



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

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In the Matter of the Application of SOUTHERN)
CALIFORNIA EDISON COMPANY (U 338-E)) Application No. 14-12-013
for a Permit to Construct Electrical Facilities)
With Voltages Between 50 kV and 200 kV:) (Filed December 15, 2014)
Valley South 115kV Subtransmission Project)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)
COMMENTS ON PROPOSED DECISION

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Pursuant to California Public Utilities Commission (“CPUC” or “Commission”) Rule of Practice and Procedure 14.3, Southern California Edison Company (“SCE”) provides the following comments on the proposed *Decision Addressing The Southern California Edison Company Application For A Permit To Construct The Valley South 115 Kilovolt Subtransmission Project* (“Proposed Decision”), served on October 17, 2016.

I.

INTRODUCTION AND SUMMARY OF ARGUMENT

SCE appreciates the work of the Energy Division and their consultant Aspen Environmental Group in developing the Final Environmental Impact Report (FEIR) which identifies an environmentally superior alternative meeting the objectives of the Valley South 115 kV Subtransmission Project (“VSSP”), and for recognizing SCE’s planned participation as a Participating Special Entity (“PSE”) in the Western Riverside County Multi-Species Habitat

Conservation Plan (“MSHCP”) administered by the Western Riverside County Regional Conservation Authority (RCA). However, SCE has reviewed the mitigation measures contained in the Proposed Decision for the VSSP (including the Mitigation Monitoring and Reporting Plan, “MMRP” attached thereto), and believes modifications should be made to ensure that certain mitigation measures (“MMs”) do not unnecessarily overlap, conflict, or add to MSHCP requirements for surveys, reporting, means of avoidance, and compensatory mitigation.

In particular, SCE proposes three separate categories of revisions to the mitigation measures for biological resources set forth in the FEIR and MMRP:

- A general statement should be added to the FEIR and MMRP to clarify that if SCE becomes a PSE in the MSHCP, the following 19 mitigation measures would not be applicable to VSSP so long as SCE demonstrates its participation and compliance with MSHCP requirements: MM BIO-3, MM BIO-4, MM BIO-5, MM BIO-8, MM BIO-9, MM BIO-10, MM BIO-11, MM BIO-12, MM BIO-13, MM BIO-14, MM BIO-15, MM BIO-16, MM BIO-17, MM BIO-18, MM BIO-19, MM BIO-20, MM BIO-23, MM BIO-24, and MM BIO-25.
- Certain language should be deleted from five of the above 19 mitigation measures to avoid any confusion regarding the effect of becoming a PSE in the MSHCP, namely measures MM BIO-4, MM BIO-5, MM BIO-12, MM BIO-13, and MM BIO-23.
- MM BIO-21 and MM BIO-22 should be deleted in their entirety because they do not provide additional species protection, and impacts they are meant to address would already be reduced to less-than-significant with the implementation of

mitigation measures MM BIO-1 and MM BIO-5, as well as SCE participation in the MSHCP.

II.

ARGUMENT

The MSHCP provides incidental take coverage and mitigates for impacts to the MSHCP's 146 covered species.¹ The MSHCP addresses take and the conservation of covered species, listed and non-listed, and their habitats under both the state and federal Endangered Species Acts. As such, the MSHCP is approved as both a Natural Community Conservation Plan ("NCCP") under state regulations and a Habitat Conservation Plan ("HCP") under federal regulations. The EIR/EIS for the MSHCP was reviewed and certified under both CEQA and NEPA and is consistent with CEQA's goals of protecting wildlife.² The intent of the MSHCP is to provide Riverside County, cities, covered agencies, and PSEs a consistent process for participation in the MSHCP and consistent requirements for the protection and conservation of biological resources. Participation in the MSHCP provides assurance that specific project impacts to resources are appropriately addressed and mitigated within the context of the MSHCP's broader, regional conservation goals. As the MSHCP administrator, the RCA works closely with the California Department of Wildlife ("CDFW") and the U.S. Fish and Wildlife Service ("USFWS") to ensure individual projects are consistent with the MSHCP and implement MSHCP requirements. The protection and mitigation for covered species also provides protection and mitigation to non-covered species through the conservation and protection of habitat that is shared by many species. As with other MSHCPs, conservation of covered species provides an umbrella of protection for all habitats and their occupants.

¹ Volume 1 of the MSHCP is available online at: http://6de85afa9cdd9250af26-3b22a263ed002c8175a7ed4a05021155.r33.cf1.rackcdn.com/Permit_Docs/MSHCP_Docs/Volume1/Final_MSHCP_The_Plan_Parts_1-2-Volume1.zip).

² See MSHCP, at 1-16.

A. The MMRP Should Be Revised To Provide That SCE’s Participation In The MSHCP Would Fully Mitigate Impacts To Several Biological Resources, And Therefore Mitigation Measures Designed To Achieve Similar Mitigation Would Be Unnecessary.

Aligning the mitigation strategies of the CPUC with those of the local and regional resource agencies with specific expertise in biological resources (such as the RCA, CDFW and USFWS) would help to both: 1) ensure an appropriate level of resource protection; and 2) provide a consistent approach to environmental reviews for projects located within MSHCP boundaries. To achieve those objectives, SCE’s participation as a PSE in the MSHCP would not only serve to demonstrate SCE’s compliance with federal and state environmental laws, including the Federal Endangered Species Act, the California Endangered Species Act, and the California Natural Communities Conservation and Protection Act, but would *also* fulfill the CPUC’s obligation as CEQA lead agency to ensure that all VSSP-specific biological resources impacts are mitigated to a less-than-significant level. In addition, by providing SCE the option to either become a PSE or mitigate per the FEIR mitigation measures, the CPUC would enable SCE to save millions of dollars in ratepayer funds by avoiding duplicative measures. To align with the MSHCP conservation and protection goals and intent, SCE recommends that the MMRP be revised to provide that if SCE becomes a PSE in the MSHCP, then certain biological resources mitigation measures would not be necessary. In addition, several other measures should be further revised to delete language that would be duplicative if the edits suggested by SCE below are incorporated into the MMRCP.

In particular, SCE recommends that the following statement be *inserted* into the MMRP (as shown in underline text):

“If SCE becomes a PSE in the MSHCP, then the following mitigation measures would be unnecessary (and no further mitigation would be required) by virtue of the fact that impacts addressed in these measures would already be reduced to a less-

than-significant level through participation and implementation of the MSHCP requirements: MM BIO-3, MM BIO-4, MM BIO-5, MM BIO-8, MM BIO-9, MM BIO-10, MM BIO-11, MM BIO-12, MM BIO-13, MM BIO-14, MM BIO-15, MM BIO-16, MM BIO-17, MM BIO-18, MM BIO-19, MM BIO-20, MM BIO-23, MM BIO-24, and MM BIO-25. Documentation of participation (i.e., a Certificate of Inclusion) and compliance with the MSHCP, including mitigation fee payment confirmation, shall be submitted to the CPUC prior to site mobilization activities. However, if SCE does not become a PSE and/or submit the necessary documentation, then each of these mitigation measures shall apply to VSSP.”

In addition, to clarify that SCE’s participation in the MSHCP would satisfy the intent of these measures to mitigate impacts to a less-than-significant level, SCE further recommends that the following language be *deleted* (as shown in strikethrough text) from mitigation measures MM BIO-4, MM BIO-5, MM BIO-12, MM BIO-13, and MM BIO-23:

~~“Take of individuals may be covered by the MSHCP if SCE becomes a PSE and implements the requirements of the MSHCP. Documentation of participation and compliance (i.e., Certificate of Inclusion) with the MSHCP, including mitigation fee payment confirmation, shall be provided to the CPUC prior site mobilization activities.”~~

The revisions suggested above would be appropriate given that the MSHCP “addresses the potential impacts of urban growth, natural habitat loss and species endangerment, and creates a plan to mitigate for the potential loss of Covered Species and their habitats due to the direct and indirect impacts of future development of both private and public lands within the MSHCP Area.”³ Indeed, the stated purpose of the MSHCP is to ensure that each project and its proponent comply with laws protecting biological resources, and the MSHCP provides remedies for a proponent’s failure to comply with MSHCP obligations. Of particular relevance is the MSHCP’s statement that

³ See MSHCP Implementing Agreement (“IA”) (available at: http://6de85afa9cdd9250af26-3b22a263ed002c8175a7ed4a05021155.r33.cf1.rackcdn.com/Permit_Docs/MSHCP_Docs/Volume3/Final_Implementation_Agreement-Volume3.zip) at 3.

“Pursuant to the ‘No Surprises’ provisions of 50 Code of Federal Regulations, sections 17.22(b)(5) and 17.32(b)(5), and State Assurances pursuant to Sections 3.101 and 15.3 [of the IA], as long as the terms of the MSHCP, [the IA] and [permits] are properly implemented, the Wildlife Agencies will not require additional mitigation from Permittees, with respect to Covered Species Adequately Conserved, except as provided for in [the IA] or as required by law.”⁴

SCE’s participation in the MSHCP would obviate the need for additional mitigation because:

- Participation itself would mitigate environmental impacts to a less than significant impact level;
- The MSHCP grants “take” coverage to PSEs for all Covered Species (146 in the case of the MSHCP) related to a specific project (a “Covered Activity”⁵) that is consistent with the MSHCP. A PSE applicant must demonstrate consistency with the MSHCP, including any species-specific conservation requirements, to obtain “take” coverage under the MSHCP;⁶ and
- Entities having projects within the MSHCP area are not discouraged from becoming PSEs out of concern that a CEQA lead agency will impose additional and often costly mitigation above what is required to meet the mitigation requirements under CEQA.

SCE’s participation in the MSHCP mitigates potential impacts to covered species, promotes consistency within the MSHCP, and complies with CEQA requirements.

Additionally, eliminating redundant CPUC mitigation measures that are already covered by the

⁴ See MSHCP IA at 15; *see also* MSHCP IA at 14, § 3.101 (providing that unless special circumstances warrant, if “Permittees are implementing the terms and conditions of the MSHCP... [CDFW] shall not require...additional restrictions on the use of land, water, or other natural resources...”); MSHCP, Planning Agreement (“PA”) Appendix A at 25 [§§ 13.1 (“No Surprises”) and 13.2 (“No Additional Mitigation”), which states “As long as the terms of an approved MSHCP are being fully implemented, the [USFWS] and [CDFW] agree that they will not seek additional mitigation involving additional land or funds for impacts to covered species under the FESA, CESA, NEPA, CEQA, CNPPA, or in any other regulatory or permitting process.”)].

⁵ See MSHCP Definitions (“Covered Activities” are defined as “Certain activities carried out or conducted by ... Participating Special Entities ... within the MSHCP Plan Area ... that will receive Take Authorization...provided these activities are otherwise lawful”).

⁶ See MSHCP IA at 36-37.

MSHCP allows SCE to decrease the project cost to ratepayers by approximately \$3 to \$4 million.

By participating in the MSHCP, obtaining PSE status, and following MSHCP permit requirements, SCE would mitigate the specific VSSP impacts and fulfill the regional species and habitat conservation and protection goals of multiple resource agencies such as the RCA, CDFW and USFWS. However, the above-mentioned mitigation measures included in the VSSP FEIR would duplicate the MSHCP requirements and are not necessary to minimize and mitigate potential significant adverse impacts of covered activities and species. Moreover, the additional VSSP FEIR mitigation measures: 1) do not result in additional species protection, 2) increase project cost to ratepayers, and 3) remove applicant incentives for participating in the MSHCP.

MM BIO-21 And MM BIO-22 Should Be Deleted Because Other Mitigation Measures (And Compliance With The MSHCP) Would Already Mitigate Impacts To Two-Striped Garter Snake And Special Status Herpetofauna Species.

Potential impacts to the two-striped garter snake (not a MSHCP covered species) and special status herpetofauna species (some of which are not MSHCP covered species) are reduced to less than significant levels with implementation of MM BIO-1 and MM BIO-5. As with other MSCHPs, conservation of covered species provides an umbrella of protection for all habitats and their occupants in the same geographical area. This is true for the subject species of MM BIO-21 and MM BIO-22. Those species are not specifically covered under the MSHCP, however they receive the benefit of the protection activities of the MSHCP plan since they are in the same general area. In addition, the focused surveys described in MM BIO-21 and MM BIO-22 would not effectively reduce impacts to the species because it is already expected that these species would occur in suitable habitat; focused surveys would only confirm this assumption and would not actually mitigate “take” of the species. Rather, a more effective way to mitigate impacts would be to ensure that monitoring efforts continue,

particularly during ground disturbance activities when animals would potentially be impacted during construction. A monitor present during these activities would have the ability to halt construction and relocate any such animals out of harm's way.⁷

Therefore, MM BIO-21 and MM BIO-22 should not be required for VSSP because these species derive benefit from the MSHCP as well as the fact that other mitigation measures provide additional protection for the species.

⁷ In addition, BIO-21 appears to be excessive in that it could be interpreted to require constant monitoring during all facets of construction activities, even after major ground-disturbing activities have concluded. Ground disturbing activities would presumably cause the greatest risk of impacts to garter snakes and herpetofauna, and MM BIO-5 already provides for monitoring by a qualified biologist during such activities.

III.

CONCLUSION

SCE appreciates the CPUC's thorough review of VSSP as reflected in the Proposed Decision. However, SCE respectfully requests that the CPUC revise the Proposed Decision as described above. With those revisions, SCE respectfully requests that the CPUC adopt the Proposed Decision.

Respectfully submitted,

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