

SoCalGas-19

Prepared Reply Testimony of Gregory Healy (March 20, 2020)

I.19-06-016

ALJs: Hecht/Poirier

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

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CHAPTER IX

PREPARED REPLY TESTIMONY OF GREGORY HEALY ON BEHALF OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)

March 20, 2020

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CHAPTER IX

I. INTRODUCTION.

The purpose of my prepared reply testimony on behalf of Southern California Gas Company (SoCalGas) is to address the testimony of Margaret Felts on behalf of the California Public Utilities Commission's (Commission) Safety and Enforcement Division (SED)¹ regarding SED's proposed violations of Section 451 of the California Public Utilities Code based on the allegation that SoCalGas failed to cooperate with SED during its pre-formal investigation of the Aliso Canyon SS-25 incident.² Specifically, SED contends SoCalGas did not completely answer the discovery of Blade Energy Partners (Blade) and subsequently provided "data dumps" of documents weeks before the announced release date of Blade's Root Cause Analysis (RCA) Report (Violations 89, 90, 91, and 92). SED also alleges that SoCalGas violated Section 451 and Rule 1.1 of the Commission's Rules of Practice and Procedure by asserting privilege over certain documents sought by a data request and subsequently withdrawing privilege and producing them (Violations 95-320). Lastly, my testimony addresses the integrity of the electronic well files produced to SED during the course of their investigation of the SS-25 incident to refute the allegations that SoCalGas' recordkeeping practices are not reasonable (Violations 327, 328, and 329).

¹ SED's opening testimony was originally served on parties to I.19-06-016 on November 22, 2019 without an identified witness. Subsequently, pursuant to SoCalGas Data Request 2 to SED, SED responded that Ms. Margaret Felts is the sponsoring witness for SED's opening testimony.

² SED alleges four separate violations (Violations 89, 90, 91, and 92) of Section 451 based on updates to four data requests. The associated dates for each of these violations are: Violation 1: March 31, 2016 to March 1, 2019; Violation 2: April 18, 2016 to March 1, 2019; Violation 3: June 7, 2016 to March 1, 2019; Violation 4: April 7, 2016 to March 1, 2019.

1 **II. BLADE’S DATA REQUESTS TO SOCALGAS AND SOCALGAS’ ORIGINAL**
2 **RESPONSES.**

3 SED asserts four violations of Section 451, one for each of the data request responses
4 which were “supplemented” on February 26, 2019 and March 1, 2019.³ SED contends that each
5 violation begins two months after the date Blade issued each of four data requests, and ends on
6 the first date Blade received the supplemental response documents.

7 • Violation 89: March 31, 2016 to March 1, 2019. This is Blade’s first data
8 request, issued January 31, 2016, which sought extensive information including, among other
9 things, well files for SS-25 and P-39.⁴

10 • Violation 90: April 18, 2016 to March 1, 2019. This violation correlates to
11 Blade’s data request issued February 19, 2016,⁵ which sought, among other things, well files for
12 SS-5 and SS-40.⁶

13 • Violation 91: June 7, 2016 to March 1, 2019. This violation correlates to Blade’s
14 data request issued April 7, 2016, which sought, among other things, the well files for F-3, FF-
15 34, FF-34A, P-38, and F-7.⁷

16 • Violation 92: April 7, 2018 to March 1, 2019. This violation correlates to
17 Blade’s data request issued February 18, 2018, which sought the well files for F-6, F-7, F-8, P-
18 47, PS-42, SF-3, SF-4, SF-6, SS-2, SS-13, SS-14, SS-17, SS-24, and SS-30.⁸

³ Although SED alleges Blade received the documents on March 1, 2019 and March 6, 2019, SoCalGas’ supplemental responses were dated February 26, 2019 and March 1, 2019.

⁴ Ex. IX-1.

⁵ Note that the date of violation is inconsistent with SED’s statement that “the beginning date for each violation should not start until two calendar months after Blade issued each data request.” *See* SED’s Opening Testimony at 54, which references “Violation 4: April 7, 2016 to March 1, 2019.”

⁶ Ex. IX-2.

⁷ Ex. IX-3.

⁸ Ex. IX-4.

1 SoCalGas originally and fully responded to each of the above requests for well files with
2 electronic copies of SoCalGas' hard copy well files.

3 **III. SOCALGAS' SUPPLEMENTAL RESPONSES WERE PROVIDED AT BLADE'S**
4 **REQUEST.**

5 SoCalGas' February and March 2019 supplemental responses to Blade's data requests
6 were provided at Blade's specific request, so that Blade had the most complete records and to
7 allow it to complete its commissioned root cause analysis. In about January 2019, Blade and
8 SoCalGas had ongoing discussions (including at an in-person meeting) regarding whether Blade
9 had been provided with the entire universe of documents that could inform its RCA
10 investigation, including documents and data that had not specifically been asked for in a written
11 data request. SoCalGas understood these discussions to be an informal data request from Blade.

12 In response, SoCalGas assessed sources for well-related information. SoCalGas
13 determined that certain of its repositories may contain well-related information that was not
14 specifically requested by Blade in a data request and would not have been part of the previously
15 provided hard copy well files, and thus performed another search for production. As stated in the
16 supplemental responses provided on February 26 and March 1:

17 The enclosed documents supplement the complete hard copy versions of the well
18 files for [subject wells] originally produced on [original date of production], and
19 include the electronic well file documents and/or well-related information to further
20 assist Blade's investigation with a comprehensive, broad set of well-related
21 information. While SoCalGas continues to keep its well files in hard copy,
22 electronic versions of well file records are available in various digital repositories
23 (e.g., WellView, UGS Servers). The hard copy well file consists of the following:
24 (1) histories (2) logs, (3) surveys, and (4) invoices. The only repository SoCalGas
25 digitizes well file information is WellView.⁹
26

⁹ Copies of SoCalGas' data responses to Blade dated February 26, 2019 and March 1, 2019 are included as Exhibit IX-5 to this testimony.

1 SoCalGas was aware that the documents included duplicates of hard copy files, or
2 otherwise comprised information that had already been provided to Blade (i.e., not an exact
3 duplicate, but containing duplicate information), but sought to avoid delay by providing the
4 documents to Blade as soon as practicable out of an abundance of caution and to be responsive to
5 Blade's informal request to have a comprehensive set of data. SoCalGas understood Blade's
6 informal request to be broad and open-ended, and SoCalGas did not seek to make limiting
7 determinations as to relevance. SoCalGas notified Blade in advance that it would produce these
8 documents, and held a telephone conference with Blade on March 6, 2019 to explain the contents
9 of the productions.¹⁰

10 Instead of requesting that Blade issue a new data request for electronic well file
11 documents and/or well-related information, SoCalGas supplemented a prior data request in
12 response to which it already had produced the complete hard copy versions of the well file. As
13 noted in the written supplemental responses themselves,¹¹ the process chosen for production does
14 not indicate that SoCalGas' prior responses to these four data requests were incomplete; rather,
15 tying the documents to formal data requests was simply a means to keep track of the documents
16 provided to Blade, which, over the course of Blade's 3+ year investigation, were significant.
17 The prior responses provided to the data requests were already complete.

¹⁰ SED's Opening Testimony at 53 contends that, "Just prior to the week of February 27, 2019 SoCalGas, for the first time, informed Blade that it was supplementing its data responses to certain Blade data requests that Blade issued as part of its RCA..." This allegation is false. SoCalGas had communications with Blade in mid-February informing Blade that it would be producing additional information.

¹¹ Ex. IX-5.

1 **IV. SOCALGAS' SUPPLEMENTAL RESPONSES DID NOT SUBSTANTIALLY**
2 **IMPACT BLADE'S RCA REPORT.**

3 As explained above, SoCalGas' supplemental responses were provided in response to
4 Blade's open-ended request seeking to obtain all relevant data for its root cause analysis, and
5 largely represented historical well-related information that was already known to Blade. As
6 Blade indicates in its RCA Report, its investigation took over three years and entailed review of
7 more than 57,000 files and 200 GB of data.¹²

8 SED contends SoCalGas' supplemental production delayed the issuance of the RCA
9 Report. However, this is an unsupported extrapolation. Even before Blade's informal data
10 request to SoCalGas around January 2019, the issuance date of the RCA Report had changed by
11 four months, from November 20, 2018 to March 31, 2019.¹³ Second, based on the fact that
12 Blade issued a substantive data request to SoCalGas on April 12, 2019—over a month after, and
13 unrelated to, the supplemental productions—Blade had not yet completed its investigation in
14 order to finalize and issue the RCA Report by March 30, 2019.¹⁴ Finally, even if the delay could
15 be attributed to the supplemental productions, the issuance date of the RCA Report was not
16 significantly extended, with the report issued a month later. For reference, Blade's investigation
17 lasted from January 2016 to May 2019, or approximately 40 months.

¹² Blade Report (Supplementary Report -Volume 1 – Approach) at 7.

¹³ SED states, “Blade is currently reviewing this massive set of data to determine if it significantly impacts the RCA.” SED Opening Testimony at 53. Since Blade issued its RCA Report on May 17, 2019, SoCalGas assumes the above statement from SED is misplaced and should be disregarded.

¹⁴ See Ex. IX-6.

1 **V. THE ELECTRONIC WELL FILES PROVIDED TO SED REPRESENTED**
2 **COMPLETE AND ORGANIZED VERSIONS OF THE HARD COPY WELL**
3 **FILES.**

4 In her testimony, Ms. Felts states SoCalGas has “Missing or lost records and unorganized
5 records,”¹⁵ and that “the records that are in the [SS-25 well] file are not organized.”¹⁶ At her
6 February 5, 2020 deposition, Ms. Felts made additional statements about the organization and
7 completeness of the electronic well files provided to her for review by SED, including that for
8 SS-25.¹⁷

9 SoCalGas carried out a deliberate process to produce accurate and complete electronic
10 versions of the hard copy well files to SED and produced them in an organized manner. While I
11 have no personal knowledge of how SED organized the well files that were provided to Ms.
12 Felts, or what exactly was provided, Ms. Felts’ descriptions in her written and deposition
13 testimony do not appear consistent with how the documents were produced to SED.

14 The electronic production of the hard copy well files was conducted by an experienced
15 third-party vendor who scanned the individual well files as they are maintained in the ordinary
16 course of business. The well file documents were then produced to SED in the order scanned.
17 This process was followed so that the electronic well files were produced to SED consistent with

¹⁵ SED Opening Testimony at 68.

¹⁶ *Id.* at 69.

¹⁷ Ex. I-10 (Tr. 93:19 – 97:22, 108:9-19, 304:10 – 305:19 (Felts)).

1 the way the hard copy well files were found, which is also further described in Chapter VII
2 (Neville).^{18, 19}

3 Based on my review of the well files in the format in which they were produced by
4 SoCalGas to SED, the electronic well files were provided to SED in an organized and accessible
5 format consistent with the hard copy versions of the well files.

6 **VI. SOCALGAS' DOCUMENT REVIEWS WERE REASONABLE.**

7 SED's Opening Testimony alleges that SoCalGas committed 226 violations²⁰ by initially
8 withholding documents from and later supplementing its response to SED's Data Request No. 16
9 (SED DR 16).²¹ SED tabulates these violations using two different methods: (1) based on the
10 number of pages (80) comprising the 48 documents initially withheld and later produced, and (2)
11 based on the number of documents (33) initially withheld and later produced.²² SoCalGas
12 initially withheld these referenced documents on the basis of the attorney-client communication
13 privilege and/or attorney work product doctrine, but later de-designated and produced the
14 documents.

15 SED claims that this initial withholding and subsequent release constitute violations of
16 Section 451 because "[the withholding] delayed SED's ability to get this information as part of
17 its pre-formal investigation."²³ SED further claims this conduct constitutes a Rule 1.1 violation
18 because "SoCalGas represented to SED that these items were protected by attorney-client or

¹⁸ The well file for SS-25 was originally produced to SED in response to a January 26, 2016 data request of SED and the Division of Oil, Gas and Geothermal Resources. That request explicitly required SoCalGas to provide the requested data in electronic format. The January 26, 2016 data request also noted that, "All records shall be available for examination and/or confirmation by CPUC Safety and Enforcement Division inspectors and/or DOGGR staff at the original record location source site upon request of the CPUC and/or DOGGR."

¹⁹ This process for production of the electronic well files was the same used to produce well files to Blade.

²⁰ See SED Opening Testimony at 61-62 (SED asserts 113 Section 451 violations, and 113 Rule 1.1 violations for the same underlying conduct).

²¹ SED Opening Testimony at 61-62.

²² SED Opening Testimony at 61-62. (SED identifies in three groupings: 80 *pages* of continuous numbered documents, 15 non-continuous numbered *documents*, and another set of 18 *documents*).

²³ SED Opening Testimony at 62.

1 attorney work product privilege, when they were not.²⁴ SED alleges these violations began the
2 day SoCalGas initially asserted the privilege and continued until SoCalGas released the
3 documents.²⁵

4 However, SED's assertions ignore several significant considerations: (a) the complexity
5 and volume of records reviewed in the process of responding to SED's data request, (b) that
6 SoCalGas was transparent in its discovery responses and appropriately qualified that they were
7 subject to change, and (c) SED has also withdrawn assertions of privilege.

8 A. SoCalGas' Initial Review of Documents Was Long and Complex.

9 SoCalGas reviewed over 8,000 documents in the course of responding to SED DR 16,
10 which broadly sought "any and all communications . . . between SoCalGas and Boots and Coots"
11 over a period of over two years. This iterative review was conducted by several attorneys over
12 the course of several weeks and culminated in the production of over 5,000 documents, totaling
13 nearly 20,000 pages, and the preparation of iterative privilege logs, the first of which was over
14 180 pages and listed over 900 documents.

15 B. SoCalGas Expressly Qualified Its Responses and Appropriately Supplemented Its
16 Production to SED.

17 SoCalGas' initial and supplemental responses to SED expressly informed SED that
18 SoCalGas' responses were based on the best available information and potentially subject to
19 further supplementation. For example, SoCalGas' March 5, 2018 response to SED DR 16 made
20 clear that its responses were "based upon the best available, nonprivileged information that
21 SoCalGas was able to locate through a diligent search within the time allotted to respond to this
22 request, and within SoCalGas' possession, custody, or control."²⁶ SoCalGas further stated that
23 its responses were subject to supplementation, amendment and correction.²⁷ SoCalGas' later

²⁴ *Id.*

²⁵ *Id.* at 62-63.

²⁶ Ex. IX-7 at 1 (SoCalGas Response Dated March 5, 2018).

²⁷ *Id.*

1 responses to SED DR 16 contained the same language.²⁸ SED never objected to SoCalGas’
2 approach.²⁹

3 SoCalGas revisited the documents listed on its initial privilege log and determined that it
4 could de-designate certain of the documents. Based on this additional review, SoCalGas
5 produced additional documents, with the latest production submitted on March 15, 2019, over
6 eight (8) months before SED served its Opening Testimony.³⁰ SED has not alleged that any of
7 the documents contained in the de-designated sets were in any way material to its investigation
8 or were relied upon for any purpose other than to allege 226 violations against SoCalGas.^{31, 32}

9 C. SED Has Also Withdrawn Assertions of Privilege.

10 Lastly, SoCalGas notes that it is not alone in revising its initial assertion of a privilege
11 during the course of its privilege review. SED, too, revisited and revised its privilege assertions
12 when its initial designations were questioned by SoCalGas. On more than one occasion, SED
13 objected to SoCalGas’ reasonable discovery requests on the basis of privilege, only to later
14 reverse itself after meeting and conferring with SoCalGas.

²⁸ See e.g., SoCalGas Response dated May 23, 2018, p. 1; SoCalGas Supplemental Response dated August 3, 2018, p. 1; Ex.IX-11 at 1 (SoCalGas Supplemental Response to SED DR 16 dated March 15, 2019).

²⁹ It is worth noting here that in prior testimony provided to the Commission in separate proceedings, SED’s expert, Margaret C. Felts, testified that it is *not* a violation of Rule 1.1 to submit information to the Commission which is later corrected in a subsequent submittal. See Cross-Exam of Felts, Sept. 6, 2012 (I-11-02-016) at 206:15-19. (“Q: . . . [I]n your view, submitting incorrect information to the Commission, even if you later correct it is a Rule 1 violation? A: No.”). Notably, further testimony from Felts in this matter indicated she believed that whether a Rule 1 violation existed turned on the intentionality of the party submitting the incorrect information, (*see id.* at 211:18-19), a position which the Commission later rejected in its ruling.

³⁰ Ex. IX-11 (SoCalGas Supplemental Response to SED DR 16, dated March 15, 2019).

³¹ See Ex. IX-8 (SoCalGas Sixth Set of Data Requests); Ex. IX-9 (SED Data Response to SoCalGas Data Request 6). SED further objected, and declined to respond to SoCalGas’ question as to whether any of the documents that SED cited for purposes of violations were in any way material to SED’s investigation in to the SS-25 leak.

³² Further, while SED asserts violations on the basis that “[the withholding] delayed SED’s ability to get this information as part of its pre-formal investigation” (SED Opening Testimony at 62), SED fails to recognize that some of these documents were already in its possession. (For example, five of the entries on the privilege log that were subsequently produced by SoCalGas were already in SED’s possession.)

1 For example, in SoCalGas' Third Set of Data Requests to SED, SoCalGas asked SED to
2 produce communications by and between SED and the Department of Public Health (DPH).
3 SED initially objected to SoCalGas' request on the ground that it sought information that is
4 protected by the common interest privilege, and based thereon withheld responsive documents.
5 SoCalGas met-and-conferred with SED and inquired about the applicability of the privilege.
6 Thereafter, SED reversed itself on January 23, 2020, withdrew its claim of privilege, and
7 ultimately produced 504 documents in response to SoCalGas' data request.

8 In another instance, SED asserted documents responsive to SoCalGas' Fifth Set of Data
9 Requests for the work papers of Margaret Felts were protected by the attorney-client privilege
10 and, based thereon, withheld responsive documents.³³ However, after SoCalGas sought a meet-
11 and-confer regarding the objections, SED reversed its assertion and produced responsive
12 documents.

13 **VII. CONCLUSION.**

14 For the foregoing reasons, SoCalGas conducted itself with candor and its actions were
15 reasonable.

16 This concludes my reply testimony.
17

³³ Ex. IX-10 (SED Response to SoCalGas Data Request 5).

WITNESS QUALIFICATIONS

My name is Gregory Healy. My business address is 555 West Fifth Street, Los Angeles, California 90013-1011. I am employed by SoCalGas as a Regulatory Business Manager. I have worked for SoCalGas since 2001. My previous responsibilities at SoCalGas include Regulatory Case Administrator, Senior Product Advisor, and Regulatory Case Manager. I received a Bachelor of Arts in Political Science and a Master of Arts in Public Administration from California State University, Fullerton.

I have not previously testified before the California Public Utilities Commission.