



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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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 June 29, 2007)

**PETITION OF THE CITY OF CHINO HILLS
TO MODIFY DECISION 09-12-044
TO REOPEN THE RECORD WITH REGARD TO
SEGMENT 8 OF THE PROPOSED ROUTE**

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Pursuant to Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the City of Chino Hills (Chino Hills or the City) petitions to modify Decision 09-12-044 issued in the above captioned proceeding on December 24, 2009. As detailed below, since the issuance of the Commission's decision almost two years ago, and the resulting construction of the transmission structures through Chino Hills, additional facts have surfaced which render certain of the findings of fact and conclusion of law contained in the Decision erroneous as they apply to the Commission's approved "Environmentally Superior Alternative" for Segment 8A of the Tehachapi Renewable Transmission Project (TRTP). By way of this Petition, Chino Hills seeks to modify those findings and conclusions and obtain the Commission's agreement to reopen the record of the proceeding in order to more fully explore less destructive alternatives for routing the section of the TRTP that traverses Chino Hills, and to adopt additional mitigation measures to address the severe environmental and economic damage inflicted on Chino Hills and its residents as a result of the construction of the TRTP.

I. PROCEDURAL BACKGROUND

The Commission issued a Certificate of Public Convenience and Necessity (CPCN) for Segments 4 through 11 of the TRTP on December 24, 2009 in Decision 09-12-044. Chino Hills actively participated the proceeding. At no time during the course of the proceeding did the City challenge the need for the project nor attempt in any manner to have the project rejected. To the contrary, the City supports SCE's renewable goals, and only tried to ensure that such goals not be reached by severely impinging on the health, safety and welfare of its residents. It was to this end that the City proposed what became known as Alternative 4CM, an alternative which altered SCE's proposed TRTP route only for the portion of the line which would cross through Chino Hills. This Alternative route would have allowed SCE to meet its reliability and renewable goals, while removing the transmission line from the unreasonably narrow space behind the homes of Chino Hills' residents where the impact from the line is significant and immitigable.

The Decision rejected the City's alternative proposal (Alternative 4CM) as well as other Alternatives such as undergrounding (Alternative 5), and, for the portion of the project which traverses Chino Hills adopted SCE's proposed route (Alternative 2) as the environmentally superior alternative. On January 25, 2010 the City filed an Application for Rehearing of the Decision, illustrating that the selection of the route which adversely affects the City is not supported by substantial evidence,¹ is inconsistent with the California Environmental Quality Act (CEQA) and implementing precedent, effects a violation of General Order 95 and is a product of arbitrary and capricious decision-making. The Commission has yet to act on this rehearing request which was filed almost two years ago.

¹ Of particular importance here is the City's argument that the Commission's finding that the Environmentally Superior Alternative is consistent with the language of SCE's easement is not
(footnote continued)

Chino Hills and its residents have sustained substantial damage by virtue of just the partial construction of the portion of TRTP that crosses the City, yet the City and its residents have effectively been denied due process due to the Commission's delay or refusal to issue an order on the pending Application for Rehearing. Chino Hills has not yet filed an appeal from Decision 09-12-044 because it would be a futile act. In virtually every case, the Court of Appeals and the Supreme Court defer action on an appeal in which the Commission still has a rehearing application pending. This delay, which is simply inexcusable in a major case of tremendous importance to the entire community of Chino Hills, is nothing more than a denial of due process and a usurpation of the appellate rights of Chino Hills.

Accordingly, given the new facts provided by the partial construction of the initial transmission structures, the Commission should grant Chino Hill's Petition for Modification to reopen the record of this proceeding to consider any and all feasible alternatives to the adopted route and to consider additional mitigation measures. The Commission must grant Chino Hills an opportunity to be heard.

The City recognizes that, as a general rule, Petitions for Modification are to be filed within one year of the issuance of the subject decision. Commission Rule 16.4(d), however, provides for late filings upon showing of significant justification. In this instance, the facts which prompted this Petition were not known within a year of the Commission issuing Decision 09-12-044. Rather, it was not until the transmission structures were built through the City that the new facts, as set forth below, presented themselves. Further, this is an unusual case as illustrated by the fact that after nearly two years there is no ruling on the City's Rehearing Request.

supported by substantial evidence and thus is not a finding the Commission is lawfully
(footnote continued)

II. NEW FACTUAL CONSIDERATIONS

Since the time that the City filed its Rehearing Application, construction of the TRTP has proceeded, and the 200 foot tubular steel poles have been erected through the City.² These monolithic structures cut a huge swath through the City, and have had a staggering impact on the City as they are located right outside the residents' backdoors. In contrast to the pre-existing 75 foot tall 230 kV towers that were far less visible³, the new steel monoliths transform the open space along the right-of-way to an eyesore. The visual, economic and societal impact of the line has been far more significant than what the City or the Commission envisioned at the time that the CPCN was issued.⁴ The transmission structures erected in Chino Hills, contrary to Commission findings, have ruined the quality of life for residents in the City,⁵ have divided the community,⁶ and destroyed the property value of those who reside along the 150 foot wide right-of-way.⁷

empowered to make.

² At this time the conductors have not been strung between the poles.

³ In addition, the 230kV line was not energized, and SCE had advised residents it did not intend to operate the line.

⁴ See Attachment A (photographs of the poles erected in Chino Hills).

⁵ In this regard, the EIR presented the following analysis

Though the proposed Project would be expected to introduce impacts that may have an adverse affect on Quality of Life, as described above, the Project would also have the potential to counterbalance this affect by providing a service which is considered beneficial to Quality of Life. Implementation of the proposed Project would serve to reliably interconnect new wind generation resources in the Tehachapi Wind Resource Area and accommodate solar and geothermal projects which are currently being planned or expected in the future. As such, the Project would serve renewable energy generation projects, providing for the transmission of renewable energy to areas of southern California where the demand for power is growing. These results of the Project are considered to be positive effects on Quality of Life by providing the power necessary to accommodate the presently growing population of southern California. In addition, the Project would be expected to introduce a positive impact to public revenue, as described in the Public Revenue Issue of Concern in this report. Such an impact would be considered beneficial to Quality of Life because it would result in financial resources to be utilized towards public benefit. In this context, the renewable energy and economic development
(footnote continued)

Moreover, although the FEIR correctly found that the visual impact from the towers, even with mitigation, would remain “significant and unavoidable,” the analysis in the FEIR does not do justice to the jarring imprint which the mammoth transmission structures have had on the viewscape.⁸ The residents of Chino Hills have given evidence to this diminished quality of life through their public testimony at the Commission’s October 6, 2011 Public Meeting in Los Angeles. These citizens spoke to the degradation of their community, the diminishment of their livelihood (through depressed home values) and their concerns regarding health impacts

aspects of the proposed Project may be viewed to counterbalance adverse Quality of Life effects that could be introduced through Project construction activities and infrastructure placement. See FEIR at p.3.12-24 (emphasis added).

While the residents of Chino Hills support renewable energy, it does not “counterbalance” the dramatic impacts which placement of the transmission infrastructure has had on their community.

⁶ CEQA Guidelines clearly state that economic or social information must be considered in an EIR/EIS as they relate to physical changes caused in turn by the economic and social changes. The FEIR dismissed the City’s contention that the construction of the monolithic transmission structure through the center of the city would divide the community because the utility right of way was already present. See FEIR, at p. H.A-352.

⁷ In this regard the FEIR determined that:

Under the Project, it is *possible* that the placement and configuration of Project infrastructure could have an indirect effect on private property value; however, due to the multiple factors listed above, *it is not possible to directly connect Project features with changes in private property value. See FEIR, p. 3.12-29 (emphasis added).*

⁸ The FEIR describes the visual impairment as follows:

In the South Area, the proposed *Project* would appear to dominate the existing landscape character(s) adjacent to the utility corridor, and the new increased height of structures would cause the industrial character to visually extend further into neighboring lands. The new and increased structure skylining and additional obstruction of the foreground landscapes and, in some cases, views to middleground and background landscapes, would result in a high degree of visual contrast, view blockage, and/or skyline impairment. Additional structure height also would cause additional structure skylining (towers and conductors extending above the horizon line), particularly for towers where, from some vantage points, the existing 220-kV structures remain below the skyline or only slightly extend above the horizon line. New 500-kV structures that protrude above the skyline would block more of the horizon and impair scenic views. Increased tower height would also raise the conductors such that more of the background landscapes in the South Area (San Gabriel Mountain Range, Hacienda Hills, and Chino Hills) would be visually obstructed, depending on view direction. *See FEIR at p. 3.14-122.*

resulting from having massive electric infrastructure within 70 feet or less of their homes.⁹

Indeed, the very impacts to quality of life which the FEIR and Decision 09-12-044 concluded *would not result* from the TRTP are in fact happening to the residents of Chino Hills.

The public testimony of the Chino Hills residents illustrating the gravity of the situation resulted in Commissioners Peevey and Simon visiting the Chino Hills community and witnessing first hand the shocking impact these towers have had on the community as a whole, which is compounded exponentially for those who reside along the right-of-way. Indeed, the shocking nature of these towers has led community leaders to petition the Commission for relief.¹⁰

Moreover, additional negative impacts of the TRTP line in Chino Hills continue to surface. As acknowledged in SCE's recently filed Petition to Modify,¹¹ SCE now proposes that a large number of these structures will have marker balls placed on the conductor wires to assure visibility to aircraft (allegedly to comply with Federal Aviation Administration regulations). Such warning devices will compound the already drastic visual intrusion of the towers and transmission lines in the community. These "additions" to the structures were not part of the environmental review of the project at the time the Commission issued its Decision was issued and are further evidence that the true impacts of these transmission structures were not known when the determination was made to approve Alternative 2 through Chino Hills.

⁹ See <http://www.californiaadmin.com/cpuc.shtml> (Commission Business Voting Meeting, October 6, 2011).

¹⁰ See Attachment B (Letters to the Commission from community leaders).

¹¹ See Southern California Edison Company's Petition to Modify Decision 09-12-044, A. 07-06-031 (October 17, 2011)

III. ERRONEOUS FINDINGS OF FACT AND CONCLUSIONS OF LAW

In approving SCE's CPCN application and adopting Alternative 2 as the Environmentally Superior Route through Chino Hills, the Commission made the following Findings of Fact and Conclusions of Law:

Conclusion of Law 24. The Tehachapi Renewable Transmission Project (Segments 4-11) is planned or located in a manner that will be most compatible with the greatest public good.¹²

Finding of Fact 38. Significant and unavoidable environmental impacts will result from construction and operation of the Environmentally Superior Alternative; however, the Commission has adopted all feasible mitigation measures; adopted certain alternatives that reduce the impacts of the Environmentally Superior Alternative; recognized all significant, unavoidable impacts; and balanced the benefits of the Environmentally Superior Alternative against its significant and unavoidable impacts and the least private injury.

Finding of Fact 39. The benefits of the Environmentally Superior Alternative outweigh and override its significant and unavoidable impacts, for the reasons set forth in the statement of overriding considerations in Section 7.4 herein.

FEIR Finding (p.3.12-24), Socioeconomics.¹³ [A]lthough the proposed Project would introduce impacts which could affect certain aspects of Quality of Life, it is not expected that the proposed Project would have the potential to adversely impact the overall concept or experience of Quality of Life for individuals who live in the Project area.

FEIR Finding (p.3.12-29) Socioeconomics. Under the Project, it is possible that the placement and configuration of Project infrastructure could have an indirect effect on private

¹² This same statement also constitutes Finding of Fact No. 45.

¹³ The FEIR findings are incorporated into the Decision through Conclusion of Law 19.

property value; however, due to the multiple factors listed above, it is not possible to directly connect Project features with changes in private property value.

As illustrated above, the reality of the situation, once the structures were actually erected within Chino Hills, is that these findings and conclusions have proven to be erroneous. These findings and conclusions can not stand. Rather the Commission must:

- (a) modify the conclusions /findings to reflect the fact that the project being built in Chino Hills can no longer be said to be planned and /or located in a manner consistent with maintaining the quality of life for the residents or compatible with the greatest public good, thereby rendering the issuance of the CPCN along the route selected in the Decision void;
- (b) reopen the proceeding on the narrow issue of appropriate routing and mitigation measures for the Chino Hills portion of Segment 8 of the TRTP, as more fully described below;
- (c) require that SCE bear the cost and responsibility for proposing such alternatives, while the Commission seeks independent evaluation of SCE's cost estimates; and
- (d) consider adoption of additional mitigation measures to diminish the harmful impact of the TRTP line within the City of Chino Hills, and/or to mitigate the impact of relocating the line if another alternative route is eventually adopted by the Commission.

IV. THE PROCEEDING SHOULD BE REOPENED TO EXPLORE LIMITED ALTERNATIVES FOR THE PROJECT ROUTE THROUGH CHINO HILLS

The Commission must reopen the record of this proceeding to explore options for reversing the significant harm which its Decision has had on the City of Chino Hills, while allowing the TRTP to move forward. Specifically, the City would request that the Commission modify Ordering Paragraph 9 of the Decision to reopen the record of this proceeding for the purpose of further analysis of alternative routes for Segment 8 of the project through Chino Hills, as well as other forms of mitigation for the community and its residents.

A. Further Analysis of Alternative Routes through Chino Hills must be Explored as a Potential Means of Undoing the Destructive Impact of the TRTP on the Community

The Commission was not without alternatives for the section of the project which is routed through Chino Hills. The route chosen, the one proposed by SCE, has shown itself to be disastrous for the City of Chino Hills. The Commission was not without advance notice of this outcome. Even the CAISO was aware that SCE's proposed route would generate devastating impacts years before the TRTP project was submitted to the Commission for approval.¹⁴

Given the degree of harm which the Commission's adopted route has inflicted on the residents of Chino Hills, the Commission should reopen the record and pursue parallel courses for the consideration of alternatives.

First, as the Commission is aware, the City spent over a million dollars designing, refining and supporting what became known as Alternative 4CM. This proposal was rejected by the Commission based primarily on the concern that the failure to receive certain necessary approvals would require that an alternative for Segment 8A be selected. As stated by the Commission:

This selection process could potentially require enhancement of the both the environmental and evidentiary record, and additional regulatory processes before this Commission and potentially elsewhere. Any of these events would add significant delay to completion of the Project. Because this project is necessary to meet the state's RPS law, approval of 4CM and any resulting delay in project completion could mean that the law will not be achieved.¹⁵

¹⁴ SCE's Proponent's Environmental Assessment states that the TRTP is being developed to conform with the CAISO Tehachapi Transmission Project, developed as part of the CAISO South Regional Transmission Plan for 2006 (CSRTP-2006) and approved by the CAISO Board in January of 2007. The CAISO report on the Tehachapi Transmission Project indicates that the development of Segment 8 around the Chino area "*may trigger a need for alternatives*" due to the issues and concerns predicted at the time for the urban areas along the Segment 8 route.

¹⁵ Decision 09-12-044 at pp. 61-62.

Almost two years have passed since the Commission made this statement. It is unclear as to whether the facts upon which the conclusion of a significant delay statement was based remain true today. Chino Hills continues to assert that Alternative 4CM is a superior and cost effective alternative that would not result in an unduly extended delay in the project. Moreover, if the Commission is at the stage of reopening the record for additional regulatory process, the timeline for the entire project must be reevaluated. Accordingly, Alternative 4CM must be reconsidered.

Second, the Commission should take another look at what was known in the proceeding as Alternative 5-The Partial Underground Alternative. The proposed route for Alternative 5 was the same route as that of the Environmentally Superior Route, with the difference being that for the approximately 3.5-mile portion of the route along Segment 8A through Chino Hills, the facilities would be placed underground in SCE's existing easement. While SCE addressed the possibility of undergrounding part of the project in its Proponent's Environmental Assessment, it dismissed the concept because it did not meet two of its project objectives: (1) minimize environmental impacts; and (2) meet project needs in a cost effective and timely manner.¹⁶ Despite SCE's rejection of the undergrounding technology, the Environmental Impact Report in determining a reasonable range of alternatives to SCE's proposed Project (Alternative 2) based on the criteria of: (1) the alternative's potential to meet most of the Project objectives/purpose and need, (2) the feasibility of the alternative, and (3) the alternative's ability to avoid or lessen adverse effects of SCE's proposed Project, included undergrounding of the project through Chino Hills as a feasible alternative.¹⁷

¹⁶ See Proponent's Environmental Assessment, Section 2.0, Alternatives to Proposed Project, p. 2-57.

¹⁷ See Final EIR/ EIS at p. 2-100.

A review of the FEIR shows that the environmental impact of Alternative 5 is fairly comparable to SCE's Alternative 2. In the area of Chino Hills where the line would be undergrounded certain of the environmental impacts are more severe while others are diminished to a significant degree. The Decision acknowledged Alternative 5 but did not provide any analysis of its feasibility or its use as a mitigation measure for the impacts of the TRTP project for the City of Chino Hills or its resident.¹⁸ Moreover, given the comparability of the environmental impacts of SCE's Alternative 2 and Alternative 5, if the Commission could issue a Statement of Overriding Consideration with respect to its chosen Environmental Superior Alternative (which included Alternative 2 through Chino Hills), then it could issue such a statement with respect to a route which contained Alternative 5.

Moreover, while SCE expressed concern regarding the cost of undergrounding and the reliability technology, these issues were not adequately explored on the record.¹⁹ It has been four years since SCE introduced its cost estimate of \$25 to \$50 million per mile, per circuit, and since SCE explored the feasibility of undergrounding for the purpose of the TRTP project. The four years could have seen an advancement of the technology and a corresponding cost decrease. In addition, it is important to bear in mind, as the Commission determined in the Decision, that "There is no requirement that the Commission adopt the lowest cost alternative, without regard to environmental and other factors."²⁰ Accordingly, merely because undergrounding may be more costly, that is not a sufficient basis for its dismissal. The Commission must look at all other factors, including its use as mitigation for otherwise unacceptable impacts on the community. As

¹⁸ Decision 09-12-044, at pp. 35-36.

¹⁹ PEA at p. 2-55.

²⁰ Decision 09-12-044, Conclusion of Law 14.

the Commission examines the harm done to Chino Hills and its residents by the construction of the transmission towers, it may well conclude that appropriate mitigation for that harm may be so expensive as to render undergrounding a reasonable alternative. Thus, the Commission should immediately establish procedures for further review of Alternative 5A using updated information about undergrounding technology.

Finally, the Commission should direct SCE to propose and evaluate multiple additional alternative routes, but specifically including Alternative 4CM and Alternative 5, or variations thereof. Once the proposals are finalized they should undergo a preliminary environmental analysis comparable to the one presented by SCE with respect to its October 17th Petition to Modify.²¹ Once the preliminary environmental review has been completed, the proposals should be presented to the Commission for determination of appropriate next steps, including independent evaluation with respect to cost estimates.

B. Additional Mitigation Measures Must be Adopted to Diminish the Devastating Impact of the TRTP Line within the City of Chino Hills

A foundational element of the Commission's Statement of Overriding Considerations was the determination that it "ha[d] adopted all feasible mitigation measures." The reality of the situation currently facing the residents of Chino Hills illustrates that the degree of mitigation adopted by the Commission is grossly insufficient. Indeed, no mitigation was afforded the residents of Chino Hills for the diminution of their quality of life, for the division of their

²¹ An additional justification for undertaking further environmental review of alternatives for Segment 8 of the TRTP would be to correct the inaccurate and biased conclusions contained in portions of the FEIR, which was prepared by the Commission's consultant under the direction of CPUC Project Manager Tom Flynn, who later revealed that while acting as project manager, he sought and negotiated employment with SCE, and did, in fact, join SCE after the FEIR was substantially completed. Chino Hills protested to the CPUC senior management that such conduct was a violation of state law, but no action was taken to remedy the bias in the environmental documents asserted by Chino Hills.

community, or the loss in value of their homes (which for most individuals constitute their largest investment).²²

Moreover, in adopting the Statement of Overriding Consideration, the Commission attested to balancing the benefits of what it determined to be the Environmentally Superior Alternative against its significant and unavoidable impact, and determining that the former outweighed the latter. It is clear, however, that at least with respect to the portion of the TRTP that cuts through Chino Hills, the degree of impact was not well understood and thus not adequately accounted for. At minimum, if the Commission's Statement of Overriding Consideration is to remain valid, it must afford the residents of Chino Hills' additional mitigation against the devastating effects that the line has and will have on their individual livelihood and the community as a whole. In addition, if an alternative route is selected as a result of the reopening of the record, appropriate mitigation related to the implementation of that alternative must be considered.

Accordingly the Commission should reopen the record of this proceeding to consider additional forms of mitigation in addition to rerouting.

IV. GRANTING PETITION FOR MODIFICATION WILL EASE THE WAY TO ULTIMATE RESOLUTION OF THIS PROCEEDING

As referenced above, the City's Application for Rehearing of Decision 09-12-044 is still pending after almost two years. The City believes that the legal basis for its rehearing application is sound, and will ultimately result, either at the Commission or Court level, in a reversal of the finding that Alternative 2 is the Environmentally Superior Alternative through Chino Hills.

²² Testimony presented by the City demonstrated that the impact of SCE's transmission line through Chino Hills on residential properties is approximately \$55,570,000. This analysis was comprised of two parts (1) homes that would need to be purchased to have a sufficient right-of-way and (2)
(footnote continued)

Indeed, on one particular issue, the Decision is plainly defective, and subject to reversal. The Decision's finding that "construction of the Environmentally Superior Alternative is consistent with the language of the easement provision found in Exhibit CH-54" which "contains no limiting language which would support a finding of an overburdening of the easement"²³ is not supported by substantial evidence in light of the whole record, and is a finding the Commission was not lawfully empowered to make under the circumstances.²⁴ Through this "finding" it appears the Commission was attempting to evade the likelihood of a determination by the California Court of Appeals that the Superior Court has jurisdiction over the adjudication of easement rights.²⁵ This is particularly true in a situation where the Commission has made no

the diminution in value of other homes along the right of way. See Exhibit CH-06 (Noh) and Exhibit CH-04 (Himes).

²³ Decision 09-12-044 at p. 89 and Finding of Fact No. 32.

²⁴ Indeed, the Commission itself has recognized the limited nature of its authority, a fact which the Court relied upon *Koponen v. Pacific Gas & Elec. Co.* (2008) 165 Cal.App.4th 345 to determine that "section 1759 presents no bar to plaintiffs' claim for damages [against PG&E] incurred as a result of unauthorized uses of the rights-of-way." *Id.* The court also recognized that the PUC does not have the authority to enforce or modify the terms of a utility's rights-of-way. Section 1759, the *Koponen* court ruled, also does not bar plaintiffs from seeking to enjoin PG & E from invading plaintiffs' property interests by licensing or leasing its facilities. The *Koponen* court noted:

Our conclusion on this point is supported by the [public utilities] commission itself, which filed an amicus curiae brief at our request. The commission affirms it has established a policy favoring the joint use of utility property, including easements, and has authorized PG & E to lay fiber optic cable alongside existing electrical lines and to share those fiber optic cables with telecommunications providers. It explains, "Implicit in this authorization, however, is the assumption that PG & E in fact possesses the legal right to lay such cable alongside its electrical lines. That issue was not presented to the Commission for determination, and no such determination was made. It is important to note that, in the Commission decisions cited by PG & E, the Commission did not (and could not) authorize PG&E to do more than what is legally permitted under the scope of PG & E's existing easements."

Koponen v. Pacific Gas & Elec. Co. (2008) 165 Cal.App.4th 345, 356 (emphasis added).

²⁵ In the Proposed Decision, the totality of the Commission's discussion regarding the issue was relegated to one sentence referencing the City's law suit in the San Bernardino Superior Court challenging SCE's right to use the easement through Chino Hills for the installation of a 500 kV transmission line -- "We are not persuaded by Chino Hills' argument that we should find the

(footnote continued)

investigation into the validity of a plaintiffs' claims regarding the overburdening of the subject easement, has not reviewed the detailed language of each and every relevant easement, and has made no finding that the utility has complied with the terms of the grants of its rights-of-way.²⁶ The likelihood that a court would overturn the Commission's blatant intrusion on the jurisdiction of the state courts to adjudicate property rights issues is greatly increased by the fact that the record in this case contains only one easement. There are eleven different easements involved in the affected right of way,²⁷ they do not all use identical language, and they have differing reservations. There was no specific discussion in the record of the easement language for all the different properties.²⁸

Environmentally Superior Alternative infeasible because Chino Hills chooses to delay the Project through its own litigation.” See Proposed Decision of ALJ Kolakowski, A. 7-06-031 (November 3, 2009) at p.6,

²⁶ See *Koponen v. Pacific Gas and Electric Company*, *supra*.

²⁷ Exhibit SCE-04, p.43.

²⁸ This strategy worked in misleading the Court of Appeal. In civil litigation which the City of Chino Hills brought against SCE, the Fourth District, Second Division, Court of Appeal deferred to the Commission because the Commission's Decision stated that the Commission had undertaken the necessary investigation to determine if there was an overburdening of the easement. See Slip Opinion, *City of Chino Hills v. Southern California Edison Company*, E05103 (September 12, 2011, Petition for Review filed with the California Supreme Court on October 25, 2011, Case No. S197428) at page 5:

“The City had argued that the Commission should consider the fact that this then pending action was likely to delay construction of the Project. It specifically argued that this action was not barred by section 1759. Citing *Koponen v. Pacific Gas & Electric Co.* (2008) 165 Cal.App.4th 345, it asserted that section 1759 would not apply unless the Commission specifically investigated and rejected its claims. The Commission responded, “We disagree with [the City]'s interpretation of § 1759. Nevertheless, we have considered [the City]'s arguments regarding the [easements].” Based on the sole written easement that the City had offered in evidence, the Commission concluded that the Project was “consistent with the language of the easement” ;

and at p.16: The Court of Appeal held:

“*Koponen* is not controlling here, for two reasons. First, in *Koponen*, the Commission had not made any determination regarding the plaintiffs' claims. Indeed, in an amicus brief, the Commission had conceded that its authorization had been based on “the assumption that [the utility] possesses the legal right to lay [fiber optic] cable alongside its electrical lines. That issue was not presented to the Commission for determination,

(footnote continued)

The Commission made no investigation into the validity of the Chino Hills’ claims that construction of the 500 kV transmission line on the easement in question would effect an overburdening as such has been defined by California law and precedent. Indeed, the Decision does not even reference the applicable law and precedent nor make any attempt to apply it or distinguish it.

In order for the Commission to render a definitive determination as to whether Alternative 2 as it traverses Chino Hills would effect an overburdening of the subject easement it would have been necessary for it to conduct an investigation into Chino Hills’ claims, applying the relevant law to the facts surrounding the granting of the easement and its use since its inception. No such investigation was made;²⁹ indeed the issue of overburdening of the easement was not placed before the Commission by either party.³⁰ As a result, there is insufficient evidence on the record (most notably only one of the subject eleven easement documents) for the Commission to make such a determination. For the Commission to make such findings without even examining the language of the easements in question is highly improper and unsupported by substantial evidence. The Commission has clearly not proceeded in the manner required by

and no such determination was made. . . . [T]he Commission did not (and could not) authorize [the utility] to do more than what is legally permitted under the scope of [the utility]’s existing easements.” (*Koponen v. Pacific Gas & Electric Co.*, *supra*, 165 Cal.App.4th at p. 356.) **By contrast, here — much as in *Hartwell* — the Commission did investigate the City’s claims; moreover, it rejected them, and it ruled that they should not affect the routing of the Project.**”(Emphasis added.)

The record of this Commission proceeding, however, clearly shows that no such investigation was conducted.

²⁹ While the decision sites to the language of the easement, which was included in the record as Exhibit 54, as providing sufficient basis for it finding that construction of a 500 kV transmission line on the property is consistent with the language of the easement which “contains no limiting language which would support a finding of an overburdening,” such cursory review does not constitute and investigation into the validity of Chino Hills’ claims

law when it seeks to adopt such a finding as a last minute addition to a decision without an adequate record to establish the terms of all the relevant easements or any exploration of the claims of the City as to the overburdening issue. There is little doubt that should this issue make its way to the Court, the decision will be reversed.

With such a reversal the proceeding will be reopened and the process will commence again. Such a result does not favor anyone. Not the Commission, whose stated objective in approving the project was to advance the state's renewable goals; not SCE who has expended considerable resources in the planning, design and construction of the project; not SCE's ratepayers who will be forced to bear additional costs as a result of the additional proceedings and potential modification of the project while the benefits of the renewable energy to be transported over the TRTP are also delayed. The City of Chino Hills will also be disadvantaged by further proceedings on appeal. The City has already expended over \$2 million dollars in development of an alternative and participation in the CPCN proceeding, all in an effort to mitigate the impacts of the project on its residents. Accordingly, if the Commission were to grant this petition and reopen the record, and if such a process led to a solution that sufficiently ameliorates the harm to the City and its individual residents, then the City would be in a position to withdraw its pending Application for Rehearing and reduce the legal uncertainty facing the TRTP project as a whole.

VI. CONCLUSION

For the reasons stated above, Chino Hills petitions the Commission to grant the relief requested herein, specifically:

³⁰ Indeed, the only reason that the one easement (Exhibit CH-54) was introduced into the record was for the purpose of refuting of statement made by an SCE witness regarding the intent behind the easements. See Tr. Vol.4 (SCE- Kraushaar), pp. 597-599.

(a) modify the conclusions /findings to reflect the fact that the project being built in Chino Hills can no longer be said to be planned and /or located in a manner consistent with maintaining the quality of life for the residents or compatible with the greatest public good, thereby rendering the issuance of the CPCN along the route selected in the Decision void;³¹

(b) reopen the proceeding on the narrow issue of appropriate routing and mitigation measures for the Chino Hills portion of Segment 8 of the TRTP, as more fully described below;

(c) require that SCE bear the cost and responsibility for proposing such alternatives, while the Commission seeks independent evaluation of SCE's cost estimates; and

(d) consider adoption of additional mitigation measures to diminish the harmful impact of the TRTP line within the City of Chino Hills, and/or to mitigate the impact of relocating the line if another alternative route is eventually adopted by the Commission.

Respectfully submitted this October 28, 2011 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Michael B. Day
Jeanne B. Armstrong
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
E-Mail: mday@goodinmacbride.com

By /s/ Michael B. Day
Michael B. Day

Counsel for the City of Chino Hills

2999/002/X132976.v2

³¹ Attachment C to this pleading contains revised findings of fact and conclusions of law reelecting the requested modification.

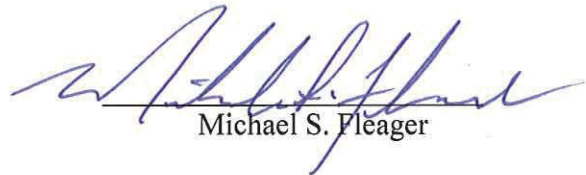
DECLARATION OF MICHAEL S. FLEAGER

I, Michael S. Fleager, declare as follows:

I, Michael S. Fleager, am City Manager for the City of Chino Hills, responsible for, among other things, overseeing the City's challenge to the chosen route for the Tehachapi Renewable Transmission Project as it traverses Chino Hills. I have reviewed the document titled *Petition of the City of Chino Hills to Modify Decision 09-12-044 to Reopen the Record with regard to Segment 8 of the Proposed Route*. If called as a witness, I could attest to the factual statements contained therein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 27th day of October, 2011, at Chino Hills, California.



Michael S. Fleager

ATTACHMENT A

















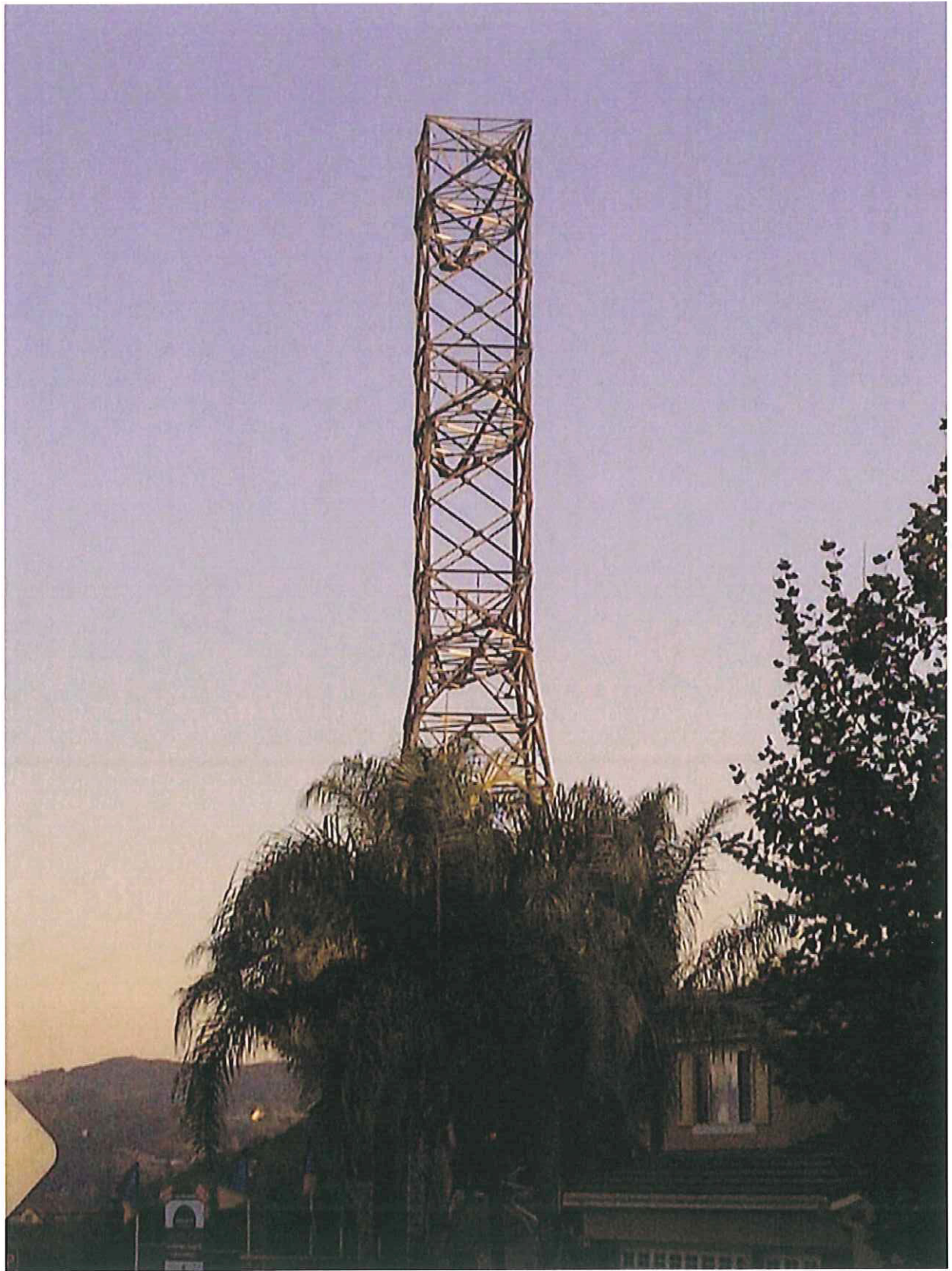


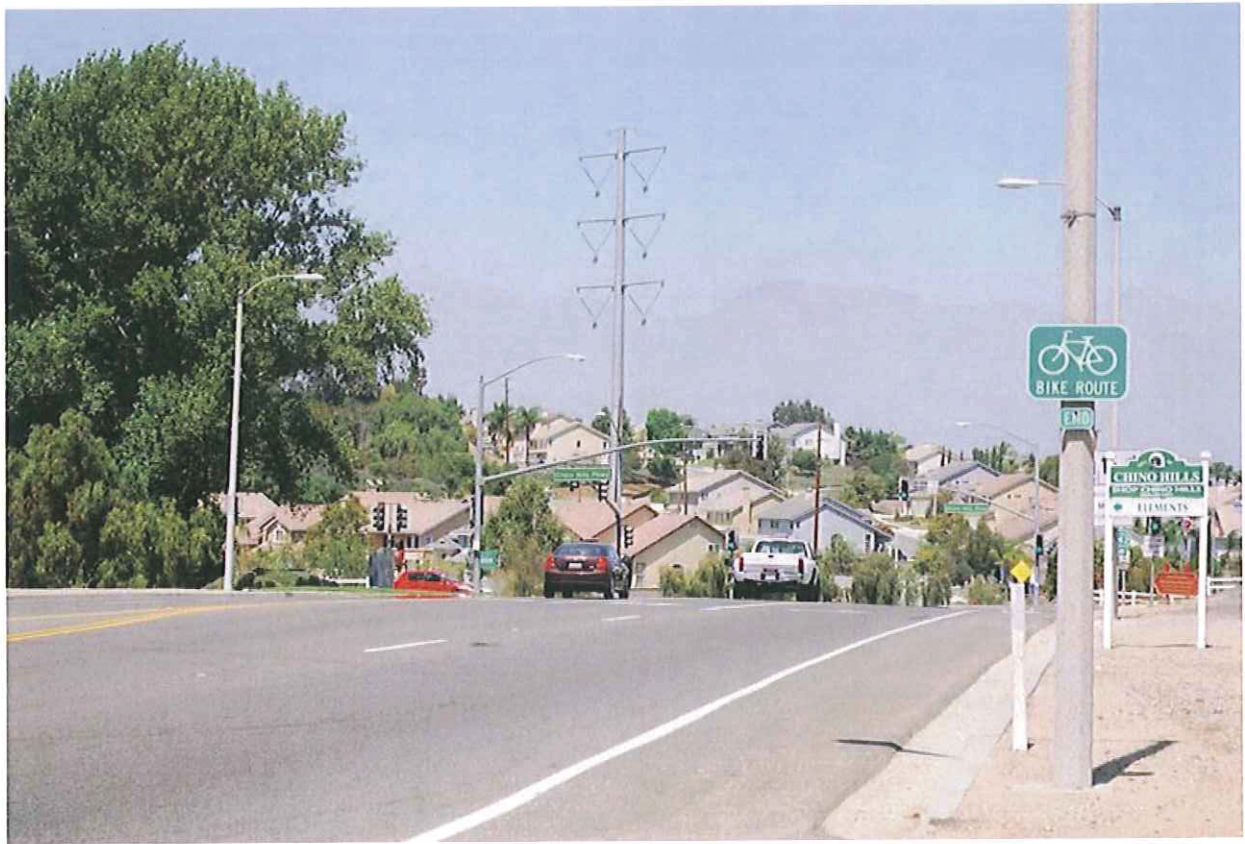


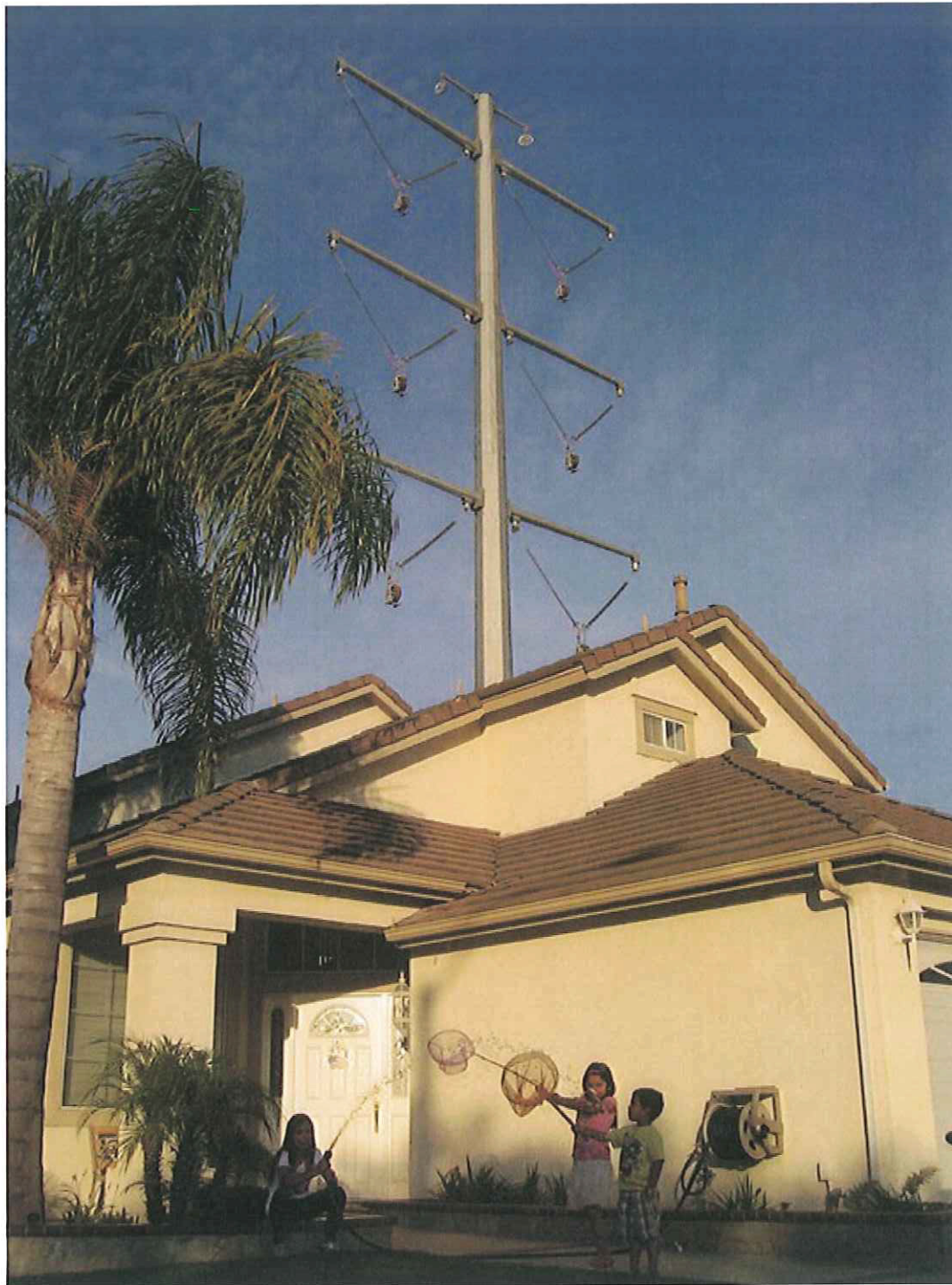
















ATTACHMENT B

CAPITOL OFFICE
STATE CAPITOL, ROOM 4081
SACRAMENTO, CA 95814
TEL (916) 651-4032
FAX (916) 445-0128

WWW.SEN.CA.GOV/NEGRETE
SENATOR.MCLEOD@SENATE.CA.GOV

California State Senate

RECEIVED

DISTRICT OFFICE
4959 PALO VERDE STREET
SUITE 110B
MONTCLAIR, CA 91763
TEL (909) 621-2783
FAX (909) 621-7483

SENATOR

GLORIA NEGRETE MCLEOD

2011 OCT 24 AM 11:22

THIRTY-SECOND SENATE DISTRICT

OFFICE OF CITY CLERK
CHINO HILLS



Thursday, October 20, 2011

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Michael Peevey, Chair California Public Utilities Commission

Chairman Peevey, having visited Chino Hills and viewed the height of the Edison towers, I have great concern with the size of the towers and their proximity to the homes that lie alongside the easement where the towers have been sited.

Recognizing, the project has gone through proper channels, I do not think anyone anticipated how large and tall these towers would be. Moreover, realizing the Edison is well into the project is there anything that can be done at this late date.

Not representing the district, I knew of the project but was not fully aware the towers would be so unsightly to the community and so distressful to the residents who are directly impacted by the project. While I understand, the state needs more ability to transfer electricity, yet in retrospect, towers this large and tall in local neighborhoods are not the ideal method to use.

At your Commission meeting, I request that the Commission contemplate if there is any other possible way the electrical transmission path can be rerouted. It is my understanding there were other transmissions paths that could have been considered.

It now it appears that on 10-21-11, the Commission ordered a temporary halt of the construction. With this newest development, perhaps there are new avenues to study in siting the path of the transmission lines. Thank you so much for listening to my concerns.

Respectfully,

Gloria Negrete McLeod

Gloria Negrete McLeod

CC: Timothy Simon, Commissioner
Mike Florio, Commissioner
Catherine Sandoval, Commissioner
Mark Ferron, Commissioner
Bob Huff, State Senator
Curt Hagman, State Assemblymember
Ed Graham, Mayor Chino Hills

*Council
Manager
Public Info. Office
10.24.11
mm*



Anna Loera
3265 Cottontail Circle
Chino Hills, CA 91709

10/11/11
RECEIVED

2011 SEP -8 AM 11:08

OFFICE OF CITY CLERK
CHINO HILLS

August 31, 2011

California Public Utilities Commission
Michael R. Peevey
505 Van Ness Avenue
San Francisco, CA 94102

*Council
Manager
Public Relations
9.8.11
mm.*

Regarding: Tehachapi Renewable Transmission Project (TRTP)

Dear Mr. Peevey:

I am a long-time resident of Chino Hills, and I am writing again to express my concerns with the California Public Utilities Commission (CPUC) approving Southern California Edison (SCE) to string double circuit 500kV high voltage power lines to 198 foot tall towers and placing them on a narrow 150 foot easement routed through our residential neighborhoods; essentially placing the towers 75 feet from homes and the wires directly over our hillside neighborhoods. This route is clearly easement overburdening, but more importantly the proximity places the health and safety of our families at risk every day. This is unprecedented as no utility company in the country has ever installed such high voltage transmission lines this close to existing homes, schools and parks.

And there is absolutely no logical reason that this route should cross through our residential community. Chino Hills, alongside several environmental organizations, spent \$2.4M developing viable alternate routes through non-residential areas that were arbitrarily dismissed by both the CPUC and SCE.

So the conclusion appears to be SCE is looking to use Chino Hills as an "example" to prove their power and influence; therefore setting precedence to build anywhere. Couple that with the approval the CPUC provided to accomplish this, while dismissing the concerns expressed by the very people they are supposed to protect, can only mean that our energy regulators have partnered with utility companies and ceased to police them.

It's difficult to argue this knowing you once served as the President at SCE, the same company that your regulatory commission oversees. Is the CPUC really set up to serve public interests or is the focus more on personal interests? It is unacceptable that CPUC executives would interact with those that have a vested interest in the commission's rulings. A specific example of this; project route approval was given to SCE during a period in which the CPUC Project Manager, Thomas Flynn, was applying for employment with SCE. It is curious that negotiations between a regulator and the industry it regulates were in discussions relating to personal employment. The fundamental part of your job is to protect ratepayers, what you're doing is completely disrespectful to the people of California. Personal gain at the expense of thousands of families should not be allowable.

Do the right thing, demand SCE remove their towers and reroute the lines. Hold to your mission statement to "serve the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy".

The consequence to this project failing could never be mitigated and with the speed of which SCE is putting these poles up (in obvious attempt to beat Chino Hills' court appeal) is cause for concern.

I will refrain from bringing up recent tragedies that have come about as a result of utility companies and regulators showing absolute disregard for residents' safety.

I am looking forward to your response.

Sincerely,


Anna Loera

Governor Jerry Brown
State Capitol, Suite 1173
Sacramento, CA 95814

Senator Dean Florez
State Capitol, Room 313
Sacramento, CA 95814

Senator Mark Leno
State Capitol, Room 5100
Sacramento, CA 95814

Senator Alex Padilla
State Capitol, Room 4038
Sacramento, CA 95814

Senator Bob Huff
State Capitol, Room 509
Sacramento, CA 95814

Congresswoman Jackie Speier
7211 Cannon House Office Bldg
Washington, DC 20515

Congressman Gary Miller
2349 Rayburn House Office Bldg
Washington, DC 20515

Assemblyman Roger Dickenson
501 Bercut Drive, Ste S
Sacramento, CA 95811

Assemblyman Carlos Calderon
13181 Crossroad Pkwy, Ste 160
City of Industry, CA 91746

Assemblyman Curt Hagman
13920 City Center Drive, Ste 150
Chino Hills, CA 91709

Assemblywoman Norma Torres
13160 7th Street
Chino, CA 91710

Mayor Ed Graham
14000 City Center Drive
Chino Hills, CA 91709

The Utility Reform Network
Mindy Spatt, Comm Director
268 Bush Street #3933
San Francisco, CA 94104

California Energy Commission
Media and Public Communication
1516 Ninth Street, MS-29
Sacramento, CA 95814

Hope For The Hills
Bob Goodwin, President
15290 Turquoise Circle
Chino Hills, CA 91709

National Transportation Safety
Chairman Deborah A.P. Hersman
490 L'Enfant Plaza SW
Washington, DC 20594

Cal Public Utilities Commission
Executive Offices
505 Van Ness Avenue
San Francisco, CA 94102

Southern California Edison
Executive Offices
Post Office Box 800
Rosemead, CA 91770

UTILITIES
SCE
Elisheva Clodfelter
15406 Turquoise Cir. N. Tehachapi
Chino Hills, CA 91709

2011 SEP -7 PM 2:36

OFFICE OF CITY CLERK
CHINO HILLS

President Michael Peevey
Public Utilities Commission
State of California
505 Van Ness Ave.
San Francisco, CA 94102

September 2nd 2011

*Council
Manager
Public Relations
9.7.11*

Re: SCE Power Lines and Towers in Chino Hills – TRTP Project

President Peevey,

I read your response letter to Mayor Graham of Chino Hills and I felt saddened and outraged by it. I feel that the SCE and CPUC decision to put those monstrous power lines and electric towers in our community with total disregard to our health, our property value and our quality of life is truly disheartening. In your letter you write, "The Commission, and all its dedicated public servants, earnestly undertakes its mission to serve all the people of California; to protect consumers, ensure safe and reliable utility service..." THERE IS NOTHING SAFE IN 500 KV POWER LINES IN OUR BACKYARDS!!!! Moreover you and the commission absolutely did not serve the people of Chino Hills! In total disregard to the well being of our community the CPUC approved a harmful project that has an alternative safer route. There is no sign that you are acting as "public servants" in this decision, only as servants to SCE. It is very regrettable that a public entity that supposes to represent and protect us is failing us so miserably. CPUC's lack of integrity and its show of indifference and total dismissive attitude toward our community is shameful and deplorable! President Peevey, you and the California Public Utilities Commission may feel as you acted in good faith, but as the reality of these monstrous towers being build and destroying our equilibrium, you must readdress the issue! President Peevey, you and the California Public Utilities Commission should come and see the harm your decision is causing. You and The Commission should reconsider this regrettable decision and instruct SCE to take down the towers and rebuild them in the safer alternative route.

Sincerely,

Elisheva Clodfelter
A very concerned Chino Hills resident

cc: Governor Jerry Brown
✓ Mayor Ed Graham, Chino Hills
Assemblyman Curt Hagman, CA State Assembly
Senator Bob Huff, CA State Senator of 29th District
Paul Clanon, CPUC Executive Director

Eloy Loera
3265 Cottontail Circle
Chino Hills, CA 91709

September 2, 2011

Michael R Peevey
President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Dear Mr Peevey:

This letter is to express legitimate concerns I have with the California Public Utilities Commission (CPUC) approving a 3 mile stretch of the Tehachapi Renewable Transmission Project (TRTP) to route directly through a densely populated residential section of Chino Hills.

During state hearings last month the National Transportation Safety Board (NTSB) found the CPUC negligent with their responsibility to provide adequate safety oversight relating to the San Bruno tragedy caused by PG&E in 2010. This gives serious concern to the amount of safety oversight they provided to Southern California Edison (SCE) for the double circuit 500,000 volts of electricity they plan to string over our children's head.

The admission of CPUC commissioners that they did not focus on the safety mandates in San Bruno tells the City of Chino Hills that the very same can be said for TRTP.

As a resident of Chino Hills I can only speak to what SCE is subjecting our residents to, however the TRTP route covers nearly 200 miles. In speaking with other impacted communities they have expressed similar concerns to the CPUC, SCE and Governor Brown. We hope our voices are being heard and acknowledged before tragedy happens.

It is time that you take a closer look at your mantra:

The CPUC serves the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy. We regulate utility services, stimulate innovation, and promote competitive markets, where possible.

- "serves the public interest by protecting consumers"
 - How can the CPUC be protecting consumers when they don't even listen to them?
 - A viable alternate route was created between the City of Chino Hills and Hills For Everyone (along with the Sierra Club) however it was casually dismissed.
- "ensuring the provision of safe, reliable utility service"
 - It is an insult that safety is mentioned, the speed that these towers are going up is incredible. Perception is that SCE believes it will be more difficult to have them ordered down than to never be put up, sorry Chino Hills will not give up until they're gone.

RECEIVED

2011 SEP -7 PM 2:36

OFFICE OF CITY CLERK
CHINO HILLS

UTILITIES
SCE
Tehachapi

Council
Manager
Public Relations
9.7.11
mm

- The 198 foot towers are being placed on 150 foot easements, and we've just learned that one of the newest towers will exceed 250 feet!
- The negative effect of the consistent exposure to EMF has not been disproven. The fact that high voltage lines have never been strung this close to homes and parks makes us appear as lab rats.
- Chino Hills resides on several faults, earlier this year the Alliance for Nuclear Responsibility had to intervene as it related to Diablo Canyon due to quake danger, what do we have to do?
- "with a commitment to environmental enhancement"
 - The alternative route through the State Park would have provided mitigation that improvement the park.
 - SCE has begun notifying residents that have iron fences that they'll need to be replaced as they could create sparks when the lines are energized, resulting in a possible brush fire.
- "a healthy California economy"
 - With the towers and lines coming straight through residential areas it is anticipated that there will be property value loss of \$3 BILLION
 - The senior living facility, Aegis, anticipates a loss of current and future tenants as the FDA advises those with pacemakers should reside near such high voltage.

Do the right thing and reevaluate what the CPUC has approved. This is dangerous and our community truly worries about what our future holds, at this point we can't move away and shouldn't have to. Chino Hills was the perfect city to raise our children and remain in through our retirement; we are being robbed of that now.

Sincerely,

Eloy Loera

cc: California Governor Jerry Brown
 US Senator Dianne Feinstein
 US Senator Barbara Boxer
 US Senator Bob Huff
 Assemblymember Curt Hagman
 Supervisor Gary Ovitt
 Chino Hills Mayor Ed Graham
 Court of Appeals, 4th District

ATTACHMENT C

REVISED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. SCE filed an application for a CPCN for authority to construct the Tehachapi Renewable Transmission Project, Segments 4-11 (Project), which included its PEA, on June 29, 2007.
2. Segments 1-3 of the Tehachapi Renewable Transmission Project were approved in D.07-03-012 and D.07-03-045.
3. On August 27, 2007, ALJ Kolakowski held a PHC in Pasadena, California, with assigned Commissioner Dian M. Grueneich in attendance.
4. A Scoping Memo was issued on March 17, 2009 after the PHC. The Scoping Memo established the scope of this proceeding and the schedule, coordinating the CPCN review with the timeline for the concurrent, parallel track environmental review pursuant to the CEQA and NEPA. The Scoping Memo also designated ALJ Kolakowski as the presiding officer.
5. A PPH was held in Chino Hills on March 19, 2009, with 50 individuals presenting testimony and attended by approximately 400 people. Commissioner Grueneich attended, along with representatives of the other Commissioners.
6. The schedule was revised in a ruling on April 1, 2009 at the request of Chino Hills, to grant additional time to prepare for evidentiary hearings.
7. 10 days of evidentiary hearings were held in July 2009.
8. All of the elements of the Project comprise a connected whole, and all elements are necessary to the entire Project.
9. The Commission has approved nine RPS contracts that are estimated to produce a maximum of approximately 2300 MW of renewable energy to the grid. 1590 MW of renewable generation would otherwise be unavailable if the Project was not constructed.
10. The Commission already has determined that the TWRA plays a critical role in meeting the state's RPS goals by approving Segments 1-3 in D.07-03-012 and D.07-03-045. Both the net new delivery capacity (4,500 MW less 700 MW for Segments 1-3) and the net RPS contracts not served by Segments 1-3 (2290 MW less 700 MW) demonstrate that the incremental capacity plays a critical role in meeting the RPS goals.
11. The CAISO has approved the Project. The CAISO report on the Tehachapi Transmission Project indicates that the development of Segment 8 around the Chino area "may trigger a need for alternatives" due to the issues and concerns predicted at the time for the urban areas along the Segment 8 route. The California Energy Commission's 2007 Strategic Transmission Investment Plan Commission Report found the Project to be one of five strategically important transmission projects and the RETI Phase 1B Report showed the TWRA to be one of the most

economically viable locations for providing new renewable resources with minimal environmental impacts.

12. Energy Division staff's "33% Renewables Portfolio Standard Implementation Analysis Preliminary Results" issued in June, 2009 identified the TRTP as one of four transmission projects needed to meet the state's existing 20% RPS goals.

13. DRA compared the costs of the Project to the Antelope Transmission Project and to SDG&E Sunrise Powerlink Transmission Project, and concluded that the Project was more cost effective on a dollar per MW basis.

14. The Garamendi Principles are statewide transmission siting policies that encourage the use of existing ROW by upgrading existing transmission facilities where technically feasible and economically justifiable. SCE followed the Garamendi Principles in siting the Project.

15. The transmission lines of Segments 6 and 11 at issue pass through the ANF. Construction in the ANF is particularly difficult due to terrain, requiring significant use of helicopters and potentially impacting biologically sensitive areas. Segments 6 and 11 will be built to 500 kV standards and mostly operated at 220 kV.

16. The Commission and the USFS prepared a joint Draft EIR/EIS.

17. Consistent with its normal protocols, USFS is conducting a detailed review of the impacts of the recent Station Fire in the ANF and will determine how to proceed upon completion of that review. The USFS will not issue its Final EIS or ROD until that review is complete.

18. For purposes of CEQA, the Project's three primary objectives are to: (a) provide the electrical facilities necessary to reliably interconnect and integrate in excess of 700 MW and up to approximately 4,500 MW of new wind generation in the TWRA currently being planned or expected in the future, thereby enabling SCE and other California utilities to comply with the California RPS goals in an expedited manner (i.e., 20 percent renewable energy by year 2010 per California Senate Bill 107); (b) further address the reliability needs of the CAISO-controlled grid due to projected load growth in the Antelope Valley; and (c) address the South of Lugo transmission constraints, an ongoing source of concern for the Los Angeles Basin.

19. Whether the 21st Century Proposal ~~does not~~ mitigates or avoids any significant adverse impacts caused by the implementation of the Proposed Project or by the implementation of the five versions of Alternative 4 should be further examined.

20. SCE is committed to removing the non-energized transmission lines in the CHSP.

21. Further examination is need to determine whether the land acquisition proposed in the 21st Century Proposal is not needed to mitigate impacts on biological resources, which are not significant.

22. Further examination is needed to determine whether the habitat restoration proposed in the 21st Century Proposal ~~would not~~ will reduce any impacts of either the Proposed Project or Alternative 4 as defined under the applicable thresholds of significance.

23. A set of CEQA Findings of Fact are attached as Attachment 1, and, as modified, accurately reflect the independent analysis contained in the Final EIR and are supported by substantial evidence in the administrative record.

24. The Final EIR was issued on October 30, 2009.

25. The Final EIR identified Alternative 2, the Proposed Project, as the environmentally superior alternative for all but two of the segments. For Segment 4, it identified Alternative 3 (West Lancaster Alternative) as the environmentally superior alternative. For Segment 7, it identified Alternative 7 (66 kV Subtransmission Alternative) as the environmentally superior alternative.

26. For Segments 6 and 11, Alternative 6 (Maximum Helicopter Construction in the ANF Alternative) was determined to be the environmentally superior alternative. Ultimately, however, the preferred method for construction in the ANF would be site-specific and would involve a balancing of the effects on helicopter construction against ground-based construction on sensitive resources. For instance, in areas where road construction would result in unacceptable impacts to sensitive species, such as in the Lynx Gulch area, helicopter construction would be preferred to the degree that it would avoid or minimize such impacts. In other locations, road construction to accommodate construction vehicle access would be preferred to avoid the impacts associated with the establishment of helicopter staging areas. Therefore, the environmentally superior alternative for Segments 6 and 11 is a combination of the helicopter construction and ground-based construction methods, with the total number of helicopter constructed towers falling within the range characterized by Alternative 2 and Alternative 6 (33 to 148 towers). The USFS will need to determine the specific combination of Alternative 2 and Alternative 6 features that provides the least overall impact to Forest resources. This is basically a decision as to which transmission structures would best be demolished and constructed by helicopter versus by conventional ground-based construction methods. As indicated in Final EIR Section 4.3.2, the environmentally preferable alternative will be identified by the Forest Service in its Record of Decision (ROD).

27. SCE's witnesses have ~~more~~ extensive experience with the design, construction and maintenance of 220 kV and 500 kV transmission lines. ~~than do Chino Hills' witnesses. SCE's witnesses²~~ The testimony of SCE's witnesses is credible that the Environmentally Superior Alternative may be safely and effectively constructed within the existing ROW in Chino Hills should be re-examined in light of new facts.

28. The Environmentally Superior Alternative will be constructed with standards that meet or exceed General Order 95.

29. Whether the Environmentally Superior Alternative can be safely and effectively operated through Chino Hills must be re-examined.

.

30. The Environmentally Superior Alternative almost entirely replaces existing transmission lines with larger transmission structures, which will result in incremental impacts on fire prevention and suppression. ~~which do not render it infeasible.~~

31. The Environmentally Superior Alternative must be reexamined to determine whether it is feasible for the segment that runs through Chino Hills.

32. The Commission has not conducted a sufficient investigation to determine whether construction of the Environmentally Superior Alternative is consistent with the language of the easement provision from Exhibit CH-54. ~~which includes provisions regarding reconstruction, enlargement, and improvement of the transmission lines within the ROW.~~

33. Alternative 4CM would cost more than the Environmentally Superior Alternative if the 21st Century Proposal is also adopted.

34. The best case relative savings over the Environmentally Superior Alternative for adoption of Alternative 4CM without the 21st Century Proposal would be \$14.9 million, which is less than 1% of the total cost of the Environmentally Superior Alternative. Alternative 4CM could potentially cost over \$69.3 million more than the Environmentally Superior Alternative.

35. The Final EIR was completed in accordance with CEQA.

36. The Final EIR was presented to the Commission, and the Commission has received, reviewed, and considered the information contained in the Final EIR.

37. The Final EIR reflects the Commission's independent judgment and analysis.

38. Significant and unavoidable environmental impacts will result from construction and operation of the Environmentally Superior Alternative. ~~; however,~~ The Commission must reexamine ~~has adopted all feasible~~ mitigation measures as they apply to the segment of the alternative through Chino Hills. The Commission must reexamine ~~adopted~~ certain alternatives that reduce the impacts of the Environmentally Superior Alternative as such apply to Chino Hills. With respect to Chino Hills, the Commission must reexamine ~~recognized~~ all significant, unavoidable impacts; and balanced the benefits of the Environmentally Superior Alternative against its significant and unavoidable impacts.

39. Whether the benefits of the Environmentally Superior Alternative outweigh and override its significant and unavoidable impacts must be reexamined for the portion of the line through Chino Hills. ~~for the reasons set forth in the statement of overriding considerations in Section 7.4 herein.~~

40. The proposed Mitigation Monitoring Plan in the Final EIR is designed to ensure compliance with the changes in the project and mitigation measures imposed on the authorized project during implementation and recommends a framework for implementation of the Mitigation Monitoring Plan by this Commission as the CEQA lead agency.

41. Contingency costs are an appropriate element of the total estimated cost of Project.
42. A reasonable level of contingency costs for TRTP is 15% of the total estimated costs for Project excluding AFUDC, P&B, and A&G costs. SCE has not demonstrated that its requested contingency of 32% is reasonable.
43. The reasonable maximum cost for the Environmentally Superior Alternative pursuant to § 1005.5(a) is \$1,522,920,000 (in 2009 dollars), excluding AFUDC. AFUDC is estimated at \$261.82 million, for an estimated total project cost of \$1,784,740,000.
44. The public interest and necessity require the Tehachapi Renewable Transmission Project (Segments 4-11).
45. With the exception of the segment of the Project which runs through Chino Hills, it has been determined that the Tehachapi Renewable Transmission Project (Segments 4-11) are planned or located in a manner that will be most compatible with the greatest public good and the least private injury.
46. The properties sought to be acquired by SCE are necessary for the Tehachapi Renewable Transmission Project (Segments 4-11).

Conclusions of Law

1. The Commission has jurisdiction over the proposed transmission project pursuant to § 1001 *et seq.*
2. The preponderance of the evidence standard, the default standard in civil and administrative law cases, is the applicable standard of review here.
3. An element-by-element need determination is inappropriate in this case, as the Project comprises a connected whole project.
4. SCE's proposal to build Segments 6 and 11 to accommodate possible operation at 500 kV is reasonable and prudent in light of the costs and benefits of additional structures to ensure relatively simple access to additional transmission capacity to access the TWRA compared to the difficulties of tearing down and rebuilding lines.
5. A finding that the Project is necessary to achieve the state's RPS goals under § 399.2.5 will serve as a definitive determination of need under §§ 1001 *et seq.*, and will render further consideration of need based upon reliability or economic factors moot.
6. The Commission considered the application of § 399.2.5 in D.07-03-012. Recognizing the extraordinary nature of the application of this provision, it established a three-prong need test for reliance upon § 399.2.5: "(1) that a project would bring to the grid renewable generation that would remain otherwise unavailable; (2) that the area within the line's reach would play a critical

role in meeting the RPS goals; and (3) that the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance."

7. The Project will bring to the grid renewable generation that would remain otherwise unavailable.

8. The area within the Project's reach, the TWRA, will play a critical role in meeting California's RPS goals.

9. The cost of the Project is appropriately balanced against the certainty of its contribution to economically rational RPS compliance.

10. The Project meets the three-prong need test of D.07-03-012, as set forth in Conclusion of Law 6 herein.

11. Further review of post-fire conditions by the USFS should not need to delay the Commission's separate decision on the Project or issuance of the Final EIR.

12. Compensatory benefits unrelated to project benefits are outside of the scope of CEQA.

13. Habitat restoration below baseline conditions is not appropriate mitigation under CEQA.

14. Contributions of funds to unspecified future programs, improvements or actions is not appropriate mitigation under CEQA.

15. Whether the 21st Century Proposal may ~~not~~ be legally imposed as mitigation for Alternatives 4A, 4B, 4C, 4CM or 4D must be further examined.

16. Chino Hills' argument that selection of the Environmentally Superior Alternative will introduce undue delay is no longer relevant. ~~should be rejected, as the delay would be due to its own litigation, and does not adequately consider the potential delays from adopting Alternative 4CM, including potential changes to the CHSP General Plan, obtaining clearances to build on the Aerojet property, or potential litigation by others.~~

17. There is no requirement that the Commission adopt the lowest cost alternative, without regard to environmental and other factors.

18. The Final EIR has been completed in compliance with CEQA and should be certified.

19. The CEQA Findings of Fact in Attachment 1, as modified, should be incorporated into this decision.

20. Section 1002 guides the Commission in selection of an appropriate alternative.

21. The community values of an individual community should not outweigh statewide values, including the RPS program. However, the impact of a project on a particular community should be weighed heavily when determining the appropriate route of a project through that community.

22. Balancing the factors of § 1002, the Commission should select the Environmentally Superior Alternative.

23. The public interest and necessity require the Tehachapi Renewable Transmission Project (Segments 4-11).

24. With the exception of the segment of the Project which runs through Chino Hills, it has been determined that the Tehachapi Renewable Transmission Project (Segments 4-11) is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.

25. The properties sought to be acquired by SCE are necessary for the Tehachapi Renewable Transmission Project (Segments 4-11).

26. Once SCE has developed a final detailed engineering design-based construction estimate for the final route of the Project, SCE should, within 30 days, file with the Commission an advice letter with the revised cost estimate and seek an adjustment of the maximum reasonable and prudent costs pursuant to § 1005.5(b)

27. SCE should amend its EMF Management Plan as needed to apply its no-cost EMF management techniques to the Environmentally Superior Alternative.

28. The Mitigation Monitoring Program in the Final EIR should be adopted.

29. Consistent with our interpretation of § 625 in D.01-10-029, the appropriate standard of notice for Project is that prescribed by § 625(a)(1)(B), which only requires notice to the Commission Calendar.

30. The Commission has jurisdiction and responsibility pursuant to § 1005.5(a) To specify a “maximum cost determined to be reasonable and prudent” for the Project.

31. The Project is eligible for the backstop cost recovery mechanism of § 399.2.5(b)(4).

32. Acton has requested that the Commission condition construction of the Project with ensuring safe and reasonable residential access, certain local requirements such as equestrian trail easements, and removal of a billboard unlawfully constructed within the SCE ROW. The Commission should direct SCE to meet with Acton and to identify reasonable measures consistent with state law and Commission orders addressing these issues, and to file an advice letter setting forth these measures, if any, within six months.

33. SCE should meet and confer with the Department of Parks and Recreation, the CHSP, and with HFE to develop a plan for fulfillment of SCE’s prior settlement obligations to remove

transmission structures within the CHSP, and to report to the Director of Energy Division every six months regarding the progress of fulfillment of this obligation until its completion satisfactory to the Director of Energy Division.

34. Application 07-06-031 is ~~closed~~ is reopened for the purpose of considering the issues raised in the City of Chino Hills' October __, 2011 Petition to Modify.