PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division

RESOLUTION T-17140
January 29, 2009

R E S O L U T I O N

Resolution T-17140. Sunesys, LLC Seeks Authority to Deviate from the Undergrounding Requirements of California Public Utilities Code Section 320. Sunesys Requests Authority to Apply an Aerial Fiber Optic Strand and Related Facilities on Existing Utility Poles Along Highway 9 in Santa Clara County.

By Advice Letter No. 12 dated August 29, 2008, from Davis Wright Tremaine LLP representing Sunesys, LLC.

Summary

Sunesys, LLC (Sunesys) through Advice Letter (AL) No. 17140 filed August 29, 2008, requests a deviation from the undergrounding requirements of California Public Utilities Code Section 320 (Section 320), which applies to facilities installed within 1,000 feet of a state-designated scenic highway.

Background

Section 320 was enacted in 1971, Chapter 1697, and reads in part as follows:

> The legislature hereby declares that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to any highway designated a state scenic highway pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which would be visible from such scenic highways if erected above ground. The Commission shall prepare and adopt by December 31, 1972, a statewide plan and schedule for the undergrounding of all such utility distribution facilities in accordance with the

> aforesaid policy and the rules of the Commission relating to the undergrounding of facilities.
>
> The Commission shall require compliance with the plan upon its adoption.

The Commission is responsible for the administration of Section 320. After hearings conducted in Case 9364, D. 80864 implemented the State Legislation. D.80864 states that:

> In order to facilitate administration, letter requests for deviations will be accepted, reviewed by the Commission staff and, where appropriate, approved by Commission resolution. (74 CPUC 457, D.80864)

D.80864 stipulates that no communications or electric utility shall install overhead distribution facilities "in proximity to" and "visible from" any prescribed corridor on a designated scenic highway in California unless a showing is made before the Commission and a finding made by the Commission that undergrounding would not be feasible or would be inconsistent with sound environmental planning. The Decision also defines "in proximity to" as being within 1,000 feet from each edge of the right-of-way of designated State Scenic Highways.

D.80864 also stipulates that when repairs or replacement of existing overhead facilities in the same location do not significantly alter the visual impact of the Scenic Highway, they should not be considered as new construction and need not be converted to underground. Furthermore, based on (D).80864, exemptions to Section 320 have been granted when undergrounding would be economically infeasible and would not significantly alter the visual impact of the scenic highway.

Notice/Protests

In compliance with the AL filing process, PSR Lawfirm, LLC served notice on behalf of Sunesys of its request for exemption to relevant jurisdictions: the Town of Monte Sereno, the City of Los Gatos, and the County of Santa Clara in letters dated June 23, 2008.

On October 22, 2008, the Commission received a letter from the County of Santa Clara Department of Planning and Development, voicing its preference for undergrounding this fiber optic cable installation. The County of Santa Clara Planning Commission voted 5-1-1 to submit a recommendation to the CPUC to require Sunesys to install the cable underground and requested that Sunesys be required to submit a bond to secure

financial responsibility for their proportionate share for the use of a larger conduit for undergrounding utilities in that corridor.

Discussion

Sunesys proposes to attach facilities to existing poles along an approximately 6,450-foot (1.22 miles) section of Highway 9 in the Town of Monte Sereno in Santa Clara County. The portion of right-of-way along the scenic highway is part of an approximately 50-mile deployment to provide high-speed dedicated access and multiplexing services to the University of California at Santa Cruz. Sunesys intends to install the communications facilities in the scenic highway corridor as joint pole attachments to existing utility poles within existing rights-of-way. The aerial fiber optic cable will be approximately 1 inch in diameter. The starting point of the fiber along Highway 9 will be located 0.147 miles west of Daves Avenue in Santa Clara County. The egress point will be 0.165 miles east of Rose Avenue in Monte Sereno.

Nature of Project

Sunesys provides high-speed dedicated access and multiplexing services primarily to school districts, libraries and other non-profit, government, and large enterprise customers (over non-switched, digital fiber-optic communications networks consisting primarily of facilities constructed, owned and operated by other telecommunications carriers). Sunesys possesses full facilities-based authority granted by the Commission in D.06-06-047.

The proposed project will provide enhanced fiber optic telecommunications services to UC Santa Cruz main campus and the west side of the City of Santa Cruz. Key project objectives include greater telephone capacity and expanded internet access capacity, as well as future expansion capability for an all-campus security system and to accommodate growth of campus telecommunications needs over time.

As a policy, Sunesys uses existing poles, conduit and other existing facilities within existing, previously disturbed public rights-of-way wherever possible. For this project, the fiber optic cable installation along the majority of the 50-mile alignment would consist of the addition of fiber optic cable to existing electrical and telephone poles. In the scenic highway corridor, the project will use existing electric utility poles owned by PG&E.

The area of deployment within the scenic highway corridor is suburban in nature, and is developed along both sides. Additionally, there are aerial utility facilities in place along this segment, including electric transmission lines (between four and seven lines

on each pole, each with a diameter of one to four inches), electric and telecommunications distribution lines that connect to individual properties along the corridor, and a cable television line on the opposite side of the highway from where the proposed Sunesys project will be deployed. All of these existing facilities are clearly visible from the scenic highway. Additionally, many of the distribution lines cross over the highway.

Coordination with Local Government

By letters dated June 23, 2008, Sunesys informed Santa Clara County, and the Cities of Saratoga and Monte Sereno of its proposed project and AL filing requesting exemption from Section 320 undergrounding requirements along portions of Highway 9.

Customer Notice

Sunesys provided notice of its AL filing to its customer, UC Santa Cruz, and the Commission's Division of Ratepayer Advocates. The requested exemption from Section 320 undergrounding requirements will not affect rates or retail service to any other customer of Sunesys, therefore no further notice was required.

Request for Comment Period Waiver

Sunesys, requested a waiver of the public commenting period in order to expedite the Section 320 exemption resolution process. The Commission cannot grant this comment period waiver due to evidence that not all parties are in agreement. The October letter from Santa Clara County is evidence of dissent, as well as other conversations with area stakeholders, so opportunity must be provided by the Commission for the public to comment on this matter.

Visibility, Aesthetics, and Environmental Impact

This 6,450-foot installation within the scenic highway corridor will be installed utilizing existing PG&E facilities throughout its deployment. The addition of the 1-inch diameter fiber optic cable does not significantly alter the visual value of the scenic highway. This 1 inch cable will be one of several utility cables already existing along this corridor.

On November 6, 2008, Commission staff conducted a site visit of the section of Highway 9 relevant to this project. During this visit, photographs were taken and staff was able to document the substantial existing utility facilities already in place along this section of Highway 9 within the Town of Monte Sereno. There are multiple electric, telecommunications, and cable lines throughout the corridor, as well as several electric distribution overhead crossings of the highway which constitute a substantial

compromise of the visual impact of the scenic highway. Sunesys' proposed project will include no overhead crossings of the highway within the designated scenic corridor.

Sunesys asserts in its application that it has inspected the area along Highway 9 where it has proposed to install its facilities and found the only existing underground utility facilities to be cable television facilities which are fully occupied. Sunesys does not believe there to be any existing underground facilities available for this fiber optic deployment.

Sunesys submitted a Supplemental Environmental Assessment with its advice letter request for Section 320 exemption. This environmental assessment concludes that there will be no significant impacts to the environment as a result of this project. Furthermore, installing the fiber optic cable above ground on existing utility poles along Highway 9 is the environmentally preferred alternative as it would avoid potential impacts associated with the construction of new underground conduit in this area.

Public Benefit

This project will accommodate the telecommunications needs of an expanding state public university campus. It is in the public interest that our public state university system be able to offer its students state of the art communications capabilities. This is necessary not only to prepare Californian students for twenty-first century careers, but also for our state university system to attract the best faculty and students. Additionally, UC Santa Cruz may use some of this additional capacity for a campus-wide public safety alerting program.

Economic Feasibility

Sunesys estimates that there exists a 12:1 cost ratio between underground and overhead (aerial) installation.

Options	Cost of Installing 6,450-feet of Fiber Optic Cable along Highway 9	Cost per Foot	Aerial to Underground Construction Ratio
Aerial OSP Construction	$21,285.00	$3.30	
Light Underground – Trench of Bore	$251,098.50	$38.93	12:1
Heavy Underground –	$470,398.50	$72.93	22:1

Backhoe Asphalt			

Summary

CD find that the Sunesys application for exemption from Section 320 undergrounding requirements has merit as it would be financially infeasible to underground this 1.22 miles of fiber optic cable attached to existing utility poles considering the very minimal visual impact that this single 1-inch diameter cable makes in the scenic highway corridor. CD therefore, recommends the Commission approve this request for deviation from Section 320 undergrounding rules due to the high cost differential, and due to the absence of any significant alteration to the aesthetic value of the scenic highway corridor.

Commission approval is based on the specifics of the Advice Letter and the associated contracts, and does not establish a precedent for the contents of future filings or for Commission approval of similar requests.

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.

Reply comments were timely filed on January 14, 2009 by Davis Wright Tremaine LLP, counsel for Sunesys LLC. These comments state that Sunesys fully supports the Draft Resolution T-17140 and urges its prompt approval by the Commission.

Findings

1. The Commission finds that by Advice Letter No. 12 dated August 29, 2008, Sunesys requested authority for deviation from the undergrounding requirements of Section 320 of the Public Utilities Code.

2. The Commission finds that this project involves adding approximately 6450 feet of 1″diameter black aerial cable, along highway 9 from 0.147 miles west of Daves Avenue in Santa Clara County to 0.165 miles east of Rose Avenue in Monte Sereno.

3. The Commission finds that the cable will be affixed to existing utility poles along with existing electric and telephone cables. Hence, overhead facilities would

remain visible from the highway, regardless of the outcome of this exemption request.

4. The Commission finds that the utility costs to place telephone lines underground at this location would exceed the overhead cost by 12:1.

5. The Commission finds the deviation request from the undergrounding requirements of Public Utilities Code Section 320 to be reasonable and should be approved.

THEREFORE, IT IS ORDERED that:

1. Sunesys' request to deviate from Public Utilities Code Section 320 to apply approximately 6450 feet of aerial cable from 0.147 miles west of Daves Avenue in Santa Clara County to 0.165 miles east of Rose Avenue in Monte Sereno along Highway 9, a scenic highway is approved.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on December 18, 2008. The following Commissioners voting favorably thereon:

I hereby certify that this Resolution was adopted by Executive Action Resolution on _____.

_____

PAUL CLANNON
Executive Director