

Decision 98-02-110 February 19, 1998

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 Available Space on Certain
Distribution Power Poles and Street
Light Poles to Metricom, Inc.

Application 97-07-048
(Filed July 30, 1997)

ORIGINAL

OPINION

1. Summary

Southern California Edison Company (Edison) seeks authority to lease available space on certain distribution power poles and street light poles to Metricom, Inc. (Metricom), which would use the space to install low-power, packet-sized wireless radio equipment for its high-speed digital telecommunications services. The Office of Ratepayer Advocates (ORA) recommends additional reporting requirements to safeguard the public interest, and the California Cable Television Association (CCTA) urges that the Commission take note of related issues in another proceeding. The application is granted, subject to conditions.

2. Background

Edison and Metricom have executed a non-exclusive license and lease agreement that would permit Metricom to use available space on an unspecified number of Edison's power poles and street light poles in southern and central California. Metricom will install radio repeaters, each about the size of a shoebox, to provide its wireless telecommunications service, operating under the trademark "Ricochet." The Ricochet network offers high-speed, wide-area access to on-line services, the Internet and local area networks.

Edison states that the lease will generate additional revenue for the benefit of its customers. Each pole attachment will generate revenue for as long as 20 years. Edison

states that it will not lease any available space on a pole unless the use is compatible with current electric utility operations. Edison states that it does not intend by this application, either directly or indirectly, to offer telecommunication services to the public.

Metricom is a public company founded in 1985, with headquarters in Los Gatos, California. Metricom initially sold wireless systems to the electric utility industry in order to improve operating efficiencies and service. Over time, these systems also were offered to water, wastewater, and gas production and distribution industries. Metricom later turned its attention to consumer applications for its technology, developing the Ricochet network in 1993. The network is aimed at corporate, consumer, and education markets in which there is a need to access information and perform transactions on line without the use of telephone lines. The Ricochet network operates under Part 15 of rules promulgated by the Federal Communications Commission. The service is commercially available to subscribers in the San Francisco, Seattle, and Washington, D.C., areas, and at a number of universities and corporations across the nation.

3. Terms of the Lease

The lease between Edison and Metricom, attached as an exhibit to the application, provides that Metricom's selection of sites and timing of installations will depend upon customer demand and other factors. As the parties agree on poles or street lights that Metricom will use, the parties will execute addendums to the lease specifying these facilities.

After Metricom selects a particular route for installation of the packet radio repeaters, it will submit a written request to Edison specifying the location, technical specifications, and dates of installation. Edison then will survey the proposed construction and sites and will review and approve the technical specifications and methods of installation.

Metricom is to pay a one-time fee per radio repeater and an annual rental fee. Metricom has paid Edison \$30,000 as pre-paid rent for the first 500 radios for the first annual rental period. The initial term of the lease is 10 years, renewable by Metricom

for an additional 10 years. Metricom will bear all costs related to the construction and maintenance of each radio, and access to Edison's poles will be regulated by Edison. Metricom agrees to indemnify Edison for all claims and costs caused by Metricom's negligence. The agreement provides that Metricom's activities must not interfere with the operation of the electrical transmission facilities.

4. Benefits of the Lease

Edison states that the lease will generate revenue benefiting ratepayers without sacrifice to Edison's service. At the same time, by using Edison's poles, Metricom can avoid having to construct its own facilities and will be able to develop its network more quickly.

According to Edison, the Metricom wireless network will provide other benefits to Californians. The cities granting rights of way for Metricom's radio repeaters may receive franchise fees based on adjusted gross revenue attributable to residents in those cities. In addition, the system will permit a variety of new applications. The Los Angeles Police Department, for example, will be testing a wireless field data capture system. The system would allow police officers to send and receive computer information from the scene of an investigation using the Ricochet network.

5. Comments by ORA and CCTA

ORA has reviewed the application and does not oppose Edison's request to lease space on its distribution and street light poles to Metricom. It notes, however, that Edison seeks authority to amend the lease from time to time to add additional communications equipment to Edison's poles without further Commission review. ORA recommended instead that the Commission condition its approval, requiring that Edison file advice letter amendments to the lease agreement as additions are made, and that Edison include with each advice letter a statement that the lease of space on specific poles will not adversely impact public utility operations. ORA stated that such filings will provide two important benefits: First, it will establish a record of the revenues to be accumulated, and, second, it will provide information so that the Commission's staff can determine that new installations are suitable ones.

In a joint reply dated September 15, 1997, Edison and Metricom proposed as an alternative to ORA's recommendation that they provide the Commission with copies of the new addendums on a semi-annual basis to avoid any delays that might be caused by the more formal advice letter filings. For competitive reasons, they propose that copies of the addendums not provide the specific pole attachment locations. By letter dated September 23, 1997, ORA stated that this alternative meets its concern for a means for monitoring revenue accrual, but it asks that the copies of addendums be sent to the Telecommunications Division rather than to ORA.

CCTA filed a partial protest to the application, urging the Commission to consider the Metricom lease in connection with other telecommunications proceedings and suggesting that approval of the application be deferred. Edison and Metricom in their joint reply stated that CCTA has presented no reason, other than speculation, that would justify a postponement of this proceeding.

By Administrative Law Judge Ruling, CCTA was asked to respond to the Edison/Metricom reply. In a response dated October 9, 1997, CCTA stated that it did not necessarily oppose Edison's application, but it sought to remind the Commission that its approval of the agreement and the rates here should not be precedential if rates or other related matters involving utility pole use are addressed in the Local Competition proceeding.¹

6. Treatment of Revenues

Edison is raising the issue of disposition of secondary use revenue in Application (A.) 97-06-021, filed on June 12, 1997. That application seeks approval of a new sharing mechanism for revenues received from enhanced utilization of utility assets.

A.97-06-021 is in the early stages of deliberation. Accordingly, until the Commission

¹ See Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-01-013/Investigation 95-01-014.

rules on the sharing mechanism issue, Edison proposes to record revenues from its lease with Metricom in the Telecommunications Lease Revenue Memorandum Account, with final disposition of such revenue subject to a Commission decision. In the meantime, Edison and Metricom could proceed with their agreement.

ORA, which is participating in A.97-06-021, agrees with this treatment of lease revenues. ORA states that by placing the revenue in the interest-bearing memorandum account, ratepayers are indifferent until A.97-06-021 is resolved and Commission policy is stated on how to direct such revenue.

7. Discussion

Section 851 of the Public Utilities Code (PU Code) provides that no public utility "shall...lease...[property] necessary or useful in the performance of its duties to the public...without first having secured from the [C]ommission an order authorizing it so to do." The relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is "adverse to the public interest." (See, e.g., Universal Marine Corporation (1984) 14 CPUC2d 644.)

The proposed lease satisfies this test. The Commission must consider the public interest in two separate areas that fall under our jurisdiction: the electric and telecommunications markets. The Commission has determined that the public interest is served when utility property is used for other purposes without interfering with the utility's operations.¹ Because the proposed agreement will increase the level of revenues Edison can obtain from secondary use of the facilities in question, without additional ratepayer risk, the public interest is advanced by this application. However, the impact of this application with respect to the telecommunications industry must also be considered. It is clear that the Metricom wireless network will provide benefits

¹In D.93-04-019, we observed: "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."

to consumers. The ability of Metricom to build its network will enable it to provide service to Californians, will enhance the state's telecommunications infrastructure, and will increase the level of competition. In addition, Metricom will avoid the construction of unnecessary facilities.

There is a possible conflict between the public interest served by maximizing electric utility revenue and the possible adverse impact higher charges by the utility would have on the telecommunications industry. At some point, maximizing revenues from use of utility property could conflict with the state's telecommunications infrastructure policy by making it more difficult and more costly for telecommunications providers to deploy their network and by increasing the prices of telecommunications service to consumers. In the case before us, Metricom has agreed to the financial terms of the lease. We have no evidence that the financial terms agreed to by Metricom in the lease are harmful to the public interest.

Addendums to the lease should be furnished to the Energy Division, as this will provide a safeguard in monitoring revenue accumulation. In addition, addendums to the lease should be furnished to the Telecommunication Division in order to assure that the state's telecommunications policies are not undermined or hindered as this lease progresses. As to CCTA's comments, our order today provides that our approval of the agreement here and the rates herein is not intended to be viewed as precedent in other proceedings. CCTA is correct that this Commission must consider the implications of this lease with respect to the telecommunications industry, in addition to the review of electric industry policy.

There remains the issue of ratemaking treatment to be accorded the revenues from the lease. In the past, revenues received prior to January 1, 1995, have been treated as a direct credit to Edison's Electric Revenue Adjustment Mechanism (ERAM) balancing account for disposition and ratepayer accrual in Edison's test year general rate case. As we changed to Performance-Based Ratemaking, we recognized that there might be no opportunity in the future to recognize lease revenues not included in the forecasts. Accordingly, in D.96-07-058, issued on July 17, 1996, we adopted an interim mechanism that would not only benefit ratepayers but would give Edison an incentive

to negotiate sensible and lucrative lease agreements. We directed Edison to use a sharing mechanism for revenue, providing for a 50/50 split between Edison's shareholders and its ratepayers, with the ratepayers' share to be treated as a direct credit to the ERAM account.

In D.96-09-092, issued on September 20, 1996, we adopted a Performance-Based Ratemaking mechanism for Edison beginning January 1, 1997. That decision eliminated the ERAM balancing account as a ratemaking tool.

On December 9, 1996, in approving a lease application similar to this one, the Commission in D.96-12-024 directed Edison to preserve a 50/50 sharing of revenue between the utility and ratepayers. All of the revenues from the lease in D.96-12-024 were credited to Edison's Other Operating Revenue Account 454.611 (Secondary Land Use), with Edison's 50% to be credited to the utility, and the ratepayers' 50% placed in a Memorandum Account until further order by the Commission.

We are considering this ratemaking treatment in Edison's application (A.97-06-021) filed in June 1997. Accordingly, pending further Commission action on the ratemaking issue, our order today directs Edison to deal with the revenue from the Metricom lease in the manner described in the application.

Findings of Fact

1. Edison is an electric public utility subject to the jurisdiction and regulation of this Commission.
2. Edison seeks to lease available space on certain of its distribution and street light poles in southern and central California to Metricom for installation of packet radios used in wireless telecommunications services.
3. Subject to Commission authorization required under PU Code § 851, Edison has negotiated a lease for the available property to provide higher future revenues with no interference with the operation of its pole facilities.
4. The proposed lessee, Metricom, is a public company experienced in the design, construction, and operation of wireless telecommunications systems.

5. Metricom will finance, construct, and maintain the equipment it installs on Edison poles, bearing the costs and making lease payments to Edison.
6. Revenue will be placed in an interest-bearing Telecommunications Lease Revenue Memorandum Account pending Commission direction on disposition of such secondary use revenue.
7. It can be seen with reasonable certainty that the proposed use will produce no significant effect on the environment.
8. ORA does not oppose this application, and it does not oppose the proposed method of dealing with revenue pending a final Commission decision on secondary use revenue.
9. ORA recommends that Edison advise the Commission of future addenda to the lease agreement.
10. CCTA urges that the Commission make it clear that the agreement and rates approved in this proceeding are not to be viewed as precedents in other Commission proceedings.

Conclusions of Law

1. No public hearing is necessary.
2. Joint use of utility property should be encouraged in appropriate cases because of the obvious economic and environmental benefits.
3. Our approval of this application is exempt from provisions of the California Environmental Quality Act.
4. Edison should be authorized pursuant to PU Code § 851 to lease the designated facilities to Metricom on the terms and conditions set forth in the application, and on the additional conditions set forth in today's order.
5. Use of Edison's property by Metricom will promote the state's telecommunication infrastructure policy by facilitating the deployment of Metricom's network as well as the eventual provision of service to Californians and is consistent with the Commission's policy promoting competition in all telecommunications markets.

6. It is appropriate to determine the public interest of this lease by considering the impacts in both the electric and telecommunications industry.

7. Because the proposed lease will advance the state's telecommunications infrastructure policy and because of the benefits of the lease to the utility and to ratepayers, approval of this application should be made effectively immediately.

ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) is authorized to enter into the lease and license agreement with Metricom, Inc., providing for installation of certain radio facilities on Edison distribution and street light poles, under the terms and conditions set forth in this application and pursuant to this order.

2. As received, all revenues from the lease authorized shall be credited to Edison's Telecommunications Lease Revenue Memorandum Account, with workpapers showing the calculation of this credit.

3. Edison shall notify the Director of the Energy Division, in writing, of any substantial amendments to, extension of, or termination of the lease agreement, within 30 days following the execution of such amendments, extensions or termination.

4. Copies of addenda to the lease agreement specifying additional installations of radio equipment shall be furnished semi-annually to the Director, Telecommunications Division, along with a written statement by Edison that the leasing of the space on the specific poles will not adversely impact Edison's public utility operations.

5. Approval of the lease agreement and rates therein in this application is not to be deemed a precedent in other Commission proceedings.

6. This proceeding is closed.

This order is effective today.

Dated February 19, 1998, at San Francisco, California.

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