

ALJ/GEW/avs

Decision 01-12-014 December 11, 2001

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 on the Gould-Mesa 220 kV Transmission Right of Way to New Century Auto, LLC.

Application 01-06-007
(Filed June 6, 2001)

O P I N I O N

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to New Century Auto, LLC a 5.3-acre site located on a portion of SCE's Gould-Mesa 220-kilovolt (kV) transmission right-of-way in the City of San Gabriel. New Century Auto would operate an automobile dealership on the site, a use that SCE states will not interfere with its utility operations. The application is unopposed. The City of San Gabriel has issued a mitigated negative declaration for the project as part of its environmental review. This decision grants authority for the utility to enter into the proposed lease.

2. Background

The 5.3-acre site is used by SCE for above-ground transmission and distribution lines.¹ SCE acquired the property in 1922. Total book value for the 5.3 acres is \$11,660.35. The site is currently vacant. SCE proposes to lease the site to New Century Auto for the development and operation of an auto dealership facility. SCE would continue to own and operate its transmission facilities, and it would retain unobstructed access to the site. Revenue from the lease would be shared with SCE's ratepayers.

3. Terms of the Lease

The term of the lease to New Century Auto is 20 years, with options to renew for three additional 10-year terms. The lessee would pay a base rent of \$100,000 in the first year, escalating to \$218,550 in the twentieth year. The base rent would be adjusted upon exercise of each renewal option based on the then current fair rental value of the property, excluding lessee improvements.

The agreement provides that the lessee's activities must not interfere with the operation of the electrical transmission facilities that cross the site. New Century Auto would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least a 17-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 be responsible for obtaining all permits and

¹ The site is bounded on the north by Las Tunas Boulevard, on the east by Burton Avenue, on the south by residential areas, and on the west by a commercial development.

approvals for construction, as well as any zoning changes or use permits required for the operation of a self-storage facility.

Under the lease, New Century Auto would be responsible for all personal property taxes and fees levied against the property and improvements, and 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 above-ground power lines crossing the site, secondary uses are limited by restrictions and height clearances. SCE states that, of the uses allowed by the City of San Gabriel, SCE determined that an auto dealership facility offered the highest level of potential revenues.

To evaluate the rental value for the site, SCE received proposals from various developers. After reviewing the proposals, SCE reviewed rent paid for comparable sites by comparable auto dealerships in Southern California. According to SCE, the proposed lease provides for rental payments that fall within the acceptable market range and are comparable to the annual base rent as a percentage of gross income found in other agreements approved by this Commission.

5. Selection of Lessee

SCE states that New Century Auto was given the opportunity to develop the property because of the background and financial position of the company's president, Dennis Tzu Chien Lin. Lin has been in the auto dealership business since 1992, when he purchased New Century BMW in the City of Alhambra. At the time of purchase, the dealership was in bankruptcy. Lin brought the dealership out of bankruptcy and later founded New Century Auto Group.

Today, the New Century Auto Group is comprised of four separate auto dealerships in Southern California: New Century BMW in Alhambra, Century West BMW in Universal City, New Century VW in Glendale, and New Century Ford in San Gabriel. In the year 2000, SCE states, the four dealerships had combined revenue of \$217 million on the sale of 4,880 new vehicles and 1,806 used vehicles.

6. Environmental Review

SCE states that New Century Auto is in the process of obtaining all permits and approvals required by the appropriate governmental agencies having jurisdiction for the development of an automobile dealership facility on the site. In accordance with Article 6.2(h) of lessee's agreement with SCE, lessee must procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations and requirements for permits and approvals, including but not limited to grading permits, building permits, zoning and planning requirements, and approvals from the various governmental agencies and bodies having jurisdiction.

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.)

In the past, the Commission has treated applications like this one merely as requests 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 review by the appropriate agency, the Commission on August 2, 2001, in D.01-08-022, announced a change in its procedures 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 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.

Here, SCE has supplemented its application to include environmental findings and filings conducted by the City of San Gabriel. After review of the proposed project, the City has issued a conditional use permit and a mitigated

negative declaration. We are aware of no information to indicate that the determination of the City of San Gabriel has been appealed. Accordingly, we will rely on the lead agency's determination that its mitigated negative declaration will govern this project under CEQA.

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 176-3065, dated June 4, 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 176-3065.

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.”

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).

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 Gould-Mesa 220-kv transmission right-of-way in the City of San Gabriel 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 proposal for the available property to provide lease revenues with no interference with the operation of the transmission line.

4. The proposed lessee, New Century Auto, is managed by an organization with substantial experience in development of auto dealership facilities.

5. New Century Auto will finance, construct and maintain an auto dealership 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. Pursuant to CEQA, where a project is to be approved by more than one public agency, one agency becomes the lead agency for purposes of preparing environmental documentation for the project.

8. Under applicable CEQA guidelines, the City of San Gabriel is the appropriate lead agency for CEQA purposes and the Commission is a responsible agency.

9. The applicant has submitted documentation to establish that the City of San Gabriel has adopted a mitigated negative declaration for the project.

10. The Commission has reviewed and considered the information contained in the mitigated negative declaration adopted by the City of San Gabriel.

11. There is no opposition to 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 5.3-acre site to New Century Auto 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. The City of San Gabriel has reviewed the project under CEQA and issued a mitigated negative declaration.

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 5.3-acre site located on a portion of SCE's Gould-Mesa 220-kilovolt

transmission right-of-way in the City of San Gabriel to New Century Auto, LLC, 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 01-06-007 is closed.

This order is effective today.

Dated December 11, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners