

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



**FILED**

02-09-09  
04:59 PM

In the Matter of the Application of San Diego  
Gas & Electric Company (U 902-E) for a  
Certificate of Public Convenience and Necessity  
for the Sunrise Powerlink Transmission Project

Application No. 06-08-010  
(Filed August 4, 2006)

**RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY  
TO APPLICATIONS FOR REHEARING**

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February 9, 2009

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## LIST OF ACRONYMS/ABBREVIATIONS USED HEREIN

AB	California State Assembly Bill
ABDSP	Anza-Borrego Desert State Park
ARB	California Air Resources Board
BLM	Bureau of Land Management, U.S. Dept. of Interior
CAISO	California Independent System Operator Corporation
Caltrans	California Department of Transportation
CBD	Center for Biological Diversity/Sierra Club
CEC	California Energy Commission
CEO	Chief Executive Officer
CEQA	California Environmental Quality Act
CO <sub>2</sub>	Carbon Dioxide
Commission	California Public Utilities Commission
CPCN	Certificate of Public Convenience and Necessity
Decision	D.08-12-058, Decision Granting a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project
EIR/EIS	Environmental Impact Report/Environmental Impact Statement
FERC	Federal Energy Regulatory Commission
GHG	Greenhouse Gas
IID	Imperial Irrigation District
IVSG	Imperial Valley Study Group
kV	Kilovolt
LEAPS	Lake Elsinore Advanced Pumped Storage project
MW	Megawatt
OII	Order Instituting Investigation
OIR	Order Instituting Rulemaking
PEA	Proponent's Environmental Assessment
P.U. CODE	California Public Utilities Code
RPS	Renewable Portfolio Standard
SB	California State Senate Bill
SDG&E	Applicant, San Diego Gas & Electric Company
SF <sub>6</sub>	Sulfur Hexafluoride
STEP	Southwest Transmission Expansion Plan
SWPL	Southwest Powerlink
TO	Transmission Owner
UCAN	Utility Consumer Action Network
WECC	Western Electricity Coordinating Council

## RECORD CITATION FORM

Record exhibits are cited “[witness surname, if applicable], Ex. [number] at [chapter, page(s):line(s) [to the extent applicable].” The record transcript is cited “[witness surname, if applicable], T.[page(s):line(s)].”

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In the Matter of the Application of San Diego  
Gas & Electric Company (U 902-E) for a  
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for the Sunrise Powerlink Transmission Project

Application No. 06-08-010  
(Filed August 4, 2006)

**RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY  
TO APPLICATIONS FOR REHEARING**

Pursuant to Rule 16.1 (d) of the Commission’s Rules of Practice and Procedure, San Diego Gas & Electric Company (“SDG&E”) hereby responds to applications for rehearing of D.08-12-058<sup>1</sup> filed by Utility Consumers Action Network (“UCAN”) and by Center for Biological Diversity/Sierra Club (“CBD”) (collectively, “applicants”) on January 23, 2009.<sup>2</sup>

**I. APPLICANTS FAIL TO SHOW COMMISSION ERROR OR THAT THE  
COMMISSION’S DECISION LACKED SUBSTANTIAL EVIDENCE**

As a preliminary matter, none of the arguments CBD and UCAN offer identify errors which merit rehearing of D.08-12-058. Commission Rule 16.1 (c) specifies:

Applications for rehearing shall set forth specifically the grounds on which applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.

D.08-12-058 is neither unlawful nor erroneous. Applicants’ rehearing arguments essentially rehash litigation positions that the Commission already considered and rejected. No corrections to the Decision are required. SDG&E’s response does not attempt to re-argue what has already

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<sup>1</sup> Referred to herein as the “Decision.”

<sup>2</sup> Citations to the UCAN and CBD rehearing applications are to “UCAN” or “CBD” followed by the page number.

been decided, but instead, addresses only the alleged errors in the Decision. Therefore, this response does not attempt to rebut applicants' every effort to reargue the evidence.

With respect to CEQA,<sup>3</sup> applicants complain that the Commission made the wrong decision and that the Commission's decision is contradicted by select "evidence" cited by the applicants. As discussed in detail below, neither disagreement with the decision nor the presence of evidence contradictory to the Decision constitutes a violation of CEQA in light of the substantial evidence supporting the Decision. UCAN and CBD must demonstrate that there is no substantial evidence in the administrative record supporting the Commission's action, even after "all reasonable doubts are resolved in favor of the [Commission's] decision." *Snarled Traffic Obstructs Progress v. City & County of San Francisco*, 74 Cal.App.4th 793, 798 (1999) (citation omitted); CAL. CODE REGS. tit. 14, § 15384. Here, substantial evidence supports the Decision. There is no reason for the Commission to revisit its action.

## **II. THE DECISION APPLIED THE PROPER BURDEN OF PROOF**

### **A. UCAN concedes that the Decision applies the correct burden of proof and the Commission properly applied that burden here.**

UCAN (at 3-7) claims that the Decision should have been based on "clear and convincing evidence" instead of on the preponderance of the evidence standard. The Decision properly found that the Commission requires "clear and convincing" evidence only to support rate increases, and the default evidentiary standard under California administrative law, preponderance of the evidence, applies in all other cases. Although UCAN cites several cases to support its position, none conflict with prior Commission precedent or with the use of preponderance of the evidence in this case. In sum, the Decision used the proper burden of proof

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<sup>3</sup> California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21000 *et seq.*

standard. UCAN’s argument that the Commission should change the law for this case provides no basis for a rehearing.

**B. The record evidence supports the Decision under the clear and convincing evidence standard.**

In any event, the record evidence supporting the Decision could have met the clear and convincing evidence standard. For example, the CAISO’s Board-approved findings that Sunrise is needed (i) to meet a San Diego-area reliability shortfall beginning in 2010,<sup>4</sup> (ii) to reduce customer costs by reducing congestion,<sup>5</sup> and (iii) to meet the State’s RPS goals, is clear and convincing evidence of need.<sup>6</sup> Giving such weight to the CAISO’s findings is appropriate for two reasons. First, the CAISO is the principal entity charged under state law,<sup>7</sup> and under the Commission’s electricity restructuring decisions,<sup>8</sup> with planning the transmission grid and identifying needed new transmission, so the grid can operate efficiently and reliably. In this role,

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<sup>4</sup> Brown, Ex. SD-5, Appendix I-1 at 18. This exhibit is the CAISO report recommending Sunrise approved by the CAISO board on August 3, 2006.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 19.

<sup>7</sup> P.U. CODE § 345 requires the CAISO “...to ensure efficient use and reliable operation of the transmission grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council.” *See also*, P.U. CODE § 334. Furthermore, section 24.1.2 (“Reliability Driven Projects”) of the CAISO’s Federal Energy Regulatory Commission (“FERC”)-approved tariff states that: “The ISO or the Participating TO [Transmission Owner], in coordination with the ISO and Market Participants, through the coordinated planning processes of the...[WECC] and the RTGs [regional transmission groups], will identify the need for any transmission additions or upgrades required to ensure system reliability consistent with all Applicable Reliability Criteria.”

<sup>8</sup> *See e.g.*, D.95-12-063, as modified by D.96-01-009, and subsequent decisions implementing AB 1890.

the CAISO is not beholden to any party in this proceeding.<sup>9</sup> Given these statutory and legal responsibilities and the CAISO's expert and independent status, it is appropriate for the Commission to give great – if not conclusive - weight to the CAISO's conclusion that California needs the project. These CAISO determinations, reinforced by its expert evidence in this case, are sufficient in and of themselves to satisfy a clear and convincing evidence standard.

Second, the CAISO's findings are supported by other weighty analysis that found a need for Sunrise. This Commission found in its Electric Resource Planning OIR, R.04-04-003 as follows:

While we do not approve SDG&E's 500 kV transmission line here, we do acknowledge the lengthy process needed to plan, license and construct transmission, and thus encourage SDG&E to continue its planning efforts and move forward with evaluating these transmission alternatives for meeting a local resource deficiency by 2010.<sup>10</sup>

In addition, the record reflects that the need for Sunrise was identified in the public stakeholder regional planning meetings of the Southwest Transmission Expansion Plan ("STEP")<sup>11</sup> and the collaborative work done as part of the Imperial Valley Study Group ("IVSG").<sup>12</sup> Both processes were open to all interested stakeholders, including regulators, and indeed, both processes enjoyed robust and broad participation. Both processes identified a scope for a 500 kV interconnection similar to that proposed here for Sunrise – to support reliable operation of the grid in the San

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<sup>9</sup> As a non-profit public benefit corporation, the CAISO has no pecuniary incentive in whether the project is built. *See* Amended and Restated Bylaws of The California Independent System Operator, amended 12/99. <http://www.caiso.com/docs/2000/01/31/200001311632465316.pdf>.

<sup>10</sup> D.04-12-048 at 228, Finding of Fact 9; *see also id.* at 45.

<sup>11</sup> STEP was formed by the CAISO in November 2002. Avery, Ex. SD-5 at I-8.

<sup>12</sup> *See*, Report of the IVSG (September 30, 2005), filed by SDG&E with the Commission on October 4, 2005 in I.05-04-005. The IVSG was formed by the CEC in response to D.04-06-010. It adopted the mission of specifying a phased development plan for the construction of transmission upgrades capable of exporting 2200 MW of power from new renewable generating sources in the Imperial Valley. Avery, Ex. SD-5 at I-8.

Diego region, encourage renewable development and support the state's renewables goals, and to reduce the cost of electric service in California. *See* Avery, Ex. SD-5 at I-8-9. Finally, the CEC's Strategic Transmission Investment Plan found, as early as November 2005, that Sunrise would provide significant benefits to the state:

**Sunrise Powerlink 500 kV Project** - The proposed 500 kV Sunrise Powerlink Project would provide significant near-term system reliability benefits to California, reduce system congestion and its resultant costs, and provide an interconnection to both renewable resources located in the Imperial Valley and lower-cost out-of-state generation. Without this proposed project, it is unlikely that SDG&E will be able to meet the state's RPS goals, ensure system reliability, or reduce RMR and congestion costs. The Energy Commission therefore believes that the proposed project offers significant benefits and recommends that it move forward expeditiously so that the residents of San Diego and all of California can begin to realize these benefits by 2010.<sup>13</sup>

In sum, the record unquestionably meets the preponderance of the evidence standard, and would amply support a CPCN based on the clear and convincing evidence standard.

### **III. CONTRARY TO UCAN'S ASSERTION (at 12-13), THE DECISION PROPERLY APPLIES THE PROJECT OBJECTIVES**

UCAN's assertion is dead wrong. The Decision was explicitly premised on the basic project objectives as set forth in Sunrise's EIR.<sup>14</sup> *See* Decision at 13 (to maintain reliability); at 14 (to reduce the cost of energy); *id.* (to accommodate the delivery of renewable energy to meet state and federal renewable energy goals).

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<sup>13</sup> Strategic Transmission Investment Plan, Prepared in Support of the 2005 Integrated Energy Policy Report Proceeding (04-IEP-1K), Final Committee Report (adopted November 21, 2005) at 6 (original emphasis); *see also id.* at 65; California Energy Commission, *Integrated Energy Policy Report 2007* at 110 and 121; Avery, Ex. SD-5 at I-9.

<sup>14</sup> The Final Environmental Impact Report/Environmental Impact Statement issued in this proceeding by the Commission and U.S. Dept. of Interior, Bureau of Land Management ("BLM") on October 13, 2008.

#### **IV. THE DECISION PROPERLY TREATS UCAN'S ILLUSORY "NO PROJECT/NO ACTION ALTERNATIVE"**

UCAN (at 14-25) claims that the Decision fails to "consider the UCAN no-project alternative." This is demonstrably false, for two reasons. First, it suggests that UCAN proposed a specific no project alternative. UCAN did no such thing. Second, the Decision addresses each element that UCAN now claims are part of its no project/no action alternative.

##### **A. UCAN never specified a no project/no action alternative.**

UCAN's claim that the Decision fails to consider the UCAN no-project alternative is simply not true. UCAN's testimony suggested that its no action alternative relied on the "menu" of potential reliability and renewable access fixes in the Draft EIR<sup>15</sup> no action concept, except that UCAN specified that IID system upgrades, plus Green Path North, would provide renewable access. Marcus, Ex. U-100 at 6-8. UCAN's Phase 2 opening brief (at 106-109), while not fully identifying a "no action" option, adds a discussion of Path 44 and Miguel upgrades, PV deployment, and reprises its Phase 1 fantasies of higher DG development than forecast by the CEC.<sup>16</sup> But UCAN's Phase 2 briefing and testimony did not specify such an alternative.

From the discussion in UCAN's Phase 2 briefing, it appears that UCAN, like the Draft EIR (at C-146) could not identify a single no project option, as "[t]he identification of a definite No Project Alternative development scenario is not possible, because specific certain consequences cannot be identified without undue speculation." Similarly, the final EIR (at C-136) identifies what it calls a "menu...of potential projects/components that could occur in the

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<sup>15</sup> Draft Environmental Impact Report/Environmental Impact Statement (January 3, 2008). At the time parties submitted their respective cases in Phase 2 briefing, the Commission and BLM had issued the Draft EIR, which was one of the topics addressed in Phase 2 testimony and briefing.

<sup>16</sup> Thus, UCAN did not identify a specific no project alternative in its briefing, although it specifically requested a placeholder in the Phase 2 briefing outline for such an alternative.

absence of the Proposed Project ....”<sup>17</sup> It appears that UCAN’s no project/no action alternative in this case was based on a similar menu.<sup>18</sup> But UCAN never provided a more specific statement of its “menu.” Indeed, UCAN’s rehearing application, for the first time (at 21), claims that its no project/no action alternative is:

based upon four major proposals: (1) Upgrading the output limit of the Miguel substation (2) Upgrading Path 44 (3) Development of the NRG Carlsbad plant (4) the availability to SDG&E of out-of-state renewables.<sup>19</sup>

Given that this is the most coherent statement of UCAN’s no project alternative in this proceeding, it is not error for the Decision not to address an “alternative” that UCAN failed to specify in its testimony and briefing.<sup>20</sup>

**B. The Decision addressed all elements of UCAN’s no project alternative.**

The Decision did in fact directly address all elements of UCAN’s menu – to the extent, at least, that such elements can be discerned from UCAN’s presentations in the record. For Path 44, the Decision found (at 80) that:

[w]e are not convinced at this time that UCAN’s Path 44 proposal presents a viable means to increase import capability into the SDG&E load area and do not

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<sup>17</sup> As the EIR notes (*id.*), it did evaluate all of the possibilities on its menu:

Not all of these projects would be required to replace the Proposed Project, but because it is not possible to foresee which projects are more likely, this ... [EIR] evaluates the impacts of the full range of options. *See also* Draft EIR at C-146.

<sup>18</sup> UCAN’s menu, to the extent it was discernable from its testimony, was anchored on increasing the Path 44 transfer capability (also considered in the EIR’s menu) and increasing the Miguel substation outlet capacity. The Decision addressed both items (at 77-78, 80). With respect to the Miguel upgrade item, *see* n. 22, *infra*.

<sup>19</sup> Elsewhere in its rehearing application (at 14), UCAN sets forth a *different* menu of elements in its no project alternative. And (*id.* at 20) there is a lone mention of Green Path North as A no project element.

<sup>20</sup> Prior to its rehearing application, the most coherent statement of UCAN’s no project alternative was found in its Phase 2 opening brief (at 107-09), where the elements recited were: Path 44, Miguel upgrades, plus additional energy efficiency, demand response, rooftop PV, distributed generation, and in-basin renewable and fossil generation.

adopt it for the Analytical Baseline.<sup>21</sup> However, we agree that a review of Path 44's rating is warranted, particularly since the last one occurred in 2001, and UCAN presents credible evidence that an increase in Path 44's rating may be possible.

As for the Miguel upgrade, the Decision specifically discusses this item at 77-78.<sup>22</sup> NRG's Carlsbad plant was addressed at 52-53. And the Decision addressed the "availability of out-of-state renewables" (UCAN at 21) at 68-69.

In sum, there is no single UCAN no project/no action alternative – not in the record, and not in its rehearing application. And the Decision addresses each "menu" item identified in UCAN's specification of error. It appears UCAN alleged that the Decision failed to address this non-existent alternative in an effort to contrive a legal error. With its contrivance exposed, all UCAN has left is to reargue the record, where there is ample evidence to support the Decision.

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<sup>21</sup> There is ample record evidence to support this conclusion. The Decision (at 79-80) notes the CAISO's evaluation of UCAN's Path 44 proposal:

CAISO opposes UCAN's Path 44 proposal for several reasons. CAISO states that increasing the path rating would result in transient frequency dips in Mexico which would cause NERC criteria violations, specifically, and thermal overloads, generally. CAISO also claims that UCAN's Path 44 proposal might be uneconomic because a decrease in SDG&E's Local Capacity Requirements would be offset by an increase in Local Capacity Requirements in the Los Angeles area.

Other compelling record evidence supports the Decision in this regard, showing that a substantial Path 44 upgrade is infeasible and not cost-effective, especially given the Barre-Ellis route – the likely path of any such upgrade – lies through developed Orange County coastal areas in SCE's service territory. Brown, Ex. SD-15 at 26:14-27:17; 27:20-28:6; 29:1-12; 30:1-17; 32:30-33:2; Sparks, Ex. I-6 at 47:3-13.

<sup>22</sup> Note that the Decision does not contradict SDG&E's un rebutted evidence that (1) no matter what is done to increase the Miguel outlet capability, SDG&E's import capability will not increase (in other words, it does nothing for the San Diego area reliability deficiency) (e.g., Brown, Ex. SD-15 at 22:15-18) and (2) such modifications will do nothing to eliminate the 1150 MW dispatch limit that discourages renewable development in the Imperial Valley. Brown, T.519:20-520:12, T.666:23-26. In other words, the fact that the Decision ordered SDG&E to pursue the upgrade does not establish that the Decision found that the upgrade is a partial alternative to Sunrise for the reliability or the import of renewables project objectives.

That UCAN would emphasize different facts does not specify any error, and it is not grounds to support rehearing.<sup>23</sup>

## **V. THE CONTRIBUTION OF SUNRISE TO ACHIEVING 33% RPS COMPLIANCE IS A PROPER BASIS FOR THE DECISION**

### **A. The parties had ample opportunity to address 33% RPS compliance**

UCAN (at 25) alleges error because parties had “no opportunity to evaluate and provide facts relating to the impacts of the “last-minute” 33% RPM [sic] mandate.” This is simply not the case. One of three bases (along with reliability and economics) for the need for the project was that it is needed to meet the state’s renewables and GHG goals. In this regard, SDG&E stated the contribution of Sunrise to a 33% RPS goal in its original application filed in December 2005. SDG&E Original Application at 4. The contribution of Sunrise to a 33% RPS standard was addressed by SDG&E’s prepared direct and rebuttal testimony,<sup>24</sup> as a project objective in the Proponent’s Environmental Assessment (“PEA”),<sup>25</sup> on examination of SDG&E witnesses,<sup>26</sup> and

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<sup>23</sup> UCAN (at 22-25) goes to great lengths to argue that SDG&E violated ALJ rulings by failing to conduct a cost analysis of UCAN’s or the EIR’s no project alternatives. Without conceding UCAN’s interpretation of the subject rulings, this accusation is manifestly false. SDG&E’s Phase 1 and Phase 2 economic modeling was premised on a reference case – the gas turbine reference case – which assumes that *if Sunrise is not built*, San Diego area reliability needs will be met with incremental additions of peaking units. Strack, Ex. SD-26 at 38-39 and Exhibit H. SDG&E economic modeling also considered a variety of other non-Sunrise alternatives, including ALJ-directed exhibits prepared at the end of Phase 2 (which included a specific UCAN-requested alternative). See ALJ Revised Table 11-1 in Ex. SD-142, and Exs. SD-143 and SD-144. The whole point of the reference case was to serve as a baseline no project alternative.

<sup>24</sup> Brown, Ex. SD-5 at I-12 and Appendix I-1 at 16; Brown, Ex. SD-35 at 2.22.

<sup>25</sup> The PEA at 2-21 stated that one of eight objectives for the project is to ... “[p]rovide transmission capability for Imperial Valley renewable resources for SDG&E customers to assist in meeting or exceeding California 20% renewable energy resource mandate by 2010 and the Governor’s proposed goal of 33% by 2020.” Emphasis added. This was acknowledged in both the EIR *Executive Summary* at ES-21 and Draft EIR *Introduction* at A-6.

in briefing.<sup>27</sup> Similarly, the CAISO supported the need for Sunrise with reference to a 33% RPS standard in its prepared testimony<sup>28</sup> and briefing.<sup>29</sup>

Nor can UCAN rely, as a source for error, on the lack of direct reference to 33% in the Scoping Memo<sup>30</sup> or other procedural ruling (*see* UCAN at 25, where UCAN claims 33% is “not articulated” in any such ruling). In fact, the Scoping Memo (at 14, n.20) specifically directed SDG&E to assess need in terms of the 33% RPS “procurement requirement.” UCAN’s claim concerning 33% RPS lacks any basis at all.

### **B. The Commission may properly base a CPCN on a 33% RPS level**

UCAN (at 27-28) claims that the Commission “lacks the authority to impose a 33% RPS standard upon SDG&E or to base its approval of a CPCN upon such a standard.” UCAN relies on Commission Grueneich’s alternate, and her assertion that “currently SDG&E is not legally obligated to procure renewables at a 33% RPS level,”<sup>31</sup> and the proposition that the Commission

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<sup>26</sup> Niggli, T.98:23-25, 3242:12-18, 3244:24–3245:16, 3248:22-23, 3249:14-17, 3256:3-14; Avery, T.265:20-22 (on cross-examination by UCAN), 266:23-26, 312:15–313:7,18-22; McClenahan, T.1103:14-19, 4159:28–4160:12, 4376:3-15, *Accord*, Reed, T.6244:13-17.

<sup>27</sup> SDG&E Phase 2 Opening Brief (May 30, 2008) at 68; SDG&E Phase 1 Reply Brief (November 30, 2007) at 54.

<sup>28</sup> Perez, Ex. I-1 at 9:20,10:1-2; Orans, Ex. I-1 at 14:1-6; Orans, Ex. I-2 at 13:19-21; Sparks, Ex. I-2 at 33:19-22, 34:1-3; Orans, Ex. I-2 at 49:15-18, 67:7-9, 78:9-11; Sparks, Ex. I-5 at 66:17-19.

<sup>29</sup> CAISO Phase 2 Opening Brief (May 30, 2008) at 3-4. CAISO Phase 1 Opening Brief (November 9, 2007) at 29.

<sup>30</sup> *Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling* (November 1, 2006)

<sup>31</sup> *Id.*, *citing* Alternate Proposed Decision of Commissioner Grueneich (October 31, 2008) at 155. Regardless of the Commission’s ability to impose a 33% standard without a legislative mandate, SDG&E has made a written commitment to the Commission to raise SDG&E’s RPS goal to 33% by 2020, and the Decision states the Commission’s intent to enforce this commitment. *See* Decision at 173 and n.469, 265 and 289 (finding of fact 39).

has no legal ability to require utilities to exceed 20% RPS.<sup>32</sup> UCAN's view of the law is simply wrong.

The Commission's authority to grant a CPCN for a transmission project is grounded in P.U. CODE § 1001, which mandates that the Commission find that "present or future public convenience and necessity require or will require its construction." The Decision finds (at 287, finding of fact 28) that the Final Environmentally Superior Southern Route for Sunrise:

is the highest-ranked alternative that will facilitate Commission policy to achieve GHG reductions through renewable procurement at 33% RPS levels in the shortest time possible with the greatest economic benefits; therefore ... [this route] is necessary to meet California's GHG goals by facilitating increased levels of renewable development.

This finding, in and of itself, is legally sufficient to support the conclusion that the "public convenience and necessity" requires Sunrise. This is reinforced by the fact that the "California's GHG goals" described in the finding are statutory.<sup>33</sup> Whether the Commission has the power to compel utilities to procure renewable energy at 33% RPS levels is irrelevant to this finding under P.U. CODE § 1001. It is sufficient that Sunrise is found to further a state statutory goal.

In any event, UCAN ignores that the Decision's need finding has bases other than 33% RPS compliance, bases that, each standing alone, are legally sufficient to support the CPCN. The Decision finds that "Sunrise is the best solution to meet SDG&E's current and future resource and reliability needs."<sup>34</sup> And the Decision finds that Sunrise yields net economic benefits over other alternatives that meet the project's objectives.<sup>35</sup> In sum, finding that Sunrise

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<sup>32</sup> *Id.*, citing Grueneich alternate at 155, and D.08-03-018 at 35-36.

<sup>33</sup> AB 32, Stats. 2005-2006, Ch. 488 (Cal. 2006), codified at CAL. HEALTH & SAFETY CODE §§ 38500 *et seq.*

<sup>34</sup> *Id.* at 290, Conclusion of Law 4; *see also id.* at 283, Finding of Fact 7, 285, Findings of Fact 14-16.

<sup>35</sup> *Id.* at 285, Findings of Fact 17 and 19.

is needed to meet 33% RPS is solid legal grounding for the Decision under section 1001, and the Decision is independently supported based on other well-founded grounds.<sup>36</sup>

## **VI. UCAN's ALLEGATION CONCERNING THE ROUTE TOUR IS BASELESS AND DEFAMATORY**

UCAN makes the unsupported assertion that SDG&E bestowed an improper “gift” on Commission employees in the form of a helicopter tour of the Sunrise routes under consideration - the gift being the difference between the market value of the ride and the amount actually paid by the Commission for the tour.<sup>37</sup> Other than bald assertions, UCAN offers no evidence to support its accusation, made for the first time in its rehearing application. The simple fact is that Blackhawk Helicopters invoiced the Commission directly for the ride at the same rate that it is contracted to charge SDG&E. UCAN had access to discovery regarding the cost and reimbursement for the ride.<sup>38</sup> Based on this discovery, it had the opportunity to present evidence and to cross-examine SDG&E Chief Operating Officer Mike Niggli on the subject (Mr. Niggli moderated the helicopter tour in question), but never did so.<sup>39</sup> Now, for the first time on rehearing, UCAN alleges that the Commission's payment for the ride was insufficient. The

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<sup>36</sup> UCAN does not appear to argue that the only renewables-based legal grounds for a CPCN is P.U. CODE § 399.25, nor could it rationally do so. Section 399.25 is an additional basis for a transmission line CPCN that gives applicant the opportunity for “backstop” retail rate recovery of transmission costs. This statute does not purport to supplant section 1001 for a transmission line CPCN where renewable access is the need rationale, nor does it purport to provide the only basis upon which access to renewables may support a transmission line CPCN.

<sup>37</sup> This tour was the subject of an *ex parte* notice filed by SDG&E on March 25, 2008.

<sup>38</sup> UCAN was copied on discovery requests to SDG&E related to the helicopter ride. SDG&E responded to these discovery requests on March 31, 2008 and April 11, 2008. The responses included invoices for the ride. The ALJ ruled that discovery requests to any party were to be served on all parties, that that SDG&E was to make its discovery responses available to all parties by timely posting on an external website. ALJ Ruling dated November 22, 2006.

<sup>39</sup> Mr. Niggli was cross examined at evidentiary hearings in San Diego on April 7, 2008.

Commission should disregard this assertion as untimely and without basis. In this context, the assertion is gratuitous and defamatory.

## **VII. THE DECISION AND THE EIR FULLY COMPLY WITH CEQA**

### **A. The Commission’s Decision is supported by substantial evidence**

Review of a final EIR is “not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.” CAL. CODE REGS. tit. 14, § 15151. “Thus, [a] reviewing court ‘does not pass upon the correctness of the EIR’s environmental conclusions, but only upon its sufficiency as an informative document.’” *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 392 (1988) [“*Laurel Heights I*”] [citation omitted]. Accordingly, a court “may not set aside an agency’s approval of an EIR on the ground that a different conclusion would have been equally or more reasonable.” *Marin Municipal Water Dist. v. KG Land California Corp.*, 235 Cal.App.3d 1652, 1660 (1991) (citation omitted).

Indeed, all that is needed is “**any** substantial evidence in the record to support the findings.” *Smith v. County of Los Angeles*, 211 Cal.App.3d 188, 198 (1989) (original emphasis) (citation omitted). “Substantial evidence” means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” CAL. CODE REGS. tit. 14, § 15384(a). It is not enough for applicants to point to evidence that supports their arguments, they must identify the evidence that supports the Commission’s conclusions and then show why it is insufficient. *Environmental Council of Sacramento v. City of Sacramento*, 142 Cal.App.4th 1018, 1026 (2006).<sup>40</sup> Moreover, it is insufficient for CBD and UCAN simply to point to additional evidence

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<sup>40</sup> Courts criticize project opponents who claim that there is no substantial evidence in the record without a meaningful effort at analyzing the evidence supporting the agency’s determination. *Markley v. City Council of the City of Los Angeles*, 131 Cal.App.3d 656, 673 (1982).

in the record that may support a different conclusion. Whether “other conclusions might also be reached” is irrelevant. CAL. CODE REGS. tit. 14, § 15384.

The Commission can give more weight to one expert than to another (*Greenebaum v. City of Los Angeles*, 153 Cal.App.3d 391, 412 (1984)) and can “choose between differing expert opinions.” *Browning-Ferris Indus. v. City Council*, 181 Cal.App.3d 852, 863 (1986). The Legislature established that “[d]isagreement among experts does not make an EIR inadequate. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.” *Karlson v. Camarillo*, 100 Cal.App.3d 789, 805 (1980); CAL. CODE REGS. tit. 14, § 15151. Thus, even if CBD or UCAN point to some evidence in the record they claim calls the Commission’s conclusions into question, the Commission’s conclusions are correct if any substantial evidence supports them. Put another way, if the record contains any substantial evidence supporting the Commission’s Decision, the decision must be upheld. *Barthelemy v. Chino Basin Mun. Water Dist.*, 38 Cal.App.4th 1609, 1620 (1995).

In the end, the test is not whether applicants claim the evidence is insufficient but, rather, “based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency.” *Harris v. City of Costa Mesa*, 25 Cal.App.4th 963, 969 (1994) (citation omitted). Therefore, UCAN and CBD must demonstrate that there is no substantial evidence in the administrative record supporting the Commission’s action, even after “all reasonable doubts are resolved in favor of the [Commission’s] decision.” *Snarled Traffic Obstructs Progress*, 74 Cal.App.4th at 798 (citation omitted); CAL. CODE REGS. tit. 14, § 15384.

Here, substantial evidence supports the Decision. The applicants’ disagreement with the Decision provides no basis for a rehearing. There is no reason for the Commission to revisit its action.

## **B. The Commission did not hide information from the public**

CBD complains (at 6-7) that the Commission violated CEQA because the Commission relied “on the evidentiary hearing” to analyze CAISO’s technical modeling for Sunrise and the EIR contained only “a limited discussion of this [CAISO] analysis.” (citing Decision at 167). CBD’s arguments are without merit. First, contrary to CBD’s assertion, the CAISO modeling was fully disclosed to the public, explained in detail in the EIR which cites to the CAISO modeling and testimony (EIR at D.11-50-11-51), and discussed at length throughout the Commission’s administrative process. This is exactly what CEQA requires.<sup>41</sup>

The Commission’s analysis of the CAISO modeling in the draft EIR incorporates and relies upon CAISO data request responses to the Energy Division to reach its conclusion that the greenhouse gas emissions offset by Sunrise on a WECC-wide basis. DEIR at D.11-55. SDG&E also included the CAISO data request response in Attachment 11-14 of its Phase 2 Direct Testimony.

As discussed in detail by SDG&E witness Dr. Tony Held, the CAISO Gridview modeling that underlay its data request responses to Energy Division was conducted for purposes of CAISO’s Phase 1 energy benefits. Held, Ex. SD-35 at 4.17-4.23. CAISO provided a “full and transparent description” of its modeling assumptions through detailed written testimony submitted during Phase 1. *See* Perez, Sparks and Orans, Ex. I-2 (Initial Testimony of the CAISO

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<sup>41</sup>To the extent CBD is complaining that the EIR does not include the actual CAISO computer modeling, CBD fails to assert a valid CEQA claim. *See* CAL. CODE REGS. tit. 14, § 15148 [“Preparation of EIRs is dependent upon information from many sources, including...many scientific documents relating to environmental features. These documents should be cited **but not included in the EIR.**”] [emphasis added]; *see El Morro Community Ass’n v. Cal. Dept. of Parks & Recreation*, 122 Cal.App.4th 1341, 1351 (2004) [finding citation to technical reports generally was sufficient and did not render EIR invalid because perfection is not required in an EIR].

Corporation, Part II, March 1, 2007). All parties had ample opportunity to evaluate the CAISO modeling.

The CAISO's modeling also was thoroughly discussed during Phase 2 of the Sunrise proceedings. *See, e.g.*, Held, Ex. SD-35 at 4.17-4.29 (describing CAISO assessment). Division of Ratepayer Advocates witness Daniel Suurkask discovered an error in the CAISO's calculation of CO<sub>2</sub> emissions relied upon in the Draft EIR. Suurkask, Ex. D-100 at 9 n.29.<sup>42</sup> Correcting for the error demonstrates that the greenhouse gas benefits of Sunrise are significantly more substantial than indicated in the Draft EIR and far outweigh the temporary construction impacts.<sup>43</sup> Held, T.4444:1-27.

The Commission fully disclosed, and corrected for, the CAISO error that resulted in an understatement of Sunrise's greenhouse gas reduction benefits. *See* General Response GR-8 at 2-43 ("The original [CAISO] forecast of avoided power plant emissions included an error in the emission factor for existing fuel oil-fired facilities that has been corrected in the Final EIR/EIS. The Final EIR/EIS shows the new information provided by SDG&E after the close of the Draft EIR/EIS comment period (Data Response 27-6, filed with Commission on May 6, 2008) and

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<sup>42</sup> Mr. Suurkask discovered that the CAISO, despite identifying various generation units as burning two types of fuel oil, mistakenly mapped those units to the emission rate for coal-fired generation. Suurkask, Ex. D-100 at 9 n.29. The heavy fuel oil unit should have had an emission rate of 174 lbs/MMBtu and the distillate or light fuel oil units should have had an emission rate of 161 lbs/MMBtu, rather than the coal emission rate of 211.9 lbs/MMBtu. Suurkask, Ex. D-100 at 9 n.29, 10. Dr. Held confirmed the error discovered by Mr. Suurkask. Held, T.4443-4444.

<sup>43</sup> Correction of the emission rate error in the CAISO calculation resulted in the addition of Sunrise reducing CO<sub>2</sub> emissions WECC-wide in 2015 (even with other conservative assumptions discussed in SDG&E's Phase 2 Opening Brief) by 17,910,000 lbs, or 8,955 tons, of CO<sub>2</sub>. SDG&E Phase 2 Opening Brief at 87-88; Ex. SD-130 (DRA Responses to Q.5 to Q.11). Maintaining the EIR assumption that the avoided GHG emissions remain steady over a 40 year period, constructing Sunrise would avoid roughly 358,000 tons of CO<sub>2</sub> emissions— even assuming that every investor-owned utility had met its RPS obligations before Sunrise was added to the electrical grid.

confirmed by CAISO (Submission Pursuant to June 20, 2008 Assigned Commissioner/ALJ Revised Scoping Memo and Ruling, filed August 4, and August 26, 2008).” The EIR adopts CAISO’s correction of the errors in its modeling. To the extent CBD is complaining that the EIR does not include the actual CAISO computer modeling, CBD fails to assert a valid CEQA claim. The EIR did not need to contain the actual modeling, it could cite to it. *See* CAL. CODE REGS. tit. 14, § 15148 [“Preparation of EIRs is dependent upon information from many sources, including...many scientific documents relating to environmental features. These documents should be cited **but not included in the EIR.**”] [emphasis added]; *see El Morro Community Ass’n*, 122 Cal.App.4th at 1351 [finding citation to technical reports generally was sufficient and did not render EIR invalid]. EIR at D-11-55.<sup>44</sup>

### **C. The EIR fully addresses the proposed project’s potential greenhouse gas impacts**

The EIR contains a detailed analysis of Sunrise’s as well as the studied alternatives’ potential impacts on greenhouse gas emissions. *See e.g.*, EIR at D.11-50-54 [analyzing Sunrise’s greenhouse gas impacts]. Nevertheless, CBD argues (at 4) that the EIR is defective because it failed to “assess the GHG emission benefits of conditioning the line to carry various amounts (or any amount) of renewable energy...” CBD is wrong. The EIR’s greenhouse gas analysis is not

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<sup>44</sup> The EIR (at D.11-50 to D.11-52) also discusses the CAISO’s forecasts in detail when analyzing indirect emissions from energy imports. *See* EIR at D.11-50 (“The analysis of how the Proposed Project would indirectly affect power plant operation and emissions is taken from the Initial Testimony of the CAISO in the General Proceeding A.06-08-010 (Phase I, Part II, filed March 1, 2007) with updates (CAISO, 2008).”); *id.* at D.11-50 [referring to CAISO forecast based on its modeling]; *id.* at D-11-51 [citing to CAISO modeling when discussing CO<sub>2</sub> emissions increases from incremental generation outside San Diego County under “power plant operation scenario without Imperial Valley Renewables”]. The Commission also cited to CAISO’s analyses in its list of references in the EIR. *See* EIR at D-11.80 [referencing (1) CAISO Responses to the Discovery Request from Aspen Environmental Group, April 18, October 12, and November 14, 2007; and (2) CAISO Submission Pursuant to the June 20, 2008 Assigned Commissioner/ALJ Revised Scoping Memo and Ruling (CO<sub>2</sub> update work-paper), August 4 and August 26, 2008].

defective. Rather, CBD's argument evinces a fundamental misunderstanding of CEQA and its goals.

**1. The EIR contains a thorough and detailed greenhouse gas analysis**

Under CEQA, an EIR's purpose is to: (i) provide public agencies and the public with detailed information about a project's likely effects on the environment; (ii) list ways that a project's significant effects might be mitigated; and (iii) identify alternatives to a project. CAL. PUB. RES. CODE, §§ 21002, 21002.1(a), 21061.

Here, the EIR: (i) detailed the likely impacts the construction and operation of Sunrise would have on greenhouse gas emissions (EIR at D.11-50-55); (ii) listed ways these impacts could be mitigated (*id.*); and (iii) identified alternatives to Sunrise and evaluated the impacts the identified alternatives would have on greenhouse gas emissions (*see, e.g.*, EIR at E.4.11-3 [discussing Modified Route D Alternative's Impacts on greenhouse gas emissions]; *id.*, at E.7-145 [discussing Aspen's Lake Elsinore Advanced Pumped Storage ("LEAPS") transmission-only alternative's impacts on greenhouse gas emissions]; *id.*, at E.5-188-190, 192, and 194 [discussing Aspen's new in-area renewable generation alternative greenhouse gas emissions]).

The EIR contains a detailed evaluation of the potential impacts of all of Sunrise's phases on greenhouse gas emissions. *See, e.g.*, EIR at D.11-18, D.11-52-55. The EIR first analyzes the construction and operational impacts of Sunrise on greenhouse gas emissions. The EIR concludes that Sunrise would have a significant unmitigable impact on the environment because it would cause a net increase of greenhouse gas emissions.<sup>45</sup> *Id.*

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<sup>45</sup>The EIR set the significance criteria for greenhouse gas emissions at zero, so any alternative was found to have a significant (Class 1) impact on the environment if it resulted in any net increase of CO<sub>2</sub>. Table D.11-2 (EIR at D.11-6); EIR at 11-52; EIR at General Response GR-8 at 2-42.

The EIR next analyzes mitigation measures to reduce greenhouse gas emissions during Sunrise’s construction and operational phases. During the construction phase, the EIR recommends that SDG&E offset construction-phase greenhouse gas emissions with carbon credits. *Id.* at D.11-52. At a minimum, the EIR provides requirements that SDG&E create or obtain and hold carbon credits to offset 55,000 tons of carbon dioxide emissions for each of the two years of Sunrise’s construction. *Id.* Similarly, the EIR details that operational greenhouse gas emissions should be offset with carbon credits. *Id.* at 11-53. The EIR also recommends sulfur hexafluoride (“SF<sub>6</sub>”) emissions be avoided by developing and maintaining a record of SF<sub>6</sub> purchases, instituting a laser imaging SF<sub>6</sub> leak detection program, developing an SF<sub>6</sub> recycling program, and instituting an employee education and training program to avoid or eliminate SF<sub>6</sub> emissions. *Id.* at 11-54.

These mitigation measures were revised in response to comments on the Draft EIR. For example, Mitigation Measures AQ-4a and AQ-4b, which require obtaining offsets for greenhouse gas emissions, were revised in response to comments. *See* EIR at 2-46 [citing Responses A0013-11 and A0028-6, which explain in detail how these mitigation measures were revised in the final EIR to address current uncertainties in implementing carbon reduction strategies]; *see also* EIR at 3-435, Response A0028-6 [“Mitigation Measures AQ-4a and AQ-4b provide a reasonable and feasible way to reduce the GHG impact. Onsite reductions, or avoiding GHG emissions that would otherwise occur, could be used for compliance with these measures so long as the reductions are measurable (this means real and surplus) and sufficient in quantity, but the analysis recognizes that an accurate and transparent market is evolving.”]. This analysis satisfies CEQA’s requirement that an EIR identify and analyze mitigation measures to reduce significant environmental impacts.

In addition to analyzing Sunrise’s direct greenhouse gas emission impacts, the EIR addresses how Sunrise would indirectly affect power plant operations and their respective greenhouse gas emissions. Regarding this, CBD argues (at 5) that the Commission “addresses the global warming consequences of the Project in contradictory ways in its Decision...” CBD complains (at 6) that while the Commission’s Decision analyzed the greenhouse gas impacts of Aspen’s new in-area new all-source generation and new in-area renewable generation alternatives, it failed to do so for the transmission based alternatives. CBD’s argument is without merit. The EIR discussed the greenhouse gas emission impacts from the power plants CBD claims were missed.

The EIR found that Sunrise would “facilitate an overall indirect net decrease in emissions from power plants.” EIR at D.11-51. Specifically, Sunrise’s development and the development of new renewable generation sources in the Imperial Valley would avoid 8,120 metric tons of CO<sub>2</sub> emissions in 2015 and create 96 tons of NO<sub>x</sub> emissions in 2015. *Id.* Moreover, even if renewable generation sources were not developed in the Imperial Valley, the EIR concluded that the 26.5% RPS goal would be achieved with new renewable resources developed elsewhere in the Western United States and Canada. EIR at D.11-51. Achievement of the RPS goal would occur through the reduction and replacement of existing fossil fuel-powered plants in San Diego and Mexico by renewable energy generated outside the region. *Id.*

The EIR also evaluated the potential direct and indirect impacts that Aspen’s alternatives could have on greenhouse gas emissions.<sup>46</sup> Aspen’s new in-area renewable generation alternative, for example, contains four types of renewable energy sources: (i) solar thermal; (ii)

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<sup>46</sup>In addition to addressing greenhouse gas impacts for the alternatives discussed below, among other things, the EIR analyzed the greenhouse gas impacts of Aspen’s Interstate 8 alternative (EIR at E.1.11-3), Aspen’s BCD alternative (*id.* at E.2.11-2-3), Aspen’s Route D alternative (*id.* at E.3.11-2-3), and Aspen’s modified Route D alternative (*id.* at E.4.11-3).

solar photovoltaic; (iii) biomass/biogas; and (iv) wind. EIR at E.5-194-95. The EIR analyzed the air quality impacts, including the greenhouse gas emission portion, of each component. For example, for the wind component of this alternative, the EIR found that it would “generate essentially no greenhouse gas per megawatt-hour of output.” EIR at E.5-194. Aspen’s new in-area all source generation alternative analysis undertakes a similar exercise. *See* EIR at E.6-147-156. For Aspen’s new in-area all source generation alternative, the EIR concluded that the conventional generation components would cause a net increase of greenhouse gas emissions and, therefore, have a significant environmental impact. EIR at E.6-150 [San Diego gas-fired power plants would generate 1,165 pounds of CO<sub>2</sub>/megawatt-hour]. Aspen’s LEAPS transmission-only alternative and Aspen’s LEAPS generation and transmission alternative would also have significant impacts on greenhouse gas emissions. EIR at E.7-145 [analyzing greenhouse gas emission of LEAPS transmission-only alternative]; *id.* at E.7-252 [analyzing same for LEAPS generation and transmission alternative]. Finally, the EIR analyzed the greenhouse gas emission potential for Aspen’s no project/no action alternative. The EIR concluded that “[a]n overall net increase of GHG emissions would occur due to...the increased operation of conventional power plants, a significant impact.” EIR at E.8-13. The EIR contains a similar analysis for each of the alternatives analyzed in the EIR. *See generally*, EIR at §§ E.1.11, E.2.11, E.3.11, E.4.11, E.5.11, E.6.11, E.7.11, E.8.11 [EIR sections analyzing air quality impacts of alternatives considered in the EIR].

Since the EIR contains a detailed analysis of greenhouse gas emissions, it complies with CEQA. *See* CAL. PUB. RES. CODE § 21061. Accordingly, the Commission’s Decision was fully informed and appropriately relied upon the detailed EIR.

## 2. There is no CEQA violation for not analyzing a different project

CBD contends that the Commission violated CEQA by not *redefining* Sunrise to require that it carry renewable energy. The failure to redefine a project and a project's objectives in response to a project opponent's request is not a CEQA violation. *See Burbank-Glendale-Pasadena Airport Authority v. Hensler* 233 Cal.App.3d 577, 592 (1991) [project description set by applicant should be "accurate, stable and finite..."]. There is no CEQA violation where a project applicant declines to redefine a project in response to an opponents' request.<sup>47</sup> The Commission met CEQA's burden to inform the public and decisionmakers about Sunrise, suggest mitigation measures, and analyze alternatives – nothing more was required, certainly regarding CBD's demand for a different project.<sup>48</sup> Moreover, as discussed below, SDG&E will

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<sup>47</sup> CBD argues that a mitigation measure requiring Sunrise to carry renewable energy should have been adopted, but as discussed below, the Commission properly rejected such a mitigation measure because it would have been too speculative given the uncertainty and timing surrounding the development of renewable resources in the Imperial Valley. *See* Decision at 172 [rejecting as unreasonable CBD's arguments to impose this mitigation measure given the speculative nature of Imperial Valley renewable resource development]; EIR at D.11-51 [finding that the precise location and quantity of emissions reductions associated with Sunrise will "change over time depending on the ultimate sources of power flowing into the Sunrise Powerlink and other major transmission in the western U.S. ... The level of this benefit, however, depends somewhat on the ability of the new renewable energy sources in Imperial County to be developed, and the timing of these renewable projects is uncertain"]; EIR at 2-43, General Response GR-8 ["There is no guarantee that the renewable projects now expected to generate power carried by Sunrise will be successfully developed."].

<sup>48</sup> CBD objects (at 4) that no "legal analysis" was provided to support SDG&E's inability to "guarantee that the line will carry only renewable power." EIR at 3-1621. CEQA does not require "legal analysis." Moreover, SDG&E committed to doing so should renewable energy be available to transmit. *See, e.g.,* Comments of San Diego Gas & Electric Company on Alternate Proposed Decision of Commissioner Grueneich at 9-17 (Nov. 20, 2008) [explaining why conditioning the line is unworkable given the speculative nature and timing of renewable development projects, unnecessary given purchased power agreements SDG&E already has in place for renewable energy, and offering commitments within SDG&E's power that will ensure Sunrise delivers substantial amounts of Imperial Valley renewable energy]. Rather, it is the uncertainty that surrounds the development of renewable energy in the Imperial Valley and elsewhere in California that makes conditioning the line on carrying renewable energy infeasible. EIR at 2-43 ["There is no guarantee that the renewable projects now expected to

not operate Sunrise, i.e., CAISO will determine what resources are dispatched on Sunrise, and CAISO and FERC tariffs requires it to provide comparable and non-discriminatory access to all generators.

**D. The EIR properly addressed potential mitigation measures for the proposed project**

CEQA requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid the otherwise significant adverse impacts. CAL. PUB. RES. CODE § 21002. Mitigation measures need only be reasonable. *Sacramento Old City Ass'n v. City Council*, 229 Cal.App.3d 1011 (1991). “CEQA does not require analysis of every **imaginable** alternative or mitigation measure; its concern is with **feasible** means of reducing environmental effects.” *Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School Dist.*, 24 Cal.App.4th 826, 841 (1994) [emphasis in original]; CAL. CODE REGS. tit. 14, § 15126.4(a)(1). Moreover, the specificity of an EIR’s discussion of mitigation measures only needs to be proportionate to the specificity of the underlying project. *Rio Vista Farm Bureau Center v. County of Solano*, 5 Cal.App.4th 351, 376 (1992). Thus, although an EIR must contain responses to comments proposing feasible mitigation measures, the agency is not bound to accept the comments, particularly, when analyzed, the measure is determined to be infeasible or would not reduce significant impacts. *A Local & Regional Monitor v. City of Los Angeles*, 12 Cal.App.4th 1773, 1809 (1993).

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generate power carried by Sunrise will be successfully developed. Since the proposed transmission line would carry power from all types of energy sources..., some level of GHG emissions would be attributable to electricity delivered by the Sunrise Powerlink.”].

**1. Substantial evidence supports the infeasible renewable resources mitigation measure finding**

CBD argues (at 8-9) that requiring Sunrise to carry energy generated by renewable resources was a feasible mitigation measure that would have reduced Sunrise's significant emissions of greenhouse gases. CBD alleges (*id.*) that the Commission's failure to adopt the renewable resources mitigation measure was an abuse of discretion. The Commission did not abuse its discretion in rejecting CBD's proposed renewable resources mitigation measure. Substantial evidence in the record, discussed below, supports the Commission's determination that such a mitigation measure is infeasible.<sup>49</sup>

CBD's proposed renewable resources mitigation measure is speculative. Speculative mitigation measures are infeasible under CEQA. In *Federation of Hillside & Canyon Associations v. City of Los Angeles*, the court found mitigation measures that "would require the cooperative efforts of various public agencies" and future agency expenditures were "highly speculative and...therefore...infeasible." 83 Cal.App.4th 1252, 1260 (2000). Further, since "there was great uncertainty as to whether the mitigation measures would ever be funded or implemented," there was "no substantial evidence in the record to support a finding that the mitigation measures have been 'required in, or incorporated into' the [project] in the manner contemplated by CEQA..." *Id.* at 1261.

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<sup>49</sup> CBD notes (at 9) the Assigned Commissioner's dissent, Commissioner Dian M. Grueneich, discussed why mitigating Sunrise to carry a minimum amount of renewably generated energy was feasible. That one Commissioner concluded that such a "requirement was both workable and necessary" (Dissent at 1) is not the test for whether the Commission abused its discretion in certifying the EIR. The test is whether substantial evidence, in light of the entire record, supports the Commission's decision to reject this mitigation measure. CAL. CODE REGS. tit. 14, § 15384(a). Since, as discussed below, it does, the Commission's approval of Sunrise absent this mitigation did not violate CEQA, notwithstanding the dissenting views of one Commissioner. *See also* footnotes 44 and 45 *supra*.

Merely because another agency for a different project in a different state adopted a mitigation measure similar to what CBD proposed does not make the measure feasible here. Here, CBD points to the Minnesota Public Utilities Commission's decision to condition a new transmission line's approval by requiring it to carry renewable energy. The Commission responded that this approach was not reasonable for Sunrise given the "speculative nature of the problem this solution purports to solve. As our discussion of the CAISO's modeling has shown, the determinant of whether operational GHG emissions reductions will be realized is not how Sunrise is used but whether or not the 33% RPS is met." Decision at 172.

In any event, mitigating Sunrise's potential greenhouse gas emissions through a renewable resources requirement would have been impermissible because the generation of renewable energy is sufficiently speculative. As explained in detail in SDG&E's November 20, 2008 Comments on the Alternate Proposed Decision of Commissioner Gruenreich, incorporated by this reference, there are many aspects of Sunrise that make mitigating Sunrise's greenhouse gas emission impacts through the requirement that it carry renewable energy infeasible. The two most notable are: (i) there is no guarantee the renewable energy sources will be developed; and (ii) SDG&E cannot, even if it desired, keep traditionally generated power off of Sunrise.

First, while the Commission and SDG&E anticipate that new renewable energy sources will be developed within the Imperial Valley, neither can ensure that the development actually occurs. As CAISO's CEO explained (Mansour, T.6249:15-19), if the mitigation measure was imposed, it would be impossible for SDG&E to commit to having the renewables appear as the line is energized because of the "chicken-and-egg" nature of the transmission-developer dynamic. Past Commission proceedings confirm that the uncertainty regarding new transmission

development chills and/or delays new renewable project development.<sup>50</sup> Since there is no guarantee that any amount of renewable energy will be developed, a mitigation measure requiring Sunrise to carry renewable energy would have failed under CEQA because it is uncertain if this mitigation measure could ever be implemented. *See Federation*, 83 Cal.App.4th at 1261 [uncertain mitigation measures are infeasible].

Second, even if the renewable energy sources are developed, SDG&E is powerless to confirm that renewable energy will be carried on Sunrise's lines. As SDG&E explained to the Commission, any new contracts that SDG&E negotiates that contemplate interconnection within the CAISO control area must *first* apply to the CAISO for interconnection. Since SDG&E has no exclusive right to use the new transmission line, "filling" the line's capacity must be accomplished by a number of parties. SDG&E Nov. 20, 2008 Comments on Alternative Proposed Decision of Commissioner Grueneich at 11. Neither SDG&E nor the Commission have the means currently to include other parties within any mitigation measure requiring renewable energy be carried on the line, nor can SDG&E exclude any party from using it. *Id.* Since SDG&E does not control what type of electricity (renewable or traditional) has access to Sunrise, any mitigation measure requiring SDG&E to carry only renewable energy would prove illusory because SDG&E is not the gatekeeper.<sup>51</sup>

Lastly, SDG&E has gone as far as it can go with its commitment to carry renewably generated energy on Sunrise. This is not a mitigation measure and cannot be for the reasons

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<sup>50</sup> *See*, Electric Resource Planning OIR, R.04-04-003, D.04-12-048 at 228. Accord, 2006 LTPP OIR, R.06-02-013, D.07-12-052, Transmission OII, I.00-11-001, D.01-03-077.

<sup>51</sup> Pursuant to California's electric restructuring legislation and the Commission's electric restructuring decisions, SDG&E has turned over the dispatch of resources on its transmission assets to the CAISO. As contemplated by this authority, the CAISO's FERC tariff requires it to provide comparable and non-discriminatory access to all generators on the transmission turned over to its operational control. *See e.g.*, AB 1890; D.95-12-063, *as modified by* D.96-01-009, and subsequent decisions implementing AB 1890.

discussed above, but is SDG&E's voluntary commitment to help the Commission and the State reach its renewable energy goals. Specifically, SDG&E committed to the following: (i) not entering into contracts for supply from a conventional coal generator that would deliver across Sunrise; (ii) contracting to replace any failed renewable resource contract with another renewable resource from the same region; and (iii) contracting towards a voluntary 33% RPS procurement target by 2020.

The Commission's rejection of CBD's mitigation measure as infeasible is supported by substantial evidence, the Commission's action was proper and no rehearing is required.

## **2. CBD confuses mitigation measures and baseline assumptions**

CBD argues that the Commission should have conditioned Sunrise on requiring a certain amount of renewable energy to be carried across its lines. However, CBD's argument confuses the Commission's assumptions about baseline conditions with necessary mitigation measures under CEQA. Going forward, the Commission assumes that there would be renewable energy generated in the Imperial Valley and across the State. CBD faults the EIR and the Commission's findings for failing to enforce this assumption as a condition. As set forth below, the Commission's decision to not condition the project as CBD requested did not violate CEQA. Moreover, a public agency, here the Commission, can make reasonable assumptions based on substantial evidence about future conditions without guaranteeing that those assumptions will remain true. CAL. PUB. RES. CODE § 21080(e); *City of Del Mar v. City of San Diego*, 133 Cal.App.3d 401, 412 (1982). CBD failed to demonstrate a lack of substantial evidence to support the Commission's assumption. CBD may be unhappy with the Commission's assumption, but that assumption does not violate CEQA.

### **3. CEQA neither requires nor authorizes the Commission to condition Sunrise on transmitting energy produced from renewable resources**

CBD seems to posit that CEQA is a tool for conditioning projects to meet any goal that the reviewing agency or a project opponent considers worthy. CEQA does not afford an agency such an ability (and certainly not a project opponent). Indeed, CEQA does not confer an independent basis for agencies to impose conditions on a project. “In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division.” CAL. PUB. RES. CODE § 21004. In other words, unless there is a basis beyond CEQA for conditioning Sunrise on transmitting renewable energy, the Commission lacks authority to do so. As the California Supreme Court explained in *Sierra Club v. California Coastal Commission*, 35 Cal.4th 839, 859 (2005), CEQA is not a tool to expand an agency’s authority or jurisdiction. The Commission was without authority to condition Sunrise as demanded by CBD.

Moreover, CBD’s attempt to saddle Sunrise with a renewable energy condition is simply another run at CBD’s renewable energy mitigation measure. As discussed above, such a mitigation measure is infeasible because it is speculative. Proposing the same but calling it a condition is equally unavailing because it may never materialize. Whether one calls it a condition or a mitigation measure, the uncertainty surrounding the development of renewable energy sources in the Imperial Valley, even though the Commission and SDG&E will encourage their development, is too great to make it a *requirement*. The Commission properly rejected CBD’s demand that it condition the project in a similar manner.

In any event, as noted above, SDG&E has committed to carry renewable energy along Sunrise to the extent it becomes available by committing; (i) to not contracting with conventional coal generators that deliver power to Sunrise for any length of time; (ii) to replacing any contract

for Sunrise with a contract from a renewable generator in the Imperial Valley; and (iii) to raise its RPS goal to 33% by 2020. SDG&E's commitments will certainly drive the development of renewable energy in California and will ensure that renewable energy is carried from the Imperial Valley to the San Diego region.

## **E. The EIR's discussion of alternatives was proper**

### **1. The EIR analyzed a reasonable range of alternatives**

The applicants complain that the EIR did not analyze their own devised alternatives. That is not what CEQA requires. CEQA only requires consideration of a reasonable range of alternatives; not every conceivable alternative that an opponent might urge. *Laurel Heights Improvement Assn. v. University of California*, 6 Cal.4th 1112, 1142 (1994) [*“Laurel Heights II”*]; CAL. CODE REGS. tit. 14, § 15126.6(a) [*“it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation”*]; CAL. PUB. RES. CODE § 21002. CEQA provides no specific requirements regarding the scope of an alternatives analysis, only that the EIR present a range of alternatives governed by a *“rule of reason.”* The *“rule of reason”* requires the EIR to consider *“only those alternatives necessary to permit a reasoned choice”* between the alternatives and the proposed project. CAL. CODE REGS. tit. 14, § 15126.6(f); *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal.3d 553, 565-566 (1990) [*“CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose.”*]. The Commission correctly concluded that the range of alternatives analyzed in the EIR was more than reasonable. There is no basis for the Commission to revisit this issue.

The screening process to identify alternatives to Sunrise was an exhaustive three step process designed to: (i) clearly define each alternative to allow comparative evaluation; (ii) evaluate each alternative in comparison to the project, using CEQA/NEPA criteria; (iii) determine, based on the results of Step 2, the suitability of each alternative for full analysis in the EIR; and (iv) eliminate the alternative from further consideration if it is unsuitable. EIR at Ap. 1-16. To accomplish the screening process, each alternative was evaluated through three questions: (i) does the alternative accomplish all or most of the project objectives; (ii) is the alternative potentially feasible (from economic, environmental, legal, social, regulatory, technological standpoints); and (iii) does the alternative avoid or substantially lessen any significant effects of the project (including consideration of whether the alternative itself could create significant effects potentially greater than those of the project). EIR at Ap. 1-17, 1-20.

“In total, the alternatives screening process...culminated in the identification and preliminary screening of over 100 potential alternatives or combinations of alternatives. These alternatives range from minor routing adjustments to SDG&E’s proposed 500 kV and 230 kV project routes, to entirely different transmission line routes, to alternate system voltages, and system designs.” EIR at Ap. 1-6. Of these, 27 alternatives were chosen for detailed analysis in the EIR. EIR at Ap. 1-6. The EIR explains that two categories of alternatives were eliminated from detailed consideration – those that clearly did not meet Sunrise’s basic project objectives and those that were infeasible. EIR at Ap. 1-7.

The EIR analyzed 27 different project alternatives in detail and each focused on “lessening any significant effects of the project.” CAL. CODE REGS. tit. 14, § 15126.6(b). Specifically, the EIR contains analysis of different routes (link by link, along the project (i.e., northern route) and a Southern route), evaluates non-wires alternatives (i.e., Aspen’s new in-area

renewable generation and Aspen's new in-area all source generation alternatives), evaluates alternatives focused on power generation and transmission from outside the Imperial Valley (i.e., the Aspen's LEAPS transmission-only and Aspen's LEAPS generation and transmission alternatives), and Aspen's no project/no action alternative. EIR at ES-36. This range of alternatives allowed the Commission to compare impacts from different routes (i.e., northern or southern) for transmission lines from Imperial Valley. The environmentally superior route was then compared to the environmental impact of Aspen's LEAPS transmission-only and transmission and generation alternatives and Aspen's non-wires alternatives. *See, e.g.*, Decision at 254 [comparing non-wire and Aspen's LEAPS alternatives to the environmentally superior southern route]; ES-74 to ES-78 [comparison of alternatives]. The project range of alternatives was more than reasonable under the law.

Not only does the EIR contain an exceptionally broad range of alternatives, satisfying the CEQA standard, the analyses of the alternatives goes beyond CEQA's mandates. *See Residents Ad Hoc Stadium Com. v. Board of Trustees*, 89 Cal.App.3d 274, 286 (1979) ["The discussion of alternatives need not be exhaustive, and the requirement as to the discussion of alternatives is subject to a construction of reasonableness. The statute does not demand what is not realistically possible given the limitation of time, energy, and funds."]; *see also No Slo Transit Inc. v. City of Long Beach*, 197 Cal.App.3d 241, 260 (1987) ["an EIR does not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated."].

For example, the EIR analyzes Aspen's LEAPS transmission only and LEAPS generation and transmission alternatives' impacts in 15 impact areas, including land use, biological resources, water resources, air quality, and public health, for 307 pages. *See* EIR at § E.7.2 [analyzing environmental impacts of Aspen's LEAPS generation and transmission alternative].

A similar analysis is done for each alternative. *See, e.g.*, EIR at § E.1.2, *et seq.* [analyzing environmental impacts of Aspen’s Interstate 8 route alternative]; *id.* at § E.5.2, *et seq.* [analyzing environmental impacts of Aspen’s new in-area renewable generation alternative]; *id.* at § E.6.2, *et seq.* [analyzing impacts of Aspen’s new in-area new all-source generation alternative].

Nevertheless, applicants contend that the EIR should have also considered alternatives that they concocted. Specifically, CBD argues (at 11) that the EIR should have considered an “I-8 corridor alternative.” UCAN argues (at 94) that the “UCAN No Action Alternative” should have been discussed. The EIR’s discussion of alternatives did not need to include either alternative. Moreover, in some cases, the suggested alternatives’ components were in fact analyzed. The Commission need not revisit the alternatives analysis.

**a. The I-8 corridor alternative was properly rejected from consideration in the EIR**

Despite the EIR’s consideration of 27 project alternatives, CBD (at 11) claims the EIR is deficient for failure to “seriously consider” its proposal to place the transmission lines underground “inside the footprint of Interstate 8.” CBD is incorrect. The Interstate 8 route CBD proposed was absolutely evaluated and appropriately rejected. That is all CEQA requires.

Alternative sites are only feasible when the project applicant can reasonably acquire control, or otherwise have access to it. CAL. CODE REGS. tit. 14, § 15126.6(f)(1) [defining feasibility of alternative site as “whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site...”]; *see Citizens of Goleta Valley*, 52 Cal.3d at 574; *Save Our Residential Env’t v. City of West Hollywood*, 9 Cal.App.4th 1745, 1753 n.1 (1992) [holding that evidence the applicant had no ability to acquire alternative site was sufficient to show that they were not feasible and properly excluded from discussion in the EIR].

The record contains substantial evidence that SDG&E could not reasonably control, acquire or otherwise access the Interstate 8 right-of-way. For one, the California Department of Transportation (“Caltrans”) has a written policy against permitting longitudinal easements within freeway rights-of-way. Another is the Campo Kumeyaay Nation’s (“Tribe”) stated opposition to Sunrise running across its sovereign lands held in trust for the Tribe by the United States. It was neither necessary nor even reasonable for the EIR to assume that SDG&E could have overcome either Caltrans’ or the Tribe’s stated objections to Sunrise. As such, CBD’s proposed alternative was properly excluded from further consideration.<sup>52</sup>

**i. The Caltrans policy against longitudinal easements makes acquiring the easement infeasible**

Caltrans is authorized to decide when an encroachment into a highway’s right-of-way is allowed. CAL. STS. & HIGH. CODE § 709 [“The department shall exercise a reasonable discretion in acting on applications of utilities for permits to occupy freeways for longitudinal locations of facilities, as may be required for the proper discharge of their services to the public.”]. Caltrans’ policy provides that “new utilities will *not* be permitted to be installed longitudinally within the access control lines of any freeway or expressway...” EIR at 4-818 [citing Caltrans Project Development Procedures Manual, Chapter 17, Encroachment in Caltrans’ Right of Way, at EIR Appendix 1, Attachment 1B] [emphasis added]. Since Caltrans’ policy prohibits the installation of utilities within rights-of-way, SDG&E could not reasonably acquire control of the easement necessary to underground the transmission lines.

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<sup>52</sup> Even if the Tribe and Caltrans did not object to this alternative, the EIR did not have to consider it because the Commission is not obligated to consider every proposed alternative in order to comply with CEQA. *Mira Mar Mobile Community v. City of Oceanside*, 119 Cal.App.4th 477 (2004) [EIR need not consider every conceivable variation of alternatives stated].

The test is not, as CBD puts it, whether there is a legal bar to the alternative site, but whether, as stated above, SDG&E could reasonably acquire control, or otherwise have access to the right-of-way. *Citizens of Goleta Valley*, 52 Cal.3d at 574. *Uphold Our Heritage v. Town of Woodside*, 147 Cal.App.4th 587 (2007), cited by CBD, is inapposite because it did not deal with the acquisition of an alternative site, but addressed the question of whether there was a legal restraint on the Town's ability to approve the rehabilitation or deny the demolition of an historic structure. *Id.* at 602. Similarly, whether the Commission can override Caltrans' decision is not the test for feasibility.<sup>53</sup> CBD's alternative was properly rejected.

**ii. The presence of sovereign Indian nations along the proposed route makes acquiring an easement along Interstate 8 infeasible**

CBD's proposed route along Interstate 8 would require it to pass through both La Posta and Campo reservation lands held in trust by the United States. EIR at H-99; *see also* Ex. SD-36 at 10.2 to 10.7; Trexel, T.4095:1-4096:14.

SDG&E could not reasonably acquire rights to operate within these lands because the Campo Tribe stated on the record that it would not grant such an easement, and SDG&E has no legal authority to condemn Indian lands held by the United States in trust for the Tribe. *United States of America v. Pend Oreille Public Utility District #1*, 28 F.3d 1547, 1551-52 (9th Cir. 1994) ("Congress has the exclusive right to extinguish Indian title to lands, and has not

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<sup>53</sup> CBD argues (at 12) that Caltrans' authority to prohibit the placement of utilities within right-of-ways is subordinate to the Commission's authority under Section 661 of the Streets and Highways Code. Section 661 only provides that the Streets and Highways Code does "not limit the powers and duties vested by law in the [Commission], and in the event of any conflict with regard to the powers and duties given to [Caltrans]..., those of the Public Utilities Commission shall prevail." CAL. STS. & HIGH. CODE § 661. The Public Utilities Code does not grant the Commission authority to place utilities within freeway right-of-ways. *See generally* P.U. CODE §§ 201, *et seq.* Accordingly, there is no conflict with respect to the Commission's and Caltrans' powers and duties. Caltrans' authority prevails.

authorized condemnation of land held in trust by the United States for the benefit of the Tribe”) (citations omitted); 25 C.F.R. § 169.3(a) (“No right-of-way shall be granted over and across any tribal land,<sup>54</sup> nor shall any permission to survey be issued with respect to such lands [by the federal Bureau of Indian Affairs], *without the prior written consent of the tribe.*”) (emphasis added); *see also* Ex. SD-36 at Attachment 10-1 (letter from Campo Tribe opposing Sunrise and refusing permission to engage in survey work on the Reservation); EIR at ES-62; *id.* at 3-124 [“The [Campo Tribe] objects to the Interstate 8 Alternative because of the significant impacts to the [Campo Tribe]...]; *id.* at 3-120 [“The failure to recognize tribal jurisdiction and authority is most egregious, as it relates to the [Tribe], in [the] Section...addressing Land Use for the Interstate 8 Alternative.”]. Since (i) the Tribe retains sovereign rights over encroachments; (ii) SDG&E has no legal authority to condemn lands held in trust (and thus owned by) the United States; and (iii) the Tribe has stated on the record that no such easement would be granted, SDG&E could not reasonably acquire control of the land necessary to undertake CBD’s Interstate 8 alternative. EIR at H-99 [“In the absence of tribal easements, the Interstate 8 Alternative and the Campo North Option would not be feasible.”].

**b. The EIR is not defective for failing to discuss UCAN’s illusory “No Action Alternative”**

The EIR’s analysis of Aspen’s no project/no action alternative was sufficient. CEQA requires an EIR’s alternatives discussion to include a no-project alternative. The no-project alternative allows decision-makers to compare the environmental impacts of approving the proposed project with the effects of not approving it. CAL. CODE REGS. tit. 14, § 15126(e)(1). A no-project analysis should reflect whether a project’s denial would preserve existing

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<sup>54</sup> Under federal right-of-way regulations, “tribal land” means “land or any interest therein, title to which is held by the United States in trust for a tribe or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance.” 25 C.F.R. § 169.1.

environmental conditions or would lead to other changes in the environment. *Id.* at § 15126.6(e)(2).

Aspen’s no project/no action alternative assumes that Sunrise would not be built. EIR at E.8-1. The EIR assumed that Sunrise’s absence would lead to the development of other energy generators and transmission lines. *Id.* However, because it is not possible to predict with any degree of certainty what those projects would be, Aspen’s no project/no action alternative “is not a definite development scenario but offers a menu of predictable actions (not all of which would occur in the absence of Sunrise).” *Id.* Aspen’s no project/no action alternative assumed the following energy-related developments: (i) increased photovoltaic and distributed generation deployment; (ii) new conventional and renewable generation; and (iii) new transmission lines including the LEAPS transmission project and Path 44 upgrades. *Id.* The EIR then considered the environmental impacts that these projects would cause. *See id.* at §§ E.8.2-E.8.15 [analyzing environmental impacts of the components of Aspen’s no project/no action alternative]. This analysis provided the Commission with a complete picture of what environmental changes could occur if Sunrise was not approved.

Notwithstanding the above, UCAN now claims (at 94) that the EIR was deficient because it did not analyze the proffered “UCAN No-Project alternative” and the assumptions underlying Aspen’s no project/no action alternative were not modified as requested by UCAN. Both arguments are without merit.

**i. UCAN never offered a no-project alternative**

As noted above, UCAN did not present a “No Action Alternative” to the Commission for consideration. *See* UCAN at 95-101; *see also* EIR at 3-813-3-826. While UCAN never articulated a coherent “No Action Alternative,” it did present a grab bag of modifications and

changes to Aspen’s no project/no action alternative that it claimed would be environmentally superior to Aspen’s no project/no action alternative. *See* EIR at 3-831 [commenting on range of distributed generation that could be developed]; *id.* at 3-835 [commenting that Draft EIR did “not appear to incorporate [Path 44’s viability] into its assessment”]; *id.* at 3-828 [suggesting that upgrades to the Miguel Substation should have been included in Aspen’s No Project/No Action Alternative]; *id.* at 3-831-2 [criticizing estimates of solar photovoltaic generation for the San Diego region]. As discussed below, the Commission did not need to, and in fact properly refused to consider, this myriad of modifications to Aspen’s no project/no action alternative.

**ii. The Commission was not required to consider multiple variations of a no-project alternative**

The EIR analyzed a no project alternative — Aspen’s no project/no action alternative. UCAN alleges the no-project alternative analysis is defective because its modifications to the analyzed alternative were not incorporated. UCAN is wrong. First, CEQA does not require analysis of multiple variations of the same alternative.<sup>55</sup> Second, the relative advantage of UCAN’s proposals could be determined from Aspen’s no project/no action alternative. The EIR no-project analysis complied with CEQA.<sup>56</sup>

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<sup>55</sup> In fact, Aspen’s no project/no action alternative includes more projects and more actions than any of the other seven alternatives retained in the EIR for further analysis. SDG&E Phase 2 Reply Brief at 8-9.

<sup>56</sup> The EIR recognizes the difficulty of identifying a no-project alternative here. “[I]dentification of a definite No Project Alternative development scenario is not possible, because specific certain consequences cannot be identified without undue speculation. However, absence of the Proposed Project may lead SDG&E or other developers to pursue other predictable actions to achieve the objectives of the Proposed Project or similar competitive objectives.” EIR at C-136. Reasonably foreseeable actions include: (1) the continued operation of existing transmission grid and power generating facilities; (2) continued growth in electricity consumption and peak demand within the SDG&E service territory, which would require additional electricity to be generated within San Diego County or to be imported by existing or

An EIR does not need to include multiple variations of alternatives already considered in the EIR. In *Village Laguna*, Orange County approved a project with 20,000 dwelling units after considering numerous alternatives including zero, 7,500, 10,000 and 25,000 dwelling units. *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors*, 134 Cal.App.3d 1022, 1028 (1982). Opponents charged that the range of alternatives considered in the EIR was inadequate. The court disagreed, holding that there could be literally thousands of alternatives based on the number of dwelling units. *Id.* Specifically, the court rejected opponents claim that the “obvious alternative” of 15,000 units should have been discussed because the relative advantage and disadvantage of this alternative could be determined from the alternatives the EIR discussed. *Id.*; see also *Mira Mar Mobile Community*, 119 Cal.App.4th 477 [EIR need not consider every conceivable variation of alternatives stated].

The Commission’s decision not to consider a no-project alternative that included the rate of photovoltaic development or degree of distributed generation that UCAN posited was appropriate. The EIR’s analysis provided the Commission and the public with a complete sense of the potential environmental impacts if Sunrise was not built. As in *Village Laguna*, there are thousands of different options for energy development and transmission absent Sunrise’s development. The relative advantage and disadvantage of each could be determined from Aspen’s no-project/no action alternative. *Village Laguna*, 134 Cal.App.3d at 1028. The EIR, therefore, was not inadequate for failing to consider the multitude of permutations UCAN suggests should have been discussed.

Lastly, to the extent that UCAN’s proposed modifications sufficiently deviated from Aspen’s no project/no action alternative the EIR studied, the EIR explained why those

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modified facilities; and (3) certain demand-side and supply-side actions beyond the levels currently planned by SDG&E. EIR at C-136.

modifications were properly excluded from the assumptions underlying Aspen’s no project/no action alternative. *See* Section VII.E.2, below, for a discussion of why the EIR’s responses to comments were sufficient to exclude UCAN’s suggestions on Aspen’s no project/no action alternative.

## **2. The Commission rejected infeasible alternatives based on substantial evidence**

CEQA requires public agencies to analyze feasible alternatives if they would substantially lessen significant effects of the project. CAL. PUB. RES. CODE § 21002. “Feasible” is defined by CEQA as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors. *Id.* at § 21061.1. Further, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” *City of Del Mar*, 133 Cal.App.3d at 417. An alternative is infeasible where it is inconsistent with the project objectives. *Sierra Club v. County of Napa*, 121 Cal.App.4th 1490, 1503 (2004). An infeasibility finding must be supported by substantial evidence in the record. *Id.* Here, substantial evidence supports the Commission’s infeasible alternatives findings.

### **a. Aspen’s new in-area renewable alternative is infeasible**

CBD attacks (at 18-19) the Commission’s finding that Aspen’s new in-area renewable generation alternative is infeasible. Aspen’s new in-area renewable generation alternative envisions 1000 MW of wind, solar thermal, solar photovoltaics, and biomass/biogas being created by facilities in San Diego County. EIR at E-235. Relying on substantial evidence in the record, the Commission rejected this alternative as infeasible because it is inconsistent with the

Commission's goals and policies and fails to meet the basic project objectives to the same degree as the approved Final Environmentally Superior Southern Route.<sup>57</sup>

Rather than point to substantial evidence that Aspen's new in-area renewable generation alternative is feasible, CBD alleges (at 21) that the Commission's substantial evidence is "contradicted by the record" and irrelevant. Such allegations fail to satisfy CBD's burden or undercut the Commission's infeasibility finding. The question under CEQA is whether the Commission's infeasibility finding is supported by substantial evidence in light of the whole record. CAL. PUB. RES. CODE § 21168. It is.

**i. The in-area renewable alternative conflicts with the Commission's goals and policies**

In considering Aspen's new in-area renewable generation alternative's feasibility, the Commission properly considered California's and the Commission's broader policy goals related to greenhouse gas emissions along with the project objectives and SDG&E's project greenhouse gas goals. In so analyzing, the Commission determined that the alternative was infeasible. Decision at 254; EIR at 2-6 [Commission's basic project objective 3: to accommodate the delivery of renewable energy to meet State and federal renewable energy goals from geothermal and solar resources in the Imperial Valley and wind and other sources in San Diego County]; *id.* [SDG&E's project objectives include providing transmission capability for Imperial Valley renewable resources for SDG&E customers to assist in meeting or exceeding California's 20% renewable energy source mandate by 2010 and the Governor's proposed goal of 33% by 2020]. The Commission's infeasibility finding is supported by substantial evidence.

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<sup>57</sup> CBD argues (at 19) that the Commission erred in finding Aspen's new in-area renewable generation alternative infeasible based on costs. The Commission, however, did not reject this alternative solely based on costs. Decision at 240.

Under CEQA, an agency considers a broad range of factors in determining whether an alternative is infeasible. *See* CAL. PUB. RES. CODE §§ 21061.1 [defining “feasible”], 21081(a)(3); CAL. CODE REGS. tit. 14, § 15091(a)(3). After weighing these factors, the agency may conclude that an alternative is infeasible from a policy standpoint and reject it on that ground. *See Defend the Bay v. City of Irvine*, 119 Cal.App.4th 1261 (2004) [upholding infeasibility findings on policy grounds]; *City of Del Mar*, 133 Cal.App.3d at 417 [confirming denial of alternative as infeasible because of conflict with city’s growth management program]. Where an alternative is rejected for policy-based reasons, factual determinations on environmental impacts are not required. *No Slo Transit, Inc.*, 197 Cal.App.3d at 257.

Here, the Commission concluded that Aspen’s new in-area renewable generation Alternative is infeasible because, among other reasons, it would not meet the Commission’s commitment to achieve greenhouse gas reductions in the energy sector through the procurement of renewable energy at 33% RPS levels. Decision at 255. Specifically, the approved Final Environmentally Superior Southern Route will facilitate the development of over 1900 MW of renewable energy in the Imperial Valley between 2011 and 2015. Decision at 2, 6, 187, 255. In comparison, Aspen’s new in-area renewable generation alternative assumes that it would only facilitate development of 1000 MW of renewable energy in the San Diego region and 900 MW of those would be intermittent solar and wind sources. Decision at 255-56; DEIR at E.5-1; McClenahan, Ex. SD-35 at 2.58-2.60; SDG&E Phase 2 Opening Brief at 184. Moreover, the alternative would not facilitate the development of geothermal energy resources, which are high capacity and consistent. In comparison, the approved Final Environmentally Superior Southern Route would facilitate the development of 1600 MW of geothermal resources in the Imperial Valley. *Id.* at 256; SDG&E Phase 2 Opening Brief at 328; SDG&E Phase 2 Reply Brief at 235.

The Commission properly found Aspen's new in-area renewable generation alternative infeasible because it would not meet the Commission's goal of promoting renewable energy development to the same degree as Sunrise.

A further Commission goal better met by the Final Environmentally Superior Southern Route than Aspen's new in-area renewable generation alternative is the achievement of the most economic benefits for consumers as possible. Decision at 257. The Commission's mission is to provide reliable utility service and infrastructure and reasonable rates to California's citizens. See, "CPUC Mission" at <http://www.cpuc.ca.gov/PUC.aboutus/pucmission.htm>. Sunrise would generate net benefits of over \$115 million per year for ratepayers if the project operates under a renewable procurement framework that reaches 33% RPS levels. Decision at 257. It was reasonable for the Commission to conclude that Sunrise would operate at these levels within a reasonable period of time based on the substantial evidence before it. Specifically, the record shows that of over 1900 MW of renewable energy is expected to be developed in the Imperial Valley between 2011 and 2015. Strack, Ex. SD-16, Table 2 at 13; SDG&E Phase 2 Opening Brief at 100, 149.

In contrast, the evidence before the Commission indicates that Aspen's new in-area renewable generation alternative would result in \$260 million *less in net benefits* to ratepayers because of the higher level of renewable resources in the alternative as opposed to the approved Final Environmentally Superior Southern Route. Decision at 257 [citing SDG&E Exhibit SD-142, Table 11-6, 14.].

The Commission did not abuse its discretion in rejecting Aspen's new in-area renewable generation alternative as infeasible. Its decision is supported by substantial evidence and need not be revisited.

**ii. Aspen’s new in-area renewable generation alternative is inconsistent with the basic project objectives**

The EIR identifies three basic project objectives for Sunrise: (i) to maintain reliability in the delivery of power to the San Diego region; (ii) to reduce the cost of energy in the region; and (iii) to accommodate the delivery of renewable energy in order to meet State and federal renewable energy goals from geothermal and solar resources in the Imperial Valley and wind and other sources in San Diego County. EIR at ES-22.

The Commission concluded, based on substantial evidence, that Aspen’s new in-area renewable generation alternative did not meet one of the three basic project objectives for Sunrise – it did not facilitate delivery of power from new Imperial Valley renewable sources. Decision at 240; SDG&E Phase 2 Opening Brief at 201; SDG&E Phase 2 Reply Brief at 127-128; CAISO Phase 2 Opening Brief at 38. CBD attempts to downplay the importance of meeting this basic project objective (at 18), but CBD cannot pick and choose the basic project objectives that an alternative should achieve based on the alternative it prefers. Where an alternative does not fully meet a project’s objectives, it is infeasible. *See Association of Irrigated Residents v. County of Madera*, 107 Cal.App.4th 1383, 1401 (2003) [upholding finding of infeasibility where reduced-sized project would not fully meet project objectives]. As Aspen’s new in-area renewable generation alternative does not facilitate the delivery of renewable energy from the Imperial Valley, it is infeasible.

CBD argues that because Aspen’s new in-area renewable generation alternative meets “most” of the basic project objectives it is feasible. CBD, however, relies (at 19) on inapplicable CEQA guidelines and cases. The cases and Guideline sections CBD cites address whether an EIR contained a reasonable range of alternatives. *See In re Bay Delta etc.*, 43 Cal.4th 1143, 1163 (2008) [analyzing whether EIR contained reasonable range of alternatives; not whether

alternative was infeasible for purposes of rejecting it under Public Resources Code Section 21081.1(a)(3)]; *Mira Mar Mobile Community*, 119 Cal.App.4th at 489 [same]. Yet, CBD does not argue that Aspen's new in-area renewable generation alternative should have been included in the EIR, it clearly was. CBD argues it was improperly rejected as infeasible despite meeting "most" of the project's objectives. As discussed above, an alternative is infeasible unless it "fully meets" a project's objectives. *Association of Irrigated Residents*, 107 Cal.App.4th at 1401. The Commission's conclusion that Aspen's new in-area renewable generation alternative does not fully meet all of the basic project objectives is supported by substantial evidence. The Commission's rejection of the alternative was proper under CEQA.

**iii. Aspen's in-area renewable generation alternative would have significant unmitigable environmental impacts**

Aspen's new in-area renewable generation alternative would require new transmission lines to be built across Anza-Borrego Desert State Park ("ABDSP"). *See* EIR at E.5-5 (describing that either a new 138 kV transmission line would be placed underground within ABDSP or under the second option the existing 69 kV transmission line through ABDSP would be upgraded to 138 kV including the replacement of existing wood poles with tubular or lattice steel poles and across undeveloped VID preserve land to Warners Substation); *id.* at E.5-25 to E.5-26 (these transmission options would traverse wilderness areas within ABDSP as well as Peninsular Bighorn Sheep designated critical habitat); *id.* ES-76 ("The solar thermal component would have significant visual and recreation impacts due to its location in the Borrego Valley, highly visible from surrounding Anza-Borrego Wilderness areas."). Installation of a transmission line in a State park would create a significant impact in the ABDSP, one that Sunrise will not create. *Baranowski*, Ex. SD-35 at 2.63; SDG&E Phase 2 Opening Brief at 201-202; SDG&E Phase 2 Reply Brief at 128.

Even CBD agrees that installation of a transmission line in the ABDSP would create a significant impact and should be avoided. CBD stated in its draft EIR comments: “We are opposed to any action that removes or infringes on wilderness lands, including their use as pull sites, access roads, and for other activities associated with power line construction, operation, or maintenance.” EIR at 3-1323. Further, “any and all impacts to state wilderness, and to state parks, from the proposed project or any alternatives must be considered significant and unmitigable.” EIR at 3-1325. The Commission agreed with CBD’s conclusion in this regard, finding “all of the routes that go through Anza-Borrego to be environmentally unacceptable and infeasible.” Decision at 2.

**b. The Commission properly rejected Aspen’s all source generation alternative, Aspen’s LEAPS transmission only, LEAPS generation and transmission and the no project/no action alternatives as infeasible**

The Commission found that the balance of the remaining environmentally superior alternatives were infeasible based on substantial evidence. Neither Aspen’s new all-source generation alternative, Aspen’s LEAPS transmission only alternative, nor Aspen’s no project/no action alternative meet Sunrise’s basic project objectives. Their failure to meet the basic project objectives and the Commission’s broader policy goals makes them infeasible.

**i. Aspen’s new in-area all source generation alternative does not meet the Commission’s goal of reducing greenhouse gas emissions**

An alternative’s failure to meet an agency’s broad policy goal is a basis for finding infeasibility. *No Slo Transit, Inc.*, 197 Cal.App.3d at 257. The EIR concluded that Aspen’s new all-source generation alternative would result in substantially more greenhouse gas emissions than Sunrise and the other considered alternatives. EIR at H-138 to H-139. Therefore, the Commission properly rejected this alternative as infeasible for failing to meet the Commission’s

goal of reducing greenhouse gas emissions. *See* Decision at 1219 (rejecting alternative as “not feasible for purposes of meeting California’s broader policy goals, including reduction of GHG emissions.”); *see also* Decision, Ap. E, at E-235 (finding Aspen’s new in-area all source generation alternative infeasible for the specific economic, social, and technological reasons detailed in the Decision).

**ii. Aspen’s LEAPS transmission-only and LEAPS generation and transmission alternatives do not meet Sunrise’s basic project objectives**

Alternatives are infeasible when they do not fully meet a project’s basic objectives.

*Association of Irrigated Residents*, 107 Cal.App.4th at 1401. Aspen’s LEAPS transmission-only alternative does not meet the three basic project objectives the Commission and the Bureau of Land Management identified for Sunrise.

Aspen’s LEAPS transmission-only alternative does not increase reliability, does not reduce energy costs, and does not facilitate the development of renewable energy resources. In fact, Aspen’s LEAPS transmission-only alternative does not facilitate the development of renewable energy at all because it “does not terminate in a transmission constrained area with undeveloped renewable resource potential.” Decision at 247; *see* EIR at Figure E.7.1-1 [illustrating Aspen’s LEAPS transmission-only alternative route]. In other words, unlike Sunrise, Aspen’s LEAPS transmission-only alternative would merely be a transmission line running between two points. Sunrise, on the other hand, would terminate in the Imperial Valley, an area with renewable resource potential and limited existing transmission capabilities. Unlike Sunrise, this alternative would require the completion of other transmission projects in order to deliver renewable energy from the Imperial Valley. EIR at E.7-4. Therefore, the Commission concluded that Aspen’s LEAPS transmission-only alternative did not meet Sunrise’s basic project objectives.

Similarly, the Commission concluded that Aspen’s LEAPS generation and transmission alternative has more significant impacts than Sunrise. EIR at H-119-120 [Aspen’s LEAPS generation and transmission alternative “would have substantially greater environmental impacts than the LEAPS Transmission-Only Alternative” and Sunrise]. As such, it is not an environmentally superior alternative and the Commission properly rejected it. *See Laurel Heights I*, 47 Cal.3d at 403 [purpose of an EIR’s discussion of alternatives is to identify ways to **reduce** or **avoid** significant environmental impacts]. Moreover, the Commission determined that this alternative has the same impacts as the LEAPS transmission-only alternative (failure to meet Sunrise’s basic project objectives) with added impacts from construction and operation of the facility. Decision at 251. Thus, Aspen’s LEAPS generation and transmission alternative is infeasible as well.

Since the Commission’s conclusion is supported by substantial evidence, its dismissal of Aspen’s LEAPS transmission-only and LEAPS generation and transmission alternatives as infeasible was correct.

### **3. The EIR’s discussion of alternatives was adequately detailed**

Contrary to UCAN’s contention, an EIR’s analysis of alternatives need not contain every possible piece of data, detail or information requested by project opponents. CEQA only requires enough information to reasonably inform the public and decision makers. *Laurel Heights I*, 47 Cal.3d at 406 [“the analysis must be specific enough to permit informed decision making and public participation . . . The need for thorough discussion and analysis is not to be construed unreasonably, however, to serve as an easy way of defeating projects. ‘Absolute perfection is not required.’”] (citations omitted).

Here, the EIR examined 27 project alternatives, including 18 alternative route segments along the project route, two-non wires alternatives, a no-project/no action alternative, and various other routes in significant detail. EIR at ES-34. In *Mira Mar Mobile Community*, 119 Cal.App.4th at 491, an EIR’s alternatives discussion “satisfied CEQA because it allowed decisionmakers and the public to evaluate the comparative merits of the proposed project with two low-density and one high-density alternatives on an impact-by-impact basis in eight environmental categories.”

UCAN contends that the alternatives analysis was deficient because there was no cost analysis of each alternative. CEQA is not concerned with a project’s economic effects or costs that do not contribute to a secondary physical impact. CAL. CODE REGS. tit. 14, §§ 15064(e) and (f)(6), 15131(a), 15358(b); *see also* CAL. PUB. RES. CODE § 21060.5; CAL. CODE REGS. tit. 14, § 15360. As the EIR explains:

The extent to which each alternative accomplishes the objectives, consideration of the costs and benefits, and the specific flexibility or effectiveness of each alternative, is not addressed in the EIR/EIS but will be considered in the general proceeding. Analyzing the degree to which any alternative, including the No Project/No Action Alternative, reduces energy costs is beyond the scope of the EIR/EIS.

EIR at 3-852, Response B0011-10; *see also* EIR at 3-850, Response B0011-2; *see also* EIR at 2-68, General Response 12 [explaining that neither NEPA nor CEQA require evaluation of costs of the project and citing CAL. CODE REGS. tit. 14, § 15131].

The cost information UCAN seeks is irrelevant to CEQA’s inquiry and, in any event, unnecessary for the Commission to compare the relative environmental impacts of the analyzed alternatives with Sunrise’s impacts. The EIR is not deficient for not considering this information.

## **F. The EIR properly responded to all public comments**

Both CBD and UCAN allege that the EIR and the Commission's Decision is defective for failing to properly address their respective comments. Yet, the EIR contains a reasonable response to each comment. Instead, the applicants' real complaint is that the Commission did not adopt their comments. Nothing in CEQA requires the Commission to do so.

CEQA requires responses to comments by the lead agency to "significant environmental points" raised in timely public comment. CAL. CODE REGS. tit. 14, § 15132. Specifically,

[C]ourts have held that the public agency must provide, in the final EIR, written responses that evince a good faith and reasoned analysis why specific comments and objections were not accepted. The public agency need not respond to every comment raised in the course of the review and consultation process, but it must specifically respond to the most significant environmental questions raised in opposition to the project.

*Ebbetts Pass Forest Watch v. Dept. of Forestry and Fire Protection*, 123 Cal.App.4th 1331, 1356 (2004) [quotations and citation omitted]. In determining the adequacy of responses, the *Ebbetts* decision looked at several factors: whether the responses are "totally conclusory"; whether the responses contain "specific information as to the basis for rejecting the objection"; whether the responses are supported with "empirical information, scientific authorities, and explanations"; and, if data is unavailable, whether that is explained. *Id.* at 1357-58.

"Where a general comment is made, a general response is sufficient." *Browning-Ferris Industries*, 181 Cal.App.3d at 862. Moreover, if a particular comment lacks a sufficient response, a response may be supplied if the answer is found elsewhere in the record. *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal.App.4th 1184, 1194 (2004) (information missing from a response supplied in the record elsewhere).

Here, every timely comment made on the draft EIR was reviewed, considered, and responded to in the final EIR – responses to comments from applicants, their experts and their attorneys alone consumed over 100 pages. CEQA requires nothing more.

### **1. The EIR adequately responded to CBD’s comments**

CBD contends that the EIR contains inadequate responses to its comments on the draft and recirculated draft EIR. As discussed below, the EIR fully and adequately responded to every comment CBD made.

#### **a. The EIR adequately responds to CBD’s comment regarding an Interstate 8 alternative**

In its comment to the recirculated draft EIR, CBD requested (at 11-12) that the EIR consider an alternative that would place the transmission lines underground within Interstate 8’s existing footprint from the community of Boulevard to the Viejas Reservation. Anticipating a response, CBD attempted to dictate what response was unacceptable, stating that “opposition from the California Department of Transportation must not be considered an absolute barrier to the consideration of this potential alternative...” EIR at 4-808. CBD does not determine the adequacy of a response under CEQA.

As noted above, the Interstate 8 proposal was considered in detail (*see* Section VII.E.1.a). The EIR also contains a detailed response to every point raised regarding this proposal. The response states that the Commission met with Caltrans to discuss this proposal. *Id.* In response, Caltrans told the Commission that its regulations prohibit the longitudinal easement necessary to underground the lines. *Id.* Therefore, “[b]ecause Caltrans regulations currently prohibit longitudinal easements within restricted access highways” the EIR concludes that the suggested alternative was not feasible. The response also cites to the relevant Caltrans regulations in the

EIR's appendix. *Id.* This response satisfies CEQA because it is not "totally conclusory," contains specific information for rejecting the proposal, and is supported by substantial evidence in the record. Standing alone, CBD's disagreement with the facts underlying the response does not make the comment inadequate because the conclusion is supported by substantial evidence as discussed *supra*. Moreover, CBD's anticipatory disagreement with a response does not, under CEQA, make the response inadequate. Disagreement alone is irrelevant. The response is more than sufficient under CEQA.

**b. The EIR adequately responds to CBD's comment that Sunrise should have been conditioned on carrying renewable energy**

CBD commented that instead of encouraging the development of renewable resources, Sunrise would promote the increased use of coal and liquefied natural gas, particularly from sources in Mexico. *See* EIR at 3-1336. Specifically, CBD asserted that Sunrise "will free capacity for LNG and increased coal production, thereby increasing GHG emissions." *Id.* CBD then argued that "[a] decrease in emissions is easily achieved by allowing existing fossil fuel contracts on the [Southwest Powerlink] to expire as scheduled in 2011, and replacing the generation with power from the La Rumorosa wind projects or other renewable sources, as determined after appropriate environmental reviews are completed." *Id.* at 3-1337; *see also* EIR at 4-806 [CBD's comments to the recirculated draft EIR, which argued that there is no indication that Sunrise will be required to carry wind power]. The EIR responds to CBD's comments.

Specifically, in response to CBD, the EIR provides a discussion of indirect emissions from energy imports quantified by CAISO. *See* EIR at 3-1621. Section D.11.13.2 of the EIR (at D.11-49) discusses Sunrise's overall operation-phase impacts. Impact AQ-3 analyzes the emissions associated with power plant operations, including the indirect emissions from energy imports. The draft EIR concludes: "Demand for electricity would not change as a result of the

proposed Project, and power generated in response to the demand would occur at some location regardless of whether the proposed Project is approved or disapproved.” EIR at D.11-50. The final EIR added information regarding the CAISO modeling results regarding how Sunrise could change power plant emissions. The final EIR explains that providing certain indirect emissions estimates is difficult since “actual renewable development is slow, RPS projects face many risks and barriers, and California utilities, including SDG&E are now not projected to meet the 20% by 2010 target.” *Id.* “The precise location and quantity of the emission reductions would change over time depending on the ultimate sources of power flowing into the Sunrise Powerlink and other major transmission in the western U.S. ... The level of this benefit, however, depends somewhat on the ability of the new renewable energy sources in Imperial County to be developed, and the timing of these renewable projects is uncertain (see Section B.6).” EIR at D.11-51.

The response to CBD references the analysis of potential power plant emissions changes for Sunrise without any renewable resources from the Imperial Valley. *See* EIR at 3-1621 [Response B0041-50 (renewable generation compliant with RPS could connect anywhere to the CAISO grid)].

The EIR general responses also specifically address CBD’s comments. For example, the EIR analyzes the potential for and status of renewable resource generation in the Imperial Valley, eastern San Diego county and northern Mexico. *See* EIR at 2-30 [General Response GR-5]. The EIR addresses the use of the project by renewable versus fossil fuel generation sources, stating:

SDG&E does not and is not able to claim that the line will carry only renewable power. There is no guarantee that the renewable projects now expected to generate power carried by the proposed Project will be successfully developed. Since the proposed transmission line would carry power from all types of energy

sources (including renewable, nuclear, and fossil fuel), some level of GHG emissions would be attributable to the electricity delivered by the proposed Project. The Draft EIR/EIS (in Section D.11.13.2 [Impact AQ-3]) identifies the difficulties in accurately forecasting the level of GHG reductions because of the uncertain implementation of renewable projects and the inability to precisely predict the ultimate sources of power flowing into the Sunrise Powerlink and other major transmission in the western U.S.

EIR at 2-43. “The conclusion that the Proposed Project would cause an overall net increase in GHG emissions and a significant, unmitigable impact should not be surprising considering that the proposed transmission line does not guarantee any new renewable energy facilities. The level of greenhouse gas reductions for Sunrise depends on the ability of new renewable energy sources to be developed, and the timing of these renewable projects is uncertain.” EIR at 2-44; *see also* EIR at 4-818, Response G0018-4 [responding to CBD’s comments and noting that Sunrise will not carry 100% renewable power, but that the final EIR analyzes how Sunrise would carry power from all types of energy sources (including renewable, nuclear, and fossil fuel)].

The response to CBD’s comments was reasonable, specific and lengthy. CEQA does not require more. CAL. CODE REGS. tit. 14, § 15088(c).

## **2. The EIR adequately responded to UCAN’s comments**

UCAN’s Application For Rehearing provides a litany of comments that it claims the EIR did not respond to. UCAN is wrong; all of its comments have responses. The EIR contains nearly ten pages of responses to UCAN’s comment letter (EIR at 3-850 through 3-858) in addition to the 78 pages of General Responses that respond to many of the points UCAN raised in its comment letter. *See Id.* at 2-1 to 2-78. The Commission’s responses to UCAN’s comments are detailed and provide a reasoned, good faith analysis of UCAN’s comments. CAL. CODE REGS. tit. 14, § 15088(c). Alternatively, UCAN claims that many of the responses were inadequate because the EIR was not changed in response to them or the response indicated a

disagreement with UCAN's position. UCAN is wrong again. That UCAN disagrees with the Commission's disposition of issues raised in the comments does not render the responses inadequate under CEQA.

**a. The EIR fully responded to UCAN's comments regarding a Jacumba to Sycamore Canyon southern route**

UCAN wrongly claims that the EIR did not respond to its comment that the EIR should evaluate a route that would carry transmission lines from a proposed Jacumba Substation to Sycamore Canyon. UCAN at 73-76 ["The DEIR never identifies, let alone addresses, the option of a Southern Route from Jacumba to Sycamore Canyon as an alternative to Sunrise."]; *see* EIR at 3-824 to 3-825. In response, the EIR provides: "Section 5.3.3 (UCAN's Modified Southern Routes) in the RDEIR/SDEIS addresses the option of a [sic] SDG&E building a 500 kV transmission line from Jacumba to Sycamore Canyon as suggested by UCAN in this comment." EIR at 3-851. In fact, the recirculated draft EIR dedicates a whole section to analyzing alternative southern route segments suggested by UCAN, including the option of a line that would begin at the proposed Jacumba Substation instead of the Imperial Valley Substation. *See* RDEIR at § 5.3.3. UCAN's contention that the EIR ignored its comment regarding a Jacumba Substation to Sycamore Canyon could not be more wrong. Ultimately, while UCAN's alleged CEQA violation is framed as a failure to respond to comments, the real complaint is that UCAN does not agree with the response. UCAN's disagreement does not rise to the level of a CEQA violation. *Ass'n of Irrigated Residents*, 107 Cal.App.4th at 1397-98 ["disagree[ment] with the analysis and conclusions reached in [an] FEIR...does not render the FEIR legally insufficient."].

**b. The EIR responds to UCAN's comments concerning Aspen's no project/no action alternative**

UCAN repeatedly noted in its comments on the Draft EIR that Aspen's no project/no action alternative should consider various additional suggested UCAN. UCAN alleges that the EIR's response to UCAN's comments on the draft EIR are "boilerplate language that fails to address the specific points that UCAN raised." As discussed below, the EIR properly and fully responds to each of UCAN's specific points.

**Green Path North Project.**<sup>58</sup> UCAN commented that, "It is certainly appropriate to consider GPN as part of the No Action Alternative..." EIR at 3-821. The EIR responds that, "The Green Path Coordinated Projects were considered as a potential alternative, but eliminated as shown in the Draft EIR/EIS Section C, Table C-3, and in Section 4.9.27 in Appendix 1 (Alternatives Screening Report) of Volume 6 of the Draft EIR/EIS, because it would not meet most of Sunrise's basic project objectives. The comment does not provide any new information demonstrating how Green Path North would satisfy most of the basic project objectives, as required for CEQA analysis of any alternative." EIR at 3-850 to 3-851, Response B0011-4. Moreover, as the response indicates, the Green Path North project was included in the Green Path Coordinated Projects analyzed in the EIR as a potential "system alternative" to Sunrise. EIR at Ap. 1-219.

The EIR explains that the Green Path Coordinated Projects were eliminated from detailed consideration in the EIR because although the projects are feasible and would improve the deliverability of renewable resources from Imperial County to the Los Angeles area, absent

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<sup>58</sup> The proposed Green Path North project is born out of a partnership between the Los Angeles Department of Water and Power and the Imperial Irrigation District to develop a new 230 or 500-kilovolt transmission line from a proposed Imperial Irrigation District Devers Substation to a proposed Los Angeles Department of Water and Power Hesperia Substation.

Sunrise, “no facilities would be provided to expand the deliverability of this power to load centers in San Diego County. Any benefits this alternative could provide to the SDG&E service area would be ancillary to its intended purposes and would depend upon other upgrades such as the proposed project or upgrades within SCE’s service territory. Only in combination with an interconnection from SDG&E territory to SCE or IID might this alternative marginally achieve any of the three basic objectives.” Similarly, “the Green Path Coordinated Projects...are not considered to be more likely to occur in the absence of [Sunrise], so they are not considered in the No Project Alternative scenario.” EIR at C-142.

The EIR contains detailed responses to UCAN’s comment on the Green Path North project’s inclusion in Aspen’s no project/no action alternative.

**Dixieland Project and Highland-Knob-North Gila Line.** UCAN comments that both of these projects should have been analyzed in Aspen’s no project/no action alternative EIR at 3-822 now complains that the EIR’s response was in error. They were:

Similar to Green Path North (see Response to Comment B0011-4), the projects identified by the comment for the IID service territory are not considered alternatives to the Proposed Project because they would have limited ability to satisfy basic project objectives, as required for CEQA analysis of any alternative. While the upgrades proposed by IID would improve the deliverability of renewable power from IID to the SCE territory, the IID projects would not support the other basic objectives of improving reliability or reducing the cost of energy in the San Diego territory. The IID projects would not expand the deliverability of this power to load centers in San Diego County.

EIR at 3-851, Response B0011-5. This response is adequate because: (i) it details why the comment is being rejected; and (ii) provides the evidence to support it. *See Ebbetts Pass Forest Watch*, 123 Cal.App.4th at 1356.

UCAN also complains the response was in error because it disagrees with it. The response is supported by substantial evidence. It is not enough for UCAN to summarily state

that the conclusion is wrong. Mere disagreement with the EIR's analysis does not render the EIR "legally insufficient." *Ass'n of Irrigated Residents*, 107 Cal.App.4th, at 1397-98.

**Path 44 Upgrades.** UCAN repeats nearly verbatim in its Application for Rehearing its complaint that the EIR did not consider the Path 44 Upgrades. *Compare* UCAN Application at 93-94, *with* EIR at 3-835. Yet, the EIR's response demonstrates that the EIR did in fact incorporate the Path 44 Upgrades into Aspen's no project/no action alternative. EIR at 3-854-55. The EIR explains that while this alternative had originally been evaluated for consideration as a stand-alone alternative, in the end was considered as part of Aspen's no project/no action alternative. Specifically the Path 44 Upgrades were not considered a separate alternative because Sunrise's "objectives would not be fully met by this alternative because an incremental increase of approximately 300 MW would provide only a short-term solution to SDG&E's need for additional import capability." EIR at Ap. 1-235. This response is sufficient and, again, UCAN's mere disagreement with the conclusion does not render the EIR deficient. *Ass'n of Irrigated Residents*, 107 Cal.App.4th, at 1397-98.

**c. The EIR addressed the potential use of the Southwest Powerlink to deliver renewable resources**

UCAN also alleges that its comment regarding the existing Southwest Powerlink line did not receive a complete response (at 78).

The EIR directly responds: "The comment notes that the existing SWPL could be used to achieve the basic project objective of delivering renewable power. No revision is needed to the Draft EIR/EIS because it does not contradict this position. The Draft EIR/EIS includes analysis of non-wires alternatives that would partially rely on the existing SWPL to deliver renewable power, where available. Other local generation of renewable energy would also be used in the non-wires alternatives to supplement SDG&E's efforts to comply with the RPS." EIR at 3-852,

Response B0011-9; *see* EIR at C-70, E.5-12 [analyzing potential for wind project's interconnection with the existing Southwest Powerlink].

Again, UCAN's real complaint is that its comment was not adopted: "[w]hile UCAN is pleased that the EIR appears not to disagree with UCAN's assertion, it did not far enough by conceding the point." (at 78) UCAN's complaint shows a fundamental misunderstanding of CEQA. An EIR's responses to comments need not "concede points" they only must contain a reasoned analysis in response to the comment. CAL. CODE REGS. tit. 14, § 15088(c). There is no requirement that the Commission accept UCAN's position. *See Greenebaum*, 153 Cal.App.3d at 413 [holding agency permitted to rely on the opinions of its experts and reject positions set forth by commenter]. The response to UCAN's comment satisfied CEQA.

**d. The EIR adequately considered UCAN's points about distributed generation and supply side alternatives**

Commenting on the draft EIR, UCAN argued that the EIR undervalued and overlooked new supply side alternatives of renewable or distributed generation within the SDG&E service area and identified certain facilities that it believed should have been included in the EIR's analysis. EIR at 3-830 to 3-831. The EIR response provides: "The reasonable range of potentially feasible alternatives considered in the Draft EIR/EIS includes projects and facilities that are well-defined and that may be developed depending on decisions made by individual sponsors. New biomass or wind power purchase agreements made recently by SDG&E are evidence of the potential feasibility of the renewable projects." EIR at 3-853, Response B0011-13. The response concluded that no change to the EIR was required because its intent was not to evaluate the potential impacts of any specific renewable energy project, which is what UCAN's comment indicated was necessary, but to provide the Commission with an analysis of environmental impacts of potential alternatives. *Id.* This response was adequate.

Similarly, with respect to distributed generation, the EIR responded to UCAN's Draft EIR comments that "[b]ecause a higher level of DG would not change the conclusion that DG alone could not provide sufficient in-area generation to satisfy the reliability objective..., no change is needed in the analysis of the no project/no action alternative in the Draft EIR/EIS." EIR at 3-853, Response B0011-14. Notably, the EIR evaluated whether Aspen's non-renewable distributed generation alternative should be included as a non-wires alternative to Sunrise. The alternative would have involved an expansion of non-renewable DG beyond that contemplated by SDG&E in its Proponents Environmental Assessment. EIR at C-130. UCAN complains that this response is inadequate, but its main complaint is that the EIR's conclusion regarding the amount of in-area generation is incorrect. Again, UCAN's disagreement does not render the EIR inadequate. *Ass'n of Irrigated Residents*, 107 Cal.App.4th, at 1397-98; CAL. CODE REGS. tit. 14, § 15151.

