

Decision 00-06-057 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 West Lugo-Mira Loma Transmission Line Right of Way to Secured Equities Corporation.

Application 00-03-046
(Filed March 24, 2000)

OPINION

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to Secured Equities Corporation (Secured Equities) a 4.5-acre site located on a portion of SCE's West Lugo-Mira Loma transmission line right of way in the City of Rancho Cucamonga. Secured Equities will use the site to operate a storage facility for recreational vehicles and boats, a use that SCE states will not interfere with its utility operations. The application is granted.

2. Background

The 4.5-acre site, a portion of an existing 18-acre parcel,¹ contains 500-kilovolt (kV) transmission line circuits, underground distribution circuits, and a 35-foot-tall guy-stub pole. The primary use of the property is as a right of way for above-ground 500-kV transmission lines. SCE acquired the land from

¹ The 18-acre parcel is bounded on the east by the County of San Bernardino's Dry Creek Flood Control Channel, on the west by a 4-acre self-storage facility, on the north by 13 acres of additional SCE transmission line right of way, and on the south by Arrow Route.

the Mono Power Company in 1973. Gallo's Nursery, which previously licensed the property for horticulture purposes, has vacated the site and relocated to another SCE property.

SCE proposes to lease the 4.5-acre site to Secured Equities for development and operation of a recreational vehicle and boat 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 pursuant to Commission guidelines.

3. Terms of the Lease

The initial term of the lease to Secured Equities is 30 years. The company could renew the lease for one additional 10-year term. Secured Equities would pay annual base lease fees starting at \$38,000 in Year 1 and escalating to \$40,575 in Year 6. From Year 7 through Year 20, the base rent would be adjusted each year by 3%, compounded annually. The base license fee would be adjusted at the end of the 20th year and upon exercise of the renewal option to reflect then current fair rental values. In no event, however, would the adjusted base rent be less than the base rent otherwise payable immediately prior to the adjustments or increase more than 4% per year compounded annually for 10 years.

The lease fees are substantially higher than the fee of \$3,782 per year paid by the previous lessee, Gallo's Nursery.

The agreement provides that Secured Equities' activities must not interfere with the operation of the electrical transmission facilities that cross the site. Secured Equities would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least a 27-foot clearance from all overhead electrical conductors. SCE also would require Secured Equities to maintain a 50-foot radius around all tower legs and a 10-foot radius

around all steel and wood poles. Secured Equities 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, Secured Equities would be responsible for all personal property taxes and fees levied against the property and improvements, and would maintain comprehensive liability 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 recreational vehicle storage facility offered the highest level of revenue for the site.

To evaluate the rental value for the site, SCE's internal appraisal staff established a rental range for the 4.5-acre site by determining the price that the land would bring if available on the open market for any use or purpose, then applying a fair market rate of return to the established value. According to SCE, the proposed lease provides for rental payments which at Year 4 will be at mean market value regardless of the construction and operating restrictions placed on use of the property.

5. Selection of Lessee

SCE states that Secured Equities was awarded an option to lease the site because of the proposed use of the property and in consideration of the background and financial position of the company.

Secured Equities began its business operations as an investment and development company in 1992. It has constructed, owned and operated recreational vehicle storage facilities in Hemet, Upland, Apple Valley, Redlands and Palm Springs. It also has developed and owned several assisted care and Alzheimer's facilities. Lawrence Brennan, president of the company, has more than 20 years of experience in developing and operating self-storage facilities in California. James Keefe, vice president, has 15 years of land development experience and he has operated several self-storage and recreational vehicle storage projects.

6. Environmental Review

Under the proposed lease, Secured Equities 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 Secured Equities is subject to all applicable laws and discretionary approvals of the City of Rancho Cucamonga, 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 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 an 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 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 1, 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 sufficient 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.

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.

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 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 Edison 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.

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."

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 West Lugo-Mira Loma transmission line right of way in the City of Rancho Cucamonga 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 proposed lessee, Secured Equities, has constructed, owned and operated recreational vehicle storage facilities in numerous California communities.

5. Secured Equities will finance, construct and maintain a storage facility for recreational vehicles and boats at the West Lugo-Mira Loma 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 4.5-acre site to Secured Equities 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 4.5-acre site located on a portion of SCE's West Lugo-Mira Loma transmission line right of way in the City of Rancho Cucamonga to Secured Equities Corporation (Secured Equities), 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 00-03-046 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.

Given the Commission's general goal of completing ratesetting proceedings such as this in 18 months or less (e.g., Rule 6(e)), PG&E believes the best way to carry out the directive in D.00-02-046 is for the Commission to grant this Petition and close A.98-11-023, and for PBR performance standards for PG&E to be addressed in a separate docket. PG&E avers it will file a new application proposing PBR performance standards in compliance with D.00-02-046 after the Commission grants this Petition.

In addition to PBR performance standards, there are two other issues that were to be resolved in A.98-11-023, which PG&E states will need to be addressed in other dockets.

First, in A.98-05-007, D.99-04-021 adopted PG&E's proposal for a net revenue sharing mechanism for new non-tariffed products and services "on an interim basis until the Commission adopts a permanent revenue sharing mechanism in PG&E's PBR application (A.98-11-023)" (p. 11). PG&E presented its proposal for a permanent mechanism in Chapter 8 of the Supplemental Testimony submitted in this PBR proceeding on May 3, 1999. To avoid confusion about the status of the interim mechanism, PG&E requests that the Commission in its decision granting this Petition state, "The interim net revenue sharing mechanism for new non-tariffed products and services that was approved in D.99-04-021 will continue in effect until further order of the Commission."

The second issue is ratemaking for the proceeds from sales or transfers of utility property pursuant to Pub. Util. Code § 851, as it has arisen in five recent proceedings:

- In A.97-06-002, D.99-02-033 authorized PG&E to sell two parcels of land and ordered PG&E to propose alternate ratemaking treatment for the net proceeds resulting from the sale, and then D.99-10-001 "deferred [consideration of ratemaking issues] to Pacific Gas and Electric Company's on-going performance based ratemaking (PBR) proceeding

application (A.98-11-023)" (p. 3) and authorized PG&E "to establish a memorandum account to track the net-of-tax gains and losses from non-generation-related land sales pending resolution of these issues in its PBR proceeding" (p. 4).

- In A.99-07-015, D.99-12-019 authorized PG&E to sell a certain parcel of land, with consideration of ratemaking issues "deferred to PG&E's ongoing performance-based ratemaking proceeding A.98-11-023 as was ordered in Decision 99-10-001" (p. 10).
- In A.99-08-008 and A.00-03-010, PG&E proposed the same process for consideration of ratemaking issues regarding the sale of certain parcels of land and a service center, respectively.
- In A.99-04-048, D.99-12-030 authorized PG&E to sell certain limited sole-customer facilities and approved the proposed accounting and ratemaking treatment "subject to... their re-examination in PG&E's current PBR proceeding" (p. 9).

As with PBR performance standards, PG&E plans to file a new application to resolve these deferred Section 851 ratemaking matters should the Commission grant its Petition.

The Office of Ratepayer Advocates (ORA) supports the Petition on two conditions:

1. the Commission should require PG&E to file on a date certain an application to address Pub. Util. Code § 851 ratemaking issues, and;
2. the Commission should identify a specific forum in which PG&E must propose a permanent revenue sharing mechanism for non-tariffed products and services.

PG&E has no objection to either condition. They are reasonable and will be adopted. In D.99-04-021, we expected PG&E to propose a revenue sharing mechanism for non-tariffed products and services in its PBR. We will order it in PG&E's next PBR application, to be filed by September 1, 2000. We will also

order PG&E to address Pub. Util. Code § 851 ratemaking issues in that same application.

There are no protests. We will grant the Petition.

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.

Findings of Fact

1. Granting the Petition will comply with our goal to complete ratesetting proceedings within 18 months.
2. PG&E will file a new application by September 1, 2000 proposing PBR performance standards in compliance with D.00-02-046, to resolve the Section 851 matters discussed above, and to propose a permanent revenue sharing mechanism for non-tariffed products and services.

Conclusion of Law

The Petition should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The Petition of Pacific Gas and Electric Company (PG&E) to withdraw Application (A.) 98-11-023 is granted.
2. PG&E shall file a new application by September 1, 2000 proposing performance-based ratemaking (PBR) performance standards in compliance with Decision (D.) 00-02-046.
3. The deferred Pub. Util. § 851 ratemaking matters from D.99-02-033, D.99-10-001, D.99-12-019, D.99-12-030, and A.99-08-008, and A.00-03-010 shall be considered in PG&E's PBR application to be filed by September 1, 2000.

4. The interim net revenue sharing mechanism for new non-tariffed products and services that was approved in D.99-04-021 will continue in effect until further order of the Commission.

5. PG&E shall propose a permanent revenue sharing mechanism for non-tariffed products and services with its September 1, 2000 PBR application.

6. A.98-11-023 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.