

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T - 17243
February 4, 2010**

R E S O L U T I O N

Resolution T - 17243. To grant the request of Southern California Edison Company, (U-6096-C) to lease thirty specific existing fiber optic cables to New Cingular Wireless PCS, LLC (U 3060-C).

Summary

This Resolution approves Southern California Edison's (SCE) Tier III Advice Letter 79 seeking approval under Public Utilities Code § 851 to permit it to lease thirty specific fibers to New Cingular Wireless PCS, LLC (Cingular). This lease is for a period of five years, and SCE states that this transaction has a net present value of \$1,056,171.00. Advice Letter 79 was processed pursuant to Resolution ALJ-202, which requires that all property transfer requests made pursuant to it, be made utilizing a Tier III advice letter. This resolution is effective immediately.

Background

Section 851 of the Public Utilities (P.U.) Code, states in relevant part as follows "[n]o public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or 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 first having either secured an order from the commission authorizing it to do so..." Prior to the adoption of Resolution ALJ-186 (the 851 Pilot Program) on August 25, 2005, all requests for approval of property transfers had to be made via formal application. However, since the adoption of Resolution ALJ-186, requests for property transfer pursuant to § 851 can be effected through the filing of a Tier III advice letter and the issuance of an approving resolution. The Commission extended and modified ALJ-186 by issuing ALJ-202 on August 23, 2007. There are several criteria which an asset transfer transaction must meet in order to participate in this pilot program.¹ The significance of this program, is that it allows utilities to gain approval of asset transfers outside of the more intensive and time consuming application process, if the transactions do not require review under

¹ See Resolution ALJ-202 Appendix A, at 1, available at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/71812.htm.

the California Environmental Quality Act (CEQA), do not involve assets valued at \$ 5 million or less, and do not materially impact the rate base of a utility².

On September 3, 2009, Southern California Edison (SCE) filed Advice letter 79 seeking approval to lease thirty “dark fiber” cables to New Cingular Wireless PCS, LLC (hereafter Cingular) for a period of five years. This is consistent with section 851 of the P.U. Code and Resolution Administrative Law Judge-202 (ALJ-202). The stated purpose of this transaction is to increase telecommunications competition and augment ratepayer revenues. The net present value of a transaction, is the lump sum value of its stream of future payments. SCE submits that this transaction has a net present value of \$1,056,171.00, utilizing their capital asset pricing model.

Notice

Notice of Advice Letter 79 appeared in the Commission’s Daily Calendar on October 2, 2009.

Protests

The Commission received no protests or comments in response to Advice Letter 79.

Discussion

Advice Letter 79 qualifies for review under the ALJ-202. In order for a transaction to be approved under the § 851 Pilot Program, it must meet two sets of criteria. First, the transaction must not have an adverse impact on the public interest or on the ability of the applicant utility to provide safe and reliable service to customers at reasonable rates. Second, the transaction must not be subject to CEQA review, must not involve assets valued at more than \$ 5 million, and, even if affecting assets worth \$ 5 million or less, must not materially impact the rate base of a utility.³

Based upon SCE’s description of this transaction, it will not result in any change to the physical environment and therefore is not a project subject to a CEQA review. Given that this transaction involves only the lease of currently existing fiber facilities, and not the construction of or modification to facilities, CEQA review is not necessary in this case. Therefore, this resolution does not authorize any physical change to the environment in connection with the transaction described in Advice Letter 79, and therefore falls under the provision of ALJ-202 that allows Tier III Advice Letters for

² See ALJ-202, *mimeo.*, p. 2.

³ See Resolution ALJ-202 Appendix A, at 1 & *mimeo.* p. 2.

transactions in which the Commission is either the Lead Agency or Responsible Agency under CEQA. According to ALJ-202, it is consistent with P.U. Code § 853(d) to allow

Tier III treatment for § 851 transactions that meet either the "exemption" or "no project" criteria under CEQA, and the transaction here so qualifies⁴.

Further, the transaction is not worth more than \$ 5 million, and does not materially impact the rate base of SCE.

P.U. Code § 851, confers on the Commission the obligation to determine if a transaction serves the public interest. The Commission also has the authority, to request additional terms or conditions be added to a transaction in order to ensure the public's interest is protected. Approval of this transaction will provide Cingular with additional service capacity along with additional shared ratepayer revenues. The shared revenue mechanism is found in D. 99-09-070, and will result in ratepayers receiving 10% of the revenues from this transaction. As a result of these factors, this event is deemed to be in the public interest. Therefore, it appears no additional conditions need be attached to this transaction.

The Communications Division has reviewed Advice Letter 79 of SCE, and finds that it satisfies the criteria set forth in Resolution ALJ-202 for approval pursuant to its provisions. By issuing this resolution, which permits SCE to dispose of property subject to P.U. Code § 851, we neither approve nor disapprove the lease itself nor any of its terms and conditions. The Communications Division finds no reason to deny approval of Advice Letter 79.

Comments

SCE's Advice Letter 79 is uncontested and this resolution grants the relief requested. Therefore, pursuant to P.U. Code § 311(g)(2), the 30-day public review and comment period is waived.

Findings

1. On September 3, 2009, SCE filed Advice Letter 79 as a Tier III Advice Letter requesting approval for a lease of thirty specific optical fibers to Cingular for a period of five years.

⁴ See ALJ-202, *mimeo.*, p. 5.

Resolution T-17243

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2. Advice Letter 79 qualifies for review under the § 851 Pilot Program (Resolution ALJ-202).
3. This transaction meets either the "exemption" or "no project" criteria of CEQA, and will not result in activities which will cause a change to the physical environment. Thus, the transaction is not a "project" under CEQA, and qualifies for ALJ-202 treatment.
4. This transaction is deemed not to have an adverse impact on the public interest, or on the ability of SCE to provide safe and reliable service to customers at reasonable rates given that it will increase carrier capacity for telecommunications services and increase ratepayer revenue.
5. Advice Letter 79 satisfies the criteria found in Resolution ALJ-202.
6. By issuing this resolution, which permits SCE to dispose of property subject to P.U. Code § 851, we neither approve nor disapprove the lease itself nor any of its terms and conditions.

THEREFORE, IT IS ORDERED that:

Pursuant to P.U. Code § 851 and ALJ-202, the CPUC authorizes Southern California Edison Company to lease thirty specific fiber optic cables to New Cingular Wireless PCS, LLC for a period of five years.

Pursuant to D. 99-09-070 revenues from this transaction shall be split 90/10 between SCE and the ratepayers.

This Resolution is effective today.

I hereby certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on February 4, 2010, the following Commissioners voting favorably thereon:

/s/ Paul Clanon

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners