



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

FILED
10-10-16
04:59 PM

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:)
Moorpark-Newbury 66 kV Subtransmission Line)
Project)

A.13-10-021
(Filed October 28, 2013)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)
RESPONSE TO THE JOINT APPLICATION FOR REHEARING FILED BY THE
CENTER FOR BIOLOGICAL DIVERSITY AND CITIZEN INTERVENORS

RUSSELL C. SWARTZ
BETH GAYLORD
ROBERT D. PONTELLE

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6025
Facsimile: (626) 302-6736
E-mail: Robert.Pontelle@sce.com

Dated: **October 10, 2016**

**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) RESPONSE
TO THE JOINT APPLICATION FOR REHEARING FILED BY THE
CENTER FOR BIOLOGICAL DIVERSITY AND CITIZEN
INTERVENORS**

Table of Contents

<u>Section</u>	<u>Page</u>
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL HISTORY	2
III. SUBSTANTIAL EVIDENCE SUPPORTS THE PTC DECISION’S CONCLUSION THAT THE FEIR WAS COMPLETED IN COMPLIANCE WITH CEQA	5
A. The CPUC Was Not Obligated To Review The Potential Impacts Of The M-N Line During The Advice Letter Proceeding.....	6
B. The CPUC Used An Appropriate Baseline When Analyzing The Environmental Impacts Associated With Completion Of The Proposed Project.....	8
C. The CPUC Did Not Improperly Piecemeal One Project Into Multiple Projects	11
D. The AFR Grossly Misstates The Level Of Impacts To Biological Resources.	13
1. The AFR’s Allegations Regarding Impacts From Past Work Are Meritless.....	13
2. The AFR’s Allegations Regarding Impacts From Future Work Are Meritless...	15
IV. THE AFR’S ARGUMENT THAT THERE ARE NO OVERRIDING CONSIDERATIONS WARRANTING APPROVAL OF A PTC IS BASED ON FLAWED THEORIES AND INAPPLICABLE DATA THAT PALE IN COMPARISON TO SCE’S PROFESSIONAL FORECASTING METHODOLOGIES.. ..	17
V. SUBSTANTIAL EVIDENCE SUPPORTS THE PTC DECISION’S REJECTION OF ELECTRICAL SYSTEM ALTERNATIVES SUGGESTED BY THE AFR.....	19
A. An Alternative That Involves Intentionally Leaving Pharmacy Substation And Its Single Customer Offline Would Violate Operational And Tariff Rules And Fundamental Principles Of Equity And Fairness.....	19
B. There Is No Viable Capacitor-Based Alternative, Even With Load Rolling To Other Substations.....	22

**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) RESPONSE
TO THE JOINT APPLICATION FOR REHEARING FILED BY THE
CENTER FOR BIOLOGICAL DIVERSITY AND CITIZEN
INTERVENORS**

Table of Contents

<u>Section</u>	<u>Page</u>
VI. NOTHING IN THE AFR DEMONSTRATES THAT ANY DUE PROCESS RIGHTS HAVE BEEN VIOLATED, PARTICULARLY BECAUSE SCE’S COMMUNICATIONS WITH THE CPUC WERE NOT CONTRARY TO STATUTE OR RULE, OR OTHERWISE UNFAIR, INAPPROPRIATE, OR UNETHICAL.....	25
A. There Is No Evidence Of Any Violation Of The CPUC’s Rules Governing Ex Parte Communications.....	25
B. There Is No Evidence That the CPUC Was Biased In Favor Of The M-N Line Or Improperly Collaborated With SCE.	26
C. The AFR’s Allegation That An ORA Conflict Of Interest Tainted This Proceeding Is Baseless.....	30
VII. THERE IS NO NEED TO REOPEN THIS PROCEEDING FOR ANY ADDITIONAL EVIDENCE OR ARGUMENT	30
VIII. THERE IS NO NEED FOR A STAY OF CONSTRUCTION.....	34
IX. CONCLUSION.....	35

**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) RESPONSE
TO THE JOINT APPLICATION FOR REHEARING FILED BY THE
CENTER FOR BIOLOGICAL DIVERSITY AND CITIZEN
INTERVENORS**

Table of Authorities

Page(s)

CASES

<i>Arviv Enters., Inc. v. So. Valley Area Planning Comm’n</i> (2002) 101 Cal.App.4th 1333	12, 13
<i>Eureka Citizens for Responsible Government v. City of Eureka</i> (2007) 147 Cal.App.4th 357.....	10,11
<i>Fat v. County of Sacramento</i> (2002) 97 Cal.App.4th 1270	9, 10, 11
<i>McQueen v. Bd. of Dirs.</i> (1988) 202 Cal.App.3d 1136	11, 12
<i>Riverwatch v. County of San Diego</i> (1999) 76 Cal.App.4th 1428	9, 11

STATUTES

Pub. Resources Code § 21000 <i>et seq</i>	4
Pub. Resources Code § 21065	6, 7, 8
Pub. Resources Code § 21065(c).....	6
Pub. Util. Code § 451.....	21

REGULATIONS

CEQA Guidelines § 15000 <i>et seq</i>	4
CEQA Guidelines § 15063(f)	9
CEQA Guidelines § 15069	11
CEQA Guidelines § 15084(d)(3).....	28
CEQA Guidelines § 15088.5	12
CEQA Guidelines § 15125	8
CEQA Guidelines § 15125(a).....	9
CEQA Guidelines § 15165	11
CEQA Guidelines § 15268	7
CEQA Guidelines § 15369	7
CEQA Guidelines § 15378(a)(3)	6, 7, 9
CEQA Guidelines § 15384(a).....	27

**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) RESPONSE
TO THE JOINT APPLICATION FOR REHEARING FILED BY THE
CENTER FOR BIOLOGICAL DIVERSITY AND CITIZEN
INTERVENORS**

Table of Authorities

Page(s)

CALIFORNIA PUBLIC UTILITIES COMMISSION RULES AND GENERAL ORDERS

CPUC General Order 131-D.....	3, 6, 8, 9, 10, 28
CPUC General Order 131-D §§ III.B.1.-2.....	7
CPUC General Order 131-D § III.B.1.g.....	3
CPUC General Order 131-D § XIII.....	28
CPUC Rule of Practice and Procedure 8.1-8.6.....	26
CPUC Rule of Practice and Procedure 8.1(b).....	26
CPUC Rule of Practice and Procedure 8.2.....	26
CPUC Rule of Practice and Procedure 16.1(b).....	29
CPUC Rule of Practice and Procedure 16.1(d).....	1

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS AND RESOLUTIONS

CPUC Decision D.01-01-046.....	21
CPUC Decision D.06-04-047.....	10
CPUC Decision D.11-11-019.....	3, 4, 8
CPUC Decision D.13-08-005.....	34
CPUC Decision D.15-11-003.....	10
CPUC Decision D.94-06-014.....	7
CPUC Decision D.97-03-058.....	9
CPUC Resolution E-4225.....	3, 6, 8, 11, 28
CPUC Resolution E-4243.....	3, 8, 11, 25, 28, 29

RECORD CITATION FORM

Record exhibits are cited according to the following formats:

- Citations to prepared written testimony are cited as: “[party] Exhibit [number] [(witness)], at [page(s):line(s)]” as applicable.¹
- Citations to the Final Environmental Impact Report for the Moorpark-Newbury 66 kV Subtransmission Line Project are cited as: “[DEIR], at [page(s)]” or “[FEIR], at [page(s)]” as applicable.
- Citations to the Transcript of the January 28, 2016 evidentiary hearing proceeding (as transcribed by Ms. Ana M. Gonzalez and served by e-mail by Ms. Gonzalez on February 5, 2016 replacing a prior version) are cited as: “Transcript (Witness), at [page(s):line(s)]”²

¹ Exhibit numbers correspond to the numbers assigned by Administrative Law Judge Hallie Yacknin at the evidentiary hearing held on January 28, 2016.

² In her February 5, 2016 e-mail, Ms. Gonzalez provided both a confidential and a public/redacted version of the Transcript of the January 28, 2016 evidentiary hearing, as some confidential material was discussed during that hearing. For purposes of this Response, SCE’s citations to the “Transcript” would apply to either version, as they appear to be the same except for redactions, and this Response does not cite to any of the confidential material contained in the Transcripts.

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

In the Matter of the Application of SOUTHERN)	
CALIFORNIA EDISON COMPANY (U 338-E))	A.13-10-021
for a Permit to Construct Electrical Facilities)	
With Voltages Between 50 kV and 200 kV:)	(Filed October 28, 2013)
Moorpark-Newbury 66 kV Subtransmission Line)	
<u>Project</u>)	

**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E)
RESPONSE TO THE JOINT APPLICATION FOR REHEARING FILED BY THE
CENTER FOR BIOLOGICAL DIVERSITY AND CITIZEN INTERVENORS**

**I.
INTRODUCTION**

Pursuant to California Public Utilities Commission (“CPUC” or “Commission”) Rule of Practice and Procedure 16.1(d), Southern California Edison Company (“SCE”) respectfully submits this response to *The Center for Biological Diversity And Citizen Intervenors Joint Application For Rehearing Of D.16-08-022* (the “AFR”) served by the Center for Biological Diversity and Citizen Intervenors Alan and Peggy Ludington, Environmental and Regulatory Specialists, Inc., Santa Rosa Valley Estates Homeowners Association, Krista and Phillip Pederson, Cheryl M. and Herbert T. Potter, James Porter, and Donald and Therese Walker (collectively, the “AFR Parties”) in the above-captioned proceeding.

As further explained throughout the balance of this response, the AFR does not and cannot demonstrate any manner in which CPUC Decision (“D.”) 16-08-022, *Decision Granting Permit*

To Construct The Moorpark-Newbury 66 kV Subtransmission Line Project (the “PTC Decision”), is unlawful or erroneous. Therefore, SCE respectfully requests that the California Public Utilities Commission (“CPUC” or “Commission”) deny the AFR in its entirety.

II.

FACTUAL AND PROCEDURAL HISTORY

For many years, a portion of SCE’s 220 kilovolt (“kV”) Moorpark System was supplied with power from a generation facility in Camarillo, California known as Camgen.³ However, in 2005, SCE was forced to disconnect the Moorpark System from the Camgen generation source, leaving electrical customers in portions of the City of Thousand Oaks and unincorporated Ventura County to be served only by power conveyed from other subtransmission lines. As a result of that new arrangement, several existing SCE facilities – including equipment at SCE’s Newbury Substation, SCE’s Pharmacy Substation and one segment of SCE’s Moorpark-Newbury-Pharmacy 66 kV Subtransmission Line (the “M-N-P Line”) – have become vulnerable to projected operational criteria violations and line overloads, any of which would result in disruptions of electric service. (SCE Exhibit 1 (McCabe), at 5:22-6:13.) To offset some of the burden on the existing facilities, SCE identified the need to construct the Moorpark-Newbury 66 kV Subtransmission Line Project (“M-N Line”) to provide a separate new 66 kV subtransmission line to carry electrical loads from Moorpark Substation to Newbury Substation.

SCE engineers designed the M-N Line to be located entirely within existing disturbed electric rights-of-ways (“ROWS”) to avoid impacts to undisturbed areas and to comply with the Garamendi Principles and prudent ROW utilization. (SCE Exhibit 1 (Heinicke), at 24:13-20; SCE Exhibit 9 (Heinicke), at 35:8-15; SCE Exhibit 9-C (Heinicke), at 35:8-15; *see* Senate Bill 2431,

³ The Camgen facility is located on property owned and managed by the California State University Channel Islands (“CSUCI”) Site Authority. (SCE Exhibit 1 (McCabe), at 5:23-24.)

Stats. 1988, Ch. 1457).) In 2008, SCE filed Advice Letter 2272-E, notifying the CPUC that SCE intended to construct the M-N Line pursuant to Exemption “g” of CPUC General Order (“GO”) 131-D. Exemption “g” provides that a project proposed to be entirely within existing ROW need not undergo CPUC permitting and environmental review. (GO 131-D § III.B.1.g.)⁴

The Commission, on two separate occasions, issued Resolutions confirming SCE’s conclusions regarding the applicability of Exemption “g.” (See Resolution E-4225; Resolution E-4243.) In reliance on these two Resolutions, SCE initiated construction work in Fall 2010. However, in November 2011 (more than a year after construction had commenced), the Commission issued D.11-11-019 (the “Stop Work Decision”) which granted a request for rehearing, and directed SCE to stop construction and file an application for a Permit to Construct (“PTC”) if it wished to complete the M-N Line. SCE quickly ceased all work, and since that time, the line has remained in a partially-constructed state. (Transcript (Burhenn), at 80:7-25, (Heinicke), at 113:4-21.)

While the M-N Line remains unfinished, the electrical system need for it has become more imminent over time, and in fact, it is acutely needed to address impending violations of standard operating criteria that could occur at any time. In fact, at least three separate electrical system issues demonstrate the current need for the Project: (1) an unacceptable (*i.e.*, greater than 5%) drop in voltage at certain substation buses at the moment SCE’s Pharmacy Substation is restored following an N-1 abnormal system condition, a situation that SCE projects to be possible at any time; (2) a similarly unacceptable voltage drop that could occur at certain substation buses at the

⁴ Pursuant to this section, Exemption “g” applies to:

“power line facilities or substations to be located in an existing franchise, road-widening setback easement, or public utility easement; or in a utility corridor designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies for which a final Negative Declaration or EIR finds no significant unavoidable environmental impacts.”

very moment an N-1 condition occurs, a situation that could be possible by 2023; and (3) a base case overload on the Moorpark-Newbury segment of SCE’s existing 66 kV M-N-P Line, a situation projected to occur by 2024. Any one of these events could lead to service disruptions (and, in the case of voltage violations, potential damage to SCE and customer equipment) in the Thousand Oaks and Ventura County area served by Newbury Substation and Pharmacy Substation – an area SCE terms the “Electrical Needs Area” or “ENA” for this project.⁵

To alleviate those risks and given the direction in D.11-11-019, in 2013, SCE filed an Application for a PTC to authorize completion of the M-N Line. Pursuant to its duty as the lead agency under the California Environmental Quality Act (Pub. Resources Code § 21000 *et seq.*, “CEQA”) and its implementing guidelines (14 CCR § 15000 *et seq.*, the “CEQA Guidelines”), the CPUC released a Draft Environmental Impact Report (“DEIR”) in May 2015 and a Final Environmental Impact Report (“FEIR”) in October 2015 that analyzes the potential environmental impacts of the remaining activities needed to complete the M-N Line against the then-existing environment. The FEIR concludes that after implementation of 12 measures developed by SCE to minimize impacts from construction, known as Applicant Proposed Measures (“APMs”), as well as Mitigation Measures (“MMs”) established by the CPUC, only two temporary impacts to noise and air quality would be significant and unavoidable. (DEIR, at 3-37 -3-45, 5.3-14 – 5.3-15, 5.3-18, 5.13-17 – 5.13-19, 10-9 – 10-38.)

Following the release of the FEIR, evidentiary proceedings were held on a variety of issues, including the adequacy of the CPUC’s CEQA review, whether SCE’s electrical system forecasting reliably demonstrated the need for a new line and whether SCE’s communications with CPUC representatives about the M-N Line were improper. Multiple parties served written testimony, an evidentiary hearing was held on January 28, 2016 and multiple parties filed Opening and Reply

⁵ Newbury Substation serves approximately 18,000 SCE customers, while Pharmacy Substation is a customer-dedicated substation that provides service exclusively to one large industrial manufacturer. (SCE Exhibit 9-C (McCabe), at 7:1-2; CBD Exhibit 10-C (Powers), at 5:1-4.)

briefs. In addition, multiple motions were filed by the AFR Parties, including a motion asking ALJ Hallie Yacknin to “compel” the Energy Division to recirculate the DEIR (despite the fact that the DEIR was sufficient under CEQA), and later a motion seeking to set aside submission of the matter to receive new evidence (despite the fact that the new evidence proffered by the AFR Parties would have no material effect on this proceeding). The parties also submitted comments and replies with respect to ALJ Yacknin’s proposed decision, an Oral Argument was held in person before four Commissioners on August 8, 2016 and multiple parties participated in *ex parte* meetings with Commissioners’ personal advisors. The CPUC then voted to approve the PTC Decision on August 18, 2016, and the PTC Decision was mailed to the parties on August 24, 2016.

Despite that lengthy history and the CPUC’s thorough review of each and every conceivable issue raised by the AFR Parties, the AFR (filed on September 23, 2016) asks the CPUC to simply change its mind and require rehearing of this proceeding. However, as explained in the balance of this Response, each and every conclusion reached in the PTC Decision is supported by substantial evidence and is consistent with CEQA, and no rehearing is warranted.

III.

SUBSTANTIAL EVIDENCE SUPPORTS THE PTC DECISION’S CONCLUSION THAT THE FEIR WAS COMPLETED IN COMPLIANCE WITH CEQA

The AFR’s challenge to the CPUC’s CEQA analysis appears to be entirely premised on the notion that past activities that were undertaken several years ago should be considered part of the project being prospectively analyzed now. The AFR Parties have raised this same challenge on multiple occasions, consistently refusing to acknowledge that their argument is inconsistent with established CEQA law and CPUC practice. The PTC Decision’s rejection of the same CEQA arguments is supported by substantial evidence and the law.

A. The CPUC Was Not Obligated To Review The Potential Impacts Of The M-N Line During The Advice Letter Proceeding.

The AFR first argues that the CPUC should have considered and analyzed the past work activities (*i.e.*, those undertaken prior to the issuance of the Stop Work Decision) in the FEIR, arguing that the CPUC effectively commenced CEQA review for the M-N Line during the prior Advice Letter proceedings. (AFR, at 4-15.) The AFR’s entire premise is incorrect. Those proceedings did not involve a discretionary approval by the CPUC, and CEQA only applies to “projects,” which are defined as those activities undertaken by a person in response to the issuance of a *discretionary* entitlement issued by a lead agency:

“Project” means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, *and* which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) *An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.*

(Pub. Resources Code § 21065, emphasis added; *see also*, CEQA Guidelines § 15378(a)(3) (repeating the substantive language set forth in section 21065(c).)

The AFR contends that the Advice Letter process did constitute a discretionary action triggering CEQA, arguing that even at the Advice Letter stage the CPUC has discretion to stop or modify the proposed scope of work. (AFR, at 5-6.) However, the AFR misunderstands the CPUC’s Advice Letter review process. Upon the filing of an Advice Letter by a utility claiming exemption from GO 131-D, CPUC staff’s task is to review the letter to ensure that the utility’s proposal is in fact exempt from permitting. (*See* Resolution E-4225, at 10-11.) In this case, that review extended only to whether the M-N Line would be constructed within an existing franchise,

road-widening setback easement, or public utility easement so as to qualify for Exemption “g,” and if so, whether any factor specifically identified in GO 131-D negated the exemption. (*See* GO 131-D §§ III.B.1.-2.)⁶ In other words, the CPUC’s review was not a discretionary decision about whether the M-N Line should be constructed, but rather whether the M-N Line work met the express criteria to qualify for an exemption.

Such limited review is consistent with a “ministerial” governmental process wherein the lead agency’s sole responsibility is to compare the proposed development against a fixed set of criteria (here regarding exemptions), not apply personal judgments about whether it should be carried out. (*See* CEQA Guidelines § 15369.) Ministerial projects are not subject to CEQA; CEQA is clear that a scope of work does not qualify as a “project” requiring environmental review unless it is subject to discretionary approval action by a lead agency (such as a PTC proceeding). (CEQA Guidelines § 15268; Pub. Resources Code § 21065; CEQA Guidelines § 15378(a)(3), *supra*; *see also* D.94-06-014, at Conclusion of Law 3 (“The Commission has discretion to declare that specific routine or noncontroversial activities related to under-200-kV power line facilities do not require permits. Such activities are not ‘Projects’ as defined by CEQA, and CEQA’s requirements do not apply to these activities.”).) Therefore, the AFR is incorrect in arguing that the CPUC had an obligation to review AL 2272-E as a discretionary project. In fact, until SCE submitted its Application seeking a PTC to complete the M-N Line, there was no CEQA “project” at all.

The fact that the CPUC later directed SCE to submit a PTC Application if SCE wished to complete the M-N Line did not by itself transform the prior Advice Letter proceedings into a discretionary permit action. Even the Stop Work Decision itself drew a sharp distinction between a discretionary permitting process triggering CEQA on the one hand, and an informal Advice

⁶ As discussed further in footnote 7, *infra*, the AFR also misinterprets GO 131-D with respect to how and when Exemption “g” applies.

Letter proceeding on the other hand. (See D.11-11-019, at 20 (noting that when considering whether to issue a streamlined PTC, the CPUC would employ different criteria than used in the informal process that resulted in the issuance of Resolution E-4243.) For good reason. To find otherwise would be to effectively eviscerate the CPUC’s longstanding Advice Letter process, as no Advice Letter filing would *ever* be exempt from CEQA review if the filing of one protest could turn the question of whether a project was exempt from GO 131-D into a discretionary review process.

B. The CPUC Used An Appropriate Baseline When Analyzing The Environmental Impacts Associated With Completion Of The M-N Line.

Premised on its (incorrect) theory that the Advice Letter proceedings triggered CEQA, the AFR next argues that the CPUC should have analyzed potential environmental impacts against a baseline consistent with 2010 conditions rather than the conditions in place in 2014 when the Energy Division actually began preparing the DEIR. The AFR argues that when confirming the applicability of Exemption “g,” the CPUC “acted as if” it had prepared an Initial Study and Negative Declaration, simply because in its Resolutions approving the exemption, the CPUC found that no environmental conditions negated the exemption. (AFR, at 6-7.) This argument is flawed for several reasons.

First, CEQA provides that the baseline for environmental review purposes is the date on which a Notice of Preparation is issued for an EIR, or when formal environmental review otherwise commences (*i.e.*, for a negative declaration where no EIR is being prepared). (CEQA Guidelines § 15125.) Here, contrary to the AFR’s allegations, the Advice Letter proceeding did not involve an Initial Study, a Negative Declaration or any other formal environmental review. Rather, during this time, the CPUC repeatedly confirmed that construction of the M-N Line was exempt from permitting, and therefore was not subject to environmental review at all, and in fact, the CPUC did not perform any formal environmental review. (See DEIR, at 2-1; D.11-11-019, at 5-7; Resolution E-4225, at 13; Resolution E-4243, at 24-25; Pub. Resources Code § 21065; CEQA Guidelines §

15378(a)(3); SCE Exhibit 1 (Burhenn), at 35:8-16 (filing of AL 2272-E and subsequent appeals process were informal).)⁷ The AFR argues that the CPUC “effectively undertook and relied upon an initial study” when it received a biological resources memorandum prepared for SCE and based thereon confirmed the use of Exemption “g.” (AFR, at 8-9.) Yet nothing in that process or either of the Resolutions upholding the exemption mentioned or involved a CEQA initial study, or any other affirmative CEQA review by the CPUC. (See CEQA Guidelines § 15063, subd. (f) (describing the substantive environmental impact areas that must be discussed in an initial study).) Rather, actual CEQA review commenced when the CPUC issued a full Notice of Preparation on March 25, 2014, and the baseline conditions at that time included infrastructure installed during work performed years earlier in accordance with CPUC approvals. (CEQA Guidelines § 15125(a); FEIR, at 3.1-21.)

The AFR next argues that there is no legal precedent for implementing a baseline that incorporates the past work without new review. (AFR, at 9.) But that is not true. As SCE briefed on multiple occasions and as the PTC Decision found, multiple CEQA decisions confirm that past development is part of the current baseline, even if it was an unpermitted precursor to subsequent work now under review. (*Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278-1281 (CEQA review for airport runway expansion project properly considered prior interim expansion to be part of the baseline); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1452-

⁷ The AFR argues that the CPUC must have performed CEQA review because the two Resolutions imply that Exemption “g” is only applicable where a prior Negative Declaration or EIR incorporating the relevant scope of work has been prepared. (AFR, at 7.) But the AFR’s argument is misleading and takes individual parts of GO 131-D out of context. The CPUC has itself previously addressed this issue, finding that the semicolon in the Exemption “g” text quoted in footnote 4, *supra*, unconditionally separates those projects that are exempt because: a) they are being constructed in disturbed utility ROWs or franchises; from b) those that are being constructed in designated utility corridors that have undergone CEQA review with a finding of no significant impacts. (See D.97-03-058, at 23-26.) As explained *supra*, at pages 2-3, the M-N Line qualified for exemption under the first category of Exemption “g” and therefore no environmental analysis was necessary.

1453 (EIR for mining quarry expansion properly adopted a baseline of existing conditions even where those conditions resulted from illegal prior expansions and habitat modifications); *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 370-371 (CEQA review for variance approving use of school playground properly utilized baseline of existing playground construction even though that construction was unpermitted and conflicted with site use restrictions).⁸

The CPUC itself has implemented this CEQA baseline principle on a number of occasions, refusing to arbitrarily embark on a *post hoc* environmental review of past work activities that were part of an electrical utility's ultimate development plan. (See, e.g., D.15-11-003, at 20-22 (after-the-fact environmental review of SCE's completion of about half of the 66 kV Santa Barbara County Reliability Project was not required, even though construction had previously been undertaken pursuant to an exemption that was no longer applicable); see also, D.06-04-047, at 10, 12, 15 (after-the-fact environmental review of SDG&E's 30th Street 138 kV underground conversion project was not required, even though construction had been undertaken pursuant to a mistaken belief that the project was exempt from GO 131-D permitting and CEQA.) The AFR presents no reason why the CPUC should deviate from that well-founded practice in this proceeding. The FEIR's use of a baseline that corresponds to the Notice of Preparation is consistent with CEQA.

⁸ The AFR argues that the current matter is analogous to *Lewis v. Seventeenth Dist. Agric. Ass'n* (1985) 165 Cal.App.3d 823, where the Court of Appeal held that a new racetrack modification was not exempt from CEQA review, particularly because a prior modification to the same racetrack had caused substantial impacts due to unusual circumstances. Yet the AFR's reliance on *Lewis* is misplaced. First, the *Lewis* Court's reasoning was expressly considered and rejected in the *Fat* case cited above. In addition, unlike the racetrack operator in *Lewis* that was essentially seeking to *exempt* both the first and the second racetrack modifications, the CPUC here is no longer considering whether the M-N Line is exempt from CEQA review, and in fact the CPUC prepared a full FEIR for the M-N Line.

C. The CPUC Did Not Improperly Piecemeal One Project Into Multiple Projects.

The AFR is also incorrect when it argues that the CPUC improperly piecemealed the project into multiple approvals. (See AFR, at 10-12.) As the PTC Decision notes, piecemealing concerns commonly arise when multiple *future* projects or multiple phases of the same project to be constructed *in the future* are being contemplated by the lead agency. (See, e.g., CEQA Guidelines § 15165; PTC Decision, at 16 (citing former CEQA Guidelines § 15069).) CEQA law does not support the AFR’s notion that past construction must be revisited under the fiction that it is being proposed as part of an entirely new prospective project.⁹ In fact, the cases cited in the AFR do not support that position at all, and in any event the CPUC’s treatment of the M-N Line is not inconsistent with the AFR’s own cases.

For example, the AFR cites to *McQueen v. Bd. of Dirs.* (1988) 202 Cal.App.3d 1136, a case in which a county’s attempt to purchase property for public open space was found to violate CEQA because even though the county was aware of hazardous contamination on the property, the county failed to also analyze its plan for remediating the contamination once the property was acquired. Although the AFR cites to *McQueen* as a case where simultaneous projects had been improperly piecemealed, nothing in *McQueen* addresses the impacts of *past* actions whose impacts became part of the underlying baseline years earlier. In fact, *McQueen* is consistent with the PTC

⁹ As discussed in the previous section, multiple CEQA cases confirm that past impacts are to be treated as part of the baseline for future work, even if the past impacts resulted from illegal or unpermitted activities. Yet that is not to suggest that the past work completed by SCE was illegal like the activities in *Riverwatch*, *Eureka Citizens* and *Fat*. To the contrary, the CPUC itself has repeatedly confirmed that there was “no illegal activity” associated with the past construction activities associated with the project, as the past work was undertaken pursuant to multiple Energy Division and Commission decisions, including the approval of Advice Letter 2272-E, Resolution E-4225 and Resolution E-4243. (See, e.g., FEIR, at 3.1-15 (“In 2009, the CPUC approved SCE’s request for an exemption from requirements for filing a PTC, and SCE began to construct the project in 2010.”); FEIR, at 3.1-16 (“[T]here was no illegal activity conducted relative to the previous construction activities associated with the project.”); FEIR, at 3.1-21 (past work activities were undertaken “in accordance with the CPUC’s approval.”).)

Decision's characterization of piecemealing in that the remediation plan was a *future* project that had been piecemealed from the property acquisition. (*McQueen, supra*, 202 Cal.App.3d at 1147.)

The AFR also cites to *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, a case in which the Court of Appeal agreed with a lead agency's determination that where a developer proposed a series of small individual construction projects that were logically connected as part of a larger overall concept, a full EIR describing the cumulative effects of the combined scope of work should be prepared (even though the developer objected). (*Arviv, supra*, 101 Cal.App.4th at 1346-1351.) That case is likewise unhelpful to the AFR's argument. First, there is no evidence that SCE ever misled the CPUC or anyone else regarding the full scope of the past work or future work. Unlike the abbreviated original analysis in the *Arviv* case prior to the lead agency's recognition that a broader project was actually being undertaken, the FEIR for the M-N Line *already* considers the cumulative impacts of the past work (to the extent such impacts could overlap with future work). (*See* FEIR, at 3.1-24 – 3.1-25; Errata.)

In fact, as more thoroughly discussed in SCE's Reply brief (at pages 18-19) and SCE's Reply to other parties' comments on the Proposed Decision (at 2), both the FEIR and a subsequent one-page Errata prepared by Energy Division specifically include edits to the DEIR text that clarify that impacts from the prior work were included in the cumulative impacts discussion. (FEIR, at 3.1-24 – 3.1-25; Errata.)¹⁰ In that discussion, the FEIR specifically notes that with few limited

¹⁰ The AFR argues that the issuance of the Errata violated CEQA because it amended the FEIR so much that the entire FEIR should be recirculated. This argument is incorrect. Prior to certification, an EIR need not be recirculated unless it has been revised with significant new information such as: a) a new significant environmental impact; b) a substantial increase in the severity of an environmental impact; c) a newly identified alternative or mitigation measure; or c) where the revisions show the original DEIR was fundamentally deficient. (CEQA Guidelines § 15088.5.) Here, none of those triggers has been met. The only edits to the FEIR contained in the Errata are *clerical* edits made to DEIR Chapter 7 (Cumulative Impacts) to confirm that past work impacts were not ignored in the cumulative analysis but were included to the extent they could overlap with future work. These edits parallel edits that the FEIR already made to DEIR Chapter 2 (Background). They do not alter the substance of the environmental analysis in any way, let alone trigger any of the criteria in CEQA Guidelines section 15088.5.

exceptions, the majority of the impacts associated with the past activities were temporary in nature and thus would not overlap with impacts from the future work given the five-year gap in time. (FEIR, at 3.1-25.) Unlike *Arviv*, the cumulative analysis here did not overlook past work.

In summary, the CPUC acted in a good faith effort to consider the entirety of the M-N Line at every stage. Despite the fact that its decisions span a timeframe of more than five years, the CPUC has not ignored the potential cumulative impacts from past work, as clarified in the FEIR and Errata. Therefore, the CPUC did not improperly piecemeal its consideration of the M-N Line.

D. The AFR Grossly Misstates The Level Of Impacts To Biological Resources.

Turning to the substance of the FEIR itself, the AFR argues that the FEIR ignored impacts to biological resources from the past work and further fails to ensure that impacts from future work would be mitigated. (AFR, at 14-16.) However, the AFR is incorrect on both accounts.

1. The AFR's Allegations Regarding Impacts From Past Work Are Meritless.

The AFR charges that past work activities caused lingering habitat degradation and permanent impacts to endangered species that were not disclosed. (AFR, at 14-16.) But this argument overlooks the fact that SCE incorporated a variety of measures specifically designed to avoid direct impacts to species during past work activities, such as surveying construction areas for sensitive species and flagging and avoiding areas where any were found, preserving and replacing important topsoil, restoring habitat and monitoring by a qualified biologist. (DEIR, at 2-13 – 2-18.) Regardless, the AFR argues that habitat for Lyon's pentachaeta and Conejo dudleya was significantly impacted during previous work activities, particularly resulting from the sidecasting of a relatively small amount of soil on a hillside and into an ephemeral creek. (AFR, at 15.)¹¹ However, the DEIR clearly explained that the past work caused no lingering impacts to

¹¹ The AFR actually alleges that SCE “caused at least three landslides” but that is incorrect. During past grading activities, some soil was inadvertently sidecast over existing slopes but no landslides occurred.

habitat for either of these species. For example, the DEIR explains that past work avoided Conejo dudleya habitat altogether:

“Areas supporting Conejo dudleya were flagged prior to project activities by a qualified biologist and avoided during construction. In addition, a biological monitor was present during project activities occurring within the vicinity of these resources to ensure that no sensitive species were impacted.”

(DEIR, at 2-14.)

Similarly, the DEIR explains that although some soil disturbance did occur at construction sites 38, 39 and 40 in Lyon’s pentachaeta critical habitat, these disturbances were only temporary, and any affected habitat was restored under the watchful eye of a qualified biological monitor:

“Temporary impacts to sensitive plant communities occurred in locations where native vegetation was removed but that was subsequently restored following the cessation of past construction activities; this includes the locations adjacent to pole locations 38, 39, and 40 where certain soils were deposited by SCE on sloped surfaces.

“A qualified biologist was present during clearing and restoration activities to ensure that native habitat (coastal sage scrub) removal was minimized.”

(DEIR, at 2-17.)

In addition, the restoration was completed in accordance with a Streambed Alteration Agreement between SCE and the California Department of Fish and Wildlife (“CDFW”) and no California endangered species was significantly impacted. (DEIR at 2-14; February 16, 2010 California Department of Fish and Wildlife Streambed Alteration Agreement for the Moorpark Newbury Park 66kV Line Area Notification #1600-2011 0325-R5 Revision 2; included in SCE’s

Proponent’s Environmental Assessment (“PEA”) Appendix F.)¹² There is simply no evidence that SCE’s past work resulted in any significant impacts to sensitive species or habitat.¹³

2. The AFR’s Allegations Regarding Impacts From Future Work Are Meritless.

The PTC Decision found that impacts to biological resources from future work also would be minimized and mitigated to a less-than-significant level given the range of APMs and MMs that SCE would implement. (PTC Decision, at 8, 32.) Yet the AFR argues that such measures would not adequately mitigate biological impacts, alleging that: a) they do not require SCE to comply with other laws designed to protect sensitive species such as the Migratory Bird Treaty Act and Endangered Species Act; b) some measures required by the CPUC involve only focused surveys; and c) the CPUC has not directed SCE to consult with USFWS or CDFW regarding compensation for potential “take” of endangered species. (AFR, at 16.) None of these allegations has any merit.

For example, there is a very logical reason that the PTC Decision does not explicitly require SCE to comply with generally-applicable species protection laws: SCE is obligated to comply with those laws *regardless* of the PTC Decision. Whether or not the CPUC specifically calls out each

¹² The AFR also charges that it is unknown whether SCE addressed any “harm” to floristic endangered species with the United States Fish and Wildlife Service (“USFWS”), alleging that surveys done by SCE were inadequate. (AFR, at 15.) But multiple floristic surveys were done in 2008 and 2010, and the only endangered flora identified in those surveys were found a considerable distance away from the sidecasting location, and all construction work in the vicinity of those individuals was done in a manner that avoided the species. (SCE PEA Appendix F1, at July 21, 2010 Bonterra letter to Paul Yamazaki, at Exhibit 5.)

¹³ Indeed, the DEIR states at page 2-14:

“During past project related grading activities, native soils were deposited by SCE on a sloped surface adjacent to pole locations 39 and 40. This resulted in a disturbance of approximately 0.16 acre of coastal sage scrub; although this disturbance occurred within an area designated by USFWS as critical habitat for Lyon’s pentachaeta, no Lyon’s pentachaeta individuals were detected in the disturbed area during focused surveys, preconstruction surveys, or during construction monitoring.”

and every law SCE must comply with is immaterial; where a law is binding, SCE must comply. Of course, the fact that SCE must comply with all laws protecting migratory birds and endangered species further ensures that the future work activities would not cause any significant impacts to special status species.

The AFR next errs in arguing that APM Bio-3 and MM 5.4-2 fail to adequately protect coastal California gnatcatcher and special status reptiles, respectively, because, the AFR argues, those measures require only that surveys be performed, without more. (AFR, at 16.) This argument should be rejected because these measures also require SCE to perform many *other* actions not acknowledged in the AFR. Namely, in APM Bio-3, SCE commits to far more than just surveying for gnatcatchers. Following surveys, SCE would also: a) flag and avoid gnatcatcher nests (as well as a 500-foot buffer around such nests) during the February 15 – August 31 breeding season until the young have fledged; b) refrain from grading activities in any habitat area occupied by gnatcatchers (as well as a 500-foot buffer) during the breeding season; and c) retain a specially-qualified biological monitor to oversee all construction activities that occur within 500 feet of any mapped gnatcatcher territory. (DEIR, at 3-40.)

Similarly, in MM 5.4-2, the CPUC required SCE to undertake surveys for special status reptiles such as western pond turtle, coast horned lizard, silvery legless lizard, two-striped garter snake, and South Coast garter snake within 24 hours of commencing ground disturbance activities. (DEIR, at 5.4-39.) However, that is not, as the AFR alleges, the extent of that measure. Rather, SCE is also required to relocate any special status reptiles identified in the surveys away from work areas to a suitable relocation area previously confirmed in advance with CDFW. (*Id.*) Moreover, the relocation itself must be performed by an expert authorized by CDFW to undertake species relocation. (*Id.*)

Given that these measures (and many other APMs, MMs and generally-applicable laws and regulations that impose similar obligations) would ensure that impacts to sensitive species are

avoided and no “take” would occur, no consultation with specialist resource agencies would be either necessary or appropriate. Substantial evidence thus supports the PTC Decision’s finding that completion of the M-N Line would not have any significant environmental impacts to biological resources that cannot be mitigated to a less-than-significant level. (PTC Decision, at 32.) No rehearing is necessary.

IV.

THE AFR’S ARGUMENT THAT THERE ARE NO OVERRIDING CONSIDERATIONS WARRANTING APPROVAL OF A PTC IS BASED ON FLAWED THEORIES AND INAPPLICABLE DATA THAT PALE IN COMPARISON TO SCE’S PROFESSIONAL FORECASTING METHODOLOGIES

The AFR argues that the PTC Decision fails to demonstrate a need for completion of the M-N Line. (AFR, at 17.) That assertion is baseless. The record in this matter is replete with information demonstrating overriding considerations that support the CPUC’s approval of a PTC authorizing completion of the M-N Line. Among those considerations, three electrical system justifications stand out:

- 1) Alleviating the imminent threat of voltage violations at ENA substations that could occur *at any time* if Pharmacy Substation is re-energized after an N-1 event on the M-N-P Line during peak demand conditions (SCE Exhibit 1 (McCabe), at 8:15 – 12:16.);
- 2) Alleviating the threat of voltage violations at ENA substations that could occur by 2023 at the moment an N-1 event occurs on the M-N-P Line during peak demand conditions (SCE Reply Brief, at 33-35);
- 3) Alleviating the threat of an unacceptable base case overload on the Moorpark-Newbury Segment of the M-N-P Line projected to occur as early as 2024, even under normal operating conditions (SCE Exhibit 1 (McCabe), at 12:21 -13:2.).

The PTC Decision acknowledges these electrical justifications, noting also that they were vetted in detail in both the FEIR and elsewhere in this proceeding. (PTC Decision, at 25-26, 33-34.) However, the AFR challenges the PTC Decision's findings, arguing that electrical load data submitted by the AFR Parties shows flat or declining demand in contrast to SCE's projections of load growth. (AFR, at 17.) Yet, the evidence in the record belies the AFR's position, as the AFR Parties' evidence was shown to be unreliable and inapposite.

Although the AFR does not cite to any actual evidence, presumably its argument regarding load growth is premised on the testimony of CBD witness Bill Powers, who suggested that SCE's projections of future growth should be downgraded to match that of the much broader and distinct Big Creek West service area. (CBD Exhibit 5 (Powers), at 11:3-10; CBD Exhibit 5-C (Powers), at 11:3-10.) However, SCE expert witness Paul McCabe explained why the use of data for broader areas is not representative of small ENA locales which are prone to significant differences, and in contrast, how SCE compiles growth projections for each ENA based on a list of specific components, including very localized knowledge. (SCE Exhibit 9 (McCabe), at 4:13-6:6, 7:1-10:9; SCE Exhibit 9 (McCabe), at 4:13-6:6, 7:1-10:9; SCE Exhibit 9-C (McCabe), at 4:13-6:6, 7:1-10:9.) In addition, the data used by Mr. Powers to craft his opposition to SCE's forecast does not even comport with publicly available demand data or data compiled by SCE for comparable areas over comparable time periods, thus further undermining its reliability. (SCE Exhibit 9 (McCabe), at 6:7-27; SCE Exhibit 9-C (McCabe), at 6:7-27.)

In stark contrast to the unrepresentative and unreliable information on which the AFR argument is based, SCE has developed an industry-leading approach to forecasting. SCE employs a range of methodologies designed to make forecasts as reliable as possible, including: normalizing peak load to peak temperature trends in order to temper the effects of an anomalous year; incorporating reasonable projections of market penetration of new technologies such as electric vehicles, solar photovoltaic installations, energy efficiency devices, battery storage devices and

policy-driven developments such as “Zero Net Energy” homes and Distribution Resource Plans. (SCE Exhibit 1 (McCabe), at 5:5-7; SCE Exhibit 9 (McCabe), at 4:25-5:4, 5:19-6:6; SCE Exhibit 9-C (McCabe), at 4:25-5:4, 5:19-6:6.) SCE’s forecast projections and conclusions regarding the need for the M-N Line were also thoroughly vetted by the CPUC’s independent consultant Scheuerman Consulting, who validated SCE’s forecast and need projections after meticulously reviewing SCE’s load flow diagrams and data. (FEIR, at 3.1-4, 3.1-28, 3.2-93, 3.3-120.)

In short, nothing in the AFR or anywhere else presents any new or different information about the need for the M-N Line. As has been the case throughout this proceeding, the evidence shows that SCE’s projections are far more reliable and apposite to the ENA than the data relied upon by the AFR, and the CPUC’s independent consultant has consistently agreed. Nothing suggests any reason for rehearing.

V.

SUBSTANTIAL EVIDENCE SUPPORTS THE PTC DECISION’S REJECTION OF ELECTRICAL SYSTEM ALTERNATIVES SUGGESTED BY THE AFR

In a related argument, the AFR also contends that alternative approaches (such as refusing to restore power to a major facility, installing large pieces of new equipment that would require SCE to obtain additional property and wastefully transferring electrical load to other substations), could address electrical demand in the ENA instead of constructing the M-N Line. Yet, although these issues have been repeatedly briefed by the parties in this proceeding, the AFR ignores the legal, equitable and technological challenges inhibiting its suggested alternatives.

A. An Alternative That Involves Intentionally Leaving Pharmacy Substation And Its Single Customer Offline Would Violate Operational And Tariff Rules And Fundamental Principles Of Equity And Fairness.

The PTC Decision rejects suggestions that SCE unilaterally decide to keep Pharmacy Substation offline – and completely leave Pharmacy’s sole industrial customer without power – as

an alternative to building a new M-N Line to prevent excessive voltage deviations during an N-1 event. (PTC Decision, at 25-26.) The AFR challenges that finding, arguing that no criteria or regulation requires SCE to restore power to Pharmacy Substation during such an event. (AFR, at 17-18, 20.) The AFR should be rejected because the PTC Decision is supported by substantial evidence on this point, and the AFR misrepresents both the language and intent of applicable planning criteria.

First, the PTC Decision correctly notes that under SCE Tariff Rule 14.C, it would be unreasonable for SCE to simply target one customer for an interruption in load rather than apportioning its electricity supply in an equitable manner. (PTC Decision, at 25-26.)¹⁴ Despite this common-sense notion, the AFR argues that Tariff Rule 14.C is irrelevant because an N-1 event is not a shortage of supply, and because leaving Pharmacy Substation offline would not be an improper targeted interruption of load. (AFR, at 17-18.) Yet the AFR is incorrect. As explained by Mr. McCabe, upon an N-1 event that affects the M-N-P Line, the supply of power to Pharmacy Substation would be completely disrupted, and the supply of power to Newbury Substation could be dramatically reduced by voltage losses. (SCE Exhibit 1, at 9:1 – 10:9, 11:13-19.) A disruption in the available power to serve those substations is therefore a shortage of supply under any reasonable interpretation. In addition, if during an N-1 event SCE could redistribute power flows such that Pharmacy Substation and its one substantial industrial customer could be re-energized (while minimizing load disruptions to the rest of the ENA), the failure to implement that solution

¹⁴ SCE Tariff Rule 14.C provides:

“Apportionment of Supply During Time of Shortage. Should a shortage of supply ever occur, SCE will apportion its available supply of electricity among its customers as authorized or directed by the Public Utilities Commission. In the absence of a Commission order, SCE will apportion the supply in the manner that appears to it most equitable under conditions then prevailing.”

(Available at: <https://www.sce.com/NR/sc3/tm2/pdf/Rule14.pdf>.)

would effectively “target” Pharmacy Substation – and Pharmacy Substation alone – for an outage. SCE Tariff Rule 14.C clearly speaks to a situation such as the one at issue here, and it does not sanction any alternative that would single out Pharmacy Substation during an N-1 event.

The AFR next points to one isolated provision of SCE’s planning criteria that it contends would authorize a load interruption at a substation served by a single subtransmission system component (such as Pharmacy Substation, which is only connected to the rest of the SCE grid via the M-N-P Line). (*See* AFR, at 18, 20.) Yet this argument does not demonstrate a reasonable understanding of how SCE’s planning criteria must be read in logical concert with SCE’s broader obligations. The purpose of the provision cited in the AFR is not to sanction a wholesale interruption of load to a particular customer served by a customer-dedicated substation, but rather to permit a brief interruption of service to facilities served by a single subtransmission system component *where at least some of the load served by those facilities can be accommodated by other distribution circuit connections during the interruption.*¹⁵ Yet, that option is not possible for a large customer (such as the one served by Pharmacy) that lacks ties to other distribution circuits. Therefore, disrupting service to that customer’s dedicated substation would completely black out that customer, and that customer alone, from the SCE system. SCE’s criteria must be read in this context, as unilaterally selecting one customer for a potential long-term service disruption would be contrary to SCE’s obligations to apportion its available supply as appropriately as possible under adopted laws and SCE’s own tariff rules (not to mention egalitarian principles of fundamental fairness).¹⁶

¹⁵ The SCE distribution system includes a network of circuit ties that enable at least some load to be transferred to other substations during emergency conditions. (*See generally*, CBD Exhibit 12-C, at 3.)

¹⁶ As a public utility, SCE is charged with the obligation to provide as much reliable electrical service to each of its customers as possible. (SCE Exhibit 9 (McCabe), at 21:20, fn. 14; SCE Exhibit 9-C (McCabe), at 21:20, fn. 14.) That obligation is confirmed by decisions of the CPUC and in State statutes. (*See generally*, D.01-01-046; Pub. Util. Code § 451.)

In addition, the AFR's suggestion to leave Pharmacy Substation in the dark would result in a wasteful misallocation of electrical system resources. The key consideration in any service disruption should be to minimize the impact of an outage and apportion available supply as equitably as possible. Yet, keeping Pharmacy Substation offline would require *all* of the load associated with that one substation's customer to be dropped from the SCE system for the entirety of an N-1 event, even though a smaller reduction of megawatt load in the ENA could successfully avoid an excessive voltage drop problem. That cannot be a reasonable interpretation of any planning criteria, especially where SCE field operations personnel can make case-specific decisions commensurate with field conditions in real time in order to minimize disruptions.

For all of these reasons, the PTC Decision properly rejects the AFR Parties' suggestion that SCE leave Pharmacy Substation offline as an alternative to the M-N Line.

B. There Is No Viable Capacitor-Based Alternative, Even With Load Rolling To Other Substations.

The AFR next argues that the PTC Decision erroneously rejected an alternative that would include a simple addition of a 14.4 MVAR capacitor at Newbury Substation, combined with load rolling to other substations. (AFR, at 19.) But the evidence in the record provides numerous reasons demonstrating the futility of that suggestion.¹⁷

¹⁷ In response to suggestions from the AFR Parties that reactive power alternatives (*i.e.*, those involving additional capacitors) could be implemented, SCE analyzed *seven* other capacitor options in its rebuttal testimony. Each option failed for various reasons. In some cases, capacitors were insufficient, while in several others keeping capacitors on would result in potential overvoltage conditions during normal operations. (*See* SCE Exhibit 9-C (McCabe), at 13:9–17:16, Attachments C-E.) To address overvoltage concerns, the AFR suggests that capacitors could simply be turned off when an N-1 violation is cleared. (AFR, at 19.) But that suggestion misses the point of having the capacitors in the first place. Capacitors cannot mitigate voltage violations unless they are operating *at the moment a voltage problem occurs*, and as stated above, SCE projects that within a few short years, a voltage violation can be expected *at the moment an N-1 event occurs*. (*See* SCE's Reply Brief, at 34-35.) Therefore, if the capacitors had been turned off at that moment like the AFR suggests, they would be of no value in addressing that immediate voltage violation.

First, the AFR ignores data in its own exhibits showing that existing capacity on the distribution circuitry and substations connected to Newbury Substation would be inadequate to handle the necessary load rolling. For example, the data show that in just a few years, the transformation capacity at nearby substations would be far below the capacity needed to handle the additional load transferred from Newbury Substation. (SCE Reply Brief, at 20; CBD, Exhibit 14-C, at 2.) Once the capacity of those substations is exceeded, SCE would be forced to again consider either: a) undertaking new projects to add transformation capacity at nearby substations; or b) revisiting the potential for a new subtransmission line. Similarly, the existing SCE distribution circuitry in the area has been designed and constructed to handle existing and projected customer demand on those circuits, and that circuitry has its own design and operational constraints. (See SCE Reply Brief, at 21.) It was not designed to accommodate additional permanent large-scale load transfers from Newbury Substation. (*Id.*; CBD Exhibit 12-C, at 3.) In fact, evidence showed that multiple new distribution circuits may have to be constructed just to handle the necessary transfers, each with its own level of environmental impacts and costs (as well as reduced reliability given that distribution circuits are more prone to disruption). (CBD Exhibit 12-C, at 3.)¹⁸

Because the PTC Decision's rejection of capacitor-based alternatives is supported by substantial evidence, there is no need for rehearing.

C. There Is No Viable Battery Storage Alternative.

The AFR next argues that the PTC Decision improperly rejected battery storage device solutions, claiming that the decision misunderstood the AFR Parties' previous critique of Mr. McCabe's testimony regarding potential battery sizes. (AFR, at 18-19.) But the AFR's argument is irrelevant. Mr. McCabe never claimed that there was no battery large enough to meet ENA

¹⁸ In addition, even if such rolling could be achieved, a substantial amount of Newbury Substation's capacity could be wastefully stranded. (SCE Reply Brief, at 22.)

needs, and neither SCE nor the PTC Decision made any statement to that effect. Rather, the PTC Decision rejected battery-based alternatives based on a *variety* of reasons discussed in the FEIR and other evidence in the record, not simply because there was no battery big enough to meet the ENA's needs.

For example, the PTC Decision noted that the FEIR itself considered energy storage as an alternative, concluding that it would not be a viable solution due in part to uncertainty about its present viability. (*See* FEIR, at 3.1-6 - 3.1-8 (Master Response 1, addressing electricity storage in the context of demand-side management and distributed energy generation alternatives) FEIR 3.3-222 (Response I50-3, regarding thermal energy storage), Appendix G, at 7 (regarding general storage equipment at Newbury Substation).) In addition, other evidence showed there is insufficient space at Pharmacy Substation for a battery device and ancillary equipment of sufficient size to be installed, so an additional project to construct these facilities nearby would have to be undertaken at greater cost and with new environmental impacts. (SCE Exhibit 9 (McCabe), at 11:15 – 12:19, fn. 6; SCE Exhibit 9-C (McCabe), at 11:15 – 12:19, fn. 6.)¹⁹ Other evidence also demonstrated that a battery device would most likely have a shorter lifespan than a new subtransmission line, so additional maintenance and replacement work (with additional impacts) probably would be needed over time. (SCE Exhibit 9 (McCabe), at 17:2–19:7; 18:6-14, fn. 10; SCE Exhibit 9-C (McCabe), at 17:2–19:7; 18:6-14, fn. 10.) Each of these concerns supports the PTC Decision's rejection of a battery storage alternative, regardless of whether a battery of sufficient size is available.

¹⁹ Large-scale battery storage facilities are quite expensive, as would be the cost of acquiring new property in the ENA area, where property values are higher than in many other communities. (*See* SCE Exhibit 9 (McCabe), at 12:6, 18:14, fn. 10; SCE's Reply Brief, at 24, fn. 23.)

Because the PTC Decision’s rejection of each of the alternatives discussed in the AFR is supported by substantial evidence and the AFR does not and cannot demonstrate any legal error with respect to alternatives, there is no need for rehearing.²⁰

VI.

NOTHING IN THE AFR DEMONSTRATES THAT ANY DUE PROCESS RIGHTS HAVE BEEN VIOLATED, PARTICULARLY BECAUSE SCE’S COMMUNICATIONS WITH THE CPUC WERE NOT CONTRARY TO STATUTE OR RULE, OR OTHERWISE UNFAIR, INAPPROPRIATE, OR UNETHICAL

Despite the CPUC’S issuance of the Stop Work Decision to require SCE to participate in a formal PTC process, and despite a subsequent three-year PTC proceeding that involved preparation of a full FEIR, hundreds of data requests and responses, evidentiary proceedings, full briefing and multiple motions, the AFR Parties now argue that their due process rights have been violated and that the CPUC has been biased against them. In fact, the AFR shockingly accuses SCE and the CPUC of “collusion” to “subvert” CEQA. However, there is no evidence of either: a) any violation of applicable *ex parte* rules by SCE; or b) any CPUC failure to fulfill its independent duties (codified or otherwise) as a CEQA lead agency in reaching the PTC Decision.

A. There Is No Evidence Of Any Violation Of The CPUC’s Rules Governing *Ex Parte* Communications.

This proceeding has been unique in that it involved a painstaking examination of SCE communications with CPUC representatives in a range of different categories, including: a) communications during the informal Advice Letter proceedings; b) communications during the past formal proceeding A.10-04-020 on the AFR Parties’ request for rehearing of Resolution E-4243; c) communications with the CPUC’s General Counsel; d) communications with the Energy

²⁰ As the PTC Decision also notes, even though many of the AFR Parties submitted comments on the DEIR’s alternatives analysis, each of the alternatives they now advocate in the AFR was suggested well *after* the DEIR and FEIR had been prepared. (*See, e.g.*, PTC Decision, at 22.)

Division and its consultants; and e) still others. Yet even after all that review, there is absolutely no evidence of any SCE communication with the CPUC about the M-N Line that was inconsistent with any established *ex parte* rule (*i.e.*, CPUC Rules of Practice and Procedure 8.1-8.6), and the PTC Decision concludes accordingly. (PTC Decision, at 34.)

Given the absence of any actual violations of the CPUC's *ex parte* rules, the AFR simply attempts to rewrite the rules to create a violation where none actually exists. For example, when discussing a lunch meeting between an SCE employee and CPUC General Counsel Frank Lindh that occurred in November 2011, the AFR argues: "Lindh had been elevated to either a 'decision-maker' or 'advisor' for purposes of *ex parte* rules in this timeframe," (apparently speculating that Lindh himself had personally "advised" the Commission to issue the Stop Work Decision. (AFR, at 27.) Yet there is no basis for the AFR's claim, as the CPUC's General Counsel is not considered a "decisionmaker" or "Commissioner's personal advisor" under the *ex parte* rules, regardless of the timing or advice assignment he might work on. (*See* CPUC Rules of Practice and Procedure 8.1(b), 8.2 (*ex parte* rules govern communications with any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge, as well as Commissioners' personal advisors).)

The AFR simply contains no new or different information about any communication that actually violated the CPUC's actual *ex parte* rules.²¹

B. There Is No Evidence That the CPUC Was Biased In Favor Of The M-N Line Or Improperly Collaborated With SCE.

Next, the AFR Parties are left to argue that SCE and the CPUC have violated an *ad hoc* standard of "ethics, fair dealings and appropriateness." The AFR's position should be rejected

²¹ For brevity, SCE has not provided in this Response a detailed explanation of how there is no evidence of any communication that violated the *ex parte* rules for any of the categories listed above. For more

because it essentially asks the CPUC to ignore its own rules adopted to provide the very clarity the AFR Parties now seek to avoid. Regardless, the AFR fails to present any evidence of how any purportedly improper CPUC or SCE action actually led to unfair treatment of the AFR Parties.²² To the contrary, the record demonstrates that CPUC staff, ALJ Yacknin and CPUC consultants vigorously scrutinized the need for the Project, its design and its environmental impacts at every turn.²³

This vigorous scrutiny was especially evident during the CPUC’s CEQA review of the M-N Line, despite the AFR’s baseless argument that CPUC staff “coach[ed]” and “collaborat[ed]” with SCE about environmental issues and electrical forecasting. (*See* AFR, at 28.) The fact that Energy Division staff and consultants regularly communicated with SCE during the CEQA process is not indicative of bias or collaboration, but rather due diligence. For example, it is not unusual – rather it is expected and in many cases required – that an applicant provide an administrative draft PEA to the CPUC and its environmental consultant for pre-filing review. (SCE, Exhibit 1 (Burhenn), at 37:15-21, 38:15-19; see also Ludington Exhibit 4, at 139 (referencing SCE’s recent submittal of an administrative draft PEA for its unrelated Circle City project).) Such reviews enable the applicant to receive input about what types of additional information might be needed to complete an application package so that the CPUC and its consultant advisors can complete a thorough and adequate CEQA review (like any other CEQA lead agency). This exchange was critical for the M-N Line, given that the CPUC requested additional environmental information

detailed discussions on these issues, please refer to SCE’s Opening Brief, at 33-38 and SCE’s Reply Brief, at 41-47.)

²² The record actually demonstrates that some of the AFR Parties themselves participated communications similar to those they now argue were inappropriate by SCE (actually they could be seen as even more concerning given that one communication involved direct contact with a CPUC Administrative Law Judge in an attempt to influence a decision). (*See* SCE Exhibit 9 (Burhenn), at 40:12-27; SCE Opening Brief, at 35-36.)

²³ The AFR Parties’ simple disagreement with the CPUC’s conclusions does not justify an accusation of collusion or dereliction of duty. A lead agency may rely on substantial evidence, even if opponents believe other conclusions could have been reached. (CEQA Guidelines § 15384(a).)

and that the CPUC clarified some formatting and filing requirements during SCE's PEA preparation process. (See Ludington Exhibit 4, at 142.) In addition, the Energy Division's exchange of electrical load flow analysis reviews with SCE was nothing more than legitimate communication to ensure the accuracy of data and assumptions. This process resulted in a series of data requests where SCE was asked on multiple occasions to "show its work" and demonstrate to the CPUC and its consultants the complete story about reliability risks in the ENA, and all (non-confidential) results were made publicly available on the CPUC's website (where it still remains). (See http://www.cpuc.ca.gov/Environment/info/esa/moorpark_newbury/index.html.)²⁴

The AFR also accuses the CPUC and SCE of "collusion" to subvert CEQA, apparently because SCE performed construction activities for several months until the Stop Work Decision was issued. (AFR, at 28.) This accusation is also baseless and should be rejected for several reasons. First, as the CPUC has recognized on a number of occasions (including the FEIR and the PTC Decision), the past work was fully authorized as it was undertaken pursuant to multiple Energy Division and Commission decisions, including the approval of Advice Letter 2272-E, Resolution E-4225 and Resolution E-4243, and no stay was ever requested or issued. (See, footnote 9, *supra*; PTC Decision, at 15.) GO 131-D itself provides that in a case where a protest to an Advice Letter has been filed, construction may commence as soon as the CPUC issues an Executive Resolution dismissing the protest. (GO 131-D § XIII.) Here, Resolution E-4225 dismissing the protests was adopted by Executive Director Action Resolution on February 24, 2009, so SCE technically could have commenced construction at that time.

²⁴ The AFR's argument that Energy Division's communications with SCE during the CEQA process somehow tainted the CPUC with bias in favor of the M-N Line is also legally moot. Under CEQA, a project applicant may legally prepare its own EIR altogether, as long as the lead agency decisionmakers ultimately consider it pursuant to their own independent judgment. (CEQA Guidelines § 15084, subd. (d)(3); *Eureka Citizens, supra*, 147 Cal.App.4th 357 at 369 (applicant's preparation of DEIR does not reflect bias or legal inadequacy, and it is common practice for lead agencies to review CEQA documents prepared by project proponents).) In this case, Energy Division and its consultants (not SCE) prepared the EIR for the M-N Line, thereby demonstrating independence above and beyond what CEQA permits.

The filing of the previous request for rehearing in 2010 also did not, as the AFR argues, spawn an “automatic” stay. The AFR points to nothing in the CPUC rules that provides for any such automatic stay or any CPUC duty to implement a stay, and no such rule exists. In contrast, Rule 16.1(b) actually provides that the terms of a CPUC action remain effective *despite* the filing of an application for rehearing: “Filing of an application for rehearing shall not excuse compliance with an order or a decision.” Prior to SCE’s commencement of work in 2010, the latest decision issued by the CPUC was Resolution E-4243, which specifically confirmed (for the second time), that construction of the M-N Line would be exempt from permitting, consistent with Exemption “g.” (Resolution E-4243, at 25.) That resolution, which was adopted on March 11, 2010, specifically states, “This Resolution is effective today.” (*Id.*)

Second, the accusation that the CPUC and SCE acted surreptitiously to avoid complying with CEQA is unreasonable and unsupported by any evidence in the record. The AFR alleges that during the lunch meeting discussed above, Mr. Lindh “encourage[d]” SCE to construct as fast as possible before the CPUC had no choice but to issue the Stop Work Order. (AFR, at 27.) But the only evidence cited by the AFR is a secondhand e-mail between SCE employees vaguely discussing their impressions of Mr. Lindh’s reactions about the M-N Line, including what one witness explained was Lindh’s hope that public concerns about the project would be assuaged once construction was completed and impacts proved to be minimal. (SCE Exhibit 9 (Burhenn), at 41:4-16.) In addition, the entire conversation took place against the backdrop of SCE’s concerns that the need for a new subtransmission line was evident, even in 2011, so completion of the line was important for the continued provision of reliable service to the ENA. (*Id.*, at 41:10-13.) Accordingly, the AFR’s solitary reliance on one vague email about a third-party conversation does not justify an accusation of collusion to subvert State law.

In summary, SCE's commencement of work was undertaken pursuant to a resolution valid at the time, no stay was ever requested or imposed and there is no evidence of any collusion or other improper dealings intended to subvert CEQA.²⁵

C. The AFR's Allegation That An ORA Conflict Of Interest Tainted This Proceeding Is Baseless.

The AFR Parties also argue that the PTC Decision is the product of a conflict of interest in that Connie Chen – whom they describe as “one of the drafters” of a protest filed by ORA against the M-N Line – subsequently left ORA to take a job in the Energy Division. (AFR, at 29-30.) This argument, raised for the first time in the AFR, is nonsensical.

First, there is simply no evidence that Ms. Chen *ever* worked on anything related to the M-N Line while at the Energy Division, and therefore no evidence that she had any input about it at all. In addition, even assuming Ms. Chen had been an active opponent against the M-N Line while still at ORA, it confounds logic to think that she somehow inflicted bias *in favor* of the issuance of a PTC into the Energy Division or anywhere else.

Because the AFR does not and cannot demonstrate any legal error with respect to whether there was any due process violation, undue influence or bias or improper conflict of interest in any aspect of this proceeding, there is no need for rehearing.

VII.

THERE IS NO NEED TO REOPEN THIS PROCEEDING FOR ANY ADDITIONAL EVIDENCE OR ARGUMENT

Repeating arguments made (and rejected) just prior to the issuance of the PTC Decision, the AFR argues that additional evidence should be taken about SCE's negotiations with CSUCI

²⁵ Although the past work was fully authorized when commenced by SCE, how it came to be is immaterial to the CEQA review for construction of the remainder of the M-N Line, as it has become part of the environmental baseline over the past five years. (*See supra*, at 8-11.)

regarding a potential power purchase agreement (“PPA”) extension that the AFR Parties believe could incorporate a reconnection between Camgen and SCE’s Moorpark System as an alternative to the M-N Line. (AFR, at 20-24.) But this argument is a red herring; evidence has consistently shown that the reconnection of the Camgen generation facility to SCE’s Moorpark System is not a viable alternative because the electrical need for a new line would still remain, even with Camgen reconnected.

The impetus for the AFR Parties’ request for further proceedings on this subject appears to be a letter CSUCI submitted to the CPUC, wherein CSUCI indicates a willingness to enter into a renewed PPA with SCE. (AFR, at 22-23.) But that letter does not, as the AFR argues, indicate any material change of fact. SCE’s dealings with CSUCI are irrelevant to this proceeding, and even a reconnection to Camgen would not obviate the need for the M-N Line. This is because *even if energy from Camgen could be fed directly into the Moorpark System, the primary N-1 voltage deviation problem would still exist*. The evidence in the record is conclusive on this point. For example, when discussing why Alternative 4 (“Reconnect the Camgen Generator to the Moorpark System”) was eliminated from further consideration, the FEIR explained that the unacceptable voltage violation risk would remain, leading to the need for a new subtransmission line:

“Reconnecting Camgen to the Moorpark System would only provide a short-term solution to addressing voltage violations for the base case scenario. With Camgen reconnected to the Moorpark System, SCE anticipates that . . . voltage violations would occur during the first year that this alternative would be operational with the loss of the Moorpark-Newbury line and the reconnection of the Pharmacy Substation load (SCE, 2015ed). *Accordingly, SCE would still need to have the Proposed Project operational to address this forecasted N-1 violation on the Moorpark System.* Therefore, Alternative 4 is not considered to be a viable alternative to the Proposed Project and has been eliminated from full consideration in this EIR.”

(FEIR, at 3.1-10, edits in original, but emphasis added.)²⁶

Similarly, the FEIR also confirmed that even when combined with a reconductoring of the MNP Line, the reconnection of Camgen would still not provide a remedy for the excessive voltage drop problem. The FEIR explained that the threat of a voltage drop of **6.6 percent** (which is above the acceptable 5 percent threshold) would still be present, even in the very first year (2015):

“In addition, it would not solve long-term voltage violations at Newbury Substation. With the loss of the Moorpark-Newbury-Pharmacy line and the Pharmacy Substation load, and with the Camgen generator operating, voltage at Newbury Substation would remain within an acceptable range, dropping only ~~1.9~~1.2 percent. However, upon reenergizing the Pharmacy load, the voltage at Newbury ~~and Pharmacy~~ substations would plunge, resulting in a total decrease of ~~6.3~~6.6 percent for year ~~2026~~2015 compared to pre-outage conditions. . . . This would exceed SCE’s limit of a 5 percent drop in voltage, resulting in a voltage violation.”

(FEIR, at 3.1-11, edits in original.)

For these reasons, the FEIR understandably eliminated the reconnection of Camgen as a potential alternative, concluding that it would fail to achieve the Project objectives because “Voltage violations are projected at Newbury Substation in 2015.” (DEIR, at 4-8.)

In his direct testimony regarding the overriding considerations supporting the need for the Project, Mr. McCabe further elaborated on this point, confirming that the risk of an excessive 6.6 percent voltage drop would exist even with Camgen reconnected (and even with the M-N-P Line reconducted as well):

²⁶ Reaching the same conclusion, the DEIR originally cited to “SCE, 2015c” as the source of this information, and defined “SCE, 2015c” as: “Responses to California Public Utilities Commission (CPUC) Data Request 6 for the Moorpark-Newbury 66 kV Subtransmission Line Project, May 5, 2015.” (See DEIR, at 4-32.) The FEIR updated that citation to “SCE, 2015d” and defines “SCE, 2015d” as: “Responses to California Public Utilities Commission (CPUC) Data Request 7 for the Moorpark-Newbury 66 kV Subtransmission Line Project, submitted September 9 and 10, 2015.” (See FEIR, at 3.1-11.) As such, the FEIR analyzed data from SCE’s 2015-2024 forecast, which was an update compared to the data reviewed in the DEIR.

“With respect to Alternative 4, I again agree with the Final EIR’s assessment that this alternative would fail to achieve the primary project objectives. *In particular, although the reconnection of Camgen to the Moorpark System would help to limit the voltage drop condition, it would not prevent an unacceptable condition altogether.* In fact, Alternative 4 would still lead to an excessive voltage drop of 6.6% at the Newbury Substation bus in 2015 upon the re-energization of Pharmacy Substation.”

(SCE Exhibit 1 (McCabe), at 16:6-10, emphasis added.)

Mr. McCabe also testified that even when combined with other potential system improvements such as the addition of voltage capacitors, the addition of energy generated by Camgen would still not resolve voltage issues in the Moorpark System. In fact, such a combination would lead to other voltage problems, such as the risk of an overvoltage situation at Moorpark Substation. (See SCE Exhibit 9 (McCabe), at, at 20:10 – 21:11; SCE Exhibit 9-C (McCabe), at, at 20:10 – 21:11, Attachment E.)²⁷ In short, a potential reconnection of Camgen to the Moorpark System would have no bearing on the need for the M-N Line, and both the FEIR and the PTC Decision are well-supported in reaching that conclusion.

Nevertheless, the AFR also argues that SCE never “willingly disclose[d] the Camgen Reconnection as a solution.” (AFR, at 22.) This argument is both incorrect and disingenuous. In fact, the Camgen reconnection issue has been evaluated on a number of different occasions, and SCE provided information and load flow analyses about it in multiple communications with the Energy Division and the AFR Parties, including a number of data request responses. (See, e.g., SCE Data Request Response DATA REQUEST SET A1310021 Moorpark-Newbury-ED-SCE-07, Question 02; SCE Data Request Response A1310021 Ludington-SCE-15 Q.01 Attachment_2026-Recon+Camgen-N-1 CONFIDENTIAL; SCE Data Request Response

²⁷ Mr. McCabe also testified that, separate and apart from the failure of the Camgen reconnection alternatives to remedy the voltage drop concern, any alternative predicated upon a restored direct connection between Camgen and SCE’s Moorpark System also would be unreliable given that the flow of energy would be entirely dependent upon a third-party generator whose output would not be under SCE control. (SCE, Exhibit 1 (McCabe), at 16, fn. 9.)

A1310021 CBD-SCE-05 -Q01-Camgen+Newb_Cap CONFIDENTIAL; SCE Data Request Response CONFIDENTIAL A.13-10-021 CBD-SCE-07 Q.01.1 Attachment 1_Alt-4-Camgen-prn; SCE Data Request Response CONFIDENTIAL A.13-10-021 CBD-SCE-07 Q.01.2 -Alt-4-Camgen_ Attachment 3 of 4.) Moreover, based on information provided by SCE well before the DEIR was published for review, the CPUC's independent electrical consultant, Scheuerman Consulting, reviewed the concept of reconnecting Camgen *in lieu* of the Project. Scheuerman Consulting even produced an analysis in February 2015 noting potential concerns that needed more investigation, including N-1 voltage deviation issues and impacts to SCE's Santa Clara System which remains connected to Camgen even today. (*See* Ludington Exhibit 4, at 149-150.)

In short, SCE has never avoided discussing the possibility of reconnecting Camgen to the Moorpark System, and the fact remains that such a reconnection would simply have no bearing on the need for an operational M-N Line. There is no need to reopen this proceeding to receive additional evidence on this point.

VIII.

THERE IS NO NEED FOR A STAY OF CONSTRUCTION

The AFR's request for a stay of construction should be denied. The CPUC has stated that when considering a request for a stay, it considers the following factors: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits of the application for rehearing; (3) a balance of the harm to the moving party (or the public interest) if the stay is not granted and the decision is later reversed, against the harm to the other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case. (*See* D.13-08-005.)

Here, these factors weigh heavily in favor of denying the AFR's request for a stay. The AFR presents no reason why the AFR Parties would be irreparably harmed in any way by completion of the M-N Line. Moreover, as shown throughout the balance of this Response, the

AFR presents no legal or factual argument warranting rehearing, so the AFR Parties are not likely to prevail on the merits of the AFR. In addition, the potential harm to SCE and its customers is significant: with each passing day, the threat of an N-1 voltage deviation that could damage equipment and/or result in service disruptions grows. Given the immediate need for a subtransmission line that would instantly alleviate that threat as soon as it is operational, and given that nothing in the AFR warrants rehearing for any reason, no stay of construction is warranted.

IX. CONCLUSION

The issues in this proceeding are hardly new. In fact, every argument raised in the AFR has been vetted in great detail in this proceeding, which involved testimony, an evidentiary hearing, briefs, multiple motions, an Oral Argument, a Proposed Decision, *ex parte* meetings and even oral comments on the day the Commission voted to approve the PTC Decision. At each stage, CPUC decisionmakers carefully reviewed the evidence and arguments, and as a result the PTC Decision accurately reflects the facts of this proceeding and relevant law. Given that the AFR identifies no aspect of the PTC Decision that is unlawful or erroneous, no rehearing is necessary and the AFR should be denied in its entirety so that SCE can rely on the PTC Decision to complete the M-N Line and provide a much-needed reliability enhancement to the ENA.

Respectfully submitted,

ROBERT D. PONTELLE

/s/ Robert D. Pontelle

By: Robert D. Pontelle

Attorney for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6025
Facsimile: (626) 302-6736
E-mail: Robert.Pontelle@sce.com

October 10, 2016