Decision 13-02-035 February 28, 2013

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 Concerning the Tehachapi Renewable Transmission Project (Segments 4 through 11).	Application 07-06-031 (Filed June 29, 2007)

INTERIM DECISION ON RATE RECOVERY OF REASONABLE COSTS ASSOCIATED WITH SPECIFIED PRELIMINARY ACTIVITIES NECESSARY TO ENSURE TIMELY COMPLETION OF SEGMENT 8A OF THE TEHACHAPI RENEWABLE TRANSMISSION PROJECT

1. Summary

The sole focus of this decision is the request of Southern California Edison Company (SCE) for Commission support for rate recovery for reasonable costs it will need to incur in the next few months – ***prior*** to the Commission's determination on undergrounding of Segment 8A of the Tehachapi Renewable Transmission Project -- ***if*** the Project is to begin commercial operation in late 2015, as scheduled. We conclude, on balance, that it is in the public interest for SCE to undertake certain specified pre-construction activities and to incur the costs associated with those activities. This determination necessarily means that SCE may be entitled to recover reasonable expenditures in the amount of as much as $32.95 million, including contract termination charges, should the Commission decline to authorize undergrounding after a review on the merits. Because any rate recovery is subject to the jurisdiction of the Federal Energy

Regulatory Commission, today's decision has no immediate rate impact. Further, construction of much of Segment 8A, the portion of the Project that passes through the City of Chino Hills, is stayed at present and this decision does not alter that stay.

2. Background and Procedural History

By Decision (D.) 09-12-044, issued on December 24, 2009, the Commission granted Southern California Edison Company (SCE) a Certificate of Public Convenience and Necessity (CPCN) to construct Segments 4 through 11 of the Tehachapi Renewable Transmission Project (the Project), using the Environmentally Superior Alternative, and subject to the mitigation measures and other conditions the decision adopts.

For context, we repeat D.09-12-044's summary description of the Project:

> The Project is a portion of the Tehachapi Renewable Transmission Project (TRTP). The TRTP is designed to provide access to up to 4,500 megawatts (MW) of renewable energy generation, primarily wind energy, from the Tehachapi Wind Resource Area in Kern County and to deliver it to load in Los Angeles and San Bernardino counties. We approved Segment 1 in Decision (D.) 07-03-012 and Segments 2-3 in D.07-03-045, which together form the Antelope Transmission Project (ATP), which will deliver approximately 700 MW of the total TRTP carrying capacity. (D.09-12-044 at 2.)

Following D.09-12-044's convention, today's decision will continue to refer to Segments 1-11, collectively, as the TRTP, and to Segments 4-11, as the Project.[1]

In approving D.09-12-044, the Commission determined that review of the Project had occurred in compliance with the California Environmental Quality

Act (CEQA) and therefore, consistent with lead agency responsibilities under CEQA, the Commission certified the Final Environmental Impact Report (EIR). The Commission also determined that the Project complied with the Commission's electromagnetic field guidelines. Several parties filed applications for rehearing of D.09-12-044, and on October 28, 2011, the City of Chino Hills (Chino Hills) filed the petition for modification that underlies our review of the issues we address today.[2]

Chino Hills' concerns focus exclusively on the portion of Segment 8 within the City referred to as Segment 8A, and in particular, upon on the height (200 feet) of the tubular steel poles needed to support the 500 kilovolt transmission line that would run for about 5 miles through a 150 foot wide right-of-way (ROW) in the City. On November 10, 2011, shortly after Chino Hills filed its petition for modification, D.11-11-020 stayed construction of much of Segment 8A. Two subsequent stay decisions have issued: D.11-11-026 corrected clerical errors in D.11-11-020; D.12-03-050 clarified and somewhat narrowed the extent of the stay by describing it more precisely.

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[1] D.09-12-044 refers to Segments 1-3 as the ATP, but today's decision does not concern this portion of the TRTP.

[2] The applications for rehearing are pending, as is SCE's October 17, 2011, petition for modification of D.09-12-044, which seeks changes to the Project to conform to Federal Aviation Administration mitigation requirements.

On the same day as our initial stay decision, the assigned Commissioner, by ruling, directed SCE to develop prepared testimony to update several Segment 8 routing scenarios examined in D.09-12-044. Three prehearing conferences followed on December 5, 2011, January 18, 2012, and March 19, 2012, and thereafter, the assigned Commissioner filed a scoping memo on July 2, 2012, and an amended scoping memo on November 15, 2012.

3. Discussion

3.1. Overview

The amended scoping memo anticipates that in July, 2013, the Commission will determine whether to require undergrounding of Segment 8A through the existing ROW in Chino Hills. That ultimate issue is not before us today; however, today's decision will determine whether we ever consider that ultimate issue on its merits. Today we must answer the following, two-part question:

> Should SCE be authorized (a) to undertake in the next few months certain actions necessary to ensure that the Project could attain commercial operation by late 2015 if, in July 2013, the Commission was to order undergrounding; and (b) to request future recovery in rates of those reasonable costs?

In considering this two-part question we look to two filings SCE has made pursuant to the amended scoping memo, and to comments on those filings.[3] The

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[3] See *Amended Scoping Memo and Ruling of Assigned Commissioner*, filed November 15, 2012. In requiring the two reports, the amended scoping memo granted, in substantial part, a motion Chino Hills filed on November 2, 2012. That motion suggested specific revisions to scope and schedule to preserve the late December 2015 commercial operation date and yet ensure timely record development and consideration of additional undergrounding options for Segment 8A.

Chino Hills' motion included, as Attachment A, an October 29, 2012, letter from Ron Litzinger, President of SCE, to Commission President Michael Peevey (with copies

Footnote continued on next page

first, filed on November 30, 2012, is SCE's proposal for rate recovery of costs associated with activities that SCE has determined it would need to incur prior to a final Commission decision on whether or not to underground Segment 8A (the rate recovery proposal). The second, filed on January 17, 2013, is a more specific identification of the activities that SCE contends should be subject to its rate recovery proposal and the estimated costs of those activities (the contracting report).

Chino Hills, Silverado Power LLC (Silverado Power) and the Division of Ratepayer Advocates (DRA) filed timely responses to the rate recovery proposal on December 14, 2012, and on January 22, 2013, Chino Hills and DRA filed timely responses to the contracting report. SCE filed a reply to comments on the contracting report. In Sections 3.2 and 3.3, below, we review the contents of the rate recovery proposal and the contracting report, as well as the comments filed by other parties.

We conclude on balance, as discussed further in Section 3.4, that SCE should proceed with certain pre-construction activities within the next few months and should be entitled to recover reasonable expenditures for those activities, whether or not we ultimately order undergrounding of Segment 8A.

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to all other commissioners then sitting), which SCE previously had filed as part of a written notice of ex parte communication. The letter warned that review of Segment 8A undergrounding under the schedule in the then-current scoping memo likely would delay the operational date of the Project beyond 2015 and accordingly, might deleteriously affect planned interconnection with a number of renewable generation projects. To avoid any such delay, Chino Hills' motion proposed several procedural solutions. Independent Energy Producers and Large Scale Solar Association filed responses supportive of Chino Hills' motion; the Division of Ratepayer Advocates opposed the motion.

3.2. Rate Recovery Proposal

In directing SCE to file a rate recovery proposal, the amended scoping memo quoted language in Chino Hills' November 2, 2012, motion, which in turn drew upon an October 29, 2012, letter from SCE to President Peevey, included as Attachment A to the motion:

> SCE should be directed to submit a proposal that clearly defines the "reasonable assurance" it requires "that the Commission will support rate recovery of the costs incurred [for undergrounding the TRTP through Chino Hills] should the Commission later decide to reject the CPCN modification" (Amended scoping memo at 4, quoting Chino Hills' motion at 6.)

The rate recovery proposal that SCE has filed expressly recognizes that jurisdictional authority to set the TRTP's transmission rates lies with the Federal Energy Regulatory Commission (FERC). SCE states that it "expects that all costs associated with the Project will be recovered at [FERC] … through existing rate recovery mechanisms on file" there. (Rate recovery proposal at 12.) However, while FERC holds the authority to determine the prudency of costs expended by a utility, SCE argues that under the unique circumstances of a situation like this one, a state Commission's assessment is particularly likely to inform FERC's determination. Accordingly, though SCE is not an undergrounding proponent, SCE's rate recovery proposal seeks a finding from this Commission that it would be in the public interest for SCE to undertake certain activities now – essentially to accelerate them – in advance of our decision on the merits of undergrounding Segment 8A.

Chino Hills' response to the rate recovery proposal focuses on the nature of certain costs and urges greater specification of them. Indeed, the rate recovery proposal identifies the necessary activities in a preliminary and very general

way, describing them as advanced engineering and costing efforts on viable underground designs, solicitation of bids from the market to refine cost estimates, and advanced contracting efforts on construction activities, materials, and equipment. The contracting report is more specific and includes cost estimates. Therefore, we defer discussion of these activities and their estimated costs to subsection 3.3 and turn, now, to other aspects of SCE's rate recovery proposal.

The TRTP has been planned and approved, in large part, to move electric power generated from renewable sources in the remote Tehachapi Wind Resource Area (TWRA) to major load centers in California and the Western United States. D.09-12-044 includes numerous findings on the TWRA's importance to meeting California's ambitious goals for renewable power development and transmission (often referred to as Renewable Portfolio Standards, or RPS) and the TRTP's integral role. (See for example, D.09-12-044, Findings of Fact 10-12, 18, and Conclusions of Law 5–8, 10.) Proponents of other renewable energy sources share wind developers' interest in the TRTP and its timely completion in late 2015; many of them, particularly developers of solar power projects, have become parties to this proceeding in order to weigh in on the schedule.

SCE's rate recovery proposal projects that undergrounding of Segment 8A will take approximately 39 months from date of approval (if the Commission ultimately authorizes undergrounding). Importantly, SCE's more recent contracting report revises this estimate downward after preliminary review of bids; the report states, with caveats: "[B]oth the cable and civil construction vendor resources should be available to support the best case

scenarios targeted in service date of late 2015/early 2016 for the first circuit (three cables per phase)." (Contracting report at 3.)

We understand that this timeline is not a given -- the actual timeline could be shorter or longer and the projections certainly will be examined carefully if hearings are held, as now scheduled, in April 2013. Moreover there are differing views (which no doubt also will be explored at hearing) about how integral operation of Segment 8A is to delivery of power over more northern segments of the Project and over the TRTP as a whole. The timing impact of SCE's rate recovery proposal, then, is to shave some five months or more off the current timeline (measured from the date of today's decision to an anticipated mid-July 2013, decision on the merits). Silverado Power, in its response in support of SCE's rate recovery proposal focuses on the timing impact:

> We believe that it is in the public interest to accelerate these particular engineering and procurement activities now in order to manage the risk of delay to the TRTP. For this reason, Silverado Power urges the Commission to find that the expenditures associated with these activities are prudent and reasonable … because they should reduce or eliminate any risk of delay to the TRTP, whose timely completion is necessary to California's energy future. (Silverado Power response at 3.)

DRA disagrees that accelerating pre-construction activities is reasonable or necessary, and therefore contends that doing so cannot be in the public interest. In DRA's view, ratepayers should bear no additional cost responsibility prior to a Commission determination on whether or not to underground Segment 8A. Moreover, DRA argues that any costs SCE has incurred in responding to the Chino Hills' petition for modification must be recovered under the cost cap for the Project approved by D.09-12-044. DRA argues: "[N]one of the costs associated with the new underground option has been authorized, as an ACR

[Assigned Commissioner's ruling] cannot approve or authorize rate recovery." (DRA response at 1.) We are not sure what DRA means by this argument and will not speculate. We merely observe, as Chino Hills does, that SCE has responded to several rulings by the Assigned Commissioner, all of which issued after the Commission voted to stay Segment 8A. FERC has jurisdiction to determine rate recovery of the reasonable costs associated with these endeavors, which we differentiate from the accelerated pre-construction activities at issue today and their related costs.

DRA, like SCE and other parties, is correct that authorization of accelerated pre-construction activities requires a public interest finding. We recognize, as the parties do, that direction to a utility to engage in pre-construction activities is unusual – we would much prefer to wait until we are in the position to issue a decision on whether or not to underground Segment 8A following full development of the record. But in this unique situation, if we wait, we certainly will delay commercial operation of the TRTP. That clearly is not in the public interest. At this stage in our review of Chino Hills' petition for modification, we find it reasonable to continue that review, as long as the associated costs of the additional and necessary pre-construction activities are not disproportionately large. We now turn to those issues.

3.3. Contracting Report

In directing SCE to file a contracting report, the amended scoping memo also quoted Chino Hills' November 2, 2012, motion:

> SCE should be directed to prepare and file a detailed report (contracting report) specifying the contracts for services and materials that it must enter into, the transmission cable and/or other materials it must order (including any necessary deposits), the deadlines for executing such contracts so that a December 31, 2015 commercial operation date for the TRTP

can be met, and the current status of its negotiations to enter into such contracts. (Chino Hills motion at 6.)

In summary, SCE's contracting report, filed January 27, 2013, at page 11 identifies the following as important categories of pre-construction activities and estimates their costs as shown:

Estimated Pre-Decision Activity Costs by Function *(2013 nominal dollars)*	
Pre-Decision Activity Function	**Estimated Cost**
Pre-Production Cable Testing	$3,000,000
Additional Engineering	$1,500,000
Real Estate Acquisition Preparation	$200,000
Environmental Survey and Permit Preparation	$250,000
Contracting Termination Charges	$24,000,000 - $28,000,000
Approximate Total	**$28,950,000 - $32,950,000**

SCE explains that to be able to develop prepared testimony responsive to the direction in the scoping memo and amended scoping memo, it has "continued extensive efforts to develop the design, schedule, and specifications necessary" and that this includes "a bid process to provide the Commission with more refined estimates of the actual costs of an underground design derived from specific market information." (Contracting report at 2.) Further, "SCE solicited bids from five cable manufacturers and five civil construction contractors … based on comprehensive bid solicitation packages." (*Id.*) SCE is evaluating bids at present; because it deems the bid results to be confidential, it has not filed them with the report. However, SCE states that the prepared

testimony it must serve on February 28, 2013, will contain refined cost estimates and "should be solid enough to warrant a contingency factor less than the 50% contingency factor" SCE has used in earlier prepared testimony. (*Id.*)

Regarding the categories of pre-construction activities, SCE identifies the following two as critical in the very near term: pre-production cable type testing and the engineering necessary to complete contracts and supporting documentation for cable manufacture and installation. These two, together, SCE estimates as costing up to $4.50 million.

Chino Hills' response to the contracting report endorses SCE's request. Chino Hills characterizes the costs estimate "as not exorbitant" and adds that "each activity for which cost recovery is sought is intended to ensure that all of the necessary pieces are in place to immediately proceed with the construction of an underground alternative" should the Commission subsequently approve one. (Chino Hills' response at 3.) As Chino Hills also points out, the TRTP is a project of approximately $2 billion, these cost estimates are a fraction of that total, and the actual costs for most activities could prove to be smaller than presently forecast. If the Commission should approve undergrounding of Segment 8A, up to $4.95 million effectively will be absorbed into the costs of the Project modification and no contract termination charges will be incurred. Ratepayers only will be responsible for contract termination charges, which are the significant portion of the potentially stranded costs, if the Commission determines the Segment 8A should not be undergrounded. However, because we cannot know today what the Commission may decide in the future, this last observation cannot meaningfully factor into our analysis. We must assume that ratepayers could be at risk for the actual value of all costs reasonably incurred. In that situation, Chino Hills suggests that we might deem SCE's pre-

construction costs to be analogous to cancelled project costs, and authorize recovery on that basis. However, because cost recovery of these pre-construction costs is before us today, and a determination on the merits is in the future, this approach does not appear to be a good procedural fit and we need not explore it substantively.[4]

DRA's response to the contracting report continues to oppose recovery for the costs of any pre-construction activities. DRA contends that we have an inadequate record on which to decide the matter before us today, that we lack a reasonable rationale for moving forward to examine undergrounding, and that even if we authorize these pre-construction activities, the TRTP cannot be completed on time. The first two points reiterate the position DRA has articulated previously; on the third, however, we think that DRA undervalues SCE's updated information on the timeline for construction of an undergrounding alternative for Segment 8A.

3.4. Conclusion

Fundamentally, if the Commission wishes to review undergrounding of Segment 8A on the merits while safeguarding the Project's anticipated commercial operation in late 2015, certain things have to happen sooner rather than later, and costs will be incurred to make those things happen. At this

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[4] Chino Hills cites D.96-01-011 (64 CPUC2d 241, 279), *In Re SCE,* where the Commission applied the rule it has used to assess recovery of cancelled project costs, asking: (1) whether the project ran its course during a period of unusual uncertainty, (2) whether the project was reasonable through the project's duration in light of both the relative uncertainties that then existed and the alternative for meeting the service needs of customers, (3) when the project was cancelled, and (4) whether the project was cancelled promptly when conditions warranted. At issue in D.96-01-011 was SCE's share of costs for the California-Oregon Transmission Project. The Commission denied recovery.

juncture in the proceeding, we are prepared to risk further expenditure of up to $32.95 million dollars so that we may decide, once and for all, whether Segment 8A should be undergrounded. We caution SCE, however, that any sums presented to FERC must be actual and reasonable expenditures, based on sound engineering and prudent management decisions. Like DRA, we strongly question SCE's assertion that various uncertainties associated with the potential undergrounding of Segment 8A demand a 50% contingency. We agree with Chino Hills that should the Commission decline to authorize undergrounding of Segment 8A, SCE should cease all expenditures toward that end, and the immediate cancellation of cable manufacture and installation contracts should mitigate penalties for contract termination. Likewise, we caution SCE to explore other reasonable mitigation, such as resale/restocking of materials, commodities, or components.

4. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 19, 2013 by SCE, Chino Hills, DRA, and Terra-Gen Power, LLC; on February 25, 2013, SCE and Chino Hill filed reply comments.

After review of the comments and reply comments, we make no changes to the proposed decision, which provides SCE with both the direction and the authority to do all of the things it has persuaded us it must do to keep an undergrounding option procedurally viable in advance of our decision on the merits, while safeguarding timely completion of the TRTP. We have recognized that this interim decision is unusual, but DRA incorrectly characterizes it as an

advisory opinion and the authority on which DRA relies readily can be distinguished from the circumstances here. This interim decision does not opine upon what might be. Rather, the Ordering Paragraphs require SCE to undertake real actions within the next several months and they specify what SCE must do or cease to do should we determine not to authorize the undergrounding of Segment 8A.

The purpose of this interim decision is quite limited. We decline to revise findings or conclusions on the great importance of timely completion of the TRTP or the role of Segment 8A to that effort. If any party believes our existing decisions are insufficient, then after a showing of changed facts or policy, we will consider appropriate revisions. That showing has not been made here, nor is this the correct forum. Likewise, for the same reasons, we decline to add findings or conclusions on the potential financial impact to generators, renewable or conventional, of alleged construction delays along some part of the TRTP to date.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. SCE's rate recovery proposal anticipates recovery of all costs associated with the Project through existing rate recovery mechanisms on file at FERC; however, today's decision may inform FERC's determination on rate recovery.

2. The TRTP has been planned and approved, in large part, to move electric power generated from renewable sources in the remote TWRA to major load centers in California and the Western United States. Both the TWRA and TRTP are critical to meeting California's ambitious goals for renewable power development and transmission.

3. Timely completion and commercial operation of the TRTP in late 2015 or soon thereafter is of great importance to renewable power developers.

4. SCE's contracting report states, with caveats, that timely completion and commercial operation of the TRTP (with an in service date of late 2015/early 2016) appears possible if specified pre-construction activities are authorized.

5. All rulings by the assigned Commissioner directing SCE to develop undergrounding information were issued after the Commission voted to stay Segment 8A.

6. At this stage in the Commission's review of Chino Hills' petition for modification of D.09-12-044, it is reasonable to continue that review to permit a decision on the merits regarding whether to underground Segment 8A, as long as the associated costs of the additional and necessary pre-construction activities are not disproportionately large.

7. SCE's contracting report identifies the necessary pre-construction activities and their estimated costs. Near term, the two most important activities are estimated to cost up to $4.50 million: pre-production cable type testing and the engineering necessary to complete contracts and supporting documentation for cable manufacture and installation.

8. If the Commission determines that Segment 8A should not be undergrounded, ratepayers could be at risk for the actual value of all costs reasonably incurred, up to $32.95 million.

9. Given the approximately $2 billion cost of the TRTP, $32.95 million is not an unreasonable amount to authorize toward the total of pre-construction activities and potential contracting termination charges.

10. Any costs that SCE presents to FERC for recovery must be actual and reasonable expenditures, based on sound engineering and prudent management decisions.

11. The assertion that various uncertainties associated with the potential undergrounding of Segment 8A require a 50% contingency is questionable.

12. If the Commission declines to authorize undergrounding of Segment 8A, SCE should cease all expenditures toward that end. The immediate cancellation of cable manufacture and installation contracts should mitigate penalties for contract termination and SCE also should explore other reasonable mitigation, such as resale/restocking of materials, commodities, or components.

Conclusions of Law

1. SCE should be authorized to undertake the pre-construction activities specified in the contracting report and to incur the reasonable costs associated with them.

2. If the Commission issues a decision that declines to authorize undergrounding of Segment 8A, SCE may incur contracting termination changes, as further specified in its contracting report.

3. This order should be effective immediately to prevent further delay in the schedule for completion of the TRTP.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company is authorized to undertake the following activities, as further specified in its Contracting Report, filed January 17, 2013, and to the extent consistent with sound engineering and prudent management decisions:

(a) Pre-production cable testing, in an amount not to exceed $3 million;

(b) Additional engineering, in an amount not to exceed $1.5 million;

(c) Real estate acquisition preparation, in an amount not to exceed $200,000; and

(d) Environmental survey and permit preparation, in an amount not to exceed $250,000.

2. If the California Public Utilities Commission issues a decision that declines to authorize undergrounding of Segment 8A of the Tehachapi Renewable Transmission Project, Southern California Edison Company (SCE) shall cease all expenditures toward that end and shall immediately cancel cable manufacture and installation contracts associated with undergrounding Segment 8A; in such event, SCE may incur contracting termination changes, as further specified in its Contracting Report, filed January 17, 2013, in an amount not to exceed $28 million.

3. All amounts set forth in Ordering Paragraphs 1 and 2 represent 2013 nominal dollars.

4. Any amounts that Southern California Edison Company may file with the Federal Energy Regulatory Commission pursuant to today's decision shall represent actual and reasonable expenditures and shall reflect all reasonable mitigations, as further specified in today's decision.

5. Application 07-06-031 remains open.

This order is effective today.

Dated February 28, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners