

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of Southern California Edison Company (U 338-E) for a Certificate of Public Convenience and Necessity Concerning the Tehachapi Renewable Transmission Project (Segments 4 through 11)

Application 07-06-031
(Filed June 29, 2007)

**CITY OF ONTARIO'S PETITION FOR MODIFICATION TO ORDER THE
UNDERGROUNDING OF SEGMENT 8B**

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I. Introduction

Pursuant to the Rules of Practice and Procedure (RPP) 16.4, the City of Ontario (City) respectfully petitions the Commission to modify Decision 09-12-044 as modified by related decisions¹ (the Decisions). The latest component of the Decisions was Decision 14-07-029 issued on July 11, 2014. As explained below, additional facts have arisen since the issuance of D.09-12-044 which render certain findings of fact and conclusions of law in the Decision erroneous as applied to Segment 8B of the Tehachapi Renewable Transmission Project (TRTP). Specifically, the Commission’s decision to modify Decision 09-12-044 as set forth in the Decisions to authorize the undergrounding of Segment 8A of the TRTP through Chino Hills justifies undergrounding Segment 8B of the TRTP through the City. The severe environmental and economic impacts that justified undergrounding Segment 8A justify undergrounding the substantially similar Segment 8B. Failure to do so raises equal protection and fairness concerns. These concerns are compounded by the racial and economic disparities between these communities and the similarities between the respective segments of the TRTP. Ultimately, the City applauds Chino Hills’ successful efforts to underground Segment 8A and simply wishes to ensure that its residents’ receive the same justice.

¹ Decision 09-12-044 has been modified by a host of later decisions. These are Decisions D.14-07-029, D.14-01-005, D.13-10-076, D.13-10-062 and D.13-07-018.

II. Procedural Background²

The Commission issued a Certificate of Public Convenience and Necessity (CPCN) for Segments 4 through 11 of the TRTP on December 24, 2009 in Decision 09-12-044. This decision did not include undergrounding for either Segment 8A or Segment 8B. Chino Hills then filed a Petition to Modify D.09-12-044 to Re-Open the Record with Regard to Segment 8 of the Proposed Route (Petition) on October 28, 2011 based on new facts that indicated the scope and extent of the intrusiveness of the 200-foot tubular steel poles. Importantly, Chino Hills' Petition acknowledged that D.09-12-044 and the Commission's Final Environmental Impact Report (FEIR) indicated that there would be visual impacts due to these poles. However, the Petition correctly noted, "[t]he visual, economic and societal impact of the line has been far more significant than what the City [of Chino Hills] or the Commission envisioned at the time that the CPCN was issued."³

Concurrently with the Petition, Chino Hills filed a Petition to Modify D.09-12-044 to Stay Construction of Transmission Facilities in Segment 8A (Stay Request). The Stay Request urged the Commission to stay construction of the partially completed Segment 8A given the merits of its Petition and the general impacts of the line on the community. This Stay Request was immediately granted by the Commission.⁴

The Commission ultimately granted the Petition. In D.13-07-018, the Commission modified D.09-12-044 to underground Segment 8A. In doing so, the Commission acknowledged that the "actual impacts" of the new tubular steel pole towers constituted new facts, the Petition met its burden of proof under RPP 16.4 to justify modification and generally ordered Southern California Edison (SCE) to underground Segment 8A.⁵ This decision was ultimately modified by subsequent decisions (the last of which was issued on July 11, 2014) but Segment 8A will be undergrounded under the Decisions.

² While the Commission is aware the procedural history of this proceeding is very complicated, this section provides a simplified summary of the relevant background.

³ Petition, p. 4.

⁴ See *Order Granting the City of Chino Hills' Motion for Partial Stay of Decision 09-12-044*, D.11-11-020 (Nov. 10, 2011). This order was ultimately modified a number of times. See D.13-07-018, p. 5-6.

⁵ D.13-07-018, p. 60-68.

III. Standard of Review & City's Ability to Petition for Modification

Under RPP 16.4, anyone can file a petition for modification of a Commission decision. This petition must include the “requested relief and must propose specific wording to carry out all requested modifications to the decision.”⁶ The petition must generally be filed within one year of the decision at issue.⁷ However, later petitions may be filed provided that they justify the delay.⁸ Lastly, “[i]f the petitioner was not a party to the proceeding in which the decision proposed to be modified was issued, the petition must state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier.”⁹

The Commission has clarified that the petition for modification is not a rigid procedural tool but a means for achieving substantial justice:

Precedent establishes that the Commission has not applied the justification and timing requirements of Rule 16.4 and its predecessor, Rule 47, in a mechanical way if that would thwart justice; thus, even where the Commission has determined that a petition was not the appropriate procedural remedy, on occasion and for public policy reasons, it has considered the substantive merits and after that review, has either granted or denied the petition.¹⁰

The City meets these procedural requirements. First, the last of the Decisions was D.14-07-029 issued on July 11, 2014. This is well within the one-year requirement. Second, even assuming the one-year time period is calculated from the issuance of D.09-12-44 (December 24, 2009) or D.13-07-018 (July 16, 2013), the City’s delay was justified as the facts supporting its petition for modification were unknown. As explained in D.13-07-018, the actual effects of the line were not known until they began to be constructed. Construction began within the City after April this year. Once these facts were known, the City promptly filed this petition for modification. Moreover, the City was not aware that similar communities would be treated differently until D.13-07-018 provided an undergrounding exemption for Chino Hills, and all requests for rehearing on this decision were not decided until D.14-07-029 was issued on July 11, 2014.

⁶ RPP 14.4(b).

⁷ RPP 14.4(d).

⁸ RPP 14.4(d).

⁹ RPP 14.4(e).

¹⁰ D.13-07-018, Conclusion of Law #1, p. 65-66.

Third, while the City did not participate in A.07-06-031 as a formal party, it submitted numerous California Environmental Quality Act (CEQA) comment letters throughout the process.¹¹ However, to the extent RPP 16.4 requires the City to indicate its interest in the proceeding and explain why it only participated in the CEQA process, the City is clearly interested in this proceeding as Segment 8B passes through the City. The adverse impacts of this line, which only became clear after its partial construction, occur within the City. In addition, the City previously limited its participation in this proceeding for economic reasons.

As noted in D.13-07-018, Chino Hills spent \$1.8 million during the initial proceeding with another \$2 million on the petition. While the City appreciates that jurisdiction's decision to participate fully in the proceeding and the result it obtained, \$3.8 million is a significant sum of money that the City simply could not spend at that time. However, now that the true impacts of the lines are apparent and in an effort to ensure equal treatment for its residents, the City will spend the public resources necessary to achieve a similar result.¹²

IV. New Facts Justify Modification

There are three categories of new facts that justify modification of the Decisions. First, as explained in D.13-07-018, the actual impacts of the new 200-foot tubular steel poles is simply more substantial than ever anticipated in the FEIR. Second, the Commission's anticipation in D.13-07-018 that these impacts would be unique in Chino Hills has been belied as construction has begun in the City. In fact, these impacts are the same or even worse in the City. Third, the Commission's decision in D.13-07-018 to underground Segment 8A is a new fact. It raises equal protection and fairness concerns, especially given the economic and racial disparity between Chino Hills and the City.

A. The Actual Impacts of the Line are Greater than Anticipated

As explained by Chino Hills in its Petition, while the FEIR accurately explained the construction of the line through Segment 8A and Segment 8B, "[t]he visual, economic and societal impact of the line has been far more significant than what the City [of Chino Hills] or the

¹¹ See D.09-12-044, p.5.

¹² It is troubling that significant taxpayer resources must be spent on these proceedings to fairly and fully represent local concerns. However, as public agencies are not eligible for intervener compensation, that is an issue that requires legislative attention.

Commission envisioned at the time that the CPCN was issued.”¹³ This is true in the City as well. The same 200-foot tubular steel poles are being erected in residential areas of the City.¹⁴ These towers depress property values, affect quality of life and generally stand as community-wide visual impairments. The effect of these towers is not in dispute.¹⁵

B. The Impacts to the City are the Same or Worse than Those in Chino Hills

In modifying D.09-12-044 to order undergrounding in Chino Hills, the Commission determined that the line uniquely affected Chino Hills. Specifically, the Commission noted that (1) the right of way (ROW) is the narrowest along the TRTP, (2) the affected section in Chino Hills is longer than elsewhere and (3) a large number of residences border the ROW.¹⁶ While the City appreciates the Commission’s reasoning and reasonable forecast, the actual construction of the lines demonstrate that these impacts are equally applicable to the City.

First, the ROW is essentially the same 150-foot distance through substantial portions of the City as it is through Chino Hills.¹⁷ As such, all concerns regarding the narrowness of the ROW equally apply to the City. Second, the fact that the line through Chino Hills is longer than through the City does not lessen the impact to affected portions of the City. The portions of the City affected by the line are impacted in the same manner and to the same extent as those sections in Chino Hills. For example, the height of the towers is the same in both cities. Third, while a smaller number of residences are impacted within the City, the impact to those residences is the same as the impact to residences within Chino Hills. In fact, the shorter segment of the line through the City likely explains the disparity in affected residences.

Moreover, the impacts to future City residents is greater in Ontario. The City annexed 13 square miles of former agricultural preserve land in south Ontario which is beginning to be developed. To the east of the Cucamonga Channel, the NMC Builders, LLC. consortium has invested over \$150 million in backbone infrastructure (streets, sidewalks, curb/gutter, water system, recycled water, sewer, storm drains, parks, etc.) in support of their planned residential, commercial and retail development. At buildout, the entire 13 square mile area (New Model

¹³ Petition, p. 4.

¹⁴ See Attachment A containing pictures of TRTP towers within the City.

¹⁵ See D.13-07-018, Finding of Fact #1, p. 60.

¹⁶ D.13-07-018, p. 19-20.

¹⁷ D.13-07-018, p. 19, Table 1.

Colony) will add approximately 120,000 to 130,000 new residents. And the SCE easement, where these towers are being constructed, runs right through the New Model Colony. This will depress land values around the easement and will negatively impact the potential sales prices of new housing (hurts developers), housing values once built (hurts homeowners), and by extension property tax revenues collected by San Bernardino County, the City (impacting provision of government services), school districts and special districts serving the area. Accordingly, the construction of the line has proven that the impact to the City is the same or worse than the impact to Chino Hills.

C. Fundamental Fairness and Equal Protection Requires Treating the City and Chino Hills the Same

Undergrounding Segment 8A through Chino Hills without undergrounding Segment 8B through the City is fundamentally unfair and raises concerns that similarly situated communities have been treated fundamentally differently by the Commission. There is simply no reasonable rationale basis for requiring SCE's ratepayers (i.e., the community at large) to share the cost of undergrounding Segment 8A while requiring the City's residents to solely bear the impacts of the aboveground Segment 8B.

While the City does not attribute any personal animus to the Commission or its staff, these concerns are compounded given the racial and economic disparities between the communities. Based on the 2010 Census, the City's population is 163,924.¹⁸ The median income in the City is \$54,994, with 16.4% of the population living below the federal poverty line. By contrast, Chino Hills' population is 74,799.¹⁹ The median income is \$97,065, with 6.3% of the population living below the federal poverty line.

Moreover, the decision not to underground the lines in the City has a discriminatory impact on the Hispanic and African American populations in the City of Ontario. The census tracts affected by the TRTP in the City have a significantly greater proportion of Hispanic and African American residents than do the affected census tracts in Chino Hills. In Chino Hills, where the TRTP will be undergrounded, the affected population is 22.8% Hispanic and 4.6% African American. In contrast, in Ontario, where the TRTP's 200 foot towers will be visible

¹⁸ See <http://quickfacts.census.gov/qfd/states/06/0653896.html>.

¹⁹ See <http://quickfacts.census.gov/qfd/states/06/0613214.html>.

from the resident’s backyards, the affected population is 49.5% Hispanic and 14.1% African American. Below is a chart outlining these ethnic and racial differences:

Category	Ontario	Ontario – Affected Tracts	Chino Hills	Chino Hills – Affected Tracts
Total Population	163,924	7,060	74,799	21,133
Hispanic or Latino (%)	113,085 (69.0%)	3,492 (49.5%)	21,802 (29.1%)	4,814 (22.8%)
African American (%)	10,561 (6.4%)	992 (14.1%)	3,415 (4.6%)	977 (4.6%)

Given the demographic differences between the communities, their disparate treatment is especially concerning. Whether through less access to resources or otherwise, the residents of Ontario were unable to mount the exorbitantly expensive campaign necessary to underground Segment 8B. It is unfair and a denial of equal protection to penalize the City’s residents. As such, basic notions of fundamental fairness mandate undergrounding Segment 8B.

V. Requested Relief

The City requests that the Commission modify the Decisions to afford its residents equal treatment. Importantly, the Decisions should be modified to provide for the undergrounding of Segment 8B or equivalent mitigation measures. A complete list of the requested changes to the Decisions is attached as Attachment B.

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VI. Conclusion

Based on the foregoing, the City requests that the Commission grant its petition for modification and modify the Decisions to provide for the undergrounding of Segment 8B or equivalent mitigation measures.

DATED: October 31, 2014

Respectfully submitted,

/s/

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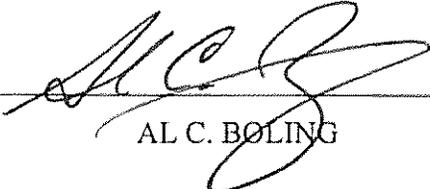
DECLARATION OF AL C. BOLING

I, Al C. Boling, declare as follows:

I, Al C. Boling, am City Manager for the City of Ontario, responsible for, among other things, overseeing the City's challenge to the decision to locate the Tehachapi Renewable Transmission Project aboveground as it traverses Ontario. I have reviewed the document entitled *City of Ontario's Petition for Modification to Order the Undergrounding of Segment 8B*. If called as a witness, I, on information and belief, could attest to the factual statements contained therein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed this 31st day of October 2014, at Ontario, California.


AL C. BOLING