

**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)

**COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON
COMMISSIONER RECHTSCHAFFEN'S SEPTEMBER 11, 2017 AMENDED SCOPING
MEMO AND RULING REGARDING ADDITIONAL ISSUES TO BE DETERMINED**

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On February 3, 2017, Southern California Edison Company (SCE) filed the above-referenced Application requesting an order from the California Public Utilities Commission (CPUC) pursuant to Section 851 of the Public Utilities Code authorizing SCE to lease to the Cello Partnership D/B/A Verizon Wireless certain optical fibers along existing routes and additional routes that are constructed in Southern California pursuant to the terms and conditions of the “Master Dark Fiber Lease Agreement between Southern California Edison Company and Cello Partnership C/B/A/ Verizon Wireless” dated November 17, 2016 (MLA). No party protested or filed a response to SCE’s Application. After a prehearing conference on April 17, 2017, the Administrative Law Judge issued a proposed decision granting SCE’s Application, which has been on several of the Commission’s business agendas but held each time.

On September 11, 2017, Commissioner Rechtschaffen issued an Amended Scoping Memo and Ruling (Ruling) requesting SCE file comments responding to nine additional questions.¹ Pursuant to the procedural schedule set forth in the Ruling,² SCE submits the

¹ Ruling, pp. 3-4.

² Ruling, p. 5.

following response.

I.

SCE'S RESPONSE TO THE ADDITIONAL ISSUES FROM THE AMENDED SCOPING

MEMO AND RULING

1. Does SCE's application meet the requirements for revenue sharing established in D.99-07-070?

The revenue expected from the MLA would meet the requirements for revenue sharing established in D.99-07-070 as further described in the Application starting on page 3:

In D.99-09-070, the Commission adopted a settlement between SCE and the Office of Ratepayer Advocates (ORA), concerning SCE's application for a mechanism for sharing revenues resulting from non-tariffed products and services between shareholders and ratepayers. (D.99-09-070 at 1). In the settlement, SCE and ORA agreed to classify all existing non-tariffed products and services as either active or passive, and their agreement is memorialized in an attachment to the settlement agreement, which was adopted by the Commission in D.99-09-070.

The leasing of unused (or dark) fiber on SCE's fiber optic system was an existing nontariffed product or service at the time the settlement agreement with ORA was executed. In the attachment to the settlement agreement at page A-2, SCE and ORA agreed that "Dark fiber on fiber optic system" would be classified as "Active." SCE's lease with Verizon Wireless is a lease of "dark fiber" on SCE's "fiber optic system." SCE's participation in the lease is therefore classified as "active." Pursuant to D. 99-09-070, revenue from non-tariffed product and services go first to the ratepayers up to a \$16.7 million threshold and then are shared between shareholders and ratepayers using a 90/10 split pursuant to the revenue sharing mechanism adopted in D.99-09-070. Since SCE is seeking approval of the Master Dark Fiber Lease Agreement and not the individual Lease Route Orders (which are unknown at this time), approval of SCE's application will not affect rates.³

2. How does SCE's proposed MLA impact safety and reliability?

SCE believes the proposed MLA does not implicate or expand safety or reliability issues or concerns for SCE facilities. In accordance with the MLA, SCE will construct and install any

³ Application, pp. 3-4 (excludes footnotes).

new portion of a Lease Route Order and perform all required maintenance and repair work on all fibers covered by the MLA. No construction is required for Lease Route Orders of existing fiber optic cables. As identified in the Application, for any new portion of a Lease Route Order, SCE will install new fiber optic cable, perfect land use rights, and construct any necessary facilities needed to extend SCE's System to the Verizon facility specified in a Lease Route Order. SCE will own, operate, and maintain the entire fiber optic cable. SCE believes the MLA does not implicate or expand safety issues or concerns for SCE facilities absent the MLA.

This type of construction, installation, and maintenance to be performed under the MLA is the normal course of business for SCE as an electric utility and telecommunications service provider and does not include any unusual or new types of activities. It will include: (1) designing and installing new underground conduit, vaults, and associated facilities in rights-of-way and on private property; (2) evaluating and preparing existing poles for cable attachment including pole loading calculations (see below); (3) designing, performing pole loading calculations, and installing new poles as needed; (4) placing fiber optic cables and associated hardware in new and existing underground conduit, vaults, and associated facilities; (5) attaching fiber optic cables and associated hardware on new and existing poles; and (6) maintaining, inspecting, and repairing the new and existing fiber optic cable and associated facilities as required.

All existing poles that may be used for this project will be evaluated under the Pole Loading Program (PLP) and the Deteriorated Pole Replacement & Restoration Program, which are assessment and remediation programs and which identify poles for repair or replacement that do not meet pole loading safety factor requirements of General Order 95 and SCE's internal design standards, including wind loading in high wind areas of SCE's service territory. Poles that do not meet or exceed the pole loading safety factor requirements of the PLP will be repaired or replaced before fiber optic cable is attached to them under any Lease Route Order.

3. Does SCE's description of its fiber facilities in this proceeding meet the definition of dark fiber?

Dark fiber is defined in the United States Code of Federal Regulations, Title 47 Part 51, Subpart D, §51.319 (a)(6) as follows:

Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

In 1999, the FCC relied on a definition from Harry Newton in Newton's Telecom Dictionary, 14th ed. (Flatiron Publishing, New York, 1998) 197-98 in its Local Competition Third Report and Order [UNE Remand Order], 15 Federal Communications Commission Record at 3771, paragraph 162 note 292 as follows:

Dark fiber is defined as "[u]nused fiber through which no light is transmitted, or installed fiber optic cable not carrying a signal." It is "dark" because it is sold without light communications transmission. The [carrier] leasing the fiber is expected to put its own electronics and signals on the fiber and make it "light."

The fibers to be leased under this MLA meet both definitions of dark fiber in that it is fiber that will not be activated by SCE, and SCE will not transmit any light or signals over it.

On page 6 of the Application, SCE stated:

SCE is responsible for the construction and maintenance of the cable and its electronics, while Verizon Wireless shall pay for and arrange all connections of its facilities with the fibers Verizon Wireless leases under the Agreement.

The use of the phrase "and its electronics" may have caused confusion over whether this contract was for dark fiber. The inclusion of the phrase "and its electronics" was inadvertent and SCE will be filing an amendment to its Application to correct this error.

a. What is the difference between dark and lit fiber?

When SCE provides lit fiber to a customer, it supplies and operates electronics and optronics to place light and signals on the fiber optic cable for use by its customer. When SCE provides dark fiber, it does not supply or operate any of the electronic equipment or optronic equipment to light the fibers or create signals on the fiber optic cable.

b. If this is lit fiber, are there existing provisions for how the facilities and costs/revenues should be handled?

Under this MLA, no lit fiber will be provided.

4. What effects will SCE's MLA have on the competitive market for telecommunications services in California?

The MLA would allow SCE to competitively bid on Verizon's dark fiber opportunities within SCE's telecommunications service territory approved in its CPCN. If SCE is awarded any Lease Route Orders, any new fiber facilities built by SCE to fulfill the Verizon requests will be paid for by shareholders and will also be made available to all carriers and enterprise customers for both lit and dark services. In short, our existing network and future fiber facilities allow for increased competition and greater deployment of next generation networks throughout our telecommunications service territory.

a. Is SCE's MLA proposal consistent with rules and regulations regarding competitive access to telecommunications infrastructure?

Yes, SCE's MLA will not limit access to telecommunications infrastructure. The proposed MLA does not provide Verizon or any other customer with exclusive rights or access to SCE's telecommunication infrastructure.

b. How will SCE ensure non-discriminatory access for carriers besides Verizon?

SCE markets its telecommunication services, including dark fiber, to all carriers and enterprise customers. The Verizon Lease Route Orders require two strands of fiber leaving the majority of the remaining fibers in the cable available to other carriers and enterprise customers for both lit and dark services. Making the fiber available to all carriers and enterprise customers greatly increases the potential revenue for SCE and its ratepayers and provides more fiber routes to carriers and enterprises.

c. Is the proposal consistent with the Commission's Right of Way decision (D.98-10-085)?

Where SCE builds new poles, ducts, and conduits as part of the MLA, SCE will make those structures available consistent with the Commission's Right-of-Way decision (D.98-10-

085). Where SCE uses existing poles, ducts, and conduits, it will use a variety of methods to obtain access including the Southern California Joint Pole Committee, individually negotiated agreements with municipalities and private parties, and contracts in accordance with the Commission's Right-of-Way decision (D.98-10-085).

5. Revenue sharing between SCE shareholders and ratepayers.

a. Is there a meaningful distinction between lit and dark fiber that justifies separate sharing rules?

Lit and dark fiber contracts use many of the same ratepayer and shareholder funded assets, for example, poles, conduit, and existing fiber optic cable. The incremental costs for the equipment needed when a contract is for lit fiber rather than dark fiber are borne completely by shareholders. Both dark and lit fiber use the same existing ratepayer funded assets and both can be offered to customers as a non-tariffed product and service under the Use of Communications and Computing Systems category.⁴ This category under SCE's Gross Revenue Sharing Mechanism (GRSM) is considered "active" and is further described in SCE's response to Question 1.

b. Will existing fiber facilities be used to meet the Lease Route Orders by Verizon, or will new fiber facilities need to be built? Or both?

As stated in the Application starting on page 5, both existing fiber facilities and new fiber facilities will be used:

SCE will use existing fiber optic cables when excess capacity is available. For those portions of the routes that do not have existing capacity, SCE will install new fiber optic cable, perfect land use rights, and construct any necessary facilities at shareholders' expense. SCE will own, operate, and maintain the entire fiber optic cable.

c. Will new fiber be built with shareholder funds or ratepayers funds?

The cost of building any new fiber optic cables to support this MLA will be borne by shareholders (see response to question 5.b).

⁴ The entire list of non-tariffed products and services categories are listed in Advice 1286-EA which was approved in Resolution E-3639.

6. What steps can the Commission take to ensure that SCE does not subsidize its CLEC business with its gas and electric customers?

So that SCE's electric ratepayers do not subsidize SCE's CLEC business, SCE and ORA, in connection with SCE's offering of telecommunications services, agreed to cost tracking and allocation rules, reporting requirements, and service monitoring measures, which were adopted by the CPUC and memorialized in Appendix C of D.98-12-083.

The cost tracking and allocation rules require SCE to establish and maintain policies and procedures so that the revenue, incremental costs and capital investments required to start up, operate, and maintain SCE's telecommunications services business are tracked and recorded separately in SCE's accounting records and excluded from rate making.

So that electric ratepayers do not cross subsidize SCE's telecommunication services, SCE established a separate business unit within SCE, Edison Carrier Solutions (ECS), to provide these services. SCE also established and complies with accounting policies and procedures based on Appendix C of D.98-12-083 and SCE's Gross Revenue Sharing Mechanism (GRSM) in D.99-09-070.

To facilitate monitoring by the Commission and ORA of SCE's compliance with the cost tracking and allocation rules, SCE is required to submit an annual report providing specific financial and operational information for the telecommunications services business unit (ECS) as listed in Appendix C of D.98-12-083. The provision of non-tariffed products and services (NTP&S) under which dark and lit fiber products and services are offered to third parties is covered by Rule VII of the Affiliate Transaction Rules (D. 06-12-029) (ATR). As part of Rule VII of the ATR, SCE submits an annual report regarding its NTP&S activities. In addition, under Rule VI of the ATR, the Commission requires the Energy Division to hire an independent auditor to audit the ATR. During these audits, SCE's NTP&S (which includes ECS) and SCE's handling of the incremental costs associated with its NTP&S activities are reviewed. The reviews of both NTP&S and SCE's handling of its incremental costs help allow SCE to demonstrate that SCE is appropriately allocating incremental costs for its NTP&S (which include

the incremental costs associated with fiber) to ratepayers. SCE's General Rate Case (GRC), where SCE's proposed utility costs are reviewed, provides an additional opportunity for SCE to demonstrate that SCE is appropriately allocating NTP&S incremental costs to ratepayers.

a. For the existing fiber capacity that will be used:

i. When and where was it built?

As indicated in Section II.A of SCE's Application, SCE does not know at this time the specific routes that will be used under the MLA.

ii. How many fiber miles of excess capacity exist?

SCE does not know at this time the specific routes that will be used under the MLA. When SCE looks to proving fiber under the MLA, SCE will determine which strands of fiber will be used in a particular project include the following steps, first, existing shareholder funded cables are checked for excess capacity to use, if unavailable, ECS makes a request for excess capacity to the utility's IT-Telecommunications team. If capacity is available, the IT-Telecommunications team approves the request and if not, shareholders fund the cost to install the new cables required.

iii. What portion of existing excess capacity will be used by Verizon, and what portion will be reserved for SCE's own communications needs?

SCE does not know at this time the specific routes that will be used under the MLA.

b. How are the excess capacity fiber facilities described in SCE's GRC, A.16-09-001?

SCE did not describe excess capacity fiber facilities in SCE's GRC. Excess capacity in the context of this Application can be described as temporarily available capacity of fibers that can be leased to ECS customers to generate additional revenues. To the extent that these fibers become necessary for electric utility operations, ECS will either renegotiate with the customer regarding the use of the relevant fibers or will expand the existing capacity at no cost to ratepayers.

c. Will SCE leverage poles and other support facilities that were built with ratepayer funds to provide service under the proposed MLA?

Yes, as described in our Application in Section II.A.

d. If this is dark fiber, is SCE's proposed 90 / 10 split reasonable?

The reasonableness of the 90/10 split was determined in D.99-07-070 (see answer to Question 1).

e. If this is lit fiber what revenue sharing mechanism should be apply?

The MLA is not for lit fiber.

7. Should any new rules developed through the Pole Attachment and Right-of-Way proceedings (I1706027 / R1706028 / R1703009) be applied to this MLA, if approved?

In short, any new rules developed through the Pole Attachment and Right-of-Way proceedings (I.1706027 / R.1706028 / R.1703009) would not apply to the MLA, since the MLA is merely a contract for certain services; however, SCE believes that such rules could potentially apply to the utility assets developed and/or used in the provision of services to Verizon. The following provides a brief overview of the respective proceedings and how rules (if adopted) may apply.

Investigation 17-06-027 was launched to assess the possible creation of a California-wide database to store and maintain utility pole and underground conduit information. The Investigation will identify what data is relevant for a variety of purposes (e.g., competition, oversight, and safety), and then explore strategies for making it available, if appropriate. Because the Investigation remains in its earliest stages, it is difficult to determine the outcome of the proceeding. If the Commission were to establish requirements for specific assets and information, which are consistent with the assets that SCE develops and/or uses to provide service according to the MLA, such assets would likely be subject to the new requirements.

Rulemaking 17-03-009 grants the petition filed by the Wireless Infrastructure Association (WIA) to institute a rulemaking proceeding to consider whether the Revised Right-of-Way Rules should apply to competitive local exchange carriers' (CLECs') wireless pole attachments. The

scope of the Rulemaking proceeding includes the consideration and possible adoption of new regulations so that CLECs' wireless pole attachments are constructed, operated, and maintained to (i) protect worker safety and public safety, and (ii) preserve the reliability of co-located utility facilities (e.g., power lines). Like Investigation 17-06-027, this Rulemaking is in its earliest stages and it is difficult to determine the outcome of the proceeding. If the Commission were to establish construction, operation and maintenance requirements for assets that SCE develops and/or uses to provide service according to the MLA, such assets would likely be subject to the new requirements.

Rulemaking 17-06-028 was established to address new services and new market entrants in light of the increasingly hybrid nature of the telecommunications network, recent developments at the federal level related to broadband providers, problems with pole management identified in D.16-12-025, and general concerns about the safety and reliability of the electric supply and communications infrastructure in this environment. Track 1B of this proceeding will consider rules that would allow Broadband Internet Access Service (BIAS) providers to attach facilities to poles and to use conduit following their classification as public utility telecommunications carriers in the FCC's 2015 Open Internet Order. As with Investigation 17-06-027 and Rulemaking 17-03-009, this proceeding is in its earliest stages and it is difficult to determine the outcome of the proceeding. If the Commission were to determine that BIAS providers could attach to poles and use conduit in a manner similar to telecommunications carriers, SCE would comply and offer access to the facilities that it develops and/or uses to provide service according to the MLA in a manner consistent with its offerings to telecommunications carriers.

8. Is SCE's MLA proposal compliant with Orders 95 and 128, applicable local, state, and federal safety regulations, and best safety standards and practices?

It is SCE's intent that any overhead or underground construction associated with the MLA proposal will be compliant with General Orders 95 and 128, as well as applicable local,

state, and federal safety regulations. SCE strives to stay current with industry best safety standards and practices and will continue to do so after the MLA is approved.

9. Should the terms of the MLA 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 CPUC?

General Order 96-B (GO 96-B) governs advice letters and information-only filings submitted to the Commission by public utilities.⁵ Therefore, the terms of the MLA, which were submitted as Appendix A to SCE's Application, are not subject to General Order 96-B. SCE's Application was submitted to the Commission pursuant to Section 851 of the Public Utilities Code, which provides that SCE will not sell, lease, assign, dispose of, encumber the whole or any part of its line, plant, system, or other property necessary or useful in the performance of its duties to the public without the Commission's approval. A limited portion of the MLA is confidential, and SCE filed a Motion to File Under Seal a non-redacted copy of the Agreement, and the Agreement is available to the Commission and its staff under Public Utilities Code Section 583 and General Order 66(c). In addition, SCE submitted a declaration in compliance with Decision No. 16-08-024, as support for its request to protect the confidential information.

Regarding the Lease Route Orders, in SCE's Application, SCE does not propose submitting future Lease Route Orders to the CPUC for approval. As indicated on pages 2-3 of SCE's Application, instead of filing an Application, SCE contemplated seeking the Commission's approval of the potentially numerous individual Lease Route Orders via the GO 173 Advice Letter process when an individual transaction is under five million dollars and meets the other requirements of GO 173. However, because the collective value of the anticipated Lease Route Orders over the life of the Agreement could exceed five million dollars and because the number of Lease Route Orders could be numerous (thus potentially burdening the Commission's resources), SCE felt it was prudent to seek the Commission's approval of the

⁵ Section 1.1 of GO 96-B.

MLA via a Section 851 Application. Filing each Lease Route Order could prevent ECS from responding to opportunities in a timely manner due to regulatory uncertainty. Approval of the Application would eliminate the need for SCE to file, and the Commission to approve, numerous advice letters if SCE were to classify each Lease Route Order as a single transaction. A similar approach has enabled SCE to competitively respond to wireless carriers' requests to lease space on SCE towers.

If, however, the Commission would prefer SCE to submit the individual Lease Route Orders to the Commission, then, yes, SCE will do so. SCE envisions this can be done one of two ways. First, if the Commission would prefer SCE to submit the individual Lease Route Orders via a GO 173 Advice Letter for approval, then the Commission should indicate this and there would not be a need for the Commission's approval of Application 17-02-001.⁶ SCE should thus be permitted to withdraw its Application. Because SCE has not executed any Lease Route Orders yet, SCE does not know if any information in the Lease Route Orders will be confidential. However, if SCE submits a Lease Route Order to the Commission via a GO 173 Advice Letter, then SCE's Advice Letter would comply with General Order 96-B. Section 9 of General Order 96-B outlines the Commission's process for submission of confidential information under the General Order, and if there is any confidential information in the Lease Route Order, SCE will follow the procedures set forth in Section 9.⁷

Alternatively, if the Commission intends to approve SCE's Application but wants SCE to submit future Lease Route Orders, SCE could submit its Lease Route Orders through a different procedural vehicle other than an Advice Letter (for example, via letter to the Telecommunications Division or via a periodic compliance filing). As such, SCE would not need to follow General Order 96-B (which governs Advice Letters) and if there was confidential

⁶ As SCE understands it, the filing of a GO 173 advice letter is in lieu of filing a Section 851 application. SCE should not be expected to seek approvals through both vehicles.

⁷ If the CPUC required SCE to submit the Lease Route Orders to the Commission via an Advice Letter that was not associated with GO 173, then SCE would follow the procedures of GO 96-B for Advice Letters, including Section 9 if applicable.

information in any of Lease Route Orders, then SCE would follow the processes set forth in the Commission's recent decisions on confidentiality, including D. 16-08-024 and D. 17-09-023.

SCE requests that the Commission be mindful that, if there are numerous Lease Route Orders, either approach above could impact ECS' ability to provide timely responses to its customer and strain the resources of both SCE and the Commission's staff. If the Commission is interested in information on future Lease Route Orders, SCE recommends that the Commission consider requesting SCE to provide a periodic list of the Lease Route Orders via a letter to the Telecommunications Division. Then, if the Telecommunications Division is interested in the details of a particular Lease Route Order, SCE could provide the Lease Route Order to the Telecommunications Division. If there is confidential information in the Lease Route Order, then SCE would follow the Commission's processes and procedures for submission of confidential information.

II.

CONCLUSION

SCE appreciates the opportunity to comment on these issues. SCE respectfully requests that the Commission expeditiously grant its Application, which has been pending before the Commission since early February 2017.

Respectfully submitted,

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