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November 22, 2021

VIA E-MAIL

Connie Chen
Energy Division
Public Utilities Commission
500 Van Ness Avenue
San Francisco, CA 94102

Re: Zayo Group, LLC's Prineville to Reno Fiber Optic Line Project (Application A.20-10-008) -
Response to Data Request No. 4

Dear Ms. Chen:

I write on behalf of my client Zayo Group, LLC to provide a response to the Data Request 4. As is detailed in the attached response, the Project, which has remained unchanged since submittal of the PEA, has been and is defined at a level sufficient to allow for an accurate and thorough analysis of potential impacts. While refinements maybe made during the final design, these refinements are anticipated to result only in a reduction of potential impacts as they would only be implemented to avoid resources. We have taken a conservative approach to estimating impacts so that a "worst case" analysis can be completed and the CPUC and the public can be made aware of the highest level of impacts that could occur. With this submittal you should now have all the information necessary to complete the administrative draft of the Environment Impact Report ("EIR") for Zayo's Prineville to Reno Fiber Optic Line Project (the "Project").

In Data Request 4, you indicated that Zayo had yet to provide a clear and stable "Project Description." We believe that this conclusion is not accurate and is premised on a misunderstanding as to how the impacts have been assessed in the PEA and related documents as well as how the Project may be refined as a result of the cultural resource surveys. We agree that an accurate and consistent project description is prerequisite to an informative and legally sufficient environmental document. *See County of Inyo v. City of Los Angeles* (1977) 71 CA3rd 185, 199 (a "finite project description is indispensable to an informative, legally adequate EIR"). This does not mean, however, that changes/refinements cannot be made during and even following development of an EIR. In fact, CEQA encourages agencies to conduct the analysis in the early stages of a project, where changes to avoid or reduce impacts can most readily be made.

The case of *Sierra Club v. City of Orange* (2008) 163 CA4th 523 is instructive. In that case, the plaintiffs claimed that a project description for, among other things, a general plan amendment that would require annexation was deficient because the precise boundaries for annexation areas were not yet determined. The Court rejected that argument as the City had adequately considered

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the potential level of impacts, by taking a broader, worst-case scenario approach. *Id. at 533*. The Court recognized that allowing for flexibility in the process was appropriate and consistent with the intent of CEQA. *Id.*; see also *Dusek v. Redevelopment Agency* (1985) 173 CA3d 1029, 1041 (rejecting a CEQA challenge to a project description where defendant agency approved project narrower than one described in the EIR). Here like in *Sierra Club*, the PEA describes and analyzes a broader area than will actually be utilized for installation of the Project, adequately assesses all potential impacts that could occur, identifying a maximum level for each, and describes mitigation to offset that level of impact.

Additionally, while a project description must include sufficient information to allow the decisionmaker and the public to understand the full scope of a project, the project description "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact." 14 CCR § 15124. In *Dry Creek Citizen Coalition v County of Tulare* (1999) 70 CA4th 20, the leading case regarding the level of detail required in a project description, the court noted that CEQA requires a "general description" of the characteristics of a project but does not require all the particulars or details. *Id. at 28*. *Dry Creek* involved a challenge to an EIR for an expansion of a surface mining project which would require several stream diversion structures. The EIR provided a conceptual design for these features. Rejecting the challenge, the court found that the EIR did not need to include "final design" for the structures. So long as the features are conceptually described at level that allows for analysis of potential impacts and consider mitigation measures, nothing more is required. Here, like in *Dry Creek*, all Project features have been adequately described to allow for a full consideration of all potential impacts.

We would like to schedule a time to review the attached responses to Data Request 4 so we can make sure that you have all the information you need. We understand that the intent is still to complete the document, with the exception of the cultural resource section and share the administrative draft with Caltrans as soon as possible. Please let us know when you and your team area available for a call.

Sincerely,

/s/ Ella Foley Gannon

Ella Foley Gannon

EFG/Typist Initials
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