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MAIL DATE  
9-5-96

Decision 96-09-046      September 4, 1996

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
Sierra Pacific Power Company for a	)	
Certificate of Public Convenience	)	Application 93-11-018
and Necessity to Construct and	)	(Filed November 9, 1993)
Operate the Alturas Transmission	)	
Line Project.	)	

ORDER DENYING REHEARING OF DECISION 96-04-068

Norman Rice and North American Technical Trading Co. (Applicants), filed an application for rehearing of Decision (D.) 96-04-068 on May 31, 1996. In D.96-04-068 the Commission granted a Petition for Modification of D.96-01-012 filed by Sierra Pacific Power Company (Sierra) to revise the alignment of a 345 kV electric transmission line and two related substations between Alturas, California and Reno, Nevada (Alturas line). In D.96-01-012 Sierra was granted a certificate of public convenience and necessity to construct the line.

We have considered all the allegations of error in the application for rehearing and are of the opinion that good cause for rehearing has not been shown. We are therefore denying the Applicants' application.

Applicants' main contention is that they did not receive notice of the release of the Draft Environmental Impact Report (EIR) as provided for in Rule of Procedure 17.1, which sets forth the Commission's procedure for implementation of the California Environmental Quality Act.

Applicants contend that they were denied the opportunity to present alternatives for the transmission line route with the consequence that the value of mineral deposits on

their property has been harmed and the public has denied access to a valuable resource. After considering these contentions we conclude that they lack merit.

First, Sierra has provided a copy of the relevant portion of the certificate of service of the mailing of the notice of the release of the Draft EIR on February 24, 1995. It shows that Applicant Rice was mailed this notice. Furthermore, Applicants were provided with far more notice of the EIR than is legally required. Sierra has included in its Response the Declaration of Stephen Younkin, Sierra's Contract Right-of-Way Manager. It shows that Sierra contacted Mr. Rice on numerous occasions, beginning as early as March 31, 1994. Sierra's records show that there were a number of contacts with Mr. Rice, both before and after the issuance of the Draft EIR, including meetings with him in the Spring of 1994.

Applicants merely state that they were unaware of the existence of the EIR, draft or final, until April 16, 1996, three days before the April 19, 1996 Commission meeting (App. for Rehearing, p. 5). Yet, Mr. Rice himself appeared before the Commission on December 19, 1995 when the decisions certifying the project and certifying the Final EIR/EIS were first on the Commission's agenda, and spoke to the same subject: loss of value of the mineral deposits beneath the line.

Since Sierra has complied with all notice requirements contained in CEQA, as well as those required by the Commission, Applicants would need to show that those requirements were insufficient to meet due process concerns. Applicants have made no such showing or argument. Furthermore, even though they were not served with the petition for modification they appeared at the April 19, 1996 meeting and repeated the position expressed at the December 19, 1995 meeting. Given these facts the only reasonable conclusion is that Applicants had received notice of the Alturas line project and the EIR during the time the project was in process at the Commission and the proposed adjustment set forth in the petition for modification.

The weight of the arguments submitted by the contending parties supports the conclusion that good cause for rehearing has not been shown. It appears that Applicants received notice of the Draft EIR as required by CEQA and the Commission's rules. Therefore, if they had alternate routes to advance they should have done so at that time.

Applicants also contend that, since they failed to receive notice of the Alturas line project at the outset, they have been denied the right to submit evidence on the impact of the project on the alleged high value of the pozzolan deposit on their land. In their view the project's location on their property both harms their property rights and also deprives the public of "a rare, valuable and necessary resource" (App. for Rehearing, p. 9.)

In Sierra's Response it asserts that the mineral is not rare and as valuable as claimed. It includes the declaration of a mining and environmental engineer to support this position. The primary assertion is that fly ash is an abundant available substitute for pozzolan and in common use for this purpose. An additional declaration of Sierra's former project manager for the Alturas line states that out of the 3,000 acres of land owned by Applicants in the project area Sierra's right of way will require only about 50 for the transmission line.

Insofar as the allegation of loss of value of the pozzolan deposit is concerned, Applicant's remedy lies with the courts and not the Commission. The determination of just compensation for private property taken by a public utility for a utility project is not within the Commission's jurisdiction. (See Public Utilities Code Sections 1401-21) Thus, even if Applicants' contention relating to notice had validity, the remedy they seek is not within the jurisdictional domain of the Commission. Accordingly, Applicants should pursue that their loss of value claim in eminent domain proceedings with Sierra in the courts.

**Findings of Fact:**

1. Applicants for rehearing received notice of the EIR process in the Alturas transmission line project and the petition for modification filed by Sierra Pacific on February 15, 1996.

2. Applicants appeared at the Commission meeting of April 19, 1996 and presented their position on the petition and the Alturas project.

**Conclusions of Law:**

1. Applicants have not been denied due process of law.

2. The Commission does not have jurisdiction to determine the monetary value of private property taken by a regulated utility's exercise of eminent domain authority for construction of the Alturas line project, or the loss in value of such property resulting from the project.

**IT IS ORDERED that:**

1. Rehearing of D.96-04-068 is denied.

This order is effective today.

Dated September 4, 1996, at San Francisco, California.

DANIEL Wm. FESSLER  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

President P. Gregory Conlon,  
being necessarily absent,  
did not participate.