

Decision 24-03-051 March 21, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Southern California Edison Company
(U338E) for a Certificate of Public
Convenience and Necessity for the
RTRP Transmission Project.

Application 15-04-013

**DECISION DENYING THE CITY OF NORCO'S PETITION FOR
MODIFICATION OF DECISION 20-03-001**

Summary

This decision denies the petition for modification of Decision 20-03-001 filed by the City of Norco and closes the proceeding.

1. Background and Procedural History

Decision (D.) 20-03-001 granted Southern California Edison Company (SCE) a Certificate of Public Convenience and Necessity (CPCN) for the Riverside Transmission Reliability Project (RTRP) and related facilities. As lead agency, the City of Riverside prepared an Environmental Impact Report (EIR) and certified that it complied with the California Environmental Quality Act (CEQA) on February 5, 2013.¹ In 2016, SCE revised the RTRP to underground a portion of the transmission line because the City of Jurupa Valley approved residential and commercial developments within the proposed alignment for

¹ D.20-03-001 at 3.

SCE's portion of the RTRP. The Commission prepared a Subsequent EIR (SEIR) to address the revised project and issued a final SEIR on October 2, 2018.²

The SEIR incorporated by reference the City of Riverside EIR, which evaluated fire risk from the overhead transmission component of the RTRP.³ The EIR recognized that the RTRP would cross "abundant vegetation that may pose conditions conducive to wildfires near the banks of the Santa Ana River."⁴ It also noted that fires "could occur if tree limbs or structures were to interface with a live phase conductor."⁵ However, the EIR determined that vegetation management in conformance with the Commission's General Order 95 and Public Resources Code Section 4293, would reduce the likelihood of vegetation interfacing with the RTRP.⁶ In addition, the EIR adopted Mitigation Measure (MM) HAZ-03, which requires development and enforcement of a Fire Management Plan specific to the RTRP.⁷ The EIR determined that implementation of MM HAZ-03 "would reduce potential fire impacts to less than

² D.20-03-001 at 4.

³ SEIR at 1-7.

⁴ City of Riverside EIR at 3-202.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.* ("[Riverside Public Utilities] and SCE would implement MM HAZ-03, which would require development and enforcement of a Proposed Project-specific Fire Management Plan. Fire safety standards established in the RTRP Fire Management Plan would be followed relative to Proposed Project construction, and construction personnel would be trained to use proper fire prevention and management techniques. As a standard precautionary measure, power would be automatically removed from the line if conductor failure were to occur. Lightning protection would also be provided by overhead groundwires along the line. Prior to construction, SCE would also coordinate with the Riverside County Fire Department to ensure that construction activities and associated lane closures would not hinder firefighting response pathways or delay response time.")

significant levels.”⁸ The SEIR bolstered the City of Riverside’s EIR with additional analysis of the RTRP’s potential fire risk.

Specifically, the SEIR recognized that although transmission lines are designed to withstand high winds and conductor phases are spaced to allow adequate “blow out” room to ensure that the conductors do not make contact with each other or surrounding trees and infrastructure, there is potential for “downed structures.”⁹ But transmission structures contain protection systems to cut off power flow in a fraction of a second.¹⁰ Further, the SEIR stated that regular maintenance inspections which would identify corrosion, equipment misalignment, loose fittings, and other mechanical problems, would reduce the risk of down structures.¹¹ Overall, the SEIR determined the “impact from downed structures would be less than significant.”¹²

The Commission’s SEIR also considered and eliminated “Alternative 8,” which was a proposal to underground the entire transmission line. The Commission eliminated Alternative 8 from further consideration because it would result in substantially greater environmental impacts than the revised RTRP.¹³

The City of Norco (Norco or Petitioner) participated in the Commission’s CEQA review process by providing comments on the SEIR dated May 15, 2018. In its comments, Norco noted its strong concern about the overhead transmission

⁸ *Ibid.*

⁹ Final SEIR at 4.7-24.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Id.* at 3-11.

lines' aesthetic impacts on the Santa Ana River's natural landscape, property values, and recreation resources for residents. Norco also stated its concern about the significant loss of agricultural land, as well as the potential threat to fire safety. However, Norco did not request that the Commission reconsider Alternative 8 to address these concerns at that time.

On November 7, 2018, Norco requested party status in this proceeding. While Norco indicated that its primary interest was participating in a potential "consolidated review and consideration of SCE's interrelated projects," Norco also expressed an interest in ensuring that the Commission "fully consider the construction and placement of high voltage transmission lines in an area designated by the State of California as high fire risk immediately adjacent to the City's borders."¹⁴ On June 17, 2019, as its Motion for Party Status was pending, Norco served testimony, which stated that the fire threat created by overhead transmission lines is residents' most significant concern. In its testimony, Norco asserted that undergrounding the RTRP would mitigate many of the adverse fire threats.¹⁵

On August 12, 2019, the Commission denied Norco's Motion for Party Status in this proceeding because SCE's other projects and the "overhead transmission line segment over the Santa Ana River is outside the footprint of the proposed changes and, therefore, outside the scope of the [SEIR] and this proceeding."¹⁶ Norco did not challenge the Commission's denial of its motion.

¹⁴ Norco's Motion for Party Status at 2-3.

¹⁵ The Prepared Testimony of Kevin Bash on Behalf of the City of Norco, dated and served on June 17, 2019, was marked for identified in the record of this proceeding as Exhibit NOR-1. (*See* Administrative Law Judge's Ruling Denying Norco's Motion for Party Status dated August 12, 2019.) Norco's testimony is also part of the CEQA administrative record for this proceeding.

¹⁶ Administrative Law Judge's Ruling Denying Norco's Motion for Party Status at 1, 2.

Norco also did not challenge the Commission's certification of the SEIR or its decision granting SCE a CPCN in D.20-03-001, which became effective on March 12, 2020 and was issued on March 18, 2020.¹⁷

On October 2, 2023, over three years after the issuance of D.20-03-001, Norco filed this petition for modification (PFM) requesting that the Commission modify that decision to reopen the record and again reconsider the previously rejected Alternative 8. Norco stated that multiple changed factual circumstances within the last two years contributed to greatly increase the risk of wildfire in the overhead portion of the RTRP route, including increased residential development, vegetation growth, and fire incidents in the vicinity of the RTRP route. Norco also points to regulatory changes that underscore the state's priority in identifying and mitigating wildfire impacts.

On November 1, 2023, the Public Advocates Office of the Commission (Cal Advocates) and SCE filed responses opposing Norco's instant PFM. SCE referenced Senate Bill (SB) 901 and its Wildfire Mitigation Plan, which was approved by the Office of Energy Infrastructure Safety (OEIS), to assert that there are extensive wildfire ignition risk practices in place for the RTRP.¹⁸ SCE further stated that the increase in vegetation growth is not a new fact because the Commission was and continues to be aware that the overhead route would traverse areas of dense vegetation when it approved the RTRP. Similarly, Cal Advocates also confirmed that the California Department of Forestry and Fire Protection identified RTRP sites near Norco as fire hazard severity zones with very high-risk status as early as 2007.

¹⁷ D.20-03-001 at 39.

¹⁸ SCE Response at 16 (*citing* OEIS's October 24, 2023 Decision approving Southern California Edison's 2023-2025 Wildfire Mitigation Plan).

The City of Jurupa Valley (Jurupa Valley) filed a response, which stated that “the Commission had considered public health and safety concerns, such as fire hazards, in its original decision.”¹⁹ Nevertheless, Jurupa Valley noted that it does not oppose Norco’s PFM on the condition that the Commission preserves D.20-03-001’s requirement that SCE underground the RTRP through Jurupa Valley’s boundaries. Norco filed a reply on November 13, 2023, agreeing with Jurupa Valley on the point that the Commission need not modify the previously approved undergrounded portion of the RTRP. Norco’s reply also addressed Cal Advocates’ and SCE’s responses.

2. Legal Standard and Discussion

Public Utilities (Pub. Util.) Code Section 1708 authorizes the Commission to “rescind, alter, or amend any order or decision made by it” after providing proper notice to the parties and an opportunity to be heard. By its very nature, the Commission’s authority under Section 1708 is an extraordinary remedy. It must be exercised with care, justified by extraordinary circumstances, and remain consistent with the fundamental principles of res judicata because “Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.”²⁰

Rule 16.4 of the Commission’s Rules of Practice and Procedure governs the filing of a petition for modification, a procedural vehicle that “asks the Commission to make changes to an issued decision.”²¹ Rule 16.4(d) requires petitioners to file and serve their petition within one year of the effective date of the decision proposed to be modified, or to explain the late submission. If the

¹⁹ Jurupa Valley’s Response at 2.

²⁰ D.92058 (1980) 4 CPUC 2d 139 at 149-150; *see also* D.15-05-004 at 6.

²¹ Rule 16.4(a); *see also* D.15-05-004 at 6.

Commission determines the petitioner failed to justify the late submission, “it may on that ground (alone) issue a summary denial of the petition.”²²

Because Norco’s PFM here was filed over three years after D.20-03-001 was issued, Norco bears the burden to justify the late submission. Norco explained that it filed its PFM “at this time due to multiple changed factual circumstances that have combined within the last two years to greatly increase the risk of wildfire in the portion of the RTRP route that is to be constructed with overhead lines.”²³ According to Norco, wildfires have occurred more frequently in Norco and the surrounding communities; there is increased residential and vegetation growth in the vicinity of the RTRP route; and there is an increase in the number of fire incidents in this location.

The Commission takes its role in addressing the risk of utility-involved wildfires seriously. As noted above, the danger of fires caused by or in proximity to the transmission lines was considered by the Commission in the SEIR.²⁴ Since certification of the SEIR, the Commission continues to assess and monitor whether utilities, like SCE, are properly directing resources and taking appropriate measures to address and mitigate wildfire risks. As one example, the Commission coordinates with the OEIS to further the wildfire mitigation mandates in Public Utilities Code Section 8385 et seq, which requires utilities to prepare and comply with wildfire mitigation plans.

Nevertheless, we find that Norco’s PFM does not raise a fire risk that was not previously evaluated and addressed in the proceeding. Norco raised the RTRP’s potential threat to fire safety in its comments on the Commission’s SEIR

²² D.18-09-005 at 4-5 (parenthetical in original).

²³ PFM at 5.

²⁴ Final SEIR at 4.7-24.

many years ago. It noted substantially similar concerns in its motion for party status and testimony, also many years ago. Even in its reply to Cal Advocates' and SCE's responses to this PFM, Norco characterized its concerns as "ongoing."

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We find that Norco did not timely act on these admitted "ongoing" concerns by properly and timely raising them through the CEQA challenge processes or by pursuing timely challenges of the Commission's denial of its motion, the Commission's certification of the SEIR, or the Commission's decision to grant SCE a CPCN.

Norco filed its PFM three years after D.20-03-001 was issued to seek the Commission's reconsideration of similar concerns it raised in 2018 and 2019. The PFM raises again the fire risk previously evaluated and addressed by the SEIR regarding the overhead transmission component of the RTRP. We, therefore, deny Norco's PFM.

3. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

As attachments to its PFM and its reply, Norco included letters from elected officials and members of the public supporting full undergrounding of the RTRP. After issuance of the proposed decision in this proceeding, members

²⁵ Reply of the City of Norco at 7. In Opening Comments on the Proposed Decision, Norco explained that its "ongoing" concern that it raised in its CEQA comments "were milder risks from a bygone era." (Norco Opening Comments at 5.)

of the public submitted additional written comments using the “Public Comment” tab of the online Docket Card. Most comments were from residents of Norco, Riverside, and nearby areas, including Corona, Eastvale, Lake Elsinore, Menifee, and Perris. These comments expressed concern about the RTRP’s fire risk and supported undergrounding. The Commission also received comments from Riverside residents supporting the proposed decision and urging the Commission to move forward with a second connection to the state grid.

4. Procedural Matters

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

5. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Robyn Purchia in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Norco, Cal Advocates, and SCE filed opening comments on March 5, 2024, and reply comments were filed on March 11, 2024, by SCE.

Cal Advocates and SCE support the proposed decision. In its opening comments, Norco requests that the proposed decision be modified to address the changes Norco alleges have occurred, such as a claimed increase in wildfire risks, changes in regulatory guidance, and evacuation concerns. Norco’s comments also allege an increase in annual wildland fire incidents and an increase in public concern and fear of wildfires in the region. To support its points, Norco highlights letters from the Riverside City Council and current and former Fire Chiefs from Riverside County and Norco asking the Commission to reconsider the environmental impacts of the RTRP. The fire risks raised by the commenters

were previously considered and addressed in the proceeding. The proposed decision was revised to highlight some additional areas where the Commission previously considered and addressed fire risks, as well as areas where the Commission continues to consider and address fire risks.

The proposed decision was also revised to add footnote 15 in response to Norco's statement that its 2019 testimony addressing fire risks was never included in the record,²⁶ and acknowledge public comments and parties' pleadings pertaining to the PFM.

6. Assignment of Proceeding

Commissioner Karen Douglas is the assigned Commissioner and Robyn Purchia is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On March 18, 2020, the Commission issued D.20-03-001.
2. On October 2, 2023, Norco filed and served its instant PFM, which requested that the Commission reopen the record to reconsider Alternative 8 of the RTRP.
3. Norco explained that it did not bring the PFM within a year of the effective date of the decision because multiple changed factual circumstances within the last two years contributed to greatly increase the risk of wildfire in the overhead portion of the RTRP route, including increased residential growth, vegetation, and the number of fire incidents in the area greatly increased the risk of wildfire in the overhead portion of the RTRP route.
4. The Commission's SEIR determined the project poses a less-than-significant risk of wildfire. The Commission's SEIR also considered and

²⁶ Norco Opening Comments at 4.

eliminated “Alternative 8,” which was a proposal to underground the entire transmission line.

5. On May 15, 2018, Norco provided comments on the SEIR and stated its concern about the potential threat to fire safety. However, Norco did not request that the Commission reconsider Alternative 8 to address these concerns, nor file further challenges to the certification of SEIR.

6. In 2018, Norco moved for party status in this proceeding based, in part, on its concern about the construction of transmission lines in a high fire risk area. In 2019, Norco served testimony that highlighted the fire threat posed by overhead transmission lines and stated that undergrounding the RTRP would mitigate this threat.

7. On August 12, 2019, the Commission denied Norco’s motion for party status. Norco did not challenge the ruling.

8. Rule 16.4 of the Commission’s Rules of Practice and Procedure governs the filing of petitions for modification.

9. Pub. Util. Code Section 1708 is an extraordinary remedy that the Commission exercises with care, justified by extraordinary circumstances, and in keeping with the principles of *res judicata*.

10. Pub. Util. Code Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.

Conclusions of Law

1. Norco’s PFM should be denied.
2. There is insufficient justification as to why Norco’s PFM was filed three years after the Commission’s issuance of D.20-03-001 and why it could not have been filed within one year of that decision.

3. There is insufficient justification for the Commission to revisit the previously evaluated and dismissed Alternative 8 issue.
4. Norco's PFM does not meet the requirements of Rule 16.4(d).
5. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The City of Norco's Petition for Modification of Commission Decision 20-03-001 is denied.
2. Application 15-04-013 is closed.

This order is effective today.

Dated March 21, 2024, at San Francisco, California.

ALICE REYNOLDS
President
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Darcie L. Houck being
absent, did not participate.

Commissioner Matthew Baker recused
himself from this agenda item and was not
part of the quorum in its consideration.