

Decision No. 92302 OCT 8 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of SOUTHERN CALIFORNIA EDISON)
COMPANY for a certificate that)
the present and future public)
convenience and necessity require)
or will require construction and)
operation by applicant of a single)
circuit 500 kV transmission line)
between Palo Verde Nuclear Gen-)
erating Station in Arizona and)
Devers Substation in California.)

Application No. 57251
(Filed April 21, 1977;
amended April 21, 1978)

SUPPLEMENTAL ORDER

Background

By its petitions dated July 17, 1980 and August 15, 1980, Southern California Edison Company (SCE) requests the Commission to issue an ex parte order amending the certificate of public convenience and necessity authorized by D.90552 dated July 17, 1979 to permit construction of a 500-kV transmission line between Devers Substation in California and the Palo Verde Nuclear Generating Station in Arizona.

SCE seeks to modify the routing of segments of the transmission line in the Cactus City area in California and segments S-5 and S-23 in Arizona to conform to the routes adopted by the United States Bureau of Land Management (BLM) on February 1, 1980. The Brenda Route is the route proposed by SCE. The Kofa Route is the principal alternate route proposed by BLM, the principal landowner along the transmission line routes, evaluated in this proceeding. In D.90552 the Commission adopted the Brenda Route for the California segment

of the transmission line and the route initially adopted by the Arizona Power Plant and Transmission Line Siting Committee (Committee) and approved by the Arizona Corporation Commission (ACC).

The decision indicated that SCE could seek ex parte certification if BLM adopted an Arizona route to avoid the Yuma Proving Ground.

Ordering Paragraph 3 of D.90552 requires SCE to report on the posture of its acquisition of a right-of-way through allotted lands on the Agua Caliente Band of Cahuilla Indians Reservation (ACB) within one year of the effective date of the order. The Commission adopted SCE's proposed alignment through the allotted ACB lands since "[a]n alternate location, within the Brenda corridor, would skirt ACB's reservation but would be situated part way up the slopes of a hill, would be more costly, and environmentally inferior to the proposed routing."

Finding 18 of D.90552 states:

"Construction and operation of SCE's proposed Brenda Route alignment with the mitigating measures discussed on page 28 herein is preferable to the construction and operation of the northerly alternate route within the Brenda Route transmission corridor providing that the right-of-way can be obtained on a timely basis, within one year after the effective date of this order."

That decision also states that "[i]f SCE notifies the Commission that it cannot obtain the necessary right-of-way within that time span, we will issue an ex parte certificate of public convenience and necessity to construct and operate the northerly alternate route, avoiding the Willow Hole area, within the Brenda transmission corridor."

SCE seeks to postpone the issuance of that alternate route until a decision is rendered in a pending condemnation case or until its construction schedule necessitates the use of the alternate route. Due to "unanticipated delay" caused by ACB opposition to the proposed extension of time and to imminent demands of its construction schedule in the Cactus City area, SCE filed a petition on August 11, 1980 to sever the ACB issue from the substitution of routes in the Cactus City area.

Cactus City Area Revision

BLM adopted the Kofa Route^{1/} because (a) it is immediately adjacent to an existing 220-kV transmission line owned by SCE, (b) the existing access roads can be used with only minimum upgrading, and (c) only minor extension of stub roads will be needed for construction and operation of this line.

Most of the Kofa Route near Cactus City parallels and would be visible from Interstate Highway 10 (I-10). The Brenda Route would require more extensive construction of access roads, but would present a lesser visual impact to the traveler on I-10 compared to construction of the Kofa line.

^{1/} The two routes are shown on page 4 of Figure 2-2 of the Final Environmental Impact Report which is attached to SCE's July 17, 1980 filing.

There is a close balance between adverse environmental impacts associated with both routes. We will defer to BLM's choice and authorize the requested modification.

Arizona Route Modifications

SCE's July 17, 1980 petition states that: (a) on February 1, 1980 BLM granted a route through the State of Arizona which differs from the route adopted by Committee, the body statutorily authorized to approve power plant and transmission line siting in Arizona; (b) on May 9, 1980 Committee amended the Certificate of Environmental Compatibility for this line to conform with the transmission corridor adopted by BLM, to incorporate revised route segments designated as S-5 and S-23 differing from the routing adopted by ACC and by this Commission; (c) ACC would consider these changes on July 22, 1980; and (d) after ACC gave its requisite final approval for these route modifications, SCE would submit the amended Certificate of Environmental Compatibility to the Commission with a request for an ex parte amendment to modify D.90552 to conform to the action taken by ACC. SCE's August 15, 1980 petition for modification contains a copy of ACC's July 23, 1980 final approval for the revised routing, as requested, and route maps. SCE requests Commission approval of these modifications on or before September 15, 1980. SCE states that it is soliciting bids and purchasing materials for the line, it must award the contract on October 1, 1980, and it must commence construction on October 15, 1980 in order to meet the designated operating date of May 1, 1982.

The Committee considered and tested evidence in support of SCE's application by SCE's witnesses and by a BLM representative and evidence in opposition to parties of the application prior to issuing its conditional approval. Construction of the revised routing in Arizona will not impact the California environment. Since these environmental impacts were considered by the Committee and confirmed by ACC, this Commission concludes that the Arizona route modifications requested by SCE should be authorized.

Routing Affecting the ACB

SCE's July 17, 1980 status report on acquisition of the ACB right-of-way states that its right to acquire the ACB lands through its power of eminent domain "has been challenged in Southern California Edison Company v. 33.49 Acres of Land, Case No. 79-03709 - RJX-KX^{2/} and that due to the unexpected delay in obtaining a decision in this matter, it has been unable to obtain the necessary right-of-way within the one-year period specified in D.90552. SCE requests that "the Commission not automatically issue an Ex Parte Certificate of Public Convenience and Necessity to construct and operate the northerly alternate route, avoiding the Willow Hole area, within the Brenda transmission corridor." SCE requests an extension of time on certification for the alternate route until a decision is rendered in the condemnation case or the construction schedule for the project necessitates the use of the alternate route. In response to ACB's objection to granting an extension of time and to avoid delay which would affect the "imminent demands of the construction schedule in the Cactus City area" SCE requested severance of the ACB issue from the Cactus City area route modification and ex parte action on the latter proposal.

2/ Filed in the United States District Court, Central Division, California.

ACB contends that much of the delay in obtaining a decision in the above-mentioned litigation is due to lack of diligent action by SCE as follows:

- (a) The Commission decision was issued on July 17, 1979.
- (b) SCE did not file its condemnation action until September 25, 1979.
- (c) SCE served its complaint on the first of six Indian allottees on November 19, 1979 and served the last allottee in early December 1979.

ACB argues that even if the Commission authorizes an extension of time pending resolution in the Federal District Court, the litigation would continue. ACB anticipates a delay of at least two and possible five or more years, preventing construction, for appeals to be carried through to the United States Supreme Court by the unsuccessful party in the pending litigation to determine if SCE can condemn the allotted ACB lands. If SCE prevails, there would be further litigation on the amount of compensation to be paid to the allottees and there could be further disputes if SCE did not comply with an ACB ordinance to regulate land use on allotted lands.

ACB has sought to protect its allotment rights through legislation and litigation for many years. Since over 95 percent of the ACB reservation consists of allotted lands, ACB will contest any action perceived as a threat to its control of the reservation. ✓

Discussion

If we reopened the proceeding for further argument or delayed issuance of an order on the ACB issue, that action would constitute a de facto extension of time.

We do not perceive a need to issue separate orders on the ACB issue on the same day that the Cactus City and Arizona line segments are modified.

ACB's pleading is an update and expansion of its earlier arguments. In its earlier review the Commission considered ACB's arguments and authorized SCE to obtain a right-of-way through ACB allotted lands because of environmental and cost advantages. Those advantages remain unchanged. SCE has commenced litigation to secure this more desirable right-of-way. An extension of time should be granted to permit SCE to secure that right-of-way.

Findings of Fact

1. On July 17, 1979 this Commission granted a certificate of public convenience and necessity to SCE to construct a single circuit 500-kV transmission line between the Palo Verde Nuclear Generating Station in Arizona and Devers Substation in California.

2. The California portion of the transmission line followed SCE's Brenda Route. The Arizona portion followed the route adopted by the Committee which issued a Certificate of Environmental Compatibility. The ACC gave final approval for that action.

3. The environmental review for this project involved consideration of various alternative routes by this Commission, the Committee, and the ACC, and by the Federal Government. The principal alternate route considered was BLM's Kofa Route.

4. The BLM approved alternate routes for certain segments of this line on February 1, 1980, namely, the Kofa Route in the Cactus City area of California and segments S-5 and S-23 in Arizona.

5. There is a close balance between adverse environmental impacts associated with the Brenda Route and the Kofa Route in the Cactus City area.

6. The certificate in the Cactus City area should be changed to adopt the Kofa Route; shown on page 4 of Figure 2-2 of the Final Environmental Impact Report, providing that the mitigation measures described in D.90552 are implemented in constructing the line along that route.

7. The environmental impacts associated with alternate route segments S-5 and S-23 in Arizona were considered by the Committee and confirmed by the ACC.

8. There are no California environmental impacts associated with alternate route segments S-5 and S-23.

9. This Commission should change the certificate to adopt alternate route segments S-5 and S-23 depicted in Maps A-1 and A-2 attached to SCE's petition of August 15, 1980, subject to the conditions set forth in the revised Certificate of Environmental Compatibility.

10. The Commission approved a route through allotted lands of the ACB because of environmental and cost advantages. Those advantages still exist.

11. SCE filed suit to condemn the requested right-of-way.

12. SCE requests an extension of time to obtain that right-of-way and a deferral of an ex parte Commission order certificating a route skirting ACB lands.

13. The revised project is essential to meet the future public convenience and necessity.

14. The construction of the revised project will not produce an unreasonable burden on natural resources, aesthetics of the area in which the proposed facilities are to be located, public health and safety, air and water quality in the vicinity, parks, recreational and scenic areas, historic sites and buildings, or archaeological sites.

15. Early approval of the requested route modifications is needed to avoid construction delays for the project.

Conclusions of Law

1. Present and future public convenience and necessity require the construction and operation of this revised transmission line project.

2. SCE is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

3. The action taken herein is not to be considered as indicative of amounts to be included in future proceedings for the purpose of determining just and reasonable rates.

4. SCE should be required to follow the construction constraints, route selection, and mitigating measures proposed in its Environmental Data Statement (EDS) and supplemental EDS, with recommendations of the Commission staff in the Final Environmental Impact Report and in accordance with Findings 18, 23, and 28 of D.90552.

5. The Notice of Determination for the project is attached as Appendix A to this decision. The Commission certifies that the Final Environmental Impact Report has been completed and adopted by it in compliance with the California Environmental Quality Act and the guidelines and that it has reviewed and considered the information contained in the Final Environmental Impact Report in arriving at this decision.

6. Based on the foregoing, the 500-kV Devers-to-Palo Verde Nuclear Generating Station Brenda Route in California, except for the Kofa Route in the Cactus City area, and the revised transmission line route adopted by the Committee and the ACC should be authorized in the manner set forth in the following order.

7. Any future transmission line located within this corridor will require further environmental review prior to certification.

8. SCE should be granted an extension of time, as requested, to acquire a right-of-way through ACB allotted lands.

9. The effective date of this order should be the date hereof.

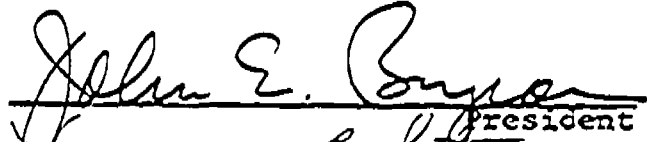
IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to Southern California Edison Company (SCE) to construct and operate a 500-kV transmission line and ancillary facilities between its Devers California Substation and the Palo Verde Nuclear Generating Station in Arizona in Decision No. 90552 is modified to substitute the alternate route segments described in Finding 4 herein for the originally adopted segments.

2. SCE is granted an extension of time to file an ex parte petition for a certificate of public convenience and necessity for an alternate route skirting the reservation of the Agua Caliente Band of Cahuilla Indians until (a) a decision is rendered in Southern California Edison Company versus 33.49 Acres of Land, filed in the United States District Court, Central Division, California, in Civil Case No. 79-03709-RJK-KX; or (b) the construction schedule for the project necessitates use of the alternate route.

The Executive Director of the Commission is directed to file a Notice of Determination for the project, with contents as set forth in Appendix A to this decision, with the Secretary for Resources.

The effective date of this order is the date hereof.
Dated OCT 8 1980, at San Francisco, California.



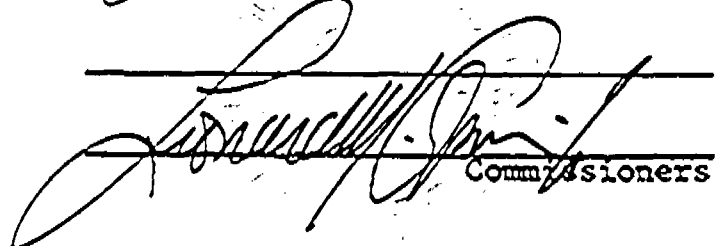
President



Commissioner



Commissioner



Commissioners

Commissioner Claire T. DeDrick, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

NOTICE OF DETERMINATION

TO: Secretary Resources
1416 Ninth Street, Room 1312
Sacramento, California 95814

FROM: California Public
Utilities Commission
350 McAllister Street
San Francisco, Calif. 94102

SUBJECT: Filing of Notice of Determination in compliance with
Section 21108 or 21152 of the Public Resources Code.

Project Title

Devers - Palo Verde 500 kV Transmission Line

State Clearinghouse Number (If submitted to State Clearinghouse)

78091213

Contact Person

Telephone Number

Richard Tom

(415) 557-3241

Project Location

Riverside County, California; Maricopa and Yuma Counties, Arizona

Project Description Southern California Edison Company

Modification of portions of the transmission route previously approved by this Commission, to conform with the route adopted by the U.S. Bureau of Land Management.

This is to advise that the California Public Utilities Commission as lead agency has made the following determination regarding the above described project:

1. The project has been approved by the Lead Agency.
 disapproved
2. The project will have a significant effect on the environment.
 will not
3. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. A copy of the Negative Declaration is attached.

Date Received for Filing

Executive Director

Date