

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 (U338E) for a
Certificate of Public Convenience and Necessity
Concerning the Tehachapi Renewable Transmission
Project (Segments 4 through 11).

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

**MOTION OF THE CENTER FOR ENERGY EFFICIENCY AND
RENEWABLE TECHNOLOGIES FOR STAY OF
COMMISSION “CONFIDENTIAL SETTLEMENT NEGOTIATIONS”**

May 9, 2012

SARA STECK MYERS
Attorney for the
Center for Energy Efficiency and
Renewable Technologies

122 – 28th Avenue
San Francisco, CA 94121
Telephone: (415) 387-1904
Facsimile: (415) 387-4708
E-mail: ssmyers@att.net

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully moves for a stay of Commission “confidential settlement negotiations” that will affect the outcome of this application, but have not been noticed in this proceeding and do not provide an opportunity for interested parties to participate. This Motion is filed and served pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure.

**I.
BACKGROUND**

A. Noticed Commission Actions in A.07-06-031

At the current time in this proceeding, the following *publicly* noticed actions are pending in this proceeding : (1) an anticipated Scoping Memo resulting from the Prehearing Conference (PHC) held on March 19, 2012 (March 19 PHC), and (2) the resolution of applications for rehearing of Decision (D.) 09-12-044 filed separately by the City of Chino Hills (Chino Hills), Californians for Renewable Energy, Inc. (CARE), and the Acton Town Council, as well as a motion to reconsider the rejection of the Application for Rehearing of D.09-12-044 filed by Antelope Valley-East Kern Water Agency.

As detailed by Administrative Law Judge (ALJ) Vieth at the March 19 PHC, Southern California Edison Company (SCE) and Chino Hills at an earlier PHC (January 18, 2012) had

asked for time to mediate “differences between them.”¹ By the March 19 PHC, those “talks [had] been suspended.”²

Multiple parties participated at the March 19 PHC, including CEERT, expressing opposition to re-opening the Tehachapi Renewable Transmission Project (TRTP) Certificate of Public Convenience and Necessity (CPCN) granted by D.09-12-044, including alternatives to the approved route for Segment 8A. Specifically, at the March 19 PHC, CEERT, NextEra Energy Resources, LLC (NextEra), EnXco Development Corporation (EnXco), Terra-Gen Power, LLC (Terra-Gen), and Iberdrola Renewables specifically sought and were granted party status to participate in A.07-06-031 in opposition to reconsideration of the CPCN or unnecessary changes to SCE’s construction of one of the “critical” segments of the Tehachapi Renewable Transmission Project (Segment 8a) that would, in turn, constrain the development and timely delivery of Tehachapi renewable resources and inappropriately increase the costs and burden on SCE’s ratepayers to do so.³

In response to the input from all parties, ALJ Vieth indicated that the next step in this proceeding would be a “Scoping Memo” defining any issues or schedule that might be further considered in A.07-06-031. In fact, ALJ Vieth advised those seeking party status that they “may wish to see what’s in the Scoping Memo before ...mak[ing] the final determination.”⁴

On March 22, 2012, the Commission issued D.12-03-050 to narrow a stay of D.09-12-044 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

¹ Reporter’s Transcript (March 19 PHC RT), at p. 194.

² March 19 PHC RT, at p. 194.

³ March 19 PHC RT, at pp. 195-206.

⁴ March 19 PHC RT, at p. 203; see also, p. 254.

Alternatives to those portions of Segment 8A.”⁵ The original stay order (D.11-11-020) was shown by SCE to be “overbroad.”⁶ In doing so, SCE confirmed that TRTP construction work in Segment 8A “remains critical to the completion of TRTP Segment 8...and to the delivery of renewable power to California.”⁷

As to the rehearing matters, they have been noticed in Commission Business Meeting Agendas, but not decided. Specifically, these rehearing requests were first noticed as Item 105 on the Commission’s Closed Session Agenda for April 19 and now are included as Item 60 on the Commission’s Closed Session Agenda for its upcoming meeting on May 10, 2012.

B. Commission Press Release of May 3, 2012

Outside of these publicly noticed, anticipated actions by the Commission (the Scoping Memo and disposition of the rehearing requests (neither of which have taken place)), no other Commission ruling or decision has been issued in this proceeding since the issuance of D.12-03-050, narrowing the scope of the stay. However, late in the afternoon of May 3, 2012, CEERT was advised by staff to the California Legislature that legislative staff had been sent a Commission “press release” (May 3 Press Release) by the Commission’s legislative liaison regarding the initiation *by the Commission* of “confidential settlement negotiations” between the “CPUC, SCE, and the City of Chino Hills to agree upon undergrounding the line beneath the existing right-of-way in the city.”⁸

CEERT was and has never been served with a copy of the May 3 Press Release and, to CEERT’s knowledge, no service of this press release has been made in A.07-06-031. Instead,

⁵ D.12-03-050, at p. 1.

⁶ D.12-03-050, at p. 5.

⁷ D.12-03-050, at pp. 4-5.

⁸ May 3 Press Release (http://docs.cpuc.ca.gov/WORD_PDF/NEWS_RELEASE/165626.PDF), at p. 1; emphasis added.

CEERT only learned of its existence in this indirect manner and was required to search for it on the Commission's website.

Yet, the May 3 Press Release makes sweeping statements and initiates a process that will be dispositive of this application. Namely, it states: "The negotiations announced today represent an effort by the CPUC, SCE, and the City of Chino Hills *to agree upon undergrounding the line beneath the existing right-of-way in the city.*"⁹ Commission President Peevey is quoted as saying: "All of us at the CPUC are hopeful these negotiations, *with the active involvement of our General Counsel*, will be successful and produce *an outcome that satisfies the concerns of the citizens of Chino Hills*, while fulfilling the transmission needs of SCE and its renewable energy suppliers."¹⁰

The May 3 Press Release, while it includes a notation at the top to "Docket #: A.07-06-031," was not, and, again to CEERT's knowledge, has never been served on the service list to A.07-06-031 through today. Further, this action – Commission-initiated confidential settlement negotiations in which the Commission is a party – has never been noticed in any ruling, decision, or other order served on parties to A.07-06-031 through today. Finally, the May 3 Press Release makes no mention of any other party or position taken on such a change in the construction of Segment 8A in this proceeding other than reference to the "CPUC, SCE, and Chino Hills" and does not define or make any reference to the Commission rules that will govern this process.

⁹ *Id.*; emphasis added.

¹⁰ *Id.*; emphasis added.

II.
THE COMMISSION HAS INAPPROPRIATELY SET A COURSE FOR PRIVATE SETTLEMENT NEGOTIATIONS THAT, ESPECIALLY AS TO INTENDED OUTCOME AND PROCESS, ADVERSELY AFFECTS THE RIGHTS AND INTERESTS OF ALL PARTIES TO A.07-06-031 AND SHOULD BE IMMEDIATELY STAYED.

CEERT does not question that parties to an application, inclusive of the applicant, can initiate settlement discussions and even reach a settlement pursuant to Article 12 of the Commission’s Rules of Practice and Procedure. While those rules extend to “parties,” not the “Commission,” they clearly are intended to preserve the rights of all parties by imposing specific requirements before a settlement motion can even be submitted to the Commission for its review and approval, a process that is further subject to both settling and non-settling party notice, comment, and hearing requests (where the settlement is “contested”). The rules also impose a specific legal standard for review and approval of a settlement by the Commission (the settlement must be “reasonable in light of the whole record, consistent with law, and in the public interest”).¹¹

In keeping with these rules, SCE and Chino Hills could certainly have voluntarily entered settlement negotiations, which they noticed an intent to do in a public PHC in January 2012, but for which talks were eventually suspended with no settlement reached. If one had been reached between these two parties, CEERT would clearly have anticipated that Article 12 of the Commission’s Rules of Practice and Procedure would have been followed to the letter, and the rights of all parties thereby preserved, when the settling parties brought that settlement to the Commission and the Commission conducted its review and decided either to approve or reject the settlement.

The “confidential settlement negotiations” identified in the May 3 Press Release are a different matter altogether that this Article 12 settlement process and fail to comply with either

¹¹ Commission Rules of Practice and Procedure, Rules 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, and 12.7.

Commission rules or applicable legal standards. Among other things: (1) the *Commission* has been identified as a “party” to these negotiations, represented by its General Counsel, Frank Lindh, who is not otherwise a party to A.07-06-031, but is nevertheless identified as representing the “CPUC” in these negotiations; (2) the May 3 Press Release takes Commission action directly affecting the outcome of A.07-06-031 without any service of that press release, notice of that release or its inclusion in any formal ruling or order served on the parties to A.07-06-031; (3) the May 3 Press Release indicates a specific disposition of this proceeding – “undergrounding the line beneath the existing right-of-way in the city [of Chino Hills]” – to which objections have been raised as to propriety, delay, and cost by other parties to this proceeding; yet (4) the May 3 Press Release indicates that the settlement negotiations will *exclude* all parties to A.07-06-031 other than SCE and Chino Hills in reaching this decision and will proceed in a “confidential” manner, even while acknowledging that such a settlement will impact “renewable energy developers,” of which, as noted above, many are parties to this proceeding.

The Commission’s initiation of these “confidential settlement negotiations” absolutely fails to meet any and all applicable standards of due process. It is discriminatory and seeks to exclude from these “negotiations” parties, while deciding issues (i.e., “transmission needs” of SCE’s “renewable energy suppliers”) without those parties being noticed or having an opportunity to be heard on the issues or their resolution. The May 3 Press Release further notices an inappropriate delegation of duty by the Commission to either a single Commissioner or the Commission’s General Counsel to resolve this application in a specific manner.

Clearly, these actions identified by the May 3 Press Release are highly prejudicial to the interest of all parties to this proceeding, represent a clear abuse of discretion by the Commission, and violate the Constitutional rights of all parties at odds with the legal standards applicable to

all Commission orders and decisions.¹² It is important to remember in this context that “Commission adoption of a settlement is binding *on all parties* to the proceeding in which the settlement is proposed.”¹³ Thus, to initiate a “settlement” negotiation, especially one predicated on reaching a specific, dispositive outcome for this application with only a few parties that will bind all parties to the proceeding, is clearly a due process violation.

These errors must be addressed and cured immediately by the Commission halting the “confidential settlement negotiations” identified in the May 3 Press Release. Any further “cure” of that process, especially *if the Commission itself continues as a party or, even more, where the Commission has a defined outcome in mind*, will require, at the least, that such negotiations be made public; noticed to all parties to this proceeding, with an opportunity to participate; and be made to comply with Article 12 of the Commission’s Rules of Practice and Procedure.

III. REQUESTED RELIEF

CEERT, therefore, moves the Commission to stay the “confidential settlement negotiations” identified in the May 3 Press Release. Failure to take such action constitutes a violation of the due process rights of all parties to this application and will result in actions that will be highly prejudicial to the rights and interests of those parties.

Respectfully submitted,

May 9, 2012

/s/ SARA STECK MYERS
Sara Steck Myers
Attorney for CEERT
122 – 28th Avenue
San Francisco, CA 94121
Telephone: (415) 387-1904
Facsimile: (415) 387-4708
E-mail: ssmyers@att.net

¹² See, e.g., PU Code §1757.1.

¹³ Commission Rules of Practice and Procedure, Rule 12.5; emphasis added.