

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 11, 2018

PUBLICMr. Bret Lane
President and Chief Operating Officer
Southern California Gas Company
555 West 5th Street, GT21C3
Los Angeles, CA 90013**SUBJECT: Memorialization of Southern California Gas Company's (SoCalGas)
Failure to Cooperate with Safety and Enforcement Division (SED)
in SED's Preliminary Investigation**

Dear Mr. Lane:

I have been informed that SoCalGas is not producing certain of its own contractors for SED to examine under oath, even though SED has requested that SoCalGas produce them to appear at the California Public Utilities Commission (Commission) headquarters in San Francisco, CA. Specifically, SED has requested SoCalGas produce [REDACTED]

[REDACTED] In response to SED's request, SED's counsel learned from SoCalGas's counsel on or about the week of June 18, 2018 that SoCalGas would produce only one of these contractors to talk with SED investigators and attorneys, either by phone, or in Houston.

By not producing all of these requested individuals in person at the Commission headquarters, SoCalGas is not cooperating with SED's direction in this preliminary investigation for two main reasons. First, California Public Utilities Code Section 702¹ requires:

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.
(Emphasis added.)

Recognizing and applying Section 702,² the California Supreme Court has held:

¹ All future references to sections of the California Public Utilities Code shall be referenced in shorthand as "Section."

² *Snyder v. Southern Cal. Edison Co.*, 44 Cal.2d 793, 796.

Where the law imposes a definite, affirmative duty upon one by reason of his relationship with others, whether as an owner or proprietor of land or chattels or in some other capacity, such persons cannot escape liability for a failure to perform the duty thus imposed by entrusting it to an independent contractor. . . . It is immaterial whether the duty thus regarded as 'nondelegable' be imposed by statute, charter or by common law. *Id.* at 800.

SoCalGas has suggested an agency relationship with [REDACTED] via the attached [REDACTED] (Attachment A), where it specifically asserted [REDACTED]. Then, SoCalGas refused to produce some of those same [REDACTED] for examination under oath on the basis that they were neither employees nor agents of SoCalGas. Asserting attorney-client privilege over an agent, but then hiding behind the non-employee status of that agent undermines the Commission's jurisdiction, and the specific direction to produce [REDACTED] pursuant to Section 702. SoCalGas's position also evades SED's investigation and discovery rights.⁵ If SoCalGas's position was allowed, SoCalGas would be encouraged to consistently [REDACTED] to do all of its regulated work so as to avoid providing information about the nature of that work to the Commission. Such a result is particularly dire given the Commission's concern regarding safety, and in the specific context of SoCalGas's safety-related Aliso Canyon incident on October 23, 2015.

Second, [REDACTED]

[REDACTED] Moreover, because SoCalGas [REDACTED]

[REDACTED] . Given that authority, the [REDACTED] means that SoCalGas must produce the [REDACTED]

³ See Attachment A, [REDACTED] in Response to SED Data Request 16 Question 3. For example, [REDACTED]

⁵ For examples of SED's discovery authority, *see*, See also Cal Pub. Util. Code §314, which states in part, "The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, *agent*, or employee of a public utility in relation to its business and affairs." (Emphasis added.) *See also*, Cal. Pub. Util. Code §311. "The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state."

⁶ [REDACTED]

[REDACTED]

SED puts SoCalGas on notice that it is formally requesting SoCalGas produce at the Commission headquarters in San Francisco the following individuals from [REDACTED]:

[REDACTED]

If SED has misunderstood SoCalGas's position, and SoCalGas is willing to cooperate with SED's preliminary investigation by producing the requested individuals, please let us know in writing. We would be happy to coordinate with you to accommodate schedules as much as practicable.

As another gesture of cooperation on SoCalGas's part, SED is requesting that SoCalGas make public the Agreement [REDACTED], and its [REDACTED], both of which are attached to this letter. In the interest of transparency, SED is also requesting that SoCalGas agree that all aspects of this letter can be made public. Please advise in writing whether SoCalGas is willing to cooperate with these requests.

If you have any questions, please contact Nicholas Sher and Darryl Gruen.

Sincerely,

/s/ ELIZABETA MALASHENKO
Elizaveta Malashenko
Director-Safety and Enforcement Division, CPUC

cc:
Lee Palmer, Deputy Director – Safety and Enforcement Division
Kenneth Bruno, Program Manager – Safety and Enforcement Division
Jimmie Cho, Senior Vice President
Rodger Schwecke, VP Storage & Transmission Gas
Sabina Chlorefine-Counsel, SoCalGas

ATTACHMENT A

(Provided only in Confidential Version)

ATTACHMENT B

(Provided only in Confidential Version)