

Decision 11-05-003 May 5, 2011

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

Edward H. Leonhardt,

Complainant,

vs.

Southern California Edison Company  
(U338E),

Defendant.

Case 10-08-023  
(Filed September 7, 2010)

**ORDER DISMISSING COMPLAINT**

**1. Summary**

This decision dismisses the complaint by Edward H. Leonhardt against Southern California Edison Company. We find that the complaint fails to state a claim upon which relief may be granted. This proceeding is closed.

**2. Background**

Decision (D.) 08-12-031, adopted December 18, 2008, granted Southern California Edison Company (SCE) a Permit to Construct the El Casco Systems Project (Project). The Project included construction of a substation, upgrade of 115 kilovolt (kV) sub-transmission lines, and other related activities within Riverside and San Bernardino Counties. D.08-12-031 adopted a Recirculated Final Environmental Impact Report (RFEIR) which incorporated the Draft Environmental Impact Report (EIR) and the Final EIR.

This complaint filed August 31, 2010, was calendared under the Commission's Expedited Complaint Procedure (ECP).<sup>1</sup> The complaint alleges that SCE's construction during April and May, 2010, of the 115 kV sub-transmission line element of the Project is inconsistent with the approved and planned design. More specifically, Edward H. Leonhardt (Complainant) alleges that the portion of the line through the Sun Lakes Community included installation of seven new wires instead of six wires. The seven new wires are attached to new steel poles, and replace three wires previously installed on wooden poles.

Complainant also alleges that the RFEIR, dated October 17, 2008 and prepared in accordance with the California Environmental Quality Act (CEQA)<sup>2</sup> includes six wires in the proposed design and not seven wires. Complainant argues that when the Commission adopted D.08-12-031<sup>3</sup> granting SCE approval to construct the Project, this approval was conditioned on construction of the Project as specified in the RFEIR.

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<sup>1</sup> On September 7, 2010, an assigned Administrative Law Judge's Ruling terminated the ECP for this matter and calendared the matter as a regular complaint.

<sup>2</sup> CEQA (Pub. Resources Code section 21000, et. seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, Section 15002.) CEQA defines a project as "an activity which may cause a direct change in the environment, or reasonably foreseeable change in the environment, and which is..., an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Pub. Resources Code Section 21065).

<sup>3</sup> See, Application (A.) 07-02-022.

In support of his allegations, Complainant refers to a discussion during an open meeting on June 16, 2010, of the Sun Lakes Country Club Board of Directors. During that discussion, George Moyer, President of the Sun Lakes Country Club Board of Directors provided a summary of a June 11, 2010, meeting he held with Michael Bennett, General Manager of Sun Lakes Country Club, and SCE representatives. Complainant alleges that the June 11, 2010 meeting was held to address the installation of a seventh wire on the steel poles.<sup>4</sup>

Complainant concludes that the construction of the Project using seven wires is inconsistent with the approved plan which was based on six wires. Complainant therefore requests that the CEQA process for the Project be reopened.

On October 13, 2010, SCE answered the Complaint. SCE disputes the allegations raised by Complainant. SCE points out that the Proponent's Environmental Assessment (PEA) for the Project,<sup>5</sup> and the RFEIR<sup>6</sup> each include the seven-wire proposed design. SCE further disagrees with the characterization of the June 11, 2010 meeting between SCE and Mr. Bennett. SCE states that the purpose of this meeting was to celebrate the completion of the Project and thank Sun Lakes Country Club for their collaboration. In addition, SCE states that the

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<sup>4</sup> In support of Complainant's allegations, attached to the complaint is a letter dated June 11, 2010, from SCE to the General Manger of the Sun Lakes Country Club. The letter explains that a fault return conductor (FRC) wire initially attached to the new steel poles at mid-height will be attached at the peaks of the poles. The FRC wire equalizes the potential during a fault, such as lightning strikes, for public safety.

<sup>5</sup> PEA at 2-26.

<sup>6</sup> See, Draft EIR at B-33. The Draft EIR is included with the Final EIR in the RFEIR.

purpose of the June 11, 2010 letter was to explain the placement of the seventh wire on the poles.

SCE argues that the FRC wire, which is the seventh wire, was included in the PEA and the RFEIR, and therefore considered and approved by the Commission in D.08-12-031. Accordingly, SCE requests that the Complaint and relief requested be denied.

### **3. Discussion**

A review of the documents cited by Complainant and SCE support SCE's position.

A plain reading of the PEA<sup>7</sup> shows that the seventh wire was included in SCE's proposed design of the Project. Furthermore, the Draft EIR (at B-33, B.6.1.2, Structures and Associated Equipment) states that "overhead ground wires would be installed on the peaks of the steel poles." Finally, the June 11, 2010 letter attached to the complaint discusses the location of the FRC wire on the poles. This letter does not introduce a seventh wire to the Project.

As this complaint does not state a claim upon which relief may be granted, it should be dismissed.

### **4. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. No comments were received.

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<sup>7</sup> PEA at 2-26.

## **5. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Bruce DeBerry is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. SCE was granted authority by D.08-12-031 to construct the Project. A portion of the Project replaces existing electrical wires through the Sun Lakes Community on steel poles.
2. The portion of the Project passing through the Sun Lakes Community replaces three existing wires with six new wires and a seventh or FRC wire.
3. The seventh or FRC wire is included in the PEA and the RFEIR.
4. The June 11, 2010 letter from SCE to the General Manager of the Sun Lakes Country Club explains the movement of the seventh FRC wire from mid-height on the steel poles to the peak of the poles. The letter does not introduce an additional wire to the Project.
5. Complainant provides no factual information upon which to reopen the CEQA process for the Project.
6. Nothing in this complaint sets forth any act or thing done or omitted to be done by SCE in violation or claimed to be in violation, of any provision of law or of any order or rule of the Commission.
7. There are no issues or facts raised in this complaint which warrant evidentiary hearings.

### **Conclusions of Law**

1. This complaint does not explain how the Commission's authorization to construct the Project is in violation of CEQA.
2. The complaint presents no triable issue of law or fact, and the Complainant has not stated any claim upon which the Commission may grant relief.

3. No hearing is necessary.
4. The complaint should be dismissed.
5. This order should be effective immediately.

**IT IS ORDERED** that:

1. The complaint of Edward H. Leonhardt against Southern California Edison Company is dismissed for failure to state a claim upon which relief may be granted.
2. No hearing is necessary.
3. Case 10-08-023 is closed.

This order is effective today.

Dated May 5, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK FERRON  
Commissioners