

Decision 09-03-041 March 26, 2009

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 Santiago-Estrella No. 2 Sub-transmission Right-of-Way to Centra Sand Canyon II, LLC, a Delaware Limited Liability Company.

Application 08-12-003
(Filed December 3, 2008)

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

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to Centra Sand Canyon II, LLC, a Delaware limited liability company (Centra), an approximately 41.55-acre site located on a portion of SCE's Santiago-Estrella No. 2 Sub-transmission right-of-way (Santiago-Estrella No. 2 ROW) in the City of Irvine (Site). The Santiago-Estrella No. 2 ROW is part of the 66 kilovolt system and includes, among others, Commission-jurisdictional facilities. On December 31, 2007, Centra and SCE executed the Option Agreement between SCE and Centra (Agreement).¹ Centra will operate a retail center, medical office complex, office complex, and horticulture and/or agriculture growing grounds on the Site. This decision grants the authority.

¹ A copy of the Agreement is attached to the application as Appendix A.

2. Background

The Site is approximately 41.55 acres and is located on a portion of SCE's Santiago-Estrella No. 2 ROW in the City of Irvine.² The Site will be used for the development and operation of a retail center, medical office complex, office complex and horticulture and/or agriculture growing grounds, which is compatible with its primary use as a right-of-way for aboveground and underground sub-transmission lines. SCE acquired the Site from the Irvine Company in April, 1973.³ The Site is currently vacant. Under the proposed lease with Centra, the Site will generate an average base rent of \$710,200 during the initial 20 years of the rental term. At the end of the initial rental term and every five years thereafter, the base rent shall be increased based on the then current fair market rental value of the Site; however, in no event will the adjusted base rent be less than the base rent otherwise payable immediately prior to such adjustment, or more than 10%. Thus, SCE concludes, revenue from the proposed lease will generate substantial revenue for the benefit of SCE's ratepayers. (See Section 2.5 below.)

2.1. Agreement

The Agreement grants Centra the option to lease the Site for the development and operation of a retail center, medical office complex, office complex, and horticulture and/or agriculture growing grounds. Upon approval of this application, a lease will be created upon Centra's exercise of the option.

² The Site is bounded on the west by residential development; on the south by the San Diego (I-450) Freeway; on the east by medical offices and hospitals; and on the north by the Barranca Channel.

³ The book value of the Site is \$252,679.

The term of the lease is 65 years, beginning on the date Centra exercises the option.

Under the lease, Centra will pay base rent of \$95,500 in Year 1 of the rental term, \$169,000 in Year 2, \$291,000 in Year 3, and \$682,000 in Year 4. Base rent will then increase annually by 2% each year through Year 20. The average annual base rent over the initial 20 years of the rental term is \$710,200. The base rent shall further be adjusted upon the expiration of the 20th year of the rental term and every five years thereafter based on the then current fair market rental of the property. However, in no event will the adjusted base rent be less than the base rent otherwise payable immediately prior to such adjustment, or more than 10%.

The Agreement provides that Centra's activities must not interfere with the operation of the electric facilities that cross the Site. In connection with its development of the Site, Centra will be responsible for undergrounding a portion of the Santiago-Estrella No. 2 sub-transmission line at no cost to SCE. Centra is not allowed to use or store hazardous substances, explosives, or flammable materials on the Site. Any equipment used by Centra on or adjacent to the Site must be used and operated to maintain a minimum clearance of 16 feet from all overhead electrical conductors. SCE requires Centra to maintain a minimum 50-foot radius around all tower legs, and a 10-foot radius around all steel poles and anchors. Additionally, Centra 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 retains the right and authority to enter the Site at any and all reasonable times to inspect the Site. SCE also has the right to impose temporary restrictions on Centra's right to enter, occupy, and use the Site to allow SCE to

perform any necessary work on the electrical facilities located on the Site. SCE also retains the right to take all or a part of the leasehold by eminent domain or inverse condemnation.

Centra is responsible for all personal property taxes, as well as other general or special assessments or fees levied against the Site or the improvements thereon. Centra is also responsible for obtaining all permits and approvals for construction and any zone changes or use permits required for the improvements to and operation of a retail center, medical office complex, office complex, and horticulture and/or agriculture growing grounds. Centra must also maintain specified comprehensive general liability insurance, comprehensive auto liability insurance, and workers' compensation insurance. Centra further agrees to 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.

2.2. Determination of Best Secondary Use

SCE says its objective in selecting secondary uses of its utility property is to provide revenue to its ratepayers and shareholders while safeguarding the utility's obligations to maintain the safety and reliability of its facilities. The facilities located on the Site are used in the transmission of electricity. Because aboveground sub-transmission lines and future underground sub-transmission lines cross portions of the Site, secondary land uses thereon are limited by restrictions and height clearances.

Of the land uses allowed by the City of Irvine that are compatible with planned utility operations, SCE determined that leasing the Site for a retail center, medical office complex, office complex, and horticulture and/or

agriculture growing grounds offered a high level of potential revenues for this particular 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 not ideally suited for valuing secondary uses. Instead, SCE established the rental value of the property based on the value the property has for a specific secondary use. To evaluate the rental value for the Site, SCE appraised the Site with comparable sites in the Orange County area. SCE believes the revenue it will receive from Centra falls within an acceptable market range and was determined using methodologies similar to those used in the transactions approved in Decision (D.) 07-10-029, D.05-11-022, D.03-10-009, D.03-08-031, and D.01-10-053.

Since 2000, Centra Realty Corporation (the sponsor of Centra Sand Canyon II, LLC) has successfully developed over 1.2 million square feet of office, industrial, retail, storage, and mixed-use projects; including nearly 850,000 square feet of office space. The Centra management team has experience collectively in building over 12 million square feet of industrial, storage, manufacturing, and R&D; three million square feet of office/mixed-use facilities; and been involved with tens of thousands of acres of land with a combined build-out value of over \$10 billion.

In accordance with Article 6.2(g) of the Agreement, Centra will procure and deliver to SCE 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 having jurisdiction.

Prior to the date of this application, Centra has procured all discretionary entitlements, zoning, and planning approvals for the Site.

Under the California Environmental Quality Act (CEQA), the Commission is obligated to consider the environmental consequences of a project that is subject to the Commission's discretionary approval (Public Resources Code 21080). The City of Irvine was the lead agency for CEQA review of the Centra project. On June 19, 2008, the City of Irvine Planning Commission approved Resolution No. 08-2909 recommending City Council certification of the Environmental Impact Report (EIR) and adoption of a general plan amendment and zone change. On July 22, 2008, the Irvine City Council adopted Resolution No. 08-82 certifying the EIR. Also on July 22, 2008, the Irvine City Council adopted Resolution No. 08-83 approving the General Plan Amendment. On August 15, 2008, the Irvine City Council adopted Ordinance No. 08-08, which approved a change in the zoning for the Site and determined that the project, as modified by design review and conditions of approval, will not result in any potentially significant impacts upon the environment.

Pursuant to Ordering Paragraph 5 of D.01-08-022, SCE has attached the City's final CEQA findings regarding the development project to the application as Appendix D.

2.3. Commission Imposition of Environmental Conditions on This Transaction

The Site is, and will continue to be, a utility operating property. Thus, ratepayers should continue to have certain financial responsibilities for the operation and maintenance of utility facilities on the Site. Environmental claims arising out of utility operations are precisely the type of claims for which SCE should be allowed to seek cost recovery from ratepayers.

The Commission addressed this precise issue in D.01-05-004 and D.01-05-005. SCE does not object to Commission imposition of those same provisions which permit cost recovery from ratepayers for claims relating to utility operations and which preclude ratepayer liability for environmental claims related to the tenancy or activity of the lessee.

2.4. The Proposed Transaction Will Benefit the Public

Under the proposed lease, the primary use of the Site for sub-transmission lines will remain. Further, while some local fire departments have raised issues concerning commercial improvements being placed underneath overhead transmission lines, the lines on this site are being undergrounded and will not raise these issues. The project master plan was reviewed by the City of Irvine Community Development, Public Works, and Building Departments, in addition to review by the Orange County Fire Authority (OCFA) (the contract fire service provider for the City of Irvine). The riser on the north portion of the property has a minimum horizontal clearance of 64 feet from the proposed building. The riser on the south portion of the property has a minimum horizontal clearance of 606 feet from the proposed building. Additionally, a Fire Master Plan was separately prepared, reviewed, and approved by the OCFA on December 29, 2007. No special or unique conditions of approval have been imposed for the development of this Site by the City of Irvine or OCFA. As such, SCE stated that the lease is not expected to affect the utility's planned operation of the sub-transmission lines which cross the Site.⁴ Because the proposed lease will provide

⁴ As noted earlier, if the leased property becomes necessary for utility operations, SCE has reserved the right to exercise its power of condemnation to acquire any or all of the leasehold.

revenues for the benefit of ratepayers with low risk to the ratepayers and without interfering with SCE's operations or affecting service to SCE's customers, SCE requests the Commission to issue an order authorizing the Agreement.

2.5. Ratemaking Considerations

In accordance with the categories listed in Attachment B to Advice-1286-E-A, SCE is offering Centra a lease for the secondary use of utility assets. SCE asserts that under the terms of the proposed lease, operation of a retail center, medical office complex, office complex, and horticulture and/or agriculture growing grounds is compatible with SCE's planned operation of the sub-transmission lines located on the Site. Utility service is therefore not expected to be affected as a result of Commission approval of this lease. The lease will generate Other Operating Revenue (OOR) for the benefit of the ratepayers.

On January 30, 1998, SCE filed Advice 1286-E which set forth proposed categories of non-tariffed products and services offered for sale by SCE and provided descriptions for each category. This Advice filing was made pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088. Attachment B to Advice 1286-E-A (filed April 5, 2000) 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. SCE states that leasing the utility right-of-way to Centra fits within these categories. This filing complies with the requirements of Rule VII for existing non-tariffed products and services.

The revenue from the proposed lease will be treated as OOR. For the 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% to 30% basis. (See D.99-09-070.) 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* categories have been deemed “passive” for revenue sharing purposes.

3. Discussion

This application is subject to § 851 which states, in relevant part, as follows:

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. The public interest is served when utility property is used for other productive purposes without interfering with utility operations or service to utility customers.⁵ When necessary, the Commission may attach conditions to a transaction to protect and promote the public interest.⁶

We find that SCE’s proposed lease with Centra is in the public interest. The use of the Site as a retail center, office complex, etc., is a productive secondary use of the Site that is compatible with its primary use as a right-of-way for transmission lines. Ratepayers will benefit from the OOR generated

⁵ D.00-07-010 at p. 6.

⁶ See, e.g., D.04-08-048, at pp. 12-13.

over the life of the lease. The terms of the lease ensure that Centra will not interfere with SCE's use of the Site or with service to SCE's customers. The Agreement also requires Centra to use the Site in a manner that is safe and in compliance with legal and regulatory requirements.

We will grant the application. We approve the proposed ratemaking treatment for the rent that SCE will receive under the lease. The treatment of the rent as "passive" OOR for purposes of allocation between shareholders and ratepayers is consistent with Commission policy.

4. Environmental Matters

The Commission is required by the CEQA to consider the environmental consequences of a project that is subject to the Commission's discretionary approval.⁷ In doing so, the Commission must act as either a Lead Agency or Responsible Agency. The Lead Agency is the agency with the most responsibility for supervising or approving the project as a whole.⁸

In this case, the City of Irvine is the Lead Agency for CEQA review of the Centra project and the Commission is a Responsible Agency. CEQA requires the Commission to consider the Lead Agency's environmental documents and findings before acting upon or approving the project.⁹

We have reviewed the City's environmental documents and find them adequate for our decision-making purposes. We also find that the City reasonably concluded that the project, with the conditions and mitigation measures adopted by the City, would not have a significant effect on the

⁷ Public Resources Code § 21000, *et seq.*

⁸ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

environment. Accordingly, we will adopt the City's environmental documents and the conclusions, conditions, and mitigation measures contained therein for purposes of our review and approval.

We are concerned that the agreement would permit Centra to assign, transfer, sublease or mortgage the lease, without prior Commission approval. However, the agreement does require Centra to notify SCE in advance before taking any of these actions. We will therefore address these concerns by requiring SCE to apply for Commission authorization pursuant to § 851 for any proposed assignment, transfer, sublease or mortgage of the lease by Centra that would alter the terms of the existing agreement.

We also note that in addition to use of the site for a retail and office complex, etc., the proposed lease would permit any other use permitted by law that would not interfere with SCE's facilities, without prior Commission approval of the change in use. However, the conditional use permit granted to Centra by the City only authorizes use for a retail and office use, and for horticulture and agriculture growing grounds. The environmental analysis conducted by the City and the Commission addressed only the proposed use of the site for these purposes.

Therefore, in order to comply with CEQA and § 851, if Centra wishes to utilize the property for any use other than the retail and office complex and for horticulture and agriculture growing grounds authorized by the City, SCE must first apply for authorization pursuant to § 851 and undergo any additional required environmental review.

⁹ CEQA Guidelines §§ 15050(b) and 15096.

The second environmental matter related to this application concerns a newspaper article that appeared in the *Los Angeles Times* on November 19, 2007. The article reported that SCE would no longer lease land on its transmission ROW except for a narrow set of uses. The reason given by the article was mounting concern by fire department officials regarding safety hazards around high-voltage transmission lines. In response to an inquiry from the assigned Administrative Law Judge (ALJ), SCE stated that Centra had obtained all necessary approvals for the project, including from OCFA. OCFA's agreement dated December 29, 2007, providing conditional approval for the project was incorporated into the final EIR issued by the City of Irvine. Based on the preceding information, we conclude that the project satisfies all of the OCFA's conditions, regulations, and requirements.

The final environmental matter concerns SCE's request for the Commission to find that ratepayers are responsible for environmental claims arising out of utility operations at the Site. We addressed this same issue in D.01-05-004 and D.01-05-005. There, we authorized utilities to seek recovery of the costs they incur for environmental claims stemming from utility operations. We also shielded ratepayers from costs for environmental claims related to the tenancy or activity of the lessee. We will adopt the same provisions here. SCE will have the burden of demonstrating that any claims for environmental costs are reasonable and should be recovered from ratepayers.

5. 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.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3227, issued on December 18, 2008, the Commission preliminarily determined that the category for this proceeding is ratesetting and that there is no need for an evidentiary hearing. Based on our review of the record for this proceeding, we affirm and finalize these determinations.

7. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. SCE requests authority under Pub. Util. Code § 851 to lease 41.55 acres of land on SCE's Santiago-Estrella No. 2 transmission right of way to Centra. Centra will use the Site to develop and operate a retail and office complex, and a horticulture and agriculture growing grounds.
2. The lease agreement will generate revenue for the benefit of SCE's shareholders and ratepayers. The lease revenue will be treated as "passive" OOR and split between shareholders and ratepayers in accordance with D.99-09-070.
3. The use of the Site for a retail and office complex, etc., in accordance with the Lease Agreement will not interfere with SCE's use of the Site for utility operations, SCE's facilities located at the Site, or with service to SCE's customers.
4. The City of Irvine has issued a permit for Centra to construct on the Site. The permit incorporates the City's approved environmental documents, including a Final EIR and a Mitigation Monitoring Program. These documents include the City's determination that the potentially significant environmental impacts of the project can be avoided or mitigated to less than significant by the

imposition of the conditions and mitigation measures in the Mitigation Monitoring Program.

5. The Lease Agreement requires Centra to maintain certain minimum clearances from SCE's facilities located at the Site.

Conclusions of Law

1. This is a ratesetting proceeding. A hearing is not necessary.

2. It is in the public interest to approve this application pursuant to § 851, subject to the conditions set forth in the following order.

3. Construction on the Site should maintain the same minimum clearances and distances from SCE's facilities as set forth in the Lease Agreement.

4. The City of Irvine is the Lead Agency under CEQA for the proposed project. The Commission is a Responsible Agency under CEQA.

5. The City of Irvine's environmental documents are adequate for the Commission's decision-making purposes with respect to this application. No additional CEQA review by the Commission is required.

6. The City of Irvine reasonably concluded that Centra's construction and operation of its facilities will not have significant adverse effects on the environment with the conditions and mitigation measures adopted in the City's environmental documents.

7. Pursuant to the CEQA Guidelines, § 5096(g)(1), the Commission should adopt the mitigation measures identified in the City of Irvine's environmental documents, including those measures in the Mitigation Monitoring Program.

8. SCE should not be permitted to recover from ratepayers any costs for environmental claims that result from Centra's tenancy or activities.

9. In order to comply with CEQA and § 851, if Centra wishes to utilize the property for any use other than the retail and office complex and for horticulture

and agriculture growing grounds, authorized by the City, SCE must first apply for authorization pursuant to § 851 and undergo any additional required environmental review.

O R D E R

IT IS ORDERED that:

1. Application (A.) 08-12-003 is approved pursuant to Pub. Util. Code § 851, subject to the following conditions:

- i. All construction and completed construction on the Site shall maintain the same minimum clearances and distances from Southern California Edison Company's (SCE) facilities at the Site as set forth in the Lease Agreement.
- ii. All revenue from the lease shall be treated as "passive" Other Operating Revenue, shall be subject to the sharing mechanism set forth in Decision 99-09-070, and shall be allocated between shareholders and ratepayers on a 70% - 30% basis, unless directed otherwise in a future Commission order.
- iii. The conditions and mitigation measures adopted by the City of Irvine (including those in the Mitigation Monitoring Program) that apply to Centra Sand Canyon II's (Centra) use of SCE's land are hereby made conditions of project approval by this Commission order. SCE shall ensure that these conditions and mitigation measures are carried out.
- iv. SCE shall not recover from its ratepayers any costs for environmental claims related to Centra's tenancy or activities, including legal costs incurred in defending against those claims.
- v. In order to comply with CEQA and § 851, if Centra wishes to utilize the property for any use other than the retail and office complex and for horticulture and agriculture growing grounds, authorized by the City, SCE must first apply for authorization pursuant to Section 851 and undergo any additional required environmental review.

2. SCE shall notify the Director of the Commission's Energy Division in writing of any amendment, extension, or termination of the Lease Agreement no later than 30 days after the amendment, extension, or termination is executed.

3. A.08-12-003 is closed.

This order is effective today.

Dated March 26, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners