BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

FILED
11/24/26
04:59 PM
R2009001

Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California.	R.20-09-001

APPLICATION OF AVX NETWORKS AND DIGITAL EQUITY FOUNDATION FOR REHEARING OF RESOLUTION T-17934

Anita Taff-Rice
iCommLaw
1547 Palos Verdes, #298
Walnut Creek, CA 94597
Telephone: (415) 699-7885
Facsimile: (925) 274-0988 Email:
anita@icommlaw.com
Counsel to AVX Networks and Digital Equity Foundation

Dated: November 24, 2026

Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure, AVX Networks and the Digital Equity Foundation (collectively "Applicants") hereby file their Application for Rehearing of all parts of Resolution T-17934[1] ("Resolution") related to the termination of the $37,571,833 Federal Funding Account ("FFA") award 00150 for up to $37,571,833.[2] Applicants expressly are not seeking rehearing of the directive in Resolution T-17934 that despite the termination of the award "AVX Networks' properly incurred and documented expenses remain eligible for reimbursement".[3]

I. INTRODUCTION AND SCOPE OF REQUESTED REVIEW

Under California law, the scope of a rehearing is set by the Applicants, and because Applicants are not seeking rehearing on the directive for staff to work with Applicants to identify and reimburse proper expenses, that portion of Resolution T-17934 remains in effect and binding on staff.[4] Applicants have submitted a modified reimbursement request to staff that removes the three items that staff identified as concerns – administrative salaries, potential purchase of a mixed-use property and a ruggedized truck with "premium" trim.[5] Staff has declined to meet with Applicants to discuss reimbursement requests, and instead directed that all communications go through a Commission attorney. Although this approach is not optimal for efficiency, Applicants are hopeful that legal representation will assist staff in interpreting applicable rules and determining the reimbursement amounts are reasonable in a fair and non-discriminatory manner consistent with 2 C.F.R Part 200 (which the Commission acknowledges apply to all FFA

[1] CED D.26-01-015.
[2] Resolution T-17934, Summary and Ordering Paragraphs 1–3, at pages 1 and 22–23.
[3] Resolution T-17934, at 8; see also at 2.
[4] Cal. Pub. Util. Code §1731(b) ("A cause of action arising out of any order or decision of the commission shall not accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance . . . .").
[5] Resolution T-17934 at 5-6, Exh. A, C, E; AVX Opening Comments on Resolution T-17934, at 4-5.

awards)[6] and with the Commission's own rules regarding reimbursements set forth in D.22-04-055 and subsequent staff guidance (e.g. notice of fixed amount reimbursement).[7] Under the federal Part 200 rules, which the Resolution explicitly acknowledges apply, "a cost is reasonable if it does not exceed an amount that a prudent person would incur under the circumstances prevailing when the decision was made to incur the cost."[8]

The purpose of an Application for Rehearing is to alert the Commission to legal and factual errors, in order to permit the Commission to correct them expeditiously.[9] Accordingly, Applicants identify numerous legal and factual errors in the Resolution that require rehearing so they may be corrected. The decision to terminate the FFA Award errs legally for at least three independent reasons. First, Commission staff made substantial, material revisions to the draft resolution after the comment period closed and no further comment was allowed. Thus, Applicants (and members of the public, Avalon residents and state legislators) were denied any opportunity to be heard on multiple alleged facts and legal claims about the Applicants and AVX CEO Lance Ware personally. Imposing a drastic penalty on Applicants without a fair opportunity to be heard violates due process. Further, the Resolution violates 2 C.F.R. Part 200 rules and Decision 22-04-055 (App. A Section 17) setting forth required processes prior to terminating an FFA award. Further, the Commission dismisses the comments that were allowed, which raised due process and public safety concerns, federal procedural requirement

[6] Resolution T-17934, at 6
[7] Resolution T-17934, at 21, n.24 (citing *Guidance on Supporting Documentation for Reimbursement Requests*, Jan. 2026, at 2. (reimbursement on a "fixed amount" basis, defined as "payments are based on meeting specific requirements of the award (e.g., performance and results), rather than actual costs incurred . . .based on monthly construction progress reporting: geotagged photos, engineering maps.").
[8] 2 C.F.R. § 200.404.
[9] Resolution T-17934 was issued on October 30, 2026. Rule 16.1 (a) permits Applications for Rehearing to be filed within 30 days after the date that the Commission mails the order or decision. This Application is timely filed.

violations, and the absence of a notice-and-cure process consistent with a single, blanket response — the Commission has followed proper process

Second, the Resolution is based on factual assertions that are not in the record because they were introduced for the first time in the revised draft resolution issued on August 5, 2026. The Commission has held that the evidentiary record is closed, and the proceeding is submitted when a draft resolution is issued.[10] Third, the rescission did not follow the mandatory procedural sequence under 2 C.F.R. Part 200, which the Commission has conceded applies, or the Commission's own rules

Any one of these errors independently warrants reversal or rehearing. Together, they demonstrate that the Commission has not proceeded in the manner required by law, has violated Applicants' constitutional due process rights and has acted in an arbitrary and capricious manner and has failed to consider evidence in the whole record in violation of Cal. Pub. Util. Code § 1757(a). Section 1732[11] requires an application for rehearing to state specifically each ground on which the applicant considers the decision unlawful and limits later judicial review to the grounds stated. AVX sets forth each legal and factual error below.

II. BACKGROUND AND RELEVANT FACTS

On December 18, 2025, the Commission adopted Resolution T-17896 awarding Applicants a $37,571,833 FFA award to construct the Digital Equity for Coastal and North Orange County and Catalina Island project. The Commission issued an award letter on December 29, 2025, and Applicants submitted their consent form on January 12, 2026.[12]

On April 19, 2026, AVX submitted its first reimbursement request for $2,559,284.03. On May 1, 2026, Communications Division directed AVX by email to stop all work and spending,

[10] D.19-06-039, at pp. 5-7, 12 (July 23, 2018) (citing Rule 13.14(a).
[11] All statutory citations are to the California Public Utilities Code unless otherwise noted.
[12] Resolution T-17934, at 3–5.

citing unspecified concerns about the payment request.[13] On May 8, 2026, staff sent a letter raising expense and documentation concerns. AVX responded on May 14, 2026.[14] For 52 days after the stop-work order, staff did not communicate substantively with AVX until July 7, 2026, when staff issued a document titled "NOTICE OF TERMINATION" stating that the FFA Award was hereby terminated, effective July 17, 2026.[15]

On August 5, 2026, staff issued draft resolution T-17934 ("August draft resolution") and set a deadline of September 3, 2026 for comments. Applicants served their opening comments on September 2, 2026, and reply comments on September 8, 2026. Twenty-six sets of comments were submitted in total, including comments from the public, Catalina Island Health, INCOMPAS, Attain Partners, the City of Avalon, the City of Huntington Beach, and Dr. Matthew Byrnes.[16]

A month after the comment period closed, staff issued a revised draft resolution on October 2, 2026. The revised draft resolution ("Rev. 1") was more than double the word count of the initial resolution. The revised draft resolution added detailed factual allegations about AVX and its CEO by name, adds characterizations of transactions as constituting "self-dealing," states that "matters of this type" may be referred to an investigatory body, and releases up to $37,571,833 immediately for future FFA projects. No additional comment period was provided to Applicants to address or rebut these substantive and material additions.[17]

III. RESOLUTION T-17934 IS BASED ON LEGAL AND FACTUAL ERRORS

The draft resolution and Resolution T-17934 are materially different documents. The approved Resolution T-17934 is more than two and a half times as long as the initial draft

[13] Resolution T-17934, at p. 5, Exh. C.
[14] Resolution T-17934, Exh. F.
[15] Resolution T-17934, at 5–7, Exh. G; AVX Opening Comments, sections II.A.4 and III.A.
[16] Draft resolution T-17934, transmittal letter, at page 1; Resolution T-17934, at 11–17.
[17] Resolution T-17934, at 9, 11, 18; Ordering Paragraphs 1–3, at 22–23.

resolution issued on August 5, 2026 – growing to 7,618 words (23 pages) from 2,965 words (13 pages) in the initial draft resolution. The August draft resolution included the name "Lance Ware" once, and only in the service line. Resolution T-17934 refers to Mr. Ware 29 times. The draft resolution had no references to Mr. Ware's wife, Julie Ware, but the adopted Resolution mentions her ten times.

The August draft focused on AVX and its reimbursement request. The adopted Resolution suddenly, and without any cites to record evidence, morphs into a series of accusations against AVX, Mr. Ware, his conduct, and his wife. None of them had any notice that they would be publicly named and blamed or *any* opportunity to respond because no additional comment period was allowed after these voluminous, material additions. Moreover, the new material is largely based on hearsay because the staff assertions on which the termination is based were made outside of the record, were not provided during any type of public hearing or in declarations made under penalty of perjury. Further, some of the statements are contradictory to prior Commission orders and the record in this proceeding. Applicants identify the new material below and provide rebuttal evidence, some from the Commission's own representations to a federal court, that they would have provided if they had been given the opportunity. Applicants are filing a request for official notice of these rebuttal materials.

A. REVISED DRAFT AND RESOLUTION ADD MATERIAL AND HEARSAY CLAIMS WITH NO NEW COMMENT PERIOD

The draft resolution contained a brief factual summary and a general discussion of alleged documentation deficiencies. The adopted Resolution substantially expands asserted facts, allegations and innuendo against Applicants and, for the first time, names a specific individual that the Commission asserts is at fault for the supposedly improper reimbursement request. All of the following assertions, characterizations and claims were added after the comment period

closed so that neither Applicants nor Mr. Ware had *any* opportunity to publicly rebut them. Further, the Commission has foreclosed any ability for Applicants to gather information to support its comments on the initial draft resolution by failing to produce responses to Public Records Act requests that have been pending since July, 2026.

1. **Resolution T-17934 adds new hearsay grounds for termination**

a. Self-dealing. Rev 1 and approved Resolution T-17934 for the first time alleged that the FFA award was terminated due to alleged self-dealing. Resolution T-17934 acknowledges that the allegation is new, "[t]his Resolution is *modified* to provide clarification that the termination of this grant is in part predicated on AVX Networks self-dealing and attempts to self-benefit from public funds."[18] The Resolution, and the revised draft also recast the termination as "due to AVX Networks' conduct since receiving the award."[19] The August draft resolution did not allege "self-dealing" as a basis for termination. It used the term "self-dealing" once, in a generic reference about why procurement rules exist.[20] Resolution T-17934 provides no citation to the criteria applied, apparently by non-legal staff, to reach a determination that Applicants' conduct constituted "self-dealing." Further, this new basis for terminating the FFA award was added after the comment period was closed, thereby denying Applicants any ability to be heard and rebut this serious, and factually inaccurate hearsay allegation.

b. Lack of ability. Rev. 1 also added (and Resolution T-17934 relies on) another new, unsubstantiated ground for termination based on hearsay statements asserting that "AVX Networks has not shown itself to have the requisite administrative, technical, and operational capacity to deliver on its project."[21] No finding, exhibit, or fact in the Resolution supports this

[18] Resolution T-17934, at 20-21; revised draft resolution at 22-23 (emphasis added).
[19] Resolution T-17934, at 2; draft resolution (Rev. 1) at 3.
[20] August draft resolution at p. 11.
[21] Resolution T-17934, p. 2; Rev. 1 at p. 3.

disputed hearsay claim. Indeed, Resolution T-17934 contradicts the staff hearsay claim by quoting the Commission's prior holding in Resolution T-17896 that granted the FFA award: "The applicant demonstrated the administrative, technical, and operational capacity to provide broadband service at the scale of this project."[22] The Resolution cites to nothing in the record to explain why it made a material reversal in assessing Applicants' qualifications and abilities.

The sole basis for terminating the FFA Award is three expense reimbursement requests that staff believed might not comply with federal Part 200 rules.[23] Even if staff were correct (and Applicants strongly argue they are not) Resolution T-17934 provides no explanation for why the issue couldn't have been addressed by denying the expense request or by imposing conditions on reimbursements (as Part 200 requires) and letting the project continue. If the Commission had allowed comment on these new allegations, Applicants could, and would, have rebutted the allegations.

c. Purchase of property. Rev 1 added for the first time (and Resolution T-17934 relies on) a hearsay allegation that AVX Networks requested reimbursement of $1.5 million for the purchase of a property characterized as "residential" property, that the buyer "bought a property from itself" and described the transaction as "plainly non-arms-length," and that more than $1 million in reimbursements that would have flowed to AVX Networks' CEO Mr. Ware."[24] Rev. 1 and Resolution T-17934 also included the hearsay allegation that "a remote and substantially cheaper Optical Line Terminal" was as an alternative to the purchase of a property. This hearsay statement is the same type of hearsay allegation disallowed in *TURN v. CPUC*.[25]

[22] Resolution T-17934, p. 4, quoting Resolution. T-17896.
[23] Resolution T-17934, p.21-22.
[24] Resolution T-17934, at 8-9; Rev. 1, at 9.
[25] *The Utility Reform Network v. Public Utilities Com*. (2014) 223 Cal.App.4th 945, 961.

What the record shows is that the property was a mixed-use building that had previously been used by commercial operations including as AVX's headquarters and that it was intended to be used as the central office and network headend for the FFA project.[26] The Commission's own records show that 305 Sumner Avenue is AVX's business address.[27] Further, the Commission was aware that the purchase had not been consummated. In a related federal court case, the Commission filed a formal pleading confirming that the property purchase had not been consummated.[28] Resolution T-17934 also incorrectly describes the proposed purchase as "the $3.5 million real estate expenditure,"[29] even though the entire reimbursement request (which included invoices for engineering, legal services, marine survey, etc.) was $2,559,284.03.[30] As with the self-dealing allegation, Resolution T-17934 provides no analysis identifying the criteria that the apparently non-legal staff applied to determine that the proposed transaction was not arms-length or even if there is a rule that bars non-arms-length transactions. There is not. If Applicants had been given an opportunity to comment on Rev. 1, they would have provided evidence that the federal Part 200 rules do not bar non-arms-length transactions. Rather the rules require additional scrutiny.[31]

e. Proof of payment: Resolution T-17934 adds a new claim that "to date, AVX Networks has failed to provide proof of payment of any eligible expenses related to the award."[32] A new count of AVX's submissions, including counsel's July 10 and July 22 submissions, both after the July 7 letter.[33] This claim is contradicted by the Resolution's own text. At page 14,

[26] Resolution T-17934, Exhs. A, B.
[27] *AVX Networks v. California Public Utilities Commission*, Case No. 3:26-cv-07172-WHO in the N. District of CA Federal Court, ECF 36-4 at 2.
[28] *Id.*, ECF 50 at 13:19-20, quoting ECF 25 ¶¶ 218-20.)
[29] Resolution T-17934, at 13.
[30] Resolution T-17934, at 5.
[31] 2 C.F.R. § 200.404(b)–(c); 2 C.F.R. § 200.465(b)–(c).
[32] Resolution T-17934, at 11, 20.
[33] Resolution T-17934, at 8.

Resolution T-17934 acknowledges that "AVX Networks provided proof of payment" for at least one invoice. Yet that invoice has not been paid.

Further, Resolution T-17934 adds a new reimbursement rule, that "grantees must first incur and pay project costs and only then can seek reimbursement."[34] This assertion has no citation to authority and is contradicted by evidence in the record and written documents prepared by Commission staff. The Commission's own guidance document, cited in the Resolution, provides that awardees "who have difficulty submitting proof of payment may submit documentation that clearly demonstrates that project expenses have been incurred."[35] The AVX award letter also bases payment on "submitted receipts, invoices, and other supporting documentation showing expenditures incurred."[36]

Further, the claim is contradicted by official Commission staff guidance formulated in January 2026 and issued for approval in May 2026. That guidance institutes a "fixed amount" approach by which project expenses are paid based on construction milestone accomplishments documented by "geotagged photos, engineering maps," not paid invoices.[37]

Even though Applicants had no opportunity to respond to this new purported requirement for reimbursement only of pre-paid expenses, Resolution T-17934 attempts to preempt any such argument (likely in response to Applicants' filings in the federal court case). The Resolution asserts that the fixed award approach is limited only to FFA projects funded with federal Capital Funds Project ("CPF") funds, and that the Applicants' FFA award was funded fully with state

[34] Resolution T-17934, at 8.
[35] *Guidance on Supporting Documentation for Reimbursement Requests*, Jan. 2026, at 2.
[36] Award Letter, Dec. 29, 2025, at 3 (cited in Resolution T-17934, at 5).
[37] Resolution T-17934, at 21, n. 24 (https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/ffa-webpages/post-award-items/fixed-amount-subawards-guidance-june-2026.pdf.)

funds.[38] However, Resolution T-17934 confirms that the federal rules apply to all FFA projects[39] and fails to explain why such reimbursement approach should not be extended to all FFA projects or why invoices that are partially or not paid fail to qualify as Type 2 reimbursements. Applicants submitted evidence obtained through Public Records Act requests to the California Department of Finance showing that the Applicants' FFA award had no assigned funding source *(i.e.* state or federal) for months and that Commission staff have moved projects from federal or state funding and vice versa.[40] The Commission has not responded to PRA requests submitted in mid-July, so the Applicants have been unable to obtain evidence showing whether their FFA award was ever funded with CPF money, and if so, when the funding source was changed.

Regardless, the Commission is clearly treating Applicants in a manner less favorable than other FFA awardees. For example, funding for FFA Award 00055 for the City of Placerville was initially allocated from state funds in the FFA account. In June 2026 Commission staff moved $17,777,720.87 of that award to CPF funding, and on June 26, 2026 told the Department of Finance that a payment of $2,133,116.87 that "has been paid from the General Fund . . . will need to be re-processed to request a drawdown." On June 29, 2026, Finance confirmed it had no further questions or concerns with the change. [41] Thus, even if Applicants' FFA award has remained funded with state funds since an allocation source was eventually assigned, the allocation from state funding is entirely within staff's control and it could have moved Applicants' FFA award to CPF funding because it was on track to meet the December 31, 2026

[38] Resolution T-17934, at 16, 21, n.24.

[39] Resolution T-17934, at 6, n. 15 (Federal Part 200 rules apply "regardless of whether their grant was funded with Capital Projects Fund monies," citing Public Utilities Code section 281(n)(2)).

[40] *AVX Networks v. California Public Utilities Commission*, Case No. 3:26-cv-07172-WHO in the N. District of CA Federal Court (ECF No. 53-2, Declaration of L. Ware in support of Plaintiffs' Opposition to the CA Dept of Finance Motion to Dismiss the First Amended Complaint, Exhs. A and B, October 28, 2026).

deadline prior to the stop work order. By apparently choosing to fund Applicants' FFA award with state funds and thereby "making" Applicants "ineligible" for "fixed amount" reimbursements, Commission staff and Resolution T-17934 discriminated against Applicants.

f. NOTICE OF TERMINATION letter: Resolution T-17934 adds a new claim that the July 7, 2026 letter from staff entitled "NOTICE OF TERMINATION" "does not terminate the award."[42] This assertion is contrary to the record evidence. The text of the July 7 letter states that the award "is hereby terminated, effective July 17, 2026."[43] The Resolution corroborates that the July 7, 2026 letter was in fact a termination because it states that staff "provided the required 10 day written notice to AVX Networks to terminate the award."[44] But the only notice Applicants received was the July 7, 2026 letter, thereby confirming that the letter started the 10-day termination clock.

2. Staff allegations in Rev. 1 and Resolution constitute hearsay

It is well settled in California that while the Commission generally may admit hearsay, such information ordinarily does not constitute substantial evidence required to support the Commission's factual findings on disputed issues.[45] The new allegations in Rev. 1 of the draft resolution are not supported by a sworn declaration or offered during a hearing where Applicants had a right to cross examine staff. As discussed above, Applicants were denied any opportunity to respond to the new allegations in Rev. 1, much less to cross examine staff on the multiple disputed issues identified in Applicants' opening comments on the initial draft resolution. The failure to allow Applicants to rebut hearsay allegations in Rev. 1 or Resolution T-17934 violates Rule 13.6 of the Commission's Rules of Practice and procedure, which allows hearsay only if

[42] Resolution T-17934, at 21.
[43] *Id*., Exh. G.
[44] *Id*., at p. 10.
[45] *The Utility Reform Network v. Public Utilities Com'n.* (2014), 223 Cal. App. 4th 945, 949.

"the rights of parties to meaningfully participate in the proceeding" are preserved. The sole basis for terminating the FFA award is staff allegations that are unsupported by any sworn declaration but which are accepted for the truth of the matter. Resolution T-17934 therefore errs legally because it is based entirely on staff allegations that constitute hearsay.

B. COMMISSION VIOLATED DUE PROCESS AND STATE LAW BY FAILING TO ALLOW NEW COMMENT PERIOD AFTER SUBSTANTIAL REVISIONS TO DRAFT RESOLUTION WERE MADE AFTER COMMENT PERIOD CLOSED

For the first time, it identifies Lance Ware by name as the sole member of the LLC from which Applicants allegedly purchased property (even though the record clearly shows that the property was not actually purchased). It characterizes the transaction as "plainly non-arms-length" and states that more than $1 million in reimbursements . . . would have flowed to AVX Networks' CEO Mr. Ware . . . without adequate justification. It explicitly announces that staff may refer matters of this type to an investigatory body for investigation and culpability. The Commission's adopted Resolution therefore contains materially new factual allegations and punitive insinuations — imposed as part of a $37,571,833 rescission — that neither AVX nor the public had any opportunity to address.

1. Due Process Requires Notice and Opportunity to be Heard

It is well settled that the due process clause applies whenever governmental action threatens to deprive a person of a protected property interest.[46] A party has a protected property interest where it holds a legitimate claim of entitlement, not merely a unilateral expectation.[47] The Commission has acknowledged that "[a] fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"[48] Yet neither staff

[46] *Las Lomas Land Co., LLC v. City of Los Angeles*, 177 Cal. App. 4th 837, 852 (2009).
[47] *Id.*
[48] D. 08-04-062, at p. 14, (Apr. 24, 2008) (citing *Mathews v. Eldridge* (1976) 424 U.S. 319, 333).)

nor the Commission provided any opportunity for Applicants to be heard on ten new pages of new factual and legal allegations added after the single comment period was closed. The Resolution confirms that the only opportunity Applicants had to be heard was to submit comments on the initial, narrower draft resolution, on September 3, 2026. By then, staff had unilaterally stopped all work, locked Applicants out of the mandatory awardee portal and publicly told government officials that the FFA award had been rescinded.[49]

Applicants held a protected property interest in the FFA grant awarded in Resolution T-17896, confirmed in a written award letter and consent form, governed by published rules. That is a legitimate claim of entitlement, not a discretionary gratuity.[50] The right to prior notice and a hearing is at the core of due process.[51] At a minimum, whenever property is taken, due process requires some form of notice and hearing; advance process may be omitted only in limited cases requiring prompt action to protect public health or welfare.[52] No emergency, no imminent public harm, and no impracticability existed here. Six months elapsed between the staff's stop-work order and the Commission's vote approving Resolution T-17934. Indeed, the draft resolution was twice placed on the hold list, and the Commission's vote was deferred. There was ample time to allow for meaningful comments on the newly introduced assertions, yet none was allowed.

The harm from rescinding the FFA Award to Applicants and residents of Avalon who do not have adequate broadband communications is substantial. The inability of Applicants to address new factual allegations that publicly accused a named individual of self-dealing and conflicted conduct and threatened referral to an investigatory body, all without any opportunity to respond clearly violates the Applicants' and Mr. Ware's dignitary interests. The

[49] Resolution T-17934, at 22, Exh. D; Applicants' Opening Comments, at p. 7.
[50] Resolution T-17934, at 3–5.
[51] *People v. Litmon*, 162 Cal. App. 4th 383, 396 (2008).
[52] *Tyler v. County of Alameda*, 34 Cal. App. 4th 783-784 (1995).

Commission's adopted Resolution is effective immediately. Its Ordering Paragraphs terminate the grant and release the funds for other projects with no stay. The deprivation is total and immediate. Where pre-deprivation process was available and straightforward — a brief supplemental comment period on the revised draft — its omission is constitutionally and statutorily indefensible.

2. State Law Requires New Comment Period When a Proposed Resolution is Substantially Revised

Section 311, subdivision (g)(1), requires that, prior to voting, a decision be served on the parties and be subject to at least thirty days of public review and comment.[53] Staff served the initial draft resolution on August 5, 2026 and set the comment deadline on September 3, 2026. Therefore, staff did not allow the required 30 days of public review and comment. While the California Code of Regulations Rule 14.5 allows for reduction or waiver of the public comment period in specific, narrow circumstances, none of those exceptions apply here and the Resolution does not assert that the Commission intended to reduce the comment period.

Where, as here, the Commission substantially rewrites a draft resolution, the comment period on the original draft does not satisfy the purposed of allowing for meaningful public review and comment. The Commission denied the opportunity to rebut the new allegations in the substantially revised draft resolution adopted in Resolution T-17934. The Commission failed to comply with the mandate of section 311(g)(1) by opening a new comment period on a document that differs materially from the one actually voted upon.

3. Commission Precedent Requires Rehearing When Comments are not allowed for Substantially Revised Proposals

[53] *See* also, *Southern Cal. Edison Co. v. Public Utilities Com*., 85 Cal. App. 4th 1086, 1107 (2000).

In D.11-11-019, the Commission granted rehearing and vacated Resolution E-4243 after adopting a revised draft that added five findings based on material submitted informally by the utility and obtained through independent research. The Commission cited Rule 14.1(d) in discussing the failure to recirculate the revised draft and explained that the parties had no opportunity to address material the Commission relied on to resolve contested issues. The Commission concluded that the record was inadequate to resolve the matter and vacated the resolution.[54] Further, Sections 311(e) and (g) require a summary of revisions and a separate comment period for alternate decisions. While Section 311(e) and (g) doesn't explicitly address revisions to the primary draft decision, the principle should be the same – parties should have an opportunity to review and comment on substantive revisions to decisions under consideration for approval by the Commission.

As discussed above the approved Resolution T-17934 expressly relies on new legal theories asserted facts, including a newly added allegation of self-dealing.[55] Rev. 1 introduced that allegation as an affirmative ground for rescission after the comment period closed. Under sections 311(e) and (g), Applicants submit that the substantive, material, and in many instances hearsay additions to Rev. 1 required service and a renewed opportunity to comment before the Commission voted. The Commission should grant rehearing and circulate the revised text for comments directed to the new grounds and supporting factual assertions.

4. State Case Law Requires Reversal When Comments are not allowed for Substantially Revised Proposals

Case law makes clear that an opportunity to comment on material revisions to proposed decisions is required and is especially important in instances where the proposal would impose a

[54] D.11-11-019, pp. 6, 8–9, 21.
[55] Resolution T-17934, p. 21.

penalty on a party. In *ASSE International, Inc. v. Kerry*, the State Department gave an exchange-program sponsor notice of proposed sanctions and allowed for a written response. However, the State Department's final decision relied on significant evidence it had not identified in the notice and gave the sponsor no opportunity to respond to that evidence. The Ninth Circuit held that the written process was constitutionally inadequate because the sponsor had no meaningful opportunity to rebut significant portions of the evidence used against it. One added item was an email from the sponsor's own employee. But the Court held that the sponsor's familiarity with the underlying events did not supply notice that the Department would rely on the email or an opportunity to explain it. The court reversed the dismissal and remanded for the district court to determine whether the sponsor had a protected property interest and, if so, whether the error was harmless.[56]

The same defect constitutional occurred here. After the comment period on the initial August draft resolution closed, staff issued Rev. 1 which relied on new factual assertions and allegations about material bases for termination of the FFA award, including purported self dealing, technical/financial abilities of the Applicants, ownership of property, and whether staff terminated the project prior to Resolution T-17934 was approved by the Commission. The Commission directly relied on these new allegations to terminate the FFA award based on conclusions that AVX sought to divert public funds for private benefit. If comments had been allowed on these new, material allegations, Applicants would have provided rebuttal evidence. Applicants therefore request that the Commission reverse Resolution T-17934 and provide the required opportunity to address the new allegations in a formal rehearing proceeding with an impartial administrative law judge and full administrative processes.

[56] *ASSE International, Inc. v. Kerry*, 803 F.3d 1059, 1077–79 (9th Cir. 2015).

C. RESOLUTION ERRS LEGALLY BY FAILING TO CONSIDER THE ENTIRE RECORD INCLUDING COMMENTS RAISING PUBLIC SAFETY CONCERNS

Section 1757(a)(4) mandates that Commission decisions must be supported by substantial evidence in light of the whole record. This statutory requirement emphasizes that the Commission must consider all relevant evidence, such as the public comments on the August version of the draft resolution. Here, there were 26 sets of public comments on the August version of the draft resolution, which comprise a significant part of the evidence in the record, but Resolution T-17934 does not take them into account. Rather, the Resolution simply notes the existence of the comments and provides a cursory and high-level summary that combines the bulk of the comments together. By doing so, the Resolution fails to comply with the Commission's own rules and state law.

1. Commission Rules Require Commission to Consider Comments

Rule 14.5 of the Commission's Rules of Practice and Procedure permits any person to comment on a draft or alternate draft resolution within the prescribed 20-day period. For proposed and alternate decisions, Rule 14.3 directs commenters to identify factual, legal, or technical errors with specific references to the record or applicable law, and it provides that comments failing to do so will receive no weight. Inviting comments serves no purpose if the Commission can simply ignore comments with which it disagrees. Read together, Rules 14.3 and 14.5 establish a process designed to place specific public concerns before the Commission while its proposed action remains subject to correction. Rule 14.6 reinforces the importance of that process by limiting the circumstances in which it may reduce or waive the public-review period to a narrow set of emergency circumstances. These carefully drawn exceptions confirm that public participation is an integral part of the Commission's decision-making process in nonexempt matters—not an empty procedural formality.

2. California Statute and Case Law Requires Consideration of Entire Record

Section 1757(a)(4) requires the Commission to base its decisions on substantial evidence in light of the entire record. A Court of Appeal is in accord. Commission findings must be supported by substantial evidence in light of the whole record.[57]. The required rational connection between the relevant factors, the Commission's choice, and the purposes of the governing statute is absent when the Commission does not consider material information placed before it through the prescribed comment process.[58] The substantial-evidence requirement also demands more than reliance on selected or unreliable materials. In *The Utility Reform Network v. Public Utilities Commission*, the court annulled a CPUC decision where the finding under review rested on uncorroborated hearsay and the remaining cited materials did not address the question framed by the proceeding.[59]

California case law addressing agency public-comment procedures confirms that an agency's failure to consider public comments is prejudicial when it frustrates the purpose of the governing comment requirement.[60] Courts generally cannot speculate that omitted information would not have affected the agency's decision or accept the agency's post hoc assurances to that effect.[61] Unless the omitted material was demonstrably repetitive, patently irrelevant, or supportive of the agency's action, the agency bears the burden of showing that its failure to consider the comments was harmless.[62]

Public comments may supply information critical to agency decision making, while also strengthening public confidence by exposing the agency to information from varied experts and

[57] *The Ponderosa Telephone Co. v. Public Utilities Com'n*. (2019), 36 Cal. App. 5th 999, 1019.
[58] *Id.*
[59] *The Utility Reform Network v. Public Utilities Com'n*. (2014), 223 Cal. App. 4th 945, 956.
[60] *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection*, (2008) 44 Cal. 4th 459, 486.
[61] *Id.*
[62] *Id.*

sources.[63] A failure to follow mandatory procedures that frustrates the purpose of public participation is presumptively prejudicial.[64]

3. Due process requires Resolution to consider all comments

The Commission's own decisions recognize that a fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Commission Decision 08-04-062, at page 25 (*citing Mathews v. Eldridge,* 424 U.S. 319, 333 (1976)). A comment process followed by boilerplate non-responses is not a meaningful hearing. When an agency proceeding affords public input and requires a response, the response requirement bears directly on judicial review of the resulting administrative decision.[65]

When an agency must respond to comments, its responses must reflect a good-faith, reasoned analysis, not conclusory statements unsupported by facts.[66] The Resolution answers the hospital, Mr. Tran, the Mayor and AVX with the same sentence: the Commission followed "approved" or "proper" process for grant funding "according to its rules, which were published April 21, 2022."[67] It answers the hospital's and the Mayor's safety concerns with the same words, that the Commission "is aware of the importance of broadband to public safety and supports this objective through the Federal Funding Account",[68] and answers INCOMPAS by referring to the exhibits.[69]

The Commission invited comments, received substantive objections going to the lawfulness of its own process, and responded with form answers that did not engage the specific

[63] *California Natural Gas Vehicle Coalition v. State Air Resources Bd*. (2024), 105 Cal. App. 5th 304, 332.
[64] *Id.*
[65] *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection*, 44 Cal. 4th 459, 521 (2008).
[66] *Preservation Action Council of San Jose v. City of San Jose* (2023) 91 Cal.App.5th 517, 544.
[67] Resolution T-17934 at 12, 16, 17, 18.
[68] *Id*., at 12, 17.
[69] *Id.,* at 12-13.

points. Resolution T-17934, Comments, at pages 12–18. That is not proceeding in the manner required by law under Public Utilities Code sections 1757, subdivision (a), and 1757.1, subdivision (a).[70]

4. Resolution T-17934 Fails to Consider Public Comments

The Commission failed to comply with either state law or its own rules because it disregarded 26 sets of comments, including comments from the public, Catalina Island Health, INCOMPAS, the City of Avalon, the City of Huntington Beach, Attain Partners, Dr. Matthew Byrnes, and AVX.

a. Resolution omits record evidence of wildfire threat

The most troubling omission of record evidence is the blanket statement in Resolution T-17934 that it will have no effect on safety.[71] This unsupported statement directly contradicts Resolution T-17896, which granted the FFA award to Applicants, and public comments. Resolution T-17896 held that "[t]he proposed project provides public safety benefits of reliable broadband infrastructure. This project is located in High Fire Threat District 3."[72] The issued version of Resolution T-17934 omits any reference to fire threats generally or the location of Catalina Island in the highest fire threat district 3.

b. Resolution disregards comments from Catalina's hospital

Further, the Resolution does not take into account comments from the only hospital on Catalina Island and a resident doctor expressing grave concerns about public safety if the FFA award were terminated. The Commission clearly views Catalina Island Health as highly credible

[70] Cal Pub Util Code § 1757; Cal Pub Util Code § 1757.1.
[71] Resolution T-17934, at 1.
[72] Resolution T-17896, at 13 (Dec. 18, 2025).

because Resolution T-17896 explicitly relies upon Catalina Island Health as an expert on resident demographics.[73]

Catalina Island Health has submitted comments on the DR raising alarms about public safety if the Federal Award is terminated.[74] Catalina Island Health adds that it has no radiologist on the island, and that its clinicians coordinate cancer care, dialysis, high-risk pregnancies and behavioral health across the same connection.[75] Similarly, "[a] patient with symptoms concerning for stroke is evaluated over live video by a neurologist who is not on the island, because there is no neurologist on Catalina," and that for roughly half of each month that doctor must manage patients remotely through telemedicine while physically off the island. [76] Catalina Island Health also has no radiologist on the island, and its clinicians coordinate cancer care, dialysis, high-risk pregnancies and behavioral health across the same telecommunications connection.[77] Catalina Island Health requested that the Commission make ten specific changes to the draft resolution to address these concerns.

The Commission's response was a one-line dismissal -- "The Commission is aware of the importance of broadband to public safety and supports this objective through the Federal Funding Account" but that the Commission has "to protect public funds and ensure grantees act in accordance with these rules."[78] The Resolution does not explain why any such non-compliance could not be corrected with the conditions that Applicants proposed or imposition of staff conditions. That may be due to the lack of specificity as to what rules are at issue.

[73] Res. T-17896, p. 13, n.13.
[74] Catalina Island Health Public Comment on Draft Resolution T-17934 (August 14, 2026).
[75] *Id*., at p. 2.
[76] *Id*., at p. 2.
[77] *Id*., at p. 2.
[78] Resolution T-17934, at 12.

Nor does the Resolution rebut the safety concerns expressed by Catalina Island Health, does not explain how terminating the FFA award is consistent with protecting public safety or the other mandates of the Federal Funding Account statutes and rules, or the mandates of the Commission for FFA awards in D.22-04-055. The Resolution does not explain why it claims that terminating the FFA award would have no effects on public safety[79] despite the dire concerns expressed by the hospital.

c. Resolution disregards public health concerns from Dr. Byrnes

Similarly, Dr. Matthew Byrnes, an inpatient physician at Catalina Island Hospital submitted comments expressing strong concerns that terminating the FFA award would be detrimental to public health and safety. [80] He stated, among other concerns, that "[a] patient with symptoms concerning for stroke is evaluated over live video by a neurologist who is not on the island, because there is no neurologist on Catalina," and that for roughly half of each month he manages patients by telemedicine while physically off the island.[81]

Resolution T-17934 does not specifically mention Dr. Byrnes' comments. It includes an oblique reference, stating "[c]ommenters expressed concerns about their need to reach emergency services and the hospital's ability to render quality medical services."[82] The Commission did not take Dr. Byrnes' record evidence into account, and instead brushes the concerns aside with a non-response that "[t]he Commission agrees with the commenters on the need for dependable communications infrastructure for public safety, and for reliable internet to conduct business" and a statement that Catalina Island "may be" eligible for future broadband funding.[83] The Resolution does not rebut the safety concerns expressed by Dr. Byrnes and other

[79] Resolution T-17934, at 1.
[80] Matthew C. Byrnes, M.D., M.H.A., M.P.H. Comments on Draft Resolution T-17934 (August 9, 2026).
[81] *Id*., at p. 2.
[82] Resolution T-17934, at 11.
[83] *Id*., at 11.

Catalina Island residents and provides no explanation or finding that terminating the FFA award will exacerbate the existing, serious public health concerns due to seriously inadequate broadband connections to the island.

d. Resolution disregards expert comments demonstrating that termination process did not comply with federal Part 200 rules

Gil Tran of Attain Partners, and a former Office of Management and Budget official overseeing application of Part 200 submitted comments on September 3, 2026. Mr. Tran stated, among other things, that once a federal award is granted, an escalation process is required before the award can be terminated and that grant costs incurred before the termination date are allowable as long as the costs are in accordance with the terms of the award.[84] Mr. Tran also expressed "concerns about compliance with state and federal procedures and reporting."[85] The Commission dismissed Mr. Tran's concerns based on a blanket and unsupported statement that it " has followed approved procedures for administering grant funding according to its rules." Resolution T-17934 does not provide any analysis of the federal and state rules nor cite to any record evidence to support its claim that it followed such rules.

e. Resolution dismisses or ignores errors identified by Applicants

AVX's comments specifically identified findings the Commission must make before terminating a federal award under 2 C.F.R. § 200.339 — including a determination that specific conditions could not cure the alleged noncompliance — and listed six categories of mandatory findings the Resolution should contain. The Commission's response does not address a single one of them. It asserts that the exhibits demonstrate adequate communication with AVX, but the exhibits themselves confirm that no specific conditions were ever imposed, no determination that

[84] *Id.,* at 15.
[85] *Id.*

conditions would be inadequate was ever made, and no method for requesting reconsideration or pursuing a cure was ever provided. The Commission's refusal to address findings that the record makes necessary violates that requirement to base its decisions on the evidence in the record taken as a whole.

f. Resolution dismisses concerns of Catalina Island residents

The Resolution is equally dismissive and fails to take account of other commenters on the initial draft resolution who expressed substantive concern about the absence of a notice-and-cure process before termination; the Commission's failure to follow the federal Part 200 graduated-remedies sequence; citation of nonexistent CFR provisions as grounds for rescission; the impossibility of spending the funds before the December 31, 2026 federal deadline; and the need to follow the BEAD program's notice-and-cure framework under the same federal baseline.[86] The Resolution's response to each of these comments is dismissed with the assertion that the Commission has followed proper process for rescinding grant funding according to its rules.[87] No explanation is offered for why the federal Part 200 sequence was not followed. No explanation is provided for why the INCOMPAS-recommended notice-and-cure framework was rejected — the Resolution merely "refers to the exhibits."[88]

D. RESOLUTION IS BASED ON FACTS NOT IN THE RECORD

The Commission's findings must be supported by substantial evidence in light of the whole record.[89] Several findings in Resolution T-17934 rest on material that was not in the record when the draft resolution issued on August 5, 2026, and that Applicants never had a

[86] AVX Opening Comments, sections II.A.1–4, II.B.5, and II.C.8; Catalina Island Health Comments, recommendations concerning safety, process, and rescission; Dr. Matthew Byrnes Comments, recommended changes; AVX Reply Comments, Summary of Recommended Changes.
[87] Resolution T-17934, at 12–18.
[88] *Id*., Comments, at 12.
[89] Cal Pub Util Code § 1757(a)(4).

chance to answer. Some of it matches a declaration that Commission staff filed in federal court, not any document in this record.

1. The "December 25, 2027" end date. The Resolution denies fixed amount treatment in part because AVX's "end date was December 25, 2027."[90] The award documents state no calendar end date. The award letter requires completion "within 18 or 24 months, in accordance with the terms of the award."[91] Resolution T-17896 runs that period from authorization: projects not exempt from CEQA "shall be completed within 24 months after receiving authorization to construct." AVX never received authorization to construct because CEQA review was still underway. The Commission had contracted with Ascent Environmental (Contract No. 25NC0843, up to $1,161,202 for an EIR or $712,340 for an IS/MND) to prepare it.[92] Staff then stopped all work on the project on May 1, 2026. The 24 months had not started. AVX's approved project shows a "Deployment Schedule" of 36 months.[93] The completion date of December 25, 2027 does not appear in the August draft, Exhibits A-G, the award letter, or T-17896.

2. The fixed amount criteria. The Resolution says fixed amount subawards were "made available to identified awards supported by federal Capital Project Fund monies and with awarded end dates before December 31, 2026."[94] The guidance it cites does not say that. It makes fixed amount subawards an option for CPF projects "that can meet the CPF timelines, and other last mile Federal Funding Account projects identified by the Communications Division," and lists the factors the Division would consider: "projects currently supported by federal CPF monies," "projects with the potential to be supported entirely or in part by federal CPF monies,"

[90] Resolution T-17896, at 21.
[91] Award Letter, Dec. 29, 2025, at 3.
[92] Exhibit B, A true and correct copy of the Attachment A, Ascent Environmental, Inc. CEQA contract No. 25NC0843.
[93] Resolution T-17896, App. H.
[94] *Id*., at 21 & n.24.

OTDR test reports (or being "on track to have" them), and payment requests by October 30, 2026.[95] It contains no December 31, 2026 end-date criterion. The Resolution's stated reason, that AVX's award "is not CPF-funded," is not the guidance's test. In the same months, the Commission was moving General Fund projects onto CPF: staff sought the Department of Finance's confirmation in June 2026 to move Placerville's award to CPF after a $2,133,116.87 General Fund payment that staff said "will need to be re-processed to request a drawdown," and the Commission's May 12, 2026 presentation to the Department of Finance describes fixed amount subawards as a "continuation of planned implementation ... discussed since last fall." AVX's award letter requires monthly schedules based on "an Awardee-defined segmentation of the build," with segments sized to "correspond with payment intervals" (Award Letter at 4), and the Commission split other awards between CPF and General Fund monies.[96] Nothing in the record shows AVX was ever considered under the guidance's actual factors.

3. The "substantially cheaper" remote OLT. The Resolution faults AVX for not showing that "a remote and substantially cheaper Optical Line Terminal was insufficient."[97] No exhibit says a remote OLT is cheaper. Staff asked for a cost analysis. AVX's May 14 response compared the central office with the lease alternative it had considered, explained why the submarine cable termination requires a central facility that remote OLTs cannot replace, and said AVX was prepared to engage further on lease alternatives if the Commission preferred.[98] Staff's July 7 letter acknowledged that AVX had provided "an explanation of why AVX Networks considered a remote Optical Line Terminal (OLT) insufficient", then faulted AVX for not providing "supporting engineering documentation", without saying what document was missing.

[95] Fixed Amount Subawards Guidance (June 2026) at 1 & § I.A.
[96] Exhibit A, A true and correct copy of email correspondence with the CA DoF re: Placerville. As
[97] Resolution T-17896. at 9.
[98] AVX Response to May 8, 2026 Letter (May 14, 2026), item 3.i, at 19-21.

The central office design was not new: AVX identified 305 Sumner to staff as "the Avalon Central Office, the 'headend' for the submarine cable system", and the Commission approved the project on AVX's application and budget. If staff needed more engineering support for a design the Commission had already approved, it could have asked before the award or named the missing document as a specific condition under 2 C.F.R. § 200.208. Neither happened. A ground for termination that relies on a guidance document the Resolution misreads, is not supported by the record and must be set aside.

E. THE RESCISSION VIOLATED THE MANDATORY FEDERAL PART 200 GRADUATED-REMEDIES PROCEDURE AND D.22-04-055 SECTION 17.

The Commission concedes that the rules in 2 C.F.R. Part 200 apply to the Applicants' FFA award.[99] The award letter issued to AVX on December 29, 2025 expressly conditioned the grant on compliance with Title 2 of the Code of Federal Regulations Part 200.[100] The consent form that Applicants executed to receive the FFA award stated that the grant must comply with Part 200 rules.[101] The Commission's May 8, 2026 deficiency letter cited Part 200 as the governing standard for allowable expenses, and the July 7, 2026 Notice of Termination relied on Part 200 provisions as the grounds for termination. Staff cannot invoke Part 200 selectively — applying it to disallow expenses while ignoring the mandatory process it prescribes for the agency before termination is permitted.

1. Section 200.339 required the Commission to impose specific conditions before terminating the award.

Under 2 C.F.R. § 200.339, subsection (a), a pass-through entity may implement specific conditions when a recipient fails to comply with award requirements, but termination is

[99] Resolution T-17934, at 6, Exh. C, E.
[100] *Id.,* at 4.
[101] *Id.,* at 4-5.

authorized only after the entity "determines that noncompliance cannot be remedied by imposing specific conditions."[102] Before imposing any specific conditions, the pass-through entity must provide the written notice specified in 2 C.F.R. § 200.208, subsection (c), including the nature and reason for the condition, the action needed to remove it, the time allowed, and the method for requesting reconsideration.[103]

The record confirms that none of these steps occurred. The May 1 stop-work order identified no specific condition, stated no consequence, set no deadline, and described no method for reconsideration. The May 8 letter raised concerns about documentation but did not impose a specific condition within the meaning of 2 C.F.R. § 200.208, did not state what AVX must do to remove any requirement, and did not identify a reconsideration pathway. AVX responded fully on May 14, proposed multiple curative conditions on its own initiative, and received no acceptance, rejection, or guidance in response. Staff then remained silent for 52 days before issuing a unilateral termination notice. The adopted Resolution contains no finding that specific conditions were considered and determined inadequate. It offers only the conclusory assertion that AVX received multiple opportunities to cure deficiencies — a statement unsupported by any identified specific condition, written notification, or curative process in the record.

That gap is fatal. Section 200.339 makes the conditions determination a prerequisite to termination, not an element the Commission may satisfy after the fact with a general assertion.[104] A Commission decision whose findings are not supported by substantial evidence in light of the whole record does not proceed in the manner required by law.[105]

[102] 2 CFR 200.339.
[103] 2 CFR 200.208.
[104] 2 CFR 200.339.
[105] Cal Pub Util Code § 1757.

2. Resolution fails to comply with Section 200.340 independently requirements

Under 2 C.F.R. § 200.340, subsection (a)(1), a federal award may be terminated by the pass-through entity if the recipient fails to comply with the terms and conditions of the award.[106] But that authority operates within the remedies framework of 2 C.F.R. § 200.339, which requires a determination that noncompliance cannot be remedied by imposing specific conditions.[107] The Commission's adopted Resolution identifies no such determination. It proceeds directly from alleged documentation deficiencies to full rescission of a $37,571,833 award without analyzing the intermediate remedies identified in 2 C.F.R. § 200.339, subsections (a) through (f), including temporary withholding, disallowance of costs, suspension, and withholding of further awards.[108]

AVX specifically flagged each of these alternatives in its comments and proposed its own curative conditions. The Commission's response to that record was silence: neither the resolution itself nor its response to AVX's comments identifies why those alternatives were considered and rejected. A decision that fails to address evidence of proposed conditions in the record — evidence directly bearing on the mandatory Part 200 prerequisite — is not supported by findings based on substantial evidence in light of the whole record.[109]

3. The Commission's reliance on Section 17 of Decision 22-04-055 is misplaced.

The adopted Resolution cites Decision 22-04-055, Appendix A, section 17, at page A-28, as authority for termination at the Commission's "sole discretion" on ten days' written notice.[110] That reliance is doubly defective.

---

[106] 2 CFR 200.340.
[107] 2 CFR 200.339.
[108] *Id.*
[109] Cal Pub Util Code § 1757.
[110] Resolution T-17934, at 6–7.

First, section 17 is a performance provision, not a documentation provision.[111] Its text authorizes termination where a recipient fails to commence work at the agreed upon time or is not following the project plan in a reasonable manner. Neither ground was alleged here. The sole basis for rescission was alleged deficiencies in a reimbursement request — a documentation dispute, not a failure to commence or a deviation from the project plan.[112] AVX was actively executing its project plan until staff directed it to stop all work on May 1, 2026.[113] A party directed by its grantor to cease work cannot simultaneously be found to have abandoned the project plan.

Second, even accepting the Commission's reading of Section 17 as a general termination authority, that authority does not displace the federal procedural requirements of 2 C.F.R. § 200.339. The award letter expressly incorporated Part 200 as a condition of the grant. Cal. Pub. Util. Code § 281(n) requires FFA projects to be implemented consistent with the applicable Code of Federal Regulations. A Commission rule that conflicts with the federal procedural requirements the Commission itself accepted as a condition of administering federal money cannot supersede those requirements. The Commission's own BEAD grant agreement under the same Part 200 baseline explicitly provides for written notice of default, a right to cure, and a five-step process before termination — confirming that the Commission understands how to implement Part 200's requirements in a grant program and chose not to do so here.

4. Section 15 of Decision 22-04-055 — the operative payment provision — was not followed.

AVX's comments notified the Commission that the draft resolution applied the wrong section 17 of D.22-04-055 in determining that that the FFA award should be terminated due to its

[111] D.22-04-055, Appendix A, section 17, at A-28.
[112] Resolution T-17934, at 5–11.
[113] *Id*., at 5–6.

reimbursement requests. Regardless, Resolution T-17934 did not follow the rules set forth in D.22-04-055. An agency's failure to follow its own regulations that protect the interests of a party before the agency may be a due process violation.[114]

Specifically, Applicants' comments demonstrated that section 15, not section 17, provides the Commission-mandated process for payment disputes under the FFA program.[115] Decision 22-04-055, Appendix A, section 15, addresses reimbursement review and permits rescission where the awardee fails to notify the Communications Division of project-completion delays and the project fails to meet the approved completion date. Neither ground exists here. AVX was performing until staff directed it to stop all spending on May 1; the dispute here concerns reimbursement documentation, not performance. AVX submitted its reimbursement request on the program's standard timeline; it had not missed any project-completion deadline; and it was under a stop-work order it had not requested.[116]

Section 15 of D.22-04-055 is the actual section that applies to payments for FFA awards, and the Resolution makes clear that the CPUC did not follow it. The adopted Resolution T-17934 mentions Section 15 only once, in a list of provisions AVX allegedly violated, without analyzing whether section 15's rescission conditions were satisfied.[117] Terminating the award under section 17 while ignoring section 15's operative limitations on rescission for payment disputes is not proceeding in the manner required by law under Public Utilities Code sections 1757, subdivision (a), and 1757.1, subdivision (a).

/ / /

/ / /

[114] *Morton v. Ruiz* (1974) 415 U.S. 199, 235; *ASSE International, Inc. v. Kerry* 803 F.3d 1059, 1077–79 (9th Cir. 2015).
[115] AVX Opening Comments, section II.B.5.
[116] Resolution T-17934, at 5–7.
[117] Resolution T-17934, at 6–7.

5. Nonexistent regulatory provisions cited as grounds for rescission.

The adopted Resolution, tracking the July 7, 2026 Notice of Termination, cites "Section 400.400" and "Section 400.403" as Part 200 provisions that AVX violated.[118] Those sections do not exist in 2 C.F.R. Part 200. The Commission acknowledged in its response to AVX's comments that these were "typos" that should read "200.400 Policy guide" and 200.403 Factors affecting allowability of costs.[119] But this acknowledgment does not cure the error — the Resolution, effective immediately, still rests in part on citations carried forward from the Notice of Termination.[120] A decision whose stated grounds include nonexistent regulatory provisions is not supported by findings grounded in the whole record as required under Section 1757(a)(4).

F. APPLICANTS ARE TREATED DIFFERENTLY FOR REIMBURSEMENT CONSIDERATION WITHOUT ANY JUSTIFICATION IN THE RESOLUTION

The Commission told the federal court that it "has not yet terminated any FFA award on similar grounds," and that "staff have not recommended termination of any award for conflicts of interest other than AVX's award."[121] The Commission's own program records show that, under the same rules, other awardees received the accommodations AVX asked for and did not receive. The Resolution explains none of the differences. Treating one awardee differently from others in the same program, without a stated rational basis, is arbitrary and denies equal protection.[122] A decision that does not explain why it departs from the agency's treatment of similarly situated parties is not supported by its findings.[123]

---

[118] AVX Opening Comments, section II.A.2.
[119] Resolution T-17934, at 17.
[120] Resolution T-17934, at 6–7, Ordering Paragraph 3, at 23.
[121] *AVX Networks v. California Public Utilities Commission*, Case No. 3:26-cv-07172-WHO in the N. District of CA Federal Court, ECF 36 at 27.
[122] *Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564; Cal. Const., art. I, § 7.
[123] Cal Pub Util Code § 1757(a)(3), (a)(4).

1. Payment milestones. In November 2025 the Communications Division moved Gateway Cities Council of Governments (FFA00102) to 10% payment milestones seven days after it asked, to "expend the Capital Project Funds faster," and in January 2026 to 5% milestones, finding that "[t]he Federal Funding Account program teams can accommodate the 5% payment milestones."[124] On March 2, 2026, AVX asked in writing for the same 5% milestones, citing that approval. Staff answered on March 16, "this is a different project, so let's see." On April 2 AVX noted it had been told the request "was being looked at by staff." No decision was ever issued. Gateway Cities' second request, a claim prepared March 12, 2026 for project management, engineering, permitting and materials invoices dated January through August 2025, at a reported 10% completion, was paid $3,835,737.20 on May 5, 2026, four days after staff stopped AVX's project.[125] Gateway Cities had been paid $19,016,437.70 through September 1, 2026.[126]

2. Funding source and payment method. The Commission moved state-funded awards onto CPF when it chose to. Placerville[127] was paid $2,133,116.87 from the General Fund on January 22, 2026,[128] and in June 2026 staff asked the Department of Finance to confirm moving $17,777,720.87 of that award to CPF and told the Department the General Fund payment "will need to be re-processed to request a drawdown." In July 2026 federal subaward reports show six new CPF subaward records and a $10,724,786 reduction of Gateway Cities' CPF subaward.[129] Fixed amount subawards were offered to "selected" projects beginning June 2, 2026. AVX was

[124] Minkus memoranda to file, Nov. 17, 2025 and Jan. 20, 2026.
[125] State Controller voucher data.
[126] Exhibit C, A true and correct copy of the Public Utilities Commission Reimbursement Claim for Gateway Cities Council of Govt's (March 12, 2026).
[127] FFA00055.
[128] Open FI$Cal.
[129] USAspending, FAIN CPFFN0147.

never offered either option, and the Resolution then cites AVX's funding source as a reason it could not have them.[130]

3. Extensions and help. Treasury approved CPF period-of-performance extensions for 46 California projects between June and August 2026, and staff told the Department of Finance it was "working with the awardee on an extension" for Placerville. The Commission reported to Treasury that it had provided "technical assistance to awardees and other stakeholders," including "574 in-person and virtual meetings and presentations." AVX's request for a meeting on May 4 was deferred until after the May 8 letter, and the meeting staff offered on May 29 "after the response is delivered" never occurred. In its petition for modification of Resolution T-17845, served November 3, 2026, El Dorado County describes written staff guidance over many months and staff's advice that significant changes to an award "may only be enacted by Commission action." AVX received a stop-work order and a termination letter from staff.[131]

IV. CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Commission reverse T-17934, grant rehearing and restore Applicants' access to the awardee portal and the right to perform under the award. In the alternative, Applicants request that the Commission set aside Resolution T-17934, open a supplemental comment period on the materially revised document that was actually adopted, and require staff to issue a written notice of specific conditions under 2 C.F.R. § 200.208 and to follow the graduated-remedies sequence of 2 C.F.R. §§ 200.339 through 200.342 before proceeding further.

Signed and dated: November 24, 2026.

[Signature block on next page.]

---

[130] Resolution T-17896. at 21.

[131] *See* El Dorado County Petition for Modification of Resolution T-17845 (September 11, 2026).

Respectfully submitted,



iCommLaw
1547 Palos Verdes, #298
Walnut Creek, CA 94597
Telephone: (415) 699-7885
Facsimile: (925) 274-0988
Email: anita@icommlaw.com
Counsel to AVX Networks and Digital Equity Foundation

EXHIBIT A

Message

From: Swan, Sara [Sara.Swan@dof.ca.gov]
Sent: 6/29/2026 6:21:12 PM
To: Cortez, Nelson [Nelson.Cortez@cpuc.ca.gov]; Perkey, Matthew [Matthew.Perkey@dof.ca.gov]; Halterman, Mary [Mary.Halterman@dof.ca.gov]
CC: Minkus, Michael J. [Michael.Minkus@cpuc.ca.gov]; Haro, Lea [Lea.Haro@cpuc.ca.gov]; Hoang, Lucie [Lucie.Hoang@cpuc.ca.gov]; Rosanova, Grace [Grace.Rosanova@cpuc.ca.gov]; Chow, Calvin [Calvin.Chow@cpuc.ca.gov]
Subject: Re: CPF Encumbrance Change - Placerville FFA00055

Hi Nelson - Confirming that we don't have any additional questions or concerns with $17.8m encumbrance of CPF for the City of Placerville.

Thank you,
Sara

Get Outlook for iOS

From: Cortez, Nelson <Nelson.Cortez@cpuc.ca.gov>
Sent: Friday, June 26, 2026 12:20 PM
To: Perkey, Matthew <Matthew.Perkey@dof.ca.gov>; Swan, Sara <Sara.Swan@dof.ca.gov>; Halterman, Mary <Mary.Halterman@dof.ca.gov>
Cc: Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Haro, Lea <Lea.Haro@cpuc.ca.gov>; Hoang, Lucie <Lucie.Hoang@cpuc.ca.gov>; Rosanova, Grace <Grace.Rosanova@cpuc.ca.gov>; Chow, Calvin <Calvin.Chow@cpuc.ca.gov>
Subject: RE: CPF Encumbrance Change - Placerville FFA00055

Hi Matthew and DOF team,

Following up on DOF's verbal questions at our June 16 meeting regarding the proposed encumbrance change involving The City of Placerville project.

The identification was based on project progress, including general fund reimbursements, project timelines, and reporting. That said, the last mile Federal Funding Account project end date is July 1, 2026 and the CPUC is working with the awardee on an extension.

Specifically, the project was identified based on the ability to reach substantial completion in the period of performance (by December 31, 2026). In light of the above, however, requesting a Treasury extension for the project, with sufficient justification, may be strategic and provide a timing buffer.

Lastly, a payment request totaling $2,133,116.87 has been paid from the General Fund and will need to be re-processed to request a drawdown.

Please let us know if any additional information would be helpful for DOF review.

Best,

Nelson

Nelson Cortez
Communications Division
California Public Utilities Commission
Nelson.Cortez@cpuc.ca.gov
916-597-3071

From: Cortez, Nelson
Sent: Tuesday, June 9, 2026 10:42 AM
To: Perkey, Matthew <matthew.perkey@dof.ca.gov>; Swan, Sara <sara.swan@dof.ca.gov>; Halterman, Mary <mary.halterman@dof.ca.gov>
Cc: Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Haro, Lea <Lea.Haro@cpuc.ca.gov>; Hoang, Lucie <Lucie.Hoang@cpuc.ca.gov>; Rosanova, Grace <Grace.Rosanova@cpuc.ca.gov>; Chow, Calvin <Calvin.Chow@cpuc.ca.gov>
Subject: CPF Encumbrance Change - Placerville FFA00055

Hello Matthew and DOF team,

As previously discussed, the attached excel format will be used to inform DOF about CPF encumbrance changes in a standard format. Attached "2026-06-09 FFA CPF Encumbrance" spreadsheet includes the planned encumbrance change for the City of Placerville FFAA00055 project to CPF.

Ask. For this change, and in the future, we would appreciate if DOF can confirm in writing the City of Placerville FFA00055 encumbrance change of $17,777,720.87 to CPF.

Happy to discuss if you have any questions.

Best,
Nelson

Nelson Cortez
COMMUNICATIONS DIVISION
Broadband Regional Initiatives | Fiscal, Policy & Admin
Mobile: 916-597-3071 | Nelson.Cortez@cpuc.ca.gov

California Public Utilities Commission | cpuc.ca.gov



EXHIBIT B

ATTACHMENT A

PROPOSED SCOPE OF WORK
DIGITAL EQUITY FOR COASTAL AND NORTH ORANGE COUNTY AND CATALINA ISLAND PROJECT
ORANGE COUNTY AND CATALINA ISLAND

INTRODUCTION

This Contract for a maximum amount of $1,161,202 for preparation of an Environmental Impact Report (EIR) or $712,340 for an Initial Study/Mitigated Negative Declaration (IS/MND) is for Ascent Environmental, Inc. (Ascent) to provide the California Public Utilities Commission (CPUC) with expert technical consulting services in compliance with the California Environmental Quality Act (CEQA) for the review of AVX Networks' (Applicant) Digital Equity for Coastal and North Orange County and Catalina Island Project (project). The Applicant is expected to file an application for a Certificate of Public Convenience and Necessity (CPCN) for the project.

The project would provide broadband infrastructure on Santa Catalina Island by connecting it directly to telecommunications networks in Huntington Beach, California, via a new fiber optic cable. The direct fiber optic connection would require the placement of fiber optic cables on utility poles, in conduit structures and under the seafloor of the Pacific Ocean. The project would include direct connectivity to the California Middle Mile network, which is currently being developed in the Huntington Beach area.

Installation of the terrestrial facilities would almost exclusively utilize existing infrastructure such as utility poles or underground conduits. Where existing utility poles do not exist, new poles would be installed. Underground conduits would be used in the urban areas where available. Where necessary, additional underground conduits would be installed by the use of trenching or trenchless technology. Terrestrial facilities would also include microwave antennas, which would be installed on an existing tower on Santa Catalina Island and on an existing structure at Sunset Beach in Huntington Beach. Additionally, to connect the fiber optic cable system to other networks and to the residents, businesses and other entities, a central office would be constructed on a vacant lot in Avalon, California. The central office would be an approximately 800-square-foot building with a maximum height of 16 feet.

The primary component of this project would be the marine fiber optic cable to be placed on and under the ocean floor. The marine segment would begin at a landing vault on the Huntington Beach side and terminate at a landing vault on the Catalina Island side. The landing vaults would be underground vaults that provide direct access to a landing pipe for cable pulling and would provide a location to splice the marine fiber optic cable onto the terrestrial cable. The marine cable installation would require a large vessel capable of deploying and operating a large cable plow and remote operated vehicle. The cable would be plowed to a minimum depth of 3.2 feet below the sea floor. For areas that cannot be plowed due to steep slopes on the sea floor or conflicts with other marine utilities, a remote operated vehicle would be deployed to jet the cable to its design depth.

EXHIBIT C

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
REIMBURSEMENT CLAIM
DATE: March 12, 2026

Agency Name:	**Gateway Cities Council of Gov'ts**	**Contract #:**	Resolution T-17855
Service Category:	**Broadband**	**Schedule #:**	**n/a**
Type of Program:	**Gateway Cities COG Last Mile Broadband Project**	**Claim Period:**	Jan 2025 - August 2025
		Date Prepared:	March 12, 2026
		Amount Requested:	**$ 3,835,737.20**

PERSONNEL	***Prior Expended***	***Expended This Quarter***	***Expended Year-to-Date***	***Approved Budget***	***Balance***
Executive Director	$ 15,494.40		$ 15,494.40	$ 47,726.00	$ 32,231.60
Admin Director	$ 8,132.40		$ 8,132.40	$ 23,505.00	$ 15,372.60
Attorney	$ 61,135.38		$ 61,135.38	$ 88,200.00	$ 27,064.62
Attorney/Proj Specialist	$ 31,015.00		$ 31,015.00	$ 80,700.00	$ 49,685.00
Project Manager	$ 135,514.80		$ 135,514.80	$ 313,200.00	$ 177,685.20
Engineer			$ -	$ 425,787.00	$ 425,787.00
Admin Analyst	$ 960.25		$ 960.25	$ 14,225.00	$ 13,264.75
Total	**$ 252,252.23**	**$ -**	**$ 252,252.23**	**$ 993,343.00**	**$ 741,090.77**
BENEFITS					
Personnel			$ -	$ 6,657.00	$ 6,657.00
					$ -
Total	**$ -**	**$ -**	**$ -**	**$ 6,657.00**	**$ 6,657.00**
CONSULTANTS					
Entrust/EnEngineering	$ 936,235.20	$ 3,835,737.20	$ 4,771,972.40	$ 6,400,000.00	$ 1,628,027.60
Southstar Engineering & Consult.	$ 107,777.52		$ 107,777.52	$ 2,656,602.00	$ 2,548,824.48
Construct.Oper.Equip.Materials.Cable	$ 2,276.75		$ 2,276.75	$ 36,043,853.00	$ 36,041,576.25
			$ -		$ -
			$ -		$ -
			$ -		$ -
			$ -		$ -
			$ -		$ -
			$ -		$ -
			$ -		$ -
			$ -		$ -
			$ -		$ -
				$ -	
Total Consultant	**$ 1,046,289.47**	**$ 3,835,737.20**	**$ 4,882,026.67**	**$ 45,100,455.00**	**$ 40,218,428.33**
INDIRECT COSTS *			**$ -**		**$ -**
TOTAL	**$ 1,298,541.70**	**$ 3,835,737.20**	**$ 5,134,278.90**	**$ 46,100,455.00**	**$ 40,966,176.10**

EXHIBIT D

Invoice

ENengineering

April 15, 2025
Project No: 2406203.00
Invoice No: 0469007

EN Engineering, LLC
Remit to: PO Box 735681
Chicago, IL 60673-5681
(T) 630-353-4000 (F) 630-353-7777
ACH - ABA#071000013, Acct#951566519
Chase (Net 45 Days)

Project Manager: Alexander Telthorst
Ref. Number:
Invoice Total: 195,010.18

Total without travel
$188,114

Gateway Cities COG
16401 Paramount Blvd
Paramount, CA 90723

Project 2406203.00 Gateway Cities COG - PMCM
Invoice Type: FF
Attn: Genny Cisneros
Email invoices to: gcisneros@gatewaycog.org
CC Invoices To: atelthorst@entrustsol.com; mpowell@entrustsol.com
Professional Services from January 16, 2025 to January 25, 2025
Fee

Billing Phase	Fee	Percent Complete	Earned	Previous Fee Billing	Current Fee Billing
Project Management ($94,473/mo)	1,700,516.00	5.5555	94,473.00	0.00	94,473.00
Consulting and Planning ($71,505/mo)	1,287,085.00	5.5556	71,505.00	0.00	71,505.00
HLD Planning Design (22,136/mo)	398,448.00	5.5556	22,136.00	0.00	22,136.00
Total Fee	3,386,049.00		188,114.00	0.00	188,114.00

Total Fee **188,114.00**

Billing Limits	Current	Prior	To-Date
Expenses	0.00	0.00	0.00
Limit			21,294.00
Remaining			21,294.00

Total this Project **188,114.00**

Project 2406203.01 Gateway Cities - FFA Design
Reimbursable Expenses

Travel - Airfare - Reimb			5,707.04	
Travel - Auto Mileage - Reimb			434.70	
Meals - Reimb			49.72	
Per Diem - Reimb			580.52	
Office Supplies - Reimb			124.20	
Total Reimbursables		**1.0 times**	**6,896.18**	**6,896.18**

Billing Limits	Current	Prior	To-Date
Total Billings	6,896.18	0.00	6,896.18
Limit			2,326,160.00
Remaining			2,319,263.82

Invoices not paid within 15 days of the contract terms are subject to a 1.5% per month interest charge.