utility's conduct was unreasonable based on what it knew or should have known at the time.[93] Applicable laws, regulations, and relevant industry standards provide guidance as to reasonableness.[94]

California utilities are held to a standard of reasonableness based upon the "facts and circumstances that were known or should have been known at the time."[95] In other words, a utility must "comport with what a reasonable manager of sufficient education, training, experience and skills using the tools and knowledge at his disposal would do when faced with a need to make a decision and act."[96] SED has not shown—because it cannot—that SoCalGas acted unreasonably based on what was known at the times it acted. As demonstrated below, SED fails to allege facts sufficient to meet its burden to show that SoCalGas knew or should have known at that time it acted that its conduct was unreasonable—and thus SED's alleged violations should be dismissed.

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[92] *All Saints Parish, Waccamaw v. The Protestant Episcopal Church in the Diocese of S.C.* (2004) 358 S.C. 209, 236; see also *Harris v. Hillegass* (1880) 54 Cal. 463, 469 [recognizing the doctrine of stale demands].

[93] *In re New Safety & Reliability Regulations*, 2014 WL 880908, at *4.

[94] See, e.g., *BART*, 2018 WL 5631631, at *57 [noting violation of "established safety standards" may constitute Section 451 violations].

[95] *In re New Safety & Reliability Regulations*, 2014 WL 880908, at *4.

[96] *Ibid.*

As the Commission stated in *BART*, to support a violation of Section 451, SED—the party that bears the burden of proof in the OII—must "prov[e], by competent and sufficient evidence," that SoCalGas' conduct violated safety rules or standards to provide a "basis for the assessed fine."[97] In this case, however, SED has not offered such evidence. To the contrary, SED's expert witness concedes that SED did not base its charges on the finding of a violation of any industry standard,[98] and SED freely admits that it did not base its allegations of violations of Section 451 on non-compliance with rules, regulations, or industry standards, or even inconsistency with the practices of other operators.[99] In this proceeding, the only evidence regarding common practice, industry standards, and State regulations is from SoCalGas, who has offered testimony that its practices related to the operation and maintenance of Aliso Canyon met or exceeded industry standard practice and regulatory requirements.

SED's prosecution thus fails for two reasons. *First*, SED provides no standard of care that SoCalGas is alleged to have violated. SED insists SoCalGas should have done things differently—yet cannot identify what SoCalGas should have done or why, or which rule, regulation, practice, or industry standard gave SoCalGas notice that it reasonably should have done something it did not do. *Second*, the evidence shows that SoCalGas acted as a prudent gas storage operator with respect to SED's allegations. SED attempts to incorrectly shift the burden to SoCalGas to prove it did not violate Section 451 rather than affirmatively establishing that SoCalGas' conduct violated Section 451. But under the reasonable operator standard, SED must show why SoCalGas' conduct was not reasonable based on what SoCalGas knew or should have known at the time.[100] Otherwise, SED cannot support its case that SoCalGas violated Section 451. SED has abdicated this obligation—and Ms. Felts admits she is not charging SoCalGas with any violation of industry standards. There is thus no dispute as to applicable industry standards, and no support for SED's

[97] See *BART*, 2018 WL 5631631, at *54.

[98] See SED Sur-Reply Testimony (Felts), Ch. 1 pp. 1-2 ("I agree that there are no industry standards . . . so it would be impossible for SED or me to identify violations of such standards.").

[99] See Stoddard Decl. ¶ 9, Ex. H (SED's Supp. Response to SoCalGas' Data Request 15), Response to Question 1a, at 2.

[100] See *In re New Safety & Reliability Regulations*, 2014 WL 880908, at *4.

claims that SoCalGas' actions were anything other than what a reasonable operator would have done at the time.

### A. SED Fails to Set Forth Evidence of an Applicable Standard of Care Under Section 451 that SoCalGas Allegedly Violated. *[Violations 1-79, 83-87, 327-330]*

SED does not allege that SoCalGas violated any applicable statute (aside from Section 451), rules, or industry standards in place at the time of the Incident. Unlike *San Bruno*, *Cingular*, *Carey*, and *BART*, then, SED has identified no evidence of a comprehensible standard of care here to which SoCalGas should have conformed its conduct. SED concedes as much: Ms. Felts states that her testimony does "not [include] violations of industry standards."[101] SED's case is premised on applying Blade's prospective recommendations on a retroactive basis to claim safety violations of Section 451.[102] This does not suffice. Without evidence of a baseline standard of care existing at the time of the actions in question, there is nothing against which a regulated entity—or the Commission—can measure SoCalGas' conduct. Therefore, SED's allegations against SoCalGas—specifically those related to operations and maintenance, Incident response, and recordkeeping—must be dismissed because the company did not have fair notice that its conduct was prohibited, and the Commission has repeatedly held that notice is a prerequisite to any

[101] See Stoddard Decl. ¶ 9, Ex. H (SED's Supp. Response to SoCalGas' Data Request 15), Response to Question 1a, at 2.

[102] It is telling that the Scoping Memo contemplates the determination of potential Section 451 violations and associated penalties separately from (and prior to) whether the "proposed mitigation solutions" of the Blade Report should be implemented moving forward. Scoping Memo at 4-5. SED seeks to combine these inquiries by fining SoCalGas for not having already implemented measures that were not previously contemplated.

violation of Section 451.[103] To hold otherwise would violate SoCalGas' due process rights because a party must have notice that the conduct for which it may be held responsible is actionable.[104]

SED's testimony does not dispute the fact that as of October 23, 2015, there were no documented industry standards applicable to the investigation of casing failures in underground gas storage facilities.[105] Similarly, Blade stated that there were no specific standards or practices related to failure analysis or subsequent risk assessments;[106] and furthermore, Blade did not identify any requirements for "failure analysis or subsequent risk assessments in the October 2015 version of the *California Statutes and Regulations for Conservation of Oil, Gas, and Geothermal Resources*."[107] Moreover, Blade stated that no pattern of casing failures was identified at Aliso Canyon based on the data available,[108] and further that Blade could not judge whether it was unsafe for SoCalGas to operate its field without having investigated the cause of casing failures at Aliso Canyon.[109] Additionally, Blade stated that it "is not aware of investigations or analysis of casing

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[103] See *BART*, 2018 WL 5631631, at *54-55 (citing *Pacific Bell Wireless, LLC v. Public Utilities Com.* ("*Cingular*") (2006) 140 Cal.App.4th 718, 739-40); see also, e.g., *San Bruno*, 2015 WL 1687681, at *21 [noting "PG&E has been on notice for several decades … its gas transmission system was potentially unsafe" … based on, among other things, NTSB federal investigations in 1981 and 2008, PG&E-commissioned audit of its integrity management risk algorithm in 2009, and CPUC's investigation of PG&E based on electrical safety violation in 2005].

[104] See *Lambert v. California* (1957) 355 U.S. 225, 228 ["Engrained in our concept of due process is the requirement of notice. Notice is sometimes essential so that the citizen has the chance to defend charges. Notice is required before property interests are disturbed, before assessments are made, before penalties are assessed."]; *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–09 [noting the absence of clear legal guidelines leads to "ad hoc and subjective" enforcements, "with the attendant dangers of arbitrary and discriminatory application."].

[105] Hower & Stinson Reply Testimony at 9; Felts Sur-Reply at 4; Stoddard Decl. ¶ 10, Ex. I (Blades' Response to SED's Data Request 69), Question 2 at 17.

[106] Stoddard Decl. ¶ 3, Ex. B (Blade's Response to SoCalGas' January 23, 2020 Data Request), Question 5; *id.* ¶ 10, Ex. I (Blades' Response to SED's Data Request 69), Question 3.

[107] Stoddard Decl. ¶ 3, Ex. B (Blade's Response to SoCalGas' January 23, 2020 Data Request), Question 5; Blade Report at 235.

[108] Stoddard Decl. ¶ 10, Ex. I (Blade's Response to SED's Data Request 69), Question 4 at 19; Blade RCA Report, Vol. 4, *Analysis of Aliso Canyon Wells with Casing Failures*, at 2, 18, 60, available at ftp://ftp.cpuc.ca.gov/News_and_Outreach/Volume%204%20-%20Aliso%20Canyon%20Casing%20Integrity.pdf.

[109] Stoddard Decl. ¶ 10, Ex. I (Blade's Response to SED's Data Request 69), Question 2 at 17.

failures in other natural gas storage facilities."[110] It comes as little surprise then, that when asked to describe the investigation that SED believes would have constituted an adequate response to the "blowout" from wells Frew-3, on December 31, 1984 (SED alleged Violation 1), and FF-34A, on December 31, 1990 (SED alleged Violation 2), SED could only respond that it is "SoCalGas's (not SED's) mandated responsibility, pursuant to California Public Utilities Code Section 451."[111]

Likewise, SED can point to no historical analogue that could have alerted SoCalGas to take different actions at Aliso Canyon. If an event—and its attendant danger—is unprecedented, there is, by definition, no factual notice of the type that existed in *Carey*. SED points to the two prior "blowouts" and SoCalGas' earlier plan to address casing integrity as indications of notice, but those facts lend no support to what is at issue here. First, the so-called blowouts were different in kind from the SS-25 event. If anything, the prior leaks and their mitigation support a finding that SoCalGas was maintaining the field safely. Both leaks were confined underground and, like other leaks at Aliso Canyon, were contained by normal well-killing methods—that is why Blade acknowledged that "the consequences of a larger leak or a near-surface casing rupture were not anticipated until the SS-25 event."[112] The ability to control those leaks provided SoCalGas (as well as the industry and regulators such as SED) assurance that leaks could be timely identified and similarly controlled. Far from providing notice that SoCalGas' practices were so unsafe or unreasonable as to violate the law, the two incidents show the exact opposite.

SED's reliance on an internal proposal from 1988 that was partially executed also fails to support a violation. That memo detailed a proposal to inspect a subset of wells using pressure tests and a casing inspection tool known as Vertilog. Neither pressure testing nor Vertilog testing were required by regulations in place at the time. Indeed, in 1989, while SoCalGas was implementing the 1988 proposal, DOGGR issued a Project Approval Letter documenting the requirement for annual mechanical integrity tests, which was consistent with SoCalGas' then-existing practice.[113]

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[110] Stoddard Decl. ¶ 10, Ex. I (Blade's Response to SED's Data Request 69), Question 4 at 19.

[111] Stoddard Decl. ¶ 8, Ex. G (SED's Fifth Supplemental Response to SoCalGas' Data Request 3), Questions 1(a), 2(a).

[112] Blade Report at 239.

[113] Hower & Stinson Reply Testimony, Ex. I-5 (DOGGR Project Approval Letter (Apr. 18, 1989); revised July 26, 1989.

A few years later, in 1995, DOGGR reaffirmed that SoCalGas' "monitoring program and static temperature surveys [that were] currently used . . . could be used to satisfy compliance of the requirements for mechanical integrity" required by the State.[114] Unlike *Carey*—where a company policy was implemented to prevent a specific harm, and elimination of the policy resulted in that specific harm reoccurring repeatedly—SED does not identify a specific safety concern that SoCalGas knew would arise if SoCalGas did not fully execute the discretionary 1988 proposal.[115] And importantly, as Blade highlighted, "[t]here is no way to know what an inspection of the SS-25 casing would have shown in 1988."[116, 117]

In response to questions from SoCalGas as to what SED believes the company should have done differently (based on what was known at the time), SED simply states "[i]t is not [S]afety and [E]nforcement [D]ivision's role to identify the kinds of investigations that Southern California Gas company should be doing on its own field."[118] In other words, SED incorrectly believes it does not have to make a case for what standards SoCalGas may have not met, if any, or identify the sort of conduct that in its view would have complied with the law. That is why Ms. Felts, SED's sole witness, concedes that she is not charging SoCalGas with violations of any industry standards.[119] This statement by SED further underscores SED's misapplication of the Blade Report: for example, SED takes a prospective recommendation by Blade (Recommendation No.

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[114] Stoddard Decl. ¶ 7, Ex. F (Division of Oil, Gas, and Geothermal Resources, *15-Day Public Re-notice of Proposed Rulemaking*, May 24, 1995).

[115] Moreover, that technology in 1988 was unreliable, both over- and under-identifying casing issues. See SoCalGas Reply Testimony Ch. II (Carnahan Testimony) at 3-10.

[116] Blade Supplemental Report, Volume 4: Aliso Canyon Casing Integrity, "Review of the 1988 Candidate Wells for Casing Inspection," at 2, *available at* ftp://ftp.cpuc.ca.gov/News_and_Outreach/Volume%204%20-%20Aliso%20Canyon%20Casing%20Integrity.pdf.

[117] It should also be considered that penalizing a utility for proactive efforts to test new tools or programs in order to exceed regulatory requirements could have the chilling effect of stunting such efforts altogether.

[118] Stoddard Decl. ¶ 6, Ex. E (Felts Depo. Tr.), at 215:22-216:1.

[119] See Stoddard Decl. ¶ 9, Ex. H (SED's Supp. Response to SoCalGas' Data Request 15), Response to Question 1a, at 2.

6, Conduct Casing Failure Analysis)[120] and fashions it into a violation because SoCalGas did not do it many years prior, never mind that there was no rule, regulation, or industry standard that directed it (whatever "it" is).

SED's belated proffer of steps that SoCalGas *could* have taken that *might* have stopped the leak does not speak to what was reasonable at the time that each relevant decision was made. An *ex post* assessment does not provide sufficient notice for purposes of alleging violations of Section 451 when the statute requires a determination of what was reasonable based on what was known or should have been known at the time.[121]

SED repeatedly states it need not demonstrate what other operators in the industry would have done because it is neither relevant nor concerns SED—"[it] is SoCalGas's (not SED's) mandated responsibility" to identify what SoCalGas should have done differently.[122] This ignores that a violation of Section 451 requires notice, at the time of the conduct at issue, of the conduct that is expected and that notice would necessarily come in the form of rules, regulations, Commission decision, industry standards, or internal company standard or policy. Without this standard, there is no basis for SED's allegations—SED cannot penalize SoCalGas merely because the Incident occurred. Because no facts are offered to show that SoCalGas' conduct was unreasonable at the time, the violations must be dismissed.

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[120] Blade Report at 235.

[121] See *In the Matter of the Application of San Diego Gas & Electric Company and Southern California Gas Company for Authority to Revise Their Rates Effective January 1, 2013, in Their Triennial Cost Allocation Proceeding* [D.14-06-007] (2014) at pp. 31, 36 (slip op.) [noting under Section 451's Prudent Manager standard, "industry best practices . . . is not a 'perfection' standard: it is a standard of care that demonstrates all actions were well planned, properly supervised and all necessary records are retained."].

[122] See, e.g., Stoddard Decl. ¶ 6, Ex. E (Felts Depo. Tr.), at 215:22-216:1; *id.* ¶ 8, Ex. G (SED's Fifth Supplemental Response to SoCalGas' Data Request 3), Questions 1, 2, 3, 4, 5, 7, 9, & 11 [When asked what SED believed would have constituted an adequate response or the applicable conduct, SED simply responded "[t]hat [it] is SoCalGas's (not SED's) mandated responsibility, pursuant to California Public Utilities Code Section 451. SED further objects to this question as unduly burdensome in that it requests SED to gather information related to the blowout that is or was in the control of SoCalGas, and analyze it to determine what type of investigation might have been adequate."].

### B. SED Has Failed to Meet its Burden to Show SoCalGas' Conduct Was Unreasonable.

Not only does SED fail to allege any specific requirement or standard with which SoCalGas did not comply, the only relevant evidence at issue in this case indicates SoCalGas met or exceeded the comprehensible standard of care established by lawmakers and other operators—*i.e.*, the applicable State regulations and prevailing industry practices—in operating the storage facility.[123]

It is presumptively reasonable for a utility to follow State regulations that have addressed the very subject at issue.[124] For example, SED complains that leaks were not adequately investigated, but DOGGR has specific regulations addressing well integrity monitoring—regulations with which SoCalGas complied.[125] When a State regulation is present to guide conduct in a specific area, that is a proxy for the standard of care.[126] Compliance with such rules and regulations is *per se* reasonable.

In order to assert retroactive violations of Section 451, SED relies almost exclusively on the Blade Root Cause Analysis Report (which took more than three years to produce at a cost of more than $40 M) and Blade's recommendations for what gas storage operators should do in the future. What is missing from these alleged violations, however, is any evidence demonstrating that SoCalGas acted unreasonably based on the information known at the time. This showing cannot be made. Indeed, some of Blade's proposed solutions to address what it identifies as the root causes of the Incident are *still* not required by State regulations that have been updated since the Incident.[127]

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[123] *See generally* Hower & Stinson Reply Testimony.

[124] Cf., e.g., Am. L. Prod. Liab. 3d § 89:19 (Effect of compliance with government regulations) [noting compliance with government regulations often create a presumption of no liability].

[125] See Hower & Stinson Reply Testimony, Ex. I-5 (DOGGR Project Approval Letter [approving SoCalGas' well integrity monitoring program]).

[126] See *Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, 547 ["[T]he proper conduct of a reasonable person under particular situations may become settled by judicial decision or be prescribed by statute or ordinance."].

[127] See, e.g., Stoddard Decl. ¶ 12, Ex. K (DOGGR notice of workshop considering adoption of regulations regarding transient well kill modeling and failure investigation per API 585).

Blade's after-the-fact analysis does not provide the standard of care for a reasonable gas storage operator at the time of or prior to the Incident, and thus SED's attempt to use them as support for violations of Section 451 fail. Evaluating reasonableness is not an exercise in hindsight.[128] As detailed below, these violations, each premised on only Section 451, must be dismissed.

### 1. SED has failed to allege facts sufficient to demonstrate that SoCalGas' alleged failure to investigate was unreasonable and in violation of Section 451.

***[Lack of Investigation Violations: Violations 1-60]***

Violations 1 through 60 focus on a supposed lack of investigation into various purported underground leaks that took place at Aliso Canyon prior to the SS-25 Incident. SoCalGas' conduct may only be in violation of Section 451, though, to the degree that it was not reasonable based on what SoCalGas knew or should have known at the time. SED has not made this showing. Instead, SED foregoes the facts altogether in applying its hindsight-based violations. That assumption ignores the reality that SoCalGas acted in conformity with applicable State regulations.

SED alleges that there had been over 60 casing leaks at Aliso Canyon before the SS-25 Incident, but that no failure investigations were ever conducted and, therefore, the extent and consequences of the corrosion in other Aliso Canyon storage wells were not understood.[129] These alleged casing leaks span a period of more than 40 years. However, there was no casing leak identified at SS-25 prior to the sudden rupture that occurred on October 23, 2015, and no indications of a preexisting casing integrity issue on SS-25.[130] Additionally, no pattern of casing failure was previously identified at Aliso Canyon based on the available data.[131] SED also describes two wells as having previously experienced underground blowouts from casing leaks,

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[128] Cf., e.g., Cal. Jury Instr.—Civ. 12.93 ("Evaluation of Reasonableness) (noting reasonableness "cannot be measured or tested by hindsight").

[129] SED Opening Testimony at 7 (citing Blade Report at 4, 219, 237).

[130] Stoddard Decl. ¶ 13, Ex. L (Blade's Response to SED's Data Request 78) at 2.1.1(c) & (e); Hower & Stinson Reply Testimony at 36, 38; Stoddard Decl. ¶ 14, Ex. M (Blade's Response to SED's Data Request 58) at 2.19.1.4, 2.21.1.4.

[131] Felts Sur-Reply at 36.

Frew-3 in 1984 and FF-34A in 1990.[132] Both wells were successfully killed by pumping fluid down the tubing.[133] SoCalGas' success with controlling and addressing prior leaks is why, as Blade acknowledged, the potential consequences of a larger leak were not known to SoCalGas until the SS-25 Incident.[134] SED further identifies four wells that had parted casings between 1969 and 1994.[135] But SED fails to identify any evidence of the standard of care pertaining to leak investigations aside from API 585. API 585, however, applies to pipelines, not underground storage facilities. In fact, the prevailing industry practice was to fix minor leaks as they occurred—and that is what SoCalGas did.[136] SoCalGas investigated and remediated all previous casing leaks at Aliso Canyon.[137]

For the Lack of Investigation Violations, the allegation is that "SoCalGas did not investigate or analyze its past casing leaks of other wells at Aliso Canyon."[138] But that charge ignores the evidence that SoCalGas' conduct was consistent with the applicable industry practice at the time—that is, SoCalGas' practices were in accord with what other gas storage operators did and what DOGGR required.[139] Specifically, for well leak investigations, "minor casing leaks or mechanical issues were inspected running a casing inspection log, determining the location of the leak or issue, and remediating the leak or issues via a well workover."[140] And based on information collected from the casing inspection log and other tests and observations, SoCalGas was generally able to assess the probable cause or causes of the issue.[141] If a pattern of failures developed, then

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[132] SED Opening Testimony at 8 (citing Blade Report at 2).

[133] Hower & Stinson Reply Testimony at 8-9; SED Opening Testimony at 8.

[134] Hower & Stinson Reply Testimony at 11.

[135] SED Opening Testimony at 8 (citing Blade Report at 165).

[136] Hower & Stinson Reply Testimony at 9-10.

[137] MHA at 12-16; SED Sur-Reply Chapter 1 at 6 (recognizing that "[MHA's] testimony launches into a *lengthy discussion of the detection, investigation and remediation* of 60 cases of well casing leaks itemized by SED's violations 1-60") (emphasis added.).

[138] SED Opening Testimony at 7.

[139] Hower & Stinson Reply Testimony at 9-11.

[140] *Id.* at 10.

[141] *Ibid.*

a more detailed investigation was conducted and a risk management plan was used to minimize the potential impact of recurrence.[142] In short, SoCalGas' actions were consistent with those of other industry operators and were compliant with applicable State regulations. SED offers no evidence to counter this or to otherwise show that SoCalGas' actions fell short of what a prudent operator would do.

On a going forward basis, SED offers Solution 7, that "SoCalGas should be required to do an API Recommended Practice 585 level 1 analysis of all failures."[143] This underscores the fact that SoCalGas acted reasonably in two ways. First, API 585 applies to pipelines, not gas storage operations, and thus is not evidence of a lack of compliance by SoCalGas.[144] Indeed, at the time of the Incident, even for transmission operators, API 585 was merely *recommended* practice, not standard practice.[145] And SED concedes that, at the time of the Incident, there were no documented industry standards to which SoCalGas should have conformed its conduct.[146]

Second, API 585 recognizes that all leaks are not alike, noting that "[i]t is impractical and unnecessary to investigate every . . . incident to the same level of detail. . . . [T]here are different degrees of consequence and complexity of incidents, warranting different levels of investigations. . . . The consequences of the incident, both actual and potential, are typically used to determine the level of investigation."[147] Here, the prior leaks were quickly controlled with minimal consequences: they were all small and easily contained—even the two so-called prior "blowouts" were stopped relatively quickly and easily by pumping fluid into the tubing. But now, SED

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[142] *Ibid*. at 11.

[143] SED Opening Testimony at 79.

[144] Blade Report at 232.

[145] See also Stoddard Decl. ¶ 10, Ex. I (Blades' Response to SED's Data Request 69, Question 3(a) ["Blade reviewed industry documents and standards to determine what failure analysis processes were available to identify the causes of casing failures. No failure analysis guidelines directly related to gas storage well failure analysis were identified … Although API 585 was not written specifically for gas storage projects, Blade identified it as a solution as part of the RCA. Specifically, Blade stated that "gas storage regulations should require an API RP 585 Level 1 type analysis of all failures or near misses."].)

[146] SED Sur-Reply Testimony Ch. 1 at 2.

[147] Hower & Stinson Reply Testimony, Ex. I-11 (API 585-2014) at 6.1.

suggests SoCalGas should do Level 1 investigations under API 585 for all leaks, regardless of the circumstances. This shows SED's lack of understanding of API 585. API 585 instructs that the Level 1 "analysis is limited to localized incidents, and contributing causes and root causes are generally not evaluated in depth."[148] That is exactly the type of analysis SoCalGas would undertake in successfully mitigating the minor leaks found over the years at Aliso Canyon[149] (even though SED now, in hindsight, appears to believe that SoCalGas should have been undertaking root cause analyses even for minor leaks or leaks where the cause was easily discernable[150]).

Under the facts alleged in its testimony, SED cannot show that SoCalGas' adherence to applicable requirements was unreasonable. SED cannot now use hindsight to penalize SoCalGas for not doing something that neither the industry nor regulations nor internal company standard (or experience) required. SED's leak-related allegations fail to establish a violation and the Lack of Investigation Violations should be dismissed.

[148] *Id.* at 7.2.1.

[149] Blade Report at 220.

[150] SED Opening Testimony at 7 ["SoCalGas failed to perform failure investigations, failure analyses or Root Cause Analyses on failed Aliso Canyon wells despite more than 60 well casings experiencing leaks…"]; SED Sur-Reply Testimony, Ch. 1 at 7 ["SoCalGas proved the validity of violations 1-60 by failing to produce any evidence of investigations into the causes of leaks."]; contra, Stoddard Decl. ¶ 6, Ex. E (Felts Depo. Tr.), at 215:22–216:1 [in response to questions about the kind of investigation SED should have undertaken in the past, SED objected, saying "[i]t is not safety and enforcement division's role to identify the kinds of investigations that Southern California Gas company should be doing on its own field."]; *id*., at 252:10-14 [later, in a separate objection, SED noted that it was "beyond the scope of SED's purview" to recommend how to investigate."].

### 2. SED has failed to allege facts sufficient to demonstrate that SoCalGas' alleged failure to follow an earlier proposed well-inspection plan was unreasonable and in violation of Section 451.
***[1988 Proposal Violations: Violations 61-73]***

The second set of violations stem from an alleged failure to follow an earlier proposed plan to check the casing of SS-25 and 12 other wells for metal loss. Again, the testimony demonstrates that SED has failed to allege or prove that SoCalGas' conduct was unreasonable.

SED charges SoCalGas with an alleged failure to complete casing testing on 13 wells—including well SS-25—for metal loss, as proposed in a 1988 internal company memo.[151] The memo lays out a plan to determine the condition of the casing on 20 wells completed in the 1940s and 1950s, and SS-25 was determined to be low priority among those wells. From 1988 to 1990, SoCalGas ran inspection logs on seven of the 20 wells and recorded metal loss on the outside of the casing in five of those seven wells.[152] Implementation of the proposal was discontinued before SS-25 was logged.

Like the first set of Violations, Violations 61-73 fail because, without any basis, SED assumes that SoCalGas' cessation of implementing the 1988 proposal was unreasonable. SED does not, because it cannot, show that SoCalGas acted contrary to the reasonable manager standard. This is evident because DOGGR approved SoCalGas' use of annual temperature and noise surveys for purposes of well integrity inspections.[153] Indeed, DOGGR affirmed in 1995 that SoCalGas' "monitoring program and static temperature surveys [that were] currently used . . . could be used to satisfy compliance of the requirements for mechanical integrity" required by the State.[154] Although the Blade Report questioned this approach in hindsight, the Blade Report's *ex post* opinion does not supersede the mandate by SoCalGas' primary regulator as to what was

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[151] SED Opening Testimony at 10 (citing Blade Report at 2, 204).

[152] *Ibid.*

[153] Hower & Stinson Reply Testimony at 4; *id.*, Ex. I-5; Stoddard Decl. ¶ 10, Ex. I (Division of Oil, Gas, and Geothermal Resources, *15-Day Public Re-notice of Proposed Rulemaking*, May 24, 1995).

[154] Stoddard Decl. ¶ 10, Ex. I (Division of Oil, Gas, and Geothermal Resources, *15-Day Public Re-notice of Proposed Rulemaking*, May 24, 1995); Blade Report at 198.

reasonable for the Company to do at the time.[155] And as Blade notes, at the time, there was no evidence from the logs that SS-25 needed a wall thickness inspection.[156]

Therefore, even disregarding SoCalGas' evidence concerning the known inaccuracies of well-logging tools available at the time,[157] SED fails to establish a lack of reasonableness. SoCalGas' decision to discontinue the 1988 plan was reasonable, compliant with the rules imposed by its primary regulator for well integrity, and consistent with the utility's obligation to spend ratepayer funds responsibly. The 1988 Proposal Violations are a red herring that SED hopes will resonate because of the fact that the Incident occurred (*i.e.*, relying on hindsight); however, SED does not attempt to—and cannot—make a causal connection between any alleged failure to act circa 1988 and a well failure that occurred 27 years later, after the well had passed all mandated inspections during that time. These violations have no merit given SoCalGas' compliance with applicable law and industry practices at the time, and should be dismissed as well.

### 3. SED has failed to allege facts sufficient to demonstrate that SoCalGas' alleged failure to implement an integrity management program was unreasonable and in violation of Section 451.
***[Formal Risk Assessment Program Violations: Violations 74-76 & 78]***

The next set of allegations faults SoCalGas for not having a formal risk management or assessment program for well casing prior to the Incident, instead using noise and temperature surveys to evaluate wells. As with the previous charges, SED fails to establish any facts that support a Section 451 violation here. Instead, the testimony again shows that SoCalGas' practices conformed to (if not exceeded) what was required by its primary regulator for well integrity as well as to industry-wide practice, and thus SoCalGas acted as a reasonable operator.

Each of the violations in this section revolves around casing inspection. Violation 74 is for failing to implement such a program of inspection in order to assess risk.[158] Violation 75 is for a failure to detect corrosion in SS-25 due to the lack of a risk assessment program noted in Violation

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[155] As the Blade Report acknowledged, any lack of additional casing assessments was likely due to the probability and severity of a shallow casing rupture not being understood. *Id.* at 219.

[156] *Id.* at 218.

[157] Carnahan Reply Testimony at 10-15.

[158] SED Opening Testimony at 13-16.

74.[159] Similarly, Violation 76 is for failing to implement a risk assessment program in 2009, when a SoCalGas employee wrote an email concerning geologic shifting.[160] Relatedly, Violation 78 is an alleged violation for operating Aliso Canyon without internal policies requiring casing inspection.[161, 162]

SED alleges that SoCalGas should have implemented a casing inspection program in 2009, when it was contemplated to mitigate the risk of geologic shifting by one storage engineer, but SoCalGas did not because the cost could not be collected in rates.[163] The email forms the basis for Violations 74-76, as seen by the beginning date and rationale offered for that date by SED.[164] SED ties the date for Violation 78, on the other hand, to the 1988 Proposal concerning Vertilog.[165]

SED has failed to meet its burden to demonstrate that it was unreasonable for SoCalGas not to have implemented an email suggestion by a SoCalGas storage engineer in 2009. The storage engineer recommended that the company develop a well integrity program to protect against risks

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[159] *Id.* at 16-17.

[160] *Id.* at 17-18.

[161] *Id.* at 25-27.

[162] To the extent Violation 75 faults SoCalGas for not inspecting the casing, this charge is duplicative of Violation 73. Otherwise, it is merely a charge that SoCalGas should have had a risk assessment program and is duplicative of Violation 74. Either way, there is no basis for Violation 75 as a stand-alone charge.

Similarly, Violation 76 is for failing to implement a risk assessment program—as suggested by a storage engineer at the facility—*because* the cost could not be collected in rates. SED Opening Testimony at 17-18. But this "Violation" is merely a reason why SoCalGas did not begin the formal program and is entirely duplicative of Violation 74. Thus Violation 76 does not stand as a separate violation, either.

In reality, Violations 74-76 are all implicitly covered by Violation 78: operating Aliso Canyon without internal policies requiring casing inspection. SED Opening Testimony at 25-27. That is because the risk integrity management program suggested in Violations 74-76 revolves around casing inspection. SED Opening Testimony at 12-17.

[163] *Id.* at 17.

[164] *Id.* at 16 n.77 (noting 2009 as the beginning date for Violation 74 because of the engineer's recommendation); *id.* at 17 n.81 (using 2009 recommendation date as the starting point for Violation 75); *id.* at 17 (noting explicitly that the 2009 recommendation is the basis for Violation 76).

[165] *Id.* at 27.

presented by geologic shifting, not risk of blowout due to corrosion. This fact pattern stands in stark contrast to the one in *Carey*: it does not establish that SoCalGas knew or had reason to know that not implementing such a program could lead to an uncontrollable rupture due to external corrosion. Prevention of any negative occurrence in the abstract is not sufficiently specific to mitigate a risk; a risk must be defined so that it may be appropriately addressed. Moreover, SED cites to no rules, regulations, common industry practices, Commission decision, or internal company standard requiring such programs; an email from a single employee concerning a distinct risk does not suffice.

The Blade Report agrees, noting that when SoCalGas sought to institute another proactive integrity management program, there were no regulations "in place that mandated integrity programs for gas storage wells, and such programs . . . had not yet become industry recommended practices."[166] While the integrity management program that SED now advocates became part "of the 2019 California regulatory requirements for gas storage wells," such a "risk management approach indicates a shift" in the prevailing practice.[167] It is settled law that such new rules creating new obligations or duties cannot be applied retroactively.[168] The fact that there was "a shift" in both regulations and industry practice shows that SoCalGas was ahead of the industry. SoCalGas should not be held accountable for not yet implementing something that was not expected of operators at the time.

Moreover, as a matter of policy, SED's suggestion that a utility could be liable for failing to implement the suggestions of every employee would lead to an expensive and absurd result that is not contemplated by Section 451. By SED's logic, there is parity among rules and regulations, prevailing practice in an industry, and the written recommendation of a single employee. Common sense indicates that treating internal employee recommendations as equivalent to binding legal requirements is not good policy and will result in adverse unintended consequences.

The Risk Assessment Program Violations should be dismissed.

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[166] Blade Report at 183.

[167] *Id.*

[168] *Bowen v. Georgetown University Hospital* (1988) 488 U.S. 204, 208.

### 4. SED has failed to allege facts sufficient to demonstrate that SoCalGas' operation of Well SS-25 without a backup mechanical barrier was unreasonable and in violation of Section 451. *[Mechanical Barrier Violation: Violation 77]*

The next violation alleged by SED is for the lack of a "dual barrier system" in SS-25.[169] While the "violation" comprises eight pages of the Opening Testimony, barely one page describes the lack of a dual barrier system. Most of the section is devoted to extended discussions of testimony about subsurface safety valves (that Blade shows are irrelevant[170]) and SoCalGas' inspection and remediation programs (a rehashing of prior discussions by SED). What is notably absent from the entire section in the Opening Testimony—or any SED testimony—is evidence demonstrating that SoCalGas could be held liable for a violation of law due to the lack of a dual barrier.

In plain terms, the lack of a dual barrier means that gas was injected and withdrawn both through the tubing in the well and through the casing around that tubing. Functionally, only the 7-inch casing provided a barrier, whereas having gas only in the tubing would mean that both the tubing and the 7-inch casing would provide barriers—a dual barrier. This differs from the prior practice of extracting oil only through the tubing, before SS-25 was converted to a gas storage well.[171] That is because gas flows differently than oil and does not require tubing for extraction.

SED does not explain how the foregoing fact, in and of itself, constitutes a violation of Section 451. Even more, SED fails to grapple with the evidence that SoCalGas operated well SS-25 just like other gas storage operators.[172] Critically, operating gas storage wells without a dual

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[169] SED Opening Testimony at 18-25.

[170] Blade Report at 224 ["[V]iable deep-set downhole annular safety systems for gas or gas storage wells do not exist even today. . . . A shallow-set system would have not prevented SS-25 from flowing [and] 2015 regulations did not require a subsurface safety device for non-critical wells [such as SS-25]."].

[171] SED Opening Testimony at 19.

[172] Hower & Stinson Reply Testimony at 3-8 [describing industry standard practices and comparing them to SoCalGas' practices,]; 5 [showing 87% of all gas storage wells were single barrier]; 24-26 [describing cathodic protection industry practices and comparing them to SoCalGas practices]; 30, 35 [discussing industry standards regarding temperature surveys,] 31 [describing industry standard around single barrier/dual barrier,] 36-37 [discussing industry standards on real-time continuous pressure monitoring systems.]

barrier was never considered to be a problem before the SS-25 incident (even by SED) because, as SED and Blade note repeatedly, the Incident was an unprecedented event.[173] As is the case with SED's other deficient charges, following the guidance of State regulators and accepted practice in the industry cannot be anything other than acting as a reasonable and prudent operator.[174] Given what was known at the time, SoCalGas' operation of its gas storage wells without a dual barrier does not fall short of what is required by Section 451, *i.e.*, reasonableness.

### 5. SED has failed to allege facts sufficient to demonstrate that SoCalGas' alleged failure to execute the well kills properly was unreasonable and in violation of Section 451.
***[Well-Kill Violations: Violations 79 & 83]***

SED's next set of violations relate to well control activities. Violation 79 is for a supposed lack of transient modeling and Violation 83 is for a failure to prevent surface plumbing failures. SED alleges that the surface plumbing features—the wellhead and surface casing—became more unstable over time as Boots & Coots was unable to bring the well under control, and thus the plumbing was not able to be used properly once the correct modeling was allegedly employed.[175] Because Violation 83 is wholly derivative of the supposed failure in Violation 79 (*i.e.*, the plumbing failures were caused by the unsuccessful successive well control operations, which SED alleges were not successful due to the failure to conduct transient modeling), both fail for the same reasons.

SoCalGas initially attempted to "top kill" well SS-25 when the leak was discovered, as it had done successfully in the past with other wells. The Blade Report viewed this initial effort as

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[173] SED Opening Testimony at 8 ["The consequences of a larger leak or a near-surface casing rupture were not encountered until the SS-25 event."], citing Blade Report at 2.

[174] SED's discussion of this charge in its Sur-Reply Testimony (at 26-27) does not rehabilitate the claim. While SED claims there that SoCalGas operated wells "knowing" that a lack of dual barriers was unsafe, it offers no evidence for that claim (as there is none). It is also inappropriate for SED to attempt to place the burden of proof on SoCalGas to show that it, in fact, operated SS-25 safely without a dual barrier while also pointing to Blade's conclusion that a dual barrier could have helped prevent the incident. In all events, this circular logic does not circumvent the testimony.

[175] SED Opening Testimony at 32, 39.

a "reasonable response" because the extent of the failure was unknown at the time.[176] After the first attempt failed, SoCalGas contracted with well-kill experts from Boots & Coots to help control the leak.[177] SED alleges that Boots & Coots did not use transient modeling in its first five well kill attempts,[178] and that it was deployed only for the final attempt to control the well that almost succeeded but had to be stopped due to severe vibrations of the wellhead.[179]

As an initial matter, SED's allegation is factually incorrect and has been refuted in testimony. Boots & Coots' senior well control specialist assigned to Aliso Canyon—Danny Walzel—testified at his deposition (which occurred after SED's Opening Testimony was submitted, and after SED examined him under oath as part of its pre-formal investigation) that Boots & Coots used transient modeling during the incident for well kill attempts 4-7.[180] Mr. Walzel also testified that Blade was not provided documentation regarding those instances because the modeling was done on his laptop computer and was not sent to anyone else as it required licensed software to review.[181] Mr. Walzel's laptop was subsequently stolen from his truck in December 2015, and the incident was reported to the Houston Police Department.[182] SED did not ask Mr. Walzel about these matters when it examined him under oath.[183]

But even if SED's allegation were not factually deficient, SED has not—and cannot—establish that transient modeling is required by rules or regulations, or is even a common industry

[176] Blade Report at 144; SED Opening Testimony at 38.

[177] Blade Report at 144; SED Opening Testimony at 28.

[178] SED Opening Testimony at 34.

[179] SED Opening Testimony at 35-36.

[180] SoCalGas Reply Testimony Ch. III (Abel Testimony) at 6-7; SED Sur-Reply Testimony at Ch. 3, p. 4.

[181] SED Sur-Reply Testimony at Ch. 3, p. 7.

[182] SED Sur-Reply Testimony at Ch. 3, p. 7. SED outlandishly suggests that Mr. Walzel is lying about conducting transient modeling on his computer for the well-kill efforts at Aliso Canyon. SED Sur-Reply Testimony at Ch. 3, p. 7. Without support for its speculation, SED merely asserts that the police report does not mention a laptop specifically and "says nothing about a model that was on a laptop." *Id.* A police report would, of course, not say anything about the contents of Walzel's laptop.

[183] See SED Opening Testimony Exhibit, SED00635-00786 (Danny Walzel and James Kopecky, Examination Under Oath (Aug. 8, 2018)).

practice. In fact, in its sur-reply testimony, SED's witness confirmed that transient modeling was not well-accepted in the industry at the time of the well-kill efforts.[184] And, SoCalGas' expert witness corroborates this, stating he had never used it once in more than 500 well control operations.[185] SED responded that it has "no reason to dispute Mr. Abel's testimony" on that point, and this issue is not in dispute.[186] Nevertheless, bafflingly, SED has not withdrawn Violation 79. The legal standard for adjudicating SED's claims is whether SoCalGas acted as a prudent gas storage operator. Because it was not common practice to conduct transient modeling, and there are no rules or regulations requiring it, and SED concedes all of this--SoCalGas' conduct was consistent with that of a reasonable manager. SED's claim focuses on Blade's conclusion that the well-control experts Boots & Coots could have stopped the leak if they had used transient modeling for the top-kill efforts.[187] Even if SED offered evidence that Boots & Coots did not engage in the modeling that Blade's *ex post* analysis shows might have been effective, there is still no testimony showing how SoCalGas acted unreasonably in the situation.

SED repeatedly acknowledges that the SS-25 incident was unprecedented, but incongruously charges SoCalGas with behaving unreasonably for acting consistent with known norms in the industry (and, in this case, for hiring world-renowned well control experts to assist with an unprecedented scenario). It is one thing for Blade to employ transient modeling to hypothesize that Boots & Coots could have stopped the leak sooner. It is quite another to deem the same modeling was required by SoCalGas and its expert contractor while the unprecedented event was taking place and based on what SoCalGas knew at the time. SED fails to account for the fact that each top-kill effort was expected to be successful; and it was only after each one was not successful that it was known that another well control effort would be required.[188] The evidence shows that SoCalGas acted as a reasonably prudent operator under the circumstances and

[184] SED Sur-Reply Testimony at Ch. 3, p. 3.

[185] Abel Testimony at 6.

[186] SED Sur-Reply Testimony at Ch. 3, p. 3.

[187] SED Opening Testimony at 34.

[188] See Schwecke Opening Testimony at 2-3, 12-14; Schwecke Sur-reply Testimony at 4-5.

given what was known at the time. SED's hindsight allegations regarding well control efforts should be dismissed.

### 6. SED has failed to allege facts sufficient to demonstrate that SoCalGas' alleged failure to prevent groundwater from corroding the well was unreasonable and in violation of Section 451. *[Groundwater Corrosion Violations: Violations 84-86]*

SED offers three charges related to groundwater corrosion. The substance of these claims, however, may be distilled to a failure to protect the casing from corrosion.[189] Any charge related to groundwater corrosion is derivative from the earlier charges about SoCalGas not inspecting and repairing casing properly. Nevertheless, as the testimony shows, SED has failed to meet its burden to establish a Section 451 violation for this conduct.

Violation 84 is for "allowing groundwater to cause corrosion on the 7 inch and 11 ¾ inch casings" of the well.[190] Relatedly, Violation 85 is for "failure to assess the relationship between the groundwater in and around the SS-25 wellsite, and the surface casing corrosion of that well."[191] And Violation 86 is for not having systematic practices—such as "cathodic protection"—to protect surface casing strings against corrosion and for not understanding the consequences of corroded surface casing and uncemented production casing.[192] At issue here is SoCalGas' lack of cathodic protection on the 11 ¾-inch surface casing that was later found not to be cemented properly by a prior operator of Aliso Canyon. Cathodic protection protects a piece of metal from corrosion by using electric current to make a nearby piece of metal serve as a sacrificial anode that corrodes instead of the protected cathode. SED points out that such protection systems are "*commonly* used to protect pipelines from corrosion and *sometimes* used on well surface casing strings."[193] SED

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[189] *Id.* at 45. Violation 84—allowing the groundwater to cause corrosion—is merely a combination of Violation 85—failure to assess the relationship between the groundwater and the corrosion—and Violation 86—failure to protect the casing from external corrosion. Additionally, Violation 85 is duplicative of the prior allegations concerning investigation or storage integrity management programs. See Violations 1-76, 78.

[190] SED Opening Testimony at 44.

[191] *Id.* at 45.

[192] *Ibid.*

[193] *Ibid.* (emphases added).

also notes that cathodic protection had been used on five other wells at Aliso Canyon and then alleges that SoCalGas violated Section 451 by not having it in place across the field.[194] In the Opening Testimony, this allegation is tied to well SS-25;[195] but in its Sur-Reply Testimony, SED attempts to make it a system-wide critique. In each of the allegations, SED faults SoCalGas for not preventing groundwater from contributing to the casing corrosion that was found after the pipe was removed from the well and inspected by Blade.

There are two reasons SED cannot meet its burden on these allegations. First, it is undisputed that DOGGR reviewed and approved all Aliso Canyon well designs, taking groundwater into account.[196] DOGGR, in accordance with its regulatory authority over downhole aspects of gas storage operators, set the depth for the surface casings to protect against groundwater contamination during drilling..[197] Moreover, as SED notes, all relevant regulations at the time were designed to prevent contamination of groundwater from the wells; not to prevent corrosion of wells from groundwater.[198]

Second, cathodic protection is not a one-size fits all solution and would not have been the panacea SED envisions at Aliso Canyon. SED recognizes that cathodic protection is not a standard practice with gas storage wells and differs from the way it is used on gas pipelines.[199] Indeed, the testimony reveals that there is often good reason not to use cathodic protection (such as when wells are near one another, as is the case with wells SS-25, SS-25A, and SS-25B).[200] As Blade acknowledges, if the induced currents for a cathodic protection system are not properly balanced (which can happen when cathodic protection is used on multiple wells near each other), well casings that are not receiving adequate current will be unprotected and will actually see increased

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[194] *Id.* at 47. In the Opening Testimony, this violation is tied to SS-25, but in the Sur-Reply Testimony, SED argues that it is a system-wide critique.

[195] *Ibid.*

[196] Hower & Stinson Reply Testimony at 21-22.

[197] *Id.* at 20.

[198] *Id.*; SED Sur-Reply Testimony at Ch. 1, p. 12.

[199] See Stoddard Decl. ¶ 13, Ex. L (Blade's Response to SED's Data Request 78) at 2.7.1(b); Hower & Stinson Reply Testimony at 26.

[200] See *id.*

corrosion and casing leaks, above what would have occurred with no cathodic protection.[201] There was thus good reason for SoCalGas not to use cathodic protection.

Moreover, while a cathodic protection system could have provided corrosion protection to the 11 ¾ inch casing, such a system would not have protected the 7 inch production casing where the rupture actually took place.[202] And based on the historical data in the Aliso Canyon field, there was no reason for SoCalGas to anticipate there might be a potential problem with corrosion of the production casing at a depth above the surface casing shoe inside the annulus between the production casing and the surface casing, as occurred in the SS-25 well.[203] When these facts are combined with DOGGR's review and approvals of the well design[204]—taking groundwater levels into account—there is no basis to say that SoCalGas should have implemented a field-wide cathodic protection system. Not only does SED fail to establish that it was unreasonable for SoCalGas not to use cathodic protection (on SS-25 and other wells), the evidence actually points the other way. The violations related to groundwater corrosion should be dismissed.

If Violation 85 must be examined separately, the evidence shows there was no violation of Section 451.[205] SED claims that SoCalGas must maintain an "ongoing knowledge of groundwater" from the "surface to the bottom of their deepest well because … water at any depth could cause corrosion of a well casing."[206] However, aside from Section 451, SED alleges no facts describing the law, regulations, or industry standards that require such an "ongoing knowledge." Nor does SED describe how SoCalGas should maintain an ongoing knowledge of groundwater, to what extent it is feasible and what, precisely, it should do with such information.

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[201] Stoddard Decl. ¶ 13, Ex. L (Blade's Response to SED's Data Request 78) at 2.7.1(b); Hower & Stinson Reply Testimony at 26.

[202] SED Opening Testimony at 45; Stoddard Decl. ¶ 13, Ex. L (Blade's Response to SED's Data Request 78) at 2.7.1(c).

[203] Stoddard Decl. ¶ 13, Ex. L (Blade's Response to SED's Data Request 78) at 2.5.1(a).

[204] Hower & Stinson Reply Testimony at 21-22.

[205] There is no need to examine Violation 85 separately because, as presented by SED, this violation is unintelligible. Allegations against a regulated entity must be understandable and, as such, Violation 85 should be dismissed for a violation of due process. See *Valle del Sol Inc. v. Whiting* (9th Cir. 2013) 732 F.3d 1006, 1020.

[206] SED Sur-Reply Testimony at Ch. 1, p. 16.

Violation 86 also fails to establish that SoCalGas behaved unreasonably. In its Sur-Reply Testimony, SED asserts that "the basis for violation 86 was that cement along the exterior of the surface casing had failed and no longer served as a useful bond against groundwater in SS-25."[207] But this does not show that SoCalGas violated Section 451. It was not reasonably feasible for SoCalGas to evaluate of the integrity of the surface casing cement job that had been completed by a predecessor owner/operator of Aliso Canyon. SoCalGas' predecessor had pumped cement down the casing and up the annulus, which resulted in no surface returns; because there were no returns to surface, cement was then pumped from the surface down the annulus to fill the annulus with cement up to the surface.[208] Thereafter, the only way SoCalGas could have inspected the cementing of the surface casing would have been to run a cement bond log on the surface casing, which in turn would have required physically removing approximately 1000 feet of production casing from the well.[209] SED provides no evidence showing that it was *un*reasonable for SoCalGas *not* to do all that, and thus there is no cognizable violation of Section 451.

**7. SED has failed to allege facts sufficient to demonstrate that SoCalGas' alleged failure to have a continuous pressure monitoring system was unreasonable and in violation of Section 451.**
***[Pressure Monitoring Violation: Violation 87]***

SED then alleges a violation for SoCalGas' failure to have continuous pressure monitoring system on well SS-25. SED alleges that "SoCalGas violated Section 451 by not having a continuous pressure monitoring system for well surveillance because it prevented an immediate identification of the SS-25 leak and accurate estimation of the gas flow rate."[210] This violation is

[207] SED Sur-Reply Testimony at 18.

[208] Blade Report at 25; Hower & Stinson Reply Testimony at 24-25.

[209] Stoddard Decl. ¶ 13, Ex. L (Blade's Response to SED's Data Request 78), p. 11, Sec. e. ("Monitoring corrosion of the surface casing with the production casing in place is difficult with today's technology. There are no known quantitative corrosion evaluation tools available to reliably detect, monitor and measure remaining wall thickness caused by corrosion of the surface casing. The production casing is inside the surface casing, isolating it, and preventing running casing inspection surveys directly in the surface casing. Corrosion of surface casing is usually identified after the production casing is removed from the well.").

[210] SED Opening Testimony at 47-50; see also Stoddard Decl. ¶ 11, Ex. J (SED's Response to SoCalGas' Data Request 7).

premised on the belief that there were two separate breaks in the casing that took place: an axial rupture (a vertical split in the pipe that allowed gas to start coming out) and then a circumferential parting (where the pipe split into two parts by separating around the circumference). SED, like Blade, believes that the circumferential parting took place at a later point in time because of the cooling of the pipe caused by the axial rupture. SED alleges that constant monitoring could have helped control the well early on.[211]

SED does not dispute that "real-time pressure monitoring systems are not industry standard in gas storage fields."[212] While SoCalGas was working to get such systems installed at Aliso Canyon, the company was ahead of the industry and doing more than what was required by either regulation or standard practice.[213] The fact that the system had not yet been installed on SS-25 cannot be used against SoCalGas as a measure of what a reasonably prudent operator would do—particularly when other operators did not have such systems in place and the State had never required them on gas storage wells.[214]

In short, SED cannot show that SoCalGas' conduct here was unreasonable based on what it knew or should have known at the time.[215] There is thus no Section 451 violation for the Company's actions with regard to real-time pressure monitoring and Violation 87 should be dismissed.

### 8. SED has failed to allege facts sufficient to demonstrate that SoCalGas' alleged recordkeeping practices were unreasonable and in violation of Section 451.
***[Recordkeeping Violations: Violations 327-330]***

SED's final set of violations in its Opening Testimony are based on the charge that "SoCalGas did not keep complete, accurate, or accessible records that were necessary for the safe

[211] *Id.* at 48.

[212] See SED Sur-Reply Testimony at 32; Hower & Stinson Reply Testimony at 36.

[213] SED Sur-Reply Testimony at ch. 1, p. 32.

[214] See Hower & Stinson Reply Testimony at 37 (showing other operators did not have SCADA (real-time pressure monitoring) systems.)

[215] *In re New Safety & Reliability Regulations*, 2014 WL 880908, at *4.

operation and maintenance of its wells at Aliso Canyon Natural Gas Storage Facility."[216] SED charges that missing/lost/unorganized records are "an inherently unsafe practice."[217] The Opening Testimony also faults SoCalGas for missing failure analysis reports, groundwater/cathodic protection records, and operating records.[218]

Once again, SED does not base its assessment of SoCalGas' recordkeeping on any recognized standard of care that would have guided what a reasonable operator would have done; rather, SED bases these violations on its hindsight review. Indeed, SED ignores the fact that it previously reviewed and approved records at Aliso Canyon altogether.[219] SED's case, however, has a more basic problem: it is undisputed that SED's expert, Ms. Felts, never reviewed the actual physical Aliso Canyon well files. She only reviewed an electronic production of the records, in whatever format they were provided to her by SED.[220] Thus, Ms. Felts broad-brush claims are not based on her personal knowledge of the actual records, and SED does not point to any relevant rules or regulations guiding recordkeeping. Thus, SED does not meet its burden to show that SoCalGas' recordkeeping practices were unreasonable. The Recordkeeping Violations must be dismissed for lack of substantiating evidence.

### C. Without Any Applicable Standard of Care and Without Fair Notice, Section 451, as Applied by SED, Would Result in a Violation of Due Process. *[Violations 1-79, 83-87, 327-330]*

Due process demands that a regulated entity have notice that its conduct (or lack thereof) is actionable under a specific law.[221] "It is a well-settled rule that 'a statute which either forbids or requires the doing of an act in terms so vague that [people] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due

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[216] SED Opening Testimony at 67.

[217] *Id.* at 68.

[218] *Id.* at 73-74.

[219] See note 28 *supra.*

[220] SED Sur-Reply Testimony at Ch. 1, p. 34; Stoddard Decl. ¶ 6, Ex. E (Felts Depo. Tr.), at 135:22-136:1; 312:14-19.

[221] *Fox*, 567 U.S. at 253 ("A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.").

process of law.'"[222] Even though constructive notice would suffice, regulated entities must be given a reasonable opportunity to discern whether their conduct is proscribed so they can choose whether or not to comply with the law.[223] Such notice is absent here. SED has failed to offer any workable definition of Section 451,[224] instead repeatedly asserting that a "know-it-when-you-see it" standard is sufficient. SED's interpretation of Section 451 would lead to unsanctioned arbitrary enforcement. Charges of violations of the Code cannot be so nebulous that SED may bring allegations even though no law, regulation, formal or informal industry standard, or any other mandated policy was ever transgressed. In other words, without any evidence that SoCalGas had notice of and violated the expected standard of care, SED's charges must be dismissed on due process grounds.

SED has failed to offer competent and sufficient evidence to prove that SoCalGas violated a known standard of care that would make it liable for a violation of Section 451. It is undisputed that SoCalGas did not violate any rules or industry standards related to safety—after all, Ms. Felts makes clear that she did not base her allegations on such rules or standards. In the absence of any evidence that SoCalGas did not act in conformance with applicable rules, regulations, or industry standards, allowing SED to maintain these violations would violate constitutional due process protections because SoCalGas was never on notice that its conduct could give rise to a Section 451 violation.[225] Accordingly, SED's allegations premised on Section 451 should be dismissed.

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[222] *Connor v. First Student, Inc*. (2018) 5 Cal.5th 1026, 1034 (quoting *Connally v. General Const. Co*. (1926) 269 U.S. 385, 391).

[223] *Giaccio v. Pennsylvania* (1966) 382 U.S. 399, 402–03.

[224] See, e.g., Stoddard Decl. ¶ 6, Ex. E (Felts Depo. Tr.), at 215:22-216:1; *id.* ¶ 8, Ex. G (SED's Fifth Supplemental Response to SoCalGas' Data Request 3), Questions 1, 2, 3, 4, 5, 7, 9, & 11 [When asked what SED believed would have constituted an adequate response or the applicable conduct, SED simply responded "[t]hat [it] is SoCalGas's (not SED's) mandated responsibility, pursuant to California Public Utilities Code Section 451."]

[225] See *Fox*, 132 S. Ct. at 2317.

## II. SED's Duplicative Violations Based On The Same Underlying Conduct Must Be Dismissed.
***[Violations 61-76, 78, 330]***

The lack of adequate notice as required by Section 451 is not the only due process violation implicated by SED's approach. SED also seeks to hold SoCalGas liable for duplicative violations arising from the same conduct. But "[a] defendant has a due process right to be protected against unlimited multiple punishment for the same act."[226] "[O]verlapping damage awards violate that sense of 'fundamental fairness' which lies at the heart of constitutional due process."[227] Thus, due process principles prohibit imposition of "double penalties for the same conduct," and SED's duplicative allegations must be rejected.[228] Here, SED alleges many overlapping violations based on the same behavior.

Violation 78 alleges a violation based on operating Aliso Canyon without internal policies requiring casing integrity inspections.[229] SED also separately charges SoCalGas with a failure to implement an integrity management program, for failure to implement an integrity management program for a particular reason, for failure to detect corrosion on SS-25 due to lack of risk assessment (through an integrity program) or to check other wells (as part of an integrity program). (Compare Violation 78, with Violations 61–76.) The conduct sought to be penalized in Violation 78 simultaneously covers sixteen other alleged violations.

Likewise, Violation 87 charges SoCalGas with failure *to have* continuous pressure monitoring while Violation 330 alleges that SoCalGas failed *to record* continuous wellhead pressure. (Compare Violation 87, with Violation 330.) Of course SoCalGas did not record continuous wellhead pressure that it did not monitor (and no regulation or industry standard

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[226] See, e.g., *Troensegaard v. Silvercrest Industries, Inc.* (1985) 175 Cal.App.3d 218, 227.

[227] *Ibid.*

[228] *De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890, 912.

[229] SED Opening Testimony at 3.

required it to do so). Again, SED has contrived multiple violations of Section 451 stemming from a single underlying fact.

Such overcharging for the same conduct constitutes a violation of due process and, at the least, requires dismissal of Violations 61-76 and 330 as derivative and duplicative of Violations 78 and 87 made in the Opening Testimony.

## III. SED's Decades-Old Allegations—Based On Facts SED Has Long Known—Violates The Doctrines Of Laches As Well As Stale Demands.
***[Laches: Violations 74-78, 84-86, 327-330; Stale Demands: Violations 1-6]***

Equitable doctrines such as laches and stale demands exist to prevent parties from "sleep[ing] on their rights."[230] The doctrines prevent the unfair surprise of a party being held liable for conduct that everyone knew was taking place and had been acceptable for a long period of time prior to the instant litigation. Here, it would be unfair to allow SED to bring many of the charges it now seeks to raise when the agency was aware of SoCalGas' practices and had even approved the company's practices (such as when it approved SoCalGas' Gas Safety Plan). These are precisely the types of claims barred by the doctrines of laches and stale demands.

### A. The Doctrine of Laches Bars Assertion of Violations Based on Conduct SED Has Long Known.

Equitable doctrines bar multiple allegations raised by SED based on conduct that took place years ago and that SED has known about for decades. Alleging violations stretching back decades, and now claiming that SoCalGas' records warrant censure under Section 451 when they did not at a previous review, violates the principle of laches. SED reviewed SoCalGas' Gas Safety Plan and approved it in 2013.[231] Moreover, SED itself inspected and approved both the facilities and records of SoCalGas on multiple occasions.[232] The practices of which SED now complains were known

[230] *Magic Kitchen LLC v. Good Things Internat., Ltd.* (2008) 153 Cal.App.4th 1144, 1156, citing *Lyons Partnership, L.P. v. Morris Costumes, Inc.* (4th Cir. 2001) 243 F.3d 789, 797-98 ["[E]quity aids the vigilant, not those who sleep on their rights."].

[231] SoCalGas Sur-Reply Testimony Ch. III (Kitson) at 2.

[232] See note 28 *supra.*

to SED for years and never gave rise to an inquiry or investigation (which, if anything, indicates just how reasonable those actions were).

The Commission recognizes the unfair nature of allowing a party to make delayed demands. In *California Alliance for Utility Safety & Educ*. ("*CAUSE*"), the Commission affirmed dismissal of a complaint because the claims were 10 and 17 years old, respectively.[233] The Commission acknowledged that, "[a]lthough there are no specific statutes of limitations for these claims, complainants cannot postpone their claims indefinitely. This would subject utility projects to continuing uncertainty."[234] Such delay causes a utility clear prejudice because it "subject[s] [utilities] to uncertainty and challenge years later."[235] Furthermore, "it becomes difficult to examine the circumstances surrounding the construction of project more than ten years ago."[236] Accordingly, the Commission barred the complaint and dismissed the action.[237]

By contrast, the Commission rejects a laches defense where the actions at issue are unknown to the petitioning party for the duration at issue. For example, where the respondent claimed that 17 years was an impermissible delay to bring suit, the Commission rejected the argument, reasoning: "The respondent's actions first became known to the Commission staff in 1995. This proceeding was initiated in 1997. There has been no unreasonable delay or acquiescence."[238] The case was allowed to proceed, but it was because the agency only had notice of the conduct for two years prior to bringing its case (*i.e.*, a normal timeline for bringing litigation).

Here, at least seven years prior to alleging the instant violations, SED staff approved SoCalGas' operational practices at the facility. In December 2012—three years before the Incident at Aliso Canyon—SoCalGas submitted to SED a Natural Gas System Operator Safety Plan ("Gas

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[233] *CAUSE*, 78 CPUC 2d 218.

[234] *Ibid.*

[235] *Id.* at *2.

[236] *Ibid.*

[237] *Id.* at *3.

[238] See *Order Instituting Investigation Bidwell Water Co*. (Oct. 2, 2001) No. I.01-10-002, 2001 WL 1637227, *17.

Safety Plan").[239] Consistent with its statutory obligations, SED reviewed the plan and identified some deficiencies requiring correction. Consequently, SoCalGas diligently addressed SED's concerns and addressed issues identified by SED. In June 2013, SoCalGas resubmitted its Gas Safety Plan to SED and, on June 28, 2013, SED issued a letter stating that all deficiencies had been adequately addressed.[240] The Gas Safety Plan clearly gave SED notice of SoCalGas' operations and maintenance practices for its pipeline and storage facilities. And, a decade earlier, a branch of SED came to inspect the facilities and records at Aliso Canyon on multiple occasions, providing SoCalGas with letters that its facilities and records were in compliance with the California General Order regulating natural gas storage operators.[241]

Therefore, laches bars Violations 74-78, which allege failure to implement a risk or integrity management program; lack of risk assessment; failure to start well integrity program; operation of well SS-25 without backup mechanical barrier to 7-inch production casing; and operation without internal policies requiring well casing wall thickness inspection and measurement. Laches further precludes Violations 84–86, which charge SoCalGas with a failure to assess groundwater and failure to have a systematic cathodic protection practice. The absence of these measures were all known to SED by 2012 (at the latest) when SoCalGas submitted its Gas Safety Plan, and they cannot now be the basis of violations alleged in the testimony of SED's external consultant.

If SED had concerns with SoCalGas' operations, SED should have marked these "violations" when it evaluated SoCalGas' Gas Safety Plan in 2012—and not in 2019 based on hindsight acquired solely because the Incident occurred. This only further underscores that the conduct at issue was never a safety violation in SED's eyes until Blade identified preventative measures that regulators could require and enforce (but did not prior to the Incident). As it is, SED's delay exceeds seven years and is certainly unreasonable under the circumstances. To allow SED's external consultant now to charge SoCalGas for practices that SED staff previously

[239] Kitson Sur-Reply Testimony at 2.

[240] *Id.*, Ex. III-2.

[241] See note 28 *supra*.

approved "would subject the utility [ ] to continuing uncertainty."[242] According to the Commission, "it is clearly prejudicial" to a utility to subject it to such "uncertainty and challenge years later."[243]

The same is true of SED's recordkeeping charges, Violations 327–330. SED staff had previously reviewed records at Aliso Canyon on multiple occasions. SED's external consultant should not now be permitted to claim that recordkeeping violations she identified started in 1972 and 1973, as noted in her Opening Testimony as the start dates for any recordkeeping violations.[244] The doctrine of laches bars any suggestion that SoCalGas' conduct with respect to its records now violates Section 451, after its recordkeeping was already audited. SED's own conduct in the process precludes it from now pointing a finger at SoCalGas for alleged "safety" violations years later.

### B. The Doctrine of Stale Demands Bars Out-of-Date Violations.

Related to laches is the doctrine of stale demands, which also bars out-of-date violations. Violations 1-6, alleging a lack of investigations of certain individual blowouts and well casings starting in 1969, are "stale" because there is no way for the Commission to ascertain the truth of the matters that go back more than 50 years (including prior to SoCalGas' ownership/operation of the Aliso Canyon facility).[245] SED claims in its Opening Testimony that "one of the parted casings *must have been discovered* in 1969 to set the beginning of the range" and that the "violation spans from December 31, 1969 the *last possible date* of its parting."[246] This inherently speculative language concerning the date of the parting illustrates that SED's stale charges are inherently unreliable. More importantly, SoCalGas did not own or operate the field in 1969. Principles of equity preclude such claims; it would be unjust to require SoCalGas to defend against alleged violations from more than 50 years ago for the conduct of another company.

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[242] *CAUSE*, 78 CPUC 2d 218.

[243] *Id.* at *2.

[244] SED Opening Testimony at 75.

[245] Significantly, SoCalGas did not acquire the Aliso Canyon field until 1972.

[246] SED Opening Testimony at 9 (emphases added).

## IV. SED's Violations Related To Below-Ground Issues Must Be Dismissed Because They Fall Under DOGGR's Jurisdiction And Area Of Expertise. *[Violations 1-79, 84-87]*

SoCalGas is also entitled to judgment as a matter of law on Violations 1-79 and 84-87 because these violations all relate to below-ground "failures" that fall exclusively within DOGGR's jurisdiction, and thus go beyond the Commission's expertise and authority. The Commission's jurisdiction over underground gas storage facilities covers, at most: (a) the *safety* of *above-ground* equipment; and (b) *ratemaking* authority as to the whole of a utility's facilities.

The Commission has previously identified the ground's surface as the jurisdictional boundary delineating the CPUC's and DOGGR's respective authority over the safety and operation of underground gas storage wells. Indeed, the Commission has recognized that "[s]tringent standards set by [DOGGR] govern underground construction and operation of natural gas wells and underground storage reservoirs to ensure safety and security of stored gas."[247] Regarding Aliso Canyon wells in particular, the CPUC has observed that DOGGR has primary regulatory jurisdiction over underground gas storage wells, including any of the valves and pipe between withdrawal wells and the withdrawal valves.[248] For its part, the Commission's jurisdiction covers "the above-ground infrastructure beginning where the storage facility connects to the pipeline, or at the wellhead"[249] or, said differently, the "above ground pipes, which interconnect to the pipes and valves which inject and withdraw the gas from the underground storage fields."[250] In addition, the Commission has jurisdiction over cost recovery issues related

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[247] *Application of Wild Goose Storage, Inc.* (June 25, 1997) 73 CPUC 2d 90.

[248] *Application of San Diego Gas & Elec. Co. (U902m) for Auth., Among Other Things, to Increase Rates & Charges for Elec. & Gas Serv. Effective on January 1, 2016. & Related Matter* (June 23, 2016) 2016 WL 3913385, at *137. See also *Order Instituting Investigation on the Commissions Own Motion to Determine Whether the Aliso Canyon Nat. Gas Storage Facility Has Remained Out of Serv. for Nine Consecutive Months Pursuant to Pub. Utilities Code Section 455.5(a) & Whether Any Expenses Associated with Out of Serv. Plant Should Be Disallowed from S. California Gas Companys Rates.* Sept. 27, 2018) 2018 WL 5303854, at *4 ("DOGGR has primary jurisdiction over the Aliso Canyon well and focused an investigation on the mechanical and operational condition of the well to determine the cause of well failure and the subsequent natural gas leak.").

[249] *Id.*, 2018 WL 5303854, at *4.

[250] *Id*., 2016 WL 3913385, at *137.

to the operation and maintenance of underground gas storage facilities—or, the whole of the facilities.[251]

The division of enforcement authority as between DOGGR and the CPUC makes sense from an expertise and due process standpoint. That is, DOGGR is better equipped to evaluate an operator's compliance with the regulations under its purview (belowground),[252] while the Commission is better equipped to evaluate an operator's compliance with standards adopted by the Commission and applied to above-ground facilities (*e.g.*, General Order 112-F).

Thus, SED's violations that seek to penalize SoCalGas as to issues that relate solely or principally to a belowground issue (Violations 1-79, 84-87), must be dismissed as beyond the Commission's enforcement authority and expertise.

## CONCLUSION

Based on the foregoing reasons, SoCalGas' motion to dismiss should be granted as to Violations 1-79, 83-87, and 327-330.

Respectfully submitted,

By: ***/s/ F. Jackson Stoddard***
F. Jackson Stoddard

Attorney for:

SOUTHERN CALIFORNIA GAS COMPANY

Dated: February 4, 2021

[251] *Id*.

[252] 14 C.C.R. § 1726 *et seq*.

# APPENDIX A

## SED's Operation and Management Allegations Against SoCalGas

| Violation Number and Categorization | SED's Summary of Violation | Begin Date | End Date |
|---|---|---|---|
| 1 – 60<br>Lack of Investigation Violations | Failure to investigate prior casing leaks | 12/31/1984 | 10/23/2015 |
| 61 – 73<br>1988 Proposal Violations | Failure to follow company's internal 1988 proposal to check casing of 12 wells, including SS-25, for metal loss. | 8/31/1988 | 10/23/2015 |
| 74<br>Formal Risk Assessment Program Violation | Failure to implement a risk or integrity management program for Aliso Canyon storage facility (Aliso). | 12/31/2009 | 10/23/2015 |
| 75<br>Formal Risk Assessment Program Violation | Failure to detect corrosion on well SS-25 resulting in part from lack of risk assessment at Aliso. | 12/31/2009 | 10/23/2015 |
| 76<br>Formal Risk Assessment Program Violation | Failure to start well integrity monitoring program in 2009 because of inability to collect recovery for it in rates. | 12/31/2009 | 10/23/2015 |
| 77<br>Mechanical Barrier Violation | Operation of well SS-25 without backup mechanical barrier to 7-inch production casing. | 8/31/1988 | 10/23/2015 |
| 78<br>Risk Assessment Violation | Operation of Aliso without internal policies that required well casing wall thickness inspection and measurement | 8/31/1988 | 10/23/2015 |
| 79<br>Well Control Violation | Failure to successfully execute well SS-25 kill attempt numbers 2 through 7, due to lack of proper modelling. | 11/13/2015 | 2/11/2016 |
| 83<br>Well Control Violation | Prevention of surface plumbing failures on SS-25 from enabling that well to be kept filled. | 11/25/2015 | 2/11/2016 |
| 84<br>Groundwater Corrosion Violation | Allowance of groundwater to cause corrosion on the 7 inch and 11 3/4 inch casings on SS-25. | 8/31/1988 | 10/23/2015 |
| 85<br>Groundwater Corrosion Violation | Failure to assess the relationship between groundwater in and around the SS-25 wellsite and surface casing corrosion of SS-25. | 8/31/1988 | 10/23/2015 |
| 86<br>Groundwater Corrosion Violation | Failure to have systematic practice to protect surface casing strings against external corrosion and failure to employ proper understanding of the consequences of corroded surface casings and uncemented production casings. | 8/31/1988 | 13/23/2015 |
| 87 | Failure to have continuous pressure monitoring system for well surveillance | 10/23/2015 | 2/12/2016 |

| Violation Number and Categorization | SED's Summary of Violation | Begin Date | End Date |
|---|---|---|---|
| Pressure Monitoring Violation | because it prevented an immediate identification of the SS-25 leak and accurate estimation of the gas flow rate. | | |
| 327 Recordkeeping Violation | Imprudent and unreasonable recordkeeping practices associated with well SS-25. | 6/6/1973 | 10/23/2015 |
| 328 Recordkeeping Violation | Imprudent and unreasonable recordkeeping practices associated with well SS-25A. | 12/7/1972 | 10/23/2015 |
| 329 Recordkeeping Violation | Imprudent and unreasonable recordkeeping practices associated with well SS-25B. | 10/29/1973 | 10/23/2015 |
| 330 Recordkeeping Violation | Imprudent and unreasonable recordkeeping practices associated with well SS-25: Failure to record continuous wellhead pressure. | 10/15/2015 | 10/23/2015 |