

Decision 01-08-012 August 2, 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 Huntington Beach-Ellis 220 kV Transmission Right of Way to CT Self-Storage Fund, LLC.

Application 00-12-042
(Filed December 21, 2000)

O P I N I O N

I. Summary

Southern California Edison Company (SCE) seeks authority to lease to CT Self-Storage, LLC (CT), a 1.92-acre site located on a portion of SCE's Huntington Beach-Ellis 220 kilovolt (kV) transmission right of way (Huntington Beach-Ellis 220 kV ROW) in the City of Huntington Beach (Site).¹ CT will use the Site to operate a self-storage facility, a use SCE states will not interfere with its utility operations. The application is unopposed. The application is granted.

II. Terms of the Lease

The initial term of the lease is 30 years, beginning on the date CT exercises the option. CT may renew the lease for two additional 10-year terms. Under the Agreement, CT will pay an annual base rent of \$35,800 in the first year and \$71,500 in the second year. The base rent will be adjusted in year 3 through year

¹ The Site is bounded on the south by the Huntington Beach Generating Station, on the west by another self-storage facility, on the east by office buildings, and on the north by Hamilton Avenue.

20 with an increase of 3% per annum. At the end of the 30th year and upon exercise of each of the two renewal options, the base rent shall be further adjusted to reflect the then current fair rental value of the Site, excluding the value of CT's improvements. In no event, however, will the adjusted base rent be less than the base rent otherwise payable immediately prior to such adjustment.

The Agreement provides that CT's self-storage activities must not interfere with the operation of the electrical transmission facilities that cross the Site. CT is not allowed to use or store hazardous substances, explosives or flammable materials on the Site. Any equipment used by CT on or adjacent to the Site will be used and operated to maintain a minimum clearance of 18 feet from all overhead electrical conductors. SCE also requires CT to maintain a minimum of 50 foot radius around all tower legs, and a 10 foot radius around all steel poles, wood poles, and anchors. SCE will also require CT to provide and maintain access roads on the property that are at least 16 feet wide and capable of supporting a gross load of 40 tons on a three-axle vehicle. SCE will also have the right to approve construction plans and specifications and the ability to review the selection of a general contractor for the development project.

SCE retains the right and authority to enter the Site at all reasonable times to inspect the property to perform work, if necessary, on the electrical facilities located on the property. SCE has the right to impose temporary restrictions on CT's right to enter, occupy and use the property. SCE also retains the right to take all or a part of the leasehold by eminent domain or inverse condemnation.

CT 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. CT is also responsible for obtaining all permits and approvals for construction and any zone changes or use permits and approvals for construction and any zone changes or use permits required for the operation of a self-storage facility. CT must also maintain appropriate comprehensive general liability insurance, comprehensive auto liability insurance, and workers' compensation insurance. CT has agreed 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 conduct.

III. Determination of Best Secondary Use

The utility's objective in selecting secondary uses for utility sites is to find uses that provide the greatest revenue consistent with the utility's obligations to maintain the safety and reliability of its facilities. Because of the presence of above-ground power lines crossing the Site, secondary land uses on the Site are limited by operating restrictions and height clearances.

To evaluate the rental value for the Site, SCE solicited development proposals from the real estate market place. After reviewing all submitted proposals, SCE reviewed rent paid by "comparable" self-storage facilities in Southern California as a function of the effective gross income of the facilities. The annual base rent SCE will receive from CT falls within the acceptable market range established by the analysis of these comparable facilities and is in line with rents received in the transactions approved by the Commission in Decisions (D.) 96-12-024, D.99-02-035, D.99-02-036, D.99-03-016, D.00-04-066, D.00-02-041 and D.00-06-057.

A. Selection of Lessee

CT was awarded the Site to develop, because of the proposed use of the property, and the background and financial position of CT's operating officers and managing corporation, CT Realty Corporation. CT Realty Corporation was formed in February, 1994 and has acquired 27 properties with a total value over

\$175 million. CT began its business operations as CT Self Village, LLC, a limited liability company in May, 1998. In 1999, the LLC changed its name to CT Self-Storage Fund, LLC. The two primary members of CT are Robert Campbell and U. T. Thompson, III.

Robert Campbell, President and co-founder of CT Realty Corporation, has 25 years of real estate development experience. He was responsible for developing approximately 30 industrial, commercial and retail projects in California, Nevada and Arizona, involving 7.5 million square feet of space.

U. T. Thompson, III, Chairman of the Board of CT Realty Corporation, is a lawyer and real estate broker with 20 years' experience as a general partner and investor in numerous commercial real estate ventures. He is a founder and past Chairman of the Board of Pacific National Bank.

IV. Treatment of Revenues

The revenue from the license and the proposed lease will be treated as Other Operating Revenue (OOR). 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-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 passive for revenue sharing purposes.²

² In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain other operating revenues.

V. Environmental Reviews

Under the proposed lease, CT will procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations, and requirements for permits and approvals from various governmental agencies and bodies having jurisdiction.

Under the California Environmental Quality Act (Public Resources Code Section 21000, et seq, hereinafter “CEQA”), the Commission is obligated to consider the environmental consequences of a project that is subject to the Commission’s discretionary approval. (Public Resources Code § 21080.) SCE’s application indicates that development of the property by CT is subject to all applicable laws and receipt of discretionary approvals from the City of Huntington Beach.

Where a project is to be approved by more than one public agency, one agency becomes the “lead agency” having responsibility to prepare an Environmental Impact Report (EIR) or negative declaration for the project. (CEQA Guideline Section 15050, Public Resources Code Section 21165.) Generally, if the project is to be carried out by a nongovernmental entity, the “lead agency” shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guideline Section 15151) All other public agencies which have discretionary approval power over the project are “responsible agencies” (CEQA Guideline Section 15381). To comply with CEQA, a “responsible agency” must consider the lead agency’s EIR or negative declaration prior to acting upon or approving the project. (CEQA Guideline Section 15050(b).) The specific activities which must be conducted by the responsible agency are contained in CEQA Guideline Section 15096.

Because the proposed project is subject to CEQA, we must determine whether the Commission is either the lead or responsible agency under CEQA.

In the instant case, the Commission’s discretionary approval involves approving SCE’s request for authority to enter into a lease. The City of Huntington Beach appears to have greater responsibility for supervising or approving the project as a whole, because it is the

agency with responsibility to approve and oversee construction of the self-storage facility. Accordingly, in our view the City of Huntington Beach is the appropriate lead agency for CEQA purposes and the Commission is a responsible agency.

Consistent with the above referenced provisions, to fulfill its obligations as a responsible agency the Commission must review the City's environmental documentation before we may act on this lease application. In this case, it appears that the City's environmental review did not require either an EIR or a negative declaration. SCE submitted to the administrative law judge in this proceeding a copy of a document from the City's Office of the Zoning Administrator dated March 1, 2001, which approves the project subject to certain conditions and "...finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the CEQA Guidelines, because the project is an in-fill development consistent with the applicable General Plan policies and zoning regulations."

Whether CEQA Guideline 15332, involving local general plan and zoning considerations, may be properly applied to a project for purposes of authorizing an exemption from CEQA appears properly suited to the expertise and authority of a local jurisdiction, in this instance the City of Huntington Beach and the finding of the Office of the Zoning Administrator. Additionally, we are aware of no information to indicate that the City's determination of exemption was appealed. Therefore, we will rely on the lead agency's determination of exemption in this matter and find that no CEQA review is required by the Commission as a responsible agency.

VI. Discussion

Section 851 of the Pub. Util. 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 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." 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 subtransmission lines on the site. Moreover, 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. 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.

Approval of this lease is conditioned upon compliance by lessee with all applicable environmental regulations. 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.

VII. Procedural Summary

Notice of this application appeared in the Commission's calendar dated January 4, 2001.

In Resolution ALJ 176-3054, dated January 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 176-3054.

³ 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 Huntington Beach–Ellis 220 kV transmission line right of way in the City of Huntington Beach 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 two primary members of CT are Robert Campbell, who has 25 years of real estate development experience, and U. T. Thompson, III, who has 20 years' experience in numerous commercial real estate ventures.

5. CT will finance, construct, and maintain a self-storage 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. The Commission will make a discretionary determination whether to approve SCE's Section 851 lease application.

8. Development of the property in question by CT is subject to all applicable laws and receipt of discretionary approvals from the City of Huntington Beach.

9. Pursuant to the California Environmental Quality Act (CEQA), where a project is to be approved by more than one public agency, one agency becomes the lead agency for purposes of preparing an Environmental Impact Report or negative declaration for the project.

10. Under the applicable CEQA Guidelines, the City of Huntington Beach is the appropriate lead agency for CEQA purposes and the Commission is a responsible agency.

11. The applicant has submitted documentation to establish that the project in question is exempt from CEQA pursuant to CEQA Guideline 15332.

12. 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 1.92-acre site to CT 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. 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.

7. The City of Huntington Beach, as the lead agency, has properly determined that the project in question is exempt from CEQA pursuant to CEQA Guideline 15332 and thus, no CEQA review is required by the Commission as a responsible agency.

8. 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 an 1.92-acre site located on a portion of SCE's Huntington Beach–Ellis 220 kilovolt (kV) transmission line right of way in the City of Huntington Beach to CT Self-Storage, 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 00-12-042 is closed.

This order is effective today.

Dated August 2, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.