

Decision 15-02-012 February 12, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Inyo Networks, Inc. (U7159C) to expand its existing Certificate of Public Convenience and Necessity [A.09-07-023, D.09-12-036] to include full Facilities-based Telecommunication Services and Additional Service Territories.

Application 14-10-005
(Filed October 6, 2014)

DECISION GRANTING APPLICATION OF INYO NETWORKS, INC. TO EXPAND ITS EXISTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO INCLUDE FULL FACILITIES-BASED TELECOMMUNICATION SERVICES AND ADDITIONAL SERVICE TERRITORIES

Summary

Pursuant to Public Utilities Code § 1001, we grant the application of Inyo Networks, Inc. to expand its existing certificate of public convenience and necessity granted in Decision (D.) 09-12-036¹ to include full facilities-based telecommunication services and additional service territories subject to the terms and conditions set forth in the Ordering Paragraphs.

1. Background

On October 6, 2014, Inyo Networks, Inc. (Inyo or Applicant), a California corporation, filed Application (A.) 14-10-005 seeking Commission authorization to expand its existing certificate of public convenience and necessity (CPCN) to

¹ See D.09-12-036 issued on December 17, 2009.

allow it to provide full facilities-based telecommunications services and to expand its existing service territory to allow service within the territories of SureWest Telephone and Frontier Communications and California.

Decision (D.) 09-12-036 granted Inyo authority to provide limited facilities-based and resold local exchange telecommunications services in the territories of Pacific Bell Telephone Company (dba AT&T California) and Verizon California Inc. and limited facilities-based resold interexchange telecommunications services in California.

Inyo's CPCN authorization allowed it to construct and install equipment in existing buildings and structures and it now seeks to expand its CPCN authorization to allow it to engage in limited installation of new poles and underground conduit through which it intends to pull fiber in existing public rights-of-way and existing private utility easements.

Applicant's principal place of business is located at 1101 Nimitz Avenue, Suite 6, Vallejo, California 94592.

2. Jurisdiction

Public Utilities Code Section 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Public Utilities Code Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Inyo currently provides limited facilities-based and resold local exchange and interexchange telecommunications services. It offers point-to-point services to wholesale, government, business and residential customers. As established in D.09-12-036, Inyo is a telephone corporation and a public utility subject to our jurisdiction.

3. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4² of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

In the Proponent's Environmental Assessment and Response, Inyo states that it intends to install or replace new poles, conduct small scale trenching typically 1 to 3 feet in depth and 1 to 6 inches in width, install up to five miles of underground conduit with an average diameter of 1 to 4 inches, and micro-trenching and installation of small segments of underground conduit.

Inyo expects that such construction would be relatively minor in scope and take place primarily in existing rights-of-way and utility easements. Inyo asserts that its construction activities fall within one or more categorical exemptions under CEQA.

Because Inyo does not know at this time all the specific areas where it may have to undertake specific construction which is contingent on customer requests, Inyo is requesting approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction.

Inyo requests that the grant of full facilities-based construction authority be subject to compliance with the expedited 21-day environmental review process. Inyo presented an environmental review process that is substantially similar to the environmental review process that has been adopted by the

² Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

Commission for similarly situated carriers. Inyo however, is directed to comply with the review process that has been previously approved by the Commission in similar instances, as follows:

1. Applicant shall provide the Commission's Energy Division (ED) with:
 - A. A detailed description of the proposed project, including:

Customer(s) to be served;

 1. The precise location of the proposed construction project; and
 2. Regional and local site maps.
 - B. A description of the environmental setting, to include at a minimum:
 1. Cultural, historical, and paleontological resources; Biological resources; and
 2. Current land use and zoning.
 - C. A construction work-plan, to include:
 1. Commission Preconstruction Survey Checklist – Archaeological Resources;
 2. Commission Preconstruction Survey Checklist – Biological Resources;
 3. A detailed schedule of construction activities, including site restoration activities;
 4. A description of construction/installation techniques;
 5. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 6. A list of permits required for the proposed project.

- D. A statement of the CEQA exemption(s) applicable to the proposed project; and
 - E. Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
2. The Commission's ED shall then review the submittal and shall notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review within 21 days from the time that Applicant's submittal is complete.
 3. If the Commission's ED approves Applicant's claimed CEQA exemption(s), the staff shall prepare a Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
 4. If the Commission's ED disapproves Applicant's claimed CEQA exemption(s), the staff shall issue Applicant a letter which states the specific reasons that the claimed CEQA exemption(s) do not apply to the proposed project.
 5. If the Commission's ED disapproves Applicant's claimed CEQA exemption(s) and Applicant wishes to pursue the project, Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption for CEQA, or file a formal application with the Commission.

Based on the description of the proposed construction, it is possible that the construction projects described by Inyo may fall within one or more of the categorical exemptions under CEQA for which neither an Environmental Impact Report nor a Negative Declaration is required.

1. Class 3 Exemption: Construction including water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction. This includes the construction of limited numbers of new small facilities or utility extensions. (14 CCR Section 15303.)
2. Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees

except for forestry and agricultural purposes. Among other things, this includes *filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling where the surface is restored.* (14 CCR Section 304.)

3. Class 32 (“in fill”) Exemption: applies where: i) the projects are consistent with the applicable general plan designation and applicable general plan policies and applicable zoning designation and regulation; ii) proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; iii) the project site has no value as habitat for endangered, rare or threatened species; iv) approval of the project would not result in significant effects relating to traffic, noise, air quality or water quality; and v) the site can be adequately served by all required utilities and public services. (14 CCR Section 15332.)

The review procedure will expedite CEQA review and is appropriate for the type of construction described above, which may be categorically exempt. By establishing this expedited review process, the Commission is able to review the information on a specific project to confirm that it is categorically exempt from CEQA or to explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Inyo to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

The Commission has approved a similar procedure for other carriers to obtain Commission approval of claimed CEQA exemptions for proposed construction projects and therefore approves Inyo’s proposed procedure, as modified above, for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Inyo’s full facilities-based authority, based on the specific facts of this case.

Inyo shall not perform any full facilities-based construction activities without first obtaining an NTP from the ED or authorization by the Commission after the requisite environmental review.

The Commission has previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service, Rulemaking 95-04-043/Investigation 95-04-044. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

4. Financial Qualifications

The minimum financial requirements for providing full facilities-based resold local exchange and interexchange telecommunications services are the same as the minimum financial requirements for providing limited facilities-based telecommunications services.³ Because the minimum financial requirements for limited and full facilities-based services are the same, and because Applicant had already demonstrated that it has sufficient resources to meet the minimum financial requirements for limited facilities-based services in D.09-12-036, Applicant is deemed to have already satisfied the required minimum financial requirements to provide full facilities-based resold local exchange and interexchange telecommunications services.

³ The financial requirement for Competitive Local Exchange Carriers is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers is contained in D.91-10-041.

5. Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.⁴

Inyo's management had already demonstrated in its prior application that they have sufficient expertise and training to operate as a telecommunications provider. As Inyo's management and key personnel remain the same, we deem that they have sufficiently complied with this requirement.

Inyo verified that no one associated with or employed by Inyo as an affiliate, officer, director, partner, or owner of more than 10% of Inyo was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that Inyo is in compliance with the requirements of D.95-12-056.

6. Tariffs

Inyo currently has an existing tariff in effect which will continue to be applicable subsequent to authorization of Inyo's expanded local service territory

⁴ D.95-12-056 at Appendix C, Rule 4.A.

and expansion from limited facilities-based to full facilities-based telecommunications services.

7. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.⁵ In its application, Inyo provided a revised map of the location of its proposed service territory, which includes the additional service territories that it is seeking to provide services to, in compliance with this requirement.

8. Rule 3.1(i) Statement

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding General Order (GO) 104-A, Section 2. Inyo states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2. Inyo, therefore, has nothing to report under this rule. On a going forward basis, though, Inyo must file all reports required of a public utility under Commission jurisdiction.

9. Conclusion

The Commission concludes that the application conforms to its rules for certification as a full facilities-based competitive local exchange and interexchange carrier. Accordingly, the Commission grants Inyo authorization to expand the CPCN authority provided to it in D.09-12-036.

Inyo is authorized to provide full facilities-based and resold local exchange and interexchange telecommunications service and to expand its service territory to provide local exchange telecommunications service in the service territory of

⁵ D.95-12-056 at Appendix C, Rule 4.E.

SureWest Telephone and Frontier Communications and California, which is in addition to its existing authority to provide local exchange telecommunications service in the service territory Pacific Bell Telephone Company (dba AT&T California) and Verizon California Inc.

Inyo is reminded that the CPCN authority granted by this decision provides benefits and corresponding obligations. Inyo receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this decision. In return, Inyo is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Inyo is reminded that it continuous to be obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code § 451 which states that every public utility “...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

10. Categorization and Need for Hearings

In Resolution ALJ 176-3343, dated October 2, 2014, the Commission preliminarily categorized this application as ratesetting, and preliminarily

determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

11. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

12. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Rafael L. Lirag is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on October 8, 2014. No protests have been filed. A hearing is not required.
2. Inyo has existing CPCN authority, granted in D.09-12-036, to provide limited facilities-based and resold local exchange telecommunications services in the territories of Pacific Bell Telephone Company and Verizon California, Inc. and interexchange telecommunications services in California.
3. Inyo is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).
4. The Commission is the Lead Agency for this project under CEQA.
5. Inyo's proposed construction activity may fall within one or more CEQA categorical exemptions.
6. Inyo requested a grant of full facilities-based authority subject to compliance with the expedited 21-day review process.

