

November 30, 2015

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 September 23, 2015 Information Request;
CPUC Application No. A.15-04-013

Dear Mr. Uchida:

Thank you for your correspondence of September 23, 2015, requesting additional information in connection with the California Public Utilities Commission's ("CPUC") Energy Division's efforts towards preparing a subsequent environmental impact report ("SEIR") for Southern California Edison's ("SCE") Riverside Transmission and Reliability Project ("RTRP"). The owners of the Vernola Marketplace Apartments Community ("VMAC") appreciate the CPUC's efforts to refine the current baseline condition for its SEIR, and applaud its efforts to assess impacts to not only properties within the RTRP corridor, but also the entitlements which they have earned.

Our responses to the CPUC's information request track the numbers of the requests themselves, which for your convenience are repeated below:

- 1. A brief description of the use of each building along with the number of apartment units that would be lost if these buildings were removed.**

The development entitlements obtained from the City of Jurupa Valley for the VMAC property¹ allow for the construction of 397 Class A apartments dwellings. The entitlements were approved by the City of Jurupa Valley on March 19, 2015, and consist of City Council Resolution No. 2015-15, which approved General Plan Amendment No. 1404, Specific Plan Amendment No. 1401, and Site Development Permit No. 3416. In addition, City Council adopted Ordinance No. 2015-05, amending the Riverside County Zoning Map No. 15 (Jurupa

¹ These consist of Riverside County Assessor Parcel Nos. 152-020-012; 152-020-021; and 152-020-022, with a collective size of 17.38 gross acres.

Jensen Uchida
November 30, 2015
Page 2

Area Plan). A site plan of the approved development, along with a rendering with landscaping, is attached hereto as **Exhibit A**. SCE has apparently provided a conceptual drawing showing its understanding of how the proposed RTRP corridor would impact the development, which was included with your September 23, 2015 data request. (For your convenience, a copy is attached as **Exhibit B**.)

The fallacy underlying SCE’s exhibit, and the challenge VMAC faces in responding to it, is SCE’s notion that the RTRP proposed right of way will impact only those areas of the VMAC project falling directly within the to-be-acquired right of way. In reality, nothing could be further from the truth, in part because the specifics of both the dimensions and property easement rights that will be encompassed in that right of way are not defined. No matter how any final overhead line layout is developed, however, the RTRP cannot help but affect drainage and other facilities that are fundamental, core features of both the physical functionality and market positioning of the entire VMAC project.

As such, the true answer to the issue underlying all three of the specific requests you make, i.e., “What portion of the VMAC project is lost if SCE and RPU go through with the RTRP project as presently proposed?” is this: All of it.

To answer the CPUC’s specific question, the present RTRP proposed alignment directly conflicts with portions of eight different buildings on the site. These buildings are depicted on **Exhibit “C”** hereto, and their unit counts are summarized below:

BUILDING	TOTAL UNITS	2 BR UNITS	3 BR UNITS
1	25	22	3
3	30	-	30
5	30	30	-
7	9	9	-
8	6	6	-
22	20	17	3
23	10	10	-
24	25	22	3
25	10	10	-
TOTAL	165	126	39

Clubhouse: No units per se, but loss of swimming pool, recreational amenities, community clubhouse and meeting rooms, community center, and other recreational amenities.

Jensen Uchida
November 30, 2015
Page 3

As can be seen, the RTRP alignment directly displaces at a minimum 165 total apartment residential units, along with the “heart and nerve center” of the common area--the community club house, leasing and administrative center, and its shared amenity facilities. These amenities were particularly important, both to the developer and to the City of Jurupa Valley, in elevating the target demographic market segment for a higher-end, Class A apartment living community. In addition, the RTRP alignment as depicted on the SCE exhibit presently displaces at least 118 parking spaces.

However, the direct unit count and amenity loss taken alone presents only a fraction of the RTRP’s true impacts to the VMAC project, for a number of reasons. First, nothing in the RTRP environmental reporting to date has dealt with, or even identified, the impact that the right of way acquisition will have upon access from the VMAC property to the regional storm drain facility located at the westerly edge of the site. This facility, known as Line J, is owned and operated by the Riverside County Flood Control and Water Conservation District (“County Flood”). This storm drain line lies within a 38’-40’ easement traversing the VMAC property and the properties immediately to the North, and there is a slope protection easement immediately adjacent to that. As depicted in **Exhibit D** hereto², the proposed RTRP alignment (as presently configured) overlies the Line J easement.

The VMAC project directly connects to Line J for its drainage. If Line J access is no longer available, the VMAC project’s grade and topography constraints would require a pump station to take the flow from the natural and engineered drainage pattern (which is southwesterly) up to the higher grade of the existing public right of way, at 68th Street. Such a drainage solution would be prohibitively expensive.

That is exactly what the VMAC owners and developers face, however, because SCE’s standard provisions for its transmission line rights of way *prohibit* the necessary crossing and drainage structures essential to VMAC’s access to Line J, and indeed, its entire development. SCE’s “Transmission Line Right of Way Constraints and Guidelines” (attached hereto as **Exhibit E**)³ prohibit permanent structures, including pipelines. (See, Constraints and Guidelines, No. 2.) After SCE condemns its easement, therefore, VMAC will be prohibited from installing its drainage pipelines crossing the RTRP right of way to access Line J, which is the critical drainage facility serving the entire development.

² Page 1 of **Exhibit D** sets out the storm drain and slope easements, and how they relate to the RTRP proposed alignment. Page 2 shows the impacts if the RTRP proponents have to avoid these easements, and the RTRP alignment moves further into the VMAC property as a result.

³ These are dated February 2, 2012. They can be found on SCE’s website at: https://www.sce.com/wps/wcm/connect/2bca123a-c5b3-4035-8625-7f187c908d86/ConstraintsandGuidelines_AA.pdf?MOD=AJPERES, or by searching “Constraints and Guidelines.”

Jensen Uchida
November 30, 2015
Page 4

This presupposes, of course, that SCE and RPU are able to work out the underlying incompatibility between SCE's policies for transmission right of way and the pre-existing Line J facility – a presently undocumented leap of faith VMAC believes merits substantive discussion in the SEIR. Indeed, ownership conflicts of the very type posed by the pre-existence of flood control facilities like Line J have already been cited by the project proponents as a reason for rejecting alternative alignments. (*See*, SCE; Siting Report dated July, 2015, sec.4.2.2; *see also* RTRP Siting Study dated August 31, 2006 [listing “Planned Residential” land uses as “High Avoidance” areas.] Excerpts of both documents are attached with **Exhibit F**.)

Second, a substantial portion of the southwest portion of the VMAC 397 unit apartment complex consists of a below-ground, on-site Stormwater Pollution Prevention Plan (“SWPPP”) basin. This facility measures some 320 feet by 120 feet, and was necessitated by regional stormwater permit requirements. The entire VMAC site drains to this facility, prior to emptying into Line J. This underground water quality facility would not be permitted to coexist with the RTRP alignment (*see*, **Exhibit E**, SCE's Right of Way Constraints and Guidelines, No. 2, which prohibits “vaults” and “detention basins;” *see also*, No. 11, prohibiting groundwater and storm water infiltration.) As such, the entire drainage plan for the project would have to be re-conceptualized, redesigned, re-engineered, and vetted to pass muster with developers, lenders, insurance companies, County Flood, and Jurupa Valley.

Even if SCE were to depart from its Right of Way Constraints and Guidelines, and allow the underground detention facility, maintenance or access to such facility would be severely restricted, and subject to SCE approvals. SCE's right of way policies are clear; access to and maintenance of its own facilities in its rights of way take priority over any conflicting uses. The added layer of administrative headache and delay that will attend having to secure SCE approval for even routine maintenance of the SWPPP facility, and risk that such maintenance would almost certainly entail increased costs, uncertain scheduling, and added assumption of liability for damage to SCE facilities, sharply increases the operational and financial risks of the VMAC development.

SCE's failure to even mention, let alone reconcile, these drainage conflicts continues a maddening tendency of the RTRP project proponents to ignore or gloss over the true impacts the project visits on the owners of the land they would condemn to build it. Drainage isn't the last of it, however. Changes to drainage would also have consequential impacts on site grading, street, and parking layout. It would require shifts in building design, location, and orientation, and a whole host of other engineering and agency approval complications, all of which necessarily arise from disruption to the fundamental drainage pattern that was the foundational physical control point of the approved site plan. In short, RTRP's drainage impacts *alone* take VMAC and its owners “back to the drawing board” on project design, quite literally from the ground up.

Jensen Uchida
November 30, 2015
Page 5

The loss of the approved internal streets to the RTRP right of way will also require a complete reworking of the VMAC vehicle circulation design, since building layouts and parking fields will have to be redone. This will not only require redesign of private streets to meet City of Jurupa Valley criteria, but will require redesign of parking plans so as to keep available parking fields reasonably close to the apartment units they serve. It will also require resubmittal of the reworked on-site circulation plan to the applicable fire authority, to make sure fire access and turnaround clearances are preserved. This reworked access plan will also have to take into account SCE's demand that it have 24/7 access to its facilities and right of way, which will undermine the private, gated nature of the community. (See, **Exhibit E**, Constraints and Guidelines, No. 5.)

These are but a few of the conflicts between RTRP and the VMAC. VMAC has had an engineering analysis done examining these and other issues that arise if RTRP is imposed on the VMAC site, the results of which are summarized in **Exhibit G**.

The impacts are not just physical and engineering ones. The drop in the number of units, the loss of amenities characteristic of higher-end apartment residential communities, and the impacts from the large overhead wires proposed by the RTRP being immediately adjacent to the site, create significant detriment to the VMAC market position and appeal. This is no small matter; the RTRP calls into sharp question the continuing viability of the Vernola Marketplace Apartments project as presently conceived.

Attached hereto as **Exhibit H** is a letter from the Western National Group, a party with whom VMAC has been negotiating for joint development of the site for over three years. As Western National's letter indicates, the combination of the physical and marketplace impacts that would result from construction of the RTRP as presently proposed will result in the loss of a development partner⁴. Given Western National's scope and expertise in this market segment, VMAC has every reason to suspect that other sophisticated market players would react similarly. The unfortunate result is, and has been, inhibition of the owners' ability to reach a successful agreement for development of the property. Development of the RTRP as presently proposed therefore threatens the existing entitlements in their entirety.

2. **A conceptual site development layout depicting how the Vernola Marketplace Apartments site would be configured if the RTRP project were built as depicted by SCE. Please include a summary of units lost or gained in relationship to the original Vernola design. This is necessary because the reduction in buildings and apartment units associated with the revised site**

⁴ WNG concludes that the three buildings left on the westerly portion of the main north-south access road for the project (Buildings Nos. 2, 4 and 6) are not rentable. The conflicts with the present site plan are demonstrated in **Exhibit I**. Loss of these three buildings subtracts another 50 units, bringing the total lost to 215.

Jensen Uchida
November 30, 2015
Page 6

design would likely not be identical to that depicted in the SCE conflict map for the current design.

This data request cuts to the heart of the VMAC owners' current struggles with the RTRP's proposed alignment, and the pendency of the RTRP project generally. There is little question that any revised site plan "would likely not be identical" to that depicted in SCE's conflict map. Respectfully, however, it is currently impossible for the VMAC owners to provide any kind of conceptual site development layout depicting how it might be configured otherwise. Any such "substitute" development proposal would require hundreds of thousands of dollars of consultant and engineering analyses, and even then would be an exercise in speculation. No viable replacement plan can be formulated unless and until the RTRP project is completely designed, clarifying the current dizzying number of variables that RTRP foists upon the remainder property's utility and developability.

These variables include exactly where the right of way alignment will be, how wide it is, what types of towers and lines will be placed where, what fall zone protections will be required, what property rights SCE proposes to acquire within the right of way and what rights it will leave to the underlying owner, what processes the underlying owner will have to endure to exercise those reserved rights, how the RTRP will affect existing grade and infrastructure, and what rights SCE will acquire over the remaining property to access its facilities within the right of way, to name only a few. As persons who neither asked for nor particularly care for the RTRP facility on their property, the VMAC owners are understandably unenthusiastic to undertake all the engineering work required to chase their own tails on redesign of their currently approved site plan. Instead, they believe it more appropriate to look to SCE and RPU to be more specific on their own project, and the burdens they propose to create.

3. Details on the current construction and buildout schedule for the Vernola Marketplace Apartments project.

Since the City of Jurupa Valley approved their project, the VMAC owners have been proceeding with implementing their development. They have conducted negotiations with Western National Group, as identified above, and have initiated a series of inquiries with a host of financing institutions in order to secure construction financing to allow the project to go forward. The property owners have fielded a number of inquiries from both interested developers and perspective purchasers, who appear anxious to capitalize on present favorable real estate market conditions for the type of luxury high-density apartment community the City's development entitlements contemplate.

Unfortunately, the owners are battling RTRP-generated impediments to these efforts. Both Southern California Edison and City of Riverside have initiated litigation against the City of Jurupa Valley, also naming the VMAC owners, challenging the CEQA approval by the City

Jensen Uchida
November 30, 2015
Page 7

for the site's development entitlements. *City of Riverside v. City of Jurupa Valley*, Riverside County Case No. RIC1504611, was filed on April 17, 2015. *Southern California Edison v. City of Jurupa Valley, et al.*, San Bernardino Superior Court Case No. CIVDS1513522, was filed on the same day. Together, these actions seeks invalidation of the VMAC's development approvals, based specifically on an alleged failure to adequately analyze the Vernola Marketplace Apartments project on the pending RTRP.⁵

Given the uncertainties of the pendency of the RTRP on the project site generally, and the two existing CEQA actions pending against project entitlements, the CPUC can appreciate that the project developers now face providing disclosures that are an anathema to successful negotiations for development partners, construction financing, and ultimate construction of the project. The VMAC owners are hopeful the RTRP contingencies will soon be resolved, including because SCE and RPU's baseless litigation will be decided by the Superior Court this spring and is expected to be tossed out. And thus, despite facing inappropriate risks SCE and RPU are creating, the VMAC owners are proceeding with their development efforts.

Toward these efforts, the VMAC owners are preparing grading permit submittals to begin site preparation efforts, with the goal of expediting downstream development processes. VMAC estimates approximately four to six months will be required to finalize and permit grading plans, and another six months would be required for actual grading. Concurrently, VMAC estimates approximately twelve months for finalizing the architectural and engineering required to proceed to construction-ready plans and permits. Again assuming no impediments from RTRP, VMAC estimates construction financing and actual construction would be completed nine months thereafter. This means the project would be delivered in Summer 2017.

Conclusion.

The VMAC owners share the CPUC's frustration with the inability to offer specific answers to what options remain for them, their entitlements, and their property in the wake of the costs, uncertainties, and market impediments generated by the pendency of the RTRP. The VMAC owners are diligently proceeding with their development as circumstances permit, and look forward to the time when the alleged benefits RTRP may bring to the electrical users of the City of Riverside no longer impede the housing needs of the City of Jurupa Valley, and the VMAC project's attempt to meet them.

⁵ The very decision of the CPUC requiring SEIR on the RTRP would seem to negate this core allegation in both CEQA challenges. If the RTRP design and environmental review is not yet complete, it can hardly be said that there is sufficient specificity on RTRP project design, or even on whether it will go forward at all, upon which to base a successful CEQA challenge. Despite this anomaly, both City of Riverside and SCE have refused VMAC's request to dismiss these pending CEQA actions. That position betrays concern for RTRP project processing timelines, far more than any concern for the environment.

Jensen Uchida
November 30, 2015
Page 8

We appreciate the opportunity to provide what information we can, and to explain our position on RTRP's impacts. If there are further questions or items of information that would assist the CPUC in defining the baseline for its SEIR work, we invite you to contact us. We also would be pleased to make ourselves available to meet with you when you are in the area.

RUTAN & TUCKER, LLP



David B. Cosgrove

DBC:mrs

Enclosures:

- Exhibit A – Approved VMAC site plan
- Exhibit B – SCE RTRP/VMAC overlay
- Exhibit C – VMAC Site Plan with RTRP Right of Way
- Exhibit D – Line J diagram
- Exhibit E – SCE Right of Way Constraints and Guidelines
- Exhibit F – Excerpts, SCE Siting Report and RTRP Siting Report
- Exhibit G – Webb Engineering analysis of RTRP/VMAC conflict
- Exhibit H – Letter from Western National Group
- Exhibit I – Rendering of RTRP Conflict with VMAC Project