

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 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  
(Filed February 3, 2017)

**DECISION GRANTING AUTHORITY FOR SOUTHERN CALIFORNIA EDISON COMPANY TO LEASE CERTAIN FIBER OPTIC CABLES TO CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

**Summary**

This decision grants Southern California Edison Company (SCE) authority pursuant to Pub. Util. Code § 851 to lease to Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) certain optical fibers along existing routes and additional routes that are being constructed in Southern California pursuant to their Master Dark Fiber Lease Agreement dated November 17, 2016.

**1. Background and Summary of Request**

Southern California Edison Company (SCE) seeks California Public Utilities Commission (Commission) approval of the Master Agreement pursuant to Pub. Util. Code § 851, which provides that a public utility shall 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.

Under the terms and conditions of the Master Dark Fiber Lease Agreement (Master Agreement), SCE will grant an exclusive lease for Verizon Wireless' use of certain optical fibers along various cable routes within Southern California. Verizon Wireless will submit to SCE Lease Route Orders specifying the circuits and number of optical fibers it will lease, subject to SCE's review and approval. In return, Verizon Wireless will make initial, non-refundable payments and monthly payments.<sup>1</sup>

SCE will use existing fiber optic cables when excess capacity is available and, for those portions of the routes that do not have existing capacity, 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, while Verizon Wireless shall pay for and arrange all connections of its facilities with the fibers that it leases. Verizon Wireless is responsible for all taxes resulting from its installation activities and will keep SCE's facilities free from all liens and encumbrances.

Pursuant to D.99-09-070, the leasing of unused (or dark) fiber on SCE's fiber optic system is classified as an "active" non-tariffed product or service existing at the time of that decision, and revenue from such products and

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<sup>1</sup> § 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 Agreement and that their collective value will exceed that amount. SCE seeks advance approval to execute future lease route orders under the Master 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.

services is allocated first to ratepayers up to a \$16.7 million threshold and then are shared between shareholders and ratepayers using a 90/10 split.

No protests or responses to the application were filed. A telephonic prehearing conference was held on April 17, 2017; no persons appeared other than the applicant. Upon consideration of the application and discussion at the prehearing conference, 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 scoping memo determined that evidentiary hearing was not required,<sup>2</sup> and the matter was submitted.

## **2. Public Interest**

The relevant inquiry under Pub. Util. Code § 851 is whether the proposed transaction is "adverse to the public interest." (See D.11-05-048 at 9, affirming the § 851 review standard stated in D.09-07-035 and D.09-04-013, i.e., that the subject transaction should not be adverse to the public interest and that transactions that are in the public interest are to be encouraged.)

Joint use of SCE's facilities under the Master Agreement makes productive use of SCE's extensive easements, rights-of-way, and cable facilities without interfering with the utility's operation or affecting service to utility customers. The Lease Route Orders under the Master Agreement will generate revenue that

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<sup>2</sup> Resolution ALJ-176-3393 preliminarily determined that evidentiary hearing was needed.

will be split between shareholders and ratepayers according to the allocation rules set forth in D.99-09-070 with no risk to SCE or its ratepayers. We find that the Master Agreement is not adverse to the public interest.

### **3. CEQA**

The Master Agreement qualifies for a categorical exemption as a minor alteration of existing utility structures involving negligible expansion of existing use (CEQA Guideline § 15301(b)) and because it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment (CEQA Guideline § 15061(b)(3)). SCE will utilize existing fiber optic cables and facilities when available, which will have no impact on the environment. To the extent that SCE installs new fiber optic cables and constructs any necessary facilities to support the cable, the Commission has previously determined that, with SCE's compliance with the Mitigated Negative Declaration in D.98-12-083 requiring SCE to report all new construction in its quarterly Advice Letter, the activity will not have a significant impact on the environment.

### **4. Motion to File Under Seal**

SCE moves to file its unredacted application under seal in order, seeking confidential treatment of (1) the "template" terms and conditions of the Master Agreement that reflect Verizon Wireless' current view on an acceptable risk allocation between the vendor and Verizon Wireless, (2) the terms and conditions that deviate from Verizon Wireless' template terms and conditions as a result of negotiations with SCE, and (3) the technical specifications of the fiber and service that Verizon Wireless is purchasing and the technical details regarding its installation. SCE in its motion, and Verizon Wireless 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 Wireless' competitive disadvantage, and the technical information is entitled to confidential treatment because its disclosure could threaten cyber security. We agree and grant the motion.

#### **5. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge (ALJ) to the proceeding.

#### **6. Waiver of Public Review and Comment**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. 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.

#### **Findings of Fact**

1. Joint use of SCE's facilities under the Master Agreement makes productive use of SCE's extensive easements, rights-of-way, and cable facilities without interfering with the utility's operation or affecting service to utility customers.

2. The Lease Route Orders under the Master Agreement will generate revenue that will be split between shareholders and ratepayers according to the allocation rules set forth in D.99-09-070 with no risk to SCE or its ratepayers.

3. SCE will utilize existing fiber optic cables and facilities when available, which will have no impact on the environment.

4. To the extent that SCE installs new fiber optic cables and constructs any necessary facilities to support the cable, the Commission has previously determined that, with SCE's compliance with the Mitigated Negative Declaration in D.98-12-083 requiring SCE to report all new construction in its quarterly Advice Letter, the activity will not have a significant impact on the environment.

5. The disclosure of the Master Agreement's template and negotiated terms and conditions could be used to Verizon Wireless' competitive disadvantage.

6. The disclosure of the technical information in the Master Agreement could threaten cyber security.

7. There is no need for evidentiary hearing in this matter as there are no contested factual issues.

### **Conclusions of Law**

1. The Master Agreement is not adverse to the public interest.

2. The Master Agreement qualifies for a categorical exemption as a minor alteration of existing utility structures involving negligible expansion of existing use (CEQA Guideline § 15301(b)) and because it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment (CEQA Guideline § 15061(b)(3)).

3. SCE's application for authority to lease to Verizon Wireless certain optical fibers pursuant to their Master Agreement should be granted.

4. SCE's motion to file its unredacted application under seal should be granted.

5. The Commission's preliminary determination in Resolution ALJ-176-3393 that evidentiary hearing is needed should be changed to determine that it is not needed.

6. This proceeding should be closed.

7. This order should be effective immediately.

**ORDER**

**IT IS ORDERED** that:

1. Southern California Edison Company is granted authority pursuant to Public Utilities Code Section 851 to lease to Cellco Partnership d/b/a Verizon Wireless certain optical fibers along existing routes and additional routes that are being constructed in Southern California pursuant to their Master Dark Fiber Lease Agreement dated November 17, 2016.

2. Southern California Edison Company's motion to file the unredacted version of its application under seal is granted.

3. Evidentiary hearing is not required.

4. Application 17-02-001 is closed.

This order is effective immediately.

Dated \_\_\_\_\_, at San Francisco, California.