Decision 13-10-076 October 31, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for a Certificate of Public Convenience and Necessity Concerning the Tehachapi Renewable Transmission Project (Segments 4 through 11).	Application 07-06-031 (Filed July 29, 2007)

ORDER MODIFYING AND DENYING REHEARING OF DECISION (D.) 13-07-018, AS MODIFIED

I. INTRODUCTION

On August 15, 2013, the Center for Energy Efficiency and Renewable Technologies ("CEERT") filed a timely application for rehearing of Decision (D.) 13-07-018 (or "Decision") . In that decision, the Commission granted the Petition for Modification of D.09-12-044, filed by City of Chino Hills' ("Chino Hills"). In D.09-12-044, the Commission approved the application for a Certificate of Public Convenience and Necessity ("CPCN"), filed by Southern California Edison Company ("SCE"), to construct Segments 4 through 11 of the Tehachapi Renewables Transmission Project ("TRTP"). D.13-07-018 requires undergrounding of the section of the TRTP that goes through Chino Hills (Segment 8A), thus modifying, in part, the Commission's 2009 TRTP decision.[1]

[1] Applications for rehearing of D.09-12-044 were filed by several parties, including Chino Hills. Those applications are still pending.

On October 17, 2011, SCE filed a petition for modification of D.09-12-044 ("*TRTP Decision*") to address project design changes required by the Federal Aviation Authority ("FAA"). On October 28, 2011, Chino Hills filed a petition for modification of D.09-12-044, which is the subject of today's decision. In its Petition for Modification, Chino Hills asked the Commission to reopen the record to consider alternative routes through Chino Hills, including Alternative 4M (which was supported by Chino Hills in the initial proceeding and which would go through a state park) and Alternative 5, the partial undergrounding alternative. Chino Hills also requested that the Commission direct SCE to propose and evaluate multiple additional alternative routes.

On November 10, 2011, the Commission ordered a partial stay (for Segment 8A) of D.09-12-044 in response to an earlier request for a stay by Chino Hills that was linked to its application for rehearing of D.09-12-044.[2] On that same day, the assigned Commissioner issued a ruling that directed SCE to prepare testimony, by January 10, 2012, on alternatives for the routing of the portion of Segment 8A that traverses Chino Hills.

Thereafter, attempts were made at mediation between Chino Hills and SCE regarding Segment 8A. On July 2, 2012, after being notified that the mediation had concluded without a settlement, the assigned Commissioner filed a scoping memo that set dates for filing of testimony and hearings, and which further delineated the scope of the hearings.[3]

After evidentiary hearings were held and the parties filed their briefs, the Commission issued the instant decision, D.13-07-018, which grants Chino Hills' motion and which requires SCE to underground Segment 8A as set forth in the decision.

On August 15, 2013, the CEERT filed an application for rehearing of D.13-07-018. CEERT raises the following issues: (1) the process used by the

[2] Three more stay decisions were issued after this one; one which corrected clerical errors (D.11-11-026) and two which narrowed the scope of the stay (D.12-03-050, D.11-11-026.)

[3] An amended scoping memo was issued on November 15, 2012.

Commission to reverse D.09-12-044 was unlawful; (2) the decision errs in entertaining Chino Hills' Petition for Modification to reverse D.09-12-044; (3) the decision errs in failing to comply with statutory mandates applicable to undergrounding Segment 8A; (4) the decision is not supported by findings or record evidence, and is impermissibly vague; and (5) in issuing the decision, the Commission abused its discretion and violated due process. On August 30, 2013, Chino Hills filed a response to CEERT's application for rehearing.

We have carefully considered all the arguments presented by CEERT, and are of the opinion no legal error has been demonstrated. However, we will modify the Decision as follows: (1) clarify that we considered all four section 1002 factors in this proceeding, (2) clarify that the Decision does not adopt a new statewide policy, (3) change the statement that D.09-12-044 "ignored" community values, and (4) change language in the Decision regarding parties' allegations regarding risks of delay because of curtailment. We also make modifications to correct clerical and other minor errors.

Accordingly, rehearing of the Decision, as modified, is denied.

II. DISCUSSION

A. The Decision proceeded in the manner required by law.

CEERT contends that the Decision errs in treating Chino Hills' Petition for Modification as an appropriate legal basis for the Commission to reverse D.09-12-44.

1. The Commission correctly followed its process in issuing the Decision, which modified D.09-12-044.

CEERT points out that D.09-12-044, which was approved by all five sitting Commissioners, carefully examined alternative routes through Chino Hills and rejected them. D.09-12-044 found that the environmentally superior alternative was overhead construction of the transmission line along the existing right of way. CEERT notes, while a partial undergrounding alternative (Alternative 5) was considered by the Final Environmental Impact Report ("FEIR"), that alternative was not advanced by Chino Hills. Rather, Chino Hills proposed Alternative 4CM, routing Segment 8A through the state park. CEERT notes that Chino Hills filed an application for rehearing of

D.09-12-044, also asking for approval of Alternative 4CM. (CEERT App. Rehg. at pp. 17-29.)

CEERT then relates that almost two years later, in October of 2011, Chino Hills filed two ex parte notices of meetings with the Commissioner who was to be the Assigned Commissioner. Thereafter, on October 28, 2011, Chino Hills filed its Petition for Modification of D.09-12-044, in which Chino Hills asked for the first time for undergrounding. On November 10, the Commission issued a partial stay of D.09-12-044 and the Assigned Commissioner issued the Assigned Commissioner's Ruling ("ACR") that directed SCE to prepare testimony, by January 10, 2012, on alternative routes for Segment 8A.

CEERT contends that the "only things that had changed" from the time D.09-12-044 was issued to the issuance of the ACR was "the make-up of the Commission itself and the changed assignment of the lead Commissioner on the application." (CEERT App. Rehg. at p. 27. Original emphasis.) CEERT concludes:

> What this long tortuous history reflects is that Chino Hills' "Petition for Modification" was first filed in a highly opportunistic manner and was advanced both immediately before and after its filing by Commission actions that did not give adequate notice or legally support an outcome that was wholly beyond the scope of this application … or challenge to that order [D.09-12-044].

(CEERT App. Rehg. at p. 28.)

More specifically, CEERT alleges that confidential settlement negotiations, attended by both the Assigned Commissioner and General Counsel, and limited only to two parties – Chino Hills and SCE – violated both the Commission's rules on settlements and due process. According to Chino Hills, CEERT misstates the facts and the law. Chino Hills states that Assigned Commissioner was not present at the settlement negotiations in question, while the General Counsel was present and acted as facilitator.

The Commission's rules state that "prior to signing any settlement," the settling parties must convene a conference with notice and opportunity to participate provided to all parties. (Rule 12.1(b) of the Commission's Rules of Practice and

Procedure.)[4] Here, no agreement was reached and no settlement was signed. Nothing in the rules prevents the General Counsel from facilitating settlement discussions.

CEERT cites two cases in its concluding paragraph: *Southern California Edison Co. v. Public Utilities Commission* (2006) 140 Cal.App.4th 1085, 1104-1106 and *The Utility Reform Network v. Public Utilities Commission, et al.* ("TURN Decision") (2012) A132439, at p. 24 (Unpublished Decision).

We reject CEERT's attempt to cite to the *Turn Decision*, since it is not published and thus cannot be relied upon as legal authority. Even CEERT acknowledges the non-precedential value that this unpublished decision has. (CEERT App. Rehrg. at p. 11.) However, CEERT asserts that the Commission may and should officially notice the decision pursuant to Evidence Code section 452(d)(1). To take judicial notice would result in giving this decision precedential value when none is due.

Therefore , we address only CEERT's reliance on *SCE v. PUC*. In that decision, the court annulled the Commission's decision to the extent that it ordered public utilities to require the payment of prevailing wages to workers employed on energy utility construction projects. The prevailing wage issue was raised in late-filed comments to a proposed rulemaking. The court found that the Commission failed to proceed in a manner required by law because the prevailing wage issue was not in the scoping memo, the Commission violated its own rules, and three business days was insufficient time for the parties to respond to the new proposals. (*SEC v. PUC*, *supra*, at p.1106.)

The circumstances in the instant case are distinguishable from *SCE v. PUC*. Here, the Commission provided sufficient notice and opportunity to be heard. A scoping memo and was issued for this phase of the proceeding, as well as an amended scoping memo. Furthermore, parties were given sufficient lead time to prepare, and the Commission held evidentiary hearings.

For the foregoing reasons, CEERT has failed to demonstrate legal error.

[4] Subsequent rule references are to the Commission's Rules of Practice and Procedure, unless otherwise stated.

2. The Decision does not err in entertaining Chino Hills' Petition for Modification.

CEERT alleges that the Decision errs in treating Chino Hills' Petition for Modification as an appropriate legal basis for reversing D.09-12-044. (CEERT App. Rehg. at p. 29.) First, CEERT contends that the Petition for Modification did not meet the requirements of Rule 16.4 of the Commission's Rules of Practice and Procedure.

Rule 16.4 requires a petition for modification to state the justification for the requested relief, propose specific wording to carry out all requested modifications, support factual allegations with specific citations to the record, and support allegations of new or changed facts by an appropriate declaration or affidavit. (Cal. Code of Regs., tit.20, §16.4.)

CEERT argues that a petition for modification is limited to a party to the proceeding, and does not allow the Commission on its own motion to make changes to an issued decision. CEERT contends that Chino Hills did not justify a time delay of over one year. CEERT further asserts that, although the Petition for Modification contained specifically worded changes to D.09-12-044, such changes did not mention undergrounding and had nothing to do with the relief actually granted by the Decision.

CEERT also relies on Public Utilities Code section 1708, which allows the Commission to rescind, alter or amend any order or decision upon "notice to the parties, with opportunity to be heard as provided in the case of complaints."[5] (CEERT App. Rehg. at p. 29, quoting Pub. Util. Code, § 1708.) CEERT points out that the Commission has stated that that its authority under section 1708 "should be exercised with great care and justified only by extraordinary circumstances." (CEERT App. Rehg. at p. 330, quoting D.09-02-032 at pp. 8-9.) CEERT alleges that instead of making changes to an issued decision, the Petition for Modification was used to address new issues that were never addressed in D.09-12-044.

[5] Subsequent section references are to the Public Utilities Code, unless otherwise indicated.

CEERT has failed to demonstrate legal error. Although this case is unusual in many respects, most of CEERT's arguments actually address the *policy* of Commission's decision to revisit the *TRTP Decision* and order undergrounding after construction had begun.

CEERT is technically correct that a petition for modification under 16.4, by its own terms, is limited to a party to the proceeding. However, the Commission may revisit a decision on its own motion under section 1708 and has reversed prior decisions, sometime years later. (See, e.g., *In the Matter of United Parcel Service, Inc. filing tariff pages that reflect increases in Parcel Rates without authorization* [D.96-12-090] (1996) 1996 Cal. PUC LEXIS 122 [Pursuant to Public Utilities Code section 1708, the Commission on its own motion reopened and reversed its decision in D.93-02-001, in which the Commission concluded that the rate increase put into effect by United Parcel Service, Inc. ("UPS") in 1992 was unlawful.]; *The City of St. Helena vs. Napa Valley Wine Train* [D.01-06-034] 2001 Cal. PUC LEXIS 407 [Years after assertion jurisdiction over the Napa Valley Wine Train ("Wine Train"), the Commission granted a petition for modification filed by the City of St. Helena and concluded that the Wine Train's passenger excursion service did not constitute regulated transportation and in providing such service, the Wine Train was not functioning as a public utility.].)

Here, the Commission used Chino Hills' PFM to reopen the *TRTP Decision*, rather than reopening the case on its own motion. While Chino Hills' Petition for Modification may have had some technical shortcomings, the Commission's determination to reopen the *TRTP Decision* was well within its authority. (See D.13-07-018 at p. 14, fn. 10 [citing previous cases in which the Commission reached the substance of petitions for modification that might have been dismissed on procedural grounds].)

CEERT asserts that the Petition for Modification's proposed changes to the *TRTP Decision* did not mention undergrounding and had nothing to do with the relief actually granted by the Decision. CEERT is correct that the Petition's for Modification's proposed Findings of Facts and Conclusions of Law deal more generally with reexamining alternatives for Section 8A. However, contrary CEERT's implication, the

Petition for Modification does propose that the Commission relook at Alternative 5 to the TRTP, the Partial Underground Alternative.

CEERT also argues that the Commission erred under section 1708 because instead of making changes to the TRTP Decision, the PFM was used to address new issues that were never addressed in D.09-12-044. However, partial undergrounding was an alternative that was considered when the Environmental Impact Report ("EIR") was prepared. The fact that it was rejected early on does not mean that undergrounding was a new issue. Furthermore, the height and proximity of the towers to the residences in Chino Hills was always an issue in this case. Therefore, CEERT has failed to demonstrate that the Commission's actions were unlawful.

B. The Decision complies with statutory mandates.

1. Public Utilities Code sections 1001, 1002, and 399.2.5.

CEERT contends that the Decision errs in failing to comply with Public Utilities Code sections 1001, 1002, and 399.2.5.

Public Utilities Code section 1001 states, in part, that no electrical corporation shall begin construction on a line plant or system without having first obtained from the Commission a certificate "that the present or future public convenience and necessity require or will require such construction." CEERT argues that none of the examination required for the construction of the "new 'project' alternative" of undergrounding Segment 8A pursuant to the UG5 design is undertaken in the Decision. CEERT further alleges that the Decision only finds that the UG5 design is "feasible" and, on the cost record developed, "is reasonable and in the public interest." (CEERT App. Rehg. at pp. 36-37, citing the D.13-07-018 at pp. 61 [Finding of Fact 8], 65 [Finding of Fact 32].)

CEERT offers no legal support for its argument that the Commission has violated section 1001. The Commission made a determination about the public convenience and necessity for the project as a whole in the TRTP Decision. Nothing in section 1001 requires the Commission to reexamine the public convenience and necessity

in order to adopt a change in the mechanism for transporting energy in one segment of the TRTP.

Section 1002 provides that the Commission, as a basis for granting any certificate pursuant to section 1001, shall consider the following factors: (1) Community values, (2) recreational and park areas (3) historical and aesthetic values, and (4) influence on the environment.

CEERT argues that consideration of these four factors are not part any findings in the Decision. Rather, according to CEERT, the Commission considers only one factor – community values – and further narrows this factor by only considering "visual impact" as a basis for reversing the TRTP Decision.

The Decision finds that the original TRTP Decision effectively ignored the devastating effect this line would have on the community. The section 1002 factors were addressed in the *TRTP Decision*. Here, in addressing the merits of the Petition for Modification, we are simply reweighing the import of community values and visual impacts. That is not to suggest that the Commission did not consider recreational and park areas, historical and aesthetic values, and influence on the environment, in addition to community values. In order to make this clear, we will modify the Decision to discuss all four factors.

Section 399.2.5 states:

> Notwithstanding Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities is necessary to the provision of electric service if the commission finds that the new facility is necessary to facilitate achievement of the renewables portfolio standards established in [section 399.11 et seq.].

CEERT contends that the Commission has set forth a "new" policy, with statewide implications, that was never the subject of notice or opportunity to be heard. Further, CEERT alleges that the Decision contains no facts or law to support this new policy or to define its terms. (CEERT App. Rehg. at p. 38.) CEERT concludes that this new policy's consequences for transmission facilities needed to access renewable

generation is never addressed, but "could clearly 'frustrate the manifest purpose'" of section 399.2.5. (CEERT App. Rehg. at p. 38.)

The Decision does state that certain changes that have taken place in California, such as increased urbanization, necessitate "a change in the Commission's policy for transmission planning." (D.13-07-018 at p. 21.) However, our intent was to simply point out that we have to carefully balance the requirements of section 399.2.5 with the section 1002 requirement that we consider community values. This does not announce a new policy. The Decision is clearly based on the particular facts of this case. It is not intended to set a new statewide transmission policy. We will modify the Decision to clarify this.

2. Public Resources Code section 21000, et seq. (California Environmental Quality Act).

CEERT alleges that the Decision violates Public Resources Code section 21000, et seq., the California Environmental Quality Act ("CEQA"). CEERT contends that the changes in the project were "substantial" and thus a "subsequent" Environmental Impact Report ("EIR") is required. Instead, the Decision adopted an "addendum" to the EIR, which may be used for minor, technical changes.

Section 15162 of the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15162) provide that when an EIR has been certified for a project "no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record," one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of "new significant environmental effects or a "substantial increase in the severity of" previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of "new significant environmental effects or a substantial increase in the severity of" previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise reasonable diligence time the previous EIR was certified shows (a) the project will have "one or more significant effects" not discussed in the previous EIR, (b) significant effects previously examined will be "substantially more severe than shown in the previous EIR," or (c) new mitigation measures or alternatives would "substantially reduce one or more significant effects" on the environment.

(Summary of CEQA Guideline 15162, Cal. Code regs., tit. 14, § 15162.)

A supplement to an EIR, rather than a subsequent EIR, may be prepared if any conditions set forth in CEQA Guideline 15162 would require a subsequent EIR, and only minor additions or changes would be necessary to make the previous EIR adequately apply to project in the changed situation. (CEQA Guideline 15163, Cal. Code Regs., tit. 14, § 15163.)

An addendum to a previously certified EIR may be prepared if some changes are necessary, but none of the conditions described in section 15162 have occurred. (CEQA Guideline 15164, Cal. Code Regs., tit. 14, § 15164.)

Here, the Commission prepared an addendum to the EIR, stating that the proposed changes to the project would not trigger any of the conditions set forth in CEQA Guidelines 15162.

As stated in the Decision, the changes made to the project because of undergrounding Segment 8A were reviewed, and we concluded that they did not substantially increase impacts of the project as a whole. We reject CEERT's argument that a supplemental or subsequent EIR was required. CEERT also argues that an addendum may be prepared only if "minor technical changes or additions are necessary" and none of other conditions described in CEQA Guideline 15162 have occurred. We note that the language quoted by CEERT only applies to negative declarations and not to EIRs. (CEQA Guideline 15164(b), Cal. Code Regs., tit. 14, § 15164(b).)

CEERT, referring to SCE's Opening Comments, also contends that the addendum uses an incorrect environmental baseline, fails to adequately analyze the

cumulative impacts of the undergrounding, relies on an internally inconsistent project description, and ignores important components of the project that would introduce new or increase the significance of environmental impacts. CEERT contends that the Decision errs in failing to find that the previous overhead route is either no longer the environmentally superior route or is infeasible. (CEERT App. Rehg. at pp. 39-40, citing SCE's Opening Comments at pp. 14-15.)

Many of CEERT's arguments are pertinent to reviewing "alternatives" to a project under CEQA. Here, however, the Commission is reviewing a "change" in the project. We reviewed the environmental impacts of undergrounding in the original TRTP Decision, although we did not adopt that alternative. The changes made to the project because of undergrounding Segment 8A were also reviewed, and did not substantially increase impacts of the project as a whole. Therefore, we continue to believe that an addendum to the FEIR meets our CEQA obligations.

C. The Decision is supported by findings and the record evidence, and is not impermissibly vague.

CEERT asserts that the decision is not adequately supported by findings of facts and conclusions of law as required by Public Utilities Code section 1705. CEERT contends that the decision has no findings on "public convenience and necessity" under section 1001 nor findings on any of the section 1002 factors (community values, recreational and park areas, historical and aesthetic values, and influence on the environment). (CEERT App. Rehg. at pp. 44-45.)

More, specifically, CEERT alleges that there are no findings of fact to support the Conclusion of Law 4, which states:

> D.09-12-044 effectively ignores community values and places an unfair and unreasonable burden on the residents of Chino Hills by requiring construction of an aboveground double circuit 500 kV transmission line through Segment 8A; that disproportionate burden should be rectified to require the underground construction of UG5.

(CEERT App. Rehg. at p. 42, quoting D.13-07-018 at p. 66, COL 4.)

CEERT further asserts that the decision is internally inconsistent. On the one hand, the Decision states: "Chino Hills' evidence and briefs do not pursue its more attenuated argument (economic blight, etc,) but continue to focus on the enormous burden of the visual impacts on City residents . . . ." (D.13-07-018 at p. 18.) On the other hand, the Decision finds:

> Given that approximately 220 houses border the Segment 8A ROW in Chino Hills, it is reasonable to construe a proportionately large impact on local tax revenues, given the diminution in value of so many individual residential parcels in a single community.

(CEERT App. Rehg. at p. 43, quoting D.13-07-018 at p. 61, FOF 5.) CEERT argues that there is no evidence to support diminution in value.

CEERT argues that conclusions regarding the "visual impacts" of the towers are not based on the record. Rather, these conclusions are based on "ex parte 'visits' to Chino Hills," an "individual Commissioner's 'perception of what is right and wrong,'" and statements made by Commissioners in signing out the decision. (CEERT App. Rehg. at p. 46.)

Section 1705 requires a decision to "contain, separately stated, findings of fact and conclusions of law . . . on all issues material to the order or decision."

> Every issue that must be resolved to reach that ultimate finding is "material to the order or decision." Statutes like 1705 have been held to require findings of the basic facts upon which the ultimate finding is based. [Citations omitted.]

(*California Motor Transport Co. v. Public Utilities Commission* (1963) 59 Cal.2d 270, 273.)

> Findings are essential to "afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the Commission and to determine whether it acted arbitrarily, as well as assist parities to know why the case was lost and to prepare and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action." [Citations omitted.]

(*California Manufacturer's Association v. Public Utilities Commission* (1979) 24 Cal.3d 251, 258-259.)

CEERT has not demonstrated legal error. First, as stated above, there has already been a finding of public convenience and necessity regarding the TRTP as a whole, as well as consideration of the section 1002 factors. Here, the Commission is addressing a potential change to one segment of the project and is simply reweighing the 1002 factors. Furthermore, there is a substantial amount of evidence, submitted by Chino Hills in the 2009 phase of this proceeding as well as in the phase leading to the instant Decision, to support the Commission's findings and conclusions regarding the visual impacts of the overhead transmission line towers and the adverse effect the line would have on property values. (See Chino Hills Response at pp.13-14; see also Exh. CH-01 (Testimony of Paul Benson); Exh. CH-02 (Testimony of Debra Ertel-Hernandez); Exh. CH-07 (Testimony of James Prindiville); Exh. CH-07 (Testimony of James Himes); and Exh. CH-86 (Testimony of Joann Lombardo).)

Further, the statements made by some Commissioners during oral argument or at the July 11 meeting are not contained in the Decision, nor are they a basis for the findings and conclusions in the Decision. As stated above, CEERT's arguments go to *policy* determinations made by the Commission (e.g. balancing the costs and technical difficulties of undergrounding against the burden the overhead towers place on the Chino Hills community). There has never been any real disagreement about the huge impact an overhead transmission line would have on the community of Chino Hills. What has been at issue was how much weight to give this factor. Deciding this question is squarely within the Commission's discretion where, as in the instant case, there is evidence to support it.

We do agree with CEERT that Conclusion of Law perhaps goes too far in stating that "D.09-12-044 effectively ignores community values." (D.13-07-018 at p. 66.) Rather, we believe that it is more accurate to state that in light of the instant

proceeding, we now believe that D.09-12-044 did not give proper weight to community values. We will modify the Decision accordingly.

CEERT also argues that the Decision contains a "newly announced transmission policy requiring undergrounding of transmission lines, both retroactively and prospectively and in 'urbanized areas.'" (CEERT App. Rehg. at p. 42.) CEERT contends that this new policy has been made without adequate notice and without sufficient specificity, citing *People v. Superior Court* (1988) 46 Cal.3d 381, 389-390 [which deals with a challenge to a statute based on facial vagueness]. CEERT explains that a statute or "administrative regulations" must be sufficiently definite to provide adequate notice of the conduct proscribed, and must be written with sufficient specificity to avoid arbitrary, subjective, or discriminatory application. (CEERT App. Rehg. at p. 42, fn. 135.)

As we stated above, the Decision does not adopt a new transmission policy. The Decision states that California has changed over the last decade, becoming more urbanized, "just as the state's goals for renewable energy and the need to transmit that [energy] to urban areas has become more ambitious." (D.13-07-018 at p. 21.)

> These changes necessitate a change in the Commission's policy for transmission planning. Going forward, if the Commission is to avoid repeating the injustice visited upon Chino Hills, it must carefully balance the requirements under §399.2.5 (that the cost of a line is appropriate to economically rational RPS [renewables portfolio standard] compliance) with the requirement under §1002 to consider community values.

(D.13-07-018 at p. 21.)

This statement simply expresses the view that we need to carefully weigh the requirements for renewable energy with community values. Furthermore, the case cited by CEERT, *People v. Superior Court*, deals with statutory vagueness and is not applicable here. The attached proposed order clarifies that no new policy has been adopted.

D. The Commission did not abuse its discretion and did not violate due process.

CEERT contends that, in issuing the Decision, the Commission abused its discretion and violated due process. CEERT's claim is based on statements made by two Commissioners during the July 11, 2013 Commission meeting, referencing information in a letter that was made available only to Commission at the time they voted on the Decision. (CEERT App. Rehg. at pp. 49-56.)

On April 11, 2013, the Executive Director of the CAISO, Neil Miller, sent a letter to the Assigned Commissioner and the ALJ, and served on all of the parties to the proceeding . This letter expressed concerns about the single circuit underground transmission configuration, which was eventually adopted by the Decision. The April 11 letter was entered into evidence and was discussed in the Decision. (D.13-07-018 at p. 26.)

On July 9, 2013, Miller sent another letter to the Assigned Commissioner and ALJ, which was also served on the parties. At the July 11 meeting, the Assigned Commissioner, who apparently received the letter the previous evening, stated that the letter was an ex parte communication and was inappropriate. Then the Assigned Commissioner proceeded to discuss a third letter, sent that morning (July 11) from the President of CAISO, Steve Berberich, which was a response to the July 9 Miller Letter.

Both the July 9 and July 11 letters were ex parte communications, which are allowed in ratesetting proceedings subject to reporting requirements. (Rule 8.3(c).) Pursuant to Rule 8.3(c)(3), written ex parte communications are permitted at any time provided the interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

We note that both of the July letters were ex parte communications, outside the evidentiary record, and are not discussed in the Decision. (Chino Hills Response at pp. 14-15.) Regardless of the oral statements made at the July 11 meeting, the Decision stands on its own. It is based on the record in this case and was adopted for the reasons

stated therein. We do not believe CEERT has shown that the Commission abused its discretion or violated due process in issuing the Decision.

CEERT also takes exception to statements made during in the July 11 meeting and in the Decision that imply that parties who opposed undergrounding of Segment 8A have been improperly motivated or have failed to follow the Commission's rules. CEERT specifically refers to language in the Decision on potential curtailment. The Decision sets forth the arguments of CEERT and others (SCE, Edison Electric Institute ("EEI"), Independent Energy Producers ("IEP"), Terra-Gen Power, LLC ("Terra-Gen"), the Division of Ratepayer Advocates ("DRA), and The Utility Reform Network ("TURN") who contend that undergrounding could undermine the Commission's goals on renewables. The Decision then states:

> Chino Hills counters that "[t]he issue of potential curtailment of renewable generators due to a delay … because of Commission consideration of an underground circuit is an enormous red herring, conjured by SCE in an effort to induce generators to lobby the Commission….

(D.13-07-017 at pp. 16-17, quoting Chino Hills Opening Brief at p. 31.) Although we were only quoting what Chino Hills argued, we understand that it may leave the impression that parties argument about curtailment were somehow disingenuous. We did not intend to imply that and will modify this language.

E. The relief request by CEERT is denied.

In conclusion, CEERTs argues that, at the very least, the Commission must grant rehearing to correct the "most egregious legal errors" in the Decision. CEERT explains at the outset of its rehearing application that because the Decision was made effective on the day it was voted upon, there is no effective way to stay the decision without doing further harm. (Compare Pub. Util. Code, § 1733 [an application for rehearing filed 10 days or more before the effective date of a decision automatically suspends the decision],)

CEERT points out that the Decision has now been in effect since July 11. CEERT states that, under these circumstances, asking for a rehearing to reverse D.13-07-018 and uphold the original overhead line adopted in D.12-09-044, "while clearly warranted," is likely to have "adverse effects for the very purpose of the TRTP." That is, "it will only exacerbate delay in the completion of Segment 8A and will expose renewable generators and ratepayers to further, excessive costs and risks." (CEERT App. Rehg. at pp. 5-6.)

CEERT asks that Commission to do all of the following: (1) Find and conclude that the Decision failed to follow the law in approving undergrounding for Segment 8A and in establishing and relying on a "new," vague transmission policy; (2) find and conclude that the Decision is not based on substantial evidence in light of the whole record; (3) find and conclude that the Decision is not supported by the findings; and (4) find and conclude that the Decision violates due process and represents an abuse of discretion. Based on these findings and conclusions, CEERT asks the Commission to do the following:

(1) to order that D.13-07-018 is not to serve as precedent on law, fact, or policy in any future application which seeks a CPCN for any new or upgraded transmission infrastructure (including both high voltage transmission lines and distribution lines and related towers);

(2) to order that any policy adopted by the Commission to govern the undergrounding of transmission lines will first be developed in a separate, broadly noticed rulemaking or investigation and will require clear, transparent, and explicit rules, similar to Tariff Rule 20, as to all conditions precedent that must be met for undergrounding any transmission facility, including specific metrics on need, timing of the request, and cost caps and allocation;

(3) to order that both 50% of the $224 million cost cap authorized in D.13-07-018 for the undergrounding of Segment 8A and 80% of any additional costs incurred due to any delay in its completion or required reconfiguration or repair resulting from its failure, insufficiency, or inadequacy, shall be borne by all SCE

customers residing and doing business in the City of Chino Hills,

(4) to order SCE to submit an advice letter establishing a memorandum account to track all costs of undergrounding Segment 8A that exceed the $224 million cap for the next 5 years, including all costs incurred by and to be reimbursed to renewable generators due to delay in the completion of Segment 8A, and

(5) to order SCE to file an application or advice letter to recover those costs identified in (3) and (4) through a surcharge imposed on all customers residing and doing business in the City of Chino Hills.

(CEERT App. Rehg. at pp. 56-57.)

In sum, CEERT is asking the Commission to conclude that the Decision violates the law, to state that any "new" policy regarding undergrounding will be developed elsewhere, to make Chino Hills pay a greater share of the undergrounding, and to reimburse renewable generators for delay due to completion of Segment 8A.

For all of the reasons discussed above, we do not believe CEERT has shown legal error. Moreover, we note that the legal errors raised by CEERT have little to do the tangible relief sought, which is payments to generators for delay caused by undergrounding Segment 8A, and ordering Chino Hills to pay a greater share of the costs of undergrounding. Most of the arguments go to the issue of whether the Commission should have voted for undergrounding – a decision that even CEERT does not ask to be reversed at this point.

In its comments to the Decision, CEERT raised the argument of financial risks to generators because of potential delays. As we stated there, this issue is not ripe for determination. If CEERT and other parties wish to pursue this matter, they should raise it later, consistent with the Commission's rules. (D.13-07-018 at p. 60.) Therefore, CEERT's requested "corrections" are rejected.

III. CONCLUSION

For all of the foregoing reasons, good cause for rehearing has not been demonstrated. However, we modify the Decision as follows: (1) clarify that we considered all four section 1002 factors in this proceeding, (2) clarify that the Decision does not adopt a new statewide policy, (3) change the statement that D.09-12-044 "ignored" community values, and (4) change language in the decision regarding parties allegations regarding risks of delay because of curtailment. We also make modifications to correct clerical and other minor errors. Accordingly, rehearing of D.13-07-018, as modified, is denied.

THEREFORE, IT IS ORDERED that:

1. The Decision is modified as follows:

   a. On pages 16-17, delete the last sentence that begins on page 16 and continues to page 17, and substitute the following language:

      Chino Hills counters that the evidence it has provided indicates that a delay in the completion of Segment 8A should not cause any significant curtailment of renewable generation in SCE's northern area. (Chino Hills opening brief at 31.)

   b. On page 21, in the second paragraph, delete the sentence "These changes necessitate a change in the Commission's policy for transmission planning." And substitute the following language:

      Although our decision today rests on the facts of this particular case, these changes necessitate an increased awareness of the impact transmission lines have upon populated communities.

   c. On page 18, delete the first sentence of the first paragraph, and substitute the following language:

      Section 1002 requires us to consider the following factors in as a basis for granting a CPCN: Community values, recreation and parks areas, historical and aesthetic concerns, and influence on the environment. In the underlying decision approving the TRTP (D.09-12-044) we considered all of these factors. However, we now

believe that we did not give proper weight to community values, in general, and visual impacts, in particular.

d. On page 66, in Conclusion of Law 4, delete the phrase "D.09-12-044 effectively ignores community values" and replace it with the following language:

D.09-12-044 does not sufficiently assess the towers' impact on community values.

2. The Decision is further modified to correct clerical and other minor errors as set forth below:

a. On page 2, in the last full sentence, after "including" and before "offset," insert the word "an."

b. On page 13, in the first partial paragraph, in the second full sentence, add the words "in this phase" after the words "Chino Hills' evidence and briefs"

c. On page 18, in the last sentence of the third paragraph, insert "However," before the phrase "Chino Hills suggests…."

d. On page 37, in the first paragraph under the heading 4.3, in the third line, delete the phrase "constructed in time" and substitute "constructed underground in time."

e. On page 40, in the first line of the first full paragraph, insert the word "is" between the phrases "reactive compensation" and "a major area of disagreement."

f. On page 42, in in the first partial paragraph, in line seven, delete the sentence that begins "However, Chino Hills persuades" and substitute the following:

However, Chino Hills persuades us that SCE's use of 26% is excessive. "[G]iven the comparability of the area of environmental impacts for both the underground and overhead configurations (i.e., the same right-of-way), the mitigation measures should be very similar. Moreover most of the survey work for biological and other impacts should already have been done."

g. On page 48, at the end of the second full paragraph, delete the last sentence and substitute the following:

Undergrounding Segment 8A would not significantly increase the costs of the Project as a whole.

h. On page 61, Finding of Fact 8, in the last sentence, delete the word "and" and add a period to the end of the sentence.

i. On page 66, Conclusion of Law 7, delete the "a" in the phrase "Segment 8A."

3. As modified, rehearing of D.13-07-018 is denied.

This order is effective today.

Dated October 31, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners

I dissent.

/s/ MICHEL PETER FLORIO
Commissioner