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SED Witness : M. Felts



**SAFETY ENFORCEMENT DIVISION
CALIFORNIA PUBLIC UTILITIES COMMISSION**

CHAPTER NINE
PREPARED SUR-REPLY TESTIMONY
OF
MARGARET FELTS IN RESPONSE TO
REPLY TESTIMONY OF GREG HEALY

San Francisco, California
June 30, 2020

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1 This part of my testimony addresses Chapter 9, the testimony of Mr. Greg Healey.
 2 Mr. Healey’s testimony states that it responds to my Opening Testimony violations 89,
 3 90, 91, and 92; 95-320; and 327, 328, and 329.¹ For reference, immediately below, these
 4 violations are summarized, as shown in my Opening Testimony, Table 1: Summary of
 5 Violations.

6

Violation	Summary of Violation
89	Lack of Cooperation: Failure to completely respond to Blade Root Cause Analysis related data requests on January 31, 2016 until no sooner than March 1, 2019.
90	Lack of Cooperation: Failure to completely respond to Blade Root Cause Analysis related data requests on February 19, 2016 until no sooner than March 1, 2019.
91	Lack of Cooperation: Failure to completely respond to Blade Root Cause Analysis related data requests on April 7, 2016 until no sooner than March 1, 2019.
92	Lack of Cooperation: Failure to completely respond to Blade Root Cause Analysis related data requests on February 18, 2018 until no sooner than March 1, 2019.
95 through 189	Lack of Cooperation: Refusal to release 95 pages of communications based assertion of attorney-client and/or attorney work product privilege.
190 through 284	Lack of Cooperation: Misleading SED by representing to SED that 95 pages of documents are protected by an attorney-client/attorney work product privilege, when they are not.
285 through 302	Lack of Cooperation: Refusal to release 18 additional communications based upon assertion of attorney-client and/or attorney work product privilege.
303 through 320	Lack of Cooperation: Misleading SED by representing to SED that 18 additional communications were protected by attorney-client or attorney work product privilege, when they were not.
327	Imprudent and unreasonable recordkeeping practices associated with well SS-25-A.

¹ Healy Testimony, p. 1, lines 9-18.

328	Imprudent and unreasonable recordkeeping practices associated with well SS-25-B.
329	Imprudent and unreasonable recordkeeping practices associated with well SS-25: Failure to record continuous wellhead pressure.

1

2 **I. WITH REGARDS TO SECTIONS III AND IV OF MR. HEALY’S**
3 **TESTIMONY, SHAREHOLDERS SHOULD BE REQUIRED TO**
4 **PAY FOR BLADE’S REVIEW OF SOCALGAS’ SUPPLEMENTAL**
5 **RESPONSES, BUT I WITHDRAW VIOLATIONS 89-92.**

6 Mr. Healy’s testimony claims that “SED asserts four violations of Section 451,
7 one for each of the data request responses which were ‘supplemented ’on February 26,
8 2019 and March 1, 2019.² He adds the following:

9 SoCalGas ’February and March 2019 supplemental responses to
10 Blade’s data requests were provided at Blade’s specific request, so
11 that Blade had the most complete records and to allow it to complete
12 its commissioned root cause analysis. In about January 2019, Blade
13 and SoCalGas had ongoing discussions (including at an in-person
14 meeting) regarding whether Blade had been provided with the entire
15 universe of documents that could inform its RCA investigation,
16 including documents and data that had not specifically been asked
17 for in a written data request.³ . . .

18 As noted in the written supplemental responses themselves, the
19 process chosen for production does not indicate that SoCalGas ’prior
20 responses to these four data requests were incomplete; rather, tying
21 the documents to formal data requests was simply a means to keep
22 track of the documents provided to Blade, which, over the course of
23 Blade’s 3+ year investigation, was significant. The prior responses
24 provided to the data requests were already complete.⁴ . . .

25 “IV. SOCALGAS ’SUPPLEMENTAL RESPONSES DID NOT
26 SUBSTANTIALLY IMPACT BLADE’S RCA REPORT.”⁵

² Healy Testimony, p. 2, lines 3-4.

³ Healy Testimony, p. 3, lines 5-11.

⁴ Healy Testimony, p. 4, lines 12-17.

⁵ Healy Testimony, p. 5, lines 1-2.

1 SED quoted these passages and asked Blade about each of the SoCalGas
2 supplemental data responses that prompted violations 89 through 92. That is, did Blade
3 use the information in SoCalGas 'supplemental responses to confirm any facts or
4 conclusions in its Root Cause Analysis or Supporting Reports?⁶ Also, did Blade use the
5 information in SoCalGas 'supplemental responses to change any facts or conclusions in
6 its Root Cause Analysis or Supporting Reports?⁷ With regards to each of these
7 supplemental responses, Blade stated that the data provided was:

8 “. . .related to wells SS-25, SS-25A and SS-25B. The bulk of the
9 data had already been provided previously in 2016 and 2017. There
10 was minimal new data provided during February/March 2019.
11 Blade did conduct a detailed review of the supplemental responses
12 for information to confirm existing data and to check for new data
13 that may further inform or change the RCA conclusions. The
14 supplemental responses were consistent with the data already
15 provided and consequently confirmed our interpretation. The
16 supplemental responses did not change any of the RCA
17 conclusions.”⁸

18
19 These data responses suggest two things. First, because of SoCalGas 'data dump
20 on Blade, Blade was required to do a detailed review of the supplemental responses to
21 check for new data to further inform or change the RCA conclusions. Therefore,
22 SoCalGas shareholders should be required to pay for Blade's extra work related to
23 SoCalGas 'supplemental responses. I am noting this in the record now for consideration
24 in Phase II of this proceeding.

25 Second, the supplemental responses provided minimal new data, and did not
26 change any of the RCA conclusions. Given this new data, it appears SoCalGas 'initial
27 responses to Blade's data requests were sufficiently complete. Therefore, I withdraw
28 violations 89-92.

⁶ See Blade Response to SED Data Request 107, Questions 2.1(a.i), 2.2(a.i), and 2.3(a.i).

⁷ See Blade Response to SED Data Request 107, Questions 2.1(a.ii), 2.2(a.ii), and 2.3(a.ii).

⁸ See Blade Response to SED Data Request 107, Blade Response 2.1.1 (p. 5), 2.2.1 (p. 6), and 2.3.1 (pp. 6-7).

1 **II. MR. HEALY’S ASSERTION THAT “THE ELECTRONIC WELL**
2 **FILES PROVIDED TO SED REPRESENTED COMPLETE AND**
3 **ORGANIZED VERSIONS OF THE HARD COPY WELL FILES”**
4 **(SECTION V) IS CONTRADICTED BY THE EVIDENCE.**
5 **(VIOLATIONS 327, 328, AND 329)**

6 Mr. Healy’s testimony states that, “SoCalGas carried out a deliberate process to
7 produce accurate and complete electronic versions of the hard copy well files to SED and
8 produced them in an organized manner.”²

9 He also claims,

10 The well file documents were then produced to SED in the order scanned.
11 This process was followed so that the electronic well files were produced to
12 SED consistent with the way the hard copy well files were found, which is
13 also further described in Chapter VII (Neville). [Footnote omitted.]

14 Based on my review of the well files in the format in which they were
15 produced by SoCalGas to SED, the electronic well files were provided to
16 SED in an organized and accessible format consistent with the hard copy
17 versions of the well files.¹⁰

18 These statements are undermined by the evidence regarding SoCalGas’s
19 well files. Two points show this. First, I provide a section at the end of this
20 chapter that shows the ordering in which SoCalGas initially provided the well file
21 for SS-25. Second, I incorporate by reference my testimony in response to Mr.
22 Neville (Chapter VII). Violations 327, 328 and 329 should stand.

23 **III. MR. HEALY’S TESTIMONY CLAIMS SOCALGAS’ DOCUMENT**
24 **REVIEWS WERE REASONABLE (SECTION VI), BUT DOES NOT**
25 **EXPLAIN WHY SOCALGAS WITHHELD MORE THAN 1,200**
26 **DOCUMENTS FROM SED FOR APPROXIMATELY TWO YEARS.**
27 **(VIOLATIONS 95-320)**

28 In response to SED’s Opening testimony that asserted 226 violations for
29 withholding documents from SED, Mr. Healy’s testimony asserts that “SoCalGas ’
30 Document Reviews Were Reasonable”.¹¹ SoCalGas ’suggestion of reasonableness boils

² Healy Testimony, p. 5 lines 9-10.

¹⁰ Healy testimony, p. 6 line 16 to p. 7, line 5.

¹¹ SoCalGas Reply Testimony of Greg Healy, p. 8.

1 down to three things. First, its initial review of documents was long and complex.¹²
2 Second, “SoCalGas Expressly Qualified Its Responses and Appropriately Supplemented
3 Its Production to SED.”¹³ Third, “SED Has Also Withdrawn Assertions of Privilege.”¹⁴

4 The first two of Mr. Healy’s arguments suggested SoCalGas would release
5 documents if it had sufficient time. But SoCalGas continued to withhold 1,208
6 documents that responded to this question for approximately two years, spanning from
7 the time SoCalGas updated its privilege log with 1,262 entries May 24, 2018,¹⁵ to the
8 time SoCalGas finally released 1,208 documents to SED on May 15, 2020.^{16 17}
9 SoCalGas provided SED with an updated privilege log on May 24, 2018, which showed
10 1,262 entries.¹⁸

11 SED reminded SoCalGas to turn over the documents SoCalGas withheld before
12 SoCalGas tardily did so. SED specifically quoted the entire passages of SoCalGas’
13 testimony in support of these two points, and asked whether SoCalGas continued to assert
14 privilege over all of these communications. SED then prompted SoCalGas to turn over
15 the documents over which SoCalGas no longer asserted attorney-client privilege.¹⁹
16 SoCalGas responded that it “will be de-designating additional communications from the
17 privilege log most recently produced to SED on March 15, 2019, in response to SED
18 Data Request 16 (the March 15, 2019 data request), and that it “will provide them in a

¹² SoCalGas Reply Testimony of Greg Healy, p. 8.

¹³ SoCalGas Reply Testimony of Greg Healy, p. 8.

¹⁴ SoCalGas Reply Testimony of Greg Healy, p. 9.

¹⁵ SoCalGas provided SED with privilege logs on March 5, 2018 (See March 5, 2018 email from Greg Healy showing privilege log as attachment and corresponding privilege log), and May 24, 2018 (See May 24, 2018 email from Greg Healy showing privilege log as attachment and corresponding privilege log), and March 15, 2019 (See March 15, 2019 email from Greg Healy showing privilege log as attachment and corresponding privilege log). To err on the conservative side, SED is using the May 24, 2018 date as the start date of its count because it contained the 1,262 entries.

¹⁶ To view SoCalGas’ most recent updated privilege log, See SoCalGas Response to Data Request 64, Question 2 Supplemental, May 15, 2020.

¹⁷ SED asked Data Request 64 Question 2 on April 6, 2020.

¹⁸ See May 24, 2018 updated privilege log in response to SED Data Request 16, Question 10.

¹⁹ SoCalGas Response to SED Data Request 64, Question 2 shows that SED asked Data Request 64, Question 2 on April 6, 2020.

1 supplemental response the week of May 4, 2020.”²⁰ Despite SoCalGas ’representation to
2 SED that it would release these documents by May 8, 2020, SoCalGas did not actually
3 turn over 1,208 documents from its two year old privilege log until May 15, 2020.²¹

4 On May 19, 2020, four days after receiving the 1,208 documents that SoCalGas
5 had withheld for approximately two years, SED issued a data request intended to discern
6 whether SoCalGas had validly asserted attorney-client privilege over these documents
7 before releasing them.²² Questions from this data request included such objective
8 questions as: a) whether SoCalGas had released an allegedly privileged document to an
9 outside entity;²³ and, b) the name of the attorney who provided the legal advice that was
10 the basis for the privilege assertion, as many of the entries on the initial log lacked the
11 name of an attorney in the actual log entries.²⁴ SED’s Data Request May 19, 2020 Data
12 Request explicitly instructed SoCalGas that, “If SoCalGas does not intend to provide a
13 complete substantive answer to a question, objections to each such question are due May
14 22, 2020.”²⁵ However, SoCalGas waited until June 8, 2020, before providing a Data
15 Response containing only objections and no substantive answers.²⁶ SED met and
16 conferred with SoCalGas to ask SoCalGas to re-consider answering the questions. As of
17 the date this testimony was served, SoCalGas still had not provided SED with any
18 information in response to this data request.

19 SoCalGas ’third argument is that “SED Has Also Withdrawn Assertions of
20 Privilege.”²⁷ This attempted analogy ignores several differences. First, SoCalGas ’
21 privilege log was in response to SED’s question, “Please provide any and all

²⁰ SoCalGas Response to SED Data Request 64, Question 2, dated April 27, 2020.

²¹ See FTP email from SoCalGas to SED, entitled, ” SoCalGas Supplemental Response to Question 2b of I1906016 Safety and Enforcement Division Data Request 64”, dated May 15, 2020.

²² SED Data Request 93.

²³ SED Data Request 93, Question 23.

²⁴ SED Data Request 93, Question 16.

²⁵ SED Data Request 93, Question 3.

²⁶ SoCalGas Response to SED Data Request 93, June 8, 2020.

²⁷ SoCalGas Reply Testimony of Greg Healy, p. 9.

1 communications relating to Aliso Canyon between SoCalGas and Boots and Coots for the
2 time period between October 1, 2015 – January 31, 2018.²⁸ This safety related question
3 was intended to understand the communications between both entities related to efforts to
4 kill well SS-25. In contrast, SoCalGas asked for communications between SED and the
5 Los Angeles Department of Public Health.²⁹ Such a request was of the regulatory
6 agencies, which was not focused on the actual safety problems with killing the well.
7 Moreover, SED had initially understood that there was a common interest privilege with
8 DPH at the time DPH requested party status. Once DPH withdrew its request of party
9 status and it became clear there was no such privilege, SED released the documents.
10 Regarding the workpapers of Margaret Felts 'opening testimony, SED released those
11 documents quickly, and provided Ms. Felts for a thorough deposition well before
12 SoCalGas 'reply testimony was due. In contrast, SoCalGas withheld over 1,200
13 documents for approximately two years, waiting until May 15, 2020 to release them, a
14 date after the OII was opened, and after SED's opening and reply testimony due dates
15 had passed.

16 Mr. Healey's testimony also suggests a discrepancy in the method SED uses to
17 tabulates the violations, one using the number of withheld pages (80), and another using
18 number of documents withheld (48).³⁰ SoCalGas 'alleged this discrepancy in this
19 testimony regarding these relatively low numbers, even though it continued to withhold
20 the 1,207 documents from SED, only to release them approximately two years after
21 asserting privilege over them. In light of this, both methods in the Opening Testimony of
22 counting SoCalGas 'withholding of documents are both valid and extremely
23 conservative.

24 Violations 95 through 320 should stand.

²⁸ SED Data Request 16, Question 10.

²⁹ SoCalGas Reply Testimony of Greg Healy, p. 10.

³⁰ SoCalGas Reply Testimony of Greg Healy, p. 7.

1 **IV. EVIDENCE SHOWING THE FASHION IN WHICH**
2 **SOCALGAS PROVIDED WELL FILES TO SED**

3 As is shown by the document footnoted in this section, when SoCalGas first provided the
4 electronic version of the well file for SS-25 as it existed just after the incident, it was
5 disorganized. As can be seen by the footnoted document, the types or records and dates of
6 documents were out of order.³¹

³¹ Combined SS-25 Well File as initially received by Safety and Enforcement Division from Southern California Gas Company.