

DRAFT
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMUNICATIONS DIVISION

RESOLUTION T-17326
June ~~9~~23, 2011

R E S O L U T I O N

Resolution T-~~17326~~17326. Central Valley Independent Network (CVIN)

PROPOSED OUTCOME: This Resolution adopts a Negative Declaration pursuant to the California Environmental Quality Act (~~CEQA~~) for the CVIN ARRA/CASF funded broadband project.

~~At~~On the ~~Energy~~Communications Division’s own motion and in Compliance with Resolution T-17295 Filed on October 14, 2010

SUMMARY

The Central Valley Independent Network (CVIN), in partnership with the Corporation for Education Network Initiatives in California (CENIC), has applied to the National Telecommunications Information Administration (NTIA) for ~~ARRA~~ funding under the American Recovery and Reinvestment Act (ARRA) and to the Commission (CPUC) for California Advanced Service Fund (CASF) funding to plan and install a fiber optic communications network in portions of California. The CPUC’s decision to grant or deny ~~grant~~ funding under the CASF triggers the requirement for environmental review under ~~CEQA~~the California Environmental Quality Act (CEQA)¹, and the CPUC is the lead state agency for compliance with CEQA. This Resolution adopts the Final Initial Study and Negative Declaration (ND) prepared for the CVIN project in accordance with the CEQA Guidelines, the Public Resources Code, and CPUC Resolution T-17295.

¹ Section 21000 et seq. of the California Public Resources Code [PRC] and the State CEQA Guidelines (Title 14, Section 15000 et seq. of the California Code of Regulations [14 CCR 15000 et seq].

BACKGROUND

As authorized under the ~~American Recovery and Reinvestment Act (ARRA)~~, ~~the National Telecommunications and Information Administration (NTIA)~~ ARRA, ~~the NTIA~~ is administering grant funds through the Broadband Technology Opportunities Program to expand access to broadband services in unserved and underserved areas of the United States and to expand ~~the~~ broadband infrastructure. ~~Central Valley Independent Network (CVIN)~~, in partnership with the ~~Corporation for Education Network Initiatives in California (CENIC)~~ CENIC, has applied to NTIA for ARRA funding to plan and install a fiber optic communications network in portions of California (proposed project). The proposed network would cross 17 California counties, in portions of the northern Sacramento Valley, Sierra Nevada foothills, and the northern and southern San Joaquin Valley. The proposed project involves developing approximately 817 miles of fiber-based infrastructure. Approximately 723 miles of the proposed route would require new construction; for the remainder of the route, approximately 94 miles of new fiber optic cable would be installed in existing conduits.

Because the proposed fiber optic communications network project would use federal funds and would also require grant approval by the ~~California Public Utilities Commission (CPUC)~~ CPUC, it is subject to environmental review under both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (~~CEQA~~). As stated in CPUC Resolution T-~~17295~~, 17295: “The Commission cannot authorize the disbursement of funds and CVIN cannot conduct ground breaking activities until completion of CEQA review.”⁴² In addition, Resolution T-17295 at finding number 14 states: “CVIN’s project is subject to the California Environmental Quality Act (CEQA). The Commission must complete CEQA review prior to disbursing CASF funds for construction activities.” This Resolution adopts the Final Initial Study (IS) and Negative Declaration (ND) prepared for the CVIN proposed project in accordance with the CEQA Guidelines, the Public Resources Code, and CPUC Resolution T-17295.

⁴² Commission Resolution T-17295, page 5.

NOTICE

No Advice Letter or formal application has been filed with the CPUC seeking adoption of a Negative Declaration for the CVIN broadband project; rather, this Resolution has been prepared aton the Energy Communications Division's own motion. The Commission's preparation and adoption of a Negative Declaration pursuant to CEQA is in response to a requirement that CVIN comply with CPUC Resolution T-17295 filed on October 14, 2010.

The Energy Division Commission staff provided notice to the public, Responsible and Trustee agencies, and other interested parties of the availability of the Draft Negative Declaration for 30 days of comment on April 26, 2011. That notice also indicated the intent of the CPUC to adopt the Negative Declaration at a subsequent business meeting.

PROTESTS

~~No~~The award of matching CASF funding was originally granted to CVIN in Resolution T-17295. That award was not protested and there were no requests for rehearing of Resolution T-17295. The Negative Declaration prepared by the CPUC was available for comment from April 26, 2011 to May 26, 2011. All comments received during the comment period have been addressed in the Response-to-Comments in the Final Negative Declaration. Because no Advice Letter or formal application has been filed with the CPUC seeking adoption of a Negative Declaration for the CVIN broadband project; ~~rather~~, this Resolution has been prepared aton the Energy Communications Division's own motion. ~~Therefore, there are no protests to the preparation and adoption pursuant to CEQA of a Negative Declaration by the Commission. and there was no formal protest period.~~

DISCUSSION

CEQA requires the Commission to consider the environmental consequences of its discretionary decisions. Pursuant to CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA. In this instance, the Commission is the lead agency under CEQA

with respect to the environmental review of the CVIN broadband project and preparation of the Final Negative Declaration (ND). The Commission, as the lead agency, must adopt the Final ND before the ~~proposed project may be approved and the~~ conditions of the CASF grant award are satisfied per Resolution T-17295.

A "Draft Initial Study and Notice of Intent to Adopt a Negative Declaration (IS/ND)" was prepared for the proposed project in accordance with CEQA (~~Section 21000 et seq. of the California Public Resources Code [PRC] and the State CEQA Guidelines (Title 14, Section 15000 et seq. of the California Code of Regulations [14 CCR 15000 et seq.]~~). The CPUC prepared the Draft IS/ND to provide the public and responsible and trustee agencies with information about the potential environmental effects of the proposed project. An environmental assessment was also prepared under NEPA, concurrently with this IS/ND. In addition to environmental review under NEPA and CEQA, other federal, state, regional, and local permits and approvals are required. The Draft Negative Declaration may be viewed at:

<http://www.cpuc.ca.gov/Environment/info/esa/cvin/cvinbroadband.pdf>

All environmental issues identified in Appendix G of the State CEQA Guidelines are discussed in the IS/ND. Environmental protection measures to protect sensitive environmental resources have been incorporated into the project and will be made conditions of project approval by the CPUC (under CEQA) and NTIA (under the concurrent but separate NEPA process). Because these measures would be incorporated into project design, construction and operation, impacts to sensitive environmental resources will be avoided or minimized to less than significant levels.

The Commission has reviewed the Final ND as part of our consideration of whether CVIN has complied with the requirements of Resolution T-~~17295~~17295, which awarded CVIN a CASF grant. Based on that review, we find that the Final ND represents our independent judgment regarding the environmental impact of the proposed project. Therefore, we will adopt the Final ND for the proposed project pursuant to and in compliance with CEQA. The Final Negative Declaration may be viewed at:

<http://www.cpuc.ca.gov/Environment/info/esa/cvin/cvinbroadband/fnd.pdf>

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(3) provides that this 30-day period may be reduced/waived by Commission adopted rule. The 30-day comment period has been reduced by a decision where the Commission has determined that public necessity, as defined in Rule 14.6(c)(9), requires reduction/waiver of the 30-day period.

Rule 14.6(c)(9) reads in pertinent part that a comment period may be reduced or waived:

"...for a decision in a proceeding in which no hearings were conducted where the Commission determines, on the motion of a party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, "public necessity" refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. [...] When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver."

Here the Commission must balance the interests of providing a comment period with the public interest in expediting the adoption of the Final Negative Declaration for the CVIN proposed project. In this case, no hearings were conducted; the Commission has already conditionally approved the matching CASF grant award; and there is a strong public interest in adopting the Final Negative Declaration prior to the end of the normal 30-day comment period.

The CVIN proposed project provides for a 90% match of federal stimulus funds with a 10% match of CASF funds. In order to leverage the CASF funds to the maximum, the federal ARRA grant requirements must be adhered to, and these involve essentially two deadlines: 67% of the project funding and project construction must be completed within two years of the grant award; and 100% of the funding and construction must be completed within three years. The federal ARRA stimulus award was made to CVIN in the fall of 2010.

In order to meet these deadlines, CVIN must begin construction of the proposed project in the fall of 2011 prior to the rainy season. This requires that both construction permits and contracts have been obtained and resolved prior

to the end of summer 2011. This is problematic because both the permit-issuing agencies and construction contractors must know what the requirements and standards of the Final Negative Declaration will be with respect to resource avoidance and mitigation prior to issuing permits or bidding on contracts. Therefore, in order to begin construction prior to the rainy season of 2011/2012, the Final Negative Declaration must be formally adopted by the Commission on an expedited basis.

Clearly there is a public interest in adopting the Final Negative Declaration on an expedited timeframe. In addition, there are three other factors weighing in favor of a shortened comment period: (1) the Final Negative Declaration has already undergone a 30-day public review and comment period; (2) we are reducing the comment period by only a few days in this case, ~~but~~ -- we are not eliminating it; and (3) we have granted the majority of the requests made during the public review period. Therefore, balancing the interests of public comment with the clear public interest in a shortened review period, we find that approving this Resolution and adopting the Final Negative Declaration is in the public interest and outweighs a full comment period.

FINDINGS AND CONCLUSIONS

1. Commission Resolution T-17295 directed CVIN to conduct an environmental review of its proposed project pursuant to CEQA as a condition of receiving a CASF grant award to match federal ARRA grant funding.
2. The Commission is the lead agency under CEQA with respect to the environmental review of the CVIN broadband project and preparation of the Draft and Final Negative Declaration.
3. A Draft ~~Mitigated~~ Negative Declaration was published for public comment between April 26, 2011, and May 26, 2011, pursuant to CEQA Guidelines.
4. A Final Negative Declaration was prepared by the Commission staff pursuant to the CEQA Guidelines.
5. All comments received have been responded to in the Final Negative Declaration.
6. With the implementation of the applicant-proposed mitigation measures identified in the Final Negative Declaration, all environmental impacts are reduced to less-than-significant.
7. We conclude that the Final ND is competent, comprehensive and has been completed in compliance with CEQA and the Public Resources Code.

8. We find that the Final ~~MND~~ND reflects our independent judgment.
9. We have reviewed and considered the Final ND prior to adopting it as adequate for our decision-making purposes.
10. The Final Negative Declaration should be adopted by the Commission as adequate for our decision-making purposes pursuant to CEQA.
11. For the CVIN proposed project, no hearings were conducted; the Commission has already conditionally approved the matching CASF grant award; and there is a strong public interest in adopting the Final Negative Declaration prior to the end of the normal 30-day comment period.
12. In order to leverage the CASF funds to the maximum, the federal ARRA grant requirements must be adhered to, and these involve essentially two deadlines: 67% of the project funding and project construction must be completed within two years of the grant award; and 100% of the funding and construction must be completed within three years.
13. In order to meet these deadlines, CVIN must begin construction of the proposed project in the fall of 2011 prior to the rainy season. This requires that both construction permits and contracts have been obtained and resolved prior to the end of summer 2011.
14. In order to begin construction prior to the rainy season of 2011/2012, the Final Negative Declaration must be formally adopted by the Commission on an expedited basis.
15. An additional three factors weigh in favor of a shortened comment period: (1) the Final Negative Declaration has already undergone a 30-day public review and comment period; (2) we are reducing the comment period in this case by only a few days, but we are not eliminating it; and (3) we have granted the majority of the requests made during the public review period.
16. Approving this Resolution and adopting the Final Negative Declaration is in the public interest and outweighs a full comment period.
17. This Final Negative Declaration is available for consideration by all Responsible Agencies who must issue permits pursuant to CEQA Guidelines Section 15050(b).

THEREFORE IT IS ORDERED THAT:

1. The Final Negative Declaration is adequate for the Commission's decision-making purposes and is hereby adopted pursuant to ~~CEQA~~the California Environmental Quality Act Guidelines and the Public Resources Code ~~and must be used by Responsible Agencies when issuing discretionary approvals.~~

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June ~~9~~23, 2011; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director

Document comparison by Workshare Professional on Tuesday, June 21, 2011 4:25:55 PM

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Document 2 ID	PowerDocs://CPUC01/454501/1
Description	CPUC01-#454501-v1-T-17326_(Rev._1)_Central_Valley_Independent_Network_(CVIN)
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