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Ratesetting**TO PARTIES OF RECORD IN APPLICATION 12-10-018:**

This is the proposed decision of Administrative Law Judge Hallie Yacknin. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 5, 2015 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ DOROTHY J. DUDA for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF ALJ YACKNIN** (Mailed 10/6/2015)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for a Permit to Construct Electrical Facilities with Voltages Between 50 kV and 200 kV: Santa Barbara County Reliability Project.

Application 12-10-018
(Filed October 26, 2012)

**DECISION GRANTING PERMIT TO CONSTRUCT THE
SANTA BARBARA COUNTY RELIABILITY PROJECT**

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DECISION GRANTING PERMIT TO CONSTRUCT THE SANTA BARBARA COUNTY RELIABILITY PROJECT

1. Summary

This decision grants Southern California Edison Company (SCE) a permit to construct the Santa Barbara County Reliability Project to reconductor the existing 66 kilovolt (kV) subtransmission lines serving the Santa Barbara South Coast Electrical Needs Area (ENA), subject to the mitigation identified in the Mitigation Monitoring Plan.¹ Although such mitigation will not avoid the project's significant adverse impacts on air quality and noise during project construction, the need to provide better back-up support to the two 220 kV transmission lines serving the ENA is an overriding consideration meriting project approval.

This decision further determines that, as designed when SCE commenced construction in 1999, the project was exempt from the permitting requirements of General Order 131-D for being located entirely within existing rights of way.

2. Pre-application History

Southern California Edison Company (SCE) commenced construction of the project in 1999 without obtaining a permit to construct from this Commission, based on its interpretation at the time that the project was exempt from General Order (GO) 131-D's permitting requirements pursuant to Section III.B.1.b (Exemption b), which exempts "the replacement of existing

¹ The attached Mitigation Monitoring Plan includes all revisions made in the Environmental Impact Report and its errata but omits the editing notations shown in those documents.

power line facilities or supporting structures with equivalent facilities or structures.”²

SCE also believed that the project was exempt from local coastal permitting regulations requiring a local Coastal Development Permit (CDP) from the County of Santa Barbara. SCE stopped construction in 2005 after members of the public raised concerns questioning such exemption, and SCE ultimately agreed to apply for a local coastal development permit. By that time, it had largely completed about half of the project work, including the replacement of 49 wood subtransmission poles with taller galvanized metal poles along “Segment 3A” between Carpinteria and the Ventura County border.

In 2010, after SCE’s application to the County was deemed complete and the County had begun work on the environmental review of the project, the County questioned whether the project was exempt from requiring a permit from this Commission. SCE contacted the Commission’s Energy Division regarding this issue who, by letter dated April 8, 2011, advised SCE that the project did not qualify for Exemption b (or any other exemption) and directed SCE to file this application.³

3. Procedural Background

SCE filed this application on October 26, 2012. William and Valerie Kerstetter (Kerstetters) filed timely protests on November 26, 2012.

² At that time, the project was designed to be built entirely within existing rights of way. However, SCE did not at that time consider the applicability of Section III.B.1.g, which exempts “power line facilities or substations to be located in an existing franchise, road-widening setback easement, or public utility easement {...}.”

³ By this time, the project design had been refined with the result that some of the project would be built outside of existing rights of way.

The Commission's Energy Division issued a draft environmental impact report on the proposed project on September 26, 2014.

A prehearing conference was conducted on January 30, 2015, in Carpinteria, California. No party other than the applicant appeared, and no other person appeared to move for party status. The assigned Commissioner's February 13, 2015, scoping memo identified the issues to be determined, and set a schedule providing for the taking of evidence and closing briefs, with closing briefs filed after the receipt of the final Environmental Impact Report (EIR).

The parties stipulated to the admission of prepared testimony without cross-examination, and the exhibits, including the final EIR (issued on May 18, 2015) and an initial errata to the EIR (issued on May 27, 2015), were received into evidence by ruling dated June 4, 2015. Opening briefs were filed on June 30, 2015. A second errata to the EIR (issued on July 28, 2015) was received into evidence by ruling dated July 29, 2015. Reply briefs were filed on August 14, 2015, upon which the matter was submitted.⁴

4. Issues

The issues in the proceeding, as determined by the assigned Commissioner's scoping memo, are:

1. What are the significant adverse environmental impacts of the proposed project? This issue encompasses consideration of whether the project design comport with Commission rules and regulations and other applicable standards governing safe and reliable operations.

⁴ The EIR, initial errata, and second errata have been marked for identification as reference Exhibits A, B, and C, respectively.

2. Are there potentially feasible mitigation measures or project alternatives that will avoid or lessen the significant adverse environmental impacts? This issue encompasses consideration of how to design the proposed project in a manner that ensures its safe and reliable operations.
3. As between the proposed project and the project alternatives, which is environmentally superior?
4. Are the mitigation measures or project alternatives infeasible?
5. To the extent that the proposed project and/or project alternatives result in significant and unavoidable adverse environmental impacts, are there overriding considerations that nevertheless merit Commission approval of the proposed project or project alternative?
6. Was the EIR completed in compliance with California Environmental Quality Act (CEQA), did the Commission review and consider the EIR prior to approving the project or a project alternative, and does the EIR reflect the Commission's independent judgment?
7. Is the proposed project and/or project alternative designed in compliance with the Commission's policies governing the mitigation of Electric and Magnetic Fields (EMF) effects using low-cost and no-cost measures?
8. Did SCE violate GO 131-D by commencing construction of the project without a permit to construct?
9. If so, should SCE be sanctioned for its violation of GO 131-D? This issue encompasses consideration of Pub. Util. Code § 2107,⁵ which sets a \$500 minimum and a \$50,000 maximum fine for each offense, and Section 2108, which provides that every day is a separate offense. It also encompasses consideration of the six factors to consider in assessing fines, as identified in the Affiliate Rulemaking Decision, Decision (D.) 98-12-075, as follows:

⁵ Unless otherwise stated, all section references are to the Public Utilities Code.

- a. How many days did each violation continue?
 - b. What harm was caused by virtue of the violations? This includes harm to the environment and harm to the integrity of the regulatory process.
 - c. What was the utility's conduct in preventing, detecting, correcting, disclosing and rectifying the violation?
 - d. What amount of fine will achieve the objective of deterrence?
 - e. What fine or sanction has the Commission imposed under reasonably comparable factual circumstances?
 - f. Under the totality of these circumstances, and evaluating the harm from the perspective of the public interest, what is the appropriate fine or sanction?
10. If so, should SCE be required to mitigate the impacts of the prior unpermitted activity pursuant to the Commission's authority under Sections 761 and 762?

5. Environmental Impacts of Proposed Project

The EIR determined that the proposed project would not have any significant environmental impacts that cannot be mitigated to a less than significant level with the mitigation measures identified in the Mitigation Monitoring Plan other than short-term construction-related impacts on air quality. Specifically, the proposed project would have no impact or a less than significant impact on agricultural resources, greenhouse gas, hydrology and water quality, land use and planning, and population and housing. The proposed project would have impacts to aesthetics, biological resources, cultural and paleontological resources, geology, soils and mineral resources, hazards and hazardous materials, public services and utilities, recreation, and transportation and traffic that can be mitigated to less than significant with the mitigation measures identified in the Mitigation Monitoring Plan, as discussed more fully below. As also discussed below, while the proposed project's impacts on air

quality can be mitigated with the mitigation measures identified in the Mitigation Monitoring Plan, they cannot be avoided.

5.1. Aesthetics

Construction activities could result in substantial damage to scenic resources and substantially degrade the existing visual character or quality of the site and its surroundings. These construction activities include the use of vehicles and equipment for construction activities; soil and vegetation removal at new structure sites and for access roads; temporary outdoor storage of materials; and helicopter activities for transporting workers, materials and equipment and for placing and installing structures and hardware. In addition, the new transmission structures could create a new source of substantial light or glare.

These aesthetic impacts can be mitigated to less than significant with the mitigation identified in the Mitigation Monitoring Plan, including restoration of permanent disturbed areas to conditions that would blend with the overall landscape character; keeping construction sites clean and orderly and screening or storing materials and equipment from public view; using finish colors and/or surface applications and native vegetation to blend retaining walls with their surroundings; and using non-specular conductors and non-reflective finish on all new transmission structures.

5.2. Air Quality

Construction activities would result in the emission of reactive organic gases (ROG), nitrous oxides (NO_x), and particulate matter less than or equal to 10 micrometers in diameter (PM₁₀) and 2.5 micrometers in diameter (PM_{2.5}) in excess of applicable thresholds, and would result in a cumulatively considerable net increase in ROG, NO_x and PM₁₀ emissions within the Santa Barbara County Air Pollution Control District, which is a non-attainment region. These impacts

can be mitigated, but not avoided, with the use of low emission engines for off-road diesel vehicles and equipment as identified in the Mitigation Monitoring Plan.

5.3. Biological Resources

Construction activities could result in a substantial adverse effect special status plants and wildlife,⁶ special status natural communities,⁷ and federally protected wetlands.⁸ Grading or vegetation removal during operational inspection and maintenance activities could also impact special status species or habitat.

These impacts can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan, including clearly marking and restricting access to sensitive areas; conducting pre-construction surveys; developing and implementing a Noxious and Invasive Weed Control Plan; limiting the removal of native plants, trees, and natural communities; habitat restoration; implementing measures to prevent entrapment of wildlife; minimizing the potential for glare or spillover from night lighting; taking measures to reduce impacts on hydrologic features and aquatic habitat; taking additional measures to reduce potential impacts on California red-legged frog,

⁶ Special status plants and wildlife observed or known to be present in the project area include Santa Barbara honeysuckle, Nutall's scrub oak, monarch butterflies, arroyo chub, steelhead, coast range newt, California red-legged frog, western pond turtle, coast horned lizard, two-striped garter snake, Cooper's hawk, golden eagle, northern harrier, white-tailed kite, bald eagle, loggerhead shrike, song sparrow, Least Bell's vireo, burrowing owl, southwestern willow flycatcher, American badger, ringtail, San Diego desert woodrat, mule deer, and mountain lion.

⁷ Special status natural communities in the project area include riparian communities, Southern California Black Walnut Woodland, Southern Coast Live Oak Riparian Forest, and Southern Sycamore Alder Riparian Woodland.

⁸ Fifteen streams in the project area were identified as jurisdictional.

nesting birds, burrowing owl, Southwestern willow flycatcher and Least Bell's vireo, and ringtail and American badger; and implementing these measures during operations and maintenance.

5.4. Cultural and Paleontological Resources

Construction activities could potentially cause a substantial adverse change in the significance of a historical or archeological resource, destroy a unique paleontological resource or site or unique geologic feature, or disturb human remains.

These potential impacts can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan, including the retention of qualified cultural resources and paleontological consultants who shall approve cultural resources and paleontological monitoring and treatment plans, conduct worker environmental awareness training, monitor construction, and report to the Commission summarizing all monitoring and mitigation activities.

5.5. Geology, Soils and Mineral Resources

Landslides are a potential hazard through most of the project area. The proposed project would therefore expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides. This impact can be mitigated to less than significant with Mitigation Measure (MM) GEO-1 identified in the Mitigation Monitoring Plan, which requires SCE to conduct annual, or more often as needed, maintenance patrols to identify areas of active slope instability and submit an annual report to the Commission so that any areas of slope instability that could potentially affect project facilities can be addressed.

5.6. Hazards and Hazardous Materials

Although database searches of the list of hazardous materials sites compiled pursuant to Gov. Code § 65962.5 did not find any hazardous materials sites within 1,000 feet of project components, there is a minor potential for an unrecorded hazardous materials site to be present. The resulting potential for a significant hazard to the public or the environment can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan requiring the applicant to prepare and implement a Contaminated Soil/Contingency Plan in case hazardous material is found on site.

Construction, Operation and Maintenance (O&M) of the proposed project would require temporary or single-lane closure of roadways, but impacts on traffic and transportation, including by emergency vehicles, can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan requiring the development and implementation of a Traffic Control Plan.

Several of the proposed project components are located in areas that are designated by Department of Forestry and Fire Protection as Very High Fire Hazard Severity Zones, where construction, O&M of the proposed project would increase fire risk. This impact can be reduced to less than significant with mitigation identified in the Mitigation Monitoring Plan requiring the development and implementation of a Fire Control and Emergency Response Plan.

5.7. Noise

Construction of the proposed project would cause noise levels to meet or exceed standards established by Santa Barbara County construction projects located in the vicinity of sensitive receptors. This impact can be reduced to less than significant with implementation of the mitigation in the Mitigation

Monitoring Plan requiring the installation of a temporary noise attenuation barrier for construction activities in those areas.

5.8. Public Services and Utilities

As discussed previously, construction activities could increase the risk of fire. The risk of fire and unnecessary burden on local fire protection providers can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan requiring the applicant to develop and implement a Fire Control and Emergency Response Plan, as discussed previously.

Due to California's current drought conditions, construction activities could result in insufficient water supply from existing entitlements. This impact can be reduced to less than significant with the implementation of mitigation identified in the Mitigation Monitoring Plan requiring the preparation of a Water Efficiency Plan and the use of reclaimed water to the extent feasible.

Project construction will generate 7213 tons of solid waste. Under Santa Barbara County's Environmental Threshold and Guidelines Manual, the impact of more than 350 tons of construction and demolition debris is considered a significant impact on public services. In addition, Ventura County Ordinance #4421 requires the diversion of a minimum 60% (by weight) of construction debris through either reuse or recycling. The impact of the generation of 7213 tons of solid waste can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan requiring the preparation and implementation of a Solid Waste Management Plan that complies with Ventura Ordinance #4421 and ensures that no more than 350 tons of solid waste is delivered to landfills operated by Santa Barbara County.

5.9. Recreation

Construction will require temporary closures or detours along the Ojai Valley Trail and Franklin Trail that would impact members of the public that use the trails. This impact can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan requiring SCE to provide the public with at least one week notice of potential closures.

5.10. Transportation and Traffic

Temporary lane closures and/or travel lane reductions during construction could cause short-term, temporary impacts on the performance of the traffic circulation system, the potential for traffic safety hazards, access to emergency access routes, and the performance or safety of bicycle and pedestrian facilities including the Ojai Valley Trail. These impacts can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan requiring SCE to develop and implement a Traffic Control Plan to provide the public with at least one week notice of potential closures and requiring SCE to repair any damage done to area trails.

The use of helicopters during construction could potentially result in accidents or incidents at job sites and at local airports. These impacts can be mitigated to less than significant with mitigation identified in the Mitigation Monitoring Plan requiring SCE to develop and conduct Helicopter Safety Plan and Worker Environmental Awareness training and to notify the Van Nuys Flight Standards District Office and residents, businesses and owners of property within the vicinity of planned helicopter activities.

6. Environmentally Superior Alternative

The EIR considers three project alternatives: Alternative A, which would reduce the scope of work by leaving existing 30 foundations and 17 topped

subtransmission wood poles along Segments 1, 2 and 3A; Alternative B, which would install some structures along Segment 4 via helicopter; and the “No Project” Alternative, under which the project would not be built.

The proposed project is environmentally superior to the alternatives with respect to nine of the resources; Alternative A is environmentally superior to the proposed project and alternatives with respect to six resources (including air quality), and Alternative B is environmentally superior to the proposed project and alternatives with respect to two resources.

Although Alternative A would have less of an impact on air quality than the proposed project, the difference is minimal as the majority of air quality impacts would result from project activities that would occur under both alternatives. On the other hand, the proposed project would provide the long-term environmental benefits of removing abandoned infrastructure and rehabilitating small portions of the project area. On balance, the proposed project is the environmentally superior alternative.

7. EIR Compliance with CEQA⁹

CEQA requires the lead agency to certify that the EIR was completed in compliance with CEQA, that the agency has reviewed and considered it prior to approving the project, and that the EIR reflects the agency’s independent judgment.

The EIR was completed after notice and opportunity for public comment on the scope of the environmental review and the draft EIR, as required by CEQA. On April 13, 2013, the Commission’s Energy Division published and

⁹ We take up the issue of whether the EIR was completed in compliance with CEQA out of the sequence of issues as they were set forth in the scoping memo.

distributed a Notice of Preparation (NOP) in accordance with the CEQA Guidelines to the State Clearinghouse; responsible and trustee agencies including 69 representatives of federal, state, regional, and local agencies and planning groups; members of six tribes; and over 380 individuals including property owners within 300 feet of the existing proposed project right of way and substations. The NOP solicited written and verbal comments on the EIR's scope during a 30-day comment period, and noticed a public scoping meeting; the public scoping meeting was also noticed in local newspapers. The public scoping meeting was conducted on May 7, 2013, in Carpinteria, California.

Energy Division issued and distributed the Notice of Availability of the draft EIR on September 26, 2014, and held a public informational meeting on October 29, 2014, in Carpinteria. Energy Division received oral comments from two people at the public meeting, and also received 10 written comment letters (including one from the Kerstetters' representative).

Energy Division issued the final EIR on May 18, 2015, and two errata to the EIR, the first on May 27, 2015, and the second on July 28, 2015. The final EIR documents all comments made on the draft EIR and responds to them, as required by CEQA. The EIR, as revised by the first and second errata, identifies the proposed project's significant and unavoidable environmental impacts, mitigation measures that will avoid or substantially lessen them, and the environmentally superior alternative.

We have reviewed and considered the information contained in the EIR, as well as parties' challenges to the adequacy of the EIR as discussed below. We find that substantial evidence supports the EIR's findings, and we certify that the EIR was completed in compliance with CEQA, that we have reviewed and

considered the information contained in it, and that it reflects our independent judgment.

7.1. Adequacy of Project Description

The Kerstetters argue that the EIR fails to comply with CEQA because the project description improperly excludes existing infrastructure that had been installed before SCE stopped work in 2004. The Kerstetters concede that the Commission does not require an after-the-fact permit for the prior unpermitted work, but assert that CEQA nonetheless requires that the prior unpermitted work be included in the project description.

To the contrary, the “project” that is subject to environmental review pursuant to CEQA is the activity which is being approved and permitted. Specifically, CEQA Guideline § 15378 defines “project” in relevant part as follows:

- (a) “Project” means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, **and** that is any of the following:¹⁰

[...]

- (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

[...]

- (c) The term “project” refers to the activity which is being approved

¹⁰ Emphasis added.

[....]

The Santa Barbara County Reliability Project does not involve the issuance of a permit for SCE to construct its prior unpermitted work. This application does not seek, and SCE is not required to obtain, approval for its prior unpermitted work. Hence, SCE's prior unpermitted work is outside of the definition of "project" for purposes of CEQA. The exclusion of SCE's prior unpermitted work from the project description complies with CEQA.

7.2. Adequacy of Baseline for Environmental Review

The Kerstetters next argue that the EIR fails to comply with CEQA because the baseline for the environmental review includes SCE's prior unpermitted work. To the contrary, CEQA Guideline § 15125(a) provides that the baseline "normally" consists of "the physical environmental conditions in the vicinity of the project, as they exist at the time ... environmental analysis is commenced." SCE's prior unpermitted work was part of the physical environmental conditions at the time that the EIR's environmental analysis commenced and therefore properly included in the baseline.

As the EIR explains, there is ample legal precedent and authority for including SCE's prior unpermitted work in the baseline for the project's environmental review:

The comment notes, correctly, that CEQA Guidelines section 15125 provides that the baseline will "normally" constitute the physical environmental conditions in the vicinity of the project, as they exist at the time the NOP is published. The California Supreme Court and numerous courts of appeal have, thus, consistently maintained that ongoing activities occurring at the project site at the time CEQA review begins should be considered part of the existing conditions baseline. (See, e.g., *Communities for a Better Environment v. South Coast Air Quality*

Management Dist. (2010) 48 Cal.4th 310, 320-321 [CBE] [baseline must reflect “the ‘existing physical conditions in the affected area’, that is the ‘real conditions on the ground’, rather than the level of development that could or should have been present according to a plan or regulation”]; *In re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1167-1168 [preexisting environmental problems in the Bay Delta were part of the baseline conditions].) The recent decision in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439 is consistent with this line of holdings. There, the Supreme Court stated that a departure from the normal rule that baseline constitutes existing physical conditions can only “be justified by substantial evidence that analysis based on existing conditions would tend to be misleading or without informational value to EIR users. (*Id.* at 445.)

The general rule that ongoing activities should be treated as part of the baseline applies equally when the project includes renewal of a permit or other approval for an existing facility, even though the facility was not previously reviewed under CEQA. (*Citizens for East Shore Parks v. California State Lands Comm’n* (2011) 202 Cal.App.4th 549, 557-558.) It also applies when the existing physical conditions violate current regulatory provisions. (*Id.* at 559; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1452-1453; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1270; *Eureka Citizens for a Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371.) Therefore, the fact that the facilities were constructed without a permit makes no difference for purposes of the CEQA analysis. In *Riverwatch v. County of San Diego*, the court found that the analysis of a mining operation seeking a permit appropriately included prior illegal development in the baseline. (*Riverwatch*, 76 Cal.App.4th at 1452-1453.) Similarly, in *Fat v. County of Sacramento*, the court upheld the County’s choice of a baseline that included unauthorized development that had occurred over 30 years. (*Fat*, 97 Cal.App.4th at 1270.) The theory behind these holdings is that how present conditions came to be may be an issue for

enforcement agencies, but it is irrelevant to CEQA baseline determinations.

(EIR, pp. M-24 – M-25.)

The Kerstetters counter that *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, (2010) 739 F.Supp.2d 1260, which rejected an agency's use of a baseline that included existing unauthorized buoys, supports its position that the existing unpermitted work should not be included in the baseline. To the contrary, *League to Save Lake Tahoe* was concerned with the environmental provisions of the Tahoe Regional Planning Compact, not with CEQA. (*Id.* at 1294-1295; see also, *Citizens for East Shore Parks*, 202 Cal.App.4th at 561-562, discussing the case in the context of CEQA.) Furthermore, the Ninth Circuit Court of Appeals subsequently vacated the district's court's conclusion that the Tahoe Regional Planning Agency had violated the Compact by excluding unauthorized buoys from the baseline in its environmental impact statement. (*League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency* (9th Cir.2012) 469 Fed.Appx. 621.)

The Kerstetters argue that including SCE's prior unpermitted work in the baseline is nevertheless inappropriate because "it is an inextricable part of the proposed project," it "would fail to compare the Project with the environment's state absent the project," it would "mislead[] the public as to the Project's true environmental impacts," and because "use of the pre-project (1998) conditions is the only way to accurately portray the impacts of the project." (Kerstetters opening brief, pp. 11-12, emphasis in the original.) To the contrary, notwithstanding the Kerstetters' insistence that it is otherwise, the prior unpermitted work is not part of the project pursuant to CEQA Guideline § 15378.

7.3. Issuance of Second Errata Without Recirculation

The Kerstetters argue that it constitutes prejudicial procedural error for the second errata to modify the EIR's Chapter 7 to strike the discussion describing the impact of the past work along Segment 3A on private views because this modification was made without the opportunity for public comment and without explanation. This argument is without merit.

First, while Chapter 7 offers an analysis of the environmental impacts from the past work within the Coastal Zone (Segment 3A), this analysis is not required by CEQA. The Energy Division conducted this analysis and included it the EIR as a courtesy to Santa Barbara County, recognizing that development in the Coastal Zone requires the County's discretionary approval of a CDP that encompasses both the proposed project and the prior work in Segment 3A. As it would not be procedural error to omit this analysis in its entirety from the EIR, it would not be procedural error to modify the analysis without the opportunity for public comment. (*See* EIR, p. 7-1.)

Second, even if the analysis in Chapter 7 was required under CEQA, the stricken portion of the discussion was in fact subject to public comment. Indeed, it was SCE's public comment on the discussion that evidently led to its modification. SCE's comment took issue, not only with the draft EIR's purported "overstatement" of the contrast of dull grey poles against the surrounding environment, but also because the draft EIR improperly assessed the visual impact in the Shepherd Mesa area based on the impact on the residents' private views. (EIR, Appendix M, November 12, 2014, letter from SCE, pp. 12-13.) The final EIR responded by reaffirming its assessment that past work resulted in a significant impact; "however, text regarding private views under Impact AE-C has been modified." (EIR, Response to Comment 1-38, p. M-7.) However, the

EIR inadvertently omitted the indicated changes to that text. (EIR, p. 7-5.) The second errata correct that omission.¹¹

The Kerstetters complain that the EIR (as modified by the second errata) fails to articulate any reason why it struck the paragraph addressing aesthetic impacts of poles located on private property between Shepard Mesa Road and SR 192. To the contrary, the reasoning is evident from Comment 1-38, which states that the draft EIR improperly assessed the visual impact in the Shepherd Mesa area based on the impact on the residents' private views, and the Response to Comment 1-38, which states that modifications will be made to the text regarding private views.

7.4. Validity of MM BIO-14 and GEO-1

SCE argues that the EIR improperly includes two mitigation measures, MM BIO-14 and MM GEO-1. MM BIO-14 would require SCE to implement, during operations and maintenance activities that would require ground disturbance or vegetation clearance, the same mitigation measures as required during construction, and annually reporting to the Commission's Energy

¹¹ It bears noting that, had the EIR included the changes that it indicated in Response to Comment 1-38, no further public comment would have been required under CEQA. Pursuant to CEQA Guideline § 15088.5(a), recirculation to allow comment on new "information" included in an EIR is not required unless it is "significant." The guideline defines the terms "information" and "significant" as follows:

As used in this section, the term 'information' can include changes in the project or environmental setting as well as additional data or other information. New information is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful way to comment upon a substantial adverse effect of the proposed project or a feasible way to avoid or mitigate such effect....

Footnote continued on next page

Division on where such activities were performed and documenting that the mitigation measures were implemented. MM GEO-1 would require SCE to conduct annual maintenance patrols to identify areas of active slope instability and to submit an annual report to the Commission.

SCE argues that MM BIO-14 and MM GEO-1 are invalid because the impacts they purport to mitigate would be less than significant even in the absence of mitigation.¹² To the contrary, the EIR documents that grading or vegetation removal during operations and maintenance could have a significant impact on special status species or habitat, and that the siting of project components on naturally unstable geologic units and soils with high erosion potential could have a significant impact by causing landslides. (EIR, as modified by the second errata (Ex. C) at 19-20.)

SCE also argues that the mitigation measures are invalid because they would impose unreasonable and excessive burdens on SCE and potentially the Commission. We address these assertions in the context of the issue of infeasibility of mitigation measures, below.

8. Infeasibility of Mitigation Measures and/or Environmentally Superior Alternative

SCE objects that MM BIO-1 (1) would not lead to any additional protection of sensitive species during O&M work because any activities that would potentially impact sensitive species are already subject to compliance with

With regard to the issue at hand, the second errata does not include new information, and it does not change the EIR in a way that deprived the public of the opportunity to comment on the impact of the past work on visual impacts or a feasible way to avoid or mitigate such effect.

¹² See CEQA Guidelines § 15126.4(a)(3), "Mitigation measures are not required for effects which are not found to be significant."

various state and federal resource agencies' protective measures or permit requirements; (2) it could prevent SCE from performing necessary work in a timely, jeopardizing the continuity of service and public safety; and (3) it raises practicality concerns about what Commission staff or its consultants would enforce the measure.¹³ SCE similarly objects that MM GEO-1 (1) is redundant of operations and maintenance activities that SCE regularly takes pursuant to applicable laws (such as GO 95 and 165) and its own facilities inspection procedures to evaluate and alleviate slope stability concerns; and (2) it raises practicality concerns about what Commission staff would enforce the measure.

We find that MM BIO-14 and MM GEO-1 are infeasible for being impractical and unnecessary from a policy standpoint. The mitigation measures would impose special obligations with respect to a single project of a single utility, both on SCE and on Commission staff, even though SCE is already subject to enforceable rules, regulations and practices that reasonably ensure the mitigation of biological and geologic impacts during O&M of the project. Thus, the mitigation measures would pose an undue burden, while the environmental harm that would be caused by omitting these mitigation measures is minimal.

No party claims, and we do not find, any other mitigation measures to be infeasible.

9. Overriding Considerations

The need for the Santa Barbara County Reliability Project is uncontested. The Santa Barbara South Coast Electrical Needs Area (ENA) includes

¹³ Under the Commission's current organization, the Commission's Energy Division is responsible for overseeing compliance with mitigation measures imposed as conditions on the

Footnote continued on next page

approximately 82,700 metered customers in the “Goleta System” who are primarily served by power passing through Goleta Substation from two 220 kilovolt (kV) transmission lines that are co-located on the same set of lattice steel towers running through the hills of Ventura and Santa Barbara Counties. A failure of any of those towers, due to soil instability or other causes, would likely render both lines incapable of transmitting power.

There are demonstrated risks to continuity of service from the 220 kV lines. The area where they are located is prone to landslides. Heavy rainfall resulting from El Niño conditions in the late 1990s weakened soils and destabilized several of the footings supporting the structures carrying the co-located 220 kV lines. For example, during a significant rain event in early 1998, an SCE patrol crew noticed that footings on multiple towers had become so unstable due to underlying soil conditions that immediate emergency repairs were needed. The area is also prone to fires and earthquakes. For example, the 2008 “Gap Fire” resulted in several unplanned outages on both 220 kV lines. The 2013 “White Fire” did not render those lines inoperable, but had the potential to do so.

Three 66 kV lines serve the ENA as a back-up source in the event that the 220 kV lines would be out of service. However, the existing 66 kV lines can only provide about 100 megavolt amperes (MVA) as compared to the most recent peak demand forecast for the Goleta System of approximately 269 MVA. The project will increase the capacity of existing 66 kV lines to accommodate approximately 80 MVA more electrical load to the Goleta System.

issuance of a permit to construct, while the Commission’s Safety and Enforcement Division has general responsibility for overseeing compliance with other Commission orders.

We find that the need to increase the reliability of electrical service to the Goleta System is an overriding consideration that merits approval of the Santa Barbara County Reliability Project notwithstanding its unavoidable impact on air quality during construction.

10. EMF Compliance

The Commission has examined EMF impacts in several previous proceedings.¹⁴ We found the scientific evidence presented in those proceedings was uncertain as to the possible health effects of EMFs and we did not find it appropriate to adopt any related numerical standards. Because there is no agreement among scientists that exposure to EMFs creates any potential health risk, and because CEQA does not define or adopt any standards to address the potential health risk impacts of possible exposure to EMFs, the Commission does not consider magnetic fields in the context of CEQA and determination of environmental impacts.

However, recognizing that public concern remains, we do require, pursuant to GO 131-D, Section X.A, that all requests for a permit to construct include a description of the measures taken or proposed by the utility to reduce the potential for exposure to EMFs generated by the Proposed Project. We developed an interim policy that requires utilities, among other things, to identify the no-cost measures undertaken, and the low-cost measures implemented, to reduce the potential EMF impacts. The benchmark established for low-cost measures is 4% of the total budgeted project cost that results in an

¹⁴ See D.06-01-042 and D.93-11-013.

EMF reduction of at least 15% (as measured at the edge of the utility right-of-way).¹⁵

SCE filed a detailed Field Management Plan as Appendix F to its application. The Field Management Plan provides that the project will use phasing circuits to reduce magnetic field levels. Specifically, SCE proposes to utilize subtransmission structure heights that meet or exceed SCE's preferred EMF design criteria, utilize double-circuit construction that reduces spacing between circuits as compared with single-circuit constructions, arrange conductors for magnetic field reduction, and placing new substation electrical equipment away from the substation property lines closest to populated areas. SCE testifies that these design options meet SCE's EMF Design Guidelines filed with the Commission, as well as applicable national and State safety standards for new electric facilities. We concur and find that this design complies with the Commission's EMF decisions.

11. Violation of GO 131-D

11.1. Construction Without a Permit Pursuant to Section III

We consider whether SCE is in violation of GO 131-D for having commenced construction to reconductor the 66 kV subtransmission lines without obtaining a permit to construct. GO 131-D requires electric public utilities to obtain a permit to construct electric power line facilities between 50 kV and 200 kV, subject to several exemptions, two of which are implicated here:

¹⁵ SCE notes in testimony that the Commission's EMF policy is consistent with the World Health Organization's 2007 Environmental Health Criteria wherein it states, "Provided that the health, social and economic benefits of electric power are not compromised, implementing very low-cost precautionary procedures to reduced exposures is reasonable and warranted." (Ex. 1, pp. 38-39.)

Exemption b, which exempts “the replacement of existing power line facilities or supporting structures with equivalent facilities or structures,” and Section III.B.1.g (Exemption g), which exempts in relevant part “power line facilities or substations to be located in an existing franchise, road-widening setback easement, or public utility easement.”

SCE states that it began project construction in 1999 based on its reasonable interpretation at the time that the project was subject to Exemption b. SCE asserts that, as GO 131-D had been adopted only a few years earlier, there was little guidance available to assist it in interpreting how its exemptions were to be construed. SCE asserts that, in the absence of such guidance, it was reasonable to interpret Exemption b as analogous to CEQA Guidelines § 15302(c), which provides that a utility project would be exempt from CEQA review if it involved only the “[r]eplacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.” SCE assumed at the time (and, in D.03-08-033, the Commission confirmed) that “capacity” was to be interpreted as “voltage” for purposes of GO 131-D. As the reconductoring project involved only the replacement of 66 kV conductors with new conductors at the same voltage and the replacement of some existing structures with new structures on the same properties, the project was exempt from CEQA review pursuant to CEQA Guidelines § 15302(c); SCE argues that it was reasonable for it to assume by analogy that it was likewise exempt from GO 131-D’s permitting requirement pursuant to Exemption b.

In addition, although it proceeded at the time on the assumption that the project was exempt pursuant to Exemption b, SCE asserts in hindsight that it also could have proceeded under Exemption g because, at the time, the entirety of the

project was designed to be built in existing rights of way. (The project design has since been refined to locate a small portion outside of existing rights of way.)

We concur that, as designed at the time SCE began construction in 1999, the project was exempt from GO 131-D's permitting requirement pursuant to Exemption g. Regardless of SCE's basis for declining to obtain a permit to construct at the time, it was not required to do so because the project was exempt pursuant to Exemption g. We find that SCE is not in violation of GO 131-D for commencing construction of the project without a permit to construct.

The Kerstetters object to this "post-hoc rationalization" for not finding SCE in violation of GO 131-D for commencing construction without a permit. However, the fact that it is "post-hoc" does not make it less correct.

The Kerstetters argue that Exemption g does not apply to any portion of a project on private fee land and, as such, is inapplicable to the project because Segment 3A is primarily located on private land. To the contrary, as the Commission has repeatedly determined, Exemption g applies to projects located within a utility's existing fee-owned rights of way. (*See, e.g.,* Resolutions E-4165, E-4225 and E-4243.) Exemption g applied to the project as it was designed at the start of construction.

The Kerstetters argue that the GO 131-D Section III.B.1 exemptions were rendered inapplicable by Section III.B.2.c, which provides that "the exemptions shall not apply when any of the conditions specified in CEQA Guidelines § 15300.2 exist: [...] there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."¹⁶ The

¹⁶ While the Kerstetters make this argument only with respect to Exemption b, we address it because the argument applies equally to Exemption g.

Kerstetters assert that the fact that Segment 3A of the project route crosses the Coastal Zone, where visual resources are entitled to heightened protection under Santa Barbara County's Local Coastal Plan, constitutes an "unusual circumstance" and that the EIR, by finding that the past work in Segment 3A caused a significant aesthetic impact, establishes that there was a "reasonable possibility" of a significant effect on the environment.

To the contrary, the EIR's determination that the past work in Segment 3A resulted in a significant aesthetic impact is based in large part on the fact that, in 2003, the City of Carpinteria designated State Road 192/Casitas Pass Road as a potential future scenic highway. (EIR, p. 7-5.) While the presence of a designated scenic resource might give rise to a "reasonable possibility" of a significant aesthetic impact, it did not exist in 1999 when SCE commenced construction. Furthermore, the mere fact that a project is located in the Coastal Zone does not constitute an "unusual circumstance" requiring CEQA review, as demonstrated by the fact that the California Coastal Commission's adopted guidelines exempt utility repair and reconstruction work from coastal development permitting.¹⁷ The record evidence does not support finding either a reasonable possibility that the activity will have a significant effect on the environment or unusual circumstances that would render exemptions inapplicable pursuant to Section III.B.2.c.

¹⁷ See *California Coastal Commission's Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements*, Section II.B.2.b, "A coastal permit is not required to maintain, replace, or modify existing overhead facilities, including the addition of equipment and wires to existing poles or other structures, right-of-way maintenance, and minor pole and equipment relocations...."

Because we find that the project, as designed at the start of construction, was exempt from GO 131-D's permitting requirements pursuant to Exemption g, we do not reach the issue of whether Exemption b also applied at the time.

11.2. Construction Without Notice Pursuant to Section XI

The Kerstetters, in their opening and reply briefs, assert that SCE violated GO 131-D by commencing construction without notice as required by Section XI. The time and place to identify this as an issue in the proceeding was in protest to the application and/or at the prehearing conference. The Kerstetters did not identify this issue in their protest, and they did not appear at the prehearing conference to identify it there. This issue is beyond the scope of the proceeding as determined by the assigned Commissioner's February 13, 2015, scoping memo.

The Kerstetters' untimely assertions highlight the prejudice that would be caused if we were to consider them at this late juncture. Although the Kerstetters fault SCE for not including in its testimony "any claims, let alone evidence, regarding the completing notice as required by Section XI" (Kerstetters opening brief, p.13), the scoping memo did not identify or thereby put SCE on notice that it should offer such evidence.¹⁸ Although the Kerstetters make the bald assertions that "SCE opted to commence and complete construction along Segment 3A without providing notice to a single third party" (Kerstetters opening brief, p. 37) and "SCE did not provide notice of the Project in accordance with its own internal mandate..." (Kerstetters reply brief, p. 29), they did not

¹⁸ SCE did in fact offer testimony that would inform this issue. ("I recall that SCE posted notices about the Project at various places in and around at least some of the area where

Footnote continued on next page

offer any testimony or evidence in support of this factual assertion and SCE has not had an opportunity to refute it. We reject the Kerstetters' claim that SCE violated Section XI as it is untimely and beyond the scope of the proceeding.

12. Sanctions or Mitigation for Violation of GO 131-D

Because we do not find SCE in violation of GO 131-D for having commenced construction without a permit, we do not reach the issue of what sanctions or mitigation should be imposed as punishment or mitigation for such violation.

13. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Hallie Yacknin in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on ____ by ____.

14. Assignment of Proceeding

Commissioner Michel P. Florio is the assigned Commissioner and ALJ Hallie Yacknin is the presiding officer to the proceeding.

Findings of Fact

1. The proposed project would have no impact or a less than significant impact on agricultural resources, greenhouse gas, hydrology and water quality, land use and planning, and population and housing.

construction was planned to occur. Given the passage of time, records of those notices appear to no longer exist, but I distinctly remember that SCE did post some notices." (Ex. 1, p. 29:5-9.)

2. The proposed project would have impacts to aesthetics, biological resources, cultural and paleontological resources, geology, soils and mineral resources, hazards and hazardous materials, public services and utilities, recreation, and transportation and traffic that can be mitigated to less than significant with the mitigation measures identified in the Mitigation Monitoring Plan.

3. Construction of the proposed project will have a significant impact on air quality that can be mitigated with the mitigation measures identified in the Mitigation Monitoring Plan, but not avoided.

4. The proposed project is the environmentally superior alternative.

5. The EIR documents that grading or vegetation removal during operations and maintenance could have a significant impact on special status species or habitat, and that the siting of project components on naturally unstable geologic units and soils with high erosion potential could have a significant impact by causing landslides

6. MM BIO-14 and MM GEO-1 would impose an undue burden on SCE and Commission staff, while the environmental harm that would be caused by omitting these mitigation measures is minimal.

7. There are demonstrated risks of failure of the towers that carry the two 220 kV transmission lines that are the primary source of power for the approximately 82,700 metered customers in the Goleta System, which event would likely render both lines incapable of transmitting power.

8. The three existing 66 kV lines that serve the ENA as a back-up source in the event that the 220 kV lines would be out of service can only provide about 100 MVA as compared to the most recent peak demand forecast for the Goleta System of approximately 269 MVA.

9. The project will increase the capacity of existing 66 kV lines to accommodate approximately 80 MVA more electrical load to the Goleta System.

10. SCE's field management plan incorporates all feasible no-cost and low-cost measures to reduce potential EMF impacts by utilizing subtransmission structure heights that meet or exceed SCE's preferred EMF design criteria, utilizing double-circuit construction that reduces spacing between circuits as compared with single-circuit constructions, arranging conductors for magnetic field reduction, and placing new substation electrical equipment away from the substation property lines closest to populated areas.

11. At the time SCE commenced construction in 1999, the entirety of the project was designed to be built in existing rights of way.

12. The California Coastal Commission's adopted guidelines exempt utility repair and reconstruction work from coastal development permitting.

13. At the time SCE commenced construction in 1999, there were no designated scenic resources in the vicinity of Segment 3A that would give rise to a reasonable possibility that the project would have a significant aesthetic impact.

Conclusions of Law

1. The EIR's exclusion of SCE's prior unpermitted work from the project description complies with CEQA.

2. The EIR properly includes SCE's prior unpermitted work in the baseline for the project's environmental review.

3. The modification by the second errata to the EIR's discussion describing the impact of the past work along Segment 3A on private views does not require public review and comment under CEQA.

4. The EIR, as modified by the first and second errata, was completed in compliance with CEQA, the Commission has reviewed and considered the EIR prior to approving the proposed project, and the EIR reflects the Commission's independent judgment.

5. MM BIO-14 and MM GEO-1 are infeasible for being impractical and unnecessary from a policy standpoint.

6. The need to increase the reliability of electrical service to the Goleta System is an overriding consideration that merits approval of the Santa Barbara County Reliability Project notwithstanding its unavoidable impact on air quality during construction to less than significant with the mitigation measures identified in the Mitigation Monitoring Plan.

7. The proposed project is designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures.

8. At the time SCE commenced construction in 1999, the project was exempt from GO 131-D's permitting requirement pursuant to Exemption g.

9. The mere fact that a project is located in the Coastal Zone does not constitute an unusual circumstance requiring CEQA review.

10. SCE did not violate GO 131-D by commencing construction of the project in 1999 without a permit to construct.

11. SCE should be granted a permit to construct for the Santa Barbara County Reliability Project, constructed as the Proposed Project, with mitigation set forth in the Mitigation Monitoring Plan, which is attached to this order, except that SCE should not be subject to MM BIO-14 or MM GEO-1.

12. The proceeding should be closed.

ORDER**IT IS ORDERED** that:

1. Southern California Edison Company is granted a permit to construct the Santa Barbara County Reliability Project, constructed as the Proposed Project, with mitigation set forth in the Mitigation Monitoring Plan, which is attached to this decision, except that Southern California Edison Company is not subject to Mitigation Measure BIO-14 or Mitigation Measure GEO-1.

2. Energy Division may approve requests by Southern California Edison Company for minor project refinements which meet the fixed criteria described below and that may be necessary to complete the Santa Barbara County Reliability Project due to final engineering or other reasons. Minor project refinements cannot create a new significant impact or a substantial increase in the severity of a previously identified significant impact, based on the thresholds used in the Environmental Impact Report. They cannot require new conditions for approval, without which the refinements would result in a new significant impact or a substantial increase in the severity of a previously identified significant impact. They cannot conflict with any mitigation measure or applicable law or policy or trigger an additional permit requirement. Specifically, they must not change mitigation measures. Minor project refinements must be located within the geographic boundary of the study area of the Environmental Impact Report. Southern California Edison Company shall seek any other project refinements by a petition to modify this decision.

3. Application 12-10-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.