

Decision 01-01-043 January 18, 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 to Katella Operating Properties, LLC.

Application 00-06-004
(Filed June 6, 2000)

O P I N I O N

Southern California Edison Company (SCE) requests authority pursuant to Section 851 of the Public Utilities Code for SCE to lease to Katella Operating Properties, LLC (Katella), a 5.8-acre site located on a portion of SCE's Barre-Villa Park 220 kilovolt (kV) transmission right of way (ROW) in the City of Anaheim (Site). The Barre-Villa park 220 kV ROW is part of the Barre-Villa Park 220 kV system and includes facilities subject to Commission jurisdiction.

Katella currently licenses the Site from SCE for operation of a vehicle and boat parking and storage facility pursuant to an Option Agreement Between SCE and Katella Operating Properties, LLC (Agreement), dated December 11, 1998.¹ Katella exercised the option to license the Site and commenced operations on August 23, 1999. SCE and Katella desire to convert the license into a lease so that Katella can secure permanent long-term project financing which will enhance the

¹ SCE granted the license pursuant to General Order (GO) 69-C which allows public utilities to grant licenses for use of utility property for certain purposes without further authorization by the Commission.

viability and continued long-term success of the vehicle and boat parking and storage facility.

Upon receipt of the Commission's approval of this application, the existing license will convert to a lease in accordance with and subject to the terms and conditions of the Agreement. As described in the Agreement, Katella intends to continue to operate a vehicle and boat parking and storage facility on the Site following conversion of the license into a lease.

The application was filed on June 2, 2000 and was noticed on the Daily Calendar on June 7, 2000.

In Resolution ALJ 176-3040, dated June 8, 2000, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not expected. No protests have been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3040.

I. Applicants

Applicant is SCE, an electric public utility organized and existing under the laws of the State of California.

SCE is an investor-owned public utility engaged in the business of generating, transmitting, and distributing electric energy in portions of Central and Southern California. In addition to its properties in California, it owns, in some cases jointly with others, facilities in Nevada, Arizona, and New Mexico, its share of which produces energy and power for the use of its customers in California. In conducting such business, SCE operates an interconnected and integrated electric system.

SCE's service territory is located in 14 counties in Central and Southern California, consisting of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles,

Madera, Mono, Orange, Riverside, San Bernardino, Santa Barbara, Tulare, and Ventura Counties, and includes approximately 184 incorporated communities as well as outlying rural territories.

Katella is a California limited liability company specializing in the development and operating of parking and storage facilities.

II. Revenue

Operation of the vehicle and boat parking and storage facility is compatible with SCE's operation of the transmission lines located on the Site. Utility service will not be affected as a result of Commission approval of this lease. The license fees generated by the project are currently treated as Other Operating Revenue (OOR). The conversion of the license to a lease will increase the likelihood that the Site will generate OOR on a long-term basis for the benefit of ratepayers.

On January 30, 1998, SCE filed Advice 1286-E which sets forth proposed categories of non-tariffed products and services offered for sale by SCE and provided descriptions of the existing products and services within each category. This Advice filing was made pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of Decision (D.) 97-12-088. Attachment B to Advice 1286-E identified 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 existing non-tariffed products and services. This filing complies with the requirements of Rule VII for existing non-tariffed products and services. The intended secondary uses as identified above are consistent with the products and services provided within these categories.

The revenue from the license and the proposed lease will be treated as OOR. In D.99-09-070, the Commission adopted a gross revenue sharing

mechanism for certain of SCE's other operating revenues. The adopted gross revenue sharing mechanism applies to OOR, except for revenues that: (1) derive from tariffs, fees, or charges established by the Commission or the Federal Energy Regulatory Commission (FERC); (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account. Under the gross revenue sharing mechanism, all applicable gross revenues recorded from non-tariffed products and services subject to the mechanism will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffs products and services deemed "active" by the Commission, the revenues in excess of the annual threshold will be split between shareholders and ratepayers on a 90%/10% basis. 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. Products and services offered under the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* categories have been deemed "passive" for revenue sharing purposes.

III. Background

The Site is approximately 5.8 acres and is located on a portion of the Barre-Villa Park 220 kV ROW located in the City of Anaheim. The current use of the Site for operation of a vehicle and boat parking and storage facility by Katella is consistent with its primary use as a ROW for above-ground 220 kV transmission lines. SCE acquired this land from Southern Pacific Company and Pacific

Electric Railway Company in August of 1961.² On October 1, 1993, the Site was licensed to Dennis E. Proud and Cuong Doan for horticulture purposes. The license agreement with Proud and Doan expired on May 31, 1999. The annual income stream from the Proud and Doan license ranged from \$7,025 in 1993 to \$7,770 in 1999. The existing license with Katella Properties currently generates a base revenue of \$15,000 in Year 1; \$22,500 in Year 2; \$40,000 in Year 3; \$64,200 in Year 4; \$65,500 in Year 5; \$66,750 in Year 6; \$68,000 in Year 7; \$69,500 in Year 8; \$70,750 in Year 9; and \$72,250 in Year 10, whereupon the property will be appraised to determine the base rental value for subsequent years. All of the revenue from the Katella license and proposed lease will be treated as OOR, under the rules of the gross revenue sharing mechanism.

IV. Agreement

The Agreement gives Katella the option to lease the Site for the development and operation of a vehicle and boat parking and storage facility. The initial term of the license is thirty (30) years, which commenced on the date Katella exercised the Option. Katella can renew the license for one (1) additional ten (10) year term. If the Commission grants this Application, the existing license will be converted into a lease. The conversion from a license to a lease is beneficial to Katella since lenders perceive a lease as having more stability and certainty than a license as it is not terminable by either party at will. The conversion to a lease is a benefit to SCE ratepayers as it allows the developer to obtain long-term project financing at a reduced interest rate. Reduced project

² The total book value of the 5.8 acres is \$85,132.

costs will enhance the viability and future success of the project which will generate a consistent revenue stream benefiting ratepayers.

As discussed above, Katella pays an annual base license fee of \$15,000 in Year 1, escalating to \$72,250 in Year 10. The base license fee will be further adjusted at the expiration of the 10th and 20th year of the term and upon exercise of the renewal option to reflect the then current fair rental value of the Site, excluding the value of Katella's improvements. In no event, however, will the adjusted base license fee be less than the base license fee otherwise payable immediately prior to such adjustment, or increase more than 4% per year compounded annually for the following ten (10) years.³

The Agreement provides that Katella's activities must not interfere with the operation of the electrical transmission facilities that cross the Site. Katella is not allowed to use or store hazardous substances, explosives or flammable materials on the Site. Any equipment used by Katella will be used and operated to maintain a minimum clearance of seventeen (17) feet from all overhead electrical conductors. SCE requires Katella to maintain a minimum fifty (50) foot radius around all towers legs, and a ten (10) foot radius around all steel and wood poles. SCE also requires Katella to provide and maintain access roads on the Site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle. SCE has reviewed and approved construction plans and specifications related to the development of this project.

³ Section 3.1(b): For example, the base rent payable in the 10th year of the lease term could not be less than \$72,250 the amount of the base rent payable in the 10th year, or more than \$75,140.

SCE retains the right and authority to enter the Site at any and all reasonable times to inspect the Site. SCE has the right to impose temporary restrictions on Katella's right to enter, occupy and use the Site to allow SCE to perform work, if necessary, on the electrical facilities located on the Site. If the license does not convert to a lease, SCE will retain the right to cancel the license upon 12 months' notice, and if the license does convert to a lease, to take all or part of the leasehold by eminent domain or inverse condemnation.

Katella is responsible for all personal property taxes, as well as other general or special assessments or fees levied against the Site or the improvements thereon. Katella has obtained all permits and approvals for construction and operation of a vehicle and boat parking and storage facility. Katella must maintain appropriate comprehensive general liability insurance, comprehensive auto liability insurance, and workers' compensation insurance. Katella has also agreed to indemnify SCE against all liability for damages or injury to persons and property on the Site except to the extent caused by SCE's negligent or willful misconduct.

V. Determination of Best Secondary Use

The utility's objective in selecting secondary uses for utility property is to find uses that provide the greatest revenue consistent with the utility's obligations to maintain safety and reliability of its facilities. The facilities located on the site are used in the transmission of electricity to homes and businesses in various locations within Orange County. Because of the presence of above-ground transmission lines crossing the Site, secondary land uses of the 5.8 acres of utility property are limited by restrictions and height clearances.

To evaluate possible secondary uses for this type of property, SCE conducted a survey of the "secondary use" policies of nine utilities across the

nation. The survey revealed that those utilities had identified four possible uses for the unused portions of their operating properties; auto parking, recreational vehicle storage, equipment storage and self storage. Of these possible uses, SCE determined that a vehicle and boat parking and storage facility offered the highest level of potential revenues for this particular site.

VI. Valuation of Site

Traditional market value appraisal methods which attempt to determine the highest price that the land would bring if sold on the open market for any use or purpose, are not ideally suited for valuing secondary uses. Instead, real estate appraisers establish rental value for the property based on the value the property has for a specific secondary use.

To evaluate the rental value for the Site, SCE solicited development proposals from the real estate market place. The developers incorporated into their proposals the highest lease rate that they were able to pay for the particular use to be developed. After reviewing all submitted proposals, a staff appraiser computed the rent paid by comparable facilities located in Orange Country as a function of the effective gross income of the facilities. The annual base license fee SCE will receive from Katella falls within the acceptable market range established by the appraiser based on the analysis of comparable facilities and is in line with the fees SCE receives from the project approved in D.00-02-041.

VII. Selection of Developer

Katella was provided the opportunity to develop this Site because of the background and development experience of its members. Katella is a California limited liability company, specializing in the development and operation of parking and storage facilities. Katella was formed on August 22, 1997, by CHF Management, Inc., a corporation wholly owned by Charles H. "Chip" Fedalen, Jr.

(Fedalen), and Brookhollow Expressway, a California limited liability company controlled by Gregory and James Knapp, the principals of The Brookhollow Group. The Brookhollow Group is a real estate construction and development firm. Although Katella is a newly-formed company, its principals have a combined experience exceeding 65 years in the real estate industry, including real estate finance, property management, construction, development and law.

Fedalen is a Senior Executive Vice President at Wells Fargo Bank in Irvine, California. He manages the Bank's Orange County Real Estate Group office. Prior to that, Fedalen was a practicing real estate attorney. He has been active in real estate for over 15 years and has extensive experience in real estate finance, investment, operation and development. Fedalen is also a licensed California real estate broker. Jim Knapp (J. Knapp) is Chairman of The Brookhollow Group. He is an active real estate investor and developer. J. Knapp was an Executive Vice President and Director of Pacific Enterprises (formerly Pacific Lighting Corporation). Following that, he was President and co-founder of Dunn Properties, an industrial development company. J. Knapp is also a former practicing real estate attorney. J. Knapp has over 35 years of experience in all aspects of real estate development, finance, management and investment.

Greg Knapp (G. Knapp) is President of The Brookhollow Group and responsible for daily management of its multi-faceted operations. He has extensive experience in marketing, asset management and all aspects of real estate development and entitlement. G. Knapp also serves as President and responsible broker for Lakeside Realty, a commercial leasing and brokerage company. G. Knapp has over 15 years of real estate experience including acting as principal in several industrial and commercial developments. He is also a licensed California real estate broker.

VIII. Environmental Matters

Katella has obtained all permits and approvals required by the appropriate governmental agencies having jurisdiction for the development of a vehicle and boat parking and storage facility on the Site. On June 7, 1999, the Anaheim City Planning Commission adopted the Negative Declaration in support of Conditional Use Permit No. 4126 and issued the conditional use permit for development of the project. In accordance with Article 6.2(h) of the Agreement, Katella has procured and delivered to SCE, evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to grading permits, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdictions.

Under the California Environmental Quality Act (CEQA), the Commission is obligated to consider the environmental consequences of a project that is subject to the Commission's discretionary approval. (Pub. Res. Code § 21080.) A project is an activity that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and either (a) is directly undertaken by any public agency, (b) is supported by contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or (c) involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Pub. Res. Code § 21065.)

Development of the property by Katella was subject to all applicable laws and discretionary approvals from the City of Anaheim. The City's discretionary approval process triggered application of CEQA to the project resulting in the adoption of a Negative Declaration and the issuance of Conditional Use Permit

No. 4126. Consequently, no additional CEQA review by the Commission is required at this time.

We note that SCE licensed the land to Katella pursuant to GO 69-C and the license agreement specifically contemplated the future conversion of the license into a lease. We are somewhat concerned with the apparent use of GO 69-C to seal a deal in advance, then seek subsequent approval under Section 851. We are troubled that in some circumstances, this chain of events might allow the transaction to escape legally mandated CEQA review. For instance, the property at issue here was converted from horticultural purposes to a storage facility without any Commission review, as allowed by GO 69-C.

The particular facts of this case, however, indicate that appropriate environmental review under CEQA was performed by the City of Anaheim prior to the date Katella exercised its option to license the site for a storage facility.⁴ For this reason, the deal structure we are presented with here does not circumvent any CEQA requirements. However, Commission approval of this lease is conditioned upon Katella's compliance with all applicable environmental regulations. Furthermore, we expect that any modifications to the lease agreement or subsequent changes to the use of the property must obtain subsequent CEQA review.

Should environmental claims be made on SCE subsequent to the sale, SCE shall not seek recovery of any cost of the claims or defense of the claims from its ratepayers.

⁴ As noted earlier in this order, the Anaheim City Planning Commission adopted the Negative Declaration on June 7, 1999 and Katella exercised its option according to the license agreement on August 23, 1999.

IX. The Proposed Transactions Will Benefit the Public

Section 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 commission 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.”⁵ The proposed lease satisfies this test. The public interest is not harmed since a lease will not affect in any way the utility’s operation of the sub-transmission lines or the adjoining substation.⁶ To the contrary, 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 or affecting service to utility customers. Because the proposed lease will provide increased revenues for the benefit of ratepayers with minimal risk to the ratepayers, SCE requests the Commission to authorize the lease.

X. 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.

⁵ See, e.g., *Universal Marine Corporation*, D.84-04-102, 1984 Cal. PUC LEXIX 962, *3, 14 CPUC2d 644 (“[W]e have long held that the relevant inquiry in an application for transfer is whether the transfer will be adverse to the public interest”); see also D.89-07-016, 1989 Cal. PUC LEXIS 582, *25, 32 CPUC2d 233.

⁶ As noted earlier, if the leased property becomes necessary for utility operations, SCE has reserved the right to exercise its power of condemnation to re-acquire any or all of the leasehold.

Findings of Fact

1. SCE requests authority, pursuant to Section 851 of the Public Utilities Code, for SCE to lease a 5.8-acre site on available land on its transmission right of way to Katella Operating Properties, LLC for vehicle and boat parking purposes.
2. SCE is an investor-owned public utility engaged in the business of generating, transmitting, and distributing electric energy in portions of Central and Southern California.
3. Development and operation of the proposed facilities is compatible with SCE's operation of its electric facilities.
4. All of the revenues from the lease will be treated as OOR and shared in accordance with D.99-09-070.
5. The lease is for a secondary use of utility property which has been deemed "passive" for revenue sharing purposes.
6. Because the proposed lease will provide additional revenues for ratepayers, with minimal risk to them, Commission authorization of the lease will not be adverse to the public interest.
7. Development of the property by Katella was subject to all applicable laws and discretionary approvals from the City of Anaheim. The City's discretionary approval process triggered application of CEQA to this project resulting in the adoption of a Negative Declaration and the issuance of Conditional Use Permit No. 4126. No additional CEQA review by the Commission is required at this time.
8. Because the public interest would best be served by having the lease take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. 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 or affecting service to utility customers.
2. The proposed lease, as set forth in the application, is in the public interest and should be approved.
3. The lease is a passive secondary use subject to revenue sharing.
4. Pursuant to D.99-09-070, revenue sharing is 70% to shareholders and 30% to ratepayers.

O R D E R

IT IS ORDERED that:

1. Within six months after the effective date of this order, Southern California Edison Company (SCE) may lease to Katella Operating Properties, LLC the property as set forth in Application (A.) 00-06-004, subject to the reservations therein described.
2. Within 30 days of the actual transfer, SCE shall notify the Commission in writing of the date of which the transfer was consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification.
3. Approval of this lease is conditional upon compliance by lessee with all applicable environmental regulations. Any modifications to the lease agreement or subsequent changes to the use of the property shall be presented to the Commission for approval and review under the California Environmental Quality Act, as necessary. Should environmental claims be made on SCE

subsequent to the sale, SCE shall not seek recovery of any cost of the claims or defense of the claims from its ratepayers.

4. This order is a final determination that a hearing is not needed in this proceeding.

5. A.00-06-004 is closed.

This order is effective today.

Dated January 18, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

Commissioners

Commissioner Richard A. Bilas, being necessarily absent, did not participate.