



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

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In the Matter of the Application of SOUTHERN ) Application No. 07-06-031  
CALIFORNIA EDISON COMPANY (U 338-E) )  
for a Certificate of Public Convenience and ) (Filed June 29, 2007)  
Necessity Concerning the Tehachapi Renewable )  
Transmission Project (Segments 4 through 11) )  
)

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**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)  
RESPONSE TO APPLICATIONS FOR REHEARING OF DECISION 09-12-044  
SUBMITTED BY THE ACTON TOWN COUNCIL, CALIFORNIANS FOR  
RENEWABLE ENERGY, ANTELOPE VALLEY-EAST KERN WATER AGENCY, AND  
THE CITY OF CHINO HILLS**

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	DISCUSSION.....	2
A.	The Commission Applied the Appropriate Burden of Proof in Reviewing and Approving the CPCN Application for TRTP.....	2
B.	The Decision Correctly Concludes that TRTP Constitutes a Connected Whole Warranting the Presumption of Need under Section 399.2.5.....	2
C.	The Commission’s Approval of the Environmentally Superior Alternative Complies with the California Environmental Quality Act .....	5
1.	The Substantial Evidence Test, Resolving All Reasonable Doubts in Favor of the Commission’s Decision, Applies to the Applicants’ CEQA Claims .....	5
2.	The Commission Need Not Wait for the Issuance of the Angeles National Forest’s Final EIS to Approve the Project Under CEQA .....	7
3.	Review and Approval of TRTP Separately from Other SCE Transmission Projects in the Tehachapi Area Does Not Constitute Improper Segmentation under CEQA.....	12
4.	Potential Environmental Impacts of Potential Wind Projects in Tehachapi Need Not Be Analyzed as Part of the Project and Are Appropriately Analyzed as Cumulative Impacts of the Project.....	14
5.	Insignificant Changes to the Project’s Design in the Acton Area Are the Result of Final Engineering and Do Not Warrant Additional CEQA Review .....	17
6.	Distributed Generation Is Not a Viable Alternative to TRTP.....	19
7.	The Final EIR Properly Analyzed the No Project Alternative .....	21
8.	The Final EIR Properly Analyzed the Fire Safety Impacts of the Project and Alternative 4CM .....	24
9.	The Final EIR Properly Analyzed the Hazardous Materials Impacts of Alternative 4CM.....	32
10.	The Commission Properly Determined that the 21st Century Proposal Cannot Lawfully Be Imposed on SCE.....	33
D.	The Commission Did Not Err in Finding that the Environmentally Superior Alternative Complies with General Order 95 .....	36
1.	Substantial Evidence Supports Finding that TRTP, including Segment 8A, Complies with General Order 95 .....	36
2.	Chino Hills’ Interpretation of “Accepted Good Practice” Precludes Innovation and Advancement .....	38
E.	The Commission Did Not Err in Finding that the Environmentally Superior Alternative Complies with Public Utilities Code Section 1002.....	38
1.	The Commission Considered Community and Aesthetic Impacts in Determining the Environmentally Superior Alternative.....	39

2.	The Commission Appropriately Addresses Section 1002 Factors, Including Aesthetic Impact, in the Conclusions of Law.....	40
F.	The Decision Correctly Determines that the Garamendi Principles Support Adoption of Segment 8A as Proposed by SCE.....	42
G.	The Commission Supported Its Determination that Alternative 4CM Would Significantly Delay Completion of TRTP and Endanger Progress Towards the State’s RPS Goals with Substantial Evidence.....	43
1.	DTSC Approval and Remediation Issues Would Significantly Delay Completion of the Project.....	43
2.	Approval of an Amendment to the Chino Hills State Park General Plan Required by Alternative 4CM Would Delay Completion of the Project .....	45
3.	The Construction of a 500 kV GIS Switching Station as Required by Alternative 4CM Could Delay Completion of the Project.....	49
4.	The Commission Appropriately Determined that SCE’s Easements in the Chino Hills Area Are Sufficient for the Project and Thus the Easement Lawsuit Will Not Create Substantial Delay .....	51
5.	Timely Completion of Segment 8A is Critical for TRTP’s Contribution to Progress towards California’s RPS Goals .....	57
H.	The Commission’s Decision to Approve TRTP is Supported by Evidence in the Voluminous Record, Contradicting Allegations Concerning Mr. Flynn’s Employment at SCE .....	60
I.	Antelope Valley-East Kern Water Agency’s Application for Rehearing Should Be Denied .....	62
J.	CARE’s Request for Oral Argument Should Be Denied.....	63
III.	CONCLUSION.....	64

**TABLE OF AUTHORITIES**

**FEDERAL CASES**

*Ctr. for Biological Diversity v. U.S. Dep’t of Interior*,  
581 F.3d 1063 (9th Cir. 2009) ..... 23

*Dolan v. City of Tigard*,  
512 U.S. 374 (1994)..... 35

*Kettle Range Conservation Group v. U.S. Forest Serv.*,  
147 F.3d 1155 (9th Cir. 1998) ..... 12

*Laguna Greenbelt v. U.S. Dep’t of Transp.*,  
42 F.3d 517 (9th Cir. 1994) ..... 11

*Nollan v. Cal. Coastal Comm’n*,  
483 U.S. 825 (1987)..... 35

**STATE CASES**

*A Local & Regional Monitor (ALARM) v. City of Los Angeles*,  
12 Cal. App. 4th 1773 (1993) ..... 10

*Al Larson Boat Shop, Inc. v. Bd. of Harbor Comm’rs*,  
18 Cal. App. 4th 729 (1993) ..... 20

*Barthelemy v. Chino Basin Mun. Water Dist.*,  
38 Cal. App. 4th 1609 (1995) ..... 7, 28

*Bello v. ABA Energy Corp.*,  
121 Cal. App. 4th 301 (2004) ..... 53

*Bowers v. Bernards*,  
150 Cal. App. 3d 870 (1984) ..... 26

*Bowman v. City of Petaluma*,  
185 Cal. App. 3d 1065 (1986) ..... 10

*Browning-Ferris Indus. v. City Council*,  
181 Cal. App. 3d 852 (1986) ..... 7

*Cal. Farm Bureau Fed’n v. Cal. Wildlife Conservation Bd.*,  
143 Cal. App. 4th 173 (2006) ..... 13

<i>Cal. Motor Transp. Co. v. Pub. Utils. Comm'n</i> , 59 Cal. 2d 270 (1963) .....	40, 41
<i>Camp Meeker Water Sys. v. Public Utils. Com'n</i> , 51 Cal. 3d 845 (1990) .....	51
<i>County of Inyo v. City of Los Angeles</i> , 71 Cal. App. 3d 185 (1977) .....	18
<i>Defend the Bay v. City of Irvine</i> , 119 Cal. App. 4th 1261 (2004) .....	6
<i>Del Mar Terrace Conservancy v. City Council</i> , 10 Cal. App. 4th 712 (1992) .....	8, 13, 16
<i>Dry Creek Citizens Coalition v. County of Tulare</i> , 70 Cal. App. 4th 20 (1999) .....	18
<i>Eden Hosp. Dist. v. Belshe</i> , 65 Cal. App. 4th 908 (1998) .....	25
<i>Ehrlich v. City of Culver City</i> , 12 Cal. 4th 854 (1996) .....	35
<i>Envtl. Council of Sacramento v. City of Sacramento</i> , 142 Cal. App. 4th 1018 (2006) .....	6, 29, 34
<i>Fund for Env'tl. Def. v. County of Orange</i> , 204 Cal. App. 3d 1538 (1988) .....	10
<i>Gray v. McCormick</i> , 147 Cal. App. 4th 1019 (2008) .....	54
<i>Greenebaum v. City of Los Angeles</i> , 153 Cal. App. 3d 391 (1984) .....	6
<i>Greyhound Lines, Inc. v. Pub. Utils. Comm'n</i> , 65 Cal. 2d 811 (1967) .....	41, 50
<i>Harris v. City of Costa Mesa</i> , 25 Cal. App. 4th 963 (1994) .....	7
<i>Hartwell Corp. v. Superior Court</i> , 27 Cal. 4th 256 (2002) .....	56
<i>In re Bay-Delta Programmatic Env'tl. Impact Report Coordinated Proceedings</i> , 43 Cal. 4th 1143 (2008) .....	20

<i>Karlson v. Camarillo</i> , 100 Cal. App. 3d 789 (1980) .....	7
<i>Koponen v. Pac. Gas and Elec. Co.</i> , 165 Cal. App. 4th 345 (2008) .....	55
<i>Los Angeles Unified School Dist. v. City of Los Angeles</i> , 58 Cal. App. 4th 1019 (1997) .....	35
<i>Marin Mun. Water Dist. v. KG Land Cal. Corp.</i> , 235 Cal. App. 3d 1652 (1991) .....	6
<i>Markley v. City Council of the City of Los Angeles</i> , 131 Cal. App. 3d 656 (1982) .....	6
<i>Mehdizadeh v. Mincer</i> , 46 Cal. App. 4th 1296 (1996) .....	53
<i>Mira Mar Mobile Cmty. v. City of Oceanside</i> , 119 Cal. App. 4th 477 (2004) .....	20
<i>Mountain Lion Found. v. Cal. Fish &amp; Game Comm'n</i> , 16 Cal. 4th 105 (1997) .....	8
<i>No Oil, Inc. v. City of Los Angeles</i> , 13 Cal. 3d 68 (1974) .....	8
<i>Pac. Gas &amp; Elec. Co. v. Crockett Land &amp; Cattle Co.</i> , 70 Cal. App. 283 (1924) .....	53
<i>Salvaty v. Falcon Pub. Television</i> , 165 Cal. App. 3d 798 (1985) .....	53
<i>San Diego Gas &amp; Elec. Co. v. Superior Court</i> , 13 Cal. 4th 893 (1996) .....	52, 54
<i>San Franciscans for Reasonable Growth v. City &amp; County of San Francisco</i> , 151 Cal. App. 3d 61 (1984) .....	35
<i>Sierra Club v. W. Side Irrigation Dist.</i> , 128 Cal. App. 4th 690 (2005) .....	14
<i>Smith v. County of Los Angeles</i> , 211 Cal. App. 3d 188 (1989) .....	6
<i>Toward Util. Rate Normalization v. Pub. Utils. Comm'n</i> , 22 Cal. 3d 529 (1978) .....	26, 39, 41, 49, 50

<i>Waters v. Pac. Tel. Co.</i> , 12 Cal. 3d 1 (1974) .....	55
<i>W. Placer Citizens for an Agric. and Rural Env't v. County of Placer</i> , 144 Cal. App. 4th 890 (2006) .....	18
<i>W. States Petroleum Assn. v. Superior Court</i> , 9 Cal. 4th 559 (1995) .....	13
<i>Wildlife Alive v. Chickering</i> , 18 Cal. 3d 190 (1976) .....	8

### STATE STATUTES

Cal. Pub. Res. Code § 21000(g).....	8
Cal. Pub. Res. Code § 21080(e).....	6
Cal. Pub. Res. Code § 21082.2(c).....	6
Cal. Pub. Res. Code § 21083.7 .....	8
Cal. Pub. Res. Code § 21091(d)(1).....	60
Cal. Pub. Res. Code § 21166(b).....	10
Cal. Pub. Util. Code § 1705 .....	49
Cal. Pub. Util. Code § 1002(a).....	39
Cal. Pub. Util. Code § 1757(a)(4).....	26
Cal. Pub. Util. Code § 2106 .....	55

### CALIFORNIA REGULATIONS

Cal. Code Regs. tit. 14 § 15041(a).....	35
Cal. Code Regs. tit. 14 § 15124(c).....	17
Cal. Code Regs. tit. 14 § 15126.4(a)(4) .....	35
Cal. Code Regs. tit. 14 § 15126.6(e)(1) .....	22
Cal. Code Regs. tit. 14 § 15126.6(e)(3).....	22

Cal. Code Regs. tit. 14 § 15130(b).....	17
Cal. Code Regs. tit 14 § 15162(a)(2) .....	10
Cal. Code Regs. tit. 14 § 15222 .....	9
Cal. Code Regs. tit. 14 § 15262 .....	15
Cal. Code Regs. tit. 14 § 15355(b).....	17
Cal. Code Regs. tit. 14 § 15378(a).....	13
Cal. Code Regs. tit. 14 § 15384 .....	7
Cal. Code Regs. tit. 14 § 15384(a).....	6, 29, 34
Cal. Code Regs. tit. 20 § 2320 .....	42

**DECISIONS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

D.09-07-024 .....	1, 19
D.09-12-044 .....	2, 4, 12, 21, 22, 23, 26, 28, 30, 34, 35, 36, 37, 38, 39, 40, 42, 43, 45, 47, 49, 50, 56

## LIST OF COMMONLY USED ACRONYMS AND ABBREVIATIONS

Acton	Acton Town Council
Aerojet	Aerojet-General Corporation
Alternative 4CM	Alternative 4C Modified
AVEK	Antelope Valley-East Kern Water Agency
CAISO	California Independent System Operator
CARE	Californians for Renewable Energy
Chino Hills	City of Chino Hills
Commission	California Public Utilities Commission
CPCN	Certificate of Public Convenience and Necessity
CSRTP	CAISO South Regional Transmission Plan
Draft EIR/EIS	Draft Environmental Impact Report/Environmental Impact Statement
DTSC	Department of Toxic Substances Control
FERC	Federal Energy Regulatory Commission
Final EIR	Final Environmental Impact Report
GO-95	Commission General Order 95
kV	Kilovolt
MEC	Munitions and Explosives of Concern
MW	Megawatt
Park	Chino Hills State Park
PG&E	Pacific Gas & Electric Company
RCRA	Resource Conservation Recovery Act
ROW	Right-of-Way
RPS	Renewables Portfolio Standards
SB	Senate Bill

SCE	Southern California Edison Company
SDG&E	San Diego Gas & Electric Company
Segment 8A	SCE's Proposed Segment 8A of TRTP
Sunrise Powerlink	SDG&E Sunrise Powerlink Project
TRTP	Tehachapi Renewable Transmission Project
TWRA	Tehachapi Wind Resource Area

## **RECORD CITATION FORM**

Record exhibits are cited “[witness surname, if applicable], Ex. [number] at [chapter.page(s):line(s) [to the extent applicable].” The record transcript is cited “[witness surname, if applicable], Tr. [page(s):line(s)].”

Pursuant to Rule 16.1(d) of the Commission’s Rules of Practice and Procedure, Southern California Edison Company (SCE) hereby responds to the applications for rehearing of Decision (D.) 09-12-044 (D.09-12-044 or Decision) granting a CPCN for the construction, operation, and maintenance of the Tehachapi Renewable Transmission Project (TRTP or Project) filed by: (1) City of Chino Hills (Chino Hills); (2) Acton Town Council (Acton); (3) CALifornians for Renewable Energy (CARE); and (4) Antelope Valley-East Kern Water Agency (AVEK) (collectively, Applicants).

## I. INTRODUCTION

D.09-12-044 is lawful and is supported by substantial evidence in the voluminous record. Nonetheless, several parties now seek rehearing of issues that have been thoroughly litigated and decided by the Commission. Under Rule 16.1, a party to a proceeding may seek an application for rehearing of a Commission decision, but such applications shall:

set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a *legal* error, so that the Commission may correct it expeditiously.

Commission Rule 16.1(c) (emphasis added). Put more simply, an applicant for rehearing must identify a *legal* error; it cannot simply rehash evidentiary issues presented earlier in the proceedings. As previously held by the Commission, “[t]he fact that there is disagreement or contrary evidence on a holding does not indicate any legal error in the Decision.” *See* D.09-07-024 at 2 (holding that the vast majority of petitioner’s arguments for rehearing were improper attempts to relitigate evidentiary issues decided by the Commission).

The vast majority of the arguments presented in the Applicants’ applications are improper under Rule 16.1(c) because they merely dispute the evidentiary decisions underlying the Commission’s decision to grant a CPCN for the Project. Applicants’ attempts to repackage what are clearly evidentiary arguments as “legal error” in order to relitigate factual determinations

with which they disagree do not warrant review by the Commission under Rule 16.1(c). The remainder have no legal merit. SCE will avoid, to the extent possible, rearguing factual issues that have been addressed in briefing and/or the Decision, but rather will focus on the alleged legal errors raised by Applicants.

## II. DISCUSSION

### A. **The Commission Applied the Appropriate Burden of Proof in Reviewing and Approving the CPCN Application for TRTP**

In issuing D.09-12-044, the Commission appropriately applied the preponderance of the evidence standard to determine whether SCE, as the applicant, demonstrated the need for the issuance of the CPCN for TRTP. *See* D.09-12-044 at 7. Acton asserts erroneously that the clear and convincing evidence standard the Commission applies in general rate cases should apply to here because the reasonable costs of the Project approved by the CPCN will impact utility rates. *See* Acton Application at 33-34. In proceedings relating to SDG&E's Sunrise Powerlink Project (Sunrise Powerlink), however, the Commission found that the preponderance of the evidence standard is to be used in reviewing a CPCN application for a new transmission line even though the costs of the transmission project will impact ratepayers. *See* D.09-07-024 at 2-4. There is no reason to depart from this established burden of proof.<sup>1</sup> Accordingly, the Commission applied the correct burden of proof in reviewing the SCE's application for TRTP.

### B. **The Decision Correctly Concludes that TRTP Constitutes a Connected Whole Warranting the Presumption of Need under Section 399.2.5**

As the Commission concluded, the Project as a whole is required to reliably interconnect up to 4,500 MW of new generation—the vast majority of which will be renewable—in the Tehachapi area. D.09-12-044 at 9-11. *See also* SCE's Reply Brief at 11-17. Despite the fact that this conclusion is supported by ample evidence in the record, Acton continues to

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<sup>1</sup> If the Commission determines that a clear and convincing standard of review should apply, SCE submits that there is ample evidence in the record supporting the Commission's decision, as demonstrated in the Decision, the voluminous evidentiary record, and the extensive briefing in this proceeding.

advance its flawed “TRTP Light” proposal, largely rehashing arguments already presented to and rejected by the Commission during this proceeding.

Acton’s “TRTP Light” will not reliably interconnect up to 4,500 MW of new generation from Tehachapi to the load center in the Los Angeles Basin. *Id.* at 18-28. It is based on a faulty premise that interconnection means simply connecting new generation at some point at the existing grid (here, north of Vincent). What Acton fails to recognize is that the existing grid must be prepared to deliver the energy from the generators at the interconnection point (here, in the Tehachapi area) to customers in the Los Angeles Basin. Put another way, the existing grid in the Los Angeles Basin must undergo significant upgrades to handle the potential 4,500 MW of new generation from the Tehachapi area. *See Ex. ATC-05, Attachment A at 1* (“It has been widely recognized that because of the remoteness of the TWRA [Tehachapi Wind Resources Area] from the ISO Controlled Grid and insufficient existing transfer capability, significant transmission infrastructure upgrades must be constructed to interconnect and deliver energy from resources located in the TWRA.”).

To accomplish this feat is incredibly complex and cannot be approached in the overly simplistic method Acton urges the Commission to adopt. The Commission properly concluded that TRTP as a whole qualifies for the presumption of need under Section 399.2.5 based on substantial evidence in the record, including:

- The configuration of TRTP was the result of a multi-year planning process including a broad range of stakeholders, such as the Commission, the California Independent System Operator (CAISO), SCE, Pacific Gas & Electric Company (PG&E) and multiple generators. *See SCE Opening Brief at 11-15; SCE Reply Brief at 18-19.*
- The CAISO, the organization tasked by the Federal Energy Regulatory Commission (FERC) to coordinate, control, and monitor the operation of the majority of California’s high-voltage transmission grid, approved TRTP as proposed by SCE

(with very minor variations) in January 2007. *See* CAISO’s Board of Governors’ Approval (January 18, 2007), of which the Commission has taken official notice.<sup>2</sup>

- Mr. Jorge Chacon, a SCE transmission planning engineer heavily involved in TRTP’s multi-year planning process, testified credibly that: (1) all aspects of TRTP are necessary to reliably interconnect up to 4,500 MW of new generation to the grid, and (2) Acton’s “TRTP Light” Proposal would not. *See* D.09-12-044 at 11; Chacon, Tr. 752:1-3, 752:12-16; Chacon, Ex. SCE-01 at 3:3-8; Chacon, Ex. SCE-04 at 7:20-10:9, 11:18-21.<sup>3</sup>
- In contrast, “TRTP Light” is supported only by the testimony of Ms. Jacqueline Ayer, who lacks relevant training, expertise, and an understanding of transmission planning fundamentals. This is demonstrated by her misuse of the CAISO’s 2009 Transmission Plan. In its reply brief, SCE provided a straightforward explanation of why the 2009 Transmission Plan—the only study upon which Acton relies—cannot be used for the propositions Acton uses it to support. *See* SCE Reply at 20-22. Acton’s heated and confused response to this straightforward explanation demonstrates a lack of understanding of the 2009 Transmission Plan report and the limitations of the model upon which the study referenced in that report was based. Acton Application at 5, n.1. While Acton and its witness have made an admirable effort to parse through the technically dense transmission planning materials, dedication and passion do not surmount the training and experience of SCE’s transmission planners, including Mr. Chacon.

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<sup>2</sup> D.09-12-044 at 11. The CAISO approval is available at [www.caiso.com/1b6b/1b6bb5ca7400.pdf](http://www.caiso.com/1b6b/1b6bb5ca7400.pdf) (last visited February 2, 2010).

<sup>3</sup> Acton’s contention that Mr. Chacon “confirms” that the transmission line configurations proposed for TRTP Light are “identical” to the Project, and therefore “TRTP Light” would deliver the same 4,500 MW of transmission capacity, misrepresents Mr. Chacon’s testimony. *See* J. Chacon, SCE-04 at 8:19-9:20. Rather, Mr. Chacon’s testimony clearly outlines why “TRTP Light” is *not* a viable alternative to the Project. *See* J. Chacon, SCE-04 at 10-12.

- There are *no* electrical studies supporting Acton’s “TRTP Light” proposal, and SCE has identified numerous deficiencies in “TRTP Light” that render it an infeasible alternative to TRTP. In contrast, numerous electrical studies, such as those in CSRTP-2006, support the Project as approved by the Commission and CAISO.

In sum, there is substantial evidence in the record that supports the Commission’s decision that TRTP as a whole is required to reliably interconnect up to 4,500 MW of new generation from the Tehachapi area to the load center in the Los Angeles Basin. The Commission did not commit legal error in giving greater weight to the conclusions of the CAISO, the numerous agencies and stakeholders who contributed to the design of TRTP, and Mr. Chacon than to Acton’s testimony, and the Commission did not commit legal error in its determination that all segments of TRTP are necessary to access new renewable resources, thus qualifying for the presumption of need and eligibility for backstop recovery under Public Utilities Code Section 399.2.5.

**C. The Commission’s Approval of the Environmentally Superior Alternative Complies with the California Environmental Quality Act**

As the Final Environmental Impact Report (Final EIR) and the Decision demonstrate, the Commission supported its approval of the Environmentally Superior Alternative with extensive evidence and analysis in compliance with California Environmental Quality Act (CEQA). While Acton, CARE, and Chino Hills disagree with certain of the Commission’s CEQA determinations, the Applicants have not provided any grounds to refute the substantial evidence supporting these determinations. These CEQA determinations are valid and are a result of the Commission’s significant efforts to analyze the Project’s potential environmental impacts and to incorporate the public’s comments during the CEQA process.

**1. The Substantial Evidence Test, Resolving All Reasonable Doubts in Favor of the Commission’s Decision, Applies to the Applicants’ CEQA Claims**

The substantial evidence test applies to the Applicants’ CEQA claims. The test, which resolves all reasonable doubts in favor of the agency, recognizes that review of an EIR is “not for

perfection but for adequacy, completeness, and a good faith effort at full disclosure.” Cal. Code Regs. tit. 14, § 15151. Thus, a reviewing court “does not pass upon the correctness of the EIR’s environmental conclusions, but only upon its sufficiency as an informative document.” *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 392 (1988) (“*Laurel Heights I*”) (internal quotations omitted). A court “may not set aside an agency’s approval of an EIR on the ground that a different conclusion would have been equally or more reasonable.” *Marin Mun. Water Dist. v. KG Land Cal. Corp.*, 235 Cal. App. 3d 1652, 1660 (1991).

A lead agency’s approval of an EIR is valid as long as there is “any substantial evidence in the record to support the findings.” *Smith v. County of Los Angeles*, 211 Cal. App. 3d 188, 198 (1989) (emphasis in original). “Substantial evidence” means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” Cal. Code Regs. tit. 14, § 15384(a). Substantial evidence includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. Cal. Pub. Res. Code §§ 21080(e)(1), 21082.2(c). Under the substantial evidence test, reasonable doubts are resolved “in favor of the administrative finding and decision.” *Laurel Heights I*, 47 Cal. 3d at 393 (internal quotations omitted).

A party challenging a lead agency’s approval of an EIR bears the burden of fairly characterizing the evidence that the agency relied on and explaining why it is insufficient. Thus, a party challenging the approval “must lay out the evidence favorable to the other side and show why it is lacking.” *Defend the Bay v. City of Irvine*, 119 Cal. App. 4th 1261, 1266 (2004); *accord Env’tl. Council of Sacramento v. City of Sacramento*, 142 Cal. App. 4th 1018, 1026-28 (2006). “Failure to do so is fatal.” *Defend the Bay*, 119 Cal. App. 4th at 1266; *see also Markley v. City Council*, 131 Cal. App. 3d 656, 673 (1982) (criticizing project opponents who claim that there is no substantial evidence in the record without a meaningful effort to analyze the evidence supporting the agency’s determination).

Under the substantial evidence test, the lead agency can give more weight to one expert than to another. *Greenebaum v. City of Los Angeles*, 153 Cal. App. 3d 391, 413 (1984). The

agency also can “choose between differing expert opinions.” *Browning-Ferris Indus. v. City Council*, 181 Cal. App. 3d 852, 863 (1986). As the California courts have established, “[d]isagreement among experts does not make an EIR inadequate.” *Karlson v. Camarillo*, 100 Cal. App. 3d 789, 805 (1980); *accord* Cal. Code Regs. tit. 14, § 15151. Project opponents cannot simply point to additional evidence in the record that may support a conclusion that differs from the lead agency’s determination. *See* Cal. Code Regs. tit. 14, § 15384. Whether “other conclusions might also be reached” is irrelevant. *Id.*

In sum, the test is whether “based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency”—not whether the project opponents claim that the evidence is insufficient. *Harris v. City of Costa Mesa*, 25 Cal. App. 4th 963, 969 (1994). If the record contains any substantial evidence supporting the agency’s determination, then the determination must be upheld. *Barthelemy v. Chino Basin Mun. Water Dist.*, 38 Cal. App. 4th 1609, 1620 (1995). The voluminous record in this proceeding and thorough analysis of the Project’s potential environmental impacts in the Final EIR provides ample evidentiary support for the Commission’s decision to certify the Final EIR and adopt the Environmentally Superior Alternative.

**2. The Commission Need Not Wait for the Issuance of the Angeles National Forest’s Final EIS to Approve the Project Under CEQA**

CARE objects to the Commission’s decision to move forward in its certification of the Final EIR while the Angeles National Forest (ANF) has delayed issuing the Final Environmental Impact Statement (EIS) due to the Station Fire, which occurred nearly entirely on ANF lands just before the Final EIR/EIS was to go to print. *See* CARE Application at 2-5; Final EIR, Appendix L at 1 (discussing rationale for issuance of Final EIR only). The Commission did not commit legal error in issuing the Final EIR pursuant to CEQA prior to the conclusion of the ANF’s environmental review of TRTP under the National Environmental Policy Act (NEPA). While the two environmental statutes have similar goals, these two environmental statutes differ in important respects, as CARE acknowledges. CARE Application at 4. One such difference is

important here, namely, what can trigger the preparation of a supplemental document to analyze the impacts of the Station Fire, which occurred nearly entirely on ANF lands. *See* Final EIR, Appendix L at 1.

**a. Because the Commission is a State Agency, It Must Satisfy CEQA’s Environmental Review Requirements Only**

As a preliminary matter, CARE’s application for rehearing assumes is based in part on the misunderstanding that the Commission must satisfy NEPA before it can approve TRTP. Only federal agencies, such as the Forest Service, must satisfy the requirements of NEPA. Cal. Pub. Res. Code § 21000(g); *contra* 42 U.S.C. § 4332. Because the Commission is a California—not federal—agency, it must comply only with the requirements of CEQA and has no obligation to comply with NEPA. *Id.*<sup>4</sup> The federal agencies with jurisdiction over TRTP, including the ANF, will make their own evaluation of TRTP’s potential environmental impacts as required by NEPA prior to any approval of the portions of TRTP under federal jurisdiction. *Id.* Therefore, the ANF’s NEPA analysis need not be complete before the Commission may move forward with its approval of TRTP.

**b. There is No Requirement that the Commission and the ANF Concurrently Conclude the CEQA and NEPA Review Process**

Pursuant to both federal and state regulations, the Commission and the ANF coordinated efforts to create a joint Draft EIR/EIS for TRTP, as encouraged by applicable federal and state regulations. *See* Cal. Pub. Res. Code § 21083.7 (directing that “whenever possible” use the

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<sup>4</sup> SCE recognizes that in certain circumstances, NEPA decisions may be used as persuasive authority in CEQA cases. *See, e.g., No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 86 n.21 (1974); *Del Mar Terrace Conservancy, Inc. v. City Council*, 10 Cal. App. 4th 712, 732 (1992). Because NEPA and CEQA differ with respect to the requirements for a supplemental environmental review, however, NEPA authority is inapplicable with respect to this issue. *See Wildlife Alive v. Chickering*, 18 Cal. 3d 190, 202 (1976) (where the requirements of CEQA and NEPA differed, it was inappropriate to apply NEPA standards to questions under CEQA); *Mountain Lion Foundation v. Cal. Fish & Game Comm’n*, 16 Cal. 4th 105, 121 (1997) (holding that decision to delist an endangered species designated under California law was subject to CEQA even though a listing of an endangered species under the federal Endangered Species Act did not require NEPA review).

environmental impact statement for the environmental impact report); 40 C.F.R. § 1506.2 (encouraging interagency cooperation in the preparation of one document that satisfies both statutes, but recognizing that circumstances may preclude cooperation and joint documents). Federal and state agencies reviewing a project may differ in perspective or goals, however, as recognized by the Council of Environmental Quality (CEQ). *See* CEQ, 40 Frequently Asked Questions, No. 22, 46 Fed. Reg. 18,026, 18,032-33 (Mar. 23, 1981) (as amended) (stating that because federal and state agencies may differ in perspectives or goals, federal agencies should “adopt a flexible, cooperative approach” in the use of joint documents). Joint documents are a convenience to avoid duplicative review and cost where possible, but they are not mandated by law as CARE erroneously suggests.

Rather, each federal and state agency must make its own evaluation on whether the record before it complies with the relevant environmental statute, and the agencies may make that decision at different times. CARE cites no authority supporting its proposition that the federal and state agencies must conclude the environmental review process in tandem, and research has revealed none. Rather, the plain language in the CEQA Guidelines, CEQ’s NEPA regulations and applicable case law refute CARE’s assertion, because they reflect circumstances in which the state and federal environmental review may follow different timelines. *See* Cal. Code Regs. tit. 14, § 15222 (“If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency *by the time when the lead agency will need to consider an EIR or negative declaration*, the lead agency *should try to prepare a combined EIR-EIS . . .*”) (emphasis added); 42 U.S.C. § 4332(D) (providing that a federal agency may adopt a previously prepared state environmental impact statement, *e.g.*, an EIR, under certain circumstances). Indeed, both state and federal agency practice are replete with examples of projects where federal and state environmental review and decision-making proceeded along different timelines due to a host of various circumstances.

Here it has been suggested that the ANF may require a supplemental EIS to assess impacts on the Forest associated with the Station Fire. Under CEQA, a supplemental EIR is

required when, among other things, “[s]ubstantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR . . . due to the involvement of new significant, environmental effects or a substantial increase in the severity of previously identified significant effects.” Cal. Code Regs. tit 14 § 15162(a)(2); *accord* Cal. Pub. Res. Code § 21166(b). Accordingly, when circumstances change that “do not cause any significant impacts other than those already contemplated by the EIR, CEQA does not require preparation of a subsequent EIR.” *A Local & Regional Monitor (ALARM) v. City of Los Angeles*, 12 Cal. App. 4th 1773, 1803 (1993) (emphasis added) (reformulation of traffic impacts already addressed in the EIR did not require major modifications to the EIR); *accord Fund for Env'tl. Def. v. County of Orange*, 204 Cal. App. 3d 1538, 1546-48 (1988) (changed conditions that did not necessitate a change or increase in the mitigation measures already recommended in the EIR did not require major modifications to the EIR); *Bowman v. City of Petaluma*, 185 Cal. App. 3d 1065, 1079 (1986) (changed conditions that modified traffic flow but still left the overall impact of traffic virtually the same did not require major modifications to the EIR).

Here, the Commission closely reviewed the impacts of the Station Fire in a thorough 94-page addendum which analyzed the impacts of the Station Fire in every category within the Final EIR.<sup>5</sup> The Commission concluded, among other things, that:

- The Station Fire did not introduce new significant biological impacts. *See, e.g.*, Appendix L at 13, 20, 25, 28.
- The Station Fire did not alter the nature or significance of the Project’s impacts to air quality. *See id.* at 3-9.
- The Station Fire did not alter the nature or significance of the Project’s cultural resource impacts. *See id.* at 30-32.

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<sup>5</sup> If some changes or additions are necessary, but not to the level triggering preparation of a supplemental EIR, an addendum may be prepared discussing the changed conditions. *See* Cal. Code Regs. tit. 14, § 15164(a).

- The Station Fire did not alter the nature or significance of the Project’s noise impact. *See id.* at 51-55.
- While “[t]he Station Fire would affect the magnitude of the Project’s contribution to several cumulative impacts, . . . the effects of the Station Fire do not alter the nature or significance of the proposed Project’s contribution to cumulative effects described in the EIR/EIS.” Final EIR, Appendix L at 89.

Nothing in CARE’s application disputes this conclusion. Because the Station Fire did not alter the nature or significance of impacts already evaluated in the Final EIR, there are no “major revisions” necessary to the Final EIR on account of the Station Fire. The Commission, therefore, need not prepare a Supplemental EIR under CEQA prior to approving TRTP.

In contrast, under NEPA, the ANF would be required to prepare a supplemental EIS when: (1) the agency makes substantial changes to the project that are relevant to environmental concerns; or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9. SCE does not believe that a Supplemental EIS is necessary because, as demonstrated in the Commission’s analysis, the changed conditions due to the Station Fire will not alter the nature or significance of the Project’s environmental impacts.

The Ninth Circuit squarely confronted an analogous situation in *Laguna Greenbelt v. United States Dep’t of Transp.*, 42 F.3d 517, 529-30 (9th Cir. 1994). In *Laguna Greenbelt*, a federal agency approved an eight-lane highway in an open space in Orange County, and determined it was not necessary to prepare a supplemental EIS after wildfires swept through the project area. *Id.* The Ninth Circuit upheld this decision, particularly because the initial EIS had taken into account the effects of the natural fires in the area, *id.*, just as the Final EIR did here with respect to the Tehachapi Fireshed, which includes the Project area within the ANF. *See* Final EIR at 3.16-11 to 3.16-13 (discussing the environmental effects of large wildfires in the Tehachapi Fireshed).

However, applicable NEPA regulations provide the ANF with the discretion to prepare a supplemental analysis, which the ANF has chosen to exercise here. *See* 40 C.F.R. § 1502.9(c)(2) (providing that federal agencies “[m]ay also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so”) (emphasis added). *See also Kettle Range Conservation Group v. U.S. Forest Serv.*, 147 F.3d 1155, 1157 (9th Cir. 1998) (suggesting that the need to complete a supplemental EIS was not necessary to take into account wildfires in a project area even though the federal agency exercised its discretion to supplement its analysis). The ANF’s decision to delay the release of the Final EIS while it reviews the impacts of the Station Fire does not undercut the Commission’s decision to move forward with its own approval as the two agencies are operating under different statutory guidelines.

Finally, there is no attempt to avoid analysis under CEQA or NEPA of the impacts of the Station Fire prior to the Project’s construction in the burn area, which is nearly entirely on ANF lands. *See* Final EIR, Appendix L at 1. Any impacts are analyzed not only in the addendum prepared by the Commission, but will also be analyzed by the ANF before it makes any decision on the Project across its lands. For these reasons, the Commission did not commit legal error in approving TRTP prior to the completion of the federal NEPA review process.

**3. Review and Approval of TRTP Separately from Other SCE Transmission Projects in the Tehachapi Area Does Not Constitute Improper Segmentation under CEQA**

Acton erroneously claims that the Commission segmented SCE’s efforts to upgrade transmission in the Tehachapi area into three smaller projects in violation of CEQA. In other words, Acton asserts that the following three projects should have been reviewed as one project based largely on the three project’s names: (1) Segment 1, as approved in D.07-03-012; (2) Segments 2 and 3, as approved in D.07-03-045; and (3) the current Project, Segments 4-11 (TRTP), as approved in D.09-12-044. Acton Application at 32. These projects are part of a larger effort by SCE and the Commission to reliably interconnect renewable generation in the Tehachapi area to load center in the Los Angeles Basin. All three projects were subject to review under CEQA, including the preparation of an EIR.

The CEQA Guidelines define a project to mean the “whole of an action.” Cal. Code Regs. tit. 14, § 15378(a). Nonetheless, an agency may permissibly segment review of a smaller part of a larger overall project when the smaller part has “independent utility.” See *Del Mar Terrace Conservancy v. City Council*, 10 Cal. App. 4th 712, 733-34 (1992), *disapproved of on other grounds in W. States Petroleum Ass’n v. Superior Court*, 9 Cal. 4th 559 (1995) (“[T]he various components of the overall SR 56 corridor were evaluated by the preparers of the EIR as separate projects with independent utility, regardless of the completion or noncompletion of each other portion of the overall project.”).

Segments 1 and Segments 2 and 3 have utility independent of TRTP, as plainly demonstrated by the fact that nearly all of Segment 1 and Segments 2 and 3 are constructed, energized, and operating—while TRTP is still in the process of obtaining its approvals. As in *Del Mar Terrace*, therefore, Segment 1 and Segments 2 and 3 are “still viable” even without being connected to the Project. See 10 Cal. App. 4th at 734. The Commission appropriately analyzed Segment 1 and Segments 2 and 3 as cumulative impacts of the Project in the Final EIR. See Final EIR at 2-132. The Commission therefore did not impermissibly segment the Project under CEQA as alleged by Acton.

Moreover, the underlying purpose of Section 15378(a) is to ensure that agencies do not divide a project to avoid a CEQA review. See *Cal. Farm Bureau Fed’n v. Cal. Wildlife Conservation Bd.*, 143 Cal. App. 4th 173, 191 (2006) (“It would be improper for an agency to divide a project into separate parts to avoid CEQA review”); *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs*, 91 Cal. App. 4th 1344, 1357 (2001) (defining “segmentation” to mean when “an agency splits a large project into small pieces in order to avoid detailed environmental review”). All three transmission projects underwent a thorough CEQA review, including the preparation of an EIR.<sup>6</sup> The Commission did not act for the purpose of evading CEQA review.

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<sup>6</sup> The Final EIR for Segment 1 is available at <http://www.cpuc.ca.gov/environment/info/asp/antelopepardee/antelopepardee.htm>. The

**4. Potential Environmental Impacts of Potential Wind Projects in Tehachapi Need Not Be Analyzed as Part of the Project and Are Appropriately Analyzed as Cumulative Impacts of the Project**

CARE’s assertion that the Commission did not adequately consider the environmental impacts of the wind projects in the Tehachapi area that may be interconnected to TRTP is erroneous. Under CEQA, the wind projects need not be included within the scope of TRTP’s project definition because: (1) the wind projects are outside of the Commission’s jurisdiction; (2) the detailed information concerning many of the wind projects was too speculative and inadequate and those projects will undergo environmental review by the relevant land use agency; and (3) the Final EIR appropriately outlined the potential environmental impacts of the wind projects as cumulative effects of TRTP, and suggested mitigation on a programmatic level in a detailed 253-page report included in the Final EIR. *See* Final EIR, Section 6, Development of the Tehachapi Wind Resource Area.

**a. The Wind Projects Should Not Be Included as Part of the Project Because They Are Outside of the Commission’s Jurisdiction and SCE’s Control**

While CEQA prohibits “piecemeal” review of a project’s environmental impacts to prevent evasion of CEQA’s requirements, *see Berkeley Keep Jets Over the Bay Comm.*, 91 Cal. App. 4th at 1358, California agencies should avoid, when possible, expanding the scope of a project description so that it would include future actions overseen by separate state agencies in evaluating whether a future action should be included in a project description. D.05-11-026, Attachment B at ES-81. (“If there were no limitation [on expanding a project’s definition to include future actions under another agency’s jurisdiction], agencies with varying discretionary authority could be forced to try to impose mitigation measures on projects that are under the jurisdiction of a completely different agency to impose and monitor.”); *Sierra Club v. W. Side Irrigation Dist.*, 128 Cal. App. 4th 690 (2005) (holding that the separation of two projects into

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Final EIR for Segments 2 & 3 is available at <http://www.cpuc.ca.gov/Environment/info/aspen/atp2-3/atp2-3.htm>.

separate EIRs did not violate CEQA because, among other things, the two projects were approved by separate independent agencies).

Here, the Tehachapi-area wind projects are outside of the Commission's jurisdiction. The wind projects are or will be under the jurisdiction of another agency (such as Kern County), which will evaluate the potential environmental effects of those projects when those projects seek the relevant agencies' approval. Final EIR at 6-17 ("Future wind projects would undergo an individual environmental analysis and permitting process. It should be noted that the [Commission] has no jurisdiction over future wind projects located in the TWRA."). *See Nat'l Park and Conservancy Ass'n v. County of Riverside*, 42 Cal. App. 4th 1505, 1520 (1996) (holding that "[t]here are adequate environmental safeguards in the approach taken" because another agency with jurisdiction over future project "will have to conduct [an] environmental review" before operations commence). Similarly, the Tehachapi wind projects are outside of the control of SCE. They are owned and will be operated by other entities, many of which are not parties to the instant proceedings. Practically speaking, therefore, the Commission and SCE would be unable to dictate where the wind projects are located and how the wind projects are operated, or enforce the implementation of any mitigation. *See, e.g.*, Final EIR at 6-16 (explaining that mitigation measures proposed in Section 6 of the Final EIR are presented only "for consideration by decision makers as possible conditions for the approval of future wind projects within the TWRA").

**b. Many of the Wind Projects Are in the Preliminary Planning Stages Only and Therefore Cannot Undergo Meaningful Environmental Review Under CEQA**

CEQA does not require that the scope of the "project" include related actions that are only in the preliminary planning stages. *See* Cal. Code Regs. tit. 14, § 15262 ("A project involving only feasibility or planning studies for possible future actions which the agency, board or commission has not approved, adopted, or funded does not require the preparation of an

EIR[.]”). As explained in *Nat’l Parks and Conservation Ass’n*, delay of environmental review of future related actions is proper where the nature of the future actions is speculative:

Although discussion in general terms is required of possible future expansion of a project or other such action, where a proposed project itself has been fully evaluated in an EIR, discussion of separate projects may be omitted. Deferral of environmental assessment does not violate CEQA where an EIR cannot currently provide meaningful information about speculative future projects.

42 Cal. App. 4th at 1519-20 (citations omitted).

The majority of the wind projects that would interconnect with TRTP are in the initial planning stages only, and therefore there is significant uncertainty about the location, number, timing, and size of the potential renewable generation sources at this time, precluding meaningful environmental review. *See* Final EIR at 6-16 (explaining that at the time of the analysis, “no information was available on potential future wind development projects” other than a few projects described in more detail in Section 6 of the Final EIR). In other words, “it is difficult to see how much more detailed, useful information” about the wind projects can be supplied “when it is not known where they will be situated and who will be operating them.” *Nat’l Parks and Conservation Ass’n*, 42 Cal. App. 4th at 1518. With respect to the limited number of projects further along in the process, such as the Alta Wind Project and PdV Wind Energy Project,<sup>7</sup> the Final EIR discusses those projects in greater detail providing the

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<sup>7</sup> Alta Wind Project and PdV Wind Energy Project technically do not need TRTP to interconnect with the grid. *See* PdV Wind Energy Project Final EIR at 7-318 to 319 (“Completion of the TRTP is not a necessary prerequisite to the construction and operation of the project. . . . The proposed project can operate independently of the TRTP just as the TRTP can operate independently of the project.”). Therefore, because these wind projects have utility without TRTP, PdV Wind Energy Project and the Alta Wind Project should not be considered part of TRTP under CEQA. *See, e.g., Del Mar Terrace*, 10 Cal. App. 4th at 733-34 (“[T]he various components . . . were evaluated by the preparers of the EIR as separate projects with independent utility, regardless of the completion or noncompletion of each other portion of the overall project.”).

Commission with sufficient information upon which it may make its decision.<sup>8</sup>

The Commission expressly evaluated the issue raised by CARE and properly chose to review the potential environmental impacts of the wind projects as cumulative impacts of TRTP. *See* Final EIR at 2-129 to 2-130 (analysis of wind projects as cumulative impacts of the Project); Final EIR 6-1 to 6-2 (“[The wind] projects are *not* considered connected actions to TRTP and are outside the scope of the proposed action and alternatives for this EIR/EIS); Cal. Code Regs. tit. 14, § 15355(b) (“The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and *reasonably foreseeable probable future projects.*”) (emphasis added). The CEQA Guidelines provide that an EIR’s discussion of cumulative impacts “shall reflect the severity of the impacts and their likelihood of occurrence, *but the discussion need not provide as great detail as is provided for the effects attributable to the project alone.*” Cal. Code Regs. tit. 14, § 15130(b) (emphasis added).<sup>9</sup> The Commission’s analysis in the Final EIR of the potential impact of wind projects in Tehachapi Wind Resources Area amply satisfies this requirement. Accordingly, the Commission did not commit legal error with respect to its analysis of the potential environmental impacts of the Tehachapi-area wind projects.

**5. Insignificant Changes to the Project’s Design in the Acton Area Are the Result of Final Engineering and Do Not Warrant Additional CEQA Review**

Acton asserts that the Commission committed legal error when it included minor changes to the project description in the Final EIR. *See* Action Application at 34-37. The CEQA Guidelines provide that an EIR must contain only “[a] general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.” Cal. Code Regs. tit. 14, § 15124(c);

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<sup>8</sup> *See, e.g.*, Final EIR, Section 6 (discussing potential environmental impacts of Alta Wind Project throughout analysis); Final EIR, Appendix E (providing summary of the PdV Wind Energy Project EIR).

<sup>9</sup> *See also* Cal. Code Regs. tit. 14, § 15143 (“The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence.”).

*Dry Creek Citizens Coalition v. County of Tulare*, 70 Cal. App. 4th 20, 28 (1999) (“‘General’ means involving only the main features of something rather than details or particulars.”). The level of detail in the description of the Project provided in the Project’s EIR is not required under CEQA. *W. Placer Citizens for an Agric. and Rural Env’t v. County of Placer*, 144 Cal. App. 4th 890, 899 (2006) (“When interpreting CEQA, courts are not authorized to impose requirements not present in the statute.”).

Acton’s argument that minor changes to the project description violate CEQA ignores the fundamental principle that “[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 199 (1977). Acton also fails to recognize that the project description must not be enforced too literally because “absolute perfection is not required.” *Laurel Heights I*, 47 Cal. 3d at 406 (holding that an analysis “must be specific enough to permit informed decision making and public participation. . . . The need for a thorough discussion and analysis is not to be construed unreasonably, however, to serve as an easy way of defeating projects.”). As noted above, an agency must prepare a subsequent or supplemental EIR and allow additional public review and comment only when there are *substantial* changes to the project that result in new significant impacts. *See* discussion *supra* at 9-10.

Acton complains about a number of minor project changes that are largely the result of the final engineering process and were conveyed to the Commission as the information became available. The Commission’s decision to approve minor design changes and incorporate those into the Final EIR’s project description without recirculation does not constitute legal error. *See Dry Creek Citizens Coalition*, 70 Cal. App. 4th at 36 (“Appellants have not established that the general description of the diversion structures in the EIR coupled with approval of final designs after the project is approved violated any CEQA mandate.”).

For example, the minor changes to the design of towers along Segment 11 in the Acton area exemplify the process and why additional analysis under CEQA is unnecessary. SCE

initially proposed in its conceptual design to construct along a portion of Segment 11 a 500 kV single circuit Delta structure that ranged in size between 107 and 198 feet. Because this configuration would require a new SCE tower design, it would take approximately two years to design and test the new tower for safety and reliability standards.

Instead of creating a new tower design, SCE determined in final engineering that using the SCE standard 500 kV double circuit design would eliminate the delay and related costs of the new design initially proposed. Additionally, to overcome the right-of-way (ROW) placement issue and meet General Order 95 clearance requirements, the tower design will use one side of the 500 kV double circuit tower only, will modify the middle cross arm to mitigate any ice loading concerns and will be slightly taller than the initial design. *See* D.09-12-044, Attachment 3 at 10 (Final EIR, Figures 2.2-56 and 2.2-58 (Revised)). The transmission line will follow the same route through the Acton area, and the towers will have no additional significant environmental impacts than were analyzed previously. SCE conveyed this information to the Commission, which incorporated the information into the Final EIR. As is typical for a large infrastructure project, there will be many minor changes as a result of final engineering that SCE will submit to the Commission for review. The Commission's decision to incorporate these changes in the Final EIR without recirculation of the EIR does not constitute legal error.

#### **6. Distributed Generation Is Not a Viable Alternative to TRTP**

The Commission did not commit legal error under CEQA for excluding distributed generation as a project alternative in the Final EIR as CARE asserts. CARE Application at 8-11.<sup>10</sup> CARE ignores that the Commission considered at SCE's suggestion a "non-transmission system alternative," which would have included "the development of in-basin generation, [which] . . . could include distributed generation, such as solar panels installed on building rooftops." TRTP Alternatives Screening Report, Section 3 at A-112-113. However, the

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<sup>10</sup> Contrary to CARE's assertion, CARE Application at 13, the Commission considered a reasonable range of alternatives, as demonstrated in voluminous alternatives examined in the Alternative Screening Report attached to the Final EIR as Appendix A.

Commission appropriately concluded that this alternative was problematic because: (1) upgrades would still be required in the transmission system to integrate up to 4,500 MW of new generation; (2) there would be site-specific impacts associated with the construction and installation of the new in basin generation sources; (3) transmission upgrades may nonetheless be required to integrate the new in-basin sources into the transmission system; and most importantly, (4) the non-transmission system alternative would not have met the Project's basic objectives and purposes. *Id.*; see also FEIR Section 2.8 at 2-122, 2-127 (eliminating non-wire in-basin alternatives because "this alternative does not meet the basic objectives/purpose and need of the TRTP").

The Commission's decision to eliminate the non-transmission system alternative was appropriate under well-established CEQA authority. For a proposed alternative to be considered in the CEQA process, the alternative must, among other things, implement most of the basic project objectives. See, e.g., *Mira Mar Mobile Cmty. v. City of Oceanside*, 119 Cal. App. 4th 477, 479 (2004). The California Supreme Court has made clear that an agency need not consider an alternative that "cannot achieve the project's underlying fundamental purpose." *In re Bay-Delta Programmatic Env'tl. Impact Report Coordinated Proceedings*, 43 Cal. 4th 1143, 1165 (2008). An agency also need not consider an alternative that would fundamentally change the nature of the project. See *Al Larson Boat Shop, Inc. v. Bd. of Harbor Comm'rs*, 18 Cal. App. 4th 729, 744-46 (1993) (court affirmed agency's decision to not consider alternatives for port expansion project that did not reflect the port's needs or desires to handle more commercial shipping).

SCE's application for a CPCN sought approval for the construction, operation, and maintenance of a transmission line needed to interconnect up to 4,500 MW of new generation to the grid. CARE's distributed generation proposal is a wholesale shift away from utility-scale renewable generation in favor of wide-spread distributed generation in the load centers, raising policy issues that are outside of the scope of these proceedings. The distributed generation

proposal also raises a host of difficulties as explained in SCE's briefing in this proceeding. *See* SCE Reply Brief at 31-35.

Under this standard, distributed generation does not constitute an alternative to TRTP under CEQA. In addition to the problems discussed in the Alternatives Screening Report, *see* discussion *supra*, distributed generation would not achieve TRTP's fundamental objectives, including but not limited to: (1) constructing a transmission line to reliably interconnect to new wind generation in the Tehachapi area to promote achievement of Renewables Portfolio Standards (RPS) goals; (2) complying with all applicable reliability planning criteria required by the North American Electric Reliability Council (NERC), the Western Electricity Coordinating Council (WECC), and the CAISO; (3) addressing reliability concerns needs of the CAISO-controlled grid due to projected load growth in Antelope Valley; and (4) addressing the South of Lugo constraints, an ongoing source of concern in the Los Angeles Basin. D.09-12-044 at 25. Because a non-transmission distributed generation alternative does not meet these fundamental Project objectives, the Decision concluded correctly that it need not be considered further in the Final EIR. *Id.* at 78-79.

#### **7. The Final EIR Properly Analyzed the No Project Alternative**

CARE's assertion that the Commission failed to consider the no project (or no action) alternative is without merit. CARE argues that the no project alternative should have not accounted for the need to interconnect wind projects in the Tehachapi area to the load center in the Los Angeles Basin to help achieve legislative RPS goals. CARE Application at 11-16. CARE's erroneous argument is based on the faulty premise that the no project alternative should be the same as the current environmental baseline, which lacks both the Project and the wind projects in the Tehachapi area. CARE's argument is based on the erroneous assumption that the wind projects in the Tehachapi area are part of TRTP.<sup>11</sup> CARE's version of the "no project"

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<sup>11</sup> CARE also claims that the Final EIR's alternatives analysis is improper due to the alleged inadequacy of the Final EIR's responses to the comments of K. Shawn Smallwood, Ph.D. CARE Application at 16-17. After CARE pointed out that the Final EIR did not include

alternative ignores the fact that, in light of California's aggressive RPS goals, wind projects will be developed in the wind-rich Tehachapi area irrespective of TRTP and that some configuration of transmission will be constructed to interconnect that new generation to the grid.

The CEQA Guidelines recognize that the specifics of the no project alternative will vary depending on the nature of the project. Cal. Code Regs. tit. 14, § 15126.6(e)(3). While CARE seemingly argues that the no project alternative must correspond to the environmental baseline, this is not the case. *See* CARE Application at 11. The no project alternative will not necessarily correspond to the baseline for analyzing a project's environmental impacts:

The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline.

Cal. Code Regs. tit. 14, § 15126.6(e)(1) (internal citations omitted). In some cases, rejection of the project will maintain the baseline, and the no project alternative will equal the baseline. *Id.* § 15126.6(e)(3)(B). In other cases, rejection of the project will not maintain the baseline, and the no project alternative will differ from the baseline. *Id.*

When rejection of the project will not maintain the baseline, as likely will occur with respect to the renewables-rich Tehachapi area, "the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment." *Id.* If rejection of the project "would result in predictable actions by others, such as the proposal of some other project, this 'no project' consequence should be discussed." *Id.* As a corollary, when a project involves a

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responses to Dr. Smallwood's comments, the Commission corrected the issue before issuing its Decision by including written responses in the Revisions to the Final EIR. D.09-12-044 at 79; Final EIR at H.B-345 to H.B-359. The responses thoroughly address Dr. Smallwood's comments; CARE does not explain why it finds the substance of the comments to be lacking. *See* Final EIR at H.B-345 to H.B-359.

specific objective mandated by the legislature, such as the legislatively-mandated RPS goals of 20% by 2010, the no project alternative should consider the consequence of needing to implement another project to fulfill that legislative mandate. *See id.*

One of TRTP's central objectives is to interconnect reliably to new wind generation in the Tehachapi area and help achieve progress towards RPS goals. D.09-12-044 at 25. It is undisputed that Tehachapi is potentially one of the richest areas for renewable energy resources and is uniquely positioned near the Los Angeles Basin load center allowing the economical delivery of renewable energy to help achieve progress towards RPS goals. D.04-06-010 ("The Tehachapi area contains the largest wind resource in California and, if more fully developed could meet a significant portion of the goals for renewable energy development in California.").

The Final EIR properly found that under the no project alternative, another transmission project would be necessary in the future to make progress towards these RPS goals. Final EIR at 2-4 to 2-5, 4-2. *See also* D.07-03-045 at 16 ("[T]he Tehachapi area offers the largest wind resource in California. It has the undeveloped potential of generating about 1400 gigawatt-hours per year, with about 4,500 MWs of installed capacity. To capture this potential, the lines must go where the wind blows—there is no other choice."). While the Final EIR acknowledged that it could not predict which transmission project would be proposed in the future, the Final EIR recognized that the future project likely would traverse the same geographic regions as TRTP to reliably interconnect Tehachapi-area wind projects to the load center in the Los Angeles Basin to help achieve legislative RPS goals. Final EIR at 4-25 to 4-38. The Final EIR then properly analyzed the environmental impacts of implementing a future transmission project that would likely traverse the same geographic regions as TRTP.<sup>12</sup> *See id.* Therefore, the Commission's

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<sup>12</sup> CARE's reliance on a NEPA case, *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 581 F.3d 1063, 1065 (9th Cir. 2009), is inapposite. In that case, the lead agency under NEPA assumed incorrectly that a mining company would conduct operations in the same manner regardless of whether the company acquired fee simple to lands for which it already held mining claims on federal lands (and the latter of which would require a great deal more environmental compliance under federal law).

evaluation of the no project alternative, which assumed that the wind projects and necessary transmission would still be constructed without the construction of TRTP, is supported by substantial evidence.

**8. The Final EIR Properly Analyzed the Fire Safety Impacts of the Project and Alternative 4CM**

Chino Hills' and Acton's allegations regarding the evidentiary record do not demonstrate any legal error in the Commission's decision regarding fire impacts, which is supported by substantial evidence. Instead, Chino Hills and Acton attempt to relitigate issues and ask the Commission to reweigh evidence in order to reach conclusions that the Commission already correctly rejected. Because neither disagreement with the Decision nor the presence of evidence contradictory to the Decision constitutes legal error in light of the substantial evidence supporting the decision, the Commission should reject Chino Hills' and Acton's evidentiary claims. There is no reason for the Commission to revisit its conclusions on fire safety impacts.

**a. Chino Hills' Rehearing Arguments Essentially Rehash Litigation Positions that the Commission Already Considered and Rejected**

Chino Hills challenges the Commission's analysis of: (1) the Project's impact on the ability to effectively fight fires in the existing ROW behind the homes of Chino Hills' residents (Chino Hills Application at 8-11, 30); and (2) the impact of Alternative 4CM on firefighting activities in the Park, including the contribution to increased risk of wildfire ignitions in the Park resulting from this alternative. Chino Hills Application at 30-31. The Commission already considered and rejected Chino Hills' arguments throughout the course of this proceeding, and supported its analysis with substantial evidence.

First, the Final EIR contains an extensive fire risk analysis and a separate "Wildfire Prevention and Suppression" section. *See* Final EIR, Section 3.16. Following this extensive analysis, the Final EIR found that the Project did not have unmitigable fire-related environmental impacts, *id.* at 3.16-23 to 3.16-34, and that Chino Hills' five proposed alternatives (4A-D and 4CM) were the only ones that did have such impacts, *id.* at 3.16-37 to 3.16-41. The thorough

treatment of fire impacts also resulted in development of mitigation measures that are incorporated as part of the approved TRTP and would reduce any fire impacts.<sup>13</sup> Substantial evidence supports the Final EIR's determination that the Project does not unduly impede firefighting efforts, including the record developed through the extensive evidentiary hearings.<sup>14</sup>

Second, the Commission thoroughly analyzed the findings in the Final EIR as well as the extensive testimony and arguments presented by all parties on fire issues. Chino Hills merely asks the Commission to reconsider the *same evidence* previously presented,<sup>15</sup> and reach a different conclusion in its rehearing application. It is for the Commission to weigh the evidence in the record and come to a reasonable determination based on that evidence. *Eden Hosp. Dist. v. Belshe*, 65 Cal. App. 4th 908, 915 (1998). Chino Hills' disagreement with the Commission's

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<sup>13</sup> The mitigation measures consist of preparing wildland traffic control plans (Final EIR at 3.16-23); revising SCE's Fire Management Plan for maintenance activities, ceasing work during Red Flag Warning Events, ensuring open communication pathways during construction and maintenance, and removing hazards from the work area, *id.* at 3.16-26, 3.16-29; complying with the non-smoking policy on the Puente Hills Landfill Native Habitat Preservation Authority lands, *id.* at 3.16-27; sharing costs for ANF fuel break maintenance and providing transmission line safety training for ANF staff, *id.* at 3.16-27; and preparing and implementing an emergency evacuation plan, *id.* at 3.16-29.

<sup>14</sup> The evidence supporting the conclusions in the Final EIR and the Commission's decision on fire impacts is discussed at length in SCE's Opening Brief at 62-70 and SCE's Reply Brief at 59-65. The evidence demonstrates, *inter alia*, that: (1) transmission lines are a linear feature that occupies minimal space in an overall fire area, and they are not a major obstruction to firefighting, *see* Final EIR at 3.16-25; Whitman, Ex. SCE-04 at 55:17-56:12; (2) aerial firefighting has safely occurred near SCE transmission lines and ROWs for many years, Whitman, Ex. SCE-04 at 56:6-7; and (3) any adverse impacts on firefighting are minimal where transmission infrastructure is placed in existing ROW that already contains transmission infrastructure, such as Segments 6, 8A, and 11, *see* Whitman, Tr. 837:20-838:2.

<sup>15</sup> For example, Chino Hills' arguments regarding Alternative 2's purported impact on the ability to effectively fight fires in the ROW behind the homes of Chino Hills residents are virtually identical to the arguments in its Opening Brief. *Compare* Chino Hills Opening Brief at 15 and n.36-37 *with* Chino Hills Application at 10 and n.22-23 (citing identical portions of Chief Benson's testimony); Chino Hills Opening Brief at 16-17 and n.45 *with* Chino Hills Application at 10 and n.24 (citing identical portions of Chief Benson's testimony). Similarly, Chino Hills raises the same arguments and evidence to support its claim that Mr. Whitman's testimony allegedly is "inaccurate" because the ROW is covered with "highly flammable" vegetation. *Compare* Chino Hills Opening Brief at 14 and n.34 *with* Chino Hills Application at 10-11 and n.26.

determination—while apparent, is insufficient as a matter of law.<sup>16</sup> There is no legal error where (as here) there is substantial evidence supporting the Commission’s determinations. Cal. Pub. Util. Code § 1757(a)(4); *see also Bowers v. Bernards*, 150 Cal. App. 3d 870, 873-874 (1984).

Third, Chino Hills again relies extensively on the testimony of its witness, Fire Chief Paul Benson, to argue again that the introduction of a 500 kV transmission line in the existing ROW introduces a significant risk to residents by allegedly negating the ability to effectively fight fires in the area behind the Chino Hills homes. *See* Chino Hills Application at 10-11, 30. Although Chino Hills contends that the “testimony of Chief Benson was not effectively refuted,” and that “the Decision fails to adequately weigh or even discuss” his testimony in “making its findings on this issue” (Chino Hills Application at 10-11), these claims are flatly wrong.<sup>17</sup>

As demonstrated *supra* n.15, Chino Hills already presented the same arguments to the Commission for its consideration. The Commission clearly explained in its decision that it reviewed all of the arguments and evidence (including exhibits and testimony of witnesses) submitted by Chino Hills, Puente Hills, Acton, and SCE on fire issues, as well as the evidence in the Final EIR. D.09-12-044 at 58-59. Based upon its careful review, the Commission rejected Chino Hills’ arguments relating to fire impacts. D.09-12-044 at 59 (“After reviewing each of the exhibits as well as the cross-examination of the witnesses in the evidentiary hearings, we find that fire prevention and suppression risks do not render construction of the Environmentally Superior Alternative infeasible, nor will it pose undue risks in this area.”).

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<sup>16</sup> It is clear that Chino Hills’ arguments on rehearing are premised on its disagreement with the Commission’s conclusions, and that it would have reached a different result based on its own weighing of the evidence. *See* Chino Hills Application at 10 (asserting that the “testimony of Chief Benson was not effectively refuted”); *id.* (claiming Mr. Whitman’s testimony “was shown to be entirely inaccurate”); *id.* at 11 (alleging “the Decision fails to adequately weigh or even discuss” certain evidence); *id.* at 30 (disagreeing with conclusions reached in Final EIR as “simply incorrect”). Such disagreement does not, however, demonstrate legal error in the Commission’s decision.

<sup>17</sup> Moreover, there is no legal requirement that every piece of evidence in the record be mentioned in the Commission’s decision. *See Toward Utility Rate Normalization v. Pub. Util. Comm’n*, 22 Cal. 3d 529, 540 (1978).

There is substantial evidence supporting the Commission’s conclusions on each of the issues Chino Hills raises:

- **Alleged Fire Risks in Existing ROW Due to Highly Flammable Vegetation.**

Although Chief Benson testified that the existing ROW in Segment 8A includes highly flammable fuels in addition to annual grasses, SCE fire expert Troy Whitman explained that during a site visit in Chino Hills he observed “fire resistant vegetation with streets intersecting the right-of-way throughout that stretch which serve as a natural fire or man-made firebreak.”<sup>18</sup> Whitman, Tr. 813:7-14. Furthermore, the Final EIR documented that fuels in the existing ROW along Segment 8A in urban areas such as Chino Hills are sparse. Final EIR at 3.16-16.

- **Alleged Impacts on Firefighting Efforts.** Chief Benson testified that placing higher transmission towers in the existing ROW without widening it would impede firefighting, *see* Chino Hills Application at 10, but the Final EIR explains that increasing the height would not significantly impact firefighting.<sup>19</sup> Chino Hills’ suggestion that the Commission must directly refute Chief Benson’s testimony for the

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<sup>18</sup> Chino Hills’ claim that Mr. Whitman “has virtually no firefighting experience” (Chino Hills Application at 10) fails to acknowledge his extensive fire experience in SCE’s territory. Mr. Whitman’s experience includes nine months as a firefighter with the Orange County Fire Authority, 10 years as a journeyman lineman and senior patrolman for SCE, and 15 years as senior fire management representative for SCE at the incident command level for wildland fires. Whitman, Ex. SCE-04 at A-31:12-14; Whitman, Tr. 800:24-802:15. Mr. Whitman’s training experience includes 15 years as senior fire management representative for SCE, where he has trained and participated in training with firefighters from many public agencies. Whitman, Tr. 802:2-15, 835:4-14.

<sup>19</sup> Final EIR at 3.16-25 (“The height increase would be approximately 50 feet on average along these segments. The increased height of transmission lines in these areas would decrease the effectiveness of aerial firefighting activities because firefighting aircraft would have to fly at higher altitudes to avoid conflicts with the transmission lines and towers. Flying at higher altitudes can reduce the accuracy of targeted drops of water and flame retardant used to suppress and contain wildfires. However, because there are existing transmission lines in the shared ROW, aerial firefighting crews avoid making drops near the ROW under existing conditions, and the addition of the proposed Project would present only a marginal increase in the required altitude of aerial vehicles working through the shared ROW.”).

Final EIR's determination on firefighting impacts to be valid, *see* Chino Hills Application at 10, is fundamentally at odds with the substantial evidence test. If the record contains substantial evidence supporting the Final EIR's determination, then that determination must be upheld. *Barthelemy v. Chino Basin Mun. Water Dist.*, 38 Cal. App. 4th 1609, 1620 (1995).

- **Disagreement with the Final EIR's Determination Regarding Alternative 4CM's Fire Risk and Firefighting Impacts in the Park.** The Final EIR determined that by adding 8.3 miles of new and expanded ROW to the Park, Alternative 4CM would increase the severity of fire risk and firefighting impacts relative to Segment 8A, which uses existing rather than new ROW. Final EIR at 3.16-37 to 3.16-41. Chino Hills disagrees with the Final EIR's findings based on assertions that Alternative 4CM will: (1) reduce linear transmission lines by 1.8 miles and remove one transmission corridor from the Park and (2) move transmission infrastructure from ridgetops to "significantly lower elevations as designed by Chino Hills under the guidance and direction" of the Department of Parks and Recreation. Chino Hills Application at 30. Chino Hills relies on testimony by Joann Lombardo and comments submitted by Fire Chief Benson and its own attorneys to support these assertions. *See id.* The Commission already considered and rejected this testimony and comments, based upon record evidence. Final EIR at H.A-319; D.09-12-044 at 58-59. Once again, this Chino Hills' proffered evidence fails to negate the Final EIR's conclusions that Alternative 4CM would *incrementally increase* the risk of fire and impacts on firefighting activities relative to no need for new ROW under Segment 8A. *See id.* at 3.16-37 to 3.16-41, H.A-319.<sup>20</sup>

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<sup>20</sup> The Final EIR explained that Alternative 4CM would add 8.3 miles of new and expanded ROW to the Park that could be accessed only by narrow, unpaved roads. Final EIR at 3.16-37 to 3.16-38. Adding this new and expanded ROW not only would require more intensive construction activities relative to Segment 8A but also would introduce new linear obstructions to the Park relative to Segment 8A, which does not run through the Park and

- **Alleged “Contrary” Conclusions Regarding Fire Risk from New Infrastructure.**

Contrary to Chino Hills’ contention, the Final EIR’s determination that high-voltage transmission lines pose minimal fire risk (which is supported by the record from the evidentiary hearings), does not undermine the Final EIR’s determination that adding new and expanded ROW under Alternative 4CM would *incrementally increase* that risk relative to using existing ROW under Segment 8A. *See id.* at 3.16-9 to 3.16-10, 3.16-37 to 3.16-41; *see also* Benson, Tr. 851:9-23, 855:9-14; Whitman, Ex. SCE-04 at 55:6-12; Whitman, Tr. 835:15-23, 838:15-22. While Chino Hills disagrees with the findings in the Final EIR, it has not effectively demonstrated the lack of substantial evidence underlying the Final EIR’s conclusions. The Final EIR’s determination on Alternative 4CM’s fire risk and firefighting impacts is therefore proper and does not require rehearing. *See Env’tl. Council of Sacramento v. City of Sacramento*, 142 Cal. App. 4th 1018, 1029 (2006); *see also* Cal. Code Regs. tit. 14, § 15384(a).

- b. The Commission Already Considered and Correctly Rejected Acton’s Arguments Regarding Alleged Fire Impacts for Segments 6 and 11**

As with Chino Hills, Acton’s allegations do not demonstrate any legal error, but rather attempt to relitigate issues in the proceeding and reweigh the evidence in the record. Acton focuses on the Final EIR’s statement that the “height increase would be approximately 50 feet on average along” Segments 6, 7, 8A, and 11. *See* Acton Application at 25 (referring to Final EIR at 3.16-25). Acton argues that since the average height increase for Segments 6 and 11 is actually higher than an average of 50 feet, and since not all existing transmission lines in the existing ROW for these segments are currently active, the Final EIR’s determination that the Project does not have significant project-specific or cumulative impacts is invalid. *Id.*

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uses existing ROW. *Id.* at 3.16-37 to 3.16-40. Relative to Segment 8A, the new and expanded ROW would incrementally increase any fire risk associated with construction and operation of transmission infrastructure and would incrementally increase any obstruction from that infrastructure to aerial and ground firefighting. *Id.*

First, Acton's arguments were already considered and appropriately rejected by the Commission. *See* Acton Opening Brief at 13-14 (discussing purported risks posed by increasing height of transmission lines along Segments 6 and 11, and disputing testimony that such risks to firefighting efforts are "marginal"); D.09-12-044 at 51, 58-59 (referring to Acton's specific arguments regarding Acton and the area surrounding the Vincent substation and, after reviewing this evidence, concluding that "fire prevention and suppression risks do not render construction of the [Project] infeasible, nor will it pose undue risks in this area"); Final EIR at H.A-150 (Response to Acton's Comments on Draft EIR, Comment A.16-24) (explaining that due to the presence of existing transmission lines in the ROW, fire suppression risks are not significant). As discussed above, there is substantial evidence in the record demonstrating that the Project will not unduly interfere with firefighting efforts (including in Segments 6 and 11).

Second, Acton mischaracterizes the findings in the Final EIR. Acton erroneously contends that the "[Final EIR] states that the height of the transmission lines in the ***Segment 11 and Segment 6 shared right of way*** would be increase [sic] by approximately 50 feet on average (pg. 3.16-25)." Acton Application at 25 (emphasis added). Acton points out that the increased height along Segments 6 and 11 is actually higher than 50 feet, and then argues that the Final EIR therefore erred in concluding that the height increase for Segments 6 and 11 presents "only a marginal increase" that does not significantly reduce the effectiveness of firefighting in this area. *Id.* The Final EIR, however, (1) described the increased heights for Segments 6, 7, 8A, and 11, Final EIR, Section 3.16-14 to 3.16-17; (2) indicated that the average for portions of Segments 6, 7, 8A, and 11 (not just Segments 6 and 11) was 50 feet on average, *id.* at 3.16-25; and (3) found that increasing the height for each segment discussed would decrease the effectiveness of aerial firefighting activities, *id.*

The Final EIR nonetheless concluded that "because there are existing transmission lines in the shared ROW, aerial firefighting crews avoid making drops near the ROW under existing conditions, and the addition of the proposed Project would present only a marginal increase in the required altitude of aerial vehicles working through the shared ROW." *Id.* Contrary to

Acton's claim, the Final EIR appropriately considered the specific increases in height for each segment in the shared ROW when reaching this conclusion. *See* Final EIR at 3.16-15 ("Segment 6 would substantially increase the maximum height of transmission lines in the shared ROW through the Tehachapi Fireshed from S6 MP 0 to S6 MP 4.8 and from S6 MP 6.85 to S6 MP 9.5 by replacing single-circuit 220-kV structures with single-circuit 500-kV structures. This increase would be up to 113 feet taller based on a maximum single-circuit 500-kV structure height of 193 feet and a minimum single-circuit 220-kV structure height of 80 feet."); *id.* at 3.16-17 ("Segment 11 would increase the maximum height of transmission lines in the shared ROW through the Tehachapi Fireshed from S11 MP 1 to S11 MP 25 by an average of approximately 50 feet.").<sup>21</sup> In other words, the Final EIR already considered the evidence that Acton claims it ignored or did not appropriately weigh.

Third, Acton points to the firefighting analysis in the Final EIR for the Antelope-Pardee project to question the firefighting analysis for the Final EIR for this Project. The analysis for the Antelope-Pardee project does not undermine the analysis for this Project. The two projects involve different routes under different conditions: TRTP Segments 6 and 11 traverse ridgetops, while the Antelope-Pardee project runs along or parallels a ridgeline for a significant distance. The Final EIRs for both projects agree that placing transmission lines in existing ROW with

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<sup>21</sup> *See also* Final EIR at H.A.-150 (Response to Acton's Comments on Draft EIR, Comment A.16-24) ("Segment 11 in the community of Acton would increase the maximum height of structures in the existing shared ROW by approximately 50 to 100 feet (see Figure 2.2-56). Segments 5 and 6 through the community of Acton would not increase the maximum height of structures in the shared ROW (see Figures 2.2-9 and 2.2-18). Aerial firefighters are required to maintain at least 150 feet of clearance from transmission structures, and aerial crews routinely avoid making drops of water and retardant in existing transmission ROWs due to the twin risks of electrocution and causing damage to the transmission infrastructure. Therefore, due to the presence of the existing transmission structures, the proposed Project's maximum height increase of 50 to 100 feet through the community of Acton will not significantly change the existing baseline conditions Segment 11. The baseline conditions with respect to the maximum height of transmission structures for Segments 5 and 6 through the community of Acton would be unchanged. No change to the significance conclusion of Impact F-2 has been made.").

existing transmission infrastructure does not unduly impede aerial firefighting because fire pilots already avoid making drops near the ROW. *See id.* at 3.16-25.

**9. The Final EIR Properly Analyzed the Hazardous Materials Impacts of Alternative 4CM**

While Chino Hills disagrees with the Final EIR’s conclusion that the hazardous materials impacts of Alternative 4CM are greater than those of the Project, it points only to opinion and misrepresentation to support its position.

First, Chino Hills claims that the Final EIR overstated Alternative 4CM’s potential impacts from munitions and explosives of concern (MEC) at the Aerojet site. To support this claim, Chino Hills refers to the California Department of Toxic Substances Control’s (DTSC) “latest proclamation that ‘there are no significant impediments for using the Aerojet Property for the City’s proposed Alternative 4CM.’” Chino Hills Application at 31 n.85. DTSC never said this. Instead, DTSC noted in its October 13, 2009 letter to the Chino Hills City Manager that Michael Short (who opined on ordnance clearance for Chino Hills)—not DTSC—“concludes that with normal mitigation measures in place and subject to the facilities being located on the property as outlined in his letter, there are no significant impediments for utilizing the Aerojet property for the City’s proposed alternative.” Late-Filed Ex. CH-84 (October 13, 2009 Letter from Manny Alonzo, DTSC Unit Chief, to Michael Fleager, Chino Hills City Manager, at 1).

Contrary to Chino Hills’ misrepresentation, DTSC’s October 13, 2009 letter simply discusses the timeline for it to undertake a Corrective Action Complete Determination (i.e., a no further action determination) as the final step in the carve-out process after investigative work, potential remedial work, and reporting for the Aerojet property are finished. *See id.* This Corrective Action Complete Determination would be necessary for Alternative 4CM because it proposes to place a switching station and associated transmission lines and access roads on the Aerojet property, which was used for research and development of explosives and for loading, assembling, and testing ordnance for the U.S. Department of Defense from about 1954 to 1995.

Goulart, Ex. Aerojet-01 at 2, Answer 8. Chino Hills' misrepresentation provides no basis to refute the Final EIR's determination on potential MEC issues at the Aerojet site.

Second, Chino Hills misunderstands the Final EIR's discussion of contaminated sites near the route for Segment 8A and the route for Alternative 4CM. The Final EIR explains that with respect to excavation or grading that could result in mobilization of existing soil or groundwater contamination from known sites, Alternative 4CM would "avoid the 54 contaminated sites located in Chino and Ontario near which the proposed Project would be located." Final EIR at 3.6-50. The Final EIR, however, found that the Project's impacts for this issue are less than significant with implementation of standard site assessments and investigations. *Id.* at 3.6-40. Furthermore, while Segment 8A would run *near* these 54 sites, Alternative 4CM would "traverse directly through the southern part of the Aerojet Chino Hills RCRA facility and within approximately 100 feet of the former SWMU [Solid Waste Management Unit] #9," and therefore require additional DTSC approval. *Id.* at 3.6-50.

Third, Chino Hills argues that since the Final EIR determined that Alternative 4CM's impacts would be less than significant after providing ordnance recognition training and detecting and removing MEC from access roads on the Aerojet site, the Final EIR should not have concluded that the hazardous materials impacts of Alternative 4CM are greater than those of the Project. Chino Hills Application at 31-32. The Final EIR explained that "[a]lthough prudent selection of structure locations and new access roads could avoid the waste area, [Alternative 4CM] may still increase the potential to encounter environmental contamination, ordnance, and hazards." Final EIR at 4-62 to 4-63. The Final EIR supported this determination with substantial evidence, and its assessment of the hazardous materials impacts of Alternative 4CM relative to the Project is valid. *See* discussion *infra* at 43-45.

**10. The Commission Properly Determined that the 21st Century Proposal Cannot Lawfully Be Imposed on SCE**

The Commission's determination the 21st Century Proposal cannot lawfully be imposed on SCE as mitigation under CEQA for Alternative 4CM is supported by the evidentiary record

and well-established CEQA authority. D.09-12-044 at 99. The Commission noted in its Decision that Chino Hills' claims about the Proposal "largely restate [its] earlier positions," which have already been "fully considered." *Id.* at 82-83. Yet in its application, Chino Hills tries once again to validate its "mitigation" Proposal. As before, Chino Hills' arguments are plainly wrong. The Commission's analysis and rejection of the Proposal are fully supported by both the record and the law, and the mere fact that Chino Hills has different mitigation preferences does not undermine the substantial evidence supporting the Final EIR's mitigation determination.

**a. The 21st Century Proposal Reflects Chino Hills' Mitigation Preferences, But It Does Not Undermine the Substantial Evidence Supporting the Final EIR's Mitigation Determination**

The Final EIR thoroughly analyzed the appropriate mitigation measures for TRTP, and its determinations are supported by substantial evidence. *See* SCE's Reply Comments to the Proposed Decision, Attachment A (describing the numerous mitigation measures contained in the Final EIR). While Chino Hills and other certain parties that would benefit from the 21st Century Proposal under Alternative 4CM claim it is needed because existing mitigation measures identified by the Commission in the Final EIR are insufficient, these claims fall flat. *See, e.g.,* Schlotterbeck, Tr. 1482:14-1483:6 ("I don't agree that the mitigation measures were adequate in the first place under the [Draft EIR/EIS]."); SCE Reply Brief at 87-88.

In its Application, Chino Hills has articulated merely its own reasons for disagreeing with the Final EIR's determination regarding mitigation measures that would apply within Chino Hills State Park. It has provided *no* legitimate basis for questioning the substantial evidence underlying that determination. The Final EIR's mitigation determinations are therefore proper and do not require rehearing. *See Envtl. Council of Sacramento v. City of Sacramento*, 142 Cal. App. 4th 1018, 1029 (2006); *see also* Cal. Code Regs. tit. 14, § 15384(a).

**b. The 21st Century Proposal is Inconsistent with CEQA and Constitutional Requirements for the Mitigation of a Project’s Environmental Impacts**

Under CEQA and constitutional requirements, a “nexus” must exist between a project’s impacts and mitigation, and the mitigation must be “roughly proportionate” to the impacts. *See Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994); *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 834-37 (1987); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 872-76 (1996); Cal. Code Regs. tit. 14, §§ 15041(a), 15126.4(a)(4); SCE Opening Brief at 115-18.

Chino Hills has claimed repeatedly that the Proposal contains a nexus or proportionality, but *nothing in the record establishes this*. *See* SCE Opening Brief at 116-17; SCE Reply Brief at 87. Consequently, the Decision appropriately concludes that “we have been unable to find any nexus between the 21st Century Proposal and the impacts of the TRTP that would not already be mitigated by measures identified in the EIR, which our ‘wide latitude’ to determine the proper mitigation measures allows us to adopt.” D.09-12-044 at 86. The Final EIR supports this conclusion. Final EIR at H.A-312 to 317 (demonstrating no connection—let alone one that is roughly proportional—between Alternative 4CM and the Proposal).

Despite Chino Hills’ baseless assertions to the contrary, the underlying factual and legal analysis of both the Decision and the Final EIR rejecting the legality of the 21st Century Proposal is thoroughly supported by the law and the record of these proceedings. *See* D.09-12-044 at 85-86; Final EIR at H.A-312 to 317; *Dolan*, 512 U.S. at 391; *Nollan*, 483 U.S. at 834-37; *Ehrlich*, 12 Cal. 4th at 872-76; *San Franciscans for Reasonable Growth v. City & County of San Francisco*, 151 Cal. App. 3d 61 (1984); *Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1029 (1997); Cal. Code Regs. tit. 14, §§ 15041(a), 15126.4(a)(4). Therefore, the Decision properly concludes that the 21st Century Mitigation Proposal cannot lawfully be imposed on SCE as “mitigation.”

**D. The Commission Did Not Err in Finding that the Environmentally Superior Alternative Complies with General Order 95**

Despite Chino Hills' concession in this proceeding that "no party is contesting the fact that SCE will construct the TSPs in conformance with the standards of General Order 95" (GO-95), Chino Hills has now done an about face to recast its factual disagreement concerning the safety of Segment 8A as legal error in an attempt to fit within Rule 16.1's requirements. *Compare* Chino Hills Opening Brief at 17 *with* Chino Hills Application at 6-12. Chino Hills' argument in this regard is not only disingenuous but also incorrect because the safety issues it raises were thoroughly litigated during these proceedings and substantial evidence supports the Commission's finding that the Project complies with all aspects of General Order 95. D.09-12-044 at Finding of Fact No. 28.

**1. Substantial Evidence Supports Finding that TRTP, including Segment 8A, Complies with General Order 95**

Substantial evidence in the record supports the Commission's finding that TRTP complies with GO-95, including evidence that the construction, maintenance, operation and use of the Project are safe for the public in general (GO-95, Rule 11), and evidence that the Project will be constructed according to accepted good practice for local conditions (GO-95, Rule 13).

With respect to the portion of TRTP contested by Chino Hills, the record contains evidence that: (1) a 500 kV transmission line can be constructed in a 150 foot ROW using well-understood and ordinary construction techniques;<sup>22</sup> (2) a 150 foot ROW provides adequate clearances for the safe construction and operation of a 500 kV transmission line;<sup>23</sup> (3) tubular steel poles are well-understood and do not present a safety risk;<sup>24</sup> (4) SCE and its witnesses have experience using 500 kV tubular steel poles;<sup>25</sup> (5) SCE specifically took (and will continue to

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<sup>22</sup> See SCE Opening Brief at 34-40; SCE Reply Brief at 38-41.

<sup>23</sup> See SCE Opening Brief at 34-50; SCE Reply Brief at 38-42.

<sup>24</sup> See SCE Opening Brief at 58-59; SCE Reply Brief at 48-49.

<sup>25</sup> See SCE Opening Brief at 58-59; SCE Reply Brief at 49; Carrington, Ex. SCE-12 at Curriculum Vitae of Ron Carrington; Guditis, Ex. SCE-08 at Qualifications Summary of Robert Guditis.

take) local conditions into account in developing design specifications for Segment 8A;<sup>26</sup> (6) SCE has robust maintenance and inspection standards;<sup>27</sup> and (7) SCE design specifications, developed independent of TRTP, contemplate 500 kV TSPs in 150 ROWs.<sup>28</sup>

The Commission weighed the evidence and correctly concluded that the Project, including Segment 8A, complies with GO-95. In reaching this conclusion, the Commission specifically considered Chino Hills' arguments regarding safety, including the fact that there is only one other known 500 kV transmission line in the United States in a 150 foot ROW, as well as Chino Hills' incorrect allegation that SCE has not previously used TSPs for 500 kV lines. D.09-12-044 at 51-52. *See also* SCE Reply Brief at 48, n.30. The Commission also considered the testimony of Chino Hills' witness Turan Gonen, but determined that the testimony proffered by SCE carried greater weight because it was more credible. *Id.*

The Decision provides a detailed summary of both parties' evidence regarding construction safety and then explains why it balanced the evidence the way it did—in short, because SCE presented more credible evidence:

After reviewing each of the exhibits as well as the cross-examination of the witnesses in the evidentiary hearings, we find SCE's witnesses to be more credible at determining safe construction techniques, and that construction of the Environmentally Superior Alternative through Segment 8A is feasible and can proceed safely. . . . [W]e find SCE's witnesses to be more credible at determining the safe operation of the TSPs. We find that the Environmentally Superior Alternative meets or exceed[s] all design requirements, and that operation of the Environmentally Superior Alternative through Segment 8A is feasible, and poses no undue operational risk.

D.09-12-044 at 51-58. The Commission acted fully within the letter of the law in considering and weighing the evidence in this manner.

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<sup>26</sup> *See* SCE Opening Brief at 33-59.

<sup>27</sup> *See* SCE Opening Brief at 60-62.

<sup>28</sup> *See* Ex. SCE-10C, Confidential Exhibit R at 6-5.

**2. Chino Hills’ Interpretation of “Accepted Good Practice” Precludes Innovation and Advancement**

Chino Hills’ argument regarding “accepted good practice” would result in the dangerous precedent of banning innovation and advancement in overhead transmission lines. According to Chino Hills, Segment 8A cannot be understood to utilize “accepted good practice” simply because “no other utility has ever used such a narrow right-of-way for this purpose” in an area where homes already exist along the ROW. Chino Hills Application at 8.<sup>29</sup> Notwithstanding the fact that SCE has constructed numerous transmission lines where the height of the towers exceeds the distance to the edge of the right-of-way, by this logic, no utility company would ever be able to introduce new technology or structures because there is no previously-established “accepted good practice” on its construction or use. Obviously, GO-95 is not meant to be interpreted in such a restrictive and impractical fashion.

**E. The Commission Did Not Err in Finding that the Environmentally Superior Alternative Complies with Public Utilities Code Section 1002**

Chino Hills’ assertion that the Commission failed to properly consider Public Utilities Code Section 1002 factors in selecting the Project is entirely without merit. The Decision aptly describes how the Commission weighed the evidence regarding Section 1002 factors, and substantial evidence supports its findings. The Commission is not required to separately address aesthetic impacts in its Findings of Fact and Conclusions of Law under California Public Utilities Code Section 1705; thus, its failure to do so does not constitute legal error. For each of these reasons, the Decision is legally sound with regard to Section 1002.

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<sup>29</sup> Chino Hills’ assertion is incorrect, as there is a 500 kV transmission line in Georgia that is contained within a 150 foot ROW in a residential area. Chino Hills Opening Brief at 2, n. 2. Moreover, as noted by Commissioner Chong in her Concurrence to the D.09-12-044, “the City of Chino Hills bears some responsibility for creating today’s problem” by allowing “homes to be built immediately abutting a transmission right-of-way.” Commissioner Chong’s Concurrence to D.09-13-044 at 2.

**1. The Commission Considered Community and Aesthetic Impacts in Determining the Environmentally Superior Alternative**

In D.09-12-044, the Commission considered the Public Utilities Code Section 1002 factors, including community and aesthetic impacts, in selecting the Environmentally Superior Alternative, and its decision is based on substantial evidence. Section 1002 requires the Commission to give consideration to community values, recreational and park areas, historical and aesthetic values and influence on the environment when determining whether to grant a CPCN. Cal. Pub. Util. Code § 1002(a). Section 1002 does *not* mandate that the Commission apply any particular balancing test or reach a particular conclusion; it simply requires that the Commission take these factors into consideration in determining whether to grant the CPCN. *Id.* That the Commission gave careful consideration to the relevant factors in selecting the Project is evident throughout the Decision, and Chino Hills' suggestion otherwise is based only on factual disagreement with the Commission's conclusions and thus does not warrant rehearing under Rule 16.1.

Specifically, the Decision discusses the requirements of Section 1002(a), explains how the statute applies in this proceeding (noting that Section 1002 "is relevant in determination of the specific route selected for the Project"), and states its finding that the Project is consistent with application of Section 1002. D.09-12-044 at 3-4, 8. In another section of the Decision, the Commission fully explains how it weighed the evidence regarding the various Section 1002 factors. D.09-12-044 at 18-20, 46-51. Finally, the Decision provides Findings of Fact and Conclusions of Law regarding its consideration and analysis of the Section 1002 factors. D.09-12-044 at Findings of Fact Paragraphs 45-46 and Conclusions of Law Paragraphs 20-24. The Commission is *not* required to provide a list of every piece of evidence it considered, as suggested by Chino Hills. *Toward Utility Rate Normalization v. Public Utils. Comm'n*, 22 Cal. 3d 529, 540 (1978) ("We have never held that an administrative decision must contain a complete summary of all proceedings and evidence leading to the decision. Rather we have repeatedly . . . set as our standard a statement which will allow us a meaningful opportunity to ascertain in the principles and facts relied upon by the Commission in reaching its decision.").

Section 1002 considerations factor throughout the Decision, demonstrating that the Commission considered the factors as required by law. As explained by the Decision and reflected in the record, the Section 1002 factors weigh in favor of the Project. D.09-12-044 at 18-20 (noting that it would be nearly impossible to construct a transmission line the length of the Project without impacting either residential communities or public lands set aside for conservation; noting that the Garamendi Principles encourage use of existing ROW; and noting that California government has taken the position that renewable resource development is “vital” and that “[a]ny individual community’s preference to avoid development of transmission infrastructure in its boundaries cannot outweigh these important statewide policy goals and the need for the Project.”), 46-51 (noting that, *inter alia*, “overriding statewide values [such as] timely implementation of [RPS goals] . . . outweigh community values interest of Chino Hills”; explaining why aesthetic impacts would be more severe under Alternative 4CM; and noting that Chino Hills residents have “diminished expectation of a view without transmission lines,” because those residents purchased homes alongside existing ROW with an existing transmission line in it). Chino Hills’ factual disagreement with the Commission’s conclusions regarding the balance of Section 1002 factors does not create legal error.

**2. The Commission Appropriately Addresses Section 1002 Factors, Including Aesthetic Impact, in the Conclusions of Law**

Chino Hills also complains that the Commission did not address aesthetic values in a separate Finding of Fact or Conclusion of Law. *See* Chino Hills Application at 26. However, this does not constitute legal error. California Public Utilities Code Section 1705 provides that Commission decisions “shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision.” It is within the discretion of the Commission to determine the material issues—Section 1705 merely requires the Commission “to state what those factors are and to make findings on material issues that ensue therefrom.” *California Motor Transport Co. v. Public Utils. Comm’n*, 59 Cal. 2d 270, 275 (1963). Overall:

[Section 1705] findings afford a rational basis for judicial review and assist the reviewing court to . . . determine whether [the Commission] acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action.

*Greyhound Lines, Inc. v. Public Utils. Comm'n*, 65 Cal. 2d 811, 813 (1967) (holding that an ultimate finding of public interest alone does not satisfy Section 1705); *California Motor Transport Co.*, 59 Cal. 2d at 275 (same). Section 1705 does *not* require the Commission to recite every piece of evidence supporting its Decision in the Findings of Fact and Conclusions of Law. *Toward Utility Rate Normalization v. Public Utils. Comm'n*, 22 Cal. 3d 529, 540 (1978) (“We have never held that an administrative decision must contain a complete summary of all proceedings and evidence leading to the decision. Rather we have repeatedly (*Greyhound, California Motor*) set as our standard a statement which will allow us a meaningful opportunity to ascertain in the principles and facts relied upon by the Commission in reaching its decision.”). In determining compliance with Section 1705, a court may also consider discussion of the case contained in other parts of the Decision. *See id.*

With regard to aesthetic values, the “issue material to the order” is whether Section 1002 is met, and this is precisely the issue the Commission addresses in paragraphs 20-24 of the Conclusions of Law and paragraphs 45-46 of the Findings of Fact. As discussed above, other sections of the decision discuss each Section 1002 factor individually. Since Section 1705 does not require the Commission to separately list each relevant factor or sub-issue of an issue, the Findings of Fact and Conclusions of Law regarding Section 1002 factors are more than sufficient to satisfy Section 1705. To the extent the Commission agrees that its consideration of aesthetic values warrants a separate finding of fact or conclusion of law, it may modify the Decision without granting a rehearing on this ground alone. *See D.08-12-058 at 2, 33-39.*

**F. The Decision Correctly Determines that the Garamendi Principles Support Adoption of Segment 8A as Proposed by SCE**

The Decision concludes that SCE followed the Garamendi Principles in siting the Project. D.09-12-044 at 93. As the Decision states, “The Garamendi Principles are statewide transmission siting policies that encourage the use of existing ROW by upgrading existing transmission facilities where technically feasible and economically justifiable.” D.09-12-044 at 19 (citing Cal. Code Regs. tit. 20, § 2320); *see also* SB 2431, Stats. 1988, Ch. 1457; SCE Opening Brief at 31-33.

Chino Hills’ argument that the Decision misapplies the Garamendi Principles is erroneous, reflecting both a misreading of the Decision and a misunderstanding of the state policy. *See* Chino Hills Application at 27-29. Contrary to Chino Hills’ assertion, the Decision does not find that SCE’s route for Segment 8A is superior to Alternative 4CM under the Garamendi Principles; rather, the Decision finds that SCE’s route complies with the Garamendi Principles because it utilizes existing right-of-way where feasible. *See* D.09-12-044 at 19, 93.

Chino Hills also asserts incorrectly that Alternative 4CM is somehow superior to the adopted route along Segment 8A, because it “makes use of each of the Garamendi Principles” and that both the Project and Alternative 4CM “effect a balancing of all three types of right-of-way permitted by the Garamendi Principles.” Chino Hills Application at 28-29. The Garamendi Principles, however, are not to be applied with a “balancing” test; the plain language of the Garamendi Principles considers the three factors by order of importance. *See* Cal. Code Regs. tit. 20, § 2320(b)(1) (“ . . . encouraging the use of existing rights-of-way, the expansion of existing rights-of-way, and the creation of new rights-of-way *in that order*”) (emphasis added); SCE Opening Brief at 31-32. Because the Project extensively uses *existing right-of-way*—the policy’s top priority—the Decision properly concludes that SCE followed the Garamendi

Principles in the siting of TRTP's route.<sup>30</sup> Therefore, the Decision's analysis concerning the Garamendi Principles is straightforward and without legal error.

**G. The Commission Supported Its Determination that Alternative 4CM Would Significantly Delay Completion of TRTP and Endanger Progress Towards the State's RPS Goals with Substantial Evidence**

The Commission's determination that Alternative 4CM would significantly delay completion of TRTP and thus endanger progress towards California's RPS goals is supported by substantial evidence in the record. The record demonstrates that significant delays would occur because of: (1) the need to construct a switching station, associated transmission lines, and access roads on the Aerojet property, which raises issues with potential MEC remediation and requires additional DTSC approval before construction could begin; (2) the need for general plan amendment before construction could begin in Chino Hills State Park; and (3) problems with constructability at the steep and geologically unstable switching station site on the Aerojet property. The Commission correctly determined that the risk of delay posed by Alternative 4CM unacceptably hinders progress towards California's RPS goals.

**1. DTSC Approval and Remediation Issues Would Significantly Delay Completion of the Project**

The Decision explains that DTSC has not "definitively resolved the issues" of whether MEC remains on the portion of the Aerojet property on which Alternative 4CM would require a switching station, associated transmission lines, and access roads. D.09-12-044 at 33. Chino Hills continues to disagree with this statement but musters nothing more than misrepresentation in support.

According to Chino Hills, "DTSC states that 'there are no significant impediments for using the Aerojet Property for the City's proposed Alternative.'" Chino Hills Application at 16, 19. Any fair reading of the DTSC letter plainly demonstrates this assertion to be wrong. As

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<sup>30</sup> For the reasons set forth in SCE's briefs in these proceedings, it is SCE's position that the adopted route for Segment 8A is superior to Alternative 4CM under the Garamendi Principles. See SCE Opening Brief at 31-33.

discussed above, *see supra* at 32-34, DTSC simply noted in its October 13, 2009 letter to the Chino Hills City Manager that Chino Hills' ordnance clearance expert Michael Short "concludes that with normal mitigation measures in place and subject to the facilities being located on the property as outlined in his letter, there are no significant impediments for utilizing the Aerojet property for the City's proposed alternative." Late-Filed Ex. CH-84 (October 13, 2009 Letter from Manny Alonzo, DTSC Unit Chief, to Michael Fleager, Chino Hills City Manager, at 1).

Chino Hills continues to assert incorrectly that the October 13, 2009 letter establishes that obtaining clearance from DTSC in the form of a Corrective Action Complete Determination would take only 45 to 60 days following SCE's submission of plans. Chino Hills Application at 17. Chino Hills ignores the evidence demonstrating that the 45-60 day period for DTSC to undertake a Corrective Action Complete Determination represents only a portion of the overall timeline before Alternative 4CM could proceed. *See* Goulart, Ex. Aerojet-03 at 4-5, Answers 15-16; Goulart, Ex. Aerojet-08 at 2-3; Late-Filed Ex. CH-84 at 2. In the October 13, 2009 letter, DTSC confirmed that investigative work, potential remedial work, and reporting must be completed before DTSC will undertake a Corrective Action Complete Determination:

DTSC also wishes to add that the 45 to 60 day timeline mentioned in your letter for a Corrective Action Complete Determination after submission and completion of the survey and fact sheet information is contingent upon the number of comments received during the public notice comment period.

Late-Filed Ex. CH-84 at 2 (emphasis added).

DTSC thus recognized that the entire timeline includes not only the time that it needs to undertake a Corrective Action Complete Determination, which DTSC estimates to take 45 to 60 days, but also the time needed to complete investigative work, potential remedial work, and reporting. *See id.*; *see also* Goulart, Ex. Aerojet-03 at 4-5, Answer 15; Goulart, Ex. Aerojet-08 at 2-3.<sup>31</sup> As Scott Goulart, who is Aerojet's Director of Environmental Site Restoration, testified,

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<sup>31</sup> This entire process is called the carve-out process because it would involve carving out the portion of the Aerojet property proposed for Alternative 4CM from the rest of the Aerojet

and as DTSC confirmed in its July 29, 2009 letter to the Chino Hills City Attorney, the complete carve-out process would take at least *11 months*. Goulart, Ex. Aerojet-03 at 4-5, Answers 15-16; Goulart, Ex. Aerojet-08 at 2-3; Goulart, Tr. 1381:21-1382:20, 1384:26-28. That estimate remains unchanged, regardless of Chino Hills' misrepresentation.

Alternative 4CM's proposed use of a portion of the Aerojet property introduces other delays. As the Decision explained, SCE would need to acquire the Aerojet property before it could begin the carve-out process, and acquisition would require time for SCE to negotiate with Aerojet, and if negotiations fail, to condemn the land. D.09-12-044 at 60-61. If investigations identify MEC on the portion of the Aerojet property proposed for Alternative 4CM, then MEC remediation would cause further delay. *Id.* at 61.

Far from relying upon "pure speculation," Chino Hills Application at 18-19, the Commission has provided a reasonable assessment of the significant consequences resulting from potential delays. Specifically, the delays for the carve-out process, acquisition of a portion of the Aerojet property, and potential need for MEC remediation are substantial evidence in support of the Commission's determination that DTSC approval and MEC remediation issues for Alternative 4CM would significantly delay completion of the Project. Because Chino Hills has not refuted this substantial evidence or demonstrated any legal error, the Commission should reject its request for rehearing.

**2. Approval of an Amendment to the Chino Hills State Park General Plan Required by Alternative 4CM Would Delay Completion of the Project**

Chino Hills disagrees with the Commission's determination that approval of the amendment to the Park General Plan would delay completion of the Project. *See* Chino Hills Application at 17-18. In support of its disagreement, Chino Hills revisits its arguments about

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property. Goulart, Ex. Aerojet-01 at 2-3, Answer 11; Ex. Aerojet-03 at 4-5, Answer 15. The entire Aerojet property remains subject to RCRA requirements for corrective action for hazardous waste. Goulart, Ex. Aerojet-01 at 2-3, Answer 11; Ex. Aerojet-03 at 4-5, Answer 15.

why Alternative 4CM plus the 21st Century Proposal are consistent with the Park General Plan. *Id.* at 19-20. These arguments all fail.

**a. Alternative 4CM is Not Consistent with the Park General Plan and Therefore Would Trigger Preparation of a Plan Amendment**

Chino Hills continues to ignore that Alternative 4CM proposes to run a brand new 500 kV double-circuit transmission line through the Park’s designated Critical Habitat Zone and other areas of the Park where none exists now, requiring new ROW from the California Department of Parks and Recreation. Final EIR at H.A-60 to H.A-62. The Park General Plan explains that the Core Habitat Zone has the “highest biological resource sensitivity in the park,” and that its primary goal is to “preserve and protect sensitive plant and animal species and their supporting habitats, as well as to protect the movement of plants and animals within the park and throughout the region. Resource protection will be the foremost consideration for all land use and management decisions.” Adamson, Ex. SCE-23 at 49, 55 (Park General Plan), *accord* Final EIR at H.A-62.

In comments to the Draft EIR/EIS, the Department of Parks and Recreation explained that creating new ROW through the Park and constructing any part of the transmission line through Core Habit Zone are inconsistent with the Park General Plan and would require amending it. Final EIR at H.A-60 (“The Project, as proposed, is not consistent with the existing General Plan. A General Plan Amendment would need to occur, as the Draft EIR/EIS correctly concluded, before the Chino Hills Alternative could be constructed.”); *id.* at H.A-61 (“we concur with DEIR/EIS conclusion that implementation of the Chino Hills Alternative 4 is not consistent with the Chino Hills [State Park] General Plan”); *id.* at H.A-62 (“construction and placement of power lines in the ‘Core Habitat Zone’ would be inconsistent with [the Critical Habitat Zone’s] primary goal listed in the Chino Hills [State Park] General Plan”). During the en banc meeting before the Commission, representatives from both the Department of Parks and Recreation and the California State Parks Foundation confirmed that Alternative 4CM would trigger a plan

amendment. Substantial evidence therefore supports the Commission's determination that Alternative 4CM would require an amendment to the Park General Plan.

**b. Adoption of the 21st Century Proposal Would Not Eliminate the Need for a Plan Amendment**

Chino Hills asserts that Alternative 4CM would not trigger a plan amendment, because of, *inter alia*, the implementation of the 21st Century Proposal which it claims the Commission overlooked.<sup>32</sup> It is irrelevant whether the Commission considered the 21st Century Proposal in evaluating whether Alternative 4CM was consistent with the Park General Plan, because as the Commission correctly concluded, the 21st Century Proposal cannot be legally imposed on SCE. *See* discussion *supra* at 34-36; D.09-12-044 at 34-35. The 21st Century Proposal therefore should not be considered in the Commission's determination whether Alternative 4CM would require a plan amendment.

Even assuming that the 21st Century Proposal could be considered (which it should *not*), the evidentiary record shows that Alternative 4CM would nonetheless be inconsistent with the Park General Plan and would *increase* biological impacts of the Project. While shifting some transmission lines from ridgelines to lower elevations may improve visual resources at the Park,<sup>33</sup> it will introduce new ROW and construction within the Core Habitat Zone and new

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<sup>32</sup> Contrary to Chino Hills' claim, the Commission did consider whether Alternative 4CM plus the 21st Century Proposal are consistent with the Park General Plan. D.09-12-044 at 82. The Commission noted, however, that "[t]his is not a question that the Commission can definitively resolve, as the interpretation of the [Park] General Plan is not within our jurisdiction. However, the only evidence that we have in the record regarding the [Park] General Plan is a letter from [the Department of Parks and Recreation] stating that Alternative 4 is inconsistent with the [Park] General Plan." *Id.* Since the Department of Parks and Recreation has jurisdiction over the Park General Plan, the Commission appropriately considered the Department's letter in the determination that approval of an amendment to the Park General Plan would delay completion of the Project.

<sup>33</sup> This argument ignores that Alternative 4CM requires a new transmission line traversing the Park from north to south that would still need to go over the ridgelines and would still have visual impacts within the Park. *See* Lombardo, Ex. SCE-44 (map of Park Management Zones that Alternative 4CM crosses).

biological impacts to the Core Habitat Zone, potentially impacting species listed under the Endangered Species Act. *See* Final EIR at H.A-60 to H.A-62; Alsobrook, Ex. SCE-04 at 35:5-7 (explaining that potential habitat for the federally protected least Bell's vireo is present along several roads in the Park that Alternative 4CM would use for new transmission line construction); Lombardo, Ex. SCE-44 (map of Park Management Zones that Alternative 4CM crosses); Schlotterbeck, Tr. 1471:18-21, 1484:1-8 (acknowledging that Alternative 4CM would move transmission lines into Telegraph Canyon and cross the Core Habitat Zone). Chino Hills claims that the net reduction in transmission line length in the Park obviates the need for a plan amendment, but they do not account for the biological impacts of new transmission lines in the Core Habitat Zone, or the fact that nowhere on the face of the Chino Hills Park Plan is such construction authorized in the Core Habitat Zone. *See* Alsobrook, Ex. SCE-04 at 35:5-7; Lombardo, Ex. SCE-44; Schlotterbeck, Tr. 1471:18-21, 1484:1-8.

Accordingly, the Commission's decision that the 21st Century Proposal would not obviate the need for a plan amendment is based on substantial evidence in the record, most notably the plan language of the Park General Plan as well as the representations of the state agency responsible for administering that Plan.

**c. Substantial Evidence Supports the Commission's Determination that a Plan Amendment Would Delay TRTP's Completion**

The Commission's determination that a plan amendment could cause significant delay in the completion of the Project is supported by substantial evidence in the record. During the evidentiary hearings on the Sunrise Powerlink, the Department of Parks and Recreation testified that preparing an amendment to the Anza Borrego Desert State Park General Plan would take at least eight to fifteen months. Final EIR at H.A-60; D.08-12-058 at 207-08. Importantly, it is possible that any plan amendment would be denied by the State Park Commission, which could indefinitely delay completion of Segment 8A and return the parties back to the drawing board. As explained by the Department of Parks and Recreation in its comments on the Draft EIR/EIS for this Project:

[T]here is no requirement that the State Park Commission approve any outside proposal to amend a State Parks General Plan. State Parks generally does General Plans to allow development in line with its mandates and duties and does not have a process to allow outside interests to amend a Parks General Plan. This uncertainty has an effect on the viability and feasibility of the alternative.

Final EIR at H.A-60.

The Department of Parks and Recreation's testimony in the Sunrise Powerlink proceeding and its comment on the Draft EIR/EIS for this Project indicate that approval of an amendment to the Park General Plan would take at least eight to fifteen months. *See* Final EIR at H.A-60. And State Parks' representative at the en banc meeting indicated that a plan amendment (if it were subsequently to be approved by the State Parks Commission) could take as long as 24-36 months. *See* Tr. 1812:12-17 (Comments of B. Foster of SCE) ("And the best case scenario, [SCE] might get approval from [the] Parks and Recreation Commission in approximately six to eight months. State Parks said this morning it could take 24-36 months."). The Department of Parks and Recreation's comments provide substantial evidence supporting the Commission's determination that approval of the Park General Plan amendment would delay completion of the Project. *See* D.09-12-044 at 60, 82.

### **3. The Construction of a 500 kV GIS Switching Station as Required by Alternative 4CM Could Delay Completion of the Project**

Chino Hills contests the validity of the Commission's determination that the construction of a 500 kV GIS switching station on the Aerojet property could cause significant delay to the completion of Segment 8A. Chino Hills Application at 21-23. As a preliminary matter, Chino Hills' contention that the Commission committed legal error by not addressing the switching station in its Findings of Fact and Conclusions of Law is incorrect. As discussed *supra*, a Commission decision is not rendered legally erroneous because each sub-issue, or factor influencing a finding, is not separately addressed in the Findings of Fact and Conclusions of Law. *See* Cal. Pub. Util. Code § 1705; *Toward Utility Rate Normalization v. Public Utils. Comm'n*, 22 Cal. 3d 529, 540 (1978).

Although the Conclusions of Law do not single out the potential delay associated with constructing a 500 kV GIS switching station under Alternative 4CM, the Decision contains a Conclusion of Law that Chino Hills' arguments do not "adequately consider the potential delays from adopting Alternative 4CM," and it discusses the potential delay associated with the switching station in other parts of the Decision. *See* D.09-12-044 at 60-61, 99. This finding is sufficient to address Section 1705's requirement that the Decision contain separately stated Findings of Fact and Conclusions of Law on issues material to the decision. The finding is also sufficient to assist a reviewing court "to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily," particularly when considered with the Decision's preceding discussion regarding the potential delays associated with the switching station site. *Greyhound Lines, Inc. v. Public Utils. Comm'n*, 65 Cal. 2d 811, 813 (1967); D.09-12-044 at 59. Addressing the issue of delay in this fashion does not constitute legal error. *See Toward Utility Rate Normalization*, 22 Cal. 3d at 540.<sup>34</sup>

The remainder of Chino Hills' arguments relating the switching station simply reargue the weight of the evidence regarding the logistics of constructing a switching station at the site and thus fails to specify a legal error. Chino Hills Application at 21-23 (*e.g.*, arguing that the Commission misinterpreted Chino Hills' witness's testimony; disputing the amount of grading and access road upgrades required; disputing the potential for delay associated with various other factors). There is substantial evidence in the record to support a finding that constructing the switching station could potentially delay completion of the project. D.09-12-044 at 61; SCE Opening Brief at 79-84; SCE Reply Brief at 67-72, 78-81.

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<sup>34</sup> To the extent the Commission agrees that its consideration of potential delay associated with the switching station warrants a separate finding of fact or conclusion of law, it may modify the Decision without granting a rehearing on this ground alone. *See* D.08-12-058 at 2, 33-39.

**4. The Commission Appropriately Determined that SCE’s Easements in the Chino Hills Area Are Sufficient for the Project and Thus the Easement Lawsuit Will Not Create Substantial Delay**

The Commission’s finding that the Project is consistent with the language of SCE’s easements within the Chino Hills area does not constitute legal error. Importantly, Chino Hills injected the scope of SCE’s easements along Segment 8A into this proceeding to broadly claim that SCE’s easements are insufficient for the approved 500 kV upgrade in the Chino Hills area and as a result, Chino Hills purportedly could block construction of Segment 8A in an attempt to counter the high risk of delay posed by Alternative 4CM. It was therefore appropriate for the Commission to investigate and evaluate the strength of Chino Hills’ claims, and there is substantial evidence supporting the Commission’s finding that SCE’s broad easement rights are sufficient, undermining Chino Hills’ assertion that its easement lawsuit will cause significant delay.

**a. The Commission’s Conclusion that SCE’s Easement Rights in the Chino Hills Area Are Sufficient is Supported by Substantial Evidence and California Authority**

The Commission acted within its authority in considering the scope of the easements put at issue by Chino Hills. If property rights issues are presented to the Commission, it may decide those issues if the determination is incidental to the Commission’s authorized powers. *See Camp Meeker Water Sys. v. Public Utils. Com.*, 51 Cal. 3d 845 (1990). Here, ascertaining the scope of the easements was incidental to the Commission’s decision granting SCE’s application for a CPCN because Chino Hills argued that its easement lawsuit would cause significant delay to construction of the Project. Thus, it was within the Commission’s authority to issue findings on the extent of SCE’s property rights in the easements.

The Supreme Court squarely addressed the Commission’s authority to construe the property rights of a regulated utility in *Camp Meeker*. *Id.* There, to determine the proper rate to be charged for water, the Commission made numerous determinations regarding a public utility’s property rights to a water source, including a finding that the utility “enjoyed quasi-easement rights to use [a] portion of . . . [the subject] property for public utility purposes.” *Id.* at 860. The

Supreme Court held that the Commission has constitutional and statutory jurisdiction to construe the existing property rights of a regulated utility if it is construing those rights “for the purposes of exercising its regulatory and ratemaking authority.” *Id.* at 861-862. Because the Commission construed the utility’s property rights for the purpose of determining water rates, i.e. an area within the Commission’s authority, the Supreme Court held that the Commission acted appropriately. *Id.* at 861.

Here, the Commission likewise acted appropriately because it construed SCE’s property rights in connection with its determination whether to grant SCE’s application for a CPCN. It is indisputable that the Commission has broad authority over the design and siting of transmission lines, and that it is in the Commission’s exclusive jurisdiction to approve or deny applications for a CPCN. *See San Diego Gas & Electric Co. v. Superior Court*, 13 Cal. 4th 893, 924-25 (1996). The Commission’s findings regarding the scope of the easements were appropriately rendered as part of its consideration of SCE’s CPCN application given, among other things, that Chino Hills took the position that approval of the Project would, due to its pending superior court claims concerning the scope of the easements, lead to “extensive delays in the construction of TRTP and risks restriction on SCE’s ability to construct or upgrade other new transmission facilities in the existing rights-of-way.” Chino Hills Opening Brief at 26. Accordingly, it was appropriate for the Commission to consider the scope of the easements and it was not legal error for the Commission to make findings in that regard.

Moreover, the substance of the Commission’s findings regarding the scope of the easements is not legal error because its findings are supported by substantial evidence. The terms of the easements themselves support the Commission’s findings. In each of the easements at issue, SCE’s rights include:

permanent and exclusive easements and right of way to construct, reconstruct, maintain, operate, enlarge, improve, remove, repair, and renew an electric transmission line consisting of a line of steel towers, wires, cables and other structures, including ground wires, both overhead and underground, with necessary and convenient foundations, insulators and cross-arms placed on said towers, and

other appurtenances connected herewith, convenient and necessary for the construction, maintenance [of electric transmission lines].

Ex. CH-54.<sup>35</sup>

Not only are these terms obviously very broad, expressly permitting the construction of the proposed facilities within the terms of the existing easements under their plain language, but under California law, normal future uses of an easement are permissible and include technological improvements.<sup>36</sup> The easement holder's rights to object to SCE's use are further restricted because the easements are exclusive. Ex. CH-54 (the easement grants SCE "permanent and exclusive easements and right of way" (emphasis added)). An exclusive easement "is an unusual interest in land; it has been said to amount almost to a conveyance of the fee." *Id.* Exclusive easements, although unusual, are "justified [where there is a] socially important duty of a utility to provide an essential service, *such as water or electricity.*" *Mehdizadeh v. Mincer*, 46 Cal. App. 4th 1296, 1306 (1996) (emphasis added).

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<sup>35</sup> Chino Hills' argument that the Commission's investigation is insufficient and "highly improper" because the Commission reviewed only one of the eleven relevant easements is a red herring. Each of the eleven easements in the Chino Hills area contain the same operative language regarding permitted use. Complaint, *City of Chino Hills v. Southern California Edison Company*, Case No. CIVRS 901914, filed in the Superior Court of the State of California, County of San Bernardino on April 29, 2009 at ¶ 9 (Easement Complaint). SCE requests that the Commission take official notice of the Easement Complaint pursuant to Commission Rule of Practice and Procedure 13.9. Moreover, Chino Hills had ample opportunity to object to SCE's use of the language contained in Chino Hills' own exhibit (Exhibit CH-54) as representative of all easements in the Chino Hills area.

<sup>36</sup> See *Bello v. ABA Energy Corp.*, 121 Cal. App. 4th 301, 313 (2004) ("[T]he 'modern' trend—which began in California in . . . 1894—is to construe public rights-of-way to accommodate technological advancement in the conveyance of goods and people, an approach that has been adopted invariably by California courts in right-of-way decisions . . . ."); *Salvaty v. Falcon Public Television*, 165 Cal. App. 3d 798, 802-803 (1985) ("[T]he real issue was whether the use in a particular case was consistent with the primary object of the grant."; "Although the cable television industry did not exist at the time the easement was created, it is part of the evolution of communications technology."); *Pacific Gas & Elec. Co. v. Crockett Land & Cattle Co.*, 70 Cal. App. 283, 294 (1924) (public service corporations "should be encouraged rather than embarrassed in the betterment of their property in order that they may carry out the purposes for which they were created").

And, an indisputable and important feature of an exclusive easement is that the grantor relinquishes any right whatsoever to the easement property. *Gray v. McCormick*, 167 Cal. App. 4th 1019, 1026-28 (2008) (grant of “exclusive” access easement over part of servient tenement owners’ (grantors’) land precluded grantors from making any use of the surface of the easement area). Between the plain terms of the easement and the state of the law in California, the Commission’s Finding of Fact that SCE’s easement is sufficient for the construction, operation, and maintenance of Segment 8A is supported by substantial evidence and does not constitute legal error.

**b. California Public Utilities Code Section 1759 Bars Chino Hills’ Easement Lawsuit and Request for Injunctive Relief Pending in Superior Court**

In addition, Chino Hills’ lawsuit pending in superior court, seeking (among other things) to enjoin SCE from constructing and maintaining the Project through Chino Hills, is barred by the Commission’s exclusive jurisdiction under California Public Utilities Code Section 1759, under which the Commission has broad authority to select and design the Project’s route. *San Diego Gas & Electric Co. v. Superior Court*, 13 Cal. 4th 893, 924-25 (1996) (*Covalt*). Section 1759 deprives the superior court of “jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.” An action against a public utility under California Public Utilities Code Section 2106 is barred when the relief sought “would directly contravene a specific order or decision of the [C]ommission.” *Covalt*, 13 Cal. 4th at 918. Because the Commission determined that it is appropriate to site the Project along the existing ROW through Chino Hills, in part based on the determination that SCE’s easements are broad enough to encompass the Project, any order by the superior court enjoining SCE from constructing the

Project under the easements would plainly “review, reverse, correct or annul” a Commission decision in violation of Section 1759.<sup>37</sup>

Chino Hills erroneously attempts to avoid application of Section 1759 by comparing the present proceeding to that in *Koponen v. Pacific Gas and Electric Co.*, 165 Cal. App. 4th 345 (2008). In *Koponen*, the Commission approved certain applications permitting PG&E to license its facilities to telecommunication providers without considering whether PG&E had sufficient property rights to enter into the licenses. *Id.* Plaintiffs claimed that PG&E exceeded the scope of certain easements by licensing its facilities to the telecommunications providers. PG&E asserted that Section 1759 precluded plaintiff’s lawsuit regarding the easements because: (1) the Commission had a regulatory policy to promote the joint use of utility property for general telecommunications purposes, and (2) the Commission issued five decisions granting applications by PG&E to enter into agreements with providers of telecommunications services. *Koponen*, 165 Cal. App. 4th at 351. The Court of Appeal ruled only that the certain of plaintiffs’ claims survived the demurrer stage and remanded the case to the superior court for further proceedings. *Id.* at 359.

Unlike the present dispute between Chino Hills and SCE, however, in *Koponen*, the Commission never investigated the scope of the easements at issue, and it expressly stated that its prior decisions granting the applications *assumed* that PG&E possessed the necessary legal rights to lay telecommunication cables in their easements. *Id.* at 358. Indeed, the scope of plaintiffs’ easements was apparently not considered at all when the Commission issued its decisions. The Court of Appeal held that these factors drove its finding that Section 1759 did not

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<sup>37</sup> SCE also recognizes that Section 2106 authorizes a private cause of action in Superior Court for unlawful acts by a public utility. Public Utilities Code § 2106. California courts have found that “[i]n order to resolve the potential conflict between sections 1759 and 2106, the latter section must be construed as limited to those situations in which an *award of damages would not hinder or frustrate the commission’s declared supervisory and regulatory policies.*” See *Waters v. Pacific Telephone Co.*, 12 Cal. 3d 1, 4 (1974) (emphasis added).

bar plaintiff's claim for relief. Specifically: "the commission has made no investigation into the validity of plaintiffs' claims, has made no finding [the utility] has complied with the terms of the grants of its rights-of-way, and has made no determination further action has been rendered unnecessary." *Id.* Accordingly, the Court of Appeal found that the superior court's decision in *Kopenen* did not conflict with Commission's decisions or interfere with its regulatory authority.

In this case, Chino Hills specifically introduced the issue concerning the scope of the easements into this proceeding, and the Commission appropriately investigated that issue. The Commission specifically found that construction of the Project is consistent with the existing easement terms. D.09-12-044 at 89-90; Finding of Fact No. 32. Considering this issue and acting under its broad authority to design and site transmission lines, the Commission issued its Decision selecting the Project route through Chino Hills. Any suit by Chino Hills alleging that the existing easements do not permit construction of Segment 8A would "directly contravene a specific order or decision of the Commission" to regulate the design and siting of transmission lines. *See Covalt*, 13 Cal. 4th at 918. Such a suit before the superior court is explicitly disallowed by Section 1759. *Id.*; *see also Hartwell Corp. v. Superior Court*, 27 Cal. 4th 256, 278 (2002) (holding that a court injunction issued after a jury finding that a utility violated water quality standards would be improper because it would interfere with the commission in the performance of its official duties where the Commission had previously determined that the utilities at issue had complied with the standards).<sup>38</sup>

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<sup>38</sup> While SCE agrees with the Commission that its existing easement rights are more than sufficient to build the Project through Chino Hills, as a matter of prudence and to avoid any potential for delay, SCE is prepared, should it become necessary, to simultaneously, and in the alternative, seek any additional rights as may be required, consistent with Commission Finding of Fact 46 and Conclusion of Law 25.

**5. Timely Completion of Segment 8A is Critical for TRTP's Contribution to Progress towards California's RPS Goals**

The Commission appropriately considered the importance of California's progress towards RPS goals as a ground to select SCE's proposed route over the delays associated with Alternative 4CM.

**a. Challenges Hindering Progress Towards RPS Goals Do Not Justify Discounting the Importance of Timely Completion of TRTP**

Chino Hills' objection to the Commission's consideration of California's RPS goals as a basis for rejecting Alternative 4CM is based on two contradictory arguments. On one hand, Chino Hills argues that the Commission improperly considered California's RPS goals in the selection of SCE's proposed route because it would be difficult for SCE to complete the construction of TRTP in time for consideration in progress towards the 20% renewables goal by the 2010 deadline (even extended by up to 3 years under Public Utilities Code Section 399.14). Chino Hills Application at 13-14. In other words, Chino Hills asserts the Commission committed legal error by rejecting a route that would cause *more* delay to the completion of TRTP (and thus the interconnection of up to 4,500 MW of new generation, the vast majority of which will be renewable). Whether or not California will achieve the 20% by 2010 target is irrelevant as the Commission cannot ignore the intent of the RPS goals, namely, to significantly increase the percentage of renewable energy utilized within California as quickly as possible. If anything, this argument only *accentuates* the need to avoid any further delay to TRTP's completion because it underscores the difficulties in progress towards California's ambitious RPS goals.

On the other hand, Chino Hills asserts that California has copious amounts of time to meet Executive Order S-14-08's 33% RPS goals by 2020, so that the Commission may feel comfortable adopting Alternative 4CM and its related risk of significant delay. *See* Chino Hills Application at 15. As recognized by Chino Hills, however, California has significant progress to

make towards the RPS goal of 20% by 2010, and any unnecessary delay will similarly jeopardize California's ability to achieve the 33% by 2020 target as well.

**b. There is No Legal Error in the Commission's Consideration of the 33% by 2020 RPS Goal Included in Executive Order S-14-08**

Chino Hills also criticizes the Commission's reliance on the 33% by 2020 goal as a factor in its rejection of Chino Hills' proposal because: (1) it cannot be legally enforced by the Commission; and (2) it is unlikely to be imposed in the future. Recently, the Commission rejected nearly identical arguments made by the opponents to the Sunrise Project, finding: "Although pursuant to Public Utilities Code section 399.15 we cannot impose a 33% renewable requirement, *we can find that such a requirement is likely to be imposed in the future*, as we have done. . . . [W]e can predict conditions over which we do not have authority. If that were not the case we would be unable to act in an informed manner. Therefore, we are justified in evaluating Sunrise in the context of a future, more stringent, renewable generation goal." D.09-07-024 at 5 (emphasis added).

Chino Hills' contention that the implementation of a 33% goal is unlikely to be implemented based on Governor Schwarzenegger's recent veto is without merit. *See* Chino Hills Application at 15. The California Senate and Assembly passed legislation in September 2009 that would raise the RPS to 33% by 2020. *See* SB 143; AB 644. Governor Schwarzenegger vetoed these bills because he disagreed with certain aspects of how the 33% target would be reached under the legislation, but he issued Executive Order S-21-09 mandating 33% RPS by 2020 soon after the Senate and Assembly bills passed.<sup>39</sup> In short, the disagreement between the Governor and Legislature is not whether or how much RPS goals should be increased, but merely the *means* of increasing them. Governor Schwarzenegger's veto, therefore, provides no support for Chino Hills' contention that a 33% RPS goal is unlikely.

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<sup>39</sup> *See, e.g.*, Remarks of Governor Schwarzenegger, September 15, 2009, available at <http://gov.ca.gov/index.php?/speech/13282/>.

Moreover, Chino Hills' argument requires that the Commission operate within a vacuum ignoring the uncontroverted fact that timely development of transmission projects, such as TRTP, to bring renewable energy to the grid is both a state *and* national priority. Led by the Department of Interior (Interior), the federal government has stressed the importance of timely development of transmission projects to promote renewable energy development, as demonstrated by:

- Secretary of the Interior Salazar's issuance of Order No. 3285 in March 2009, establishing that the development of renewable energy is a priority for Interior, and instructing a Departmental Task Force to, among other things, (1) to identify transmission corridors needed to connect areas rich in renewable resources to the grid, and (2) "prioritize the permitting and appropriate environmental review of transmission rights-of-way applications" necessary to deliver renewable energy to customers. *See* U.S. Dep't of Interior Exec. Order 3285 (March 11, 2009).
- The Memorandum of Understanding (MOU) dated October 23, 2009 between federal agencies involved in the construction and siting of transmission projects (including the Department of Agriculture, the agency overseeing the U.S. Forest Service) aiming to facilitate coordination in the environmental review of transmission projects.
- The Memorandum of Understanding (MOU) between the State of California and the Department of Interior released in October 2009, in which Governor Schwarzenegger pledged to "take the necessary actions to further the implementation" of the State of California's and Department of Interior's implementation of renewable energy goals "in a cooperative, collaborative, and timely manner."<sup>40</sup>

In light of developments both within and outside of California placing a priority on the timely development of transmission to interconnect renewable energy to the grid, including but

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<sup>40</sup> Memorandum of Understanding between the State of California and the Department of Interior on Renewable Energy, dated October 12, 2009, Section III, located at [www.doi.net/documents/CAMOUsigned.pdf](http://www.doi.net/documents/CAMOUsigned.pdf) (last visited Jan. 31, 2010).

not limited to the likely legislative implementation of a 33% by 2020 RPS goal in California, the Commission certainly acted within its authority to consider the risk for lengthy delay created by Alternative 4CM in its decision to adopt SCE's proposed route for Segment 8A.

**H. The Commission's Decision to Approve TRTP is Supported by Evidence in the Voluminous Record, Contradicting Allegations Concerning Mr. Flynn's Employment at SCE**

Chino Hills and CARE suggest that the Commission's decision is somehow tainted by SCE's employment of Mr. Thomas Flynn, the Commission's former project manager for TRTP. *See* Chino Hills Application at 49-52; CARE Application at 20-21. Chino Hills contends that the Commission committed legal error when it denied Chino Hills' open-ended request to delay these proceedings to go on a fishing expedition for evidence of purported impropriety. As demonstrated by the documents concerning Mr. Flynn's interviews with SCE attached to Chino Hills' application, *see* Chino Hills Application, Attachment F, there is no evidence of impropriety on the part of the Commission in rejecting Chino Hills' route.

Neither Chino Hills nor CARE can establish that Mr. Flynn's eventual employment with SCE impacted this Commission's decision to approve TRTP, including its rejection of Alternative 4CM in favor of SCE's preferred route along Segment 8A in Chino Hills. Rather, the record reflects that the Commission went to great lengths to consider Chino Hills' proposals to reroute the Project, thoroughly undercutting these baseless allegations:

- The Commission exhaustively reviewed at least five alternative routes in the Chino Hills area. Notably, the Commission went above and beyond its obligations under CEQA to review Chino Hills proposed alternatives: it had no legal obligation under CEQA to review Alternative 4CM, which Chino Hills ultimately supported, because it was submitted *after* the comment deadline to the Draft EIR/EIS. *See, e.g.*, Cal. Pub. Res. Code § 21091(d)(1) (The lead agency "shall consider comments it receives" on draft EIRs "if those comments are received within the public review period").

- The Commission and the parties developed an exhaustive administrative record thoroughly vetting the issue of the appropriate route through the Chino Hills area, including: (1) approximately 60 sets of data requests exchanged between SCE and Chino Hills alone (in addition to data requests from the Commission on the issue); (2) hundreds of pages of evidence concerning the safety of the construction, operation, and maintenance of Segment 8A in the Chino Hills area; (3) hundreds of pages of evidence concerning the infeasibility of Chino Hills' proposals, including Alternative 4CM; (4) two weeks of evidentiary hearings presided over by ALJ Kolakowski (in which Mr. Flynn did not participate); (5) an en banc meeting and separate final oral argument before the Commission (in which Mr. Flynn did not participate); and (6) consideration of the voluminous comments on the Draft EIR from the parties and the public; and (7) the preparation and certification of a Final EIR thoroughly analyzing the potential environmental impacts of Segment 8A and Alternative 4CM.
- SCE was not alone in objecting to Chino Hills' attempt to reroute the project away from the existing right-of-way. Several parties, including the California State Parks Foundation and the Aerojet Corporation, vigorously opposed Chino Hills' attempt to reroute the transmission line into Chino Hills State Park and the Aerojet property. Ultimately, certain environmental groups as well abandoned the Chino Hills proposal.<sup>41</sup>
- Mr. Flynn was only one of many Commission staff working to review SCE's Application for TRTP.

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<sup>41</sup> See Letter from J. Reynolds and J. Wald of the National Resources Defense Council to the Commission dated November 24, 2009, attached to the Notice of Ex Parte Communication submitted November 30, 2009 (clarifying the NRDC's position that it "does not support any of the Chino Hills alternatives").

In light of the above, there is no evidence warranting delay of or undermining the validity of the Commission's approval of TRTP under the Political Reform Act.<sup>42</sup> Accordingly, there is no legal error warranting rehearing of the Commission's decision under Rule 16.1.

**I. Antelope Valley-East Kern Water Agency's Application for Rehearing Should Be Denied**

On January 27, 2010, the Commission's Docket Office rejected the Antelope Valley-East Kern Water Agency's Application for Rehearing, which AVEK had filed concurrently with a Motion to Become a Party, on the grounds that AVEK is not a party to the TRTP proceeding. SCE concurs that AVEK cannot obtain party status at this late stage in the proceedings and that the Commission's Docket Office properly rejected AVEK's Application for Rehearing.<sup>43</sup> AVEK has also filed a Motion to Reconsider the rejection of its Application for Rehearing. Both the Motion to Reconsider and the Motion to Become a Party are still pending, and SCE believes that both motions should be denied for the reasons set forth in SCE's response to the two motions.<sup>44</sup>

In the event that AVEK is granted party status, AVEK's arguments are not sufficient to warrant a rehearing. SCE needs a total of approximately 18 acres of ROW for the portion of Segment 4 that will traverse AVEK property, while the total recharge area is roughly 1,500 acres. SCE's 18-acre ROW is a negligible portion of the total 1,500 acre recharge area and is not likely to restrict AVEK's groundwater recharge activities. Further, SCE is committed to working with AVEK to reach a solution satisfactory to both parties, if possible. Notwithstanding the resolution of the AVEK application, SCE will continue to work with AVEK to address this

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<sup>42</sup> The Commission's extensive review of the Project, the Project's impacts to the environment, and the numerous alternatives presented by the parties similarly demonstrate the fallacy of CARE's assertion that the Commission's decision was a "post hoc rationalization" of a prior approval of the Project. *See* CARE Application at 21.

<sup>43</sup> *See* SCE's Response to Response to Antelope Valley-East Kern Water Agency's: (1) Motion to Become a Party and (2) Motion to Reconsider Rejection of Application for Rehearing.

<sup>44</sup> *See id.*

issue, but for the purposes of this proceeding, it is SCE's position that AVEK should not be granted party status and should not be allowed to seek rehearing of the Commission's decision.

**J. CARE's Request for Oral Argument Should Be Denied**

CARE requests oral argument, but its Application fails to set forth appropriate grounds supporting the request. Although the Commission may grant oral argument for any reason, Commission Rule 16.3 sets for the general requirements that CARE failed to follow. First, CARE should have "explain[ed] how oral argument will materially assist the Commission in resolving the application." Rule 16.3(a). Second, CARE should have demonstrated that the application raises issues of major significance for the Commission because the challenged order or decision: (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation; (2) changes or refines existing Commission precedent; (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or (4) raises questions of first impression that are likely to have significant precedential impact. *Id.* CARE's request for oral argument fails to meet Rule 16.3(a)'s requirements.

CARE's application makes no attempt to explain how oral argument would materially assist the Commission in resolving its application, merely stating that "CARE requests oral argument before the Commission on the basis that this Decision grants an application using an environmental review process contrary to law." CARE Application at 1. It is unlikely that oral argument could possibly assist the Commission in these circumstances. The parties to this proceeding have already engaged in two weeks of evidentiary hearings, thoroughly briefed the issues, placed hundreds of exhibits into the record, and conducted an en banc meeting and final oral argument on the Proposed Decision before the Commission. CARE's application, which largely regurgitates its positions and raises only new meritless arguments concerning purported defects to the CEQA process (as well as wholly inapplicable purported defects by the Commission in the NEPA process), is entirely meritless and thus does not warrant the time and expense associated with holding yet *another* oral argument in this proceeding. Accordingly,

CARE's request for oral argument fails to meet any of the criteria suggested by Rule 16.3 and should be denied.<sup>45</sup>

### III. CONCLUSION

A vast majority of the arguments presented in the Applicants' applications are improper under Rule 16.1(c) because they dispute the evidentiary decisions underlying the Commission's decision. The Commission's determinations in the Final EIR are consistent with CEQA authority, are supported by substantial evidence in the record, and thus do not constitute legal error warranting rehearing. Accordingly, SCE respectfully submits that the Applicants' requests for rehearing should be denied.

Dated: February 9, 2010

Respectfully submitted,  
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<sup>45</sup> AVEK's request for oral argument should be denied for the same reasons, if the Commission were to entertain AVEK's application for rehearing, which to date has been rejected by the Commission. *See* AVEK Application for Rehearing at 1-2; SCE's Response to AVEK's (1) Motion to Become a Party and (2) Motion to Reconsider Rejection of Application for Rehearing.

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission’s Rules of Practice and Procedure, I have this day served a true copy of **SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) RESPONSE TO APPLICATIONS FOR REHEARING OF DECISION 09-12-044 SUBMITTED BY THE ACTON TOWN COUNCIL, CALIFORNIANS FOR RENEWABLE ENERGY, ANTELOPE VALLEY-EAST KERN WATER AGENCY, AND THE CITY OF CHINO HILLS** on all parties identified on the attached service list. Service was effected by one or more means identified below:

Transmitting the copies via e-mail to all parties who have provided and e-mail address. First class mail will be used if electronic service cannot be effectuated.  
Executed this 9th Day of February 2010, at Rosemead, California.

/s/ Meraj Rizvi

By: Meraj Rizvi

SOUTHERN CALIFORNIA EDISON COMPANY

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[TOP OF PAGE](#)  
[BACK TO INDEX OF SERVICE LISTS](#)