Decision 15-12-053 December 17, 2015

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).	A.07-06-031 (Filed July 29, 2007)

ORDER MODIFYING DECISION (D.) 15-05-004 AND DENYING REHEARING OF THE DECISION AS MODIFIED

I. INTRODUCTION

On June 15, 2015, an application for rehearing of Decision[1] (D.) 15-05-004 ("Decision") was timely filed by the City of Ontario ("Ontario"). The Decision denied two Petitions for Modification of D.09-12-044. One of these, as amended, sought to require undergrounding of an electric transmission line, and the other sought relief in the form of a stay of construction. These petitions were filed pursuant to Rule 16.4 of this Commission's Rules of Practice and Procedure ("Rules")[2], and were denied because: (i) the construction Ontario sought to stay was essentially complete; and (ii) Ontario failed to provide a required justification for why it was proper to consider modifying a decision adopted in 2009 almost five years later, in October, 2014. In its June 2015 rehearing application ("Rehearing Application"), Ontario alleges that it was error to deny its amended petition requesting undergrounding ("Petition"). According to the Rehearing

[1] All citations to Commission decisions are to the official pdf versions available on the Commission's website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

[2] This Commission's Rules are codified at Cal. Code. Regs., tit. 20, §§ 1-18.1.

Application, we committed error when we applied Rule 16.4's requirements because, for policy reasons, and to prevent injustice, we should have, instead, considered the substance of Ontario's Petition. Ontario also alleges it was error for us to reject certain factual claims that city made in its pleadings, that we misapplied the doctrine of laches, and made findings that were unsupported by the record. We have carefully considered all the arguments presented in the rehearing application, and have concluded that good cause for rehearing has not been shown. However, to prevent misunderstanding, we will modify the Decision's holdings to ensure they are clear. Accordingly, rehearing of D.15-05-004, as modified, is denied.

II. BACKGROUND

In June, 2007, Southern California Edison Company ("SCE") filed an application for Commission approval of the Tehachapi Renewable Transmission Project ("TRTP"). That project was designed to transmit energy produced by up to 4,500 megawatts of renewable generation from the Tehachapi Wind Resource Area to Los Angeles and San Bernardino counties. Several interested parties and ratepayer advocates protested the application, including the City of Chino Hills ("Chino Hills").

After conducting environmental review, certifying an EIR,[3] holding evidentiary hearings, and facilitating public meetings, we approved the TRTP in December 2009. (See *Certificate of Public Convenience and Necessity for the Tehachapi Renewable Transmission Project* (2009) [D.09-12-044] ("D.09-12-044").) D.09-12-044 approved construction of the TRTP through Chino Hills, despite that city's opposition. The TRTP was also routed through the neighboring city of Ontario, which had been informed of the proposed routing, but did not become a party to our proceedings, and had

[3] An Environmental Impact Report ("EIR") is required to be prepared by a government agency prior to considering and approving certain infrastructure projects, pursuant to the California Environmental Quality Act ("CEQA").

limited participation in the EIR process.[4] In both cities, SCE proposed to run the TRTP on tubular steel poles and lattice towers, some reaching over 190 feet in height.

Some parties, including Chino Hills, sought rehearing of D.09-12-044 in January, 2010, and also filed a stay request. Subsequently, Chino Hills filed a Petition for Modification of D.09-12-044 in October 2011, noting that its rehearing application had not yet been acted upon. By that time, construction of the TRTP in Chino Hills had begun, and the city asserted that the striking appearance of the transmission poles, when viewed in situ, provided new support for its longstanding claims. In response to these filings, we issued a limited stay of D.09-12-044 in November 2011. Ultimately, we issued *Undergrounding Segment 8A of the Tehachapi Renewable Transmission Project* (2013) [D.13-07-018] ("D.13-07-018") in July 2013. That decision ordered SCE to run the TRTP underground through Chino Hills, and was based on an extensive evidentiary record that had been developed in open proceedings, and a published Addendum to the EIR. Power producers sought rehearing of D.13-07-018, claiming they were owed compensation if the TRTP was delayed by the undergrounding in Chino Hills. This rehearing application was denied in October 2013, while rehearing of D.09-12-044 was denied in July 2013. On August 14, 2014, this proceeding, A.07-06-031, was closed by *Order Closing Proceeding* [D.14-08-018].

Subsequently, in October and November 2014, the City of Ontario ("Ontario") filed its two Petitions for Modification in what was at the time, a closed proceeding. By this time, construction of the TRTP in Ontario was almost complete. Ontario argued that the timing of its requests for undergrounding was appropriate because one factor we had relied on when we considered undergrounding in Chino Hills was that the actual impact of the transmission poles could not, according to Ontario, be appreciated by reviewing the EIR. Ontario's claim was based on its interpretation of language in

[4] Ontario submitted three letters as part of the EIR process. These letters supported an alternate route proposed by Chino Hills, and made specific, narrow, comments on matters such as easements, the need to know exact proposed locations for towers, noise-reduction, and the need to co-ordinate with that city.

D.13-07-018 pointing out that the impact of the tubular steel poles constructed in Chino Hills' narrow right-of-way became undeniably clear when they were viewed in person, after construction started. According to Ontario, this meant that "the facts supporting its petition for modification were unknown" in that city until SCE began construction in April 2014. (City of Ontario Amended Petition for Modification of D.09-12-044, November 21, 2014, p. 3.) SCE, The Utility Reform Network ("TURN") and the Commission's Office of Ratepayer Advocates ("ORA") opposed Ontario's two petitions.

In D.15-05-004, we denied both Ontario's Petitions for Modification of D.09-12-044. Because construction was essentially complete,[5] the Decision focused on the request for undergrounding made in the Petition, and found that Ontario failed to comply with Rule 16.4(d) of our Rules. That Rule requires parties to explain the timing of any petition for modification filed over a year after a decision's effective date-and allows summary denial of petitions that do not justify their late submission. The Decision set forth a number of reasons that supported our determination that Ontario's Petition failed to meet Rule 16.4(d)'s requirements. Ontario filed its application for rehearing on June 15, 2015. SCE and Power opposed the rehearing application. Save Archibald Ranch filed a motion, to which SCE responded.[6]

III. DISCUSSION

A. The Decision Properly Exercised This Commission's Discretion to Deny a Petition For Modification That Was Not Justified

Public Utilities Code section 1708 gives us authority to modify our past decisions. The language of the statute is permissive. We "may at any time" modify past

[5] Ontario's Rehearing Application does not claim that any portion of the Decision denying the request for a stay in its other petition for modification was error. (Cf. Pub. Util. Code, § 1732.)

[6] Save Archibald Ranch filed a motion for party status on August 28, 2015, after the deadlines for filing rehearing applications and responses had passed. SCE filed an opposition to the motion. No other matters are under consideration in this proceeding and statutes bar parties from filing further pleadings on the rehearing or participating further in the rehearing process. (E.g., Pub. Util. Code,§ 1731(b)(1).) Therefore, there is no purpose to granting Save Archibald Ranch party status, and its motion is denied.

decisions, including at a time after they have become effective. Decisions interpreting section 1708[7] hold that we exercise this authority as a matter of discretion. A proper exercise of discretion is not legal error. (*Northern Cal. Ass'n to Preserve Bodega Head v. Public Utilities Com.* (1964) 61 Cal.2d 126, 135.) Our past decisions make it clear that we will exercise our authority under section 1708 only as an "extraordinary remedy" that must be sparingly and carefully applied—particularly in cases involving the construction of major facilities. (*Denying Petition to Set Aside Submission* (1980) [D.92058] 4 Cal.P.U.C.2d 139, 149-150.)

Under normal circumstances, we exercise discretion under section 1708 to ensure that settled expectations remain undisturbed, and parties are insulated from relitigation of decided matters—as required by section 1709, which accompanies section 1708.[8] Consistent with this policy, our Rules establish that a party must properly justify requests made via petitions for modification. For example, factual allegations must be supported with citations to the record or matters that may be officially noticed.[9] Petitions that are filed more than one year after a decision has been adopted must explain why that petition could not have been filed earlier. Relevant here, Rule 16.4(d) allows us to summarily reject those petitions we find do not adequately justify a late submission.

The Decision determined that Ontario had failed to justify the late submission of its Petition for two main reasons. First, Ontario did not address the likelihood that granting its Petition would delay the completion of the TRTP, and cause that project to exceed its approved cost. Because of this significant omission, the Petition

[7] All section references are to the Public Utilities Code, unless otherwise indicated.

[8] D.15-05-004 refers to those principles as "res judicata" using a well-known legal term of art. For the sake of accuracy, however, D.15-05-004 is modified to refer to section 1709's principles of finality, which specifically apply to the administrative decisions issued by the Commission.

[9] The main support Ontario provided in this instance consisted of: (1) a brief declaration from a city employee stating they would testify in favor of the statements of counsel contained in the Amended Petition for Modification, and (2) a series of photographs which were not in the record or accompanied by any request for official notice.

failed to provide an adequate justification for why it would be proper to grant relief to Ontario at this time.[10]

We also found the main justification provided in the Petition was not supported by the facts, and was therefore unpersuasive. The Decision found that the record did not support Ontario's claim that the impacts of the TRPT were unknown until 2014. The Decision also set out a number of facts that supported the inference that Ontario had failed to seek alternatives to the overhead TRTP at the proper time, when the project was undergoing review. In support of its denial of the Petition, the Decision also finds that Ontario failed to show that the route of the TRTP in its jurisdiction was similar to the route in Chino Hills.

The rehearing application, however, claims the conclusion that Ontario's arguments were inadequate or unpersuasive "applies Rule 16.4 in an incorrectly narrow way." (Rehearing Application, p. 3.) According to Ontario, we had discretion to exercise "equitable powers" and should have done so because granting the relief it requested would have achieved justice, in Ontario's view. However, the fact that we have discretion to grant the relief requested by Ontario—had that request for relief been adequately justified—does not show that it was legal error to review Ontario's claims and find that they were unpersuasive.[11] The Decision provides a full explanation of why we did not accept Ontario's claims, and makes findings of fact based on the record. The Decision further notes that injustice would also occur if Ontario's Petition were granted. Denying the Petition on these grounds was a proper exercise of discretion, and was not a

[10] By way of contrast, undergrounding in Chino Hills was approved, in part, because there was a realistic possibility that undergrounding work could be completed within the project's approved budget, and in time for the TRTP to reach commercial operation in late 2015 or early 2016, as planned. (Compare D.13-07-018, pp. 37-38, with D.15-05-004, pp. 15-16.)

[11] The cases cited by Ontario all hold that it would have been equally lawful for us to dismiss or consider the petitions for modification in question. (E.g., *Re Competition for Local Exchange Service* (1997) [D.97-02-051] 71 Cal.P.U.C. 2d 144, 159 (Conclusion of Law 1).) Based on the specific facts of those cases, we determined to consider those petitions, but we did not find that we were required to do so. One of the cases cited by the rehearing application is the Chino Hills decision, and we have properly explained why the circumstances attending Chino Hills' Petition to Modify and Ontario's Petition were different, and resulted in different outcomes.

"mechanical," or unreasoned application of Rule 16.4.[12] To the extent that Ontario asserts that this result was inconsistent with D.13-07-018, Ontario repeats claims made in other parts of its rehearing application that are discussed in section II, below.

B. The Decision Properly Found that the Circumstances Present in Ontario and Chino Hills Were Different, And Ontario's Petition Presents Different Issues From Chino Hills' Petition

The rehearing application alleges that Ontario's claims are so similar to those raised by Chino Hills that D.13-07-018 is controlling, and dictates the approach we must take here. To the contrary, as noted above, the granting of a petition to modify is an exercise of discretion, based on the facts of each situation. The claim that D.13-07-018 sets forth any precedent that we must follow here is without merit.

Moreover, review of D.13-07-018 shows that we explicitly engaged in a fact-specific analysis based on "multiple variables[.]" (D.13-07-018, p. 60 (Finding of Fact 3).) The combined effect of all the facts present in Chino Hills caused us to conclude that the visual impacts of SCE's poles and towers were disproportionate "at a particular point" along the route of the TRTP. For example, in Chino Hills, 220 residences would be affected by tall TRTP transmission towers and lattices over the very short distance of 3.5 miles. D.13-07-018 explicitly compared that situation with the circumstances in surrounding communities, including Ontario. That comparison showed that only 36 structures in Ontario would be affected (despite a much longer route). Further, structures in Ontario were located along the North side of the right-of-way, with the towers sited nearer to the undeveloped South side. (D.13-07-108, p. 19.)

As noted above, another important difference between Ontario's petition to modify and Chino Hills' is that granting the relief to Chino Hills was found not to jeopardize the schedule or budget for the TRTP. Chino Hills also took the step of filing a

[12] Contrary to the rehearing application's claims, the Decision acknowledges that Ontario made some equitable arguments in favor of granting its Petition for Modification, but held that other equitable considerations—which Ontario failed to acknowledge—were equally or more important here. (E.g., D.15-05-004, pp. 14-17, 22.) We will modify the Decision so this reasoning is clearly set forth.

petition to modify only after that city was unsuccessful in pursuing other approaches, including significant involvement in the EIR process and the filing of an application for rehearing of D.09-12-044. Given these facts, the use of a similar procedural vehicle by both cities—a petition for modification—is not sufficient to establish that Chino Hills and Ontario are so similarly situated that the fact-specific result of D.13-07-019 must control here. (See Rehearing Application, p. 5.) The Decision distinguishes D.13-07-018, and it is not error for us to reach different conclusions when different facts were presented.

Ontario also claims that D.13-07-019 establishes precedent supporting Ontario's specific claim that it did not understand the true impacts of the TRTP until SCE began to raise poles within its borders during April 2014. Ontario quotes language from D.13-07-018 stating that the transmission towers have a far greater impact when viewed in person, but this language comes from discussion analyzing "whether Chino Hills' situation is unique in ways that require a special design approach." (D.13-07-018, p. 18.) This language is specific to the effect of the towers in Chino Hills, and does not make a broad holding that the true impact of TRTP towers cannot be known until they are constructed, as the rehearing application claims.[13] (See Rehearing Application, p. 3.)

Moreover, the Decision considered Ontario's claim in light of the record and found it to be unpersuasive. Finding of Fact 15 holds that information in the record makes Ontario's claim that it was unaware of the impacts transmission towers would have until 2014 unpersuasive. The Decision points out that the height of the towers was disclosed in the EIR and such towers were constructed in Chino Hills in 2011, providing Ontario an opportunity to view them in situ. Finding of Fact 16 demonstrates that we reviewed the record to find that Ontario did not make a significant contribution to pursuing design alternatives or revisions relating to SCE's transmission towers when it had the chance to do so. Those two factual findings, in turn, support Conclusion of Law 3, which holds that

[13] We also note such a claim is directly at odds with the principles of disclosure and finality contained in CEQA. (E.g., Pub. Resources Code, § 21177(b).)

Ontario did not meet Rule 16.4's requirement that parties must justify the timing of a petition for modification filed over a year after the underlying decision has issued.

Both these findings make inferences from information in the record, and the Rehearing Application makes no allegation claiming that we were not entitled to draw such inferences here. Instead, Ontario simply claims we were required to simply copy without question the approach we took when we reviewed different factual circumstances, concerning a different jurisdiction, in 2011. The rehearing application also fails to identify any evidence that would allow us to infer that Ontario could, as a matter of fact, have remained ignorant of these claimed impacts from 2009 to 2014 (despite the protracted struggle occurring in directly adjacent Chino Hills), or that Ontario used the available environmental and Commission review processes to protect its interests when there was ample opportunity to do so. (See Rehearing Application, pp. 2-3.) It is not legal error for us to consider the record and make our own factual findings, even if those findings reject one party's position.[14]

C. The Decision Properly Followed Past Decisions Applying the Principle of Laches to Untimely Claims Challenging Construction Projects

In addition to finding Ontario's justification for the timing of its Petition to be both incomplete and unpersuasive, we noted that independent grounds for rejecting Ontario's claims could be found in the doctrine of laches. (D.15-05-004, p. 22 ("We do not find a different answer in the law of equity.").) The Decision quotes from past decisions in which we denied equitable challenges to utility construction projects when the untimeliness of those requests made it unfair to grant the requested relief. These decisions follow the principle that laches "precludes equitable claims … which have been unduly delayed." (*Granting Limited Rehearing and Modifying D.96-09-093* (1997) [D.97-12-117], 78 Cal.P.U.C.2d 218, 220.))

[14] In essence, Ontario is claiming error on the grounds that the Decision fails to adopt Ontairo's viewpoint, that the "true impact of TRTP towers is not known until they are constructed." (See Rehearing Application, p. 3 (emphasis omitted).) It is not error for us to reject a party's claims when we rely on the record to do so.

One purpose of this discussion is to address the Ontario's claims that principles of equity require its Petition to be granted. Ontario asserts that fairness requires it to receive the same treatment as Chino Hills, and that these concerns about fairness are "compounded" by demographic considerations. (Amended Petition for Modification, November 21, 2014, p. 6.) The Decision, however, points out that Ontario's claims were brought so long after the 2009 authorization for SCE to construct the TRTP that providing relief for Ontario would delay the operation of the line, and add to its cost—unlike the undergrounding in Chino Hills. As a result, the Decision finds that the equities in the case did not all weigh in Ontario's favor, and that Ontario's very late decision to request undergrounding itself contained an element of unfairness.

It is worth noting that the portion of the Decision that discussed laches immediately follows a review of the limited nature of Ontario's involvement with the approval process for the TRTP. That discussion pointed out that Ontario did not seek party status until it filed its Petition in October 2014—even though SCE originally filed its application in June, 2007. (D.15-05-004, pp. 20-21.) That discussion explained that Ontario was capable of asking for specific changes to SCE's proposal (tubular poles instead of lattice towers, and changes to substation designs), but did not protest or seek changes to the proposed height of the transmission towers during the period from August 2007 to October 2014. These facts support the determination that Ontario's conduct amounts to laches.

The Rehearing Application claims laches cannot apply because Ontario's delay in filing its Petition was, in Ontario's view, reasonable. This claim fails to demonstrate the result in D.15-05-004 was in error for a number of reasons. As an initial matter, we did not rely exclusively on laches to deny Ontario's Petition. The Petition was denied because Ontario made incomplete and unpersuasive the arguments.[15] (See D.15-05-004, p. 22.) Moreover, the Rehearing Application ignores the majority of the

[15] No Conclusion of Law explicitly states that laches apply here, and the Decision can be understood and implemented without relying on the discussion at pages 22 and 23.

facts we relied on when we found that Ontario's petition was unreasonably late. Instead, the Rehearing Application claims that Ontario relied on D.13-07-018's conclusion that the towers in Chino Hills were unique, and, therefore, took a reasonable approach when it waited for SCE to actually build the TRTP before seeking undergrounding. This claim misses the point. The Decision faulted Ontario for failing to challenge the placement of transmission towers in its jurisdiction during the entire period from 2007 to 2014. The excuse, unsupported by any reference to the record or any cognizable facts, that Ontario had determined it did not need to act because it was re-assured by language in a Commission decision issued in July 2013 does not address the length of the delay involved, or the fact that Ontario failed to appear as a party to this very active proceeding until October 2014.[16] The claim that the Commission misapplied the doctrine of laches is therefore without merit.

[16] The claim that Ontario is somehow being unfairly singled out for disparate treatment, or was denied due process, is also shown to be groundless by these facts. (Cf. Rehearing Application, pp. 5-6.) There are a number of differences between Ontario's and Chino Hill's situations, but one of those is particularly pertinent here. Chino Hills actively participated in the CEQA process and in this proceeding. Chino Hills became a party and protested SCE's application when it was filed in 2007, and ultimately filed an application for rehearing of D.09-12-044 when that decision issued. Ontario, on the other hand, expressed little concerns during CEQA review, and only sought party status in October 2014, for the purpose of making new, last-minute objections to infrastructure that had already been built. Ontario suggests that the Commission should infer from these facts that Chino Hills was simply able to take advantage of its relative economic prosperity to mount effective opposition to the overhead TRTP. In D.13-07-018, however, the Commission found that Chino Hills' protracted opposition, despite the costs incurred, was a sign of the significant extent to which overhead towers impacted community values in that jurisdiction, producing strong of local opposition. (D.13-07-018, p. 20.) As a result, when the Decision finds that Ontario's lack of prior participation in this proceeding is an important factor that weighs against granting its Petition, it is consistent with D. 13-07-018. Moreover, Ontario's claim incorrectly assumes that opposing overground transmission towers was an all-or-nothing proposition. That is, since it did not feel it had the resources to mount an opposition as aggressive as Chino Hills', Ontario claims is was reasonable for it to have limited involvement in the CEQA process and not to become a party to this proceeding. That claim fails to explain why Ontario could not have taken basic steps to advance its claim, such as becoming a party, identifying potential impacts to be considered during the preparation of the EIR, or becoming part of the group who filed a join rehearing application of D.09-12-044, without expending the amount of resources Chino Hills devoted to opposing overhead towers.

D. The Decision Relies on the Record

The Decision infers that Ontario is requesting relief that would result in a five-year delay to the TRTP. Among the information in the record that supports this inference is the following:

- SCE's statement that it would need to procure and have cable manufactured if it were to underground this portion of the TRTP.
- SCE's statement that it would need time to develop a design (presumably, an engineering plan) for the underground segment Ontario was requesting.
- Estimated construction time in Chino Hills was 2-3 years.
- Additional CEQA review in Chino Hills took 1.5 years.
- The Final EIR evaluated some undergrounding alternatives for Chino Hills but not for Ontario, meaning review for Ontario could take longer.
- The total time to implement undergrounding in Chino Hills was 5 years from the filing of the Petition for Modification to completion.

As a result, the Rehearing Application is simply wrong when it claims the inference that it would take 5 years to implement the undergrounding in Ontario was "entirely speculative[.]" That inference is based on the information summarized above taken from SCE's response to the Petition for Modification (and statements from ORA and TURN), among other things. In its Reply to SCE's Response, Ontario made no comment on CEQA review and explicitly stated that further Commission proceedings—up to and including a trial-type hearing—would be required to act on its Petition.[17] (Reply to Responses to Amended Petition, December 15, 2014, p. 7.) SCE's statements

[17] The requirements of CEQA review and our procedures are also not unknowable simply because they have not yet begun. (Cf. Rehearing Application, p. 6.) The CEQA statute, the Public Utilities Code and our Rules all set forth clear requirements that govern such review, and outline the elements that must be accomplished, and the timelines involved. However, Ontario fails to address those clear requirements and, instead, baldly alleges that it is "entirely unclear how long … CEQA and related Commission review and hearings would take …." This allegation is in clear violation of Section 1732, and Rule 16.1(c), requiring rehearing applicants to support their arguments with specific references to the law.

should therefore be considered uncontested. Such statements provide ample support for inferences about the time it would take to grant Ontario's the relief it has requested.

At page 8, for purposes of background, the Decision discusses the current construction status of the TRTP in Ontario. The information the Decision relied on was taken from a Declaration submitted with SCE's December 5, 2014 Response to the Petition, and included in the record. Ontario's reply to that response does not dispute statements about the status of the TRTP construction in SCE's declaration. The Rehearing Application, however, asserts that it was error for us to state, in addition, that our staff had confirmed the accuracy of SCE's statements. We believe, as a matter of transparency and good government, that public disclosure of our internal review of SCE's statements provided helpful information to the parties and the public. Nevertheless, we do not wish to provide any distraction from the fact that our Decision is based on record material that Ontario did not dispute, and will modify D.15-05-004 to make this clear.

IV. CONCLUSION

The Decision found that Ontario's Petition did not meet the requirements of Rule 16.4(d) because they were incomplete in an important aspect—Ontario failed to explain why a request that would result in significant delay to the TRTP and additional expense was properly filed many years after that project was approved. The Decision also found that Ontario's Petition did not meet the requirements of Rule 16.4(d) because they failed to persuade us that Ontario was wholly unaware of the impact that SCE's poles and towers would have until construction of the TRTP was substantially complete within Ontario's borders. These holdings are the result of factual inferences properly drawn from a mostly uncontested record, and amount to a proper exercise of our discretion under section 1708. In the course of reviewing Ontario's Rehearing Application we have identified several clarifications that we wish to make to the Decision, but have concluded that rehearing should be denied.

IT IS ORDERED that:

1. The third sentence in the first paragraph in Section 2 on page 6 is modified to read:

> It must be exercised with care and in keeping with principles designed to uphold the integrity of our decisions, since "Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed." (D.92058 (1980) 4 CPUC 2d 139 at 149-150; see also Pub. Util. Code, § 1709.)

2. The third sentence in the paragraph spanning pages 8 and 9, which sentence begins, "While the Wright Declaration …" is modified to read:

> The Wright Declaration states that "SCE expects to complete testing and energize the lines in later December 2014/early January 2015" and those dates have now passed.

3. A new sentence is added at the end of the first paragraph on page 17, immediately before the heading for section 4.1.2, reading:

> Because of these considerations, Ontario's request is inadequate because it simply fails to address a crucial element that we would need to consider if we were to address the substance of its claims.

4. A new sentence is added at the end of Finding of Fact 15 on page 28, reading:

> We infer from these facts that Ontario's claim is entitled to little weight.

5. A new sentence is added at the end of Finding of Fact 16 on page 28, reading:

> This means Ontario did not pursue design alternatives or revisions when it had the chance to do so at an appropriate time.

6. A new Finding of Fact 18 is added on page 28, reading:

Ontario has not met its burden of proving that its petition to modify was timely, or that it could not have sought relief at an earlier time. Ontario similarly fails to show that, after balancing all of the equitable considerations at issue here, fairness requires the Commission to grant the relief requested.

7. All outstanding motions not disposed of in this order are denied.

8. Rehearing of D.15-05-004, as modified, is denied.

9. Application 07-06-031 is closed.

This order is effective today.

Dated December 17, 2015 at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners