

Decision _____

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 Barre-Ellis 220 kV Transmission Right of Way to Hawaii Properties, Inc., a California corporation.

Application 07-08-001
(Filed August 1, 2007)

**DECISION GRANTING APPROVAL UNDER
PUBLIC UTILITIES CODE SECTION 851 FOR A LEASE OF
UTILITY PROPERTY**

Summary

We grant the application of Southern California Edison Company (SCE) for authority to lease available land under Public Utilities Code Section 851.¹ The SCE property consists of a 2.03-acre site located on a portion of SCE's Barre-Ellis transmission right of way (ROW) in the City of Stanton (Site). The Site is part of the Barre-Ellis 220 kilovolt (kV) system. The lease is sought by Hawaii Properties, Inc. (Hawaii Properties or Lessee) to construct and operate an industrial park on the Site.

Background

The Site is subject to an Option Agreement (Option Agreement) between SCE and Hawaii Properties dated June 15, 2007. Pursuant to the Option

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

Agreement, Hawaii Properties has the right, subject to Commission approval, to lease the Site from SCE for the described uses for a period of 45 years with two additional ten-year renewal options beginning on the date Hawaii Properties exercises the option. Annual rent will be \$10,000 in Year One; \$15,000 in Year Two; \$20,000 in Year Three; \$25,000 in Years Four and Five; and \$30,000 in Years Six through Ten of the lease term. The base rent will be adjusted upon the expiration of the tenth year and upon each renewal option based on the then current fair market rental value of the property.

The Option Agreement provides that Hawaii Properties' activities must not interfere with the operation of the electric facilities that cross the Site. To that end, Hawaii Properties is forbidden to use or store hazardous substances, explosives or flammable materials on the Site. Further, any equipment used by Hawaii Properties on or adjacent to the Site must at all times maintain a clearance of at least 17 feet from all overhead electrical conductors. Hawaii Properties must maintain a minimum radius of 50 feet around all tower legs and ten feet around all poles and anchors and provide access roads to the Site that are at least 16 feet wide and capable of supporting a gross load of 40 tons on a three-axle vehicle.

SCE retains various rights under the Option Agreement including the rights to:

- Approve Hawaii Properties' construction plans and specifications;
- Enter the Site at any and all reasonable times to inspect the property;
- Impose temporary restrictions on Hawaii Properties' 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.

Hawaii Properties is also 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

The primary use of facilities located on the Site is the transmission and distribution of electricity in the City of Stanton. SCE's above-ground 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 revenue to its ratepayers and shareholders while safeguarding its utility safety and reliability obligations, and that it has determined that the Hawaii Properties project offers a high level of potential revenues for this particular Site. To evaluate the rental potential of the Site, SCE analyzed the rent paid for comparable industrial park facilities in and around the Site. 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 such as Decision (D.) 03-01-083, D.03-05-016 and D.05-01-008.

Developer Selection

SCE states that it entered into the Agreement with Hawaii Properties because of the proposed project's benefits to the City of Stanton and the economic benefits to SCE ratepayers and shareholders.

Hawaii Properties is a real estate development and investment corporation that was incorporated in 1998. It owns various commercial and residential properties located within the San Gabriel Valley including five shopping centers and a supermarket. Hawaii Properties has a total asset base of \$24 million and a net worth of \$14.5 million.

Environmental Review

Because CEQA applies to discretionary projects to be carried out or approved by public agencies and because the Commission must act on the Section 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines Section 15051(b)).

In this case, the City of Stanton (City) is the Lead Agency. The City's environmental review process and associated documents are effectively equal to the traditional CEQA preparation of an Environmental Impact Report. The CPUC is a Responsible Agency for this proposed project. CEQA requires that the CPUC consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency environmental documents and findings before acting upon or approving the project. (CEQA Guidelines 15050(b)). The specific activities that must be

conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

After conducting an initial study, on May 16, 2007 the City of Stanton Planning Commission adopted Resolution no. 2166 and determined that the project, as modified by design review and conditions of approval, will not result in any potentially significant impacts on the environment. SCE included the detailed record of the City's action in the Application. We adopt the City's finding that the project will have no significant effect on the environment.

Revenue Treatment

All 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 operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fee 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 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. The lease proposed here is “passive” for sharing purposes.²

Discussion

As a lease of utility-owned real property, the proposed transaction falls squarely within the requirements of Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The task of the Commission in a Section 851 proceeding is to review the transaction, “[T]o ensure that it will not impair the utility’s ability to provide service to the public.” (D.96-04-045.) We have reviewed the Option Agreement and the proposed lease, and find that they do not impair SCE’s ability to provide utility service to the public. Because the proposed lease will generate revenues from the secondary use of Site and ratepayers will share in those revenues, the Application should be approved.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

² 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, 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.

Findings of Fact

1. In order for Hawaii Properties to construct its facilities on the Site, a lease from SCE is required.
2. Lease of the Site to Hawaii Properties is consistent with the current uses of the related SCE properties. The lease and associated construction will not impair SCE's ability to provide service to the public.
3. The City of Stanton has conducted an environmental review that includes the Site.
4. The City of Stanton has issued a mitigated negative declaration with regard to the Site.
5. It can be seen with certainty that construction and operation of the facilities contemplated by the lease as proposed in the Application will have no significant effect on the environment.
6. All revenue from the 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.
7. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Approving the requested lease is in the public interest.
2. The mitigated negative declaration adopted by the City of Stanton for the Site is adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.
3. No additional CEQA review by the Commission is required.
4. The proposed revenue sharing conforms to the Commission's order in D.99-09-070.
5. A public hearing is not necessary.

6. The Application should be granted as set forth in the following Order.

7. This decision should be effective today in order to allow Hawaii Properties to expeditiously enter into the lease with SCE and begin paying rent for the benefit of SCE and its ratepayers as soon as possible.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (SCE) Application for authority to lease a portion of its Barre-Ellis transmission Right of Way to Hawaii Properties, Inc. is granted, as described above.

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

3. SCE shall notify the Director of the Commission's Energy Division in writing of any amendment, extension or termination of the lease agreement, within 30 days after such amendment, extension or termination is executed.

4. Application 07-08-001 is closed.

This order is effective today.

Dated _____ at San Francisco, California.