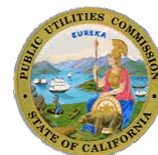


BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
12/06/19
04:59 PM

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

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

MOTION OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) TO STRIKE PORTIONS OF THE SAFETY AND ENFORCEMENT DIVISION'S RESPONSE TO SOUTHERN CALIFORNIA GAS COMPANY'S MOTION TO QUASH SUBPOENA

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December 6, 2019

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

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I. INTRODUCTION

Pursuant to Rule 11.1 and of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Southern California Gas Company ("SoCalGas") moves to strike portions of the Safety Enforcement Division's ("SED") late-filed response ("Response") to SoCalGas' Motion to Quash Subpoena. Sections of SED's Response inappropriately reference a prohibited *ex parte* communication that has been excluded from the evidentiary record of this proceeding, and should therefore be stricken. SoCalGas submits this Motion to Strike concurrently with the Reply of SoCalGas to SED's Response to SoCalGas' Motion to Quash Subpoena.

II. BACKGROUND

On October 29, 2019, the Parris Law Firm emailed the service list for proceeding I.19-06-016, attaching three declarations, including one apparently signed by SED's former investigator into the Aliso Canyon incident. On November 7, 2019, the ALJs to this proceeding ruled that the Parris Law Firm's email communication constituted a prohibited *ex parte* communication, and further ruled that the prohibited *ex parte* communication would be excluded

from the evidentiary record of proceeding I.19-06-016.¹ On November 19, 2019, SED served its Response to SoCalGas' Motion to Quash Subpoena. On November 20, 2019, ALJ Kenney issued an email ruling ("November 20 Ruling") rejecting SED's Response as untimely pursuant to Rule 11.3(b).² The November 20 Ruling authorized SED to re-file its Response with a motion for extension of time. On November 26, 2019, SED re-served its Response, which attaches, references and relies on the excluded *ex parte* communication.

III. ARGUMENT

The Commission should grant SoCalGas' motion to strike references to the prohibited *ex parte* communication because, per the ALJ's Ruling, it was excluded from the record in this proceeding. The legal standard California courts apply to a motion to strike is whether the material is irrelevant, false, improper, or not in conformity with the law.³ Here, SED's use of a prohibited *ex parte* communication was improper and inconsistent with Commission rules. Accordingly, all references to this communication should be stricken from SED's Response.

SED's Response references a declaration attached to a prohibited *ex parte* communication that was improperly emailed to the service list of this proceeding. The ALJs have expressly excluded this *ex parte* communication, including the attached declarations, from the evidentiary record of this proceeding. Permitting SED to rely on statements made in a prohibited *ex parte* communication would create a path for parties to circumvent the Commission's strict *ex parte* prohibition in adjudicatory proceedings and undermine the Commission's rules. If permitted, it would encourage any interested persons to use *ex parte* communications as a backdoor for getting evidence into the record with the expectation that a party with aligned interests will do what SED has done here. This would undermine the Commission's process.

Moreover, neither the Parris Law Firm nor SED's former Aliso Canyon investigator are parties to this proceeding. Thus, even if the prohibited *ex parte* communication had not otherwise been excluded from the evidentiary record of this proceeding, the declarant is not

¹ E-Mail Ruling Directing Rex Parris to Report a Prohibited Ex Parte Communication, I.19-06-016, Nov. 7, 2019.

² Email Ruling Rejecting the Safety and Enforcement Division's (SED) Untimely Response, Authorizing SED to Re-File its Response with a Motion for Extension of Time, and Authorizing Southern California Gas Company to File a Reply, I.19-06-016, Nov. 20, 2019.

³ *Rehart v C.A. Rasmussen*, No. BC602571, 2016 WL 11185771, at *1 (Cal.Super. Apr. 28, 2016) (citing Cal. Code Civ. Proc. § 436).

available to respond to discovery or be cross-examined in this proceeding. Therefore, SED should not rely on the excluded declaration in its Response.

SoCalGas respectfully asks that the ALJs strike from SED’s Response all references to the Parris Law Firm’s prohibited *ex parte* communication, which are as follow:

Citation to SED’s Response	Language to be stricken
Page 6, lines 15-17 ⁴	Q: Have you read the response of the ‘lead investigator’ to SoCalGas’ commentary regarding this OII (served on October 24, 2019 - a week prior to SoCalGas’ Motion)?
Page 7, lines 11-16 ⁵	SoCalGas knew or should have known that the October 24, 2019 declaration of SED’s ‘lead investigator’ clearly sets forth that he became the Program Manager in the Commission’s Consumer Protection and Enforcement Division on July 8, 2019. ²⁶ That declaration also clearly sets forth that “Blade proceeded to complete the root cause report without my involvement. I did not participate in the drafting or commenting on the Blade report issued by the CPUC on May 17, 2019.” ²⁷
Page 7, footnote 26	See, Attachment D, Kenneth Bruno’s Response To Commentary By Southern California Gas Company and SEMPRA Energy Regarding Orders Instituting Investigation I.19-06-016.
Page 7, footnote 27	Id. Also, it is clear from the declaration that there was no conflict of interest because SED’s lead investigator was diagnosed with cancer on April 10, 2019, approximately one month prior to the release of Blade’s report.
ATTACHMENT D	(Entire Attachment)

⁴ SoCalGas notes that SED misstates in this passage the date on which the Parris Law Firm emailed its prohibited *ex parte* communication on the service list.

⁵ SoCalGas again notes that SED misstates in this passage the date on which the Parris Law Firm emailed its prohibited *ex parte* communication on the service list.

