

Decision 99-02-035 February 4, 1999

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 Santiago Estrella 66 kV Right of Way to SSD, LLC.

Application 98-02-042
(Filed February 26, 1998)

O P I N I O N

Southern California Edison Company (SCE) and SSD, LLC (SSD) jointly request authority, pursuant to Public Utilities (PU) Code § 851, for SCE to lease approximately 4.53 acres of available land on the Santiago Estrella 66 kV subtransmission line right of way to SSD for development of a self-storage facility.

The application was filed on February 26, 1998 and was noticed on the Daily Calendar on February 27, 1998.

In Resolution ALJ 176-2988, dated March 12, 1998, the Commission preliminarily categorized this proceeding 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 176-2988.

Applicants

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 power and energy for the use of its customers in

California. In conducting such business, SCE operates an interconnected and integrated electric utility system.

SSD, a Nevada limited liability company, is a newly formed company comprised of companies experienced in the design, construction, and management of self-storage facilities throughout the United States. The firms that comprise SSD are described below:

Cook Properties - Cook Properties is a real estate developer located in Provo, Utah. Established in the early 1980s, Cook Properties has been active in the construction of government build-to-suit projects, residential developments, and self-storage facilities. During the past five years, Cook Properties has primarily focused on residential subdivisions and self-storage facilities. In 1995, Cook Properties completed the development of a 104,000-square-foot self-storage facility in Lakewood, Colorado.

EJW Development Group, Inc. (EJW) - EJW was incorporated on April 6, 1995 in California. EJW consists of two firms:

Jordan Valli Architects, Inc. is a full service design firm specializing in self-storage projects. Established in 1982, the firm has designed more than 150 self-storage facilities throughout the western United States. Jordan Valli is highly skilled in public presentations and development processing through local governmental agencies, and has a proven track record in dealing with cities and communities in securing approval of conditional use permits and zone changes. In California, Jordan Valli has successfully placed self-storage facilities in Alhambra, Burbank, Corona, Costa Mesa, Los Angeles, Orange, San Gabriel, Stanton, Torrance, Westminster and Whittier.

Eitel Wade, Inc. is a firm specializing in the construction of quality self-storage facilities throughout the United States. The principals of Eitel Wade, Inc. have 42 years of experience in the construction of commercial and residential properties. During the last four years, Eitel Wade, Inc. has constructed 18 self-storage facilities.

The Agreement

The terms and conditions of the lease are set forth in the Option Agreement between SCE and SSD (Agreement) attached to the application dated August 15, 1997. As described in the Agreement, SSD intends to develop and operate a self-storage facility on the available land.

Development and operation of the proposed self-storage facility is compatible with SCE's operation of the Santiago Estrella subtransmission line. Throughout the lease period, SCE will continue to own and operate the line, and will retain unobstructed access to the line's right of way.

The initial term of the lease is 30 years beginning on the date SSD exercises the option. SSD can renew the lease for two additional 10-year terms. If the Commission grants this application, a lease will be created upon SSD's exercise of the option.

Under the Agreement, SSD will pay annual base rent of \$50,000 in the first year, \$100,000 in the second year, and \$150,000 in the third through 10th years. The base rent will be adjusted at the 10th and 20th years of the lease term and upon the renewal option based on the then current fair rental value of the property, excluding the value of SSD improvements. In no event, however, will the adjusted base rent be less than the base rent otherwise payable immediately prior to such adjustment, nor will it increase more than 6.5% per year compounded annually for 10 years. As additional rent, at the end of each year, beginning in year four, SSD will pay the excess of 15%, and commencing in year 11 of the lease term, the excess of 20%, of its gross revenues over the base rent for the same year.

The Agreement provides that SSD's activities will not interfere with the operation of the electrical transmission facilities that cross the site. SSD is not allowed to use or store hazardous substances, explosives, or flammable materials

on the site. Any equipment used by SSD on or adjacent to the site will be used and operated to maintain a minimum clearance of 17 feet from all overhead electrical conductors. SCE also requires SSD to refrain from using any of the areas directly underneath electrical towers and to maintain a minimum 50-foot radius around all towers legs and a 10-foot radius around all steel and wood poles. SCE requires SSD 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 also has the right to approve construction plans and specifications and the selection of a general contractor for the development project.

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

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

Revenue

The subject property was previously licensed to the Irvine Company for landscape and beautification purposes for \$6,000 per year, which license fee was treated as Other Operating Revenue (OOR). Under the proposed Agreement, SCE will obtain revenues substantially higher than the previous license fee, thus benefiting ratepayers.

All of the revenues from the lease will be treated as OOR. Under presently authorized ratemaking treatment for OOR, SCE will record 50% of the revenues from this lease in the Secondary Land Use Revenue (SLUR) Memorandum Account pending a final disposition of the ratepayers' share of such revenues. Disposition of the SLUR Memorandum Account is being addressed in SCE's Application (A.) 97-06-021, filed on June 12, 1997, which seeks approval of a new OOR sharing mechanism for the gross revenues received from the enhanced utilization of utility assets, including leases of available land. Accordingly, the Commission should order SCE to file an advice letter adding the lease that is the subject of this application to the SLUR Memorandum Account. SCE requests that this application be approved and that the revenue from this lease should be recorded in the SLUR Memorandum Account until the Commission issues a decision on SCE's proposed revenue-sharing mechanism in A.97-06-021.

On January 30, 1998, SCE filed Advice Letter 1286-E which sets forth proposed categories of nontariffed products and services offered for sale by SCE and provided descriptions of the existing products or services within each category. This advice letter filing was made pursuant to Rule VII.F of the affiliate transactions rules contained in Appendix A of Decision (D.) 97-12-088. Attachment B to Advice Letter 1286-E identified the Secondary Use of Transmission Right of Ways and Land as a category of existing products or services and listed storage facilities as an existing product or service within that

category. This filing complies with the requirements of Rule VII for existing nontariffed products and services.

SCE acquired this land from the Irvine Company in April of 1973. From September of 1988 to December of 1997, this site was licensed to the Irvine Company for landscape and beautification purposes. All of the revenue from the Irvine Company license was credited to OOR. If the Irvine Company license remained in effect today it would only generate \$6,000 per year in revenue. In contrast, under the proposed lease with SSD, the 4.53 acres will generate an expected base revenue of \$50,000 in 1998, \$100,000 in 1999, and \$150,000 in the subsequent lease years. Thus, revenue from the proposed lease represents a substantial increase in OOR for the benefit of SCE's ratepayers.

Best Secondary use

SCE'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 66 kV Santiago Estrella subtransmission line is used in the transmission of electricity to homes and businesses in the Irvine area.

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; recreation vehicle storage; equipment storage; and self-storage. Of these possible uses, SCE determined that a self-storage facility offered the highest level of potential revenues for this particular site.

Valuation of The Irvine Site

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 or purposes 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 this site, SCE hired Charles Ray Wilson & Associates, MAI real estate appraisers, to compute rent paid by comparable self-storage facilities in Southern California as a function of the effective gross income of the facility. The annual base rent SCE will receive from SSD (approximately 18% of projected gross revenues) falls within the acceptable market range established by the appraiser based on the analysis of comparable facilities. In the event that SSD earns higher than projected revenues, SCE is entitled to additional rent at the end of each calendar year beginning with the fourth year of the lease term equal to the excess of 15%, and commencing in year 11 of the lease term, the excess of 20% of its gross revenues over the base rent.

The Proposed Transaction Is In the Public Interest

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 § 851 proceedings is whether the

proposed transaction is "adverse to the public interest".¹ The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect in any way the utility's operation of the Santiago Estrella subtransmission line. To the contrary, 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 customers². Because the proposed Agreement will provide additional revenues for ratepayers, with minimal risk to them, SCE requests Commission authorization of the lease³

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,

¹ See, e.g., *Universal Marine Corporation*, D.84-04-102, 14 CPUC2d 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.89-07-16*, 32 CPUC2d 233.

² *D.93-04-019*, p. 3 ("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 In *D.96-12-024* the Commission approved a similar agreement pursuant to which SCE leases available land to *Outback/Taft, LLC* for development of a self-storage facility.

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, 1997 are on file in this proceeding.

Waiver of Comment Period

PU Code § 311(g)(1) provides that this decision must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties in the proceeding have stipulated to waive the 30-day waiting period required by PU Code § 311(g)(1) and the opportunity to file comments on the draft decision. Accordingly, this matter will be placed on the Commission's agenda directly for prompt action.

Findings of Fact

1. SCE and SSD jointly request authority, pursuant to PU Code § 851, for SCE to lease approximately 4.53 acres of available land on the Santiago Estrella 66 kV subtransmission line right of way to SSD for development of a self-storage facility.
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. SSD, a Nevada limited liability company, is a newly formed company comprised of companies experienced in the design, construction, and management of self-storage facilities throughout the United States.
4. Development and operation of the proposed self-storage facility is compatible with SCE's operation of the Santiago Estrella subtransmission line.
5. The subject property was previously licensed to the Irvine Company for landscape and beautification purposes for \$6,000 per year, which license fee was treated as OOR.
6. Under the proposed lease, SCE will obtain revenues substantially higher than the previous license fee, benefiting ratepayers.

7. All of the revenues from the lease will be treated as OOR. Under presently authorized ratemaking treatment for OOR, SCE will record 50% of the revenues from this lease in the SLUR Memorandum Account pending a final disposition of the ratepayers' share of such revenues.

8. 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.

9. Because the proposed lease will provide additional revenues for ratepayers, with minimal risk to them, Commission authorization of the lease will not be adverse to the public interest.

10. 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.

11. CEQA review will be performed by the appropriate local authority.

12. 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. A public hearing is not necessary.
2. The proposed lease as set forth in the application, and the accounting treatment of the transaction as set forth in the application should be approved.
3. CEQA review is deferred to the appropriate state and local authorities having jurisdiction over proposed changes in use of the site.

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 SSD, LLC the property as set forth in Application 98-02-042, 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. SCE shall file an advice letter adding the lease that is the subject of this application to the Secondary Land Use Revenue Memorandum Account.
4. Approval of this lease is conditional upon compliance by lessee with applicable federal, state and local environmental regulations.
5. Application 98-02-042 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