

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for a Permit to Construct Electrical Facilities with Voltages between 50 kV and 200 kV: Triton Substation Project.

Application 08-11-019
(Filed November 21, 2008)

ORDER DENYING REHEARING OF DECISION (D.) 10-09-025

I. INTRODUCTION

On October 22, 2010, the City of Temecula (“City”) filed an application for rehearing of Decision (D.) 10-09-025 (“Decision”). In D.10-09-025, the Commission granted Southern California Edison’s (“Edison’s”) application for a permit to construct (“PTC”) for the Triton Substation Project (“Triton Project”). Edison filed a response to the City’s application.

We have carefully considered all the arguments presented by the City and are of the opinion that good cause for rehearing has not been shown. Accordingly, rehearing of D.10-09-025 is denied.

II. DISCUSSION

A. No Significant Impact Conclusions

The City alleges that we erred in concluding that the Triton Project would not have a significant impact on the environment and that, consequently, preparation of an Environment Impact Report (“EIR”) was not required. Specifically, the City contends that we applied the wrong standard in determining whether the project may have a significant impact, the project creates significant visual and land use impacts; and the MND failed to adequately consider alternatives. Edison counters that the MND appropriately concludes that the Triton project will not cause significant impacts.

Pursuant to the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.), prior to granting a permit for a discretionary project, an agency must first conduct an Initial Study to determine whether the project may have a significant impact on the environment. (14 Cal.Code Regs. (“CEQA Guidelines”) § 15365.) If the project may have a significant impact the agency must prepare an EIR, and if the project will have no significant impact the agency need only prepare a Negative Declaration. (Pub. Resources Code, § 21080.) Where mitigation can be incorporated into the project which reduces any significant impacts to an insignificant level, the agency may incorporate those measures and prepare a MND. (Pub. Resources Code, § 21064.5.)

1. Fair Argument Standard

In general, the standard for whether an agency needs to prepare an EIR rather than a Negative Declaration is whether substantial evidence in the record supports a fair argument that the project would have a significant impact on the environment (“fair argument standard”). (*Friends of “B” Street v. City of Hayward* (1980) 106 Cal. App. 3d 988, 1002; Pub. Resources Code, § 21080 (c), (d).) Mere opinions and generalized concerns are not sufficient evidence to support a fair argument that the project will cause a significant environmental effect. (*Lucas Valley Homeowners Association v. County of Marin* (1991) 233 Cal.App.3d 130, 163-164.)

As an initial matter, the City is mistaken in its contention that the Commission applied the wrong standard for determining whether an EIR must be prepared. The City challenges the Decision’s statement that the “Final MND complies with CEQA and the conclusion therein are supported by substantial evidence,” (Decision at p. 17), claiming that this “applies an incorrect legal test.” (App. Rhg., at p. 4.) The City reads too much into this statement which does not set out any test. All the Decision says is that our conclusions are supported by substantial evidence, which is in fact the general standard for sufficiency of Commission conclusions pursuant to CEQA and the Public Utilities Code. (Pub. Util. Code, § 1757; Pub. Resources Code, § 21168.5.) Although for the particular issue of whether there may be a significant impact the standard is whether there is substantial evidence that the project may cause a significant

effect (CEQA Guidelines, § 15063(b)(2)), the Decision does not contradict that standard. In fact, in Conclusion of Law 9, the Decision explicitly states the applicable standard. (Decision, at p. 20.) In addition, the fair argument standard also has been described as “whether substantial evidence supports the agency’s conclusion as to whether the prescribed ‘fair argument’ could be made.” (*Friends of “B” Street*, at p. 1002.) Accordingly, there is no error in the Decision’s statements.

2. Visual Impacts

The City alleges that the Commission erred in concluding that the Triton Project would not have a significant visual impact because constructing the substation and new tubular steel poles (“TSPs”) near a residential neighborhood will “drastically change the character of the area.” (App. Rhg., at p. 5) Applying the fair argument standard, we correctly concluded that there is no substantial evidence that the Triton Substation project will have a significant aesthetic impact on the environment.

Although the City asserts that the MND’s “analysis of aesthetic impacts is cursory and conclusory,” the MND actually undertakes a careful and considered analysis of the visual impacts. Applying the Federal Highway Administration’s Visual Impact Assessment (“FWHA Assessment”), in widespread use for evaluation of visual impacts, the Initial Study and MND use a four step process for analyzing the visual impacts. (MND, at p. 3.1-15.) In this process a visual environment is established and the visual character of the area is assessed. Simulations are developed to predict the impact of the project and the impact is analyzed in terms of the viewers’ experience and expectation. (*Ibid.*)

A visual resources expert completed the aesthetic analysis for the Commission. (See MND, at p. 4-1 [Tom Dildine, Visual Resources Specialist].) The analysis uses Key Observation Points (“KOPs”), and from those vantage points compares the existing landscape with a simulation of the landscape after the project is built. Using the visual impact categories set out in CEQA Guidelines App. G, the analysis concludes that although there are visual impacts, with the incorporated project design features and mitigation, such as landscaping and setbacks, the standards do not rise to the level of

significance. One factor making the impact less than significant is that the seven to eight 85-foot high TSPs will be replacing eight 50-55 foot high wooden poles. (MND, at p. 3.1-21.) Therefore, although “the 85-foot-high TSPs would result in an incremental visual change ... the TSPs would not substantially degrade the existing visual character or quality of the area.” (MND, at p. 6-3.) Due to this extensive analysis, there is substantial evidence supporting the Commission’s conclusion that the Triton Substation project will not have a significant visual impact on the environment.

Beyond unsupported opinion, the City does not present any evidence that the project may have a significant visual impact. In its brief argument in its application for rehearing, the City refers to no evidence that it presented regarding the project’s visual impacts. As it explained in its comments on the MND, the City reiterates that it would like to keep the area’s rural character. The MND explains that because there is already planned development and existing power lines, the project would not significantly impact the visual character of the area. (MND, at p. 6-3.)

Without support, the City alleges that the project is inconsistent with its general plan in respect to rural preservation. As Edison notes, however, the MND discusses that issue and concludes that the Rural Preservation Area designation, “does not prohibit substations or electrical transmission lines” and, moreover, “no design guidelines for the Rural Preservation Area have been finalized or adopted.” (MND, at p. 6-14.) The City does not counter the MND discussion with any specific argument or evidence.

In summary, the City does not present evidence or analysis to counter the MND conclusions. Because “mere opinions” are not sufficient evidence to support a fair argument that there will be a significant environmental impact (see *Lucas Valley Homeowners Association, supra*, 233 Cal.App.3d at pp. 163-164), the City has not shown that the visual impacts may be significant.

3. Land Use Impacts

The City next asserts that the Triton Project would result in significant land use impacts that were not considered. According to the City, the “intensity of the substation” is not compatible with the nearby low density residential neighborhood. The

City further argues that the incorporated project design features do not sufficiently mitigate the impacts, and there is no means for enforcing compliance with them in any event.

Pursuant to the CEQA Guidelines, an agency considering whether a project may have a significant land use impact must consider if the project would: (1) physically divide an established community, (2) conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project, and (3) conflict with a conservation plan. (CEQA Guidelines, App. G.) Only the first two categories are potentially relevant to the City's current allegations.

The MND concludes that the project would not divide a community because the Triton substation will be built on a relatively undeveloped site, and removal of the old substation would improve the character of the surrounding community. (MND, at p. 3.9-4.) Also, because of landscaping and setback measures any impact on nearby residences would be minimized. Furthermore, there is no conflict with any land use plan of an agency with jurisdiction over the project, in part because the City does not have jurisdiction over the utility project. (MND, at p. 3.9-5.) Moreover, as discussed, the Triton Project would not conflict with the Rural Preservation Area designation.

The City's contention that the project design features cannot be enforced is also without basis. Edison must build the project as we approved, and our orders are fully enforceable. (See Pub. Util. Code, § 2112.)

Finally, the City's argument that we failed to adequately consider alternatives is misplaced. The CEQA requirement of considering alternatives to a project only applies when the project may have a significant impact and an EIR is prepared. (See CEQA Guidelines, §§ 15071, 15126.6.) Because our conclusions that the project will not have a significant impact are adequately supported, there is no requirement that the Commission consider project alternatives. In an effort to be thorough, the MND discusses some alternatives to the proposed project. Neither CEQA nor the Public Utilities Code requires such a discussion, however.

B. Mitigation Measures

The City contends that the MND fails to impose “enforceable and feasible mitigation” for the project’s significant impacts. (App. Rhg., at p. 6.) Specifically, the City lists a number of measures in the areas of hydrology, hazards and traffic, which it says should be required mitigation measures. The City’s argument lacks merit.

In its application for rehearing, the City lists specific measures it claims are required mitigation to reduce hydrology, fire and hazardous materials, and traffic impacts. (App. Rhg., at pp. 7-10.) The City’s proposed mitigation measure fall within two categories – measures that are already incorporated into the Triton Project as “project design features,” and a few other additional measures which are not required parts of the project.

Most of the City’s current suggestions are already part of the project as it was approved. These include submitting a drainage study, submission of a conditional letter of map revision (“CLOMR”) and having a paved access road in compliance with the California Fire Code. The City objects to these design features because these measures were incorporated as part of the project design, as opposed to being set out as separate mitigation measures. The City suggests that the measures are therefore, “unenforceable.” (App. Rhg., at p. 8.) As explained above, however, because these features were part of the Triton Substation project as approved, they are enforceable. (Pub. Util. Code, § 2112.) It is not clear why the City believes that Edison is free to disregard the specific authority we granted to it to build the project, as approved. If Edison were to deviate from the Commission’s specific authorization, it would be exceeding its authority and failing to obey a Commission order. It makes little difference whether a measure is incorporated into the project by Edison, or imposed as “mitigation.” Edison is authorized to build the project as approved, with design features and mitigation, and we found the project as approved will not have a significant impact on the environment.

The City also suggests that certain other mitigation measures should be required. However, mitigation measures are only required for effects that are found to be

significant, and not for less than significant impacts. (CEQA Guidelines, § 15126.4 (a)(3).) Because the MND finds that the project as approved will not result in significant impacts on the environment, no further mitigation is required. Moreover, beyond listing certain additional measures, the City provides no specific argument regarding how the measures are necessary to prevent any particular impact, and provides no evidence that would support such an argument. As Edison notes, the City fails to provide any type of nexus between the requested mitigation and the impact it is supposed to mitigate. For these reasons, the City's argument suggesting additional mitigation measures fails to show any legal error in our Decision or MND.

III. CONCLUSION

For the reasons stated above, the City has failed to demonstrate legal error in D.10-09-025.

Therefore **IT IS ORDERED** that the City of Temecula's application for rehearing of D.10-09-025 is denied.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners