

Decision 96-10-071 October 25, 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 Enter Into Three Lease Agreements With Pacific Lightwave, Inc. (U-5371-C) For Certain Optical Fibers in Existing Fiber Optic Cables

Application 95-12-051
(Filed December 15, 1995)

O P I N I O N

ORIGINAL

1. Summary

Southern California Edison Company (Edison) seeks authority to lease optical fibers in its underground cable space to Pacific Lightwave, Inc. (Pacific). Pacific wishes to lease temporarily available fiber optics in Edison's internal communications system and install Pacific's electronic amplification equipment in Edison facilities through parts of Los Angeles and San Bernardino Counties. Such optical fibers are sometimes referred to as "dark fiber," that is, fibers that have been installed in existing telecommunications cables, but are not currently being used. These dark fibers are temporarily available capacity that Edison will not need during the terms of the three agreements. The application is unopposed, and we will approve the three lease agreements. However, we will decide on the treatment of the lease revenues in a future proceeding and direct Edison to track revenues under these leases in a separate memorandum account pending that decision.

2. Background

On December 15, 1995, Edison filed this application for authority to enter into three leases of dark fibers and certain of its facilities to Pacific, pursuant to §§ 701 and 851 of the Public Utilities (PU) Code.

Pacific is certified by this Commission as an interexchange carrier of telecommunications services. Pacific is constructing a fiber-optic telecommunications system and would use the Edison dark fiber to extend its system through Los Angeles and San Bernardino Counties.

Edison has unused optical fibers in its internal communications system in Los Angeles and San Bernardino Counties. Edison and Pacific have reached three agreements that will allow Pacific to meet its need for a fiber-optic path by taking advantage of this unused fiber. The first agreement (San Gabriel Agreement) was executed on April 28, 1994, and amended on November 1, 1994 and August 9, 1995. The second agreement (Alhambra Agreement) was executed February 23, 1995 and amended August 9, 1995. The third agreement (Covina Agreement) was also executed February 23, 1995 and amended August 9, 1995. The Agreements initially grant Pacific licenses to use the available space. Once the Commission grants Edison the appropriate authority, the licenses will be converted into 10-year leases which each may be renewed for one additional 10-year term at prices then to be negotiated. Edison may cancel any license upon 12 months' written notice.

Under the Agreements, Pacific will have the right to use a specified number of Edison-owned optical fibers extending an aggregate distance of approximately 89.8 miles. The San Gabriel Agreement covers optical fibers running through the San Gabriel and Pomona Valleys and West San Bernardino County, and extending along a 64.4-mile portion of Edison's fiber-optic network. The Alhambra Agreement covers optical fibers running through the Alhambra and Monterey Park areas of Los Angeles County, and extending along an 11.8-mile portion of Edison's fiber-optic network. The Covina Agreement covers optical fibers running through the Covina and

its facilities to Pacific pursuant to §§ 701 and 821 of the Public Utilities Act.

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.

Industry areas of Los Angeles County, extending along a 13.6-mile portion of Edison's fiber-optic network. Pacific will pay Edison for use of the fibers an annual fee of \$1,020 per lineal cable mile, per fiber, due and payable January 1 each year. Pacific has the right to install and operate free-standing racks of electrical equipment for signal and amplification in Edison's Padua, Mesa, and Walnut substations and the general office complex. Pacific will pay \$14,400 annually for this space in the communications rooms of Edison's Padua, Mesa, and Walnut substations and in Edison's general office complex. The Agreements require Pacific to connect all of its electronic equipment and other devices required to use the optical fibers at its own expense and to reimburse Edison for its reasonable costs related to the connection activities. Edison must review and approve all specifications and procedures for these connections in advance. Pacific will maintain the installation. After the license is converted to a lease, Pacific will acquire an indefeasible right-of-use of the installation. Pacific's annual payments to Edison will flow to Edison's customers.

Edison states that the lease of the available optical fibers will not degrade its ability to provide electric service to its customers. The application specifically states that Edison does not seek Commission authority to offer telephone service to the public. As we have done in the past for leases of aboveground cable space, we will include a Conclusion of Law in this decision noting that no telecommunications authority is contemplated. See Decision (D.) 95-05-039.

Edison has also incorporated in the application received guidelines drafted by the Division of Ratepayer Advocates (DRA) and endorsed in D.95-05-039 which require Edison to notify the Commission's staff in the event of substantive changes in the lease agreement or in the event of direct use by Edison or an affiliate

of the fiber optics. Therefore, we have incorporated these notice provisions in the ordering paragraphs of this decision, consistent with the Commission's subsequent internal reorganization.

3. **Discussion** We will grant Edison the requested authority, subject to the notice provisions incorporated in the application. The arrangement between Edison and Pacific makes good sense from several perspectives, as we stated in D.93-04-019, and in the general D.94-06-017, in which we approved similar agreements for the use of underground conduits for fiber optic installation, and in D.95-05-039, approving a similar agreement for the use of aboveground conduits.

First, both the President of the United States and the Governor of California have voiced their support for development of a fiber-optic infrastructure. Even small increments like this one are important steps in developing that infrastructure.

Second, the Agreements make 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 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 the utility's operation or affecting service to utility customers.

Third, revenues generated by these Agreements may 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 (ERAM) balancing account. As the Commission directed in D.94-06-017 (June 8, 1994), revenues received for years 1995 and beyond were to be included on a forecasted basis in Account 454.450, Other

Operating Revenue (OOR), in Edison's test year 1995 General Rate Case. The annual payments for Pacific's use of space in the substations and general office complex were also be placed in this OOR account. 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 of accounting for these revenues that, like test-year ratemaking, may benefit ratepayers while providing an incentive for Edison to spend the time and money necessary to negotiate sensible lease and license agreements.

In Decision (D.) 96-07-038 and D.96-07-058, the Commission recently set forth a revenue sharing mechanism for Edison's leased fiber optic cable space and all similar license/lease agreements whose revenues were not included in Edison's General Rate Case (GRC) forecast in Account 454,450. These decisions split revenues from such agreements 50/50 between Edison and the ratepayers with 50% of the revenues to be treated as a direct credit to Edison's Electric Revenue Adjustment Mechanism (BRAM) balancing account. Shortly after the issuance of these decisions, the Commission issued D.96-09-092, which adopted a performance-based ratemaking (PBR) mechanism for Edison beginning January 1, 1997. In so doing, the Commission eliminated the BRAM balancing account treatment for base revenue requirements. (Id., mimeo (at 269)). Therefore, it is necessary to revisit our revenue treatment of the Pacific Agreements and similar licenses/leases since they no longer fit within the revenue sharing mechanisms of D.96-07-038 and D.96-07-058.

Rather than further delay our approval of the Agreements, today we defer the treatment of revenues under these Agreements to a similar proceeding, Application (A.) 96-09-008, involving Edison and Pacific Bell Mobile Services. We put Edison and all its

licenseholders and lessees on notice that in A 96-09-008 we will explore the proper treatment of the revenue from all outstanding telecommunications leases, which were not included in the GRC on a forecasted basis, in light of PBR mechanisms. Until the issuance of the decision in A 96-09-008, we order Edison to account for the revenues under the Pacific Agreements in a separate memorandum account in order to track them for future ratemaking treatment. Fourth, the Agreements will allow improved service to Pacific's customers. Since Pacific is a public utility, the duty of welfare of its customers also enters into our consideration of this application.

Finally, the residents of Los Angeles and San Bernardino Counties will be spared the disruption of Pacific's installation of its own conduits or fiber optic cables along public streets and roads.

Pacific shall not use these facilities to provide service beyond that authorized under its certificate of convenience and necessity. In addition, Edison shall not unduly or unlawfully discriminate in the provision of access to its conduits and rights-of-way to telecommunications companies. This Commission has long had a policy of promoting competition in the telecommunications industry and does not wish its efforts to be frustrated by unduly restrictive or discriminatory access to the conduits and rights-of-way of regulated public utilities.

4. Review of Environmental Effects
The Commission concluded in D. 93-04-0197 (D/94806-017) and D. 95-05-039 that if an environmental review of Agreements like these is required. Earlier, in a case involving telephone company use of certain Pacific Gas and Electric Company above-ground facilities, the Commission likewise found the proposal exempt from environmental requirements. (D/92-07-007, 45 CPUC 2d 24, 1992 Cal. 1669). A similar proceeding, Application (A.) 95-09-008, (1995 CPUC 1659) involved Edison and Pacific Bell Mobile Services. We put Edison and all its

Even if we assume that our approval of the Agreements and the resulting activities by Pacific trigger the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.), the proposal is exempt from CEQA in at least two ways. The proposal could qualify for a categorical exemption as a minor alteration of existing utility structures involving only a negligible expansion of use beyond previously existing uses (14 Cal. Code of Regulations § 15301(b)). More fundamentally, the proposal is exempt because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment (14 Cal. Code of Regulations § 15061(b)(3)). The installation will be made in the three substations and general office complex merely by installing equipment racks inside the buildings. Under the leases, Pacific will merely use existing fiber-optic cable with no alteration of the environment outside of that cable. Moreover, our approval of the Agreements avoids any environmental effects associated with the trenching or new construction that Pacific otherwise would have to undertake to develop its fiber-optic paths.

5. Pricing Information

When the instant application was filed, Edison filed a motion for protection of confidential business information, attaching for filing under seal the number of optic fibers to be leased under the Agreements and the total annual revenues Edison will receive from the transaction. Edison requested the information be kept under seal for two years. Edison asserted that disclosure of the specific number of fiber optics leased under the Agreements would give Pacific's competitors valuable strategic information about its network capacity, thus placing Pacific at a competitive disadvantage. By utilizing the number of fibers in a specific portion of Pacific's network, the total volume of information which Pacific can transmit can be calculated by a competitor or potential market entrant. Thus, Pacific's areas of

relative strength or weakness could be calculated and factored into competitors' strategic plans. Edison also declared that the amount of annual revenues received for the dark fiber could be used to calculate the number of fibers leased if divided by the price per lineal foot disclosed in the application. (For this reason, Edison also sought its confidential treatment. There being no opposition to the motion nor protest to the application, the Law and Motion Administrative Law Judge granted Edison's motion for confidential treatment for only a one-year period. However, Edison was permitted to request an extension of the confidential treatment for another year with appropriate justification.)

We have reviewed the pricing provisions and the methodology used by Edison to set the price for the Agreements as set forth in the application and its attachments, including those filed under seal. We believe that by disclosing the price per lineal cable mile per fiber, Edison has met the standard articulated in D.95-05-039 and D.94-06-017 for disclosing pricing information to encourage market mechanisms to work efficiently to ensure that ratepayers receive the benefits of proper pricing.

Findings of Fact

Edison filed this application on December 15, 1995, asking the Commission to approve three Agreements with Pacific under §§ 701 and 851 of the PU Code. The application appeared on the Commission's Daily Calendar on December 22, 1995. No protests were filed. Under the terms of the Agreements, Pacific will have the right to use a specified number of Edison-owned optical fibers extending an aggregate distance of approximately 8918 miles in Los Angeles and San Bernardino Counties. Pacific will pay Edison an annual fee of \$17,020 per lineal cable mile per fiber. In addition, Pacific will pay \$14,400 annually for space in the communications rooms of Edison's Padua, Mesa and Walnut substations and in Edison's general office complex for the installation of

Pacific's electronic equipment racks. Pacific will connect all of its electronic equipment and other devices required to use the optical fibers at its own expense and will reimburse Edison for its reasonable costs related to the connection activities. Pacific will maintain the installation.

3. Payments to Edison under the Agreements should be tracked in a separate memorandum account.

Pacific's installation is a minor alteration of existing utility structures involving negligible expansion of use beyond of previously existing uses. Pacific should continue to require certain safeguards to make it clear that Edison is not seeking to offer telephone service.

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

Conclusions of Law

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

Our approval of this application is exempt from CEQA review.

3. Edison should be authorized under PU Code §851 to lease the designated segments of its unused optical fibers in its underground cable to Pacific and to permit use of and access to part of its property to the extent necessary to carry out the Agreements consistent with Commission rules.

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

5. Revenue treatment of the Pacific Agreements is deferred to A.96-09-008.

Because the Agreements offer substantial benefits for ratepayers of Edison and customers of Pacific, this decision should be effective on the date signed.

ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) is authorized to enter into three leases of unused optical fibers in its utility underground cable with Pacific Lightwave, Inc. (Pacific) as previously described in the three agreements and amendments thereto, attached to Edison's application (Agreements).

2. Edison shall track all revenues under the Agreements in a separate memorandum account. Edison shall address the proper ratemaking treatment of the Agreements and similar outstanding licenses/leases, which were not included in Edison's general rates case on a forecasted basis, in Application (A.) 96-09-008. The Commission defers to the decision in A.96-09-008 the revenue treatment of these leases under performance based ratemaking.

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

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

Edison shall notify the Office of Ratepayer Advocates (ORA) and Energy Division (ED) through their respective directors, in writing of all substantive amendments, extensions of, or terminations of the Agreements, within 30 days following the execution of such amendments, extensions or terminations.

Edison shall notify the ORA and ED directors, in writing, of any substantive changes to plant in service resulting from implementation of the Agreements, within 60 days of any such change.

- c. Edison shall notify the ORA and ED directors, in writing, if any right-of-way which is the subject of the Agreements 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 Agreements, 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 any of the Agreements, Edison shall notify the ORA and ED directors, 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.
5. This proceeding is closed.
This order is effective today.
Dated October 25, 1996, at Sacramento, California.

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

Commissioner Daniel Wm. Fessler,
being necessarily absent, did
not participate.