

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 El Nido-Sepulveda-Culver Right of Way to Champion Chevrolet, LLC, a Delaware Limited Liability Company.

Application 05-06-045
(Filed June 29, 2005)

OPINION AUTHORIZING PROPERTY LEASE**Summary**

Southern California Edison Company (SCE) is authorized to lease to Champion Chevrolet, LLC, (Champion) a site on SCE's El Nido-Sepulveda-Culver right of way in the City of Hawthorne.

Background

SCE seeks Commission authorization under Pub. Util. Code § 851 to lease to Champion a 3.16-acre site located on a portion of SCE's El Nido-Sepulveda-Culver right of way in Hawthorne. The right of way is part of the El Nido-Sepulveda-Culver 66-kilovolt system and includes Commission-jurisdictional facilities. Champion, an affiliate dealership of AN Dealership Holding Corporation, will use the site for vehicle parking and storage for its nearby automotive retailing operation.

SCE and Champion executed an option and lease agreement on March 25, 2004. The agreement fully defines the terms of the proposed lease and

gives Champion 30 days after the Commission approves the lease to accept any conditions the Commission may impose and exercise its lease option.

Lease Terms

Pursuant to the agreement and subject to Commission approval, Champion has the right to lease the site from SCE for 20 years beginning on the date Champion exercises the option, with options to renew for three additional ten year terms. The base annual rent for the first twenty years is to be:

Years 1 through 5	\$91,360
Years 6 through 10	\$100,500
Years 11 through 15	\$110,550
Years 16 through 20	\$121,600

The base rent will be adjusted upon Champion's exercise of each ten year renewal option to reflect the appraised fair market value of the site at that time, but in no event will it be adjusted downward.

Terms of the agreement provide that Champion's activities must not interfere with SCE's operations or facilities on the site, it may not use or store hazardous substances, explosives or flammable materials on the site, and any equipment it operates must maintain minimum specified vertical and horizontal clearances from SCE's towers, poles, pole anchors, and overhead conductors.

SCE retains various rights under the agreement, including the rights to:

- Approve Champion's construction plans and specifications
- Enter the site at any and all reasonable times to inspect the property
- Impose temporary restrictions on Champion's right to enter, occupy and use the site, in order to perform necessary work on the electrical facilities located on the site, and

- Take back all or part of the leasehold by eminent domain or inverse condemnation.

Under the agreement Champion is required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against the site or the improvements to be constructed thereon
- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the site
- Maintain appropriate comprehensive general liability, auto liability and worker's compensation insurance, and
- Indemnify SCE against all liability for damages or injury to persons on the site except to the extent caused by SCE's negligent or willful misconduct.

Determination of Best Secondary Use, and Lessee Selection

The primary use of facilities located on the site is the transmission and distribution of electricity. SCE's aboveground electric lines crossing the site and their associated restrictions and height clearances limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations. Of the land uses allowed by the City of Hawthorne that are compatible with utility operations on this site, SCE determined that a vehicle parking and storage lot was the most desirable use based on its compatibility with Champion's auto dealership proposed for the nearby property, and because it offered the highest potential revenue. To evaluate the rental value of the site, SCE analyzed rents paid for comparable parking facilities in the area. Based on that analysis, SCE believes that the rent it will receive falls within the acceptable

market range and is in line with revenues it receives from similar Commission-approved transactions.¹

CEQA Considerations

Procedural Background

The California Environmental Quality Act (CEQA, Public Resources Code Sections 21000, *et seq.*) 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 proposed activities.

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (*i.e.*, the Commission must act on the application before it for an approval of a lease agreement subject to Pub. Util. Code § 851), the Commission must act as either a Lead Agency or a Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.²

Champion's use of the site for vehicle parking and storage for its nearby automotive retailing operation is part of, and the site to be leased is located within, the Hawthorne Gateway Center Project.³ The City of Hawthorne

¹ SCE cites, *e.g.*, transactions approved in Decision (D.) 05-01-008, D.04-09-018, D.03-03-027, D.04-05-016, and D.03-01-083.

² CEQA Guidelines (Title 14 California Code of Regulations), Section 15051(b).

³ The City describes Hawthorne Gateway Center Project as involving "the development of retail, auto sales and service and hotel uses on a 44 acre site just west of the I-405 freeway.... The maximum potential development of the Project would involve 318,500

Footnote continued on next page

Community Redevelopment Agency (City) is the Lead Agency for the project under CEQA, and the Commission is a Responsible Agency. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting on or approving the project.⁴ The specific activities that must be conducted by a Responsible Agency are contained in the CEQA Guidelines, Section 15096.

The City issued a Draft Environmental Impact Report (EIR) for the Hawthorne Gateway Center Project for public review and comment on June 10, 1999. A Final EIR was published in August 1999 following a 45-day public comment period that included a public hearing. The City certified the Final EIR on September 13, 1999, including findings, a statement of overriding considerations, and a mitigation monitoring program.⁵ On September 14, 1999, the City filed its Notice of Determination and Final EIR with the State Office of Planning and Research.⁶

The project before the Commission is SCE's application pursuant to Pub. Util. Code § 851 for approval to lease a 3.16-acre site on SCE's transmission right of way to Champion for vehicle parking and storage. The site is within the geographic area of an ongoing redevelopment project in Hawthorne.

square feet of new retail and auto sales and service uses and a 200,000 square foot hotel with 300 rooms." (City of Hawthorne Community Redevelopment Agency Resolution No. 343, September 13, 1999).

⁴ CEQA Guidelines, Section 15050(b).

⁵ City Resolution No. 343.

⁶ SCH No. 99041048.

Automobile dealership vehicle parking and storage on the site is part of the Hawthorne Gateway Center Project and covered in the redevelopment EIR. Champion's proposed use is consistent with the purpose of that redevelopment. Public Resources Code Section 21090 and the CEQA Guidelines, Section 15180, provide that an EIR on a redevelopment plan is regarded as similar to a program EIR, and no subsequent EIRs are required for activities undertaken subject to the redevelopment plan or for individual components of the redevelopment plan, unless the activity is one that requires a subsequent or supplemental EIR under Public Resources Code Section 21166. We have reviewed Champion's proposal and confirmed that the lease that is the subject of this application qualifies for the treatment authorized in Public Resources Code Section 21090 and the CEQA Guidelines, Section 15180; no additional environmental review beyond that set forth in this opinion is required by the Commission.

Project Alternatives and Objectives

The Hawthorne Gateway Center Project EIR indicated that the objectives of the redevelopment project were, among others: to eliminate blight by stimulating construction activity and new commercial uses in stagnant, unproductive areas, thereby increasing property values; to recycle land uses in the area into viable and productive uses consistent with the City's General Plan; and to increase employment and generate sales tax, property tax, and business tax revenues.

The EIR analyzed six alternatives: no project; development with an entertainment center; smaller project; office/R&D development with support uses; multi-family housing; and regional auto center. The City found that none of the alternatives were feasible because they would not achieve the basic objectives of the project, would do so only to a much smaller degree that would

leave unaddressed significant social and economic problems, or because they would not eliminate the adverse environmental impacts of the proposed project.⁷ We concur with the City's findings: the proposed project meets the redevelopment objectives and is the preferred alternative.

Environmental Impacts

The Final EIR identified eight resource categories for which the redevelopment project would have no significant impact on the environment: geology, water, biological, land use, energy and minerals, cultural, recreation, and population and housing. The EIR identified five categories in which the redevelopment project could cause potentially significant environmental impacts, and measures to mitigate them to less than significant levels: noise, public services (schools), aesthetics, hazards (toxic materials), and utilities (storm drainage). There were four additional categories for which the environmental impacts would remain significant and unavoidable, and for which measures were adopted to reduce those impacts to the extent feasible: air quality, traffic and circulation, public services (fire and police), and utilities (solid waste disposal).

Environmental Findings

With reference to the impacts listed above, and as authorized by Public Resources Code Sections 21000, *et seq.* and the CEQA Guidelines, Sections 15091, 15092, 15093 and 15096(f), (g) and (h), we conclude that there is substantial evidence in the record to make the findings that follow.

⁷ Final EIR, page xxiv; and City Resolution No. 343, pages 2, 3.

With regard to geology, water, biological, land use, energy and minerals, cultural, recreation, and population and housing, the City found that there was no potential for significant adverse impact upon those resources. We concur with and adopt the City's findings and conclusion.

With regard to the significant adverse impacts on noise, public services (schools), aesthetics, hazards (toxic materials), and utilities (storm drainage), the City found that those project impacts can be reduced to less than significant levels with the implementation of mitigation measures. We concur with and adopt the City's findings and conclusion.

With regard to the project's significant adverse impacts on air quality, traffic and circulation, public services (fire and police), and utilities (solid waste disposal), the City found that those impacts are significant and unavoidable, and we concur with and adopt that finding.

Statement of Overriding Considerations

The City found, pursuant to the CEQA Guidelines, Section 15093, that there are specific benefits that outweigh the unavoidable, significant, adverse impacts described and evaluated in the Final EIR. Accordingly, the City prepared and certified a Statement of Overriding Considerations in which it enumerated its reasons for concluding that the benefits justify approving the project:⁸

- A. The Project will contribute to the public health, safety and welfare by implementing a portion of the Redevelopment Plan for Project Area No. 2 and assisting in eliminating blight in the Project Area by:

⁸ Resolution No. 343.

- i) comprehensively planning, designing and developing an underused site, including upgrading and expansion of existing uses;
 - ii) revitalizing and upgrading commercial segments of the City by attracting new and viable commercial uses;
 - iii) improving the visual image and urban design of the City and improving its attractiveness as a viable commercial center;
 - iv) constructing traffic and circulation improvements, which will alleviate congestion and improve air quality.
- B. Generating jobs and increasing employment in the City, thereby contributing to the public health and welfare.
- C. Generating tax revenue which will assist in financing needed public improvements and in implementing the Redevelopment Plan for Project Area No. 2, thereby providing environmental, physical and social benefits and contributing to the public health, safety and welfare.

The Commission concurs with the City's findings and in turn finds, pursuant to the CEQA Guidelines, Sections 15093 and 15096(h), that there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts, and that the project should be approved.

Revenue Treatment, and Environmental Claims

All revenues from the agreement and 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 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 are to 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 are split between shareholders and ratepayers on a 70/30 basis. Revenue from the agreement is “passive” for sharing purposes.⁹

SCE’s application notes that this site is, and will continue to be, utility operating property and, as such, ratepayers should continue to have certain financial responsibilities relating to utility facility operations and maintenance. In D.01-05-004 and D.01-05-005, the Commission addressed permitting cost recovery from ratepayers for environmental claims relating to utility operations vis-à-vis environmental claims relating to a lessee’s tenancy or activity. In those decisions, the Commission agreed that SCE should be allowed to seek recovery from ratepayers for the former but not for the latter. SCE does not object to the Commission’s imposing the same provision should it approve this lease. We will do so.

⁹ See Attachment B to SCE’s 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.

Discussion

Pub. Util. Code § 851 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 Commission’s role in examining transactions subject to Section 851 is the protection of the public interest.¹⁰ 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 operations,¹¹ and such is the case here. There is in addition a clear public benefit to be gained here in that the agreement will generate revenues that will be shared between SCE and its ratepayers, thus lowering rates and at the same time enhancing the utility’s financial health and the California economy. As discussed in the CEQA Considerations section above, the proposed use has been reviewed, its environmental impact assessed, and the project approved by the local jurisdiction. The lease agreement provides a host of provisions addressing lessee activities that could potentially impair the site’s primary public utility use; informing the lessee of potential hazards; and reserving SCE’s rights to fully access the site and to reclaim it if necessary. We conclude that the proposed lease is in the public interest and should be approved.

¹⁰ Section 853(a): “This article [Article 6, Transfer or Encumbrance of Utility Property, Sections 851 through 856] ... shall apply to any public utility ... if the commission finds ... that the application of this article is required by the public interest.”

¹¹ 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.”

Procedural Considerations

The Commission in Resolution ALJ 176-3156 preliminarily categorized this as a ratesetting proceeding not expected to require hearings. There are no material facts in dispute, and there is no known opposition to granting the relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, the requirement for a 30-day period for public review and comment is waived as permitted by Pub. Util. Code § 311(g)(2).

Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and James C. McVicar is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Under terms of the lease, Champion's use of the site will not interfere with SCE's operations or facilities on the site.
2. All revenue from the agreement and lease in excess of a Commission-established threshold will be treated as Other Operating Revenue and shared 70%/30% between SCE and its ratepayers, pursuant to D.99-09-070.
3. Champion's proposed use of the site was contemplated in the Hawthorne Gateway Center Project that was the subject of a redevelopment EIR, and Champion's proposed project is consistent with the purpose of that redevelopment.
4. The City is the Lead Agency for the redevelopment project pursuant to CEQA.
5. The Commission is a Responsible Agency for the proposed project pursuant to CEQA.

6. By Resolution No. 343, the City certified the Hawthorne Gateway Center Project EIR on September 13, 1999, and included findings, a statement of overriding considerations, and a mitigation monitoring program.

7. The Hawthorne Gateway Center Project EIR was prepared pursuant to CEQA and is adequate for the Commission's decision making purposes. No supplemental or subsequent EIR is required.

8. The Hawthorne Gateway Center Project objectives include among others: to eliminate blight by stimulating construction activity and new commercial uses in stagnant, unproductive areas, thereby increasing property values; to recycle land uses in the area into viable and productive uses consistent with the City's General Plan; and to increase employment and generate sales tax, property tax, and business tax revenues.

9. The City analyzed six alternatives to the project and found that none were feasible because they would not achieve the basic objectives of the project, would do so only to a much smaller degree that would leave unaddressed significant social and economic problems, or because they would not eliminate the adverse environmental impacts of the proposed project.

10. The Commission finds that the proposed project is consistent with the stated redevelopment project objectives, is the environmentally superior alternative, and is the preferred alternative.

11. The Final EIR found that no significant impacts would occur with respect to geology, water, biological, land use, energy and minerals, cultural, recreation, and population and housing.

12. The EIR identified five categories in which the redevelopment project could cause potentially significant environmental impacts, and measures to

mitigate those impacts to less than significant levels: noise, public services (schools), aesthetics, hazards (toxic materials), and utilities (storm drainage).

13. There are four categories for which the environmental impacts would remain significant and unavoidable: air quality, traffic and circulation, public services (fire and police), and utilities (solid waste disposal). The City has adopted mitigation measures to reduce those impacts to the extent feasible.

14. Pursuant to the CEQA Guidelines, Sections 15093 and 15096(h), there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts and that the project should be approved pursuant to the Statement of Overriding Considerations.

15. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Sharing of option agreement and lease revenues as outlined in this order conforms to the Commission's order in D.99-09-070.

2. Champion's lease of the SCE site qualifies for the treatment authorized in Section 21090 of the Public Resources Code and Section 15180 of the CEQA Guidelines, and no further environmental review is required by this Commission.

3. The Commission has considered the Hawthorne Gateway Center Project EIR in its decision making process in accordance with the CEQA Guidelines, Section 15096(f).

4. Pursuant to the CEQA Guidelines, Section 15096(g)(1), the Commission should adopt the mitigation measures identified in the Hawthorne Gateway Center Project EIR and in Exhibit B to the City's Resolution No. 343, and make conditions of project approval those that apply to Champion's use of SCE's site.

5. Should environmental claims related in whole or in part to Champion's tenancy or activities be made on SCE subsequent to the execution of the lease, SCE should not be permitted to seek to recover the costs of those claims or of its defense of those claims from ratepayers.

6. A public hearing is not necessary.

7. Approving the requested lease is in the public interest.

8. The application should be granted as set forth in the following order.

9. This order should be made effective immediately to allow the lease to take effect and its benefits to begin flowing to SCE and its ratepayers as soon as possible.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized to lease to Champion Chevrolet, LLC, (Champion) a site on SCE's El Nido-Sepulveda-Culver right of way in the City of Hawthorne, in accordance with the terms and conditions set forth in Application 05-06-045 and this order.

2. The mitigation measures identified in the Hawthorne Gateway Center Project EIR and in Exhibit B to the City's Resolution No. 343 that apply to Champion's use of SCE's site are hereby made conditions of project approval by this Commission Order. SCE shall ensure that those mitigation measures are carried out.

3. SCE shall ensure that activities anticipated to result from our Section 851 approval of the proposed lease are conducted consistent with any prior environmental mitigation measures adopted by this Commission related to the subject property.

4. Approval to lease is conditioned upon Champion's compliance with all applicable environmental regulations. Should environmental claims related in whole or in part to Champion's tenancy or activities be made on SCE subsequent to the execution of the lease, SCE shall not seek to recover the costs of those claims or of its defense of those claims from ratepayers.

5. All revenue from the option agreement and lease shall be treated as Other Operating Revenue and subject to the sharing mechanism set forth in Decision 99-09-070.

6. SCE shall notify the Director of the Commission's Energy Division in writing of any amendments to, extension of, or termination of the lease agreement, within 30 days after such amendments are executed.

7. Application 05-06-045 is closed.

This order is effective today.

Dated _____, at San Francisco, California.