



State of Utah

Department of Commerce  
Division of Public Utilities

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## Supplemental Action Request Response

**To:** Public Service Commission of Utah

**From:** Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Manager

Brenda Salter, Utility Technical Consultant Supervisor

Ron Slusher, Utility Technical Consultant

**Date:** January 6, 2022

**Re:** **Docket No. 21-2631-01**, In the Matter of the SUPPLEMENTAL ACTION REQUEST issued by the Public Service Commission for the Application of EarthGrid PBC, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Public Telecommunications Services within the State of Utah.

### Recommendation (Approval)

The Division of Public Utilities (“Division”) has reviewed the technical, managerial, and financial abilities of the EarthGrid PBC, Inc. (“EarthGrid” or “Applicant”) and has found that it has provided the necessary information to fulfill the requirements as stated in the existing Public Service Commission (“Commission”) rules except for posting an appropriate bond.

The public interest will be promoted by the Commission granting EarthGrid a Certificate of Public Convenience and Necessity (“CPCN”) as requested under the same terms and conditions allowed in other CPCNs as soon as proof of the necessary bond is provided.

## Discussion

On or about December 09, 2021, the Public Service Commission (“Commission”) issued a supplemental action request seeking further information about the CPCN for EarthGrid. The Division reviewed the request and has the following reply.

Please review EarthGrid PBC’s (“Applicant”) Application for compliance with Utah Admin. Code R746-349-3, including:

- 1) Subsection (A)(2), including whether the proof of bond that Applicant provided from its California CPCN application satisfies Utah’s requirement;
  - **R746-349-3(2)** “proof of a bond in the amount of \$100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer liabilities;” (see 11(c) also)
  - A) When the Division reviewed EarthGrid’s application it overlooked that the surety listed the State of California as the benefactor. The Division has notified the applicant that it will need to file a new bond with the State of Utah and expects the applicant to provide proof of that bond prior to the Commission approving the application for CPCN. Based on conversations with EarthGrid, the Division anticipates the bond will be filed with the Commission by January 14, 2022.
- 2) Subsection (A)(10)(b), including verifying Applicant’s relationship to the entity for which it provided financial information, and how the provided financial information satisfies the rule;
  - **R746-349-3(10)(b)** “a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,”
  - A) The Applicant filed a letter with its application, **Confidential Exhibit D**, that includes a verification attesting to the accuracy of the financial statements and that the statements were prepared according to GAAP.
- 3) Subsection (A)(11)(b), related to “verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations;”
  - **R746-349-3(11)(b)** “sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations,”
  - A) EarthGrid has access to the financing and capital necessary to conduct its

telecommunications operations. A financial statement for EarthGrid is contained in **Confidential Exhibit D**.

- 4) Subsection (A)(12), related to a “five-year projection of expected operations,” including
- **R746-349-3(12)** “a five-year projection of expected operations including the following:”

A) EarthGrid has access to the financing and capital necessary to conduct its telecommunications operations. A financial statement for EarthGrid is contained in **Confidential Exhibit D**.

- 5) Subsection (A)(12)(a), related to “[pro forma] income statements and [pro forma] cash flow statements,”

- **R746-349-3(12)(a)** “proforma income statements and proforma cash flow statements,”

A) EarthGrid has access to the financing and capital necessary to conduct its telecommunications operations. A financial statement for EarthGrid is contained in **Confidential Exhibit D**.

- 6) Subsection (A)(12)(b), related to “a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities;”

- **R746-349-3(12)(b)** “when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities,”

A) EarthGrid intends to acquire, lease and construct conduit, handholes, fiber optic cable and supporting equipment and facilities in the State of Utah in order to provide services to the public. No firm plans have been made for specific routes in Utah. EarthGrid plans to install new conduits and may, in some cases, over-size its underground infrastructure to allow other utility and/or telecommunications providers (cable, fiber, etc.) to lease space from EarthGrid in its conduits and/or tunnels underground. EarthGrid intends to bury its conduits deep enough underground (e.g., 30 meters below grade) along public rights of way to be hardened against disruption. This additional underground infrastructure has the potential to increase the capacity of available telecommunications services and improve both the resilience and reliability of telecommunications services by enabling large bandwidth increases via underground tunnels that to reduce outages during weather events, natural disasters (earthquakes, volcanic eruptions, etc.) or man-made threats. Consequently, EarthGrid intends to offer its secure and resilient communications facilities and services to federal and/or state governments to protect critical infrastructure, including strategic facilities that may be vital to national security. Confidential discussions between EarthGrid and one or more of these parties have already commenced.

- 7) Subsections (A)(14)(a) and (b), related to “proof . . . that service is currently being offered in other jurisdictions by the applicant . . . or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide,” in light of Applicant’s receipt of a CPCN in California in July of 2021 and including clarifying whether Applicant provided those services for the required two years under a different name, did not need a CPCN to provide the qualifying services, or otherwise can explain how it complied with the rule;
- **R746-349-3(14)(a)** “proof of certification in other jurisdictions; and that service is currently being offered in other jurisdictions by the applicant,”
- A) The Applicant is currently authorized to provide local exchange telecommunications services in California, Idaho, and Nevada. Contained in **Exhibit F**.
- The Applicant states that they have applications pending in Wyoming, Nebraska, Texas, Arizona, and New Mexico.
- **R746-349-3(14)(b)** “or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide;”
- A) EarthGrid has provided distributed network services (*e.g.*, DAS, dark fiber, lit fiber, and/or small cell) on a wholesale basis for approximately 18 months in California, which is less than two years. However, EarthGrid holds authorizations to provide intrastate telecommunications services in California, Nevada, and Idaho.
- 8) Subsection (A)(17), related to illegal activities of the Applicant or any of its affiliates in any jurisdiction, including sanctions imposed against the Applicant, copies of orders from government bodies, and the Applicant’s response, in light of Applicant’s responses in its California CPCN application.
- **R746-349-3(17)** “a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction. This statement should include the following”
- A) The Division found that Mr. Helming was investigated for certain behaviors in raising investment monies for an energy company in 2002, by the State of Kansas and the State of Missouri. In the State of Kansas, it was a civil matter without any criminal allegations. In the State of Missouri, no fines, penalties, or findings of wrongdoing were found.

## **Conclusion**

Based on the Division's review of the filing, we conclude the information by EarthGrid compiles with the requirements listed under Administrative Rules R746-349-3 and as soon as the remaining outstanding bond requirement is satisfied the public interest will be promoted by the Commission granting EarthGrid PBC, Inc. a CPCN and recommends the Commission approve the application.

Cc: Troy Helming, CEO, EarthGrid PBC, Inc.  
Justin Jetter, Assistant Attorney General, State of Utah  
Office of Consumer Services, State of Utah