

**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
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.

A.17-02-001
(Filed February 3, 2017)

**REPLY OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) IN SUPPORT
OF MOTION TO WITHDRAW THE APPLICATION**

FADIA R. KHOURY
GLORIA M. ING
Southern California Edison Company
2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, CA 91770
Telephone: (626) 302-1999
Facsimile: (626) 302-6693
E-mail: Gloria.Ing@sce.com

HENRY WEISSMANN
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
Telephone: (213) 683-9150
Facsimile: (213) 683-5150
E-mail: Henry.Weissmann@mto.com

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

Dated: July 26, 2018

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Pursuant to the permission granted by Administrative Law Judge Yacknin by email dated July 25, 2018, and California Public Utilities Commission (“Commission”) Rule of Practice and Procedure 11.1(f), Southern California Edison (“SCE”) respectfully files this reply in support of its motion requesting permission to withdraw Application 17-02-001 (“Motion”). SCE replies to the Response of The Utility Reform Network (“TURN Response”), filed on July 20, 2018.

TURN argues that SCE does not have the unilateral right to withdraw the application, and that the termination of this proceeding is within the Commission’s discretion.¹ SCE’s Motion made exactly this point.² TURN fails, however, to explain why the Commission should not exercise its discretion to dismiss the application as moot.

The Commission has granted motions to dismiss an application as moot in prior proceedings.³ For example, in D.15-07-037, the Commission granted the motion to dismiss an application for approval of Comcast’s acquisition of Time Warner Cable and other entities. The proceeding involved more extensive effort by the parties and the Commission than has this proceeding, including discovery, motions, briefing, a proposed decision, two all-party meetings,

¹ TURN Response at 1-2 (citing D.92-04-027).

² Motion at 2-3.

³ *Id.* at 3 n.12.

and an alternate decision.⁴ The applicants then announced that they had terminated the proposed transaction and moved to withdraw the application as moot. The Office of Ratepayer Advocates (“ORA”) argued that the Commission should decide the merits, including resolving important questions about the scope of the Commission’s jurisdiction.⁵ The Commission rejected ORA’s position and granted the motion to withdraw without reaching those merits issues.⁶

TURN claims that these precedents are not analogous because, if the parties chose at a later date to seek similar relief, they would have filed an application.⁷ TURN asserts that SCE is seeking to “bypass” the application process and instead to seek future approvals via an advice letter.⁸ In those prior decisions, however, the Commission did not reference or rely on the application process as the vehicle for a future request. In addition, if in the future SCE and Verizon agree to lease individual dark fiber routes, any such agreement would be different from the Master Dark Fiber Lease Agreement that is the subject of this application. The advice letter process, which the Commission permits parties to pursue for transactions of \$5 million or less,⁹ has been used many times in the past.¹⁰ TURN does not support its assertion that the advice letter process is not “transparent.”¹¹ If SCE submits an advice letter, it will follow the notice process prescribed by the Commission’s rules.

Finally, TURN asserts that SCE wishes to avoid a decision on whether the Gross Revenue Sharing Mechanism (“GRSM”) should be changed.¹² SCE’s Motion, however, is based on mootness; while SCE opposes any change to the GRSM, granting the motion does not preclude the Commission from considering changes to the GRSM in future proceedings.¹³ TURN next argues that the APD would not “change” the GRSM but instead find that dark fiber

⁴ D.15-07-037 at 2-8.

⁵ *Id.* at 24-25.

⁶ *Id.* at 25. *See also* D.01-02-040 (granting motion to withdraw application for approval of transaction under Cal. Pub. Util. Code § 854 after parties terminated their agreement).

⁷ TURN Response at 2.

⁸ *Id.* at 2-3.

⁹ Cal. Pub. Util. Code § 851; General Order 173.

¹⁰ Motion at 4 & n.15.

¹¹ TURN Response at 3.

¹² TURN Response at 3.

¹³ Motion at 5.

leasing is not a non-tariffed product or service (“NTP&S”) that is subject to the GRSM.¹⁴ TURN even claims that SCE has engaged in a “misstatement of the issue and scope of this proceeding, as no party has proposed any ‘change’ to the sharing mechanism applicable to activities that are appropriately treated as NTP&S.”¹⁵ The APD, however, does not adopt TURN’s argument. The APD states that the GRSM applies a 90/10 shareholder/ratepayer allocation “for revenues from SCE’s leasing of dark fiber.”¹⁶ Indeed, the Commission has approved many advice letters for dark fiber leasing, applying the GRSM to all of those transactions. The basis for the APD’s decision to apply a 50/50 sharing of gross revenues is not that dark fiber leasing is not a NTP&S, but instead that SCE’s dark fiber leasing has (allegedly) “reached a level far greater than envisioned for non-tariffed product or service,”¹⁷ which the APD concludes justifies a change to the sharing formula.¹⁸ TURN’s argument that the parties did not argue for, and the scope of this proceeding did not include, a “change” to the GRSM underscores the flaws in the APD and is all the more reason to grant the motion to withdraw the application.

The Commission should grant SCE’s motion to withdraw the application as moot.

Respectfully Submitted,

FADIA R. KHOURY
GLORIA M. ING
HENRY WEISSMANN

/s/ Henry Weissmann
By: Henry Weissmann

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

Date: July 26, 2018

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ APD at 8.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 10.