

Decision 01-05-027 May 3, 2001

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

Application of Global Photon Systems, Inc. and Global West Network Inc. for authority to modify their Certificates of Public Convenience and Necessity to Permit Construction of Specific Telecommunications Facilities.

Application 00-06-002  
(Filed June 2, 2000;  
Petition for Modification  
Filed  
April 6, 2001)

**OPINION MODIFYING DECISION 00-11-037**

**A. Background**

Global Photon Systems, Inc. and its subsidiary Global West Network, Inc. (collectively “Applicants”) have filed a Petition for Modification of Decision (D.) 00-11-037 regarding construction of an undersea and land-based fiber optic telecommunications network (the “Project”).<sup>1</sup> In granting authorization for the Project, Ordering Paragraph 4 of D.00-11-037 states that Applicants “shall obtain all necessary permits for the Project and shall file a petition to modify this order to obtain approval for any subsequent changes to the route or construction activities of the Project.”

Applicants have filed this petition for modification because in the course of obtaining all permits necessary to construct the Project and conducting final review of conduit that Applicants intended to use, Applicants were required to

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<sup>1</sup> The term “Project” is used here as defined in D.00-11-037 and in Application 00-06-002, which contains a detailed description of the route and construction activities for the proposed fiber optic network.

make a number of minor adjustments to the terrestrial portion of the route.<sup>2</sup> Applicants explain that these minor adjustments were necessitated by the permitting process of local governments and the discovery of blockages in existing conduit that they originally intended to use. Applicants contend that the route adjustments described in the petition are de minimis, will have no significant impact on the environment, and do not alter the Project as approved by D.00-11-037.

Applicants describe their uncertainty as to the necessity of the petition and state they have submitted it out of an abundance of caution. They would prefer that the Commission dismiss the petition and convert it to an informational filing. In the event the Commission determines the petition is indeed required, Applicants request expedited review of the petition to permit them to complete construction under the terms of local permits. The permits require construction to be completed by late May so that the Project does not interfere with public access to coastal areas during peak summer months.

Applicants submitted a motion to shorten the protest period for this petition and justified the request by noting there were no protests to the original application for construction of the Project and the issuance of local permits has already involved a public review process as required by law. The assigned administrative law judge granted the motion and shortened the response period to seven days after the filing of the petition.

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<sup>2</sup> The route is described in the Final Environmental Impact Report (FEIR) certified by the State Lands Commission as Lead Agency, and considered by this Commission as a Responsible Agency.

## **B. Requested Route Changes**

The Petition for Modification explains that the route changes are caused by the unavailability of conduit space and blockages in existing conduit that were not known until the conduit was accessed. These conditions required Applicants to adjust certain terrestrial routes connecting the coastal landing sites for the undersea portion of the network with carrier Points of Presence (POPs) for interconnection with the public switched network. Applicants could either construct new facilities adjacent to those identified in the FEIR or they could identify available existing conduit on a different route that would still connect the landing site to the POP. For the most part, Applicants chose the latter option to minimize financial cost and environmental issues. Consequently, Applicants state that over 95 percent of the route adjustments lie within existing conduit. In a few instances, new construction is necessary due to blockages that preclude the use of existing conduit. According to Applicants, the new construction consists entirely of trenching and boring within existing city streets.

Applicants state that all necessary California Environmental Quality Act (CEQA) review on these minor route adjustments has been completed. The responsible agencies involved with local permitting have all concluded that the route adjustments would have no significant impact on the environment.

Three of the cities with terrestrial route adjustments, Manhattan Beach, Santa Barbara, and Morro Bay, incorporated additional CEQA review as part of their discretionary permitting process. In a fourth city, San Diego, the entire route is located in existing conduit and does not involve any new construction, so only ministerial permits were necessary. Finally, ministerial permits were necessary in Manhattan Beach and Los Angeles for two activities associated with route adjustments, namely placing fiber in existing conduit and limited trenching

and boring in city streets. Applicants contend that even if the permits in Manhattan Beach and Los Angeles were not ministerial, the route adjustments would be subject to categorical exemptions under CEQA because they involve minor alternation of existing facilities or replacement or reconstruction of existing structures.

The petition provides documentation of the permits issued by these cities in exhibits attached to the petition and concludes that all necessary CEQA review of the Project, including the minor route adjustments, has occurred. The cities, as Responsible Agencies, have conducted all additional environmental analysis required by CEQA for the route adjustments described in the petition. Where CEQA review was not conducted, such as in San Diego and Los Angeles, it is because the route changes are ministerial and CEQA does not apply, or they fall within a categorical exemption.

### **C. Discussion**

We will not grant Applicants' request to dismiss the Petition for Modification as unnecessary. The specific language of D.00-11-037 required a petition for modification for any route changes, and indeed, the route has changed. Applicants have presented a petition containing the route change descriptions and maps, and they have obtained all permits as the original order required. We do not interpret their filing as superfluous or overly cautious. Rather, we commend Applicants for following our directions from the original order to the letter. Based on the documentation provided with the petition showing that Responsible Agencies have conducted all additional environmental analysis required by CEQA for the route adjustments, we will approve the Project changes provided in this petition.

Nevertheless, we will take this opportunity to revise the language in D.00-11-037 to direct Applicants to consult with our staff about the need for further modification of their Certificates of Public Convenience and Necessity (CPCNs). At the time we initially approved the Project in D.00-11-037, we were most concerned with route changes resulting from the uncertainty of the undersea portion of the route, particularly the portion through the Monterey Bay National Marine Sanctuary. At the time of our approval of the original application, federal approval for the northern undersea portion of the route through the Sanctuary was still pending. We were concerned that the undersea route could change substantially based on the federal review and permitting process. We wanted to ensure that any major route changes resulting from a revision of the undersea route would come to our attention. For this reason, D.00-11-037 required Applicants to file a petition to modify their CPCNs to alert us to these potential changes.

We now find that the language in our November order may have been too broad. The Commission is less concerned with minor route deviations along the terrestrial route that was fully reviewed in the FEIR. Therefore, we take this opportunity to clarify that further petitions for modification of D.00-11-037 may not be required under certain circumstances such as if they involve minor changes to the originally approved route, which have local and/or Responsible Agency permitting approval and are within the scope of the Project from the original FEIR. Rather, we will require Applicants to consult with our Energy Division environmental staff to determine whether Applicants need to file a request for modification of their CPCNs. If our staff are concerned that the changes merit more formal Commission review, they can require Applicants to file a new application for modification of their CPCNs.

Therefore, we will modify the language in the November order to clarify this future process. The ordering paragraph in D.00-11-037 currently states:

4. Applicants shall obtain all necessary permits for the Project and shall file a petition to modify this order to obtain approval for any subsequent changes to the route or construction activities of the Project.

We will modify this paragraph to state:

Applicants shall obtain all necessary permits for the Project and shall consult with our Energy Division environmental staff regarding the need for modification of their CPCNs for minor route changes. If Commission staff is concerned that the changes merit more formal Commission review, staff can require Applicants to file a new application for modification of their CPCNs.

We will also replace the last sentence of the first paragraph on page 6 of the opinion with this same language.

This decision does not modify any other provisions of the November order. Applicants must still comply with the mitigation monitoring program adopted by the State Lands Commission in its FEIR, and they must still obtain all necessary permits for the Project. We remind applicants that one of the initial conditions of our approval was the requirement that they adhere to the mitigation measures from the original EIR, and this remains a requirement of their CPCN for the proposed route changes, proposed construction changes, and the entire Project. In addition, we direct Applicants to provide an updated mitigation monitoring plan to Energy Division environmental staff and to continue working with staff regarding appropriate mitigation monitoring measures for the Project.

This is an uncontested matter in which the Commission grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

**Findings of Fact**

1. Applicants filed a Petition for Modification as required in D.00-11-037 because Applicants have made minor adjustments to the route of the Project approved in that order.
2. The route changes result from the local permitting process and blockages in existing conduit.
3. Local permits require construction to be completed by late May to avoid interference with public coastal access during peak summer months.
4. All necessary CEQA review of the Project, including the route adjustments described in the petition, has occurred.

**Conclusions of Law**

1. D. 00-11-037 should be modified to authorize construction of the facilities along the route described by Applicants in their petition for modification.
2. Future minor route deviations along the originally approved route for this Project may not require an additional petition for modification of Applicants' CPCNs.
3. D.00-11-037 should be modified as described in this Order.
4. This order should be effective immediately to allow Applicants to complete construction according to the terms and conditions of local permits.

**O R D E R**

**IT IS ORDERED** that:

1. The Petition for Modification of Decision (D.) 00-11-037 filed by Global Photon Systems, Inc. and Global West Network, Inc. is granted to the extent it requests modification of Applicants' existing Certificates of Public Convenience and Necessity (CPCNs).
2. Ordering Paragraph 4 of Decision 00-11-037 is modified to read as follows:
  4. Applicants shall obtain all necessary permits for the Project and shall consult with our Energy Division environmental staff regarding the need for modification of their CPCNs for minor route changes. If Commission staff is concerned that the changes merit more formal Commission review, staff can require Applicants to file a new application for modification of their CPCNs.
3. The last sentence of the first paragraph on page 6 of the opinion should be replaced with the same language in Ordering Paragraph 1 above.
4. We direct Applicants to provide an updated mitigation monitoring plan to Energy Division environmental staff and to continue working with staff regarding appropriate mitigation monitoring measures for the Project.
5. This proceeding is closed.

This order is effective today.

Dated May 3, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners