



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Application for Rehearing of Energy Division)
Resolution E-4243)
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A.10-04-020

[Advice Letter 2272-E
filed October 2, 2008]

**RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO
MOTION OF ALAN AND PEGGY LUDINGTON, DANALYNN PRITZ, AND
DAVID J. TANNER FOR PERMISSION TO FILE APPELLANTS' REPLY BRIEF TO
SOUTHERN CALIFORNIA EDISON COMPANY'S RESPONSE FOR REHEARING OF
RESOLUTION E-4243**

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Dated: **June 16, 2010**

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I.

INTRODUCTION

Pursuant to Rule 11.1 (e) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Southern California Edison Company (SCE) hereby submits its Response to the Motion of Alan and Peggy Ludington, Danalynn Pritz, and David J. Tanner for Permission to File Appellants' Reply Brief to Southern California Edison Company's Response for Rehearing of Resolution E-4243.

II.

BACKGROUND

On April 13, 2010, the Ludingtons, Ms. Pritz and Mr. Tanner (collectively, Appellants), filed an Application for Rehearing of Resolution E-4243 (Application) on virtually the same grounds included in their previous protests to SCE's Advice Letter No. 2272-E, their appeals of Executive Resolution No. E-4225 and their arguments made at the Commission's public hearing held in Ventura on September 18, 2009. On May 3, 2010, SCE filed its response to Appellants' Application.

On May 28, 2010, Appellants attempted to file a reply brief to SCE's response to Appellants' Application pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure (Rules). The Docket Office rejected Appellants' reply brief on the ground that Rule 16.1 does not expressly allow a party to file a reply to a response to an application for rehearing. On June 1, 2010, Appellants filed a motion for permission to file Appellants' reply brief to SCE's response to Appellant's Application and their reply brief (collectively, Motion) pursuant to Rule 11.1. For the reasons set forth below, the Commission should deny the Motion on both procedural and substantive grounds.

III.

THE COMMISSION'S RULES DO NOT ALLOW APPELLANTS TO FILE A REPLY TO A RESPONSE TO AN APPLICATION FOR REHEARING

The Rules governing the Commission's rehearing procedures are set forth in Rule 16. As the Docket Office correctly recognized in rejecting Appellants' May 28, 2010 filing, Rule 16 does not allow a party to file a reply to a response to an application for rehearing. Rule 16 clearly reflects that at some point an end to the parties' participation in the rehearing process needs to be drawn. The Commission clearly drew this end point in Rule 16 by allowing an application for rehearing and a response to be filed, and nothing more. Appellants should not now be permitted to file the same reply under Rule 11.1 that was rejected under Rule 16.1.

Permitting Appellants to do so would circumvent the Commission's rehearing procedures and lead to an endless series of party replies and responses. Appellants' Motion should be denied.

IV.

THE MOTION SHOULD BE DENIED FOR APPELLANTS' FAILURE TO IDENTIFY ANY VALID GROUNDS UPON WHICH RESOLUTION E-4243 IS UNLAWFUL OR ERRONEOUS

In the event the Commission does not deny the Motion on procedural grounds, the Motion should be dismissed as Appellants' arguments are without merit. Appellants fail to identify a single valid ground upon which Resolution E-4243 is unlawful or erroneous. Except as addressed herein, each of Appellants' arguments has been addressed by SCE in SCE's Response to Protests, and its Response to Appellants' Application and also addressed and dismissed by both the Executive Director and the Commission in Executive Director Resolution E-4225 and Resolution E-4243, respectively. Since neither the facts nor the law have changed, SCE believes that these allegations have been sufficiently addressed and does not readdress them herein. Instead, SCE incorporates herein by reference, the Response to Protests, the Response to Appellants' Application, Executive Resolution E-4225 and Resolution E-4243.

A. SCE Has Sufficient Right Of Way (ROW) Rights To Construct The Moorpark-Newbury Project (Project).

Appellants argue that SCE lacks sufficient ROW rights to construct the Project because the condemnation order that condemned certain of the ROW to SCE for transmission lines allows for the construction of pasture fencing and other structures within 50 feet of the tower footings. Therefore, Appellants argue, once a pasture fence or other permitted facility is built in the ROW, SCE can not build another electric line in the ROW in perpetuity. This argument is without merit. Appellants fail to point out that the condemnation order also provides that such permitted facilities cannot "**endanger or interfere with the operation of plaintiff's aforesaid transmission lines**" In the event a non-SCE use of the ROW interferes with SCE's

exercise of its rights in the ROW, which include the right to build multiple transmission lines, SCE would make arrangements to have the interfering use removed or relocated pursuant to this condemnation order provision.

B. The Project Will Have No Impact On Archeological Resources.

As discussed in great detail in SCE's Response to Appellants' Application, the Project will not cause a substantial adverse change in the significance of a historic resource (CEQA Guidelines § 15300.2) because all known historic resources will be avoided. In the event unknown resources are discovered during construction, mitigation measures will be implemented to avoid these resources. Consequently, the Project is exempt from the permitting requirements of GO 131-D, is not a "project" under CEQA, and does not require preparation of an EIR.

SCE discussed the general findings of the archeological surveys it had prepared for the Project for the first time in its Response to Appellants' Application. Why Appellants attempt to make an issue of this fact is unclear to SCE as Appellants tried for the first time in this proceeding to create an archeological impact issue in their Application. In the Application, Appellants argue that they have "raised the issue of the vast Chumash archeological resources . . . at the public hearing and again in a [sic] letters to the Commission." Contrary to these assertions, SCE has found that Appellants made no such mention of any archeological resource concerns in Appellants' October 2008 protests, November 2008 letters in response to SCE's Protest Response, March 2009 appeals of the Executive Director Resolution or June 2009 Comments on Draft Resolution E-4243. In response to the Application, which included a general reference only to potential archeological resource concerns in the "Hill Canyon" area, SCE provided extensive information about SCE's archeological surveys for the entire Project route. The existence of these surveys is not a secret, as SCE conducts archeological reviews for all of its projects. However, SCE is precluded from sharing the survey reports or detailed findings with Appellants pursuant to California Public Resources Code § 6254.10 which exempts distribution of detailed archeological site information from public disclosure to avoid the

potential for site location or site constituent details to become known to the general public and thus enhance the potential for site looting or vandalism.

C. SCE Fully Complied With All Requirements of GO 131-D.

Although not required by GO 131-D, Appellants allege that SCE somehow failed to comply with GO 131-D because SCE did not adequately respond to Appellants' requests for additional information. Appellants' list of requested information and documentation appears to have grown significantly from the filing of their Application to the filing of their Motion and is at odds with SCE's recollection and documentation of the meeting. (See March 8, 2010 email from Mr. Thomas Burhenn to Mr. Tanner attached to SCE's Response to Appellants' Application.) In fact, each of the issues for which Appellants claim they requested additional information has been addressed at some point in this proceeding by SCE or is a matter of public record.

D. CEQA Guideline § 15064 (h) (1) Is Inapplicable To The Project.

Since the Project is exempt from GO 131-D pursuant to Section III.B.1.g., no discretionary approvals are required to construct the Project. Since no discretionary approvals are required, CEQA (including CEQA Guidelines § 15064 (h)(1) is inapplicable to this Project (Pub.Res.Code § 21065). Additionally, the Commission has already determined that there is no connection between SCE's proposed Presidential Substation Project and the Moorpark-Newbury Project and that SCE's future 220 kV project is speculative. Consequently, there is no cumulative impact analysis required for greenhouse gas emissions.

V.

CONCLUSION

For the reasons stated herein, Appellants' Motion should be denied and its Application for Rehearing should be dismissed.

Respectfully submitted,

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/s/Beth A. Gaylord

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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 the **RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO MOTION OF ALAN AND PEGGY LUDINGTON, DANALYNN PRITZ, AND DAVID J. TANNER FOR PERMISSION TO FILE APPELLANTS' REPLY BRIEF TO SOUTHERN CALIFORNIA EDISON COMPANY'S RESPONSE FOR REHEARING OF RESOLUTION E-4243** on all parties identified on the attached service list(s). Service was effected by one or more means indicated 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 **16th** day of June, **2010**, at Rosemead, California.

/s/Meraj Rizvi

Meraj Rizvi

Project Analyst

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