

March 4, 2016

**VIA E-MAIL AND
OVERNIGHT MAIL**

Mr. Jensen Uchida
Project Manager
Energy Division, CEQA Unit
State of California
Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: Response to October 27, 2015 Information Request;
CPUC Application No. A.15-04-013

Dear Mr. Uchida:

I am writing in response to your correspondence of October 27, 2015, asking for additional information in connection with the California Public Utilities Commission's ("CPUC") Energy Division's investigations for the preparation of the Subsequent Environmental Impact Report ("SEIR") for Southern California Edison's ("SCE") Riverside Transmission and Reliability Project ("RTRP"), being pursued on behalf of Riverside Public Utilities ("RPU"). For your convenience, a copy of that letter is attached as **Exhibit A**. This letter concerns the property you have referred to as the Sky County East Property ("SKE Site"). Our office previously corresponded with you regarding the Vernola Marketplace Apartments Community site, the "Phase B" site, and the PA-13 Site. We are pleased to submit additional information to you now with respect to the SKE Site.

The SKE Site is composed of some 64.5 acres and consists of Assessor Parcel Nos. 160-050-005, -021, -023, and -031. It is located at the northeast portion of the intersection of Limonite and the I-15 Freeway. Formal vesting is: SKY COUNTRY INVESTMENT CO./EAST LLC (collectively "Sky Country").

Like other properties affected by the RTRP project, the SKE Site is located within City of Jurupa Valley's ("City") I-15 Corridor Specific Plan 266 ("SP 266"). SP 266 represents the approved land use vision of the County of Riverside and the City of Jurupa Valley for the critical stretch of land along the I-15 freeway, which now serves as the City of Jurupa's signature visual entryway corridor. The City of Jurupa Valley is looking to this prominent area as a key catalyst for housing diversification, and for economic development. SP 266 has since its inception been

Mr. Jensen Uchida
State of California
Public Utilities Commission
March 4, 2016
Page 2

designed to foster a vibrant area of combined single family and multi-family residences, with regional and community-based commercial and industrial uses.

Much of the City's planning successes and development energies have been focused in the SP 266 area. In a letter from the City Planning Director Thomas G. Merrill dated August 20, 2015, SP 266 was described as "fully entitled and nearly complete." Applicable excerpts from this letter are attached. (See, **Exhibit B** hereto, "Projects Within Edison's 230KV Transmission Line Path Table, project No. 4.) SP 266 has been the subject of a long series of "substantial conformance" determinations implementing its long-term vision for the area since originally being adopted by the Riverside County Board of Supervisors in November 1993. A summary of the progress of development within SP 266 is attached hereto as **Exhibit C**. An aerial photograph depicting the boundaries of SP 266, and giving perspective to the path and progress of implementation of its land use objectives, is attached as **Exhibit D**. As the aerial shows, the SKE Site is in the heart of this development progress.

The status of the SKE Site, and all the SP 266 lands, was fully described to SCE by the City in a July 20, 2015, email from Mr. Merrill to Ray Hicks, then with SCE's Community Relations Department. Mr. Merrill's email included a link to an engineering website containing a history of SP 266, and its implementation measures.¹ A copy of this e-mail, with appended title pages of the documents referenced in the embedded link, is attached as **Exhibit E**.

Given this, Sky Country was disappointed when in SCE's July 24, 2015, response to the California Public Utilities Commission's Deficiency Letter, SCE offered no acknowledgment of any of the SP 266 zoning entitlements, nor any description of the development progress on any of the properties impacted by the RTRP, including the SKE Site. Indeed, it was the City that corrected this disregard by SCE, when Mr. Merrill provided a response to your Unit's request for additional information on August 20, 2015. (See, **Exhibit B**.)

Zoning is not the only basis upon which the SKE Site is being readied for development. In conjunction with the owners of the adjacent PA-13 Site, Sky Country is processing a lot line adjustment with the City. That lot line adjustment will consolidate existing ownerships, eliminating shape irregularities to facilitate more efficient utilization of developable area. A diagram of the proposed lot line adjustment, depicting the upgrades it will provide for the developability and market appeal of both properties, is attached as **Exhibit F**. After this lot line adjustment, the acreages of the SKE site, broken down by Planning Area, will be as follows:

¹ That link remains active, and can be reviewed at <https://file.ac/84T5UN0BXVQ/>.

Mr. Jensen Uchida
State of California
Public Utilities Commission
March 4, 2016
Page 3

PA 11 = 15.11 Ac.(Commercial)
PA 12 = 11.05 Ac. (Commercial)
PA 10 = 20.08 Ac. (Residential)
PA 20 = 18.26 Ac. (Industrial)
Total = 64.5 Av.

This reconfiguration of lot lines will consolidate ownerships, resulting in larger contiguous developable areas for both owners. This will make easier any potential changes in zoning, land use designations, or density that may be appropriate under prevailing market forces and the City of Jurupa Valley's vision for the I-15 corridor, maximizing opportunities for commercial or high density residential uses. The application for this lot line adjustment was filed with the City in December 2015. Completion is ministerial, and is expected shortly.

The relationship of the adjusted site to zoning designations, and SP 266 Planning Areas, is depicted in the map attached hereto as **Exhibit G**, entitled "RTRP Conflict with Sky County Investment Co./East, LLC, a California Limited Liability Company-After Recordation of Lot Line Adjustment." That map shows the reconfigured site outlined in red. The pink-colored area is zoned C-P-S "Scenic Highway Commercial," and includes SP 266 Planning Areas 11 and 12. The orange middle area is zoned I-P Industrial Park, Planning Area 20. The yellow northerly portion is zoned R-1 single family residential, and is in Planning Area 10.

With this background in mind, we provide the following responses to your October 27, 2015, request:

1. A description and conceptual site development layout, if available, depicting how the Sky County East Property is intended to be developed.

There are negotiations Sky Country has had with prospective developers of the SKE Site, but these discussions have yet to yield any active development proposals. Sky Country has fielded inquiries from representatives of a number of different prospective commercial, industrial, and residential developers, but has not been able to engage in any serious exploration of development, due to the RTRP impacts on the property which are pending, but not yet defined sufficiently to allow for prospective planning. The pendency of the RTRP alone is enough to create this burden. Of equal concern, however, is the prospect that any development approvals that might be secured for this site would likely be subject to litigation by SCE and Riverside Public Utilities, in the same manner as both such entities sued under CEQA to challenge the approvals on the Vernola Marketplace Apartment Community. As you may be aware, there are two cases, one filed by each project proponent, attacking the CEQA processing of the Vernola Apartment Community

Mr. Jensen Uchida
State of California
Public Utilities Commission
March 4, 2016
Page 4

property's entitlements.² Under the guise of protecting the environment for Jurupa Valley citizens (the very ones who oppose the RTRP and have fought to keep it out of their city), SCE and RPU have invoked CEQA to attack Jurupa Valley's permitting of the Vernola Apartment Community site, because such permits are inconsistent with their plan to bottle up the proposed RTRP right of way until the CPUC permitting processes are cleared. The prospect of similarly-motivated litigation further chills any reasonable opportunity for Sky Country to take advantage of current favorable markets. While Sky Country has pursued the lot line adjustment to clear the way for economically productive use of the SKE Site, at this point, development of the site sits in limbo pending resolution of the RTRP alignment and the many issues it raises.

2. Description and conceptual site development layout, if available, depicting how the Sky Country East property would be configured if the RTRP project was built as shown in Figure 1, including the types and square footage of development uses that would be lost as a result of the proposed ROW, if applicable.

At this juncture, it is neither feasible nor realistic for Sky Country to proceed with any type of conceptual development layout, beyond the lot line adjustment work referenced above. The spectre of the RTRP casts too many complications over the site.

Sky Country has, however, commissioned an engineering analysis of the impacts and development constraints the proposed RTRP imposes upon their property, by Webb Engineering. A copy of this analysis also attached as **Exhibit H**³. Webb has identified a number of negative impacts to the Site, starting with the loss of some 4.2 acres of C-P-S zoned land, 2.9 acres of which are directly in the described right of way, and 1.3 acres of which comes from a stranded "sliver" the right of way leaves separated from the larger parcel. Webb estimates this loss will translate to some 50,000 square feet of commercial development lost. Webb also identifies 1.8 acres of industrial land lost, which it estimates reduces potential yield by 32,500 square feet. The

² These are: *City of Riverside v. City of Jurupa Valley, et al.*, SBCSC Case No. CIVDS1512381; and *Southern California Edison Company v. City of Jurupa Valley, et al.*, SBCSC Case No. CIVDS1513522.

³ Please note that Webb has analyzed the impacts to the SKE Site in its present configuration, before completion of the lot line adjustment referenced above, and therefore the memo is limited to the portions of the SKE Site consisting of Assessor Parcel Nos. 160-050-023 & 031. After the lot line adjustment, the RTRP will affect the consolidated portions consisting of Assessor Parcel Nos. 160-050-005 & 021 as well.

Mr. Jensen Uchida
State of California
Public Utilities Commission
March 4, 2016
Page 5

residential portion at the northerly end of the site also suffers a 1.8 acre loss, which Webb calculates translates to a loss of 6 units.

More troubling, Webb notes that SCE's preliminary designs show nothing about how SCE plans to take access to its RTRP alignment. This leaves the Sky Country guessing as to whether, or more likely where, SCE plans to take additional vehicular access across their property. Such uncertainty impairs planning, and creates potential disclosure obligations that reduce marketability, complicate financing, and ultimately drive off buyers.

Further, Webb has analyzed SCE's "Transmission Line Right of Way Constraints and Guidelines" (a copy of which is attached as **Exhibit I**). That analysis reveals how SCE's stated width of 100 feet for the RTRP right-of-way is inconsistent with its own policies regarding configurations and reserved rights attending transmission line rights of way. SCE is therefore misstating and underestimating both the scope of its property needs, and their resulting impacts. Sky Country requests the CPUC's CEQA Unit to insist upon full reporting and analysis under CEQA on such access issues.

The location of the proposed right-of-way is just the beginning of the challenges, however. SCE's "Transmission Line Right of Way Constraints and Guidelines" contain other published policies for how it deals with the interface between the rights of way rights it acquires with its transmission easements, and the residual rights of the owners from whose properties such easements are taken. Under them, SCE reserves the right to review and approve any use of any of its right of way area, and many of the uses of adjoining property, on an individual "case by case basis." (See, **Exhibit I**, No. 1.) SCE requires 24/7 access to its transmission facilities (apparently including access rights over areas of the servient tenement needed to reach the right of way), prohibits any permanent, non-moveable structures or pipelines, and reserves the right to impose safety requirements or mitigation measures over third party users of both the right of way and the remaining property. (*Id.* at Nos. 2,3,5,11,13.) These policies pose cumbersome additional burdens, both procedural and substantive, on users of the remaining property, particularly residential users, for whom privacy and repose in their home is paramount.

The requirement of a 50 foot minimum centerline radius on all access road curves also betrays the insufficiency of SCE's proposed 100 foot right of way. SCE dictates that roadways must be no less than 14 feet wide, with an additional two feet of swale or berm on either side. (*Id.* at No. 17.). The effect of these requirements taken together means that on curves in access roads, the minimum required distance will be **114 feet**. (See, **Exhibit H** hereto.) SCE is therefore understating its right of way needs.

The overall result from the perspective of the Sky Country is an increase in risks associated with the development hurdles to bring market-appropriate uses to bear on the site, and elevated

Mr. Jensen Uchida
State of California
Public Utilities Commission
March 4, 2016
Page 6

costs associated with engineering, financing, permitting, and construction required to make them a reality.

Your letter also makes reference to a lattice steel structure for the RTRP development on the SKE Site. You refer to it as number JD4 as shown on your Figure 1 to Exhibit A, but the towers indicated on that Figure are numbered JD8 through JD14. We would appreciate identification of which of the towers will be lattice steel, and which ones, if any, will be tubular steel poles. Sky Country had been given to believe a tubular steel pole configuration was planned.

3. An overall timeline for construction and buildout of the Sky Country East property.

This question has recently become more poignant, with representations both SCE and RPU have made to the San Bernardino courts in briefing that attends their Vernola Apartment Community lawsuits. In those cases, both SCE and RPU are arguing that the RTRP project is essentially a *fait accompli*, such that as early as mid-2015 when the Vernola Apartment Community property's entitlements were considered, the RTRP had to be presumed to be part of the "baseline" existing environment for CEQA analysis.

Specifically, SCE denies that its project remains in the planning stages despite still needing final approval from the CPUC, and characterizes the RTRP as "slated for construction." (See, SCE Reply Brief dated February 16, 2016, **Exhibit J** hereto, pp. 6-7.) RPU goes even further, stating: "Riverside *fully completed* environmental review and granted all of its discretionary approvals for the RTRP on February 5, 2013." (See, RPU Reply Brief dated February 16, 2016, **Exhibit K** hereto, p. 1; emphasis added.) RPU further characterizes the RTRP as "an *approved* project that has completed full environmental review." (*Id.* at p. 8; emphasis original.) The project proponents are thus "gaming" with CEQA—they treat the development permitting on the properties they would convert to RTRP right of way as a legal nullity, while urging the courts to consider their own still-unpermitted RTRP project as an environmental certainty. CEQA neither bears nor condones such inconsistency.

The Energy Division's CEQA unit has every justification to take offense to this high-handed dismissal of its determination that CEQA analysis of this project is **NOT** finished. You might reasonably reject the short shrift it gives your own continuing efforts toward assuring that the important additional CEQA work RTRP requires is done, and done properly. Sky County certainly shares this sentiment.

More to the point, however, this callous disregard for the RTRP's still *unapproved* status is emblematic of the attitude Sky County, its fellow owners under the RTRP proposed alignment, the City of Jurupa Valley, and others have struggled with for years. The project proponents' public

Mr. Jensen Uchida
State of California
Public Utilities Commission
March 4, 2016
Page 7

statements, and the attitudes they reflect, treat the RTRP as a predetermined certainty. They treat the CPUC process and the owners' objections alike as mere procedural "speed bumps" to clear until they convert others' properties to their own purposes. With these public statements hanging over it, as with the RTRP itself, Sky County simply cannot effectively market or develop the site. It is not unrealistic to conclude that the market will hold development of the site in abeyance until the RTRP alignment and permitting issues are resolved.

Given all of the foregoing, Sky Country cannot presently commit to a timeframe for development of the site. It will not know this until the many questions, issues, and encumbrances RTRP presents are resolved. In the absence of the RTRP project, however, it estimates that this property would develop likely by 2018-19.

This is consistent with the projections of the City of Jurupa Valley's study, entitled "Economic/Fiscal Impact Analysis – Riverside Transmission Reliability Project" by Urban Futures, Inc., dated December 2, 2015. A copy is attached as **Exhibit L**. The study offers keen insight to the City's desire and expectations for the development of the SKE Site, which informs the likelihood of permitting on the site, and its fiscal importance to the City. It examined the likely development patterns of RTRP – impacted sites, both with and without the proposed transmission line. It includes the SKE Site, which it called "I-15 Corridor: Sky Country Retail Center." Absent the RTRP, the City's analysis predicted a yield of 350,544 square feet of retail space on the SKE Site, generating 701 employees. (*Id.* at p. 7) It also predicted absorption of this revenue-raising square footage over the 2018-20 timeframe. (*Id.* at p. 9.)

That study demonstrates the huge impact RTRP will have on the SKE site, which it describes as worse than any other site: "The RTRP's most significant impact to project performance and development is its anticipated impacts to the Sky Country Retail Center Site." (*Id.* at p. 19.) (*See* excerpts from the study, attached as **Exhibit M**.) The RTRP thwarts the combination Lifestyle Center/Hotel development the City envisions for the site. The economic detriment to the City alone is estimated in the amount of \$736,526 yearly. Obviously, the impacts to the property owners themselves would dwarf such amounts. In this vein, the study predicts a downgrade of some 21 acres of the commercial portion of the site to less profitable industrial uses, and a drop in the unit yield of the area it calls "Vernola Residential West" from 516 to 484 units.

In sum, the efforts Sky Country has undertaken to advance development of the SKE Site have been stymied by the RTRP. The pending RTRP project renders any realistic formulation of a specific development plan for the site presently futile, since SCE and RPU have publicly declared that they have a viable "project" that has moved beyond mere planning stages, and that will use the SKE Site, and others. Prospective users are unwilling to negotiate for a property that public utilities have effectively promised will embroil the purchaser in an eminent domain action. As such, the RTRP puts this property at a distinct competitive disadvantage in the marketplace.

Mr. Jensen Uchida
State of California
Public Utilities Commission
March 4, 2016
Page 8

This constraint is compounded by the broad nature of rights SCE reserves to itself as a matter of policy, over both the direct right-of-way acquisition and the remaining property that supports it, given the permanent impacts SCE's "Constraints and Guidelines" impose on the property for any user.

We appreciate the opportunity to explain to you the impacts of the RTRP on the SKE Site. We would welcome the opportunity to follow-up with you on any additional information you might require on any of the points discussed above, or any related matter.

Very truly yours,

RUTAN & TUCKER, LLP



David B. Cosgrove

DBC:mrs

Enclosures: Exhibit A – CPUC Data Request of October 27, 2015
Exhibit B – August 20, 2015 Letter from Thomas Merrill
Exhibit C – SP 266 Status Memo
Exhibit D – Aerial Photo of SP 266 Area
Exhibit E – Excerpts-Jurupa Valley 8-28-15 response to Information Request
Exhibit F – Lot Line Adjustment Diagram
Exhibit G – RTRP Conflict with SKE Site After Lot Line Adjustment.
Exhibit H – Webb Engineering SKE Site Analysis
Exhibit I – SCE's Transmission Line Rights of Way Constraints and Guidelines
Exhibit J – SCE Reply Brief dated February 16, 2016
Exhibit K – RPU Reply Brief dated February 16, 2016
Exhibit L – City Economic / Fiscal Impact Analysis
Exhibit M – City Economic / Fiscal Impact Analysis (*excerpts*)