Decision **PROPOSED DECISION OF ALJ VIETH** **(Mailed 3/6/2015)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

DECISION DENYING THE CITY OF ONTARIO'S AMENDED PETITIONS FOR MODIFICATION OF DECISION 09-12-044, AS MODIFIED BY SUBSEQUENT DECISIONS, TO STAY CONSTRUCTION OF SEGMENT 8 OF THE TEHACHAPI RENEWABLE TRANSMISSION PROJECT AND TO UNDERGROUND SEGMENT 8 IN ONTARIO

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Summary

Today's decision denies two amended petitions for modification of Decision (D.) 09-12-044 and related decisions, filed by the City of Ontario (Ontario or City). The petitions, initially filed in October 2014 and amended in November 2014, ask that we: (1) stay construction of Segment 8 of the Tehachapi Renewable Transmission Project (TRTP) within Ontario and (2) order the undergrounding of Segment 8 within that City. D.09-12-044 approved an above-ground design for Segment 8. Under Rule 16.4 of the Commission's Rules of Practice and Procedure, Ontario has the burden of showing that each request is justified and timely filed, and that its determination not to participate in this proceeding earlier was warranted. Ontario's arguments are unpersuasive. Furthermore, the equitable Doctrine of Laches supports our determination that Ontario has failed to act in a timely way to seek relief.

Though Ontario submitted three letters during the environmental review process (in 2007 and 2009) and two letters around the time of the Chino Hills undergrounding decision (in 2013), those letters make other design change requests; only one of them even mentions transmission tower height and that in the context of Ontario's preference for a route through Chino Hills State Park. Ontario never sought undergrounding in the City prior to filing the instant petitions – almost five years after the Commission approved Segment 8 and some three years after the City of Chino Hills requested a redesign of

Segment 8A in that city. Entertaining Ontario's request at this late date would delay completion of the TRTP by five years or more, at a great cost to all ratepayers.

The amended petitions are summarily denied.

1. Background and Procedural History

The City of Ontario (Ontario or City) filed two petitions for modification on October 31, 2014 and amended each on November 21, 2014. Ontario asks the Commission "to modify Decision 09-12-044 as modified by related decisions" and specifically references these five decisions: Decision (D.) 14-07-029, D.14-01-005, D.13-10-076, D.13-10-062, and D.13-07-018. (Amended Petition for Undergrounding at 1 and FN 1.) One amended petition seeks a construction stay within Ontario of Segment 8 of the Tehachapi Renewable Transmission Project (TRTP); the other seeks undergrounding of Segment 8 within the City. As background, we summarize the major events that precede today's decision, focusing on the Commission decisions most relevant to the issues raised by Ontario's requests. This summary repeats and updates recitations found in some of the numerous prior rulings and decisions in this docket.

D.09-12-044, issued on December 24, 2009, grants Southern California Edison Company (SCE) a Certificate of Public Convenience and Necessity (CPCN) to construct the 500 kilovolt (kV) transmission line and related facilities that comprise Segments 4 through 11 (the Project) of the larger TRTP. D.09-12-044 requires SCE to design and build the Project subject to mitigation measures and other conditions the decision adopts. The Project interconnects with previously constructed portions of the TRTP and runs approximately 173 miles through three counties in southern California--Kern, Los Angeles and San Bernardino.

D.09-12-044 includes the following brief description of the TRTP's purpose and identifies its component parts, including the Project:

> 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.)

As part of D.09-12-044, the Commission certified the Final Environmental Impact Report (FEIR), an environmental document required under the California Environmental Quality Act (CEQA) and also determined that the Project complied with the Commission's electromagnetic field guidelines. D.14-07-029, issued on July 11, 2014, modifies D.09-12-044 in minor ways that do not alter the outcome and as modified, denies rehearing.

The City of Chino Hills (Chino Hills) was one of three parties to the CPCN proceeding to timely file an application for rehearing of D.09-12-044, but on October 28, 2011, because a rehearing decision had not issued, Chino Hills also filed a petition for modification of D.09-12-044 that largely reiterated the challenges in its rehearing request. On July 16, 2013, a majority of the Commission granted Chino Hills' petition for modification, in substantial part, by adopting the Assigned Commissioner's Alternate Proposed Decision, which issued as D.13-07-018. That decision requires SCE to underground a 3.5 mile, 500 kV section of Segment 8A of the TRTP within Chino Hills in lieu of the

previously approved above-ground design. D.13-07-018 relies on an extensive evidentiary record and an Addendum to the FEIR.[1]

As relevant here, three subsequent decisions relate to the Chino Hills undergrounding order. D.13-10-076, issued on October 31, 2013, denies rehearing of D.13-07-018, subject to certain modifications that do not alter the undergrounding order. D.13-10-062, also issued on October 31, 2013, modifies D.09-12-044 (and D.13-07-018) to authorize certain design changes within Segment 8A and other segments of the TRTP to conform to Federal Aviation Administration (FAA) recommendations. D.14-01-005, issued on January 24, 2014, modifies D.13-07-018 to authorize specified voltage control equipment (reactive compensation) as part of the engineering design and to remove the requirement for a Basic Insulation Level study. A fourth decision, D.14-07-029, issued on July 10, 2014, denies rehearing of D.09-12-044, subject to certain modifications that clarify that decision but do not alter the CPCN grant.

On December 5, 2014, as directed by the assigned Administrative Law Judge (ALJ), three parties filed responses to Ontario's amended petition for undergrounding: SCE, the Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN).[2] SCE, alone, filed a response to the stay petition. On

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[1] Concurrently with its January 2010 application for rehearing of D.09-12-044, Chino Hills filed a motion for partial stay, which the Commission granted in November 2011 by D.11-11-020. Several subsequent decisions narrow the extent of that stay. Chino Hills also sought a construction stay in a second petition for modification filed concurrently with its October 2011 undergrounding petition. In D.13-07-018, the Chino Hills undergrounding decision, the Commission denied this stay request as moot.

[2] Rule 16.4(f) of the Commission's Rules of Practice and Procedure requires that responses to a petition for modification be filed within 30 days of the filing of the petition. The ruling states: "Because the basic requests in the 2 amended petitions do not differ greatly from the versions filed on October 31, 2014, there is no need to allow an additional 30 days for responses."

Footnote continued on next page

December 15, 2014, with leave of the ALJ as required by Rule 16.4(g) of the Rules, Ontario filed two replies.

2. Legal Standard

Pub. Util. Code § 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. This is an extraordinary remedy. It must be exercised with care and in keeping with fundamental principles of res judicata since "Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed." (D.92058 (1980) 4 CPUC 2d 139 at 149-150.)

Rule 16.4 of the Commission's Rules governs the filing of a petition for modification, a procedural vehicle that "asks the Commission to make changes to an issued decision." (Rule 16.4(a).) Rule 16.4 includes both procedural and substantive requirements. Ontario's petitions raise the same three preliminary issues: under Rule 16.4(b), justification for the relief requested; under Rule 16.4(d), timeliness; and under Rule 16.4(e), why Ontario did not participate in the proceeding earlier. Where a late petition is not justified, the Commission may deny it on that ground, on a summary basis. Ontario has the burden of proof. We examine each of these Rule 16.4 requirements, together with Ontario's compliance, in Section 4.

(E-mail ruling, filed November 24, 2014.) The ruling directs parties to file a single response to each petition by December 5, 2014.

3. Location and Construction Status of Segment 8 (Segments 8A, 8B, and 8C)

Ontario's amended petitions seek a Commission order requiring a construction stay, followed by undergrounding, of Segment 8 of the TRTP within the City. As initially filed, Ontario's petitions focused only on Segment 8B but the amended undergrounding petition explains: "Subsequent research indicated that other portions of Segment 8, including Segment 8A and 8C, should be undergrounded as they are indistinguishable from towers located in Segment 8B." (Amended Petition for Undergrounding at 1, FN 2.)

The entirety of the TRPA's Segment 8 stretches for approximately 33 miles between the San Gabriel Junction (in unincorporated Los Angeles County, just outside Montebello) and the Mira Loma Substation (in eastern Ontario). Segments 8A, 8B and 8C collectively constitute Segment 8 but they are electrically distinct transmission lines. Attachment 1 to today's decision, a map taken from the TRTP's FEIR, shows the routes of part of Segment 8A and of all of Segments 8B and 8C, including the transit of each through Ontario.[3]

Segment 8A, a 500 kV transmission line, runs virtually the full length of Segment 8. Segment B (approx. 6.8 miles long) and Segment C (approx. 6.4 miles long) are 220 kV lines that run between the Chino Substation (to the west of Ontario) and the Mira Loma Substation.[4] The three transmission lines cross Ontario in two rights-of-way (ROWs), Segment 8B to the north and Segments 8A and 8C in a common ROW to the south. The FEIR provides further detail about

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[3] The map is Figure 2.2-1y (Revised), Detailed Proposed Project Location Strip Map from the FEIR's Map & Figure Series Volume.

[4] Segment 8B follows a more northern route so it is a little longer.

this portion of the TRTP, as does the Declaration of Donald E. Wright (Wright), SCE's Principal Project Manager for Segments 7 and 8 of the TRTP (the declaration is Attachment A to SCE's response to Ontario's undergrounding petition).

The relevant electrical and structural components of Segments 8A, 8B and 8C in Ontario are these:

- Segment 8A – 500 kV double-circuit structures replace the preexisting 220 kV structures from the Chino Substation to just west of the Mira Loma Substation; at this point 500 kV single-circuit structures continue north and then east into Mira Loma Substation; the height of the new structures varies from 125 to 198 feet and the old ones varied from 70 to 156 feet.

- Segment 8B – 220 kV double-circuit structures replace preexisting 220 kV single-circuit structures; the height of the new structures varies from 100 to 155 feet, with one 180-foot structure, and the old ones varied from 70 to 130 feet, with one 187-foot structure.

- Segment 8C – a 220 kV line located primarily on Segment 8A's 500 kV double-circuit structures replaces a preexisting 220 kV transmission line (thus, for structure heights, refer to Segment 8A); when Segment 8A's 500 kV line turns north near the Mira Loma Substation, Segment 8C continues east into the Mira Loma Substation.

The Wright declaration includes a construction status update for each segment and the Commission's CEQA Project Manager, a member of our staff, has confirmed the status. We begin with Segment 8C, which was substantially completed in November 2014. While the Wright declaration states that "SCE expects to complete testing and energize the lines in late December 2014/early January 2015," our CEQA Project Manager reports that the only work remaining now is some additional electrical testing, final clean up, recontouring and

reseeding. (SCE Response to Amended Petition for Undergrounding, Attachment A, ¶ 6.) Segment 8B is done – it was completed and energized in June 2011. Construction continues on portions of Segment A outside of Ontario, though our CEQA Project Manager reports that line is now 95% complete, with the remaining tower and wire construction expected by early April 2015. The portion of Segment 8A in Ontario is largely complete, however; the construction still remaining in the City consists mainly of final civil work, including signage, final clean up, recontouring and reseeding.

4. Discussion

We begin by reviewing Ontario's amended petition for undergrounding, which we focus on for several reasons. Because so little Segment 8 construction remains within the City, there is little to stay. Moreover, in determining whether to grant or deny a request for stay, the Commission generally considers a multi-factor test that includes an assessment of whether the moving party is likely to prevail on the merits.[5] Thus, given the status of construction and absent any facts to support urgency – we observe that Ontario did not file a motion to shorten time for responses to either petition and moreover, proceeded to file an

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[5] The test examines:

> (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits of the application for rehearing; (3) a balance of the harm to the moving party (or the public interest) if the stay is not granted and the decision is later reversed, against the harm to the other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case. [Citations]

(*Pac-West Telecomm, Inc. v. Pacific Centrex Services, Inc., Order Granting Stay of .08-01-031* [D.08-04-044] (2008) 2008 Cal. PUC LEXIS 155, *4-*5.)

elective reply under Rule 16.4(g) – we move directly to examine the merits of the undergrounding request.

4.1. Amended Petition for Undergrounding

The amended petition for undergrounding argues that new facts support Ontario's request, that the petition is timely and that the City reasonably determined to limit its earlier participation to five letters, three submitted during the CEQA review process in 2007 and 2009, and two submitted in 2013. Ontario contends it has met all Rule 16.4 requirements

4.1.1. Justification

Rule 16.4(b) provides very specific guidance:

> A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

Ontario's basic argument is that because the Commission modified D.09-12-044 to require undergrounding in Chino Hills of 3.5 miles of Segment 8A after it had been approved and partially-constructed as an above-ground transmission line, we must now order the undergrounding of the above-ground portions of Segment 8 in the City. "The same 200-feet tubular steel poles are being erected in residential areas of the City. [FN omitted.] These towers depress property values, affect quality of life and generally stand as community-wide visual impairments." (Amended Petition for Undergrounding at 5.) As ORA notes, however, Ontario fails to clearly specify one factual aspect of its request – precisely how many miles of Segment 8 it wants undergrounded. This

lack of specificity is important for obvious reasons, but the omission could be cured through appropriate legal process and is not fatal.[6]

Ontario contends that three categories of new facts warrant the relief it seeks; in support, the amended petition includes the Declaration of Al C. Boling (Boling), Ontario's present City Manager. Boling's very brief declaration explains that he is overseeing the City's legal challenge to the TRTP route and "could attest to the factual statements contained [in the amended petition]." (*Id*. at 9.) The amended petition also includes two attachments. Attachment A consists of more than 30 photographs of transmission towers and lines. These are not authenticated but we note that the photographs are not dissimilar from those in the FEIR's Map and Figure Series Volume or from others, introduced in evidence by Chino Hills, on which D.13-07-018 relies. Attachment B consists of suggested "redline" revisions to some of D.13-07-018's Findings of Fact, Conclusions of Law, and Ordering Paragraphs to extend that decision's undergrounding order to Ontario. However, recognizing that its pleadings alone do not provide sufficient basis for us to order undergrounding, the City also states: "Ontario understands that factual hearings may be required to determine cost allocations and further CEQA work may be required … Attachment [B] is intended to outline Ontario's requested result and not necessarily all procedural steps that may be necessary." (*Id*. at Attachment B, FN 1.)

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[6] Using Attachment 1 (the FEIR's Figure 2.2-1y) as a reference, it is possible to roughly approximate the length – about 5 miles – of each portion of Segment 8 in Ontario (Segments 8A and 8B are each a little longer than 5 miles and Segment 8C is a little shorter.) Since as Section 3 explains, Segments A and C utilize the same structures for most of their distance, undergrounding all of Segment 8 in Ontario would require at least 10 miles of redesign, tear down and reconstruction.

Regarding alleged new facts, first Ontario repeats a main contention in Chino Hills' 2011 petition -- that the actual impact of the new 200-feet tubular poles is much greater than anticipated in the FEIR and could not be truly appreciated until the poles were installed. Stating that this "fact" is undisputed, Ontario points to language in D.13-07-018. Text in that decision concurs with the basic argument Chino Hills advanced (though there is no separate Finding of Fact): "Chino Hills suggests that the towers have a far greater impact when viewed in person and we must agree." (D.13-07-018 at 18.) Likewise: "Chino Hills describes the lines in the narrow ROW as an 'eyesore' and 'jarring'; we must agree." (*Id.*)

Second, Ontario argues that the Commission's assessment (in D.13-07-018) "that these impacts would be unique in Chino Hills has been belied" because "the impacts are the same or even worse" in Ontario. (Amended Petition for Undergrounding at 4.) Pointing again to D.13-07-018, Ontario notes that the ROW width and tower heights are very similar in Chino Hills and Ontario.[7] D.13-07-018 acknowledges some similarities but it relies upon certain distinctions, in particular that "[t]he ROW in Chino Hills is the narrowest anywhere along the entire Project route … [m]oreover, the affected section in Chino Hills is longer than elsewhere at 3.5 miles and a larger number of residences border the ROW (220 houses)." (D.13-07-018 at 5.) In Ontario by comparison, D.13-07-018's Table 1 indicates approximately 36 residential structures border the north side of the ROW. That decision's Finding of Fact 5 states: "Given that approximately 220 houses border the Segment 8A ROW in

[7] Table 1 of D.13-07-028 compares the ROW width, tower height and number of houses bordering the affected ROW for Chino Hills, Duarte, Chino and Ontario.

Chino Hills, it is reasonable to construe a proportionately large impact on local tax revenues, given the diminution in value of so many individual residential parcels in a single community." (*Id*. at 61.)

Ontario discounts the difference in housing numbers and instead argues, "the impact to those residences is the same as the impact to residences within Chino Hills."[8] (Amended Petition for Undergrounding at 5.) But regarding future development in the City, Ontario takes a different tack. Claiming not only that the number of affected houses is relevant but also that the resulting impact in the City will be worse than the Chino Hills scenario, the amended petition states that the Segment 8A/8C ROW runs through a planned, future development known as the New Model Colony, a 13 square mile-annexation of former agricultural reserve land in south Ontario. The City adds that initial development actually has begun as a major developer has invested "over $150 million in backbone infrastructure … in support of their planned residential, commercial and retail development" and ultimately "approximately 120,000 to 130,000 new residents" are expected. (*Id*. at 6.) We observe that the only support for these claims is the Boling declaration's general verification but we do not doubt the City's ability to provide more specific verification were we to require it. Ontario concludes this argument with a projection of cascading financial harm unless undergrounding occurs: depressed land values, depressed new

[8] On its face Ontario's amended petition asks for the undergrounding of all of Segment 8 within the City, but the amended petition suffers from some internal inconsistency. Ontario also asserts, "the fact that the line through Chino Hills is longer than through the City does not lessen the impact to affected portions of the City … the shorter segment of the line through the City likely explains the disparity in affected residences." (Amended Petition for Undergrounding at 5.)

home sales, depressed housing values and depressed property tax revenues to San Bernardino County, the City, local school districts, etc.

Third, Ontario states that "the Commission's decision in D.13-07-018 to underground Segment 8A through the City of Chino Hills is a new fact" that "raises equal protection and fairness concerns, especially given the economic and racial disparity between Chino Hills and the City." (*Id*. at 4.) Citing to governmental websites for 2010 census data, Ontario compares the total population (Ontario 163,924 and Chino Hills 74,799) and average income levels (Ontario median income $54,955, with 16.4% of the population below the federal poverty line and Chino Hills, median income $97,065, with 6.3% below the federal poverty line). Ontario also reports the demographic composition of the Ontario population as over three-quarters Hispanic/Latino and African American; in Chino Hills these demographic groups comprise less than one-third of the total population.[9] (*Id*. at 7.) Ontario does not expressly ask us to take official notice of this data but we observe that demographics and income levels could be established through appropriate sources and legal processes. Ontario then concludes: "Whether through less access to resources or otherwise, the residents of Ontario were unable to mount the exorbitantly expensive campaign necessary to underground Segment 8 through the City." (*Id*.)

We understand Ontario's desire to see fair and equitable transmission siting considerations. We observe that some of the facts Ontario alleges as justification for its undergrounding request are undisputed (and arguably not

[9] The amended petition also references another 7,060 persons in "Ontario – Affected Tracts" (more than half Hispanic/Latino and African American) and another 21,133 persons in Chino Hills-affected Tracts" (about one-quarter in these demographic groups). The location of these areas is unclear.

"new" at all) and others most likely could be established through legally recognized processes. All of these allegedly "new" facts raise timing issues, however, which Ontario's justification fails to acknowledge, let alone discuss.

Most significantly, Ontario fails to acknowledge that the timing of its undergrounding request, if granted, would delay the timeline for completion of the TRTP. ORA, SCE and TURN all oppose Ontario's amended petition and they all underscore this omission.[10] In reaching its conclusion on Chino Hills' undergrounding petition, D.13-07-018 reviews an extensive evidentiary record, including studies of future demand in the Tehachapi area and the curtailment risk associated with the timeline for completing underground construction of that portion of Segment 8A. On this point D.13-07-018 determines: "The capacity needed in the near term for Segment 8A could be constructed underground [in Chino Hills] in time for the Project to reach commercial operation in late 2015 or early 2016." (D.13-07-018, Finding of Fact 18 at 63.) Thus, the decision anticipates a two- to three-year construction period. While our CEQA Project Manager advises that this schedule has slipped a little, completion in 2016, some five years after Chino Hills filed its petition, remains the target.

ORA observes the lack of any discussion of "the impact of [Ontario's] proposal on the TRTP project schedule and the impact of the delay on the delivery of power from renewable projects in the Tehachapi area to load customer in the Los Angeles Basin." (ORA Response on Undergrounding at 4.)

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[10] TURN opposed undergrounding in Chino Hills and had raised social policy and environmental justice. Thus, though TURN opposes undergrounding in Ontario, it is not without sympathy for Ontario's fairness claims.

So does TURN, stating that Ontario's amended petition "fails to address or even acknowledge the implications its proposal would have on the development of cost-effective renewable electric generation resources." (TURN Response on Undergrounding at 3.) SCE pointedly argues: "A party who has not engaged in the underlying proceeding should not be able to derail the timely completion of this critical project at such a late stage in the project's construction." (SCE Response on Undergrounding at 12.)

Additional CEQA review would be required to examine the potential environmental impacts of undergrounding in Ontario and this alone would take substantial time. For Chino Hills, the additional CEQA review, which occurred on a parallel track to the evidentiary hearings, took approximately one and an half years – it was completed shortly before the ALJ filed a Proposed Decision in June 2013. Unlike the Chino Hills situation, however, no undergrounding alternatives in Ontario were ever requested and none were part of the initial CEQA review analyzed in the FEIR, nor part of any later environmental review.[11] For this reason, as well as the greater distance involved, CEQA analysis of undergrounding Segment 8 in Ontario would take at least this long and most likely longer. Thus, were we to entertain review of Ontario's request at this late date and ultimately, to order undergrounding of Segment 8, completion of the TRTP most certainly would be postponed to the end of this decade, if not longer.

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[11] Chino Hills' undergrounding petition required additional CEQA review but because that review was able to build upon the comprehensive FEIR's preliminary analysis of undergrounding in the Chino Hills ROW, ultimately the Commission was able to issue an Addendum to the FEIR (rather than a Subsequent EIR or a Supplemental EIR). The certified FEIR itself consists of seven volumes plus the Map and Figure Series Volume.

In addition, both ORA and TURN comment upon the lack of any mention of the potential cost of undergrounding Segment 8 in Ontario. TURN states that Ontario's amended petition "fails to address or even acknowledge the cost implications presented by the relief it seeks." (TURN Response on Undergrounding at 3.) ORA's cost concerns are both specific and comprehensive: lack of comparison of overhead and underground construction in the terrain; no acknowledgment of the need for transition stations at both ends of each underground segment; no discussion of the impact on the reactive compensation already authorized for Segment 8A, "including the need for re-design, and modification of the SCE equipment purchase orders, construction and installation costs, and construction schedules." (ORA Response on Undergrounding at 4.) SCE also observes that Ontario has not proposed to make any kind of financial contribution to offset undergrounding costs unlike Chino Hills, which offered several municipal-owned pieces of real property. D.13-07-018 values this real property at $17,376,986, a small sum relative to the costs of undergrounding in the Chino Hills ROW, but nonetheless an actual reduction in ratepayer obligations. It is clear that undergrounding Segment 8 in Ontario at this late date would have significant the costs for all ratepayers, attributable not only to actual construction costs but also stemming from the delayed completion of the TRTP.

4.1.2. Timeliness

Rule 16.4(d) governs timeliness and mandates filing "within one year of the effective date of the decision proposed to be modified" or otherwise, requires an explanation "why the petition could not have been presented within one year of the effective date of the decision." Where "the late submission has not been

justified" the Commission may "issue a summary denial." Ontario contends that it has complied with Rule 16.4(d).

First, Ontario points out that its initial petition, filed on October 31, 2014, follows approximately three months after the issuance of D.14-07-029, which denied rehearing of the original CPCN decision, D.09-12-044. But D.09-12-044 was effective immediately and moreover, pursuant to Pub. Util. Code § 1735, continued in effect after the applications for rehearing were filed – Ontario filed its initial petition nearly five years later. Likewise, D.13-07-018, the Chino Hills undergrounding decision, was effective immediately, well over a year before Ontario filed its initial petition. This argument fails.

Second, Ontario contends: "[T]he actual effects of the line were not known until they began to be constructed … after April of this year [2014]." (Amended Petition for Undergrounding at 3.) Regarding Segment 8B, this argument is factually wrong since that line was energized in 2011; however, we acknowledge that while most of the structures on Segment 8B increased in height, resulting in a range of 100 – 155 feet (up from 70 – 130 feet), the tallest structure actually was reduced from 187 feet to 180 feet. Thus, to the extent Ontario focuses on new, very tall structures in the City, it must mean those located on the Segment 8A/8C route, where heights now range from 125 – 198 feet, compared to the prior range of 70 – 156 feet. While it is true that construction resulting in the new, taller poles that support Segment 8A (and Segment 8C) began in April 2014, Ontario's argument is unpersuasive. The argument presumes that Ontario was unaware that the FEIR, certified in 2009, includes plans for 198 foot towers in the City; that in 2011 Ontario had no knowledge such towers actually were standing in Chino Hills, on Ontario's border; and that between 2011 and 2013 Ontario did not know about Chino Hills' multi-faceted effort to obtain

undergrounding in its ROW. Finally, the argument altogether ignores that between 2007 and 2013, Ontario sent the Commission five letters about various aspects of the Project design in the City, one of which actually acknowledges that the design includes higher towers. We examine these letters below.

4.1.3. Why Petitioner Did Not Participate Earlier

Rule 16.4(e) requires an explanation in the situation where a petitioner was not involved in the proceeding at an earlier stage. This subsection provides:

> If the petitioner was not a party to the proceeding in which the decision proposed to be modified was issued, the petition must state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier.

Ontario provides a three-part explanation. First, Ontario states it "is clearly interested in this proceeding as Segment 8 passes through the City. The adverse impacts of this line, which only became clear after its partial construction, occur within the City." (*Id*. at 4.) Second, though Ontario only now has become a party to the proceeding by filing this petition and the petition for stay, the City points out that it engaged earlier by submitting several letters during the CEQA review process. Finally, Ontario states: "[T]he City previously limited its participation in this proceeding for economic reasons" but now is prepared to "… spend the public resources necessary to achieve a similar result [to Chino Hills]." (*Id*.)

What Ontario does not mention, however, is that none of its letters contests construction of new overhead structures in the City or suggests that undergrounding through the City be examined as a viable routing alternative – the letters all focus on other matters. The record includes four letters signed by a

City Manager for the City of Ontario and one letter signed by a Planning Director.

Ontario sent two letters shortly after SCE filed Application 07-06-013 on June 29, 2007 (and two years before D.09-12-044 issued):

- August 2, 2007, Gregory C. Devereaux (Devereaux), Ontario City Manager, to Commission Docket Office. This letter is included in Appendix D to the CEQA Scoping Report and is part of Attachment D to SCE's response. The letter makes six requests: (1) use of tubular steel poles rather than a "skeletal design"(lattice structure) to support the new 500 kV line and improve tower aesthetics since "the area proposed for improvements is planned for residential development"; (2) use of the same tubular steel poles to support the new 220 kV line; (3) reduction in the width of a specified new ROW from 150 to 100 feet; (4) prompt notification of any changes or alternatives to the transmission line routing (5) utilization of available methods to reduce transmission line noise; and (6) coordination with the City to locate new transmission line towers outside of streets planned for the New Model Colony.

- October 4, 2007, Devereaux to Commission CEQA Project Manager. This letter, part of Attachment D to SCE's response, follows a scoping meeting Ontario attended in Chino Hills. The letter makes six requests. Five repeat requests in the City's August 2 letter; the sixth urges full environmental analysis of the alternative routing through the Chino Hills State Park.

Ontario sent one letter as comment on the Draft EIR (DEIR) a few months before D.09-12-044 issued:

- April 6, 2009, Jerry Blum, Ontario Planning Director to Commission CEQA Project Manager: This letter, part of Appendix H to the FEIR, makes two requests: (1) more specific identification of the location of the new tubular steel poles which the DEIR, in response to Ontario's prior requests, incorporates in the Project design instead of lattice structures; and (2) clarification of an easement issue raised previously. The letter also states Ontario's support for an alternative

routing through the Chino Hills State Park because it "would eliminate the need for new, taller towers impacting nearby existing and proposed residential development." This is the only letter that mentions tower height at all.

Ontario sent one letter three months before D.13-07-018 issued:

- April 9, 2013, Chris Hughes (Hughes), Ontario City Manager, to Commission Public Advisor. This letter, included as part of Attachment D to SCE's response, makes five comments, four of them about design changes at the Mira Loma substation needed to address voltage control issues caused by undergrounding in Chino Hills: (1) the substation expansion would extend "into an area planned for residential development"; (2) the substation expansion would extend "over a planned collector street"; (3) the TRTP's EIR does not fully review any Chino Hills undergrounding alternative; (4) the substation expansion would magnify the "aesthetically unappealing aspects" of that facility by requiring placement of additional equipment and towers at the substation"; (5) the new voltage control equipment proposed for the substation could and should be placed elsewhere on the transmission line.

Ontario sent one letter the month after D.13-07-018 issued:

- August 14, 2013, Hughes to Commission President Peevey: This letter, also included as part of Attachment D to SCE's response, thanks the Commission for D.13-07-018, which orders undergrounding in Chino Hills but limits expansion at the Mira Loma substation by excluding construction of reactive compensation there and instead, requiring a study on a different method of providing voltage control. The letter notes that Ontario "took no position on the issue of undergrounding per se" but reiterates concerns about the impact of expansion of the Mira Loma substation on planned development in the City, including the New Model Colony. The letter concludes that should SCE seek to modify D.13-07-018 to authorize reactive compensation, "the City will have no choice but to move for a party status to ensure our concerns are allowed to be heard."

Subsequently, in D.14-01-005, the Commission modified D.13-07-018 to authorize construction of reactive compensation at the Mira Loma substation, the potential outcome Ontario's April 2013 letter opposes. SCE raised the issue through a petition for modification properly filed and served and, as SCE's response points out, the Ontario City Manager's Office has been on the service list for this docket continuously. Ontario did not intervene in the process that led to D.14-01-005 and to our knowledge, took no action until it filed its initial petition more than 10 months after that decision.

4.1.4. Laches; Conclusion

We are faced with a question of perceived unfairness and asked to provide an equitable remedy. Under our Rule 16.4, Ontario must not only justified its request but also show that it has acted in a timely way to request that relief for the first time now. For all of the reasons discussed above, we cannot conclude that Ontario has done so.

We do not find a different answer in the law of equity. Codified in 1872 among the Maxims of Jurisprudence in California's Civil Code, the equitable Doctrine of Laches provides: "The law helps the vigilant, before those who sleep on their rights." (Civil Code §3527.) In more modern terms, this Commission has explained, "[l]aches is unreasonable delay in asserting a right which renders the granting of relief inequitable. (*County Sanitation District No. 2 of Los Angeles County v. Southern California Edison Company*, D.02-09-025 at 8, citing *Adams v. Young* (1967) 255 Cal.App.2d 145, 160; see also *Butler v. Holman* (1956) 146 Cal.App.2d 22, 28.)

Moreover, "[t]he doctrine of 'laches' is based upon grounds of public policy, which for the peace of society requires discouragement of stale demands... Laches is not merely an affirmative defense but a fundamental defect

in the cause of action." (*California Alliance for Utility Safety and Education vs. San Diego Gas & Electric Company*, D.97-12-117, 1997 Cal. PUC LEXIS 1145, *3 quoting *In re Alternative Regulatory Frameworks* (1994) 55 CPUC2d 681, 687.)

In plain terms, the doctrine requires a petitioner such as Ontario to act in a timely way to seek relief. It is pointless to speculate what decision the Commission might have reached had Ontario requested undergrounding of Segment 8 within the City in 2011. But Ontario's amended petition, filed more than five years later, does not sustain its burden to show why this proceeding should be reopened now to modify D.09-12-044. Ontario's late arguments, following construction of Segment 8 in the city, constitute laches and are unpersuasive.

The amended petition should be summarily denied.

4.2. Amended Petition for Stay

Ontario's amended petition for a construction stay of Segment 8 within the City repeats most of the arguments reviewed above. Ontario contends its request is justified (and that it will prevail on the merits), is timely filed, and that its determination not to participate earlier was warranted. We have reviewed each of those arguments above in connection with Ontario's undergrounding petition and found them unpersuasive. The amended petition should be summarily denied

5. Comments on Proposed Decision

The proposed decision 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. Ontario and SCE filed comments on March 26, 2015, and reply comments on April 1, 2014.

SCE's very brief comments support the proposed decision. Ontario's comments argue the proposed decision errs in denying the amended petition for undergrounding. In a footnote, Ontario recognizes that final construction of Segment 8 within the City has rendered the stay petition virtually moot – Segment 8B was energized in 2011 and for Segments 8A and 8C, only some testing and cleanup remain. Regarding the undergrounding denial, Ontario contends that the proposed decision overstates the facts related to the City's knowledge, before April 2014, of Segment 8 tower heights, applies Rule 16.4 too rigidly and, improperly applies the Doctrine of Laches. Ontario contends that the proposed decision reaches an inequitable result and reiterates this point in its reply comments.

None of these objections to the proposed decision establish factual or legal error. Ontario would have us reinterpret the existing facts to reach different conclusions and then, order a different result. Ontario implausibly argues that the City, its residents and the developers of its planned residential/commercial New Model Colony had no meaningful knowledge of the impact of tower height until April 2014. Moreover, Ontario completely disregards the timeline consequences of its proposal on the TRTP's completion and broadly asserts that "basic notions of fairness and equity justify any past or future delay." (Ontario comments at 5, emphasis added.)

Ontario also makes two new assertions -- that SCE's outreach efforts in the City were insufficient and that City residents have been unable to obtain Federal Housing Administration (FHA) loans on properties adjacent to the Segment 8 towers. The existing administrative record discredits the first claim; SCE's reply comments discuss the extensive notice requirements at multiple stages of the review process and other contacts by both the utility and the Commission's

CEQA staff. The FHA issue was not previously raised in this record to our knowledge. However, SCE's reply comments address the allegation, stating:

> [The FHA] issue was addressed with respect to TRTP in an April 14, 2012 Congressional Field Hearing to the United States House of Representatives Subcommittee on Insurance, Housing, and Community Opportunity, held in nearby Chino Hills. In relation to this Field Hearing, the United States Department of Housing and Urban Development (HUD) submitted a letter on this specific FHA financing issue on April 9, 2012. The HUD letter states that properties are eligible for FHA financing if they are located outside a transmission line easement. [Footnote omitted] In response to the concerns raised by Ontario residents, SCE sent a letter, dated February 17, 2015, which addressed the FHA financing issue and included the HUD letter as an attachment. SCE's letter addressing this issue is posted on Ontario's own website. (SCE reply comments at 4-5.)

In summary, Ontario's arguments do not persuade us to commence hearings, at this late date, on the undergrounding of Segment 8 within the City. We correct a few, minor typographical errors in the proposed decision but make no other changes.

6. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding

Findings of Fact

1. Construction of Segment 8C was substantially completed in November 2014; the only work remaining now is final additional electrical testing, clean up, recontouring and reseeding.

2. Segment 8B is done – it was completed and energized in June 2011.

3. Construction continues on portions of Segment A outside of Ontario, though that line is now 95% complete, with the remaining tower and wire

construction expected by early April 2015. The portion of Segment 8A in Ontario is largely complete; the construction still remaining in the City consists mainly of final civil work, including signage, final clean up, recontouring and reseeding.

4. Ontario fails to clearly specify one factual aspect of its request – precisely how many miles of Segment 8 it wants undergrounded.

5. Within Ontario, Segments 8A and 8B are each a little longer than 5 miles and Segment 8C is a little shorter. Since Segments A and C utilize the same structures for most of their distance, undergrounding all of Segment 8 in Ontario would require at least 10 miles of redesign, tear down and reconstruction.

6. The photographs, in Attachment A to Ontario's amended petition for undergrounding, are not authenticated but are not dissimilar from those in the FEIR's Map & Figure Series Volume or from others, introduced in evidence by Chino Hills, on which D.13-07-018 relies.

7. The "redline" revisions to some of D.13-07-018's Findings of Fact, Conclusions of Law and Ordering Paragraphs, in Attachment B to Ontario's amended petition for undergrounding, are insufficient to extend that decision's undergrounding order to Ontario. Ontario recognizes that its pleadings alone do not provide sufficient basis for an undergrounding order, and that additional hearings and additional CEQA review would be necessary.

8. Ontario supports its allegations of new facts with the very brief declaration of its present City Manager, Al C. Boling, which states that he is overseeing the City's legal challenge to the TRTP route within the City.

9. Ontario repeats Chino Hills' contention that the actual impact of the new 200-feet tubular poles is much greater than anticipated in the FEIR and could not be truly appreciated until the poles were installed; the text of D.13-07-018 supports this characterization.

10. Ontario attempts to distinguish D.13-07-018's determination that the 220 residential structures along Chino Hills' ROW make that situation unique compared to the 36 residential structures along the north side of Ontario's ROW; but regarding future development in the City, Ontario endorses the argument.

11. Ontario does not expressly ask us to take official notice of demographics and income levels in Ontario compared to Chino Hills but this data could be established through appropriate sources and legal processes.

12. All of Ontario's allegedly "new" facts raise timing issues, which Ontario's justification fails to acknowledge or discuss.

13. D.09-12-044 was effective immediately and continued in effect after the applications for rehearing were filed; Ontario filed its initial petitions for stay and for undergrounding nearly five years later. D.13-07-018, the Chino Hills undergrounding decision, was effective immediately, well over a year before Ontario filed its initial petitions.

14. Most of the structures on Segment 8B have increased in height, resulting in a range of 100 – 155 feet (up from 70 – 130 feet), but the tallest structure actually was reduced from 187 feet to 180 feet. The structures on the Segment 8A/8C route have increased in height and the range is now 125 – 198 feet, compared to the prior range of 70 – 156 feet.

15. Ontario's claim that the heights of the tallest structures were not known until construction began in April 2014 is factually wrong regarding Segment 8B. Regarding Segment 8A/8C route, the argument is unpersuasive because it presumes that Ontario was unaware that the FEIR, certified in 2009, includes plans for 198 foot towers in the City; that in 2011 Ontario had no knowledge such towers actually were standing in Chino Hills, on Ontario's border; that between 2011 and 2013 Ontario did not know about Chino Hills' multi-faceted effort to

obtain undergrounding in its ROW; or that between 2007 and 2013, Ontario sent the Commission five letters about various aspects of the Project design in the City, one of which actually acknowledges that the design includes higher towers.

16. Of the five letters Ontario sent to the Commission between 2007 and 2013, a City Manager signed four and a Planning Director signed the fifth. None of the letters contests construction of new overhead structures in the City or suggests that undergrounding through the City be examined as a viable routing alternative – the letters all focus on other design issues.

Ontario's undergrounding request, if granted at this late date, would delay the timeline for completion of the TRTP by at least 5 years and would have significant costs for all ratepayers, attributable not only to actual construction costs but also stemming from the delayed completion of the TRTP.

Conclusions of Law

1. Pub. Util. Code § 1708 is an extraordinary remedy, which must be exercised with care and in keeping with fundamental principles of res judicata.

2. Under Pub. Util. § 1735, the filing of an application for rehearing of an issued decision does not automatically stay that decision.

3. Ontario has not met its burden of proof under Rule 16.4 to justify its amended petition for the undergrounding of Segment 8 within the City, to establish that it has acted in a timely way by seeking that relief for the first time now, or to explain why it determined to limit its earlier participation in this proceeding.

4. Ontario's has not met its burden of proof under Rule 16.4 to justify its amended petition for a construction stay of Segment 8 within the City (including that it will prevail on the merits), to establish that it has acted in a timely way by

seeking that relief for the first time now, or to explain why it determined to limit its earlier participation in this proceeding.

5. The equitable Doctrine of Laches requires a petitioner such as Ontario to act in a timely way to seek relief.

6. Because Ontario has not met its burden of proof, its amended petition for undergrounding should be summarily denied.

7. Because Ontario has not met its burden of proof, its amended petition for a construction stay should be summarily denied.

8. This order should be effective immediately to provide certainty to the parties and to avoid any delay in completion of the TRTP.

O R D E R

IT IS ORDERED that:

1. The *City of Ontario's Petition For Modification To Order the Undergrounding Segment 8B,* filed October 31, 2014, as amended by the *City of Ontario's Amended Petition For Modification To Order the Undergrounding Segment 8,* filed November 21, 2014, is denied.

2. The *City of Ontario's Petition For Modification To Stay Construction of Segment 8B,* filed October 31, 2014, as amended by the *City of Ontario's Amended Petition For Modification To Stay Construction of Segment 8,* filed November 21, 2014, is denied.

3. Application 07-06-031 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT 1

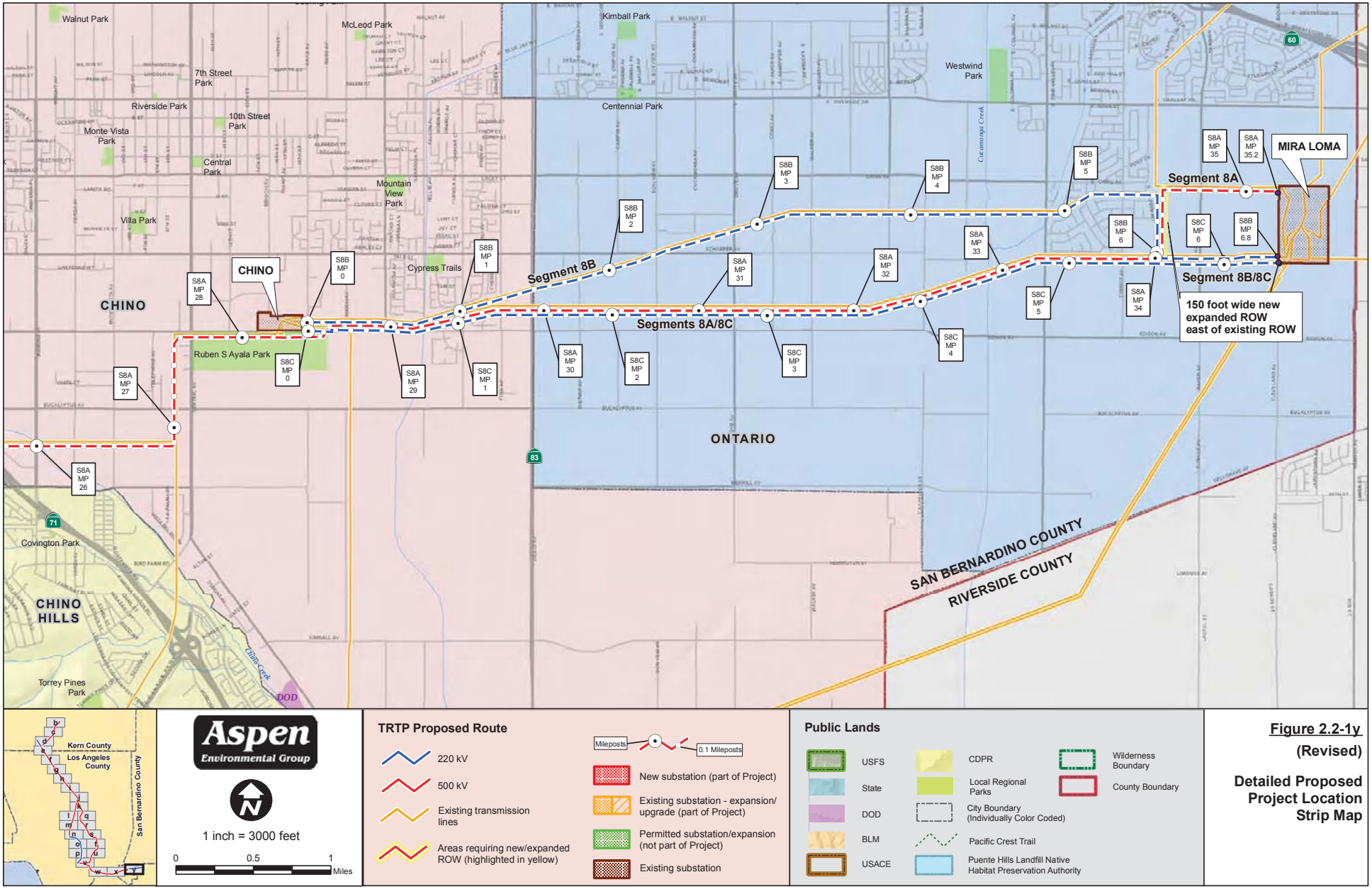

Figure 2.2-1y
(Revised)

Detailed Proposed Project Location Strip Map