Mailed 9/8/2000

Decision 00-09-034 September 7, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the operations and practices of the Southern California Gas Company, concerning the accuracy of information supplied to the Commission in connection with its Montebello Gas Storage Facility.	Investigation 99-04-022 (Filed April 22, 1999)

OPINION ON PROPOSED SETTLEMENT

1. Summary

The draft decision conditionally approved the settlement of this proceeding reached between Southern California Gas Company (SoCalGas) and the Commission's Consumer Services Division (CSD), provided that the settling parties agreed to the following two changes. First, the $3,495,000 voluntary monetary contribution SoCalGas was to make for the benefit of certain organizations should instead be made as a payment to the General Fund of the State of California. Second, SoCalGas should expand the scope of its ethics course to address a utility's ethical obligations in exercising the power of eminent domain.

In their comments to the draft decision, the settling parties indicated that each change is acceptable to them.

The draft decision also directed the settling parties to state in their comments to the draft decision whether tax deductibility was one of the bases for the parties' agreement to the amount of the monetary contribution. The draft

decision stated that if so, and if the settling parties believed that as a result of the changes we impose, the monies would not now be tax deductible, they may recommend a monetary adjustment to the settlement. The Commission can then determine in its final decision whether the entire settlement, including the adjusted amount, is reasonable and in the public interest.

The settling parties do not recommend a monetary adjustment to the settlement. Therefore, the Commission adopts the settlement as more fully set forth in this decision.

2. Introduction

A. Factual Background

This investigation concerns the accuracy of information SoCalGas supplied to the Commission in connection with its Montebello Gas Storage Facility (Montebello or the facility). The primary allegations in the order instituting investigation (OII), based on a report from CSD, are that SoCalGas misrepresented to this Commission that Montebello was needed for utility operations when SoCalGas had already made the decision to dispose of Montebello, and that SoCalGas had acquired by eminent domain mineral rights to a depth deeper than needed, and may have acquired the mineral rights at less than fair market value. The June 30, 1999 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (ALJ) further defined the investigation's scope to include both (1) SoCalGas'operations and practices surrounding the acquisition of fee ownership interests in the mineral rights in connection with Montebello; and (2) SoCalGas' representations or omissions in response to Commission staff requests for information and plans for Montebello.

Misrepresentations or omissions by SoCalGas to the Commission or its staff, if proven, would constitute a violation of Rule 1.[1]

The facility is located in an underground formation, conducive to holding natural gas injected under pressure, and consisting of the top two sands of the Eighth Zone of the West Montebello oil field. SoCalGas began operations at Montebello in the mid-1950s. For a number of years, SoCalGas did not own the facility in its entirety, but operated it pursuant to leases with many owners of the storage and mineral interests. SoCalGas would occasionally acquire some subsurface rights, but was not actively pursuing the purchase of the leased rights.

In 1955, the Commission issued Decision (D.) 51554, which approved SoCalGas' application to operate the facility, and for about 10 years Union Oil Company managed the facility for SoCalGas. In 1966, Union Oil Company no longer wanted to use the facility for oil production, so SoCalGas took over the operation. In 1996, the lease agreements with landowners for storage rights accessing the Eighth Zone started to expire. Under the lease terms, SoCalGas

[1] All rule citations are to the Commission's Rules of Practice and Procedure. Rule 1 embodies a code of ethics, and states:

> "Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of law."

had three years from lease termination to withdraw stored gas, which meant that SoCalGas had use of the Eighth Zone into 1999.

Beginning in about 1991, SoCalGas decided to purchase the facility from the property owners. If these owners would not voluntarily sell their property to SoCalGas, the utility indicated that it would initiate condemnation proceedings. At some point in time, SoCalGas determined that it no longer needed the facility, and in early 1998, it filed Application (A.) 98-01-015 requesting authority from this Commission to sell the facility because it was no longer needed for utility service.

The OII alleges (based on a report by CSD) that SoCalGas misrepresented to the Commission, to Commission staff, and to the Los Angeles Superior Court that the facility was needed for utility operations when SoCalGas had already made the decision to dispose of the facility because in fact it was not needed. According to CSD, SoCalGas made these misrepresentations to the Commission's Energy Division staff during staff's inquiry into SoCalGas' plans for Montebello. The Energy Division conducted this inquiry in response to then State Senator Calderon, who had called staff's attention to contested eminent domain actions which SoCalGas had initiated in Los Angeles Superior Court. These actions concerned SoCalGas' condemnation of a fee ownership (as opposed to a leasehold) interest in the storage and mineral interests at Montebello, and they included representations by SoCalGas to the Los Angeles Superior Court that the facility was needed to provide utility service. According to CSD, before SoCalGas made these representations, the utility had (1) decided that the facility was not needed; (2) not used the facility in over a year; and (3) initiated environmental review to be used in connection with disposing of the facility. Also according to CSD, SoCalGas acquired by eminent domain mineral

rights to a depth far deeper than needed, and may have acquired the mineral rights at less than fair market value.

SoCalGas, in its response to the OII, claimed that the Commission had no jurisdiction to consider alleged civil wrongs concerning SoCalGas' actions in acquiring property interests at Montebello. SoCalGas argued that the courts, and not the Commission, should provide a remedy in this situation, reasoning that while these claimed civil wrongs were committed by a regulated utility, they do not involve SoCalGas' relations with its customers or its provision of utility service. Thus, while the Commission could determine that SoCalGas' costs in property acquisition are not reasonable for ratemaking purposes, SoCalGas maintained that the allegations themselves are outside of the Commission's regulatory oversight.

B. Procedural Background

On June 11, 1999, the Commission held a prehearing conference (PHC). Following the PHC, Assigned Commissioner Duque and ALJ Econome issued the Scoping Memo which, among other things, defined the scope of the proceeding, confirmed the OII's categorization of this investigation as an adjudicatory proceeding, and confirmed that evidentiary hearings were necessary. The Scoping Memo also set a schedule under which this investigation could conclude within 12 months of initiation,[2] and designated ALJ Econome as the presiding officer.

[2] Pub. Util. Code § 1701.2(d) states that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why the deadline cannot be met and issues an order extending that deadline.

The Scoping Memo stated that the ratepayer implications of SoCalGas' alleged conduct in these two areas (e.g., acquisition of mineral rights at Montebello and representations to the Commission regarding the continued need for the facility) were within the scope of this proceeding. The Scoping Memo did not consolidate this investigation with A.98-01-015, SoCalGas' application requesting to sell the facility, although the OII gave the ALJ the discretion to do so, and stated that all issues presented in A.98-01-015 were not necessarily presented in this proceeding. For example, the Scoping Memo stated that the OII was not the forum to determine the precise cost of any environmental cleanup of Montebello that may be necessary.

The parties conducted extensive discovery in preparation for the evidentiary hearings set for mid-October 1999. Prior to entering into the settlement, CSD had served its testimony, which consisted of additional testimony from Margaret C. Felts, Investigative Consultant for CSD, who prepared the report that accompanied the OII. CSD's testimony also included declarations from three Commission staff members concerning the representations SoCalGas employees made to them regarding the continued need to operate Montebello as a gas storage facility, and numerous declarations from landowners from whom SoCalGas acquired gas storage and mineral interests in Montebello.

The Utility Reform Network (TURN) was the only interested party to serve prepared testimony. TURN focused its testimony on recommended remedies to prevent recurrence of the wrongdoing, should CSD's allegations prove correct.

Prior to SoCalGas serving its testimony, the ALJ issued an August 24, 1999 ruling which granted SoCalGas' motion to compel discovery, and directed

CSD to produce to SoCalGas the retainer contract between CSD and Felts, her invoices to CSD concerning work on this OII, and written communications between Felts and CSD's counsel concerning this matter. The ALJ reasoned that, for purposes of the motion, Felts should be considered an expert witness, because she is not a percipient witness (i.e., not a landowner or a Commission staff member to whom SoCalGas made certain representations), and she is offering her conclusions and opinions on the ultimate issues in the case.

On August 27, 1999, SoCalGas filed a motion to dismiss or, alternatively, to compel discovery and to extend the time for serving its testimony. SoCalGas and CSD resolved all issues raised by this motion except for the issues that SoCalGas had previously raised in its response to the OII.

On August 31, 1999, CSD filed an appeal to the full Commission of the ALJ's August 24 ruling. A September 3, 1999 Joint Assigned Commissioner and ALJ ruling denied this request. On September 3, CSD filed a request for reconsideration and for stay of the joint ruling.

On September 8, 1999, the ALJ issued a ruling which suspended the schedule until further ruling, but urged the parties to continue to work diligently on all other outstanding issues. The ruling also set a briefing schedule for outstanding pleadings, and a date certain for CSD to serve its privilege log to the parties and to produce to the Chief ALJ under seal the materials designated by the August 24 ALJ ruling. The ruling further stated that the Chief ALJ would hold the material under seal pending further disposition of the matter.

On October 15, 1999, CSD and SoCalGas noticed a settlement conference pursuant to Rule 51.1(b). On November 12, SoCalGas and CSD moved to adopt the settlement. The Commission's Office of Ratepayer Advocates (ORA) and TURN filed timely oppositions, to which SoCalGas and

CSD, jointly, and Southern California Edison Company (Edison) filed timely replies on December 28.

As a result of the schedule suspension and the proposed settlement, SoCalGas has not yet served its testimony. However, SoCalGas filed and served, together with its brief supporting the proposed settlement, the most recent draft of SoCalGas' nine witnesses' testimony.

On February 1, 2000, the ALJ issued a ruling requesting additional information regarding the settlement. The ruling set a briefing schedule by which the matter was submitted on March 8, 2000.[3]

On March 16, 2000, the Commission issued D.00-03-045, which extended the 12-month deadline set forth in Pub. Util. Code § 1701.2(d) for the resolution of this adjudicatory case in order to fully consider the settlement.

The OII categorized this investigation as an adjudicatory proceeding and set the matter for evidentiary hearings. The Scoping Memo confirmed this designation. Because this matter can be resolved by adopting the settlement as more fully set forth below, we determine that hearings are no longer necessary, and our order today makes that change in the OII and Scoping Memo's determination.

C. The Settlement

The settlement agreement is attached hereto as Appendix A. The main terms of the settlement are that SoCalGas will:

[3] The ALJ ruling set a date for replies no later than March 7, but the ALJ granted the joint request of SoCalGas and CSD to file their reply on March 8.

(1) voluntarily pay $3,495,000 to certain organizations providing energy-related assistance to low-income consumers or research and development;

(2) send a written offer to all persons from whom it has acquired mineral rights at Montebello on or after January 1, 1991, offering to rescind the acquisition of mineral rights and to restore the mineral rights to the prior owner upon the execution by the prior owner of a general release of SoCalGas. The offer will remain open for at least 120 days following mailing; and

(3) in consultation with CSD and the Commission's Public Advisor, develop and present a course on professional responsibility and practice before the Commission, with special emphasis on Rule 1 (ethics course). The course will be open to all interested persons and SoCalGas will fund it up to a maximum of $200,000.

CSD agrees that this settlement fully resolves the matters presented in the OII and that SoCalGas may submit to the Commission the then-current draft of its testimony in response to CSD's testimony in the OII. The settlement also states that shareholders will fund the settlement agreement, and that nothing in the agreement is intended or shall be construed to impact SoCalGas' ratepayers. The settlement states that the agreement is not an admission of any wrongdoing by SoCalGas, and SoCalGas continues to deny that it has committed an ethical violation or any other wrong with respect to the matters set forth in this investigation. Finally, the settlement states that it is conditioned on the Commission approving the agreement in its entirety, and in the event such approval is not received, the agreement shall no longer be in force.

D. The Parties' Positions in the Underlying Controversy

As stated above, no hearing has yet occurred in this case. The OII and attached report set forth some of CSD's allegations, on which CSD elaborates in

its proposed testimony. Together with its comments on the motion to approve the settlement, SoCalGas filed a copy of the latest draft of its testimony, which has not yet been served. No other party served testimony addressing the underlying facts of the case. Based on the above, we have a record to evaluate the proposed settlement. A broad summary of CSD's and SoCalGas' allegations are as follows.

CSD

In the OII, and again in its served testimony, CSD states that SoCalGas misled the Commission in its actions concerning Montebello. The OII focuses on two issues: (1) whether SoCalGas provided the Commission with inaccurate information, both by affirmative statements or material omissions, to the Commission and its staff; and (2) allegations that SoCalGas may have misled persons from whom it acquired property interests at Montebello or otherwise acted improperly in acquiring those interests.

The ordering paragraphs in the OII provide in pertinent part that (1) providing the Commission with misleading or inaccurate information, or making a material omission in response to an agency request for information is a violation of Rule l (the Commission's ethical rules) which could subject SoCalGas to certain monetary penalties; and (2) if the Commission finds SoCalGas was too reaching in deploying its powers of eminent domain or failed to fully disclose to landowners material information, that the Commission will entertain recommendations on what orders to enter which could reasonably and fairly restore affected parties' interests. SoCalGas challenges the Commission's jurisdiction to issue an order restoring affected parties' interests, while CSD responds that the Commission has broad authority to issue appropriate remedies.

As to the first issue, CSD primarily focuses upon a June 4, 1997, meeting between SoCalGas representatives and members of the Commission's Energy Division, where SoCalGas told Energy Division that SoCalGas needed to obtain the storage and mineral rights to the Montebello field through eminent domain because the leases were to expire and SoCalGas needed to continue to operate Montebello. CSD also states that SoCalGas made this representation in the civil court condemnation actions concerning Montebello. Based upon these representations, Commission staff also advised then-Senator Calderon (who questioned the Commission on behalf of certain landowners) in part, that the court condemnation actions appeared appropriate because Montebello was needed to provide utility service, but the particular questions would be referred to the Commission's Legal Division for further review. According to CSD, the Commissioners were ultimately advised of Senator Calderon's questions about SoCalGas' condemnation actions, and that the utility appeared to need Montebello for future utility operations.

Through the OII and other served testimony, CSD alleges that at the time SoCalGas was advising the Commission that Montebello was needed and was litigating the condemnation cases, SoCalGas had initiated environmental reviews in order to sell Montebello, because the utility decided that Montebello was not needed and had not used it in over a year. Ultimately, in early January 1998, SoCalGas filed an application requesting that the Commission permit SoCalGas to sell Montebello, with no restriction on use or buyer, because the storage facility was no longer needed.

As to the second issue, the primary concern expressed in CSD's served testimony is that the landowners did not receive fair market value for their mineral rights, and that SoCalGas acquired mineral rights to a depth deeper than

needed. CSD also states that SoCalGas threatened to take some landowners' property by eminent domain if they did not voluntarily sell their property to SoCalGas.

SoCalGas

SoCalGas denies that it engaged in any communications to deceive this Commission, the California Superior Court, and the property owners, as described in CSD's report.

As to the first issue, SoCalGas denies that it deceived this Commission in June 1997 because SoCalGas, through Enova, did not make the decision to dispose of Montebello until December 19, 1997. According to SoCalGas' draft testimony, between late 1995 and December 1997, SoCalGas was studying whether to dispose of two storage fields, Montebello and Playa Del Rey, and made contingency evaluations to do so if SoCalGas were to make a decision to dispose of either or both facilities. The testimony reflects that SoCalGas ultimately determined to dispose of Montebello (in December 1997), but not Playa Del Rey. Furthermore, the testimony of certain SoCalGas staff who met with the Commission's Energy Division in June 1997 is that they were unaware that SoCalGas was considering plans to dispose of Montebello.

The issues of whether SoCalGas misled the Los Angeles Superior Court and SoCalGas' dealings with certain Montebello property owners are more intertwined. According to SoCalGas, its predecessor [Pacific Lighting Gas Supply Company] became both the owner and manager of Montebello in the mid 1960s. At that point, Pacific owned a total fee interest of about 43% of the storage rights and about 56% of the mineral rights, and had long-term leases for the remaining rights, which were expiring in the mid 1990s (and which had a three year grace period). According to SoCalGas, over the years, many of the

leasehold interests were subdivided due to leaseholder deaths, marriages, and other transfers, while the size of the semi-annual payments decreased as oil production declined. SoCalGas states that by 1991, it was making payments to hundreds of lessors.

According to SoCalGas' draft testimony, in 1991, before the leases expired, SoCalGas determined to acquire the storage rights in fee, because the administrative costs of maintaining the lease arrangements were becoming burdensome, both because of the difficulty in tracking the legal owners, as well as overhead expenses. SoCalGas' testimony is that although it was uncertain whether it needed to acquire the mineral rights as well as the storage rights, it did so because the royalty payments were as costly to administer as the storage payments, and because the holder of the mineral rights might claim a legal right to drill to produce oil, which would disrupt the gas storage operations.

According to SoCalGas, it first attempted to acquire the storage and mineral rights voluntarily, and in about May 1995, when SoCalGas had been unable to obtain rights from about one third of the holders, it decided to file condemnation actions.

SoCalGas' draft testimony states that it reached agreement with landowners to purchase about 65% of the outstanding total rights holders and filed condemnation actions on the rest of the property interests. These actions were filed and handled in the Los Angeles Superior Court. SoCalGas enumerates each action and indicates that many resulted in default judgments or settlements, with many concluding prior to December 1997, when SoCalGas states it made the decision to dispose of Montebello. As to the remaining actions, SoCalGas' testimony is that rights sought to be condemned were still needed whether the field was eventually abandoned or kept in operation to avoid a

situation of trespass. In one 1998 motion for summary adjudication made in a condemnation action, SoCalGas states it attached to the court papers a copy of its January 1998 application before this Commission to sell Montebello. SoCalGas has also tendered an expert witness in condemnation law who believes that SoCalGas acted consistent with California law when it continued to pursue acquisition of the few remaining property interests in Montebello after December 19, 1997.

Finally, SoCalGas' draft testimony raises multiple concerns about any future duty that the Commission may impose that would require SoCalGas to disclose confidential potential and contingent business strategies to the Commission before the utility in fact decides to adopt them.

E. Position of the Settling Parties on the Settlement

The settling parties believe that the settlement complies with Rule 51.1(e) because it is a reasonable compromise supported by the entire record, is consistent with applicable law, and is in the public interest. SoCalGas believes its monetary contribution to energy-related low-income research and development programs, and its agreement to develop and present an ethics course, is reasonable in light of the contested nature of the allegations, and the fact that the settlement is funded by shareholders. SoCalGas also states that the settlement is consistent with the law.

The OII stated that it would entertain recommendations on what orders to enter "which could reasonably and fairly restore affected parties' interests." According to SoCalGas, the primary concern expressed in CSD's testimony, including the declarations submitted by the Montebello landowners, is that the landowners did not receive fair market value for their mineral rights. Although SoCalGas has a pending motion to dismiss where it argues that the Commission

does not have jurisdiction to adjudicate these issues, SoCalGas believes that the settlement is reasonable because it includes an offer to rescind SoCalGas' acquisition of mineral rights acquired after January 1, 1991, and to restore the mineral rights to the prior owner. According to SoCalGas, this provision would place Montebello property owners in the same position they would have occupied had SoCalGas never acquired the mineral rights in the first place.

In response to the ALJ's request for additional information on the settlement, SoCalGas and CSD state they intend the settlement to resolve all allegations that SoCalGas' conduct, either in acquiring storage and mineral interests at Montebello or in providing information about its activities to the Commission's staff, was wrongful. However, they state that the question of whether certain costs – such as the costs of acquiring storage rights – are unreasonable, is preserved to be addressed in future proceedings. SoCalGas and CSD further state that the settlement would not preclude the former Montebello rights holders from seeking relief in state court, should they conclude that a civil action is warranted and would be meritorious, because they are not parties to the OII.

Application of these general principals, according to SoCalGas and CSD, means that the settlement would resolve all issues associated with SoCalGas' representations and omissions in response to Commission staff requests for information and plans for the facility, including reasonable legal costs of defending against this OII, and whether ratepayers were injured by any delay the OII or SoCalGas' conduct allegedly caused in processing SoCalGas' application for approval to sell the Montebello gas storage field (A.98-01-015). The settling parties maintain that disallowing costs or otherwise penalizing SoCalGas for the claimed delay would amount to penalizing SoCalGas for the

alleged ethical violations, which are matters that SoCalGas and CSD have agreed to settle.

F. Position of the Parties Opposing the Settlement

ORA and TURN object to the settlement on various grounds. Both parties voice concerns regarding the settlement of the alleged ethical violations. ORA also states that the settlement's offer of rescission to landowners may not be adequate if the allegations of SoCalGas' bad faith in conducting the eminent domain actions are proven to be correct.

Both ORA and TURN also believe that the settlement does not address certain ratemaking or ratepayer issues. For example, ORA believes that ratepayers have incurred certain expenses for SoCalGas' lease acquisition activities related to Montebello and its costs of litigation in this case. ORA also seeks protection for ratepayers against additional litigation expenses that may arise from SoCalGas' conduct in acquiring the leases. ORA believes that the settlement or the Commission should address these issues in this proceeding. TURN voices similar concerns, and also believes that SoCalGas' actions in these areas have harmed ratepayers by delaying the disposition of Montebello.

ORA also believes that the settlement violates the law because, according to ORA, the Commission cannot order a utility to make a contribution to a charitable organization as part of the resolution of a Commission investigation. ORA also believes that if any of the landowners elect to rescind the mineral interest transaction, SoCalGas' shareholders, not its ratepayers,

should finance the effects of inflation on the transaction.[4] The objections to the settlement do not specify factually contested issues or request evidentiary hearings on the settlement.

In response to the ALJ's ruling requesting further information on the settlement, TURN recommends that the Commission reject the settlement. Alternatively, if the Commission approves the settlement, TURN recommends that the Commission explicitly state that all issues regarding harm to ratepayers are preserved for future consideration in appropriate proceedings. For example, TURN believes that the Commission should be able to address, in a subsequent application for sale of Montebello, the question of whether SoCalGas contributed to an unreasonable delay which harmed ratepayers, regardless of the outcome of this OII.

ORA maintains that it should not be precluded from examining the wrongfulness of SoCalGas' actions concerning Montebello in any subsequent proceeding where the reasonableness of SoCalGas' Montebello related expenditures might be examined. ORA also disagrees with the settling parties' position that disallowing costs or otherwise penalizing SoCalGas for the claimed delay of A.98-01-015 would be tantamount to penalizing SoCalGas for the alleged ethical violations. ORA asserts that SoCalGas' expenditures to condemn and otherwise acquire property it did not need to provide gas service in its

[4] ORA explains that SoCalGas paid various amounts for the mineral interests over the years in nominal dollars, and the settlement provides that SoCalGas will receive the same amount back from the landowners in year 2000 dollars. ORA believes that SoCalGas' shareholders should finance the present value difference between the acquisition cost and sale price for those leaseholders that repurchase their leasehold interest.

service territory are of concern quite apart from the question of whether SoCalGas committed ethical violations in justifying those expenditures. ORA believes that the OII contained more issues than just the alleged ethical violations, and the Commission has not authorized SoCalGas or CSD to enter into a settlement to remove these other issues from further consideration. According to ORA, the settling parties have attempted to arrogate powers they do not possess by trying to limit the Commission's ability to fully consider all the implications of the OII. ORA therefore continues to recommend that the Commission reject the settlement.

G. Responses to the Opposition

The settling parties contend that this investigation was not intended to address ratepayer issues. They state that the settlement was designed to avoid ratepayer impact, and does not purport to resolve or to foreclose future redress of any ratepayer issues that may exist.

Edison believes that both ORA's and TURN's positions incorrectly assume that the Commission has determined that the facility should be sold, which issue was the subject of A.98-01-015. (The Commission dismissed A.98-01-015 without prejudice.) Edison argues that the Commission can address ORA's and TURN's ratepayer issues in a separate proceeding, either in A.98-01-015 if it is reopened, or in a new application which SoCalGas may file.

3. Discussion

We review the settlement pursuant to Rule 51.1(e), which provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest."

The settling parties rely on the analysis of the reasonableness standard contained in *Re Pacific Gas and Electric Company*, D.88-12-083, 30 CPUC2d 189

(*Diablo Canyon*). The Commission there stated that the standard used by the courts in their review of proposed class action settlements is whether the class action settlement is fundamentally fair, adequate, and reasonable. (30 CPUC2d at p. 222.) The Commission thereafter quoted with approval Proposed Rule 51.1(e), which is now a final rule. Next, the Commission set forth various factors a court could use to determine reasonableness.

> "In order to determine whether the settlement is fair, adequate, and reasonable, the court will balance various factors which may include some or all of the following: the strength of the applicant's case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent to which discovery has been completed so that the opposing parties can gauge the strength and weakness of all parties; the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.
>
> "In addition, other factors to consider are whether the settlement negotiations were at arm's length and without collusion; whether the major issues are addressed in the settlement; whether segments of the class are treated differently in the settlement; and the adequacy of representation." (*Diablo Canyon*, 30 CPUC2d at p. 222, citations omitted.)

We believe these factors embodied in the three-pronged criteria set forth in Rule 51.1(e), to which we now turn.

Is the settlement reasonable in light of the whole record, consistent with the law, and in the public interest?

With the modifications set forth below, we conclude that the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. We reach this conclusion for the reasons set forth below.

Is the settlement reasonable in light of the whole record?

In *Diablo Canyon*, the Commission set forth various factors to determine a settlement's reasonableness including the extent to which discovery has been completed so that the opposing parties can gauge the strength and weakness of all parties, the stage of the proceedings, as well as the risk, expense, complexity, and likely duration of further proceedings. In the instant case, the record supports a finding that the settlement is reasonable under the *Diablo Canyon* factors.

Our finding is based upon an analysis of the competing strengths and weaknesses of each parties' case and consideration of many of the other *Diablo Canyon* factors. Yet we do not convert our settlement review into a full scale mini-hearing on the merits of the case. Rather, we look to the evidentiary strengths of CSD's claims and SoCalGas' defenses, the seriousness of the allegations, as well as the subjective evaluations of the parties. Necessarily, a settlement generally occurs before the parties are aware of what the precise litigated result would have been after a full hearing. However, as established below, the settlement is thus reasonable in light of the whole record because it resolves this case by adopting a result that is in the range of reasonableness suggested by the seriousness of the allegations, the strength of the evidence, as well as the prehearing evaluations of the parties.

In this case, the settlement has occurred late enough so that the parties have been able to assess the strengths and weaknesses of their case, but early enough (before the start of hearings) that the settlement will avoid significant additional expense and the use of Commission resources. SoCalGas and CSD were the only parties to offer testimony on the factual allegations in the OII. A CSD-sponsored report was attached to the OII, CSD had served additional

testimony, and SoCalGas filed draft testimony with the settlement. As set out more fully above, SoCalGas' draft testimony disputes each of CSD's material factual allegations. For instance, SoCalGas states that the corporate decision to sell Montebello was made approximately six month after SoCalGas representatives met with the Commission, thus disputing the allegations that the utility made misrepresentations to the Commission. With similar arguments, SoCalGas disputes that it misrepresented the need for the facility to the Los Angeles Superior Court. Although most of the discovery has been completed, the proceeding is still at an early procedural stage because hearings have not yet commenced, and thorny discovery issues, as well as challenges to the Commission's jurisdiction to order remedies to affected landowners, remain in dispute.

Further proceedings promise to be complex, contentious, and lengthy. As the settling parties stated, "after all that work [pretrial preparation], CSD and SoCalGas each concluded that the outcome of the case was not a sure thing – at the end of a lengthy and contentious hearing, each believed it was possible that the Commission could find either way on the allegations of the OII. As a result, CSD and SoCalGas agreed that a compromise made sense for both of them and the Commission." (CSD and SoCalGas' March 7, 2000 Joint Reply in Response to ALJ's Ruling at p. 1.)

We conclude that substantial considerations of litigation cost and uncertainty support approval of the proposed settlement. Other factors going to the reasonableness of the settlement overlap with the public interest criterion, so we next examine that criterion.

Is the settlement in the public interest?

The settlement also provides that SoCalGas will develop, in consultation with CSD and the Commission's Public Advisor, a course on professional responsibility and practice before the Commission, with special emphasis on responsibilities under Rule 1 of the Commission's Rules. The course would be open to all interested persons and SoCalGas will fund the course up to a maximum of $200,000.

The Commission has approved similar provisions in settlement of alleged ethical violations. (See D.97-08-055, 1997 Cal. PUC LEXIS at 765 [PG&E employees who routinely practice before the Commission would take an ethics training course of at least four hours and up to one full day regarding the preparation and processing of discovery and prepared testimony.]) This provision contributes to a finding that the settlement is reasonable and in the public interest, with a minor modification. This proceeding concerns both allegations of ethical violations and of the abuse of the utility's power of eminent domain. We will require that a portion of the professional responsibility course should address a utility's ethical obligations in exercising the power of eminent domain, and this portion of the course should be open to all SoCalGas employees and consultants who assist SoCalGas in exercising such powers. In developing this portion of the course, SoCalGas should keep in mind the admonitions of California Supreme Court concerning the duties of a government attorney in exercising the power of eminent domain.[5]

[5] Although SoCalGas attorneys are not technically government attorneys, they occupy the same position as a government attorney when exercising the power of eminent domain, which is a power reserved for the sovereign.

> "As suggested by the American Bar Association, a government lawyer may be under an even higher duty: 'A government lawyer in a civil action … has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.' … Occupying a position analogous to a public prosecutor, he is 'possessed … of important governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice.' … The duty of a government attorney in an eminent domain action, which has been characterized as 'a sober inquiry into values, designed to strike a just balance between the economic interests of the public and those of the landowner' … is of high order. 'The condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation.'" (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871.)

The settlement is in the public interest because it offers certain affected landowners the opportunity to obtain rescission of SoCalGas' acquisition of the landowners' mineral interests. This portion of the settlement addresses another major contention of the OII, namely, that SoCalGas may have paid less than fair market value for the mineral interests. The settlement avoids the complexity of the jurisdiction issues because the settlement provides that SoCalGas will take action to initiate rescission (assuming the landowners agree), and it is relatively clear that it is within this Commission's jurisdiction to order utilities to take appropriate action with respect to their regulated assets. The settlement does not preclude any of these persons from seeking relief in state court should they conclude that a civil action is warranted. (See February 15, 2000 CSD and SoCalGas Joint Response to ALJ Ruling, at p. 2, n. 2.) The settlement's resolution of this issue appears reasonable, especially since it gives landowners the option

to accept rescission and does not preclude any other remedies these landowners might elect to pursue in Superior Court or otherwise, should they not wish to obtain rescission under the settlement's terms.

The settlement states that SoCalGas agrees not to fund any portion of the agreement by money from ratepayers. In our draft decision, we agreed with ORA that if the landowners pay SoCalGas back the same dollar amount that SoCalGas paid for the mineral interests, ratepayers would be financing the present value difference between the acquisition costs and sale price for those leaseholders that repurchase their lease hold interest. That is not the intent of the settlement based on the plain language cited above, which states that shareholders will finance the settlement.

CSD and SoCalGas' joint comments to the proposed decision clarify that due to the small amount of money paid to acquire mineral rights, and the desire to mend relations with former mineral rights holders, SoCalGas does not intend to seek repayment of moneys paid to acquire these rights should a former owner request rescission under the settlement. Therefore, in order to make ratepayers whole, CSD and SoCalGas propose that within 210 days of final Commission approval of the settlement (30 days after the close of the period during which former rights holders can request rescission), SoCalGas will file an advice letter to reduce its rates prospectively by the amount of the authorized margin in then-current rates associated with the mineral rights that are returned to the prior owners. SoCalGas will also file by advice letter a plan to refund, with interest at a rate of ten percent a year, all revenue requirements associated with mineral rights returned to prior owners pursuant to the settlement that were collected in rates prior to the prospective reduction in rates. In its reply comments, ORA does not state any opposition to this clarification. This clarification is reasonable

because it is consistent with the settlement's statement that ratepayer money should not funded the settlement. We therefore adopt this clarification.

Further, those landowners receiving a rescission offer from SoCalGas should have sufficient information in order to make an informed choice. Therefore, in SoCalGas' rescission offer to affected landowners, we direct SoCalGas to make a full disclosure of the condition of the property, including but not limited to (a) advising landowners of the nature and status of SoCalGas' A.00-04-031 (requesting Commission authority to sell Montebello); and (b) providing a copy of an informative environmental document that has been recently developed at the time the notice is sent, such as the Executive Summary of the Proponent's Environmental Assessment filed with A.00-04-031, as well as the Commission's Environmental Branch's deficiency letters thereto, or the Notice of Preparation (N.O.P.) filed with the State Clearinghouse, if such a N.O.P. has been prepared.

Also, in order to effectuate the intent of shareholder financing of the settlement, we direct that no later than December 31, 2000, and every 60 days thereafter until the acquisitions pursuant to the settlement have been completed, SoCalGas shall (a) provide the Commission with a full accounting of all mineral interests the acquisition of which is rescinded pursuant to the settlement agreement; and (b) document that shareholders have financed the entire acquisition, including the present value difference between the acquisition cost and the sale price. SoCalGas shall file this report with the Commission's Energy Division, shall serve it on all parties to this OII, and shall also make it part of its initial showing in its next cost of service performance based ratemaking application before this Commission.

We conclude that the settlement fairly addresses the public interest that prompted issuance of this OII. Finally, we consider the lawfulness of the settlement.

Is the settlement consistent with the law?

In this case, CSD and SoCalGas crafted a proposed settlement designed, among other things, to provide practical training targeting the alleged violations. We find the settlement consistent with the law, if modified as discussed in this decision, because the settlement consists of appropriate remedies in light of the allegations in the OII, the strength of the evidence, as well as the parties' prehearing evaluations.

However, we believe that a settlement calling for a voluntary contribution to certain energy-related low income and research and development programs would be inconsistent with applicable law under the facts of this particular case. Therefore, we propose a modification to the settlement.

The two controlling Commission decisions on this issue are *Application of Long Distance Direct, Inc.*, D.98-03-071, 1998 Cal. PUC LEXIS 31 (LLDI) and *Re GTE California Inc.*, D.98-12-081, 1998 Cal. PUC LEXIS 910 (*GTEC*). The *LLDI* case involved allegations of slamming, that is, of a reseller of certain telephone services switching some consumers' long distance service without proper authorization. In *LLDI*, the Commission held it did not have the authority to direct payment of a "settlement fee" to the designated trust fund rather than to the General Fund. Therefore, the Commission amended a settlement agreement between CSD and an applicant so that applicant would pay the proposed funds into the General Fund of the State of California, rather than a Consumer Protection Trust Fund administered by the state's District Attorneys Association.

In *LDDI*, the Commission stated that it has the authority to levy fines and penalties against the utilities pursuant to Pub. Util. Code §§ 2100 et seq., but that penalties assessed under those provisions must be deposited in the General Fund. The Commission also stated that it has the authority to require refunds to consumers pursuant to Pub. Util. Code § 453.5, but that such refunds must be disbursed to ratepayers or, through escheat, to the General Fund. The Commission concluded that simply calling the payment a "settlement fee" instead of a fine or penalty may not be sufficient to overcome the provisions of the Public Utilities Code that require the Commission to direct such payments to the General Fund.

Also, there was no nexus between the "settlement fee" and any wrong alleged in the case, nor was the "settlement fee" needed as an additional equitable remedy specifically designed to remedy the alleged harm. (*See also TURN v. Pacific Bell*, D.97-06-062, 72 CPUC2d 799, 801 [The Commission declined to use unclaimed refunds for "upfront" funding of nonprofit customer representatives in Commission proceedings, because this use served no equitable function connected with that proceeding.])

In contrast, the *GTEC* decision approved a settlement containing a $4.85 million payment to a consumer education fund. There, the purpose of the fund was not to penalize GTEC, but to remedy harm suffered by victims of GTEC's alleged marketing practices. The Commission reasoned that unlike *LDDI*, the *GTEC* proceeding raised the issue of the adequacy of prior restitution and consumer education. The Commission also circumscribed the fund's uses for education of non-English speaking customers only in the potentially affected service area. Thus, according to *GTEC*, a monetary payment to a consumer

education fund is justified when other remedies are inadequate and the additional equitable remedy is specifically designed to remedy the alleged harm.

In this case, SoCalGas' proposed contribution to certain energy-related low income and research and development programs is not specifically designed to remedy harms alleged in the OII, nor do the settling parties suggest that other remedies are inadequate. In fact, SoCalGas implicitly acknowledges that this portion of the settlement is in compromise of the ethical violations, when it justifies the reasonableness of the monetary contribution on the grounds that if were to be found guilty of an ethical violation, it could be subject to a penalty of between $500 and $20,000 per violation (or per day of a continuing violation).

In other cases, the Commission has approved monetary settlements of alleged ethical violations, but in those cases, the money was paid to the General Fund. (See D.97-08-055, 1997 Cal. PUC LEXIS 763, 765, where CSD and PG&E settled such alleged violations for an $850,000 payment.)

As we did in *LDDI*, we approve the settlement in this case with the proviso that SoCalGas pay the funds designated in the settlement for certain groups instead to the General Fund of the State of California in the manner penalties are usually paid. As stated above, SoCalGas has agreed to "voluntarily contribute a total of $3,495,000" on the grounds that if SoCalGas were found guilty of an ethical violation, it could be subject to a penalty. Thus, SoCalGas' compromise is a payment in lieu of a penalty.

As to the monetary figure, the draft decision noted that the settling parties may have taken into account that such payments may be tax deductible for SoCalGas. ORA and TURN have referred to such payments as "charitable contributions," but this is not made a specific term of the settlement. The draft decision directed the settling parties to state in their comments to the draft

decision whether tax deductibility was one of the bases for the parties' agreement to the amount of the monetary contribution. The draft decision stated that if so, and if the settling parties believed that as a result of the changes we impose, the monies would not now be tax deductible, they may recommend a monetary adjustment to the settlement taking into account the tax implications of our modification. The Commission can then determine in its final decision whether the entire settlement, including the adjusted amount, is reasonable, lawful and in the public interest.

In their comments to the settlement, the settling parties did not recommend a monetary adjustment to the settlement. Therefore, the Commission retains the monetary amount of the settlement and directs that it be paid to the General Fund.

Are the major OII issues addressed by the settlement?

In *Diablo Canyon*, the Commission stated that an additional factor to balance in order to determine whether the settlement is reasonable is whether the major issues are addressed by the settlement. This factor implicates all of the criteria mentioned above. One of ORA's and TURN's major objections to the settlement is that it fails to address all issues presented in the OII. For example, ORA argues that the Commission should not approve the settlement, in part, because it believes that ratepayers will be exposed to considerable expenses as a result of the settlement. These costs include SoCalGas' internal costs and the costs of retaining outside counsel to litigate the eminent domain proceedings, the costs of defense against this OII, and ratepayer protection from the expense of additional litigation which may arise from SoCalGas' conduct in acquiring the leaseholds.

As stated above, in response to an ALJ ruling, the settling parties state that it is their intent that the settlement resolve all allegations that SoCalGas' conduct, either in acquiring storage and mineral interests at the Montebello facility or in providing information about its activities to the Commission's staff, was wrongful. However, these parties state that the question of whether certain costs – such as the costs of acquiring storage rights – are unreasonable, is preserved to be addressed in future proceedings. These parties further state that the settlement would not preclude the former Montebello rights holders from seeking relief in state court should they conclude that a civil action is warranted and meritorious.

We clarify here the scope of issues which the settlement resolves. By adopting this settlement, issues concerning whether SoCalGas' conduct in acquiring storage and mineral interests at Montebello was wrongful, and all issues concerning SoCalGas' representations to Commission staff about Montebello, are resolved by this proceeding with the following clarifications.

The settling parties state clearly that this settlement does not preclude individual landowners from litigating against SoCalGas, should they believe that rescission is not an adequate remedy for any of SoCalGas' alleged wrongs at Montebello. We clarify that nothing in this decision precludes individual owners from litigating any issues regarding SoCalGas' actions at Montebello should they believe rescission is not an adequate remedy, and nothing in this decision or the settlement can be used by SoCalGas against these owners in any such litigation, in order to preclude litigation of such issues or otherwise. We also clarify that this settlement does not address or decide the issue of whether shareholders or ratepayers would be responsible for the costs of defending such litigation, or in

paying any such judgments, should they occur. This potential issue is left open for an appropriate proceeding.

The settlement resolves issues at the Commission concerning SoCalGas' alleged wrongful conduct in acquisition of the leaseholds at Montebello and issues concerning SoCalGas' representations to Commission staff concerning Montebello. It also resolves the issue of who bears SoCalGas' reasonable costs for defending itself in the OII.

However, the settlement does not address or resolve the reasonableness of SoCalGas' conduct at Montebello for ratemaking purposes. Parties are therefore not precluded from examining in another proceeding whether SoCalGas' conduct at Montebello may lead to a finding of unreasonableness that supports a particular ratemaking conclusion. For example, parties in another proceeding may question the reasonableness of SoCalGas' decision to sell Montebello in 1998, arguing that SoCalGas should have made the decision to sell earlier. Similarly, they may examine the reasonableness of SoCalGas' property acquisition costs at Montebello. In another proceeding, parties may also address the reasonableness of SoCalGas' other expenses at Montebello, including the reasonableness of its expenses to defend itself in this OII. However, the settlement precludes parties from raising in another proceeding the argument that ratepayers were injured by any delay that this OII caused in the sale of Montebello, or in processing A.98-01-015, because this OII primarily dealt with SoCalGas' representations to this Commission regarding Montebello.

In summary, since the settlement resolves the major issues set forth in the OII, we believe it is reasonable to adopt it with the modifications set forth above. However, since the settlement by its own terms states that nothing in the agreement is intended or shall be construed to impact SoCalGas' ratepayers, the

approval of the settlement is not res judicata as to issues concerning the reasonableness of SoCalGas' actions at Montebello if such issues arise in another appropriate proceeding before this Commission, although it resolves all issues concerning SoCalGas' representations made to the Commission about Montebello. With this clarification, we adopt the settlement.

4. Comments on Draft Decision

The draft decision of ALJ Econome in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.7. CSD and SoCalGas (jointly) and ORA filed comments and replies on the settlement. As a result of the comments, we make the following changes to the draft decision. Additionally, we make other changes to improve the discussion and to make technical or typographical corrections to the decision.

- We require SoCalGas to pay the entire monetary settlement ($3,495,000) to the General Fund.

- We require that SoCalGas' report (which fully accounts for the mineral interests it rescinds as a result of the settlement) should be made part of its initial showing in its next cost of service based ratemaking application before this Commission, as well as filed with the Energy Division and served on all parties to this OII.

- We clarify that this settlement resolves issues concerning SoCalGas' alleged wrongful conduct in acquisition of the leaseholds at Montebello and all issues concerning SoCalGas' representations to the Commission staff concerning Montebello, but leaves open the reasonableness of SoCalGas' conduct at Montebello for ratemaking purposes to be raised, if appropriate, in another Commission proceeding.

- We clarify that both the settlement and this decision approving it does not preclude individual owners from litigating against SoCalGas should they believe rescission is not an adequate remedy for any of SoCalGas' alleged wrongdoings at Montebello, and that SoCalGas cannot use anything stated in the settlement or this decision against these owners in

any such litigation, in order to preclude litigation of these issues or otherwise. We also direct SoCalGas to make a full disclosure of the condition of the property in its rescission offer.

Findings of Fact

1. SoCalGas and CSD were the only parties to offer testimony on the disputed factual allegations.

2. The settlement has occurred late enough so that the parties have been able to assess the strengths and weaknesses of their case, but early enough (before the start of hearings) that the settlement will avoid significant additional expense and the use of Commission resources.

3. Although most of the discovery has been completed, the proceeding is still at an early procedural stage because hearings have not yet commenced, and thorny discovery issues, as well as challenges to the Commission's jurisdiction to order remedies to affected landowners, remain in dispute.

4. Further proceedings in this investigation promise to be complex, contentious, and lengthy.

5. The portion of the settlement calling for an ethics course, if modified as discussed in this decision, should help ensure that in the future SoCalGas' employees will not misrepresent matters or mislead the Commission, whether or not SoCalGas employees have done so in the past.

6. The settlement also offers certain affected landowners the opportunity to obtain rescission of SoCalGas' acquisition of the landowner's mineral interests.

7. If landowners pay back SoCalGas the same dollar amount that SoCalGas paid for the mineral interests, ratepayers would be financing the present value difference between the acquisition costs and sale price for those leaseholders that repurchase their leasehold interest.

8. In this case, SoCalGas' proposed contribution to certain energy-related low income and research and development programs is not specifically designed to remedy harms alleged in the OII, nor do the settling parties suggest that other remedies are inadequate.

9. In other cases, the Commission has approved monetary settlements of alleged Rule 1 ethical violations, but in those cases, the money was paid to the General Fund.

10. This settlement and decision approving it does not preclude individual landowners from litigating against SoCalGas, should they believe that rescission is not an adequate remedy for any of SoCalGas' alleged wrongs at Montebello. Furthermore, nothing in this settlement or decision can be used against these owners by SoCalGas in any such litigation, in order to preclude litigation of these issues or otherwise.

11. This settlement does not address or decide the issue of whether shareholders or ratepayers would be responsible for the costs of defending any litigation described in the immediately preceding finding of fact, or in paying any such judgments, should they occur. This potential issue is left open for an appropriate proceeding.

12. The settlement resolves (a) issues at the Commission concerning SoCalGas' alleged wrongful conduct in acquisition of the leaseholds at Montebello and all issues concerning SoCalGas' representations to Commission staff about Montebello; and (b) the issue of SoCalGas' reasonable costs in defending itself against the OII.

13. This settlement does not address or resolve the reasonableness of SoCalGas' conduct at Montebello for ratemaking purposes, although it resolves all issues concerning SoCalGas' representations to the Commission regarding

Montebello. Parties are therefore not precluded from examining in another proceeding whether SoCalGas' conduct at Montebello may lead to a finding of unreasonableness that supports a particular ratemaking conclusion. Similarly, parties may question in another proceeding the reasonableness of SoCalGas' property acquisition costs at Montebello. Parties may also address the reasonableness of SoCalGas' other expenses at Montebello, including the reasonableness of its expenses to defend itself in this OII. However, the settlement precludes parties from raising in another proceeding the argument that ratepayers were injured by any delay that this OII caused in the sale of Montebello or the processing of A.98-01-015, because this OII largely dealt with SoCalGas' representations to this Commission regarding Montebello.

Conclusions of Law

1. Because this proceeding can be resolved by adopting the settlement as more fully set forth below, hearings should no longer be necessary, and this order should change the determination originally made in the OII and Scoping Memo.

2. The settlement is reasonable, consistent with the law and in the public interest, and should be approved, pursuant to Rule 51.1(e) of the Commission's Rules of Practice and Procedure, if it is modified as directed by this order.

3. According to the *GTEC* decision, a monetary payment to a consumer education fund is justified when other remedies are inadequate and the additional equitable remedy is specifically designed to remedy the alleged harm.

4. SoCalGas should pay to the General Fund of the State of California the funds designated in the settlement in the manner penalties are usually paid.

5. Because SoCalGas is funding the ethics course up to $200,000, we clarify that priority of admission to the ethics course should be given to SoCalGas employees and consultants.

6. The ethics course referenced in the settlement should include a utility's ethical obligations in exercising the power of eminent domain. This portion of the course should be open to all SoCalGas employees and consultants who assist SoCalGas in exercising such powers.

7. Within 210 days of final Commission approval of the settlement (30 days after the close of the period during which former rights holders can request rescission), SoCalGas should file an advice letter to reduce its rates prospectively by the amount of the authorized margin in then-current rates associated with the mineral rights that are returned to the prior owners. SoCalGas should also file by advice letter a plan to refund, with interest at a rate of 10% a year, all revenue requirements associated with mineral rights returned to prior owners pursuant to the settlement that were collected in rates prior to the prospective reduction in rates.

8. No later than December 31, 2000, and every 60 days thereafter until the acquisitions pursuant to the settlement have been completed, SoCalGas should: (a) provide the Commission with a full accounting of all mineral interests the acquisition of which is rescinded pursuant to the settlement agreement; and (b) document that shareholders have financed the entire acquisition, including the present value difference between the acquisition cost and the sale price. SoCalGas should file this report with the Commission's Energy Division, serve it on all parties to this OII, and should also make it part of its initial showing in its next cost of service performance based ratemaking application before this Commission.

9. In SoCalGas' rescission offer to affected landowners, SoCalGas should make a full disclosure of the condition of the property, including but not limited to (a) advising landowners of the nature and status of SoCalGas' A.00-04-031 (requesting Commission authority to sell Montebello); and (b) providing a copy of an informative environmental document that has been recently developed at the time the notice is sent, such as the Executive Summary of the Proponent's Environmental Assessment filed with A.00-04-031, as well as the Commission's Environmental Branch's deficiency letters thereto, or the Notice of Preparation (N.O.P.) filed with the State Clearinghouse, if such a N.O.P. has been prepared.

10. This order should be made effective immediately in order to resolve as soon as possible the large number of disputed transactions at issue.

O R D E R

IT IS ORDERED that:

1. Because this proceeding can be resolved by adopting the settlement as more fully set forth below, hearings are no longer necessary, and this order shall change the determination originally made in the Order Instituting Investigation (OII) and Scoping Memo.

2. The November 15, 1999 joint motion of Southern California Gas Company (SoCalGas) and the Consumer Services Division to adopt the proposed settlement is granted, provided the settlement is modified and clarified as directed by this order.

3. SoCalGas shall pay the funds designated in the settlement for certain low-income and energy-related groups instead to the General Fund of the State of California in the manner penalties are usually paid.

4. The ethics course referenced in the settlement shall include a utility's ethical obligations in exercising the power of eminent domain and this portion of the course shall be open to all SoCalGas employees and consultants who assist SoCalGas in exercising such power. We clarify that recruiting for and priority of admission to the entire ethics course shall be given to SoCalGas' employees and consultants.

5. Within 210 days of final Commission approval of the settlement (30 days after the close of the period during which former rights holders can request rescission), SoCalGas shall file an advice letter to reduce its rates prospectively by the amount of the authorized margin in then-current rates associated with the mineral rights that are returned to the prior owners. SoCalGas shall also file by advice letter a plan to refund, with interest at a rate of 10% a year, all revenue requirements associated with mineral rights returned to prior owners pursuant to the settlement that were collected in rates prior to the prospective reduction in rates.

6. No later than December 31, 2000, and every 60 days thereafter until the acquisitions pursuant to the settlement have been completed, SoCalGas shall: (a) provide the Commission with a full accounting of all mineral interests the acquisition of which is rescinded to the former owner pursuant to the settlement agreement; and (b) shall document that shareholders have financed the entire acquisition, including the present value difference between the acquisition cost and the sale price. SoCalGas shall file this report with the Commission's Energy Division, serve it on all parties to this OII, and shall also make it part of its initial showing in its next cost of service performance based ratemaking application before this Commission.

7. In SoCalGas' rescission offer to affected landowners, SoCalGas shall make a full disclosure of the condition of the property, including but not limited to (a) advising landowners of the nature and status of SoCalGas' A.00-04-031 (requesting Commission authority to sell Montebello); and (b) providing a copy of an informative environmental document that has been recently developed at the time the notice is sent, such as the Executive Summary of the Proponent's Environmental Assessment filed with A.00-04-031, as well as the Commission's Environmental Branch's deficiency letters thereto, or the Notice of Preparation (N.O.P.) filed with the State Clearinghouse, if such a N.O.P. has been prepared.

8. This proceeding is closed.

This order is effective today.

Dated September 7, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners

See Formal Files for Appendix A.