

Decision 11-03-038 March 24, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for Authority to Lease Certain Fiber Optic Cables to the County of Los Angeles.

Application 10-07-003
(Filed July 2, 2010)

**DECISION GRANTING SOUTHERN CALIFORNIA EDISON COMPANY
AUTHORITY TO LEASE CERTAIN FIBER OPTIC CABLES
TO THE COUNTY OF LOS ANGELES**

1. Summary

This decision authorizes Southern California Edison Company (SCE) to lease certain fiber optic cables to the County of Los Angeles. SCE's lease with the County of Los Angeles is a lease of unused fiber on SCE's fiber optic system. Consistent with Decision 99-09-070, SCE's participation in the leases is classified as "active," and the revenue from the leases will be shared between shareholders and ratepayers using a 90/10 split (respectively).

2. Background

Southern California Edison Company (SCE) has requested a Commission order, pursuant to Pub. Util. Code § 851, authorizing it to lease to the County of Los Angeles (L.A. County) certain optical fibers along existing routes and additional routes being constructed in SCE's service territory.¹ L.A. County will

¹ L.A. County is a political subdivision of the State of California.

use the optical fibers involved in this application as part of its telecommunications network.

The leasing arrangements are set forth in the Fiber Use Agreement Between Southern California Edison Company and L.A. County, dated May 11, 2010 (Agreement).² Under the terms of the Agreement, SCE will provision certain optical fibers along a cable route within Southern California in a point-to-point configuration. SCE will utilize existing fiber optic cables when excess capacity is available.³ For those portions of the routes that do not have existing capacity, SCE will install new fiber optic cables, perfect land use rights, and construct any necessary facilities at shareholders' expense.⁴ SCE will own, operate, and maintain the entire fiber optic cable. L.A. County's use of the fibers is contingent upon Commission approval, as is construction of additional fiber optic cable, under the Agreement. Upon completion of the installation and approval of this application, SCE will assign certain fibers along each route to L.A. County, and will grant an exclusive lease for L.A. County's use.

It is unclear if all of the rights-of-way on which the fiber optics will be located include grants of a right to construct or lease facilities for use by a third

² A complete copy of the Agreement is included as an Attachment to our Order. Certain sensitive information, which we are ordering to be filed under seal, has been redacted in the public copy.

³ The following cities are traversed by the portions of SCE's existing fiber system (where there will be no new construction) subject to lease to L.A. County under the Agreement: Alhambra, Montebello, Monterey Park, Paramount, Rosemead, City of Commerce, Bell Gardens, and Long Beach.

⁴ Construction of the new fiber optic cables will take place in the following cities, contingent upon Commission approval and all necessary local permitting: Alhambra, Rancho Cucamonga, San Bernardino, Riverside, and Lake Forest.

party.⁵ SCE and L.A. County will assess the rights and acquire additional rights as necessary. To the extent additional rights are obtained by SCE, they will be shareholder funded. The Agreement does not include the right to enter the property upon which the SCE fibers are located, except at the L.A. County facilities. SCE will be responsible for the construction and maintenance of the cable and its electronics, while L.A. County will be responsible for the construction and maintenance of its equipment.

L.A. County and SCE have negotiated an arrangement in which L.A. County will make an initial, non-refundable payment of \$195,000. L.A. County will also make monthly payments of \$7,988, beginning after the Commission approves the Agreement and L.A. County has accepted the fiber. L.A. County will be responsible for all taxes resulting from its installation activities, and will keep SCE's facilities free from all liens and encumbrances.

This arrangement will enable SCE to generate additional revenues from the commercial use of its temporarily-available capacity, and will provide a financial benefit to ratepayers.⁶ SCE will retain title to all of the fiber optic cables installed under the terms of the Agreement, and will be free to find uses for the remaining fibers in the network ring, thereby expanding its ability to utilize temporarily-available utility capacity.⁷

⁵ No new rights-of-way and only one new easement is required for this project. The easement is from L.A. County for the property at 9300 Imperial County in the City of Downey.

⁶ The Application states that this benefit is without risk to ratepayers, and we have identified none.

⁷ Given more recent concerns about "improving utilization of infrastructure" and maximizing the use of existing "dark fiber," (see, e.g., National Broadband Plan, at § 6.1

Footnote continued on next page

The Agreement will generate revenues of \$674,280 over its initial term, and the lease of these resources will have no impact on SCE's ability to serve its customers. To the extent that use of these facilities becomes necessary to conduct electric utility operations, SCE will either renegotiate with L.A. County regarding the use of the relevant fibers or expand the existing capacity at no cost to ratepayers. All costs associated with the project will be paid by SCE's shareholders, and will not be included in electric utility rates.

