STATE OF CALIFORNIA——ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

November 3, 2009 Agenda ID #8988

Ratesetting

TO PARTIES OF RECORD IN APPLICATION 09-06-026

This is the proposed decision of Administrative Law Judge (ALJ) Prestidge. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Prestidge at tom@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ JANET A. ECONOME for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:oma

Attachment ALJ/TOM/oma **DRAFT**

Agenda ID #8988 (Rev. 1)

Ratesetting
12/3/09 Item 13

Decision **PROPOSED DECISION OF ALJ PRESTIDGE** (Mailed 11/3/2009)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for Authority to Lease Available Land on the West Lugo-Mira Loma Transmission Right-of-Way to RVSA, LLC, a Limited Liability Company.	Application 09-06-026 (Filed June 30, 2009)

DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE SECTION 851 FOR CONVEYANCE OF A LEASE BY SOUTHERN CALIFORNIA EDISON COMPANY TO RVSA, LLC

1. Summary

This decision takes the following actions:

- Grants the unopposed application[1] of Southern California Edison Company (SCE) for Commission authorization under Section 851[2] for SCE to convey a 20-year lease of property located on SCE's West Lugo-Mira Loma transmission right-of-way in the City of Ontario to RVSA, LLC (RVSA). RVSA plans to operate a boat and recreational vehicle storage facility on the site.
- As a condition of approval of this application, requires SCE to apply for prior Commission authorization pursuant to

[1] The application was filed on June 30, 2009. In Resolution ALJ 176-3237, dated July 9, 2009, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary. No protests to the application were filed.

[2] All statutory references are to the Public Utilities Code unless otherwise referenced.

Section 851 and to undergo any required California Environmental Quality Act review if RVSA, or any other entity to which the lease is transferred, assigned, encumbered, subleased, or mortgaged, decides to utilize the property for another purpose, and SCE approves of this change of use.

- As a condition of approval of this application, requires SCE to obtain prior Commission authorization pursuant to Section 851 for the proposed assignment, transfer, encumbrance, sublease, or mortgage of the lease by RVSA to any party that would alter the terms of the existing lease.

As a result of entering into this proposed lease, SCE will obtain substantial revenues from rent paid by RVSA. This lease will also benefit SCE ratepayers, because the rent paid by RVSA will be treated as Other Operating Revenue for ratemaking purposes, and SCE ratepayers will therefore be credited with 30% of the rent revenues.

2. Background

2.1. The Parties

~~SCE~~Southern California Edison Company (SCE) is an electric public utility organized under the laws of the State of California, which engages in the business of electric generation, transmission, and distribution. As a public utility, SCE is subject to Commission regulation.

RVSA, LLC (RVSA) is a limited liability company operating in California. John Vidovich, the managing member of RVSA, has worked in real estate development since 1980. He has acquired or developed a variety of real estate projects, including 9 projects consisting of residential uses with retail and/or office space, 15 projects totaling over 825,000 square feet of retail space, 9 projects totaling over 383,000 square feet of office space, 17 projects totaling over 1840 apartment units, 382 residential units with sales prices up to $13 million,

7 projects totaling over 520 single family residential lots, 8 projects totaling over 1600 residential units, 2 hotel projects totaling over 230 guest rooms, 2 boat and recreational vehicle storage facilities totaling over 380 spaces, 2 self-storage projects totaling over 1250 storage units, and 1 senior housing project. Most of these projects are located in Southern California and the Northern Bay Area.

In addition, Vidovich has developed or acquired about 40,000 acres of farm land. His farm company, Sandridge Farms, is one of the ten largest almond producers in the world with over 8,000 acres of almonds. Vidovich also serves on two state water boards as a director.

The Project

SCE proposes to lease to RVSA 22.65 acres, as described in Attachment A to the proposed lease, on a portion of SCE's West Lugo-Mira Loma transmission right-of-way in the City of Ontario (City). SCE owns and operates above-ground transmission and subtransmission lines on the site. Otherwise, the land is vacant.

RVSA will utilize the site to develop and operate a boat and recreational vehicle storage facility.

SCE represents that the proposed lease will not interfere with SCE's operation of its transmission and subtransmission lines and other utility facilities on the property or with its service to customers. SCE further states that based on a market analysis of rental rates paid in the Ontario area for comparable boat and recreational vehicle storage facilities in and around the site, the revenues that SCE will receive from RVSA fall within the acceptable market range.

The Proposed Agreement Between SCE and RVSA

Under the Agreement, RVSA may exercise its option to lease the site upon Commission approval of this application, so long as the following conditions are met: 1) RVSA has obtained SCE's approval of the plans and working drawings

for the site, 2) RVSA has provided SCE with evidence of adequate insurance coverage, and 3) RVSA has obtained all necessary permits and authorizations from other governmental agencies having jurisdiction over the project. The Agreement includes the proposed lease terms.

The Agreement permits RVSA to use the property for the construction, development, and operation of the boat and recreational vehicle storage facility, or, with SCE's written consent, for any other lawful purpose consistent with SCE's operation of its power lines and other facilities. SCE may not unreasonably withhold its consent to the use of the site for other than a boat and recreational vehicle facility. Under the Agreement, SCE may also lease parts of the site to third parties for the placement of billboards and for cell sites, in locations to be mutually agreed upon by SCE and RVSA. RVSA may not unreasonably withhold its approval of proposed locations for billboards and cell sites.

The initial term of the proposed lease is 20 years, and the lease may be renewed for one additional 10-year term. For the first 20 years of the lease, RVSA is required to pay an annual total of the following amounts to SCE as base rent:

Year 1 of the Lease Term	$ 76,596.00
Year 2 of the Lease Term	$ 153,180.00
Years 3-7 of the Lease Term	$ 229,776.00
Years 8-12 of the Lease Term	$ 252,756.00
Years 13-17 of the Lease Term	$ 278,028.00
Years 18-20 of the Lease Term	$ 305,832.00

The rent may be adjusted if RVSA chooses to exercise its right to extend the lease for an additional ten years. SCE may also adjust the base rent as a condition of permitting RVSA to sublet the property to a third party.

SCE is responsible for all real property taxes assessed against the site by the State Board of Equalization. RVSA has agreed to pay all personal property taxes, general and special assessments, and other charges levied or assessed against the site, RVSA's improvements on the site, the leasehold or subleasehold estate, or RVSA's personal property. However, RVSA is not responsible for payment of any taxes assessed against SCE's equipment or improvements on the site.

RVSA acknowledges that SCE has the power of eminent domain and may at any time condemn the property if it is needed for utility purposes.

Under the Agreement, RVSA must use the property in a manner that does not interfere with SCE's use of its power lines and equipment and that complies with legal and regulatory requirements. RVSA must also maintain the property and improvements in good condition and use the property safely. SCE has reserved the right to enter the property as necessary to inspect, maintain, and clean its electrical facilities, or to protect the electrical facilities in an emergency.

SCE must approve the plans and specifications for any facilities that RVSA wishes to construct on the site. RVSA shall own any improvements that it constructs on the property during the lease term, but RVSA's interest in the improvements shall end upon the expiration or termination of the lease. SCE may require RVSA to remove its facilities from the site upon the expiration or earlier termination of the lease. During the lease term, RVSA may not remove any improvements from the site or waste, destroy, or modify any improvements, except as permitted by the lease.

Unless otherwise approved by SCE in writing, RVSA may not use the area directly under SCE's towers and must maintain the following minimum clearances between its equipment and facilities and SCE's facilities on the site:

a) 50 feet from all tower legs, and b) 10 feet from all steel poles, wood poles, and anchors. RVSA, its employees, agents, and contractors must also maintain a minimum clearance of 27 feet between any of their equipment used on or adjacent to the site and SCE's overhead electrical conductors.

RVSA will give SCE access to all of SCE's facilities on the site and will not interfere with the free movement of SCE's equipment and property over the property. RVSA must provide and maintain access roads that are at least 16 feet wide and are capable of supporting a gross load of 40 tons on a three-axle vehicle.

RVSA may not use the property for any purpose which SCE deems to be a fire or other safety hazard. Further, RVSA may not use or store gasoline or petroleum products (except for fuel stored in the tank of an operable vehicle), or manufacture or store flammable materials or explosives on the property.

RVSA also may not use, permit, create, store or allow hazardous substances on the property. Under the Agreement, RVSA is responsible for the entire cost of removal of any hazardous substances placed on the site during the lease term, but not for any hazardous materials placed on the site before the lease term.

The Agreement states that, except as otherwise disclosed by SCE to RVSA, SCE does not know, or have reasonable cause to believe, that any release of hazardous substances exists on or beneath the site. RVSA has the right to inspect the property, review relevant SCE documents, and analyze the soil and ground water to determine if hazardous materials exist on the site before exercising its option to lease.

Similarly, SCE has advised RVSA that high frequency electric and magnetic fields may possibly cause health hazards.

In the Agreement, RVSA acknowledges that any structures it constructs on the property will be in close proximity to one or more high voltage (66 kilovolt or higher) electric transmission lines or substation facilities. RVSA's structures may therefore be susceptible to induced voltages, static voltages or related electrical fault conditions (induced voltages) that create a health and safety risk, unless appropriate grounding or other mitigation measures are incorporated into the structures. RVSA has agreed to assume responsibility for identifying what, if any, mitigation measures are needed to reduce this risk and for implementing these measures at its own expense.

RVSA has agreed to indemnify and defend SCE from any claims or liability connected with or arising from any cause in, on, or about the site, except for claims which are caused by SCE's negligence or willful misconduct, or which arise from SCE's entry onto the property in connection with the use and operation of SCE's facilities. RVSA has also specifically agreed to indemnify and defend SCE from any claims arising from or connected to induced voltages on the site and from any claims arising from or connected with the use, storage, release, disposal or other presence of hazardous materials on, under, in, or about the site, unless these actions have been caused by SCE. In order to further protect SCE from liability, RVSA is required to provide SCE with evidence of adequate insurance coverage before executing the Agreement or entering the property.

By entering into the lease and occupying the site, RVSA is deemed to have acknowledged that the site is in good and leasable condition and to have accepted the property on an "as is" basis.

The Agreement generally permits RVSA to assign, transfer, encumber, or sublease the lease, without the prior consent of the Commission, but with SCE's approval, which may not be unreasonably withheld. However, under

Section 10.1 of the Agreement, RVSA has an absolute right to transfer, convey, encumber or sublease the lease to a "permitted transferee," without obtaining SCE's consent.

A "permitted transferee" is defined as either:

a. A person or entity whose net worth on the date of the transfer is, in the reasonable judgment of SCE, adequate to permit the transferee to perform all of the obligations under the lease or sublease; or

b. An affiliate transferee, which may be either:

   1) any individual that controls, is controlled by, or is under common control with RVSA;

   2) another entity resulting from the merger or consolidation of RVSA; or

   3) any successor to all or substantially all of RVSA's business or assets, unless the assignment would otherwise be prohibited by the provisions of the Agreement related to bankruptcy.[3]

Under the Agreement, RVSA must give SCE reasonable notice of the proposed transfer, conveyance, encumbrance, or sublease and must pay SCE $500 as compensation for SCE's costs in investigating the proposed transferee. The transfer or other proposed action becomes effective within 30 days after

[3] Under Article XIV of the Agreement, the filing of a voluntary or involuntary bankruptcy petition by or against RVSA, or a petition for reorganization or dissolution on account of or to prevent bankruptcy is a default by RVSA, unless the action is permanently stayed, dismissed, vacated, or terminated within 60 days after the filing or initial event. In the event of a default, SCE may take any of the following actions: 1) terminate the lease; 2) reoccupy the site and lease the property and improvements to another party; 3) use RVSA's personal property and fixtures for its own purposes without compensating RVSA; 4) keep the lease in effect and bring legal actions against RVSA for the payment of rent; 5) collect damages from RVSA.

RVSA gives notice to SCE, unless, within this time, SCE has notified RVSA of a valid objection that the proposed transferee is not a "permitted transferee."

After the transfer, conveyance, encumbrance, or sublease has been implemented, RVSA has no further obligations to SCE under the lease.

RVSA also has the right to mortgage its interest in the lease, provided that the mortgagee is subject all of the covenants, conditions, and restrictions stated in the Agreement and is required to honor them. RVSA must give SCE prior notice of the mortgage. SCE and RVSA may not amend the Agreement without the written consent of any existing mortgagee.

Any disputes between the parties that cannot be resolved through good faith negotiations will be subject to arbitration.

2.2. Environmental Review

The California Environmental Quality Act (CEQA)[4] applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities."[5] Since the Commission must act on this application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead Agency or Responsible Agency under CEQA.

The City is the Lead Agency for CEQA review of RVSA's proposed construction and operation of a recreational vehicle and boat storage facility on the site (the project). The Commission is a Responsible Agency for the project.

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[4] Public Resources Code Sections 21000, et seq.

[5] Title 14 of the California Code of Regulations (hereafter, CEQA Guidelines), Section 15002.

CEQA requires the Commission to consider the Lead Agency's environmental documents and findings before acting upon or approving the project.[6] SCE's application includes the following environmental documents prepared by City for the project:

- Notice of Determination for the project, dated October 28, 2008;
- Mitigated Negative Declaration for the project, with environmental checklist and Mitigation Monitoring and Reporting Plan, dated October 28, 2008;
- City Planning Commission Resolution No. PC-08-066, dated October 28, 2008, in which the Planning Commission: 1) Approved and adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project, and 2) Approved the application for a determination of use for the project;
- City Planning Commission Resolution No. PC-08-067, dated October 28, 2008, in which the Planning Commission: 1) Approved and adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project; and 2) Approved a development plan for the project;
- City Planning Commission Resolution No. PC-08-068, in which the Planning Commission: 1) Approved and adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project; and 2) granted a conditional use permit for the project.

The City's Mitigated Negative Declaration found that, without appropriate mitigation, the project could cause the following adverse environmental impacts:

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[6] CEQA Guidelines Section 15050(b). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

- Short-term air quality impacts resulting from construction-related activities, such as excavation and paving, machinery and equipment emissions, and vehicle emissions from construction employees;
- Impacts on soil and geological resources;
- Potential impacts on the western burrowing owl, which has been designated as a species of special concern by the California Department of Fish and Game.

The Mitigated Negative Declaration noted that the project is located within a soil erosion control area, as described in the City's General Plan Final Environmental Impact Report, because, from September to April, the area is subject to strong winds, which blow sand and dust and create erosion problems.

In addition, according to the Mitigated Negative Declaration, the site provides potential habitat for the western burrowing owl. As part of the Lead Agency's environmental review, a survey of the site was conducted, and no burrowing owls were found. However, since the burrowing owl is a transient species, mitigation measures are needed to prevent potentially significant adverse impacts on the owl.

City's Mitigation Monitoring and Reporting Plan for the project designates and requires mitigation measures which reduce these impacts to less than significant.[7]

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[7] The Mitigation Monitoring Program includes the following mitigation measures to address the following impacts:

A. Air Quality

1) Use of dust control techniques during clearing, grading, and construction.

2) Minimization of construction interference with regional non-project traffic movement.

Footnote continued on next page

We have reviewed the City's environmental documents and find them adequate for our decision-making purposes. We also find that the City reasonably concluded that the project, as mitigated, will not have significant adverse impacts on the environment and that the mitigation measures required by City are reasonable.

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3) Other measures to reduce dust after clearing, grading, or earth moving.

4) Emissions control from on-site equipment through a routine, mandatory program of low-emission tune-ups.

B. Geology and Soils

1) RVSA shall develop and submit an erosion control plan to reduce wind erosion impacts.

2) Fugitive dust shall be controlled by regular watering, paving of construction roads, and other dust-preventive measures.

3) Dust control measures shall be utilized after clearing, grading, or earth moving.

4) RVSA shall obtain a National Pollutant Discharge Elimination System permit authorizing the discharge of storm water.

C. Biological Resources (Burrowing Owls)

1) Thirty to ninety days before any ground-disturbing construction activities occur, a qualified biologist shall conduct a focused survey for the burrowing owl on the site.

2) If the burrowing owl is present, occupied burrows shall not be disturbed during nesting season unless a qualified biologist verifies through non-invasive methods that either: a) the birds have not begun egg-laying and incubation or b) young birds from the occupied burrows are foraging independently and are capable of independent survival.

3) If the owls must be removed from the area, passive relocation techniques shall be utilized.

Accordingly, we adopt the City's environmental documents, including the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan, for the purposes of our approval of the project.

2.3. Ratemaking Considerations

SCE proposes to treat revenue from the proposed lease as Other Operating Revenue (OOR). This treatment of lease revenues easement is unopposed.

On January 30, 1998, SCE filed Advice Letter 1286-E, which sets forth categories of non-tariffed products and services offered for sale by SCE and describes the products and services within each category. This advice filing was made pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of Decision (D.) 97-12-088. Attachment B to Advice Letter 1286-E identified 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 existing non-tariffed products and services.

In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's OORs. The adopted gross revenue sharing mechanism applies to OOR, except for revenues that: (1) derive from tariffs, fees or charges established by the Commission or 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 gross revenue sharing mechanism, all applicable gross revenues recorded from non-tariffed products and services subject to the mechanism will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been set. For those non-tariffed products and services deemed "active" by the Commission, revenues in excess of the annual threshold will be split between shareholders and

ratepayers on a 90%/10% basis. 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.[8]

SCE products or services offered under the Secondary Use of Transmission Right of Ways and Land and the Secondary Use of Distribution Right of Ways, Land, Facilities and Substations have been deemed "passive" for revenue sharing purposes. Therefore, here, the proposed lease with RVSA would be treated as "passive," so that any lease revenues which exceed the annual threshold would be allocated between shareholders and ratepayers on a 70%/30% basis.

3. Discussion

Section 851 provides that no public utility shall sell, lease, mortgage, or otherwise encumber the whole or any part of property necessary or useful in the

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[8] Under the settlement approved in D.99-09-070, an existing product or service is classified as "active" if it involves a total incremental shareholder investment of $225,000 or more, either on a one-time basis or within a 12-month period. An existing product or service is classified as "passive" if it involves a total incremental shareholder investment of less than $225,000. "Incremental shareholder investment" includes capital-related costs and expenses. Capital-related costs, labor and other expenses properly charged to the utility shall not be included in calculating the $225,000 threshold.

Each new category of products or services is presumed to be "passive." To reclassify an existing product or service as "active," or a new product or service as "active," SCE must file an advice letter which shows that the product or service involves incremental shareholder investment of at least $225,000 either on a one-time basis or within a 12-month period. SCE may file only up to four advice letters per year for this purpose. If no protests to the advice letter are filed, the change in classification becomes effective on the 31st day after the filing of the advice letter.

performance of its duties to the public, without first having obtained Commission approval.[9]

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is in the public interest. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or affecting service to utility customers.[10] In reviewing a Section 851 application, the Commission may "take such action, as a condition to the transfer, as the public interest may require."[11]

We find that SCE's proposed lease with RVSA is in the public interest. The proposed lease will not interfere with SCE's use of the property or with service to SCE customers, and the property will be utilized safely and in a manner consistent with legal and regulatory requirements. The terms of the Agreement between SCE and RVSA are reasonable and do not subject SCE to an undue risk of liability that could affect SCE's ability to provide utility service to the public. SCE's entry into the lease with RVSA will generate substantial OOR for the

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[9] Section 851 states in pertinent part:

> No public utility…shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its … property necessary or useful in the performance of its duties to the public … without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars ($5,000,000) or for qualified transactions valued at five million dollars ($5,000,000) or less, filed an advice letter and obtained a resolution from the commission authorizing it do to so.…

[10] D.00-07-010 at 6.

[11] D.3320, 10 CRRC 56, 63.

benefit of ratepayers and will permit the productive use of the site, without interfering with SCE's existing transmission facilities.

However, we are concerned that the Agreement would permit RVSA to assign, transfer, encumber, sublease or mortgage the lease, without prior Commission approval. We therefore, require SCE to apply for Commission authorization pursuant to Section 851 for any proposed assignment, transfer, encumbrance, sublease, or mortgage of the lease by RVSA that would alter the terms of the existing Agreement, including for transactions which involve a "permitted transferee," as defined in the Section 10.1 of the Agreement.

We are also concerned that in addition to use of the site for a recreational vehicle and boat storage facility, the proposed lease would permit RVSA to utilize the property for other purposes, with SCE's approval, but without prior Commission approval of the change in use of the property.

Therefore, in order to comply with CEQA and Section 851, if RVSA or any party to which the lease is assigned, transferred, encumbered, subleased, or mortgaged, wishes to utilize the property for any use other than a recreational and boat storage facility, and SCE wishes to permit such use of the property, SCE must first apply for authorization pursuant to Section 851 and undergo any additional required environmental review. RVSA must also obtain any necessary local approvals required for use of the property other than as the site for a recreational vehicle and boat storage facility.

We approve of the proposed ratemaking treatment for the compensation that RVSA will pay to SCE under the lease. The treatment of this compensation as OOR and of the lease as a "passive" source of revenue for the purposes of allocation between shareholders and ratepayers is consistent with prior Commission decisions and our current policy.

4. Conclusion

For all of the foregoing reasons, we grant the application of SCE pursuant to Section 851, subject to the ordering paragraphs which follow, effective immediately.

5. Final Categorization

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations made in Resolution ALJ 176-3237 (July 9, 2009) that this proceeding should be categorized as ratesetting, and that there is no need for a hearing.

6. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. ~~Comments were filed on _____, and reply~~No comments were filed~~ on _____ by _____~~.

7. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

Findings of Fact

1. The proposed lease/option agreement will not interfere with SCE's use of the property or its facilities or with service to SCE customers and the property will be utilized safely and in a manner consistent with Commission and legal requirements.
2. City is the Lead Agency for RVSA's proposed project under CEQA.
3. The Commission is a Responsible Agency for the purposes of environmental review of the proposed lease/option agreement under CEQA.

4. Rent received by SCE from RVSA under the lease will be treated as OOR from a "passive" revenue source and will be allocated among shareholders and ratepayers on a 70%/30% basis pursuant to D.99-09-070.

5. The proposed lease will generate substantial lease revenues for the benefit of SCE's ratepayers.

6. The proposed lease will allow productive use of the site without interfering with SCE's existing use of the property for its transmission and substation facilities.

Conclusions of Law

1. Under Section 851, a regulated utility must obtain prior Commission authorization before entering into a lease of utility property that is used or useful in serving the public.

2. Under Section 851, the Commission must review a proposed lease of utility property that is used or useful in serving the public to determine if the proposed lease is in the public interest.

3. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or affecting service to utility customers.

4. The Commission has reviewed the City's Mitigated Negative Declaration, Mitigation Monitoring and Reporting Plan, and other environmental documents for the project and finds them adequate for our decision-making purposes under CEQA.

5. The Commission finds that the City reasonably concluded that RVSA's construction, operation, and maintenance of a recreational vehicle and boat storage facility on the property, will not have significant adverse effects on the environment, provided that RVSA implements the mitigation measures required

by City's Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan.

6. Consistent with Section 851, SCE's conveyance of the lease to RVSA is in the public interest and should be approved, as consistent with this order.

7. There is no need to change the preliminary determinations made in Resolution ALJ-3237, dated July 9, 2009, that this proceeding should be categorized as ratesetting and that no hearing is necessary.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company is authorized pursuant to Public Utilities Code Section 851 to convey to RVSA, LLC a lease of 22.65 acres of land located along certain portions of Southern California Edison Company's West Lugo-Mira Loma transmission right-of-way located in the City of Ontario, as described in the application.

2. Southern California Edison Company shall treat compensation received from RVSA, LLC under the lease as Other Operating Revenue received from a "passive" revenue source pursuant to Decision 99-09-070 and shall allocate this revenue between shareholders and ratepayers on a 70%/30% basis, unless directed otherwise in a future Commission order.

3. Southern California Edison Company shall amend its option agreement and any subsequent lease with RVSA, LLC to require advance Commission approval of any proposed assignment, transfer, conveyance, encumbrance, sublease, or mortgage of the lease that would alter the lease terms or change the use of the property to other than for RVSA, LLC's construction, operation, and maintenance of a recreational vehicle and boat storage facility on the site. This requirement applies to transactions between RVSA, LLC and "permitted

transferees" as defined in Section 10.1 of the Option Agreement between Southern California Edison Company and RVSA, LLC, dated April 11, 2007, attached to the application as Appendix A, as well as to transactions between RVSA, LLC and other parties.

4. If RVSA, LLC wishes to utilize the property for any purposes other than the uses analyzed in the environmental documents prepared by the City of Ontario and relied upon by the Commission in this decision, and Southern California Edison Company wishes to permit such use, Southern California Edison Company shall first apply for Commission authorization pursuant to Public Utilities Code Section 851, undergo any required environmental review, and apply for any required local approvals. Southern California Edison Company shall amend its option agreement and any subsequent lease with RVSA, LLC to include this requirement.

5. Since the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Plan, and other environmental documents prepared and adopted by the City of Ontario, as the Lead Agency under the California Environmental Quality Act, for the project are adequate for our decision-making purposes as a Responsible Agency under California Environmental Quality Act, we approve and adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan prepared by the City of Ontario as the Lead Agency for the project.

6. Application 09-06-026 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

~~**INFORMATION REGARDING SERVICE**~~

~~I have provided notification of filing to the electronic mail addresses on the attached service list.~~

~~Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.~~

~~Dated November 3, 2009, at San Francisco, California.~~

~~/s/ OYIN MILON~~

~~Oyin Milon~~

Document comparison by Workshare Professional on Tuesday, December 01, 2009 3:13:40 PM

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Padding cell	

Statistics:	
	Count
Insertions	8
Deletions	28
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	36