



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

**FILED**  
7-26-16  
04:59 PM

In the Matter of the Application of SOUTHERN )  
CALIFORNIA EDISON COMPANY (U 338-E) ) A.13-10-020  
for a Certificate of Public Convenience and )  
Necessity for the West of Devers Upgrade Project ) (Filed October 25, 2013)  
and for an Interim Decision Approving the )  
Proposed Transaction Between Southern )  
California Edison Company and Morongo )  
Transmission LLC. )

---

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)**  
**REPLY TO THE OPENING COMMENTS OF THE OFFICE OF RATEPAYER**  
**ADVOCATES TO THE ALTERNATE PROPOSED DECISION OF PRESIDENT**  
**PICKER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND**  
**NECESSITY FOR THE WEST OF DEVERS UPGRADE PROJECT AND RELATED**  
**MATTER**

BETH GAYLORD  
REBECCA AUSTIN FURMAN  
IAN MICHAEL FORREST

Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770  
Telephone: (626) 302-6980  
Facsimile: (626) 302-6736  
E-mail: [ian.forrest@sce.com](mailto:ian.forrest@sce.com)

Dated: **July 26, 2016**

## I. INTRODUCTION

Pursuant to California Public Utilities Commission (CPUC or Commission) Rule of Practice and Procedure 14.3(d), Southern California Edison Company (SCE) submits this reply to the Office of Ratepayer Advocate's (ORA) comments on the Alternate Proposed Decision (APD). The APD properly reiterates the Proposed Decision's (PD) approval the West of Devers Upgrade Project (Project),<sup>1</sup> and further recognizes that if SCE becomes a Participating Special Entity (PSE) within the Western Riverside (WR) and Coachella Valley (CV) Multi-Species Habitat Conservation Plans (MSHCPs), certain mitigation measures will not apply.<sup>2</sup>

By its comments, ORA misapplies the California Environmental Quality Act's (CEQA) requirements for findings, as well as the breadth of evidence the Commission is encouraged to reference, solicit, and review per CEQA and the CPUC Rules in support of its decision-making. As explained herein, the Commission, via the APD, is entitled to modify the Project's mitigation measures (MMs) based on its authority and the evidentiary record before it. The APD appropriately finds SCE's participation in the MSHCPs consistent with CEQA's goals of protecting wildlife in a manner that avoids duplication and unnecessary ratepayer expense.<sup>3</sup>

## II. THE APD'S MODIFICATION OF CERTAIN MITIGATION MEASURES DO NOT MAKE SUCH MEASURES "INAPPLICABLE"

In the interest of clarifying the administrative record, SCE notes that the APD does not "revise these same MMs [WIL-2c, WIL-2d, WIL-2e, and WIL-2j] and make them inapplicable" as asserted by ORA.<sup>4</sup> To the contrary, the APD's revisions to those MMs make clear that the Project's impacts to threatened or endangered riparian birds, Stephens' kangaroo rat (SKR),

---

<sup>1</sup> In relevant part, the APD approved SCE's Proposed Project combined with the Tower Relocation and the Iowa St. Underground Alternatives (TRA and Iowa UGA, respectively).

<sup>2</sup> See APD at 51-52 (Conclusions of Law 3-8).

<sup>3</sup> See APD at 37-38 (noting MSHCPs comply with applicable environmental laws and agreeing with SCE's assertion that MMs WIL-2c, 2d, 2e, and 2j are not necessary if SCE becomes a PSE); Cal. Pub. Res. Code §§ 21003, 21093, 21158 (collectively discouraging delay, unnecessary duplication of effort).

<sup>4</sup> See ORA Comments at 2.

coastal California gnatcatcher (CAGN), and special status small mammals will be mitigated *either* “according to the requirements for [PSEs] under either or both applicable MSHCP documents,” provided SCE obtains PSE status, *or* via the prescriptions of MMs WIL-2c, 2d, 2e and 2j, respectively.<sup>5</sup> The substance of the APD’s revisions is to make clear that participation in the MSHCPs is acceptable to offset Project impacts to species covered under those MSHCPs.<sup>6</sup> Thus, the APD does not suggest that MMs WIL-2c, 2d, 2e, or 2j are somehow “inapplicable,” but rather that the MSHCPs may be relied upon to “adequately mitigate [] the direct impacts associated with the construction of this project.”<sup>7</sup>

### **III. THE APD AND ITS FINDINGS ARE CONSISTENT WITH CEQA**

ORA argues that the Commission may not “delegate its independent responsibility under CEQA to other wildlife agencies”<sup>8</sup> and that the “APD did not make any findings regarding the MMs it revised... [,] did not make a statement of overriding considerations [, and t]herefore, the APD was erroneous as a matter of law.”<sup>9</sup> In making both assertions, ORA misapplies CEQA.

There are two functions under CEQA for which a lead agency must exercise its independent judgment and shall not delegate: “(1) Reviewing and considering a final EIR or approving a Negative Declaration prior to approving a project. [and] (2) The making of findings

---

<sup>5</sup> See APD at 34-37 (WIL-2c, 2d, and 2e), 42 (WIL-2j). SCE’s Comments on the APD identify an apparent inconsistency regarding WIL-2j and suggest revising it to make it consistent with WIL-2c, 2d and 2e. See *SCE Comments to the Alternate Proposed Decision* at 2-3.

<sup>6</sup> See APD at 38 (“Each MSHCP is supported by implementing agency authority, permit-based compliance with Federal and State environmental laws, certified joint FEIR/FEIS documents that analyze impacts before and after mitigation, and a clearly delineated path for entities such as SCE to build and mitigate within the MSHCP boundaries. Those elements form a structure that adequately mitigates the direct impacts associated with the construction of this project. ... We find it reasonable to rely on the extensive, active, and lawful structure of land management already established within the boundaries of the WR-MSHCP and CV-MSHCP.”)

<sup>7</sup> See APD at 38.

<sup>8</sup> See ORA Comments at 3.

<sup>9</sup> See ORA Comments at 4.

as required by Sections 15091 and 15093.”<sup>10</sup> The Commission satisfied both these functions, noting its independent review and consideration of the final EIR, and making all required findings.<sup>11</sup> CEQA expressly allows however, the delegation of a variety of other functions, including the “reporting or monitoring responsibilities” of any mitigation program.<sup>12</sup> Based on the substantial evidence in the administrative record, it is proper under CEQA for the APD to determine that SCE’s participation in the MSHCP would mitigate impacts on covered species to less-than-significant levels, and then delegate the reporting and monitoring of mitigation to offset those impacts to the MSHCP’s administrative agencies.<sup>13</sup> The APD’s revisions of MMs WIL-2c, 2d, 2e, and 2j do not improperly delegate Commission authority.

Further, ORA cites California Public Resources Code section 21081 in support of its argument that the APD fails to make the requisite findings and statement of overriding considerations with respect to the changed MMs.<sup>14</sup> Fatal to the ORA’s argument, however, is the fact that impacts to threatened or endangered riparian birds, SKR, CAGN, and special status small mammals will be mitigated to a *less than significant* level through the imposition of MM

---

<sup>10</sup> Title 14, Cal. Code of Regs (CEQA Guidelines) § 15025 (Delegation of Responsibilities); *see also* CEQA Guidelines §§ 15084(e), 15090(a)(3) (EIRs must reflect the lead agency’s independent judgment).

<sup>11</sup> *See* APD at 26 (“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, with the revisions to the mitigation measures reflected in the Mitigation Monitoring, Compliance, and Reporting Plan attached to this order, it reflects our independent judgment.”), 41 (APD findings regarding overriding considerations).

<sup>12</sup> *See* CEQA Guidelines §§ 15097 (“...A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation....”), 15025 (delegation of other functions permissible under CEQA).

<sup>13</sup> *See id.*; APD at 51-52 (conclusion of law no. 3-8).

<sup>14</sup> *See* ORA Comments at 3-4 (citing Ca. Pub. Res. Code § 21081, which provides, in relevant part “[N]o public agency shall approve or carry out a project for which an environmental impact report has been certified *which identifies one or more significant effects on the environment that would occur if the project is approved* or carried out unless both of the following occur...” emphasis added); *see* APD at 41 (findings regarding overriding considerations).

WIL-2c, 2d, 2e, and 2j, respectively.<sup>15</sup> Because there are no significant and unavoidable impacts associated with these species due to the Project, the requirements of section 21081 are *not* triggered for said impacts and ORA’s argument fails accordingly.

#### **IV. SCE’S SUPPLEMENTAL COMMENTS WERE PROPER AND MAY BE RELIED ON BY THE COMMISSION**

ORA’s arguments that SCE’s Supplemental Comments<sup>16</sup> filed in response to ALJ Yacknin’s May 13, 2016 Ruling<sup>17</sup> were improper when made, and may not now be relied on by the Commission’s APD, are also unavailing.<sup>18</sup> First, SCE’s references to the WR and CV MSHCPs and their implementing agreements in its Supplemental Comments are not “new” evidence in the administrative record as ORA alleges. The Final EIR makes extensive reference to the MSHCPs, including citations to the WR and CV-MSHCP documents and websites, thus making those documents part of the existing evidentiary record relied on by the Commission.<sup>19</sup>

---

<sup>15</sup> See Final EIR at D.5-70, 71 (WIL-2A – 2K “would reduce the Proposed Project’s adverse impacts to special-status and wildlife and habitat *to less than significant*” (emphasis added)), D.5-75 (TRA impacts would be “less than significant” with MMs), D.5-76 to 77 (Iowa UGA “impacts on listed and special-status wildlife and habitat would be reduced through implementation of [MMs]”); see also Final EIR at ES-41 (all impacts to wildlife “less than significant” with implementation of MMs), ES-42 (TRA and Iowa UGA wildlife impacts would be reduced via MMs), D.5-37 (WIL-2d reduces SKR impacts to less than significant); D.5-38 (WIL-2e reduces CAGN impacts to less than significant).

<sup>16</sup> See *Supplemental Comments of Southern California Edison Company (U 338-E)*, A.13-010-020 (May 19, 2016).

<sup>17</sup> See *Administrative Law Judge’s Ruling Directing Southern California Edison Company To File Supplemental Comments*, A.13-010-020 (May 13, 2016) (Ruling).

<sup>18</sup> See ORA Comments at 6 (alleging “legal error” for APD to rely on allegedly “new evidence” in form of Supplemental Comments) and 7 (alleging CPUC cannot rely on SCE’s “new evidence” to change CEQA document). As a threshold matter, the suggestion that SCE’s Supplemental Comments do not comply with CPUC rules is inaccurate. CPUC Rule 14(b) does not specifically address supplemental comments and ALJ Yacknin’s Ruling did not prescribe any page limits. See CPUC Rule 14(b); Ruling.

<sup>19</sup> See Final EIR at section D.5 (multiple WR and CV MSHCP references), D.5-89 (“CVAG (Coachella Valley Association of Governments). 2007. Final Recirculated Coachella Valley MSHCP. [http://www.cvmshcp.org/Plan\\_Documents.htm](http://www.cvmshcp.org/Plan_Documents.htm)” ...“ \_\_\_\_ [sic]. 2003. Western Riverside County Multiple Species Habitat Conservation Plan. [http://www.rcip.org/Documents/draft\\_2\\_mshcp\\_vol\\_2/b\\_02.pdf](http://www.rcip.org/Documents/draft_2_mshcp_vol_2/b_02.pdf)”). As persuasive, non-binding authority, SCE also notes the scope of documents included in administrative records under CEQA expressly includes “(9)...all documents...cited or relied on in the findings or in a statement of overriding considerations... [and] (10) ... copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public ... or included in the respondent public agency’s files....” See Ca. Pub. Res. Code § 21167.6(e)(9) & (10).

Moreover, while ALJ Yacknin ordered SCE to file Supplemental Comments regarding the MSHCPs, she simultaneously allowed all other parties to do similarly.<sup>20</sup> Having declined to file any comments or objections in response to ALJ Yacknin’s Ruling, ORA cannot now assert that it has been somehow prejudiced by SCE’s compliance with same.<sup>21</sup> SCE’s Supplemental Comments are properly part of the administrative record which may be relied on by the Commission in its issuance of the APD and approval of the Project.<sup>22</sup>

## V. CONCLUSION

As expressed herein, SCE respectfully requests the Commission to reject ORA’s Comments and approve the APD.

Respectfully submitted,  
BETH GAYLORD  
REBECCA AUSTIN FURMAN  
IAN MICHAEL FORREST

*/s/ Ian Michael Forrest*

---

By: Ian Michael Forrest

Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 Walnut Grove Avenue  
Rosemead, California 91770  
Telephone: (626) 302-6980  
E-mail: [ian.forrest@sce.com](mailto:ian.forrest@sce.com)

Dated: July 26, 2016

---

<sup>20</sup> See Ruling (“...I direct SCE (and allow other parties) to file supplemental comments...”).

<sup>21</sup> See ORA Comments at 2 (“SCE filed the supplemental comments...No other party responded.”). Thus, the case of *Southern California Edison Co. v. Public Utilities Commission*, 140 Cal.App.4th 1085, 1106 (2006) cited by ORA is wholly distinguishable given that here, the CPUC did not belatedly and/or prejudicially expand the scope of the Project’s proceeding. First, the “issues to be determined” by the Project’s 8/24/15 Scoping Memo specifically include “3. What are the significant adverse environmental impacts of the proposed project...” and “4. Are there potentially feasible mitigation measures...that will avoid or lessen the significant adverse environmental impacts?” See *Scoping Memo* at 4 (available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K225/154225918.PDF>). Moreover, any allegations of prejudice are undercut by the fact that parties to the proceeding had multiple opportunities (via draft EIR comments, in response to SCE’s PD comments, in response to ALJ Yacknin’s Ruling, *etc.*) to provide comments, argument, and briefing regarding the applicability or reliance on the MSHCPs.

<sup>22</sup> See CPUC Rules 13.10 (ALJ “may require production of further evidence on any issue”), 13.14(a) (“A proceeding shall stand submitted for decision... *after* the taking of evidence, the filing of briefs, and the presentation of oral argument as may have been prescribed” (emphasis added)).