3. Environmental Considerations

In Decision (D.) 93-04-019, D.94-06-017, D.95-05-039, and D.96-11-058 (all involving SCE's leases of temporarily-available conduit, duct or overhead cable, pole space, and optical fibers), the Commission noted that agreements involving the subject matter of this Application do not pose environmental hazards, and thus do not require environmental review under the California Environmental Quality Act (CEQA), Public Resources Code sections 21000 et seq.⁸ The Commission also followed this approach in D.00-01-014, PG&E's Section 851 application to permit Electric Lightwave, Inc. to install and use fiber optic lines

and Recommendation 11.16), we are concerned that contractual limitations on the City's use of the leased fiber, such as found in Section 26(c) of the attached agreement, might be inimical to the widespread availability of broadband service and prevent anchor community organizations from using the fiber leased by the County. Thus, our approval of this lease should not be read as approval of such conditions on a general or going-forward basis.

⁸ D.93-04-019 (agreement is exempt from provisions of CEQA "because it can be seen with a certainty that there is no possibility that the proposal may have a significant effect on the environment"); accord, D.94-06-017, D.95-05-039. In a case involving MCI's use of some of Pacific Gas and Electric Company's (PG&E) aboveground facilities and dark fiber, the Commission likewise found the proposal to be exempt from CEQA requirements. (D.92-07-007.)

on certain PG&E transmission towers, substations, rights-of-way, and other facilities.

As stated earlier, SCE will utilize existing fiber optic cables and facilities when available. We find that such actions qualify for a categorical exemption from CEQA as a minor alteration of existing utility structures involving negligible expansion of existing use (14 Cal. Code of Regulations section 15301(b)).

For those portions of the routes that do not have existing capacity, SCE will install new fiber optic cables, and construct any necessary facilities to support the cables. SCE has existing authority for such action pursuant to D.98-12-083. We continue to require SCE to follow all permit conditions and mitigation measures addressed in D.98-12-083 and its associated Mitigated Negative Declaration, including, but not limited to, the filing of a petition to modify its Certificate of Public Convenience and Necessity should it seek to build beyond the utility right-of-way. Additionally, consistent with the Mitigated Negative Declaration in Appendix D to D.98-12-083, SCE states that it will file the construction reports listing all new construction pursuant to this Agreement in its quarterly advice letter.

4. Discussion

No protests have been filed in response to the application. As SCE states, approval will afford a benefit to ratepayers with no associated risk. In particular, the project will enhance the efficient utilization of utility assets without damaging the environment.

This is the latest in a series of applications by SCE seeking Commission approval to lease temporarily-available underground conduit space, aboveground cable space, optical fiber or a combination of each. For example, in

D.93-04-019 and D.94-06-017, the Commission approved agreements that involved the leasing of SCE-owned underground cable and conduit space to competitive access providers. Similarly, in D.95-05-039, the Commission approved a lease of SCE-owned aboveground cable space on poles, facilities, and rights-of-way. The Commission further authorized the lease of optical fibers, underground conduit, and overhead cable space in D.96-11-058.

In evaluating the leasing arrangement between SCE and Metropolitan Fiber Systems of California, Inc., in D.93-04-019, we stated:

[T]he agreement makes productive use of what is currently vacant conduit space. It makes eminent good sense for California's energy utilities, with their extensive easements, rights of way, and underground conduits, to cooperate in this manner with the telecommunications utilities who are seeking to build the fiber optic network. Joint use of the 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.⁹

Consequently, Commission policy favors arrangements of the type proposed in the current application, which not only do not interfere with service to ratepayers, but benefit them.

In D.99-09-070, we adopted a settlement between SCE and the Commission's Division of Ratepayer Advocates (DRA) concerning SCE's application for a mechanism for sharing revenues resulting from non-tariffed products and services between shareholders and ratepayers. In that settlement, SCE and DRA agreed to classify all existing non-tariffed products and services as

⁹ 48 CPUC2d 602 at 603.

either active or passive. The agreement between SCE and DRA is memorialized in an attachment to the settlement agreement which was adopted by the Commission. The leasing of unused (or dark) fiber on SCE's fiber optic system was an existing non-tariffed product or service at the time, and the settlement provided that dark fiber on fiber optic system would be classified as "active." (D.99-09-070, Settlement Agreement at A-2.)

SCE's lease with L.A. County is also a lease of dark fiber on SCE's fiber optic system. SCE's participation in the lease is therefore classified as active, and the Agreement provides that revenue from the lease will be shared between shareholders and ratepayers using a 90/10 split pursuant to the revenue sharing mechanism adopted in D.99-09-070. This arrangement is also expected to enable L.A. County to provide better service to its telecommunications customers by facilitating the expansion of its network. We will approve the leasing arrangement set forth in the Agreement and grant the application, subject to the terms and conditions to protect SCE's ratepayers and the environment, detailed in the ordering paragraphs of this decision.

5. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of the Proceeding

Michael R. Peevey is the assigned Commissioner and Darwin E. Farrar is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SCE has entered into an agreement, subject to authorization by the Commission, under which SCE will provision certain optical fibers along a cable route within Southern California to form a redundant fiber optic network ring, and lease them to the County of Los Angeles. A copy of the Agreement is attached as an Attachment to this Decision.

2. The leasing arrangement governed by the Agreement will utilize SCE's assets in a manner compatible with its electric utility operations.

3. Use of the fiber system under the Agreement will have no negative effect upon service to SCE's customers.

4. Under the terms of the Agreement, SCE's ratepayers will receive a material financial benefit without incurring any additional financial risk, because all financial risk will be borne by SCE's shareholders.

5. The leasing arrangement under the Agreement is a lease of dark fiber on SCE's fiber optic system, and SCE's participation in the lease is therefore classified as "active" for the purpose of sharing revenues between shareholders and ratepayers.

6. The leasing arrangement under the Agreement is similar to other such arrangements that have previously been approved by the Commission.

7. The leasing arrangement qualifies for a categorical exemption as a minor alteration of existing utility structures involving negligible expansion of an existing use.

8. Should the leasing arrangement require the building of new facilities, SCE has previously received authority for such construction pursuant to D.98-12-083.

Conclusions of Law

1. Authorization of the leasing arrangement set forth in the Agreement would not be contrary to the public interest by reason of the matters set forth in Findings of Fact 2 through 8.
2. The Commission should approve the application by reason of Conclusion of Law 1.
3. This leasing arrangement is exempt from CEQA.
4. Any future construction that may be accomplished under this leasing arrangement has previously been authorized by this Commission pursuant to D.98-12-083.

O R D E R

IT IS ORDERED that:

1. Application 10-07-003 of Southern California Edison Company for authority to lease certain fiber optic cables to the County of Los Angeles, pursuant to the Fiber Use Agreement Between Southern California Edison Company and the County of Los Angeles, dated May 11, 2010, attached in redacted form as an Attachment to this Order, is approved.
2. Southern California Edison Company's motion to file under seal the confidential version of the agreement identified in the preceding paragraph is granted, to the extent that the confidential portions of the agreement shall not be made accessible or disclosed to anyone other than Commission staff for a period of three years from the effective date of this Order, except pursuant to a protective order or on further ruling of the Commission, the assigned Administrative Law Judge, or the Administrative Law Judge then designated as the Law and Motion Judge.

3. The lease of utility resources approved herein must have no impact on Southern California Edison Company's ability to serve its electric utility customers.

4. All costs associated with the lease arrangement approved herein must be paid by Southern California Edison Company's shareholders, and must not be included in electric utility rates.

5. Any new construction pursuant to this leasing arrangement must comply with the permitting conditions of Decision 98-12-083 and its associated Mitigated Negative Declaration.

6. Southern California Edison Company must file construction reports listing all new construction in the Appendix to its quarterly advice letter, consistent with its Mitigated Negative Declaration in Appendix D to Decision 98-12-083 until superseded by Commission General Order 170.

7. Revenues from the leasing arrangement approved in this Order shall be shared between Southern California Edison Company's shareholders and ratepayers using a 90/10 split pursuant to the revenue sharing mechanism adopted in Decision 99-09-070.

8. Southern California Edison Company must provide the following notifications to the extent that they apply to the circumstances of this matter in the future:

- a. Southern California Edison Company shall notify the Commission's Division of Ratepayer Advocates and the Consumer Protection and Safety Division, through their respective assistant directors for energy, in writing, of all substantive amendments to, extensions of, or termination of the Appendix;
- b. Southern California Edison Company shall notify the Division of Ratepayer Advocates and Consumer Protection and Safety

- Division assistant directors for energy, in writing, of any substantive changes to plant in service resulting from implementation of the Appendix within 60 days of any such change;
- c. Southern California Edison Company shall notify the Division of Ratepayer Advocates and Consumer Protection and Safety Division assistant directors for energy, in writing, if any right-of-way which is the subject of the Appendix ceases to be used and useful for the provision of electric service or if there are any substantive changes in the right-of-way segments which are the subject of the Appendix within 30 days of any such event; and
 - d. If Southern California Edison Company or any affiliate of Southern California Edison Company enters into an agreement to make direct use of the fiber optic cables which are the subject of the Appendix, Southern California Edison Company shall notify the Division of Ratepayer Advocates and Consumer Protection and Safety Division assistant directors for energy, in writing, at least 60 days prior to the commencement of such use.

The required notification shall include a specification of the rates to be charged to Southern California Edison Company or the affiliate and the accounting principles which will be used to track the costs and payments associated with such use.

9. Application 10-07-003 is closed.

This order is effective today.

Dated March 24, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK FERRON
Commissioners