

Decision 07-11-026 November 16, 2007

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 Antelope-Pardee 500 kV (Segment 1) Transmission Project as Required by Decision 04-06-010 and as Modified by Subsequent Assigned Commissioner Ruling.

Application 04-12-007
(Filed December 9, 2004)

**OPINION DENYING PETITION FOR MODIFICATION
OF DECISION 07-03-012**

This decision denies the petition (Petition) of the R-Ranch (Reitano Family Trust) (Reitano or Petitioner) to modify Decision (D.) 07-03-012, which approved Southern California Edison Company's (SCE) application for a Certificate of Public Convenience and Necessity (CPCN) for the Antelope-Pardee 500 kilovolt (kV) transmission project (Project). Petitioner sought to modify the Decision's approved route for the transmission line to move the line to a different portion of the Reitano property. This proceeding is closed.

1. Introduction

SCE filed its application for a CPCN for the Project on December 9, 2004 in response to D.04-06-010, in which we made a preliminary finding of the need for the project and directed SCE to file this application.

The Commission conducted a thorough review of the Project pursuant to the California Environmental Quality Act (CEQA)¹ and issued a final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) in December 2006. In March 2007, the Commission issued D.07-03-012, which approved SCE's application for a CPCN for the Project and certified the EIR/EIS.

2. Procedural Background

Petitioner filed the present petition to modify D.07-03-012 on July 10, 2007. SCE filed its Response on August 9, 2007. Petitioner timely requested leave to file a reply to SCE's response and for an extension of time to file the response, which was granted by Administrative Law Judge (ALJ) Victoria S. Kolakowski telephonically on August 20, 2007 pursuant to Rule 16.4(g). Petitioner filed a Response on August 23, 2007.

3. The Petition Must Be Denied

The petition alleges that SCE violated General Order (GO) 131-D, by failing to provide the required notice under Section XI(C)(5).² Furthermore, the petition alleges that the approved route is inconsistent with the mitigation measures we imposed on the project in D.07-03-012,³ in a manner which causes hardship to Petitioner's business.⁴ We conclude that the Petition is both procedurally and substantively deficient, and deny the requested relief.

¹ CEQA requires that the Commission consider the environmental consequences before acting upon or approving the Project. *See* California Code of Regulations, Title 14, Chapter 3 (CEQA Guidelines), Section 15050(b).

² Petition, p. 1.

³ D.07-03-012, Attachment B, Impact L-5 and L-6 on pp. B-73-75.

⁴ Petition, pp. 6-7.

3.1 The Petition Does Not Meet the Requirements of Rule 16.4 and Must Be Denied

Rule 16.4⁵ governs the process for filing and commenting upon a petition for modification of a Commission decision. Rule 16.4(b) through (d) specify the manner in which such a petition may be filed and served, and the Petition meets all of these requirements. The Petition states the justification for the requested relief and provides specific information needed to make the requested modifications (see Rule 16.4(b)). Also, the Petition was filed and served upon all parties to the proceeding within one year of the effective date of the decision (see Rule 16.4(c)-(d)).

However, Rule 16.4(e) states that if a petitioner was not a party, the petitioner must state how they were affected and why they did not participate. There is no question that Petitioner is affected by this decision. Nevertheless, Petitioner's explanation for failure to obtain party status is insufficient, as Petitioner was given adequate notice and information needed to participate in the Commission proceeding which led to the issuance of D.07-03-012.

Petitioner actively participated in the environmental review under CEQA of the project with assistance of counsel.⁶ This process included review of SCE's Proponent's Environmental Assessment (PEA). The PEA contained a copy of the original notice sent to potentially affected individuals which fully complies with the notice requirements of GO 131-D, including information on contacting the

⁵ All rule references are to the Commission's Rules of Practice and Procedure.

⁶ Petition, p. 4 and Attachment D.

Commission's Public Advisor's Office.⁷ The PEA specifically identifies Petitioner as receiving this Notice.⁸ Petitioner has not directly disputed this fact, but instead relies upon the argument that SCE failed to provide additional notice in subsequent communications with interested parties.

Because the un rebutted evidence in the record is that Petitioner received the initial notice, and indeed participated in the CEQA review represented by counsel, we find that Petitioner had full and adequate notice regarding how to participate in the Commission proceeding. Therefore, Petitioner failed to demonstrate sufficient cause for failure to participate pursuant to Rule 16.4(e).

3.2 The Petition Does Not Allege New Facts

Rule 16.4(b) states that a petition to modify can only consider factual allegations contained in the record or that may be officially noticed, unless accompanied by an appropriate declaration or affidavit. The Petition was not accompanied by any such declaration or affidavit, and therefore no new facts may be considered other than those in the record or that may be officially noticed.

3.3 The Petition's Arguments That the Application Failed to Meet the Notification Requirements of General Order 131-D are Without Merit

The Petition alleges that SCE did not comply with the notice requirements of GO 131-D, and that SCE intentionally misled Petitioner so as to interfere with

⁷ PEA, Exhibit G.

⁸ *Id.*

Petitioner's ability to participate in the Commission proceeding. These allegations are without merit.

Because the un rebutted evidence in the record is that Petitioner received the initial notice, as discussed more fully above, which complies with GO 131-D, we conclude that Petitioner has failed to demonstrate SCE's non-compliance with GO 131-D.

Furthermore, Petitioner participated in the CEQA review process represented by counsel, which is where the proposed route was initially considered. Therefore, Petitioner had ample opportunity to participate in the route design, to interact with the Commission's staff and consultants, and to discover how best to protect Petitioner's rights and interests. Petitioner has failed to adequately allege, let alone prove, any actual harm caused by SCE's continued informal efforts to resolve their disagreement over the proposed route.

3.4 The Petition's Arguments That the Approved Route Does Not Conform With the CEQA Findings of Fact are Unpersuasive

Petitioner alleges that the Mitigation Measures L-5 and L-6 from the CEQA Findings of Fact in Appendix B of D.07-03-012 require the requested modifications. This is based upon an incorrect interpretation of these measures. The purpose of both of these measures is to ensure that within the approved right-of-way, that SCE work as collaboratively as possible with agricultural property owners to minimize the direct impacts of the construction and ongoing operation of the transmission line. Neither was intended to allow a property-owner to demand that the approved right-of-way be changed.

Mitigation Measure L-5 requires that SCE negotiate an agreement with agricultural landowners to minimize the impact on agricultural operations and to provide appropriate restoration of the land to usable condition. This measure

does not entitle the landowner to unilaterally demand a change of the route of the project, but was enacted to ensure that SCE negotiated in good faith with the agricultural landowners to accomplish those specific purposes.

Mitigation Measure L-6 requires that SCE locate transmission towers to avoid agricultural operations. This measure was adopted with full knowledge that there was agricultural land being impacted, and with full knowledge of the route being concurrently adopted. The appropriate interpretation of this measure must be consistent with both the intention of minimizing impacts on agricultural operations while still maintaining the approved route. The appropriate interpretation of this measure is that within the approved transmission right-of-way, SCE shall choose the location of specific towers so as to best accomplish the purposes described therein: avoidance of crop land, irrigation ditches and diagonal placement of the towers themselves.

3.5 Granting Petitioner's Requested Relief Would be Unfair to Other Parties and Non-Party Entities

It would be fundamentally unfair to numerous other parties and interested non-parties to grant the requested relief. The proposed relocation of the transmission line would require moving the approved route on neighboring property, and Petitioner has not demonstrated that these parties have had adequate notice of the proposed changes.⁹

⁹ SCE notes that the proposed modifications would affect Petitioner's neighbors and property owners along the western and northern boundaries of Petitioner's property, as well as adding a half mile to the proposed route and cause significant delays to the project's construction schedule. SCE Response, p. 4. Petitioner did not rebut this allegation in Petitioner's Response.

Furthermore, it is inconsistent with both the purposes of CEQA and of the CPCN process for individual property owners along the route of a lengthy transmission line to seek individualized, *post hoc* revisions of approved routes after approval of the CPCN application and of the project route. In addition to interfering with the finality of decisions upon which applicants rely to construct expensive infrastructure projects, such reviews are both administratively burdensome and unfair to the numerous parties and affected individuals who properly participated in the extensive CEQA and CPCN process.

4. Comments on Proposed Decision

The proposed decision of the 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. No comments were received.

5. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Victoria S. Kolakowski is the assigned ALJ in this proceeding.

Findings of Fact

1. The Petition presents no new facts pursuant to Rule 16.4(b). Therefore, the Commission is bound to follow the existing record in this proceeding.
2. The Petition stated the justification for the requested relief and provided specific information needed to make the requested modifications, as required by Rule 16.4(b).
3. The Petition was filed and served upon all parties to the proceeding within one year of the effective date of the decision, as required by Rule 16.4(c)-(d).
4. Petitioner received actual notice pursuant to GO 131-D, including information on how to contact Commission staff and the Public Advisor's Office.

5. Petitioner participated in the CEQA review process represented by counsel, which is where the proposed route was initially considered, and therefore Petitioner had ample opportunity to participate in the route design, to interact with the Commission's staff and consultants, and to discover how best to protect Petitioner's rights and interests.

6. Petitioner has failed to demonstrate any actual harm caused by SCE's continued informal efforts to resolve their disagreement over the proposed route.

7. Mitigation Measure L-5 does not entitle the landowner to unilaterally demand a change of the route of the project, but was enacted to ensure that SCE negotiated in good faith with the agricultural landowners to accomplish specific purposes.

8. Mitigation Measure L-6 was adopted with full knowledge that there was agricultural land being impacted, and with full knowledge of the route being concurrently adopted. The appropriate interpretation of this measure is that within the approved transmission right-of-way, SCE shall choose the location of specific towers so as to best accomplish the purposes described therein: avoidance of crop land, irrigation ditches and diagonal placement of the towers themselves.

9. Petitioner has not demonstrated that the neighboring properties have received proper notice of the Petition or how approval might affect their properties.

Conclusions of Law

1. The Petition meets the procedural requirements of Rule 16.4(a)-(c).
2. The Petition does not meet the requirement under Rule 16.4(e) that a non-party petitioner demonstrate why they did not participate in the proceeding, given that Petitioner received adequate notice.

3. The Petition fails to demonstrate that SCE did not comply with GO 131-D.
4. The Petition fails to prove its allegations that SCE interfered with Petitioner's ability to participate in proceeding A.04-12-007.
5. The Petitioner's arguments that Mitigation Measures L-5 and L-6 in the CEQA findings of fact of D.07-03-012 require the requested modifications in the approved route are unpersuasive and based upon an incorrect interpretation of those measures.
6. Granting the Petition would be unfair to Petitioner's neighbors and other potentially affected individuals or entities.
7. The Petition should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 07-03-012 filed by R-Ranch (Reitano Family Trust) on July 10, 2007 is denied.
2. Application 04-12-007 is closed.

This order is effective today.

Dated November 16, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners