

Decision 10-02-027 February 25, 2010

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
Transmission Right of Way to RVSA, LLC,
a Limited Liability Company.

Application 09-11-002
(Filed November 3, 2009)

**DECISION AUTHORIZING THE LEASE OF
LAND ON A TRANSMISSION RIGHT-OF-WAY**

Southern California Edison Company (SCE) seeks to lease to RVSA, LLC, a limited liability company (RVSA), a 4.11 acre site located on a portion of SCE's Barre-Ellis transmission right-of-way (Barre-Ellis ROW) in the City of Westminster (Site). The Barre-Ellis ROW is part of the 220 kilovolt (kV) system and includes, among others, California Public Utilities Commission-jurisdictional facilities. On April 11, 2007, RVSA and SCE executed the Option Agreement between SCE and RVSA (Agreement).¹ RVSA will operate a boat and recreational vehicle storage facility on the Site if the Commission authorizes the lease.

In accordance with the categories listed in Attachment B to Advice 1286-E-A, SCE is offering RVSA a lease for the secondary use of utility

¹ A copy of the Agreement is attached to the application as Appendix A. A copy of the Amendment to the Option Agreement is attached to the application as Appendix B.

assets. Under the terms of the proposed lease, operation of a boat and recreational vehicle storage facility is compatible with SCE's planned operation of the transmission lines located on the Site. Utility service is therefore not expected to be affected as a result of Commission approval of this lease. The lease will generate Other Operating Revenue (OOR) for the benefit of ratepayers.

On January 30, 1998, SCE filed Advice 1286-E which set forth proposed categories of non-tariffed products and services offered for sale by SCE and provided descriptions for each category. This Advice filing was made pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of Decision (D.) 97-12-088. On April 5, 2000, attachment B to Advice 1286-E-A 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.² Leasing utility right-of-way to RVSA fits within these categories. This filing complies with the requirements of Rule VII for existing non-tariffed products and services.

The revenue from the proposed lease will be treated as OOR. In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's other operating revenues.³ The adopted Gross Revenue Sharing Mechanism applies to OOR, except revenues that: 1) derive from tariffs, fees, or charges established by the Commission or the Federal Energy Regulatory Commission; 2) are subject to other established ratemaking procedures or

² On April 5, 2000, pursuant to Commission Resolution E-3639, SCE filed Advice 1286-E-A which provides additional information regarding its non-tariffed product and service categories.

³ The Gross Revenue Sharing Mechanism is set forth in Part G of the Preliminary Statement to SCE's Tariffs.

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 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-tariffed 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% to 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% to 30% basis. Products or 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.

The Site is approximately 4.11 acres located on a portion of SCE’s Barre-Ellis ROW in the City of Westminster.⁴ The Site will be used for the development and operation of a boat and recreational vehicle storage facility. The use of the Site for a boat and recreational vehicle storage facility is compatible with its primary use as a right-of-way for aboveground transmission lines. SCE acquired the Site from Pacific Electric Land Company in April, 1956.⁵ The Site is currently being used for horticulture purposes. Under the proposed lease with RVSA, the

⁴ The Site is bounded on the east by a Southern Pacific railroad right-of-way; on the south by commercial uses; on the east by residential and commercial uses; and on the north by residential uses.

⁵ The book value of the Site is \$76,254.22.

Site will generate base rent of \$15,636 in Year 1; \$31,260 in Year 2; \$46,896 in Years 3 through 7; and thereafter will increase every five years by 10% through Year 25. The base rent shall be adjusted upon expiration of the 25th year of the base term and upon the exercise of each of the four 10-year renewal options based on the then current fair market rental value of the Site. However, in no event will the adjusted base rent be less than the base rent otherwise payable immediately prior to such adjustment, or more than 3% per year for each year of the four 10-year renewal terms. Thus, revenue from the proposed lease represents substantial OOR for the benefit of SCE's ratepayers.

The Agreement provides that RVSA's activities must not interfere with the operation of the electric facilities that cross the Site. RVSA is not allowed to use or store hazardous substances, explosives, or flammable materials on the Site. Any equipment used by RVSA on or adjacent to the Site must be used and operated to maintain a minimum clearance of 27 feet from all overhead electrical conductors. SCE requires RVSA to maintain a minimum 50-foot radius around all tower legs, and a 10-foot radius around all steel poles, wood poles, and anchors. Additionally, RVSA must provide and maintain access roads on 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 the right to enter the Site at all reasonable times to inspect the Site. SCE also has the right to impose temporary restrictions on RVSA's right to enter, occupy, and use the Site to allow SCE to perform any necessary work on the electrical facilities located on the Site. SCE also retains the right to take all or a part of the leasehold by eminent domain or inverse condemnation.

RVSA 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. RVSA is also responsible for obtaining all permits and approvals for construction and any zone changes or use permits required for the improvements to and operation of a boat and recreational vehicle storage facility. RVSA must also maintain specified comprehensive general liability insurance, comprehensive auto liability insurance, and workers' compensation insurance. RVSA 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.

Determination of Best Secondary Use

The utility's objective in selecting secondary uses of its utility property is to provide revenue to its ratepayers and shareholders while safeguarding the utility's obligations to maintain the safety and reliability of its facilities. The facilities located on the Site are used in the transmission of electricity. Because aboveground transmission lines cross the Site, secondary land uses thereon are limited by restrictions and height clearances.

Of the land uses allowed by the City of Westminster that are compatible with planned utility operations, SCE determined that leasing the site for a boat and recreational vehicle storage facility offered a high level of potential revenues for this particular Site.

Valuation of Site

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

To evaluate the rental value for the Site, SCE employed the Call Company, a boat and recreational vehicle storage facility consulting and management firm, to prepare a market analysis of rental rates in the Orange County area and analyzed rents paid for comparable facilities in and around the Site. The revenue SCE will receive from RVSA falls within the acceptable market range and was determined using similar methodologies to those used in those transactions approved by the Commission in D.06-01-037, D.04-12-036, D.04-03-019, and D.03-01-084.

Environmental Matters

In accordance with Article 6.2(e) of the Agreement, RVSA will procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to grading permits, building permits, and zoning and planning approvals from various governmental agencies having jurisdiction.

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 (Public Resources Code 21080). The City of Westminster was the lead agency for CEQA review of the RVSA project. On June 24, 2009, the City of Westminster's Mayor and City Council adopted and approved Resolution No. 4235, and determined that the project, as modified by design review and conditions of approval, will not result in any potentially significant impacts upon the environment. Resolution No. 4235 also grants the requests for a Conditional Use Permit and Design Review Request to allow the establishment and operation of a boat and recreational vehicle storage facility on the SCE right-of-way. SCE has

attached the City's final CEQA findings regarding the development project as Appendix E to the application.

We have reviewed the Application, including Appendix E containing the City's findings and Notice of Exemption. We agree with the City's determination that this project is exempt from the CEQA. However, we reach a different conclusion as to the appropriate exemption to use in this instance. We find that this project meets the requirements for an exemption from CEQA pursuant to CEQA Guidelines Section 15332 for In-Fill Development Projects. We take note that the City imposed a number of Conditions upon RVSA, LLC in its Conditional Use Permit, and it conditioned the exemption upon the implementation of those conditions. We agree that the terms and conditions of the Article 6.2(e) of the Agreement require RVSA, LLC to comply with each permit condition and provide proof of such to SCE.

The Site is, and will continue to be, utility operating property. Thus, ratepayers should continue to have certain financial responsibilities for the operation and maintenance of utility facilities on the Site. Environmental claims arising out of utility operations are claims for which SCE should be allowed to seek cost recovery from ratepayers. The Commission addressed this precise issue in D.01-05-004 and D.01-05-005. These decisions permit cost recovery from ratepayers for claims relating to utility operations and preclude ratepayer liability for environmental claims related to the tenancy or activity of the lessee.

The Proposed Transaction Will Benefit the Public

In relevant part, 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 in the public interest. 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 revenues for the benefit of ratepayers with low risk to the ratepayers, we authorize the lease.

We find that SCE's proposed lease with RVSA is in the public interest. The use of the Site as a boat and recreational vehicle storage facility is a productive secondary use of the Site that is compatible with its primary use as a right-of-way for transmission lines. Ratepayers will benefit from the OOR generated over the life of the lease. The terms of the lease ensure that RVSA will not interfere with SCE's use of the Site or with service to SCE's customers. The Agreement also requires RVSA to use the Site in a manner that is safe and in compliance with legal and regulatory requirements.

We will grant the application. We approve the proposed ratemaking treatment for the rent that SCE will receive under the lease. The treatment of the rent as "passive" OOR for purposes of allocation between shareholders and ratepayers is consistent with Commission policy.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) and Rule 14.6(c)(2) of the

⁶ D.93-04-019, at 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.") See also D.00-07-010 at 6.

Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Categorization and Need for Hearing

In Resolution ALJ 176-3244, issued on November 20, 2009, the Commission preliminarily determined that the category for this proceeding is ratesetting and that there is no need for an evidentiary hearing. Based on our review of the record for this proceeding, we affirm those determinations.

Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SCE requests authority under Pub. Util. Code § 851 to lease 4.11 acres of land on SCE's Barre-Ellis transmission right-of-way to RVSA. RVSA will use the Site to develop and operate a boat and recreational vehicle storage facility.
2. The lease agreement will generate revenue for the benefit of SCE's shareholders and ratepayers. The lease revenue will be treated as "passive" OOR and split between shareholders and ratepayers in accordance with D.99-09-070.
3. The use of the Site in accordance with the Lease Agreement will not interfere with SCE's use of the Site for utility operations, SCE's facilities located at the Site, or with service to SCE's customers.
4. The City of Westminster has issued a permit for RVSA to construct on the Site. The permit incorporates the City's approved environmental documents, which found the project was Categorical Exempt.
5. The Lease Agreement requires RVSA to maintain certain minimum clearances from SCE's facilities located at the Site.

6. The Commission finds this project to be exempt from CEQA pursuant to CEQA Guidelines Section 15332.

Conclusions of Law

1. This is a ratesetting proceeding. A hearing is not necessary.
2. It is in the public interest to approve this application pursuant to § 851, subject to the conditions set forth in the following order.
3. Construction on the Site should maintain the same minimum clearances and distances from SCE’s facilities as set forth in the Lease Agreement.
4. The Commission finds that the project is Categorical Exempt from further environmental assessment under CEQA § 15332. No additional CEQA review by the Commission is required.
5. Pursuant to the CEQA Guidelines, Section 15096(g)(1), the Commission should adopt the conditions identified in the City of Westminster’s environmental documents.
6. SCE should not be permitted to recover from ratepayers any costs for environmental claims that result from RVSA’s tenancy or activities.

O R D E R

IT IS ORDERED that:

1. Application (A.) 09-11-002 is approved pursuant to Pub. Util. Code § 851, subject to the following conditions:
 - i. All construction and completed construction on the 4.11 acre site located on a portion of Southern California Edison Company’s Barre-Ellis transmission right-of-way (Site) shall maintain the same minimum clearances and distances from Southern California Edison Company’s facilities at the Site as set forth in the Lease Agreement

between Southern California Edison Company and RVSA, LLC.

- ii. All revenue from the lease shall be treated as “passive” Other Operating Revenue, shall be subject to the sharing mechanism set forth in Decision 99-09-070, and shall be allocated between shareholders and ratepayers on a 70%-30% basis, unless directed otherwise in a future Commission order.
- iii. The conditions adopted by the City of Westminster that apply to RVSA, LLC’s use of Southern California Edison Company's land are hereby made conditions of project approval by this Commission order. Southern California Edison Company shall ensure that those conditions are carried out.
- iv. Southern California Edison Company shall not recover from its ratepayers any costs for environmental claims related to RVSA, LLC’s tenancy or activities, including legal costs incurred in defending against those claims.

2. Southern California Edison Company shall notify the Director of the Commission’s Energy Division in writing of any amendment, extension, or termination of the Lease Agreement no later than 30 days after the amendment, extension, or termination is executed.

3. Application 09-11-002 is closed.

This order is effective today.

Dated February 25, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners