Decision _____

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 Center-Del-Amo/Alamitos-Center Right of Way to RHC Communities, LLC and the City of Bellflower.	Application 06-06-012 (Filed June 8, 2006)

DECISION GRANTING PETITION OF APPLICANTS FOR MODIFICATION OF DECISION 06-10-011

1. Summary

This decision grants the unopposed petition for modification (petition) filed by Southern California Edison Company (SCE) seeking revision of Decision (D.) 06-10-011, based on SCE's current plan to lease 12.4 acres of the property directly to the City of Bellflower (City) for use as a municipal park, rather than to RHC Communities, LLC (RHC), which would then sublease this acreage to the City, as previously approved in D.06-10-011.

We order changes to D.06-10-011 as appropriate to implement the modifications requested by SCE.

We also adopt an updated negative declaration which was recently approved by the City as the Lead Agency for the Bellflower Riverview Park project and find that the project would have no significant adverse impacts on the environment and that no mitigation measures are necessary.

2. Background

In D.06-10-011, the Commission approved an application by SCE for authorization pursuant to Section 851[1] to lease 19.6 acres of its property, which consists of a 7.2 acre parcel and a 12.40 acre parcel, located on a portion of SCE's Center-Del-Amo/Alamitos-Center transmission right of way (CDA ROW) in Bellflower California to RHC. This decision authorized RHC to construct and operate a self-storage facility on the 7.2 acre parcel and to sublease the 12.40 acre parcel to the City for use as a park. RHC and SCE had entered into an option to lease this property, and RHC could exercise this option upon Commission approval of the application.

D.06-10-011 also requires SCE to file a new application and to undergo any additional required environmental review if RHC decided to use the property for another purpose.

3. Complainant's Petition for Modification

On December 16, 2008, SCE filed this petition for modification of D.06-10-011 (Petition). According to the Petition, the City now wishes to enter into a lease of the 12.40 acre parcel directly with SCE, rather than subleasing from RHC, because of an upcoming deadline for the City's participation in a state park bond funding program that will be used to fund the park, and delays in RHC's development of the self-storage facility. RHC has not yet exercised its option to lease the property approved in D.06-10-011. SCE is therefore asking the Commission to modify D.06-10-011 to authorize this lease directly between SCE and the City, so that the City can maintain its eligibility for approximately

[1] All Code references are to the Public Utilities Code, unless otherwise stated.

$2.9 million in state park bond funds. The lease between SCE and the City is subject to the understanding that, in the future, SCE may re-lease both the 12.40 acre parcel and the 7.2 acre parcel (the Combined Parcel) directly to RHC, so that City would then sublease the 7.2 acre parcel directly from RHC.

The Petition requests modifications to D.06-10-011 to reflect changes in the lease term, the rent, and updated environmental review of the project, based on the current plan for SCE to lease the 12.40 acre parcel directly to the City.

No protests to the application have been filed.

4. Standard of Review

The Commission Rules provide two ways to challenge a Commission decision after its adoption: (1) an application for a rehearing, and (2) a petition for modification.

An application for rehearing is the appropriate way for a party to alert to the Commission to an alleged legal error in the decision.[2] In contrast, the Commission uses the petition for modification process in order to address new or changed facts that might affect the outcome of the decision or the Commission's interpretation of the decision.[3]

Here, SCE states that a petition for modification is appropriate because of new facts related to the plans for leasing the site. We agree with SCE that under the unique circumstances of this case, a petition for modification is the appropriate vehicle to present new facts that could not have previously been raised before the Commission. Because this petition presents new facts that were

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[2] D.02-09-020.

[3] *Id.*

not in existence in the year following the effective date of D.06-10-011, SCE has met the requirements of Rule 16.4(d) by explaining why this petition could not have been filed within one year of the effective date of D.06-10-011.

Under Rule 16.4, a petition for modification must concisely state the justification for the requested relief and must propose specific language to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.

SCE has met the procedural requirements for filing a petition for modification.

4.1. The Proposed Lease between SCE and City

The direct lease between SCE and the City for the 12.40 acre parcel contains several major differences from the original option to lease between SCE and RHC, which was approved in D.06-10-011, as follows:

- **Lease Term**. The term of the proposed direct lease between SCE and the City is 25 years. The previous option to lease entered into by RHC and SCE was 65 years.
- **Rent**. SCE and the City have agreed to a base rent of $500 per acre per year or approximately $6,200 for the 12.40 acres for years 1 through 5 of the lease, with rental increases of 10 percent every five years thereafter. In the final five years of the lease, the rent will have increased to $756.42 per acre, or $9,077 per year.[4] SCE

[4] According to Schedule B to the Petition, the rental rates throughout the lease term would be:

Years 1-5 - $6,200 per year or $516.47 per acre.

Years 6-10 - $6,820 per year or $568.33 per acre.

Years 11-15 - $7,502 per year or $625.17 per acre.

Footnote continued on next page

notes that these rental rates are lower than the appraised value of $2,700 to $3,300 per acre, with a minimum annual increase of 10%. However, without a lower rent, as agreed to in the Petition, City would not be able to lease the site and would have to forego plans to develop the park and available state funds.

- **Possible Adoption of Master Lease with RHC in the Future**. The parties have agreed that SCE may, in its discretion, choose to enter into a master lease with RHC for the entire site, including the acreage to be leased to City for the park, at any time during the term of the lease with City. If SCE and RHC enter into a master lease, RHC will assume the obligations of the lessor of the acreage leased to City for the park, and SCE will have no further responsibilities under the lease with City.

The lease contains other terms which are generally consistent with the option agreement between SCE and RHC, as approved in D.06-10-011. Under the lease, City may only use the property for a park. City must submit plans for the park to SCE, for SCE's approval or disapproval, and must obtain all required governmental approvals for the park. City has accepted the property in its current condition and accepts all risks associated its use of the site for a park. City has agreed to maintain the site and all improvements in good condition and repair.

The lease requires City to comply with all legal requirements and with the requirements of the State Fire Marshall. Except as permitted by SCE, City may not install or operate a gasoline or petroleum station, transport or store gasoline or petroleum products, or manufacture or store flammable or explosive materials on the site, or use the site for any purpose which SCE deems to be a fire hazard.

Years 16-20 - $8,252 per year or $687.67 per acre.

Years 20-25 - $9,077 per year or $756.42 per acre.

City also may not use, create, store, or allow any hazardous substances on the site. The lease also requires City to allow SCE access to its utility facilities on the site, and to permit SCE to conduct inspections and to protect, maintain, reconstruct, and operate its utility facilities on the site at all times. City may not interfere with the free movement of SCE's equipment and materials over the site. SCE may require City to provide and maintain access roads on the site. City has also agreed that any of its equipment used on the site will maintain at least 27 feet of vertical ground clearance from all overhead electrical conductors. City will not use the area directly under SCE's towers and will maintain a clearance of at least 50 feet from all towers and 10 feet from all steel poles, wood poles, and anchors, unless otherwise authorized by SCE in writing.

Under the lease, SCE may enter into licenses with third parties for the construction and maintenance of cellular towers on the site, with City's consent, which shall not be unreasonably withheld. SCE shall retain all revenue from the cellular tower sites.

City has agreed to hold harmless and indemnify SCE from liability for any personal injury, including death, or property damage that may arise from or is connected with the lease or from the City's use of the site for the park. In addition, City has specifically acknowledged that any structures or facilities it constructs will be in close proximity to one or more high voltage electric transmission lines and/or substation facilities, and has agreed to hold harmless and indemnify SCE for any liability for personal injury, including death, or property damage caused by, resulting from, or connected with induced voltages on or related to SCE's facilities. The lease also requires City to maintain adequate insurance or self-insurance during the lease term. City may not from assign, transfer, convey, encumber, or sublease its interests under the lease with SCE.

Further, if City changes the use of the site from other than a park or ceases its use of the site, SCE may terminate the lease.

SCE and City have agreed to undergo arbitration of any disputes arising under the lease.

4.2. Environmental Review

The California Environmental Quality Act (CEQA) 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 SCE's petition for modification and issue a discretionary decision, the Commission must act as either a Lead Agency or a Responsible Agency under CEQA. Here, the City is the Lead Agency for CEQA review of this project, and the Commission is a Responsible Agency.

In order to approve this project, the City previously issued Conditional Use Permit No. CU 05-14, which authorized the construction and operation of a self-storage facility on 7.2 acres of the site and the use of the remainder of the site as a City park, and Variance Case No. V 05-04, which authorized certain deviations from the City Zoning Code, as necessary for the project.

On November 21, 2005, the City adopted Negative Declaration No. 05-10, which analyzed Conditional Use Permit No. CU-14, found that the project would have no significant environmental impacts and that no mitigation measures are required. The City filed a Notice of Determination with the Los Angeles County Clerk on November 23, 2005.

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[5] Public Resources Code Section 21000, *et seq.*

The City subsequently prepared and adopted an additional Negative Declaration for the Bellflower River View Park project, which concluded that the use of the site for a municipal park would have no significant environmental impacts and that no mitigation measures are required. The City filed a Notice of Determination, which reported the City's adoption of the negative declaration for the River View Park Project, with the Los Angeles County Clerk, on December 23, 2005.

In D.06-10-011, the Commission reviewed the City's environmental documents, found them adequate for the Commission's decision-making purposes, and found that the City reasonably concluded that the project would not have a significant negative effect on the environment and that no mitigation measures are required. The Commission therefore adopted the City's environmental documents and conclusions for the purposes of its approval of the project.

Based on SCE's plan to directly lease the land to the City, the City prepared an additional negative declaration for the Bellflower Riverview Park Project, which found that the project would have no significant adverse environmental impacts and that no mitigation measures are required. On February 23, 2009, the City adopted Resolution 09-05, which approved this negative declaration.

We have reviewed the City's additional negative declaration and environmental documents for the Bellower Riverview Park Project and find that these documents are adequate for our decision-making purposes. We also find that the City reasonably concluded that the project will not have a significant negative effect on the environment and that no mitigation measures are required.

Accordingly, we adopt the City's environmental documents and conclusions for purposes of our approval of the project.

4.3. Discussion

We find that SCE's change in plans to directly lease 12.4 acres of the property to City for use as a park and the terms of the lease between SCE and City are reasonable and are in the public interest. Under the terms of the lease, City's use of the land as a park will not interfere with SCE's operations or its service to customers. Although the property is being leased to City for less than its appraised value, the public will benefit from the use of the land as a municipal park, and there is no evidence that the lease between SCE and City will have any adverse impact on ratepayers. Our approval of this lease will also enable the City to accept bond funds for the park project, which is in the public interest.

Further, permitting SCE and RHC to enter into a master lease in the future, under which RHC would become the lessor of the property leased to City for the park, is consistent with the transaction approved in D.06-10-011. SCE must apply for our advance authorization of any proposed master lease with RHC pursuant to Section 851.

4.4. Conclusion

For all of the foregoing reasons, we grant SCE's Petition and modify our order in D.06-10-011, as set forth in the Ordering Paragraphs below.

5. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Myra J. Prestidge is assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.06-10-011, the Commission approved an option to lease between SCE and RHC of 19.6 acres of property located on SCE's CDA ROW in Bellflower, California.

2. The terms of the original lease permitted RHC to use 7.2 acres of the site for a self-storage facility and to sublease the remainder of the site to City for use as a municipal park.

3. RHC has experienced delays in the self-storage project, and has not exercised the option to lease granted in D.06-10-011.

4. SCE now wishes to enter into a lease of 12.40 acres directly with City, so that City can proceed with plans to develop a municipal park on the site and remain eligible for state funding for the park.

5. In the future, SCE may wish to enter into a master lease with RHC, so that RHC would directly lease all 19.6 acres on the site from SCE and would then sublease the 12.40 acres to the City for use as a park.

6. The terms of the proposed lease between SCE and City are reasonable and will not adversely impact ratepayers.

7. The proposed lease between SCE and City is in the public interest, because the public will benefit from use of the site as a park and the lease will not interfere with SCE's operations or service to customers.

8. Based on SCE's current plan to directly lease the 12.40 acres to City, City prepared an additional initial study and negative declaration for the Bellflower River View Park project.

9. In Resolution 09-05, dated February 23, 2009, the City approved the negative declaration for the Bellflower River View Park project, and found that the project would have no significant adverse environmental impacts and that no mitigation measures are required.

10. The City's negative declaration and environmental documents for the Bellflower River View Park project are adequate for the Commission's decision-making purposes.

11. The City reasonably concluded that the project will have no significant adverse environmental impacts and that no mitigation measures are required.

12. Based on the Commission's review of the City's negative declaration and environmental documents, the project will have no significant environmental impacts and no mitigation measures are required.

Conclusions of Law

1. Complainants have met the procedural requirements for a petition for modification.

2. The proposed lease between SCE and City is in the public interest and should be approved pursuant to Section 851.

3. Advance Commission approval of any future master lease between SCE and RHC is required by Section 851.

4. Under CEQA, the City is the Lead Agency and the Commission is a Responsible Agency for the project.

5. This order should take effect immediately.

O R D E R

IT IS ORDERED that:

1. The Petition for Modifications filed by Complainants in this proceeding is granted.

2. Decision (D.) 06-10-011 is modified as follows:

   a. Ordering Paragraph 1 is modified to read: "Southern California Edison Company (SCE) is authorized pursuant to Public Utilities Code Section 851 (Section 851) to convey a leasehold interest of 12.40 acres on its Center Del Amo/Alamitos Center Right of Way property located in Bellflower, California, as depicted in Exhibits A-1 and A-2 (attached to SCE's Petition for Modification filed on December 16, 2008) to the City of Bellflower (the City) as described in this decision."

   b. Ordering Paragraph 2 is deleted.

   c. Ordering Paragraph 3, is modified to read: "SCE shall treat compensation received from the City under the lease, and if applicable, the sublease to the City, as other operating revenue received from a passive revenue source pursuant to Decision (D.) 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."

   d. Ordering Paragraph 4 is modified to read: "SCE shall seek Commission approval of any proposed assignment, transfer, sublease, or mortgage of the lease that would alter the lease term or change the use of the property to other than a municipal park. If, in the future, SCE wishes to enter into a master lease for the site with RHC Properties, LLC., SCE shall first apply for Commission authorization pursuant to Section 851."

   e. Ordering Paragraph 5 is modified to read: "If SCE or the City desire to utilize the 12.4 acre property for any other purposes other than the uses analyzed in the environmental documents prepared by City and relied upon by the Commission in this decision, SCE shall first apply for Commission authorization

pursuant to Section 851, undergo any required environmental review, and apply for any required local approvals."

f. The Ordering Paragraphs shall be numbered to reflect the deletion of former Ordering Paragraph 2.

3. The lease between Southern California Edison Company (SCE) and the City of Bellflower (City), attached to the Petition for Modification as Exhibit B, is approved pursuant to Public Utilities Code Section 851.

4. SCE shall apply for advance Commission authorization pursuant to Section 851 before entering into any master lease of the property with RHC Communities, LLC in the future.

5. We adopt the City's negative declaration for the Bellflower View River Park project, approved by City on February 23, 2009, for our own decision-making purposes and find that the project will have no significant adverse environmental impacts and that no mitigation measures are required.

This order is effective today.

Dated _____, at San Francisco, California.