

ALJ/BRS/tcg

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Decision 99-02-036 February 4, 1999

**ORIGINAL**

**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 Industry Storage, LLC on Transmission Line Right of Way.

Application 98-07-018  
(Filed July 8, 1998)

## **OPINION**

### **Summary**

This decision authorizes Southern California Edison Company (Edison) to lease a site along its Etiwanda-Walnut-Mesa transmission line in the city of Industry to Industry Storage, LLC (Industry Storage) for the purpose of operating a self-storage facility. The revenue generated by the lease will be shared between ratepayers and shareholders.

### **Background**

Edison seeks a Commission order authorizing it to lease to Industry Storage a 6.51-acre site located on Edison's Etiwanda-Walnut-Mesa 220 kilovolt (kv) transmission line right of way on Gale Avenue in the City of Industry. Industry Storage will develop and operate a self-storage facility on the available land.

Edison states that the revenues generated from this lease will exceed the revenues generated by the former lessee, Gray Estates and Ira Lyon, doing business as Bud Lyons Christmas Tree Farm, of approximately \$8,557 per year, or \$1,337 per acre. That lease terminated prematurely on April 2, 1997 due to unpaid fees.

Edison proposes that this application be categorized as ratemaking and anticipates that hearings will not be necessary. The issue, according to Edison, is as follows: Is the proposed lease of this available land on Edison transmission line right of way to Industry Storage adverse to the public interest?

In Resolution ALJ 176-2997 dated July 23, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. 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 176-2997.

#### **Study of Secondary Uses**

Edison conducted a survey in 1990 of secondary use policies of nine utilities across the nation, which identified four possible uses for the unused portions of their operating properties: auto parking, recreational vehicle storage, equipment storage, and self storage. Of these uses, self storage offered the highest level of potential revenues from this site.

Edison filed Advice 1286-E pursuant to Rule VII.F of the affiliate transactions rules set forth in of Decision (D.) 97-12-088, as modified by D.98-08-035. Appendix B of Advice 1286-E identified the secondary use of transmission line right of way as a category of existing products or services and listed storage facilities as existing within that category. Edison believes that this filing complies with Rule VII for existing and nontariffed products and services.

Edison selected Industry Storage, a newly formed company, based on the extensive experience of the principals in the real estate industry including self-storage facilities.

#### **The Lease**

The terms and conditions of the lease are set forth in the document entitled Option Agreement Between The Southern California Edison Company and

Industry Storage, LLC (Agreement), dated December 8, 1997. The Agreement provides for an expected base revenue amount of \$38,250 in year one, \$76,500 in year two, \$114,750 in year three, and \$143,000 in the fourth through tenth years. The base lease fee will be adjusted at the tenth and twentieth years of the lease, and upon the renewal option based on the then current fair rental value of the property, excluding the value of Industry Storage improvements. The adjusted base lease fee will not be less than the fee otherwise payable immediately prior to the adjustment, and will not exceed an increase of 3 percent per year compounded annually for 10 years. Thus, the base lease fee in the eleventh year could not be less than \$143,000, or more than approximately \$186,639. An additional lease fee applies beginning at the end of the fourth year, in which Industry Storage will pay the excess of 18 percent of its gross revenues over the base lease fee for the same year.

Lessee's activities may not interfere with the operation of Edison's transmission facilities that cross the site, and hazardous substances, explosives or flammable materials may not be stored or used on the site. Specific clearances must be maintained between electrical conductors, tower legs and steel and wood poles. Lessee is required to maintain adequate access roads for Edison's use.

The Agreement grants Industry Storage the option to lease the site for the development and operation of a self-storage facility. The initial term of the lease is 35 years commencing on the date the option is exercised by Industry Storage, with an additional five-year lease term available.

Edison retains the right to enter the site at all times, to impose temporary restrictions, to occupy and use the site to perform necessary work, and it retains the right of eminent domain or inverse condemnation.

Industry Storage is responsible for all taxes and fees levied against the site and improvements thereon, and for obtaining all necessary permits. It must maintain appropriate insurance and agrees to indemnify Edison against all normal liability claims relating to the site.

#### **Ratemaking Treatment**

Edison proposes that all revenues from the lease be treated as Other Operating Revenue (OOR), with 50% of the revenues recorded in the Secondary Land Use Revenue (SLUR) Memorandum Account pending final disposition of these funds by the Commission.

#### **Environmental Matters**

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. (Public Resources 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. (Public Resources Code § 21065.)

Pursuant to this statutory directive, Commission staff from the Energy Division Environmental Review Team have engaged representatives in discussions on both the applicability of CEQA to the project proposed in SCE's application and the potential environmental impacts that might reasonably be foreseen for such project. Based upon these discussions and its independent assessment of the proposed project, staff has determined that the proposed project, in its entirety, has the potential for direct or indirect physical changes to

the environment which are reasonably foreseeable. Therefore, staff has determined that an environmental review of the project proposed by SCE in the instant application, and for which a discretionary approval for a leasing agreement is sought by SCE from the Commission, is required pursuant to CEQA prior to implementation of the proposed project.

Although the lease at issue is for self-storage uses, development of the property by the lessee is subject to all applicable laws and, before any use or development will be permitted, discretionary approvals from other public agencies having jurisdiction will be required. This discretionary approval process will also trigger application of CEQA.

The issue is presented whether the necessary CEQA review is performed by the Commission or by another state or local authority. CEQA guidelines expressly recognize that the timing of CEQA review "involves a balancing of competing factors," and that such review should occur "as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." (14 Cal. Code of Regulations § 15004.)

In this case, the Commission will defer to the appropriate state and local authorities having jurisdiction over any proposed changes in use of the site. These authorities are generally in a superior position to evaluate local environmental impacts and develop appropriate mitigation strategies.

Such deference is appropriate under the circumstances here and will not result in any regulatory gap. CEQA specifically applies to discretionary projects such as issuance of conditional use permits and approval of tentative subdivision maps. (See pub. Res. Code § 21080; see also *Myers*, *supra*, 58 Cal. App. 3d at 424.) Accordingly, if and when there is a more developed proposal to change

the use of the site, the appropriate state and local authorities having authority over such proposed uses must conduct environmental review under CEQA.

Furthermore, in lieu of conducting CEQA review at this time, the Commission may condition its approval of the proposed lease on lessee's compliance with all applicable environmental regulations. Such conditional approval is commonly imposed and is consistent with Commission precedent under CEQA. (See Sundstrom v. County of Mendocino, 202 Cal. App. 3d 292, 308 (1988), citing Perley v. Board of Supervisors, 137 Cal. App. 3d 424, 429 (1982); see also In Re: SpectraNet SGV, D.97-06-020, Cal. PUC LEXIS 367 at \*37 (1997).)

Due to these circumstances, staff reports that it has concluded that no further environmental review pursuant to CEQA will be required for the approval of this application by the Commission because such an environmental review will be required and conducted by local jurisdictional authorities in their discretionary approval of local permits required for the subsequent later actions necessary to develop the property at issue in this application. Staff's report dated November 16, 1998 addressed to the Administrative Law Judge for this proceeding and a supporting letter from SCE to staff dated August 17, 1998 are on file in this proceeding.

### Discussion

Under Public Utilities (PU) Code § 851, 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." (See, e.g., Universal Marine Corporation (1984) 14 CPUC 2d 644.)

In D.93-04-019, the Commission observed that "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 effective service to utility customers."

This proposal will achieve that result, and the level of revenue will be substantially higher than that achieved from the former lessee, benefiting both ratepayers and the utility. The conditions in the proposed lease adequately protect Edison against interference with its operations by the lessee. Therefore, the proposed lease is in the public interest and should be authorized promptly to obtain the benefits as soon as possible.

Edison notes that the revenue from the previous lease on this site was credited to the OOR account, and suggests the same ratemaking treatment for this lease.

That policy was established by the Commission in D.96-12-024 dated December 9, 1996, in approving a lease similar to this one. That decision ordered Edison to preserve a 50/50 sharing of revenue between the utility and ratepayers, by crediting all the revenues to Edison's Other Operating Revenue (OOR) Account 454.611 (Secondary Land Use), with Edison's 50% to be credited to the utility, and the ratepayers' 50% placed in a memorandum account until further order of the Commission. Currently, that memorandum account, the SLUR Memorandum Account is being addressed in Edison's Application 97-06-021, filed on June 12, 1997, which seeks approval of a new revenue sharing mechanism for gross revenues received from enhanced utilization of utility assets, including leases of land.

We will direct Edison to deal with these revenues in that manner, pending further Commission action on the ratemaking issue.

As mentioned above, Edison addresses its compliance with the Commission's Affiliate Transactions Rule VII.F in its application. Commission D.97-12-088 established, and D.98-08-035 modified, Rules which govern

transactions between energy utilities and their affiliates, and the provision by the utilities of nontariffed products and services. The lease sought by Edison is an existing nontariffed service, as described in its Advice Letter 1286-E.<sup>1</sup> As such, Rules VII.C.4 and VII.G apply here. Rule VII.C.4 lists five conditions which must be met:

- a. The nontariffed product or service utilizes a portion of a utility asset or capacity;
- b. Such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
- c. The involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;
- d. The products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and
- e. The utility's offering of such nontariffed product or services does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

The Rules require that the utility inform the Commission by advice letter of the utility's existing or new nontariffed products and services, and how their provision complies with the Rules. However, Rule VII.G requires that, if Commission authority is sought pursuant to Section 851, "the utility need not file

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<sup>1</sup> We grant authority in this Decision for the lease sought by Edison in its application. We will address Advice Letter 1286-E in a subsequent resolution and do not prejudge it here.



a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule."

The record indicates that the conditions specified by the affiliate transaction Rules have been satisfied for this existing nontariffed service provided by Edison.

We conclude that the proposed lease is in the public interest and should be authorized promptly to obtain the benefits as soon as possible.

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

#### **Findings of Fact**

1. Edison is an electric public utility subject to the jurisdiction of the Commission.
2. Edison has a site on its Etiwanda-Walnut-Mesa transmission line right of way available for secondary uses.
3. Edison has entered into a proposed lease with Industry Storage, subject to Commission approval, which would result in substantially greater revenues from the lease than were achieved from the prior lessee.
4. The proposed lessee, Industry Storage, is a newly formed company with a principal who has experience in developing self-storage facilities.
5. Industry Storage will finance, construct, and maintain the self-storage facility, bearing the costs, and making payments to Edison.
6. Revenue from the lease would be shared between ratepayers and shareholders.
7. The proposed project, in its entirety, has the potential for direct or indirect physical changes to the environment which are reasonably foreseeable; however,

lessee's plans to build are presently preliminary and contingent upon numerous factors.

8. CEQA review will be performed by the appropriate local authority.
9. There are no protests or requests for hearing.
10. This lease is an existing nontariffed service, as Edison describes in its Advice Letter 1286-B.
11. As such, Rules VII.C.4 and VII.G of the Commission's affiliate transaction Rules apply here.
12. The record indicates that the conditions specified by the affiliate transaction Rules have been met for this nontariffed service provided by Edison.

#### **Conclusions of Law**

1. No public hearing is necessary.
2. Joint use of utility property when practical offers economic and environmental benefits.
3. CEQA review is deferred to the appropriate state and local authorities having jurisdiction over proposed changes in use of the site.
4. Edison should be authorized pursuant to PU Code § 851 to lease a 6.51-acre site located on its Etiwanda-Walnut-Mesa transmission line right of way on Gale Avenue in the City of Industry.
5. Edison should be ordered to credit the revenues as received to the OOR account with a 50/50 split between ratepayers and shareholders.
6. This decision should become effective on the date signed.

### **O R D E R**

**IT IS ORDERED that:**

1. Southern California Edison Company (Edison) is authorized pursuant to Public Utilities Code § 851 to enter into a lease of 6.51 acres of its Etiwanda-

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Walnut-Mesa transmission line right of way to Industry Storage, LLC, under the terms and conditions set forth in the application.

2. As received, all revenues from the lease shall be credited to Edison's Other Operating Revenue account 454.611 (Secondary Land Use), with 50% credited to Edison, and 50% placed in the Secondary Land Use Revenue Memorandum Account for ratepayers until further order of the Commission.

3. Edison 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.

4. The authority granted in Ordering Paragraph 1 shall expire if not exercised before November 1, 1999.

5. Approval of this lease is conditional upon compliance by lessee with applicable federal, state and local environmental regulations.

6. This proceeding is closed.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners