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 (U 904 G)	Application No.99-05-029

BRIEF OF PROTESTANTS

TO THE SALE OF THE LOTS

March 16, 2001

Submitted By:

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I.

INTRODUCTION

This brief is being submitted in response to the issues raised in the January 19, 2001 Administrative Law Judge" Ruling regarding the referenced matter, and to reply to the issues raised in the "Brief" of Southern California Gas Company (U904G) dated February 16, 2001.

On May 12, 1999, SOCALGAS filed the instant Application for Authority to sell certain lots located in Playa Del Rey ("PDR"). Specifically, the Application seeks approval of the sale of a total of 82 lots, 48 of which were previously sold without obtaining Public Utility Code Section 851 approval.

According to the Application, 21 natural gas storage wells were abandoned in order to make way for these lot sales. These wells are located underneath the lots already sold, and to be sold, and have been made an integral part of the property conveyances. For example, the "Purchase and Sale Agreement" provides in relevant part:

> **"The property may contain an oil/gas well that has been abandoned to the standards promulgated as of this date by the California Department of Oil, Gas and Geothermal Pressures. As a result of the well, if any, the property may contain underground piping and/or contamination resulting from oil productions or well maintenance."**

Under Paragraph 12.1 of the "Purchase and Sale Agreement" the Property is being sold in an "AS IS" condition:

> **"Buyer agrees to accept the Property 'AS IS', 'where is' and 'with all faults' which may exist without any representation or warranty by Seller except as expressly set forth in Section 9.0 of this Agreement."**

Some of these wells were formerly used as monitoring wells to assure that the field was being operated within safe limits, and to monitor for gas migration from the storage field. Page 7, lines 16 through 18 state that the "natural gas wells located underneath certain of these properties were taken out of service for a variety of different reasons, and are no longer used by SOCALGAS as part of its underground gas storage operations."

It will become clear in the following discussion that the above issues are pivotal in the evaluation of the applicability of Public Utilities Code Section 851 to the sale of the subject lots:

> **No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...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.**

SOCALGAS has a non-delegable duty to maintain its gas storage facility in a safe condition. In particular, SOCALGAS has an obligation to make sure that its gas storage wells do not develop leaks that will endanger the residential structures that lie above, and are adjacent to these gas storage wells. Accordingly, the central issue to be addressed is whether or not the lots are "necessary or useful in the performance of its duties to the public."

SOCALGAS relied upon the analysis of its engineers to make the determination that the particular storage wells were no longer "necessary or useful" as part of the PDR storage operations (See pg. 9, lines 11-13 of the SOCALGAS "Brief" dated February 16, 2001). The Prepared Direct Testimony of Jim Mansdorfer (See Exhibit G of the Application) fails to even address the ongoing obligations of SOCALGAS in maintaining these wells in a safe condition into the indefinite future.

A long history of well leakage problems at PDR, at the Montebello underground gas storage facility, and at many other gas storage facilities throughout the United States provides overwhelming evidence that these wells will develop leaks, and endanger homes located over and adjacent to the wells. A SOCALGAS rate increase application to the PUC filed in the 1980's revealed that all of its gas storage facilities were experiencing serious gas inventory losses as a result of well leaks to the surface. Their analysis to the PUC identified that the gas leaks were proportional to the square of the reservoir pressure and the total number of wells located within the storage field.

When the wells develop leaks, it is necessary to have access to the wells by way of the surface lots that have been sold, or are in the process of being sold. This requires placing a very large workover rig onto the well to execute a re-abandonment of the well. If a house has been constructed on the lot, it would require tearing down the house to provide access for re-entry into the well. This was a serious problem with the Montebello underground gas storage facility where homes had to be torn down to provide access to the leaking wells. These problems at Montebello proved unsolvable leading ultimately to the abandonment of the gas storage operations.

The lots are also "necessary or useful in the performance of its duties to the public in allowing soil gas monitoring to be performed in order to detect well leaks. Since well leaks can develop at any time, this monitoring is essential in order to detect the leaks before they become an explosion hazard. If a well leak goes un-detected, the gas has the ability to enter confined spaces within the overlying structures, and with an ignition source it will blow up the building. This was the cause of the Ross Dress-For-Less Department Store explosion that occurred in the Fairfax area of Los Angeles in 1985. A nearby oil/gas well (viz. Metropolitan No. 5) developed a leak in its casing, causing gas to migrate upward under the building. The leaking gas gathered in the employees' lounge

area, and was ignited by a time clock that was being punched by an employee of the store. There were 23 injuries, several with very serious burn injuries.

The recent gas storage well leaks, fires and explosion in Hutchinson, Kansas that killed 2 people in January 2001 is an additional wake-up call to the dangers posed by leaking gas storage wells.

The dangers posed by leaking wells requires careful engineering analysis and the investigation of the causes of prior leaks in order to avoid repeating the same mistakes. Most of the oil/gas wells at PDR were drilled in the 1920's and 1930's before modern well completion practices were developed. The most vulnerable location for well leaks to develop at PDR is within the annular space between the well casing and the bore hole. This area was not properly sealed with cement, and attempts to seal this area during abandonment or reabandonment of the wells has proven to be nearly impossible.

Most wells at PDR have developed leaks after abandonment or reabandonment because this annular space cannot be reached and sealed off with cement, as is possible with the interior of the well casing. Accordingly it is fallacious for SOCALGAS to rely upon the well abandonment procedures allowed by the Division of Oil and Gas (DOG). These procedures were developed for abandoned oil fields which operate at much lower reservoir pressures. The underground gas storage reservoir pressures at PDR are approximately 1700 pounds per square inch (psi).

Furthermore, two areas of the storage field are currently undergoing repressurization as a result of water incursions into the reservoir. These areas are approaching 2400 psi pressure, and are causing serious well leakage problems. The Block 11 well in the Venice Peninsula area of the field has required numerous attempts by SOCALGAS to reabandon the well to control

surface leakage. The lot was being prepared for construction of a home to be located on top of the well.

The Townsite 2 well location has had an ongoing series of well leakage problems. The well was reabandoned by SOCALGAS as part of a lot sale to the Lee Group, a real estate development firm that bought numerous lots from SOCALGAS. Well leakage was detected before construction began, requiring reabandonment of the well. However, recent data has established that gas has been detected within the house, even before construction was completed.

The Lee Group represented to the City of Los Angeles that they were going to install a vent system to deal with the leaking gas, but there is no evidence to indicate that this vent was ever installed. In contrast, the Lee Group did install a vent system into a home that was built over the Townsite well location in the Venice Peninsula. This lot was also purchased from SOCALGAS. As a result of the well leakage problems at Townsite 2, SOCALGAS commissioned a soil gas study in the area between the Townsite 2 and Townsite 3 locations. This study revealed very high gas levels as the monitoring was conducted in the direction of the Townsite 3 well. However, SOCALGAS terminated the studies short of determining which wells were responsible for the largest gas concentrations.

Unfortunately, no disclosure has been made of these gas leakage problems to the current residents of the homes in this area. Furthermore, no disclosure of these well leakage problems has been made to the City of Los Angeles. As a result, no gas mitigation systems have been required by the City of Los Angeles, placing the residents of these homes at great peril.

These case histories reveal that it would be reckless and irresponsible if the PUC were to approve any of the proposed lot sales without first requiring an extensive independent investigation of these well leakage problems, as well as

the evaluation of the health and safety risks posed by allowing residential construction in the immediate areas of these serious leakage problems.

Operation of an underground gas storage facility in a highly residential area constitutes an ultra-hazardous activity imposing upon SOCALGAS an utmost standard of care regarding its "duties to the public." Every opportunity was available to SOCALGAS to provide for a buffer zone between the gas storage facility and the residential community. Instead, SOCALGAS undertook the sale of many lots to real estate developers in an area where there are serious well leakage problems from the many abandoned wells that are located directly under the homes.

There is no right of re-entry provided for in the contracts of sale, which prevents SOCALGAS performing monitoring of the wells to assure that they are not leaking. Real estate development on the lots also prevents them from performing appropriate soil gas monitoring studies to provide early warning of well leaks.

The lots are clearly "necessary or useful in the performance of its duties to the public. Detailed studies should be directed by the PUC to correct, and to prevent further dangers to the public if the lot sales are approved.

II.

THE PROPERTY IS NECESSARY OR USEFUL IN THE PERFORMANCE OF ITS DUTIES TO THE PUBLIC

The language that is essential to focus on within Public Utility Code Section 851 is the phrase "necessary or useful in the performance of its duties to

the public." It is clear that our state legislature intended this to include public health and safety. Furthermore, it is clear that the state legislature has granted the PUC broad authority in the regulation of public utilities.

For example, there was certainly an intent to make sure that public utilities were operated in a safest manner so as to protect public safety. Pipeline safety regulations would be a specific instance. An underground gas storage operation is no exception.

In fact, the dangers associated with operating an underground gas storage facility within a highly urbanized setting, such as PDR, constitutes an ultrahazardous activity requiring by operation of law an utmost standard of care. As a minimum, the duty of care imposed upon SOCALGAS regarding it PDR operation is commensurate with the risks involved. These include:

(1) The Fire and Explosion Hazards:

There are grave dangers posed by leaking gas from the wells, pipelines and storage reservoir giving rise to an explosion and fire hazard if the gases were to migrate into homes or buildings. Many such incidents have occurred in the past, even where the storage facility was located a significant distance from the homes or buildings. Hutchinson, Kansas (see Exhibit 1) is the most recent example of these extreme hazards. Montebello, California (see Exhibit 2) is another profound example directly involving SOCALGAS. The Fairfax explosion and fires in 1985 was caused by a leaking oil/gas well that was not properly maintained by the oil field operator (see Exhibit 3).

(2) Toxic Gas Emissions:

The health and safety risks posed by the toxic gas emissions from the surface operations (including the tank farm, compressor station and well heads) is a serious danger that must be addressed regarding the

lot sales. These gas emissions, including intentional venting of gas to the atmosphere, contain chemicals known to the state of California to cause cancer and birth defects. Benzene, a known human carcinogen is contained in the gas, as admitted to by SOCALGAS by way of the Proposition 65 signs that are posted at the facility and on the individual well locations throughout the residential area of PDR (See Exhibit 4). Additionally, the leaking gases contain hydrogen sulfide (H2S), a chemical that is known to cause brain damage, even in small exposure levels (e.g., 1 ppm).

The only known way to protect public health and safety from these hazards is to provide a buffer zone between the gas storage facility, including the individual well locations, and the residential community. This was determined to be necessary by SOCALGAS when they expanded their underground gas storage operations to Alyso Canyon and Honor Rancho. These locations were carefully planned by SOCALGAS to provide for a large buffer zone between the storage facility and the surrounding community. A large surface area was purchased by SOCALGAS where no housing development is allowed. The following relevant language is from a paper authored by Richard Morrow, Manager of underground storage for SOCALGAS:

(1) When the more recent Alisyo Canyon and Honor Rancho fields were acquired, control of surrounding acreage was given prime consideration in order to avoid problems later.

(2) Buffer areas were sized and located so that the storage facility would be isolated from residential neighborhoods.

These considerations also establish an appropriate standard of care for the PDR facility. SOCALGAS should never have undertaken a policy of selling lots to real estate developers at PDR that has resulted in the current conditions of having no buffer zone between the storage facility, and well, and the residential community. Accordingly, the approval of additional lot sales by the PUC,

including retroactive approval of prior lot sales, not approved by the PUC would amount to the condoning of a very dangerous activity of placing homes in close proximity to these known health hazards.

Furthermore, since there has been inadequate disclosure of these hazards to the public, including intentional concealment of the hazards by SOCALGAS, the PUC is the only entity in a position to protect public health and safety by refusing to grant permission for these lot sales. Conversely, if the lot sales are approved by the PUC there will be long term dire consequences, including law suits that will inevitably involve the State of California.

In reality, the conduct of SOCALGAS in failing to obtain PUC approval for the prior lot sales, places the current decision process by the PUC at great risk. This is regardless of whether or not these sales are deemed void, pursuant to the express language of Public Utilities Code Section 851. Namely, litigation is inevitable under either scenario:

(1) If the prior lot sales are not approved by the PUC, litigation will ensue regarding the cloud upon the title of the property, which will be inevitable.

(2) If the lot sales are approved, as proposed in the subject application, wide scale litigation regarding toxic tort and property damage is inevitable. In particular, the lot sales will result in even more homes that will be built directly over and adjacent to the leaking wells, and in close proximity to the toxic emissions. It is only a matter of time before the residents, and future residents, will realize that they have been exposed to very dangerous chemicals that will have an accumulative effect on the body. Namely, the risk of litigation will increase with the passage of time.

In essence, SOCALGAS is coming into these proceedings with

unclean hands, and requesting relief from prior violations of the Public Utilities Code. This is nothing more than attempting to shift the environmental liabilities for these transgressions to the PUC and hence, the State of California. Approval of these lot sales would implicate the PUC regarding responsibility for causing serious harm to the residents who will be living in these homes.

The highest risk, and by far the most costly litigation, can be anticipated relating to those lot sales that will result, and have resulted, in homes being built directly over the abandoned oil/gas wells. Leakage of these wells will be a certainty at some point in the lifetime of the structure (viz., at least 70 years). Competent engineering studies in the oil and gas industry have established that even by utilizing the latest well completion practices, wells will develop gas leaks to the surface. This is because the cement used to seal and abandon the wells deteriorates. This problem is especially acute when the soil conditions are highly corrosive, and, in addition, contain hydrogen sulfide gas, both of which are present at the PDR facility.

Accordingly, even if an utmost standard of care were to be applied to the maintenance of the oil/gas wells at PDR, they would develop leaks. It is obvious that the lots are necessary. This is because the cement used to seal, and abandon the wells, will eventually fail because of the highly corrosive conditions existing within the soils of an oil field. Furthermore, the steel casings will suffer certain destruction from the corrosion caused by the high levels of hydrogen sulfide (H2S) existing within the soils at PDR. The Society of Petroleum Engineers (SPE) has determined that there is no known engineering solution for the well casing corrosion caused by H2S.

If there is no surface access provided for, by virtue of the lot sales, there would be no ability to re-enter and repair well leaks as they develop from these ongoing corrosive conditions.

In addition, the well bores and seals will be subject to ongoing damage and failure from oil field subsidence, and seismic activity from earthquakes the PDR facility has experience – nearly two feet of officially confirmed subsidence by the DOG. However, no measurements of monitoring of these conditions have been performed since 1970. The subsidence has been shown to directly relate to the ongoing fluid production within the oil field. SOCALGAS produces, on average, 2500 barrels per day of fluids from the PDR facility. The accumulative impact of this ongoing fluid production would have most certainly caused additional land subsidence since 1970.

This fact would have given rise to damage to the well seals because of the compacting and changing geological conditions surrounding the well bores and seals. The understanding of these problems is well known within the oil and gas industry. However, SOCALGAS has failed to meet its most minimal obligations regarding evaluating and protecting the public, leave alone the utmost standard of care imposed by the ultrahazardous activity associated with their operation of the PDR facility.

In the case of **Travelers Indemnity Co. v. City of Redondo Beach** (1994) 28 Cal. App. 4th 1432, 34 Cal. Rptr. 2d 337, the Second Appellate District Court refused to dismiss an ultrahazardous activity cause of action for the oil field subsidence of 2 feet that caused the destruction of the breakwater in the Redondo Beach Harbor during a storm on January 17, 1988.

Ironically, the amount of subsidence that has been caused at PDR by SOCALGAS and its predecessors in interest, has been nearly 2 feet, as measured through 1970. The fact that this ongoing subsidence has not been evaluated by SOCALGAS, nor included in their engineering analysis in support of this application, is nothing short of reckless and irresponsible.

Based upon the prepared direct testimony of Jim Mansdorfer submitted as part of the subject application (see Exhibit 6 of the Application). and relied upon by SOCALGAS in reaching its conclusion that "the property is not necessary or useful in the performance of its duties to the public", fails to even mention any of the above very serious public safety issues.

The public policy of this State, as set forth in the Public Resources Code, is to protect against the well-known hazards of subsidence caused by oil field production. There is no indication that SOCALGAS has even an appreciation of these hazards, leave alone factoring these into their conclusions submitted in support of this application:

> "As discussed above, SOCALGAS relied upon the analysis of its engineers to make the determination that the particular storage wells were no longer "necessary or useful" as part of the PDR storage operations..." (See "Brief" of SOCALGAS dated February 16, 2001, Pg. 9, lines 11-13, with emphasis added.)

In the case of **Stadish V. SOCALGAS**, the second Appellate District Court in an opinion dated June 16, 1999, stated as follows:

> **"As far as we can tell, neither the PUC nor the DOG has considered for the last 55 years whether Southern California Gas Company is releasing toxic pollutants into the air or groundwater which are harmful to the health and safety of the residents in the surrounding neighborhood."**

It is clear, that the PDR facility has been operated for many years with virtually no oversight. Instead, SOCALGAS has been allowed to perform self-monitoring oversight of their facility (the proverbial fox being placed in charge of

the hen house). However, the most alarming conclusion that must be drawn from the subject application is that the engineering staff of SOCALGAS appear to be totally oblivious of the public safety hazards related to these issues. They have focused their attention exclusively on the "needs and uses" of SOCALGAS. and totally disregarded the serious public safety issues raised by operating such a dangerous facility in a highly populated area. with additional residents being "invited" by the lot sales

III.

THE ULTIMATE DETERMINATION THAT THE PROERTY IS NECESSARY OR USEFUL IN THE PERFORMANCE OF ITS DUTIES TO THE PUBLIC IS AN ISSUE OF LAW AND NOT OF FACT:

It is clear from the foregoing analysis that access must be provided to the abandoned oil/gas wells into the indefinite future in order to make repairs of well leaks, and to make sure – by way of soil gas surveys and monitoring – that the wells are not leaking. This is essential in order to protect the safety of the existing residents. Since there have been no steps taken to warn or otherwise inform the residents of these hazards. the duties imposed by law upon SOCALGAS are even more significant.

Civil Code Section 1714 (a) provides that every person is responsible, not only for the results of his or her willful acts, but also for any injury occasioned to another by his or her lack of ordinary care or skill in the management of his or her property. SOCALGAS is the owner or possessor of all of the mineral rights below 500 feet. including all of the oil and gas that is related to the oil fields of Playa Del Rey and Venice, as well as their underground gas storage operations that are integral and inseparable from these interests.

An owner of possessor of premises (which includes oil, gas and the associated oil/gas wells) is under a duty to others by virtue of that possession of

ownership to act reasonably to keep the premises safe and prevent persons from being injured.

As previously discussed, the underground gas storage operations at PDR would constitute an ultrahazardous activity, which would elevate this duty to an utmost standard of care. In the case of Sprecher v. Adamson Companies (1981) 30 Cal. 3d 358, 178 Cal Rptr. 783 the California Supreme Court held that a possessor of land is also liable for harm caused by the natural condition of his land to persons outside his premises. Accordingly, SOCALGAS would be liable for any gas migrating upward into the overlying properties, including by way of migration along well bores to the surface. As set forth in the Sprecher decision, the question is whether the possessor of land has acted as a reasonable person **under all of the circumstances**. The factors that must be considered in this evaluation are as follows:

(1) the likelihood of injury to the plaintiff,

(2) the probably seriousness of such injury,

(3) the burden of reducing or avoiding the risk,

(4) the location of the land, and

(5) the possessor's degree of control over the risk creating conditions.

These same factors should be used by the PUC in its evaluation regarding the subject application. It is suggested that item (3), the burden of reducing or avoiding the risk be given considerable weight in this determination. It is obvious, that if the lots are not sold, and thereby no homes are built over the leaking gas, that this would avoid the risk of additional injury.

The long standing law of this State is that the duties imposed upon the possessor of land, as described above, are nondelegable. Accordingly, any attempt to shift this responsibility to someone else would be a violation of the law. Under the Public Resources Code and the Regulations of the DOG, SOCALGAS has the responsibility to maintain all of their wells, including abandoned wells, in a safe condition.

The clear intent of the Purchase and Sage Agreements regarding the lot sales is to delegate any future responsibility for well maintenance and repairs to the ultimate purchaser of the surface lots. This includes a provision that would indemnify and hold harmless SOCALGAS regarding any future problems arising from these wells. In view of the enormous risks associated with these wells developing leaks in the future, these lot sales border upon fraud and misrepresentation.

The PUC should not be approving lot sales that could be later construed by the Courts as constituting fraudulent land sales. Alternatively, SOCALGAS should not be allowed to use the PUC as a shield in defending any future litigation regarding this obnoxious fraud.

IV.

CONCLUSION

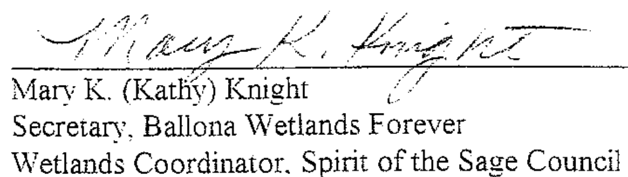
The application of SOCALGAS regarding the approval of all lots sold, and to be sold, should be rejected in total. Any issues related to the cloud created on the title to properties already sold, is an issue that would appropriately need to be resolved by the Superior Court.

Exhibits will be sent separately.

CERTIFICATE OF SERVICE

I hereby certify that I have this date, served a true copy of the original attached prepared material "Brief of Protestants to Sale of Lots" on the following person(s) in this proceeding by mailing a copy thereof via U.S. mail, addressed as follows: (See attached Service List)

Dated in Los Angeles this 16th day of March, 2001



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