

Decision 00-02-041 February 17, 2000

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 at Santiago Substation to Irvine R.V. Storage, LLC.

Application 99-11-029
(Filed November 22, 1999)

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 Irvine R.V. Storage, LLC a 12-acre site located on a portion of SCE's Santiago Substation property in the City of Irvine. The Santiago Substation is part of the Santiago 66 kV system and includes facilities subject to Commission jurisdiction. Irvine R.V. Storage, LLC currently licenses the site from SCE for operation of a recreational vehicle storage facility pursuant to an Option Agreement Between SCE and Irvine R.V. Storage, LLC (Agreement), dated September 3, 1998. Irvine R.V. Storage, LLC exercised the option to license the property and commenced operations on October 1, 1998.

SCE and Irvine R.V. Storage, LLC now desire to convert the license into a lease so that Irvine R.V. Storage, LLC can secure permanent long-term project financing which will enhance the viability and continued long-term success of the recreational vehicle 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, Irvine R.V. Storage, LLC intends to continue to

operate a recreational vehicle storage facility on the site following conversion of the license into a lease.

The application was filed on November 22, 1999 and was noticed on the Daily Calendar on November 30, 1999. In Resolution ALJ 176-3028, dated December 2, 1999, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not reviewed. 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 176-3028.

Applicant

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.

Background

The site is approximately 12 acres and is located on a portion of SCE's Santiago Substation. The current use of the site for a recreational vehicle storage facility by Irvine R.V. Storage, LLC is consistent with its primary use as a substation. SCE acquired this land from the Irvine Company, a West Virginia corporation on January 18, 1967.¹ On May 31, 1983, this site was licensed to Sunnyslope Tree Farm Company for horticulture purposes. The License Agreement for Sunnyslope Tree Farm Company expired on February 28, 1995. The annual income stream from the Sunnyslope Tree Farm Company License ranged from \$7,312.00 in 1983 to \$13,140.00 in 1995. The existing license with Irvine R.V. Storage, LLC generates a base revenue of \$30,000 in Year 1; \$40,000 in Year 2; \$80,000 in Year 3; \$120,000 in Year 4; \$130,000 in Years 5 through 7; \$140,000 in Years 8 through 10; \$151,200 in Years 11 through 15; \$163,300 in Years 16 through 20; and \$176,350 in the subsequent license years.

Revenue

Operation of the recreational vehicle storage facility is compatible with SCE's operation of the substation and the subtransmission lines connected thereto. The license fees generated by the project are 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 Letter 1286-E which set forth proposed categories of non-tariffed products and services offered for sale by SCE

¹ The total book value of the 12 acres is \$205,453.

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 and modified in Appendix B of D.98-08-035. Attachment B to Advice Letter 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 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 revenues that: 1) derive from tariffs, fees, or charges established by the Commission or the 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-tariffed 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. 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.

Agreement

The Agreement granted Irvine R.V. Storage, LLC the option to license the site for the development and operation of a recreational vehicle storage facility. The initial term of the license is 40 years, which commenced on the date Irvine R.V. Storage, LLC exercised the option. 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 Irvine R.V. Storage, LLC 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 costs will enhance the viability and future success of the project which will generate a consistent income stream benefiting ratepayers.

As discussed above, Irvine R.V. Storage, LLC pays an annual base license fee of \$30,000 in the first year, escalating to \$176,350 in Year 21 through the end of the term. The base fee will be further adjusted at the expiration of the twentieth and thirtieth years of the term based on the then current fair rental value of the property, excluding the value of Irvine R.V. Storage, LLC's improvements. In no event, however, will the adjusted base fee be less than the base lease fee otherwise payable immediately prior to such adjustment, or increase more than 35% per year compounded annually for ten years.²

² Section 3.1(b): For example, the base license fee payable in the twenty first years of the lease term could not be less than \$163,300, the amount of the base license fee payable in the twentieth year, or more than approximately \$176,350.

The Agreement provides that Irvine R.V. Storage, LLC's activities must not interfere with the operation of the substation and the electrical subtransmission facilities that cross the site. Irvine R.V. Storage, LLC is not allowed to use or store hazardous substances, explosives or flammable materials on the site. Any equipment used by Irvine R.V. Storage, LLC will be used and operated to maintain a minimum clearance of seventeen feet from all overhead electrical conductors. SCE also required Irvine R.V. Storage, LLC to maintain a minimum 100-foot radius around all towers legs and a 10-foot radius around all steel and wood poles. SCE also required Irvine R.V. Storage, LLC to provide and maintain access roads on the property that are at least sixteen feet wide and capable of supporting a gross load of 40 tons on a three-axle vehicle. SCE has reviewed and approved construction plans and specifications related to the development of this project.

The Agreement satisfies the provisions of Affiliate Transaction Rule VII.C.

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

Irvine R.V. Storage, LLC is responsible for all personal property taxes, as well as other general or special assessments or fees levied against the property or the improvements thereon. Irvine R.V. Storage, LLC has obtained all permits and approvals for the construction and operation of a recreation vehicle facility. Irvine R.V. Storage, LLC must maintain appropriate comprehensive general

liability insurance, comprehensive auto liability insurance, and workers' compensation insurance. Irvine R.V. Storage, LLC has also agreed to indemnify SCE against all liability for damages or injury to persons on the property except to the extent caused by SCE's negligent or willful misconduct.

Determination of Best Secondary Use

The utility's objective in selecting secondary uses for utility property is to find uses that will provide the greatest revenue consistent with the utility's obligations to maintain the safety and reliability of its facilities. The facilities located on the Santiago Substation site are used in the transmission and distribution of electricity to homes and business in various locations in the cities of Irvine, Tustin, and Santa Ana. Because a substation and power lines are present on the site, secondary land uses of the 12 acres of utility property are limited by restrictions and height clearances.

To evaluate possible secondary uses for this type of utility property, SCE conducted a survey in 1990 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 recreational vehicle storage facility offered the highest level of potential revenues for this particular site.

Valuation Offsite

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 of 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 hired appraiser Steven J. Decker & Associates to compute rent paid by comparable recreational vehicle facilities in Southern California as a function of the effective gross income of the facility. The annual base rent SCE will receive from Irvine R.V. Storage, LLC (approximately 22% of project gross revenues in Year 4) falls within the acceptable market range established by the appraiser based on the analysis of comparable facilities.

Selection of Developer

Irvine R.V. Storage, LLC was provided with the opportunity to develop this site because of the background and development experience of its members. Irvine R.V. Storage, LLC is a limited liability company, specializing in the development and operation of recreational vehicle storage facilities. Irvine R.S. Storage, LLC was formed in April 23, 1997, by five individuals (Robie Ky Coffing, Douglas J. Coffing, Brian J. Hale, Lisa baziak Halle and Dan Wilson). Although Irvine R.V. Storage, LLC is a newly-formed company, its principals have combined experience in the real estate industry, recreational vehicle storage business and in law.

For over thirty years, Douglas and Robie Coffing have owned and managed the Laguna Hills RV Storage Facility within the City of Irvine. Laguna Hills RV Storage is one of Orange County's oldest and largest vehicle storage facilities capable of storing over 700 vehicles. The Coffings will share in the day to day management of the facility. Brian Halle has over 15 years of commercial real estate experience. Brian Halle is also an attorney at law with extensive experience with the land entitlement process. Lisa Halle is a practicing attorney at law and specializes in the area of workers' compensation. Dan Wilson has

over fifteen years of commercial real estate experience and has managed a \$300,000 commercial loan portfolio.

Environmental Matters

Irvine R.V. Storage, LLC has obtained all permits and approvals required by the appropriate governmental agencies having jurisdiction for the development of a recreational vehicle storage facility on the site. On August 27, 1997, the Zoning Administrator of the City of Irvine adopted the Negative Declaration in support of Conditional Use Permit 26741-CPM and issued the conditional use permit for development of the project. In accordance with Article 6.2(h) of the Agreement, Irvine R.V. Storage, LLC 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 jurisdiction.

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.)

Development of the property by Irvine R.V. Storage, LLC was subject to all applicable laws and discretionary approvals from the City of Irvine. 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 26741-CPM. Consequently, no additional CEQA review by the Commission is required at this time.

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."³ 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 substation or subtransmission lines.⁴ To the contrary, the Commission has determined that the public interest is served when the 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 continue to provide revenues for the benefit of ratepayers

³ See, e.g., *Universal Marine, Corporation*, D.84-04-102, 1984 Cal. PUC LEXIS 962, *3, 14 CPUC 2d 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 CPUC 2d 233.

⁴ 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.

with minimal risk to the ratepayers, SCE requests the Commission to authorize the lease.

Waiver of Comment Period

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

Findings of Fact

1. SCE requests authority, pursuant to Section 311 (g)(2) of the Public Utilities Code, for SCE to lease a 12-acre site on available land at its Santiago Substation to Irvine R.V. Storage, LLC for vehicle storage 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 self-storage facilities is compatible with Edison'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 leases will not be adverse to the public interest.

7. Development of the property by Irvine R.V. Storage, LLC was subject to all applicable laws and discretionary approvals from the City of Irvine. 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 26741-CPM. 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 Irvine R.V. Storage, LLC the property as set forth in Application (A.) 99-11-029, subject to the reservations therein described.

2. Within 10 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.

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

5. A.99-11-029 is closed.

This order is effective today.

Dated February 17, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners