

Decision 03-09-006 September 4, 2003

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 two Sites located on the Gould-Mesa Transmission Right of Way to Park Edison.

Application 03-04-029
(Filed April 25, 2003)

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

We grant the Application of Southern California Edison Company (SCE) for authority to lease available land under Pub. Util. Code § 851.¹ The SCE property consists of a 3.0 acre site located on a portion of SCE's Gould-Mesa transmission right of way in the City of Rosemead (Site 1); and a 2.5 acre site also located in the Gould-Mesa right of way in Rosemead (Site 2). Site 1 and Site 2 (collectively, Sites) are adjacent to one another. The Sites are part of the Gould-Mesa 220-kilovolt system and include, among others, Commission jurisdictional facilities. Lease 1 and Lease 2 (collectively, Leases) are sought to permit Park Edison, LLC (Park Edison or Lessee)² to develop and operate an industrial office complex on Site 1 and a self-storage facility on Site 2.

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

² Park Edison is not associated with SCE in any way.

Background

Site 1 is subject to an Option Agreement (Option) between SCE and Park Edison dated May 20, 2002. Under the terms of the Option, upon approval by the Commission, SCE and Park Edison will enter into a lease of Site 1 (Lease 1). Pursuant to the terms of Lease 1, Park Edison will lease Site 1 from SCE for development and operation of an industrial office complex for an initial term of 45 years, with two additional 10-year renewal terms. The annual base rent rises throughout the initial term of Lease 1 as follows:

Year 1	\$ 25,000
Year 2	\$ 50,000
Year 3	\$ 75,000
Year 4	\$ 80,000
Years 5-7	\$ 90,000
Years 8-10	\$ 95,000
Years 11-13	\$ 100,000
Years 14-17	\$ 110,000
Years 18-20	\$ 115,000

In the twenty-first, thirty-first and forty-first years of the Lease term and upon exercise of any renewal option, base rent will be adjusted to fair rental value, excluding the value of Park Edison's improvements, but not less than the base rent in the immediately prior year nor more than the base rent in the immediately prior year compounded annually at 3% per year for 10 years.

Site 2 is subject to an Option Agreement (Option) between SCE and Park Edison dated June 17, 2002. Under the terms of the Option, upon approval by the Commission, SCE and Park Edison will enter into a lease of Site 2 (Lease 2).

Pursuant to the terms of Lease 2, Park Edison will lease Site 2 from SCE for development and operation of a self-storage facility for an initial term of 45 years, with two additional 10-year renewal terms. The annual base rent rises throughout the initial term of the Lease as follows:

Year 1	\$ 50,000
Year 2	\$ 100,000
Years 3-7	\$ 150,000
Years 8-12	\$ 165,000
Years 13-17	\$ 181,500
Years 18-20	\$ 199,650

In the twenty-first, thirty-first and forty-first years of the Lease term and upon exercise of any renewal option, base rent will be adjusted to fair rental value, excluding the value of Park Edison's improvements, but not less than the base rent in the immediately prior year nor more than the base rent in the immediately prior year compounded annually at 3% per year for 10 years.

Both Leases provide that Park Edison's activities must not interfere with the operation of the electric facilities on and adjacent to the Sites. To that end, Park Edison is forbidden to use or store hazardous substances, explosives or flammable materials on the Sites. Further, any equipment used by Park Edison on or adjacent to a Site must maintain at all times a clearance of at least 17 feet from all overhead electrical conductors. Park Edison must maintain a minimum radius of 50 feet around all tower legs and 10 feet around all poles and anchors and provide access roads to a 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 various rights under the Leases including the rights to:

- Enter the Site at any and all reasonable times to inspect the property;

- Impose temporary restrictions on Park Edison's right to enter, occupy and use the site in order to perform necessary work on the electrical facilities located on the Site; and
- Take back all or part of the leasehold by eminent domain or inverse condemnation.

Park Edison is also required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against a Site or the improvements to be constructed thereon;
- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on a Site;
- Maintain appropriate comprehensive general liability, auto liability and worker's compensation insurance; and
- Indemnify SCE against all liability for damages or injury to persons on a Site except to the extent caused by SCE's negligent or willful misconduct.

The Application

On April 25, 2003, SCE filed its application, seeking authorization from the Commission to enter into the Leases with Park Edison. SCE's application is made under § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public.³

³ Section 851 reads:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit

Footnote continued on next page

Leasing real property on which transmission towers and lines are located is therefore one of the enumerated activities that require approval under § 851.⁴

Determination of Best Secondary Use

The primary use of facilities located on the Site is the transmission and distribution of electricity in the City of Rosemead (the City). Because both Sites are crossed by overhead transmission lines, their potential secondary uses are limited. SCE states that its objective has been to select secondary uses for its

or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

⁴ As the Commission previously stated: “The language of Section 851 is expansive, and we conclude that it makes sense to read “encumber” in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility’s plant, system, or property.” (Decision (D.) 92-07-007, 45 CPUC2d 24, 29.)

property that provide the highest revenue consistent with its utility safety and reliability obligations, and that it has determined that the Park Edison project offers the highest potential revenue.

To evaluate the rental value for Site 1, SCE solicited development proposals from the real estate market. The developers incorporated into their proposals the highest lease rates they were willing to pay for the particular use to be developed. After reviewing all submitted proposals, SCE determined that Park Edison's proposal provided the highest potential revenue. To verify the Park Edison proposal, SCE determined a rental value for Site 1 by appraising the land value of comparable industrial facilities and applying a market capitalization percentage to the land values. The annual base rent SCE will receive from Park Edison for Site 1 falls within the acceptable market range established by the analysis of comparable facilities and is in line with revenues SCE will receive from similar transactions that we have approved in the past.

Unlike Site 1, which could be marketed as a stand-alone development, the location and size of Site 2 make it unattractive for separate land development. Upon being awarded the right to develop Site 1, Park Edison requested the right to discuss the development potential of Site 2 with the City. The City agreed with Park Edison's proposal to develop Site 2 as a self-storage facility but stipulated that development of Site 2 was contingent upon Park Edison's development of Site 1.

To evaluate the rental value for Site 2, SCE reviewed the rent paid by comparable self-storage facilities in and around the City. Utilizing the results of this rental survey and research accumulated during prior self-storage lease negotiations, SCE determined a rental value for Site 2. The annual base rent SCE will receive from Park Edison falls within the range determined by analysis of

comparable self-storage facilities and is in line with revenues SCE will receive from similar transactions that we have approved in the past.

Developer Selection

SCE states that it entered into the Agreement with Park Edison because of the economic benefits to SCE ratepayers. SCE chose Park Edison as its developer because of the proposed uses of the Sites, Park Edison's financial proposal and the background and financial position of the company's members. Park Edison is a property management, construction services and equipment rental company with extensive experience in all phases of the commercial real estate development business in Southern California.

Environmental Review

Because the California Environmental Quality Act (CEQA) applies to discretionary projects to be carried out or approved by public agencies and because the Commission must act on the § 851 application and issue a discretionary decision without which the project cannot 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)).

In this case, the City is the Lead Agency. The Commission is a Responsible Agency for this proposed project. CEQA requires that the CPUC consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project. (CEQA Guidelines Section 15050(b).) The specific activities that must be conducted by a Responsible Agency are contained in CEQA guidelines Section 15096.

The City Planning Commission approved a Conditional Use Permit (CUP 02-863) for the self-storage facility on August 19, 2002. On September 10, 2002, the City Council approved Ordinance No. 2002-283, adopting a Negative Declaration for the Park Edison projects at Sites 1 and 2, and approving zone change 02-215 for the project. The Negative Declaration found that the project could not have a significant effect on the environment. Following adoption of the Ordinance, the City filed its Notice of Determination with the County of Los Angeles in compliance with Section 21108 or 21152 of the Public Resources Code.

Because the City's environmental review was in compliance with CEQA requirements and found that there could be no significant environmental impact of the Edison Park project, we adopt the city's finding for purposes of our approval.

Revenue Treatment

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 operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fee 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 leases are to 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 are split between shareholders and ratepayers on a 70/30 basis. The Leases are “passive” for sharing purposes.⁵

Discussion

As leases of utility-owned real property, the proposed transaction falls squarely within the requirements of § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The basic task of the Commission in a § 851 proceeding is to determine whether the transaction serves the public interest: “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.” (D.02-01-058) We have reviewed the proposed agreements and find they do not interfere with SCE’s operation or affect its ability to provide service to its customers. Because ratepayers will receive 30% of the gross revenue from the transaction without incurring any measurable increased costs, we find that the properties are being “used for other productive purposes” and accordingly the proposed Leases are in the public interest and the Application should be approved.

⁵ 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, 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.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In order for Park Edison to develop and operate an industrial office complex on Site 1, a lease from SCE is required.
2. In order for Park Edison to develop and operate a self-storage facility complex on Site 2, a lease from SCE is required.
3. Lease of the Sites to Park Edison is consistent with the current uses of the related SCE properties.
4. The Leases will not impair SCE's ability to provide service to the public.
5. The City is the lead agency for environmental review under CEQA.
6. The Commission is a responsible agency for environmental review under CEQA.
7. The Commission has reviewed the City Council Resolution, Negative Declaration and Notice of Determination, and finds these documents adequate for our decision-making purposes.
8. The Park Edison project received environmental review from the City.
9. All revenue from the Leases in excess of a Commission-established threshold will be treated as OOR and shared 70/30 between SCE and its ratepayers, pursuant to D.99-09-070.
10. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Approving the requested Leases is in the public interest.
2. With respect to the potential environmental impacts resulting from the project, we find that the City reasonably concluded that the proposed project could not have a significant impact on the environment. We adopt the City's finding for purposes of our approval.
3. This decision should be effective today in order to allow Park Edison to expeditiously enter into the Leases with SCE.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's Application for authority to lease two sites located on the Gould-Mesa Transmission Right of Way to Park Edison, LLC is granted, as described above.
2. This proceeding is closed.

This order is effective today.

Dated September 4, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners