

Decision 04-12-036 December 16, 2004

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of SOUTHERN CALIFORNIA  
EDISON COMPANY (U 338-E) for Authority to  
Lease Available Land located on the Barre-Del  
Amo Transmission Right of Way to Anaheim RV  
Storage, LLC.

Application 04-09-017  
(Filed September 15, 2004)

**OPINION GRANTING CONDITIONAL APPROVAL OF A LEASE OF  
UTILITY PROPERTY PURSUANT TO PUB. UTIL. CODE § 851**

**Summary**

This Opinion grants Southern California Edison Company (SCE) conditional authority under Pub. Util. Code § 851 to lease utility property to Anaheim RV Storage, LLC (Anaheim RV).<sup>1</sup> The property is a 6.3-acre site located on SCE's 220 kilovolt Barre-Del Amo transmission right-of-way in the City of Anaheim (Site). Anaheim RV intends to construct and operate a recreational vehicle (RV) storage facility on the Site. The lease will not interfere with SCE's utility obligations, and the lease revenues will be split between SCE's shareholders and ratepayers under a previously approved sharing mechanism.

The authority granted by this Opinion is subject to the following conditions. First, the lease agreement allows Anaheim RV to use SCE's property for any purpose allowed by law, as long as such uses do not interfere with SCE's

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<sup>1</sup> All statutory references are to the Public Utilities Code unless noted otherwise.

use of the property for utility-related purposes. This Opinion requires any change in use of SCE's property to be approved by the Commission.

Second, the Site is located on SCE's electric transmission right of way. It is possible that SCE may need to expand its transmission capacity in the future. This Opinion provides that SCE shall have the right to install new transmission facilities on the Site when deemed necessary by SCE or the Commission.

Third, the conditional use permit for using the Site as an RV storage facility that was granted by the City of Anaheim expires in February 2007. This Opinion requires SCE to notify the Commission if the City declines to authorize the continued use of the Site as an RV storage facility, authorizes a new use, or adopts new conditions governing the use of the Site that negatively affect SCE's ability to use the Site for utility-related purposes.

Finally, consistent with previous Commission decisions, this Opinion determines that ratepayers shall not be held responsible for any costs associated with environmental claims related to the tenancy or activities of the lessee.

## **Background**

SCE filed Application (A.) 04-09-017 on September 15, 2004. Notice of the Application appeared in the Commission's Daily Calendar on September 23, 2004. There were no protests or other responses to the Application.

In A.04-09-017, SCE requests authority under Section 851 to lease the Site to Anaheim RV in accordance with an Option Agreement between SCE and Anaheim RV.<sup>2</sup> Edison has electric transmission facilities located on the Site. The Site is not currently used for any other secondary purposes.

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<sup>2</sup> The Option Agreement is appended to A.04-05-017. The Agreement is dated March 25, 2004.

The Option Agreement gives Anaheim RV the right, subject to Commission approval, to lease the Site for the purpose of constructing and operating an RV storage facility beginning on the date that Anaheim RV exercises an option to enter into the lease. The initial term of the lease is 40 years, and Anaheim RV may renew the lease for two additional ten-year terms.

Anaheim RV will pay annual rent of \$32,422 in Year 1; \$64,848 in Year 2; \$97,260 in Years 3-5; \$103,092 in Years 6-8; \$109,248 in Years 9-11; \$115,836 in Years 12-14; \$122,748 in Years 15-17; and \$130,152 in Years 18-20. Rent will be adjusted to fair market value at the end of the twentieth and thirtieth years of the lease, and upon the exercise of each renewal option. However, in no event will there be (1) a reduction in rent, or (2) an increase in rent of more than 5% per year compounded annually for 15 years. SCE believes that the rent it will receive falls within the acceptable market range and is in line with revenues it receives from similar Commission-approved transactions.

The Option Agreement provides that Anaheim RV's activities must not interfere with the operation of SCE's facilities located at the Site. To that end, the Agreement forbids the use or storage of hazardous substances, explosives, or flammable materials on the Site. Any equipment used by Anaheim RV must maintain at all times a clearance of at least 18 feet from all overhead electrical conductors. In addition, Anaheim RV must maintain a minimum radius of 25 feet around all tower legs and 10 feet around all poles and anchors, and must provide access roads to the Site that are at least 16 feet wide.

Anaheim RV is also required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against the Site or the improvements to the Site;
- Obtain all permits and approvals for the construction and operation of its business on the 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 the Site except to the extent caused by SCE's negligent or willful misconduct.

SCE retains various rights under the Option Agreement, including the right to:

- Enter the Site at any reasonable time to inspect the property;
- Impose temporary restrictions on Anaheim RV'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.

The Option Agreement permits Anaheim RV to use the Site for any purpose permitted by law, consistent with SCE's use of the Site for its power lines and equipment. Although Anaheim RV must obtain SCE's consent prior to using the Site for purposes other than as an RV storage facility, the Option Agreement stipulates that SCE's consent shall not be unreasonably withheld. If the Site is used for other purposes, the Option Agreement requires a rent adjustment to reflect the fair rental value of the Site for the other purposes.<sup>3</sup>

On February 9, 2004, the Anaheim Planning Commission granted Conditional Use Permit No. 2003-04816 for an RV storage facility at the Site. The permit expires on February 9, 2007.

All revenues from the Option Agreement will be treated as Other Operating Revenue (OOR). In Decision (D.) 99-09-070, the Commission adopted

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<sup>3</sup> Option Agreement, Section 5.1.

a gross revenue sharing mechanism for 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 from non-tariffed products and services like the proposed Option Agreement are split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. All incremental costs are borne by SCE's shareholders. 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. OOR from the Option Agreement are "passive" for sharing purposes.

### **Discussion**

SCE requests authority under Section 851 to lease utility property to Anaheim RV. Section 851 states, in relevant part, as follows:

No [utility]...shall...lease...any part its plant, system, or other property necessary or useful in the performance of its duties to the public...without first having secured from the commission an order authorizing it to do so. Every such...lease...made other than in accordance with the order authorizing it is void...[Any lease] of property by a public utility shall be conclusively presumed to be of property that is not useful or necessary in the performance of its duties to the public, as to any...lessee...dealing with such property in good faith and for value....

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to Section 851. The primary standard used by the Commission is whether the transaction will serve the public interest. Where

necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.<sup>4</sup>

The Commission has repeatedly held that 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.”<sup>5</sup> We find that the proposed lease does not interfere with SCE’s operation or affect its ability to serve the public. In other contexts, we have defined “productive” activities as those that lead to a measurable benefit to ratepayers. Because ratepayers will receive 30% of the gross revenue from the lease with little or no increase in costs, we find that the property is being “used for other productive purposes.” Accordingly, the proposed lease is in the public interest and should be approved, subject to the conditions set forth below.

We place four conditions on our approval of the lease. First, the Option Agreement allows Anaheim RV to use SCE’s property for any other purposes allowed by law, as long as such uses do not interfere with SCE’s use of the property for utility-related purposes. We do not believe that it is prudent to grant such sweeping authority for the next 40-plus years. We will require any change in use of SCE’s property to be approved by the Commission.<sup>6</sup>

Second, the Site is located on SCE’s electric transmission right of way. In its application, SCE does not address the potential future need to expand transmission capacity within the right of way. We believe that it is possible that SCE may need to expand its transmission capacity during the next 40-plus years.

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<sup>4</sup> D.01-06-007, *mimeo.*, p. 17.

<sup>5</sup> See, for example, D.02-01-058, *mimeo.*, p. 7.

<sup>6</sup> As discussed *infra*, our environmental review was limited to an RV storage facility. Any change in use could require additional environmental review by the Commission.

To ensure that the public interest is protected, we will condition our approval of the lease on SCE having the ability to install new transmission facilities on the Site when deemed necessary by SCE or the Commission.

Third, the conditional use permit (CUP) for using the Site as an RV storage facility that was granted by the City of Anaheim expires in February 2007. The City will have to renew the permit in order for the authorized use to continue. This will give the City an opportunity to determine if the conditions have been met, add new conditions, deny a renewal of the CUP, or authorize a different use of the property. We will require SCE to notify the Commission whenever the City declines to authorize the continued use of the Site as an RV storage facility, authorizes a new use, or adopts new conditions governing the use of the Site that negatively affect SCE's ability to use the Site for utility-related purposes.

Finally, in D.01-04-004 and D.01-05-005, the Commission adopted the following limitation on ratepayer responsibility for future environmental claims on leased utility property:

Should environmental claims, in whole or in part, related to the tenancy or activities of the lessee be made on SCE subsequent to the execution of the lease, SCE shall not seek recovery of any such claims, or defense of such claims, from ratepayers.  
(D.01-05-005, *mimeo.*, p. 3 and Ordering Paragraph 1.)

This provision is applicable here, and we adopt it as a condition of our approval.

### **California Environmental Quality Act (CEQA) Compliance**

CEQA applies to discretionary projects to be carried out or approved by public agencies. The Lead Agency is the public agency with the greatest

responsibility for supervising or approving the project as a whole.<sup>7</sup> Here, the City of Anaheim is the Lead Agency for the Anaheim RV project and the Commission is a Responsible Agency.

As a Responsible Agency, the Commission must consider the environmental consequences the Anaheim RV project, including those set forth in the Lead Agency's environmental documents, before acting upon or approving the project.<sup>8</sup> We have reviewed the City's environmental documents (Appendix D to the application) for the Anaheim RV project. We find these documents to be adequate for our decision-making purposes.

On February 9, 2004, the Anaheim Planning Commission approved Resolution No. PC 2004-18 adopting a Negative Declaration for the Anaheim RV project and granting Conditional Use Permit No. 2003-04816 for the RV parking facility. As evidenced by these documents and a Department of Fish and Game Certificate of Fee Exemption dated March 16, 2004, the environmental setting is urban and the proposed project's surrounding land uses are fully developed.<sup>9</sup> On March 2, 2004, a Notice of Determination for the Anaheim RV project was filed with the Orange County Clerk, finding that the project will not have a significant effect on the environment. Mitigation measures were not required or adopted as part of the approved project. We find that the City of Anaheim reasonably concluded that the project will not have a significant effect on the environment, and we adopt the City's finding for purposes of our approval.

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<sup>7</sup> CEQA Guidelines § 15051(b).

<sup>8</sup> CEQA Guidelines §15050(b).

<sup>9</sup> The Department of Fish and Game further found that the project will not individually or cumulatively have an adverse impact on wildlife resources.



### **Comments on the Draft Opinion**

The draft Opinion of the Administrative Law Judge (ALJ) in this matter was mailed to the service list in accordance with Section 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. There were no comments.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3139, the Commission preliminarily determined that this proceeding should be categorized as ratesetting and that hearings would not be necessary. Based on the record of this proceeding, we affirm that this is a ratesetting proceeding and that hearings are not necessary.

### **Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. In A.04-09-017, SCE requests authority under Section 851 to lease the Site to Anaheim RV. Anaheim RV intends to use the Site to construct and operate an RV storage facility.
2. The construction and operation of RV storage facilities on the Site in accordance with the terms of the Option Agreement will not impair SCE's ability to provide electric utility service to the public.
3. All revenue from the lease 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. All incremental costs arising from the lease will be borne by SCE's shareholders.
4. The City of Anaheim is the Lead Agency under CEQA for the Anaheim RV project.

5. In approving the proposed Anaheim RV project, the City of Anaheim adopted a Negative Declaration for the project.

6. On March 2, 2004, a Notice of Determination was filed by the City Clerk of the City of Anaheim finding that the Anaheim RV project will not have a significant effect on the environment. Mitigation measures were not required or adopted as part of the approved project.

7. The Commission is a responsible agency under CEQA and has reviewed the City's environmental documents.

8. There is no known opposition to granting the authorization requested.

### **Conclusions of Law**

1. This is a ratesetting proceeding.

2. No hearings are necessary.

3. It is in the public interest to approve the lease, subject to the conditions identified in the body of this Opinion.

4. The City of Anaheim's environmental documents are adequate for Commission decision making-purposes and the findings therein should be adopted.

5. The following Order should be effective today in order to allow Anaheim RV to expeditiously enter into the lease with SCE.

## **O R D E R**

### **IT IS ORDERED** that:

1. Application 04-09-017 filed by Southern California Edison Company (SCE) for authority to lease a portion of its Barre-Del Amo transmission right-of-way (Site) to Anaheim RV Storage, LLC (Anaheim RV) pursuant to the

Option Agreement appended to the Application is granted, subject to the conditions set forth in the following Ordering Paragraphs.

2. All costs and revenues from the lease shall be subject to the sharing mechanism set forth in Decision 99-09-070.

3. Anaheim RV and its assignees or successors shall use the Site only for RV storage. Any other use must be approved by the Commission.

4. SCE shall have the ability under the lease to install new transmission facilities on the Site when deemed necessary by SCE or the Commission.

5. SCE shall notify the Commission whenever the City of Anaheim declines to authorize the continued use of the Site as an RV storage facility, authorizes a new use, or adopts new conditions governing the use of the Site that negatively affect SCE's ability to use the Site for utility-related purposes.

6. SCE shall not seek to recover from its ratepayers any costs for environmental claims that are related, in whole or in part, to the tenancy or activities of the lessee subsequent to the execution of the lease.

7. The City of Anaheim's finding that the Anaheim RV project will have no significant effect on the environment is adopted.

8. SCE shall notify the Director of the Commission's Energy Division in writing of any extension or termination of the Option Agreement within 30 days after such extension or termination is executed.

9. This proceeding is closed.

This order is effective today.

Dated December 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners