

**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 Public Utilities Code Section 851 to Sell Certain Real Property in Playa del Rey, California.

Application 99-05-029

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION OF PROTESTANTS TO DISQUALIFY THE ENVIRONMENTAL CONTRACTORS**

**Summary**

This ruling denies the motion of the Grassroots Coalition, Earthways Foundation, Ballona Ecosystem Education Project, and Spirit of the Sage Council (collectively Protestants) to disqualify Environmental Science Associates (ESA) the environmental contractors selected to perform an environmental study on the lots that are the subject of Southern California Gas Company's (SoCalGas) application before the Commission.

**Background**

On May 12, 1999, SoCalGas filed an Application (A.) 99-05-029, with the Commission pursuant to Pub. Util. Code § 851<sup>1</sup> seeking authorization to sell vacant lots located in Playa del Rey and Marina del Rey, California. Some of the lots contain abandoned and capped oil and gas wells. A number of nearby

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<sup>1</sup> Unless otherwise noted, all code references are to the Pub. Util. Code.

residents and interest groups filed protests to the Application raising environmental, health and safety issues concerning the abandoned wells.

In January 2000, the assigned Administrative Law Judge (ALJ) determined that SoCalGas' Application triggered an environmental review under the California Environmental Quality Act (CEQA). SoCalGas was instructed to file a Preliminary Environmental Assessment and the CEQA process began.

In January 2003, the environmental contractors selected in 2000 to conduct the CEQA review of the project were replaced by ESA. On March 25, 2003, Protestants filed a motion to disqualify ESA from performing the CEQA study on the subject lots because of a "genuine conflict of interest." On April 9, 2003, SoCalGas filed a response to the motion indicating it took no position on the qualifications of the consultants retained to conduct the CEQA review.

A hearing on Protestants' motion was heard on April 21, 2003. Protestants supplemented their motion on June 26, 2003, and SoCalGas filed a response to the supplemental motion on June 27, 2003.

### **Discussion**

Protestants supported their motion to disqualify ESA from conducting the CEQA review on the subject lots on the ground of a "genuine conflict of interest." To bolster this argument, Protestants stated that "members of the contractor team . . . have repeatedly served as agents for contractors and builders who have constructed homes, apartment buildings and condominiums over and adjacent to old wells in Playa del Rey and Marina del Rey/Venice without regard for the above identified hazards."<sup>2</sup> In summary, the hazards Protestants

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<sup>2</sup> Protestants' Motion to Disqualify, filed March 25, 2003, pp. 4-5.

refer to stem from Protestants' concerns over allowing residential construction over and adjacent to old oil and gas wells. Protestants allege that old wells have a long history of leaking, and the leakage creates health and safety hazards, not just to the lot purchasers, but also to the surrounding community.

Protestants are steadfast in their belief that the construction of buildings, especially residences, over old wells is “inherently unsafe.” It appears that the gravamen of Protestants' motion is that some members of the ESA CEQA team have not shared Protestants' concern and have approved projects for other clients that involved construction over and around gas storage wells. At the April 21, 2003 law and motion hearing, Protestants argued that the conflict of interest with the ESA CEQA team exists because a particular civil engineer with ESA had previously worked with the City of Los Angeles and had supported lot sales and development in areas over gas storage fields – albeit with mitigation. In addition, Protestants claim that another member of the ESA CEQA team provided consulting services to a development, known as Playa Vista, that is contiguous to the SoCalGas gas storage field, and the consultant did not find any impediments from the storage fields to prevent the development of the Playa Vista project.

The ESA CEQA team was chosen in a joint effort by the Commission's contracting office, the Energy Division (ED), and the Department of General Services (DGS) following well established state-contracting/bid procedures. In fact, Protestants' supplemental motion, filed June 26, 2003, included copies of the documents the Commission used to solicit bids on the Playa del Rey project, as well as the bid package submitted by ESA that included affidavits and disclosure statements required by the state's contracting rules.

The Commission solicits Statements of Qualifications (SOQ) from interested contractors by way of a Request for Qualifications (RFQ). The RFQ for the Playa del Rey lots, No. 02PS-5264, requested SOQs from qualified firms “to prepare environmental documents on the sale of certain real property in the Playa del Rey and Marina del Rey areas as proposed by SoCalGas.” The RFQ set forth specific conditions that would constitute automatic disqualification from the selection process for any team member, indicated the format the SOQ must follow, and identified other information that had to be included in the bid package.

In particular, the SOQ had to include a statement, signed by the principal of each participating firm, that addressed whether the firm met any of the conditions that would have resulted in automatic disqualification, and any other conditions that might render the team unable to give “impartial, technically sound objective assistance and advice, otherwise result in a biased work product, or result in an unfair competitive advantage.” ESA did provide the required affidavits and disclosure statements and each statement addressed the conflict of interest and bias criteria as set forth in the RFQ.

Upon receipt of Protestants’ motion to disqualify ESA, the Commission again reviewed the affidavits and disclosure statements filed by ESA as part of its bid package. The Commission determined that ESA’s SOQ was in full compliance with the requirements of the RFQ and the signed statements indicated that there was no conflict of interest that required disqualification of the firm or indicated that the team could not render an impartial, unbiased work product. In addition, the Commission followed up with the ESA team to verify that ESA had not misled the Commission by any omission in its filed statements.

In addition to controlling for conflicts of interest of environmental firms competing for Commission CEQA contracts, the Commission, ED and DGS also study the educational and professional qualifications of the competing firms. In summary, ESA was chosen according to the state contracting guidelines, was found to be professionally qualified for the project, and no genuine conflict of interest was determined to exist.

**IT IS ORDERED** that the motion to disqualify Environmental Science Associates from conducting a California Environmental Quality Act review of the lots that are the subject of Southern California Gas Company's application is denied.

Dated July 10, 2003, at San Francisco, California.

/s/ CAROL A. BROWN  
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Carol A. Brown  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge’s Ruling Denying Motion of Protestants to Disqualify the Environmental Contractors on all parties of record in this proceeding or their attorneys of record.

Dated July 10, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS  
Elizabeth Lewis

**N O T I C E**

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