PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division **RESOLUTION T- 17517**
Broadband, Video and Market Branch **May 12, 2016**

R E S O L U T I O N

Resolution T-17517 Conditionally Approving Additional CASF Funding of $399,853.20 or $462,978 to the Happy Valley Telephone Company dba TDS Telecom (U-1010-C) to Complete the Olinda Underserved Broadband Project

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I. SUMMARY

This Resolution conditionally approves additional California Advanced Services Fund (CASF) funding of either $399,853.20 or $462,978[1] to conduct California Environmental Quality Act (CEQA) review and complete the Olinda Underserved Broadband Project (the Project). The final cost would depend on whether a full Environmental Impact Report or a Mitigated Negative Declaration is appropriate, which cannot be determined until the Energy Division's CEQA Team and its consultant, Ecology & Environment, Inc. (E&E) have conducted an initial review.

II. APPLICANT REQUEST

On February 2, 2016, Happy Valley notified Communications Division (CD) staff by letter that the total costs related to its CASF grant project awarded in Resolution T- 17411 would increase from $3,056,148 to either $3,722,570 or $3,827,778, depending on the type of environmental review document required.[2] Based on this, Happy Valley requested additional funding for CEQA cost overruns in the amount of $399,853.20 or $436,978, which is 60% of the cost to product either the Mitigated Negative Declaration or an Environmental Impact Report, from the CASF program to complete the project.

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[1] This award represents 60% of the additional Project costs: $399,853.20 is 60% of $666,422, which is the total cost of producing a Mitigated Negative Declaration or $462,978 is 60% of $771,630, which is the total cost of producing an Environmental Impact Report.

[2] On January 13, 2016, in a meeting with CD staff, representatives of Happy Valley requested additional CASF monies to help finance cost overruns related to CEQA compliance and complete the project. Happy Valley was instructed to submit a request in writing for additional funding, along with an explanation and supporting documentation of the unanticipated expenses.

III. BACKGROUND

On October 3, 2013, the Commission adopted Resolution T- 17411, authorizing a CASF grant of $1,833,689 to Happy Valley to construct the Project. The grant represented 60% of the total estimated project cost of $3,056,148, with Happy Valley contributing the remaining 40%. Of this total cost of $3,056,148, Happy Valley had budgeted $185,383[3] for environmental impact studies and any right-of-way issues. Happy Valley's initial CASF application provided the Commission with construction plans for the Project. The construction plans showed that Happy Valley would implement VDSL2 technology at the central office location as well as at numerous existing and proposed digital loop carrier sites. Happy Valley planned to install about 16 miles of new fiber facility. Happy Valley's preferred methods of buried construction are plowing and horizontal boring. Happy Valley planned on using little to no open trenching.

The resolution stated that the Olinda Project is subject to CEQA review and must provide its Proponent's Environmental Assessment (PEA) prior to the first 25% payment unless the project is statutorily or categorically exempt from CEQA requirements. The PEA submission was to include information on any land crossing sites requiring discretionary or mandatory permits or environmental review pursuant to CEQA (including the type of permit required, the name of the permitting agency/agencies and the Lead Agency if an environmental review is required).

IV. DISCUSSION

Following award of the grant on October 3, 2013, Happy Valley submitted its PEA to Energy Division's CEQA Team, and learned that it would cost an additional $666,422 or $771,630 for the CEQA Team's consultant, E&E, to review their PEA and draft either a Mitigated Negative Declaration or an Environmental Impact Report. Based on this estimate by E&E Happy Valley requests 60% of this amount from the CASF, which amounts to either $399,853 or $436,978. When and if the contract is approved by the Department of General Services (DGS), DGS will post more detail regarding these costs on their website. The CEQA Team is unable to proceed or ask DGS to approve the contract until the Commission makes a determination on whether to approve additional funding for this Project.

CD staff notes that prior Commission rulings that established the review process for CASF applications (i.e., D.07-12-054 and Resolution T-17143) do not discuss a process for addressing CASF awardees' cost overruns and/or requests for additional funding. Further, the Commission approved additional funding for two projects in Resolutions

[3] $111,230 or 60% was funded by CASF.

T-17352 and T-17408 where it acknowledged the lack of guidance to address cost overruns and/or requests for additional funding.[4]

The Commission in T-17352 found it reasonable to approve IP Networks' application for additional CASF funding to cover cost increases, so long as these cost increases resulted from exogenous factors beyond the applicant's control. Additionally, the resolution recommended that the Commission refrain from using CASF funds to reimburse IP Networks for any cost increases resulting from planning and estimation changes that were not caused by additional requirements from another entity. Based on this reasoning, the Commission only granted IP Networks a portion of its request for additional funds.

In Resolution T-17408, the Commission approved cost increases that resulted from exogenous factors and from factors unforeseen by the applicant when it applied. Specifically, the Commission found it reasonable to grant additional funding despite the fact that "some of the cost overruns may be attributed to factors under the CBC's (the grantee) control, [in addition to the] extraordinary, cultural, historic preservation, and other agency requirements the project faced [which] contributed to the cost overruns."[5] One such category of cost overruns which were in the grantee's control, but the Commission chose to fund was environmental and cultural resources. The resolution states, "CBC and its vendors underestimated the environmental and cultural resources review required to construct within the project area. CBC did not anticipate the need to bore along dirt roads graded annually by County authorities. Despite this, CD recommends the Commission consider these cost overruns as allowable."[6] Based on this, CD concludes that there are other reasonable bases that the Commission might rely on to grant additional funds.

In this instance, Happy Valley underestimated the cost of the environmental review process. CD staff notes that at the time it issued the initial resolution granting funds, it may not have thoroughly explained the CEQA review process past the initial step of submitting a PEA. Furthermore, Happy Valley's authority to operate in this state predates CEQA and therefore, Happy Valley was unaware of the entirety of the requirements that a CEQA review at the Commission entails.[7] Today, resolutions

[4] Resolution T-17352 - Approval of Additional Funding for the IP Networks Highway 36 Humboldt - Trinity Counties Project from the CASF Amounting to $1,540,258.40; Resolution T-17408 – Conditionally Approving Additional CASF Funding of up to $9,928,715 to the California Broadband Cooperative to Complete the Digital 395 Project.

[5] Resolution T-17408, p. 37, Finding 4. `

[6] Resolution T-17408, pp. 23-24.

[7] Happy Valley and the other telephone companies operated by TDS (Winterhaven and Hornitos) were authorized to provide service before CEQA was passed in 1970. Decision No. 83-08-050 – Authorization for Happy Valley Telephone Company to Establish a New Telephone Exchange, Decision No. 88-06-023 –

granting CASF funds include additional language regarding the CEQA process and provide that a grantee may request additional funds if a full CEQA analysis is required.[8] Had that language been a part of the initial resolution granting Happy Valley a CASF grant, Happy Valley would have been on notice that it would need to take additional steps beyond the PEA to complete environmental review.

Additionally, the project remains important. Happy Valley is the sole wireline Internet service provider in this area and these funds will improve maximum broadband speeds in the community. The improved broadband speeds may support numerous anchor institutions and businesses in the area. The anchor institutions in the area include Igo-Ono School, Igo-Ono Elementary, Platina School, Happy Valley Primary School, Happy Valley Union Elementary, and Happy Valley Community Day, and Happy Valley Elementary. Additionally, the Anderson Chamber of Commerce supported the original application because of the importance of broadband internet for the daily operations of businesses in the area.[9]

Happy Valley has stated that without an additional grant, the cost to conduct CEQA review could be up to half of the funds originally granted to Happy Valley to implement this project. Happy Valley states that it cannot complete the project if it is required to take on this additional financial burden.

CD finds that these costs increases resulted because Happy Valley did not foresee that it would have to take additional steps beyond the submission of a PEA and therefore underestimated the cost of the environmental review process. Therefore, CD recommends funding 60% of the cost increases related to the hiring of E&E, the Commission's CEQA Team's consultant, to review Happy Valley's PEA and prepare a Mitigated Negative Declaration or an Environmental Impact Report.

Granting CPCN to Winterhaven Telephone Company. Hornitos Telephone Company's authorization was granted before 1969.

[8] For example in Resolution T-17497, granting CASF funds to Cal.net, in discussing CEQA, we stated, "Cal.net should contact the Supervisor of the Commission's Energy Division CEQA Unit well in advance of a contemplated filing to: (a) consult with staff regarding the process of developing and filing a PEA; (b) provide for cost recovery per Rule of Practice and Procedure 2.5; and (c) enter into a Memorandum of Understanding to allow the Energy Division to initiate the retention of an environmental contractor to perform the environmental review… Cal.net must provide the PEA prior to the first 25% payment. Should the Energy Division recommend that a full CEQA analysis is required, the applicant may either pay for the analysis itself or seek a supplemental CASF grant to cover 60 percent of the cost."

[9] Resolution T-17411, p. 6.

V. CONDITIONS/REQUIREMENTS

Happy Valley must complete the Project within the scope and budget specifications provided in this Resolution. Should Happy Valley need further funding to do this, Happy Valley will be responsible for providing it. Furthermore, the Commission should ensure that it reserves the right to seek recompense equal to the amount of the CASF grant should Happy Valley fail to complete the Olinda Project. Happy Valley should comply with all guidelines, requirements, and conditions associated with the granting of CASF funds as specified by Resolution T-14173 and T-17411.

VI. COMMENTS ON DRAFT RESOLUTION

In compliance with PU Code §311(g), a notice letter was emailed on March 22, 2016, informing all parties on the CASF Distribution List of the availability of the draft of this Resolution for public comments at the Commission's documents website at http://www.cpuc.ca.gov/documents/. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at the same website. Happy Valley submitted a letter to CD Staff on March 29, 2016 in support of this Resolution providing additional funding to the Olinda Project. No parties submitted opening or reply comments.

FINDINGS

1. On January 13, 2016, CD staff met with representatives of Happy Valley to discuss project cost overruns on the Olinda Underserved Broadband Project. On February 2, 2016, Happy Valley submitted its request, in writing, for either $399,853.20 or $462,978 in additional CASF funding.

2. In approving Resolution T- 17408, the Commission approved a CASF grantee's request for additional CASF funding to cover cost increases even though some costs may have been attributable to factors under the grantees control.

3. Happy Valley's authority to operate in this state predates CEQA and therefore Happy Valley was unaware of the entirety of the requirements that a CEQA review entails. Unlike CASF resolutions today, Resolution T-17411, which awarded Happy Valley a CASF grant, did not include additional provisions regarding the CEQA process or provide that a grantee may request additional funds if a full CEQA analysis is required.

4. Happy Valley is the sole wireline internet service provider in this area and approval of additional funds will help to support numerous anchor institutions

which include Igo-Ono School, Igo-Ono Elementary, Platina School, Happy Valley Primary School, Happy Valley Union Elementary, and Happy Valley Community Day, and Happy Valley Elementary.

5. The Anderson Chamber of Commerce supported the project, as stated in T-17411, because of the importance of broadband internet for the daily operations of businesses in the area.

6. CD finds that these costs increases resulted because Happy Valley did not foresee that it would have to take additional steps beyond the submission of a PEA and therefore underestimated the cost of the environmental review process.

7. The Commission agrees with CD's findings and recommendation to fund the Project on a conditional basis.

8. A notice letter was e-mailed on March 22, 2016, informing all parties on the CASF distribution list of the availability of the draft of this Resolution for public comments at the Commission's website http://www.cpuc.ca.gov/PUC/documents/. This letter also informed parties that the final confirmed Resolution adopted by the Commission will be posted and available at this same website. Happy Valley submitted a letter to CD Staff on March 29, 2016 in support of this Resolution providing additional funding to the Olinda Project. No parties submitted opening or reply comments.

THEREFORE, IT IS ORDERED:

1. The Commission shall conditionally award additional funding of up to either $399,853.20 or $462,978 from the CASF to complete the Olinda Underserved Broadband Project.

2. The Commission shall reimburse Happy Valley in accordance with the payment guidelines adopted in Resolutions T-17143 and T- 17411. Additionally, Happy Valley shall provide CD with all invoices documenting the cost overruns outlined in its request.

3. Happy Valley shall complete the Project, within the scope and budget specifications provided in this Resolution. Should it need further funding to do this, Happy Valley will be responsible for providing it. Furthermore, if Happy Valley fails to complete the Project, the Commission reserves the right to seek recompense from Happy Valley an amount equal to the amount of the grant.

4. Happy Valley shall inform the Commission immediately if it learns of any cost increases beyond the estimate it submitted to CD on February 2, 2016.

5. Happy Valley shall update CD staff on the Project's progress on a bi-weekly basis.

6. Happy Valley shall comply with all guidelines, requirements, and conditions associated with the CASF funds award as specified in Resolution T-17143 and T-17411.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 12, 2016. The following Commissioners approved it:

/s/ Timothy J. Sullivan

TIMOTHY J. SULLIVAN
Executive Director

MICHAEL PICKER
President

MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners