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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion into the application of the California Environmental Quality Act to applications of jurisdictional telecommunications utilities for authority to offer service and construct facilities.

Rulemaking 06-10-006
(Filed October 5, 2006)

JOINT RULING OF ASSIGNED COMMISSIONER AND ASSIGNED ADMINISTRATIVE LAW JUDGE

Pursuant to Decision (D.) 11-12-054, this ruling sets the schedule for the rehearing in this proceeding and allows parties to update the record by responding to several questions.

Background

The California Legislature enacted the California Environmental Quality Act (CEQA) in 1970 with the intent of requiring public agencies to consider the environmental implications of their actions when implementing agency projects or approving private projects. The application of CEQA is triggered by an agency's discretionary action or approval. CEQA review requirements apply when an agency makes any discretionary decisions. Further, CEQA requires all state agencies regulating the activities of private individuals to "regulate those

activities so that major consideration is given to preventing environmental damage.”¹

On October 5, 2006, the Commission adopted an Order Instituting Rulemaking (OIR) opening Rulemaking 06-10-006 to consider changes to the Commission’s application of CEQA to the telecommunications utilities under its jurisdiction. The stated goals of the OIR are to develop rules and policies that will:

- Ensure that the Commission’s practices comply with the current requirements and policies of CEQA;
- Promote the development of an advanced telecommunications infrastructure, particularly with regard to facilities that provide broadband facilities; and
- Ensure that the application of CEQA in the area of telecommunications does not cause undue harm to competition, particularly intermodal competition.

The Commission adopted General Order (GO) 170 in D.10-12-056² to address the goals of the OIR and resolve issues relevant to the Commission’s application of CEQA to telecommunications providers. On December 15, 2011, the Commission issued D.11-12-054, which granted rehearing of D.10-12-056 and vacated GO 170. In granting the rehearing, the Commission concluded that D.10-12-056 and GO 170 failed to provide a uniform discretionary approval mechanism that would trigger the application of CEQA for telecommunications companies. Furthermore, both D.10-12-056 and GO 170 contained legal

¹ Public Resources Code Section 21000(g).

² The Commission adopted D.10-12-056 on December 16, 2010.

inconsistencies leading to a vulnerable structure and substance of the exemption process in GO 170.

Discussion

The parties focused on two approaches to address the issues in this proceeding: a decentralized model, with local jurisdictions responsible for review of telecommunications projects, and an exemption-based centralized model, with the Commission responsible for review of telecommunications projects not exempted. The decentralized model is a similar approach to that taken by the Commission in its GO 159-A, Rules Regarding the Construction of Cell Phone Towers. We continue to look at these two approaches in this proceeding.

Aside from the comments on the October 20, 2010 proposed decision, the most recent set of general comments in this proceeding were filed in 2007. Therefore, the record should be updated. We remind parties that the Commission granted this rehearing but clarified that two major rehearing arguments lack merit and will not be considered. In D.11-12-054, the Commission determined that “it is well-established that we have the authority to preempt local agencies when acting within the scope of our jurisdiction.”³ The Commission also determined that while we cannot impose any absolute ban on telephone companies’ construction, “we can make the determination of whether the fixture is necessary and how, when and where the utilities can construct.”⁴ Thus, parties’ comments to this Ruling should not re-argue whether the

³ D.11-12-054 at 10. See also discussion at 8-10.

⁴ *Id.* at 12.

Commission is able to require incumbent carriers to obtain discretionary approval for construction or whether the Commission may preempt local jurisdictions.

Parties may provide comments in this rehearing process to address the following sets of questions:

1. **Parties' Positions:** Parties should provide their current analysis on the best approach to the CEQA approval process that takes into consideration the issues and interests CEQA seeks to consider, including those affected by construction and environmental impact. In their responses the parties should state whether this position has changed either due to the Commission's subsequent vacating of GO 170 or changes in other circumstances since the adoption of the OIR in 2006. Parties wanting to reference earlier pleadings in this proceeding should ensure that those pleadings are available to all parties. Any pleading references should be sufficiently specific that they do not include positions no longer being advocated and/or no longer viable. (Cutting and pasting from earlier comments may be advisable.) In addition, parties should provide details as to how the preferred approach addresses the goals of the proceeding as stated in this Ruling.

2. **Centralized Approach:** Can the approach that was used in the Commission's previous effort to adopt GO 170 - essentially centralizing CEQA review of telecommunications projects at the Commission and expediting that process through a series of exemptions - be viable and legal? What are the services covered under these exemptions? In light of the conclusions in D.11-12-054, are there ways to correct the previous version of GO 170 in order for it to be clear and legally sufficient? Are there legal barriers to such an approach?

Are there other formal processes, e.g., using the Office of Planning and Research, which the Commission should undertake prior to adopting exemptions?⁵

3. **Decentralized Approach:** Should the Commission adopt a form of the GO 159-A approach which gives local jurisdictions primary CEQA authority for telecommunications extensions? Could this approach be done on a trial basis for a finite period of time, perhaps two to three years? Would an emphasis on local review better meet the requirements of CEQA? Are there legal barriers to such an approach? Please provide the advantages and disadvantages to this approach in terms of environmental, public safety, land issues, and deployment of services or other relevant considerations. Parties should support their view not only with anecdotal evidence, but also with statistical evidence where it is available.

4. **Two-Stage or Hybrid Approach:** Would it be appropriate for the Commission to adopt a two-stage approach to CEQA review? Under this approach, local authorities would have primary authority, as in the Decentralized Approach, and the Commission would act as a “court of appeal” for those instances where local jurisdiction and carriers could not find common ground. Are there legal and practical barriers to such a hybrid approach? How would GO 170 be revised to accommodate a two-stage process? What standards of review should the Commission put in place that might also act as guidelines to parties involved in CEQA reviews at the local level and that would also act as

⁵ Public Resources Code Section 21086. “(a) A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. That request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that the class of projects does, or does not, have a significant effect on the environment.”

criteria for the Commission itself in adjudicating disputes that were brought to it?

5. **Alternate Approaches:** Are there other approaches the Commission should consider that have not been raised or considered previously? Please provide details to these approaches.

Schedule

We adopt the following schedule:

May 31, 2013	Opening Responses to this Ruling Due
June 14, 2013	Replies Due
Summer 2013	Proposed Decision Issued

The assigned Commissioner or Administrative Law Judge may adjust this schedule as necessary for efficient management of this proceeding.

Ex Parte Communication

Ex parte communications are generally permitted in quasi-legislative proceedings without restrictions or reporting requirements pursuant to Rule 8.3(a). However, if parties submit any written materials pertaining to this proceeding to any Commissioner or Commission staff, they must serve a copy of that material to all parties on the service list.

IT IS RULED that the items addressed in the body of this ruling are adopted. In particular:

1. The schedule stated in the ruling is adopted. The assigned Commissioner or Administrative Law Judge may adjust this schedule as necessary for efficient management of this proceeding.

2. Parties shall serve, to the service list, copies of any materials provided to a Commissioner or Commission staff.

Dated May 2, 2013, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval
Assigned Commissioner

/s/ KELLY A. HYMES
Kelly A. Hymes
Administrative Law Judge