

SEP 20 1996  
**ORIGINAL**

Decision, 96-09-061, September 20, 1996

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application )  
of San Diego Gas & Electric )  
Company (U 902-G) for Authority ) (Filed June 14, 1996)  
to Lease Fiber Optics to MCIM. )

Appendix, is dated as of February 15, 1996. The agreement  
initially gives MCIM a license to use the certain unused optical  
fibers. OPINION states that

**1. Summary**

Once the Commission grants SDG&E appropriate authority,  
San Diego Gas & Electric Company (SDG&E) requests  
authority to lease certain single-mode optical fibers which are  
not in use by SDG&E to MCIMetro Access Transmission Services,  
Inc. (MCIM) so that MCIM can use those existing facilities in  
conjunction with its business as an interexchange carrier  
providing telephone service in the San Diego area. The lease  
agreement is approved.

**2. Background**

On June 14, 1996, SDG&E filed this application for  
authority to lease certain single-mode optical fibers which are  
not in use by SDG&E to MCIM, 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.

MCIM is certified by this Commission to operate as an  
interexchange telephone company. It is constructing a fiber

optic system in the San Diego area, but wishes to use the unused  
fibers on SDG&E's 45.4-mile loop covering an area extending from  
downtown San Diego north to the Sorrento Valley area to provide

immediate service during its build-out, for five years. SDG&E states that the fibers are not presently required for utility use by it. SDG&E and MCIM have reached an agreement that will allow MCIM to use these fibers to provide telephone communications services. The agreement, attached to the application as Appendix, is dated as of February 12, 1996. The agreement initially gives MCIM a license to use the certain unused optical fiber. SDG&E states that it will not require these facilities during the term of the proposed MCIM lease.

Once the Commission grants SDG&E appropriate authority, the license will be converted into a 5-year lease which may be renewed for consecutive 1-year terms, with the price to be negotiated for such subsequent terms.

SDG&E states in its application that because MCIM is a public utility, the public benefits from the deployment of these unused fibers to provide telecommunications services, the agreement has no negative impact on any third party, is

"environmentally benign," and the fees which MCIM pays to SDG&E will flow to and benefit ratepayers. In addition, SDG&E disclaims that it will obtain any authority by approval of the agreement to provide telephone service, and states that it will seek specific authority from the Commission and obtain a

certificate of public convenience and necessity prior to holding out telecommunications services to the public. SDG&E also states that MCIM has no intention to use the fibers to provide service

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

beyond what it is authorized to do under its own certificate of public convenience and necessity.

**3. Environmental Effects**

We recently approved a similar agreement between a different electric utility and another telephone utility without requiring an environmental review. (In re Southern California Edison Company (1996) (D.96-07-038).) In that application, the telephone utility was seeking to use space in underground conduit and above-ground cable facilities, including installing fiber optic cable along 171,700 lineal feet of above-ground poles owned by the electric utility. We concluded that there was no possibility of a significant effect on the environment due to the use of existing conduit and poles. In the present application, the only physical changes involve attaching equipment to existing fiber optic cable strands, which involves even less activity. Accordingly, we reach the same conclusion, which is that no environmental review is needed.

**4. Price**

SDG&E states that the original cost of the fiber being leased was approximately \$1.23 million and that it has a present book value of approximately \$0.83 million. Pursuant to a protective order, leave was granted to file the price terms of the lease agreement under seal, for competitive reasons. (The telephone utility would be disadvantaged in other negotiations if the price it was willing to pay to lease fibers were known.) We have examined the confidential price terms, and we are satisfied that the amount that MCIM will pay to SDG&E is within the range of public convenience and necessity. In addition, we

require that SDG&E not unduly discriminate among

that we would expect commercial parties bargaining on their own behalfs to settle within.

SDG&E asks that the revenues from the agreement be credited to its Electric Revenue Adjustment Mechanism (ERAM) account, where they will flow to ratepayers, which we will approve.

**5. Discussion**

We will grant SDG&E the requested authority. The arrangement between SDG&E and MCIM makes good sense from several perspectives, and we have noted this in earlier decisions approving use of unused utility space for fiber optic installation. (see, e.g., *id.*) The same considerations apply to installed, but unused, fibers.

The agreement makes productive use of what is currently available optical fibers. 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 the fiber optic network. 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 service to MCIM's customers to occur earlier than would otherwise be possible.

Our order provides that MCIM shall not use these facilities to provide service beyond that authorized under its certificate of public convenience and necessity. In addition, we require that SDG&E not unduly discriminate among

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. SDG&E notes that prior to the implementation of Performance Based Rates (PBR), net revenues from the agreement would have flowed through miscellaneous revenues on a forecasted basis. Currently, however, the forecast for miscellaneous revenue will not be updated during the period in which revenues from the agreement will accrue. Thus, it is appropriate to approve SDG&E's request that the revenues be flowed through the ERAM account.

**Findings of Fact**

1. SDG&E is a public utility subject to the jurisdiction of this Commission.

2. MCIC is a public utility subject to the jurisdiction of this Commission.

3. SDG&E filed its application on June 14, 1996.

4. Notice appeared in the Daily Calendar on June 19, 1996.

5. No protests were filed.

6. SDG&E has an existing fiber optic cable system with unused fibers that MCIM could utilize in order to provide telecommunications services.

7. SDG&E and MCIM have entered into an agreement pursuant to which SDG&E licenses the right to use such fibers to MCIM and pursuant to Commission approval, to lease such fibers

18. Payments made under the lease will flow to SDG&E's ratepayers.

9. MCIM's connection of equipment to the fibers is a minor alteration of existing utility structures involving negligible expansion of use beyond previously existing uses.

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

Conclusions of Law

1. A public hearing is not necessary.

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

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

4. SDG&E should be authorized under PU Code Section 851 to lease the designated fibers MCIM 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.

5. SDG&E did not seek, nor is it granted, authority to offer telephone or telecommunications services. SDG&E would require Commission authority to begin offering telephone service to the public.

6. Because the agreement offers substantial benefits for ratepayers of SDG&E and customers of MCIM, this decision should be effective on the date signed.

O R D E R

IT IS ORDERED that:

1. Southern California SDG&E Company (SDG&E) is authorized to enter into a lease of unused optical fibers MCImetro Access Transmission Services, Inc. (MCIM), as described in the agreement attached to SDG&E's application.

2. SDG&E shall annually credit to its Electric Revenue Adjustment Mechanism (ERAM) balancing account all revenues received from this agreement.

3. MCIM shall not use these facilities to provide service beyond that authorized under its certificate of public convenience and necessity.

4. This proceeding is closed.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

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