**e. The EIR appropriately addressed UCAN's points regarding demand reduction**

During the public comment period, UCAN commented that the EIR underestimated Energy Efficiency and Demand Response potential. EIR at 3-832. In response, the EIR notes that a higher level of demand response and energy efficiency could be achievable, but that the EIR analysis used conservative, achievable levels because higher levels were speculative in nature. EIR at 3-854, Response B0011-16; *see also* EIR at C-132 to C-133. UCAN's objection to this response merely quibbles with the EIR's conclusion. UCAN's belief that the EIR just got it wrong poses no CEQA violation. *See* CAL. CODE REGS. tit. 14, § 15151.

### 3. CEQA does not require a full analysis of every issue raised by the public

CEQA requires that there be a good faith effort at full disclosure; analyses need not be perfect or exhaustive or contain that which project opponents demand. *Bakersfield Citizens for Local Control*, 124 Cal.App.4th at 1198. In other words:

The EIR must contain facts and analysis, not just the bare conclusions of the agency. An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project. CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive.

*Id.* A lead agency is not required to accept a commenter's calculation of impacts. *See Greenebaum*, 153 Cal.App.3d at 412; CAL. CODE REGS. tit. 14, § 15204(a) ("CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors."). The *Greenebaum* court held that "it was not an abuse of discretion" to reject the project opponent's calculations when the lead agency had been apprised of the opponent's assertions and had accounted for those issues as it deemed fit. *Id.*

Yet this is what UCAN seeks when it complains, for example, that: (i) "the EIR did not consider cost issues raised by UCAN" (UCAN at 68); (ii) the EIR did not quantify the extent to that Sunrise meets the EIR's basic project objectives (*id.* at 67); and (iii) the EIR did not consider transmission alternatives suggested by UCAN (*id.* at 93). UCAN's desire for more analysis on each of these points is not a CEQA violation. Again, the EIR only must reflect a "good faith effort at full disclosure." *Bakersfield Citizens for Local Control*, 124 Cal.App.4th at 1198.

As discussed above, the EIR responded to all of UCAN's comments and incorporated those that merited inclusion and reasonably rejected those that did not. This is all that CEQA requires. The Commission did not violate CEQA just because UCAN would have liked to see

more discussion or analysis on issues that were already addressed or otherwise extraneous to the Commission's decision.

**G. Neither the EIR nor the Decision were required to consider SDG&E's purported past practices related to the 2007 fires under CEQA**

CBD alleges (at 21-22) that the Commission violated CEQA by failing to give appropriate consideration to SDG&E's purported "past practices," "compliance record" and "prior conduct" related to the October 2007 fires.<sup>59</sup> CBD further contends (at 21) that the findings of Cal Fire and Commission investigators regarding the October 2007 fires somehow demonstrate that SDG&E is unlikely to adhere to the fire-related mitigation measures in the EIR. CBD's arguments are completely unfounded.

First, none of the October 2007 fires were attributed to SDG&E's 230 kV or 500 kV high voltage transmission lines.<sup>60</sup> The overwhelming evidence shows that 230 kV and 500 kV transmission lines such as those proposed for Sunrise produce minimal risk for fire ignition.<sup>61</sup>

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<sup>59</sup> SDG&E disputes CBD's characterization of its compliance history, and does not admit any liability for the October 2007 fires.

<sup>60</sup> See EIR, General Response GR-9 at 2-50 ("A detailed investigation report into the cause of the Witch, Guejito, and Rice Fires issued by Cal Fire July 9, 2008 explains that the cause of the Witch Fire was an SDG&E 69 kV transmission line, the cause of the Guejito Fire (which ultimately merged with the Witch Fire) was a combination of an SDG&E 12 kV distribution line and a Cox Communications cable television line, and the cause of the Rice Fire was an SDG&E 12 kV distribution line in combination with a failure to adequately maintain vegetation around the distribution line in accordance with Public Resources Code 4293.").

<sup>61</sup> There have been no fires caused by 500 kV lines and few (three fires no greater than five acres) caused by 230 kV lines in SDG&E's service territory, and the engineering of these lines makes it extremely unlikely that they would cause fires. See EIR at 4-196, Response G0013-2) ("It should be noted that of the three 230 kV fires that occurred in SDG&E's system in the past four years, none occurred during a Santa Ana event and none exceeded five acres."); General Response GR-9 at 2-47; EIR Section D.15.1.1; Ex. SD-35 at 5.5; Decision at 211. The Commission correctly concluded that "lower voltage distribution and sub-transmission lines, not high-voltage transmission lines, have been responsible for most power line related fires in the San Diego area." Decision at 208.

Cal Fire’s investigation reports and the Commission’s Consumer Protection and Safety Division (collectively, “Investigation Reports”) therefore have no bearing on the evaluation of fire risks resulting from the approved Sunrise high voltage transmission lines. The Commission correctly concluded that “230 kV or 500 kV lines placed on steel towers are highly unlikely to ignite fires, and that mitigation of the type described [in the Decision] should ensure this outcome.”

Decision at 218.

Second, CBD does not argue (because it cannot) that the Commission failed to adopt adequate mitigation measures to reduce fire risk. CBD simply speculates that SDG&E will not comply with the adopted mitigation measures in the future. There is no basis for CBD’s conjecture. In any event, CEQA already requires that feasible mitigation measures actually be “implemented as a condition of development, and not merely be adopted and then neglected or disregarded.” *Lincoln Place Tenants Ass’n v. City of Los Angeles*, 155 Cal.App.4th 425, 446 (2007) (quoting *Federation of Hillside & Canyon Associations*, 83 Cal.App.4th at 1261. CBD can pursue any available remedies if it believes SDG&E has not complied with feasible mitigation measures in the future.

Third, the Investigation Reports *were given* appropriate consideration by the Commission. The reports are discussed in Section D.15.1 of the EIR and in General Response GR-9, as part of over 300 pages devoted to fire issues. Both reports were noted by the Commission in Section 15 and Appendix C of its Decision, which discuss wildfire risks extensively. The Commission’s exhaustive analysis of fire issues led to its adoption of “the most rigorous, reasonable mitigation available to reduce the risk of fire ignition.” Decision at 217-218; *see also* Finding of Fact 25 and Ordering Paragraph 4.

Finally, as the Commission correctly concluded, an EIR “is not the appropriate forum for determining the nature and scope of prior alleged illegal conduct.” See EIR at 4-824, Response G0018-26 (citing *Eureka Citizens for Responsible Government v. City of Eureka*, 147 Cal.App.4th 357, 371 (2007) (alleged illegal activity may be relevant to certain aspects of project approval, but it is not a CEQA consideration); *Riverwatch v. County of San Diego*, 76 Cal.App.4th 1428 (1999) (“[W]hether the past actions of third parties were properly authorized may be of interest to resource agencies for enforcement actions but are not pertinent to the Proposed Project.”). The Commission therefore correctly “assumes that full compliance with existing statutes, regulations, Applicant Proposed Measures, and required mitigation measures would be achieved.” EIR at 4-824, Response G0018-26.<sup>62</sup>

#### **H. The Commission’s statement of overriding considerations is sufficient**

An agency that approves a project that may result in significant environmental impacts must adopt a statement that approves the project despite its environmental harm because of the project’s overriding benefits. CAL. CODE REGS. tit. 14, § 15043. CEQA provides that “[e]conomic, legal, social, technological or other” project benefits are possible bases for a statement of overriding considerations. CAL. PUB. RES. CODE § 21081(b). An agency’s balancing of a project’s economic, legal social, technological, and other benefits and potential

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<sup>62</sup> The Commission further noted that it already is “examining in three other, pending dockets whether any entity subject to our jurisdiction bears responsibility for those fires by failure to comply with existing laws, such as rules on vegetation maintenance, and whether prospective rules changes are necessary.” Decision at 278 (citing Investigation (I.) 08-11-006 and I.08-11-007 and Rulemaking 08-11-005). “Any rule changes would apply to all applicable transmission lines.” *Id.* The Commission did not violate CEQA by determining that it was not necessary to include the results of those ongoing investigations in the record for this proceeding or otherwise consolidate those dockets with SDG&E’s Project application.

significant impacts “lies at the core of the lead agency’s discretionary responsibility under CEQA.” *City of Marina v. Bd. of Trustees of the Cal. State Univ.*, 39 Cal.4th 341, 368 (2006).

This “balancing” does not require a technical analysis. *Defend the Bay*, 119 Cal.App.4th at 1268-69, states that “[w]e are not dealing with assaying of minerals here,” and cautions project objectors from “asking that [a court] arrogate to [itself] a policy decision which is properly the mandate of the [agency].” *Id.* at 1269. Rather, CEQA requires that a statement of overriding considerations “focus[] on the larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like.” *Concerned Citizens of South Central Los Angeles*, 24 Cal.App.4th at 847; *see also Koster v. County of San Joaquin*, 47 Cal.App.4th 29, 32 (1996) [statement complies with CEQA if supported by substantial evidence and provides the agency’s rationale for rejecting the recommendations of the EIR]. A statement of overriding considerations does not need to make detailed environmental findings. *See, e.g., CAL. CODE REGS. tit. 14, § 15021(d)* [the agency shall prepare a statement of overriding considerations that “reflect the ultimate balancing of competing public objectives”]; *CAL. CODE REGS. tit. 14, § 15093(b)* [“agency shall state in writing the specific reasons to support its action...”].

The Commission’s statement of overriding considerations appears at page 269 of its Decision and incorporates by reference Sections 9, 15, and 17 of the same. Decision at 270. Rather than a mere two pages or five paragraphs as UCAN and CBD respectively claim, the document fills over 60 pages. *See* Decision at 108-127, 218-257, 263-267. The statement describes the Final Environmentally Superior Southern Route that it approved and its impacts. *Id.* at 247-250. The statement discusses alternatives to the approved Final Environmentally Superior Southern Route and other CEQA considerations. *Id.* at 221-246, 251-253. The

statement of overriding considerations lists numerous categories of the Final Environmentally Superior Southern Route-related economic, social and environmental benefits. The Commission found that any one of these benefits outweighs the adverse environmental impacts of the approved Sunrise route. *Id.* at 270. The Commission made an informed choice in balancing Sunrise’s potential environmental impacts against the economic, social, technological, and other benefits from the the Project. The Commission’s decision is supported by substantial evidence and does not need to be reheard.

First, the Commission found that the Sunrise would facilitate the Commission’s policy goal of renewable procurement at 33% RPS levels within a reasonable period of time with the greatest economic benefits at the lowest environmental cost. Decision at 270. In Decision (D.)08-10-037, the Commission and the California Energy Commission recommended 33% renewables as a key strategy to reducing greenhouse gas emissions: “We recommend that ARB [California Air Resources Board] adopt requirements that by 2020 at least 33% of California’s electricity needs be met by renewable resources, and that by 2020 each retail provider obtain at least 33% of the electricity delivered to its customers from renewable resources... We also support ongoing analysis of the implementation path needed, the actions we can take to help ensure success, and the potential costs and benefits of renewables in the context of AB 32.” On November 17, 2008 Governor Schwarzenegger signed Executive Order S-14-08 directing all state agencies to work toward a 33% RPS by 2020. Given these directives, that Sunrise would greatly further them is a significant public benefit. The extent of this benefit is set forth throughout the Decision and record; the Commission was entitled to rely on it.<sup>63</sup>

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<sup>63</sup> See Decision at 255 (Sunrise would facilitate development of over 1900 MW of renewable energy sources); EIR at 2-43, General Response GR-8; Decision at 265 (citing SDG&E’s voluntary commitment to facilitate the development of solar and geothermal resources in

Second, the Commission also considered and relied on Sunrise’s limited fire risk. The Commission correctly concluded based on the evidence before it that the type of high-voltage transmission lines associated with Sunrise do not pose a significant fire risk. Decision at 218 (“We find that 230 kV or 500 kV lines placed on steel towers are highly unlikely to ignite fires, and that mitigation of the type described [in the Decision] should ensure this outcome.”); *see* EIR at 4-196, Response G0013-2 (“It should be noted that of the three 230 kV fires that occurred in SDG&E’s system in the past four years, none occurred during a Santa Ana event and none exceeded five acres.”); General Response GR-9 at 2-47; EIR Section D.15.1.1; Ex. SD-35 at 5.5. The Commission gave appropriate consideration to the concerns regarding wildfires raised by members of the public, CBD, and UCAN when it correctly concluded that the Project does not pose a significant risk of fire.

Third, the Commission stated Sunrise’s contribution to a more robust southern California transmission system, long-term improvement of California’s aging energy infrastructure, and insurance against unexpected high load growth in SDG&E’s service area are substantial benefits that would increase reliability for SDG&E and ratepayers. Decision at 270. Relying on past experience, the Commission noted that “just-in-time” procurement of energy is inefficient, costly and far too risky to rely on to meet the reliability needs of ratepayers. *Id.* at 127 [citing LTTP Decision at 85-86]. Additionally, the development of new generation within California is extremely challenging. *Id.* [citing Decision D.07-D.07-12-052, D.08-02-019, D.08-11-004]. In light of these and other factors, the Commission concluded that the approved transmission system best met SDG&E’s and ratepayers’ reliability needs. *Id.* at 128. Knowing that electricity will be there to power factories, buildings, and homes when the switch is turned on is an

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Imperial Valley); Strack, Ex. SD-16, Table 2 at 13; SDG&E Phase 2 Opening Brief at 100, 149.

important benefit that the Commission properly considered in concluding that the Sunrise's benefits outweighed its potential impacts.

In sum, the increased likelihood of the development of renewable energy sources to meet California's RPS goals, the reduction of fire risks, and the increased reliability created by the Final Environmentally Superior Southern Route are benefits that the Commission properly considered against Sunrise's environmental impacts.

Contrary to CBD's assertion (at 14), the Commission was not required to engage in a complicated quantitative weighing of Sunrise's benefits against its impacts. The Commission's enumeration of Sunrise's benefits together with their juxtaposition against the Final Environmentally Superior Southern Route's impacts is all that CEQA requires. *Concerned Citizens of South Central Los Angeles*, 24 Cal.App.4th at 847. Since the statement of overriding considerations sets forth the Commission's rationale for approving the Final Environmentally Superior Southern Route in light of its potentially significant, unmitigatable impacts, it satisfies CEQA's requirements.<sup>64</sup>

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<sup>64</sup> Despite the Commission's thorough and complete statement, CBD attempts to shake the Commission's confidence (at 16-17) in the sufficiency of its decision by alleging that the statement is deficient for failing to discuss and compare the selected Final Environmentally Superior Southern Route to the project alternatives discussed in the EIR. Again, CBD's arguments show a lack of understanding of how CEQA works. An agency is not required to discuss or compare alternatives in a statement of overriding considerations. CAL. CODE REGS. tit. 14, § 15093 [listing what must be contained in a statement of overriding considerations]. Further, and contrary to CBD's argument, the statement of overriding considerations is not where an agency should discuss why certain alternatives have been rejected as infeasible, but are to be made in the agency's findings. *Id.* at § 15091 [infeasibility findings for alternatives to be made in findings]; *see also* Decision, Appendix E [Commission's CEQA findings]. CEQA does not require the Commission to discuss alternatives or their feasibility in the statement of overriding considerations. The Commission was correct not to do so and the applicants' respective Applications for Rehearing should be denied.

## VIII. CONCLUSION

The applicants raise no issues that warrant modification of the Decision. The Commission followed the law and acted based on substantial evidence in the record before it. The Applications for Rehearing filed in this proceeding should be denied.

Respectfully submitted,

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February 9, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing **RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY TO APPLICATIONS FOR REHEARING** on all parties identified in Docket No. A.06-08-010 by U.S. mail and electronic mail, and by Federal Express to the assigned Commissioner(s) and Administrative Law Judge(s).

Dated at San Diego, California, this 9<sup>th</sup> day of February, 2009.

/s/ JOEL DELLOSA

Joel Dellosa



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