

Decision 96-07-038 July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA EDISON COMPANY)
(U 338-B) for Authority to Lease)
Certain Underground Conduit Space,)
Aboveground Cable Space, and) (Filed February 8, 1996)
Rights-of-Way to Linkatel)
Pacific, L.P.)

ORIGINAL

The Agreement is an example of Edison's ongoing efforts to generate **OPERATIONAL** revenue for ratepayers through the commercial use of Edison's temporarily available conduit space and aboveground cable space. The Agreement

1. Summary

Southern California Edison Company (Edison) seeks authority to lease underground conduit space and aboveground cable space to Linkatel Pacific, L.P. (Linkatel), so that Linkatel can install a fiber optic path through parts of Los Angeles and Orange counties. Edison would comply with conditions recommended by the Commission's staff in a similar lease proposal last year. The lease agreement is approved.

2. Background

On February 8, 1996, Edison filed this application for authority to lease certain unused underground conduit space, aboveground cable space, and rights-of-way to Linkatel, pursuant to Section 851 of the Public Utilities (PU) Code. Section 851 requires Commission approval of any lease or other transfer of public utility property.

Linkatel is certified by this Commission to operate as an interexchange telephone company. It is constructing a fiber optic telecommunications system and would use the Edison rights-of-way to extend the system through parts of Los Angeles and Orange counties.

Edison states that it has space in its underground conduit and aboveground cable facilities that it will not need during the term of the proposed Linkatel lease. Edison and

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Linkatel have reached an agreement that will allow Linkatel to use this space for its fiber optic cable. The agreement, attached to the application as Exhibit 1, was executed on August 10, 1994. The agreement initially gives Linkatel a license to use the available space. Once the Commission grants Edison appropriate authority, the license will be converted into a 10-year lease which may be renewed for two additional 10-year terms at prices then to be negotiated. Edison states:

"The Agreement is an example of Edison's ongoing efforts to generate additional revenue for ratepayers through the commercial use of Edison's temporarily available conduit space and aboveground cable space. The Agreement will generate annual revenues of approximately \$59,000 for at least ten years. The Agreement

will also allow Linkatel to avoid disruptive construction activities that otherwise would be required to serve customers in the Los Angeles and Orange counties. (Application, p. 2.)

Under the agreement, Linkatel will install three innerduct sleeves, placing one fiber optic cable in one of the sleeves, and attaching one fiber optic cable to aboveground poles owned by Edison. The fiber optic cable will extend along 171,700 linear feet.

Linkatel will bear all costs of construction and will deed title to the entire installation (valued at \$858,000) to Edison after completing construction. Edison will be free to find other commercial uses for the two innerduct sleeves not used by Linkatel. Linkatel will maintain the installation. After the license is converted to a lease, Linkatel will acquire an

Edison states that it has space in its underground

1 General Order 69-C permits public utilities to grant easements, licenses, or permits for use of their property when the public utility functions are not affected.

indefeasible right of use of the installation. Linkatel will make annual payments to Edison for use of these facilities.

Edison states that the lease of the available cable space will not degrade its ability to provide electric service to its customers.

3. Notice Requirements

In an application last year for a similar lease of unused cable space,² Edison agreed to notice requirements proposed by the Commission's Advisory and Compliance Division (ACD) and the Division of Ratepayer Advocates (DRA) to ensure that Edison was not itself providing telephone services. In this application, Edison commits itself to similar notice provisions. Specifically, Edison agrees to:

To notify DRA and CACD in writing of any substantive change in the Linkatel agreement within 30 days of such change.

To notify DRA and CACD of any substantive change to Edison's plant-in-service resulting from Linkatel's installation and operation.

To notify DRA and CACD if any right-of-way ceases to be used and useful in providing electric service, or if there are any substantive changes in right-of-way segments licensed or leased to Linkatel.

To notify DRA and CACD in advance of any proposed agreement by which Edison or any Edison affiliate would make direct use of cable installed by Linkatel.

DRA and CACD last year also recommended that the Commission include a Conclusion of Law in its decision noting that no telecommunications authority for Edison was contemplated. We

² Decision (D.) 95-05-039, 1995 Cal. PUC LEXIS 557.

assert the same conclusion in our order today. The notice and public requirements set forth in Edison's application also are incorporated in the ordering paragraphs.

4. Environmental Effects, Pricing

The Commission concluded in D.93-04-019, 48 CPUC2d 602 (1993), and in D.94-06-017, 1994 Cal. PUC Lexis 458, that an environmental review of an agreement like this one is required. Earlier, in a case involving telephone company use of certain Pacific Gas and Electric Company aboveground facilities, the Commission likewise found the proposal exempt from environmental requirements (D.92-07-007, 145 CPUC2d 249 (1992)). We reach the same conclusion here, noting in addition that the proposal is exempt because it can be seen with certainty that there is no possibility that there will be a significant effect on the environment (14 Cal. Code of Regulations § 15061(b)(3)). The installation will be made in existing conduits and cable with no alteration of the environment outside of these facilities.

Pricing provisions and the methodology used by Edison to set the price for the agreement are set forth in the application and its attachments. In general, in addition to the value Edison will obtain through transfer of the fiber optic cable, Linkatel has agreed to pay Edison (1) an annual fee of \$350 per underground linear foot for the use of the fiber optic cable; (2) a one-time initial fee of \$0.17 per aboveground linear cable foot; and (3) an annual fee of \$0.27 per aboveground linear cable foot for the first 10-year period.

5. Discussion

We will grant Edison the requested authority. The arrangement between Edison and Linkatel makes good sense from several perspectives, and we have noted this in earlier decisions

Decision (D.95-02-035, 1995 Cal. PUC Lexis 257)

approving use of unused utility space for fiber optic installation.³ The agreement makes productive use of what is currently available cable space. It is sensible for California's energy utilities, with their extensive easements, rights-of-way, and cable facilities, to cooperate in this manner with the telecommunications utilities that are seeking to build their fiber optic networks. Joint use of 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 a utility's operation.

Finally, the agreement will allow improved service to Linkatel's customers and, at the same time, the residents of Los Angeles and Orange counties will be spared the disruption that would occur if Linkatel installed its own conduits or fiber optic cables along public streets.

Our order provides that Linkatel shall not use these facilities to provide service beyond that authorized under its rate certificate of public convenience and necessity. In addition, we require that Edison not unduly discriminate among all telecommunications companies in providing access to its conduit or rights-of-way.

6. Pass-Through to Ratepayers

Revenues generated by this agreement are intended to flow to and benefit ratepayers. Edison notes that revenues received prior to January 1, 1995, have been treated as a direct credit to Edison's Electric Revenue Adjustment Mechanism (BRAM) balancing account. As the Commission directed in Decision 94-06-017 (June 8, 1994), revenues received for years 1995 and beyond were to be

used to place fiber optic cable along 171,700

³ See, e.g., D.93-04-019, 48 CPUC2d 602 (1993); D.94-06-017, 1994 Cal. PUC LEXIS 458; D.95-05-039, 1995 Cal. PUC LEXIS 557.

included on a forecasted basis in Account 454.450, Other Operating Revenue, in Edison's test year 1995 General Rate Case. With the change to performance-based ratemaking, however, there may be no opportunity in the future to adjust Account 454.450 to true up costs and revenues and to recognize lease revenues that were not included in the forecasts. Therefore, it is appropriate to devise another method for pass-through of these revenues that, like test year ratemaking, benefits ratepayers but also provides an incentive for Edison to spend the time and money necessary to negotiate sensible lease and license agreements that have not been

Accordingly, we will direct Edison to use a sharing mechanism for this and all similar license/lease agreements that do not involve incremental costs. There will be no change in the treatment of those revenues that have been included on a forecasted basis (Account 454.450) in Edison's test year 1995 General Rate Case. Revenues from agreements not included in the General Rate Case forecast will be split 50/50 between the utility and ratepayers, with 50% of such revenues will be treated as a direct credit to Edison's BRAM balancing account. The utility will bear the risk of a failure to achieve forecasted revenues and any costs associated with developing unforecasted projects. This revenue treatment will remain in place until Edison's next general rate case or implementation of performance-based ratemaking.

Findings of Fact

Edison filed this application on February 8, 1996, asking the Commission to approve its agreement with Linkatel under Section 851 of the PU Code. No protests have been filed. Under the terms of the agreement, Edison will lease to Linkatel a portion of its existing underground conduit space, aboveground cable space and rights-of-way in Los Angeles and Orange counties. Linkatel will place fiber optic cable along 171,700 linear feet of existing Edison rights-of-way. Linkatel will construct and maintain the installation. Will bear the costs of

construction and maintenance, and will deed title to the installation to Edison upon completion of construction. Linkatel will make annual payments to Edison.

3. Payments to Edison under the agreement will flow to its ratepayers. 4. Linkatel's installation is a minor alteration of existing utility structures involving negligible expansion of use beyond previously existing uses.

5. Edison has agreed to observe notice requirements proposed earlier by staff to make it clear that Edison is not seeking to offer telephone services.

6. It can be seen with certainty that no significant effects on the environment could result from our granting the requested authorization.

Conclusions of Law

1. Joint use of utility facilities should be encouraged in appropriate cases because of the obvious economic and environmental benefits.

2. Our approval of this application is exempt from the California Environmental Quality Act.

3. Edison should be authorized under PUC Code 851 to lease the designated segment of its underground conduit space and repair aboveground cable space to Linkatel and to permit use of and access to part of its property to the extent necessary to carry out the agreement consistent with Commission rules.

4. Edison did not seek, nor is it granted, authority to offer telephone or telecommunications service. Edison would require Commission authority to begin offering telephone service to the public.

5. Because the agreement offers substantial benefits for ratepayers of Edison and customers of Linkatel, this decision should be effective on the date signed.

ORDER

IT IS ORDERED that: Edison shall make annual payments to Linkatell Pacific, L.P. (Linkatell) as described in the agreement attached to Edison's application.

Edison (Edison) is authorized to enter into a lease of underground conduit space and aboveground cable space Linkatell Pacific, L.P. (Linkatell), as described in the agreement attached to Edison's application.

2. Edison shall annually credit to its Electric Revenue Adjustment Mechanism (ERAM) balancing account 50% of all revenues received from this and all similar agreements not reflected in Decision 96-01-011, Edison's Test Year 1995 General Rate Case. If it can be shown with certainty that no significant change in Edison's revenues has occurred since the filing of its application, Edison shall incorporate the 50% ERAM revenue credit into rates ordered in the forecast phase of its annual Energy Cost Adjustment Clause (ECAC) proceeding. Edison's update filing with the ECAC forecast phase shall include workpapers showing the calculation of this credit.

4. Linkatell shall not use these facilities to provide service beyond that authorized under its certificate of convenience and necessity.

5. Edison shall be subject to the following notification requirements:

a. Edison shall notify the Division of Ratepayer Advocates (DRA) and the Commission Advisory and Compliance Division (CACD), through their respective assistant directors for energy, in writing, of all substantive amendments to, extensions of, or termination of the agreement, within 30 days following the execution of such amendments, extensions or termination.

b. Edison shall notify the DRA and CACD assistant directors for energy, in writing, of any substantive changes to plant in service resulting from implementation of the agreement, within 60 days of any such change.

- c. Edison shall notify the DRA and CACD assistant directors for energy, in writing, if any right-of-way which is the subject of the agreement 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 agreement, within 30 days of any such event.
 - d. If Edison or any affiliate of Edison enters into an agreement to make direct use of the cable which is the subject of this agreement, Edison shall notify the DRA and CACD 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 Edison or the affiliate and the accounting principles which will be used to track the costs and payments associated with such use.
6. This proceeding is closed.
This order is effective today.
Dated July 17, 1996, at Sacramento, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners