

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



**FILED**  
01-27-11  
04:59 PM

In the Matter of the Application for Rehearing )  
of Resolution No. E-4373 Issued on )  
November 22, 2010 )  
\_\_\_\_\_ )

Application No. 10-12-014  
(filed December 22, 2010)

**MOTION FOR INJUNCTION / STAY**

Chuck Leatherbury  
2848 Via Victoria  
Palos Verdes Estates, CA 90274  
Telephone: 310.541.0233  
E-mail: cleatherb@aol.com

Dated: January 27, 2011

On behalf of Leatherbury & Lowell Family  
Trusts

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

In the Matter of the Application for Rehearing )  
of Resolution No. E-4373 Issued on ) Application No. 10-12-014  
November 22, 2010 ) (filed December 22, 2010)  
\_\_\_\_\_ )

**MOTION FOR INJUNCTION / STAY**

On December 22, 2010, in accordance with Rule 16.1 of the Commission’s Rules of Practice and Procedure, Chuck Leatherbury (“Leatherbury”) on behalf of the Leatherbury & Lowell Family Trusts (“Trusts”) timely submitted an Application for Rehearing of Commission Resolution E-4373 issued on November 22, 2010.

By this motion A. 10-12-014 pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, Leatherbury requests issuance of an injunction or stay of Resolution E-4373 precluding SDG&E from commencing construction activity related to the transmission facilities that are the subject of Resolution E-4373 pending Commission resolution of the Application for Rehearing. In support of its request for issuance of the requested Injunction or Stay, this motion asserts that SDG&E is engaged in activity that presents imminent and irreparable harm to the property in dispute and requests the CPUC grant an immediate injunction or stay to maintain the status quo until the Application for Rehearing is reviewed and a settlement is determined.

**I. ESSENTIAL TO JUSTICE, CONTRARY TO GOOD CONSCIENCE, AND NECESSARY TO SECURE RIGHTS**

SDG&E has chosen the disputed Trusts' property to begin the wood-to-steel replacement project. The property is roughly in the middle of the nine mile line and an adequate explanation has not been given by SDG&E for why the disputed property was chosen as the first place to have wood-to-steel poles erected. The presumption is that SDG&E is trying to usurp the power and authority of the CPUC by erecting new steel poles before the CPUC can take action on the Request for Rehearing, and before a legal settlement or court ruling is obtained as mandated by the CPUC in Resolution E-4373, dated November 22, 2010, that stipulates SDG&E is to obtain a settlement agreement or court ruling.

“Therefore, in this specific case, the Commission requires definitive evidence that its property rights are sufficient to carry out the projects. This may take the form of a settlement agreement between SDG&E and affected property owners reflecting a mutually satisfactory determination of the scope of the easement; an order or ruling by a court of competent jurisdiction clearly defining the scope of SDG&E's easements; or other similarly definitive documentation.”

**II. HIGH LIKELIHOOD OF SUCCESS**

There is a high likelihood of success in both the Trusts' Request for Rehearing and in a court ruling. SDG&E since October of 2009 has not been able to prove to the CPUC that SDG&E had an easement. The first two CPUC staff recommendations found that SDG&E did not have an adequate and clear right-of-way / easement. See Draft Resolution E-4304 dated April 22, 2010 (I.D. #9288) and dated October 28, 2010 (#9824). The Findings and Conclusions of both were that -

“8. The Commission finds that there is a dispute between the parties as to the scope of SDG&E's easements.

9. The Commission does not determine the scope of SDG&E's easements.

10. The Commission cannot authorize SDG&E to do more than what is legally permitted under the scope of its easements.”

Prior to the November Commission hearing, the language in the resolution was changed to accommodate SDG&E's position regarding a 12-foot easement that Leatherbury has been advised by a former SDG&E attorney will not hold up upon review. First, it is based on the presumption of a prescriptive easement that has to meet numerous criteria, has not been ruled on by the courts, or thoroughly reviewed by CPUC staff. Second, the standard width for a 69kV line is at least 20 feet and a thorough review by CPUC of the ability of SDG&E to meet safety standards and construct within 12 feet is highly likely to overturn the 12 foot claim by SDG&E that it meets standards.

### **III. NEED FOR IMMEDIATE RELIEF AND RISK OF IMMINENT HARM**

SDG&E has forcibly entered the Trusts' property under protest, confrontation, and knowledge that the project is under CPUC review. SDG&E chose the Trusts' property as the first to erect the wood-to-steel poles knowing that the Application for Rehearing had been filed, a dispute existed, and that the CPUC resolution stated that they must resolve the easement dispute. SDG&E is moving as quickly as possible to complete the installation in the next two to three weeks, before injunctive action can be taken or the CPUC has time to rule on the Application for Rehearing. SDG&E began drilling holes on January 26, 2011. SDG&E stated it will take 2-3 days to complete drilling the pole holes then they will immediately install the wood-to-steel poles and complete the installation in 2-3 weeks. SDG&E is rushing to install wood-to-steel

poles and immediate relief in the form of an Injunction or Stay is needed. Time is of the essence and we request an immediate Injunction or Stay be issued.

**Background:** On Friday, January 21, 2011, without advance notice, SDG&E moved drilling equipment on to the disputed Trusts' property. Prior to this they vandalized the gate by first removing it from the hinges, then cutting the chain and adding their own lock. On Sunday, January 23, 2011, Trusts' placed a vehicle across the access road with a sign stating there was a legal review in process and SDG&E was to cease work; and provided contact information. On Monday, January 24, we received a confrontational call from SDG&E field management demanding the vehicle be removed. SDG&E field management stating they knew the easement was in dispute and could not provide a satisfactory answer to why the Trusts' property is being converted wood-to-steel posts first and refused to identify the location of any sites where steel poles have been installed. (Leatherbury visually observed much of the line outside the property and could find no steel poles erected.) At 4:07 p.m. on Tuesday evening, January 25, 2011, Leatherbury received an email from the SDG&E legal department with an attached letter demanding the vehicle be removed. Before Leatherbury could respond, at 7:00 a.m. the next morning, January 26th, Leatherbury's brother-in-law found a tow truck preparing to move the vehicle with SDG&E field management and other management in attendance. To avoid damage to the vehicle the brother-in-law (Mark Lowell) was forced to move the vehicle and was advised by SDG&E management of the rapid schedule for installing the wood-to-steel poles. A report was filed with the local Sherriff's department, Event# S8933686.

#### **IV. IRREPARABLE DAMAGE**

SDG&E is irreparably harming the property and has immediately started drilling and installation of the wood-to-steel poles. We believe that upon review our Request for Rehearing and by court ruling, SDGE&E will be shown to not have an easement for Transmission through property. We also believe upon review the positioning of the large, steel pool through the center of property will be shown to change the nature and character of the property resulting in irreparable damage.

The Leatherbury and Lowell Family Trusts members and children, as individual property owners, that have had the property in the family since 1959 know that the nature and character of the property will be irreparably damaged for current and future generations.

The Commission Energy Advisor, who instructed the CPUC Staff to change the language in the final ruling, advised Leatherbury in a telephone conversation that he understood that the steel poles would change the nature and character of the property. He was sympathetic to the degree of change Leatherbury could expect. He also advised that an additional, second set of 69kV lines were likely to be added; as could additional cross-arms.

Real estate experts have advised us that irreparable damage will be done to the property and the nature and character of the property will be completely changed with the installation of the large and clearly visible steel pools.

#### **V. POSPONE UNTIL SDG&E COMPLIES WITH RESOLUTION**

SDG&E has never contacted Leatherbury to comply with the Final Resolution E-4373 to find a resolution to the matter. Leatherbury has offered compromise since the beginning such as moving the line to the property boundary to avoid the irreparable damage of the large, steel poles

running through the middle of the property. Leatherbury offers of compromise have consistently been responded to with comments such as “SDG&E has unrestricted rights” and “SDG&E never losses a legal battle”.

Therefore, Trusts request injunctive or stay relief to ensure that SDG&E complies with Resolution E-4373 which states the following.

“Therefore, in this specific case, the Commission requires definitive evidence that its property rights are sufficient to carry out the projects. This may take the form of a settlement agreement between SDG&E and affected property owners reflecting a mutually satisfactory determination of the scope of the easement; an order or ruling by a court of competent jurisdiction clearly defining the scope of SDG&E’s easements; or other similarly definitive documentation.”<sup>1</sup>

## VI. NECESSARY TO SECURE RIGHTS OF PARTY

SDG&E have demonstrated that they do not believe that Trusts have property rights. They have consistently made false claims regarding the easement documentation including that a SDG&E field worker’s hand written notes on an SDG&E map in 1971 gave them permission to change the Distribution line in place since roughly 1952, to a Transmission line. They are now making false claims such as they are doing our farming tenants a “favor” by putting in the poles immediately. (Please note the tenant they are referring lease is only paid through March 2011.) They have also made false claims that the reason the Trusts’ property is being targeted first for

---

<sup>1</sup> We respectfully ask the CPUC to recognize that the Leatherbury/Lowell Application for Rehearing included a Request for Injunction/Stay. We stated in our Conclusion that in addition to a rehearing, that an order to cease and decess be granted.

“For the reasons set forth herein, rehearing of Commission Resolution E-4373 should be granted, **along with an order directing SDG&E to cease and desist** any activity affecting the Trusts’ property unless and until SDG&E demonstrates: (1) that it has existing easement rights to construct a transmission line; and (2) that it can safely, consistent with industry custom and practice, construct and operate 69kV within the existing 12-foot easement affecting the Trusts’ property.”

pole installation is that the poles to the East with the similar geography “require foundations”. It is clear that Trusts’ require CPUC injunctive or stay relief to secure rights and allow time for the CPUC and the legal process to take effect.

**VII. CONCLUSION**

For the reasons set forth herein, a Request for Injunction or Stay relief should be granted directing SDG&E to cease and desist any activity affecting the Trusts’ property.

Dated: January 27, 2011

Respectfully submitted,

Chuck Leatherbury  
2848 Via Victoria,  
Palos Verdes Estates, CA 90274  
Telephone: 310.541.0233  
E-mail: [cleatherb@aol.com](mailto:cleatherb@aol.com)

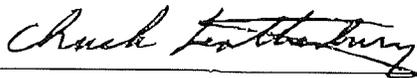
On behalf of the Leatherbury & Lowell  
Family Trusts

By           /s/ Chuck Leatherbury            
Chuck Leatherbury

**VERIFICATION**

The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 27, 2011 at Palos Verdes Estates, California.

A handwritten signature in cursive script that reads "Chuck Leatherbury". The signature is written in black ink and is positioned above a horizontal line.

Chuck Leatherbury

0454/001/X126016.v1

**CERTIFICATE OF SERVICE**

I, Lisa Chapman, certify that I have on this 27th day of January 2011 caused a copy of the foregoing

**MOTION FOR INJUNCTION / STAY**

to be served on all known parties to A. 10-12-014 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be delivered as follows:

*Via Hand Delivery*

Chief ALJ Karen V. Clopton  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

*Via Hand Delivery*

Julie A. Fitch  
Director, Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue, Room 5203  
San Francisco, CA 94102

*Via First Class Mail*

Allen K. Trial  
101 Ash Street, HQ-12  
San Diego, CA 92101

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of January 2011 at San Francisco, California.

*/s/ Lisa Chapman*  
Lisa Chapman

Service List A.10-12-014  
Last Updated 12/23/10

CHUCK LEATHERBURY  
cleatherb@aol.com

JULIE A. FITCH  
jf2@cpuc.ca.gov

CHIEF ALJ KAREN V. CLOPTON  
kvc@cpuc.ca.gov

ALLEN K. TRIAL  
ATrial@semprautilities.com

NICHOLAS SHER  
nms@cpuc.ca.gov

HELEN W. YEE  
yee@cpuc.ca.gov

IAIN FISHER  
aei@cpcu.ca.gov

PUC/X126045.v1