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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Investigation 19-06-016

**ADMINISTRATIVE LAW JUDGES' RULING
ADDRESSING TWO MOTIONS TO COMPEL**

This Ruling addresses two motions related to discovery disputes between Southern California Gas Company (SoCalGas) and the Commission's Safety and Enforcement Division (SED). In both requests, SoCalGas asks that SED be compelled to respond to data requests related to SED staff work that took place before the opening of this formal investigation. The specific filings addressed in this Ruling are:

- *Motion to Compel Discovery* filed by SoCalGas on January 21, 2021 (*January Motion*); and
- *Motion to Compel Discovery* filed by SoCalGas on March 1, 2021 (*March Motion*).

The resolution of the *January Motion* and the *March Motion* (together, *Motions to Compel*) is informed by the motions themselves and related

responsive filings, as well as relevant information received in more recent filings. Other outstanding requests and motions will be addressed via separate rulings.

Many of the questions in the Motions to Compel focus on whether and, if so, to what extent SoCalGas should have access to people involved and materials generated as part of SED staff's "informal" inquiry into the Standard Sesnon-25 (SS-25) storage well gas leak and associated examination of SoCalGas' Aliso Canyon natural gas storage facility (Aliso Canyon) that took place prior to the issuance of this formal Investigation (I.) 19-06-016.¹ This Ruling grants in part a request in the *March Motion* by requiring SED to search for and, if located, produce one or more specific versions of a staff report prepared during the course of the pre-formal inquiry. All other requests in these Motions to Compel are denied.

1. Proceeding Background

On October 23, 2015, a natural gas injection and extraction well failed at Aliso Canyon, resulting in a blowout and the uncontrolled release of methane gas into the atmosphere from SS-25. The gas leak continued for 111 days until February 11, 2016, when SoCalGas was able to stop the leak.

In January 2016, the California Public Utilities Commission (CPUC or Commission), in consultation with the Federal Department of Transportation's Pipeline and Hazardous Materials Safety Administration and the California Department of Conservation, Division of Oil, Gas and Geothermal Resources, selected Blade Energy Partners (Blade) to conduct an independent root cause

¹ Work undertaken by SED during the period beginning when SoCalGas notified SED of the leak incident in late October 2015 and ending with the adoption I.19-06-016, on June 27, 2019, is sometimes referred to as SED's informal or pre-formal investigation. In this Ruling, we will use the phrase "pre-formal investigation" to describe SED's work during this period.

analysis of the gas leak. On May 16, 2019, Blade publicly released its main report and four supplementary reports (together, the Blade Report).² The Commission issued I.19-06-016, the “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” (OII or Order Instituting Investigation) on June 27, 2019.

The assigned Commissioner’s Scoping Memo for this proceeding, issued on September 26, 2019, clarified the issues and schedule for this proceeding. The proceeding schedule has been extended multiple times at parties’ request. Twenty days of remote evidentiary hearings took place in spring of 2021. Near the end of the hearing period, on April 28, 2021, the assigned Administrative Law Judges (ALJs) granted a SoCalGas request to conduct a deposition with Mr. Randy Holter, an SED staff engineer, as a percipient witness to aspects of the SED pre-formal investigation.

SoCalGas conducted a deposition with Mr. Holter on August 25, 2021, and subsequently filed *Southern California Gas Company’s Response to Administrative Law Judges’ August 10, 2021 E-Mail Ruling (SoCalGas September Request)* on September 3, 2021. For the purposes of this Ruling, the notable portion of the *SoCalGas September Request* renewed the *March Motion to Compel* and asked that the ALJs rule on it expeditiously. This Ruling resolves issues related to the

² www.cpuc.ca.gov/aliso/

March Motion, as well as the also-pending *January Motion*. Additional issues raised in the *SoCalGas September Request* will be addressed via separate rulings.

