

FER/sbf 7/5/2012



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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mr. John S. Davis,

Complainant,

vs.

Southern California Edison Company
(U338E),

Defendant.

Case 12-02-021
(Filed February 29, 2012)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1. Summary

This ruling and scoping memo sets forth the scope, schedule, category, the need for evidentiary hearings, and the presiding officer for this proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure.

2. Background

In Case 12-02-021, Mr. John S. Davis (Davis) seeks an order from the Commission that Southern California Edison Company (SCE) relocate a transformer from his backyard to the municipal parkway, due to excessive noise. Previously, in Decision (D.) 10-09-023, the Commission granted relief requested by Davis to replace the transformer located in his backyard with another transformer in order to remedy a degradation of service due to excessive noise.

Both SCE and Davis agree that SCE did replace the transformer as ordered, and that SCE subsequently replaced the transformer one or more times after that.

A prehearing conference (PHC) was held on June 5, 2012 in San Francisco.

3. Motion to Dismiss

On June 8, 2012, SCE filed a Motion to Dismiss the Complaint. SCE claims that:

1. The Complaint is an improper collateral attack on the Commission's final and binding D.10-09-023;
2. The Complaint should have been filed as a Petition for Modification of D.10-09-023;
3. The Complaint fails to state a claim upon which relief can be granted, because SCE complied with the mandate of D.10-09-023; and
4. Mr. Davis delayed in requesting relief after SCE complied with D.10-09-023, thus causing undue prejudice to SCE.

On June 14, 2012 Davis filed a response to SCE's Motion. Davis argues that he is not relitigating D.10-09-023, but addressing a new nuisance. Specifically, Davis claims that despite the efforts of SCE to replace the transformer on more than one occasion, SCE has increased the noise level of the transformer in his backyard.

While the parties agree that SCE complied with the provisions of D.10-09-023 by replacing the transformer, Davis raises a different issue: With the current transformer, is there an unacceptable level of noise on Davis' property? It is possible that Davis could show that, notwithstanding SCE's efforts post-D.10-09-023, there remains or is now an unacceptable circumstance involving noise from the transformer which is within the Commission's jurisdiction to remedy. The Motion to Dismiss is denied.

4. Scope of the Proceeding

The scope of this proceeding is to decide:

- whether SCE, in replacing the transformer in Davis' backyard, most recently installed an excessively noisy transformer (including how term "excessively noisy" should be determined for the purposes herein);
- whether SCE violated any of the provisions of D.10-09-023;
- whether, if SCE did most recently install an excessively noisy transformer in Davis' backyard and/or violated the provisions of D.10-09-023, there is any solution other than relocation of the transformer; and
- whether the Commission should order SCE to relocate the transformer and, if so, who should pay for such relocation.

5. Schedule for the Proceeding

The schedule for this proceeding is as follows:

Event	Date
Complaint filed	February 29, 2012
Answer to Complaint	April 13, 2012
Prehearing Conference	June 5, 2012
Testimony	August 6, 2012
Reply Testimony	August 27, 2012
Evidentiary Hearing (Los Angeles) Junipero Serra State Office Building 320 West 4 th Street, Suite 500 Los Angeles, CA 90013	October 1, 2012 at 10:00 a.m.
Opening Briefs Filed and Served	To be determined at hearings
Reply Briefs Filed and Served/Case Submitted	To be determined at hearings
Presiding Officer's Decision	No later than 60 days after submission

Event	Date
Decision on Commission Agenda	No earlier than 30 Days After Proposed Decision

The presiding officer may revise the proceeding schedule, as necessary. Consistent with Pub. Util. Code § 1701.2(d), it is anticipated that this proceeding will be completed within 12 months from its filing, unless the Commission extends the deadline pursuant to Section 1701.2(d).

At the PHC, the parties stated that they elected not to avail themselves of the Commission's Alternative Dispute Resolution Program. The parties continue to have the opportunity to pursue Alternative Dispute Resolution upon mutual agreement.

6. Need for Evidentiary Hearings

Evidentiary hearings are needed in this proceeding. The evidentiary hearing will be held on October 1, 2012 at the Commission's Courtroom in Los Angeles, CA at 10:00 a.m..

7. Categorization and *Ex Parte* Communications

The Commission preliminarily categorized this proceeding as adjudicatory pursuant to Rule 7.1(b). No party appealed this categorization pursuant to Rule 7.6(a). Therefore, the categorization of this proceeding as adjudicatory is now final. *Ex parte* communications are prohibited in adjudicatory proceedings pursuant to Rule 8.3(b).

8. Presiding Officer

Assigned Administrative Law Judge (ALJ) David M. Gamson is designated as the presiding officer for this proceeding pursuant to Rules 7.3(a) and 13.2(a).

9. Service of Documents and Filing Documents

Electronic service of documents is standard under Rule 1.10. If no e-mail address has been provided, service should be made by U.S. mail or similar means. Parties are reminded that the format of documents served by e-mail must conform to the requirements of Rule 1.10(c). Parties shall also provide paper copies of served documents upon request.

When serving documents, parties should use the most up-to-date service list on the Commission's website. Service of documents shall be done in accordance with Rules 1.9 and 1.10.

Rules 1.9 and 1.10 govern the service of documents but not the filing of documents at the Commission. Parties can find information about electronic filing of documents at www.cpuc.ca.gov/PUC/efiling. All documents filed at the Commission's Docket Office must include the caption for this proceeding.

Parties who file and/or serve documents shall provide the assigned ALJ with both a hard copy and an electronic copy of the documents. The electronic copy shall be in Microsoft Word and/or Excel formats to the extent practical.

10. Service List for This Proceeding

The official service list is available on the Commission's website. Parties

