



**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)

**MOTION OF THE CITY OF CHINO HILLS  
FOR PARTIAL STAY OF DECISION 09-12-044**

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FOR PARTIAL STAY OF DECISION 09-12-044**

Pursuant to Public Utilities Code section 1735, the City of Chino Hills (“the City”) hereby respectfully moves for a partial stay of Decision 09-12-044. The City requests that the Commission stay construction of Alternative 2 for Segment 8A of the Tehachapi Renewable Transmission Project (“TRTP” or “the Project”), pending a Commission decision on the City’s Application for Rehearing filed concurrently with this motion.

**I. INTRODUCTION**

On December 24, 2009 the Commission issued Decision. 09-12-044, approving a Certificate of Public Convenience and Necessity (CPCN) for Segments 4-11 of the TRTP. In granting the CPCN, the Commission rejected an alternative for Segment 8A proposed by the City of Chino Hills, Alternative 4CM. The City proposed Alternative 4CM to address serious health and safety issues related to Alternative 2 for Segment 8A, which requires the construction of 500 kV transmission lines on approximately 200 feet tubular steel poles in a 150 foot wide right-of-way running through a densely populated residential neighborhood.

In approving Alternative 2 for Segment 8A, and rejecting Alternative 4CM, the Commission found that:

- The Project as approved is consistent with the requirements of General Order 95;
- The adoption of Alternative 4CM would, for various reasons, engender a significant delay thereby endangering achievement of the State's renewable goals;
- The statutorily mandated review under PU Code section 1002 favored adoption of Alternative 2.
- Alternative 2, unlike Alternative 4CM, is consistent with the Garamendi Principles for siting transmission facilities;
- The FEIR appropriately determined the Environmentally Superior Route.
- The 21st Century Mitigation Proposal, proposed in conjunction with Alternative 4CM, is not legal and may not be imposed on SCE; and
- The Project as approved is consistent with an existing easement.

As discussed in detail in the City's Application for Rehearing filed concurrently with this motion, the Commission findings in support of Alternative 2 for Segment 8A are not supported by substantial evidence in light of the whole record and/or are inconsistent with existing law or judicial precedent, thus the Commission failed to proceed in a manner required by law.

## **II. STANDARD OF REVIEW**

As set forth in *UCAN v. Pacific Bell*, the Commission has established the following standard of review for use in the assessment of motions for stay of its own decisions:

The Commission considers a number of factors in determining whether there is good cause to grant a stay pending rehearing of its own decisions. Those factors include whether the moving party will suffer serious or irreparable harm if the stay is not granted and whether the moving party is likely to prevail on the merits. (*Pacific Gas and Electric Company* (1999) 1999 Cal. PUC LEXIS 602; *Re Southern California Gas Co.* (1990) 39 Cal.P.U.C.2d 14.) In addition, the Commission balances harm to the applicant or the public interest, if the decision is later reversed versus harm to other parties or the public interest if the decision is affirmed. (*Re Line Extension Rules of Electric and Gas Utilities* (1999) 1999 Cal. PUC LEXIS 928; *AirTouch Communications v. Pacific Bell* (1995) 61

Cal.P.U.C.2d 606.) In addition, the Commission may consider other factors relevant to a particular case.<sup>1</sup>

The main factors under the above standard are whether the moving party will suffer serious or irreparable harm if the stay is not granted and whether the moving party is likely to prevail on the merits. The Commission considers these two prongs in a flexible manner.

Therefore:

A moving party need not demonstrate that both factors have been met. Rather, if there is a high degree of irreparable harm, something less than likelihood of success on the merits may justify a stay. Similarly, if there is no harm to the moving party, a stay may not be appropriate even if the party may ultimately prevail.<sup>2</sup>

The City can show serious and irreparable harm if the stay is not granted, as well as a likelihood of prevailing on the merits. In addition, the balance of harm weighs heavily in favor of the City.

### **III. THE CITY WILL SUFFER SERIOUS OR IRREPARABLE HARM IF THE STAY IS NOT GRANTED.**

In this case, the risk of serious or irreparable harm is especially high because it involves risk of harm to the health and safety of the City's residents. The Commission has considered and granted motions for stay for potential financial harm. *In the Matter of Southern Cal. Gas Co. for Authorization to Revise Rates*, D. 97-05-099, 72 Cal PUC 2d 692; *Order Instituting Rulemaking on the Commission's Own Motion to Consider the Line Extension Rules of Electric and Gas*

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<sup>1</sup> D. 01-11-069, 2001 Cal. PUC Lexis 1121 at 5-6; also see *Investigation of USP&C*, D. 01-05-093, 2001 Cal. PUC Lexis 268 at 3.

<sup>2</sup> *Pacific Bell Telephone Co. v. CBeyond Communications LLC et al.*, D. 08-09-044, 2008 Cal. PUC Lexis 414 at 34, citing *Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities*, D. 04-08-056.

*Utilities*, D. 99-09-034, 1999 Cal. PUC Lexis 601. The harm at issue in this case is much greater than any potential financial harm. Once caused, health impacts cannot necessarily be undone through after-the-fact orders or the use of compensation. Allowing construction of Alternative 2 for Segment 8A to commence could have irreversible and potentially unnecessary negative impacts on the residents of Chino Hills.

The situation at issue here is analogous to the Commission's decision in *Pacific Telesis Group*, D. 95-03-021, 59 CPUC 2d 54.<sup>3</sup> In that case, the Commission granted a stay because if the Commission's decision were reversed, it would be practically impossible to recover funds once they were disbursed from a Telecommunications Education Trust. This would effectively prevent disbursement in another manner if directed to do so by the reviewing court. Similarly, as detailed below, it would be virtually impossible to undo the health and safety impacts caused by construction of Segment 8A once such construction has begun.<sup>4</sup>

The Decision finds that the construction of the Environmentally Superior Alternative (which includes Alternative 2 for Segment 8A) would have a significant and unavoidable temporary impact on local sensitive receptors.<sup>5</sup> More specifically, the FEIR determines that even after mitigating to the greatest extent possible, construction of the project would have a significant impact on sensitive receptors within 50 meters of the construction of a pole/tower site.<sup>6</sup> Residential areas, such as those along the Segment 8A right-of-way in Chino Hills, are considered sensitive receptors because residents (including children and the elderly) tend to be

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<sup>3</sup> Also see, *Re Southern Pacific Transportation Company*, D. 95-02-047, 58 CPUC 2d 654, granting a stay because it would be difficult to obtain a refund from the State's General Fund in the event the underlying decisions were modified or reversed upon Commission review.

<sup>4</sup> See also *Bosio v. Superior Court*, 36 Cal. App. 3d 586 (court stayed construction of a highway while appeals pending noting potential for irreparable damage once construction commences).

<sup>5</sup> Decision at p. 41.

<sup>6</sup> FEIR, p. 3.3-40.

home for protracted periods of time, resulting in sustained exposure to any pollutants present.<sup>7</sup> Certain residents of Chino Hills along Segment 8A reside within 25 meters from the site of pole/tower site, thus ensuring detrimental impacts from the construction of those sites. Residents who suffer from respiratory ailments or experience allergies could have their health drastically compromised by the adverse air quality impacts of the significant construction activity occurring outside their doors.

Similarly, as stated in the Decision, “although construction noise would be temporary and would be reduced by implementation of applicant-proposed measures (APMs) and mitigation measures, significant construction-related noise impacts cannot be reduced to a less-than-significant level.” As noted in the FEIR, while there are no federal noise standards that directly regulate environmental noise, the U.S. Environmental Protection Agency have set forth recommended noise levels for protecting public health and safety.<sup>8</sup> For all areas, that recommended noise level is no greater than 70 dB. More significantly for outdoor residential areas the recommended noise level is no greater than 55 dB.<sup>9</sup> Once construction commences, residents of Chino Hills will be subjected to noise levels fifty percent greater than normal conditions<sup>10</sup> and well above those levels recommended by the EPA.

Finally, the record documents an increased risk of fire hazard associated with the construction of the transmission line. As noted in the FEIR:

Construction activities associated with the proposed Project would include excavation, grading, blasting, and the use of vehicles and heavy equipment. The use of heavy equipment along with the personnel required to construct, repair, and

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<sup>7</sup> FEIR, at p. 3.3-20.

<sup>8</sup> FEIR at p. 3.10-17

<sup>9</sup> Id.

<sup>10</sup> Compare FEIR, p.3.10.4, Table 3.10-2 (Ambient Noise Levels along Project Route) with p. 3.10.10, Table 3.10-4 (Estimated Construction Equipment Noise Level vs. Distance)

maintain the transmission line would introduce a variety of potential wildfire ignition sources to surrounding vegetation fuels. Construction activities would also introduce additional combustible materials to the construction areas, such as diesel fuel and herbicides.<sup>11</sup>

The record shows that the right-of-way through Chino Hills traverses neighborhoods in a high hazard firehatched<sup>12</sup> which is covered with highly flammable vegetation.<sup>13</sup> The introduction of additional ignition sources into such an area enhances the risk of fire, thus placing the lives and property of Chino Hills' residents at risk.

Construction activity will be taking place literally at the backdoors of Chino Hills' residents, ten hours a day, five days a week (or more). The adverse health and safety impacts to the residents of Chino Hills who reside along the right of way from the commencement of construction of Segment 8A are not speculative, but have been documented by the FEIR which was certified by the Commission. There is no "undoing" of these impacts should the Commission's decision be altered on rehearing. The damage will have been done.

The Commission should afford the residents of Chino Hills the greatest protection available under the law, granting a stay of the construction of Segment 8A, and thereby avoid exposing the residents to potentially serious and irreparable harm, while the City's application for rehearing is pending.

#### **IV. THE CITY'S APPLICATION FOR REHEARING DEMONSTRATES THE LIKELIHOOD THAT IT WILL PREVAIL ON THE MERITS IN THIS CASE.**

The Application for Rehearing filed concurrently with this motion demonstrates the extent and substantive nature of the legal infirmities presented by the Decision, and establishes the likelihood that the City will prevail on the merits of this matter.

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<sup>11</sup> FEIR at p. 3.16-25.

<sup>12</sup> Exhibit CH-03 (Benson), at p. 2, lines 20 -23.

<sup>13</sup> Tr. Vol. 6 (Chino Hills-Benson), p. 868, lines 2-12; p. 872, lines 7-20.

As discussed further in the City's Application for Rehearing, the Commission's finding in favor of Alternative 2 for Segment 8A is inconsistent the overarching tenet of General Order 95 calling for the safe construction of transmission facilities, and in particular with Rule 13 which dictates that all particulars not specifically addressed in the General Order to be constructed according to "accepted good practice for the given local conditions."<sup>14</sup> In particular, based on the potentially dangerous circumstances and conditions which would result from construction of Alternative 2 for Segment 8A, Alternative 2 cannot be deemed "accepted good practice." By failing to consider the entirety of the record and appropriately apply General Order 95, the Commission did not act in a manner required by law.

In addition, the Commission's finding that Alternative 4CM will cause delay, endangering achievement of the State's renewable energy goals, is unsupported by law or fact. Specifically, the TRTP likely cannot be used to meet SCE's statutory target of 20 percent renewables by the end of 2010 given the anticipated 59 month construction schedule for Segments 4 through 11 of the TRTP. Furthermore, there is no support on the record for the contention that Alternative 4CM would result in a significant delay of the Project. Nor would Alternative 4CM pose any threat to accomplishing 33% RPS goals in 2020, as the project would be completed well before 2020. Thus the Commission's findings on this matter are not supported by substantial evidence in light of the whole record. At the same time, the Commission's use of "statewide value" of timely implementation of the state's RPS program as a rationale to discount the impact of the community values interest of Chino Hills failed to undertake a proper analysis under Section 1002 in the manner required by law.

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<sup>14</sup> General Order 95, Rule 13.

As also discussed in the City's Application for Rehearing, the Commission applies the Garamendi Principles to Alternative 2 and Alternative 4CM in an inconsistent manner, which is, therefore, arbitrary and capricious. Both alternatives effect a balancing of the use of existing, expanded, and new rights of way, as permitted by the Garamendi Principles. Therefore, a determination that Alternative 2 is in some manner more in line with the state's policy regarding the use of existing right-of-ways than Alternative 4CM is not supported by the facts of this case.

The Commission's certification of the Final Environmental Impact Statement absent an independent review and assessment of the information contained therein is not consistent with the CEQA Guidelines and results in a failure to adequately assess evidence which contradicts certain of the FEIR's findings. As a result, the Decision's determination of the Environmentally Superior Alternative is not supported by substantial evidence in light of the whole record.

Contrary to the Commission's finding, the City provided sufficient evidence that the 21<sup>st</sup> Century Mitigation Proposal is reasonably tailored to meet the environmental impacts of Alternative 4CM. In particular, the 21<sup>st</sup> Century Proposal is consistent with State and Commission precedent regarding mitigation measures, and U.S. and State constitutional requirements regarding mitigation of a project's environmental impacts.

Finally, the Commission made no investigation into the validity of the City's claims that construction of the 500 kV transmission line on the easement in question would affect an overburdening as such has been defined by California law and precedent. The issue of overburdening of the easement was not placed before the Commission by either party. Therefore, there is insufficient evidence on the record for the Commission to make a determination regarding overburdening of the easement.

In sum, the Application for Rehearing sets forth numerous grounds demonstrating legal error in the Decision and establishing the City's likelihood of prevailing on the merits in this matter.

**V. THE BALANCING OF HARM WEIGHS HEAVILY IN FAVOR OF THE CITY.**

In determining whether to grant a stay, the Commission may also weigh the harm to the applicant or the public interest if the decision is later reversed versus harm to other parties or the public interest if the decision is affirmed. In this case, the balance of harm weighs in favor of the City. The City is requesting only a partial stay of the Decision. Therefore, construction activity on the remainder of the Project can proceed without any delay while the Commission considers the City's Application for Rehearing. Even if the Decision is later affirmed, SCE, having been permitted to commence construction on all other components of the Project aside from Segment 8A, should not have lost any significant amount of time in the overall construction schedule of Segments 4 through 11 of the TRTP and thus should not experience any prejudice if the Commission grants the City's motion for stay.

On the other hand, as discussed above, the harm to the City and its residents absent a stay would be the immediate infliction of sustained exposure of its residents to air and noise pollution caused by the construction activities, with their concomitant negative health impacts, along with increased risks of fire damage and construction accidents. If the Decision is later reversed, the City's residents would suffer additional similar impacts if previously constructed facilities had to be removed.

**VI. CONCLUSION**

For all of the reasons set forth above, the City respectfully requests that the Commission issue a decision partially staying D. 09-012-044, pending a Commission decision on the City's Application for Rehearing regarding Alternative 4CM for Segment 8A.

Respectfully submitted this January 25, 2010 at San Francisco, California.

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By /s/ Michael B. Day  
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**CERTIFICATE OF SERVICE**

I, Linda Chaffee, certify that I have on this 25<sup>th</sup> day of January 2010 caused a copy of the foregoing

**MOTION OF THE CITY OF CHINO HILLS  
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to be served on all known parties to A.07-06-031 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 hand-delivered as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25<sup>th</sup> day of January 2010 at San Francisco, California.

*/s/ Linda Chaffee*  
Linda Chaffee

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