BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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In The Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) for a Permit to Construct Electrical Facilities: Cleveland National Forest Power Line Replacement Projects	Application 12-10-009

SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902E) RESPONSE TO PROTECT OUR COMMUNITIES FOUNDATION AND CLEVELAND NATIONAL FOREST FOUNDATION'S APPLICATION FOR REHEARING

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SUMMARY OF RECOMMENDATIONS

(California Public Utilities Commission Rule of Practice and Procedure 13.11)

San Diego Gas & Electric Company (SDG&E) respectfully requests that the California Public Utilities Commission find:

(1) SDG&E proposed the Cleveland National Forest (CNF) Power Line Replacement Projects (Project) to continue operating existing SDG&E facilities within the CNF and to increase fire safety and service reliability of these facilities. Having taken into consideration SDG&E's objectives, the Commission identified two basic project objectives: (a) reduce fire risk by fire hardening electric facilities in and around the CNF; and (b) improve the reliability of power delivery to surrounding communities.

(2) The Project, as initially proposed by SDG&E, would have significant and unavoidable adverse impacts on visual resources, air quality, water resources, and land use.

(3) The environmentally superior alternative for the Project is the Environmentally Superior Alternative Project (ESAP), which meets both of the Commission's basic project objectives of reducing fire risk and improving reliability in and around the CNF. The ESAP avoids or substantially lessens the significant environmental effects of the proposed Project as identified in the Final Environmental Impact Report/ Environmental Impact Statement (EIR/EIS). The ESAP would have a single unavoidable adverse environmental impact from temporary construction emissions.

(4) All feasible mitigation measures have been imposed to reduce the environmental impacts of the ESAP to the greatest extent feasible.

(5) The No Project Alternative is infeasible because it fails to meet the Commission's basic project objectives of increasing fire safety and service reliability. The No Project

Alternative would also continue noncompliance with the CNF Land Management Plan and other relevant land use policies.

(6) Overriding considerations in favor of the ESAP outweigh its single temporary significant environmental impact. Each of the following benefits of the ESAP constitutes an overriding consideration, which, on its own, would be sufficient to outweigh the ESAP's single adverse environmental impact:

(a) The ESAP will improve service reliability in and around the CNF, including in the unincorporated communities of Descanso, Campo, Pauma Valley, Santa Ysabel, and Warner Springs.

(b) The ESAP will improve fire safety in and around the CNF, an area of extreme fire hazard, through various "fire hardening" techniques, including: replacing existing wood pole structures with new steel pole structures designed to withstand higher wind speeds; increasing conductor spacing to maximize line clearances; installing new conductors and removing weak spliced locations; installing appurtenant facilities—such as weather stations, fire safety and early fire detection equipment, smart-grid system data collection equipment, or other technologies or facilities—to further increase fire safety and service reliability as new technologies become available; and removing and undergrounding certain portions of the line. These fire reduction measures will reduce the risk of ignition from power lines and enable power lines to better withstand wind and wildfire conditions, substantially reducing damages, loss, injury, or death involving fires compared to existing conditions. The ESAP is consistent with the U.S. Forest Service's

recommendation to evaluate additional fire protection measures for SDG&E's electrical facilities within the CNF as part of the Project.

(c) The ESAP will reduce or eliminate existing land use and aesthetic impacts in and around the CNF associated with existing power and distribution lines by removing or undergrounding portions of existing lines.

(7) SDG&E's amended Magnetic Field Management Plan is consistent with the Commission's electromagnetic field (EMF) policy for implementing no-cost and low-cost measures to reduce potential EMF impacts.

(8) The Final EIR has been completed in compliance with the California Environmental Quality Act.

(9) The Final EIR reflects the Commission's independent judgment and analysis.

(10) SDG&E is granted a Permit to Construct the ESAP.

(11) Protect Our Communities Foundation and Cleveland National Forest Foundation's Application for Rehearing is denied.

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SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902E) RESPONSE TO PROTECT OUR COMMUNITIES FOUNDATION AND CLEVELAND NATIONAL FOREST FOUNDATION'S APPLICATION FOR REHEARING

I. INTRODUCTION

Pursuant to the California Public Utilities Commission's Rules of Practice and Procedure Rule 16.1(d), San Diego Gas & Electric Company (SDG&E) submits this response to Protect Our Communities Foundation and Cleveland National Forest Foundation's (POC/CNFF) application for rehearing of Decision (D.) 16-05-038 unanimously approving a Permit to Construct (PTC) for the Cleveland National Forest (CNF) Power Line Replacement Projects (Project).[1] ***POC/CNFF's application fails to identify any legal errors in the Decision warranting rehearing and should be denied.***

POC/CNFF's application consists almost entirely of previously-asserted meritless allegations regarding the adequacy of the Project's environmental review and tired claims that the Commission has already considered and rejected after extensive environmental review and evidentiary proceedings. To the extent that the application includes new arguments, such arguments also lack merit, and none of the arguments identify any legal errors or deficiencies in the Decision.

[1] D.16-05-038 is referred to herein as the "Decision."

Contrary to POC/CNFF's claims, the record demonstrates that the Commission's thorough environmental review of the Project complies with the California Environmental Quality Act (CEQA) and substantial evidence supports the Commission's lawful approval of the PTC. Accordingly, SDG&E respectfully requests the Commission reject POC/CNFF's meritless arguments and deny the application for rehearing.

II. BACKGROUND

The Project has been the subject of a robust environmental and Commission review process.

The Commission and the U.S. Forest Service jointly reviewed the Project. On September 5, 2014, the Commission and the Forest Service released the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) under CEQA and the National Environmental Policy Act (NEPA). Final EIR/EIS at ES-4. Following release of the Draft EIR/EIS, the agencies set a 60-day public comment period (an expansion of the 45-day minimum).[2] *Id*. As required by CEQA Guidelines section 15088, the agencies evaluated and responded to all comments on the Draft EIR/EIS received during the public review period. Final EIR/EIS at I-1; *id*. at Volume 2. On July 10, 2015, the Commission and the Forest Service released the Final EIR/EIS. Together the Draft EIR/EIS and Final EIR/EIS total almost 4,000 pages and analyze potential Project impacts on visual resources, air quality, biological resources, cultural and paleontological resources, greenhouse gas emissions, public health and safety, fire and fuels management, hydrology and water quality, land use and planning, noise, public services and utilities, recreation, and transportation and traffic. *Id.* at D.1-1.

[2] Pursuant to CEQA Guidelines section 15105(a), the public review period need only be 45 days and should not be longer than 60 days "except in unusual circumstances."

Administrative Law Judge (ALJ) Yacknin held a full-day evidentiary hearing on October 11, 2015. Decision at 9. All parties had the opportunity to submit written testimony and evidence in advance of the hearing. During the hearing, POC/CNFF and other Project opponents had the opportunity to cross-examine SDG&E's witnesses. Following the hearing, all parties had the opportunity to submit opening and reply briefs to ALJ Yacknin. ALJ Yacknin carefully considered POC/CNFF's and other Project opponents' positions, as reflected in the Proposed Decision issued on April 26, 2016.

The Commission unanimously adopted the Proposed Decision and approved the Project's PTC on May 26, 2016.

III. STANDARD OF REVIEW

An application for rehearing is intended "to alert the Commission to a legal error, so that the Commission may correct it expeditiously." Commission Rule of Practice and Procedure 16.1(c). An application for rehearing must set forth the "grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous." *Id*. A decision is unlawful where: (1) the Commission has acted without, or in excess of, its powers; (2) the Commission has not proceeded in the manner required by law; (3) the Commission's decision is not supported by the findings; (4) the Commission's findings are not supported by substantial evidence; (5) the Commission's decision was procured by fraud or was an abuse of discretion; or (6) the decision violates the applicant's constitutional rights. *See* Pub. Util. Code § 1757(a). In other words, the Commission's decision is reversible only where the Commission has failed to comply with required procedures, applies an incorrect legal standard, or commits an error of law. *Pedro v. City of Los Angeles*, 229 Cal. App. 4th 87, 99 (2014). POC/CNFF has not shown that any of this has occurred here.

IV. COST AND NEED ARE IRRELEVANT IN A PERMIT TO CONSTRUCT PROCEEDING

Without citing any new law, POC/CNFF repeats its argument that the Commission must review project cost and need. POC/CNFF Application for Rehearing (POC/CNFF App.) at 7-13, 32. POC/CNFF again ignores that under General Order (GO) 131-D, a PTC proceeding is focused on environmental review under CEQA. Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo) at 7-8 (Mar. 17, 2014). Project cost and need fall beyond the scope of CEQA and, therefore, beyond the scope of a PTC proceeding. *See* SDG&E Reply Comments on Proposed Decision (Reply Comments) at 5; SDG&E Nov. 16, 2015 Reply Brief in Support of a Permit to Construct (SDG&E Reply Brief) at 29-38. Indeed, the Commission has already rejected POC/CNFF's argument as an "improper collateral attack on the many Commission decisions approving the exemption of projects [requiring a PTC] from such review." Decision at 12.

Here, the Project upgrades and reconstructs various 69 kilovolt (kV) lines. Based on the unambiguous requirements of GO 131-D, the Commission can only require a PTC. Scoping Memo at 8-11. Accordingly, the Commission properly proceeded with the PTC process because a Certificate of Public Convenience and Necessity (CPCN) process is only required for transmission lines over 200 kV. *See* SDG&E Reply Brief at 29-34. Plainly, no showing of cost of and need for the Project was required.

A. The Commission Was Not Required to Consider Cost and Need

As previously explained, the Commission need not consider cost and need as part of a PTC proceeding:

> The process we adopt for lines between 50 kV and 200 kV differs from the review that results in the issuance of a CPCN for lines over 200 kV. ***The process will result in a "permit to construct" and our review focuses solely on environmental concerns, unlike***

> ***the CPCN process, which considers the need for and economic cost of a proposed facility***.

D.94-06-014, 1994 Cal. PUC LEXIS 453 at *2 (1994) (establishing a streamlined process for review of PTC applications, as compared to CPCN applications). Commission precedent is consistent on this fundamental principal. D.10-06-014 at 5-6 ("In contrast to applications seeking certificates of public convenience and necessity, GO 131-D does not require PTC applications to include an analysis of purpose and necessity, and estimate of cost and an economic analysis, a schedule or an in-depth description of construction methods beyond that required for CEQA compliance.") The Commission has repeatedly identified the relevant considerations in a PTC proceeding to be as set forth in the Scoping Memo—they do not include need and cost. *See* Scoping Memo at 11-12; *accord* D.12-06-039 at 9-10.

The Project involves upgrades and reconstruction of 69 kV lines. *See* Decision at 3. Based on the unambiguous requirements of GO 131-D, a PTC—*not* a CPCN—was required. *See* SDG&E Reply Brief at 32. GO 131-D does not allow the Commission to deviate from the requirements establishing when a PTC applies. *See id*. As detailed in SDG&E's prior briefing, SDG&E does not propose to increase the existing lines' capacity. *See* SDG&E Nov. 2, 2015 Opening Brief in Support of a Permit to Construct (SDG&E Opening Brief) at 11-12; SDG&E Reply Brief at 32; Final EIR/EIS Response to Comment F3-2. Because the Commission properly rejected POC/CNFF's argument that the Commission should have used the CPCN process instead of the PTC process, no rehearing on this point is required.

POC/CNFF argues for a case-by-case determination of whether a project meets certain unwritten requirements not contained in GO 131-D. *See* POC/CNFF App. at 9. This would amount to a sweeping change to how the PTC process is implemented and would essentially override GO-131-D. The Commission has already rejected such an improper "collateral attack"

on GO 131-D. *See* Decision at 11-12 (These arguments "amount [ ] to an improper collateral attack on the many Commission decisions approving the exemption of projects with operating voltages at or below 200 kV from [cost and need] review.").

POC/CNFF also rehashes its prior arguments that SDG&E should make a cost and need showing regardless of whether a PTC or CPCN is required. *See* SDG&E Reply Brief at 32. The ALJ determined on multiple occasions that "those issues are properly beyond the scope of the proceeding pursuant to General Order 131-D." *Id*., citing Administrative Law Judge's Ruling Denying Motion to Amend Scoping Memo and Providing Requested Clarification (Sept. 17, 2015). Substantively, POC/CNFF's argument for a cost and need showing is the same as POC/CNFF's meritless argument for a CPCN, which fails for the reasons discussed above. POC/CNFF's request for detailed cost and need testimony must be denied to maintain GO 131-D's fundamental distinction between a PTC and a CPCN. *See* Decision at 11-12; SDG&E Reply Brief at 34.

If the Commission had wanted to require cost and need analyses for PTC applications, the Commission could have written such requirements into GO 131-D. The Commission declined to do so and instead chose to adopt the test that appears in GO 131-D. Under GO 131-D, and in accordance with years of Commission precedent, the Commission properly concluded that the Project is covered by the PTC process and that no cost and need analyses were necessary. *See* Decision at 11-12.

POC/CNFF now makes the bizarre claim that GO 131-D is "an informal policy statement that was not approved by the Legislature or the Commission pursuant to a rulemaking." POC/CNFF App. at 9-10. POC/CNFF is completely wrong. The Commission adopted GO 131-D after a public proceeding in D.94-06-014. In 1983, the Commission began

investigating whether to expand the requirements of GO 131-C to include power lines with voltages of 200 kV or less. See D.94-06-014, 1994 Cal. PUC LEXIS 453, at *6 (1994). Throughout the following years, the Commission repeatedly met with utility representatives and local agencies to draft various proposals, which were published for review and comment. *Id*. at *7. The Commission also held workshops with local agencies and revised proposals based on public comments. *Id*. After carefully reviewing the comments and considering the final proposal, the Commission issued and adopted GO 131-D. As D.94-06-014 expressly states, GO 131-D "prescribes the rules relating to the planning and construction of electric generation and transmission/power line facilities located in California." *Id*. at *71. GO 131-D is hardly an informal policy statement.

Finally, POC/CNFF claims that SDG&E failed to comply with Commission Rule of Practice and Procedure 3.1(h), which requires applications to include a "statement of the proposed rates to be charged for service to be rendered by means of" a construction project. POC/CNFF completely ignores that SDG&E's application for a PTC includes a statement of proposed rates, in accordance with Rule 3.1(h). Application of San Diego Gas & Electric Company (U 902 E) for a Permit to Construct the Cleveland National Forest Power Line Replacement Projects (Project Application) at 18-19 (Oct. 17, 2012).

As described therein, the costs associated with the Project are predominantly for transmission-related services. When the Project is placed in service, SDG&E will seek to recover the costs through the California Independent System Operator's Federal Energy Regulatory Commission (FERC) jurisdictional rates. This would occur as part of a FERC rate case covering the test period in which the Project will become operative. Costs not approved by FERC for recovery in general transmission rates may be recovered through Commission

jurisdictional retail rates. POC/CNFF alleges that there is a "high probability" that Project costs would not be recoverable. POC/CNFF App. at 13. This allegation is not supported by any evidence and is purely conjecture, to which the Commission should give no weight.

B. Public Utilities Code Section 1005.5(a) Applies to CPCN Proceedings, Not PTC Proceedings

POC/CNFF argues that under Public Utilities Code section 1005.5(a), the Commission must review costs for construction projects that will exceed $50 million. POC/CNFF App. at 7-8. POC/CNFF ignores that section 1005.5 applies to CPCN proceedings, not PTC proceedings. Section 1005.5 is located in Division 1, Part 1, Chapter 5 of the Public Utilities Code. Chapter 5 is titled "Certificates of Public Convenience and Necessity." Section 1005.5(a) is inapplicable because SDG&E does not seek a CPCN. Indeed, the Commission properly rejected POC/CNFF's same contention in the Decision. *See* Decision at 12-13 (characterizing this argument as an "improper collateral attack").

C. POC/CNFF's Purported Cost Estimates Are Unsupported and Wrong

POC/CNFF repeats its erroneous characterization of the Project as a "$1 billion" project, even though SDG&E refuted this claim with clear evidence in its Reply Comments on the Proposed Decision. *See* Reply Comments at 1. While POC/CNFF again cites to the Office of Ratepayer Advocates' (ORA) cost estimate (POC/CNFF App. at 2, fn. 9), ORA's November 26, 2012 Protest does not present a cost estimate of $1 billion and does not dispute SDG&E's cost estimate for the Project. *See* Protest by the Division of Ratepayer Advocates of the San Diego Gas and Electric Company's Application for a Permit to Construct the Cleveland National Forest Power Line Replacement Projects, at 1, 3-4, 7 (Nov. 26, 2012) (repeatedly referring to the cost of the Project as $418.5 million). POC/CNFF's arguments about a $1 billion cost are entirely unsupported by its citations and are wrong.

As previously explained, SDG&E conservatively combined multiple projects relating to five 69 kV power lines and six 12 kV distribution lines into its PTC application. Application at 3-4. The costs associated with these multiple projects are predominantly for services related to the power lines. *Id*. at 19. SDG&E estimates that the cost for the five separate and independent power lines is $418.5 million +/- 5%. *Id*. at App. I. The ***total*** cost including distribution lines is approximately $680 million +/- 5%.

V. THE COMMISSION COMPLIED WITH CEQA

POC/CNFF reasserts its baseless claims that the EIR/EIS did not comply with CEQA. POC/CNFF App. at 13. POC/CNFF also repeats its argument that the Commission's conclusions that the Project's benefits present overriding considerations are not supported by substantial evidence. *Id*. As before, POC/CNFF's claims fail. Substantial evidence supports the Commission's statement of overriding considerations and directly contradicts POC/CNFF's assertions. The Commission appropriately found that the Final EIR/EIS complies with CEQA and that the Project's important benefits outweigh its single remaining significant impact. Decision at 2, 37.

A. The Commission Analyzed a Reasonable Range of Project Alternatives

POC/CNFF does not raise any new alternatives arguments. POC/CNFF's comments merely repeat previously-briefed issues that the Commission rejected. *See* Decision at 26-29.

POC/CNFF again contends that the Commission failed to adequately consider potential Project alternatives. POC/CNFF App. at 14. As the Decision correctly explains, this argument lacks merit because the Final EIR/EIS analyzed a reasonable range of alternatives, including a No Project alternative. Decision at 26-29. CEQA requires nothing more.

California Public Resources Code sections 21001(g), 21002.1(a), and 21061 require that an EIR identify alternatives to a proposed project. CEQA Guidelines section 15126.6(a) expands

on the statute by stating that an EIR must also include a "reasonable range" of alternatives that "would ***feasibly attain most of the basic objectives of the project*** but would avoid or substantially lessen any of the significant effects of the project." CEQA Guidelines § 15126.6(a) (emphasis added). An agency need not consider every conceivable alternative and has the discretion to determine how many is a reasonable range. *Id*.; *see also Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 566 (1990). A lead agency is not required to analyze "every conceivable variation" of an alternative. *Village Laguna of Laguna Beach, Inc. v. Bd. of Supervisors*, 134 Cal. App. 3d 1022, 1029 (1992).

Here, the EIR/EIS included alternatives proposed by SDG&E, the Commission, the Forest Service, the Bureau of Indian Affairs, and those identified by the general public and other agencies during the public scoping period. *See* SDG&E Reply Brief at 20; Final EIR/EIS at D5-13. Of the 26 alternatives considered, 11 alternatives—in addition to the No Project and No Action alternatives—were carried forward for full analysis in the EIR/EIS. *Id*. This constitutes a reasonable range of alternatives, as required by CEQA. *See* Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126.6(a), (c).

With the exception of impacts due to short-term construction activities, the alternatives considered in the EIR/EIS would avoid and/or reduce identified project impacts considered to be adverse and unmitigable. For example, the ESAP avoids or substantially lessens the visual resources, air quality, water resources, and land use impacts that the Project otherwise would have had. *See* Final EIR/EIS at ES-11. Accordingly, the EIR/EIS determined that further analysis of alternatives would not provide more meaningful data on ways to lessen or avoid those impacts deemed significant given the comprehensive nature of the analysis. *Id*. at D5-13. Therefore, the Commission and the Forest Service determined that the evaluation of alternatives

conducted in the EIR/EIS provides a range of reasonable alternatives as defined by CEQA Guidelines section 15126.6 and NEPA. No further analysis of Project alternatives is warranted. *Id*. at D5-14.

1. The Commission Was Not Required to Develop an Alternative That Would Reduce or Eliminate All Significant Impacts

POC/CNFF repeats its meritless claim that the Commission was required to develop an alternative that could reduce or eliminate the Project's temporary construction impact to air quality. POC/CNFF App. at 15-16. As SDG&E has repeatedly explained, the EIR/EIS identified over two dozen alternatives that avoid or reduce the Project's potentially significant environmental impacts, including air quality impacts. *See, e.g.*, SDG&E Reply Brief at 20; SDG&E Reply Comments at 3; *see also* Draft EIR/EIS at D.3-23 to D.3-31 (discussing air quality impacts of each alternative). Indeed, POC/CNFF's repeated reliance on *Habitat and Watershed Caretakers v. City of Santa Cruz*, 213 Cal. App. 4th 1277 (2013) is unavailing. *Habitat and Watershed Caretakers* involved an EIR that analyzed only ***two*** alternatives, including the no-project alternative. Here, the Commission considered 26 alternatives, 13 of which were fully analyzed in the EIR/EIS. Final EIR/EIS at Section C; *see also* SDG&E Reply Comments at 3, fn. 2. Furthermore, contrary to POC/CNFF's assertions, the Commission was not required under CEQA to develop an alternative that would reduce or eliminate *all* significant environmental impacts. *See, e.g.*, CEQA Guidelines § 15126.6(a) ("An EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen ***any*** of the significant effects of the project . . . .") (emphasis added).

In addition, the Commission already considered and rejected POC/CNFF's other legal authority**.** *See* Decision at 30. POC/CNFF, in its prior briefing and in this Application, cites

Watsonville Pilots Ass'n v. City of Watsonville, 183 Cal. App. 4th 1059 (2010), and *Preservation Action Council v. City of San Jose*, 141 Cal. App. 4th 1336 (2006), to argue that CEQA requires an EIR to develop an alternative that would avoid or lessen the project's significant air quality construction impacts. As the Decision correctly points out, neither case supports that proposition. *See* Decision at 30. In fact, "CEQA establishes ***no*** legal imperative as to the scope of alternatives to be analyzed in an EIR." *Watsonville Pilots Ass'n*, 183 Cal. App. 4th at 1086, citing *Preservation Action Council*, 141 Cal. App. 4th at 1350 (emphasis added). Accordingly, the Commission should reject POC/CNFF's recycled argument that the EIR/EIS failed to analyze alternatives to eliminate the Project's single, temporary construction impact.

2. The Commission Adequately Analyzed a Shorter Pole Alternative

POC/CNFF argues that the Commission should have analyzed a steel poles alternative that more closely matched the height and diameter of existing poles. POC/CNFF App. at 19. It did: Alternative Pole Design 1 - Height. *See* Draft EIR/EIS at Section C.5.9; Final EIR/EIS at D6-41. As described in detail in Section V.B.4, below, the EIR/EIS concluded that a shorter pole alternative would not allow for the use of new conductors, which are necessary to reduce fire risks and improve reliability. Final EIR/EIS at D6-41.

POC/CNFF also alleges that a shorter pole alternative would reduce the Project's "significant visual impacts." *Id*. POC/CNFF ignores, however, that the Project does not result in ***any*** significant visual impacts that needed to be avoided or lessened. *See* Final EIR/EIS at E-36 to E-37.

B. The Commission Properly Determined That POC/CNFF's Preferred Alternatives Are Infeasible

POC/CNFF again claims that the EIR/EIS should have more fully analyzed vegetation management, no-wire, distributed generation, undergrounding, and pole design alternatives. POC/CNFF App. at 14, 17-19. SDG&E fully briefed this issue in its November 16, 2015 Reply Brief. SDG&E Reply Brief at 25-28. The Commission correctly found that the EIR/EIS adequately explains why it rejected these alternatives. Decision at 26-29.

1. Substantial Evidence in the Record Demonstrates That a Vegetation Management Alternative Would Not Meet Project Objectives

The Decision properly finds that a vegetation management alternative would be infeasible because it would not meet Project objectives. Decision at 26. The Decision is supported by substantial evidence in the record. For example, the EIR/EIS explains that a vegetation management alternative would not include stronger, fire-resistant steel poles or implement undergrounding, relocation, or consolidation of lines that would occur with the Project, and therefore would not reduce wildfire risk to the same extent as the Project. *Id*. at 24-25; Final EIR/EIS at C-20, D6-41. Additionally, relying on increased vegetation management and equipment inspections to reduce fire risk does not address other wildfire causes resulting from the presence of transmission lines. Final EIR/EIS at C-20, D6-41; SDG&E Reply Brief at 25.

As described in Section D.8 of the EIR/EIS, wildfire ignition can occur during high wind events via line failure, arcing, or through conductor-to-conductor contact. These situations are ***not*** mitigated by increased vegetation management or equipment inspections. *See* Final EIR/EIS at C-20, D.8-6 to D.8-7. The EIR/EIS also concluded that vegetation management would result in permanent loss of native wildlife and/or their habitat. *See id*. at A-4; SDG&E Reply Brief

at 25. Accordingly, in light of this substantial evidence, the Commission properly rejected the vegetation management alternative. Decision at 26.

2. Substantial Evidence Demonstrates That a No Wire, Microgrid, or Distributed Generation Alternative Would Not Meet the Commission's Basic Project Objectives and Is Infeasible

The alternatives screening process considered a No-Wire Alternative that used a microgrid technology and a Distributed Generation Alternative. Final EIR/EIS at D5-13. Both alternatives were properly eliminated from further consideration as alternatives to the existing system, which is the backbone of SDG&E's electrical grid system in central and eastern San Diego County. *Id*. at D5-13 to D5-14; Final Record of Decision: San Diego Gas & Electric Master Special Use Permit, U.S. Forest Service ("Record of Decision") at 8 (Mar. 11, 2016). The EIR/EIS concluded the use of this technology on a backbone system would not be feasible because microgrids are an emerging technology unproven on a larger scale. Final EIR/EIS at D5-13 to D5-14.

Similarly, the Distributed Generation Alternative, as a single option to meet current energy demand within the study area, would not meet Project objectives or screening criteria because it would not satisfy the reliability needs of existing customers. Because neither alternative would be feasible, the EIR/EIS did not carry the alternatives forward for further consideration. This decision was supported by substantial evidence and is consistent with CEQA Guidelines section 15126.6(a). *See also* SDG&E Reply Brief at 28; Decision at 28 (EIR/EIS sufficiently explains how these alternatives degrade local service reliability).

3. Substantial Evidence Demonstrates That Complete Undergrounding Would Result in Greater Land Disturbance and Expense than the Project

Substantial evidence supports the Commission's rejection of the full undergrounding alternative. The Commission found that this alternative would increase the disturbance area and

result in greater impacts to environmental resources. Final EIR/EIS at D6-36 to D6-37. Under the full undergrounding alternative, approximately 150 miles of existing power lines would be placed underground, representing more than 45 acres of permanent land disturbance. *See* SDG&E Reply Brief at 25-26, citing Final EIR/EIS at C-14. Because the full undergrounding alternative would have greater short-term construction related impacts, including greater air quality impacts (*see* Final EIR/EIS at D6-37), greater long-term permanent environmental impacts, and a significant increase in permanent disturbance/impact to sensitive resources, the alternative was properly eliminated from further evaluation. *See* Decision at 28-29 (EIR/EIS "sufficiently explains how this alternative presents ***significant*** construction challenges and would result in ***greater*** impacts than the proposed project.") (emphasis added); *see also* SDG&E Reply Brief at 26, citing Final EIR/EIS at D6-36 to D6-37.

The EIR/EIS also evaluated various undergrounding configurations for portions of existing lines and, in fact, adopted an undergrounding alternative in part. *See, e.g.*, Final EIR/EIS at Sections C.5.7, C.5.8, and D.5.4.3; Decision at 38. Contrary to POC/CNFF's contentions that the CEQA required more (POC/CNFF App. at 19), the Commission was not required to analyze every conceivable variation of the undergrounding alternative. *See Village Laguna of Laguna Beach, Inc.*, 134 Cal. App. 3d at 1029. The variations of the underground alternatives analyzed and adopted satisfied the Commission's obligations under CEQA.

4. Substantial Evidence Demonstrates That Shorter Poles Would Not Provide Similar Fire Reduction Benefits

POC/CNFF claims that the Commission improperly rejected POC/CNFF's proposed pole design alternative. POC/CNFF App. at 19. To the contrary, the EIR/EIS analyzed a shorter pole alternative and found that a shorter pole alternative would not allow for the use of new conductors necessary to reduce fire risks and improve reliability. Final EIR/EIS at D6-41. As

explained in the EIR/EIS, the Project would replace the existing conductors on five 69 kV lines—conductors that were installed decades ago—with stronger conductors. *Id*. at G-3, D6-41. The new conductors would be stronger, heavier, and more resistant to heat than existing conductors, resulting in greater fire prevention benefits than would conductors similar to those already in place.[3] *Id.* Using conductors similar to those already in place, as suggested by POC/CNFF, would not achieve the Project's objectives to fire harden and improve service reliability. *Id*. at D6-41.

In sum, substantial evidence in the record supports the Commission's determination that the Vegetation Management, No-Wire, Distributed Generation, complete undergrounding, and pole design alternatives would be infeasible. Decision at 24-29.

5. The Commission Properly Applied Project Objectives to Exclude Project Alternatives

POC/CNFF reasserts its prior argument that the Commission improperly applied Project objectives to reject several feasible Project alternatives. POC/CNFF App. at 14. POC/CNFF ignores that an EIR need not present alternatives incompatible with fundamental project objectives. *See In re Bay-Delta Programmatic Envt'l Impact Report Coordinated Proceedings*, 43 Cal. 4th 1143, 1165 (2008) (an EIR need not study alternatives that "cannot achieve the project's underlying fundamental purpose"); *see also Sierra Club v. County of Napa*, 121 Cal. App. 4th 1490, 1503 (2004). Alternatives that fail to meet basic project objectives are "infeasible" and need not be considered in an EIR. CEQA Guidelines § 15126.6(a), (c) (alternatives may be eliminated from detailed consideration if they fail to meet most of the basic project objectives). Here, as demonstrated in SDG&E's briefing and the Commission's

[3] POC/CNFF's claims that SDG&E wants to convert wooden poles to steel poles for increased capacity. *See* POC/CNFF App. at 19. This claim lacks any support, and is refuted by contrary evidence in the record confirming that SDG&E does not propose increasing the capacity of the existing lines. *See* SDG&E Opening Brief at 11-12; Final EIR/EIS Response to Comment F3-2.

Decision, and as discussed in detail in Sections V.B.1-4, above, substantial evidence in the record shows that POC/CNFF's preferred alternatives would not meet project objectives and, therefore, were not carried forward for further analysis. *See* SDG&E Reply Brief at 24-26; Decision at 26-29.

Further, the Commission did not rely on an "improperly narrow" interpretation of "fire hardening" in applying the objectives. POC/CNFF App. at 16-17. POC/CNFF argues that the Commission considered "fire hardening" to be synonymous with "pole conversion." *Id*. at 17. To the contrary, the Commission considered a number of options for reducing fire risks, and the Commission's approved Project includes both wood-to-steel pole conversion, undergrounding, and power line relocation. Final EIR/EIS at E-36 to E-37. *See also* Decision at 15-21 (discussing and analyzing project alternatives); 35-37 (modifying the proposed Project to best comport with Project objectives and minimize environmental impacts).

C. The Commission's Project Objectives and Purpose Did Not Violate CEQA

POC/CNFF again argues that the Commission shifted Project objectives when it issued Errata 2. POC/CNFF App. at 20-21; Cleveland National Forest Foundation, Protect Our Communities Foundation, and Backcountry Against Dumps Opening Comments on Proposed Decision, at 4-5 (May 17, 2016). SDG&E already addressed this argument in its Reply Comments on the Proposed Decision, which the Commission considered prior to issuing the Decision. *See* SDG&E Reply Comments at 2. Errata 2 clarifies a response to a comment in the Final EIR/EIS concerning structural failure of poles from fire heat. *See id*. The statement that "the purpose of the proposed project is to reduce the risk of wildfires due to power line failure, not to build a powerline that is resistant to wildfires" reiterates information in the EIR/EIS demonstrating the Project does not aim to build a power line that is fire proof. *See* Decision at 27, 29. Rather the Project aims to reduce the existing fire risk due to line failure. *See* Final

EIR/EIS at A-8 to A-10. This neither provides evidence of nor establishes a change in the Project objectives. POC/CNFF's claim that this purportedly "narrower purpose . . . is a major change" is without merit. *See* POC/CNFF App. at 20.

The Project objectives were also not so narrow as to preclude an adequate alternatives analysis. POC/CNFF App. at 21. The Project objectives, including "[r]educ[ing] fire risk by fire hardening electric facilities in and around the CNF" were sufficiently broad to allow the Commission to analyze 13 alternatives, including a No Project alternative, a No Action alternative, and 11 action alternatives. *See* Final EIR/EIS at D5-13; *see also* Decision at 13. Thus, the Commission appropriately used the objectives to "develop a reasonable range of alternatives to evaluate in the EIR." CEQA Guidelines, § 15124(b); *In re Bay-Delta Programmatic EIR Coordinated Proceedings,* 43 Cal. 4th 1143, 1166 (2008) (alternatives analysis may be structured "around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal"); *Save San Francisco Bay Assn. v. San Francisco Bay Conservation and Development Comm.,* 10 Cal. App. 4th 908, 929 (1992) (lead agency may limit alternatives to those "which could feasibly accomplish the project's purpose").

Finally, POC/CNFF suggests that the Commission erred in referring to SDG&E's objective of securing Forest Service authorization to continue to operate and maintain existing SDG&E facilities within the CNF. *See* POC/CNFF App. at 22. CEQA permits an agency to adopt an applicant's stated objectives. *See Sierra Club v. County of Napa,* 121 Cal. App. 4th 1490 (2004) (adopting applicant's objective of constructing a new winery facility that consolidates operations, minimizes costs, and reduces highway usage). Further, this objective does not abrogate the Commission's thorough and independent analysis of the Project, which is demonstrated throughout the Decision. *See, e.g.*, Decision at 15-20, 30 (analyzing the benefits

and impacts of various alternatives); *id.* at 35-37 (modifying SDG&E's preferred alternative to reduce environmental impacts).

D. The Commission Adequately Analyzed the Project's Growth-Inducing Effects

POC/CNFF argues that the EIR did not adequately analyze the Project's growth-inducing effects. POC/CNFF App. at 22. As described at length in the briefing in this matter and in the EIR/EIS, the capacity of the existing lines will not increase under the Project. *See* SDG&E Opening Brief at 11-12; SDG&E Reply Brief at 32; Final EIR/EIS Response to Comment F3-2. Substantial evidence in the record supports the Commission's determination that the Project will not induce growth. *See* Final EIR/EIS at Section G.1.

E. The Commission Adequately Responded to Comments

POC/CNFF again argues that the Commission inadequately responded to public comments. POC/CNFF App. at 23. The EIR/EIS included robust responses to POC/CNFF's and others' comments, spanning 732 pages. *See* Final EIR/EIS, Vol. 2 (Response to Comments); *see also id*. at D6-33 to D6-47. POC/CNFF has failed to show how the Commission's responses were not "good faith, reasoned analysis" or "unsupported by factual information." *See* POC/CNFF App. at 23.

POC/CNFF strangely argues that the Commission should have included a more robust response to its ***comments on the Proposed Decision***—specifically, the claim that Errata 2 introduced a new Project objective. POC/CNFF App. at 23. As described in Section V. B., above, however, Errata 2 did not introduce a new Project objective. Further, POC/CNFF's cited authority provides that the Commission is required to provide responses to comments on the Draft EIR during the CEQA process, not to comments on a Proposed Decision. POC/CNFF's argument, therefore, is completely misplaced.

F. The Commission Adequately Analyzed Cumulative Impacts

The Commission adequately analyzed cumulative impacts. *See* SDG&E Reply Brief at 29. Specifically, cumulative land use impacts are discussed at length in the EIR/EIS at pages F-33 to F-37; *see also* Decision at 25-26 (contrary to POC/CNFF's assertions, "the EIR/EIS appropriately summarizes and responds to POC's comments" on cumulative impacts). As the EIR/EIS explains, the Project is located within existing SDG&E right-of-way or underground in area roads and is essentially a reconstruction project of existing electric utility lines. Final EIR/EIS at F-34. The Project would also eliminate existing land use conflicts with the Forest Service's Land Management Plan for the CNF. *Id*. at F-34 to F-35. Thus, the EIR/EIS properly concluded that the Project's land use impacts would not be cumulatively considerable. *Id*. Accordingly, POC/CNFF's rehashed argument fails.

G. The Commission Made the Requiring Findings for the Project's Single Unavoidable Adverse Impact

POC/CNFF's reargues that the Commission had a duty to mitigate or avoid significant impacts to visual resources, air quality, water resources, and land use. POC/CNFF App. at 24. This completely ignores the lengthy briefing and discussion demonstrating that the Project would avoid or substantially lessen ***all but a single*** temporary construction impact. *See* SDG&E Reply Comments at 3; Decision at 35-36. The Commission adequately explained its findings related to the significant impact in the EIR/EIS, and POC/CNFF's suggestion that impacts to visual resources, water resources, and land use remain significant is not supported by the Final EIR/EIS and is just flatly wrong. *See* Final EIR/EIS at E-36; Decision at 35-36.

H. Substantial Evidence Supports Approving the Project and Adopting a Statement of Overriding Considerations

The Project will provide important fire hardening and reliability benefits to customers in eastern San Diego County. These benefits are documented in the Project's robust EIR/EIS, in

sworn testimony before ALJ Yacknin, and in the Decision. Nonetheless, POC/CNFF continues to challenge the Statement of Overriding Considerations. As SDG&E previously explained, the record before the Commission contains substantial evidence of the Project's benefits—evidence that has been confirmed multiple times throughout this proceeding. *See, e.g.*, SDG&E Reply Brief at 3-19; Decision at 31-33. POC/CNFF continues to ignore this evidence.

A statement of overriding considerations will be upheld when supported by substantial evidence in the record. CEQA Guidelines § 15093(b); *see also Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School Dist*., 24 Cal. App. 4th 826, 847 (1994). Substantial evidence is "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 be reached." CEQA Guidelines § 15384(a); *see also Stanislaus Audubon Society, Inc. v. County of Stanislaus*, 33 Cal. App. 4th 144, 152 (1995) (explaining substantial evidence does not require "overwhelming or overpowering evidence"). Substantial evidence may include "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" in the EIR/EIS or elsewhere in the record. CEQA Guidelines § 15384.

Here, the record before the Commission contains numerous studies, documents, and testimony upon which the Commission properly relied in determining the Project's benefits. The Commission properly relied upon the Revised Plan of Development, the EIR/EIS, the Forest Service's Draft Record of Decision for the CNF Master Special Use Permit ("Draft Record of Decision"), and testimony from SDG&E expert witnesses. These documents constitute expert reports and analysis and, therefore, constitute substantial evidence. *See Sierra Club v. Dep't of Forestry & Fire Protection*, 150 Cal. App. 4th 370, 382 (2007) (evidence from experts

constitutes substantial evidence); *Stanislaus Audubon Society*, 33 Cal. App. 4th at 152 (qualitative environmental evidence constitutes substantial evidence).

Possible bases for a statement of overriding considerations include "economic, legal, social, technological, or other" project benefits. Pub. Res. Code § 21081(b); CEQA Guidelines § 15093(a). A statement of overriding considerations contains the "larger, more general reasons for approving the project." *Concerned Citizens of South Central Los Angeles*, 24 Cal. App. 4th at 847. Here, the statement of overriding considerations was justified by the Project's myriad public health, safety, and environmental benefits, all of which are well established in the record. *See* Decision at 32, 37. Indeed, SDG&E thoroughly explained the evidence supporting the Project's benefits in its November 2, 2015 Opening Brief. *See* SDG&E Opening Brief at 25-36. In short, the Project would: (1) increase fire safety and service reliability in and near the CNF (Final EIR/EIS at B-1 to B-23, D.8-45 to D.8-46); (2) provide more reliable electric service to SDG&E's customers (*id*. at D.8-46); and (3) improve existing conditions in and near the CNF. *Id.* at ES-17 to ES-18, B-44; *see also* Decision at 31 ("the proposed project will reduce the risk of powerline failure and thereby reduce the risk of wildfires in and around the [CNF] and power outages caused by powerline failures.").

The record before the Commission contains more than substantial evidence supporting the Commission's determination that "the project benefits of reducing the risk of wildfires and power outages caused by powerline failure and allowing [SDG&E] to obtain a Master Special Use Permit to continue operating its electrical facilities within the Cleveland National Forest outweigh the project's significant and unavoidable effects on air quality during project construction." Decision at 2; *see also id.* at 32 ("These safety, reliability, economic and

environmental benefits present overriding considerations that merit approval of the [Project], notwithstanding its significant, unmitigable effects on air quality during project construction.”).

1. Substantial Evidence Supports the Commission’s Determination That the Project Will Provide Fire Safety and Reliability Benefits

POC/CNFF again argues that the record lacks substantial evidence demonstrating that Project construction will reduce fire risk and improve service reliability. POC/CNFF’s arguments again fail. As SDG&E has repeatedly explained, the EIR/EIS, expert reports and testimony at the evidentiary hearings, and the Draft Record of Decision demonstrate that the Project provides numerous short-term and long-term benefits related to fire hardening and service reliability. *See, e.g.*, SDG&E Reply Brief at 7.

Fire Hardening. The EIR/EIS details how the Project will provide important fire risk reduction benefits: the steel poles are designed to withstand higher wind speeds; increased conductor spacing will maximize line clearances; weak spliced locations will be removed; the installation of appurtenant facilities will further increase fire safety and service reliability as new technologies become available; and portions of existing lines will be removed or underground. *See* SDG&E Opening Brief at 4-5; SDG&E Reply Brief at 7; Final EIR/EIS at B-1, D.8-45 to D.8-46. Similarly, the Forest Service’s Record of Decision confirms the Project’s numerous fire hardening benefits. *See* Record of Decision at 6 (“One of the primary project purposes was to reduce the risk of power line related wildfires. . . . As described in the Final EIR/EIS section D.8, ***fire hardening reduces the risk of power line related wildfires when compared to the existing system***.”) (emphasis added). The fire hardening measures would reduce “the fire risk associated with existing facilities in a high fire hazard area through fire hardening or undergrounding.” *Id*.

Indeed, on numerous occasions the Commission has found that fire hardening activities, such as wood-to-steel pole replacement, would reduce fire risks and improve system reliability. *Id*. at D.14-02-004 at 9 (replacing wood poles with steel poles "will improve fire safety conditions"); D.15-03-020 at 7-8 (electric line upgrade project would provide reliability and safety benefits by "replacing existing wooden poles with the proposed steel poles, which are stronger and more resistant to wildfire"). The evidence contained in the record on the risk reduction benefits is hardly speculation, unsubstantiated opinion, or narrative, as POC/CNFF claims. *See* POC/CNFF App. at 25; Decision at 32-33 (contrary to POC/CNFF's contention that fire hardening does not provide overriding benefits, "while the likelihood of powerline-related fires occurring may be low, the potential harm from such fires in the [CNF] is enormous."). Thus, the Commission correctly found the Project will provide safety and reliability benefits. Decision at 32, 37.

Service Reliability. The Project will increase the service reliability of existing lines in and around the CNF, including areas subject to severe weather conditions, in a manner consistent with Commission General Orders, North American Electric Reliability Corporation/Federal Energy Regulatory Commission requirements, and SDG&E standards. *See* SDG&E Reply Brief at 9; Final EIR/EIS at A-9 to A-10. Without the Project, there would be no improvements to service reliability, or such improvements would be dramatically delayed. *See id*. at E-27 (under the No Project Alternative, the "ongoing public health and fire risks associated with structural failure . . . due to extreme weather conditions would continue.").

Not only does the EIR/EIS explain how replacing existing equipment will reduce the potential for line breakages or failures during hazardous weather conditions, but SDG&E's witnesses also described the purpose and effectiveness of the Project's reliability improvements

during the evidentiary hearings. *See* Transcript of Proceedings in Application No. 12-10-009 ("Tr.") at 31:5-16 (the existing service presents reliability problems); 32:10-24 (describing past equipment failures); and 41:9-20 (proposed measures will "improve the integrity" of the "whole system," "making it more robust"). POC/CNFF's contrary assertions are baseless, and ignore substantial evidence in the record confirming the Project's benefits. *See* Decision at 31-32 (rejecting claims that the Project does not present reliability benefits).

2. Substantial Evidence Demonstrates the Benefits of Wood to Steel Pole Replacement

POC/CNFF continues to argue that the record fails to demonstrate the extent to which the Project's wood-to-steel conversion would reduce fire risks or improve reliability. POC/CNFF App. at 27-30. POC/CNFF alleges that the EIR's evidence of the benefits of steel poles is "unsubstantiated," and therefore, there is no need to replace the existing wooden poles with fire-resistant steel poles. *Id*. at 27. Incredibly, POC/CNFF goes so far as to suggest that fire-hardening is not necessary because "[o]nly a handful" of major fires in the Project area have been linked to power line failure. *Id.* at 28.

POC/CNFF's argument patently contradicts evidence in the record, Commission and public policy, and common sense. *See, e.g.*, Final EIR/EIS at D.8-45 to D.8-46 (discussing benefits of fire hardening); D.15-03-020 at 47 (overriding considerations warrant upgrades to existing lines in light of "[m]ajor reliability and safety benefits," including "reducing risks of wildfire"); Decision at 31 ("Wood poles, unlike steel poles, are susceptible to deterioration from fire, woodpeckers, termites and weather, and have inherent variability in the material strength properties.").

POC/CNFF continues to argue that steel pole construction does not address fire risks identified by any particular agency. POC/CNFF App. at 26. POC/CNFF is wrong: both the

Forest Service and the Commission have identified fire risks to be addressed by the Project. As described in the Decision, as part of the NEPA review process, the Forest Service requested the evaluation of additional fire reduction measures. Decision at 2. Likewise, reducing fire risk was identified as one of the ***Commission's*** Project objectives. *Id*. at 4.

POC/CNFF also repeats baseless claims that the benefits of wood to steel pole replacement do not justify approving the Project. POC/CNFF App. at 27. SDG&E responded to this argument in its prior briefing. *See, e.g.*, SDG&E Reply Brief at 9-12. In addition, the EIR/EIS discusses the benefits of fire hardening, and Commission precedent explains that overriding considerations warrant upgrades to existing lines in light of "reducing risks of wildfire." Final EIR/EIS at D.8-45 to D.8-46; D.15-03-020 at 47.

Indeed, the EIR/EIS specifically addressed the superiority of steel poles over wood poles in response to POC/CNFF's comments on the Draft EIR/EIS. *See* Final EIR/EIS at D6-10, D6-40. The EIR/EIS also analyzed the benefits of wood-to-steel pole conversion, including susceptibility to fire damage, strength, and height. Final EIR/EIS at D.8-45 to D.8-46, C-17; *see also* SDG&E Reply Brief at 10. For example, steel poles are better able to withstand lightning strikes as compared to wood poles. SDG&E Reply Brief at 10, citing Final EIR/EIS at D.8-45 to D.8-46. The EIR/EIS also explained that the existing wood poles were designed for historical design conditions of 56 miles per hour wind, whereas the new steel poles are designed for more extreme wind conditions of 85 miles per hour. Final EIR/EIS at I-8; *see also id.* at D.8-45 ("Winds can exceed 100 mph, particularly near the mouth of canyons oriented along the direction of airflow" such that, in some instances, "standard steel pole design parameters may be exceeded").

Commission precedent likewise indicates that "[w]ood products have considerable natural variability. As a result, the actual strength of wood products used by electric utilities . . . to build structures will likely deviate to some degree from the presumed strength of materials." D.12-01-032 at 167. Similarly, the Forest Service's Record of Decision confirmed the superiority of steel poles over wood poles. *See* Record of Decision at 6 ("Project design elements include the use of stronger steel towers and stronger wind resistant conductors, and relocating certain sections of the distribution system to underground ducts. As described in the Final EIR/EIS . . . , fire hardening reduces the risk of power line related wildfires when compared to the existing system.").

Further, contrary to POC/CNFF's assertions otherwise, SDG&E witnesses also testified to the benefits of steel poles. *See* POC/CNFF App. at 28; SDG&E Reply Brief at 11-12. For example, Tim Knowd, SDG&E's Project Manager, testified that steel poles are safer than wood poles in the event of a wildfire. Tr. at 27:23-28. Hal Mortier, SDG&E's Fire Program Manager, similarly testified that the replacement of the wood poles with steel poles would "improve the integrity" of the system. *Id*. at 41:11-23; *see also id.* at 46:8-16.

In response, POC/CNFF cites to testimony from the Project opponents' consultant, Matthew Rahn, suggesting that GO 95's requirements adequately manage fire risks, so converting to steel poles is not necessary. POC/CNFF App. at 27. SDG&E addressed this contention at length in its Reply Brief. *See* SDG&E Reply at 15, 26-27. As described therein, this same argument was raised in POC/CNFF's comments on the Draft EIR/EIS. *See* Final EIR/EIS at D6-10. The EIR/EIS response to POC/CNFF's comment confirms that additional fire hardening measures beyond complying with GO 95 are beneficial and should be adopted. *Id*. at D6-41. Further, GO 95 allows and encourages utilities to take fire precaution measures

beyond the bare minimum. *See, e.g.*, GO 95, Rule 35 (providing that utilities may determine and apply additional appropriate clearances above and beyond the minimum requirements of GO 95). In addition, Mr. Rahn's contention that steel poles have an increased risk of lightning strikes is also contradicted by evidence in the EIR/EIS that steel poles are better able to withstand lightning strikes as compared to wood poles. Final EIR/EIS at D.8-45 to D.8-46.

The Commission also addressed Mr. Rahn's testimony in the Decision. *See* Decision at 26-27. Even after considering Mr. Rahn's testimony, the Commission appropriately concluded that substantial evidence supports "the EIR/EIS' conclusion that replacing wood poles with steel poles will reduce the risk of power line-related wildfires." *Id*. at 27. Further, the Commission has the discretion to choose the expert evidence upon which to rely. *See Sierra Club v. Cal. Coastal Comm.*, 19 Cal. App. 4th 547, 558-59 (1993); *Center for Biological Diversity v. Dep't of Forestry & Fire Protection*, 232 Cal. App. 4th 931, 948 (2014) ("A public agency may choose between differing expert opinions, and may also properly rely upon the opinion of its staff in reaching decisions."). The Commission is also not required to "correctly solve a dispute among experts." *Cadiz Land Co. v. Rail Cycle*, 83 Cal. App. 4th 74, 101-02 (2000).

3. The Commission Properly Excluded Evidence of Project Need

POC/CNFF rewrites history when it claims that the Commission improperly excluded evidence demonstrating an alleged lack of Project benefits from the administrative record. POC/CNFF App. at 30-31. POC/CNFF first claims that the Commission erred because POC/CNFF "requested evidentiary hearings to develop the record for this proceeding." *Id*. at 30. The Commission did just that—ALJ Yacknin held a full day evidentiary hearing on October 11, 2015, during which all parties were given an opportunity to participate. Decision at 9.

POC/CNFF next alleges that the Commission improperly limited the scope of the proceeding, presumably by excluding testimony as to Project cost and need. However, as confirmed by ALJ Yacknin and as discussed in Section IV, above, project "need" is not part of the inquiry for a PTC. *See* Ruling Denying Motion to Amend Scoping Memo and Providing Requested Clarification at 1-2; Tr. at 135:11-14 (ALJ Yacknin: "General Order 131-D . . . makes it very clear that need and cost are beyond the scope of a permit to construct."). Further, as ALJ Yacknin held during the evidentiary hearing, the Commission has already made the determination that the Project is "needed" and that issue is not subject to further argument in this proceeding. Tr. at 134:13 to 135:14.

To the extent that POC/CNFF claims it was prevented from introducing evidence on environmental issues, POC/CNFF had the opportunity to submit evidence in its comments on the Draft EIR/EIS and did so. *See* Decision at 27-28, n. 19 ("evidence regarding issue no. 2 [alternatives] was to be offered in comment on the draft EIR/EIS in the course of the CEQA environmental review process"); *see also id*. at 23-24 ("[W]e reject POC's premise that intervenors were denied an opportunity to present evidence challenging the EIR/EIS's rejection of project alternatives" because "POC availed itself of that opportunity and its extensive comments were included in the final EIR/EIS and in the record of the proceeding.").

Lastly, POC/CNFF claims that the Commission wrongly excluded testimony from Mr. Rahn from the record. POC/CNFF App. at 31. POC/CNFF ignores that ALJ Yacknin initially granted SDG&E's motion to strike Mr. Rahn's testimony in its entirety, but later reversed that ruling in part. *See* Dec. 3, 2015 Ruling Reversing in Part Ruling Striking Prepared Direct Testimony at 1-2. Subject to the revised ruling, ALJ Yacknin admitted Mr. Rahn's

testimony as to Issue 5 (overriding considerations).[4] *Id*. at 2. Accordingly, contrary to POC/CNFF's argument, the Commission was very accepting of evidence from Project opponents.

4. The Commission Appropriately Limited the Scope of the PTC Proceeding to Exclude Project Cost and Need

POC/CNFF's argument that the Commission must weigh the cost of the Project against the Project's economic benefits fails for the same reasons as POC/CNFF's earlier argument that the Commission must consider the need and cost of the Project. *See* Section IV. B, above.

5. The Commission Considered the Project's Single Temporary Significant Environmental Impact and Determined It Was Outweighed by Project Benefits

POC/CNFF's claim that the Commission failed to adequately weigh the Project's significant environmental impacts is wrong. *See* SDG&E Opening Brief at 26-35; SDG&E Reply Brief at 6-19 . The Commission adequately explained its findings related to any significant impacts in the EIR/EIS. *See* Final EIR/EIS at E-36. Substantial evidence in the record shows that the Project would avoid or substantially lessen all but a single temporary construction impact. *See* SDG&E Reply Comments at 3; Decision at 32 ("These safety, reliability, economic and environmental benefits present overriding considerations that merit approval of the [Project], notwithstanding its significant, unmitigable effects on air quality during project construction.").

[4] ALJ Yacknin noted that, to the extent Mr. Rahn's testimony is cited for the purpose of challenging the EIR/EIS, it will be given little weight. Dec. 3, 2015 Ruling Reversing in Part Ruling Striking Prepared Direct Testimony at 2.

VI. CONCLUSION

POC/CNFF raises no legal issues warranting rehearing. SDG&E respectfully requests that the Commission reject POC/CNFF's arguments and affirm its approval and issuance of a PTC for the Project.

Dated in San Diego, California, this 26th day of July, 2016.

Respectfully submitted,

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