

Decision D.05-11-023 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 338-E) for Authority to Grant an Easement on Kaweah Hydroelectric Project land to Brian and Cheryl Ford.

Application 05-03-017
(Filed March 16, 2005)

OPINION AUTHORIZING SOUTHERN CALIFORNIA EDISON COMPANY TO GRANT AN EASEMENT ON UTILITY PROPERTY IN TULARE COUNTY UNDER PUBLIC UTILITIES CODE SECTION 851

Pursuant to Pub. Util. Code § 851, Southern California Edison (SCE) is authorized to grant an easement on a parcel of land (Site) of approximately one-tenth of an acre in Tulare County to Brian and Cheryl Ford (Fords). This proceeding is closed.

Background

Section 851 requires a public utility to secure authorization from the Commission before encumbering or transferring any of its properties or rights necessary or useful in the performance of its duties as a public utility. As an investor-owned utility, SCE provides electrical service in 15 counties in Southern and Central California, with substantial holdings throughout the state.

SCE's Kaweah Hydroelectric Project (Kaweah Project) is located in the Sierra Foothills along the Kaweah River, in Tulare County. The Kaweah Project includes three powerhouses that produce 8.8 megawatts of electricity. SCE is requesting authority to grant a 3,383 square foot easement (one-tenth acre) to the

Fords, on available land within the Kaweah Project, in the community of Three Rivers. The Site is part of a 23-acre portion of the Kaweah Project, adjacent to property owned by the Fords. The Site includes two retaining walls, a fence, shrubbery and sprinklers. SCE owns the property in fee and maintains no other facilities on the Site.

Granting the easement resolves a dispute between the Fords and SCE on the use of the Site and settles a related civil complaint filed by the Fords in the Tulare County Superior Court. Pursuant to Rule 35 of the Commission's Rules of Practice and Procedure, the Fords co-signed and support this application.

Settlement Agreement and Easement

In 1987, the Fords purchased a parcel of land with a single-family residence adjacent to the Site, and have since used the Site for limited parking and recreational use, believing it was part of their purchased property. In or about 1996, SCE engaged a State Licensed Real Estate Appraiser to conduct a land survey of the Site, who found it to be part of SCE property. Following the survey, SCE demanded the Fords remove all encroachments from the Site, but also offered to grant the Fords a license for its use, which they refused.

On September 22, 2003, the Fords filed a civil suit in Tulare County Superior Court regarding the use and maintenance of the Site. The Fords and SCE subsequently entered into a settlement agreement in the Tulare County case that allows the Fords limited use (including parking of up to three vehicles) of the Site through an easement granted in perpetuity upon payment of a one-time fee of \$1,050. As a condition of the settlement agreement, the Commission must first approve the easement.

Ratemaking

The Kaweah Project is used for the purpose of electric transmission and is included in SCE's rate base, subject to ratemaking jurisdiction by the Federal Energy Regulatory Commission. The Fords will pay a one-time easement fee of \$1,050 to be credited to SCE's Other Operating Revenue account. Granting the easement will result in ratepayer and shareholder benefits. Pursuant to the revenue sharing mechanism outlined in Decision (D.) 99-09-070 for the secondary use of utility property, lease payment benefits will be split with 70% credited to shareholders and 30% credited to ratepayers.

Safety Issues

The Site has no overhead conductors or other utility facilities. The easement allows the Fords to use the Site for limited parking and other leisure and recreational activities that do not disturb the ground. Use of the Site must not interfere with SCE's operation of the Kaweah Project, and the Fords must keep and maintain the property in an orderly state. No hazardous substances, explosives or flammable material may be used or stored on the site.

Transaction in the Public Interest

Pub. Util. Code § 851 requires that transactions involving public utilities shall be in the public interest. Copies of this application were served on the Commission's Energy Division and its Office of Ratepayer Advocates, and the Federal Energy Regulatory Commission. No protests or comments opposing this application were received. Granting the easement will provide the Fords continued use of the Site, but will not interfere with the operation of SCE facilities or with the level of service to its customers. This application and the proposed easement are not adverse to the public interest.

Environmental Review

The California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 *et seq.*) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Because the Commission must issue a discretionary decision (*i.e.*, grant Section 851 authority) without which the proposed activity will not 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)).

Here, the Commission is the Lead Agency for the proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the environmental impacts and findings before acting upon or approving the project.

The easement does not allow any further development on the property except landscaping. The existing retaining walls and fence on the Site were constructed prior to 1987. Granting the easement has no potential for causing a direct or indirect change to the environment and therefore CEQA does not apply in this case, pursuant to CEQA Guidelines Section 15378. In the event the easement was considered to be a CEQA project, it would be categorically exempt pursuant to CEQA Guidelines Section 15301(h).

In this application, SCE requests that the Commission find that the proposed project is not subject to CEQA, pursuant to CEQA Guidelines

Section 15378. Accordingly, we find that, for purposes of our approval, the project is not subject to CEQA review.

Categorization of Proceeding

The Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that a hearing was not necessary. Based on the record, we conclude that the proceeding is properly categorized and that a public hearing is not necessary.

Waiver of Comment Period

This is an uncontested matter where the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 77.7 (f)(2) of the Commission's Rules of Practice and Procedure, the 30-day period for public review and comment is being waived.

Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Kenneth L. Koss is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. By this application, SCE seeks authority under Pub. Util. Code § 851, to grant an easement to the Fords of approximately one-tenth of an acre on utility property in Tulare County, for private use.
2. The Site is within SCE's Kawaeh Project property, in the community of Three Rivers, and is owned in fee by SCE.
3. No SCE facilities exist on the Site.
4. The Fords co-signed and support this application.
5. The easement resolves a dispute over use of the Site and is part of a settlement agreement in a civil lawsuit filed by the Fords in the Tulare County Superior Court.
6. The Fords will pay SCE a one-time fee of \$1,050 for the easement.

7. Revenues from the easement payment will be split between shareholders and ratepayers as outlined in D.99-09-070, with shareholders receiving 70% and ratepayers 30% of the proceeds.

8. Granting the easement will not allow further development on the property, except landscaping, and will have no potential for causing a direct or indirect change to the environment.

9. This is an uncontested matter as no protests or other comments were received opposing this application.

10. The proposed easement is in the public interest and will not interfere with the operation of SCE facilities or service to its customers.

Conclusions of Law

1. The applicant has satisfied the requirements of Pub. Util. Code § 851.
2. The applicant has satisfied the requirements of the Rules.
3. An evidentiary hearing is not required.
4. The easement is exempt from CEQA requirements, pursuant to CEQA Guidelines Section 15378.
5. Our approval of the transaction is not adverse to the interest or rights of the public.

O R D E R

IT IS ORDERED that:

1. The request of Southern California Edison (SCE) to grant an easement to Brian and Cheryl Ford (Fords) for use of utility property in Tulare County is approved.
2. As a fee for the easement, the Fords shall make a one-time payment of \$1,050 to SCE.

3. Easement payment revenues shall be split as described in Decision 99-09-070, with 70% directed to shareholders, and 30% to ratepayers.
4. The applicant and the Fords shall comply with the terms and conditions of the easement.
5. Within 30 days of issuing the grant, SCE shall file an advice letter with this Commission providing notice of the completed transfer.
6. SCE shall record the proceeds from the \$1,050 payment in its Other Operating Revenue Account.
7. The 30-day comment period is waived, as this is an uncontested matter.
8. This proceeding 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