PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 12, 2023

TO PARTIES OF RECORD IN INVESTIGATION 19-06-016;
DECISION 23-09-002

On August 10, 2023, a Presiding Officers' Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedure provide that the Presiding Officers' Decision becomes the decision of the Commission if no appeal or request for review has been filed within 30 days of the mailing of the Presiding Officers' Decision.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officers' Decision is now the decision of the Commission.

The decision number is shown above.

/s/ MICHELLE COOKE
Michelle Cooke
Acting Chief Administrative Law Judge

MLC:jnf

Attachment

Decision 23-09-002 September 12, 2023

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

PRESIDING OFFICERS' DECISION APPROVING SETTLEMENT OF THE SAFETY AND ENFORCEMENT DIVISION, SOUTHERN CALIFORNIA GAS COMPANY, AND THE PUBLIC ADVOCATES OFFICE RESOLVING SUBSTANTIVE ISSUES RELATED TO THE ADJUDICATORY INVESTIGATION OF THE ALISO CANYON GAS LEAK OF 2015

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Appendix A – Settlement Agreement

PRESIDING OFFICERS' DECISION APPROVING SETTLEMENT OF THE SAFETY AND ENFORCEMENT DIVISION, SOUTHERN CALIFORNIA GAS COMPANY, AND THE PUBLIC ADVOCATES OFFICE RESOLVING SUBSTANTIVE ISSUES RELATED TO THE ADJUDICATORY INVESTIGATION OF THE ALISO CANYON GAS LEAK OF 2015

Summary

This Decision approves the Settlement Agreement between the Southern California Gas Company, the Safety and Enforcement Division of the California Public Utilities Commission, and the Public Advocates Office of the California Public Utilities Commission resolving Investigation 19-06-016 (Settlement Agreement). This Decision finds that, considered as a whole, the settlement meets the California Public Utilities Commission's standards for adoption. The Settlement Agreement, in which Southern California Gas Company acknowledges a safety violation of Section 451 of the Public Utilities Code and agrees to penalties and other financial remedies, is consistent with the proceeding record, consistent with the law, and in the public interest. In addition, the penalty amount contained in the Settlement Agreement meets the Commission's standards under Decision 98-12-075, which sets forth five factors to be examined in determining whether the proposed fine or penalty is reasonable. As the Settlement Agreement meets these standards, we find that it is reasonable and should be approved.

To ensure the Settlement Agreement is implemented as intended, we require that for the next five years, Southern California Gas Company shall submit an attestation by a Vice President or higher company executive with every application requesting rate recovery, attesting that the application does not include any expenses or costs identified in the Settlement Agreement, or other costs directly attributable to the Aliso Canyon gas leak.

Though the Settlement Agreement purports to resolve all issues in the proceeding, including a variety of motions for sanctions filed by multiple parties, we note that parties do not have the ability to settle away offences against the Commission itself. Specifically, only the Commission can resolve potential violations of Rule 1.1, including actions taken by a party or parties meant to mislead the Commission or that harm the regulatory process.[1] We remind parties that behavior that undermines the integrity of the Commission or harms the regulatory process is not acceptable in any Commission proceeding and is subject to sanction(s) and/or fine(s).

With the adoption of the Settlement Agreement, this proceeding is closed.

1. Background

1.1. Factual Background

1.1.1. History of the Aliso Canyon Storage Facility

The Aliso Canyon storage facility (Aliso Canyon) is located approximately 30 miles northwest of downtown Los Angeles in the northern end of the San Fernando Valley. At the time of the incident, Aliso Canyon consisted of approximately 114 storage injection and withdrawal wells that were drilled from 1939 to 2014.[2,3] Aliso Canyon was originally used to produce oil.[4] Southern California Gas Company (SoCalGas) purchased the facility in 1971 and converted

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[1] Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing…agrees to comply with the laws of this State; to maintain the respect due to the Commission…and its Administrative Law Judges and never to mislead the Commission or its staff by artifice or false statement of fact or law.

[2] Exhibit CPUC-1000 (Blade Report) at 15-16.

[3] Subsequent to the incident, the number of active wells and the allowable volume of gas stored in Aliso Canyon have been significantly reduced, and more stringent regulatory requirements have been put in place for this and other natural gas storage facilities.

[4] *Id.* at 25.

it to a natural gas storage facility.[5] SoCalGas serves approximately 21.8 million consumers in Southern California, and in 2021 the utility recorded $5.5 billion in operating revenue.

The total storage capacity of Aliso Canyon is 86 billion cubic feet (Bcf) of natural gas, making it one of the largest natural gas storage facilities in the United States. Natural gas is injected into the old sandstone reservoir formation at approximately 8,500 feet below ground for storage and later withdrawn for transmission and sale in response to market conditions. Stored gas is withdrawn during times of high demand and transported through transmission pipelines to help ensure reliability.[6]

On October 23, 2015, a leak of natural gas was detected in Well Standard Sesnon 25 (SS-25), one of the wells at Aliso Canyon. Despite multiple attempts to stop the leak and plug the well, the leak continued until February 11, 2016. The release of natural gas from Well SS-25 occurred when the well's metal casings failed due to corrosion, allowing natural gas to escape and come up through nearby fissures in the ground.[7]

1.1.2. Blade Investigation Report

On January 22, 2016, the California Public Utilities Commission (Commission) and California Department of Conservation Division of Oil, Gas, and Geothermal Resources (DOGGR) (now known as CalGEM) initiated a technical root cause analysis (RCA) of the leak at Well SS-25 by selecting Blade Energy Partners (Blade) to conduct an independent RCA of the Well SS-25 blow out. SoCalGas retained Blade on January 26, 2016 at the direction of the

[5] *Id.* at 160.

[6] Exhibit CPUC-1000 (Blade Report) at 21.

[7] *Id.* at 3.

Commission, but Blade performed its RCA without supervision or interference from any entity including the Commission, DOGGR and SoCalGas.

Blade performed an extensive and detailed investigation that leveraged modern material science technology and tools to evaluate the metallurgy, mechanics, chemistry and microstructure of the tubing and casing. Blade also employed the latest state-of-the art diagnostic technologies. On May 16, 2019, Blade publicly released its main report and four supplementary reports (together, the "Blade Report").

Blade found the direct cause of the leak was a rupture of the seven-inch intermediate casing due to microbial corrosion. The corrosion, in turn, was caused by the presence of: (1) groundwater accessing the surface casing from outside the well bore and (2) carbon dioxide (a component of natural gas) seeping through the seven-inch intermediate casing which nourished the formation of the microbes, adding to the corrosion.

The Blade Report identified the root cause of the Well SS-25 leak as:[8]

- The lack of detailed follow-up investigation, failure analyses, or RCA of casing leaks, parted casings, or other failure events in the field in the past.
- The lack of a dual mechanical barrier system in the wellbore. The 7 inch Outside Diameter (OD) production casing was the primary barrier to the gas.
- The lack of internal policy or any other regulations that required production casing wall thickness inspections.
- The lack of a well-specific well-control plan that considered transient kill modeling or well deliverability.

[8] Exhibit CPUC-1000 (Blade Report) at 237-238.

- The lack of understanding of groundwater depths relative to the surface casing shoe and production casing, until the two groundwater wells were drilled at Well SS-9 in 2018.
- The lack of systematic practices of external corrosion protection for surface casing strings.

1.2. Procedural Background

In response to the Blade Report, the Commission issued the combined Order Instituting Investigation (OII) 19-06-016 and Order to Show Cause (OSC) (together, OII/OSC) on June 27, 2019. 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 Public Utilities Code, Commission General Orders or decisions, or other applicable laws, rules, or requirements. The OII/OSC ordered SoCalGas to show cause as to why it should not be sanctioned for the uncontrolled release of gas from Aliso Canyon. In addition, the OII/OSC directed SoCalGas to show at hearings why the Commission should not find SoCalGas in violation of the provisions of the Public Utilities Code, Commission General Orders or decisions, other rules or requirements identified in the OII/OSC, and/or engaging in unreasonable and/or imprudent practices related to these matters.

