

**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 Certain Fiber Optic Cables to CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS under the Master Dark Fiber Lease Agreement Pursuant to Public Utilities Code Section 851.

A.17-02-001
(Filed February 3, 2017)

**MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO
WITHDRAW THE APPLICATION**

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Dated: July 5, 2018

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Pursuant to California Public Utilities Commission (“Commission”) Rule of Practice and Procedure 11.1, Southern California Edison (“SCE”) respectfully files this motion requesting permission to withdraw Application 17-02-001. Given the passage of time since SCE filed its application, circumstances have changed such that SCE no longer plans to enter into any individual lease route orders under the Master Dark Fiber Lease Agreement (“MLA”). Diminished business opportunities, which would be exacerbated by the ratemaking treatment reflected in the pending Proposed Decision (PD), renders SCE’s application moot.

I. PROCEDURAL HISTORY

On February 3, 2017, SCE submitted A.17-02-001 requesting an order from the Commission pursuant to California Public Utilities Code § 851 authorizing SCE to lease certain fiber optic cables to Cellco Partnership D/B/A Verizon Wireless (“Verizon Wireless”) under the MLA.

On April 27, 2017, the Assigned Commissioner and Administrative Law Judge issued a scoping memo identifying the issues in the proceeding as: “Is the proposed lease adverse to the public interest?” and “Does the proposed lease require environmental review pursuant to the California Environmental Quality Act?”¹

On June 5, 2017, the Administrative Law Judge issued a proposed decision approving the application as filed. This proposed decision was subsequently withdrawn.

¹ Assigned Commissioner’s Scoping Memo and Ruling at 2 (Apr. 27, 2017).

On September 11, 2017, the Assigned Commissioner and Administrative Law Judge issued an amended scoping memo significantly expanding the scope of this proceeding to include nine additional issues.² The amended scoping memo noted that “related proceedings require us to take a closer look at the over-arching issue of whether the proposed Master Lease Agreement here is consistent with the revenue sharing mechanism set forth in D.99-07-070 [sic³] and in the public interest.”⁴

On January 9, 2018, the ALJ issued a proposed decision.⁵ The proposed decision would change the gross revenue sharing mechanism applicable to fiber lease transactions under the MLA from a regime in which 10% of the gross revenue is allocated to customers (after the first \$16.7 million in non-tariffed products and services revenue, which is allocated 100% to customers) to a new system in which 75% of the gross revenue is allocated to customers.⁶ On January 29, 2018, SCE filed comments opposing the proposed decision.⁷ SCE stated and continues to maintain that, if the revenue sharing mechanism set forth in the proposed decision were adopted, it would not proceed with the transactions contemplated by the MLA.⁸

Due to its findings on the gross revenue sharing mechanism, SCE requested that the Commission hold the proposed decision. The Commission has done so repeatedly, and no alternate proposed decision has been issued to date.

II. STANDARD FOR GRANTING THE MOTION

“The Commission has sole authority to close a proceeding”⁹ and withdrawal of an application at this stage is “a matter of the Commission’s discretion.”¹⁰ “Although the

² Assigned Commissioner’s Amended Scoping Memo and Ruling (Sept. 11, 2017) (“Amended Scoping Memo”).

³ The Amended Scoping Memo likely intended to refer to D.99-09-070.

⁴ Amended Scoping Memo at 2.

⁵ Proposed Decision of ALJ Yacknin Approving and Adopting 25/75 Revenue Allocation for Revenues Under the Master Dark Fiber Lease Agreement Between Southern California Edison Company and Verizon Wireless (Jan. 9, 2018) (“PD”).

⁶ PD at 7-8.

⁷ Comments of Southern California Edison Company (U 338-E) on the Proposed Decision Approving and Adopting 25/75 Revenue Allocation for Revenues Under the Master Dark Fiber Lease Agreement Between Southern California Edison Company and Verizon Wireless (Jan. 29, 2018) (“SCE Comments”).

⁸ SCE Comments at 3.

⁹ D.04-06-016 at 6 (2004).

Commission has usually granted such motions, the Commission may deny motions to withdraw when doing so is in the public interest and [the Commission may] pursue matters of public concern after an applicant has moved to withdraw an application.”¹¹ In numerous past decisions, the Commission has granted motions to withdraw when an application becomes moot due to a change in circumstances, whether factual or legal.¹² Indeed, the Commission recently exercised its discretion to grant a motion to withdraw an application for approval of a transfer of control pursuant to California Public Utilities Code § 854 at a similar procedural stage.¹³ Upon termination of the proposed transaction, the Commission granted the motion to withdraw even though “the Commission would have voted on a proposed decision or an alternate proposed decision at the May 11, 2015 meeting but for the Joint Applicants’ motion to withdraw.”¹⁴

III. THE COMMISSION SHOULD GRANT SCE’S MOTION IN THIS CASE BECAUSE THE APPLICATION IS MOOT AND THE RELIEF SOUGHT IS NO LONGER NECESSARY

For the reasons below, SCE has made a decision that it no longer plans to move forward with any individual lease route orders under the MLA. Thus the relief sought by SCE in filing this application is no longer necessary and the application is moot. Accordingly, SCE respectfully requests permission to withdraw the application.

SCE initially filed this application to comply with California Public Utilities Code § 851, which requires that approval of lease transactions valued at more than \$5 million dollars be sought via application. Section 851 and General Order 173 allow for approval of transactions valued at \$5 million or less to be sought via advice letter, and SCE has sought and obtained

¹⁰ D.92-04-027, 43 CPUC 2d 639, 1992 Cal. PUC LEXIS 340 at *3 (1992).

¹¹ D.04-06-016 at 6.

¹² *See, e.g.*, D.01-02-040, 2001 Cal. PUC LEXIS 142 (2001) (granting a motion to withdraw an application under Cal. Pub. Util. Code § 854 after evidentiary hearings where the planned merger was later terminated); D.92-04-027, 1992 Cal. PUC LEXIS 340 (granting a motion to withdraw an application seeking preapproval of long-term supply contracts after evidentiary hearings and a proposed decision where the contracts were subsequently terminated); D.98-05-011, 1998 Cal. PUC LEXIS 326 (1998) (dismissing as moot an application for approval of radiotelephone utility interconnection tariffs due to subsequent passage of the Telecommunications Act of 1996); D.98-08-022, 1998 Cal. PUC LEXIS 619 (1998) (same); D.98-08-023, 1998 Cal. PUC LEXIS 610 (1998) (same); D.98-10-012, 1998 Cal. PUC LEXIS 956 (1998) (same).

¹³ D.15-07-037 (2015).

¹⁴ *Id.* at 9.

approval via advice letters for many leases of dark fiber in the past.¹⁵ At the time of filing this application, “SCE expect[ed] that the collective value of the anticipated Lease Route Orders over the life of the [MLA] could exceed five million dollars.”¹⁶ In the application, SCE sought a global determination from the Commission approving leases under the MLA, permitting SCE to proceed expeditiously with individual lease route orders.¹⁷ It was SCE’s hope that the Commission would approve the application expeditiously, as the transactions contemplated by the MLA would promote the deployment of 5G infrastructure. Indeed, SCE specifically requested expedited action on the application.¹⁸

No party has questioned the public benefits of the leases. However, the proposed decision would change the gross revenue sharing mechanism (“GRSM”) adopted in D.99-09-070 as applied to the MLA.¹⁹ That issue has, unfortunately, slowed the resolution of what SCE believed was a straightforward application. Moreover, with the proposed decision having been held repeatedly, and no alternate having been issued as of this date, it is not clear when, if ever, the Commission would issue a decision that would approve the application on economic terms that would enable SCE to have a viable business opportunity with Verizon Wireless for the transactions covered by the MLA.

In the seventeen months since SCE filed its application, Verizon Wireless has continued to obtain the additional infrastructure it requires from its existing providers. While there may be future business opportunities with Verizon Wireless for dark fiber lease transactions independent of the MLA, at this time, the volume of lease route orders SCE would be able to enter into under the MLA is less than what SCE had planned when it filed the application. Had the Commission adopted the June 5, 2017 proposed decision, SCE may have been able to carry out the MLA, but at this juncture the original justification for the application is no longer economically viable.

In light of these changed circumstances, SCE no longer plans to enter into the individual lease route orders covered by the MLA and the application is moot. To the extent that SCE may

¹⁵ See SCE Comments at 8.

¹⁶ Application (A.) 17-02-001 at 2-3 (Feb. 3, 2018) (“Application”).

¹⁷ Application at 3.

¹⁸ Application at 15-16.

¹⁹ See The Utility Reform Network’s Notice of *Ex Parte* Communication at 2 (Feb. 26, 2018) (“TURN emphasized that the findings and conclusions in this Proposed Decision only apply to the instant application and do not have an impact on previous or current SCE fiber lease arrangements.”).

seek, in the future, to lease its dark fiber to Verizon Wireless or any other potential lessee, it will comply with § 851 and General Order 173 for eligible transactions.

IV. THE COMMISSION SHOULD NOT DECIDE THE CONTROVERSY SURROUNDING THE GROSS REVENUE SHARING MECHANISM

SCE strongly believes that the GRSM should not be changed, as it creates beneficial incentives for SCE to maximize the value of utility assets for the joint benefit of customers and the company. Indeed, customers have received more under the GRSM than has SCE.²⁰ Nevertheless, the Commission should not decide in this proceeding the controversial question whether the GRSM should be changed, especially since it raises concerns well beyond the scope of the relief SCE initially sought in its application.²¹

For the above reasons in this motion, SCE respectfully requests that the Commission grant its motion to withdraw the application as moot. In order to give the other parties adequate opportunity to respond to this motion, SCE would respectfully request that the Commission hold the vote on the Proposed Decision, currently scheduled for July 12, until interested parties have had an opportunity to respond to this motion.

Date: July 5, 2018

Respectfully Submitted,

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²⁰ SCE Comments at 9 (“SCE’s GRSM has directed 26% of *net* revenues to shareholders and 74% to customers.”).

²¹ The Utility Reform Network (TURN) has also “emphasized that the findings and conclusions in [the] Proposed Decision only apply to the instant application and do not have an impact on previous or current SCE fiber lease arrangements.” TURN Notice of *Ex Parte* Communication, filed February 27, 2018 in A.17-02-001.

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Code Section 851.

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**[PROPOSED ORDER] GRANTING MOTION OF SOUTHERN CALIFORNIA EDISON
COMPANY (U 338-E) TO WITHDRAW THE APPLICATION**

On February 3, 2017, SCE submitted A.17-02-001 requesting an order pursuant to California Public Utilities Code § 851 authorizing SCE to lease certain fiber optic cables to Cellco Partnership D/B/A Verizon Wireless (“Verizon Wireless”) under the Master Dark Fiber Lease Agreement (“MLA”).

On July 5, 2018, SCE filed a motion to withdraw the application (“Motion”) as moot.

The Commission has considered SCE’s Motion and, good cause having been shown, grants the Motion. Accordingly, it is hereby ORDERED that the Motion of Southern California Edison Company (U 338-E) To Withdraw The Application is granted.

Dated _____, 2018, at San Francisco, California.

Hallie Yacknin
Administrative Law Judge