

Decision 99-04-066 April 22, 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 to Instant Storage on Transmission Line Right of Way.

Application 98-07-019
(Filed July 8, 1998)

OPINION

Summary

This decision authorizes Southern California Edison Company (Edison) to lease a site along its Barre-Ellis transmission line in the City of Westminster to Instant Storage, for the purpose of operating a self-storage facility. The revenue generated by the lease will be shared between ratepayers and shareholders.

Background

In this application, Edison seeks a Commission order authorizing it to lease to Instant Storage a 5.48-acre site located on its Barre-Ellis 220-kilovolt transmission line right of way near Bolsa Avenue in the City of Westminster. Instant Storage will develop and operate a self-storage facility on the site.

Edison proposes that this application be categorized as ratesetting, 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 Instant Storage adverse to the public interest?

There are no protests to the application and no party has requested a hearing in this matter.

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 type of site.

Edison filed Advice Letter 1286-E pursuant to Rule VII.F of the affiliate transactions rules set forth in Appendix A of Decision (D.) 97-12-088. Appendix B of Advice Letter 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 non-tariffed products and services.

The Lease

The terms and conditions of the lease are set forth in the proposed lease agreement, which grants Instant Storage the option to lease the site for development as a self-storage facility. The initial term of the lease is 10 years, and may be renewed for three additional 10-year terms. The agreement provides for an expected base revenue lease fee of \$82,182 in year one, \$122,273 in year two, and \$164,364 in year three through the tenth year. The base lease fee will be adjusted upon each renewal option based on the then fair rental value of the property less the value of Instant Storage's 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 2% per year compounded annually for 10 years.

An additional lease fee applies at the end of each year, based on gross revenues over the base lease fee for the same year.

The revenues from this lease will be substantially higher than revenues obtained from the current lessee, Bolsa Nursery, which uses the site for horticultural purposes. Bolsa Nursery is planning to relocate and license another Edison property, but if its current license remained in effect, it would generate revenues of only \$10,960 per 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.

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 retains the right of eminent domain or inverse condemnation. Edison has the right to approve construction plans and specifications and to review the selection of a general contractor for the development project.

Instant 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

All of the revenue from the proposed leases will be treated as OOR. Under presently authorized ratemaking treatment for OOR, Edison will record 50% of the revenues from these leases 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 Edison'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 will order Edison to file an advice letter adding the leases that are the subject of this Application to the SLUR Memorandum Account until the Commission issues a decision on Edison's proposed revenue-sharing mechanism in A.97-06.921.

On January 30, 1998, Edison filed Advice 1286-E which set forth proposed categories of non-tariffed products and services offered for sale by Edison and provided descriptions of the existing products or services within each category. This Advice filing was made pursuant to Rule VII.F of the Affiliate Transactions Rules contained in Appendix A of D.97-12-088. Attachment B to Advice 1286-E identified to 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.¹ This filing complies with the requirements of Rule VII for existing non-tariffed products and services.

Valuation of the Barre-Ellis Site

Edison compared the fees negotiated for this site in relation to comparable self-storage facilities in Southern California as a function of the effective gross income of the facility. The annual base fee from this facility will be approximately 20% of the project gross revenues, which is within the acceptable market range and is in line with the rental income Edison will receive from the leases approved by the Commission in D.96-12-024, D.97-07-009 and D.97-07-010.

¹ We grant authority in this decision for the lease sought by Edison in its application. We do not address Advice Letter 1286-E in this decision.

Selection of Developer

Instant Storage was selected based on its development expertise and the self-storage background of the company's partners. The company began business operations in 1978 as a recreational vehicle and mini-storage company. One of the partners is also a partner in Industry Storage, with which Edison has also entered into a proposed lease for self-storage agreement and has filed Application (A.) 98-07-018 seeking Commission authority.

Discussion

Under Public Utilities (Pub. Util.) 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 CPUC2d 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." (Id., at 3.)

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.

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 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 A.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.

Pending further Commission action on the ratemaking issue, we will direct Edison to deal with these revenues in the same manner.

In Resolution ALJ 176-2997, dated July 23, 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, a public hearing is not necessary, nor is it necessary to alter the preliminary determination in ALJ 176-2997.

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

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 in discussions on both the applicability of CEQA to the projects proposed in Edison's application and the potential environmental impacts that might reasonably be foreseen for such projects. Based upon these discussions and its independent assessment of the proposed project, staff has determined that the proposed projects, in their entirety, have 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 projects proposed by Edison in the instant application, and for which a discretionary approval for a leasing agreement is sought by Edison from the Commission, is required pursuant to CEQA prior to implementation of the proposed projects.

Although the leases at issue are for self-storage uses, development of the properties 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.

This 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 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 are more developed proposals to change the uses of the sites, 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 leases 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 Edison to staff dated August 17, 1997 are on file in this proceeding.

Waiver of Comment Period

Pub. Util. 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 Pub. Util. 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. Edison is an electric public utility subject to the jurisdiction of the Commission.
2. Edison has a site on its Barre-Ellis transmission line right of way available for secondary uses.
3. Edison has entered into a proposed lease with Instant 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, Instant Storage, has experience in self-storage facilities.
5. Instant Storage will finance, construct, and maintain the self-storage facility, bearing the costs, and making payments to Edison.
6. All of the revenues from the lease will be treated as OOR. Under presently authorized ratemaking treatment for OOR, Edison 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.
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.

Conclusions of Law

1. The proceeding has been designated as ratesetting; no protests have been received; no 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. The proposed leases are not subject to further review under CEQA by the Commission.
5. Edison should be authorized pursuant to Pub. Util. Code § 851 to lease a 5.48-acre site located on its Barre-Ellis transmission line right of way in the City of Westminster.
6. Edison should be ordered to credit the revenues as received to the OOR account with a 50/50 split between ratepayers and shareholders.
7. 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 to enter into a lease of 5.48 acres of its Barre-Ellis transmission line right of way to Instant Storage, 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. Edison shall file an advice letter adding the leases that are the subject of this application to the Secondary Land Use Revenue Memorandum Account.

5. Approval of this lease is conditional upon compliance by lessee with all applicable environmental regulations.

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

7. This proceeding is closed.

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

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