2. Standard for Resolving Motions to Compel Discovery

When assessing a Motion to Compel Discovery within a formal proceeding, our standard for assessing the request is Rule 10.1 of our Rules of Practice and Procedure, which states:

Without limitation to the rights of the Commission or its staff under Pub. Util. Code Sections 309.5 and 314, any party may obtain discovery from any other party regarding *any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.* Where it would aid in efficiency and transparency, parties may request that the assigned Administrative Law Judge establish a process whereby discovery requests and non-confidential responses from parties are appropriately distributed to other parties in the proceeding. (emphasis added).

This standard applies to our analysis of the requests made in both Motions to Compel.

3. January 21, 2021 Motion to Compel

On January 21, 2021, SoCalGas filed the *January Motion*. First, the *January Motion* asks that SED be compelled to provide a more detailed privilege log than previously provided in response to a question in SoCalGas' Fifth Set of Data Requests, in which SoCalGas asked that SED produce all workpapers related to SED's opening testimony. In addition, the *January Motion* requests that SED be ordered to provide full answers to numerous data request questions for which SoCalGas asserts that previous SED responses were either incomplete or

unresponsive. Specifically, the motion requests that the Commission require SED to respond fully to numerous questions in SoCalGas Data Requests 15, 16, 20, 21, 22, and 23. The request for a more detailed privilege log was later withdrawn,³ and is not addressed here. To the extent that questions in the *January Motion* may relate to or duplicate issues also raised in the *March Motion*, and particularly relate to production of documents created or used during the SED pre-formal investigation, those questions will be addressed further in the discussion of the *March Motion*, below.

In the *January Motion*, SoCalGas characterizes SED's responses to the questions cited in SoCalGas Data Requests 15, 16, and 20 through 23 as unresponsive, noting that in many cases SED refused to answer questions based on general objections, for example asserting that the questions were vague or overly broad, arguing that answering the questions would be unduly burdensome and, in some cases, contending that questions would more properly be directed to Blade.

On February 4, 2021, SED late-filed its response to the *January Motion*.⁴ SED's response suggests that the *January Motion* should be denied in its entirety, asserting a variety of bases in support this claim, including that many of the questions are precluded by previous ALJ rulings on discovery, and other questions involve information already in the possession of SoCalGas. SED further asserts that SED Advocacy staff involved in prosecuting this case cannot answer questions about the pre-formal investigation because they cannot

³ SoCalGas's *Reply In Support Of Motion To Compel Discovery (Reply in Support of January Motion)*, filed February 16, 2021 at 2.

⁴ SED's *Motion For Leave To Late-File Its Response To Southern California Gas Company's Motion To Compel*, February 4, 2021.

respond on behalf of SED Advisory staff such as those involved in the pre-formal investigation.⁵ SED also characterizes many of the questions in the data requests referenced in the *January Motion* as irrelevant to issues in the proceeding.

SoCalGas replied in support of its motion on February 16, 2021.

At this point, we deem most questions contained in the *January Motion* to be moot. Twenty days of remote evidentiary were held in this proceeding between March and May 2021, during which SoCalGas conducted extensive cross-examination of the SED witness, Margaret Felts. Many of those cross examination questions focused on her knowledge and understanding of the issues addressed in her testimony. This provided SoCalGas with an extensive opportunity to explore many issues covered in the *January Motion*. In addition, on August 25, 2021, SoCalGas conducted a deposition with SED engineer Randy Holter, a participant in SED's pre-formal investigation, as a percipient witness to aspects of the pre-formal investigation. Based on recent filings, it appears that the deposition included topics that are covered in this motion, such as SED's review of well records.⁶ As a result, we do not find that responses to the questions contained in the *January Motion* are likely to result in new information that meets the standard of Rule 10.1 that the discovery is "either... itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Because of this, the *January Motion* is denied except to the extent that any issues referenced in that motion may also be raised in the *March Motion*, which is addressed below.

⁵ SED's *Response To Southern California Gas Company's Motion To Compel Discovery*, February 4, 2021 at 2.

⁶ Parties disagree on whether the deposition exceeded the scope authorized by the ALJs, which authorized the deposition of Mr. Holter as a percipient witness only.

4. March 1, 2021 Motion to Compel Discovery

On March 1, 2021, SoCalGas filed its *March Motion*, which requested that SED be compelled to respond to questions in two additional data requests, SoCalGas Data Requests 24 and 25. A primary focus of these data requests appears to be on any “staff reports” or “findings” developed by SED before the issuance of this OII on June 27, 2021. In support of the claim that the initial responses were inadequate, the *March Motion* includes as exhibits copies of both Data Requests 24 and 25, as well as SED’s initial and supplemental responses. SED filed an expedited response opposing this motion on March 4, 2021 and SoCalGas filed a reply on March 5, 2021.

In its March 4, 2021 response to the *March Motion*, SED asserts that it responded to Data Requests 24 and 25 in good faith, but that it was unable to answer many or most questions because the questions themselves were too vague.⁷ In its reply to the SED response, SoCalGas states that rather than working with SoCalGas to narrow or clarify the scope of the requests, or providing a response containing some reasonable subset of documents, SED refused to provide any documents at all.⁸ SoCalGas further asserts that SED’s responses largely consist of objections that SoCalGas considered to be generic and invalid.⁹

4.1. Contents of Data Requests 24 and 25

Data Requests 24 and 25 ask, among other things, for SED to provide SoCalGas with a variety of information, including the names of SED staff who

⁷ SED’s *Response to Southern California Gas Company’s Motion to Compel Discovery (Response to March Motion)*, March 4, 2021 at 1-3.

⁸ SoCalGas’s *Reply in Support of March Motion* at 1-2.

⁹ SoCalGas’s *Reply in Support of March Motion* at 3.

visited the Aliso Canyon facility during the pre-formal investigation, along with documents including staff correspondence, communications, and work products created or sent during the timeframe of the pre-formal investigation.

Review of Data Requests 24 and 25 shows that each begins with general instructions for responding to the data request, followed by a “Definitions” section in which SoCalGas defines several terms used in the questions that follow. For the purposes of this analysis, the most relevant term in Data Request 24 is “STAFF REPORT,” which is defined as follows:

“STAFF REPORT” means any incident investigation report(s) or memo(s) prepared by SED personnel, whether complete or incomplete, draft or final, and which reflect the findings and/or conclusions of SED personnel regarding their investigation of an incident.¹⁰

Also relevant to this discussion is the definition provided in Data Request 25 for the word “FINDINGS,” which that Data Request describes as follow:

“FINDINGS” means any preliminary or final, perceptions, observations, theories and/or conclusion(s) or determinations reached by SED in the course of or as a result of SED’s pre-formal investigation... into the INCIDENT.¹¹

The key questions in Data Request 24 appear to focus on whether or not staff created any document(s) that could be described as a “staff report” during SED’s pre-formal investigation, and if so, for that report or reports to be produced to SoCalGas.¹² Data Request 25 similarly focuses on whether SED developed or shared (internally or with another entity or agency) any “findings”

¹⁰ *March Motion*, Exhibit C, Definition 4 (emphasis added).

¹¹ *March Motion*, Exhibit F, Definition 4 (emphasis added).

¹² *March Motion*, Exhibit C.

on the Aliso Canyon incident in advance of the commencement of this formal OII, and if so, SoCalGas requests production of any such “findings.”¹³

In particular, Data Request 24 Questions 5 and 6 focus on whether at any point during the SED pre-formal investigation staff worked on a staff report related to the leak, leak response, and general maintenance and operation of Aliso Canyon. These questions are:

Question 5: Did SED commence preparation of a STAFF REPORT in connection with SED’s investigation of the INCIDENT?

Question 6: If YOUR response to Question 5 is anything other than an unqualified “no,” please produce any and all STAFF REPORTS related to SED’s investigation of the INCIDENT.

The following discussion focuses primarily on Data Request 24 Questions 5 and 6, and SED’s responses to those questions, in the context of the definitions provided by SoCalGas for the terms STAFF REPORT and FINDINGS.

4.2. SED Responses and Subsequent Motion to Compel

SED’s responses to Data Requests 24 and 25, along with its response to the *March Motion*, focus largely on the difficulty SED would expect to encounter if it attempted to identify and gather a comprehensive set of documents potentially consistent with the SoCalGas requests for “any and all” staff reports or findings.¹⁴ SED claims to have made good faith efforts to respond to all questions in these data requests, but alleges that the effort needed to compile all responsive documents would be onerous and burdensome. SED further states that “[i]t is fundamentally impossible for SED to respond to [some] questions... in Data Request 24 and 25 in a meaningful way,” due to the wide scope of the

¹³ *March Motion*, Exhibit F.

¹⁴ SED’s *Response to March Motion* at 3.

questions, and in particular due to the broad definitions provided in the data requests for “staff report” and “findings.”¹⁵ As a secondary objection, SED asserts that if any materials covered under these definitions did exist and could be identified, they might be protected by deliberative process or some other privilege, but that “SED cannot ascertain what documents and communications are encompassed by SoCalGas’ incredibly broad and oppressive requests, so whether deliberative process privilege (or any privilege) applies is not ripe for consideration.”¹⁶

As SED describes in its *Response to the March Motion*, despite these broad definitions, and “to facilitate a response and in a good faith attempt to resolve this discovery dispute without a motion to compel,” SED redefined the terms “findings” and “staff report” in a narrower way, and then answered questions in Data Responses 24 and 25 using its own, narrower definitions. SED redefined “findings” as “final conclusions and/or determinations that have been subject to review and approval by SED management.”¹⁷ Similarly, SED redefined “staff report” as “a report or memo prepared by SED personnel, and which has undergone SED management review and approval.”¹⁸ In both instances, SED defines the terms in a way that ensures that only a final product approved by SED management could possibly meet the definition, and leaves unclear what constitutes “approval” for the purposes of the answer. Whether or not this was the intended outcome, the approach virtually eliminates the need to search beyond the files of SED management personnel for possibly responsive

¹⁵ SED’s *Response to March Motion* at 3.

¹⁶ SED’s *Response to March Motion* at 3.

¹⁷ SED’s *Response to March Motion* at 3.

¹⁸ SED’s *Response to March Motion* at 5.

documents, while effectively obscuring the standards used to determine whether a particular document would be considered responsive.

4.3. Renewed Request for Ruling on the *March Motion*

In the *SoCalGas September Request*, filed on September 3, 2021, SoCalGas renewed its request that the Commission grant the *March Motion*, and provided what it argues is additional support for that motion. SoCalGas' additional arguments in support of the *March Motion* are drawn largely from the deposition of SED staff engineer Randy Holter. In renewing this request, the *SoCalGas September Request* notes three specific documents apparently referenced in the Holter Deposition that it contends are responsive to Data Requests 24 and 25 because they "include information relevant ... to the violations alleged against SoCalGas, and SoCalGas' associated defenses."¹⁹ SoCalGas specifically seeks, "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."²⁰

In recent filings, SED suggests that SoCalGas narrowed its document requests related to Data Requests 24 and 25 from the original, broad requests, to a request for three specific documents listed in the *SoCalGas September Request*: all versions of the engineer's status report, a gap analysis referenced by Mr. Holter, and another report and table prepared during the SED review of well files. SED then responds that the newer, narrower request has already been

¹⁹ *SoCalGas September Request* at 7.

²⁰ *SoCalGas September Request* at 7.

satisfied by information provided by SED.²¹ To the extent that other questions from these data requests seek answers beyond the information already provided, SED continues to claim that it is not obligated to provide some of the information because some requests remain overly broad,²² SoCalGas already has access to much of the information sought,²³ SED considers some of the requested information to be irrelevant,²⁴ and SED asserts that some of the material may be subject to attorney-client privilege.²⁵ Of the three documents specifically identified by the *SoCalGas September Request*, SED asserts that two, the gap analysis and spreadsheet table, are covered by attorney-client privilege, and that the privilege log has been updated accordingly.²⁶ SED concludes that this leaves only the request for the engineer's status report outstanding from the data requests encompassed in the *March Motion*. SED further argues that SoCalGas' request for the engineer's status report is satisfied by SED's production of a March 2020 version of the engineer's status report,²⁷ along with a Declaration by Randy Holter stating that he is not aware of any previous copies of the report

²¹ SED's *Response To Southern California Gas Company's September 3, 2021 Filing As Required By The Administrative Law Judges' August 10, 2021 E-Mail Ruling (Response to September Request)*, filed September 23, 2021 at 3 and 8.

²² SED's *Response to September Request* at 1.

²³ SED's *Response to September Request* at 7.

²⁴ SED's *Response to September Request* at 7.

²⁵ SED's *Response to September Request* at 7.

²⁶ SED's *Response to September Request* at 8 and Appendix B (updated privilege log).

²⁷ SED's *Motion to Find SoCalGas in Contempt of This Commission and in Violation of Rule 1.1 (Motion for Contempt)* filed September 8, 2021, see Exhibit C, *Engineer's Status Report*, marked as "March 17, 2020 addendum update."

that remain available.²⁸ SED states explicitly that its “responses to SoCalGas’ more narrowly tailored request render the issues in SoCalGas’ March 1, 2021 Motion to Compel moot.”²⁹ SoCalGas disagrees with this conclusion, noting that the engineer’s status report was provided as an attachment to a completely unrelated filing (SED’s *Motion for Contempt*)³⁰ and questioning whether there might be additional versions of the status report that could be found through a more thorough search.³¹

4.4. Analysis of *March Motion* in the context of subsequent filings

Based on its filings, it appears that SED considers release of the engineer’s status report dated March 2020 to be an adequate response to the *March Motion*’s document requests, as those have been narrowed through subsequent exchanges with SoCalGas.³² It is not clear to us, as SED implies, that SoCalGas narrowed its *March Motion* requests such that the only issues remaining to be resolved are access to the reports enumerated in the *SoCalGas September Request*. Still, based on a review of the March 2020 engineer’s status report, earlier versions of the report might possibly answer many of the questions contained in Data Requests 24 and 25, or make some of those questions moot, so it is reasonable to focus solely on the specific reports named by SoCalGas and SED.

²⁸ SED’s *Response to September Request*, see Exhibit A, Declaration of Randy Holter, executed September 23, 2021.

²⁹ SED’s *Response to September Request* at 8.

³⁰ SoCalGas’s *Reply To The Safety And Enforcement Division’s Response To Southern California Gas Company’s Filing In Compliance With The Administrative Law Judges’ August 10, 2021 E-Mail Ruling (Reply in Support of September Request)*, filed October 4, 2021 at 13-14.

³¹ SoCalGas’s *Reply in Support of September Request* at 14-15.

³² SED’s *Response to September Request* at 8.

A review of the March 2020 report version is informative.³³ The engineer's status report version from March 2020 appears to be the type of report (containing information about the incident and SED's follow-up activities related to the incident, including SED staff observations and sometimes conclusions) that is often prepared and released in support of new adjudicatory OIIs on enforcement actions stemming from informal or pre-formal incident investigations by SED staff. For example, the engineer's status report attached to the *Motion for Contempt* appears to include the same sections, and in fact appears to be in the same template format as found in comparable staff reports associated with other recent SED enforcement OIIs.³⁴ Further review of the Commission's website show SED reports using the same template format to summarize SED's work related to other incidents that could impact safety, including some that did not lead to formal proceedings.³⁵

While we know of no specific rule or procedure that requires SED to issue a staff report associated with each enforcement OII, the many similar reports made public in the past suggest that preparing incident reports may be a standard practice for SED in certain situations. As a result, it is not clear why SED had so much difficulty identifying that a report of this type existed and

³³ *Motion for Contempt*, Exhibit C.

³⁴ See, for example, the reports associated with I.19-06-015, accessible via: [FTP directory /I19-06-015/I.19-06-015%20October%202017%20NorCal%20Fires/](ftp://ftp.cpuc.ca.gov/directory/I19-06-015/I.19-06-015%20October%202017%20NorCal%20Fires/) at [ftp.cpuc.ca.gov](ftp://ftp.cpuc.ca.gov). Reports with substantially similar content and analysis (if different formats), have been released in multiple other OIIs based on other SED staff investigations; see, for example, I.14-08-022: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M106/K024/106024169.PDF>, and I.15-11-006: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M157/K541/157541534.PDF>.

