

Joint Dissent of Commissioners Peterman and Florio

D.13-07-018 in A.07-06-031

Chino Hills Petition to Modify Decision 09-12-044 on Undergrounding of Segment 8A of the Tehachapi Renewable Transmission Project Decision

We dissent from the majority opinion in this matter for the reasons articulated below. This is in spite of our personal sympathy for the residents of Chino Hills, who clearly love their city and have been very engaged in this lengthy siting and petition for modification process. We also respect their willingness to contribute resources to remain engaged.

Our disagreement is grounded in our core duties as Commissioners to balance our decisionmaking in a thorough analysis of impacts on all affected ratepayers, and not only the residents of this individual community. During the course of this proceeding, there has been discussion that perhaps California is entering into a new era of transmission siting, where we will need to consider undergrounding for more transmission corridors.

That may well be the case, but we would have preferred to consider that idea on a forward-looking basis for new transmission siting, and not retroactively apply it to a line for which the Commission approved a Certificate of Public Convenience and Necessity (CPCN) almost four years ago,¹ and, on the basis of that determination, has already been substantially built.²

Section 1708 of the Public Utilities Code allows the Commission to reconsider its decisions, stating as follows:

1708. 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

¹ D.09-12-044.

² In fact, the law already requires the Commission to consider alternatives to transmission facilities that support reliable and affordable electricity supply, such as energy efficiency, demand response, and distributed generation. Public Utilities Code § 1002.3.

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.

We believe that this code section should be used extremely sparingly to avoid introducing a great deal of uncertainty into the Commission's decisionmaking process. Applying Section 1708 to a previously approved transmission line brings several issues to the forefront.

We are concerned about substituting the judgment of a mostly new set of commissioners for the judgment of those that originally decided the case after seeing all of the evidence. If we had been among those commissioners, we may have reached a different conclusion originally. Because of the more limited scope here, focusing solely on Segment 8A, the commissioners presently seated did not have the benefit of drawing on a complete record addressing siting, design, and engineering for the entire transmission line of which Segment 8A through Chino Hills is a part.

Because the Commission has now reopened and reconsidered this case several years later, we are concerned that it will invite other interested parties who disagree with our decisions to persist in appeals until we change our minds on other matters. Ultimately, a commission decision needs to have some meaning and finality, unless we have made some sort of legal error, which we do not believe to be the case here.

This principle applies with particular importance to transmission infrastructure. As is true of numerous elements of California's transmission infrastructure, the Tehachapi Renewable Transmission Project was developed to bring approved generation resources to meet the state's needs, in this case wind energy in the Tehachapi region. Developers of that generation reasonably relied on this commission's 2009 decision to finance and build their projects, and

brought significant investment to California. The majority's reversal on Segment 8A brings uncertainty and likely delay, with ramifications for those developers to finance, build, and interconnect their projects. In the context of the Commission's authority to grant a CPCN for transmission infrastructure, we feel that this represents a serious departure from our regulatory responsibility.

We are further concerned that the majority's decision at best vaguely applies the requirements of Public Utilities Code section 1002. The decision approved by the majority defines "community values," as argued by the City of Chino Hills, as primarily visual impacts.³ This is in contrast to the discussion in the Commission's decision granting the CPCN, in which all four factors of Section 1002 were considered and applied.⁴ We are concerned that the precedent set by undergrounding this single segment on the basis of an incomplete consideration of all of the factors in Section 1002, giving other communities in the future grounds to insist on undergrounding of high-voltage transmission based on visual impacts recast as community values. Community values are important but are not absolute, and are certainly not limited to either a single community among many that may be affected, nor are they limited to visual impacts alone.

The point was also raised, in order to compare reasonableness of costs, that the Commission has approved undergrounding of portions of transmission lines, such as the Jefferson Martin line on the San Francisco peninsula, and the Sunrise Powerlink line coming into San Diego.⁵ In those cases, however, undergrounding was either proposed by the utility originally, or studied explicitly as part of the environmental alternatives in the original siting case, and was chosen by the Commission for reasons that went beyond the visual impact

³ D.13-07-018 at 12-13, 17-20. The decision discusses impact on property values (at 20), but does not draw on the record for evidence or analysis of such economic impact.

⁴ D.09-12-044 at 46-51.

⁵ D.13-07-018, at 48; see also original Proposed Decision of Administrative Law Judge Vieth at 48.

on one affected community.⁶ In fact, the majority's decision here relies on the Commission's approval of undergrounding a portion of Sunrise Powerlink solely as a metric of cost reasonableness, and does not discuss it as a precedent for a finding of visual impacts equating to community values.⁷ We do not believe that those two instances of constructing transmission lines underground set a precedent that establishes either the need for or reasonableness of undergrounding Segment 8A in Chino Hills.

There are also equity issues at stake. We are deeply concerned about the message we send by approving undergrounding in Chino Hills but not in other nearby cities. In light of the majority's decision, an unintended message appears to be that communities that can afford to pay attorneys to intervene in CPUC proceedings to fight transmission lines can succeed in changing our minds while other cash-strapped cities cannot.⁸

This is by no means a critique of the Chino Hills community's efforts and investments. Instead, it is a comment that our transmission siting process should be robust, thorough, and equitable for all Californians-- regardless of ability to intervene or contribute matching funds.

⁶ D.04-06-086 at 127-128 (granting CPCN for Jefferson-Martin transmission line and applying Section 1002 to balance interests among community values of Hunters Point and Bayview neighborhoods in the City of San Francisco, County of San Mateo, City of Burlingame, City of San Bruno, Town of Hillsborough, other municipalities and consumer groups, and environmental impacts on regional parks and SFPUC watershed). See also D.08-12-058 at 249-251 (granting CPCN for Sunrise Powerlink transmission line with Final Environmentally Superior Southern Route incorporating underground lines through Alpine because of tribal objections, need to reduce impacts on Anza-Borrego State Park to zero, land use considerations within Cleveland National Forest, and visual impacts of alternate routes).

⁷ D.13-07-018 at 48.

⁸ See, for example, a letter from the Mayor of Duarte to all Commissioners, dated July 10, 2013: "What makes undergrounding the lines in the City of Chino Hills different from that portion of the TRTP project running through the City of Duarte...? [...] The major difference between Chino Hills and Duarte is that Chino Hills has spent \$4 million on this battle, whereas Duarte did not have the resources to launch into such an expensive legal morass....Duarte too faces negative TRTP impacts, and would like to be included in any outcome that would minimize those negative impacts in our City[.]"

This leads to our overall cost concerns. Even if the total cost of undergrounding Segment 8A is limited to \$224 million cost cap⁹ authorized in the majority's decision, it is still an increase of more than fifty times the \$4 million it would have taken to complete the overhead version of the line that the Commission originally approved. This cost will be borne by all customers in the state that utilize transmission lines, and while it may be small for individual residential customers, it is large for certain large energy users who provide jobs in this state. Moreover, the increase in cost cannot be justified, given the policy concerns laid out here.

For all of these reasons, we do not support this decision and would have supported the Administrative Law Judge's proposed decision denying the undergrounding of the Tehachapi Renewable Transmission Project through Chino Hills.

Dated July 23rd, 2013 in San Francisco, CA.



Carla J. Peterman
Commissioner



Michel Peter Florio
Commissioner

⁹ D.13-07-018 at 68 (Ordering Paragraph 3).