The OII alleges that SoCalGas knew about the well integrity problems, specifically the presence of corrosion and the lack of a dual mechanical barrier system in the wellbore, which put SoCalGas on notice of the potential for a leak due to exactly what caused the leak at Aliso Canyon. Blade opines that these and other events "should have resulted in the development of a formal plan for events with more severe consequences."[9]

[9] Investigation (I.) 19-06-016 OII at 8.

If a violation was found, the OII/OSC directed SoCalGas to show why penalties in the form of fines and/or any other form of relief should not be applied. Responses to the OII/OSC were filed on July 29, 2019, by SoCalGas and the Public Advocates Office of the California Public Utilities Commission (Cal Advocates). A reply was filed on August 8, 2019, by Cal Advocates. A prehearing conference (PHC) was held on August 30, 2019. A Scoping Memo setting the category, issues to be addressed, and schedule for the proceeding pursuant was issued on September 26, 2019. The proceeding schedule was extended multiple times at parties' request. Twenty days of remote evidentiary hearings took place in spring of 2021. Parties filed post-hearing briefs in May 2022, and the record for Phase 1 was submitted on May 31, 2022. The ALJs began preparing the presiding officers' decision (POD) for Phase 1 in early June.

1.3. Settlement Efforts

The scoping ruling for Phase 1 of this proceeding required the Commission's Safety and Enforcement Division (SED) and SoCalGas to meet on at least a monthly basis "to discuss the potential for a settlement agreement and/or the possible stipulation of discrete issues."[10] Parties complied with this requirement during the remainder of 2019 and all of 2020. On January 6, 2021, SED filed a Motion to Amend the Scoping Memo and Ruling, requesting the suspension of the monthly meeting requirement in order to focus efforts on preparation for the evidentiary hearings scheduled to begin in March of that year.[11] SoCalGas filed a response opposing SED's motion on January 12, 2021.

[10] Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo), September 26, 2019 at 14.

[11] Motion of the Safety and Enforcement Division to Amend the Scoping Memo and Ruling, January 6, 2022, at 2-3.

On January 22, 2021, the assigned ALJs granted the motion to suspend the monthly meeting requirement "until after the conclusion of the initial set of evidentiary hearings."[12] The assigned ALJs did not require, and the parties did not resume, regular settlement meetings in 2021 or 2022.

On August 4, 2022, a representative of SoCalGas sent a Notice of Mediation (Notice)[13] to the proceeding service list. The Notice stated that SoCalGas, SED, and Cal Advocates (the Settling Parties) had agreed to attempt to reach a settlement of all issues in all phases of this proceeding using an outside (non-Commission) mediator. The assigned ALJs held a mandatory status conference for all active parties in the proceeding to learn more about the potential scope and schedule for mediation. Representatives of the Settling Parties, The Utility Reform Network (TURN), Indicated Shippers, and the Southern California Generation Coalition participated in that status conference, at which the Settling Parties described the scope and schedule for their proposed mediation process.

An email ruling issued on August 24, 2022 (August 24 Email Ruling), required the Settling Parties to file two interim status updates on their mediation, and required the settling parties to file either a comprehensive settlement agreement or "a status update providing information on the likelihood and potential timing of a motion for a comprehensive settlement."[14]

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[12] Administrative Law Judges' Email Ruling Suspending Monthly Meeting Requirement

[13] This Notice is attached to the Email Ruling Setting Mandatory Status Conference for August 10, 2022, August 5, 2022.

[14] Email Ruling Requiring Status Updates (August 2022 Email Ruling), August 24, 2022 at Ruling Paragraph 2.

The Settling Parties filed brief interim updates as required in the August 24 Email Ruling. These updates merely confirmed that Settling Parties remained committed to mediation and were taking steps to prepare for mediation sessions in late September. The Setting Parties filed a similarly vague status update on October 7, 2022. This update stated only that Settling Parties were "continuing to actively negotiate," and noted that "[i]f parties reach a comprehensive agreement, Joint [Settling] Parties will immediately provide an update to the ALJs."[15] The update did not contain any information on the likelihood or potential timing for such a settlement, as required in the August 24 Email Ruling.[16]

On October 11, 2022, the Settling Parties filed a supplemental Joint Update on Settlement Status, along with a motion requesting a waiver of the Rule 12.1 deadline for filing settlements 30 days after the close of hearings. Settling Parties stated in these documents that they had "reached a comprehensive settlement of this proceeding."[17] The assigned ALJs granted the waiver of Rule 12.1 on October 13, 2022, in an email ruling that recognized that a global settlement that resolves all issues in this proceeding, including issues not yet litigated, could significantly reduce the amount of work for the Commission and the parties.

On October 28, 2022, the Settling Parties filed the "Joint Motion for Adoption of Settlement Agreement" addressed in this decision.

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[15] Joint Update of the Safety and Enforcement Division, Southern California Gas Company and the Public Advocates Office on Settlement Status (October 7 update), October 7, 2022 at 1.

[16] August 24 Email Ruling at Ruling Paragraph 2.

[17] Joint Update of the Safety and Enforcement Division, Southern California Gas Company and the Public Advocates Office on Settlement Status (October 11 Update), October 11, 2022 at 1.

2. Jurisdiction

The Commission has jurisdiction over safety at all facilities operated by investor-owned utilities (IOUs).

All of SED's alleged violations in this proceeding cite a single legal authority, Public Utilities Code Section 451, which provides:[18]

> Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

It is well established that Section 451 requires utilities to operate safely, and that Section 451 can be used as the sole basis for a safety violation. This is discussed in detail in, among other places, the San Bruno Violations Decision (D.) 15-04-023.

3. Issues Before the Commission

The task in this adjudicatory proceeding is specifically to determine if SoCalGas's conduct associated with the Aliso Canyon Incident or the company's overall operation and maintenance of the storage field violated any applicable safety laws, orders, rules, policies, or standards, and if so, what remedies are appropriate. The Scoping Memo limited Phase 1 activities to the determination of whether SoCalGas had committed any violations of law, regulation, or policy at Aliso Canyon related to the Aliso Canyon Incident, and deferred issues of cost recovery, as well as appropriate remedies, including penalties, in the event any violations were found in Phase 1, to a later phase of the proceeding. The assigned ALJs further limited the scope of initial evidentiary hearings and briefing to the core issues related to safety at Aliso Canyon, including general

[18] All subsequent section references are to the Public Utilities Code unless otherwise noted.

operations and maintenance before the Aliso Canyon Incident and response to the incident itself, along with proposed record-keeping violations. The assigned ALJs also deferred to a future phase the consideration of potential violations related to alleged non-cooperation of SoCalGas with the SED's investigation of the facility and its operation in the period after the start of the leak and before the issuance of this OII/OSC.

Phase 1 issues in this proceeding have been fully litigated through evidentiary hearings and briefs, with the record for Phase 1 deemed submitted on May 31, 2022. Further phases of this proceeding to address various proposed violations alleging a lack of cooperation by SoCalGas with SED, along with the level of appropriate penalties for any violations, and some cost recovery issues, were scheduled to begin after the resolution of Phase 1 issues through a POD and (if needed) a Commission vote. Instead, SED, SoCalGas, and Cal Advocates filed a motion for adoption of a settlement that would address all issues, including the Phase 1 issues as well as the issues deferred to a future phase.

4. Summary of the Settlement

On October 28, 2022, the Settling Parties submitted a proposed settlement developed with the help of a private mediator. Settling Parties assert that, consistent with Rule 12.1, they "noticed a settlement to all parties on October 14, 2022," and "convened a settlement conference on October 21, 2022." Settling Parties report that representatives of all settling parties, as well as representatives of TURN, Indicated Shippers, SCGC, and the City of Long Beach attended a brief settlement conference at which the Settling Parties "answered questions regarding the proposed settlement." The Settlement Motion does not provide any details of party responses or reactions at the settlement conference, however, they note that (with the waiver of the requirement that settlements be submitted

within 30 days of after the last day of hearings), this process and the submission of the settlement meet the requirements of Rule 12.1

The Settling Parties indicate the Settlement Agreement is a comprehensive and global settlement of this proceeding. The main provisions of the Settlement Agreement include: (1) SoCalGas's admission to a violation of Section 451 for the Aliso Canyon Incident, (2) a monetary fine and (3) other monetary remedies, including fines, disallowances, and refunds.[19] The main provisions:

- Admission of one violation of the safety requirements of Section 451 based on the totality of the circumstances of the incident, for the purposes of the settlement only;
- A monetary fine of $105.1 million, offset by $34.1 million of costs incurred by SoCalGas in mitigating the greenhouse gases emitted by the leak. Remaining $71 million goes into Aliso Canyon Recovery Account pursuant to Section 2104.7;[20]
- SoCalGas will not seek rate recovery of the following incident-related expenses tracked by SoCalGas and reported pursuant to direction of the CPUC:
    - $108.8 million in costs related to the Blade Report (closing the Aliso Canyon Memorandum Account (ACIMA));
    - $362,051,835 in outside counsel, litigation costs, and regulatory costs (this provision appears to refer to legal expenses for Aliso Canyon-related court and regulatory cases);

[19] The Settlement Agreement is Appendix A to this Decision.

[20] Note that under Section 2104.7, the penalty DOES NOT go to the state's general fund, as is usually the case with fines under Sections 2107 and 2108. This special provision directs penalties related to the Aliso Canyon Incident to a special "Aliso Canyon Recovery Account" within the State Treasury. The legislature may allocate funds in this account to mitigate impacts of the Aliso Canyon Incident, particularly environmental, public health, and ratepayer impacts. This money must be allocated to projects or actions by the legislature through the appropriations process before they can be spent.

  - $14,448,165 million in public affairs, community relations, and other support (this provision appears to refer to expenses for media and public relations related the leak);
- SoCalGas will reimburse SED $1.5 million in investigation and litigation costs related to Investigation (I.) 19-06-016 (also tracked in ACIMA and allowing that to be closed); and
- SoCalGas will refund the certain ratepayers the following amounts, apparently to settle with parties seeking refunds through this proceeding:
  - $13.2 million for Operational Flow Order (OFO) noncompliance charges; and
  - $5 million for a balancing function rebate.

The Settling Parties estimate the total value of the Settlement Agreement to be approximately $600 million in penalties, rebates, and amounts that SoCalGas agrees it will not try to recover in this or future proceedings. The Settling Parties maintain that SoCalGas's agreement to the settlement terms is sufficient to address all issues in this proceeding, including Phase 1 issues already litigated and awaiting a Presiding Officer's Decision, as well as all issues deferred to future proceeding phases, all outstanding motions, and all claims related to misconduct or sanctions of any party. The Settlement Agreement also resolves existing claims by parties of inappropriate behavior by other parties in the course of discovery and similar interactions. We note that parties do not have the authority to settle away possible violations of Commission rules or actions that undermine the Commission's regulatory and enforcement processes.

Though all parties active in Phase 1 of this proceeding have joined in the Settlement Agreement, it is not an all-party settlement and it cannot be considered uncontested. Parties that monitored Phase 1 expecting to participate

in future phases of the proceeding, especially parties focused on penalties, cost recovery, and customer reimbursements, have not joined the Settlement Agreement, and as discussed below, several have expressed opposition to the Settlement Agreement through comments filed under the Rule 12 settlement process.

5. Review of the Settlement Agreement

In order to approve a settlement under Rule 12.1, the Commission must find that the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The Commission has found that a proposed settlement is reasonable if it "adopts a result in the range of reasonableness in the context of the allegations and the strength of evidence, and as weighed against the significant risk, expense, complexity, and length of further proceedings."[21]

In addition, for settlements that include a fine or penalty, D.98-12-075 sets forth five factors to be examined in determining whether the proposed fine or penalty is reasonable:

(1) The severity of the offense, including consideration of economic harm, physical harm, harm to the regulatory process, and number and scope of violations, with violations that cause physical harm to people or property being considered the most severe and violations that threatened such harm closely following;

(2) The conduct of the utility in preventing, detecting, disclosing and rectifying the violation;

(3) The financial resources of the utility (to ensure that the degree of wrongdoing comports with the amount of fine and is relative to the utility's financial resources such that the amount will be an effective deterrence for that utility

[21] D.19-10-033 at 19.

while not exceeding the constitutional limits on excessive fines);

(4) The amount of fine in the context of prior Commission decisions; and

(5) The totality of the circumstances in furtherance of the public interest.[22]

Additionally, in Resolution M-4846, the Commission adopted criteria for consideration when determining the reasonableness of the remedies in a proposed settlement in an enforcement proceeding. These criteria include equitable factors, mitigating circumstances, evidentiary issues, and other factors that may adversely affect acquisition of the calculated penalty.

As discussed below, we find that the instant Settlement Agreement addresses all issues in the scope of this proceeding, meets Rule 12.1(d) requirements, is reasonable under the five-factor analysis set forth in D.98-12-075 and consistent with the Resolution M-4846 criteria.

5.1. Rule 12.1 Discussion

Rule 12.1 requires that for the Commission to adopt any settlement, we must be able to find that "the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." The Commission has also stated that, "Beyond this basic [Rule 12.1(d)] standard, we have incorporated other standards into its analysis, which have largely depended on situational factors, such as the type of proceeding at issue, the interests of the settling parties and whether the settlement is contested."[23] We have said, "[A] contested settlement is not entitled to any greater weight or deference merely by virtue of its label as a settlement; it is merely the joint position of the sponsoring parties,

[22] D.98-12-075, 84 CPUC2d 155 at 182-84.

[23] D.20-12-015 at 9.

and its reasonableness must be thoroughly demonstrated by the record."[24] However, contested or not, the Commission has long favored the settlement of disputes.[25]

Commission policy in favor of settlements supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. While our policy is to favor settlement of disputed issues, our standard of review for settlements is designed to ensure that settlements meet a minimum standard of reasonableness in light of the law and the record of the proceeding. A settlement can be unreasonable, and we will not be persuaded to approve unreasonable settlements simply because of a general policy favoring the approval of settlements.

There are several characteristics that can render a settlement unreasonable. One such attribute is the presence of significant deviations from Commission findings, policies, and practices if those deviations are not adequately explained and justified in the motion for the settlement's adoption. Another such attribute is the lack of demonstration that the settlement fully and fairly considered the interests of all affected entities – both parties and non-party entities such as affected customers.

The Settlement Agreement offered by SED, SoCalGas, and Cal Advocates is a contested settlement. In this instance, not only has the Settlement Agreement been offered by only a subset of parties to the proceeding, but other parties

[24] D.03-07-044 at 7.

[25] Examples of adoption of contested or not-all-party settlements for which the Commission still recognizes the favoring of settlements include: D.18-05-042 at 20, and D.11-05-018 at 16, and D.20-09-019 at 16-17.

actively oppose adoption of the settlement, arguing that certain provisions are not consistent with the record or in the public interest. With this background in mind, we turn to the contested settlement at issue here.

5.1.1. Analysis: Consistent with the Record

5.1.1.1. Settling Parties Position

The Settling Parties assert that the Settlement Agreement complies with the requirements of Rule 12.1(d), and specifically that it is reasonable in light of the whole record, consistent with law, and in the public Interest.[26] In support of this, the Settling Parties indicate that the Settlement Agreement "is the result of extensive and vigorous arms-length negotiations among the Joint [Settling] Parties to resolve a complex dispute and determine appropriate settlement terms."[27] These parties contend that they have a thorough understanding of the issues involved in the proceeding and the evidentiary record. The Settling Parties further indicate that they have a "full understanding and assessment of each other's factual and legal positions" based on briefing and their participation in the evidentiary hearings.[28]

The Settling Parties state that the parties that are not sponsoring the settlement had multiple opportunities to learn about and express positions on the settlement. The Settling Parties report holding a settlement conference noticed to all parties on October 21, 2022 (prior to filing the settlement motion) consistent with Rule 12.1.[29] According to the settlement motion TURN, SCGC, Indicated Shippers, and the City of Long Beach attended the settlement

[26] Joint Settlement Motion at 13.

[27] *Ibid.*

[28] *Ibid.*

[29] *Id*. at 11.

conference.[30] Additionally, non-settling parties also had an opportunity to submit comments per Commission Rule 12.

5.1.1.2. Comments on the Proposed Settlement

Consistent with the process established in Rule 12.1, non-settling parties had the opportunity to submit formal comments in response to the motion for adoption of the settlement. The Commission received one set of such comments on November 28, 2022, which were joint comments in opposition to the settlement from TURN and SCGC. These parties express concerns about several aspects of the Settlement Agreement.[31]

First, TURN and SCGC assert that the settlement overstates the amount of penalties and ratepayer savings attributable to the agreement by including amounts for which SoCalGas has agreed not to seek recovery in the total value of the settlement, implying those amounts are comparable to penalties. Specifically, the Settling Parties describe the settlement as requiring SoCalGas's "agreement to… fines, disallowances, and refunds totaling six hundred ten million, one hundred thousand dollars ($610.1 million)…."[32]

According to SCGC and TURN, this overstates the actual value of the settlement because "in order for the Commission to assess whether the proposed monetary remedies are a sufficient penalty for the conduct at hand, the Commission must first assess whether the included dollars would have been appropriate to collect from ratepayers under any circumstances."[33] The

[30] Joint Settlement Motion at 11.

[31] TURN/SCGC Comments on the Settlement Motion, filed on November 28, 2023 (TURN/SCGC Comments) at 3.

[32] Joint Settlement Motion at 11.

[33] TURN/SCGC Comments at 6-7.

opposing parties argue that recovery of some of the $610.1 million total likely would have been disallowed had those amounts been litigated, so the actual ratepayer savings attributable to the Settlement Agreement is significantly lower. TURN and SCGC assert that the "record would benefit from a clear accounting of all Aliso Canyon related costs so that the Commission could consider the proposed remedy in the context of that information."[34]

TURN and SCGC also assert that the limited customer refunds for OFOs noncompliance and balancing function rebates contained in the settlement are insufficiently supported in the proceeding record and their reasonableness is inadequately explained in the settlement. TURN and SCGC assert that their "intent in participating in Phase 2 of this proceeding was to ensure that in the event SoCalGas's conduct was deemed unreasonable, ratepayers would be made whole for any costs that would not have occurred but for the leak."[35] TURN and SCGC further claim that "if the Settling Parties believe that some amount less than a full refund is appropriate, the Settlement must explain why ratepayers should bear OFO and balancing costs they would not otherwise had to have paid."[36] In each case, opposing parties' core argument is that "approving the Settlement deprives TURN, SCGC, and other ratepayer representatives the opportunity to develop this record" on Phase 2 issues.[37]

5.1.1.3. Responses to the Comments

Two parties or groups of parties filed responses to the opening comments. Indicated Shippers supports the arguments made in the TURN and SCGC

[34] TURN/SCGC Comments at 12.

[35] *Ibid.*

[36] *Ibid.*

[37] *Ibid.*

opening comments. The second response was filed by the Settling Parties in support of the Settlement Motion.

5.1.1.3.1. Indicated Shippers

Indicated Shippers filed a timely response to the Joint Comments. This response supports most of the points made by TURN and SCGC. In particular, the Indicated Shippers emphasize that customers affected by the OFOs noncompliance and balancing function costs related to the Aliso Canyon Incident were not included in the development of the settlement. The Indicated Shippers assert that "the process that led to the settlement wrongly excluded interested and active parties to the case,"[38] and that the Settlement Agreement provides insufficient information to assess whether the customer refunds represent "just and reasonable remedies to the customers harmed by the Aliso Canyon Incident."[39] Consistent with these points and other points made in the comments of TURN and SCGC, Indicated Shippers oppose the settlement.[40]

In summary, opposition to the Settlement Agreement is largely based on the claim that "Phase 1 has been fully litigated on a fully-developed record… In stark contrast, there has been virtually no record developed in Phase 2 issues, and no litigation of related issues."[41] As a result, opposing parties state that "the Commission needs a better understanding the universe of Aliso-related costs

[38] Reply Comments of the Indicated Shippers (Indicated Shippers Reply), filed on December 13, 2022 at 2.

[39] Indicated Shippers Reply at 2.

[40] TURN, SCGC, and Indicated Shippers will be referred to collectively as the "Opposing Parties."

[41] TURN/SCGC Comments at 5-6.

customer impacts before deciding the settlement represents a reasonable remedy." [42]

5.1.1.4. Settling Parties' Response

The Settling Parties filed a timely response to the Joint Comments in which they restate many of the arguments made in the Settlement Motion, and address many of the criticisms raised by TURN and SCGC. First, the settling parties note that many Commission proceedings are settled before a full record is developed on all issues, noting that "[p]ursuant to Commission Rule 12.1(a), parties may propose settlements as early as following the pre-hearing conference."[43] The Settling Parties argue that this undermines the TURN and SCGC arguments that lack of evidentiary record on Phase 2 issues makes it impossible for the Commission to determine whether the Settlement Agreement is consistent with the record on those issues. The Settling Parties also note that their settlement process was consistent with the Commission's Rule 12 requirements, and included a settlement conference to which all parties were invited. Because the Indicated Shippers filed only reply comments, the Settling Parties did not reply to their arguments related to customer rebates.

5.1.1.5. Analysis

Given that a settlement was reached before Phase 2 issues in this proceeding were fully adjudicated, while several legal and factual issues remained in dispute, the Commission evaluates the reasonableness of the Settling Parties' proposed outcome based on the record to date and in light of the potential range of outcomes that could result if this proceeding was fully adjudicated, as well as the litigation risk facing the parties.

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[42] TURN/SCGC Comments at 10.

[43] Reply Comments of Settling Parties, filed on December 13, 2022 at 3.

The Settling Parties assert that the Settlement Agreement reflects a reasonable balance of the various interests in this proceeding by knowledgeable and experienced parties who have a well-documented history of strongly held positions. The Settling Parties include the key and only active participants in this adjudicatory proceeding, the Commission's SED, which is responsible for ensuring compliance with safety rules by regulated utilities and "prosecuting" potential safety violations, and SoCalGas, the regulated utility responsible for the activities and facilities involved in the Aliso Canyon Incident. In addition, Cal Advocates, an independent division of the Commission that represents the interests of utility customers, reports being heavily involved in the development of the Settlement Agreement and supports its adoption. These three parties are the only parties actively involved in Phase 1 of the proceeding, in which violations by the investor-owned utility, if any, were to be determined. In adjudicatory proceedings in general, the major interested parties are the "prosecutor" (SED) and the "defendant" (in this instance, SoCalGas). Other parties may participate if they show a specific interest in the results of the proceeding (*e.g.*, appropriateness of customer refunds or other remedies), but do not generally provide the foundation for determining the existence specific violations. Consistent with this, the Opposing Parties expressed interest in only a portion of the proceeding, and failed to engage actively in Phase 1.

The assigned ALJs held a status conference on August 10, 2022, immediately after receiving notice of the resumption of settlement talks and use of a mediator. It was clear at that status conference that the three active parties in Phase 1 intended to attempt to resolve all issues in the proceeding, including Phase 2 issues. This status conference also provided an opportunity for parties that did not participate in Phase 1 to express concerns about the contemplated

process. Though the representative of the City of Long Beach expressed some concern about settling all issues through a mediation in which Phase 2 parties did not participate,[44] they have not filed comments supporting or opposing the settlement ultimately offered.

During the status conference, the representative of SCGC stated that his organization was "very encouraged to… get the email announcing that a mediator had been selected, and we certainly support, as best we understand the process that will be undertaken." [45] The representative for TURN stated "I look forward to finding out the success… of the mediation and hopefully seeing a strong and positive outcome that TURN would support but would hope that we would retain the opportunity to file comments as we would on other settlements."[46] Similarly, the representative of Indicated Shippers explicitly acknowledged that the Settling Parties hoped to reach a global settlement of all issues, but did not object to the mediation proposal made by the Settling Parties.[47] In summary, when given the opportunity, no party raised a serious objection that the existing case record could not support global settlement that included Phase 2 issues. To the extent that any concern was expressed, it was about whether the Phase 2 parties could or should be represented in the mediation.

Nevertheless, in comments on the Settlement Motion, parties inactive in Phase 1 raised concerns about the ability of the existing record to support a settlement of Phase 2 issues only after a completed settlement was reached.

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[44] Status Conference RT at 189:21 to 190:1

[45] Status Conference RT at 187:28 to 188:4

[46] Status Conference RT at 189:21 to 190:1

[47] Status Conference RT at 189:6-15

These parties also focus their concerns on specific parts of the settlement that have outcomes they do not support. This raises questions about whether the parties' concerns fundamentally spring from the relative lack of record on Phase 2 issues, or from the specific outcomes of the Settlement Agreement on certain issues. Had these parties found the outcome acceptable, it is not at all clear that they would claim that the outcome cannot meet the "consistent with the record" requirement because Phase 2 has not yet been litigated. Only after seeing the settlement outcome do the Phase 2 parties raise this fundamental concern and suggest more record on Phase 2 issues must be created before it is possible to determine whether the settlement outcome is reasonable.

As to the substance of the claim that Phase 2 issues cannot be evaluated due to the absence of record, this ignores the reality that the record contains significant testimony and analysis on most Phase 2 issues. In summary, the issues deferred to Phase 2 include:

(1) Potential violations related to whether SoCalGas failed to cooperate with SED before the formal investigation was initiated;

(2) What, if any, penalties are appropriate based on the violations found in Phase 1;

(3) Appropriate cost recovery for various Aliso Canyon-related expenses; and

(4) What, if any, remedies beyond penalties may be appropriate for any violations found in Phase 1.

When asked to explain the reasoning behind including all phases and issues in the mediation, SoCalGas noted that "issues in Phase 1 and Phase 2 are necessarily linked,"[48] and because they are "not both separate and distinct…

[48] Status Conference RT 195:26 through 196:2.

that's part of why we think and we're hopeful that we're able to resolve the entire proceeding as opposed to having another several years of, you know, this proceeding carrying on."[49]

We agree that the issues in Phase 1 and Phase 2 of the proceeding are inter-related in a variety of ways, and as a result, the existing record may support a settlement of all outstanding issues. Specifically, significant record exists on Issue 1 (above): all parties interested in the "failure to cooperate" allegations had the opportunity to provide testimony on those potential violations. Similarly, there is significant information in the record on Issue 2 (above): appropriate penalties for violations found. Because state statute sets a penalty range for any violations found, any penalties assessed in Phase 2 would have been directly related to the violations found in Phase 1, based on the impact and significance of the violation(s) found. The existing record supports analysis of the penalty amount contained in the settlement, consistent with the requirements of D.98-12-075, which specifies the factors to consider in setting the penalty level for a violation. This decision contains that analysis in Section 5.3.

While a full record has not been developed on Issue 3 above, cost recovery, the Settlement Agreement resolves many fundamental issues in favor of ratepayers and customers. Specifically, SoCalGas will reimburse staff expenditures for the SED investigation, will not seek reimbursement of expenditures related to the Blade Report from ratepayers, and agrees to forego attempts to recover a wide range of potentially recoverable costs.

Although we agree with the Opposing Parties that a disallowance of cost recovery cannot be considered equivalent to a penalty unless the foregone

[49] Status Conference RT 196:13-17.

amount was likely to be recoverable from ratepayers, in this instance, the Settlement Agreement clearly protects ratepayers from the risk of litigating hundreds of millions of dollars of potential costs, some of which likely would have been found to be reimbursable by ratepayers. In principle, we agree with the Opposing Parties that the Settlement Motion may overstate the value of the settlement for ratepayers; nevertheless, we find that SoCalGas's agreement to forego cost recovery provides some (perhaps non-quantifiable but still real) ratepayer value.

As a result, in addition to assessing both fines and financial remedies, the Settlement Agreement eliminates both the additional cost to litigate these Phase 2 of this proceeding, and removes the risk of ratepayers ultimately paying for some portion of the costs enumerated in the Settlement Agreement. If the Settlement Agreement allowed SoCalGas to pursue significant costs from ratepayers, it could be important to create a record on the full universe of costs and the relative and absolute amount of those costs to be borne by ratepayers versus shareholders. Given that SoCalGas has agreed not to pursue cost recovery of its own costs and will reimburse SED and Blade costs without use of ratepayer funds, further litigation of these issues would not be productive. Also, in implementing the settlement, we require SoCalGas to certify in future rate increase applications that no costs attributable to the Aliso Canyon Incident are included in those requests. This will help to ensure that the Settlement Agreement successfully protects ratepayers from any remaining related costs.

Finally, though Phase 2 was to include consideration of whether any remedies beyond penalties are appropriate (Issue 4 above), that does not guarantee that any particular remedy would have been found appropriate. The Settlement Agreement is designed to address what appears to be the major issue

raised by SCGC and Indicated Shippers, refunds for OFO and balancing costs. In contrast, at this point, it is not clear whether the Commission would have entertained the proposal to fully reimburse customers, much less that it would have accepted the stated position of TURN and SCGC that all customers should be made whole for costs that would not have been incurred in the absence of the Aliso Canyon Incident. If the Commission did accept that position, factual issues related to the appropriate amount to be recovered would still need to be addressed.

As a result, Opposing Parties would have faced significant litigation risk in the determination of whether customer refunds were appropriate, and if so, the appropriate level of those refunds. It is not reasonable to assume, as TURN and SCGC seem to, that the scope of Phase 2 would include making "ratepayers… whole for any costs that would not have occurred but for the leak,"[50] nor is it clear how the amounts (if any) the Commission determined to refund would compare to the amounts allocated to refunds in the Settlement Agreement. There is a significant possibility that the Commission could have found that some amount less than a full refund, or less than the amount contained in the Settlement Agreement, would be appropriate.

5.1.1.6. Conclusion: The Settlement is Consistent with the Record

In conclusion, we need not find that each separate term of a settlement meets the Commission's standards for approval of a settlement; the focus of settlement analysis is on whether the settlement as a whole can be found to meet the Rule 12.1(d) requirements. The Settlement Agreement filed by SED, SoCalGas, and Cal Advocates is consistent with the record in that it includes an

[50] TURN/SCGC Comments at 12.

admission of a safety violation of Section 451 for the totality of the Aliso Canyon Incident, as well as a significant fine consistent with the magnitude and impacts of the violation, and a commitment to reimburse major staff expenditures incurred investigating the incident as well as the costs of the Blade Root Cause Analysis. While the record on some Phase 2 issues is not complete, the Settlement Agreement addresses issues such as cost recovery and customer refunds in a manner that is consistent with the existing record and accounts for the litigation risk of parties on the net-yet-litigated issues. The proposed Settlement Agreement appears designed to represent all major stakeholder groups, including the Phase 2 parties, and those parties had the opportunity to attend a settlement conference regarding the Settlement Agreement, as well as to file comments and replies on the settlement motion.

Given the full record for Phase 1 issues, existing record for several expected Phase 2 issues, SoCalGas's agreement to forego cost recovery of Aliso Canyon-related costs, and the large litigation risk parties would face in determining whether customer refunds are appropriate and if so, at what level, we find that the settlement agreement is consistent with the proceeding record.

5.1.2. Analysis: Consistent with the Law

The Settling Parties assert that the "Settlement Agreement is consistent with applicable laws. There are no terms within the Settlement Agreement that are contrary to any statute, case law, or Commission rules or regulation."[51] No parties allege that the Settlement Agreement is inconsistent with law. Similarly, our analysis finds that the Settlement Agreement is consistent with applicable laws, regulations, and policies. Specifically, the Settlement Agreement finds a

[51] Joint Settlement Motion at 14.

violation under Section 451, and assesses a fine for that violation consistent with the magnitude of the incident's impact and the conduct that allowed the incident to occur, consistent with the requirements of Section 2107 and D.98-12-075. In addition, of the fine amount identified in the Settlement Agreement, $34 million has already been used to mitigate the environmental impacts, and the remaining $71 million of the fine will be deposited in the Aliso Canyon Recovery Account pursuant to Section 2104.7, to mitigate impacts from the Aliso Canyon Incident. No parties dispute that the Settlement Agreement is consistent with law; the opposing parties' concerns focus on whether the record is sufficient to support the Settlement Agreement and whether the settlement can be determined to be in the public interest. Finally, no parties state that they are aware of any statutory provisions or controlling law that would be contravened or compromised by the Settlement Agreement.

5.1.3. Analysis: In the Public Interest

The Settling Parties claim the Settlement Agreement is in the public interest for several reasons, including but not limited to the resources that will be saved by ending the long-running litigation of this case. Specifically, the Settling Parties allege that the "public interest is served by reducing the expense of litigation, conserving state resources, and allowing litigants to eliminate the risk of an uncertain litigated outcome."[52] In addition, the Settlement Agreement assesses a significant penalty of $105.1 million, which should act as a deterrent to future unsafe practices, and commits SoCalGas to forego attempts to collect hundreds of millions of dollars from ratepayers. While Phase 2 parties raise concerns that the Settlement Agreement would not "make customers whole" for

[52] Joint Settlement Motion at 14.

any losses incurred and may allow for litigation of recovery of other costs not identified in the Settlement Agreement, it is far from certain that litigating the customer refund issues would result in a total refund to all customers. In fact, given the widespread impacts of the Aliso Canyon Incident on the price of both gas and electricity in the years since the Aliso Canyon Incident, it is likely to be difficult or impossible to identify all rate and cost impacts to customers. As a result, the public interest is served by adopting the Settlement Agreement and avoiding the use of Commission and party resources to further litigate these issues, for which the outcome of litigation is uncertain.

5.1.4. The Settlement Meets the Rule 12.1(d) Standards for Commission Adoption

The Commission has previously found that a "proposed settlement is reasonable if it 'adopts a result in the range of reasonableness in the context of the allegations and strength of the evidence, and as weighed against the significant risk, expense, complexity, and length of further proceedings.'"[53]

In this instance, we find that the Settlement Agreement provides sufficient fines and remedies to deter future safety violations while avoiding the complex and potentially prolonged process of completing Phase 1 on its merits and litigating all issues in Phase 2. The Settlement Agreement is consistent with the proceeding record, consistent with the law, and in the public interest, and meets the standards for Commission adoption. Therefore, we find that the Settlement Agreement is reasonable and should be adopted.

[53] I.19-10-033 at 8.

5.2. Consistency of the Settlement Agreement with Commission's Policies Regarding Enforcement and Assessing Penalties

As discussed above, the Commission must also evaluate whether the Settlement Agreement is reasonable under the penalty assessment analysis adopted in D.98-12-075 and consistent with the criteria adopted in Resolution M-4846.

5.2.1. Compliance of Penalty with Decision 98-12-075

Section 2107 provides that the Commission may impose a penalty between $500 and $100,000 for each violation of state law. Under Section 2108, every violation is a separate and distinct offense, and each day of a continuing violation is a separate and distinct offense. As established in D.98-12-075, the Commission evaluates the reasonableness of a penalty under five general factors: (1) the severity of the offense, (2) the conduct of the utility, (3) financial resources of the utility, (4) the role of precedent, and (5) the totality of the circumstances in furtherance of the public interest.

5.2.2 Severity of the Offense

The Commission will examine the severity of a violation, "which encompasses four sub-factors: (1) physical harm, (2) economic harm, (3) harm to the regulatory process, and (4) the number and scope of violations."[54] Violations that cause physical harm to people or property are considered the most severe and violations that threatened such harm closely following.[55] The severity of a

[54] D.19-12-001 at 16.

[55] D.18-10-020 at 117-18; *see* D.98-12-075 at 9, 54-56.

violation increases with the level of costs imposed on the victims of the violation.[56]

The Settling Parties assert that the Settlement Agreement acknowledges the significance of the Aliso Canyon Incident that resulted in a gas leak that persisted for 111 days before being stopped. They further acknowledge the leak released an estimated 109,000 metric tons of methane during the leak period and resulted in the temporary relocation of more than 8,000 households from the nearby community during until the leak was stopped.[57]

The Settling Parties argue that despite the significant physical and economic harm caused by the Aliso Canyon Incident, no fatalities resulted from the incident and the subsequent well control operations. The Settling Parties also emphasize that: (1) nearly all of the civil claims related to the incident have been resolved via settlement and (2) the greenhouse gas (GHG) impacts from the incident have been fully mitigated. They also note that SoCalGas has already incurred substantial costs for customer relocation as well as government and civil plaintiff settlements.

Lastly, the Settling Parties indicate that due to economic harm to some ratepayers, the Settlement Agreement provides refunds to ratepayers for $13.2 million for OFO noncompliance charges and $5.0 million for balancing function rebate.[58]

The Commission evaluates not only economic or physical harm, but also harm to the integrity of the regulatory process. Pursuant to Section 702,

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[56] D.18-10-020 at 119-20.

[57] Joint Settlement Motion at 16.

[58] *Ibid.*

> Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

The Settling Parties indicate they disagree as to whether SoCalGas violated Section 451 and/or Rule 1.1, with respect to the 89 alleged violations related to SoCalGas's operations and maintenance, leak response, and record-keeping and 238 alleged "lack of cooperation" violations. However, the Settling Parties indicate that SoCalGas, SED, and Cal Advocates considered all of the alleged violations and associated harm during settlement negotiations and resolved these disagreements by the proposed Settlement Agreement.[59]

No other party addressed the severity of the offense factor in their comments.

We find that the severity of the violation by SoCalGas with respect to the Aliso Canyon Incident is high. The violation caused significant physical and economic harm, while also harming the regulatory process. We also find that the fines and remedies included in proposed Settlement Agreement fall within a range that reasonably reflect the severity of the violation.

5.2.3. Conduct of the Utility

The Commission will assess the "utility's conduct in: (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation."[60] Prevention includes "becoming familiar with applicable laws and regulations, and most critically, the utility regularly reviewing its own operations

[59] Joint Settlement Motion at 17.

[60] D.98-12-075, at 56.

to ensure full compliance."[61] Detection includes diligent monitoring.[62] Disclosure and rectification include prompt reporting and correction of a violation.

The Settling Parties disagree as to whether SoCalGas violated Section 451 and/or Rule 1.1, with respect to the various alleged violations. However, they indicate that the conduct of SoCalGas was a factor they considered during settlement negotiations and informs the proposed Settlement Agreement.[63]

No other party addressed the conduct of utility factor in their comments.

In the Settlement Agreement, SoCalGas admits to one violation of the safety requirements of Section 451 based on the totality of the circumstances of the incident. Such an admission indicates that SoCalGas's conduct was unreasonable with respect to its operation of Aliso Canyon. While SoCalGas's conduct is troubling, the Settling Parties considered SoCalGas's conduct during settlement negotiations and we find that the fines and remedies included in proposed Settlement Agreement reasonably reflect the problematic conduct of SoCalGas with respect to the Aliso Canyon Incident.

5.2.4. Financial Resources of the Utility

The third factor to be considered under D.98-12-075 is the financial resources of the utility. The Commission must ensure against excessive fines or penalties while imposing an effective fine or penalty. "Effective deterrence … requires that the Commission recognize the financial resources of the public utility in setting a fine, which balances the need for deterrence with the

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[61] *Id*. at 57.

[62] *Id*. at 57-58.

[63] Joint Settlement Motion at 17.

constitutional limitations on excessive fines."[64] An effective fine or penalty should reflect the severity of the harm and be proportionate to the offending entity. Therefore, the fine or penalty should be high enough to send an "effective message to the offending entity and those similarly situated to deter future similar offense or violations, without putting them out of business or otherwise impacting the entity in a catastrophic way."[65]

The Settling Parties assert that the Settlement Agreement satisfies the third factor because SED took SoCalGas's financial resources and condition into consideration when negotiating the settlement. They argue that the $610.1 million penalty provided for in the proposed Settlement Agreement is sufficiently substantial to deter future similar incidents, while not exceeding the constitutional limits on excessive fines.[66]

No other party addressed the financial resources of the utility in their comments.

We find that SoCalGas has the financial resources to pay the proposed fines and remedies. We agree with the Settling Parties that the proposed fines and remedies are not excessive. We further find that SoCalGas can pay the fines and remedies included in the Settlement Agreement without harming ratepayers or its ability to raise the equity needed for revenue-producing investments required to provide adequate and safe service.

[64] D.98-12-075 at 58-59.

[65] D.19-12-001, at 16.

[66] D.18-10-020, at 117; *see* D.98-12-075, at 59.

5.2.5. Role of Precedent

The Commission will consider the "amount of the fine in the context of prior Commission decisions."[67] This factor takes into consideration the proposed outcome compared with "previously issued decisions which involve the most reasonably comparable factual circumstances and explain any substantial differences in outcome."[68]

The Settling Parties maintain that the Settlement Agreement "is within the reasonable range of potential outcomes when compared to other settlements and outcomes in Commission proceedings."[69] They cite to three approved settlements and one enforcement decision involving several safety incidents. The Settling Parties indicate that although these settlements and decisions are not directly comparable to the situation in this proceeding, they broadly demonstrate that the level of sanctions imposed in the Settlement Agreement is within the range previously imposed by the Commission.[70]

The first settlement cited to by the Settling Parties concerns the 2019 Kincade wildfire, which burned more than 5,000 acres and caused substantial harm, including injuries to four individuals, $385 million in property damage, and destruction of 77,758 acres of land and 374 structures. The wildfire was caused by Pacific Gas and Electric Company (PG&E) facilities. In July 2022, the Commission approved a settlement between PG&E and SED related to alleged violations General Order 95 and Section 451.[71] The settlement required PG&E

[67] D.18-10-020, at 117.

[68] D.98-12-075, at 60.

[69] Joint Settlement Motion at 20.

[70] *Ibid.*

[71] Resolution SED-6A.

pay $125 million in total penalties, including $40 million in fines and $85 million in disallowances.

The second cited settlement concerns the PG&E Mark and Locate OII.[72] On January 17, 2020, the ALJ approved a settlement, with modifications, between PG&E, SED, and the Coalition of California Employees related to PG&E's falsification and undercounting of records related to PG&E's "Locate and Mark" program for identifying the location of underground gas and electric facilities.[73] The settlement memorialized PG&E's violation of Section 451 and Rule 1.1 based on various actions related to the "Locate and Mark" program. The settlement required PG&E to pay total fine of $110 million, with $44 million going to the General Fund and $66 million for shareholder-paid initiatives to address problems with the "Locate and Mark" program.

The third cited settlement concerns the 2017-2018 Southern California Wildfires. In July 2022, the Commission approved a settlement between Southern California Edison Company (SCE) and SED related to the Liberty, Rye, Meyers, Thomas and Woolsey fires, which were caused by SCE facilities.[74] SED alleged 51 violations of Sections 399.2, Section 316 and General Order 95 connected to the five fires. The fires caused substantial harm, including 26 fatalities as well as the destruction and damaging of thousands of structures. The fires also burned hundreds of thousands of acres and resulted in nearly 8 million metric tons of GHG emissions, which were not mitigated. The approved settlement required SCE to pay a total of $550 million in penalties including a

[72] I.18-12-007.

[73] D.20-02-036.

[74] Resolution SED-5A.

$110 million fine and $440 million in shareholder-funded safety enhancements and disallowances.[75]

Lastly, the Settling Parties cite to the Commission decisions resolving three enforcement proceedings against PG&E concerning the 2010 San Bruno gas pipeline explosion.[76] The Commission found 2,425 continuing violations concerning Section 451, General Order 112, Commission Rule 1.1 and other safety requirements. The violations concerned deficient PG&E practices as to recordkeeping, engineering, design, and construction. The San Bruno gas pipeline explosion caused eight fatalities, injured 58 people, and destroyed 38 homes.[77] In D.15-04-024, the Commission penalized PG&E a total of $1.6 billion, which included a $300 million fine, $850 million in shareholder funded gas infrastructure improvements, a $400 million refund to PG&E customers, and $50 million to implement 75 remedial measures proposed by SED.[78]

No other party addressed the role of precedent factor in their comments.

As discussed above, we find that the actual value of the Settlement Agreement may be overstated and will be less than the $600 million that the Settling Parties assert. However, even with this reduced valuation, we find that the fines and remedies are reasonable when compared to the decisions cited by the Settling Parties as well as other comparable Commission decisions.[79] Furthermore, the Settlement Agreement is consistent with prior decisions in that it includes a variety of remedies, including fines, reduced revenue requirements

[75] Resolution SED-5A at 1.

[76] *See* D.15-04-021, D.15-04-022 and D.15-04-023.

[77] D.15-05-023 at 3.

[78] D.15-02-024 at 1-2.

[79] D.21-09-026.

and customer refunds that the Commission has found appropriate.[80] Also, we recognize that, in addition to the amounts in the Settlement Agreement, substantial amounts have already been paid as a result of civil ligation settlements and relocation costs.[81] Lastly, we note that major operational and infrastructure changes have already been implemented at the Aliso Canyon facility. These changes will help ensure that the facility operates safely and that an event like the Aliso Canyon Incident does not occur again.

5.2.6. Totality of the Circumstances

This factor takes into consideration facts that may mitigate or exacerbate the degree of wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.[82] In considering the appropriate penalty, we must consider the gravity and severity of the violation, SoCalGas's statutory obligation to provide safe and reliable gas service, the impact of the Aliso Canyon Incident, and the Commission's and the public interest in ensuring safe and reliable natural gas service.

The Settling Parties argue that totality of the circumstances in furtherance of public interest supports the approval of the Settlement Agreement. They acknowledge the gravity of the Aliso Canyon Incident and its many impacts, but contend that approval of the Settlement Agreement is in the public interest because "it avoids the uncertainty inherent in continued litigation and obviates

[80] *See* D.07-09-041, D.15-04-024, D.15-07-014, D.17-09-024, D.18-04-014, D.19-04-041, D.19-09-037, D.20-02-036 and D.21-09-026.

[81] Joint Settlement Motion at 19.

[82] D.98-12-075, at 59.

the need for the Commission to adjudicate the disputed facts, alleged violations, appropriate penalty, and remedies."[83]

The Settling Parties assert the public interest is served by the main terms of the Settlement Agreement because SoCalGas will: (1) forego recovery from ratepayers of $108.8 million in costs related to Blade's Root Cause Analysis investigation; (2) reimburse SED for $1.5 million in investigation and litigation costs related to I.19-06-016; (3) forego ratepayer recovery of $376.5 million in outside counsel, litigation costs, and regulatory costs, as well as public affairs, community relations, and other support; (4) refund $13.2 million to ratepayers for OFO noncompliance charges; and (5) refund $5 million to ratepayers for balancing function costs.[84]

The Settling Parties further argue that approval of the Settlement Agreement is in the public interest because it memorializes that SoCalGas will not seek to recover from ratepayers nearly $2 billion in costs to settle civil litigation related to the Aliso Canyon Incident and $461.8 million for relocation in the surrounding community during the incident.[85] They also assert that SoCalGas has also fully mitigated the GHG impacts of the Aliso Canyon Incident, and that the Settlement Agreement provides a significant sum towards the Aliso Canyon Recovery Account.

No other party addressed the totality of the circumstances factor in their comments.

Based on our discussion in connection with the other factors, we find that a significant penalty is warranted given the severity of the violations at issue in

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[83] Joint Settlement Motion at 19.

[84] *Ibid.*

[85] *Ibid.*

this proceeding, the impact of the Aliso Canyon Incident, and the Commission's and the public interest in ensuring safe and reliable natural gas service. We find that the penalty included in the Settlement Agreement, including fines, disallowances, and refunds, reasonably reflects the totality of the circumstances related to the Aliso Canyon Incident.

5.3. Compliance of Penalty with Resolution M-4846

Resolution M-4846 provides criteria for consideration when determining the reasonableness of the remedies in a proposed settlement in an enforcement proceeding. These criteria include equitable factors, mitigating circumstances, evidentiary issues, and other factors that may adversely affect acquisition of the calculated penalty.

The Settling Parties indicate that each party considered the risks and weaknesses of their positions, and that concessions by one party on some issues were offset by concessions by the other parties on other issues. Therefore, they assert that the Settlement Agreement represents a series of tradeoffs and must be viewed as a "package."[86]

No other party addressed the issue of compliance of the penalty amount with Resolution M-4846 in the Settlement Agreement in their comments.

We find that the Settlement Agreement adequately complies with the Resolution M-4846 criteria for determining the reasonableness of remedies in a proposed settlement in an enforcement proceeding. It is apparent that the Settling Parties considered equitable factors, mitigating circumstances,

[86] Joint Settlement Motion at 15.

evidentiary issues, and other factors in arriving at the fines and remedies in the Settlement Agreement.[87]

6. Potential Violations of Rule 1.1

During the pendency of this proceeding, multiple parties filed motions requesting that the Commission initiate disciplinary actions against other parties. The Settlement Motion states that, "upon approval of this Settlement Agreement by the Commission, the Parties… shall withdraw all pending motions… [and] SoCalGas shall withdraw and support dismissal of all its claims against SED."[88] The instant Decision approves the global settlement filed by SED, SoCalGas, and Cal Advocates, and consistent with the intention expressed in the Settlement Motion, we deem all outstanding motions to be withdrawn.

Nevertheless, we remind all proceeding participants that parties do not have the authority to settle away potential violations of Commission rules or offenses against the Commission itself that may undermine the regulatory process. Both regulated entities and representatives of the Commission, regardless of Division, have obligations to work in the public interest. These obligations include supporting safe and reliable service to California customers and maintaining the integrity of the regulatory process. Obfuscation, lack of respect, and attempts to mislead the Commission or other parties, especially in filed documents and sworn declarations, undermine this integrity as well as the credibility of the parties involved.

Throughout this proceeding, Phase 1 parties participated and engaged in behavior that delayed or disrupted progress in the case, including excessive and

[87] *Ibid.*

[88] Joint Settlement Motion at 5

unnecessary motion practice, inappropriate and disrespectful behavior during evidentiary hearings, and lack of cooperation with other parties and Commission requirements related to discovery. Such behavior is not acceptable.

In this instance, we have serious concerns about potential violations of Rule 1.1. In particular, SED provided apparently contradictory and irreconcilable information in certain of its filings and sworn declarations with respect to the existence and availability of a SED staff report on the Aliso Canyon Incident. Despite these filings, and numerous additional documents that appear to support the conclusion that such a report exists, SED failed to either produce the report or complete an ordered search to determine its existence and availability. At the least, SED's actions surrounding the search for this alleged report reflect a potential lack of respect for the regulatory process and the Commission's instructions. Any of these allegations, if true, could constitute violations of Rule 1.1.

With the adoption of the Settlement Agreement and in the interests of conserving Commission and party resources, we elect not to pursue these concerns at this time. Nevertheless, we caution parties that failure to be honest and forthright, failure to ensure the accuracy of all formal filings and sworn declarations, and failure to comply with rulings, can all constitute Rule 1.1 violations and may lead to sanctions.

7. Appeal and Review of Presiding Officer's Decision

Pursuant to Rule 14.4, any party may file an appeal of the Presiding Officer's Decision within 30 days of the date the decision is served. In addition, any Commissioner may request review of the Presiding Officer's decision by filing a request for review within 30 days of the date the decision is served. Appeals and requests for review shall set forth specifically the grounds on which

the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. Vague assertions as to the record or the law, without citation, may be accorded little weight.

8. Confirmation of Rulings

As expected from a proceeding of this complexity and level of contention, active parties made numerous requests and filed numerous motions. The assigned ALJs have issued electronic and oral rulings in response to these motions. This decision confirms all rulings issued in response to the motions. All outstanding motions filed in this proceeding that have not yet been ruled on are hereby denied.

9. Assignment of the Proceeding

Alice Reynolds is the assigned Commissioner and Jessica Hecht and Marcelo Poirier are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. In response to the Aliso Canyon Incident, the Commission opened I.19-06-016.
2. SoCalGas serves approximately 21.8 million consumers in Southern California.
3. In 2021, SoCalGas recorded $5.5 billion in operating revenue.
4. On October 28, 2022, the Settling Parties filed a Joint Motion for Adoption of the Settlement Agreement.
5. The Settlement Agreement is contested.
6. The Settlement Agreement includes a net fine of $71 million.
7. In addition to the fine, the Settlement Agreement calls for other specified remedies including reduced revenue requirements and customer refunds.

8. In the Settlement Agreement, SoCalGas admits to one violation of the safety requirements of Section 451 based on the totality of the circumstances of the incident.

9. The overall Settlement Agreement is consistent with the record of this proceeding.

10. The overall Settlement Agreement is consistent with California law.

11. The overall Settlement Agreement is in the public interest.

12. The $71 million fine and the other penalties in the Settlement Agreement are substantial and appropriate in light of SoCalGas's violation and conduct as well as the associated harms.

13. The fine and penalties are set at a level that should effectively deter SoCalGas and others, but should not affect SoCalGas's ability to continue providing service to its customer base.

14. The Settlement Agreement addresses and resolves all factual and legal allegations made by SED.

15. The issues in this proceeding are adequately addressed by the Settlement Agreement, with the exception of a potential lack of respect for the regulatory process and the Commission's instructions, which the Commission chooses not to pursue at this time.

Conclusions of Law

1. Section 451 requires all public utilities to provide and maintain "adequate, efficient, just and reasonable" services and facilities as are necessary for the "safety, health, comfort, and convenience" of its customers and the public.

2. Section 451 serves as a separate and individual basis for finding safety violations.

3. The California Constitution, along with Section 701, confers broad authority on the Commission to regulate public utilities.

4. The Commission may impose fines for violation of laws and regulations pursuant to Sections 2107 and 2108.

5. The Commission may order refunds or bill credits as an equitable remedy pursuant to the California Constitution and Sections 701, 728 and 761.

6. The purpose of fines is to deter further violations by the perpetrator and others.

7. For settlement agreements that include a fine or penalty, D.98-12-075 sets forth five factors to be examined in determining whether the proposed fine or penalty is reasonable.

8. Violations that result in physical or economic harm and the failure to comply with statutes or Commission directions are considered severe violations.

9. SoCalGas's violation should be considered severe.

10. The fine and penalties in the Settlement Agreement are reasonable in light of the five factors outlined in D.98-12-075.

11. The penalties imposed by this decision are not excessive and are necessary to deter future violations.

12. Resolution M-4846 adopted criteria for consideration when determining the reasonableness of the remedies in a proposed settlement in an enforcement proceeding. These criteria include equitable factors, mitigating circumstances, evidentiary issues, and other factors that may adversely affect acquisition of the calculated penalty.

13. The Joint Motion for Adoption of the Settlement Agreement, filed October 28, 2022, should be granted and the Settlement Agreement should be approved and adopted without change.

14. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest, consistent with Rule 12.1(d) of the Commission's Rules and should be approved.

15. Consistent with Section 2104.7, the $71 million net fine contained in the settlement should be deposited in the Aliso Canyon Recovery Account and may be allocated by the Legislature for purposes of mitigating local environmental and health impacts.

16. The Settlement Agreement addresses all issues in the scope of this investigation.

17. It is reasonable to adopt the Settlement Agreement and close this proceeding.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of the Safety and Enforcement Division, Southern California Gas Company and the Public Advocates Office of the California Public Utilities Commission for Adoption of Settlement filed on October 28, 2022, is granted.

2. The Settlement Agreement, attached to this decision as Appendix A, is approved and adopted without modification.

3. Southern California Gas Company shall pay $71 million to the Aliso Canyon Recovery Account pursuant to California Public Utilities Code Section 2104.7 as indicated in Section II(C)1(a) of the Settlement Agreement (*see* Appendix A hereto). All payments pursuant to this decision shall be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Southern California Gas Company PLD

shall write on the face of the check or money order "For deposit to the Aliso Canyon Recovery Account Decision 23-09-002" with the "X" being the Commission-designated number for today's decision.

4. Southern California Gas Company is directed to comply with and implement all of the terms of the Settlement Agreement as adopted and set forth in Appendix A of this decision.

5. Southern California Gas Company shall submit an attestation by a Vice President or higher company executive with every application requesting rate recovery attesting that it has not included any expenses or costs identified in the Settlement Agreement. This attestation requirement shall apply for five years from the date of the final issuance of this decision.

6. Investigation 19-06-016 is closed.

This order is effective today.

Dated September 12, 2023, at San Francisco, California.

APPENDIX A

Settlement Agreement