³⁵ See, for instance: [april-11-2008-cpuc-incident-investigation-report.pdf \(ca.gov\)](#); [may-15-2014-cpuc-incident-investigation-report.pdf \(ca.gov\)](#); [august-25-2014-cpuc-incident-investigation-report.pdf \(ca.gov\)](#).

would fall within the Data Request definition given for a staff report.³⁶ SED has now included a version of the engineer's status report with a formal filing, and parties seem to agree that it is the type of staff report sought in Data Request 24.

Based on recent filings, we can conclude that SED currently acknowledges the existence of a report, referred to in the *SoCalGas September Request* and responsive filings, as the "engineer's status report," that it concedes is likely consistent with the definition for staff report contained in SoCalGas Data Requests 24 and 25. SED did not claim privilege with reference to the engineer's status report from March 2020. Indeed, SED submitted it voluntarily as an attachment to a separate filing, and at the same time claimed privilege for the other specific documents included in the *SoCalGas September Request*. As a result, it does not appear that SED is currently claiming the engineer's status report is by nature privileged. We may also conclude from SED's recent filings, including the Holter Declaration, that this report was updated, changed, and maintained over time, meaning that multiple versions of this report likely existed at different points in time, reflecting then-current content.³⁷

In its response to the *SoCalGas September Request*, SED characterizes the declaration from Mr. Holter as providing "that no additional drafts of the engineer's report exist,"³⁸ and declares that because the only known version of

³⁶ After the header identifying the Commission's Gas Safety Branch, the engineer's status report version filed with the *Motion for Contempt* is titled "***Incident Investigation Report***," a designation also used in other reports linked on the Commission's Aliso Canyon Web Page (See links at Footnote 34 and 35). This title is consistent with the definition provided in the relevant data requests, which define staff report as "any ***incident investigation report(s)*** or memo(s) prepared by SED personnel" (emphasis added).

³⁷ SED's *Response to September Request* Exhibit A (Holter Declaration), numbered statement 4 references to "prior Word document drafts" and "other document versions."

³⁸ SED's *Response to September Request* at 8, cited to Exhibit A (Holter Declaration).

the report has been released, “SoCalGas’ request for specific documents, which were encompassed in its March 1, 2021 Motion to Compel, is now moot as SED has already responded adequately.”³⁹ In support of this, SED cites the Holter Declaration stating that Mr. Holter “is not aware of any other document versions that are available.”⁴⁰

We do not agree that SED’s release of a copy of the engineer’s status report dated March 2020 adequately responds to Data Requests 24 and 25. Parties seem to agree that the engineer’s status report is a “staff report in connection with SED’s investigation of the incident” for the purposes of Question 6. It is not clear that the single copy provided, however, constitutes an adequate response to this question.⁴¹ Assuming that the SoCalGas request for staff reports has been narrowed to focus specifically on this engineer’s status report, the SED position that the request is satisfied by release of the March 2020 document is predicated on the claim that that version is indeed the only version that currently exists and/or can be accessed. The only evidence that SED provides in support of this claim is the Holter Declaration. That document, however, is the declaration of a single individual, and it does not support the general assertion that no other copies of the engineer’s status report exist; it states only that Mr. Holter individually is not aware of any previous versions still in existence.

As a result, at this point we do not know what research or due diligence SED has done to determine whether any other SED employees are aware of

³⁹ SED’s *Response to September Request* at 3.

⁴⁰ SED’s *Response to September Request*, Exhibit A, numbered statement 4.

⁴¹ Given the acknowledgement that this report exists, it is also not clear why SED failed to answer Question 5 of Data Request 24, which asked simply whether SED staff “commenced” work on a staff report.

earlier versions of this report that may still be stored in electronic or hard copy records, or whether earlier versions of the report may be recoverable in other ways, such as through email servers or archives.

Based on the many indications that the document was maintained over a significant period of time⁴² and that it is likely that multiple people had access to the database in which it was stored,⁴³ it seems quite possible that SED may still be able to find additional versions of this document. As a result, it is premature for us to conclude that no additional drafts of the engineer's status report exist. Because of this, we also cannot conclude that Data Request 24 Question 6 has now been fully answered or has become moot.

4.5. The *March Motion* is Granted in Part

Our standard for determining whether to compel discovery is whether the information sought is "reasonably calculated to lead to admissible evidence," with exceptions for material subject to privilege or if the burden of the request outweighs the likely value of any evidence found. Based on the content of the March 2020 report, which includes a summary of the incident written by SED staff, details about the time and location of the incident, the names of witnesses, a list of evidence, and extensive observations and findings,⁴⁴ it seems likely that a version of the report prepared earlier in the investigation would contain the same types of information, but from the perspective of staff at the time the reports were prepared and/or modified. This appears to be exactly the type of report that SoCalGas described in Data Requests 24 and 25, and exactly the type

⁴² SED's *Response to September Request*, Exhibit A, numbered statement 4.

⁴³ SED's *Response to September Request*, Exhibit A, numbered statements 3 and 4.

⁴⁴ *SED Motion for Contempt*, Exhibit C.

of information SoCalGas requested in those data requests. Based on the *Motions to Compel* and the *SoCalGas September Request*, it appears that very little information of this type from the pre-formal investigation period has been made available in response to discovery up to this point, increasing the likelihood that reports dating from the end of the pre-formal period may include new information that is not duplicative of previous discovery. There is also little doubt that this type of information can be considered “*relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence,*” the standard by which we judge motions to compel. SED has not claimed that the report is protected by privilege, and in fact SED produced a version of it voluntarily.

Given that versions of this report dating from the pre-formal period meet the requirements of Rule 10.1, the next question is whether “*the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.*” In this instance, we find that the burden, expense, and intrusiveness of conducting a good faith search for one or more earlier copies of this report from a narrowly defined time-period does not outweigh the likelihood that the search will uncover potentially admissible evidence. At this point, SED is searching for a narrow set of documents, specifically versions of a single report. SED has already identified the report and made a version of it available publicly, which should help them: 1) facilitate a search of division and individual employee records, and 2) provide a comparison to help them recognize versions of the document when they find it.

Further, it does not appear that this report is subject to any specific claim of privilege. In its *Response to the March Motion*, SED states that the document requests from SoCalGas are so broad that it is not possible to determine whether any or all of them are privileged. At this point, we have narrowed the request to a single specific report, of which a version has been made public. The fact that the report is substantially similar in format and content to reports that are commonly released publicly following SED incident investigations similarly suggests that reports of this type are not by nature privileged, and that the people preparing the report may have been aware of the possibility that the report would ultimately become public in some form, potentially at the time the Commission opened a formal proceeding. Whether or not this is the case, SED has not claimed that this particular report or versions of it are privileged.

As a result, we grant the *March Motion* to the extent that we require SED to search for, and if located, produce, copies of the engineer's status report that meet requirements established here. SED shall undertake a good faith search of division and individual employee records for prior drafts or versions (electronic or hard copy) of the engineer's status report (as provided in the *Motion for Contempt* and referenced extensively in the Holter Declaration), or substantially similar documents differing only in title or formatting, that were **created, prepared, updated, modified, saved, shared, or dated between May 1 and June 27, 2019**. SED shall search division and individual employee records and documents in locations that could reasonably contain a copy of this report, including but not necessarily limited to hard copy files, computer files (on the hard drives of individuals as well as drives shared by the division), and electronic mail. The search will not be limited to any specific document format, either paper or electronic, including in applications such as Word, Access, and

pdf. Copies of the report described in this ruling from the relevant time period should be provided to SoCalGas regardless of the format in which they are found.

In addition to conducting a thorough search of both individual employee records and any records kept by the division as a whole, SED shall work with the Commission's Information Technology staff to identify whether any drafts of this report that were sent via email between May 1 and June 27, 2019, including any that may have been discarded by SED staff, can be found through the Commission's e-mail server, and to determine whether the Word files described by Mr. Holter in his declaration, or earlier versions of the text of the report (even if superseded in the interim), can be recovered.

This search may be somewhat work-intensive, but given that the search is limited to: 1) versions of a single document of which SED has already identified and disclosed a version, and 2) the search covers only a narrow time-period (less than two months at the end of a multi-year investigation), we are confident that SED, with the assistance of the Commission's Information Technology staff if needed, can conduct the search expeditiously. SED need not provide duplicate copies of versions of the report found in different locations or formats that include identical content, but must provide a copy of every distinct version found that dates to this time period. SED is not required to produce any other documents, including any correspondence or other communications found or associated with copies of the report.

Any and all distinct copies of the engineer's status report found during this search that date to the period of May 1 through June 27, 2019, shall be produced to SoCalGas within 14 calendar days of this Ruling.

In the event that SED conducts a thorough, good faith search (one that includes but may not be limited to all the methods described in this Ruling) and fails to find a version or draft of the report from the time period of May 1 through June 27, 2019, SED shall provide the most recent version of the report it finds that was created, prepared, updated, modified, saved, shared, or dated before the initiation of this OII on June 27, 2019.

If no version of this report from the defined time period (May 1 through June 27, 2019) is found, SED shall file a sworn declaration in which a management-level or higher SED representative attests, based on his or her personal knowledge, that he or she oversaw the search, that the search was undertaken in good faith as required here, and that no copies of the report were found in any format dating from the period of May 1 through June 27, 2019. This sworn declaration shall include a detailed description of the specific actions (including but not limited to those listed above) undertaken during the course of the search. The person signing the declaration should be prepared to describe the search and answer questions about it before the ALJs, if directed. The sworn declaration is required if no copy from the defined time period is found.

5. Conclusion

The March 1, 2021 Motion to Compel filed by SoCalGas is granted to the extent that SED shall make a thorough, good faith search, as described in Section 4.5, above, for *any version, draft, or form of the engineer's status report* provided with the SED *Motion for Contempt* filed on September 8, 2021, *that dates from the period between May 1 and June 27, 2019*. All other requests in the *January* and *March Motions* to compel are denied.

IT IS RULED that:

1. The Motion to Compel Discovery filed on March 1, 2021, is granted in part, with respect to the production of the engineer's status report as described in this Ruling.

2. SED shall undertake in good faith a thorough search of SED division and individual employee records, including but not limited to the locations, storage platforms, and formats described in this ruling, for prior drafts or versions (electronic or hard copy) of the engineer's status report (as exemplified in the *Motion for Contempt* and referenced extensively in the Holter Declaration), or substantially similar documents differing only in title or formatting, that were created, prepared, updated, modified, saved, shared or dated between May 1 and June 27, 2019.

3. All distinct versions of the engineer's status report found during the search ordered in Ruling Paragraph 2 that date to the period of May 1 through June 27, 2019, shall be produced to SoCalGas within 14 calendar days of this Ruling.

4. In the event that SED conducts a thorough, good faith search, and fails to find a version or draft of the report from between May 1 and June 27, 2019, SED shall provide the most recent version of this report it finds that was created, prepared, updated, modified, saved, shared, or dated before the initiation of this OII on June 27, 2019.

5. If no version of this report from the specified May/June time-period is found, SED shall file a sworn declaration in which a management-level or higher SED representative attests, based on his or her personal knowledge, that he or she oversaw the search, that the search was undertaken in good faith as required here, and that no copies of the report were found in any format dating from the

period of May 1 through June 27, 2021. This sworn declaration shall include a detailed description of the specific actions (including at least those listed above) undertaken during the course of the search. The person signing the declaration shall be prepared to describe the search and answer questions about it before the ALJs, if directed.

6. All other requests contained in the Motions to Compel Discovery filed by SoCalGas on January 21, 2021, and March 1, 2021, are denied.

Dated November 29, 2021, at San Francisco, California.

 /s/ JESSICA T. HECHT
 Jessica T. Hecht
 Administrative Law Judge

 /s/ MARCELO L. POIRIER
 Marcelo L. Poirier
 Administrative Law Judge