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Decision 96-11-058, November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease to ICG Access Services, Inc. (U 5406-G), and IntelCom Group Inc. Certain Underground Conduit Space and Certain Currently Available Optical Fibers in Existing Fiber Optic Cables.

ORIGINAL

Application 96-03-047 (Filed March 27, 1996)

OPINION

1. Summary

Southern California Edison Company (Edison) requests authority to enter into two agreements to lease (1) certain currently available optical fibers within existing Edison-owned fiber optic cables and (2) underground conduit space and aboveground cable space throughout Edison's service territory to ICG Access Services, Inc. (ICG Access), a wholly-owned subsidiary of IntelCom Group Inc. (Group). ICG Access would use these existing facilities in conjunction with its business as an interexchange carrier providing telephone service in the Southern California area. The two lease agreements are approved. 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 March 27, 1996, Edison filed its application 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. The Southern Pacific

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Transportation Company (Southern Pacific) filed a protest to the application, and at the request of the parties, no proceedings were scheduled to permit Edison and Southern Pacific to resolve concerns over potential conflicts over rights-of-way. On September 10, 1996, Southern Pacific filed a notice of withdrawal of its protest.

Edison proposes to enter into two lease agreements. The first would grant to ICG Access and Group the exclusive right to use approximately 19,500 fiber-miles of currently-available Edison-owned optical fibers, extending over approximately 1,200 cable-route miles. The second would grant to ICG Access and Group the nonexclusive right to use Edison-owned facilities such as conduit, poles, and towers located on Edison rights-of-way to install not more than 500 cable route-miles of new fiber optic telecommunication cables. The term of the agreements is for 25 years from February 20, 1996.

Edison states that it does not currently require the use of the fibers for electric utility operations and has no plans to use them during the term of the agreements. However, it would have the right to reclaim the fibers should their use become necessary for electric utility operations.

By leasing its entire fiber optic network, Edison considers that it has optimized the long-term revenues that it is able to realize for commercial uses, since no route segments will be left unleased after the most desirable route segments have been picked over.

The agreements provide that Edison will assume responsibility for up to \$3 million of the cost of constructing or modifying additional Edison facilities needed to fill gaps in

As permitted by General Order 69-C, the same facilities are currently covered by a license agreement between the parties that would be terminated upon approval of the agreements.

transfer of public utility property. The Southern Pacific

the conduit and pole network connecting existing Edison facilities. In addition, Edison will have the exclusive right to use four fiber strands in each new fiber optic cable that ICG Access installs over Edison facilities. Edison will also have the right to commercially exploit unused underground conduit and aboveground cable space that ICG Access constructs.

ICG Access will provide Edison the exclusive use of one DS-1 circuit (or its equivalent) to each building served by ICG Access within Edison's service territory.

**3. Notice Requirements**

In an application last year for a similar lease of unused cable space,<sup>2</sup> Edison agreed to notice requirements proposed by the Commission's former Advisory and Compliance Division (CACD) and the former 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 notify the DRA and the CACD, in writing, of all substantive amendments to, extensions of, or termination of the agreements, within 30 days following the execution of such amendments, extensions or termination.
- To notify the DRA and CACD, in writing, of any substantive changes to plant in service resulting from implementation of the agreements, within 60 days of such change.
- To notify DRA and CACD if any right-of-way ceases to be used and useful in providing electric service, or if there are substantive changes in right-of-way segments which are the subject of the agreements.
- To notify DRA and CACD, in writing, at least 60 days in advance, of any proposed agreements in which Edison or any Edison affiliate would make

<sup>2</sup> ICG Access under the agreements. Group is jointly and severally obligated to pay to Edison the obligations of Decision (D.) 95-05-039.

...direct use of the cable which is the subject of the agreement. In addition, Edison will have the exclusive right to use four fiber strands in each new fiber optic cable that ICG shall require these as conditions, with the appropriate changes to reflect the recent reorganization of Edison. Edison will also have Commission staff.

**4. Environmental Effects**

We recently approved an agreement (similar to the proposed agreements) between Edison 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 aboveground cable facilities, including installing fiber optic cable along 171,700 lineal feet of aboveground 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.

**5. Price**

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 it were known the price it was willing to pay to lease fibers.) We have examined the confidential price terms and we are satisfied that the amount that ICG Access will pay to Edison is within the range that we would expect commercial parties bargaining on their own account to settle with Edison in advance of any proposed settlement which Edison or any Edison affiliate would make.

<sup>3</sup> Group is jointly and severally obligated to pay to Edison the obligations of ICG Access under the agreements.

**6. Discussion**

We will grant Edison the requested authority. The arrangement between Edison and ICG Access 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 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 ICG Access's customers to occur earlier than would otherwise be possible.

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

**7. Pass-Through to Ratepayers**

Revenues generated by these agreements are intended to flow to and benefit ratepayers. Before January 1, 1995, such revenues were treated as a direct credit to Edison's Electric Revenue Adjustment Mechanism (BRAM) balancing account. As the Commission directed in D.96-03-017, revenues allowed for years 1995 and beyond were included on a forecasted basis in the issuance of the decision in A.96-03-008, we order Edison to

Account 454.450, Other Operating Revenue, in Edison's forecast year 1995 General Rate Case (GRC).

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 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 the revenues of which were not included in Edison's 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 created as a direct credit to Edison's ERAM 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 ERAM balancing account treatment for base revenue requirements (Id. at mimeo. at 26.) Therefore, the former revenue sharing mechanisms through ERAM will no longer be available.

We will defer the treatment of such revenues to a similar proceeding, Application (A.) 96-09-008, involving Edison and Pacific Bell Mobile Services. There 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 received under the present agreement in a separate memorandum account to track them for future ratemaking treatment.

Findings of Fact

1. Edison is a public utility subject to the jurisdiction of this Commission.

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

3. Edison filed its application on March 27, 1996.

4. Notice appeared in the Daily Calendar on March 28, 1996.

5. One protest was filed, but subsequently withdrawn.

6. Edison has an existing fiber optic cable system with unused fibers that ICG Access could utilize in order to provide telecommunications services.

7. Edison and ICG Access have entered into an agreement pursuant to which Edison licenses the exclusive right to use such fibers to ICG Access and, pursuant to Commission approval, to lease such fibers.

8. Edison and ICG Access have entered into a similar agreement pursuant to which Edison licenses the nonexclusive right to underground conduit space and aboveground cable space.

9. Payments made under the leases should flow to Edison's ratepayers as determined in A.96-09-008 and should be tracked in a separate memorandum account pending the decision in that proceeding.

10. Connection of equipment to the fibers by ICG Access is a minor alteration of existing utility structures involving negligible expansion of use beyond previously existing uses.

Edison's service territory with ICG Access Services, Inc. ICG

11. 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. Edison should be authorized under PU Code Section 85101 to lease the designated fibers to ICG Access 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. 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.

6. Revenue treatment of the agreement should be deferred to A.96-09-008.

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

8. Payments made under the leases should flow to Edison's ratepayers as determined in A.96-09-008 and should be tracked in

**O. R. D. E. R.**

**IT IS ORDERED that:**

1. Southern California Edison Company (Edison) is authorized to enter into leases of unused optical fibers and underground conduit space and aboveground cable space throughout Edison's service territory with ICG Access Services, Inc. (ICG



Access) and IntelCom Group Inc. (Group), as described in the agreement attached to Edison's application.

2. Edison shall track all revenues under the agreement in a separate memorandum account. Edison shall address the proper ratemaking treatment of the agreement 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. ICG Access 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:

- a. To notify the Office of Ratepayer Advocates (ORA) and the Energy Division, in writing, of all substantive amendments to, extensions of, or termination of the agreements, within 30 days following the execution of such amendments, extensions or termination.
- b. To notify the ORA and Energy Division, in writing, of any substantive changes to plant in service resulting from implementation of the agreements, within 60 days of such change.
- c. To notify ORA and the Energy Division if any right-of-way ceases to be used and useful in providing electric service, or if there are substantive changes in right-of-way segments which are the subject of the agreements
- d. To notify ORA and the Energy Division, in writing, at least 60 days in advance, of any proposed agreement in which Edison or any Edison affiliate would make direct use of the cable which is the subject of the agreement.

Access) and Intelcor Group Inc. (Group), as described in the  
6. Application 96-03-047 is closed to Edison.

This order is effective today. Edison shall...  
Dated November 26, 1996, at San Francisco, California.

The Commission deems to the decision in A.96-03-008 the  
P. GREGORY CONLON  
President

DANIEL Wm. FESSLER  
JESSIE J. KNIGHT, JR.  
JOSIAH W. NEEPER  
Commissioners

Commissioner Henry M. Dique  
being necessarily absent, did not participate in the following notification

- a. To notify the Office of Ratepayer Advocates (ORA) and the Energy Division, 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. To notify the ORA and Energy Division, in writing, of any substantive changes to plant in service resulting from implementation of the agreement, within 60 days of such change.
- c. To notify ORA and the Energy Division if any right-of-way ceases to be used and useful in providing electric service, or if there are substantive changes in right-of-way segments which are the subject of the agreement.
- d. To notify ORA and the Energy Division, in writing, at least 60 days in advance, of any proposed agreement in which Edison or any Edison affiliate would make direct use of the cable which is the subject of the agreement.