

Decision _____

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.

Application 01-07-036
(Filed July 27, 2001)

O P I N I O N**1. Summary**

Southern California Edison Company (SCE) seeks authority to lease to Power Storage Industry II, LLC (Power Storage) a 5.7-acre site located on a portion of SCE's Walnut 220/12-kilovolt (kV) substation in the City of Industry. Power Storage would develop a self-storage facility on the site, a use that SCE states will not interfere with its utility operations. The application is unopposed. We grant the application but, based on our new procedures for applications like this one, we require SCE within 120 days to submit documents attesting to the appropriate environmental review of the project.

2. Background

The 5.7-acre site is used by SCE for aboveground transmission and distribution lines.¹ SCE acquired the land in three transactions that took place between 1955 and 1960. The book value of the 5.7 acres is \$25,625.30. The site and an additional 3 acres have been licensed to Michael Craig for horticultural

use since 1997, but the temporary agreement for that use will expire on October 2, 2001. SCE proposes to lease the 5.7 acres to Power Storage for development and operation of a self-storage facility. SCE would continue to own and operate its transmission and distribution facilities, and it would retain unobstructed access to the site. Revenue from the lease would be shared with SCE's ratepayers.

3. Terms of Lease

The term of the lease to Power Storage is 65 years. The lessee would pay a base rent of \$32,000 in Year 1, \$65,000 in Year 2, \$95,000 in Year 3, and \$178,250 in Year 4 to the end of the lease term. Additionally, the base rent would be adjusted by appraisal every tenth year to reflect fair market value. The lease rate is substantially greater than current revenue from the Craig agreement, which has ranged from \$17,200 to \$17,716 annually.

The Power Storage agreement provides that the lessee's activities must not interfere with the operation of the electrical transmission facilities that cross the site. Power Storage would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least a 20-foot clearance from all overhead electrical conductors. SCE also would require the lessee to maintain a 50-foot radius around all tower legs and a 10-foot radius around all steel and wood poles. The lessee would provide and maintain access roads on the property. The lessee would 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.

¹ The site is bounded on the north by the Salt Lake Railroad, on the east and on the west by industrial buildings, and on the south by Gale Avenue.

Under the lease, Power Storage would be responsible for all personal property taxes and fees levied against the property and improvements, and it would maintain comprehensive liability insurance, auto insurance and workers' compensation insurance. The company would indemnify SCE against all liability for damages or injury to persons or property not caused by SCE's negligent or willful misconduct.

4. 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 aboveground 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 5.7 acres, SCE analyzed lessee's 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 Power Storage falls within the acceptable market range based on this analysis and is in line with the revenues SCE receives in other transactions approved by this Commission.

5. Selection of Lessee

SCE states that Power Storage was selected to develop the site because of the proposed use and the background and financial position of the company's principal members, Bert Dumars and John A. McDonald.

Dumars, president and chief executive officer of Preferred Investments, has more than 20 years of experience in commercial and industrial real estate

development. He has been involved with commercial and industrial park developments, high-rise complexes, and entertainment theme park organizations. He has participated in the development of 18 self-storage facilities, ranging in size from 38,000 to 98,000 square feet.

McDonald has more than 20 years of experience as a senior principal and consultant with major development organizations, including the Koll Company, Aetna Realty Advisors and the Irwindale Community Redevelopment Agency. He has managed commercial and industrial construction projects with finished costs ranging up to \$120 million.

6. 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 Power Storage 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(h) of lessee's agreement with SCE directs 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.

In the past, the Commission has treated an application like this one merely as a request by the utility to allow it to transfer a leasehold interest in utility property. The Commission does not approve the project itself and does not issue a permit for the project development. The Commission conditioned its approval of such proposed leases on lessee’s compliance with all applicable environmental regulations. The Commission reasoned that local authorities are generally in a superior position to evaluate local environmental impacts and develop appropriate mitigation strategies. (*See, e.g.*, Decision (D.) 99-02-036 and D.99-04-066.) Accordingly the Commission deferred to the local authorities to approve the project as a whole, subject to CEQA requirements.

However, to ensure that no development will take place without CEQA approval by the appropriate agency, the Commission on August 2, 2001, in D.01-08-022, announced a change in its procedure for future applications. Henceforth, we will require the utility to include with its application copies of the necessary documents issued by the local entity acting as the lead agency under CEQA. This will be done to establish that the environmental review has been conducted and any mitigation measures required by CEQA have been imposed, or that the lead agency found that the project in question is exempt from CEQA. The Commission would then assume the role of a responsible agency for CEQA purposes.

Since this application was filed before the change in our procedure, we will in this instance approve the application on condition that SCE submits the necessary documents within 120 days to confirm that the lead agency has, in fact, conducted environmental review for this project.

7. Treatment of Revenues

SCE states that 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 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.²

² 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, 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.

8. 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 property is used for other productive purposes without interfering with the utility’s operation.³ 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.

In Resolution ALJ 176-3068, dated August 2, 2001, 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 176-3068.

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).

³ 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 Walnut Substation in the City of Industry 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, Power Storage, is managed by principals with substantial experience in commercial and industrial projects, including self-storage facilities.
5. Power Storage will 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. In D.01-08-022, issued August 2, 2001, the Commission announced a change in its procedure whereby it will require applicants to file lead agency CEQA documentation with their applications in cases of this kind.
9. This application was filed prior to the change in procedure announced in D.01-08-022.

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. The Commission should require SCE within 120 days to provide the Commission with copies of the documents issued by the local entity acting as lead agency under CEQA to establish that the environmental review has been conducted.

5. SCE should be authorized pursuant to Pub. Util. Code § 851 to lease the designated 5.7-acre site to Power Storage on the terms and conditions set forth in the application.

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

7. 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 a 5.7-acre site located on a portion of SCE's Walnut 220/12 kilovolt substation in the City of Industry 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 (CEQA).

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. SCE shall within 120 days of the date of this order provide the Environmental Section of the Energy Division with copies of the documents issued by the local entity acting as lead agency under CEQA to establish that the environmental review has been conducted and any mitigation measures required by CEQA have been imposed, or that the project is exempt from CEQA pursuant to CEQA Guideline 15332.

6. Application 01-07-036 is closed.

This order is effective today.

Dated _____, at San Francisco, California.