

City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: FEBRUARY 28, 2017

FROM: PUBLIC UTILITIES DEPARTMENT WARDS: 1 & 2

SUBJECT: RESOLUTION FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR ACQUIRING AND AUTHORIZING THE CONDEMNATION OF CERTAIN SOUTHERN CALIFORNIA ELECTRICAL FACILITIES AND REAL PROPERTY INTERESTS WITHIN THE CITY OF RIVERSIDE ANNEXATION AREAS NO. 95 AND NO. 99, AND AUTHORIZING THE CITY ATTORNEY TO FILE A COMPLAINT IN EMINENT DOMAIN, AND THE TAKING OF ALL OTHER ACTIONS REQUIRED UNDER THE CITY'S EMINENT DOMAIN AUTHORITY

ISSUE:

Adoption of a Resolution of Necessity authorizing the initiation of an eminent domain proceeding to acquire electrical facilities and real property interests from Southern California Edison within the City of Riverside Annexation Areas No. 95 and No. 99.

RECOMMENDATIONS:

That the City Council:

1. Conduct a public hearing to consider the adoption of a Resolution of Necessity to acquire electrical facilities and real property interests from Southern California Edison within the City of Riverside Annexation Areas No. 95 and No. 99 (Attachment 1) and provide all parties that have an interest in the affected properties, or their representatives, an opportunity to be heard on the issues related to the Resolution;
2. Find that the transfer of ownership from Southern California Edison to the City is exempt from CEQA;
3. Make the following findings: (a) the public interest and necessity require the proposed public project described in this report; (b) the proposed public project is planned and located in a manner to be most compatible with the greatest public good and the least private injury; (c) the real property interests being sought to be acquired as described in the Resolution are necessary for the proposed public project; and (d) that the offer required by Government Code 7267.2 has been made to the owner of record;
4. Adopt the resolution declaring that the City Council's formal decision has been made relative to each of the foregoing findings to acquire the subject real property interests and

electrical facilities through an eminent domain proceeding;

5. Authorize the City Attorney to prepare and file a complaint in eminent domain and take all other actions necessary to acquire the subject real property interests and electrical facilities; and
6. Except on matters involving policy determinations to be made by the City Council, authorize the City Manager, or his designee, to prepare and execute the appropriate documents and take all other actions as required under the City's eminent domain authority.

BOARD RECOMMENDATION:

On October 24, 2016, the Board of Public Utilities (Board) with 7 of 7 members present, met to consider recommending that the City Council adopt of a Resolution of Necessity authorizing the initiation of eminent domain proceedings to acquire electrical facilities and real property interests from Southern California Edison within the City of Riverside Annexation Areas 95 and 99; recommending that City Council find that the transfer of ownership is exempt from CEQA; and approve Work Order No. 1704094 in the amount of \$444,000 for deposit into the State Condemnation Fund for the eminent domain process.

The Board unanimously recommended that City Council adopt a Resolution of Necessity authorizing the initiation of an eminent domain proceeding to acquire electrical facilities and real property interests from Southern California Edison within the City of Riverside Annexation Areas No. 95 and No. 99 and that the transfer of ownership is exempt from CEQA. The board deferred to another date the work order for the funds needed for the eminent domain process.

The Board asked staff to provide to City Council information as to any representations made to residents by the City of Riverside or the Local Agency Formation Commission (LAFCO) when the areas designated as Annexation Nos. 95 and 99 were annexed to the City.

LEGISLATIVE HISTORY:

On February 1, 2005, City Council adopted Resolution No. 20863 approving the annexation of the area designated as Annexation No. 95; and on April 5, 2005, City Council adopted Resolution No. 20911 approving the annexation of the area designated as Annexation No. 99.

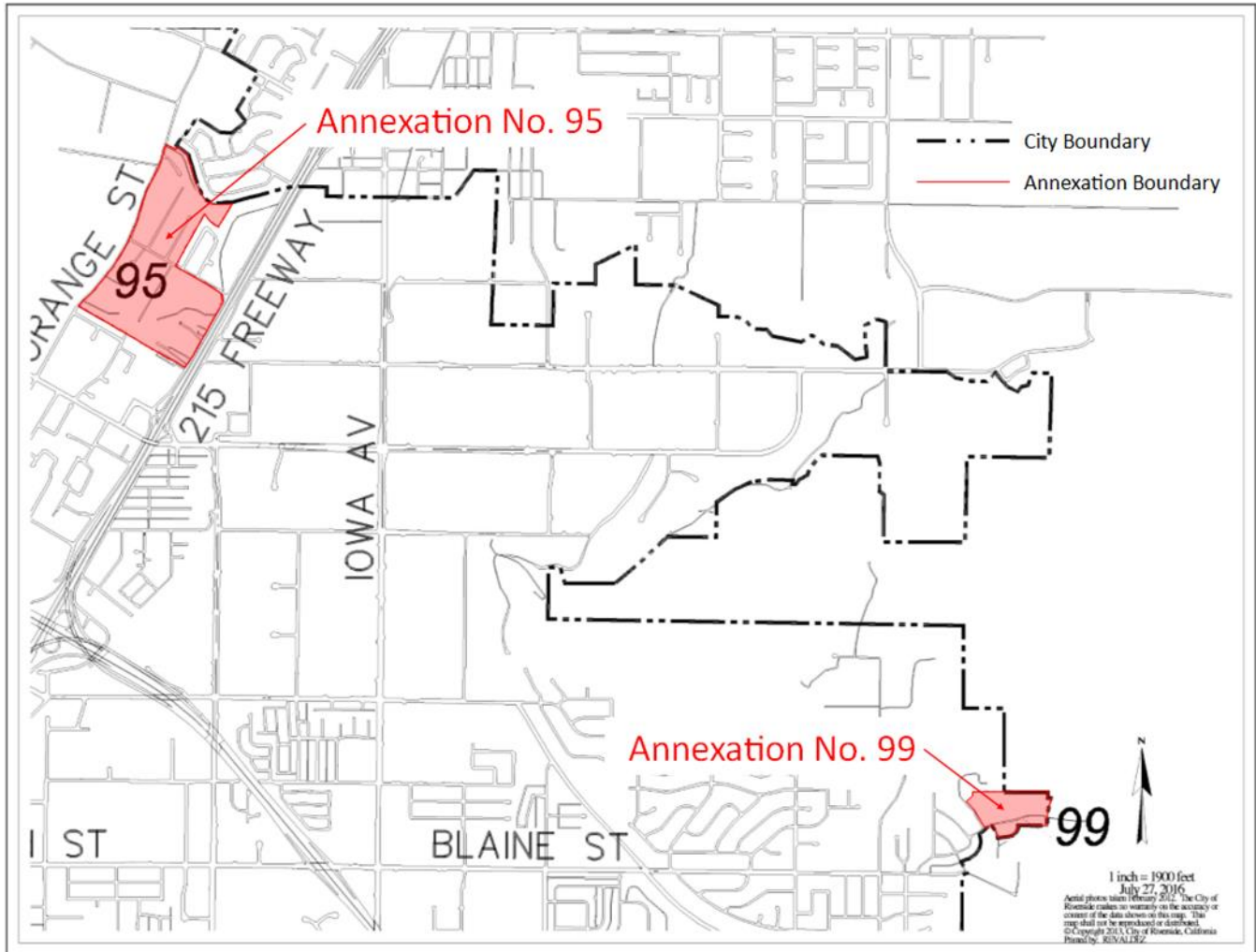
BACKGROUND:

During the high economic growth period, from 2000 to 2008, the City of Riverside (City) annexed several areas with existing and future developments. The existing developments in the acquired annexations included facilities that received electric distribution service from Southern California Edison (SCE). Currently, many of the Riverside residents within the annexed areas are still served by SCE. The City continues to work on acquiring SCE's electrical facilities and real property interests for Annexation No. 95 and Annexation No. 99. The transfer of ownership requires a Resolution of Necessity to be adopted by the City Council in order to authorize the initiation of an eminent domain proceeding to acquire the necessary SCE electrical facilities and real property interests within those areas. The transfer of ownership is not subject to CEQA, pursuant to Sections 15301 (b) (existing facilities) and 15061 (b)(3) (no effect) of the State CEQA

guidelines, California Code of Regulations, Title 14, Chapter 3.

DISCUSSION:

The focus of this City Council action is the acquisition of SCE's electrical facilities and real property interests within Annexation No. 95 and Annexation No. 99. Annexation No. 95 is located northerly of Columbia Avenue, bounded by Orange Street to the west and West La Cadena Drive to the east. Annexation No. 99 is bounded by Galaxie Road to the west and the existing City limits. The acquisition of 121 facilities and 130 service areas are required in Annexation No. 95. The acquisition of 14 facilities and 6 services are required in Annexation No. 99. The locations of Annexation No. 95 and No. 99 are depicted below:



Statutory purchase offers were made to SCE between February 2014 and April 2016. On May 27, 2016, the City received a letter from SCE declining the City's offer for the purchase of SCE's assets in Annexation No. 95 and No. 99. Public Utilities Code Section 851 would first require SCE to obtain approval from the Public Utilities Commission to sell its electrical assets that are currently used to serve the general public. Because SCE has rejected the City's offer, staff recommends that a Resolution of Necessity be adopted and an eminent domain action be filed in court in order to acquire the necessary real property interests and electrical facilities.

LAFCO

On October 24, 2016, the Board asked staff to provide to City Council information as to any representations made to residents by the City of Riverside or the Local Agency Formation Commission (LAFCO) when the areas designated as Annexation Nos. 95 and 99 were annexed to the City. The LAFCO report dated October 23, 2003, is for Annexation No. 95 (Attachment 4) and the report dated December 9, 2004, is for Annexation No. 99 (Attachment 5).

In each of these reports, the following was indicated regarding electrical service:

Annexation No. 95:

“Electrical Power: The City of Riverside provides electrical services to nearly all constituents within the city boundaries. Currently, the annexation area is serviced by Southern California Edison (SCE). City electricity rates are generally lower than SCE’s. After annexation, the city plans to acquire the existing SCE facilities to serve the subject area, however service will not transfer immediately. The acquisition of the facilities necessary for RPU to provide electrical service to the subject area is expected to take a minimum of one year to complete.”

Annexation No. 99:

“Electric Utilities: The Riverside Public Utilities Department is a provider of electrical services within the City of Riverside. Presently the area is provided electrical services from Southern California Edison Company (SCE) through a fringe area service agreement using Riverside Public Utilities power lines. Upon annexation the City would eventually take over electrical services from Southern California Edison. The City of Riverside has long term energy contracts with rates significantly lower than existing Edison rates. The City of Riverside charges their residents a 6.5% utilities tax. The City estimates that after annexation and the City’s takeover of the electrical services, that even after the application of the City’s 6.5% utilities tax, electric rates would be between 43-55% lower for its customers than current SCE rates.”

Hearing and Required Findings:

On February 6, 2017, the required notice of hearing was sent by first class mail to Southern California Edison. The notice specified the City’s intent to consider the adoption of the Resolution, right to appear and be heard on the issues noted below, and that failure to file a written request would result in a waiver of the right to appear and be heard. The City has scheduled this hearing at which all persons who filed a written request may appear and be heard. This hearing has also been scheduled in order for the City Council to make the required findings for the Resolution.

The Resolution requires a two-thirds majority vote to adopt and the City Council must make the following four (4) findings:

1. *Whether the public interest and necessity require the proposed project.*

Riverside Public Utilities (RPU) has an obligation to provide a safe and reliable energy supply and electrical infrastructure to all customers, including government, education, and health facilities within the City limits, so long as there is not another entity providing such electric service. Here, the City wishes to extend such electric service within its City limits,

to an area that is already served by Southern California Edison (SCE). This project will enable RPU to acquire existing utility interests from SCE in order for RPU to better serve the residents of the City.

The public interest is best served by having all areas of the City served by the City's own electric utility. The city limit boundary is a line of demarcation used for many purposes, including the delineation of electric service territory. If the City serves the area and acquires the electrical facilities on the annexation it will control the construction and expense of the added electrical utility facilities in the developing area. Further, the City serving this area would avoid customer confusion for marketing of energy conservation programs. The City spends significant resources to market its energy and water conservation programs to its residents, and there is an efficiency to be realized if the residents receive their information from one provider – the City.

2. *Whether the proposed public project is planned and located in a manner that would be most compatible with the greatest public good and the least private injury.*

The utility interests and easements are pre-existing and owned by SCE. The City is only acquiring utility interests that already exist and nothing more. These interests are necessary for providing electrical service by RPU to City residents in certain annexed areas of the City. Annexation No. 95 and No. 99 were declared categorically exempt from the California Environmental Quality Act (CEQA). As such, the proposed project is planned and located in a manner that will be most compatible with the least private injury to the parcels and property interests that are necessary to complete the project in a manner that enhances the health, safety and welfare of the general public by supplying reliable and safe electrical energy.

3. *Whether the property interests sought to be acquired is necessary for the proposed Project.*

The taking of the property is necessary for the expansion of the electrical distribution system of the City of Riverside into the areas annexed. The purchase by the City of the existing facilities would be more economical than the construction of duplicate facilities and such purchase would also satisfy any obligation by the City to compensate SCE for any of SCE's facilities that are idled by the City taking over the service area. The facilities proposed for purchase can be connected to the City's electrical system after minor modification.

4. *Whether the offer required by Section 7267.2 of the Government Code has been made to the owner of record.*

The statutory offer was made on April 27, 2016 as required and is in substantial compliance with Government Code section 7267.2.

FISCAL IMPACT:

There is no fiscal impact associated with the filing of the lawsuit. The estimated cost to acquire the subject real property interests and electrical facilities is \$444,000. Any such expenditure for the acquisition above this amount will require authorization from the Public Utilities Board and City Council.

Prepared by:	Girish Balachandran, Utilities General Manager
Certified as to	
availability of funds:	Scott G. Miller, PhD, Chief Financial Officer/Treasurer
Approved by:	John A. Russo, City Manager
Approved as to form:	Gary G. Geuss, City Attorney

Attachments:

1. Resolution of Necessities: Southern California Edison
2. Legal Descriptions and Maps
3. PUB October 24, 2016 Minutes
4. LAFCO report for Annexation No. 95
5. LAFCO report for Annexation No. 99
6. Presentation