

Decision 18-09-009 September 13, 2018

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 CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS under the Master Dark Fiber Lease Agreement Pursuant to Public Utilities Code Section 851.

Application 17-02-001

DECISION DISMISSING APPLICATION

Summary

This decision grants Southern California Edison Company's motions to file its unredacted application under seal and to withdraw its application for approval of the Master Dark Fiber Lease Agreement between Southern California Edison Company and Cellco Partnership d/b/a Verizon Wireless. The proceeding is closed.

1. Procedural Background

Southern California Edison Company (SCE) filed this application seeking Commission approval of the Master Dark Fiber Lease Agreement (Master Lease Agreement). Under the terms and conditions of the Master Lease Agreement, SCE would grant an exclusive lease for Cellco Partnership d/b/a Verizon Wireless's (Verizon) use of certain optical fibers along various cable routes within Southern California, which Verizon would specify in individual Lease

Route Orders.¹ SCE seeks to have the revenue under the Master Lease Agreement allocated between shareholders and ratepayers using a 90/10 split pursuant to the revenue sharing allocation adopted in D.99-09-070.

Concurrently with filing this application, SCE moves to file the confidential version of its application and the Master Lease Agreement under seal.

No protests or responses to the application were filed. A telephonic prehearing conference (PHC) was held on April 17, 2017; no persons appeared other than the applicant. Upon consideration of the application and discussion at the PHC, the assigned Commissioner's scoping memo identified the issues to be determined as follows:

1. Is the proposed lease adverse to the public interest?
2. Does the proposed lease require environmental review pursuant to the California Environmental Quality Act (CEQA)?

As there were no contested issues of material fact, the assigned Commissioner's April 27, 2017, scoping memo determined that evidentiary hearing was not required,² and the matter was submitted for resolution based upon the determination of the following issues:

¹ Pub. Util. Code Section 851 requires approval by Commission order if the transaction is valued at over \$5 million, and allows approval (upon the utility's submittal of an advice letter) by the executive director if the transaction is valued at \$5 million or less. While the value of the individual Lease Route Orders may be less than \$5 million, SCE expects that it could receive 100 to 200 Lease Route Orders over the term of the Master Lease Agreement and that their collective value will exceed that amount. SCE seeks advance approval to execute future Lease Route Orders under the Master Lease Agreement in order to avoid the necessity of filing a separate application or submitting a separate advice letter for each Lease Route Order. SCE notes that the Commission approved similar master agreements in Decision (D.) 02-12-023 and D.02-12-024.

² Resolution ALJ-176-3393 preliminarily determined that evidentiary hearing was needed.

- 1 Is the proposed lease adverse to the public interest?
2. Does the proposed lease require environmental review pursuant to the CEQA?

The assigned Administrative Law Judge (ALJ) placed a proposed decision granting the uncontested relief requested on the Commission's Public Agenda 3399 for its June 15, 2017, voting meeting.³ The item was held until the assigned Commissioner issued an amended scoping memo on September 11, 2017, to more closely consider the following related issues:⁴

1. Does SCE's application meet the requirements for revenue sharing established in D.99-07-070?
2. How does SCE's proposed Master Lease Agreement impact safety and reliability?
3. Does SCE's description of its fiber facilities in this proceeding meet the definition of dark fiber?
4. What effects will SCE's Master Lease Agreement have on the competitive market for telecommunications services in California?
5. With regard to revenue sharing, is the distinction between "dark" and "lit" fiber a meaningful basis for determining the revenue sharing allocation, will existing or new fiber be used to meet Verizon's Lease Route Orders, and will shareholders or ratepayers fund new fiber, if any?
6. What steps can the Commission take to ensure that SCE does not subsidize its competitive local exchange carrier business with its electric customers?
7. Should any new rules developed through the Pole Attachment and Right-of-Way proceedings (Investigation

³ The proposed decision was not filed or mailed for comment, as permitted pursuant to Rule 14.6(c)(2).

⁴ Sub-issues are omitted from this summary.

17-06-027/Rulemaking (R.) 17-06-028/R.17-03-009) be applied to this Master Lease Agreement, if approved?

8. Is SCE's Master Lease Agreement proposal compliant with General Orders 95 and 128, applicable local, state, and federal safety regulations, and best safety standards and practices?
9. Should the terms of the Master Lease Agreement and/or Lease Route Orders with Verizon be public under General Order 96? If not, why not? Should SCE submit its Lease Route Orders to the Commission?

The Utility Reform Network (TURN) and the California Cable & Television Association (CCTA) thereupon moved for and were granted party status.

SCE filed comments on the amended scope of issues on October 11, 2017, and TURN and CCTA filed comments on November 10, 2017,⁵ upon which the matter was re-submitted.

The ALJ issued a proposed decision approving the Master Lease Agreement and the motion to file the redacted application and agreement under seal, but adopting a 25/75 shareholder/ratepayer revenue allocation for gross revenues from the leases. The assigned Commissioner issued an alternate proposed decision approving the Master Lease Agreement, but denying the motion to file the redacted application and agreement under seal, providing that the lease would not be subject to automatic renewal, and adopting a 50/50 shareholder/ratepayer revenue allocation for gross revenues from the leases. The alternate proposed decision also expressed interest in exploring the broader policy issues raised by the application in a rulemaking or general rate case.

⁵ TURN's September 8, 2017, and CCTA's November 8, 2017, motions for party status were granted on October 9, 2017, and November 9, 2017, respectively.

SCE thereupon filed a motion to withdraw the application. TURN opposes the motion.

2. Motion to Withdraw Application

SCE no longer seeks Commission authority to enter into the Master Lease Agreement, and intends to continue to seek individual dark fiber route leases through the advice letter process pursuant to General Order 173. We grant the motion to withdraw the application and close the proceeding.

We recognize, as TURN notes in its opposition to the motion, that the advice letter process will not take up or resolve the issue of the appropriate revenue sharing allocation to apply to leases that SCE might submit through that process. However, given the scope of the proceeding at this juncture, neither would a decision on the merits of this application.

That stated, the scope of the proceeding has raised broad policy issues that include identifying what policy frameworks promote the most effective utilization of ratepayer-funded dark fiber throughout California's regulated electric utility infrastructure and assure safety, universal access to utility services, and non-discriminatory access to this infrastructure, especially amidst policy changes at the federal level. The Commission may consider opening a rulemaking to consider these and other broad policy issues and, in that broader context, reconsider the appropriate revenue sharing allocation for dark fiber route leases.

3. Motion to File Under Seal

We grant the motion file the unredacted application and agreement under seal. SCE in its motion, and Verizon in its declaration accompanying the motion, assert that the template and negotiated terms and conditions are entitled to confidential treatment because their disclosure could be used to Verizon's

competitive disadvantage, and the technical information is entitled to confidential treatment because its disclosure could threaten cyber security. As we grant the motion to withdraw the application, it would be unduly prejudicial to Verizon to deny its request. This decision does not determine the Commission's views on the confidentiality of these types of contracts more severally.

4. Assignment of Proceeding

Clifford R. Rechtschaffen is the assigned Commissioner and Hallie Yacknin is the assigned ALJ to the proceeding.

5. Public Review and Comment

The ALJ's proposed decision dismissing the application was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. SCE and TURN filed comments on September 4, 2018, and SCE filed reply comments on September 10, 2018.

Finding of Fact

1. SCE no longer seeks Commission authority to enter into the Master Lease Agreement, and intends to continue to seek individual dark fiber route leases through the advice letter process pursuant to General Order 173.

Conclusions of Law

1. The issue of the appropriate revenue sharing allocation to apply to leases that SCE might submit through the advice letter process pursuant to General Order 173 is, at this juncture, beyond the scope of this proceeding.

2. The motion to withdraw the application should be granted, and the proceeding should be closed.

3. As we grant the motion to withdraw the application, the motion to file the unredacted application and Master Lease Agreement under seal should be granted in order to avoid undue prejudice to Verizon.

4. Any other pending motions should be denied.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's motion to file the unredacted application and Master Dark Fiber Lease Agreement under seal is granted.

2. Any other pending motions are deemed denied.

3. Southern California Edison Company's motion to withdraw Application 17-02-001 is granted and the proceeding is closed.

This order is effective immediately.

Dated September 13, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners