

OCT. 6 1992

Decision 92-10-007 October 6, 1992

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	Application 89-05-004
The Ponderosa Telephone Company)	(Filed May 4, 1989;
(U 1014 C) for a Certificate of)	Petition for Modification
Public Convenience and Necessity.)	filed May 18, 1992)

INTERIM OPINION1. Summary

This decision grants in part applicant's petition to modify Decision (D.) 91-05-043 to permit substitution of one site for installation of a radio telephone system to serve a new Cima exchange in sparsely settled areas of the eastern Mojave Desert. The request for authority for a second substitute site is deferred pending environmental review.

2. Background

On May 22, 1991, the Commission in D.91-05-043 granted a certificate of public convenience and necessity (CPCN) to permit The Ponderosa Telephone Company (Ponderosa) to establish a new Cima exchange in sparsely settled areas of the eastern Mojave Desert in San Bernardino County.

The grant of authority permits Ponderosa "to provide exchange telephone service to the traveling public and to approximately 100 potential customers who have long awaited and vitally need these services." (D.91-05-043, p. 2.) The telephone service would use Basic Exchange Telephone Radio System (BETRS) digital radio systems that permit all the usual service normally available through a landwire telephone system.

To mitigate any environmental impact, Ponderosa and the Commission Advisory and Compliance Division (CACD) identified conditions which must be followed to install equipment and

facilities. Our order conditions the granting of the CPCN on compliance with these mitigating measures.

On May 18, 1992, Ponderosa petitioned to modify D.91-05-043. Ponderosa states that it has pursued the construction of the Cima exchange, and that landline telephone service in the Cima area was to become available in summer 1992. However, Ponderosa states that it has determined that the three mountaintop sites (Columbia Mountain, Hackberry Mountain, and Kokoweef Peak) identified in the decision would not be suitable for reliable BETRS radio service. Ponderosa states that these three undeveloped sites have been found to be too inaccessible for construction and maintenance of the BETRS radio equipment.

Ponderosa states that it has worked with the Bureau of Land Management (BLM), the U.S. Department of the Interior agency that manages the relevant sites, and has identified two substitute sites acceptable both to Ponderosa and BLM. Ponderosa seeks an expedited ex parte order modifying D.91-05-043 to provide for completion of the BETRS portion of the Cima exchange using the two substitute sites in lieu of the three mountaintop sites.

The substitute sites are at Goffs Butte, located three miles south of Goffs, where Ponderosa proposes to mount BETRS and microwave antennae on an existing FM radio tower, and at Mid Hills, seven miles southeast of Cima, where the utility proposes to build a 35-foot tower for a repeater facility. The repeater facility would be powered through solar panels to be mounted with the transmission equipment on the tower.

By letter dated June 17, 1992, the Environmental and Energy Advisory Branch of CACD objected to Ponderosa's petition insofar as it seeks to substitute two different sites that have not been reviewed for environmental impact under the California Environmental Quality Act (CEQA).

3. Prehearing Conference and CACD Report

A prehearing conference on Ponderosa's petition to modify was held on July 16, 1992. At that time, CACD agreed to evaluate the two substitute sites proposed by Ponderosa and to report its recommendations to the administrative law judge. Ponderosa agreed to work closely with CACD and to coordinate communications between it, the Commission, and BLM.

On July 29, 1992, CACD submitted the results of its initial review. CACD states as follows:

Goffs Butte

The Goffs Butte site is now used by an FM radio station which leases the land from the BLM. The existing facilities include a 100-foot tower and an equipment building at the base of the tower. The site is also used by the Los Angeles Cellular Company. Ponderosa proposes to add BETRS antennae and a microwave dish to the existing tower. The BETRS antennae will add 20 feet to the height of the tower. The transmission equipment will be located in the existing building.

CACD concludes that the Goffs Butte site appears to meet requirements for a Class 1 categorical exemption under CEQA as a "minor alteration" of an existing structure. (Pub. Resources Code § 21084; CEQA Guidelines § 15301; Rule 17.1(h)(1)(A) of the Rules of Practice and Procedure.) CACD states that this conclusion is consistent with other decisions of the Commission regarding cellular and radiotelephone utility projects. (See, e.g., D.89-02-070, at pp. 9-10; D.90-08-025, at p. 5; D.90-10-010, at p. 2.)

Although, viewed alone, the Goffs Butte site may meet the requirements for a categorical exemption, CACD notes that CEQA

defines a "project" as "the whole of an action."¹ Thus, CACD raises the question of whether an interim decision should issue approving the Goffs Butte site alone.

Mid Hills

Mid Hills is an undeveloped site upon which Ponderosa proposes to construct a 35-foot tower. The site is on land administered by BLM. The site would serve as a microwave repeater between the Cima site, which has already been constructed, and the Goffs Butte site. The transmission equipment and associated solar panels would be attached to the tower. A building for equipment would not be required.

CACD states that, on July 17, 1992, Ponderosa applied to BLM for permits for construction of this tower. Ponderosa also has stated that it will apply for any necessary local permits.

To avoid duplication of effort, CACD suggests (and Ponderosa agrees) that Commission environmental review of this site be deferred pending receipt of BLM's environmental report. CACD then would recommend whether the BLM report could serve as the basis for the Commission's environmental review, or whether further environmental study is required. Ultimately, the Commission would have to determine whether the Mid Hills site is the subject of a negative declaration or an environmental impact report under CEQA.

1 CEQA Guideline § 15378. The guideline states in part:

"(a) 'Project' means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately....

* * *

"(c) The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval."

Because it is not known how long it will take BLM to complete its environmental report for the Mid Hills site, CACD recommends (and Ponderosa agrees) that the date of "completion" of Ponderosa's petition to modify be deemed to be the date on which the BLM report is submitted to CACD by Ponderosa.² CACD cautions that the BLM report can serve only as a basis for CACD's environmental review and recommendation to the Commission. If the report is deemed adequate and indicates no significant environmental effect, a negative declaration can be prepared and, after a 30-day review period, be the basis for a decision on the project. If CACD or the Commission finds a significant environmental effect, however, then an environmental impact report may be required.

4. Ponderosa's Response

By letter dated August 7, 1992, Ponderosa responds to the recommendations of CACD. It requests an interim decision granting Ponderosa's petition of modification with respect to the Goffs Butte site and an administrative law judge ruling setting forth the procedure for consideration of the Mid Hills site.

As to the Goffs Butte site, Ponderosa states that the use of an existing communications tower in lieu of construction of two new mountaintop facilities "is not only categorically exempt from CEQA but also furthers the goals of CEQA" by avoiding further construction on undeveloped sites. Ponderosa states that early

² CEQA requires that a negative declaration be completed within 105 days from the time that an application is accepted as complete. (CEQA Guideline § 15107.) A final environmental report must be completed and certified within one year from the date an application is deemed complete. (CEQA Guideline § 15108.) Under the Permit Streamlining Act, a lead agency must approve or disapprove a project within one year from the date an application was accepted as complete if an environmental impact report is prepared, and within six months if a negative declaration is prepared. (Gov. Code § 65950.)

approval of this site would serve the interests of Cima residents by expediting federal licensing and construction of the BETRS facilities.

With respect to the Mid Hills site, Ponderosa does not oppose use of the date that the BLM environmental report is furnished to CACD as the date to calculate time limits under CEQA and the Permit Streamlining Act. Ponderosa states that the environmental studies that it has submitted to BLM and to the CACD have concluded that the Mid Hills work "will not affect, jeopardize, or impact any sensitive species in the area and that no mitigation measures beyond those required by the original CPCN decision are necessary."

5. Discussion

The Commission's investigation in this matter found that the service area in question is so sparsely settled that it is uneconomic to serve it by landwire facilities, except for the community of Cima, where about 10 to 12 services can be provided by buried cable from the proposed Cima central office. (D.91-05-043, p. 7.) We also found that exchange telephone service is vitally needed throughout the 1,400 square mile area proposed for the new Cima exchange. (D.91-05-043, Finding of Fact 11.) We noted that "(c)urrently there is no telephone service available for the safety, convenience, and welfare of the residents and the traveling public or for the mining, agriculture, and other business activities in the area..." (D.91-05-043, Finding of Fact 12.)

Based on this need, and on Ponderosa's representations that early approval of the Goffs Butte site will permit it to begin work there and move forward on this project, we will accept the analysis of CACD and will approve the Goffs Butte site as categorically exempt under CEQA. Our analysis of the CEQA guidelines persuades us that we may, as lead agency, take this action, since the "project" (that is, the whole of the action) has

already been approved in D.91-05-043, and the substitution of Goffs Butte simply modifies one part of that earlier approval.

Our order today also adopts CACD's recommendation that applicant be required to submit copies of any required local permits for the Goffs Butte and Mid Hills sites, and that applicant submit copies of all correspondence between it and BLM regarding the Mid Hills environmental review, including preliminary and final environmental reports. As to Mid Hills, we adopt the recommendation of the parties that the petition for modification be deemed "complete" (for purposes of CEQA and Permit Streamlining Act time limits) when applicant submits BLM's final environmental report to CACD.

We take official notice that the administrative law judge has issued a ruling establishing the procedure for consideration of the Mid Hills site and has set dates for progress reports by the parties on the environmental review of this site.

Findings of Fact

1. The Commission in D.91-05-043 granted a CPCN to permit Ponderosa to establish a new Cima exchange in sparsely settled areas of the eastern Mojave Desert of San Bernardino County.

2. On May 18, 1992, Ponderosa petitioned to modify D.91-05-043 to substitute two sites for the radio system portion of the Cima exchange for three mountaintop sites previously approved for these facilities.

3. The two substitute sites are at Goffs Butte, three miles south of Goffs, where applicant would mount BETRS and microwave antennae on an existing radio tower, and at Mid Hills, seven miles southeast of Cima, where applicant would build a 35-foot tower for a repeater facility.

4. On June 17, 1992, the Environmental and Energy Advisory Branch of CACD objected to the petition insofar as it seeks substitution of two different sites that have not been subject to environmental review under CEQA.

5. Following initial review, CACD concludes that the Goffs Butte site appears to meet requirements for a Class 1 categorical exemption under CEQA as a minor alteration of an existing structure. (Rule 17.1(h)(1)(A).)

6. CACD concludes that further environmental review of the Mid Hills site is required under CEQA, but that it may look to environmental findings of the BLM in conducting a CEQA review.

7. Ponderosa does not oppose use of the date that the BLM environmental report is furnished to CACD as the date to calculate time limits under CEQA and the Permit Streamlining Act.

Conclusions of Law

1. The Commission found in D.91-05-043 that exchange telephone service is vitally needed throughout the 1,400 square mile area proposed for the new Cima exchange.

2. Based on the initial analysis of CACD, the Commission should approve the petition for modification as to the Goffs Butte site on the basis that the site is categorically exempt under CEQA.

3. The Commission should find that the petition for modification will be deemed "complete" as to the Mid Hills site when applicant submits BLM's final environmental report to CACD.

4. The Commission should require that applicant submit copies of any required local permits for the Goffs Butte and Mid Hills sites, and that applicant submit copies of all correspondence between it and BLM regarding the Mid Hills environmental review.

5. The Commission should order that all other requirements set forth in D.91-05-043, including all applicable environmental mitigation requirements, shall continue to apply to this application.

INTERIM ORDER

IT IS ORDERED that:

1. The petition of The Ponderosa Telephone Co. (Ponderosa) to modify Decision (D.) 91-05-043 to permit completion of the Basic Exchange Telecommunications Radio Service facilities in its Cima exchange using a site at Goffs Butte, as shown in Exhibit A of the petition, in place of previously approved mountaintop sites, is granted.

2. For purposes of compliance with the time limits set forth in the California Environmental Quality Act and the Permit Streamlining Act, Ponderosa's petition for modification shall be deemed complete as of the date that Ponderosa submits to the Commission a copy of the environmental report of the U.S. Bureau of Land Management with respect to Ponderosa's proposed use of the Mid Hills site, as shown in Exhibit A of the petition.

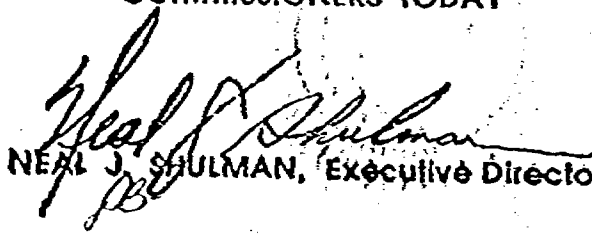
3. In all other respects, the requirements of D.91-05-043 not amended by this interim order shall continue to apply in full force and effect in Ponderosa's establishment of a new Cima exchange in San Bernardino County.

This order is effective today.

Dated October 6, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director