

Decision 05-11-016 November 18, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Southern California Edison Company
(U 38-E) for Authority to Lease Available
Land on the Center-Mesa Right of Way to
RHC Communities, LLC.

Application 05-08-040
(Filed August 31, 2005)

O P I N I O N

1. Summary

This decision grants Southern California Edison Company (SCE) authority under Pub. Util. Code § 851 to enter into a lease agreement with RHC Communities, LLC (RHC). The lease is for an 11.3-acre site located on a portion of SCE's Center-Mesa transmission right of way in the City of Pico Rivera. RHC intends to construct and operate a self-storage facility on the site. The application is unopposed. This proceeding is closed.

2. Background and Summary of Request

SCE acquired a portion of the site from the Edison Security Companies in 1952 and the remainder of the site from Associated Southern Investment in 1972. The book value of the site is \$34,398. The site is not now used for any secondary land use purpose.

SCE is offering RHC a lease for the secondary use of the property. Under the terms of a proposed lease, attached to the application, operation of a self-storage facility is compatible with SCE's operation of transmission and

distribution lines located on the property. SCE states that utility service will not be affected as a result of the lease, and the lease will generate Other Operating Revenue (OOR) for the benefit of ratepayers. The term of the lease is 65 years, beginning on the date RHC exercises its option to enter into the lease. Under the lease, the site will generate base rent of \$23,000 in Year 1; \$80,000 in Year 2; \$170,000 in Year 3, and \$262,000 in Year 4. After Year 4, the base rent will increase annually by a percentage increase based on the Consumer Price Index, subject to a maximum annual increase of 3%. In each year of the lease term, RHC will pay as additional rent the amount by which 20% of its annual gross revenue exceeds the annual base rent.

According to environmental documents submitted with the application, RHC intends to construct 14 detached self-storage buildings totaling 128,964 square feet and an office building totaling 2,500 square feet. The lease agreement provides that RHC's activities must not interfere with the operation of the electric facilities that cross the site. RHC is not allowed to use or store hazardous substances, explosives or flammable materials on the site. RHC is required to maintain a minimum clearance between its equipment and overhead electrical conduits of 18 feet, and RHC must maintain a minimum 50-foot radius around all tower legs and a 10-foot radius around steel poles. Additionally, RHC must provide and maintain access roads on the site. The lessee will be responsible for obtaining all permits and approvals for construction, as well as any zoning changes or use permits required for the operation of a self-storage facility.

Under the lease, RHC will be responsible for all personal property taxes and fees levied against the property and improvements, and it will maintain comprehensive liability insurance, auto insurance and workers' compensation

insurance. The company will indemnify SCE against all liability for damages or injury to persons or property not caused by SCE's negligent or willful misconduct.

3. Determination of Best Secondary Use

SCE states that its objective in selecting secondary uses for utility property is to find those uses that will provide the greatest revenue consistent with the utility's obligation to maintain the safety and reliability of its facilities. Because of the above-ground power lines crossing the site, secondary uses are limited by restrictions and height clearances. SCE states that, of the uses examined for the site, it determined that a self-storage facility offered the highest level of potential revenues.

To evaluate the rental value of the site, SCE analyzed lessee's projected cost and income projections. The utility further reviewed rent paid by comparable self-storage facilities in Southern California. The annual base rent SCE would receive from RHC falls within the acceptable market range based on the analysis of comparable facilities and is in line with the revenues SCE receives in other transactions approved by this Commission. (*See, e.g.,* Decision (D.) 04-12-044, D.04-03-035, D.03-03-035, and D.03-08-060.)

4. Selection of Lessee

SCE states that RHC was selected to develop the site because of the proposed use and the background and financial position of the company's officers, including its president, Richard A. Hall. Hall, the founder of RHC, has more than 25 years of experience in the real estate industry. Under his guidance, RHC has become one of the largest owner/operators of manufactured housing communities in California. The company is based in Tustin, California, and has

approximately 70 employees. Since its inception in 1979, RHC has acquired and managed nearly 2,000 apartment units and 4,000 manufactured home spaces in California.

5. Environmental Review

Under the California Environmental Quality Act (CEQA), the Commission must consider the environmental consequences of a project that is subject to the Commission's discretionary approval. (Pub. Resources Code § 21080.) SCE states that RHC is in the process of obtaining all permits and approvals required by government agencies having jurisdiction for the development of a self-storage facility on the site. Article 6.2(f) of the lease agreement directs the lessee to procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations and requirements for permits and approvals, including CEQA requirements.

Where a project is to be approved by more than one public agency, one agency becomes the "lead agency" with responsibility to prepare an Environmental Impact Report (EIR) or negative declaration for the project. (CEQA Guideline § 15050, Pub. Resources Code § 21165.) Generally, if the project is to be carried out by a nongovernmental entity, the lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guideline § 15151.) All other public agencies with discretionary approval power over the project are "responsible agencies." (CEQA guideline § 15381.) To comply with CEQA, a responsible agency must consider the lead agency's EIR, negative declaration or other CEQA analysis. (CEQA Guideline § 15050(b).) The specific activities that must be conducted by a responsible agency are set forth in CEQA Guideline § 15096.

The City of Pico Rivera is the lead agency for CEQA review of the RHC project. The site is currently zoned Industrial Planned Development. On May 9, 2005, the City of Pico Rivera adopted Resolution No. 1119 approving Conditional Use Permit No. 609 to construct a 131,464-square foot self-storage facility. Resolution No. 1119 also found that the project will not have a significant effect on the environment, and therefore the Pico Rivera Planning Division prepared a Mitigated Negative Declaration with mitigation measures and monitoring program in accordance with the provisions of CEQA. A Notice of Determination was issued on May 18, 2005.

Pursuant to D.01-08-022, SCE has attached the city's final CEQA findings regarding the development project as Appendix D. Among other mitigating conditions, the city requires RHC to comply with city, county and Los Angeles Fire Department building and engineering requirements, provide for off-street and access parking, incorporate dust control measures, submit a geotechnical report dealing with seismic hazards and excavation standards, provide for water runoff, construct a concrete block wall to reduce noise, and establish an approved exterior lighting plan. As a responsible agency, the Commission has reviewed the city's CEQA findings, and we find that the lead agency has adopted feasible and reasonable mitigations to either avoid or reduce the impacts to less than significant levels. We adopt those conditions for purposes of our approval.

6. Treatment of Revenues

In its application, SCE states that all of the 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 other 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 here 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 “passive” by the Commission, the revenues in excess of the annual threshold will be split between shareholders and ratepayers on a 70%/30% basis. The proposed lease here is a “passive” product.¹

7. Discussion

Section 851 of the Public Utilities Code 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 [C]ommission 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.” (See, e.g., *Universal Marine Corporation* (1984) 14 CPUC2d 644.)

The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect the utility’s operation of the transmission lines. The Commission has determined that the public interest is served when utility

¹ See Attachment B to 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, Land, 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.

property is used for other productive purposes without interfering with the utility's operation.² Because the proposed agreement will increase the level of revenues SCE can obtain from secondary use of the land in question, with no additional ratepayer risk, the application should be approved.

8. Category and Need for Hearing

In Resolution ALJ 176-3158, dated September 8, 2005, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3158.

9. Comments on Draft Decision

Because the application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comment is waived pursuant to Pub.Util.Code § 311(g)(2).

10. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

² In D.93-04-019, p. 3, we observed: "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."

Findings of Fact

1. SCE is an electric public utility subject to the jurisdiction and regulation of this Commission.
2. SCE has property at the Center-Mesa transmission right of way in the City of Pico Rivera available for secondary use, and it seeks to obtain revenue for ratepayers and shareholders through a secondary use lease.
3. Subject to Commission authorization required under Pub.Util. Code § 851, SCE has negotiated a long-term lease of the property to provide lease revenues with no interference with the operation of the transmission lines.
4. The proposed lessee, RHC, is managed by principals with substantial experience in commercial and industrial real estate projects.
5. RHC intends to finance, construct and maintain a self-storage facility at the site, bearing the costs and making payments to SCE.
6. Revenue in excess of a Commission-established threshold will be shared 70%/30% between the utility and ratepayers by treating all revenues as Other Operating Revenue, pursuant to D.99-09-070.
7. There has been no opposition to this application.
8. SCE has filed lead agency CEQA documentation with this application.

Conclusions of Law

1. No public hearing is necessary.
2. Joint use of utility property should be encouraged in appropriate cases because of the obvious economic and environmental benefits.

3. The Commission should condition its approval of the proposed lease on lessee's compliance with all applicable environmental regulations.

4. SCE should be authorized pursuant to Pub.Util.Code § 851 to lease the designated 11.3-acre site to RHC on the terms and conditions set forth in the application.

5. The proposed sharing of revenues with ratepayers conforms to the Commission's order in D.99-09-070.

6. Because of the benefits of this lease agreement for the utility and for ratepayers, approval of this application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized to enter into a lease of an 11.3-acre site located on a portion of SCE's Center-Mesa transmission right of way in the City of Pico Rivera under the terms and conditions set forth in this application.

2. As received, all revenues from the lease authorized shall be treated as Other Operating Revenue and shall be subject to the gross revenue sharing mechanism set forth in Decision 99-09-070.

3. Approval of this application is conditioned upon lessee's compliance with all applicable environmental regulations, pursuant to the California Environmental Quality Act.

4. SCE shall notify the Director of the Energy Division, in writing, of any substantial amendments to, extension of, or termination of the lease agreement, within 30 days following the execution of such amendments, extensions or termination.

5. Application 05-08-040 is closed.

This order is effective today.

Dated November 18, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners