

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T- 17204
April 16, 2009**

R E S O L U T I O N

**Resolution T-17204. Rural Telecommunications Infrastructure
Grant Program funding of the Nordheimer Flat Line
Extension Grant Project.**

Summary

This resolution authorizes the Executive Director of the California Public Utilities Commission (CPUC) to enter into a contract for construction of the Nordheimer Flat Line Extension Grant Project (Nordheimer Flat Project) located in the service area of Siskiyou Telephone Company (Siskiyou Telephone). This resolution (1) authorizes a grant in the amount of \$969,000.00 for construction of the Nordheimer Flat Project, (2) authorizes the Executive Director to enter into a contract with the Town of Fort Jones, California for Fiscal Agent services associated with the Nordheimer Flat Project and (3) authorizes the revisions to Siskiyou Telephone's existing line extension tariffs to address the Nordheimer Flat Project.

Background

Legislation and Rulemaking

The Rural Telecommunications Infrastructure Grant Program (RTIGP) provisions are set forth in Section 276.5 of the Public Utilities Code. The RTIGP provides grants of up to \$5 million per project, with total grant funding of \$10 million per year, for construction of

telecommunications infrastructure to low-income, rural communities currently without telephone service. The RTIGP was established by Assembly Bill 140¹ in 2001, was amended by AB 2758² to extend the program, effective January 1, 2005 until January 1, 2009, and amended again under SB 1149³ until January 1, 2013.

The legislation required the Commission to develop eligibility criteria for community-based groups to apply for grants and to establish a government-industry working group to review the technical criteria of the grant application. On February 27, 2003, the Commission issued an Order Instituting Rulemaking R.03-02-034⁴ to develop application eligibility criteria. After consideration of comments, the Commission issued an Interim Decision D.03-09-071⁵ adopting an application process and eligibility criteria for the grant program on September 18, 2003. On March 17, 2005, the Commission subsequently issued D.05-03-005⁶ which adopted the interim grant program administration rules from D.03-09-071 as final rules.

Application Process

The RTIGP application process is divided into two phases: Phase 1 is the qualifying phase, in which applicants must provide information required by the legislation (information about the community to be served, its residents, financial information, letters of support from the local government and other affected governmental agencies, letters of support from 75% of the identified residential community and identity of the fiscal agent). Upon successful completion of Phase 1, an applicant may submit a Phase 2 Application, detailing the feasibility study and the construction cost study. In the event an applicant has been approved for Phase 1, but is denied Phase 2 approval, the applicant may recover the cost of the application process from grant funds.

Nordheimer Flat Project Description

This RTIGP application proposes to provide line extensions to Nordheimer Flat, an unserved area located within Siskiyou Telephone's Sawyers Bar Exchange Area. The length of the line extension will be 13,994 ft, trenched to a depth of three feet. Of this length 9,616 ft. will be trenched in the shoulder of an existing roadway, with the remaining 4,378 ft. placed in the roadway under the asphalt surface. The construction will be in steep canyons along the Salmon River.

¹Stats. 2001, Ch.903, AB 140- Strom-Martin Rural Telecommunications Infrastructure Grant

² Stats. 2004, Ch.767, AB 2758- Berg.

³ Stats. 2008, Ch.358. SB 1149-Wiggins.

⁴ Order Instituting Rulemaking Into Implementation of AB 140, establishing the Rural Telecommunications Infrastructure Grant Program, Feb. 27, 2003.

⁵Interim Opinion On Implementation Of The Rural Infrastructure Grant Program, Sept. 18, 2003.

⁶ Opinion Closing Proceeding, March 17, 2005.

The Nordheimer Flat Project will provide telephone service to private residences and a United States Department of Agriculture (USDA) Forest Service campground. The USDA Forest Service campground does not have telephone service, and is requesting two phone lines. One line is to be dedicated for connection to a computerized system for monitoring water quality at the campground. This monitoring of the water system is mandated by the State of California. Currently, USDA employees must complete a four hour round trip to conduct visual inspections of the water system. The second line is to be used for public safety, providing emergency services for campground users and to aid with communications during forest fire fighting efforts. The emergency line will be a free public telephone.

Due to the topographical constraints of the terrain, cellular and satellite technologies are not feasible and are cost prohibitive, therefore Siskiyou Telephone proposes to utilize conventional landline telecommunications construction consisting of copper and fiber facilities, and will utilize Rural Utilities Service (RUS) standards and specifications to be compatible with Siskiyou Telephone's existing telecommunications network.

The facilities to be constructed will provide Plain Old Telephone Service (POTS) and Digital Subscriber Line (DSL) service. The Nordheimer Flat Project is projected to take eight weeks to complete (weather permitting) once the grant funds have been provided to the Fiscal Agent. Total cost for construction, labor, and materials, federal and state taxes will be approximately \$969,000.00.

An environmental Initial Study (IS) was prepared to identify the potential effects on the environment from the installation and construction of an underground telecommunications line in the right-of-way of Salmon River Road in Siskiyou County, and to evaluate the significance of these effects.

Notice/Comments

A notice letter was e-mailed March 17, 2009 informing: Jim Lowers, President of Siskiyou Telephone; Shannon Flarity, Community Representative Nordheimer Flat; Linda Romaine, City Clerk Town of Fort Jones, California, Fiscal Agent; the Government Industry Working Group and CHCF-A Committee of the availability of the draft resolution for public comments at the Commission's website: <http://www.cpuc.ca.gov>. In addition, all were informed of the availability of the conformed resolution, once adopted by the Commission, at the same website.

No public comments were received by the Commission in response to this resolution.

Discussion

Review of Phase 1 and 2 Applications

On August 17, 2007 the Communications Division (CD) received a Phase 1 Application from Siskiyou Telephone for the Nordheimer Flat Project. After review of the Phase 1 Application, CD found the application compliant with all necessary requirements. The applicant was notified in writing of the approval on October 17, 2007, and their eligibility to submit a Phase 2 Application, the feasibility study detailing the engineering and cost aspects of the Nordheimer Flat Project. The Phase 2 Application was submitted on November 7, 2007. Copies of the Phase 2 Application were provided to the Government Industry Working Group for review. One of the criteria of the Phase 2 Application is completion of a California Environmental Quality Act (CEQA) review. Resolution T-17138 was adopted by the Commission on May 29, 2008 and authorized the Executive Director to enter into a contract for CEQA review.

The Government Industry Working Group Evaluation

The Government Industry Working Group (GIWG) is comprised of six members who includes a former state legislator, a consumer advocate, an attorney specializing in telecommunications issues and representatives of three telecommunications companies operating in California. Copies of the Phase 2 Application for the Nordheimer Flat Project were sent out to the GIWG on February 6, 2008 requesting response by February 29, 2008. Although the GIWG raised some issues and concerns about the Nordheimer Flat Project, Siskiyou Telephone addressed these. Subsequently, at the GIWG meeting on April 18, 2008, the GIWG committee members indicated that all issues and concerns raised had been resolved.

Fiscal Agent Review

Section 276.5 of the California Public Utilities Code states, "The criteria (for the RTIGP) shall include a requirement that a local agency, as defined by Section 50001 of the Government Code, or a town as defined by Section 21 of the Government Code, shall act as the community based group's fiscal agent for the receipt and distribution of funds." R.03-02-034 further specifies Grant Program Administration Rules⁷. The Fiscal Agent is required

⁷ "We will order that all funds disbursed from the grant program be kept and maintained in a separate bank account with the approved fiscal agent as the sole trustee of such funds. The fiscal agent shall provide the account information 60 days prior to the first request for disbursement according to the approved payment schedule. Payments will be made after completion of approved milestones and upon request for payment from the fiscal agent according to the approved payment schedule. Payment requests shall include an itemized accounting of reimbursable amounts. The Commission shall disburse the funds within 60 days of receipt of a complete request for payment that conforms to the approved payment schedule or as soon as is otherwise practicable. Budgetary constraints or other factors may delay release of funds". September 18, 2003.

in R.03-02-034 to provide an accounting, of expenditures and account balances, until no funds remain in the account. Upon completion of the infrastructure work, records should be reviewed by an independent Certified Public Accountant (CPA) and an Attestation Report should be submitted to the Commission to ensure that the work is completed and paid for as represented.

The Phase 2 Application for the Nordheimer Flat Project designates the Town of Fort Jones, California, as the Fiscal Agent. The Town of Fort Jones is a local agency as defined by Section 50001 of the Government Code. CD received a letter from the Town of Fort Jones, dated August 10, 2007, stating its willingness to act as the Fiscal Agent for the administration of the Nordheimer Flat Project.

The Executive Director of the CPUC shall enter into an agreement with the Town of Fort Jones, California as Fiscal Agent to receive the grant funds for the Nordheimer Flat Project.

California Environmental Quality Act (CEQA) Review

The issuances of grants pursuant to the RTIGP are discretionary actions subject to the requirements of CEQA. CEQA reviews for RTIGP grants are conducted consistent with the two phase application process for RTIGP funding established in D.03-09-071. The CPUC is the lead agency for utility projects under CEQA.

Approval of a Phase 1 Application means that the Commission has determined that a proposed project is eligible to receive funds under the RTIGP. Phase 1 determinations do not approve a "project" under CEQA and do not trigger environmental review. Phase 2 Applications seek funds that are necessary for the construction of rural telecommunications infrastructure and are projects under CEQA. Phase 2 Applications are subject to a case-by-case factual analysis of environmental impacts.

Funding for CEQA review was approved by the Commission in T-17138⁸. A CEQA review was completed with the results of the Initial Study (IS) and Mitigated Negative Declaration (MND) contained in Appendix A.

The environmental IS was prepared to identify the potential effects on the environment from the installation and construction of an underground telecommunications line in the right-of-way of Salmon River Road in Siskiyou County, and to evaluate the significance of these effects. The IS was based on site visits, analysis of the environmental settings, and the studies of cultural resources, biological resources, and site geology.

⁸ "Funds shall be granted in an amount not to exceed \$341,000 from the California High Cost Fund-A for funding a California Environmental Quality Act Review of the Nordheimer Flat Line Extension Grant Project located in the Sawyer's Bar Exchange of The Siskiyou Telephone Company". May 29, 2008.

Based on the IS, the Nordheimer Flat Project as proposed by Siskiyou Telephone, including the mitigation measures proposed, would have no significant impacts in the areas of: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use planning, mineral resources, noise, population and housing, recreation, transportation and traffic, and utilities and service systems.

Based on the analysis of the IS, final MND and the mitigation measures identified therein and incorporated into the project, the Commission finds that the Nordheimer Flat Project will not have a significant impact on the environment. The Energy Division (ED) of the CPUC has reviewed the subject Phase 2 Application, and after considering all the requirements as contained in Appendix A, finds it complete and in compliance with General Order 131-D.

The ED of the CPUC concludes that approving this resolution is in the public interest and the grant funds for the Nordheimer Flat Project should be approved. The ED adopts the final MND (which incorporates the draft IS/MND), subject to the conclusions therein, and authorizes work on the line extension to begin.
(See Appendix A)

In addressing Incumbent Local Exchange Carriers (ILEC's) cost recovery, the Commission found that existing line extension tariffs should not apply to the RTIGP. In D.03-09-071 (page 13) the Commission stated: "The line extension tariffs were not designed to address a state-administered program such as this one, where funds collected through a surcharge on telecommunications customers, are provided to pay for infrastructure costs. We find that existing line extension tariffs should not apply to this program. Instead ILEC's shall file advice letters setting forth line extension rates, charges and other terms and conditions applicable to each RTIGP. Such charges shall be reasonable and cost-based. Such terms shall be consistent with this decision. These tariffs shall supplement, not replace existing line extension tariffs. Where we find that a grant application should be approved, we will permit ILEC's to recover from the fund infrastructure costs contained in the Commissioner-approved tariff".

Based on a review of the project, Siskiyou Telephone has complied with the Commission's tariffing requirements and filed a compliance tariff as shown in Appendix B.

Findings

1. The Siskiyou Telephone Company, in concert with the Nordheimer Flat Line Extension Grant Project (Nordheimer Flat Project) customers requesting telephone service, did

submit a Rural Telecommunications Infrastructure Grant Application Phase 1 and Phase 2 for Nordheimer Flat Project.

2. Siskiyou Telephone Company (Siskiyou Telephone) is requesting Rural Telecommunications Infrastructure Grant in the amount of \$969,000.00 for construction of the Nordheimer Flat Project.
3. The Phase 1 Application was approved on October 17, 2007, and the Phase 2 Application was approved on May 28, 2008 pending CEQA review.
4. The Government Industry Working Group (GIWG) has reviewed this Phase 2 of the Nordheimer Flat Project, and it has no outstanding issues or concerns.
5. The California Public Utilities Commission (CPUC) is the lead agency for California Environmental Quality Act (CEQA) review of the Nordheimer Flat Project.
6. The Energy Division (ED) reviewed the Phase 2 Application for the Nordheimer Flat Project and completed an Initial Study and Negative Mitigation Declaration, contained in Appendix A.
7. The ED of the CPUC concludes that approving this resolution is in the public interest and the grant funds for the Nordheimer Flat Project should be approved. The ED adopts the final Mitigated Negative Declaration (which incorporates the draft Initial Study/Mitigated Negative Declaration), subject to the conclusions therein, and authorizes work on the line extension to begin.
8. The Town of Fort Jones, California, will act as the Fiscal Agent for the Nordheimer Flat Project.
9. The source of the funds for this grant is the CHCF-A.
10. There are sufficient funds in the CHCF-A to cover the cost of this project.
11. The Siskiyou Telephone Company has filed a compliance Advice Letter tariff and map delineating the Nordheimer Flat Project (See Appendix B).
12. The Commission finds that approval be based on the specifics of this Resolution and the Resolution should not establish a precedent for the contents of future filings or for Commission approval of similar requests.

THEREFORE, IT IS ORDERED THAT:

1. Funds shall be granted in the amount of \$969,000.00 from the California High Cost Fund- A for funding the construction of the Nordheimer Flat Line Extension Grant Project located in the Sawyer's Bar Exchange of Siskiyou Telephone Company.
2. The Executive Director of the California Public Utilities Commission is authorized to enter into agreement with the Town of Fort Jones, California for administration and disbursement of California High Cost Fund-A funds for the Nordheimer Flat Project.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on April 16, 2009. The following Commissioners approved it:

PAUL CLANON
Executive Director