

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 STAY
CONSTRUCTION OF SEGMENT 8B**

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October 31, 2014

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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 Granting a Certificate of Public Convenience and necessity for the Tehachapi Renewable Transmission Project (TRTP) (Segments 4 through 11) as modified by later decisions (Decision)¹ to stay further construction by Southern California Edison (SCE) of the portion of the TRTP which traverses Ontario (Segment 8B) pending resolution of the City of Ontario’s Petition for Modification to Order the Undergrounding of Segment 8B (Undergrounding Petition).

II. Background

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 (Chino Hills 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, the 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,

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.

the Chino Hills 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.”²

Concurrently with the Chino Hills 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.³

The Commission ultimately granted the Chino Hills 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 Chino Hills Petition met its burden of proof under RPP 16.4 to justify modification and generally ordered SCE to underground Segment 8A.⁴ 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 Decision.

III. City’s Ability to Petition for Modification

Under RPP 16.4, anyone can file a petition for modification of a Commission decision. The petition must generally be filed within one year of the decision at issue.⁵ However, later petitions may be filed provided that they justify the delay.⁶ 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.”⁷

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.09-12-044 (December

² Petition, p. 4.

³ 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.)

⁴ D.13-07-018, p. 60-68.

⁵ RPP 14.4(d).

⁶ RPP 14.4(d).

⁷ RPP 14.4(e).

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 its Undergrounding Petition and this stay request. 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.

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.⁸ 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 an effort to ensure equal treatment for its residents, the City will spend the public resources necessary to achieve a similar result.⁹

IV. City's Request for a Stay Should be Granted

In an effort to allow the City's Undergrounding Petition to be considered by the Commission, the City requests that the Commission temporarily stay construction of Segment 8B. The Commission generally considers the following factors when determining whether to grant a stay: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits; (3) a balance of the harm

⁸ See D.09-12-044, p. 5.

⁹ 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.

to the moving party (or the public interest) if the stay is not granted and the decision is later reversed, against the harm to other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case.¹⁰

Here, a stay must be granted under this test. First, as explained in the Undergrounding Petition, the City and its residents will suffer serious and irreparable harm if the stay is not granted. Segment 8B is currently being constructed within the City. As explained in the Chino Hills 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 Commission envisioned at the time that the CPCN was issued.”¹¹ This is true in the City as well. The same 200-foot tubular steel poles are being erected in residential areas of the City. 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.¹²

Second, the City will prevail on the merits. As explained in the Undergrounding Petition, there is simply no reasonable, rational 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.

Third, the balance of harm is greater if the stay is not granted and the decision is later modified in accord with the Undergrounding Petition, than the harm if the stay is granted and the Decision is later affirmed in its current form. If the stay is not granted, SCE may complete construction of the line through the City. This will result in additional disruption to City residents and, if the Decision is modified, ultimately require SCE to remove or modify the completed line. This will result in additional cost to SCE and its ratepayers. However, if the stay is granted and the decision is later affirmed, SCE will not suffer significant harm. SCE will simply be slightly delayed in completing Segment 8B.

¹⁰ D.11-11-020, p. 2 citing *Pac-West Telecomm, Inc. v. Pacific Centrex Services, Inc.*, Order Granting Stay of .08-01-031 [D.08-04-044] (2008) 2008 Cal. PUC LEXIS 155, *4-*5.

¹¹ Petition, p. 4.

¹² See D.13-07-018, Finding of Fact #1, p. 60.

V. **Conclusion**

Based on the foregoing, the City requests that the Commission grant its petition for modification and stay the Decision while it considers the merits of the Undergrounding Petition.

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Respectfully submitted,

/s/

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