

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

In the Matter of the Application of SOUTHERN)	
CALIFORNIA EDISON COMPANY (U 338-E))	Application 07-06-031
for a Certificate of Public Convenience and)	
Necessity Concerning the Tehachapi Renewable)	(Filed June 29, 2007)
Transmission Project (Segments 4 through 11))	
_____)	

**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E)
RESPONSE TO THE CITY OF ONTARIO’S APPLICATION FOR REHEARING**

ANGELA WHATLEY

Attorney for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-3618
Facsimile: (626) 302-6736
E-mail: angela.whatley@sce.com

Dated: June 30, 2015

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

In the Matter of the Application of SOUTHERN)	
CALIFORNIA EDISON COMPANY (U 338-E))	Application 07-06-031
for a Certificate of Public Convenience and)	
Necessity Concerning the Tehachapi Renewable)	(Filed June 29, 2007)
Transmission Project (Segments 4 through 11))	
_____)	

**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E)
RESPONSE TO THE CITY OF ONTARIO’S APPLICATION FOR REHEARING**

I. INTRODUCTION

Pursuant to Commission Rules of Practice and Procedure, Rule 16.1(d), Southern California Edison Company (SCE) submits this response to the City of Ontario’s Application for Rehearing (Ontario AFR). Per Commission Rules of Practice and Procedure, Rule 16.1(c):

[a]pplications for rehearing shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.

D.15-05-004 (Decision) is lawful and correct, and Ontario’s AFR should be denied because it fails to identify any legal error. Instead, Ontario erroneously attempts to relitigate its Petition for Modification To Order Undergrounding of Segment 8 (Ontario PFM). The Ontario AFR therefore should be denied.

II. THE DECISION IS LAWFUL AND CORRECT

A. Ontario Had Ample Knowledge About the Design and Potential Effects of the Structures To Be Constructed in the City

The Commission did not commit legal error in concluding that Ontario was on notice about the potential impacts of the Tehachapi Renewable Transmission Project (TRTP) on Ontario. As noted in the Decision, Ontario commented on the 2009 TRTP Final Environmental Impact Report (Final EIR). The Final EIR included information about the range of heights of the proposed structures to be

constructed through the City. The Ontario City Manager's Office was on the Commission's service list throughout this proceeding, including the initial round of proceedings in 2009 and the undergrounding proceeding initiated by the 2011 Chino Hills Petition for Modification. Ontario also sent five letters to the Commission between 2007 and 2013 regarding the Project's design. The approximately 200-foot structures constructed in Chino Hills, approximately four miles from Ontario, existed for all to view between 2011 and 2013.

Yet, Ontario ignores these facts in its AFR and argues that its request for undergrounding in 2014 must be treated exactly the same as Chino Hills' request in 2011. Ontario claims the Decision is in "conflict" with the Commission's decision to underground in Chino Hills. This argument is misplaced. Ontario's 2014 request for undergrounding was made under materially different circumstances from Chino Hills' 2011 request: Ontario had years to observe the structures constructed in Chino Hills and received notice of the extensive Commission proceedings evaluating Chino Hills' undergrounding request. Yet, Ontario filed nothing until 2014. The Decision correctly identifies the distinguishing factors and correctly concludes that Ontario's claims of ignorance are unpersuasive.

B. The Decision Correctly Dismisses Ontario's Untimely PFM Pursuant to Rule 16.4

Under Rule 16.4, Ontario has the burden of proof to justify the relief requested (Rule 16.4 (b)), demonstrate timeliness (Rule 16.4(d)), and explain why Ontario did not participate in the proceeding earlier (Rule 16.4(e)).¹ The Decision correctly concludes that Ontario has not met its burden under Rule 16.4.

Ontario's arguments to the contrary are unpersuasive. Ontario failed to justify the extraordinary relief requested, *i.e.*, undergrounding of a substantially completed overhead line at a late date when Ontario had been aware of the Project scope and Project proceeding for years.² Ontario failed to provide compelling evidence justifying the substantial delay to the completion of this critical transmission project that would result if its request for undergrounding were granted.

¹ D.15-05-004 at p. 6.

² *Id.* at pp. 10-17.

Ontario did not justify the untimeliness of its PFM; Ontario filed its PFM in November 2014, almost five years after the initial TRTP Decision in December of 2009,³ about three years after Chino Hills filed its request for undergrounding in 2011,⁴ a and year-and-a-half after the Commission ordered SCE to underground the transmission line in Chino Hills in July 2013.⁵ Ontario offered no persuasive explanation why it could not have filed its PFM in a timely fashion.

Finally, Ontario did not provide a reasonable explanation for why it did not participate in the proceeding earlier. Ontario had ample knowledge of the entire TRTP proceeding, beginning in 2007 when SCE filed its application to construct TRTP through 2013 when the Commission issued the undergrounding decision. Ontario offered no rational explanation of why it waited until November 2014, after the multi-year-proceeding had been closed, to formally participate in the proceeding. The Commission correctly denies Ontario's PFM pursuant to Rule 16.4.

C. The Doctrine of Laches Applies to Ontario's Untimely PFM, Filed Five Years After the Original 2009 TRTP Decision and After Substantial Completion of Construction Through the City

The doctrine of laches requires a petitioner to seek timely relief.⁶ Ontario filed its PFM in November 2014, almost five years after the TRTP Decision in December of 2009, about three years after Chino Hills filed its 2011 PFM, a year-and-a-half after the Chino Hills July 2013 undergrounding decision, and after construction of structures through Ontario was substantially complete. Ontario's request for relief was not timely, particularly considering the notice Ontario received regarding the lengthy and extensive TRTP proceeding and the design of the Project within Ontario, the already-completed structures in Chino Hills, and the issues raised in the Chino Hills' PFM. The Decision, therefore, correctly applies the doctrine of laches.

³ D.09-12-044.

⁴ Petition of the City of Chino Hills to Modify Decision 09-12-044 To Reopen the Record With Regard to Segment 8 of the Proposed Route, October 28, 2011.

⁵ D.13-07-018.

⁶ D.15-05-004 at p. 23.

E. The Commission’s Factual Conclusions Regarding the Relative Impacts on Chino Hills and Ontario Do Not Constitute Legal Error

An applicant for rehearing must identify a legal error; it cannot simply rehash evidentiary issues presented earlier in the proceedings. As previously held by the Commission, “[t]he fact that there is disagreement or contrary evidence on a holding does not indicate any legal error in the Decision.”⁷ In its AFR, Ontario urges the Commission to re-examine its factual findings concerning TRTP’s relative impacts on Chino Hills as compared to Ontario. These factual findings are within the Commission’s discretion to make.⁸ Thus, Ontario’s argument amounts to nothing but disagreement with the Commission’s factual findings, which is not an appropriate basis to seek rehearing.

F. A Substantial Delay to the Completion of TRTP Would Occur if Ontario’s Untimely Request to Underground Were Granted

The Commission’s five-year estimate for the amount of delay that may result from review of Ontario’s request is not only factually accurate, but also does not constitute legal error. There is substantial evidence in the record to justify this estimate. Supported by the record in the underlying proceeding, SCE noted in its response to Ontario’s PFM that if the Commission were to grant Ontario’s late-filed request for undergrounding:

[T]here would be substantial delay to the completion [of] Segment 8 due to, among other things: (1) the development of a design for the underground portion of the transmission line in Ontario; (2) additional proceeding before the Commission to evaluate whether the Commission should adopt undergrounding in Ontario, including a review of the design and the cost of any underground facilities; (3) procurement and manufacturing of the cable and (4) and necessary supplemental CEQA review.⁹

The Decision takes similar facts into account when it estimates a delay of at least five years.

The Decision considers the two-to-three year construction time that was estimated for the underground

⁷ See D.09-07-024 at 2 (holding that the vast majority of petitioner’s arguments for rehearing were improper attempts to relitigate evidentiary issues decided by the Commission).

⁸ See D.13-07-018 at 18-20, 51, 60-61, 66.

⁹ SCE’s Response to the City of Ontario’s Amended Petition for Modification To Stay Construction of Segment 8 at 17-18.

portion through Chino Hills.¹⁰ The Decision also discusses the additional time that would be required for the required CEQA review. Unlike in Chino Hills, the TRTP Final EIR did not evaluate any undergrounding alternatives in Ontario. Thus, review of undergrounding in Ontario would likely be lengthier than the one-and-a-half year review for Chino Hills undergrounding.¹¹ The Decision also notes that TRTP's underground portion through Chino Hills has a targeted completion date in 2016, which is five years after Chino Hills filed its petition.¹² For these reasons, the Decision's estimate of a delay of at least five years is amply supported in the record and is not legal error.

G. Information in the Record Supports the Decision's Discussion on the Status of Segment 8 Through Ontario

The Decision relies on the information regarding construction and timing of Segment 8, submitted in the Declaration of Donald E. Wright, included as Attachment A to SCE's Response to Ontario's PFM (Wright Declaration). The Wright Declaration states that construction activities on Segment 8 in Ontario were substantially complete on November 21, 2014, and that only a few activities remained, such as: signage installation; restoration activities; completion of certain access roads, and minor quality assurance activities.¹³ The Decision references the construction update status in the Wright Declaration and states that the CEQA Project Manager confirmed the status, i.e., that the work is 95% complete and that the only remaining work is some additional electrical testing, final clean up, recontouring and reseeding.¹⁴ In other words, the CEQA Project Manager simply confirms nearly the same information that is included in the Wright Declaration, which is part of the record. Ontario cites no authority that the Administrative Law Judge may not consult the Energy Division to confirm evidence cited by the parties in a proceeding about the status of an ongoing project under the Energy Division's jurisdiction. The Commission therefore does not commit legal error in consulting with the Energy Division in rendering a decision on a party's PFM.

¹⁰ D.15-05-004 at 15.

¹¹ *Id.*

¹² *Id.*

¹³ Declaration of Donald E. Wright, Attachment A SCE's Response to the City of Ontario's Amended Petition for Modification To Stay Construction of Segment 8 at ¶7.

¹⁴ D15-05-004 at 8-9.

III. CONCLUSION

Ontario does not identify a legal error or factual inaccuracies in the Decision. Rather, Ontario's AFR amounts to an attempt to relitigate issues considered and rejected by the Commission in its Decision. Ontario's AFR should therefore be denied.

Respectfully submitted,

/s/ ANGELA WHATLEY

By: Angela Whatley

Attorney for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-3618
Facsimile: (626) 302-6736
E-mail: angela.whatley@sce.com

June 30, 2015