

ORIGINAL

Decision No. 85307

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY, a corporation, under Section 851 of the Public Utilities Code, for a Commission order authorizing SOUTHERN CALIFORNIA GAS COMPANY to lease certain property necessary and useful in the performance of its duties to the public to ROBERT A. MARTIN ET AL. to construct an operating base upon said property, such improvements and said property then to be leased and used by SOUTHERN CALIFORNIA GAS COMPANY.

Application No. 55804
(Filed July 10, 1975)

O P I N I O N

Southern California Gas Company (SoCal) seeks an order pursuant to Section 851 of the Public Utilities Code authorizing it to execute a lease with Robert A. Martin and other persons (Martin) granting Martin a leasehold interest in certain unimproved real property (property) in San Bernardino County as described in SoCal's application. It also requests a finding that the contemplated leaseback of the land as improved is not subject to Section 851 of the Public Utilities Code and, therefore, does not require Commission authorization.

SoCal states that the property has been recently purchased for the express purpose of use as an operating base, has a book and original value of \$129,029.80, has been included in its rate base, and is necessary and useful in the performance of its duties to the public. It proposes to lease the property to Martin for an initial term of 20 years at an annual rental of \$1 and Martin is to construct at his cost, estimated at \$272,000,

such buildings and improvements upon the property as are necessary to create an operating base for SoCal. The construction is to be designed for offices for utility purposes for an occupant load of less than 20 persons (18 persons), and not in conjunction with the building of two or more such structures.

It is proposed that Martin will lease the land and improvements back to SoCal for an initial term of 20 years, with an option to renew at a reasonable rental for five additional years. At the end of the lease period, SoCal will have an option to purchase the improvements on the property at fair market value. If it does not exercise the option, the land and improvements will be sold and that part of the sales price allocated to improvements will be paid to Martin and that part allocated to the land will be paid to SoCal.

The lease from Martin to SoCal requires SoCal to pay all taxes, general and special assessments, maintenance, insurance, utilities, and other charges of every description levied or assessed against the land and improvements during the term of the lease. Rent during the initial term of the lease shall be a sum equal to \$9.30 per thousand dollars of Martin's investment (\$272,000) or \$2,537.76 a month, or approximately \$30,453 a year.

The primary question to be determined is whether the proposed lease of the property by SoCal, under the terms and conditions proposed, would be adverse to the public interest. (Radio Paging Company (1966) 65 CPUC 635.) The contemplated leaseback of the land as improved is not subject to Section 851 of the Public Utilities Code and SoCal does not require Commission authorization to enter into that transaction; but in order to determine whether authorization to lease the property

to Martin should be granted it is necessary to consider the entire transaction, including the effect on the public of the proposed leaseback from Martin to SoCal.

A representative of the Commission's staff prepared and filed a report dated October 3, 1975, which recommends:

1. SoCal be allowed to enter into the proposed lease, counter lease agreement with Martin, such lease being advantageous to the ratepayer. However, SoCal should be ordered to review the financial advantages to the ratepayers after the initial 20-year lease period and inform the Commission of its findings. In approving this application, the Commission should reserve the right to review this matter if it becomes an issue in a future rate proceeding.
2. The lease of improvements by Martin to SoCal does not come under Section 851 of the Public Utilities Code for the reasons stated previously.
3. No revisions be made to the lease as presented in Application No. 55804 without Commission approval.
4. SoCal have available for future staff review all cost data associated with the construction by Martin.
5. At such time when SoCal exercises its option to purchase or to renew the lease agreement, authorization must be obtained from the Commission.
6. If the FASB adopts new accounting rules requiring companies to report leases as liabilities on financial statements, the staff recommends that the Commission consider long-term leases as another method of financing and extend its jurisdiction by requiring utilities to seek authorization for such leases.

The staff's recommendations 1 through 5 appear to have merit except that it is not necessary for the Commission to reserve the right to review this matter if it becomes an issue in a future rate proceeding, as there is nothing in this order which would prevent the Commission from having the right to do so, and SoCal should only be ordered to review the financial advantages to the ratepayers and inform the Commission of its findings if it intends to exercise its option to renew the lease or to purchase the improvements on the property after the initial 20-year term.

Notice of the application was published in the Commission's daily calendar on July 16, 1975. No protests have been received. A public hearing is not necessary.

Findings

1. The property described in the application which SoCal proposes to lease to Martin is necessary and useful in the performance of SoCal's duties to the public, and this proposed lease is subject to the provisions of Section 851 of the Public Utilities Code.

2. The property to be leased by SoCal to Martin will be improved and leased back to SoCal by Martin, and SoCal will continue to have the complete use of the property in the performance of its duties to the public. The proposed leaseback of the property as improved by Martin to SoCal is not within the provisions of Section 851 of the Public Utilities Code and does not require Commission authorization.

3. The proposed lease of the property by SoCal to Martin under the terms and conditions proposed, and considering the purpose and the result of the entire transaction, would not be adverse to the public interest.

4. SoCal should not enter into any amendments, modifications, or revisions of the lease by SoCal to Martin or lease-back by Martin to SoCal without prior approval of the Commission. SoCal should have available for future review by the Commission's staff all cost data pertaining to the construction by Martin. SoCal should be required to review the financial advantages of the transaction to the ratepayers and inform the Commission of its findings, and obtain Commission authorization, as a condition to the exercise of its option to purchase the improvements or to renew the lease agreement.

5. The construction project is within the categorical exemption of the Commission's Rules of Practice and Procedure (Section 17.1(m)(1)(C)1.) and it is not necessary that an Environmental Data Statement be filed pursuant to such rules or the EIR requirements of CEQA.

Conclusion

The Commission concludes that the application should be granted and SoCal should be authorized to execute a lease granting Martin a leasehold interest in the SoCal property described in the application under the terms and conditions set forth therein, as provided in the following order.

O R D E R

IT IS ORDERED that:


1. Within one hundred twenty days after the effective date of this order, Southern California Gas Company, a corporation, is authorized to lease to Robert A. Martin and other persons whose names are set forth in the application, the real property described in its application under the terms and conditions set forth therein. Within thirty days after the execution thereof, Southern California Gas Company shall notify this Commission in writing of the date on which the said lease was executed and delivered.

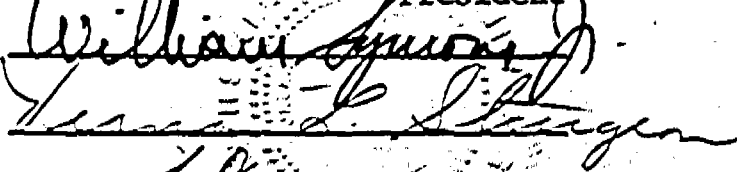
2. Southern California Gas Company shall not enter into any amendments, modifications, or revisions of the lease or leaseback between it and Robert A. Martin and the other persons whose names are set forth in the application without prior approval of this Commission, and it shall have available for the Commission staff's future review all cost data pertaining to the construction by Robert A. Martin and the other persons. In the event that Southern California Gas Company intends to exercise its option to purchase the improvements or to renew the lease agreement, it shall not do so without


prior Commission approval, and it shall review the financial advantages to the ratepayers and inform the Commission of its findings.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California,
this 6th day of JANUARY, 1976.



President


Commissioners


Commissioners