

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)

Investigation 19-06-016

**RESPONSE OF THE SAFETY AND ENFORCEMENT DIVISION TO
SOUTHERN CALIFORNIA GAS COMPANY'S
MOTION FOR DISCOVERY SANCTIONS**

I. INTRODUCTION

The Commission's Safety and Enforcement Division (SED) opposes Southern California Gas Company's (SoCalGas) Motion for Discovery Sanctions (Motion). This response is filed pursuant to Rule 11.1(e) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules).

SoCalGas spends 24 pages arguing there must be a draft version of an SED "staff report," and that draft staff report would contain information exonerating SoCalGas from fault for the 111-day gas leak at its Aliso Canyon Natural Gas Storage Facility (Aliso Canyon). SoCalGas is under the mistaken impression that a draft staff report would prove SoCalGas complied with all applicable laws, regulations, and industry best practices in its operation of Aliso Canyon, despite all the evidence to the contrary. And SoCalGas believes that the only reason it has not obtained this draft staff report is because SED is intentionally and inappropriately hiding it or has destroyed it.

The reality is much more mundane. Unlike other investigations, the Commission did not rely on an SED pre-formal investigation report as the basis for the Order Instituting Investigation (OII). The Commission was clear: it opened this OII based upon Blade Energy Partners' Root Cause Analysis (Blade Report), not based upon SED's work product.¹ Moreover, SED management never approved an SED pre-formal investigation report related to the Aliso Canyon incident before the opening of the Commission's proceeding.

SED management did approve a report – an engineer's status report prepared for the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) — after the opening of the OII, which SoCalGas has seen. But that report — one reviewed and approved by SED management and provided to SoCalGas — did not say what SoCalGas wanted, so SoCalGas has continued its quest for other reports pre-dating the opening of this proceeding, which it believes would exonerate SoCalGas of responsibility for the gas leak at its Aliso Canyon facility.

SoCalGas' entire argument for sanctions rests upon a false premise, which is clear from their own language attempting to emphasize the importance of the draft staff report:

Staff reports routinely stand as the centerpiece of an SED prosecution, laying out SED's investigative findings and the basis for any allegations of potential wrongdoing. An SED staff report typically serves as the basis for the Commission's opening of an order instituting investigation. (Motion at 2, emphasis added.)

These generalities about how a staff report is “routinely” or “typically” used are inapplicable here. In this proceeding, the Commission expressly relied upon the Blade Report, not an SED staff report, as the basis for this OII. The OII was not even based on any staff report. Any draft staff report did not “stand as the centerpiece” of this prosecution, and did not serve “as the basis” for the Commission's opening of this OII.

In addition, the value that SoCalGas attributes to an unseen draft staff report is overblown. According to SoCalGas, “Those reports identify both the problems that

¹ *Order Instituting Investigation and Order to Show Cause* (June 27, 2019), p. 2.

investigators found—including violations of laws or regulations—and those they *did not* find.”² The implication that SoCalGas draws from this is that if the draft staff report identified problems that the investigators did not find, that would somehow be exculpatory evidence that would help SoCalGas’ defense. But there are problems with this argument.

First, it is relatively rare for investigation reports to specifically identify problems that were not found, and to the extent they do so, it is usually done in a very brief and summary manner. Investigators do not want to spend time documenting problems that they did not find.

Second, even if a problem, such as a violation of a law or regulation, is not identified in an SED approved report that pre-dates the opening of the OII, but is identified later, that does not mean that no such violations occurred.³ Accordingly, any sort of pre-formal OII report would not provide much benefit to SoCalGas’ defense and would certainly not “undermine” SED’s case.

At the same time, SoCalGas is asking for extreme sanctions, and its motion for “sanctions” is in fact a motion to dismiss.⁴ SoCalGas phrases its request in the alternative, identifying three different sanctions that could be imposed, but the substance of all three is the same—they win. First, SoCalGas asks that all Phase 1A violations be dismissed, which includes all “well control activities, operation and maintenance of the wells, and records management.”⁵ Second, SoCalGas asks that the entire proceeding be dismissed “without prejudice” and SED be disqualified, and that “no testimony submitted

² Motion, p. 2 [emphasis in original].

³ For example, a rookie police officer is dispatched to investigate a report of a possible shooting. They go to the reported address, look around and find nothing, and draft a report that says that there is no evidence of a shooting. The officer’s supervisor reviews the draft report and asks, “Did you look in the garage?” The rookie admits that no, they did not, and are sent back to look in the garage, where they find several dead bodies with gunshot wounds. They revise their report accordingly. Their draft report is not good evidence that no shooting occurred.

⁴ SoCalGas previously requested similar relief in a prior motion, which was denied. See *E-Mail Ruling Denying Without Prejudice The Motion to Dismiss Filed on February 4, 2021* (Feb 12, 2021), pp. 3-4.

⁵ Motion, pp. 21-22.

or discovery obtained by SED in this proceeding, could be used in the subsequent prosecution.”⁶ Or third, the Commission order as “issue sanctions” one of the following:

1. It is established as fact that SoCalGas complied with best practices pertaining to (A) operation and maintenance of gas storage wells; (B) well control activities; and (C) records management; or
2. It is established that all prior versions of the SED staff report related to the Aliso Canyon incident found that SoCalGas complied with all applicable laws, regulations, and industry best practices pertaining to (A) operation and maintenance of gas storage wells; (B) well control activities; and (C) records management.⁷

All three of these are essentially the same request — the case goes away. There is no good reason to make this case go away and let SoCalGas off scot-free from its responsibility to safely manage, operate, and maintain its Aliso Canyon facility and its failure to timely stop the leak at Well SS-25. SoCalGas’ Motion should be denied, not only for the reasons stated above, but also because 1) SoCalGas’ claim that SED destroyed evidence is false, 2) SoCalGas’ Motion attempts to re-litigate issues that the Administrative Law Judges (ALJs) previously resolved, and 3) SED has complied with, and continues to comply with, the ALJs’ rulings. For these reasons, SoCalGas’ Motion should be denied.

II. SOCALGAS’ CLAIM THAT SED DESTROYED EVIDENCE IS FALSE

SoCalGas’ Motion for Sanctions makes multiple repetitive and false representations that SED either admitted to or simply destroyed evidence in the form of an SED staff report.⁸ Both claims are loaded with legal and factual flaws, and also rest on the unsupported conclusion that the Commission cannot open an OII without an SED investigation report.

⁶ Motion, p. 22.

⁷ Motion, p. 22-23.

⁸ Motion, pp. 1-7, 12, 17, 23.

A. Contrary to SoCalGas’ False and Misleading Claim, SED Does Not Admit to Destroying, and Did Not Destroy, a Staff Report Detailing Its Investigation Into the Aliso Canyon Gas Leak

SoCalGas’ claims that SED admitted to destroying a staff report, or simply destroyed it, are untrue. First and foremost, SED made no admission of destroying evidence. SoCalGas’ repeated claim that SED admitted to destroying evidence⁹ is false.

Second, SoCalGas buries in a footnote a misleading use of the term “staff report” in the Motion to mean “...generally, any report prepared by SED in connection with an investigation, including Incident Investigation reports and Engineer Status Reports.”¹⁰ This is much broader than the ALJs’ requirement to focus only on a single engineer’s status report.¹¹ Indeed, if SoCalGas’ definition of “staff report” were used, the term could refer to any SED work product, even privileged documents that were never authorized by SED management.¹²

Third, SoCalGas has falsely alleged that SED “destroyed” the engineer’s status report.¹³ The record shows that SED created only one version of the engineer’s status report months after the Commission opened the OIL. When deposed, Mr. Holter only recalled one version of an engineer’s status report, submitted to management after June of 2019, after the Blade Report was issued.¹⁴ Mr. Holter even reiterated in response to

⁹ Motion, pp. 1-7, 12, 17, and 23.

¹⁰ See Motion, p. 2, fn. 2. As shown below, the ALJs have narrowed SoCalGas’ request to a single specific report, which has been identified as the “engineer’s status report.” See *Administrative Law Judges’ Ruling Addressing Two Motions to Compel* (Nov 29, 2021), pp. 13, 19.

¹¹ See *Administrative Law Judges’ Ruling Addressing Two Motions to Compel* (Nov. 29, 2021), p. 19. [“At this point, we have narrowed the request to a single specific report, of which a version has been made public. [. . .] 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.”]; see also, *Id.*, p. 22, Ruling Paragraph 2.

¹² Motion p. 2, fn 2.

¹³ See Motion, p. 4.

¹⁴ *Safety and Enforcement Division’s Motion to Find Southern California Gas Company in Contempt of This Commission and in Violation of Commission Rule 1.1* (Sept. 8, 2021) Exhibit A: Transcript of Randy Holter Deposition, pp. 139:16-140:8.

follow up questions that he only recalled one draft of this engineer's status report.¹⁵ Mr. Holter's deposition testimony is not an admission to destroying drafts, but rather an indication that Mr. Holter was not aware of prior drafts of the engineer's status report.¹⁶ SoCalGas is willfully imputing the worst possible interpretation of Mr. Holter's statements.

Mr. Holter's declaration did state: "anytime text is saved on the Access server, the previous text versions are overwritten and do not exist as accessible documents."¹⁷ But that would only matter if there were previous versions. As Mr. Steve Intably, the supervisor who asked Mr. Holter to draft the engineer's status report, clarified in his declaration, there were no prior versions of the Aliso engineer's status report.¹⁸ Mr. Intably also declared that he first made a request related to the engineer's status report of Mr. Holter in December 2019,¹⁹ and that no other staff produced versions of it.²⁰

¹⁵ *Safety and Enforcement Division's Motion to Find Southern California Gas Company in Contempt of This Commission and in Violation of Commission Rule 1.1* (Sept. 8, 2021) Exhibit A: Transcript of Randy Holter Deposition, pp. 144:23-24. [When asked how many drafts he recalled, Mr. Holter answered: "I only recall the last draft."]

¹⁶ *Safety and Enforcement Division's Motion to Find Southern California Gas Company in Contempt of This Commission and in Violation of Commission Rule 1.1* (Sept. 8, 2021) Exhibit A: Transcript of Randy Holter Deposition, pp. 144:23-24. When asked at his deposition about prior drafts of the engineer's status report, he responded, "I only recall the last draft."

¹⁷ *Safety and Enforcement Division'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* (Sept. 23, 2021) Exhibit A: Declaration of Randy Holter in Support of Safety and Enforcement Division's Reply to Southern California Gas Company's Compliance Filing, no. 4.

¹⁸ *Safety and Enforcement Division's Filing in Compliance With the Administrative Law Judges' Ruling Addressing Two Motions to Compel, Dated November 29, 2021* (Dec. 8, 2021), *Declaration of Mahmoud (Steve) Intably in Compliance With Administrative Law Judges' Ruling Addressing Two Motions to Compel, Dated November 29, 2021*, p. 2, no. 11. ["[t]he March 17, 2020 engineer's status report is SED's only version of an engineer's status report or any substantially similar documents related to the Aliso incident."]

¹⁹ *Safety and Enforcement Division's Filing in Compliance With the Administrative Law Judges' Ruling Addressing Two Motions to Compel, Dated November 29, 2021* (Dec. 8, 2021), *Declaration of Mahmoud (Steve) Intably in Compliance With Administrative Law Judges' Ruling Addressing Two Motions to Compel, Dated November 29, 2021*, p. 2, no. 6.

²⁰ *Safety and Enforcement Division's Filing in Compliance With the Administrative Law Judges' Ruling Addressing Two Motions to Compel, Dated November 29, 2021* (Dec. 8, 2021), *Declaration of Mahmoud (Steve) Intably in Compliance With Administrative Law Judges' Ruling Addressing Two Motions to Compel, Dated November 29, 2021*, p. 2, no. 8.

SoCalGas requested the engineer's status report after the deposition,²¹ and SED provided it to SoCalGas, as well as the entire service list, on September 8, 2021.²²

B. The Commission Properly Opened this Proceeding Based on the Blade Report

SoCalGas' allegations that there is missing evidence is based on its incorrect and unsupported suggestion that the Commission cannot open an OII without an SED investigation report. SoCalGas' implication that SED must have a staff report here because it "typically" uses one is countered by multiple points of authority that show that the Commission relied upon the Blade Report as its basis for opening and scoping this proceeding.

Contrary to SoCalGas' implication of the centrality of a staff report, SED worked with the Department of Gas and Geothermal Resources (DOGGR) on the investigation that resulted in the Blade Report. The OII was based upon the Blade Report, not SED's work product, as the OII clearly states:

Based on the Blade Report, the Commission finds it has sufficient evidence and good cause to commence a formal investigation to determine whether SoCalGas violated the Commission's decisions and General Orders, applicable rules and requirements, the Public Utilities Code or other provisions of law.²³

Similarly, the Assigned Commissioner's Scoping Memo and Ruling of this proceeding showed that the bases for violations would also be based on concerns raised in the Blade Report:

In response to the Blade Report, the Commission issued the combined Order Instituting Investigation 19-06-016 and Order to Show Cause (together, OII/OSC) on June 27, 2019. The main Blade Report is appended to the OII/OSC.

²¹ *Safety and Enforcement Division's Motion to Find Southern California Gas Company in Contempt of This Commission and in Violation of Commission Rule 1.1* (Sept. 8, 2021) Exhibit A: Transcript of Randy Holter Deposition, pp. 145:24-146:2.

²² See generally *Safety and Enforcement Division's Motion to Find Southern California Gas Company in Contempt of This Commission and in Violation of Commission Rule 1.1* (Sept. 8, 2021), Exhibit C: Engineer's Status Report.

²³ *Order Instituting Investigation and Order to Show Cause* (June 27, 2019), p. 2.

The OII/OSC put SoCalGas on notice that the Commission intends to consider whether the concerns raised in the Blade Report represent violations of the Pub. Util. Code, Commission General Orders or decisions, or other applicable laws, rules, or requirements.

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The scope of this proceeding is limited to the SS-25 incident and the Blade Report.²⁵

While it may be a standard practice in certain situations for SED to issue a staff report that becomes the basis for a Commission OII, that is not the case here.

III. SOCALGAS' MOTION ARGUES ISSUES THAT HAVE ALREADY BEEN RULED UPON AND RESOLVED

SoCalGas' Motion should also be denied because it relitigates issues that have already been resolved.

For example, SoCalGas' Motion requests similar relief to its prior motion to dismiss the operations and maintenance, leak response, and record keeping violations (Violations 1-79, 83-87, 327-330.)²⁶ These violations form the basis of Phase 1A of the proceeding, and are, therefore the same ones SoCalGas again seeks to dismiss with prejudice through its current Motion.²⁷

The ALJs denied SoCalGas' prior motion to dismiss, specifically stating "Parties may raise any legal arguments related to these alleged violations in the post-hearing briefs..."²⁸ Nevertheless, SoCalGas' Motion once again requests dismissal of these violations.²⁹ Relabeling its motion to dismiss as a motion for sanctions does not change

²⁴ *Assigned Commissioner's Scoping Memo and Ruling* (Sept. 26, 2019), p. 3.

²⁵ *Assigned Commissioner's Scoping Memo and Ruling* (Sept. 26, 2019), p. 5.

²⁶ See generally *Southern California Gas Company's (U904G) Motion to Dismiss Alleged Violations Related to Operations and Maintenance, Leak Response, and Recordkeeping* (Feb. 4, 2021) [requesting dismissal of operations and maintenance, leak response, and recordkeeping violations (Violations 1-79; 83-87; 327-330) alleged in SED's Opening Testimony]. SoCalGas' current motion also seeks to dismiss violation 331, which has been added more recently.

²⁷ Motion, p. 1.

²⁸ *E-Mail Ruling Denying Without Prejudice The Motion to Dismiss Filed on February 4, 2021* (Feb 12, 2021), pp. 3-4.

²⁹ Motion, p. 23 [requesting that the Commission make the following findings:

the substance, and is misleading.³⁰ Not only is SoCalGas attempting to relitigate the same issue under a new guise, but SoCalGas’ Motion fails to follow the ALJs’ instructions to raise legal arguments related to these alleged violations in post-hearing briefs.

IV. SED HAS COMPLIED WITH THE ALJS’ RULINGS AND CONTINUES TO DO SO TO THE EXTENT PERMITTED BY THE COMMISSION

SoCalGas claims that SED has not followed the ALJs’ rulings, and falsely represents that SED is doing it intentionally.³¹ SoCalGas’ claims are grossly exaggerated and misleading, and ignore the unusual situation presented here, where the Commission has intervened to prevent SED from full compliance with the ALJs’ rulings.

In a March 15, 2022 ruling, the ALJs held that SED had failed to comply with rulings ordering it to search for and produce a single document, referred to as an “Engineer’s Status Report.”³² That ruling did not identify any other non-compliance by SED. SED in good faith attempted to comply with rulings ordering it to search for the Engineer’s Status Report, but the results of that search were recalled by the Commission’s Executive Director, who stated that she had done so: “To protect the integrity of the Commission and in consultation with the [Commission’s] General

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1. It is established as fact that SoCalGas complied with best practices pertaining to (A) operation and maintenance of gas storage wells; (B) well control activities; and (C) records management; or
 2. It is established that all prior versions of the SED staff report related to the Aliso Canyon incident found that SoCalGas complied with all applicable laws, regulations, and industry best practices pertaining to (A) operation and maintenance of gas storage wells; (B) well control activities; and (C) records management.]

³⁰ SoCalGas’s Motion also contains a bevy of false accusations about SED committing discovery violations as justification for their requested relief. (Motion, p. 14.) However, the ALJs have already denied all discovery disputes in their February 2, 2022 Ruling (See *Administrative Law Judges’ Ruling Addressing Various Discovery Motions*, p. 6) and SoCalGas’s improper attempt to raise these issues again is not a basis for granting this Motion.

³¹ See, e.g., Motion, p. 13; see also Motion, p. 13, heading 1. [“SED Has Willfully Violated ALJ Rulings and Continues to Do So”].

³² *Administrative Law Judges’ Ruling Requiring Weekly Progress Reports* (March 15, 2022), pp. 1 and 4.

Counsel...”³³ The Executive Director stated that this recall, which prevented SED from producing the results of the search, would continue “until a set of conventions can be put in place” that would guide how the results of such searches would be delivered to advocacy staff.³⁴ As described by the Commission’s General Counsel, “[T]he Commission’s Executive Director, in consultation with myself, on February 11, 2022, terminated SED’s access to these emails and documents...”³⁵

The March 15, 2022 Ruling also requires SED to file weekly status updates on both the “development and implementation of an alternative search methodology and the creation of adequate ‘internal conventions’ to guide how the results of IT searches may be shared with advocacy staff going forward.”³⁶ SED has filed the required status updates, but SED has no authority or control over the Commission’s development or implementation of such internal Commission “conventions.” Those would be under the purview of the Commission’s Executive Director and/or General Counsel, not SED.

To address the quandary that SED found itself in, SED appropriately filed a Motion for Guidance, seeking further direction from the ALJs on how best to proceed in light of the limitations imposed by the Commission’s Executive Director and General Counsel.³⁷ SoCalGas’ claim that SED’s Motion for Guidance was an attempt to be relieved of its duty to comply with the ALJs’ ruling is misleading.³⁸ SED stands ready to comply with future guidance from the ALJs, to the extent SED is permitted by the Commission.

³³ *Administrative Law Judges’ Ruling Requiring Weekly Progress Reports* (March 15, 2022), Attachment 2.

³⁴ *Administrative Law Judges’ Ruling Requiring Weekly Progress Reports* (March 15, 2022), Attachment 2.

³⁵ *Weekly Progress Report of the Safety and Enforcement Division* (March 25, 2022), Exhibit A, Christine Hammond’s email to Amy Yip-Kikugawa, Dated March 23, 2022.

³⁶ *Administrative Law Judges’ Ruling Requiring Weekly Progress Reports* (March 15, 2022), p. 13, Ruling Paragraph 1.

³⁷ *Safety and Enforcement Division’s Motion for Guidance* (March 25, 2022), pp. 4-5.

³⁸ Motion, p. 10.

Except for this one narrow exception, where SED has been prevented from complying with the ALJs' Rulings by the Commission, SED has complied with all ALJ rulings. SoCalGas' claims to the contrary are groundless, and its argument that SED has "willfully violated" such rulings is false and misleading. If anyone deserves sanctions in this proceeding, it is SoCalGas, not SED.

V. CONCLUSION

SoCalGas provides many words but no good reasons in support of its Motion for Sanctions. The Motion is based entirely on a false premise, contains multiple untrue and misleading statements and arguments, attempts to relitigate previously resolved issues, and casts unfounded aspersions on SED. SoCalGas' Motion is just another motion to dismiss dressed up in new clothes, but they fail to disguise that what SoCalGas really wants is to avoid taking any responsibility for its unsafe management of its Aliso Canyon Natural Gas Storage Facility, and the resulting incident at Aliso Canyon.

SoCalGas' Motion for Sanctions should be denied.

Respectfully submitted,

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