

Decision _____

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 Clear
Wireless, LLC.

Application 10-02-014
(Filed February 5, 2010)

**DECISION GRANTING AUTHORITY FOR SOUTHERN CALIFORNIA EDISON
COMPANY TO LEASE CERTAIN FIBER OPTIC CABLES TO
CLEAR WIRELESS, LLC****1. Summary**

We approve the application of Southern California Edison Company (SCE) for authority to lease certain optical fibers along existing routes, and along additional routes being constructed, to Clear Wireless, LLC. We grant this authority subject to terms and conditions for the protection of SCE's ratepayers, detailed in the ordering paragraphs of the decision. Application 10-02-014 is closed.

2. Background

Southern California Edison Company (SCE) has requested a Commission order pursuant to Public Utilities Code section 851 authorizing it to lease to Clear Wireless, LLC (Clear Wireless) certain optical fibers along existing routes and additional routes being constructed in SCE's service territory. Clear Wireless is a limited liability corporation licensed to do business in California, and is primarily engaged in the business of wireless broadband internet transmission to

internet subscribers in California and elsewhere in the United States. Clear Wireless will 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 Clear Wireless, LLC, dated January 12, 2010 (Agreement).¹ Under the terms of the Agreement SCE will provision certain optical fibers along a cable route within southern California to form a redundant, fiber optic network ring. SCE will utilize existing fiber optic cables when excess capacity is available.² 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.³ SCE will own, operate and maintain the entire fiber optic cable. Clear Wireless's use of the fibers is contingent upon Commission approval, as is construction of

¹ A complete copy of the Agreement is attached as the Appendix to our Order. Certain sensitive information, which we are ordering to be filed under seal, has been redacted in the public copy.

² 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 Clear Wireless under the Agreement: Alhambra, Anaheim, Arcadia, Azusa, Bellflower, Cerritos, Chino, Chino Hills, City of Industry, Claremont, Colton, Compton, Cypress, Fontana, Fullerton, Gardena, Glendora, Grand Terrace, Hawaiian Gardens, Hawthorne, Inglewood, Irvine, Irwindale, La Habra, La Habra Heights, La Verne, Laguna Hills, Laguna Woods, Lake Forest, Lakewood, Long Beach, Los Alamitos, Los Angeles, Monrovia, Montebello, Monterey Park, Ontario, Orange, Paramount, Rancho Cucamonga, Rialto, Riverside, Rosemead, San Bernardino, San Dimas, San Gabriel, Santa Ana, Stanton, Temple City, Torrance, Tustin, Upland, Villa Park, and Yorba Linda.

³ 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.

additional fiber optic cable, under the agreement. Upon completion of the network ring and approval of this application, SCE will assign certain fibers along each route to Clear Wireless, and will grant an exclusive lease for Clear Wireless's use.

A significant portion of the rights of way on which the fiber optics will be located may not include grants of a right to construct or lease facilities for use by a third party. SCE and Clear Wireless will assess the rights and acquire additional rights as necessary. To the extent additional rights are obtained by SCE, they will be shareholder funded. SCE will be responsible for the construction and maintenance of the cable and its electronics, while Clear Wireless will be responsible for the construction and maintenance of its equipment.

Clear Wireless and SCE have negotiated an arrangement in which Clear Wireless will make an initial, non-refundable payment of \$100,000. Clear Wireless will also make monthly payments of \$95,800, beginning after the Commission approves the Agreement and Clear Wireless has accepted the fiber. Clear Wireless 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 commercial use of its temporarily available capacity, and will provide a financial benefit to ratepayers.⁴ SCE will retain title to all of the fiber optic cable installed under the terms of the Agreement, and will be free to find uses for the remaining

⁴ The Application states that this benefit is without risk to ratepayers, and we have identified none.

fibers in the network ring, thereby expanding its ability to utilize temporarily-available utility capacity.

The Agreement will generate revenues of \$5,848,000 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 Clear Wireless regarding the use of the relevant fibers or will 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

The Commission has noted in Decision (D.) 93-04-019, D.94-06-017, D.95-05-039, and D.96-11-058 (all involving SCE leases of temporarily-available conduit, duct or overhead cable, pole space, and optical fibers) 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 section 21000 et seq.⁵ 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 on certain PG&E transmission towers, substations, rights-of-way, and other facilities.

⁵ 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 PG&E's above-ground facilities and dark fiber, the Commission likewise found the proposal to be exempt from CEQA requirements. (D.92-07-007.)

As stated earlier, SCE will utilize existing fiber optic cables and facilities when available. We find that such actions are exempt from requirements imposed by CEQA in at least two ways. The action qualifies for a categorical exemption as a minor alteration of existing utility structures involving negligible expansion of existing use (14 Cal. Code of Regulations section 15301(b)). Moreover, the action qualifies as CEQA exempt because it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment (14 Cal. Code of Regulations section 15061(b)(3)).

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 cable. 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. 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,

above-ground 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 above-ground 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., the Commission stated in D.93-04-019,

[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.⁶

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, the Commission adopted a settlement between SCE and the Division of Ratepayer Advocates (DRA), formerly the Office of Ratepayer Advocates, concerning SCE's application for a mechanism for sharing revenues resulting from non-tariffed products and services between shareholders and

⁶ 48 CPUC 2d 602 at 603.

ratepayers. In that settlement, SCE and DRA agreed to classify all existing non-tariffed products and services as either active or passive. Their agreement 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 Clear Wireless 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 Clear Wireless 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 terms and conditions to protect SCE's ratepayers and the environment, detailed in the ordering paragraphs of this decision.

5. Comments on the Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to section 311(g)(2) of the Public Utilities Code 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

Nancy E. Ryan is the assigned Commissioner and Victor D. Ryerson is the assigned ALJ.

Findings of Fact

1. SCE has entered into an agreement (the 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 Clear Wireless. A copy of the Agreement is attached as the Appendix to our Order.

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 will not have a significant effect on the environment.

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 Facts 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 10-02-014 of Southern California Edison Company for authority to lease certain fiber optic cables to Clear Wireless, LLC, pursuant to the Fiber Use Agreement Between Southern California Edison Company and Clear Wireless, LLC, dated January 12, 2010, attached in redacted form as the Appendix 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 (ALJ), or the ALJ 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 in its quarterly advice letter, consistent with its Mitigated Negative Declaration in Appendix D to Decision 98-12-083.

7. Revenues from the leasing arrangement approved in this order shall be shared between Southern California Edison Company 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 & 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 & 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 & 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 & 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 10-02-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California.