

Decision 03-03-027 March 13, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the El Nido-Sepulveda-Culver Transmission Right of Way to Volkswagen of America, Inc.

Application 03-01-020
(Filed January 17, 2003)

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

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 3.91-acre site located on a portion of SCE's El Nido-Sepulveda-Culver transmission right of way in the City of Hawthorne (Site). The Site is part of the El Nido-Sepulveda-Culver 66 kilovolt (kV) system and includes, among others, CPUC jurisdictional facilities. The lease is sought to permit Volkswagen of America, Inc. (VOA or Lessee) to construct and operate a vehicle parking and storage lot on the Site.

Background

The Site is subject to an Option Agreement between SCE and VOA dated June 19, 2002. Pursuant to the Option Agreement, VOA has the right, subject to Commission approval, to lease the Site from SCE for the described uses for a

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

period of 20 years beginning on the date VOA exercises the option. Annual rent for Years 1 through 5 of the lease term will be \$103,337. Beginning in the 6th year of the lease term, and every fifth year thereafter, base rent will be increased by ten percent (10%). The lease also grants VOA three ten-year renewal options at fair rental value.

The Option Agreement provides that VOA's activities must not interfere with the operation of the electric facilities that cross the Site. To that end, VOA is forbidden to use or store hazardous substances, explosives, or flammable materials on the Site. Further, any equipment used by VOA on or adjacent to the Site must maintain at all times a clearance of at least eighteen (18) feet from all overhead electrical conductors. VOA must maintain a minimum radius of fifty (50) feet around all tower legs and ten (10) feet around all poles and anchors and provide access roads to the Site 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 retains various rights under the Option Agreement including the rights to:

- Enter the Site at any and all reasonable times to inspect the property;
- Impose temporary restrictions on VOA'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.

VOA 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.

The Application

On January 17, 2003, SCE filed its application, seeking authorization from the Commission to enter into the lease with VOA. SCE's application is made under 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. Leasing real property on which transmission towers and lines are located is therefore one of the enumerated activities that requires approval under Section 851.²

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 Hawthorne. 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

² As the Commission previously stated: "The language of Section 851 is expansive, and we conclude that it makes sense to read "encumber" in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility's plant, system, or property." (Decision (D.) 92-07-007, 45 CPUC 2d 24, 29.)

its utility safety and reliability obligations, and that it has determined that the VOA project offers the highest potential revenue. The Site is being developed as a vehicle storage lot in conjunction with the development of an adjacent Volkswagen dealership. To evaluate the rental potential of the Site, SCE analyzed the rent paid for comparable parking and storage facilities in and around the Site. SCE believes that the rent it will receive offers the highest level of potential revenue, falls within the acceptable market range, and is in line with revenues it receives from similar Commission-approved transactions.

Developer Selection

SCE states that it entered into the Agreement with VOA because of the economic benefits to SCE ratepayers. SCE chose VOA as its developer because of VOA's offer to lease the site, its financial strength and stability, and consistency with the plans of the Hawthorne Community Redevelopment Agency for development of the Hawthorn Gateway Center Project. The Hawthorne Center Gateway Project is a 44-acre development involving construction of retail, auto sales and service, and hotel facilities that includes the Site. VOA is a wholly-owned subsidiary of Volkswagen AG, the world's fourth largest automobile manufacturer.

Environmental Review

Because California Environmental Quality Act (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 Hawthorne is the Lead Agency. The City's environmental review process and associated documents are functionally equivalent to the traditional CEQA preparation of an Environmental Impact Report. The California Public Utilities Commission (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's 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.

We have reviewed the City's environmental documents and find them to be adequate for our decision-making purposes. On September 14, 1999, the City filed a Notice of Determination (NOD) with the Los Angeles County Clerk in compliance with Public Resources Code Sections 21108 or 21152. The NOD indicates that the City approved the proposed project on September 13, 1999, (Community Redevelopment Agency Resolution No. 343) finding that with the mitigation measures adopted as a condition of approval, the project will not have a significant effect on the environment.

The City's final Environmental Impact Report (EIR) identified potentially significant environmental impacts related to water, air quality, biology, and hazards. A Mitigation Monitoring Program was adopted pursuant to the EIR and Community Redevelopment Agency Resolution No. 343, to ensure implementation of mitigation measures related to each impact area. We find that the City adopted reasonable mitigations to reduce the potential impacts to less than significant levels and we similarly require implementation of the adopted mitigations as part of our approval.

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, 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 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 Option Agreement and the proposed lease are "passive" for sharing purposes.³

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

³ 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.

performance of its duties to the public. The basic task of the Commission in a Section 851 proceeding is to determine whether the transaction serves the public interest: “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.” (D.02-01-058 (2002).) We have reviewed the proposed agreement and find it does not interfere with Edison’s operation or affect its ability to provide service to its customers. In other contexts, we have defined “productive” activities as those that lead to a measurable benefit to ratepayers. Because ratepayers will receive 30% of the gross revenue from the transaction without incurring any measurable increased costs, we find that the property is being “used for other productive purposes” and accordingly the proposed Lease is in the public interest and 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 Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In order for VOA to construct its facilities on the Site, a lease from SCE is required.
2. Lease of the Site to VOA is consistent with the current uses of the related SCE properties.
3. The lease and associated construction will not impair SCE’s ability to provide service to the public.

4. The City of Hawthorne has conducted an environmental review that includes the Site.

5. The City of Hawthorne has issued an environmental impact report with respect to the Hawthorne Gateway Center Project that specifically addresses the construction of an auto storage lot on the Site.

6. 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.

7. 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.

8. 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 mitigation measures included in the Environmental Impact Report adopted by the City are adequate for the CPUC's decision-making purposes as a Responsible Agency under CEQA.

3. This decision should be effective today in order to allow VOA to expeditiously enter into the lease with SCE.

4. This proceeding is closed.

O R D E R

IT IS ORDERED that Southern California Edison Company's Application for authority to lease a portion of its Nido-Sepulveda-Culver Transmission Right of Way to Volkswagen of America, Inc. is granted, as described above.

This order is effective today.

Dated March 13, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners