

Decision 08-11-059 November 21, 2008

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 Lease Available Land at Walnut Substation to Power Storage Industry II, LLC, a California Limited Liability Company.

Application 08-06-027
(Filed June 27, 2008)

DECISION GRANTING AUTHORITY TO LEASE

This decision grants authority to Southern California Edison Company (Edison), pursuant to § 851 of the Public Utilities Code, to enter into a lease agreement with Power Storage Industry II, LLC (Power Storage), a California limited liability company. The lease is for a 5.7 acre site located on a portion of Edison's Walnut 220/12 kilovolt substation in the City of Industry, California. Once the Commission grants the necessary approval, Power Storage intends to develop and operate a self-storage facility on the site. The application is unopposed. This proceeding is closed.

Procedural Background

Edison filed the instant application on June 27, 2008, and notice of it appeared in the Commission's Daily Calendar on July 3, 2008. There were no protests or other responses to the application.

On September 22, 2008, the assigned Administrative Law Judge (ALJ) sent Edison's attorney an e-mail message inquiring as to the position of the Los Angeles County Fire Department (LACFD) toward the proposed self-storage facility. The ALJ asked whether, in light of the discussion at pages 9-10 of Decision (D.) 08-01-036, LACFD had expressed any concerns about the proposed self-storage facility, and if so, what measures had been agreed to in order to overcome these concerns. The ALJ also asked Edison to confirm that it wished to proceed with the application.

On October 10, 2008, Edison filed what it termed an amendment to the application,¹ which explained the changes that had been made to Power Storage's proposed design in response to LACFD's concerns. Edison also confirmed that it wished to proceed with the application. Where relevant, we discuss LACFD's concerns and the response to them in the text below.

Summary of Application

Edison acquired the 5.7 acre site that is the subject of the application in a series of three transactions that took place between 1955 and 1960. The first transaction involved the Ferrero Family, and the latter two involved the Fred H. Bixby Ranch Company. According to Edison, the book value of the site is \$25,625.30.

¹ Although Edison has styled its October 10 pleading as an amendment to the application, we think it can more properly be characterized as a response, since it came in response to an inquiry from the ALJ. *See* Rule of Practice and Procedure 2.6 (c). Treated as a response, the October 10 pleading does not trigger another 30-day protest period.

In 1997, the 5.7 acres (along with an additional 2.9 acres) were licensed for horticultural use to Michael Craig. Craig continued occupying these parcels until June 30, 2008, when the temporary agreement under which he had been operating expired. The annual rent that Craig paid on the parcels ranged from \$17,200 to \$17,716.

Edison proposes to offer Power Storage a 65-year lease for secondary use of the 5.7 acre site.² According to Edison's October 10, 2008 amendment and the environmental documents attached to the application as Appendix D, Power Storage intends to build a single, two-story building totaling 73,810 square feet to serve as a self-storage facility. In addition, the site plan calls for 37 stalls for short-term car parking, as well as 66 larger open-air stalls to be used for long-term storage of recreational vehicles (RVs) or boats.

The terms of the proposed lease are set forth in an option agreement dated March 12, 2007, which is attached to the application as Appendix A. Under the terms of this option agreement, once the Commission approves the transaction, Power Storage will enter into a 65-year lease with Edison concerning the 5.7 acre site. Under the lease, Power Storage will pay an annual base rent of \$15,000 in Year 1, \$30,000 in Year 2, \$60,000 in Year 3, and \$90,000 in Year 4 and in each subsequent year through Year 65, the end of the lease term. The base rent will be further adjusted through an appraisal that will take place on the expiration of every tenth year of the lease term. The purpose of these appraisals is to reflect the current fair-market rental value for the 5.7 acre site for its then-existing use, excluding the value of improvements made by Power Storage. In no event,

² The remaining 2.9 acres that had been licensed to Mr. Craig by Edison will remain vacant. (Application, p. 4, n. 1.)

however, will the adjusted base rent be less than the base rent otherwise payable immediately prior to each adjustment, nor can the rent increase by more than 3% per year compounded annually for 10 years.

In addition to its obligation to pay basic rent, Power Storage will be obligated to pay Edison additional rent based on the amount by which Power Storage's gross annual revenue from the 5.7 acre site exceeds the base rent. For the period beginning in Year 1 through the end of Year 20, the additional rent will be the amount by which 10% of the gross annual revenue from the site exceeds the base rent. For the period from Year 21 through the end of Year 30, the additional rent will be the amount by which 15% of the gross annual revenue from the site exceeds the base rent. For the period from Year 31 to the end of the lease term in Year 65, the additional rent due will be the amount by which 20% of the gross annual revenue from the site exceeds the base rent. (*Id.*)

Under the lease terms set forth in the Option Agreement, Power Storage's activities may not interfere with the operation of the electrical facilities that cross the site.³ In particular, Power Storage may not use or store hazardous substances, explosives, or flammable materials on the site, or allow them to be used or stored there. Any equipment used by Power Storage on or adjacent to the site must be used and operated to maintain a minimum clearance of 21 feet from all overhead electrical conductors, and Power Storage will also have to maintain a minimum 50-foot radius around all tower legs, as well as a 10-foot radius around all wood and steel poles, as well as anchors. In addition, Power Storage must provide and maintain access roads on the site that are at least 16-

³ According to the application, three 220 kilovolt (kV) transmission lines and one 12 kV distribution line traverse the 5.7 acre site to enter the Walnut Substation. (*Id.* at 3.)

feet wide and are capable of supporting a gross load of 40 tons on a three-axle vehicle. (*Id.* at 5.)⁴

In addition to these physical requirements, Edison has the right at any and all reasonable times to enter and inspect the site, and to impose temporary restrictions on Power Storage's right to enter, occupy and use the site when necessary to perform work on the site's electrical facilities.

Power Storage will also have other obligations typically found in commercial leases. It is responsible for all personal property taxes as well as other general or special assessments levied against the site or its improvements. Power Storage will be responsible for obtaining all permits and approvals for construction, as well as any zone changes or use permits required for the self-storage facility.⁵ Power Storage must also maintain adequate insurance,

⁴ According to a July 31, 2007 letter to the Chief of the LACFD's Fire Prevention Division that is attached to Edison's October 10 filing as Exhibit A, one of the changes made to the original plans concerns the clearances normally required by Edison:

"SCE has agreed to the reduction of their typical clearances to allow the installation of a 26 foot wide paved drive adjacent to their tower leg located in the center of the project. This now meets the minimum drive aisle width required by the City of Industry and provides direct access to [the self-storage building] for your emergency vehicles without passing under any electric transmission lines."

⁵ In this regard, Edison's October 10, 2008 filing states that plans reflecting the changes made to Power Storage's project to satisfy LACFD's concerns were submitted to LACFD, but that final approval of detailed construction plans will also be required:

"Plans with these changes identified were submitted to the Department, and the Department stamped these plans as 'approved,' with the notation 'HVTL Approval only. Water and access conditions, and other FPD conditions may apply,' on August 3, 2007. (Exhibit B.) The developer has informed SCE that this is indicative of the Department's approval of general site design and building height and location in relation to the high

Footnote continued on next page

including comprehensive general liability, auto and workers' compensation insurance. Finally, Power Storage must indemnify Edison against all liability for damages or injuries to persons on the site, except to the extent such damages or injuries are caused by Edison's own negligent or willful misconduct.

(Application at 5.)

Determination of Best Secondary Use

Edison states that its objective in selecting secondary uses for its utility property is to find those uses that provide revenue to its shareholders and ratepayers that are consistent with Edison's obligations to maintain the safety and reliability of its facilities. Because of the presence of a substation nearby and transmission and distribution facilities that cross the 5.7 acre site, the secondary uses in this case are limited by restrictions and height clearances. Edison states that among the land uses allowed by the City of Industry that are compatible with planned utility operations, a self-storage facility "offered a high level of potential revenues for this particular Site." (*Id.* at 6.)

Selection of Developer

Edison states that Power Storage was selected because of the background and financial position of its two principals, Nicholas Limer and John McDonald. According to the application, Limer has over 30 years of experience in residential, commercial and industrial real estate development. He is a licensed California real estate broker and has a Master of Business Administration degree,

voltage transmission lines (HVTL), and that if the CPUC approves the lease, the developer will then prepare construction and detailed building plans, including provision for water and access, and these plans will be routed to LACFD for final approval." (EDISON October 10 Amendment, p. 2.)

as well as a bachelor's degree in aeronautical engineering. For the past decade Limer has concentrated on the acquisition, development and management of self-storage facilities in California and Hawaii.

Mr. McDonald has over 25 years of experience in real estate development and management, including time spent with two redevelopment agencies. He has constructed and managed projects with costs of up to \$120 million, and he is also a real estate broker licensed in California. (*Id.* at 6-7.)

Valuation of Site

To evaluate the rental value of the 5.7 acre site, Edison conducted an analysis of Power Storage's construction cost figures, income projections and rental assumptions. According to Edison, this analysis concluded that Power Storage's costs and rent payments fall within the existing market range.

In addition, Edison states that it reviewed the rents paid by comparable self-storage facilities in Southern California as a function of the effective gross income of the facilities. Edison also concluded that the rents it will receive fall within an acceptable market range under this approach. (*Id.* at 6.)

We note that the valuation methods used by Edison in this case appear similar to those we have approved for Edison's evaluation of secondary uses in a number of recent decisions. (*See* D.06-01-037 at 2-3; D.04-03-019 at 3-5; D.03-08-060 at 2-4; D.01-11-061 at 2-3.) In addition, as noted above, the proposed lease calls for the payment of supplemental rent based on the gross receipts from the facility, as well as a reappraisal every ten years. In view of these factors, we conclude that the rents to be received by Edison appear reasonable.

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.)

The CEQA guidelines set out rules concerning which entity must act as the "lead agency" under CEQA when more than one public agency will be issuing discretionary permits for a project. (CEQA guideline § 15051.) All public agencies other than the lead agency that have discretionary approval over a project are considered "responsible agencies." (CEQA guideline § 15381.) In accordance with these rules, the City of Industry acted as the lead agency in this case, and the Commission is a responsible agency.

On September 20, 2007, the Planning Director of the City of Industry issued a Negative Declaration in connection with Power Storage's application for approval of Conditional Use Permit 07-3 and a related Development Plan, which concern the project at issue in this case. Based upon an Initial Study submitted on behalf of Power Storage, the Planning Director determined that the project would not have a significant effect upon the environment.

In keeping with the Planning Director's determination, the City of Industry's Planning Commission adopted Resolution No. PC-357 on October 11, 2007, which approved the Negative Declaration and granted the requested Conditional Use Permit. Pursuant to D.01-08-022, Edison has attached to the application as Appendix D the Initial Study, the Negative Declaration, City of Industry Planning Commission Resolution No. PC-357, and a Notice of Determination thereof filed with the Clerk of Los Angeles County.

As a condition of approving the project, the City of Industry requires, among other things, that Power Storage maintain off-street parking in accordance with the original site plan, maintain adequate lighting and landscaping, and screen mechanical equipment from view. These and other conditions incorporated into the Conditional Use Permit are set forth in Appendix C of Resolution No. PC-357.⁶

As a responsible agency, the Commission has reviewed the city's CEQA findings and finds them adequate for our decisionmaking purposes. As a condition of our approval of the proposed lease, we will adopt all the conditions the City of Industry has imposed on Power Storage in the Conditional Use Permit described above.

Treatment of Revenues From the Lease

In its application, Edison states that all of the revenues from the proposed lease will be subject to the revenue sharing mechanism established for Other Operating Revenue (OOR) in D.99-09-070. (Application, pp. 2-3.)

In D.99-09-070, the Commission adopted a Gross Revenue Sharing Mechanism applicable to certain portions of Edison's OOR. The mechanism applies to all OOR except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory

⁶ We also note that under Article 6.2 (g) of the Option Agreement, Power Storage is required to deliver to Edison evidence of compliance with all applicable codes, ordinances, regulations and requirements for permits and approvals before commencing any major construction on the project. We construe this language as requiring Power Storage to present proof to Edison that final approval has been given by LACFD to the detailed building and construction plans for the self-storage facility, including provisions for water and access.

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, applicable gross revenues recorded from non-tariffed products and services like the lease proposed here are split between shareholders and ratepayers after a Commission-adopted annual threshold level has been met. All incremental costs are borne by Edison's shareholders.

For 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 lease proposed here is considered a "passive" product.⁷

Discussion

This application is subject to Pub. Util. Code § 851, which provides in pertinent part:

No public utility . . . shall . . . lease . . . any part of its . . . property necessary or useful in the performance of its duties to the public . . . without first having . . . secured an order from the commission authorizing it to do so. . .

The Commission has broad discretion under § 851 to approve or reject a proposed transaction. The primary standard used by the Commission is whether the transaction is in the public interest. We have held that the public interest is

⁷ 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.

served when utility property is used for other productive purposes without interfering with utility operations or service to utility customers.⁸ When necessary, the Commission may also attach conditions to a transaction to protect and promote the public interest. (D.04-08-048 at 12-13.)

We find that Edison's proposed lease with Power Storage is in the public interest. The use of the site as a self-storage facility is a productive secondary use that is compatible with the site's primary use as a right-of-way for above-ground transmission lines. Ratepayers will benefit from the OOR generated over the life of the lease, and the terms of the lease ensure that Power Storage will not interfere with Edison's use of the site or with service to Edison's customers. The option agreement also requires Power Storage to use the site in a manner that is safe and in compliance with legal and regulatory requirements, including those of LACFD.

Although we are approving the option agreement under § 851, we will impose two conditions based on specific concerns. First, the option agreement allows Power Storage, without prior Commission approval, to assign, transfer, or sublease the 5.7-acre site not only for self-storage, but for any other lawful purpose. While Edison's consent is needed for any such transfer, such consent may not be unreasonably withheld. (Application, Appendix A, Art. 10, § 1.) In order to protect the public interest over the 65-year term of the lease, we will require that if Power Storage or any of its assignees, transferees or sublessees wish to use the site for any purpose other than a self-storage facility, Edison

⁸ For example, in D.93-04-019 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." (48 CPUC2d 602, 603.)

must (a) obtain Commission approval in advance under § 851 for the new use, (b) obtain any local permits that may then be required, and (c) undergo any required environmental review.

Our second concern is that Edison's ratepayers should be liable only for environmental costs that arise from the utility's operations on the site, and not for environmental costs that arise from Power Storage's use of the site for a self-storage facility. Thus, as in D.04-03-019 and other decisions, we will condition our approval of the proposed lease on Edison's agreement not to seek recovery from ratepayers of (1) environmental costs not related to utility operations on the site, and (2) the costs of defending against claims for such environmental costs. (See D.08-01-036 at 10; D.04-01-039 at 7; D.01-05-005 at 3.) In any proceeding in which environmental cost recovery is sought in connection with the site, the burden will be on Edison to prove that the costs arise from its utility operations and are reasonable.

Category and Need for Hearing

In Resolution ALJ 176-3217, dated July 10, 2008, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that no hearing would be necessary. Based on the record in this uncontested proceeding, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations made in Resolution ALJ 176-3217.

Waiver of Comments

Because this is an uncontested matter that grants the relief requested, the requirement for 30 days of public review and comment is waived pursuant to Pub. Util. Code § 311(g)(2).

Assignment of Proceeding

Timothy Alan Simon is the Assigned Commissioner, and Kirk McKenzie is the assigned ALJ in this proceeding.

Findings of Fact

1. Edison is an electric utility subject to the jurisdiction and regulation of this Commission.
2. Edison has 5.7 acres of land adjacent to the Walnut Substation in the City of Industry that are available for secondary use, and Edison seeks to obtain revenue for ratepayers and shareholders through a lease of this land for secondary uses.
3. Subject to Commission authorization required under Pub. Util. Code § 851, Edison has negotiated a long-term lease of the 5.7-acre site that will provide lease revenues without interfering with the operation of Edison's transmission and distribution facilities that traverse the site.
4. The application is unopposed.
5. Power Storage, the proposed lessee, intends to finance, construct and operate a self-storage facility on the 5.7-acre site consisting of a two-story building and open-air stalls for the storage of RVs and boats. Power Storage will bear all the costs of such construction and operation and will make rental payments to Edison.
6. Power Storage's principals have substantial experience in developing and operating self-storage facilities.
7. The rent that Edison will receive under the proposed lease for the 5.7-acre site is reasonable.

8. Under the proposed lease, revenue in excess of a Commission-established threshold will be shared on a 70%/30% basis between Edison's shareholders and its ratepayers by treating all revenues from the lease as OOR pursuant to D.99-09-070.

9. For purposes of CEQA, the City of Industry is the lead agency for evaluating the self-storage project proposed by Power Storage, and the Commission is a responsible agency.

10. Edison has filed the CEQA documentation prepared by the City of Industry as an appendix to its application, including the Conditional Use Permit issued by the City of Industry.

11. The plans for the project that were the subject of the aforesaid Conditional Use Permit have been modified to reflect the concerns of LACFD.

Conclusions of Law

1. A public hearing is not necessary.
2. Joint use of utility property should be encouraged in appropriate cases because of the economic benefits to the utility and its ratepayers.
3. The 70%-30% sharing of revenues between Edison and its ratepayers proposed in the application conforms to the Commission's order in D.99-09-070.
4. The environmental documents prepared by the City of Industry as lead agency under CEQA are adequate for the Commission's decision-making purposes with respect to this application, and no additional CEQA review by the Commission is required.
5. Edison should be authorized pursuant to Pub. Util. Code § 851 to lease the 5.7-acre site at issue to Power Storage on the terms and conditions set forth in the Option Agreement attached to the application as Appendix A, subject to the additional terms and conditions set forth below.

6. In the event that Power Storage or any of its assignees, sublessees, or transferees wish to use the 5.7-acre site described in the application for any purpose other than a self-storage facility, Edison should be required to obtain advance approval for the new use from the Commission under § 851, and to demonstrate that any required environmental review has occurred.

7. Edison should not be permitted to recover from ratepayers any environmental costs that relate, in whole or in part, to the tenancy or activities of Power Storage that are the subject of this application, nor should Edison be permitted to recover from ratepayers the costs of defending against any claims for such costs.

8. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (Edison) is authorized to enter into a lease with Power Storage Industry II, LLC (Power Storage) for a self-storage facility upon the terms set forth in the Option Agreement attached to the application as Appendix A, and subject to the additional terms and conditions set forth below.

2. Edison shall treat all revenues received from the lease authorized by this decision as Other Operating Revenue resulting from a passive, non-tariffed product that is subject to the gross revenue sharing mechanism set forth in Decision (D.) 99-09-070.

3. In the event that Power Storage or any of its assignees, transferees or sublessees wish to use the 5.7-acre site that is the subject of this application for

any purpose other than a self-storage facility, Edison shall seek authorization from the Commission for such other use pursuant to Pub. Util. Code § 851.

4. As a condition of the authority granted herein, Edison shall not seek recovery from ratepayers of any environmental costs that relate, in whole or in part, to the activities of the lessee pursuant to the lease authorized in this decision, nor shall Edison seek recovery from ratepayers of the costs of defending against claims for such environmental costs.

5. Application 08-06-027 is closed.

This order is effective today.

Dated November 21, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners