

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



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Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Southern California Gas Company with Respect to the Aliso Canyon storage facility and the release of natural gas, and Order to Show Cause Why Southern California Gas Company Should Not Be Sanctioned for Allowing the Uncontrolled Release of Natural Gas from Its Aliso Canyon Storage Facility. (U904G)

I.19-06-016  
(Filed June 27, 2019)

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) FILING IN COMPLIANCE  
WITH THE ADMINISTRATIVE LAW JUDGES' AUGUST 10, 2021 E-MAIL RULING**

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September 3, 2021

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

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Southern California Gas Company with Respect to the Aliso Canyon storage facility and the release of natural gas, and Order to Show Cause Why Southern California Gas Company Should Not Be Sanctioned for Allowing the Uncontrolled Release of Natural Gas from Its Aliso Canyon Storage Facility. (U904G)

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Southern California Gas Company (SoCalGas) makes this filing pursuant to the Administrative Law Judges' (ALJs) August 10, 2021 *E-mail Ruling on the June 20, 2021 Motion of SoCalGas*,<sup>1</sup> which required that requests for additional activities or process based on the deposition of SED engineer Randy Holter be made in writing by September 3, 2021. (August 10 Ruling.) As further discussed below, SoCalGas requests the following additional activities or process based on Mr. Holter's deposition testimony: (1) admit into evidence the final transcript, exhibits, and associated video recording of Mr. Holter's deposition,<sup>2</sup> (2) a ruling on SoCalGas' March 1, 2021 Motion to Compel discovery from SED, (3) an order that Mr. Holter's deposition

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<sup>1</sup> See *Motion of Southern California Gas Company (SoCalGas) to Enforce the Administrative Law Judges' May 28, 2021 Ruling Ordering the Safety and Enforcement Division to Produce Documents in Advance of the Deposition of Randy Holter* (June 30, 2021).

<sup>2</sup> SoCalGas has attached to this filing as Attachment B, the deposition transcript from Mr. Holter's August 26, 2021 remote deposition and two associated deposition exhibits (Depo Exhs. 3 and 5.) SoCalGas offers these materials for exemplary purposes only, and not as the final transcript of the deposition for purposes of admission into the evidentiary record. SoCalGas will move to admit into the evidentiary record the final transcript, exhibits, and associated video recording after they are made available in final form.

shall remain open pending SED's responses to outstanding discovery, (4) the option for SoCalGas to call witness(es) back for additional days of evidentiary hearing pending SED's responses to outstanding discovery.

The August 10 Ruling addressed the adequacy of the document production SED made in response to the ALJs May 28, 2021 ruling, which required SED to review and produce in advance of SED engineer Randy Holter's deposition, documents and written communications created or sent by Mr. Holter.<sup>3</sup> The August 10 Ruling found that while the methodology "SED used to conduct its original document search, was both inefficient and incomplete," SED's document production likely "identified most, if not all of the documents SED is required to produce under the May 28, 2021 ruling." (August 10 Ruling at 4.) Thus, the ALJs ruled that "[n]o further search of documents is necessary for SED to comply with the May 28, 2021 Ruling." (*Id.* at 5, Ruling ¶ 2.) The August 10 Ruling further directed SED to produce to SoCalGas, "[n]ot later than August 16, 2021," any relevant "documents identified through its earlier searches" (*Id.*, Ruling ¶ 1), and ordered the parties to complete Mr. Holter's deposition by August 31, 2021. (*Id.* at Ruling ¶ 3.) Lastly, the August 10 Ruling ordered that "[r]equests for additional activities or process based on the deposition of Mr. Holter shall be made in writing by September 3, 2021." (*Id.*, Ruling ¶ 4.)

On August 26, 2021, SoCalGas proceeded with Mr. Holter's deposition. Mr. Holter's deposition revealed—counter to SED's representation at the evidentiary hearing that Mr. Holter's deposition would "provide[] nothing of value"<sup>4</sup>—substantial material evidence that is relevant to this proceeding. As further detailed below, Mr. Holter's testimony demonstrated that he was deeply involved in SED's investigation, dedicating over 100 days at the Aliso Canyon site beginning "October 23rd, 2015 to the opening of the formal investigation"—more than any other

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<sup>3</sup> See *E-mail Ruling on Document Production in Advance of Deposition of Randy Holter* (May 28, 2021) at 5, Ruling ¶ 2 (May 28 Ruling) (emphasis in original.) The May 28 Ruling further ruled that "SED may exclude from production messages sent directly from Mr. Holter to *Commission decision-makers as defined in Rule 8.1(a)*." (May 28 Ruling at Ruling ¶ 3 (emphasis added).)

<sup>4</sup> Evidentiary Hearing (EH), I.19-06-016 (May 3, 2021) (D. Gruen) Tr. at 1752:2-5. It is worth noting that the Commission's attorneys are also subject to Rule 1.1. (See, e.g., *Administrative Law Judge's Ruling Addressing All Pending Motions, Including the Two In Limine Motions*, I.16-06-010, Feb. 9, 2017, pp. 23–24 ["SED's lead counsel's misconduct to date in the handling of this proceeding is troubling in view of his ethical duty as a Commission attorney and [Rule 1.1]. In fact, SED's lead counsel's continuing pattern of misconduct demonstrates utter lack of regard to the Commission's process, including the assigned Judge and the assigned Commissioner (as well as BART's discovery rights and rights to due process and fair hearing."].)

SED personnel according to Mr. Holter. Mr. Holter further testified that he was responsible for an “engineer’s investigation status report team” and oversaw or personally drafted several reports and analysis related to SED’s investigation of the Aliso Canyon incident, including “a number of sequential drafts” of a staff report, which included a “summary of the incident,” “a description of SED’s activities to investigate the leak” and “a basis for what’s called potential violations.” SED provided none of these materials in response to SoCalGas’ *December 2020* discovery, nor the ALJs’ May 28, 2021 Ruling. And while these revelations provide significant evidentiary value on their own, because SED has refused to produce an unknown number of these reports and analyses, Mr. Holter’s testimony likely represents only the tip of the iceberg.

What’s more, Mr. Holter’s testimony revealed that none of the purported “privileges” that SED has alleged to shield Mr. Holter and his work ever had an iota of merit.<sup>5</sup> Based on Mr. Holter’s testimony, it appears that SED misled both SoCalGas and the Commission regarding Mr. Holter’s so-called “advisory” role in SED pre-formal investigation, privileges SED asserted as the basis for withholding relevant documents prepared by Mr. Holter, including the deliberative process privilege and attorney-client communication privilege, and Ms. Felts’ communication(s) with Mr. Holter during the preparation of SED’s testimony in this proceeding. These revelations serve as the basis for the “additional activities and process” requested below.

### **Additional Activities and Process Requested Based on Mr. Holter’s Deposition**

#### **Request No. 1: Admission of The Final Transcript of Mr. Holter’s Deposition.**

Mr. Holter provided testimony that is relevant to both the violations alleged by SED and SoCalGas’ defense in this proceeding. The final transcript, exhibits, and associated video recording of the deposition should be admitted into the evidentiary record of this proceeding for purposes of

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<sup>5</sup> This is not the first time SoCalGas independently confirmed that SED erroneously asserted privilege over documents SoCalGas had sought. *See* SoCalGas’ Amended Response to SED’s Motion to Quash SoCalGas’ Notice of Deposition of Utilities Engineer Randy Holter (Nov. 4, 2020) at 22-23 (describing that SED’s prior erroneous assertion of “common interest privilege” over its communications with the Los Angeles Department of Public Health); *see also* SED’s Reply to SoCalGas’ Response to SED’s Motion to Quash SoCalGas’ Notice of Deposition of Utilities Engineer Randy Holter (Nov. 12, 2020) at 14 (“LADPH stated its understanding that there was no such privilege. Shortly after clarifying that misunderstanding, SED turned over the communications with LADPH to SoCalGas.”).

the parties' briefing and any appeals that may be required. The testimony provided by Mr. Holter included the following relevant information:

- Mr. Holter served as the “lead investigator” in an “engineering capacity” for SED’s investigation into the Aliso Canyon Incident. (Depo of Randy Holter (Aug. 27, 2021) Tr. at 130:2-131:10.<sup>6</sup>)
- Mr. Holter believed, a few days after the SS-25 leak was discovered, that based on “information received from supervisors,” “if the location of the leak were downhole below the Well head that that the incident would be within DOGGR’s purview,” and that SED “could close out the incident for the CPUC Gas Safety Enforcement Division.” (Tr. at 53:21–54:18; Depo. Exh. 3.)
- Mr. Holter testified that, in addition to himself, he recalled “at least one person,” within SED’s engineering branch who questioned whether the SS-25 incident was within the Commission’s area of responsibility or jurisdiction. (Tr. at 87:3-16.)
- Mr. Holter testified that he spent over 100 days at Aliso Canyon and he was “not aware of anybody that spent as much time, dedicated work time to Aliso Canyon beginning from October 23rd, 2015 to the opening of the formal investigation.” (Tr. at 228:24–229:23.)
- Mr. Holter prepared “a number of sequential drafts” of a staff report, which Mr. Holter referred to variably as the “engineer’s investigation report” or “engineer’s status report.” (Tr. at 144:17-18; 116:8-18; 136:25-137:5.)
- Mr. Holter’s staff report included a “summary of the incident,” “a description of SED’s activities to investigate the leak” and “a basis for what’s called potential violations.” (Tr. at 138:19-21; 140:19–141:20.)
- Mr. Holter’s “status report” included “potential violations” of Public Utilities Code Section 451 based on *both* the Blade report and SED’s independent investigation. (Tr. at 141:15–145:10.)
- Mr. Holter’s “status report” includes potential Section 451 violations for a number of categories of violation that seem similar to the violations alleged in SED’s Opening testimony, including violations for: “well control activities,” “well failure investigation,” “real-time pressure monitoring,” and potentially “records management.” (Tr. at 143:3–144:11.)
- Mr. Holter visited the job site trailer at Aliso Canyon to observe “procedures for making copies of well file folders,” asked questions regarding the “process for scanning and making packs of documents of complete well,” and “observed the physical well files.” (Tr. at 220:2–221:2.) Mr. Holter further testified that he was familiar with iDiscover, and was aware of iDiscover’s role in scanning well files at the Aliso Canyon facility. (Tr. at 219:11–220:1; Exh. 5 at RH\_DEPO\_00077.)

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<sup>6</sup> See Attachment B for references to Mr. Holter’s deposition transcript and referenced exhibits.

- Mr. Holter was responsible for SED’s “engineer’s investigation status report team” that conducted a detailed four-level review of SoCalGas’ well files and generated a report, the highlights of which would go into a “spreadsheet style working table” for analysis. Mr. Holter further testified that he created a standard by which to judge the completeness of SoCalGas’ well files. (Tr. at 129:19-23; 131:18–132:14; 221:16–226:3.)
- Mr. Holter’s “investigation report team” included five or six individuals that met no less than weekly, and as frequently as daily. Mr. Holter further testified that picked the subject matters that individual engineer would be responsible for within the investigation report team. (Tr. 131:18–135:16.)
- Mr. Holter testified that he performed and documented a “gap analysis” as part of his investigation, the purpose of which was to identify requirements in connection with SoCalGas’ operations, or as Mr. Holter described: “[t]o cross-check data, if possible, for more than one source if -- and to find the gap at which, you know, information may be missing. So it’s a -- a more or less of a tabular and quantitative process.” (Tr. at 153:3–157:14.)
- Mr. Holter communicated with SED’s sole testifying witness, Margaret Felts, regarding Ms. Felts’ request for assistance accessing records related to the SS-25 investigation and “information [Mr. Holter] had garnered since 2015 on – on the SS25 incident.” (Tr. at 163:7–165:8.)
- Mr. Holter testified that the “status report” was saved to the “CPUC database,” and that the report did not include attorney-client communications, nor descriptions of emails with attorneys. Mr. Holter further testified that he did not transmit the status report to attorneys and did not “recall attorneys receiving the status report.” (Tr. at 139:16–140:18.)
- Mr. Holter testified that his engineer’s status report was saved to the same database that Ms. Felts inquired about when she contacted Mr. Holter for access to information he had “garnered since 2015 on – on the SS25 incident.” (Tr. 165:21–166:2.)
- Mr. Holter testified that he observed a return of fluids to surface during one of the well kill operation implemented by Boots & Coots and did not see “any actions by SoCalGas or their contractors that would have been outside the protocols the kill - - the kill program or the kill protocols that were set at the prior meetings in the morning.” When asked whether he was aware of “any reason that a kill team would want to eject mud from a crater in a course of kill operation,” or whether it was “more likely to simply be the result of the kill operation,” Mr. Holter testified that based on his experience, it would likely be a “result of the kill attempt.” (Tr. at 179:14-185:24.)
- Mr. Holter expected to serve as the witness in this proceeding at the time he prepared his status report, testifying “I considered it probable that I would be a witness.” (Tr. at 230:8–15.)

- In response to questioning by SED’s counsel, Mr. Holter testified that the purpose of the “engineering status reports” was to provide:

[A] status update as to current events on the incident to management, and also to provide SED with a -- for SED to use the summary of the status report for tracking purposes on their quarterly report. And if the incident were to go longer than a year on the annual report summary, a summary of the current status of the -- of the engineer status report would be presented to PHMSA, Department of Transportation, on the gas safety and reliability branch report.

(Tr. at 231:13-25.) At no point did Mr. Holter state that he communicated with a Commissioner or Decisionmaker, as defined under Rule 8.1(a).

- In response to questioning by SED’s counsel, Mr. Holter testified that it was *not* the “primary function” of his engineering status report to inform the Commission as to whether to open an order instituting investigation or an order to show cause into SoCalGas’ Aliso Canyon storage facility. (Tr. at 232:4–13.)

**Request No. 2: Ruling on SoCalGas’ March 1, 2021 Motion to Compel SED’s Responses to SoCalGas’ December 2020 Discovery.**

On March 1, 2021 SoCalGas filed a Motion to Compel SED’s responses to Data Requests 24 and 25, both served on SED in December 2020 (Motion to Compel). Data Request 24 seeks information regarding SED’s review of SoCalGas’ well files and preparation of any staff report created in connection with SED’s pre-formal investigation.<sup>7</sup> Among the questions included in Data Request 24, SoCalGas sought “any and all STAFF REPORTs related to SED’s investigation of the INCIDENT.”<sup>8</sup> Data Request 25 contains a series of related requests about factual findings made by SED during the course of its investigation, if any, and whether SED communicated these findings to Blade and/or DOGGR.<sup>9</sup>

As detailed in SoCalGas’ Motion to Compel, SED’s responses to DRs 24 and 25 consisted almost entirely of objections, and SED never produced any document resembling a staff report in response to SoCalGas’ discovery. Among its reasons for resisting SoCalGas’ discovery, SED

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<sup>7</sup> SoCalGas’ Motion to Compel Discovery (March 1, 2021), Decl. of J. Stoddard ¶ 4, Ex. C (SoCalGas’ Twenty-Fourth Set of Data Requests to SED).

<sup>8</sup> *Ibid.*, Questions 5 and 6.

<sup>9</sup> SoCalGas’ Motion to Compel Discovery (March 1, 2021), Decl. of J. Stoddard ¶ 7, Ex. F (SoCalGas’ Twenty-Fifth Set of Data Requests to SED).

repeatedly asserted that such information was protected by the deliberative process privilege.<sup>10</sup> SoCalGas' Motion to Compel argued, among other things, that the deliberative process privilege does not apply in enforcement actions and, even if applicable, would only cover pre-decisional deliberations with the Commission's decisionmakers. (Motion to Compel at 3-4.) While the ALJs have not yet issued a ruling on the motion, Mr. Holter's deposition testimony provides more than adequate reason to do so now.<sup>11</sup>

During his deposition, Mr. Holter identified several documents detailing the findings and/or analyses of Mr. Holter and members of the Aliso Canyon "investigation report team," which include information relevant (see *supra* at 4-6) to the violations alleged against SoCalGas, and SoCalGas' associated defenses. These documents include, at a minimum, all drafts of Mr. Holter's "engineer's status report," "gap analysis," and the report and "spreadsheet style working table" resulting from the "investigation report team's" four-level review of SoCalGas' well files.

Significantly, it is likely that SoCalGas would have discovered and received this information sooner, but for SED's repeated misrepresentations regarding Mr. Holter's role in SED's investigation, erroneous assertions of privilege, and Ms. Felts' repeated false testimony that she did not communicate with Mr. Holter. For ease of reference, SoCalGas has attached as "Attachment A" to the instant filing a table that compares SED's and Ms. Felts' prior representations regarding Mr. Holter, and information SoCalGas discovered during Mr. Holter's deposition.<sup>12</sup> These include, for example:

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<sup>10</sup> See, e.g., SoCalGas' Motion to Compel Discovery (March 1, 2021), Decl. of J. Stoddard ¶¶ 5, 7-9, Exs. D, F, G, H.

<sup>11</sup> SoCalGas called this, and another outstanding motion to compel, to the ALJs attention at the March 9 Status Conference. ALJ Hecht indicated that rulings would be forthcoming, but stated, "[w]e may not be ruling on those motions before hearings start. We will review them again and consider. But, I will not say that you will get that ruling before next Tuesday." (Status Conference, March 9, 2021) RT at 156:6-16.)

<sup>12</sup> SoCalGas recognizes that the "request for additional activities or process" referenced in the ALJs' August 10 Ruling is likely limited to evidentiary requests following and directly related to Mr. Holter's deposition. However, in light of the egregious nature of SED's continued misrepresentations, and the prejudice SED's misconduct has caused, SoCalGas reserves the right to move for further relief including, potentially, a motion for evidentiary sanctions, including a request for an adverse evidentiary inference or, to the extent the Commission does not act *sua sponte*, an Order to Show Cause why SED should not be held in violation of Rule 1.1.



- SED’s misrepresentations to the ALJs and Commissioner Rechtschaffen that “SED does not have a lead investigator.”<sup>13</sup> (Attachment A at 1-2.)
- SED’s misrepresentation that Mr. Holter served in an “advisory capacity” and that the “purpose of Mr. Holter’s involvement was to gather information relevant to the Commission’s decision to open an investigation proceeding of SoCalGas’ actions at Aliso Canyon.” (Attachment A at 2-4.)
- Ms. Felts’ false testimony at both of her depositions, and at the evidentiary hearing in this proceeding that she did not know who Randy Holter was and had not had any contact with him. (Attachment A at 4-7.)

Mr. Holter’s deposition revealed that not only did Mr. Holter serve as SED’s lead ‘engineer’ investigator, he spent over 100 days at Aliso Canyon during SED’s investigation—more than anyone else from SED, according to Mr. Holter—and expected that he would serve as a witness in this proceeding, testifying, “I considered it probable that I would be a witness.” (Tr. at 230:8–15.) Moreover, Mr. Holter’s testimony suggests that he was *not* working in an “advisory capacity”—as SED has repeatedly represented in this proceeding (see Attachment A at 2-4), nor was the “primary function” of his “engineer’s status report” to inform the Commission as to whether to open an Order Instituting Investigation or an Order to Show Cause into the Aliso Canyon Incident. (Attachment A at 3-4; Tr. at 232:4–13.)

In fact, at no point during Mr. Holter’s lengthy explanation of the “purpose of the engineering status reports” did he mention that the report was used to advise or inform the Commission as to whether or not it should open this OII/OSC. (See Tr. at 231:13-25 [*supra* at 6].) Instead, Mr. Holter’s testimony makes clear that his report was prepared in the course of SED’s normal investigation activities. (*Ibid.*) Mr. Holter’s description of his role and the function of his staff report are completely at odds with SED’s representations that Mr. Holter served in an advisory capacity. Significantly, it appears that the ALJs relied on SED’s misrepresentations as to Mr. Holter’s role when they initially granted—*before the start of evidentiary hearings in this proceeding*—SED’s Motion to Quash Mr. Holter’s deposition:

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<sup>13</sup> The ALJs should take note that not only has SED repeatedly misrepresented that it did not have a “lead investigator” for its Aliso Canyon investigation, SED went so far as accusing SoCalGas of a Rule 1.1 violation for stating in prior filings that Mr. Holter served as SED’s lead investigator for the Aliso Canyon incident: “SoCalGas’ statements that Randy Holter was SED’s lead investigator on Aliso Canyon are false and misleading, in violation of Rule 1.1.” (SED’s Response to Motion for Reconsideration (March 18, 2021) at 6.)

We grant SED’s Motion to Quash. The deposition of non-testifying, **advisory Commission staff is unprecedented**; we find that SoCalGas has not demonstrated sufficient cause to depart from this precedent. SoCalGas has not met its burden to show that the deposition of Mr. Holter would lead to relevant information on the issues being addressed in this phase of the proceeding: Blade Energy Partners Limited’s (Blade) root cause analysis report and the alleged operational and recordkeeping violations. We find there is no due process right for SoCalGas to depose a non-testifying **SED advisory staff** when it had the opportunity to depose or cross-examine Ms. Felts, the testifying SED witness.<sup>14</sup>

It is unclear whether the ALJs would have granted SED’s Motion to Quash, and denied SoCalGas an opportunity to depose Mr. Holter before the start of evidentiary hearings, if SED had not misrepresented Mr. Holter’s role as “advisory staff.” Moreover, even if SED did have a valid legal argument (which it never did) that Mr. Holter’s status report and other work related to his investigation of the Aliso Canyon incident was protected by deliberative process privilege—*SED has now waived any such privilege*. SoCalGas asked about the nature and contents of Mr. Holter’s “status report” throughout the deposition and SED *did not object on the basis of the deliberative process privilege or the work produce doctrine a single time*. Protection of information from discovery on the ground that it is privileged or that it is protected work product is waived unless a specific objection to its disclosure is timely made during the deposition. (Code Civ. Proc., § 2025.460(a).<sup>15</sup>)

Further, while SED asserted the attorney-client privilege as to questions regarding Mr. Holter’s engineer’s status report (Tr. at 138:19-139:8), Mr. Holter testified that the report existed independently of any communication with counsel. Indeed, Mr. Holter testified that he did not recall that the status report included attorney-client communications, nor descriptions of emails with attorneys, and did not transmit the report to legal counsel. (Tr. at 139:9-141:20.) It therefore appears that Mr. Holter’s engineer’s status report was not sent or received as part of a confidential communication that sought or provided legal advice, which is a prerequisite to assert the attorney-client communication privilege. (See e.g., *Los Angeles County Bd. of Supervisors v. Superior*

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<sup>14</sup> (Email Ruling on SED’s Motions (March 5, 2021) at 5 (emphasis added).)

<sup>15</sup> See also, Pub. Util. Code, § 1794: “[A]ny party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure and to that end may compel the attendance of witnesses and . . . documents, papers, and accounts.”

*Court* (2016) 2 Cal.5th 282, 293 [“The attorney-client privilege only protects communications between attorney and client made for the *purpose of seeking or delivering the attorney’s legal advice or representation.*” (Emphasis added).] Instead, because Mr. Holter’s status report resides on the Commission’s database, independent of any communication with legal counsel (Tr. at 139:9-141:20), SED’s assertion of attorney-client privilege has no merit.

Equally troubling is Ms. Felts’ false testimony that she did *not* communicate with Mr. Holter around the time she was preparing testimony on behalf of SED. If Ms. Felts had been truthful and disclosed to SoCalGas at one of her two depositions that she communicated with Mr. Holter regarding her request for assistance in accessing Aliso Canyon records on SED’s database and “information [Mr. Holter] had garnered since 2015 on – on the SS25 incident” (Tr. at 163:7–165:8), SoCalGas could have sought further discovery on the matter. SoCalGas could have and would have asked, for example, whether Ms. Felts evaluated or relied on any information she gathered from Mr. Holter, and whether she had accessed and/or relied on Mr. Holter’s staff report, which, as noted, was saved to the database that Ms. Felts attempted to access. Moreover, SoCalGas would have further impeached Ms. Felts’ credibility at the evidentiary hearing, when she represented to the ALJs that she did “not speak with any individuals with knowledge of the incident or who witnessed aspects of the incident,” and that “[t]here wasn’t any indication to [Ms. Felts] that there was a previous investigation for anyone assigned to the project.” (Attachment A at 6; EH (March 16, 2021) (Felts) Tr. at 133:25–135:15.)

For all these reasons, the ALJs should rule on SoCalGas’ March 1, 2021 Motion to Compel, with specific consideration of the aforementioned information, and order SED to respond to Data Requests 24 and 25 immediately. SoCalGas believes that the ALJs already have all of the information necessary to rule on SoCalGas’ Motion to Compel. However, to the degree that the ALJs desire additional information or explanation regarding the new information SoCalGas uncovered during Mr. Holter’s deposition, SoCalGas would be amenable to supplemental briefing on the issue. To the extent that the ALJs find that additional briefing would be helpful, SoCalGas suggests that the parties file concurrent briefs, limited to 7 pages, within seven (7) days after the September 9, 2021 Status Conference.

**Request No. 3: Order That Mr. Holter’s Deposition Shall Remain Open Pending SED’s Production of Documents Responsive to SoCalGas’ Data Requests 24 and 25 and the ALJs’ May 28 Ruling.**

As noted above, in light of SED’s misrepresentations about Mr. Holter’s role, and its erroneous assertions of legal privilege—documented in several filings in this proceeding (see Attachment A at 2-4)—SoCalGas was forced to depose Mr. Holter without the benefit of several reports and analyses that are clearly responsive to both Data Requests 24 and 25, and the ALJs’ May 28 Ruling.<sup>16</sup> Thus, SoCalGas requests that the Commission order that Mr. Holter’s deposition shall remain open pending SED’s responses to Data Requests 24 and 25, and specifically, production of all drafts of Mr. Holter’s “engineer’s status report,” “gap analysis,” and the report and “spreadsheet style working table” resulting from the “investigation report team’s” four-level review of SoCalGas’ well files. SoCalGas further requests that the ALJs rule that SoCalGas may at its discretion continue the deposition of Mr. Holter after evaluating SED’s responses to the outstanding discovery.

**Request No. 4: Option for SoCalGas to Call Witnesses Back for Additional Days of Evidentiary Hearing Pending SED’s Responses to Outstanding Discovery.**

For the same reasons noted in Request Nos. 1–3, above, SoCalGas requests that the ALJs leave open to SoCalGas the option to re-call any witness for cross-examination at additional days of evidentiary hearing, pending SED’s responses to Data Requests 24 and 25, and any further deposition of Mr. Holter that may be required. Although SoCalGas initially was ordered to make

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<sup>16</sup> SoCalGas further notes that throughout Mr. Holter’s deposition, SED’s counsel improperly instructed Mr. Holter not to answer questions probative of relevant and material issues without identifying any privilege. Such instructions are prohibited and represent sanctionable conduct. (See e.g., *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1015 (holding that sections of Discovery Act “clearly contemplate that deponents not be prevented by counsel from answering a question unless it pertains to privileged matters or deposing counsel’s conduct has reached a stage where suspension is warranted.”); *Jackson v. Jackson*, 2019 WL 4178941, at \*2 (Cal.Super.) (“Plaintiff’s counsel argues that he is entitled to instruct a witness not to answer a question that is not relevant and not calculated to lead to the discovery of admissible evidence. Plaintiff’s counsel is incorrect. *Counsel should not instruct a deponent not to answer any question unless the question implicates a privilege. . . . Plaintiff’s counsel acted inappropriately by directing the witness not to answer the questions on grounds other than privilege. That alone justifies the Court granting the motion and ordering sanctions.*” (Emphasis added).)

this decision by September 3, 2021, it is now clear that SoCalGas cannot make this decision without receiving full and proper discovery that should have been served months ago by SED.

Respectfully submitted,

By: /s/ *F. Jackson Stoddard*  
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Dated: September 3, 2021

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