

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
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October 20, 2010

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Quasi-Legislative

TO PARTIES OF RECORD IN Rulemaking 06-10-006

This is the proposed decision of Commissioner John A. Bohn. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Bushey at [mab@cpuc.ca.gov](mailto:mab@cpuc.ca.gov) and Commissioner Bohn's advisor Lindsay M. Brown at [lmb@cpuc.ca.gov](mailto:lmb@cpuc.ca.gov). The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ JACQUELINE A. REED for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:gd2

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER BOHN**  
(Mailed 10/20/2010)

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

Order Instituting Rulemaking on the Commission's own motion into the application of the California Environmental Quality Act to applications of jurisdictional telecommunications utilities for authority to offer service and construct facilities.

Rulemaking 06-10-006  
(Filed October 5, 2006)

**FINAL DECISION ADOPTING GENERAL ORDER  
SPECIFYING REVIEW PROCEDURES PURSUANT TO  
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**1. Summary**

This decision adopts General Order 170 which sets forth the Commission's procedures for reviewing proposed construction projects by California telephone<sup>1</sup> corporations. General Order 170 contains a streamlined California Environmental Quality Act (CEQA) process that will facilitate deployment of advanced communications policy. General Order 170 will ensure that the Commission's practices comply with the current requirements and policies of

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<sup>1</sup> As set forth in General Order (GO) 170, which is Attachment 1 to today's decision, the GO also applies to California telegraph corporations as defined in Pub. Util. Code § 236 when constructing telegraph lines as defined in § 235. These corporations are subject to the Commission's jurisdiction and are included for completeness as their business is largely of historical interest only. All references to telephone corporation herein include telegraph corporation as well.

CEQA and will promote the development of an advanced telecommunications infrastructure.

## 2. Background

On October 5, 2006, the Commission opened this Order Instituting Rulemaking (OIR) in order to consider changes to the Commission's application of CEQA to telephone corporations. The stated goals of this OIR are to develop rules and policies that will:

- Ensure that the Commission's practices comply with the current requirements and policies of CEQA;
- Promote the development of an advanced telecommunications infrastructure, particularly with regard to facilities that provide broadband facilities; and
- To make certain that the application of CEQA in the area of telecommunications does not cause undue harm to competition, particularly intermodal competition.

The Commission's current application of CEQA to carriers has resulted in inconsistent requirements, largely depending on when the particular company began to do business in California. For example, the large incumbent local exchange telephone corporations obtained their operating authority<sup>2</sup> from this Commission decades ago, prior to the Legislature adopting CEQA, and these corporations did not then and do not now submit their construction projects for Commission CEQA review. Between 1995 and 1999, the Commission, when granting operating authority to competitive local exchange carriers, conducted

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<sup>2</sup> Pursuant to Pub. Util. Code § 1001, the Commission must issue a Certificate of Public Convenience and Necessity (CPCN) prior to any "telephone corporation" commencing construction of "a line, plant, or system, or any extension thereof."

environmental review through “batch negative declarations” which authorized construction of facilities statewide within existing utility rights-of-way without any additional CEQA review, with some variation in the requirements of individual batch declarations.<sup>3</sup> In contrast, new entrants to the California telecommunications marketplace that wish to perform construction, other than very minor activities such as the use of existing facilities and placement of switches or other equipment in or on existing buildings, must generally undergo CEQA review at the Commission in order to obtain a full facilities-based CPCN.<sup>4</sup>

The goals of this proceeding include the adoption of clear, consistent, and effective policies, programs, and requirements for the Commission’s implementation of CEQA as applied to carriers.

As specified in the OIR, parties filed opening comments on certain issues in November 2006. Workshops were held in this proceeding on January 24, and February 27, 2007. At the February 27, 2007 workshop, a number of the parties proposed that local agencies, rather than the Commission, conduct any required CEQA review for telecommunications projects.

The parties through an informal process of meeting and conferring, divided themselves into two groups, the Joint Carriers and the Joint Competitive Local Exchange Carriers (CLECs). The Joint Carriers group is comprised of

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<sup>3</sup> All telephone corporations must also obtain any required local permits or meet other regulatory requirements imposed by local governments or agencies.

<sup>4</sup> As an exception, the Commission has permitted a small number of new entrants, which plan to construct facilities that they claim are exempt from CEQA, to obtain authorization to construct through an expedited process, on a case-by-case basis. For example, see *Decision (D.) 06-04-030, Application of NewPath Networks, LLC (U-6928-C) for a Modification to its Certificate of Public Convenience and Necessity in Order to Provide Competitive Local Exchange, Access and Non-Dominant Interexchange Service (Newpath)*.

established telephone corporations with relatively long-standing operating authority, including specifically the local exchange carriers and some competitive carriers that received CPCNs from the Commission before 1996 and had “batch negative declarations” approved for their construction projects.<sup>5</sup> The Joint CLECs group includes ExteNet Systems, LLC; NewPath Networks, LLC; NextG Networks of California, Inc.; Southern California Edison; Sprint Communications Company, LP; Sunesys, LLC; and Utility Telephone, Inc.

The Joint Carriers filed opening comments in response to the assigned ALJ’s ruling on August 24, 2007, and the Joint CLECs filed their opening comments on August 27, 2007.

Comments were filed on the two proposals by the League of California Cities, the City and County of San Francisco, the City of Walnut Creek and Scan Ntoa, Inc. (jointly referred to as Cities); the California Attorney General’s Office (AG), the Salinan National Cultural Preservation Association and the Society for California Archaeology (Salinan Nation), and AboveNet Communications (AboveNet) in September 2007. These comments raised legal and policy issues

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<sup>5</sup> More specifically, the Joint Carriers includes Astound Broadband, LLC; Citizens Telecommunications Company of California, Inc. d/b/a Frontier Telecommunications Company of California; Citizens Telecommunications Company of Tuolumne d/b/a Frontier Telecommunications Company of Tuolumne, Frontier Communications of America, Inc.; Level 3 Communications, LLC; Pacific Bell Telephone Company, d/b/a AT&T California; Surewest Telephone; Time Warner Telecom of California, LP; Verizon, including Verizon California Inc. and its certificated California affiliates; and the following small Incumbent Local Exchange Carriers (ILECs): Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Global Valley Networks, Inc., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

in response to the two proposals. The Joint Carriers and the Joint CLECs also filed reply comments to each other's proposals on September 10, 2007.

On April 18, 2008, the assigned Commissioner and Administrative Law Judge issued the scoping memo for this proceeding which set forth the issues to be resolved and the plan to issue a proposed decision for comment from the parties. Today's decision completes the procedural schedule adopted in the scoping memo.

### **3. Overview of CEQA**

CEQA requires public agencies,<sup>6</sup> under certain conditions, to identify the significant environmental effects<sup>7</sup> of their actions, and alternatives to these actions, and to either avoid or mitigate those significant environmental effects, where feasible.<sup>8</sup> CEQA applies to a government action if it involves a discretionary decision of a public agency, a public agency is approving an activity that may have a significant effect on the environment, and it falls within the definition of a project.<sup>9</sup> In determining whether an activity constitutes a

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<sup>6</sup> "Public agency' includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision." (Pub. Res. Code, § 21063.)

<sup>7</sup> "Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (Pub. Res. Code, § 21068.)

<sup>8</sup> "Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Res. Code, § 21061.1.)

<sup>9</sup> "Project' means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: "(a) An activity directly undertaken by any public

*Footnote continued on next page*

project, a public agency must look at all of the parts, components, and phases of the activity.<sup>10</sup>

A “lead agency” determines whether a government action constitutes a project. A lead agency is the public agency that has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.<sup>11</sup> A “responsible agency” is a “public agency, other than the lead agency, which has responsibility for carrying out or approving a project.”<sup>12</sup>

Once a lead agency has determined that an activity is a project under CEQA, the lead agency must decide whether an exemption applies.<sup>13</sup> If an exemption does not apply to a project, then the lead agency must prepare an initial study to determine whether to prepare either a negative declaration<sup>14</sup> or an

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agency. (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” (Pub. Res. Code, § 21065.)

<sup>10</sup> California courts have interpreted the statutory definition of the definition of “project” (particularly the phrase “whole of the action”) as meaning that it is contrary to CEQA to break up a project into smaller components to avoid CEQA requirements. (See CEQA Guidelines, 14 Cal. Code Reg., § 15378(c); *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, \*394-\*396.)

<sup>11</sup> Pub. Res. Code, § 21067.

<sup>12</sup> *Id.*, § 21069.

<sup>13</sup> CEQA Guidelines, 14 Cal. Code Reg., § 15061(b).

<sup>14</sup> “Negative declaration’ means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not

*Footnote continued on next page*

environmental impact report (EIR).<sup>15</sup> If the lead agency finds that there is no substantial evidence showing that the project will have a significant effect on the environment, it must prepare a negative declaration. In some cases, a public agency may find that certain measures can be incorporated in, or changes made, to the project description that would mitigate any significant environmental impacts, and that an EIR may not be necessary. In those cases, the public agency prepares a “mitigated negative declaration.”<sup>16</sup>

If the lead agency determines that a government activity is a project, is not exempt from CEQA, and may cause significant effects on the environment that cannot be addressed by a mitigated negative declaration, then the lead agency must prepare an EIR.

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require the preparation of an environmental impact report.” (Pub. Res. Code, § 21064.)

<sup>15</sup> An EIR is a detailed statement discussing any potential significant environmental impacts of a project. An EIR “ . . . shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project . . .” (Pub. Res. Code, § 21061.)

<sup>16</sup> “Mitigated negative declaration’ means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Pub. Res. Code, § 21064.5.)

#### **4. Summary of Parties' Comments in response to ALJ Ruling**

In response to the May 8, 2007 ALJ ruling, which directed the parties to meet and confer and to file comments on designated issues, both the Joint Carriers and the Joint CLECs filed timely opening comments and proposals for improving the Commission's CEQA process as applied to telecommunications carriers. Below is a summary of these comments and proposals.

##### **4.1. Joint Carriers' Comments and Proposal**

Under the Joint Carriers' proposal, existing carriers, (i.e., telecommunications utilities that are currently certificated to operate in this State) would no longer be required to apply for an amended CPCN before constructing telecommunications facilities that will: (1) extend their services in any city or city and county in which they have already lawfully commenced operations; (2) extend services into territory either within or without a city or city and county contiguous to their lines, plants or systems and not already served by another telecommunications utility; or (3) extend their services within or to territory already served by them, as necessary in the ordinary course of business.

The Joint Carriers' proposal states that existing carriers would have the right to construct in public rights of way within their approved service areas without returning to the Commission for approval, subject to the requirements of federal, state and local law. For existing carriers, local agencies would generally be the Lead Agency under CEQA, would conduct any necessary environmental review of telecommunications construction projects within their jurisdictions, and may also find that a proposed construction project is categorically or statutorily exempt from CEQA. However, the Commission would be the Lead

Agency under CEQA if an existing carrier applies to the Commission for a modification of its CPCN to authorize new construction projects.

The Joint Carriers propose that new or modified CPCNs issued after the effective date of the final Commission decision in this proceeding would not authorize the construction of telecommunications facilities, unless: (1) the CPCN identifies the facility by size, type, and geographic location, or (2) the Commission analyzed the construction of the facility under CEQA when issuing the CPCN. In cases in which the Commission issues a new or modified CPCN, telecommunications utilities would also obtain any other required permits, licenses or entitlements from federal, state, or local agencies having jurisdiction over the construction project.

The Joint Carriers have proposed an expedited procedure for Commission staff approval of construction projects claimed to fall within statutory or categorical exemptions under CEQA, which is similar to the process currently utilized by the Commission for some carriers on a case-by-case basis. (*For example, see Decision (D.) 06-04-030, (Newpath)*). Under the Joint Carriers' Proposal, when a telecommunications utility applies to the Commission for a new or modified CPCN for projects claiming to be CEQA-exempt, the carrier would identify the relevant categorical or statutory exemptions and for categorical exemptions, would explain the carrier's basis for claiming that no exception to the exemption exists. The Commission or its staff would issue a written determination within 21 days finding that either: (1) the project is exempt from CEQA and, in the case of categorical exemptions, no exceptions to the exemption apply, or (2) the project is not exempt from CEQA and an explanation of this finding; or (3) there is insufficient information to determine whether the project is exempt from CEQA. For projects found to be categorically exempt,

Commission staff would issue a Notice of Exemption as required by State CEQA Guidelines Section 15062.

#### **4.2. Joint CLECs' Comments and Proposal**

Under the Joint CLECs' proposal, all certificated carriers would have the authority to construct facilities needed to provide telecommunications service in California, without regard to the specific type of technology, equipment or facility being deployed. All carriers would have the right to: a) operate in public rights of way, b) access public rights of way, including facilities such as utility poles and conduit located therein, c) construct telecommunications facilities in public rights of way, subject to applicable time, place, and manner restrictions, and d) occupy public rights of way subject to obtaining all required excavation or encroachment permits, and/or agreements to attach equipment to facilities located in the public rights of way, such as utility poles and conduit.

The Joint CLECs' proposal emphasizes leveling the playing field. All telecommunications utilities in this state, including the ILECs, carriers whose construction projects were previously approved by "batch" negative declarations, newly certificated carriers, carriers holding CPCNs that require further Commission approval in order to construct telecommunications facilities, and any carriers operating pursuant to other authority from the Commission, would be subject to a uniform process for CEQA review of new construction. Under the Joint CLECs' proposal, telecommunications carriers that wish to engage in new construction may elect to have either the Commission or another state or local agency having jurisdiction over the project serve as the Lead Agency under CEQA.

The Joint CLECs state that telecommunications utilities that choose the Commission as the Lead Agency under CEQA and believe that a proposed

construction project is exempt from CEQA may submit to Commission staff a Construction Statement that describes the proposed construction activities, identifies the statutory or categorical exemptions claimed to apply, and in the case of categorical exemptions, states the basis for claiming that no exception to the categorical exemption applies. Within five business days, Commission staff would issue a letter determination that the proposed construction project either is or is not exempt from CEQA. If Commission staff finds that the construction project is exempt from CEQA, the carrier may proceed with construction. The Commission would conduct an environmental review of standard ground-disturbing telecommunications construction statewide and would either issue and certify a program or master EIR or a master negative declaration (ND) or mitigated negative declaration (MND).

Under the Joint CLECs' proposal, if a telecommunications carrier believes that a proposed construction activity is within the scope of the Master or Program EIR, ND or MND and elects to have the Commission, rather than another state agency or a local agency, serve as Lead Agency, the telecommunications carrier shall submit an advice letter to the Commission which describes the proposed construction and demonstrates that this construction activity is substantially of the same type and scope as reviewed in the Master or Program EIR or ND or MND. Within 21 days, the Commission would prepare an initial study and notify the carrier whether the proposed project is within the scope of the Master or Program EIR or ND or MND, and, if so, would issue a written finding approving the project and identifying all feasible mitigation measures or feasible alternatives.

If a telecommunications utility wishes to engage in ground-breaking construction outside of public rights of way that does not fall within the scope of

the Commission's Master or Program EIR or ND or MND, and chooses to have the Commission act as the Lead Agency, the Joint CLECs propose that the carrier file an application that describes the type, location, and size of the proposed construction and proposes additional mitigation measures necessary to reduce the environmental impacts of the project.

#### **4.3. Reply Comments of Joint Carriers**

The Joint Carriers state that the proposal of the Joint CLECs is unwieldy, does not comply with CEQA, and would perpetuate distinctions between telecommunications carriers and intermodal enterprises. The Joint Carriers further comment that local governments are generally in the best position to evaluate the environmental impacts of telecommunications projects, and local CEQA review will prevent inconsistent and anticompetitive treatment of telecommunications carriers and intermodal providers. However, the Joint Carriers believe that the Commission should be the Lead Agency when it issues a new or amended CPCN that will have foreseeable environmental impacts.

The Joint Carriers state that CLECs, which previously obtained batch negative declarations for their projects, and the ILECs, which have operating authority that predates the requirement for a CPCN under Section 1001, are not legally required to undergo CEQA review of their projects because the Commission need not make any discretionary decision on their projects. The Joint Carriers also claim that their proposal lessens the unequal treatment of CLECs that were not issued batch negative declarations by superseding the requirement for CEQA review by the Commission of additional projects not specifically authorized in their CPCNs.

According to the Joint Carriers, the tiered CEQA review proposed by the Joint CLECs is cumbersome and inconsistent with CEQA. The Joint Carriers

believe that the Joint CLECs' proposal fails to describe the specific project that would be reviewed in a Program EIR or a Master EIR or Master Negative Declaration. According to the Joint Carriers, CEQA review requires analysis of a specific project, and hypothetical statewide construction of telecommunications facilities is not a project. The Joint Carriers feel the proposed tiered approach is overly broad because the CEQA review would include all hypothetical telecommunications projects, even those which are exempt from CEQA.

The Joint Carriers also contend that the Joint CLECs' proposal appears to involve the unlawful piecemealing of projects.

#### **4.4. Reply Comments of Joint CLECs**

The Joint CLECs believe that the Commission needs to level the playing field so that all carriers undergo CEQA review for their projects that may have significant environmental impacts in order to ensure equitable treatment of all carriers and to remove barriers to entry into the telecommunications market in California. The Joint CLECs comment that their proposal levels the playing field by allowing carriers to choose whether they wish to undergo CEQA review at the Commission or at the local level, which gives CLECs the opportunity to avoid problems with local agencies that require unlawful payments as a condition of permitting construction. The Joint CLECs state that CEQA focuses on the type of construction to be performed and the potential environmental impacts, not the type of CPCN held by the carrier or the time period within which the CPCN was issued, and the Commission should modify its CEQA process to reflect this principle.

The Joint CLECs disagree with the Joint Carriers that the affected local agency is always better suited to be the Lead Agency than the Commission. Therefore, the Joint CLECs' proposal states that in many circumstances, it is

appropriate for the Commission to be the Lead Agency for telecommunications projects because the Commission is the only agency charged with regulating the telecommunications industry, removing barriers to entry into the marketplace, and fostering fair competition among carriers.

The Joint CLECs state that the Joint Carriers' proposal puts the heaviest burden on new CLECs entering the California market, when their construction projects, such as the installation of facilities necessary to provide Distributed Antenna System (DAS)-based services, may have less impact on the environment than other types of construction performed by carriers.

The Joint CLECs also contend that the Joint Carriers proposal makes the 21-day expedited process for Commission staff review of claimed CEQA-exempt projects adopted in *Newpath* and other Commission orders more cumbersome and more time-consuming by requiring a formal application. In addition, the Joint CLECs claim that the Joint Carriers' proposal suggests that both the Commission and the local agency might make a determination regarding whether the project is exempt from CEQA, which is not permitted under CEQA.

The Joint CLECs also object to the Joint Carrier's Proposal on the grounds that it would require CLECs applying for CPCNs to describe any facilities for which construction is reasonably foreseeable. The Joint CLECs state that this requirement would result in new CLECs having to undergo CEQA review whether or not they have a definite plan to construct particular facilities. The Joint CLECs state that, in order to avoid disruption, their proposal excludes projects already carried out by the ILECs or carriers holding batch negative declarations.

The Joint CLECs also comment that the Commission has met all procedural prerequisites to issuing an order approving the Joint CLECs'

proposal. The Commission has given public notice of its intent to modify its CEQA process in the OIR and has given the parties the opportunity to attend workshops, file proposals, and to file comments on each other's proposals.

#### **4.5. Other Parties' Comments**

Additional comments were filed on the proposals of the Joint Carriers and the Joint CLECs by AboveNet, the AG, Cities, and Salinan Nation on September 10, 2007. These comments are summarized below.

##### **AboveNet**

AboveNet commented that it supports the goal of the Joint CLECs' proposal. AboveNet contends that the Joint Carriers' proposal contains elements that favor the ILECs. For example, the Joint Carriers' Proposal "grandfathers" the authority of the existing ILECs, supersedes existing Commission decisions that require certain carriers to obtain additional review and approval from the Commission before constructing telecommunications facilities, would exempt the ILECs from further review and approval of proposed construction by the Commission, and would defer the responsibility for CEQA review of these projects to local governments. AboveNet states that since new carriers would still be required to comply with the Commission's CEQA procedures, the Joint Carriers' proposal would perpetuate the favored status of the ILECs and perpetuate the disparate treatment of other carriers.

##### **The California Attorney General (AG)**

The AG states that the Joint Carrier's proposal could become the basis for a Commission General Order (GO), but makes several comments. The AG recommends that any GO adopted in this proceeding specifically state that the new GO is not intended to alter the respective rights of carriers and local

governments regarding the use of public rights of way for telecommunications facilities under state law.

The AG notes that under the Joint Carriers' proposal, existing carriers do need to return to the Commission for authorization to construct new facilities within the areas authorized by Section 1001, and that unless the carrier applies to the Commission for such authorization, the carrier would undergo any CEQA review only as may be required by the local agency. However, the AG recommends that the Commission reserve its authority to conduct CEQA review when the carrier applies to the Commission for authorization to construct, when the Commission is the first agency to act on an application for authorization to construct, or in other appropriate cases.

The AG states that if carriers are no longer required to return to the Commission for authorization to construct every new facility, the Commission and the public may not receive notice of CEQA-exempt projects that are proposed or are under construction within California, because CEQA does not require public disclosure of exempt projects. Therefore, the AG recommends that when a Lead Agency other than the Commission approves a telecommunications construction project that is exempt from CEQA, and the Lead Agency does not file a Notice of Exemption (NOE), then the carrier should be required to file a NOE in accordance with State CEQA Guidelines Section 15062.

The AG also proposes that in order to avoid the unlawful "piecemealing" of projects, the Commission should include language in its decision or any GO adopted to state that in considering proposed CEQA exemptions for telecommunications construction activities, the Commission shall consider all reasonably foreseeable construction by the carrier and shall not apply

exemptions to segments of the project without considering all reasonably foreseeable construction.

The AG generally supports the concepts in the Joint CLECs' proposal, but makes note of several legal issues. The AG points out that the Joint CLECs' proposal appears to exceed the legal right of carriers to utilize public rights of way for their facilities, by: (1) giving carriers an unqualified right to construct facilities without prior Commission approval in violation of Section 1001; (2) including an overly expansive definition of "public rights of way"; and (3) giving carriers rights to operate in the public right of way that exceed the express grant of authority to them in Section 7901. The AG also observes that although carriers may not choose the Lead Agency under CEQA, the agency that acts first on a proposed project may be the Lead Agency.

The AG states that the Commission could prepare a program or master EIR that analyzes the potential environmental impacts of the planned deployment of telecommunications services in California, and then perform a stream-lined site-specific review of a carrier's application to construct certain facilities that are within the scope of the Master or Program EIR, ND or MND. However, the Joint CLECs proposal fails to specify the mechanism that the Commission should use to accomplish this objective or to link its proposal to the requirements for tiered environmental review stated in CEQA and the State CEQA Guidelines. In addition, the Joint CLEC's proposal fails to state the manner in which "program" MND or ND would differ from the "batch" negative declarations that the Commission discontinued in 1999.

### Cities

Cities generally support the proposal of the Joint Carriers, but raised several issues. Cities state that by eliminating the requirement for existing

carriers to apply for modified CPCNs before constructing additional facilities, the Joint Carriers' Proposal appears to permit carriers to perform new construction without CEQA review by the Commission. In order to remedy this problem, Cities propose that carriers required by previous Commission decisions to apply to for amended CPCNs before constructing additional facilities file applications with the Commission. If the Commission determines that the proposed construction will potentially result in a significant direct or indirect physical change in the environment, the application for an amended CPCN is a project under CEQA, and the Commission would be the Lead Agency.

Cities state that the Joint Carriers' proposal regarding Commission review of construction activities claimed to be exempt from CEQA fails to acknowledge that CEQA requires the Lead Agency to analyze projects as a whole, rather than engaging in piecemealing or segmenting of projects. Cities contend that although some of the construction activities that Joint Carriers claim are exempt from CEQA may be exempt in routine, isolated projects, segmenting a large project so that each segment is "stuffed" into one of the exemptions in order to reach the conclusion that the entire project is exempt would be inconsistent with CEQA.

Cities note that the Joint Carriers' Proposal provides that the installation of antennas, microcells, and supporting equipment in or on existing utility poles or other support structures used to provide telephone, electric power or other utility services would be exempt from CEQA, so long as the installation does not represent a substantial change in the nature of the structure. Cities propose that this language be modified to provide that installation of this type of equipment is exempt from CEQA only if the installation does not substantially change the size of the structure on which it is mounted and would not be installed in locations

that are a historic resource, in order to avoid potential impacts on safety, aesthetics, and migratory birds.

Cities state that the Joint CLECs' proposal does not meet the requirements of CEQA and should be rejected. The State CEQA Guidelines set forth specific criteria for selection of the Lead Agency and address situations in which more than one public agency has for supervising or approving a project. According to Cities, under CEQA, the applicant does not have a legal right to select the Lead Agency by "forum-shopping."

Cities note that since CEQA authorizes the use of Master EIRs only for designated classes of projects and Program EIRs only to analyze "a series of actions that can be characterized as one large project", neither a Master nor a Program EIR could properly be used to analyze the environmental impacts of a hypothetical "standard" telecommunications project.

Cities contend that the Joint CLECs' proposal expands the right of carriers to use public and private property beyond the authority granted in Section 7901. Cities state that under Section 7901, carriers have a right to use certain public property to construct telephone lines. Further, Cities contend that despite its broad regulatory powers, the Commission does not have jurisdiction to interfere with the statutory rights of local agencies to regulate the use of public rights of way by telecommunications carriers.

### **Salinan Nation**

Salinan Nation commented on the proposals filed by the Joint Carriers and the Joint CLECs and proposed a "best practices" cultural resources standard and procedures for the identification and protection of historical resources and Native American cultural places, which are subject to impacts from telecommunications construction projects, including CEQA-exempt projects.

Salinan Nation states that since California has failed to adopt “best practices” standards and procedures for compliance with CEQA, CEQA has been applied unequally and often inadequately with regard to cultural and historic resources. Salinan Nation states that impacts to Native American archaeological resources during a fiber optics installation project resulted in a Commission investigation (I.00-03-001).

Salinan Nation also disputes the assumption that that the public right of way is already highly disturbed and has no reasonable chance for significant impacts on archaeological or native American cultural resources. Salinan Nation points out that Caltrans has an extensive historic preservation program and has had hundreds of cases in which historic or cultural resources were uncovered during construction in the public right of way. Modern roads typically follow age-old trails used by Native Americans in prehistoric times and were later used as land transportation corridors by Spanish, Mexican and American settlers. Therefore, archaeological resources and traces of historic and prehistoric human land use are most heavily concentrated along public rights of way. CEQA requires that cultural resources older than 50 years old be identified and assessed pursuant to established criteria in order to determine whether a proposed project will have a significant adverse impact on a significant cultural resource. Salinan Nation also states that even minor trenching and backhoeing may uncover and disturb archaeological and cultural resources, and the installation of antennas or microcells in or on existing structures could have a significant environmental impact if the existing structure is a historic building.

Salinan Nation does not contest the recommendation that either the Commission or local agencies be able to serve as the Lead Agency under CEQA for telecommunications projects. However, Salinan Nation requests that the

Commission give notice to the public and conduct public hearings before issuing a decision in this proceeding. Salinan Nation also states that both the Commission and local governments should have staff with sufficient professional training and experience in historic preservation to handle CEQA review in a consistent, competent and timely manner.

Salinan Nation states that the best practices standards adopted by Caltrans in its updated Stanford Environmental Reference (SER), Volume 2, Chapter 4. Cultural Resources Identification, gives adequate guidance regarding compliance with the requirement for all telecommunications carriers to conduct and documents appropriate data research to determine whether historic resources or Native American cultural places would be significantly impacted by a proposed project.

Salinan Nation recommends that when the Commission or local agencies require the monitoring of construction activities in areas that may be archaeologically sensitive for unlocated, buried Native American cultural places by a trained experienced archaeologist and a trained Native American monitor from the tribe(s) or groups that are culturally affiliated with project area.

Salinan Nation also states that the public needs to have at least 21 days advance notice of any claimed CEQA exemptions for telecommunications construction projects. Salinan Nation recommends that the Commission post notices of claimed CEQA- exempt projects, sorted by geographic area, and any determinations that certain projects are found to be exempt from CEQA on its website. Local agencies should also post these notices when they are reviewing claimed CEQA-exempt telecommunications construction projects.

Salinan Nation recommends that carriers report annually on the status of their construction projects. Salinan Nation believes that carriers should

summarize each case in which an inadvertent archaeological discovery was made during project implementation, the outcome, e.g., whether the project was redesigned to avoid impacts or archaeological data was recovered, and the carrier's recommendations for avoiding post CEQA-review discoveries and improving the process for notifying and resolving sensitive discoveries in consultation with the involved public agencies and culturally affiliated Native Americans.

## **5. Summary of General Order (GO) 170**

Our experience with CEQA over the years has shown that nearly all of the construction projects typically undertaken by California's telephone corporations fall within an exclusion or an exemption from CEQA or were included with the CEQA review of the CPCN application. Very few telephone corporation construction projects require full CEQA review by this Commission. Accordingly, our primary objective in developing GO 170 has been to create an orderly process with clear requirements for claiming exclusion or exemption from CEQA. This objective is fully consistent with our dual goals for this proceeding of complying with the letter and spirit of CEQA while encouraging the ubiquitous availability of state-of-the-art telecommunications services.

While we do not adopt either the proposal of the Joint Carriers or the proposal of the Joint CLECs in its entirety, we do adopt portions of both of these proposals, in addition to some of the proposals and comments of the other parties. The Commission aims to adopt a CEQA process for telecommunications carriers that complies with the law, is efficient, and services the needs of the rapidly developing communications marketplace.

GO 170 begins with general provisions that require all California telephone corporations to comply with CEQA and to design all construction

projects in a manner that reduces environmental impacts. The GO also explicitly acknowledges that the proposed construction project must be within the scope of the telephone corporation's Commission-granted operating authority. When granting a telephone corporation operating authority in a CPCN, the Commission reviews the proposed operations for compliance with CEQA. To the extent specific facilities have been reviewed pursuant to CEQA as part of the CPCN process, no further review is needed. Construction projects for new facilities, however, trigger the need for additional review. As noted above, these new facilities often qualify for exclusion or exemption from CEQA, but require formal processing.

The GO then sets out three levels of Commission review for telephone corporations' construction projects. The first level, found in Section II, is an exclusion from CEQA review primarily based on the fact that these activities do not result in any physical change to the environment.<sup>17</sup> Using existing facilities, either owned by the telephone corporation or as a reseller of services provided by such facilities, and installing new equipment in existing structures, are prominent examples of exclusions from CEQA review.

The GO offers two means for telephone corporations to claim exemption from CEQA in Section III. The first option allows a telephone corporation to claim exemption without notice to the Commission and by retaining records of the projects for which specified exemptions have been claimed. The specified exemptions are for operating, maintaining, replacing or reconstructing existing

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<sup>17</sup> CEQA applies to projects that " may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Public Resources (Pub. Res.) Code, § 21065.)

facilities, and for emergency projects involving a clear and imminent danger to life, health or property. No other CEQA exemptions can be claimed via this option.

The second option for claiming exemption requires filing a request with the Commission staff and obtaining a Notice to Proceed, and allows the telephone corporation to claim any valid and applicable exemption from CEQA. A telephone corporation must file a Notice of Proposed Construction and supporting materials as a Tier 2 advice letter with the Commission's Energy Division Staff. The Notice must include a verified statement demonstrating that the proposed construction project is exempt from CEQA review and must be served on local agencies, other interested parties, and provided over the Commission's on-line reporting system when available. Parties may protest the filing. The Staff then evaluates the filing, including any protests, and, if substantiated, will issue a Notice to Proceed. The Staff finding is subject to appeal through the existing advice letter process found in GO 96-B.

The final level of Commission review for proposed construction projects is set out in Section IV and provides for full CEQA review. The Commission has existing rules for full CEQA review which require an application and proponent's environmental assessment and are found in the Commission's Rules of Practice and Procedure.

GO 170 Section V provides for enforcement. The Commission specifically retains all its authority to take such actions as the public interest may require to ensure that all California telephone corporations comply with CEQA and other applicable law and regulations. The Commission also delegates authority to the Energy Division Director to take immediate actions necessary to halt an on-going violation of CEQA by a California telephone corporation. Where the Director

finds probable cause that a violation of CEQA or Commission law or regulations is occurring, the Director may issue a Stop Work Notice requiring immediate cessation of the violation. A telephone corporation may appeal a Stop Work Notice to the Executive Director.

## 6. Discussion

The principal objective of the CEQA, Public Resources Code Sections 21000, *et seq.*,<sup>18</sup> is to develop and maintain a high-quality environment in California in the present and in the future.<sup>19</sup> In the General Order adopted in today's decision, we carry forward the objective of maintaining a high-quality environment in California while also achieving our goals of encouraging the availability of state-of-the-art telecommunications technologies.

When opening this rulemaking, we stated that our overarching objective is to ensure that the Commission is in compliance with the requirements of CEQA. We take our obligations in this arena seriously and we remain fully committed to the objectives of CEQA to ensure that the impacts of our policies on the environment are taken into account in our decision-making process.

As described above, GO 170 reflects existing CEQA law and provides clear and convenient processes for telephone corporations to comply with CEQA. These rules will enable telephone corporations to pursue their business objectives with greater certainty of regulatory compliance requirements.

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<sup>18</sup> In addition to the provision of the Public Resources Code, the California Resources Agency has adopted regulations, as required by Public Resources Code Section 21083, which provide detailed procedures that public agencies must follow to apply CEQA. The CEQA Guidelines are codified at 14 California Code of Regulations Sections 15000, *et seq.*

<sup>19</sup> Pub. Res. Code, §§ 21000, 21001.

State policy encourages the deployment of advanced telecommunications networks. We find that GO 170 applies CEQA in a way that also achieves the State's clear and oft reiterated policy favoring the widespread deployment and availability of advanced telecommunications services, including broadband and wireless technologies. GO 170 sets forth clear, pragmatic and effective policies, processes, and requirements for complying with the Commission's obligations under CEQA.

As provided in GO 170, this Commission retains its jurisdiction over California telephone corporations by acting as the lead agency under CEQA for construction projects by telephone corporations. Although additional authorization may be required from other state agencies or local authorities, this Commission is best suited to evaluate the physical change in the environment caused by telephone corporations' construction projects due to our extensive experience with such facilities and the state-wide interest in encouraging deployment.

The provisions of GO 170 apply even-handedly to all California telephone corporations but also require that the proposed construction project be within the scope of the telephone corporation's Commission-granted operating authority. Consequently, a telephone corporation with reseller or limited facilities-based operating authority may need to obtain Commission permission to modify its operating authority should the corporation wish to construct significant facilities. Such a change would typically be requested as an amendment to the CPCN, which would also provide a suitable forum for any needed CEQA review. To the extent specific facilities have been reviewed pursuant to CEQA as part of the CPCN process, no further review is needed. Construction projects for new facilities, however, trigger the need for additional

review. As noted above, these new facilities often qualify for exclusion or exemption from CEQA, but require formal processing.

## **7. Comments on Proposed Decision**

The proposed decision of Commissioner Bohn in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

## **8. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. From time to time, California telephone and telegraph corporations may require additional facilities and equipment to pursue the provision of public utility service to the public and constructing such facilities may result in a change in the physical environment.
2. State policy supports continued deployment of state-of-the-art telecommunications services and facilities.
3. GO 170 sets forth clear, pragmatic and effective policies, processes, and requirements for complying with the Commission's obligations under CEQA.

### **Conclusions of Law**

1. California telephone corporations as defined in Pub. Util. Code § 234 and telegraph corporations as defined in § 236 must comply with the CEQA.
2. This Commission must review construction projects by California telephone and telegraph corporations for compliance with the CEQA.

3. This Commission should adopt rules to provide for the orderly evaluation of proposed construction projects by California telephone and telegraph corporations for compliance with the CEQA.

4. Any rules for evaluating telephone and telegraph corporations' construction projects for compliance with the CEQA should be even-handed and not dependent on operating authority.

5. California telephone and telegraph corporations should obtain appropriate operating authority prior to or simultaneously with seeking Commission approval of proposed construction projections pursuant to the CEQA.

6. GO 170 attached to today's decision as Attachment 1 sets forth reasonable and even-handed procedural rules and substantive policies for this Commission's evaluation of construction projects by telephone and telegraph corporations as required by the CEQA.

7. GO 170 should be adopted and all telephone and telegraph corporations should comply with its terms.

8. This proceeding should be closed.

**FINAL ORDER**

**IT IS ORDERED** that:

1. General Order 170 attached to this decision as Attachment 1 is adopted and all California telephone and telegraph corporations must comply therewith.
2. Rulemaking 06-10-006 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

Attachment A – General Order 170

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**General Order No. 170**

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

**COMMISSION REVIEW PURSUANT TO THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT OF THE CONSTRUCTION OF  
TELEPHONE AND TELEGRAPH LINES LOCATED IN CALIFORNIA**

**Adopted December XX, 2010 Effective January XX, 2011  
Decision 10-12-XXX**

**I. GENERAL PROVISIONS**

- A. Purpose: These rules establish the requirements for review pursuant to the California Environmental Quality Act relating to the construction of any new telephone or telegraph line; or the repair, replacement, modification, alteration, or addition to an existing telephone or telegraph line in the State of California.
- B. Applicability: These rules apply to all telephone and telegraph corporations, as defined in Public Utilities Code Sections 234 and 236, subject to the jurisdiction of this Commission and to any other applicant seeking discretionary authority from the Commission relating to telephone lines as defined in Section 233 and telegraph lines as defined in Section 235. This General Order does not preclude the applicability of General Order (GO) 159 for wireless antennae siting.
- C. General Requirement: All California telephone and telegraph corporations shall comply with the California Environmental Quality Act when constructing facilities in California. California telephone and telegraph corporations shall design and engineer their projects in a manner that avoids, reduces, and mitigates any potential environmental impacts.

## D. Definitions:

- a. California Environmental Quality Act – Public Resources Code Sections 21000, *et seq.*, and the California Environmental Quality Act Guidelines codified at 14 California Code of Regulations Sections 15000, *et seq.*
- b. Construction Project – an effort by or on behalf of a telephone or telegraph corporation to build or assemble a telephone or a telegraph line or portion thereof that may result in a direct or indirect physical change to the environment.
- c. Full California Environmental Quality Act Review – Commission review of proposed construction project that is subject to the California Environmental Quality Act and not within an exemption, resulting in Commission decision on specific proposal.

## II. ACTIVITIES THAT DO NOT REQUIRE REVIEW BY THE COMMISSION PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The following activities when performed by California telephone and telegraph corporations in compliance with their Certificate of Public Convenience and Necessity do not require further Commission review pursuant to the California Environmental Quality Act:

- A. Reselling local or interexchange service.
- B. Use of existing facilities.
- C. Installation of facilities in existing conduit.
- D. Installation of underground or at-grade hand-holes, pull-boxes, and conduit vaults as necessary for any authorized activity.
- E. Installation of above-ground vaults and splice boxes as necessary for any authorized activity.
- F. Installation of facilities within existing structures.
- G. Installation of minor facilities such as distributed antennae systems and related nodes on existing structures.

- H. Installation of minor facilities of less than 2,400 cubic feet in total volume above-ground within a state, federal, municipal or special district Right-of-Way which must have been previously disturbed and occupied by existing utility facilities and all applicable permits must be obtained.
- I. Minimal trenching of discrete, non-continuous segments of less than 50 feet and/or 1,000 feet of aerial facilities to provide connectivity to previously authorized facilities installed (e.g., customer drops).
- J. Distributed Antenna Systems nodes or similar closed-loop RF equipment.
- K. Construction activities authorized, after California Environmental Quality Act review, in a decision issuing a Certificate of Public Convenience and Necessity.

### III. CONSTRUCTION PROJECTS EXEMPT FROM REVIEW PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Certain types of construction projects are subject to the California Environmental Quality Act but qualify for exemption from full review. California telephone and telegraph corporations shall use the following procedures to claim exemption.

- A. Exemption Without Notice to Proceed: California telephone and telegraph corporations acting within the scope of their Certificate of Public Convenience and Necessity may, where applicable, rely on the following exemptions without receiving a Notice to Proceed from the Commission or any other party, but must retain records of all instances where such exemptions are relied on:
  - i. California Environmental Quality Act Guidelines Section 15301 - Existing Facilities: operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. Carriers shall note that "existing facilities" refers to actual utility facilities and NOT to utility systems; i.e., a specific facility may be maintained, replaced, or reconstructed, but new facilities shall NOT be

installed to provide enhanced performance of existing systems.

- ii. California Environmental Quality Act Guidelines Section 15302 – Replacement or Reconstruction: replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.
- iii. California Environmental Quality Act Guidelines Section 15269 – Emergency Projects as defined by California Environmental Quality Act Guidelines Section 15359: "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

B. Exemption after Notice to Proceed. California telephone and telegraph corporations may file a Notice of Proposed Construction to request that the Commission find that a particular project is exempt from full California Environmental Quality Act review. Each Notice of Proposed Construction shall be limited to 25 pages (exclusive of maps; charts; tables; graphs; photographs; lists; and check-lists) and must contain the following information:

- i. Detailed description of the proposed project:
  - 1. Customer(s) to be served
  - 2. The precise location of the proposed construction project
  - 3. Regional and local site maps
  - 4. Project-level design details
  - 5. Other relevant information necessary to adequately describe the project
- ii. Description of the environmental setting:
  - 1. Cultural, historical, and paleontological resources
  - 2. Biological resources
  - 3. Current land use and zoning

4. Sensitive visual receptors
  5. Other relevant information necessary to adequately describe the environmental setting
- iii. Construction workplan, to include:
1. Pre-Construction Survey Checklist – Archaeological Resources
  2. Pre-Construction Survey Checklist – Biological Resources
  3. Detailed schedule of construction activities, including site restoration activities
  4. Description of construction/installation techniques
  5. List of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information
  6. List of permits required for the proposed project
- iv. Exemption statement - Clear and concise statement, with supporting factual evidence, documentation, and verifications, identifying the exemption claimed for the proposed project and demonstrating that the proposed project meets all the requirements for the exemption.
- v. Procedures for Filing and Processing a Notice of Proposed Construction
1. The Notice of Proposed Construction shall be filed with the Commission's Energy Division as a Tier 2 advice letter as specified in General Order 96-B, or successor rule, served on all local agencies in addition to those parties specified in General Order 96-B, and shall be provided via the Commission's Online Reporting System.
  2. Interested parties may protest the advice letter as specified in General Order 96-B and the Energy Division shall review and process the Notice of Proposed Construction advice letter as provided in General Order 96-B.
  3. If the Energy Division finds from the review of the advice letter and any protests that the proposed construction qualifies for the claimed exemption, it shall issue a Notice to Proceed to the advice letter filer with copies to the protestants (if any). If the Energy Division finds that the construction does not so qualify, it shall notify the advice letter filer and

any protestants. The Energy Division's finding is subject to appeal as provided in General Order 96-B.

#### **IV. FULL COMMISSION REVIEW OF PROPOSED CONSTRUCTION PROJECT PURSUANT CALIFORNIA ENVIROMENTAL QUALITY ACT**

If a proposed construction project is subject to the California Environmental Quality Act and does not qualify for an exemption, the telephone or telegraph corporation shall file an application and Proponents Environmental Assessment as provided in the Commission's Rules of Practice and Procedure.

#### **V. ENFORCEMENT AND DELEGATION OF AUTHORITY**

- A. The Commission reserves all of its authority to take such actions as the public interest may require to ensure that all telephone and telegraph corporations adhere to the requirements of this General Order, the California Environmental Quality Act, and any applicable Commission rules or decisions.
- B. In addition, the Commission delegates to Energy Division staff, or its successor, the following authority:
  - a. Monitor and Inspect Construction Activities – the Energy Division staff is authorized to monitor and inspect all construction activity by California telephone and telegraph corporations for compliance with California Environmental Quality Act as well as all Commission rules and decisions.
  - b. Access to Records and Projects – all California telephone and telegraph corporations shall, upon request, provide Energy Division staff immediate access to all records relating to construction projects and physical access to any construction projects that are underway.
  - c. Issue Stop-Work Notices – when the Commission staff obtains sufficient evidence to support a finding of probable cause that a violation of California Environmental Quality Act or Commission rules or decisions may have occurred at a construction project by a California telephone or telegraph corporation, the Director of the

Energy Division shall issue a Stop-Work Notice to the telephone or telegraph corporation.

- d. Contents of Stop-Work Notice - the notice shall be in writing and served on a representative or agent of the telephone or telegraph corporation conducting the construction project. The Notice shall indicate the activity believed to be in violation of California Environmental Quality Act or Commission rules or decisions and specify the construction activity that must cease. The Notice must also provide any available and obvious means to remedy the identified potential violation. The Notice may apply to the entire construction project or a defined portion, and may make allowances for continued work to provide for immediate public safety, such as covering an open trench.
- e. Compliance with Stop-Work Notice - all California telephone and telegraph corporations shall comply with any Stop-Work Notice and any violation of a Stop-Work Notice is a violation of this General Order.
- f. Appeal of Stop-Work Notice - any California telephone or telegraph corporation that receives a Stop-Work Notice may appeal the issuance of the Notice to the Commission's Executive Director. Such an appeal, however, does not excuse compliance with the Stop-Work Notice and all appeals where work has not ceased will be summarily denied.

**(END OF ATTACHMENT A)**

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated October 20, 2010, at San Francisco, California.

/s/ GLADYS M. DINGLASAN  
Gladys M. Dinglasan

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.