

Decision 01-01-039 January 18, 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 at the Malibu Substation to The Moshe Silagi Family Trust.

Application 00-06-005
(Filed June 2, 2000)

O P I N I O N

I. Summary

Southern California Edison Company (SCE) is granted authority to lease available land at SCE's Malibu Substation to The Moshe Silagi Family Trust for a parking lot and office facilities.

II. Introduction

SCE requests authority, pursuant to Pub. Util. Code § 851, to lease to the Moshe Silagi Family Trust (Silagi Trust), 2.1 of the 3.5 acres of property comprising SCE's Malibu Substation in the City of Agoura Hills (Site). The Malibu Substation is a part of the Malibu 66 kV (kilovolt) system that includes facilities subject to Commission jurisdiction.

SCE and Silagi Trust executed a certain Option Agreement (Agreement) between SCE and Silagi Trust on August 23, 1999, attached to the application. Pursuant to the terms of the Agreement, in the event Silagi Trust exercises the option, Silagi Trust will lease the Site for a parking lot and office facilities. Operation of a parking lot and office facilities is compatible with SCE's operation of the Malibu Substation and aboveground sub-transmission lines. These secondary uses of utility land will not affect utility services.

On January 30, 1998, SCE filed Advice Letter 1286-E which sets forth proposed categories of non-tariffed products and services offered for sale by SCE and provided descriptions of the existing products and services within each category. This 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 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.¹ This filing complies with the requirements of Rule VII for existing non-tariffed products and services. The intended secondary uses as identified above are consistent with the products and services provided within these categories.

The revenue from the 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.² 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 the Federal Energy Regulatory Commission (FERC); (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

¹ On April 5, 2000, SCE filed Advice Letter 12860E-A to provide additional information regarding its non-tariffed product and service category pursuant to Resolution E-3639.

² On October 29, 1999, SCE filed Advice Letter 1413-E setting forth the tariff changes required to implement D.99-09-070. Proposed Part G of SCE's Preliminary Statement set forth in the advice letter contains the gross revenue sharing mechanism.

subject to the mechanism will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffs products and services deemed “active” by the Commission, the 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. Products and 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* categories have been deemed “passive” for revenue sharing purposes.

III. Agreement

The Site is approximately 2.1 acres and is located on a portion of SCE’s Malibu Substation located in the City of Agoura Hills.³ The use of the Site for operation of a parking lot and office facility, is consistent with its primary utility use as a site for above-ground sub-transmission lines and substation. SCE acquired this land from Associated Southern Investment Company in February of 1963.⁴ The Site currently generates no OOR. Under the proposed lease with Silagi Trust, the 2.1 acres will generate an expected base revenue of \$21,954 in Years 1-10, \$23,052 in Years 11-20, \$24,205 in Years 21-30, \$25,415 in Years 31-40

³ Site description: The Site is the northern 2.1 acre portion of SCE’s Malibu Substation property which is bounded on the west by an office development project owned by the Silagi Trust, on the north by a residential lot held as open space, on the east by Kanan Road, and on the south by Canwood Street.

⁴ The book value of the 2.1 acre site is \$8,608.74.

and \$26,686 in Years 41-50. Thus, revenue from the proposed lease represents substantial OOR for the benefit of SCE's ratepayers.

The Agreement grants Silagi Trust the option to lease the Site for the development and operation of a parking lot and office facility. The initial term of the lease is fifty (50) years, beginning on the date Silagi Trust exercises the option. Silagi Trust can renew the lease for three additional five (5) year terms. If the Commission grants this Application, a lease will be created upon Silagi Trust's exercise of the option.

Under the Agreement, Silagi Trust will pay annual base rent starting at \$21,954 in Years 1-10 and escalating to \$26,686 in Years 41-50. The base rent shall be further adjusted upon exercise of each renewal option based on the then current fair rental value of the Site, excluding the value of Silagi Trust's improvements.

The Agreement provides that Silagi Trust's activities must not interfere with the operation of the electrical sub-transmission facilities that cross the property located on the Site. Silagi Trust is not allowed to use or store hazardous substances, explosives or flammable materials on the Site. Any equipment used by Silagi Trust on or adjacent to the Site will be used and operated to maintain a minimum clearance of seventeen (17) feet from all overhead electrical conductors. Additionally, SCE requires Silagi Trust to maintain a minimum ten (10) foot radius around all steel and wood poles. There are no transmission towers on the property that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle. SCE also has the right to approve construction plans and specifications and the ability to review the selection of a general contractor for the development project.

SCE retains the right and authority to enter the Site at any and all reasonable times to inspect the Site. SCE also has the right to impose temporary restrictions on Silagi Trust's right to enter, occupy and use the Site to allow SCE to perform work, if necessary, on electrical facilities located on the Site. SCE also retains the right to take all or part of the leasehold by eminent domain or inverse condemnation.

Silagi Trust is responsible for all personal property taxes, as well as other general or special assessments or fees levied against the Site or the improvements thereon. Silagi Trust is also responsible for obtaining all permits and approvals for construction and any zone changes or use permits required for the operation of a parking lot and office facility from any agency having jurisdiction. Silagi Trust must also maintain appropriate comprehensive general liability insurance, comprehensive auto liability insurance, and workers' compensation insurance. Silagi Trust further agrees to 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.

IV. Determination of Best Secondary Use

The utility's objective in selecting secondary uses for utility sites is to find uses that provide the greatest revenue consistent with the utility's obligations to maintain safety and reliability of its facilities. The facilities located on the Site are used in the distribution of electricity to homes and businesses throughout the City of Agoura Hills. Because of the presence of above-ground power lines crossing the Site, secondary uses of the 2.1 acre utility site are limited by operating restrictions and height clearances.

To evaluate possible secondary uses for this type of property, SCE conducted a survey of the "secondary use" policies of nine utilities across the

nation. The survey revealed that those utilities had identified four possible uses for the unused portions of their operating properties; auto parking, recreational vehicle storage, equipment storage and self storage.

To determine the best use for the Site, SCE solicited development proposals from the real estate market through an open request for proposal process. SCE's subsequent communications with the City of Agoura Hills (City) about development of the Site, indicated the City's unwillingness to grant access to the Site from Kanan Road. This decision rendered the Site virtually landlocked for secondary use purposes. Under this circumstance, SCE determined that the adjacent owner's parking lot and office facility proposal offered the only potential revenues for this particular site.

V. Valuation of Site

Traditional market value appraisal methods, which attempt to determine the highest price which the land would bring if sold on the open market for any use or purpose, are not ideally suited for valuing secondary land uses. Instead, real estate appraisers establish rental value for the property based on the value the property has for a specific secondary use.

To evaluate the rental value for the subject site, SCE reviewed development proposals from the real estate market place. The developers incorporated into their proposals the highest lease rate that they were able to pay for the particular use to be developed. The opportunity to develop the Site was minimized when the City declined SCE access to the Site from the frontage street, Kanan Road, which leaves the Site virtually landlocked for development purposes. Because of the access restriction, Silagi Trust became the only viable candidate for development of the Site. To evaluate the Silagi Trust proposal, SCE

reviewed rent paid by “comparable” parking and office facilities in Southern California as a function of the effective gross income of the facility.

The annual base rent SCE will receive from Silagi Trust falls within the acceptable market range established based on the analysis of comparable facilities and is in line with rents received in the transactions approved by the Commission in D.96-12-024, D.99-02-035, D.99-02-036, D.99-03-016 and D.99-04-066.

VI. Selection of Developer

Silagi Trust was awarded the opportunity to develop the property because of the background and financial position of the Trust’s members and they had the only proposal not requiring street access. Today, Silagi Trust has nearly \$50 million in assets with approximately 475,000 square feet (sq. ft.) of commercial/industrial/residential property under management with an additional 670,000 sq. ft. under construction, development and planning. The properties are located in the Southern California area and on the Hawaiian island of Kauai.

Moshe Silagi, the founder of the Silagi Trust, started Westoaks Door and Hardware in 1980 and soon became a leading supplier of building materials to residential and commercial real estate business. In 1985, Silagi began investing in commercial developments consisting of convenience shopping centers, community shopping centers, class “A” professional office buildings, and upscale condominiums on the island of Kauai. To date, Silagi has been involved in the construction and development of approximately 800,000 to 900,000 sq. ft. of commercial/industrial/residential property. Many of these properties were sold to a real estate investment trust, Arden Realty, Inc. in a transaction

completed in October, 1997. The remaining properties are held and managed by the Silagi Trust.

VII. Environmental Matters

Silagi Trust will obtain all permits and approvals required by the appropriate governmental agencies having jurisdiction for the development of a parking lot and office facility on the Site. In accordance with Article 6.2(h) of the Agreement, Silagi Trust will procure and deliver to SCE, evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to grading permits, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdictions.

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. Res. Code § 21080.) A project is an activity that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and either (a) is directly undertaken by any public agency, (b) is supported by contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or (c) involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Pub. Res. Code § 21065.)

Development of the property by The Silagi Trust is subject to all applicable laws and discretionary approvals from the City of Agoura Hills. The City's discretionary approval process will trigger application of CEQA to this project. Consequently, no CEQA review by the Commission is required at this time. The Commission should defer to the appropriate state and local authorities having

jurisdiction over any proposed change in the use of the Site. These authorities are generally in a superior position to evaluate local environmental impacts and develop appropriate mitigation strategies. The Commission has followed this course of action before in similar applications. (See D.99-02-036 and D.99-04-066.)

Such deference is appropriate under the circumstances in this Application and will not result in any regulatory gap. CEQA specifically applies to discretionary projects such as issuance of conditional use permits and approval of tentative subdivision maps. (*See*, Pub. Res. Code § 21080; *see also Myers, supra*, 58 Cal. App. 3d at 424.) Accordingly, if and when there is a more developed proposal to change the use of the Site, the appropriate state and local authorities having authority over such proposed uses must conduct environmental review under CEQA.

Furthermore, in lieu of conducting 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*, 202 Cal. App. 3d 292, 308 (1988), *citing Perley v. Board of Supervisors*, 137 Cal. App. 3d 424, 429 (1982); *See also In Re: SpectraNet SGV*, D.97-06-020, Cal PUC LEXIS 367 at *37 (1997).)

Should environmental claims be made on SCE subsequent to the sale, SCE shall not seek recovery of any cost of the claims or defense of the claims from its ratepayers.

VIII. The Proposed Transactions Will Benefit the Public

Section 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 commission 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.”⁵ The proposed lease satisfies this test. The public interest is not harmed since a lease will not affect in any way the utility’s operation of the sub-transmission lines or the adjoining substation.⁶ To the contrary, 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 or affecting service to utility customers.⁷ Because the proposed lease will provide increased revenues for the benefit of ratepayers with minimal risk to the ratepayers, SCE requests the Commission to authorize the leases.

⁵ See, e.g., *Universal Marine Corporation*, D.84-04-102, 1984 Cal. PUC LEXIS 962, *3, 14 CPUC2d 644 (“[W]e have long held that the relevant inquiry in an application for transfer is whether the transfer will be adverse to the public interest”); see also *D.89-07-016*, 1989 Cal. PUC LEXIS 582, *25, 32 CPUC2d 233.

⁶ As noted earlier, if the leased property becomes necessary for utility operations, SCE has reserved the right to exercise its power of condemnation to re-acquire any or all of the leasehold.

⁷ D.93-04-019, p. 3 (“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.”)

IX. Applicants

The Applicant is SCE, an electric public utility organized and existing under the laws of the State of California. The location of SCE's principal place of business is 2244 Walnut Grove Avenue, Post Office Box 800, Rosemead, California 91770.

Silagi Trust is a trust founded by Moshe Silagi which holds and manages commercial/industrial/residential properties in Southern California and Hawaii.

X. Procedure

The application was filed on June 2, 2000 and was noticed on the Daily Calendar on June 7, 2000. No protests have been received.

In Resolution ALJ 176-3040, dated June 8, 2000, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not expected.

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

Findings of Fact

1. SCE requests authority, pursuant to § 851 of the Pub. Util. Code, for SCE to lease 2.1 acres of available land at its Malibu Substation to Silagi Trust for a parking lot and office facilities.
2. SCE is an investor-owned public utility engaged in the business of generating, transmitting, and distributing electric energy in portions of Central and Southern California.
3. Development and operation of the proposed facilities is compatible with SCE's operation of its electric facilities.

4. All of the revenues from the lease will be treated as OOR and shared in accordance with D.99-09-070,

5. 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 or affecting service to utility customers.

6. Because the proposed lease will provide additional revenues for ratepayers, with minimal risk to them, Commission authorization of the leases will not be adverse to the public interest.

7. Development of the property by The Silagi Trust, being subject to all applicable laws and discretionary approvals from the City of Agoura Hills, will trigger application of CEQA to such development.

8. The Commission should defer to the appropriate state and local authorities having jurisdiction over any proposed change in the use of the Site. Consequently, no additional CEQA review by the Commission is required at this time.

9. Because the public interest would best be served by having the lease take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. A public hearing is not necessary.
2. The proposed lease, as set forth in the application, should be approved.

O R D E R

IT IS ORDERED that:

1. Within six months after the effective date of this order, Southern California Edison Company (SCE) may lease to The Moshe Silagi Family Trust the

property as set forth in Application (A.) 00-06-005, subject to the reservations therein described.

2. Within 30 days of the actual transfer, SCE shall notify the Commission in writing of the date of which the transfer was consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification.

3. Approval of this lease is conditional upon compliance by lessee with all applicable environmental regulations. Should environmental claims be made on SCE subsequent to the sale, SCE shall not seek recovery of any cost of the claims or defense of the claims from its ratepayers.

4. This order is a final determination that a hearing is not needed in this proceeding.

5. Application 00-06-005 is closed.

This order is effective today.

Dated January 18, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
Commissioners

Commissioner Richard A. Bilas, being necessarily absent, did not participate.