

Decision 01-05-052 May 14, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the El Nido-Sepulveda-Culver 66 kV Subtransmission Line Right of Way to The Great Sepulveda Car Wash, LLC.

Application 00-10-035
(Filed October 18, 2000)

O P I N I O N

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to The Great Sepulveda Car Wash LLC (GSCW) a 1.2-acre site located on a portion of SCE's El Nido-Sepulveda-Culver 66 kilovolt (kV) subtransmission line right of way in the City of El Segundo. GSCW would use the site to operate a car wash facility, a use that SCE states will not interfere with its utility operations. The application is unopposed. The application is granted.

2. Background

The 1.2-acre site is used by SCE for above-ground subtransmission lines and underground distribution lines.¹ SCE acquired the property in 1925. Since

¹ The site is located on the west side of Sepulveda Boulevard, south of Grand Avenue, in El Segundo, approximately 10 miles south of the Los Angeles International Airport.

1978, the site has been licensed to International Garden Center for a wholesale/retail nursery operation. The garden center plans to consolidate its operations on 2.28 acres of adjacent land currently licensed from SCE.

SCE proposes to lease the site to GSCW for development and operation of an automated car wash facility. SCE would continue to own and operate its transmission facilities, and it would retain unobstructed access to the site. SCE states that revenue from the lease would be shared with SCE's ratepayers.

3. Terms of the Lease

The initial term of the lease to GSCW is 30 years, with options to renew for one additional 10-year term and one additional six-year term. GSCW would pay annual base rent of \$54,000 in years 1 through 3, adjusted in year 4 and in each year thereafter by 3% compounded annually. The base rent will be further adjusted upon the exercise of each renewal option.

The lease fees are substantially higher than the approximately \$3,800 revenue derived from the existing license for the nursery operation.

The agreement provides that GSCW's activities must not interfere with the operation of the electrical transmission facilities that cross the site. GSCW would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least a 17-foot clearance from all overhead electrical conductors. SCE also would require GSCW to maintain a 50-foot radius around all tower legs and a 10-foot radius around all steel and wood poles. GSCW would provide and maintain access roads on the property. The lessee would 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 car wash facility.

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

4. 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 proposed by developers through an open request for proposal, SCE determined that a full-service car wash facility offered the highest level of potential revenues for the site.

To evaluate the rental value for the site, SCE received proposals from various developers. After reviewing the proposals, SCE reviewed rent paid by comparable sites and by comparable car wash facilities in Southern California. According to SCE, the proposed lease provides for rental payments that fall within the acceptable market range and are comparable to the annual base rent as a percentage of gross income found in other agreements approved by this Commission.

5. Selection of Lessee

SCE states that GSCW was given the opportunity to develop the property because of the background and financial position of the company and of its founding partners G. Thomas Ennis and Thomas G. Ennis. The partners have

been involved in the car wash industry since 1961. Their company N/S Corporation is one of the world's largest developers and manufacturers of automatic car wash systems. The company's corporate headquarters are in Los Angeles, with regional sales offices located in North Carolina and British Columbia.

6. Environmental Review

Under the proposed lease, GSCW is required to procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations and requirements for permits and approvals from various governmental agencies having jurisdiction over the development of the proposed storage facility.

Under the California Environmental Quality Act (CEQA), the Commission is obligated to consider the environmental consequences of a project that is subject to the Commission's discretionary approval. (Pub. Resources Code § 21080.) Since development of the property by GSCW is subject to all applicable laws and discretionary approvals of the City of El Segundo, the Commission may defer to local authorities having jurisdiction over the use of the site. SCE notes that local authorities are generally in a superior position to evaluate local environmental impacts and develop appropriate mitigation measures. The Commission has followed this course in similar applications. (See Decision (D.) 99-02-036 and D.99-04-066.)

Deference to local authorities is appropriate in this application. CEQA specifically applies to discretionary projects such as issuance of conditional use permits. (See Pub. Res. Code § 21080.) A proposal to change the use of the site here will require state and local authorities to conduct an environmental review under CEQA.

In lieu of conducting a CEQA review at this time, the Commission may condition its approval of the proposed lease on lessee's compliance with all applicable environmental regulations. Such conditional approval is commonly imposed and is consistent with Commission precedent under CEQA. (See Sundstrom v. County of Mendocino (1988) 202 Cal. App.3d 292, 308; In re SpectraNet SGV, D.97-06-020.)

The Commission's staff has concluded that no further environmental review is required for the approval of this application by the Commission because environmental review will be required and conducted by local authorities in their discretionary approval of permits required prior to the start of construction. Local authorities are in a better position than this Commission to review the lessee's building plans and to assess any impact on the community.

7. Treatment of Revenues

In its application, SCE states that all of the revenues from the proposed lease will be treated as Other Operating Revenue (OOR). 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 OOR, 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 OOR 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.²

8. 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.³ 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.

² 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. 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.

³ 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.”

Approval of this lease is conditioned upon compliance by lessee with all applicable environmental regulations. Should environmental claims, in whole or in part, related to the tenancy or activities of the lessee be made on SCE subsequent to the execution of the lease, SCE shall not seek recovery of any such claims, or defense of such claims, from ratepayers.

In Resolution ALJ 176-3050, dated November 2, 2000, 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 176-3050.

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).

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 El Nido-Sepulveda-Culver 66 kV subtransmission line right of way in the City of El Segundo 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 proposal for the available property to provide lease revenues with no interference with the operation of the transmission line.
4. The proposed lessee, GSCW, is operated by one of the world's largest developers and manufacturers of automatic car wash systems.

5. GSCW will finance, construct and maintain an automated car wash 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.

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 environmental regulations.

4. SCE should be authorized pursuant to Pub. Util. Code § 851 to lease the designated 1.2-acre site to GSCW 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. Should environmental claims, in whole or in part, related to the tenancy or activities of the lessee be made on SCE subsequent to the execution of the lease, SCE shall not seek recovery of any such claims, or defense of such claims, from ratepayers.

7. 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 1.2-acre site located on a portion of SCE's El Nido-Sepulveda-Culver 66 kilovolt subtransmission line right of way in the City of El Segundo to The Great Sepulveda Car Wash, LLC, 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 lessee's compliance with all applicable environmental regulations, pursuant to the California Environmental Quality Act.

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 00-10-035 is closed.

6. This order is effective today.

Dated May 14, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners