

Decision 08-02-027 February 28, 2008

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 La Fresa-Lighthipe 220 kV
Transmission Right of Way to Greenleaf
Industrial Parking, LLC, a California
Limited Liability Company.

Application 07-07-019
(Filed July 24, 2007;
amended November 16, 2007 and
December 13, 2007)

**DECISION AUTHORIZING SOUTHERN CALIFORNIA EDISON COMPANY
TO LEASE SITE FOR PARKING LOT TO GREENLEAF
INDUSTRIAL PARKING, LLC**

1. Summary

By this application, we approve the application of Southern California Edison Company (SCE) to lease a 5.34 acre site (site) located on a portion of SCE's La Fresa-Lighthipe right-of-way (ROW) in the City of Compton (Compton) to Greenleaf Industrial Parking, LLC, (Greenleaf). The ROW is part of SCE's 220 kilovolt transmission system that includes facilities subject to the Commission's jurisdiction.¹

¹ SCE's subtransmission facilities, which cross the site, are within the Commission's jurisdiction.

2. Background

On May 15, 2007, Greenleaf executed an option agreement (agreement) between it and SCE whereby Greenleaf will operate a truck and trailer park on the site.² The site is currently vacant.

SCE represents that, since the lease is compatible with its planned operation of its transmission and sub-transmission lines located at the site, its service to customers will not be affected by approval of the lease. SCE also states that the lease will generate revenue for the benefit of its customers.

On November 16, 2007, SCE filed an amendment to the application that provided relevant environmental documents.

3. Agreement

The agreement grants Greenleaf the option to lease the site for development and operation of a truck and trailer parking lot.³ The term of the lease is 20 years beginning on the date Greenleaf exercises the option pursuant to the agreement. Greenleaf can renew the lease for three additional ten-year terms.

Under the lease, Greenleaf will pay a base rent of \$25,000 in years one and two, \$27,500 in years three through seven and \$30,250 in years eight through

² Greenleaf is a subsidiary of Goldrich and Kest Industries, LLC, (Goldrich) which constructed a 400,000 square foot industrial building adjacent to the site. Goldrich is a diversified real estate development and management group of companies and partnerships.

³ The agreement provides that it is subject to the Commission's approval, and that it shall automatically terminate if approval is not granted.

ten.⁴ The base rent will be adjusted at the end of the tenth year and upon each renewal option based on the then current fair market rental value of the property. In no event will the adjusted base rent be less than the base rent for the period immediately prior to the adjustment. In addition, the rent may not increase more than 10% in a five-year period.

The agreement also provides that Greenleaf:

- Must not interfere with the operation of SCE's facilities that cross the site.
- May not use or store hazardous substances, explosives or flammable materials at the site.
- Must maintain a minimum clearance of 18 feet between any equipment used by Greenleaf at or adjacent to the site and all overhead electrical conductors.
- Must maintain a 50-foot minimum radius clearance around tower legs, and a ten-foot minimum radius clearance around steel poles, wood poles and anchors.
- Must provide and maintain access roads on the site at least 16 feet wide and capable of supporting a load of 40 gross tons on a three-axle vehicle.
- Is responsible for all personal property taxes and other general or special assessments or fees levied against the site or improvements thereon.
- Is responsible for obtaining all necessary permits and approvals for construction and any zone changes or use permits required for improvements to and operation of the truck and trailer parking lot.

⁴ SCE established the rental value of the site based on use of the site as a truck and trailer parking lot. The valuation was based on the rents paid for comparable facilities in and around the site.

- Must maintain general liability insurance, comprehensive auto liability insurance and workers' compensation insurance.
- 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.

SCE retains the right and authority to enter the site at any and all reasonable times to inspect the site, and to impose temporary restrictions on Greenleaf's right to enter, occupy and use the site to allow SCE to perform any necessary work on the electrical facilities located at the site.

4. Determination of Secondary Best Use

The primary use of the site is as a ROW for SCE's transmission and subtransmission lines. Because transmission and subtransmission lines cross the site, secondary uses are limited by restrictions and height clearances. Of the land uses allowed by Compton that are compatible with SCE operations, SCE represents that leasing the site for truck and trailer parking offered a high level of potential revenues.

In a November 19, 2007 Los Angeles Times article, SCE is represented as having claimed that it launched its lease and build program under pressure from the Commission. In order to ensure that this request is indeed SCE's proposal, the assigned Administrative Law Judge (ALJ) instructed SCE to indicate through a formal filing whether it intends to proceed with this application. The ALJ also required SCE to indicate whether it was pressured to enter into this lease by the Commission. On December 13, 2007, SCE filed an amendment to the application indicating that it intended to proceed with the application and that the application was filed on its own volition in compliance with its secondary land use policy.

5. Compliance with the California Environmental Quality Act (CEQA)

CEQA applies to discretionary projects to be carried out or approved by public agencies.⁵ A basic purpose of CEQA is to “inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities.”⁶ Because the Commission must act on this application and issue a discretionary decision without which the project cannot proceed, the Commission must act either as a Lead Agency or Responsible Agency under CEQA.⁷

In this instance, Compton is the lead agency responsible for review of the project and the Commission is a responsible agency. On November 8, 2006, the Compton Planning Commission adopted Mitigated Negative Declaration No. 895 (MND) by adopting Resolution 3803 granting Conditional Use Permit No. 2535. Compton determined that the project, as modified by the conditions of approval, will not result in any potentially significant impacts on the environment. CEQA requires the Commission to consider the Lead Agency’s environmental documents and findings before acting on or approving the project. We have reviewed Compton’s environmental documents and find them adequate for our decision-making purposes.

SCE staff, along with representatives of Greenleaf were contacted on January 23 2008, by Energy Division staff in order to verify that the truck and trailer park lease proposal met the conditions, regulations, and approval of the

⁵ Public Resources Code § 21000, *et seq.*

⁶ Title 14 of the California Code of Regulations (hereafter, CEQA Guidelines), § 15002.

appropriate fire officials. SCE and Greenleaf representatives identified several provisions within the MND that confirm that the project meets the standards and requirements of fire regulations:

- 1) The MND was adopted by Resolution No. 3803, which confirms the approval of the Conditional Use Permit 2535, which finds “(e) No significant impacts based on the mitigation measures included as conditions of the approval.” The approval of the MND was confirmed by letter, dated October 18, 2007, from Compton which states that the Planning Commission adopted MND No. 895 by adopting Resolution No. 3803.
- 2) The MND includes an initial study checklist which verifies that environmental issues relating to hazards were examined:
 - Section 3.9(a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? (Potentially Significant Unless Mitigated.)
 - Section 3.9(b) Create a significant hazard to the public or the environment or result in reasonably foreseeable upset and accident conditions involving the release of hazardous materials? (Potentially Significant Unless Mitigated)
 - Section 3.9(h) Expose people or structures to a significant risk of loss, injury, or death involving wild land fire, including where wild lands are adjacent to urbanized areas or where residences are intermixed by wild lands? (No impact.)
- 3) The Compton staff report entitled: “Planning Department Staff Report for Conditional Use Permit No. 2535 and

⁷ The “project” is Greenleaf’s use of the property pursuant to the lease, including any construction that may occur.

MND No. 895,” states on page 3 in the “Analysis and Recommendation” that the project was reviewed and approved with the conditions of the Development Review Committee (which includes representatives of the Fire Department).

- 4) Acceptance Form 2535, which confirms that the Greenleaf is aware of the conditions set forth in Resolution No. 3803, includes Item 42 which states as follows:
 - (42) That construction, use and property development shall comply with all requirements of the Public Works, Fire, Water, Building and Safety and Planning and Economic Development departments, and all applicable County, State, and Federal Regulations.

6. Revenue Treatment

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In Decision (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, 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 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 proposed lease is “passive” for sharing purposes.⁸

7. Discussion

Pub. Util. Code § 851 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 to do so ...” The Commission’s role in examining transactions subject to § 851 is the protection of the public interest.⁹ 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 operations,¹⁰ and such is the case here. There is a clear public benefit to be gained here in that the agreement will generate revenues that will be shared between SCE and its ratepayers, thus lowering rates and at the same time enhancing the utility’s financial health and the California economy.

As discussed above, the proposed use has been reviewed, its environmental impact assessed, and the project approved by Compton.

⁸ 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.

⁹ Section 853(a): “This article [Article 6, Transfer or Encumbrance of Utility Property, Sections 851 through 856] ... shall apply to any public utility ... if the commission finds ... that the application of this article is required by the public interest.”

¹⁰ 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.”

The lease agreement contains provisions addressing lessee activities that could potentially impair the site's primary public utility use; informing the lessee of potential hazards; and reserving SCE's rights to fully access the site, to use the site for other compatible, productive purposes, and to reclaim the site if necessary. We conclude that the proposed lease is in the public interest and should be approved.

8. Comments on Proposed Decision

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.

9. Categorization and Need for Hearings

In Resolution ALJ 176-3196, dated July 26, 2007, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

10. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. Under terms of the lease, Greenleaf's use of the site will not interfere with SCE's operations or facilities on the site.
2. 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.

3. Compton is the lead agency for the proposed project under CEQA, and the Commission is a responsible agency.

4. On November 8, 2006, the Compton Planning Commission adopted Mitigated Negative Declaration No. 895 by adopting Resolution 3803 granting Conditional Use Permit No. 2535. Compton determined that the project, as modified by the conditions of approval, will not result in any potentially significant impacts on the environment.

5. The Commission has reviewed and considered the information contained in Compton's Negative Declaration and finds that it is adequate for the Commission's decision-making purposes.

6. We adopt Compton's finding that the proposed project, as modified by the conditions of approval, will not result in any potentially significant impacts on the environment.

7. There is no known opposition to granting the application.

Conclusions of Law

1. Compton's conditions of approval should be conditions of our approval.

2. The proposed lease is in the public interest.

3. The Application should be granted as set forth in the following order.

4. A public hearing is not necessary.

5. This order should be made effective immediately to allow the lease to take effect and its benefits to begin flowing to SCE and its ratepayers as soon as possible.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized to lease to Greenleaf Industrial Parking, LLC a site on SCE's La Fresa-Lighthipe transmission right of way in City of Compton, in accordance with the terms and conditions set forth in this order.
2. Our approval of this application is contingent upon satisfaction of the conditions of approval imposed by the City of Compton as discussed herein.
3. All revenue from the lease shall be treated as Other Operating Revenue and subject to the sharing mechanism set forth in Decision 99-09-070.
4. SCE shall notify the Director of the Commission's Energy Division in writing of any amendments to, extension of, or termination of the lease agreement, within 30 days after such amendments are executed.

5. Application 07-07-019 is closed.

This order is effective today.

Dated February 28, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.