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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 06-08-010 (Filed August 4, 2006)

RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO APPLICATIONS FOR REHEARING OF DECISION 08-12-058

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Pursuant to Rule 16.1 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, the California Independent System Operator Corporation ("ISO") respectfully submits its response to the respective applications for rehearing of Decision 08-12-058 filed by the Center for Biological Diversity and the Sierra Club ("CBD/SC") and the Utility Consumers' Action Network ("UCAN").

Decision 08-12-058 grants San Diego Gas & Electric Company ("SDG&E") a Certificate of Public Convenience and Necessity ("CPCN") to construct the Sunrise Powerlink Transmission Project ("Sunrise" or "Project")[1] and certifies the Final Environmental Impact Report/Environmental Impact Statement ("Final EIR/EIS") for the Project. In doing so, Decision 08-12-058 finds that Sunrise will meet SDG&E's reliability needs and provide additional substantial benefits.[2] These findings justifying the Commission's approval of Sunrise are

[1] For purposes of the ISO's response, "Sunrise" means the routing alternative identified in the Final Environmental Impact Report/Environmental Impact Statement as the Final Environmentally Superior Southern Route.

[2] Decision 08-12-058, mimeo at 285 (Findings of Fact 15) ("Sunrise will not only meet SDG&E's reliability needs, but it will facilitate the development of renewable resources, thus advancing state policy to reduce GHG emissions."); *see also*, mimeo at 285 (Findings of Fact 16) ("Sunrise will create a more robust southern California transmission system, and provide insurance against unexpected high load growth in SDG&E's service area."); mimeo at 285 (Findings of Fact 19) ("Assuming 33% RPS and ISO Phase 2 combustion turbine costs, Sunrise will generate over $115 million per year in net benefits, which significantly exceeds the $93 million per year of net benefits estimated for the All-Source Generation Alternative.").

supported by substantial evidence in the record[3] and a thoughtful consideration of information provided in the Final EIR/EIS. Accordingly, the Commission should deny the requests of CBD/SC and UCAN for rehearing of Decision 08-12-058.

I. THE SCOPE OF THE COMMISSION'S DECISION IN THIS CASE NECESSARILY INCLUDES CONSIDERATION OF ISSUES BEYOND ENVIRONMENTAL ISSUES ADDRESSED THE FINAL EIR/EIS

CBD/SC assert that rehearing of Decision 08-12-058 is warranted because the decision is not supported by substantial evidence and violates the California Environmental Quality Act ("CEQA").[4] In particular, CBD/SC argue that the Commission violated CEQA by failing to adequately analyze and adopt certain mitigation measures or project alternatives that CBD/SC claim would better address environmental impacts identified in the Final EIR/EIS.[5] Inherent in CBD/SC's position is the notion that the Commission's decision in this case must adopt certain environmental arguments and considerations addressed in the Final EIR/EIS. Such a position is not supported by CEQA and ignores the critical role the Commission plays – along with other entities, such as the ISO – in ensuring electric reliability is maintained and that statewide renewable energy and greenhouse gas ("GHG") emissions reduction goals are met.

The Commission exercises its obligations to comply with environmental laws while carrying out its critical role in ensuring the provision of safe, reliable electric service and infrastructure at reasonable rates. Fulfilling this role necessarily requires the Commission to weigh economic, social, legal and other non-environmental factors in its decision making process. Accordingly, it is the Commission, not the Final EIR/EIS, "that bears responsibility for making 'findings' as to whether 'specific economic, legal, social, technological or other

[3] The record consists of nearly 8,000 pages of testimony and briefs, more than 400 exhibits, and almost 6,000 pages of transcripts covering 37 days of evidentiary hearings.
[4] CBD/SC Application for Rehearing at 2.
[5] CBD/SC Application for Rehearing at 7.

considerations . . . make infeasible the mitigation measures or alternatives identified in the [EIR].'"[6] Indeed, an environmental impact report does not have to include an analysis of such non-environmental issues.[7]

The Final EIR/EIS correctly acknowledges that the scope of its analysis does not include all of the factors that must ultimately be weighed by the Commission in making a decision regarding Sunrise in general, and evaluating potential mitigation measures and project alternatives in particular:

> The extent to which each alternative [to Sunrise] accomplishes the [Project] 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.[8]

Consistent with this approach, Decision 08-12-058 considers the conclusions in the Final EIR/EIS regarding the environmental impacts associated with Sunrise and the various project alternatives. However, in determining whether to approve Sunrise, adopt certain types of mitigation, or reject the Project in favor of an alternative, the Commission appropriately considered the record developed in the CPCN portion of the proceeding.[9]

As a general matter, the Commission's decision approving Sunrise will be upheld on review as long as there is substantial evidence in the record as a whole to support its determination.[10] The fact that experts may disagree on issues and that other conclusions might

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[6] *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 691.
[7] *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* at 692; 14 CCR § 15131.
[8] Final EIR/EIS at 3-852
[9] Decision 08-12-058, mimeo at 254.
[10] *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, 576.

be reached, is not an acceptable reason to find the Commission's decision improper. A lead agency can, and often must, decide to give more weight to one expert over another.[11]

Public Utilities Code section 345 provides that the ISO "shall ensure efficient use and reliable operation of the transmission grid." In this proceeding, the ISO presented nearly 500 pages of expert testimony identifying a resource deficiency/reliability need in SDG&E's service area[12] and demonstrating that Sunrise represents the best, most cost effective, way for SDG&E to meet its long-term reliability needs.[13] This testimony included the evaluation of more than 60 proposed alternatives to Sunrise and consideration of more than 80 modeling runs analyzing the reliability and economic impacts of these alternatives.[14] The ISO's testimony and analysis provides substantial evidence in the CPCN portion of the proceeding supporting the Commission's approval of Sunrise.

The Final EIR/EIS finds that *all* of the environmentally superior alternatives, *as well as the "No Project/No Action Alternative,"* would result in unavoidable significant environmental impacts.[15] Relative to these alternatives, however, the record shows that Sunrise will better help California meet its renewable portfolio standard ("RPS") and GHG emissions reduction goals by facilitating the development of significant amounts of renewable generation resources in the Imperial Valley:

> The three top ranked Alternatives [to Sunrise] would not facilitate even half the amount of renewable development that [Sunrise] will facilitate. . . . Further, neither [the All-Source Generation Alternative or In-Area Renewable Alternative] will facilitate the development of geothermal resources, which are a high capacity renewable resource that will flow more often than wind or solar

[11] *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 862 ("Disagreement among experts does not make an EIR inadequate."); *see also* 14 CCR § 15151; *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 805.
[12] ISO Ex. I-6 at 39 (Table 5).
[13] *See e.g.*, ISO Ex. I-13 at 22 (Phase 2 Rebuttal Table 1).
[14] *See* ISO Phase 1 Opening Brief at 4, footnote 7.
[15] Final EIR/EIS at ES-5 – ES-7.

> resources. CAISO projects that [Sunrise] would facilitate the development of 1,600 MW of geothermal resources in the Imperial Valley.[16]

In considering the entire record, Decision 08-12-057 finds Sunrise to be the highest of the eight ranked environmentally superior alternatives "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."[17]

In asserting that the Commission has violated CEQA, CBD/SC fail to properly account for the substantial evidence in the entire record in the proceeding. This evidence demonstrates the significant benefits of Sunrise relative to alternatives and supports the Commission's approval of the Project.

II. UCAN'S APPLICATION FOR REHEARING SIMPLY REARGUES ITS BRIEFS

Rule 16.1 (c) provides that "(t)he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." Despite this clear language, UCAN reargues positions presented in its briefs. Although UCAN asserts that Decision 08-12-058 ignores the facts in the case and looks beyond the record, in actuality it is UCAN who ignores the clear weight of the evidence and the responses of the other parties to its testimony and arguments.

For example, UCAN argues that the Commission failed to "consider" UCAN's No-Project Alternative, even though it acknowledges that Decision 08-12-058 discusses the proposal and orders SDG&E to review the Path 44 line rating.[18] UCAN also omits that various configurations of UCAN's No-Project "menu" were studied by the ISO,[19] addressed in ISO

[16] Decision 08-12-058, mimeo at 255 - 256.
[17] Decision 08-12-058, mimeo at 287 (Findings of Fact 28).
[18] UCAN Application for Rehearing at 14-25.
[19] ISO Ex. I-3 at 12-53; Ex. I-4 at 6-35.

Phase I and Phase 2 testimony[20] and discussed by the ISO in its Phase 1 and Phase 2 briefs.[21] Based on all of the information provided by UCAN, the ISO concluded that the UCAN No-Project Alternative did not provide the same level of reliability related economic benefits and access to renewables as Sunrise and its routing alternatives.[22] The Commission's reliance on factual conclusions similar to those reached by the ISO does not amount to "legal error."

UCAN's assertions that the Commission "ignored" evidentiary facts[23] and created "faux facts" upon which it relied[24] simply reflects UCAN's disagreement with an outcome adverse to its recommendations. Many of UCAN's arguments summarize its testimony or briefs without acknowledging responsive testimony and arguments presented by other parties. For example, UCAN accuses the Commission of failing "to consider demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation."[25] However, the details of UCAN's proposed demand-side modeling assumptions were addressed numerous times by the ISO, particularly during the post-Phase 2 portion of the proceeding when the ISO developed Exhibit Compliance-1.[26] Similarly, UCAN disagrees with the Commission's decision to use the SDG&E estimate of Sunrise O&M costs, but the ISO consistently used the SDG&E cost estimates in all

[20] ISO Ex. I-3 at 12-53; Ex. I-4 at 6-35; ISO Ex. I-6 at 52-57; ISO Ex. I-8 at 20-24; ISO Ex. I-9 at 3-8, 10-12.
[21] ISO Phase 1 Opening Brief at 49-51, ISO Phase 1 Reply Brief at 25-28, 34, 37-38; ISO Phase 2 Opening Brief at 44-45; ISO Phase 2 Reply Brief at 19-22.
[22] ISO Phase 2 Reply Brief at 20.
[23] UCAN Application for Rehearing at 32-44.
[24] UCAN Application for Rehearing at 29-32.
[25] UCAN Application for Rehearing at 30.
[26] *See*, *e.g.* ISO Reply Brief on Ex. Compliance-1 at 16:

> It bears repeating that engaging in the type of demand response/EE development speculation that UCAN describes is highly inappropriate for grid planning purposes and totally outside grid planning standards. The targets and forecasts underlying UCAN's calculations should be approached with extreme caution, especially when the Commission is asked to cobble together estimated peak load reductions for the purposes of making decisions about infrastructure additions.

of its scenario analyses and opposed the use of UCAN's estimate as an assumption in Exhibit Compliance-1.[27]

UCAN also takes issue with the general conclusion reached by the Commission that Sunrise is necessary for SDG&E to meet its 33% RPS requirements, and that the line will increase the capability of the network to import renewable energy into San Diego, by repeating arguments rebutted on the record.[28] UCAN also accuses the Commissioners of "not understanding" the ISO's RPS cost modeling, but then engages in a discussion that illustrates its own lack of understanding of the ISO's RPS analysis.[29]

In rearguing positions it has previously raised in its briefs and which have been addressed in the record, UCAN has not identified any error that would support rehearing.

III. THE PARTIES HAD AMPLE OPPORTUNITY TO ASSESS THE NEED FOR SUNRISE ASSUMING A GOAL OF 33% RENEWABLES PROCUREMENT BY 2020

UCAN asserts that it is an error for the Commission to consider a 33% RPS requirement as part of its evaluation of Sunrise. Specifically, UCAN claims that there was "[n]o opportunity by parties to evaluate and provide facts relating to the impacts of the last-minute 33% RPM(*sic*) mandate."[30] According to UCAN, the "notion" of building Sunrise to achieve a 33% RPS target "did not become a reality" until October 31, 2008.[31] UCAN misstates the record. All of the ISO's cost modeling for the year 2020 assumed a 33% RPS target, and this assumption was

[27] ISO Reply Brief on Ex. Compliance-1 at 8-9.
[28] For example, UCAN again states that "the existing SWPL line will soon be able to deliver 1900 MW to and through the Miguel substation" (UCAN Application for Rehearing at 34 citing to Ex. U-100) even though the ISO explained, repeatedly, that the 1150 MW dispatch limit on the IV-Miguel portion of SWPL renders this conclusion impossible. (ISO Phase 2 Reply Brief at 24).
[29] UCAN Application for Rehearing at 33, footnotes 76-80. UCAN erroneously uses the ISO's RPS portfolio developed for each alternative scenario - which appropriately assumed the same level of RPS procurement for each case- to argue that Sunrise will not promote the development of renewables available to meet RPS targets. This is clearly an "apples to oranges" discussion, since the purpose of the ISO study was to measure the RPS compliance benefits attributable to Sunrise and the alternative scenarios, thus necessitating balanced RPS portfolios for comparison purposes.
[30] UCAN Application for Rehearing at 25.
[31] UCAN Application for Rehearing at 26.

clearly explained in ISO testimony submitted in March, 2007.[32] These assumptions were thoroughly vetted through workshops and numerous rounds of Phase 1 and Phase 2 testimony, and never disputed by any of the parties (including UCAN).[33]

Indeed, it was the opposite assumption that engendered debate. The June 20, 2008 *Revised Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* directed the ISO to develop compliance scenarios assuming that SDG&E would procure no more than 20% RPS in 2010, 2015 and 2020.[34] The ISO performed the scenario calculations as requested, but specifically opposed the reasonableness of using such an assumption:

> …it is inconsistent with existing and well established Commission policy, and the emissions reductions mandated by AB 32, to assume that, for purposes of evaluating the cost-effectiveness of Sunrise - which is being amortized over a 58 year period - renewable procurement will not exceed 20% over the entire period between 2010 and 2068.[35]

The record demonstrates that parties had ample notice of the use of the 33% RPS assumption and an opportunity to raise questions about the assumption at each stage of this proceeding. Accordingly, any argument that parties had no notice that this assumption was being used in the cost effectiveness evaluations of Sunrise should be disregarded.

IV. CONCLUSION

CBD/SC and UCAN have not demonstrated that the Commission's approval of Sunrise is not supported by substantial evidence or that Decision 08-12-058 is unlawful, erroneous, or

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[32] ISO Ex. I-2 at 49:

> **Q. What are the RPS targets?**
> **A.** Based on statutory requirements, the CPUC and the California Power Authority (CPA), the RPS targets are 20% in 2010 and 33% in 2020. We used a straight-line interpolation to find the 26.5% target for 2015.

[33] UCAN attempts to make much of the lack of explicit reference to the 2020 33% assumption in the ISO and SDG&E briefs, but in actuality the assumption was so well-settled throughout the proceeding that there was no need to discuss it in the briefs.

[34] *Revised Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge,* Appendix (June 20, 2008).

[35] ISO Opening Brief on Ex. Compliance-1 at 7.

should otherwise be changed. Accordingly, the Commission should deny the requests of CBD/SC and UCAN for rehearing of Decision 08-12-058.

Respectfully submitted,
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Dated: February 9, 2009

CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

On February 9, 2009, I caused the following to be served:

RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO APPLICATONS FOR REHEARING OF DECISION 08-12-058

enclosed in a sealed envelope, by first class mail on the parties listed as "Parties" and "State Service" on the attached service list who have not provided an electronic mail address, and via electronic mail to all parties on the service list who have provided the Commission with an electronic mail address.

/s/ Judy Pau
Judy Pau

cc: Commissioner Dian M. Grueneich (via US Mail and email)
ALJ Jean Vieth (via US Mail and email)