7. Inyo was deemed to have complied with the financial requirements for providing limited facilities-based telecommunications services in its prior application in which it was granted CPCN authority.

8. The financial requirements for limited facilities-based CPCN authority are the same as the financial requirements for full facilities-based CPCN authority.

9. Inyo requested to expand its service territory with respect to the provision of local exchange telecommunications services, to include authority to provide services within the territories of SureWest Telephone and Frontier Communications of California and Citizens Long Distance.

10. Inyo has an existing tariff applicable for its services.

11. Inyo provided a map of the location of its proposed service territory and included the additional territories in which it proposes to provide service.

12. Inyo has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding compliance with GO 104 A, Section 2.

Conclusions of Law

1. Inyo should be granted a CPCN to provide full facilities-based and resold local exchange telecommunications service in the service territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Frontier Communications of California and Citizens Long Distance, and full facilities-based and resold interexchange service in California, subject to the terms and conditions set forth in the OPs.

2. Inyo should be allowed to use the ED's 21 day CEQA exemption process.

3. Inyo is deemed to have complied with the financial requirements to provide full facilities-based and resold telecommunications service.

4. Inyo's existing tariff shall be applicable.

5. Inyo, once granted a CPCN, should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California Public Utilities.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity previously granted to Inyo Networks, Inc. in Decision 09-12-036 is modified to provide full facilities-based and resold local exchange telecommunications service in the service territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Frontier Communications of California and Citizens Long Distance, and full facilities-based and resold interexchange service in California, subject to all previous requirements set forth in Decision 09-12-036.

2. The corporate identification number assigned to Inyo Networks, Inc. Networks, Inc. U7159C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

3. Inyo Networks, Inc. must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Inyo Networks, Inc. must submit a Tier 1 Advice Letter annually, but not later than March 31, with a copy of the executed bond.

4. Inyo Networks, Inc. must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission

may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

5. Inyo Networks, Inc. must continue to abide by all the requirements applicable to competitive local exchange carriers as set forth in Decision 09-12-036 and Inyo Networks, Inc. is subject to the Consumer Protection Rules contained in General Order (GO) 168, and all applicable Commission rules, decisions, GOs, and statutes that pertain to California Public Utilities.

6. Inyo Networks, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

7. Concurrent with filing a written acceptance of the certificate granted in this proceeding, Inyo Networks, Inc. must file a revision to the current map associated with its existing tariff, to conform to its revised service territories as a result of this Decision.

8. The staff of the Commission's Energy Division is authorized to review, process, and act upon Inyo Networks, Inc.'s requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

9. If Inyo Networks, Inc. wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act (CEQA), Inyo Networks, Inc. shall first apply to the Commission's Energy Division staff for a determination of exemption from CEQA using the following procedure set forth in Ordering Paragraph 10.

10. Inyo Networks, Inc. will provide the Commission's Energy Division with:

- A. A detailed description of the proposed project, including:
 - 1. Customer(s) to be served;
 - 2. The precise location of the proposed construction project; and
 - 3. Regional and local site maps.
- B. A description of the environmental setting, including at a minimum:
 - 1. Cultural, historical, and paleontological resources;
 - 2. Biological resources; and
 - 3. Current land use and zoning.
- C. A construction work-plan, including:
 - 1. Commission Preconstruction Survey Checklist – Archaeological Resources;
 - 2. Commission Preconstruction Survey Checklist – Biological Resources;
 - 3. A detailed schedule of construction activities, including site restoration activities;
 - 4. A description of construction/installation techniques;
 - 5. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - 6. A list of permits required for the proposed project.
- D. A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
- E. Documentation supporting the finding of exemption from CEQA.
- F. The Energy Division will then review the submittal and notify Inyo Networks, Inc. of either its approval or its denial of Inyo Networks, Inc.'s claim for exemption from CEQA review within 21 days from the time that Inyo Networks, Inc.'s submittal is complete.

- G. If the Energy Division approves Inyo Networks, Inc.'s claimed CEQA exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
 - H. If the Energy Division disapproves Inyo Networks, Inc.'s claimed CEQA exemptions, the staff will issue to UTILITY a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.
 - I. If the Energy Division disapproves Inyo Networks, Inc.'s claimed CEQA exemption(s), Inyo Networks, Inc. shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any full facilities-based construction activities.
11. Application 14-10-005 is closed.

This order is effective today.

Dated February 12, 2015, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners