

Decision 12-03-050 March 22, 2012

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 Tehachapi Renewable Transmission Project (Segments 4 through 11).

Application 07-06-031
(Filed June 29, 2007)

DECISION CONSTRUING MOTION TO CLARIFY DECISION 11-11-026 AS FUNCTIONALLY EQUIVALENT TO PETITION FOR MODIFICATION, AND ON THAT BASIS GRANTING REQUEST TO NARROW PARTIAL STAY

1. Summary

We construe the unopposed motion for clarification of Decision (D.) 11-11-020, filed by Southern California Edison Company, as a petition for modification, and as construed, grant the relief requested. Accordingly, we modify D.11-11-020's stay of construction on Segment 8A of the Tehachapi Renewable Transmission Project and narrow the stay to apply only to those portions of Segment 8A that lie within the City of Chino Hills or that would become unnecessary or obsolete if the Commission were to select one of the 21 identified Alternatives to those portions of Segment 8A.

2. Background and Procedural History

By Decision (D.) 09-12-044, the Commission granted Southern California Edison Company (SCE) a Certificate of Public Convenience and Necessity to construct Segments 4 through 11 of the Tehachapi Renewable Transmission Project (TRTP), using the Environmentally Superior Alternative, and subject to

the mitigation measures and other conditions described in that decision. Several parties filed applications for rehearing of D.09-12-044, including the City of Chino Hills (Chino Hills), which also filed a motion for partial stay. By D.11-11-020, the Commission stayed D.09-12-044 “to the extent it applies to Segment 8A of the TRTP pending the Commission’s resolution of Chino Hills’ Application for Rehearing.”¹ Shortly thereafter, the Commission issued D.11-11-026 to correct two clerical errors in D.11-11-020.

On February 17, 2012, SCE filed a motion requesting that the Commission clarify the scope of the partial stay.² SCE asks that the Commission expressly confirm that the stay applies “only to those portions of Segment 8A that lie within the City of Chino Hills or that would become unnecessary or obsolete if the Commission were to select one of the 21 identified Alternatives” and thereby modify the authority granted by D.09-12-044.³

SCE’s motion states that prior to filing the motion, SCE reviewed its request with Chino Hills and has confirmed that Chino Hills does not object to the proposed clarification. No responses or oppositions to SCE’s motion were filed.

¹ D.11-11-020, Ordering Paragraph at 2. At the time D.11-11-020 issued, Chino Hills also had filed two petitions for modification of D.09-12-044, seeking to reopen the record on the portion of Segment 8A of the TRTP that passes through the city, and in the interim, to stay construction of that part of the TRTP.

² *See Motion for Clarification of November 10, 2011 Commission Order Granting the City of Chino Hill’s Motion for Partial Stay of Decision 09-12-044*, February 17, 2012.

³ SCE motion at 4.

3. Discussion

3.1. Requirements for Revising a Commission Decision

Public Utilities Code § 1708⁴ provides that the Commission, after appropriate notice, may alter one of its prior decisions:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision. (§ 1708)

A petition for modification is the procedural vehicle specifically designed to ask the Commission to revise a prior decision and is the vehicle most commonly used for that purpose. Rule 16.4 of the Commission's Rules of Practice and Procedure governs such petitions.⁵ Functionally, a petition for modification is similar to a motion under Rule 11.1. The primary differences are that a motion can be used to seek various kinds of relief during the pendency of a proceeding; typically, though not always, a motion is directed to the assigned Administrative Law Judge (ALJ), rather than the Commission; and generally, a motion prescribes a shorter timeline for responses.

We will construe SCE's motion for clarification as Rule 16.4 petition, since the clarification it seeks would narrow the stay ordered in D.11-11-020 and only the Commission may revise D.11-11-020 in that way. Since the motion is

⁴ All subsequent references to statute mean the Public Utilities Code, unless otherwise specified.

⁵ All subsequent references to rules mean the Commission's Rules of Practice and Procedure, unless otherwise specified.

unopposed (responses were due on March 5, 2011 and none were filed)⁶ and since further delay would unreasonably interfere with the construction schedule, we will deem the petition to be unopposed, and will not require the full 30-day response period provided for under Rule 16.4(f). We do so consistent with Rule 1.2, which allows us to liberally construe our Rules in the interests of “just, speedy, and inexpensive determination of the issues” and to allow deviations from the Rules “[i]n special cases and for good cause shown.”

SCE’s motion meets the primary requirements for a petition for modification set forth in Rule 16.4(b) and (c) since it clearly specifies the justification for the relief requested, clearly words the relief sought, has been filed and served on all parties to the proceeding, and less than a year has passed since the Commission issued D.11-11-020.

We should find that SCE has met the procedural requirements for a Rule 16.4 petition.

3.2. Nature of Relief Requested

SCE contends that the stay ordered by D.11-11-020 is overbroad and argues that a narrower stay should be fashioned to preserve the status quo regarding the issues of concern to Chino Hills without halting all construction work in Segment 8A areas outside of the city. Specifically, SCE states:

Certain TRTP construction work in Segment 8A in areas outside of Chino Hills and unaffected by the potential selection of any of the Alternatives remains critical to the completion of TRTP Segment 8 (Segment 8) and to the delivery of renewable power to

⁶ Because the motion was filed on February 17, 2012, any responses were to be filed and served within 15 days thereafter, and because day 15 was a Saturday, the filing deadline for responses was March 5, 2012.

California. This work would all take place west of Mile Post (MP) 19 (approximately two (2) miles west of Chino Hills' city boundaries) and would remain in the substantially same form and location as originally engineered regardless of whether or not there were modifications to the Approved Chino Hills Route or if one of the Alternatives were mandated. [fn omitted] [reference omitted] SCE's requested clarification of the Order will allow SCE to undertake these important components of TRTP and minimize delays to the completion of the Project.⁷

No public purpose is served by continuing imposition of a stay that SCE has shown to be overbroad. We should modify D.11-11-020 to stay only that portion of Segment 8A potentially implicated by the as yet unresolved issues raised by Chino Hills.

4. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. SCE's motion is unopposed.
2. SCE has established that the stay of Segment 8A ordered by D.11-11-020 is overbroad.

⁷ SCE motion at 3.

3. No public purpose is served by continuing imposition of an overbroad stay of Segment 8A; the stay should be narrowed as discussed in the body of this decision, and D.11-11-020's Ordering Paragraph should be so modified.

Conclusions of Law

1. SCE's motion should be construed as a petition for modification of D.11-11-020, and as so construed, should be found both in procedural compliance with Rule 16.4 and reasonable, and should be granted.

2. This decision should be effective immediately in order to prevent delay in construction of those portions of Segment 8A that are not subject to the current controversy.

O R D E R

IT IS ORDERED that:

1. The unopposed motion for clarification filed by Southern California Edison Company, on February 17, 2012, is construed as a petition for modification of Decision 11-11-020, and as so construed, is granted, consistent with Ordering Paragraph 2, below.

2. The Ordering Paragraph of Decision 11-11-020 is modified as follows:

Therefore, IT IS ORDERED that D.09-12-044 is stayed, pending the Commission's resolution of Chino Hills' Application for Rehearing, to the extent it applies to those portions of Segment 8A of the TRTP that lie within the City of Chino Hills or that would become unnecessary or obsolete if the Commission were to select one of the 21 identified Alternatives to those portions of Segment 8A pending the Commission's resolution of Chino Hills' Application for Rehearing.

This order is effective today.

Dated March 22, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners