

Decision 11-12-050 December 15, 2011

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 Laguna Bell-Lighthipe
Transmission Right-of-Way to the City of
Paramount.

Application 11-09-017
(Filed September 26, 2011)

**DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE
SECTION 851 FOR CONVEYANCE OF A LEASE BY SOUTHERN
CALIFORNIA EDISON COMPANY TO THE CITY OF PARAMOUNT**

1. Summary

This decision grants the unopposed application¹ of Southern California Edison Company (SCE) for Commission authorization under Section 851² for SCE to convey a 25-year lease of a 9.2 acre site located on a portion of SCE's Laguna Bell-Lighthipe transmission right of way to the City of Paramount (City) for development and use as a public park.

¹ The application was filed September 26, 2011. In Resolution ALJ 176-3282, dated October 6, 2011, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are not necessary. No protests to the application were filed.

² All statutory references are to the Public Utilities Code unless otherwise specified.

This decision finds that the lease for development of a public park is the best secondary use of the site, the rental fee amount is reasonable, and the granting of the lease is in the public interest. Under the lease, SCE retains the right to terminate the lease if SCE requires the site for utility purposes.

The Commission agrees with the City's determination, as the lead agency under the California Environmental Quality Act (CEQA), that the park project is categorically exempt under CEQA Guidelines Section 15304.

Revenues from the lease will be treated as other operating revenue by SCE with proceeds to be split 70% to shareholders and 30% to ratepayers.

2. Summary of the Proposed Lease

Southern California Edison (SCE) proposes to lease to the City of Paramount (City) a 9.2 acre site located on a portion of SCE's Laguna Bell-Lighthipe transmission right of way (ROW). The Laguna Bell-Lighthipe ROW is part of the 220 kilovolt (kV) transmission system. The site is located in the City of Paramount, County of Los Angeles, State of California, occupying the portion of the ROW immediately north of Somerset Boulevard.^{3 4}

The City plans to develop and utilize the site for public municipal park space. The City's plans include the following improvements to the site: landscaping improvements, a rubberized jogging track, an artificial turf field, exercise stations, and a parking lot. No structures are contemplated.

³ SCE acquired the site from Edison Securities on July 30, 1929. The book value of the site is \$68,568.

⁴ The specific location of the site is bounded on the north by Rosecrans Avenue and along the west of Texaco Avenue. The site is predominantly bordered by residential and educational areas, with some light industrial/commercial and recreational uses at the north and south of the site.

SCE represents that operation of a public park in accordance with the terms of the proposed lease is compatible with SCE's planned operation of the transmission and subtransmission lines located on the site. The site is currently vacant except for SCE's transmission and subtransmission facilities, consisting of towers, poles, and ancillary structures.

The lease is proposed to extend for a period of 25 years. Under the lease terms, the City will pay base rent of \$500 per acre per year, or a total of \$4600 per year in Years 1-5, with the base rent to be increased by 10% in Year 6 and every five years thereafter through the end of the lease term.

The lease provides that the City's activities must not interfere with the operation of the electric facilities that cross the site. The City would be prohibited from using or storing hazardous substances, explosive or flammable materials on the site. Any equipment used by the City on or adjacent to the site must be used and operated to maintain a minimum clearance of 27 feet from all overhead electrical conductors. In addition, the City is required to maintain a minimum 100 foot radius around all tower legs and a ten foot radius around all steel poles, wood poles, and anchors. Finally, the City 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 would retain the right and authority to enter the site at any time to inspect the site or perform necessary work on the electrical facilities. In addition, SCE would have the right to impose temporary restrictions on the City's right to enter, occupy, and use the site if work by SCE is in progress on the electrical facilities. With proper advance notice, SCE also would retain the right to terminate, without compensation or payment to the City, all or a part of the lease

in the event that the site becomes necessary for utility purposes; exercise of the termination right would not require exercise of any condemnation powers.

Except for taxes and assessments on SCE's facilities and improvements, the City would be responsible for all real and personal property taxes, as well as any other special assessments or fees levied against the site or its improvements. The City would be responsible for obtaining all permits and approvals for construction and any land entitlements or use permits required for improvements to and operation of a public park. The City would also be required to furnish all required insurance including comprehensive general liability, comprehensive auto liability, and worker's compensation insurance. Finally, the City would further indemnify SCE against all liability for damages or injury/death to persons incurred in connection with the lease or the site.

The lease agreement is only by and between SCE and the City. The lease contains a prohibition against assignment of the lease to another party.

A complete copy of the lease agreement between SCE and the City is attached to the application as Appendix A.

3. Determination of Best Secondary Use

The 9.2 acre site is currently not being used for any purposes other than SCE's facilities. SCE represents that the lease for use of the site as a public park is compatible with utility operations. Potential secondary uses are limited on the property due to the height and clearance restrictions. SCE also represents that, of the land uses allowed by the City on this property, development of the site as a public park is the most compatible with continued utility operations, and also provides additional public benefits to the community.

4. 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 generally not used to value secondary uses of property. To determine the value of the property for rental purposes, SCE retained an independent appraiser to prepare a report. This report identified the fair market rental range at \$1,800 to \$3,500 per acre per year, with a minimum annual increase of two percent. Rent under the proposed lease is set at \$500 per acre per year, which is lower than the market rate. However, SCE presents several justifications for the lower rent:

- Use of the property as a park is a not-for-profit purpose to be established for the purpose of enjoyment and benefit by the public.
- The proposed use of the site as a public park is expressly authorized in Section 857, which mandates that the Commission include community benefits as a ratepayer benefit when considering the value of the lease.
- Use of the site as a public park will not restrict or interfere with SCE's use of the site for utility purposes; public utility use will continue to be the primary use of the site. SCE argues that those limitations and restrictions devalue the property for other potential secondary uses.

SCE also attaches to its application Resolution 10:003 from the City which approves an application for grant funds by the City to the Statewide Park Program. SCE further states that it is their understanding that the City would not be able to develop the park at a higher rental rate than the amount agreed upon in the lease.

5. Ratemaking Considerations

SCE proposes to treat revenue from the proposed lease as Other Operating Revenue (OOR). On January 30, 1998, SCE filed Advice Letter 1286-E, which sets forth categories of non-tariffed products and services offered for sale by SCE and describes the products and services within 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. Attachment B to Advice Letter 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.

In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's OOR. 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 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 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 set. For those non-tariffed products and services deemed "active" by the Commission, 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.⁵

SCE 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 have been deemed “passive” for revenue sharing purposes. Therefore, here, the proposed lease with the City would be treated as “passive,” so that any lease revenues which exceed the annual threshold would be allocated between shareholders and ratepayers on a 70%/30% basis. In addition, all incremental costs associated with this activity will be paid for by shareholders.

6. Environmental Matters

Under the terms of the lease, the City is required to furnish 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 and bodies with relevant jurisdiction.

⁵ Under the settlement approved in D.99-09-070, an existing product or service is classified as “active” if it involves a total incremental shareholder investment of \$225,000 or more, either on a one-time basis or within a 12-month period. An existing product or service is classified as “passive” if it involves a total incremental shareholder investment of less than \$225,000. “Incremental shareholder investment” includes capital-related costs and expenses. Capital-related costs, labor and other expenses properly charged to the utility shall not be included in calculating the \$225,000 threshold.

Under the requirements of the California Environmental Quality Act (CEQA), the Commission is required to consider the environmental consequences of a project that is subject to Commission discretionary approval. In this case, the City is the lead agency for CEQA review of the proposed park project, and the Commission is a responsible agency. On January 5, 2010, the City filed a Notice of Exemption (Notice) in compliance with Sections 21108 and 21152 of the Public Resources Code. The Notice states a categorical exemption from CEQA, as permitted in Section 15304 of the CEQA Guidelines. The Notice further states that the project is exempt because of “minor alterations in the condition of land that do not affect sensitive resources.” SCE attached to its application both the Notice and a letter from the City of Paramount City Manager stating that no comments were received during or after the 30-day filing period.

SCE also proposes, consistent with Commission orders in D.01-05-004 and D.01-05-005, that the Commission allow SCE to claim cost recovery from ratepayers only from environmental claims arising out of use of the site for utility operations. However, environmental claims related to the tenancy or any activities of the City would not be the responsibility of the SCE ratepayers.

7. Discussion

Section 851 provides that no public utility shall sell, lease, mortgage, or otherwise encumber the whole or any part of property necessary or useful in the performance of its duties to the public, without first having obtained Commission approval.⁶

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is in the public interest. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or affecting service to utility customers.⁷ In reviewing a Section 851 application, the Commission may "take such action, as a condition to the transfer, as the public interest may require."⁸

We find that SCE's proposed lease with the City is in the public interest. The proposed lease will not interfere with SCE's use of the property or with service to SCE customers, and the property will be utilized safely and in a manner consistent with legal and regulatory requirements. In addition, development and use of the site as a public park will bring a positive public

⁶ Section 851 states in pertinent part:

No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...property necessary or useful in the performance of its duties to the public...without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000) or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained a resolution from the commission authorizing it do to so...

⁷ D.00-07-010 at 6.

⁸ D.3320, 10 CRRC 56, 63.

benefit to the City and the community in the form of athletic fields and other related recreational assets. SCE's entry into the lease with the City will also generate revenue for the benefit of ratepayers and will permit the productive use of the site, without interfering with SCE's existing transmission facilities.

Under the terms of the lease, SCE will receive rental payments from the City that are below the market rate identified by the report of an independent appraiser. However, we find that this is reasonable in light of the fact that the lessee is the City, a public agency. In addition, the site will be developed for the benefit and enjoyment of the public, and not for profitable or commercial uses.

Further, under Section 857(b), when evaluating a fair price for rent for park purposes, the Commission is required to consider community benefits of parks and open space as a benefit to ratepayers.⁹ Those benefits in this case include improvement to public health and increasing recreational assets in the community. Thus, we find the rental fees to be reasonable.

We also approve of the proposed ratemaking treatment for the compensation that the City will pay to SCE under the lease. The treatment of this compensation as OOR and of the lease as a "passive" source of revenue for the purposes of allocation between shareholders and ratepayers is consistent

⁹ Section 857 states, in pertinent part:

"(b) In determining whether a lease of real property to a governmental entity for park purposes is for fair value, the commission shall include the community benefits of parks and open space as a benefit to ratepayers.

(c) As used in this section, "community benefits" include, but are not limited to, improving public health, protecting the environment, and increasing recreational assets."

with prior Commission decisions and our current policy. Thus, revenues will be split 70% to shareholder and 30% to ratepayers.

On environmental matters and CEQA, we find that the City's determination that the project is exempt from CEQA under Guidelines Section 15304 to be correct. This exemption applies to minor alterations to the land, and is appropriate in the circumstances of development of a public park.

In addition, consistent with our policy as articulated in D.01-05-004 and D.01-05-005, SCE may not charge its ratepayers for any environmental claims related to the tenancy or activities of the City. However, ratepayers will still be responsible for any environmental claims on the site related to SCE's utility operations.

8. Final Categorization

Based on review of this application, there is no need to alter the preliminary determinations made in Resolution ALJ 176-3282 (October 6, 2011) that this proceeding should be categorized as ratesetting, and that there is no need for a hearing.

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

10. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Julie A. Fitch is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed lease between SCE and the City for 9.2 acres in SCE's Laguna Bell-Lighthipe right of way will not interfere with SCE's use of the property or its facilities or with service to SCE customers and the property will be utilized productively.
2. Under the terms of the lease, the site will be developed by the City as a public park.
3. The proposed rent under the lease to be paid by the City to SCE of \$500 per acre per year, with a 10% increase every five years, is below market rate.
4. Rent received by SCE from the City under the lease will be treated as OOR from a "passive" revenue source and will be allocated among shareholders and ratepayers on a 70%/30% basis pursuant to D.99-09-070.
5. The proposed lease will generate revenues for the benefit of SCE's ratepayers.
6. The City is the Lead Agency for the proposed park project under CEQA.
7. The Commission is a Responsible Agency for the purposes of environmental review of the proposed lease agreement under CEQA.

Conclusions of Law

1. Under Section 851, a regulated utility must obtain prior Commission authorization before entering into a lease of utility property that is used or useful in serving the public.

2. Under Section 851, the Commission must review a proposed lease of utility property that is used or useful in serving the public to determine if the proposed lease is in the public interest.

3. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or affecting service to utility customers.

4. Development of the site as a public park is the best available secondary use of the 9.2 acre property.

5. Under Section 857, the Commission is required to consider the community benefits of parks and open space as a benefit to ratepayers when considering whether the lease payment is a fair value. In this case, the community benefits of the park include improving public health and increasing recreational assets.

6. The proposed rent to be paid by the City to SCE, although below market level, is reasonable because the lessee is the City, a public agency, and use of the site as a park is a not-for-profit purpose for the benefit and enjoyment of the public.

7. The rent paid by the City to SCE should be treated as OOR, with proceeds split between shareholders and ratepayers on a 70%/30% basis.

8. The Commission has reviewed the City's Notice of Exemption under CEQA and we find it adequate for our decision-making purposes.

9. Consistent with Section 851, SCE's conveyance of the lease to the City is in the public interest and should be approved, as consistent with this order.

10. There is no need to change the preliminary determinations made in Resolution ALJ 176-3282, dated October 6, 2011, that this proceeding should be categorized as ratesetting and that no hearings are necessary.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company is authorized pursuant to Public Utilities Code Section 851 to convey to the City of Paramount a lease of 9.2 acres of land located along Southern California Edison Company's Laguna Bell-Lighthipe transmission right-of-way located in the City of Paramount, as described in the application.

2. Southern California Edison Company shall treat compensation received from the City of Paramount under the lease as Other Operating Revenue received from a "passive" revenue source pursuant to Decision 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.

3. Southern California Edison Company shall not recover from its ratepayers any costs for environmental claims related to the City of Paramount's tenancy or activities, including legal costs incurred in defending against any such claims.

4. The Notice of Exemption from the California Environmental Quality Act filed by the City of Paramount as the Lead Agency is adequate for our decision-making purposes and we approve and adopt it as a Responsible Agency.

5. Application 11-09-017 is closed.

This order is effective today.

Dated December 15, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners