Decision **PROPOSED DECISION OF ALJ BROWN** **(Mailed 3/7/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company for Authority Pursuant to Pub. Util. Code § 851 to Sell Certain Real Property in Playa del Rey, California. (U 904 G)	Application 99-05-029 (Filed May 12, 1999)

(*See* Appendix A for List of Appearances)

PROPOSED DECISION AUTHORIZING SOUTHERN CALIFORNIA GAS COMPANY TO VALUE AND SELL 36 LOTS AND CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE SALE

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PROPOSED DECISION AUTHORIZING SOUTHERN CALIFORNIA GAS COMPANY TO VALUE AND SELL 36 LOTS AND CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE SALE

Summary

This decision grants the application of Southern California Gas Company (SoCalGas) for authority under Pub. Util. Code § 851[1] to value and sell 36 lots at Playa del Rey and Marina del Rey and certifies the Final Environmental Impact Report (FEIR) for the proposed sale. Section 851 approval for the additional 48 lots that had been sold is granted only on a prospective basis.

Background

On May 12, 1999, SoCalGas filed an application (A.) 99-05-029, pursuant to Pub. Util. Code § 851, seeking authorization to value and sell 36 undeveloped lots in Playa del Rey and Marina del Rey and for approval of an additional 48 lots that had been sold between 1950 and 1998. SoCalGas then amended its application on June 5, 2000 to include the signatures of the property purchasers. In its application SoCalGas sought authority to sell these lots because they were not "necessary or useful" to the Playa del Rey storage operations. Twelve of the 36 lots each contain an abandoned gas well; these gas wells were once used by SoCalGas as observation or monitoring wells for the gas storage facility in Playa del Rey.

On June 17, 1999, Division of Ratepayer Advocates (DRA) filed a response to the application supporting SoCalGas' request for ex parte status and recommended that no evidentiary hearing be scheduled in this matter. The

[1] Herein after all references to Code sections are to the California Public Utilities Code and references to rules are to the California Public Utilities Commission Rules of Practice and Procedure.

Utility Reform Network (TURN) filed a protest raising the issue of gain on sale allocation between shareholders and ratepayers. In addition, protests were filed by the Grassroots Coalition, Friends of Animals, Ballona Wetlands Forever, Spirit of the Sage Council and Bernard Endres (collectively Grassroots). SoCalGas filed a reply to the protests.

Following an initial Prehearing Conference (PHC), Grassroots was instructed to revise its protest. In summary, in its revised protest, the Grassroots participants beseech the Commission to not allow structures to be built on these lots. The Grassroots participants argue that SoCalGas needs to have access to these lots, especially the lots over the abandoned and capped wells, to monitor for gas leaks, to repair or recap the wells, and to provide a buffer between the wells and the residential homes in the area.

A second PHC was held January 25, 2000, at which time Administrative Law Judge (ALJ) Wright and Commissioner Duque informed the parties that Energy Division (ED) recommended that an initial environmental analysis be performed to determine if a full EIR should be conducted.

On March 22, 2000, the ED informed the ALJ and Commissioner that an analysis under the California Environmental Quality Act (CEQA) was required to guide the Commission's decision on the application. SoCalGas was directed to submit a Proponent's Environmental Assessment (PEA) and the company did so on June 5, 2000, revising it on October 13, 2000.

On April 5, 2000, Commissioner Duque issued an Assigned Commissioner's Ruling and Scoping Memo (ACR/Scoping Memo) setting forth the scope of the proceeding as follows:

1. Whether the Commission should authorize the sale of the properties in Playa del Rey and Marina del Rey as requested by SoCalGas.

2. Consideration of the forthcoming CEQA analysis of those sales.
3. The division of the gain on these sales between ratepayers and shareholders.

Environmental Review

Procedural Matters

SoCalGas filed this application for authorization to sell 36 lots located in Playa del Rey and Marina del Rey and for approval of an additional 48 lots that had been sold between 1950 and 1998. After reviewing the application and the PEA, Commission staff determined that the project should be reviewed under CEQA.

CEQA (CEQA, Public Resources Code Section 21000 *et seq*.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Because the Commission must issue a discretionary decision (*i.e.,* grant § 851 authority) without which the proposed activity will not proceed, the Commission is the Lead Agency for this project and is responsible for compliance with CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. The Commission retained consultants to conduct an environmental review of the project. The Commission's staff oversaw the consultants' work.

Section 851 Approval

In its application SoCalGas seeks Commission approval pursuant to Pub. Util. Code § 851 for the sale of 36 undeveloped lots. By its original application,

we are also aware of 48 lots that had been sold between 1950 and 1998. SoCalGas sold the 48 lots that were once part of the Playa del Rey storage operation several years ago without our prior approval. Subsequent to those sale transactions, development took place on the properties.

In this case, and similar to our determinations in Decision (D.) 03-06-069 and D.04-07-021 we will not impose a penalty for failure to obtain prior approval of those transactions. However, we emphasize that the purpose of § 851 is to enable the Commission to review a proposed encumbrance of utility property before it takes place, in order to take such action as the public interest may require. Thus we will only grant approval of the sale of the 48 lots on a prospective basis. Granting approval on a retroactive basis would thwart the purpose of § 851.

With respect to the CEQA, we note that because all of the transactions took place several years ago, any activity which may have warranted our timely environmental review has long since occurred. Consequently, for practical purposes, meaningful CEQA review at this time would have no effect because we are unable to conduct review prior to any project or construction activity. Therefore, the environmental review conducted as part of this application is limited to the 36 lots for which prior § 851 approval is sought.

Project Description

SoCalGas has submitted its application to the Commission to sell surplus land associated with 36 undeveloped lots in Playa del Rey and Marina del Rey, totaling approximately 4.7 acres. All of the lots proposed for sale overlie the existing SoCalGas storage field in Playa del Rey, which lies approximately 6,000 feet below ground surface and had an extensive history of oil exploration and extraction activity during the 20th century. The general project area is

approximately 4 miles south of the city of Santa Monica, 1.5 miles north of the Los Angeles International Airport, 5 miles west of Culver City, and is bordered by the Santa Monica Bay to the west. Playa del Rey is located within the city of Los Angeles, and Marina del Rey is located within the county of Los Angeles. Marina del Rey and Playa del Rey are approximately 2 miles apart, separated by the Ballona Wetlands and the Marina del Rey Channel. Out of the 36 lots, 34 lots are located in Playa del Rey, are scattered throughout the long established residential neighborhood and sit atop a bluff overlooking the Ballona Wetlands and Marina del Rey. These lots surround the upper site of SoCalGas' Playa del Rey Trap Gas Storage Facility (PDRGSF). The two lots in Marina del Rey are located in a residential neighborhood on the coastal side of the Marina Peninsula.

Environmental Review Process

On September 3, 2003, Commission staff issued an Initial Study, which analyzed the foreseeable consequences of the project. The Initial Study concluded that, although no direct significant environmental impact would result from the sale of the lots, the reasonable foreseeable future development of urban land uses, consistent with existing zoning and adjacent land uses, could result in significant environmental impacts to air quality, biological resources, cultural resources, geology and soils, public health, public safety, hydrology and water quality, noise, transportation and traffic, and utilities and service system. Based on the assessment presented in the Initial Study, the Commission prepared the Draft Environmental Impact Report (EIR) to further analyze these potential impacts.

The Commission issued a Notice of Preparation (NOP) to prepare an EIR on September 2, 2003 and distributed it to the State Clearinghouse (SCH No. 2003091003) and federal, State, local trustees and agencies, organizations and

individuals on the service list. The NOP was noticed in the LA Times on September 2 and 11, 2003, in the Daily Breeze on September 4 and 9, 2003, and in the Argonaut on September 4 and 11, 2003. Six letters were received from public agencies and local residents during the NOP scoping period.

Draft EIR

The Commission issued the Draft EIR on June 4, 2004. The Notice of Availability (NOA) of the Draft EIR along with a CD copy of the Draft EIR was mailed to agencies, organizations and individuals on the service list, and to the two libraries in Marina del Rey and Westchester. The NOA included information on how to gain access to the Draft EIR, information on alternatives, and the date, time, and location for the Commission's public meeting. The Draft EIR was available for review at the Marina del Rey Library, the Westchester Library, the Los Angeles and San Francisco offices of the Commission and on the project website at: http://www.playadivest.com. The Draft EIR included a detailed analysis of impacts in ten environmental disciplines and an evaluation of alternatives to the proposed sale, including the No Project Alternative. The 45-day public comment period for the Draft EIR was June 4 to July 19, 2004.

Public Meeting

A public meeting for the project was noticed and held on Monday, June 28, 2004, at the Westchester Municipal Building. Newspaper notices, including information on the Draft EIR, the project website address, and the date and time of the public meeting, were printed in the Argonaut on June 17 and 24, 2004, and in the Daily Breeze and the LA Times on June 15 and 24, 2004. The purpose of the public meeting was so that the public could learn about the Draft EIR and the status of the project and to ask questions prior to the

conclusion of the Draft EIR comment period. Approximately 40 people attended including representatives from the Grassroots Coalition, Wetlands Action Network, Sierra Club, Spirit of the Sage Council and SoCalGas.

Comments on Draft EIR

During the 45-day public comment period, the Commission received numerous comments to the Draft EIR by mail, e-mail and/or facsimile. Comments were submitted from the following agencies: Southern California Association of Governments, South Coast Air Quality Management District, Department of Toxic Substances Control, Native American Heritage Commission and County of Los Angeles Fire Department. Organizations commenting on the Draft EIR were Ballona Ecosystem Education Project & Spirit of the Sage Council, Paragon Communities, Gabrielino/Tongva Indians of California Tribal Council and Grassroots Coalition (submitting two sets). Two individuals, Dr. Bernard Endres and Leslie Purcell submitted written comments, as well as the applicant SoCalGas. In addition, Energy Division summarized the comments that were received at the June 28, 2004, public meeting. Each of the comments was included in the Final EIR along with written responses to the comments and any changes to the Draft EIR that were warranted by the comments.

Final EIR

On February 11, 2005, the Commission issued a Final EIR for consideration of SoCalGas' application to sell the 36 lots in Marina del Rey and Playa del Rey. The Final EIR incorporated changes resulting from comments submitted during the Draft EIR comment period (June 4 through July 19, 2004).

The June 2004 Draft EIR, together with the Comments, Responses to Comments, and Changes made to the Draft EIR in response to Comments

constitutes the Final EIR. Copies of the Final EIR are available for review at the Marina del Rey Library, the Westchester Library, the Los Angeles and San Francisco Commission's offices and on the Commission's project website: http://www.playadivest.com.

Environmental Analysis

Under CEQA Guidelines 15378(a), a "project" is defined as [1] 'the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or [2] a reasonably foreseeable indirect physical change in the environment…" Accordingly, the EIR evaluation approach used a two-pronged analysis considering the potential environmental impacts that would result from [1] the sale itself, i.e., the transfer of property ownership of the 36 lots; as well as [2] impacts of the reasonably foreseeable future development of the lots for urban land uses consistent with existing zoning and adjacent land uses. In this case, the reasonably foreseeable future development that would be expected to result from the proposed sale includes the construction and occupancy of residential housing units, as well as commercial uses.

The EIR concludes that the transfer of property ownership of the 36 lots would not directly result in any significant environmental impact. The Commission, as the lead agency, would not have jurisdictional control over the 36 lots after the proposed sale has been completed. Therefore, the Commission would not have the authority to impose and/or enforce mitigation measures associated with the construction and occupancy of future building on the lots.

However, the EIR discloses the environmental impacts that would be expected to result from the future development of the lots and recommends mitigation measures, which if implemented by other responsible agencies (*i.e.,* City of Los Angeles), could avoid or minimize these significant environmental

impacts. With implementation of the recommended mitigation measures, the EIR concluded that potential impacts from future development of the property related to air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, noise, transportation and traffic, and utilities and service systems would be less than significant. The EIR also evaluates alternatives to the proposed project, including the No Project Alternative, as required by CEQA.

CEQA Guidelines 15123 requires the EIR summary to include "[a]reas of known controversy known to the lead agency including issues raised by agencies and the public." Known areas of controversy, which incorporate issues raised during the public scoping process include:

- Potential for well leaks to occur and the associated health hazards that could result from these leaks.
- Impacts to public health that could occur as a result of specific future development of these lots resulting from the sale.
- Potential odor impacts that could occur as a result of specific future development of these lots resulting from the sale.

Human Health Risk Assessment

A Human Health Risk Assessment (HHRA) dated April 2004 is included as Appendix E of the EIR. This report presents a human health risk assessment for chemicals found in samples of environmental media[2] at the 36 lots. The HHRA is a formal process that combines information on how people could be exposed to chemicals and how the chemicals could affect human health.

[2] Soil, soil vapor and groundwater.

The combined information is used to estimate the likelihood that an adverse health effect could occur. The report presents the risk assessment in the following manner:

- data evaluation that includes an evaluation and summary of the analytical data and discusses the chemicals that were identified in the environmental media.
- exposure assessment that identifies activities that bring people into contact with chemicals and estimates the chemical concentrations to which people could be exposed.
- toxicity assessment that discusses the toxicological properties combined with potential daily exposure used to calculate risk.
- risk characterization that combines the exposure and toxicity information to evaluate the potential for adverse health effects.
- uncertainty analysis that identifies sources of uncertainty in the risk assessment and discusses the level of confidence that can be placed in the findings.

The HHRA findings indicate that the potential for cancer risk or noncancer hazard health effect, if any exist, would have no significant health risk to the public. Based on the results for Playa del Rey and Marina del Rey, an individual who is exposed for 30 years as a child and adult will have an increased probability of incidence of cancer of 0.0000004 ($4x10^{-7}$) over their baseline risk. An individual's baseline risk of contracting cancer over a lifetime in the United State is about 0.25. The total noncancer hazard index for all chemicals and all types of exposure is 0.6, which is well below the level of 1.0 considered safe for lifetime exposure by U.S. EPA and Cal/EPA for children. However, to address uncertainty, the EIR recommends that mitigation measures

required by the City of Los Angeles Building Code (Ordinance No.175790) be implemented when future construction occurs at the 36 lots. The recently enacted changes to the Building Code (Ordinance No.175790) require mitigation measures for all structures in potential soil gas areas, whether gas is present or not. The measures include the installation of membrane barriers and vent piping as well as trench dams and electrical seal offs for each property.

Environmental Impacts and Mitigation Measures

The EIR finds that the sale of the 36 lots, *i.e.,* transfer of property ownership from SoCalGas to new owners would not directly result in any significant environmental impacts. The proposed sale was also evaluated for the necessity of requiring SoCalGas to provide complete disclosure of existing site conditions and/or other related documents to the four future buyers of the 36 lots as mitigation measures associated with the sale and required in the EIR. The EIR determined that the future buyers have already been provided with a substantial amount of information on the lots by SoCalGas. That information is supplemented by the Draft EIR and the Final EIR as well as documents from the field investigation data. Therefore, the EIR concluded that because the information already provided by SoCalGas along with the EIR information are believed to comprise full disclosure of existing site conditions including environmental documentation and supporting scientific information, no mitigation measures are required for the proposed sale.

However, the EIR considered the reasonable foreseeable associated impacts resulting from the future development of the lots proposed for sale. When a lead agency makes findings on significant effects identified in an EIR, an agency must also adopt a program for reporting or monitoring mitigation

measures that were adopted or made conditions of approval (CEAQ Guidelines Section 15091(d), 15097). As stated previously, because the future development on the 36 lots would undergo future environmental review by the City of Los Angeles, the CPUC does not have authority to enforce any of the recommended mitigation measures identified in the EIR. In this case, the Commission could only recommend mitigation measures to be considered by other agencies during the environmental review associated with the future development of these 36 lots. The recommended mitigation measures in the EIR address two aspects of future development: construction and occupation of the properties.

Recommended construction mitigation measures are:

- Air Quality – measures are provided to control dust and carbon monoxide from construction equipment and construction-related traffic.
- Biology – measures surveys of raptor and other nesting birds species at the lots. For lots in Cluster 9, surveys are required to determine if monarch butterflies are present during the winter prior to the start of construction or onsite tree removal. For lots in Cluster 12, surveys for globose dunes beetles are required prior to construction. Additionally, measures for compensation of loss of habitat are provided.
- Cultural Resources – measures are provided that specify action should an accidental discovery of archaeological or paleontological artifacts be made.
- Geology and Soils – measures require that a site-specific design level geotechnical investigation for each building be conducted and that full seismic considerations be given to future structures.
- Noise – measures require limits of operation of construction equipment, use of construction equipment with noise control measure incorporated, and a system

for instruction to contractors about noise control and a complaint reporting system.

- Transportation and Traffic – measure requires construction contractors to implement mitigations such as limiting the transport of construction materials and equipment to off-peak traffic periods, as required by the City of Los Angeles.

Recommended future development operations measures are:

- Hydrology and Water Quality – measure requires that future developers prepare a drainage plan for each site and submit it with the building permit application, as required by the City of Los Angeles Works Department.
- Transportation and Traffic – measure requires that a trip generation study be performed for the commercial lot (Cluster 5) to determine impacts on local traffic as well as to insure that commercial lot is provided with adequate parking.

Alternatives Considered

CEQA Guidelines 15126.6(a) requires that a range of reasonable project alternatives be discussed in the EIR which would "feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any significant effects of the project." The EIR identifies and analyzes the range of alternatives; discusses the environmental effects of each alternative; compares the environmental effects of each alternative with existing conditions and with project impacts; and addresses the relationship of each alternative to the project objectives. The alternatives evaluated in the EIR are:

1. No Project – the lots proposed for sale by SoCalGas would not be sold. SoCalGas would retain ownership and no future development would occur.
2. Partial Sale - Exclude Cluster 9 to avoid potential adverse impacts to the monarch butterfly habitat.

Commission would authorize the sale of all lots except the lots in Cluster 9.

3. Partial Sale – Exclude Cluster 12 to avoid potential adverse impacts to the globose dune beetle habitat. Commission would authorize the sale of all lots except those contained in Cluster 12.

Under CEQA Guidelines Section15126.6(c), the EIR must also identify any alternatives identified but rejected as infeasible. The one alternative considered, but rejected, was having SoCalGas maintain ownership of the lots and develop them as parks or common areas. However, this did not meet any of SoCalGas' objectives of divesting its assets, and would have increased public access to the areas that could result in additional environmental impacts.

Adequacy and Certification of the Final EIR

The Lead Agency must certify the Final EIR before a project may be approved. Certification consists of two steps. First, the agency must conclude that the document has been completed in compliance with CEQA. Second, the agency must have reviewed and considered the Final EIR prior to approving the project. Additionally, the Lead Agency must find that the Final EIR reflects its independent judgment (Public Resources Code § 21082.1(c)(3).)

The Final EIR must contain specific information according to the CEQA Guidelines Sections 15120 through 15132.[3] The various elements of the Final EIR satisfy these CEQA requirements. The Final EIR consists of the June 2004 Draft EIR, together with the Comments, Responses to Comments and Changes make in

[3] Cal. Admin. Code Sections 15122-131.

the Draft EIR. Section III of the Final EIR contains the comments received on the draft EIR and individual responses to those comments.[4]

The Commission must conclude that the Final EIR is in compliance with CEQA before approving SoCalGas' application for the sale of the lots. The basic purpose is to ensure that the environmental document is a comprehensive, accurate, and unbiased tool to be used by the lead agency and other decisionmakers in addressing the merits of the project. The document should embody "an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the consideration of qualitative a well as quantitative factors."[5] It must be prepared in a clear format and in plain language.[6] It must be analytical rather than encyclopedic, and emphasize alternatives over unnecessary description of the project.[7] Most importantly, it must be "organized and written in such a manner that [it] will be meaningful and useful to decisionmakers and the public."[8]

We believe the Final EIR meets these tests. It is a comprehensive, detailed, and complete document that clearly discusses the advantages and disadvantages of the proposal by SoCalGas and the various alternatives. We find that the Final EIR is the competent and comprehensive informational tool that CEQA requires it to be. The quality of the information therein is such that we are

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[4] CEQA Guidelines Section 15132.

[5] *Id.*, Section 15142.

[6] *Id.*, Sections 15006(q) and (r), 15120, 15140.

[7] *Id.*, Sections 15066, 15141; Pub. Res. Code Section 21003(c).

[8] Pub. Res. Code Section 21003(b).

confident of its accuracy. We have considered that information in approving the SoCalGas project as described in this decision.

Therefore, we herein certify the Final EIR.

Discussion of Section 851 Application

On May 12, 1999, SoCalGas filed its application, seeking authorization from the Commission to sell 36 vacant lots; two in Marina del Rey and 34 in Playa del Rey. SoCalGas has entered into contracts to sell the lots. SoCalGas' application is made under § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary and useful in the performance of its duties to the public.[9] The Commission's role in examining transactions subject to § 851 is the protection of the public interest.[10]

Twelve of these lots are over abandoned and capped oil and gas wells. The late-filed protest by Grassroots *et al*. opposed the sale of the lots on the theory that the abandoned wells posed potential environmental, health and safety issues. As previously explained, CEQA applies to discretionary projects to be carried out or approved by public agencies, and the Commission must issue a discretionary decision (*i.e.,* grant § 851 authority) without which the proposed activity will not proceed. Accordingly, CEQA applies to this application and the

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[9] Section 851 reads in pertinent part:

No pubic utility . . . shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, . . . without first having secured from the commission an order authorizing it to do so.

[10] Section 853(a): "This article [Article 6, Transfer or Encumbrance of Utility Property, Sections 851 through 856] . . . shall apply to any public utility . . . if the commission finds . . . that the application of this article is required by the public interest."

Commission is the Lead Agency for the proposed sale. While the project itself is the sale of the 36 lots, a "paper transaction," the construction of homes and a business are reasonable foreseeable indirect effects of the project. In addition, the Commission wanted an opportunity to investigate the concerns raised by the protestants and other concerned citizens and community members at the various Public Participation Hearings (PPH) held in a meeting room in the Playa del Rey/Westchester neighborhood. The Commission therefore determined that it could not rule on the § 851 Application until an environmental assessment was performed that addressed all the concerns raised, including the health and safety issues.

After thoroughly reviewing the Draft EIR and the Final EIR, we cannot conclude that the health and safety of the community will be compromised if the lots are sold and developed.

While SoCalGas seeks to sell all 36 lots, the CEQA analysis of options presented alternatives that involved selling none of the lots, or selling all the lots except those in Cluster 9 or those in Cluster 12. We carefully considered the alternatives presented in the Final EIR and are convinced that there is no compelling reason to not authorize the sale of all 36 lots. Declining to authorize the sale at all would not allow SoCalGas to obtain its objective of divesting itself of assets that are no longer "necessary or useful" to its storage operation and the ratepayers would be deprived of their appropriate allotment from the gain on sale. In addition as discussed above, the record does not support finding that the health and safety of the Playa del Rey community requires us to deny SoCalGas the authority to sell the lots.

Allowing a sale, but exempting Cluster 9 or Cluster 12, does not allow SoCalGas to achieve its complete objective of full divesture of these vacant lots,

but also would not serve any environmental purpose. As the Final EIR discusses, leaving these lots in Cluster 9 or Cluster 12 would not bring added protections to either the monarch butterfly or the globose dune beetle because their habitats have been disturbed by the public. We therefore find that our approval of the project, the sale of 36 lots in Marina del Rey and Playa del Rey, is in the public interest and furthers the Commission's goals of protecting the ratepayer.

Gain-on-Sale

In its protest filed after the application was submitted, TURN raised the issue of the proper allocation of the gain-on-sale from the sale of the lots as between ratepayers and shareholders. Since TURN filed its protest, the Commission initiated a Rulemaking (R.) 04-09-003 that is designed to address gain-on-sale issues. A Commission decision is anticipated soon in this rulemaking and SoCalGas is directed to disperse the gain-on-sale from the sale of the 36 lots and the previous sales of the 48 lots in accordance with the final decision in R.04-09-003.

Motions

On June 29, 2004, Paragon Communities (Paragon), one of the intended purchasers of some of the lots for sale by SoCalGas filed a motion for an interim decision to permit the sale of eight of the 36 lots on which there are no oil or gas wells. Since this decision grants the application as to all 36 lots, there is no need to rule on Paragon's motion for an interim decision. Paragon's motion is therefore denied as moot. Any motions not already ruled on during the course of this proceeding are also deemed denied.

Categorization and Need for Hearings

In Resolution ALJ 176-3016, dated May 27, 1999 (ratified June 3, 1999), the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were necessary.

Comments on Proposed Decision

The proposed decision of ALJ Brown in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed by _____.

Assignment of Proceeding

John Bohn is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. On May 12, 1999, SoCalGas filed an application to value and sell 36 unimproved lots in Play del Rey and Marina del Rey and for approval of the sale of an additional 48 lots that had been sold between 1950 and 1998.

2. The 48 lots that was once part of the Playa del Rey storage operation several years ago had been sold by SoCalGas without out prior approval. Subsequent to those sale transactions, development had already taken place on the properties.

3. Twelve of the 36 undeveloped lots are over abandoned and capped oil and gas wells.

4. DRA and TURN were concerned with the allocation of the gain-on-sale as between shareholders and ratepayers, but did not protest the sale of the lots.

5. Allocation of the gain-in-sale from the sale of the 36 lots and the 48 lots is deferred until there is a final decision in R.04-09-003.

6. Community and concerned citizens filed a protest to the application raising a concern as to whether these lots should be sold or retained by SoCalGas to ensure that the gas company had continuing access to the lots and wells to monitor for leaks, and to repair the leaks or recap the wells if needed.

7. It was determined by the Commission's ED that an analysis under CEQA was required to guide the Commission's decision on the application.

8. CEQA review for the 48 lots that had been sold and developed would not have any effect because we are unable to conduct review prior to any project or construction activity.

9. Environmental review conducted as part of this application is limited to the 36 lots for which prior Section 851 approval is sought.

10. An environmental analysis was commenced and in September, 2003, the IS initiated the preparation of an EIR under the direction of the Commission.

11. As a corollary to the environmental review undertaken pursuant to the CEQA Guidelines, a HHRA was prepared for chemicals found in samples of soil, soil vapor and groundwater in the area of the lots.

12. The HHRA, issued in March 2004, determined that the estimated probability of an increased incidence of cancer for the residential future use scenario and the estimated noncarcinogenic hazard index are both below the Cal/EPA and U.S. EPA levels of no-significant risk.

13. On June 4, 2004, the Draft EIR was issued identifying that the focus of the environmental review was on the proposed sale of the 36 lots and the reasonably foreseeable future development of these lots with the construction and occupancy of residential housing units and commercial uses.

14. The Draft EIR also evaluated alternatives to the proposed project, including the No Project Alternative, as required by CEQA.

15. The Draft EIR was released for public review and was available at a number of areas, including two local libraries, Commission's Los Angeles and San Francisco offices and website.

16. Instructions were given for submitting written comments.

17. A public hearing for the project was noticed and held on June 28, 3004, in Westchester, California.

18. On February 11, 2005, the Commission issued a Final EIR.

19. The Final EIR includes the June 2004 Draft EIR, comments received during the 45-day comment period, responses to the comments from the ED staff, and changes made to the Draft EIR in response to comments.

20. The Final EIR was released for public review and was available at a number of areas, including two local libraries, Commission's Los Angeles and San Francisco offices and website.

21. The Final EIR must contain specific information according to the CEQA Guidelines Sections 15120 through 15132.

22. The various elements of the Final EIR satisfy these CEQA requirements.

23. The Commission must conclude that the Final EIR is in compliance with CEQA before approving SoCalGas' application for the sale of the lots.

24. CEQA requires that the Final EIR should embody "an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors," it must be prepared in a clear format and in plain language, it must be analytical rather than encyclopedic, emphasize alternatives over unnecessary description of the project, and be "organized and written in such a manner that [it] will be meaningful and useful to decisionmakers and the public."

25. The Final EIR is the competent and comprehensive informational tool that CEQA requires it to be and the quality of the information therein is such that we are confident of its accuracy.

26. We have considered that information in the Final EIR in evaluating the SoCalGas project as described in this decision.

27. Under § 851, the Commission's role in examining transactions is the protection of the public interest.

28. In addressing whether the sale of the lots is in the public interest we give considerable weight to the views of the local community voiced by Grassroots *et al*. that they have real concerns about the health and safety of the neighborhood if structures are built on the lots over abandoned and capped wells.

29. We cannot conclude based upon this record and the Final EIR that the health and safety of the community will be compromised if the lots are sold and developed.

30. The Final EIR includes an analysis of three alternatives, including a No Project option.

31. The Final EIR does not recommend any of the three alternatives over the proposed project.

32. The Final EIR analyzes the environmental impacts, mitigation measures and significance after mitigation under the following categories: (1) air quality; (2) biological resources; (3) cultural resources; (4) geology and soils; (5) hazards; (6) hydrology; (7) noise; (8) transportation and traffic; and (9) utilities.

33. The Commission will not have jurisdictional control over the lots after the proposed sale has been completed. Therefore, the Commission will not have

authority to impose and/or enforce any of the recommended mitigation measures identified in the EIR.

34. The recommend mitigation measures identified in the EIR can only be considered by other agencies (*i.e.,* City of Los Angeles) during future environmental review associated with the future development of these 36 lots.

35. The Final EIR has been completed in compliance with CEQA.

36. The Final EIR reflects the Commission's independent judgment and analysis on the issues addressed in the Final EIR, and the Commission has reviewed and considered the information in the Final EIR before issuing this decision on the project.

Conclusions of Law

1. The EIR, which consists of two separate documents, the Draft EIR and the Final EIR, should be certified.

2. The transfer of property ownership of the 36 lots would not directly result in any significant environmental impact.

3. The EIR discloses the environmental impacts that would be expected to result from the future development of the lots and recommended mitigation measures, which if implemented by other responsible agencies, could avoid or minimize these significant environmental impacts.

4. The Commission, as a lead agency would not have jurisdictional control over the 36 lots after the proposed sale has been completed and the Commission would not have authority to enforce mitigation measures identified in the EIR.

5. The community concerns were weighed against the recommendations in the Final EIR and it is reasonable to approve the project.

6. With respect to any necessary state or local discretionary permits which the purchasers of the lots must obtain in order to construct on the lots, we clarify

that the discretionary decision as to whether or not, to issue the permits or pursuant to what conditions, is at the sole discretion of the state or local entity.

7. SoCalGas should segregate the gain-on-sale from the sale of the 36 lots and the 48 lots into a Memorandum Account pending a final Commission decision in R.04-09-003, at which time SoCalGas is to allocate the gain-on-sale in accordance with the final decision.

8. SoCalGas' application to value and sell the 36 lots and the 48 lots, as set forth in its amended application and the Final EIR, should be granted subject to the terms and conditions set forth in this decision.

9. SoCalGas' request for approval of the additional 48 lots that had been sold should be granted only on a prospective basis.

O R D E R

IT IS ORDERED that:

1. The environmental Impact Report (EIR), which consists of two separate documents, the Draft EIR and the Final EIR, shall be certified.

2. Southern California Gas Company (SoCalGas) is authorized to sell the 36 lots as proposed in its amended application, 2 in Marina del Rey and 34 in Playa del Rey, subject to the terms and conditions set forth herein.

3. Section 851 approval is granted for the sale of the 48 lots that had already been sold on a prospective basis.

4. SoCalGas shall book any gain-on-sale from the sale of the 36 and the 48 lots into a Memorandum account pending a final Commission decision in Rulemaking 04-09-003, at which time, SoCalGas is to allocate the gain-on-sale in accordance with the final decision.

5. Paragon Communities' motion for an interim decision to permit the sale of eight of the 36 lots is denied and any outstanding motion not ruled on is deemed denied.

6. Application 99-05-029 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
(List of Appearances)

********** APPEARANCE **********
Last updated on 29-DEC-2005 by: CPL
A9905029 LIST

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(End of Appendix A)