



**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)

**PETITION OF THE CITY OF CHINO HILLS
TO MODIFY DECISION 09-12-044
TO STAY CONSTRUCTION OF TRANSMISSION FACILITIES IN SEGMENT 8A**

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Pursuant to Rule 16.4 of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure the City of Chino Hills (Chino Hills or the City) Petition 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) (the TRTP Decision) to stay further construction by Southern California Edison (SCE) of the portion of the TRTP which traverses Chino Hills(Segment 8A) pending resolution of the Petition for Modification of D. 09-12-044 to Reopen the Record With Regard to Segment 8A of the Proposed Route (Petition to Reopen) filed on October 28, 2011.

I. INTRODUCTION AND BACKGROUND

As detailed in the Petition to Reopen, the TRTP Decision grants SCE a Certificate of Public Convenience and Necessity for Segments 4 through 11 of the TRTP, which includes the Segment (8A) which crosses through Chino Hills. With respect to Segment 8A, the Decision approved SCE's proposed route (Alternative 2) which, for a three mile stretch would erect 200 feet tall transmission structures directly the behind the homes of Chino Hills' residents on a narrow right-of-way. This Decision came over strenuous opposition of the City which argued

the severe negative impacts which Alternative 2 would inflict on the City as well as presenting its own Alternative 4CM which would have allowed the line to move forward but have taken it out of the backyards of the City's residents.

On January 25, 2010 the City filed an application for rehearing of the decision, illustrating that the selection of the route which adversely affects the City is not supported by substantial evidence, is inconsistent with the California Environmental Quality Act (CEQA) and implementing precedent, effects a violation of General Order 95 and is a product of arbitrary and capricious decision-making. The Commission has yet to act on this rehearing request which was filed almost two years ago.

The filing of an application for rehearing, however, does not stay a decision,¹ so construction of the TRTP through Chino Hills went forward, and at this time the transmission poles and towers have been erected in the City creating a blight on the City's viewscape and casting monstrous shadows over the homes along the right-of-way. As detailed in the Petition to Reopen, the visual, economic and societal impact of the line has been far more significant than what the City or the Commission envisioned at the time that the CPCN was issued. The gravity of the situation, significantly more severe than that contemplated at CPCN issuance, compelled the City to file a Petition to Reopen the proceeding based on these new facts which render certain of the findings of fact and conclusion of law contained in the Decision erroneous as they apply to the Commission approved "Environmentally Superior Alternative" for the segment of the TRTP through Chino Hills. Chino Hills is seeking through the Petition to Reopen to modify those findings and conclusions, and obtain the Commission's agreement to reopen the record of the proceeding in order to more fully explore less destructive alternatives for the section of the

¹ California Public Utilities Code § 1735.

TRTP that traverses Chino Hills, or, at minimum to adopt additional mitigation measures to address the severe environmental and economic damage inflicted on Chino Hills and its residents through the construction of the TRTP.

Given the extremely negative impact which the TRTP is having on the community of Chino Hills, the Commission, consistent with its mission to serve the public interest by protecting consumers, should stay any further construction on the section of the TRTP in Chino Hills to allow for further consideration of (1) whether, given the new facts presented in the Petition to Reopen, its TRTP Decision is legally supportable as that Decision applies to the route through Chino Hills, and, if not (2) what alternative routes and /or mitigation measures are available to reduce the impact on the City's residents.

The City recognizes that, as a general rule, Petitions for Modification are to be filed within one year of the issuance of the subject decision. Commission Rule 16.4(d), however, provides for late filings upon showing of significant justification. In this instance, the facts which prompted the City's Petition to Reopen and this accompanying Petition to Stay were not known within a year of the Commission issuing Decision 09-12-044. Rather, it was not until the transmission structures were built through the City that the new facts presented themselves.

II. GOOD CAUSE EXISTS TO STAY THE EFFECTIVENESS OF THE TRTP DECISION AS SUCH APPLIES TO CONSTRUCTION OF THE LINE THROUGH CHINO HILLS

Rule 16.4(h) of the Commission's Rules of Practice and Procedure provides that "[u]nless otherwise ordered by the Commission, the filing of a petition for modification does not stay or excuse compliance with the order of the decision proposed to be modified."² Accordingly, absent additional action by the Commission, Decision 09-12-044, as currently

² CPUC Rules of Practice and Procedure, Rule 16.4(h).

manifested remains in effect while the Commission undertakes consideration of the City's Petition to Reopen. Given the substantial additional harm which could be inflicted on the residents of Chino Hills during this interim period, the City, through this Petition, seeks for the Commission to stay the Decision to the extent it authorizes construction for the TRTP through Chino Hills. 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 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.³ Based on these factors, good cause exists to grant this Petition to stay the effectiveness of Decision 09-12-044.

First, the residents of the City of Chino Hills will suffer irreparable harm if the stay is not granted. As explained in the Petition to Reopen, the transmission poles and towers have already been erected in Chino Hills, but the conductors have not yet been strung. The introduction of the monstrous transmission structures into the community has had a staggering impact on the residents as a majority of these structures are located right outside their backdoors. In contrast to the pre-existing 75 foot tall 230 kV towers that were far less visible, the new steel monoliths have the effect of relegating the open space along the right of way to an eyesore. The visual, economic and societal impact of the line has been far more significant than what the City or the Commission envisioned at the time that the CPCN was issued. The transmission structures erected in Chino Hills, contrary to Commission findings, have ruined the quality of life for

³ See, e.g., Decision 08-04-044 at p.3; Decision 07-08-034 at p. 4.

residents in the City, have divided the community, and destroyed the property value of those who reside along the 150 foot right-of-way.

It is appropriate to stay the effectiveness of the TRTP Decision, as such authorizes the construction of the line through Chino Hills, to preserve the current state of construction. This will prevent additional disruption to the City, further degradation of the residents' quality of life,⁴ and the expenditure of funds, long enough to address the City's Petition to Reopen, thus allowing the Commission time to fully consider the full implications of its TRTP Decision.

Second, the City should prevail on its Petition to Reopen. The Petition to Reopen demonstrates that since the issuance of the Commission's TRTP Decision almost two years ago, and the resulting construction of the transmission structures through Chino Hills, additional facts have surfaced which render certain of the findings of fact and conclusion of law contained in the Decision erroneous as they apply to the Commission approved "Environmentally Superior Alternative" for the segment of the project that traverses Chino Hills. The Commission cannot let stand these erroneous findings and conclusions. The removal / modification of these findings and conclusions will render the determination that the SCE proposed route through Chino Hills is the Environmentally Superior Alternative void, necessitating that the Commission reopen the record to consider other alternative routes.

⁴ The stringing of the conductors will only serve to make the structures even more prominent further dividing the community, impacting residents enjoyment of their environment, and further diminishing property values. Moreover the transport of electricity across those conduction will, as acknowledged by the EIR, adversely impact residents' perception of safety in their own community:

Project features and the potential for impacts that may have an adverse effect on Quality of Life. For instance, there is a great deal of public interest and concern regarding the potential health and safety effects of Electric and Magnetic Fields (EMF) that would be introduced or intensified through implementation of the proposed Project. EMF could have an indirect adverse effect on Quality of Life by resulting in an alteration of the

(footnote continued)

Third, the balance of harm is greater if the stay is not granted and the decision is later modified in accord with the City's Petition to Reopen, than the harm if the stay is granted and the TRTP Decision is later affirmed in its current form. As stated above, if the stay is not granted then SCE could proceed with the stringing of the conductors and any other necessary project elements to complete the construction of the TRTP through Chino Hills. This will result in additional disruption to the lives of the City's residents as well as the additional expenditure of funds by SCE (and thus its ratepayers). However, if the stay is granted and the decision is later affirmed, SCE will not suffer significant harm. While it may lose a few months of construction time for the Chino Hills segment of the TRTP, the requested stay would not prohibit it from working on other sections.

Moreover, Chino Hills notes that given the Federal Aviation Agency's required mitigation measures associated with the 200 foot tower/poles impacts on aviation safety in the area, SCE was recently compelled to file a Petition for Modification.⁵ In order to allow the Commission sufficient time for environmental review of the visual impacts and other resource impacts of the mitigation measures required by the FAA, which consist of changes to some 200 tower structures and catenaries, a stay of construction of the line was issued by the Commission

Therefore, an additional stay to address issues in Petition for Reopening has less impact on the overall project timeline and argues for maintaining the stay in place (as it applies to the section of the TRTP through Chino Hills) to address the important issues raised in the Petition to Reopen before construction resumes.

perception of safety and/or security that members of the public have of their communities. *See* FEIR, p. 3.12-23.

⁵ *See* Southern California Edison Company Petition to Modify Decision 09-12-044, A. 07-06-031 (October 17, 2011)

III. CONCLUSION

For all these reasons, the Commission should stay the effectiveness of the TRTP Decision as such decision applies to the construction of the line through Chino Hills pending resolution of the City's Petition to Reopen.

Respectfully submitted this October 31, 2011 at San Francisco, California.

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