

Decision No. 80530

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the construction of 220 kv La Fresa-La Cienega and La Cienega-El Nido electric transmission lines and related facilities of Southern California Edison Company.

Case No. 9245  
(Filed July 13, 1971)

ORDER DENYING REHEARING

Petitions for rehearing of Decision No. 80197 were filed by the State Attorney General on July 14, 1972 and by the City of Torrance on July 17, 1972. That decision authorized Southern California Edison Company (Applicant) to construct two overhead transmission lines. Applicant filed a response to the petitions for rehearing on July 28, 1972.

Generally, the arguments of petitioners consist of broad <sup>1/</sup> attacks on many of the decision's thirty-six findings of fact. No useful purpose would be served by responding to each of the specifically alleged errors. After considering each and every allegation, the Commission is of the opinion that good cause for rehearing has not been made to appear.

One finding and argument, however, should be discussed in some detail. Finding of Fact No. 30 states in part that "[t]he proposed

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<sup>1/</sup> Other arguments include allegations that: 1) the Commission failed to properly apply the provisions of the Environmental Quality Act of 1970; 2) the decision's conclusions of law are not supported by the findings, and 3) the Commission's discussion of "allocation of resources" is erroneous.

transmission lines and routes, as modified, are not nuisances...." (Decision No. 80197, p. 53.)

Petitioner, Attorney General, argues that this finding is beyond the scope of the order of investigation. Furthermore, it is urged that the Commission's determination is contrary to the evidence. Petitioner, City of Torrance, asserts that the facts overwhelmingly evidence that the poles do constitute a nuisance and that the Commission should have stayed or abated its proceedings until an action involving this precise question pending in the Los Angeles Superior Court (City of Torrance v. Southern California Edison Co., et al., Case No. SWC 19975) has been concluded.

It is noted at the outset that it is the superior court which has jurisdiction over actions against public utilities based on alleged nuisance (California-Oregon Power Co. v. Superior Ct., 45 C.2d 858 (1955); Yolo Water, etc., Co. v. Superior Ct., 43 CA 332 (1919)). However, once the Commission has assumed jurisdiction "...for the purpose of administering the law applicable to the activities of the utility, the Commission has exclusive jurisdiction over the regulation and control of said utility...." (Miller v. Railroad Commission, 9 C.2d 190, 195 (1937); City of Union City v. Southern Pac. Co., 261 CA2d 277 (1968).)

Public Utilities Code Sections 761, 762 and 762.5 empower the Commission to review the reasonableness of existing or proposed facility sitings and to make orders consistent with its determinations. Civil Code Section 3482 specifically states that "[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance." Clearly, this latter section provides that action required by this Commission, acting properly under its statutory authority, cannot be deemed to be a nuisance (see also City of Union City v. Southern Pac. Co., *supra*).

Thus, the Commission does have the power and jurisdiction over the operations of a regulated utility. Accordingly, it is important that matters, such as those involved in this controversy, be settled as soon as possible. This Commission has no desire to interfere with

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matters before a court of law. However, in discharging the responsibilities entrusted to us by the California Constitution and the Legislature, it is our conclusion that issues involved in this investigation have been fully presented and argued. There is no reason to defer our decision.

IT IS ORDERED that rehearing of Decision No. 80197 is hereby denied.

Dated at San Francisco, California, this 26<sup>th</sup> day  
of SEPTEMBER, 1972.

Vernon L. Sturgeon  
President  
William J. Sturgeon, Jr.  
William J. Sturgeon, Jr.  
Thomas J. Sturgeon  
Edmund J. Sturgeon  
Commissioners