

Decision 00-06-056 June 22, 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 on the Laguna Bell-Lighthipe Transmission Line Right of Way to CT Self Storage Fund, LLC.

Application 00-03-048
(Filed March 24, 2000)

OPINION

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to CT Self Storage Fund, LLC (CT) a 7.8-acre site located on a portion of SCE's Laguna Bell-Lighthipe 220-kilovolt transmission line right of way in the City of Southgate. CT will use the site to operate a self-storage facility, a use that SCE states will not interfere with its utility operations. The application is granted.

2. Background

The 7.8-acre site is part of the Laguna Bell-Lighthipe transmission line system.¹ SCE acquired the land as two separate parcels in 1928 and 1930. The property has been used for a Christmas tree farm, but that use was discontinued at the end of March.

¹ The site is bounded on the north by Union Pacific Railroad, on the east and west by industrial users and on the south by Firestone Boulevard.

SCE proposed to lease the site to CT for development and operation of a self-storage facility. SCE would continue to own and operate its transmission facilities, and it would retain unobstructed access to the site. SCE states that revenue from the lease would be shared with SCE's ratepayers.

3. Terms of the Lease

The initial term of the lease to CT is 30 years. CT would pay annual rent of \$57,725 in the first year, \$86,590 in the second year, \$115,453 in the third year, with a 2% annual increase thereafter through year 20. The base rent would be adjusted at the end of the 20th year based on the then current fair rental value, excluding the value of lessee-owned improvements. In no event, however, would the adjusted base rent be less than the base rent otherwise payable immediately prior to the adjustments. As additional rent, at the end of each year, CT will pay the excess of 15% of its gross revenues over the base rent for the same year.

The lease fees are substantially higher than the fee of \$17,000 per year paid by the previous lessee for its Christmas tree farm.

The agreement provides that CT's activities must not interfere with the operation of the electrical transmission facilities that cross the site. CT would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least an 18-foot clearance from all overhead electrical conductors. SCE also would require CT to maintain a 100-foot radius around all tower legs and a 10-foot radius around all steel and wood poles. CT would provide and maintain access roads on the property. The lessee would be responsible for obtaining all permits and approvals for construction, as well as any zoning changes or use permits required for the operation of a self-storage facility.

Under the lease, CT would be responsible for all personal property taxes and fees levied against the property and improvements, and would maintain comprehensive liability insurance, auto insurance and workers' compensation insurance. The company would indemnify SCE against all liability for damages or injury to persons or property not caused by SCE's negligent or willful misconduct.

4. Determination of Best Secondary Use

SCE states that its objective in selecting secondary uses for utility property is to find those uses that will provide the greatest revenue consistent with the utility's obligation to maintain the safety and reliability of its facilities. To evaluate secondary uses for this type of property, SCE in 1990 conducted a survey of the secondary use policies of nine utilities across the nation. SCE states that the survey showed four appropriate uses for the unused portions of similar properties: auto parking, recreation vehicle storage, equipment storage, and self-storage. Of those uses, SCE states that a self-storage facility offered the highest level of revenue for the site.

To evaluate the rental value for the site, SCE received proposals from various developers. After reviewing the proposals, SCE reviewed rent paid by comparable industrial-zoned sites in the general area and by comparable self-storage facilities in Southern California. According to SCE, the proposed lease provides for rental payments that fall within the acceptable market range and are comparable to the annual base rent as a percentage of gross income found in other agreements approved by this Commission.

5. Selection of Lessee

SCE states that CT was given the opportunity to develop the property because of the background and financial position of the company. CT Realty

Corporation is a member and a manager of CT Self Storage Fund, LLC. The two primary members of CT are Robert Campbell, president, who has 25 years of real estate development experience, and U. T. Thompson III, chairman of the CT Realty Corporation, a lawyer and real estate broker with 20 years of experience in real estate ventures. CT Realty Corporation was formed in 1994 and has acquired 27 properties with a total value of \$175 million.

6. Environmental Review

Under the proposed lease, CT is required to procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations and requirements for permits and approvals from various governmental agencies having jurisdiction over the development of the proposed storage facility.

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. Resources Code § 21080.) Since development of the property by CT is subject to all applicable laws and discretionary approvals of the City of Southgate, the Commission may defer to local authorities having jurisdiction over the use of the site. SCE notes that local authorities are generally in a superior position to evaluate local environmental impacts and develop appropriate mitigation measures. The Commission has followed this course in similar applications. (See Decision (D.) 99-02-036 and D.99-04-066.)

Deference to local authorities is appropriate in this application. CEQA specifically applies to discretionary projects such as issuance of conditional use permits. (See Pub. Res. Code § 21080.) A proposal to change the use of the site here will require state and local authorities to conduct an environmental review under CEQA.

In lieu of conducting a 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 (1988) 202 Cal. App.3d 292, 308; In re SpectraNet SGV, D.97-06-020.)

The Commission's staff has concluded that no further environmental review is required for the approval of this application by the Commission because environmental review will be required and conducted by local authorities in their discretionary approval of permits required prior to the start of construction. Local authorities are in a better position than this Commission to review the lessee's building plans and to assess any impact on the community.

7. Treatment of Revenues

In its application, SCE states that all of the revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's other 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 here 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 a "passive" product.²

8. Comments by Advocacy Staff

On May 3, 2000, the Commission's Office of Ratepayer Advocates (ORA) submitted comments supporting SCE's application on the condition that ratepayers share in the revenues in the manner set forth in the application. ORA states that its examination of the application shows that SCE has taken appropriate steps to retain control over the use of its transmission and distribution lines at the site, and that operation of SCE's facilities to serve its customers will not be adversely impacted.

9. Discussion

Section 851 of the Public Utilities 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 [C]ommission 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 CPUC2d 644.)

The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect the utility's operation of the transmission lines. Moreover, if the leased property becomes necessary for utility operations, SCE

² See Attachment B to 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. Vehicle storage is listed as an existing product or service within these categories. 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.

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.

In Resolution ALJ 176-3036, dated April 6, 2000, 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 176-3036.

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 Laguna Bell-Lighthipe transmission line right of way in the City of Southgate available for secondary use, and it seeks to obtain revenue for ratepayers and shareholders through a secondary use lease.

³ 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."

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 proposed lessee, CT, is managed by CT Realty Corporation, which since 1994 has acquired 27 properties with a total of value of \$175 million.

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. ORA does not oppose 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 7.8-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. 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 a 7.8-acre site located on a portion of SCE's Laguna Bell-Lighthipe transmission line right of way in the City of Southgate to CT Self Storage Fund, LLC (CT), 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 00-03-048 is closed.

This order is effective today.

Dated June 22, 2000, at San Francisco, California.

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

President Loretta M. Lynch, being necessarily absent, did not participate.