



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

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In the Matter of the Application of SOUTHERN ) Application No. 07-06-031  
CALIFORNIA EDISON COMPANY (U 338-E) )  
for a Certificate of Public Convenience and ) (Filed June 29, 2007)  
Necessity Concerning the Tehachapi Renewable )  
Transmission Project (Segments 4 through 11) )  
)

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**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)  
RESPONSE TO ANTELOPE VALLEY-EAST KERN WATER AGENCY'S:  
(1) MOTION TO BECOME A PARTY AND  
(2) MOTION TO RECONSIDER REJECTION OF APPLICATION FOR REHEARING**

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Dated: February 9, 2010

## I. INTRODUCTION

On January 25, 2010, one month after the California Public Utilities Commission (Commission) issued its Final Decision in these proceedings, Antelope Valley-East Kern Water Agency (AVEK) concurrently filed a Motion to Become a Party and an Application for Rehearing. On January 27, 2010, the Commission Docket Office rejected the Application for Rehearing on the grounds that AVEK is not a party to the proceedings. On January 29, 2010, AVEK filed a Motion to Reconsider the rejection of its Application for Rehearing.

In the Motion to Reconsider, AVEK argues that the Docket Office should not have rejected its Application for Rehearing because AVEK merits party status. The Motion to Become a Party and the Motion to Reconsider, both of which are apparently still pending, therefore turn on the same issue of whether AVEK should be granted party status at this very late stage. Under Commission Rules of Practice and Procedure 11.1 and 16.1, Southern California Edison Company (SCE) opposes both motions.<sup>1</sup>

In its Application for Rehearing, AVEK challenges the Final Decision on the grounds that the Final Environmental Impact Report (Final EIR) does not adequately consider the alleged impacts of the Tehachapi Renewable Transmission Project (TRTP or the Project) on AVEK's groundwater recharge activities. While the Project requires 18 acres of right-of-way (ROW) that will traverse AVEK property, AVEK's total recharge area is roughly 1,500 acres. It is unlikely that water recharge activities will be disrupted entirely within the 18 acres of SCE's ROW. AVEK has failed to explain how or why its narrow concerns were not raised before now, notwithstanding the numerous opportunities for public involvement in this proceeding. SCE respectfully requests that the Commission deny AVEK's Motion to Become a Party and its separate Motion to Reconsider.

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<sup>1</sup> SCE also opposes AVEK's Application for Rehearing, as detailed in SCE's Response to Applications of the Acton Town Council, CARE, and City of Chino Hills for Rehearing of Decision 09-12-044.

## II. STATEMENT OF FACTS

The Commission has provided numerous opportunities for public participation in the TRTP proceedings. Unlike the many other parties to this proceeding that availed themselves of the opportunity to participate, AVEK did not participate in the environmental review process until after it was long over (e.g., by sending a letter on the Final EIR one month *after* the Commission issued the document) and failed to move for party status until one month *after* the Commission issued its Final Decision:

- June 29, 2007: SCE filed an Application for a Certificate of Public Convenience and Necessity (CPCN) for the Project. D.09-12-044 at 5.
- February 6, 2009: The agencies released the Draft EIR/EIS and opened the public comment period. *Id.* at 24.
- March 17, 2009: ALJ Kolakowski issued a Scoping Memo outlining the scope and including a schedule of key deadlines in the evidentiary proceedings and environmental review under CEQA. *Id.* at 5.
- April 6, 2009: The public comment period for the Draft EIR/EIS closed. *Id.* at 24.
- July 6-10 and 27-31, 2009: ALJ Kolakowski held ten days of evidentiary hearings on the Project, in which numerous parties participated. *See id.* at 6.
- October 30, 2009: The Commission issued the Final EIR. *Id.* at 24.
- November 3, 2009: The Commission issued its Proposed Decision, on which it invited public comment. *Id.* at 6.
- November 20, 2009: The Commission held a publicly-noticed En Banc Meeting and Final Oral Argument. *Id.*; *see also* A.07-06-031, Administrative Law Judge's Ruling Setting Final Oral Argument Before the Commission (Nov. 9, 2009). At the end of the Final Oral Argument lasting nearly 3 ½ hours, ALJ Kolakowski submitted the proceedings for final decision. Tr. 1894:20-28; *accord* D.09-12-044 at 6.
- November 23, 2009: Parties submitted opening comments on the Proposed Decision. D.09-12-044 at 77.
- November 30, 2009: Parties submitted reply comments on the Proposed Decision. *Id.* AVEK commented—for the first time—on the Final EIR, but it did not move to become a party or comment on the Proposed Decision. AVEK Motion to Reconsider at 2.

- December 3, 2009: AVEK explained its concerns to the Commission but did not move to become a party. *See id.*
- December 17, 2009: At the Commission hearing to adopt the Final Decision, which was also on December 17, 2009, AVEK appeared before the Commission to discuss its concerns but again did not move to become a party. AVEK Motion to Reconsider at 2. The Commission submitted its Notice of Determination to the State Clearinghouse, which was received on December 21, 2009.<sup>2</sup>
- December 24, 2009: The Commission issued its Final Decision granting the CPCN, D.09-12-044.
- January 25, 2010: AVEK moved for party status by filing a Motion to Become a Party. AVEK concurrently filed its Application for Rehearing.

As the above timeline demonstrates, AVEK did nothing during the public comment period on the Draft EIR/EIS, before the issuance of the Final EIR, during the 10-day evidentiary hearings, the publicly-noticed En Banc Meeting and Final Oral Argument, or seek to comment on the Proposed Decision. Instead, AVEK waited to comment on the Final EIR *after* all the opportunities for public participation had passed. AVEK did not move for party status until one month *after* the Commission issued its Final Decision and sent it to the State Clearinghouse.

### **III. LEGAL STANDARD**

AVEK's Motion to Become a Party and Motion to Reconsider both turn on the question of whether AVEK warrants party status at this late stage in the proceedings. Under Commission Rule of Practice and Procedure 1.4(b), a person filing a motion for party status must "state the factual and legal contentions that the person intends to make and show that the contentions will be reasonably pertinent to the issues already presented." In considering a motion for party status, the Commission "may, where circumstances warrant, deny party status or limit the degree to which a party may participate in the proceeding." Rule 1.4(c).

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<sup>2</sup> *See* TRTP, available at [ftp://ftp.cpuc.ca.gov/gopher-data/enviro/tehachapi\\_renewables/TRTP.htm](ftp://ftp.cpuc.ca.gov/gopher-data/enviro/tehachapi_renewables/TRTP.htm) (last visited Feb. 9, 2010).

#### IV. DISCUSSION

AVEK's Motion to Become a Party, and consequently its Motion to Reconsider, should be denied because of AVEK's delay in moving for party status, the unnecessary delay that granting AVEK party status would impose on TRTP's completion, and AVEK's failure to explain how its contentions relate to the issues already presented in these proceedings. *See* Rule 1.4(b)-(c).

##### **A. Party Status for AVEK at This Late Stage Would Unnecessarily Delay TRTP's Completion and Endanger Achievement of State RPS Goals**

AVEK waited to comment on the Final EIR until November 30, 2009, after all the numerous opportunities for public participation in these proceedings had passed. AVEK waited until January 25, 2010, one month after the Commission issued its Final Decision, to seek party status. Rather than comply with the timeline set by the Commission for this proceeding, AVEK waited to submit comments to the Final EIR on November 30, 2009, long after the deadline to comment on the Draft EIR (April 6, 2009). *See* Cal. Pub. Res. Code § 21091(d)(1) (The lead agency "shall consider comments it receives" on draft EIRs "if those comments are received within the public review period"). The Commission is under no obligation to consider AVEK's late-filed comments to the EIR. AVEK also failed to submit timely comments to the Proposed Decision, which were due on November 23 and 30, 2009. AVEK does not explain its failure to act on one of the many opportunities for public participation in this proceeding.<sup>3</sup>

AVEK seeks rehearing on the Project's alleged impacts on AVEK's groundwater recharge activities, issues which it failed to raise properly during the public involvement process during this proceeding. While the Project requires 18 acres of right-of-way (ROW) that will traverse AVEK property, this is a small percentage of AVEK's total recharge area of roughly

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<sup>3</sup> At the latest, AVEK could have moved for party status under Rule 1.4(b) before the En Banc Meeting and Final Oral Argument on November 20, 2009, as other parties concerned with the Proposed Decision, such as Alta Windpower, did. *See* Order Granting Party Status to Alta Windpower, Email from ALJ Kolakowski (Nov. 16, 2009); *see also* D.09-12-044 at 6.

1,500 acres. It is unlikely that water recharge activities will be disrupted entirely within the 18-acres of SCE ROW.

SCE is currently working with AVEK to address its concerns. The Commission's unnecessary evaluation of AVEK's untimely concerns may result in delay to the Project's completion. In turn, delaying the Project's completion would disproportionately harm the public interest because California's immediate need for the Project to make progress towards RPS goals is undisputed. *See* D.09-12-044 at 9-18 (documenting that the Project will facilitate renewable generation and play a critical role in California's achievement of its aggressive renewable energy goals). The circumstances therefore warrant denial of AVEK's Motion to Become a Party under Rule 1.4(c).

**B. AVEK Fails to Explain How Its Narrow Concerns Are Reasonably Pertinent to the Issues Already Presented in the Proceedings**

AVEK has failed to explain in any of its motions how its narrow concerns about its own groundwater recharge activities “will be reasonably pertinent to the issues already presented” in the proceedings. *See* Rule 1.4(b). This failure alone warrants denying party status. *See* A.09-08-008 at 2 (Nov. 3, 2009) (denying party status for failure to show how contentions are reasonably pertinent to the issues already presented in CPCN proceedings); A.06-08-010 at 1-2 (Nov. 21, 2008) (denying motion for party status for failure to show how contentions would be relevant to the issues already raised during the evidentiary hearings and briefing stage of CPCN proceedings).

**V. CONCLUSION**

AVEK's long delay in moving for party status, the unnecessary delay that granting AVEK party status would impose on TRTP's completion, and AVEK's failure to show how its contentions relate to the issues already presented in these proceedings all warrant denial of its Motion to Become a Party. *See* Rule 1.4(b)-(c). While other parties engaged in the extensive opportunities for public participation during the proceedings, AVEK did nothing. Instead, AVEK waited to comment on the Final EIR and to seek party status until long after all

opportunities for public participation had passed. AVEK's own delay should not be permitted to delay the Project. SCE therefore respectfully requests that the Commission deny AVEK's Motion to Become a Party and Motion to Reconsider.

Dated: February 9, 2010

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO ANTELOPE VALLEY-EAST KERN WATER AGENCY'S: (1) MOTION TO BECOME A PARTY AND (2) MOTION TO RECONSIDER REJECTION OF APPLICATION FOR REHEARING** on all parties identified on the attached service list. Service was effected by one or more means identified below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address.  
First class mail will be used if electronic service cannot be effectuated.  
Executed this 9th Day of February 2010, at Rosemead, California.

/s/ Meraj Rizvi

By: [Meraj Rizvi](#)

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