

Decision 06-01-037 January 26, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 38-E) for Authority to Lease Available Land on the Barre-Villa Park Transmission Right of Way to Emmanuel Goriel.

Application 05-11-013
(Filed November 15, 2005)

O P I N I O N

This decision grants Southern California Edison Company (SCE) authority under Pub. Util. Code § 851 to enter into a lease agreement with an individual named Emmanuel Goriel (the Lessee). The lease is for a 4.31-acre site located on a portion of SCE's Barre-Villa Park transmission right of way in the City of Orange. The Lessee intends to operate a recreational vehicle storage facility on the site. The application is unopposed. This proceeding is closed.

1. Background and Summary of Request

SCE acquired the 4.31-acre site from the Transcounties Corporation in 1961. The book value of the site is \$31,269. The site is not now used for any secondary land use purpose.

SCE is offering the Lessee a lease for the secondary use of the property. Under the terms of a proposed lease, attached to the application, operation of a recreational vehicle storage facility is compatible with SCE's operation of transmission and distribution lines located on the property. SCE states that utility service will not be affected, and the lease will generate Other Operating Revenue for the benefit of ratepayers. The term of the lease is 45 years,

beginning on the date the Lessee exercises his option to enter into the lease. Under the lease, the site will generate base rent of \$27,500 in Year 1; \$54,996 in Year 2; \$82,500 in Year 3; \$84,972 in Year 4, and \$87,528 in Year 5. Base rent will escalate by 3% per year in Year 6 through Year 15, with further adjustments every five years thereafter to reflect the then current fair market rental value of the site.

According to environmental documents submitted with the application, the Lessee intends to locate a manufactured office trailer on the site and construct a parking area, fencing and appropriate lighting, all in conformance with City of Orange building and fire department requirements. The lease agreement provides that the Lessee's activities must not interfere with the operation of the electric facilities that cross the site. The Lessee is not allowed to use or store hazardous substances, explosives or flammable materials on the site. The Lessee is required to maintain a minimum clearance between its equipment and overhead electrical conduits of 18 feet, and a minimum 50-foot radius around all tower legs and a 10-foot radius around steel poles. Additionally, the Lessee must provide and maintain access roads on the site. The Lessee will be responsible for obtaining all permits and approvals for construction, as well as any zoning changes or use permits required for the operation of a recreational vehicle storage facility.

The Lessee will be responsible for all personal property taxes and fees levied against the property and improvements, and it will maintain comprehensive liability insurance, auto insurance and workers' compensation insurance. The Lessee will indemnify SCE against all liability for damages or injury to persons or property not caused by SCE's negligent or willful misconduct.

2. Determination of Best Secondary Use

SCE states that its objective in selecting secondary uses for utility property is to find those uses that will provide the greatest revenue consistent with the utility's obligation to maintain the safety and reliability of its facilities. Because of the above-ground power lines crossing the site, secondary uses are limited by restrictions and height clearances. SCE states that, of the uses examined for the site, it determined that a recreational vehicle storage facility offered the highest level of potential revenues.

To evaluate the rental value of the site, SCE employed the Call Company, a self-storage and recreational vehicle consulting firm, to prepare a rental analysis of recreational vehicle storage spaces in the surrounding area. The annual base rent SCE would receive from the Lessee falls within the acceptable market range based on the analysis of comparable facilities and is in line with the revenues SCE receives in other transactions approved by this Commission. (*See, e.g.,* Decision (D.) 04-12-044, D.04-03-035, D.04-12-036, D.04-03-019, and D.03-03-035.)

3. Selection of Lessee

SCE states that the Lessee was selected to develop the site because of the proposed use and the background and financial position of the Lessee. The Lessee has been a business entrepreneur for 25 years, forming Chapman RV Storage, Inc., in Garden Grove in the year 2000 and opening a second recreational vehicle storage facility in Garden Grove in 2003.

4. Environmental Review

Under the California Environmental Quality Act (CEQA), the Commission must consider the environmental consequences of a project that is subject to the Commission's discretionary approval. (Pub. Resources Code § 21080.) SCE states that the Lessee is in the process of obtaining all permits and approvals

required by government agencies having jurisdiction for the development of a recreational vehicle storage facility on the site. Article 6.2(f) of the lease agreement directs the lessee to procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations and requirements for permits and approvals, including CEQA requirements.

The CEQA guidelines set out rules concerning which entity will act as the lead agency under CEQA when more than one public agency will issue discretionary permits for a project. (See CEQA guideline § 15051.) All other public agencies with discretionary approval power over the project are “responsible agencies.” (CEQA guideline § 15381.) In accordance with those rules, the City of Orange as the agency carrying out the overall project is the lead agency for CEQA review of the project in this case, and the Commission is the responsible agency. On February 15, 2005, the City of Orange Senior Planner provided written notice of the Staff Review Committee’s approval of the project in its Minor Site Plan Review No. 261-03. The notification concluded that the project was exempt from CEQA under guidelines 15301 Existing Facilities, 15311 Accessory Structures, and 15332 New Infill Development. The Senior Planner stated that the project is consistent with the general plan designation and policies as well as with the applicable zoning designation and regulations. On March 3, 2005, the City of Orange Community Development Director confirmed the Design Review Committee approval of the project in DCR #3976-05. Pursuant to D.01-08-022, SCE has attached the city’s final CEQA and other findings regarding the development project as Appendix D.

Also, as a condition to approving the project, the city requires the Lessee to comply with city, county and fire department building and engineering requirements, provide for off-street and access parking, incorporate dust control

measures, provide for water runoff, construct approved fencing, and establish an approved lighting plan, among other measures.

As a responsible agency, the Commission has reviewed the city's CEQA findings and agrees with these findings. Also, we adopt all other conditions the city has required in approving the project, for purposes of our approval.

5. Treatment of Revenues

In its application, SCE states that all of the revenues from the proposed lease will be treated as Other Operating Revenue. In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's other operating revenues. The sharing mechanism applies to Other Operating Revenue, except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms, or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease here will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of Other Operating Revenue has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the annual threshold will be split between shareholders and ratepayers on a 70%/30% basis. The proposed lease here is a "passive" product.¹

¹ See Attachment B to Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* as categories of non-tariffed products and services.

Footnote continued on next page

6. Discussion

Section 851 of the Public Utilities Code provides that no public utility “shall...lease...[property] necessary or useful in the performance of its duties to the public...without first having secured from the [C]ommission an order authorizing it so to do.” The relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is “adverse to the public interest.” (See, e.g., *Universal Marine Corporation* (1984) 14 CPUC2d 644.)

The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect the utility’s operation of the transmission lines. The Commission has determined that the public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation.² Because the proposed agreement will increase the level of revenues SCE can obtain from secondary use of the land in question, with no additional ratepayer risk, the application should be approved.

7. Category and Need for Hearing

In Resolution ALJ 176-3163, dated December 1, 2005, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3163.

Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

² In D.93-04-019, p. 3, we observed: “Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.”

8. Comments on Draft Decision

Because the application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comment is waived pursuant to Pub. Util. Code § 311(g)(2).

9. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SCE is an electric public utility subject to the jurisdiction and regulation of this Commission.

2. SCE has property at the Barre-Villa Park transmission right of way in the City of Orange available for secondary use, and it seeks to obtain revenue for ratepayers and shareholders through a secondary use lease.

3. Subject to Commission authorization required under Pub. Util. Code § 851, SCE has negotiated a long-term lease of the property to provide lease revenues with no interference with the operation of the transmission lines.

4. The proposed Lessee has substantial experience in commercial and industrial real estate projects.

5. The Lessee intends to finance, construct and maintain a recreational vehicle storage facility at the site, bearing the costs and making payments to SCE.

6. Revenue in excess of a Commission-established threshold will be shared 70%/30% between the utility and ratepayers by treating all revenues as Other Operating Revenue, pursuant to D.99-09-070.

7. There has been no opposition to this application.

8. SCE has filed lead agency CEQA documentation with this application.

Conclusions of Law

1. No public hearing is necessary.
2. Joint use of utility property should be encouraged in appropriate cases because of the obvious economic and environmental benefits.
3. The Commission should condition its approval of the proposed lease on Lessee's compliance with all applicable conditions discussed in this decision.
4. SCE should be authorized pursuant to Pub. Util. Code § 851 to lease the designated 4.31-acre site to the Lessee on the terms and conditions set forth in the application.
5. The proposed sharing of revenues with ratepayers conforms to the Commission's order in D.99-09-070.
6. Because of the benefits of this lease agreement for the utility and for ratepayers, approval of this application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized to enter into a lease of a 4.31-acre site located on the Barre-Villa Park transmission right of way in the City of Orange under the terms and conditions set forth in this application.
2. As received, all revenues from the lease authorized shall be treated as Other Operating Revenue and shall be subject to the gross revenue sharing mechanism set forth in Decision 99-09-070.
3. Approval of this application is conditioned upon the lessee's compliance with all applicable conditions discussed in this decision.

4. SCE shall notify the Director of the Energy Division, in writing, of any substantial amendments to, extension of, or termination of the lease agreement, within 30 days following the execution of such amendments, extensions or termination.

5. Application 05-11-013 is closed.

This order is effective today.

Dated January 26, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners