L/jmc

Date of Issuance
07/13/2009

Decision 09-07-024 July 9, 2009

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)

ORDER MODIFYING DECISION 08-12-058 AND DENYING REHEARING OF DECISION, AS MODIFIED

On January 23, 2009 Utility Consumers' Action Network ("UCAN") and Center for Biological Diversity jointly with the Sierra Club ("CBD/Sierra Club") filed applications for rehearing of Decision (D.) 08-12-058. D.08-12-058 ("Decision" or "*Sunrise*") grants the application of San Diego Gas and Electric ("SDG&E") for a Certificate of Public Convenience and Necessity ("CPCN") to construct the Sunrise Powerlink Project. After preparing an Environmental Impact Report ("EIR")[1] pursuant to the California Environmental Quality Act ("CEQA"), we approved the Final Environmentally Superior Southern Route ("Approved Route") alternative to SDG&E's proposed project. We found the Approved Route to be environmentally superior to the Proposed Project, and more feasible than the alternatives ranked higher environmentally in the EIR. SDG&E and the California Independent System Operator Corporation ("CAISO") filed timely responses to the applications for rehearing.

[1] This order uses "EIR" as shorthand to refer to the final environmental document which is the Final Environmental Impact Report/Environmental Impact Statement. The Final EIR encompasses most of the Draft EIR, and has a number of changes and additions.

We have carefully considered all the arguments raised by the rehearing applicants and are of the opinion that good cause for rehearing has not been demonstrated. However, rehearing applicants identify certain areas where modifications to the Decision are warranted to clarify our reasoning and correct inadvertent errors, as discussed below. Accordingly, we will order modifications to the Decision, and deny rehearing of the Decision as modified.

As an initial matter, for the most part UCAN's pleading does not meet the requirements of Commission Rule 16.1 which provides:

> Applicants for rehearing shall set forth specifically the grounds on which applicant considers the order or decision to be unlawful or erroneous, and must make specific references to the record or the law.

Most of UCAN's arguments seek to relitigate issues resolved in the proceeding and fail to specify a legal error. The fact that there is disagreement or contrary evidence on a holding does not indicate any legal error in the Decision. Although we have thoroughly considered all of UCAN's arguments, we do not believe there is any further benefit from repeating our discussion of most of these issues. This is particularly true where UCAN has not alleged any legal error, and UCAN's concerns were adequately addressed in the Decision or the EIR.[2] Nonetheless, we have carefully reviewed all of UCAN's contentions to determine whether any legal error is alleged. We discuss UCAN's allegations in this order only where additional discussion is warranted.

I. BURDEN OF PROOF

UCAN alleges that the Decision incorrectly adopts a "preponderance of the evidence" standard for approving Sunrise, when the correct standard "clear and

[2] We note, however, that although the purpose of an application for rehearing is to alert the Commission to legal errors in the Decision, UCAN's pleading makes it difficult to find any actual errors that UCAN is alleging. UCAN should be aware that, due to the length, disorganization, lack of relevant citations, and other errors in its application, its pleading falls below the standard we expect for applications for rehearing. For example, in fifty pages of arguments about CEQA, UCAN does not cite to any case, statute or any other CEQA authority to support its arguments. UCAN also cuts and pastes from earlier pleadings without updating the dates.

convincing" evidence. According to UCAN, although the standard of review in a CPCN proceeding is a question of first impression, because the CPCN approval will impact utility rates, the clear and convincing evidence standard generally applied in rate cases should be applied. In the Decision, we decline to adopt the clear and convincing evidence standard for SDG&E's application, adopting the more common preponderance standard. UCAN fails to show that the burden of proof is in error.

As a general matter, the preponderance of the evidence standard requires a party to have more weighty evidence on its side than there is on the other side. The clear and convincing standard is more stringent, requiring evidence "so clear as to leave no substantial doubt…. [Citations]" (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) We have frequently adopted the "clear and convincing" standard in general rate cases, but as the Decision notes in a footnote, it can be unclear whether the Commission means "clear and convincing" in a lay sense, or is actually adopting the more technical "clear and convincing" standard. (Decision, at pp. 18-19, fn. 28.)

UCAN's argument on burden of proof does not allege any legal error. Although UCAN suggests that clear and convincing should be the burden of proof, it does not present any legal principle that we violate in adopting the preponderance standard. UCAN asserts the CPCN proceeding should be treated as a rate case because the projects impact rates, but it does not present any reason that our failure to accept its suggestion is in error.

Moreover, we adequately explain in the Decision that the clear and convincing standard has generally been limited to general rate cases and reasonableness reviews which are specialized proceedings. (Decision, at pp. 18-9.) The Decision also notes that the preponderance standard is the default standard in administrative proceedings and is therefore the appropriate standard for CPCN applications.[3] (*Id*.; Evid.

[3] Because there have been many CPCN cases, whether or not the Commission explicitly discussed the issue, the burden of proof issue cannot be considered an issue of first impression. By default the Commission has applied the preponderance standard in CPCN proceedings, and therefore there is

(footnote continued on next page)

Code, § 115.) Our explanation adequately supports our decision to use the preponderance of the evidence standard in the current proceeding.

II. ADDITION OF NEW PROJECT OBJECTIVES

UCAN alleges that we introduced new project objectives at the end of the process, including encouraging Imperial Valley renewables and promoting 33% RPS compliance to achieve GHG reductions. (UCAN Rehrg. App., p. at 13.) UCAN is incorrect in its argument, and does not specify what laws it is alleging we violated.

UCAN particularly focuses on our reliance on the fact that the project "will facilitate our policy goal of renewable procurement at 33% RPS levels…" (Decision, at p. 270.) According to UCAN, because the Commission announced the 33% RPS goal at the "last-minute," the parties did not have an opportunity to demonstrate that the Sunrise project is not needed to meet that goal. UCAN incorrectly declares that the "potential for using a 33% RPS standard … is not articulated in any scoping memo nor any instruction by the ALJ."

UCAN is mistaken, since footnote 20 in the original November 1, 2006 Scoping Memo and Ruling provides:

> **For renewable requirements, SDG&E should assess need both in terms of** meeting the 20% RPS procurement requirement established in SB 107 (enrolled 2006) and to be codified at Cal. Pub. Res. Code §25740 and **the 33% by 2020 strategy** set forth in the March 2006 "Climate Action Team Report to Governor Schwarzenegger and the Legislature".

Moreover, as both SDG&E and CAISO respond, both of these parties made myriad references to the 33% RPS goal throughout the proceeding, and also performed analyses based on the 33% figure. (SDG&E Response, at pp. 9-10 [referencing the PEA, testimony]; CAISO Response, at pp. 7-8 ["All of the ISO's cost modeling for the year

---

(footnote continued from previous page)

precedent for applying the less stringent standard.

2020 assumed a 33% RPS target," also referencing testimony and exhibits].) UCAN's assertion that it had no notice of the 33% RPS goal is not credible.

UCAN also appears to suggest that the goal of accommodating Imperial Valley renewable development is a late addition. (UCAN Rehrg. App., at p. 13.) There is no basis for this argument either, as that goal was announced in the November 1, 2006 Scoping Ruling (p. 6), and is contained throughout the environmental documents.

III. AUTHORITY TO IMPOSE 33% RENEWABLE REQUIREMENT

UCAN argues that because the Commission lacks the authority to impose a 33% renewable requirement, "it also cannot legally base a decision … upon a non-existent 33% RPS assumption." (UCAN Rehrg. App., at p. 28.) UCAN's reasoning and arguments on this point are in error.

As discussed below regarding the renewable condition, there is a difference between assuming or finding that a condition will occur and imposing it. Although pursuant to Public Utilities Code section 399.15 we cannot impose a 33% renewable requirement, we can find that such a requirement is likely to be imposed in the future, as we have done. Contrary to UCAN's allegations, we can predict conditions over which we do not have authority. If that were not the case we would be unable to act in an informed manner. Therefore, we are justified in evaluating Sunrise in the context of a future, more stringent, renewable generation goal.

IV. HELICOPTER RIDE

UCAN also contends that a helicopter tour that certain Commission staff members took of the Sunrise route created a conflict of interest. According to UCAN, because the $1003 amount "allegedly" billed to the Commission was not the true cost of tour, the Commission employees were beneficiaries of unreported gifts. As a result, UCAN claims, the employees should have been prohibited from participating in the Sunrise proceeding, and the Decision is invalid. UCAN fails to show any conflict of interest.

UCAN's argument is misplaced for a number of reasons. First, as SDG&E notes, UCAN's claim is procedurally improper. In addition to the fact that UCAN did not motion to disqualify any of the Commission staff members or otherwise challenge the tour during the proceeding, UCAN's current arguments about the value of the helicopter flight have no evidentiary support. The crux of UCAN's argument is that the market value of the flight was more than the employees paid, but there is no evidence in the record to support that assertion. UCAN attempts to introduce new evidence, via a website, but this evidence is not in the record. Moreover, as SDG&E asserts, the helicopter company billed the staff directly for their flight. Assuming this is the case, and UCAN has not shown differently, there is no "gift" from SDG&E.

In any event, UCAN would not have a conflict claim on a substantive basis. The helicopter tour satisfied the "informational materials" exemption to the gift limitation, particularly since it was over an expansive and somewhat remote area. (See Cal. Code Regs., tit. 2, § 18942.1.) Thus, a gift of the tour would not be subject to the gift limitation. Out of an abundance of caution, rather than any clear requirement, the Commission paid for the tour. Because the recipients have paid for the tour, and there is no evidence supporting the contention that what they paid was less than market value, there is no support for UCAN's suggestion that the Decision is invalid.

V. GREENHOUSE GAS ANALYSIS

CBD/Sierra Club contend that the EIR's discussion concerning the GHG impact of the alternatives is insufficient because it relies on inadequate CAISO modeling, and only contains a limited discussion of the CAISO analysis. CBD/Sierra Club also attack the Decision's GHG analysis that went beyond the conclusions in the EIR. CBD/Sierra Club's specific criticisms of the analysis are (1) the EIR did not quantify the amount of GHG emissions for the main project or under alternate scenarios; (2) the Decision mistakenly assumes because of statewide renewable requirements, GHG emissions in the state will be the same for all alternatives, beyond those of construction, and operation and maintenance activities; and (3) the EIR does not discuss the CAISO modeling it relies upon in sufficient detail. UCAN also challenges the GHG analysis.

The EIR's GHG discussion must be evaluated in light of the general CEQA standards. As CBD/Sierra Club note, that information in an EIR must be sufficient to be informative about issues the proposed project raises and must be presented in an understandable manner. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659.) At the same time:

> An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. … The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

(Cal. Code Regs., tit. 14 ("Guidelines"), § 15151.)

The EIR's analysis of the GHG emissions is contained in a number of EIR sections, including section D.11.13.3, as amended by General Response (GR) 8. The EIR concludes that there will be a net increase in GHG emissions as a result of the proposed project, based on the unavoidable emissions due to construction and operation and maintenance of the line (DEIR D.11-52-3). In mitigation, to some extent, the EIR contemplates that this increase will be offset by requiring SDG&E to obtain carbon credits, and the EIR also requires SDG&E to take specific measures to avoid sulfur hexafluoride emissions. (DEIR D.11-53-4.) In addition, to the extent the line facilitates renewable development, the GHG impacts may be lessened. (EIR, GR 8, p. 2-46.) Despite these mitigating factors, the EIR characterizes the construction phase GHG impacts as having a significant unavoidable effect on the environment. (DEIR D.11-52.)

Regarding the GHG impact of the Sunrise line compared to other transmission line alternatives, or the Sunrise line carrying energy from different sources, the EIR concludes that these impacts are speculative because the exact sources of the power Sunrise or other lines would carry is not known. (DEIR D.11-51.) However, for the two in-area generation alternatives where there is more information available concerning the generation, the EIR concludes that the New In-Area All-Source Generation Alternative would cause substantially more GHG emissions than the proposed

project, and the New In-Area Renewable Generation would result in fewer net emissions. (EIR H.6.1, H.6.2.)

The EIR adequately assesses the GHG impacts of the project. CEQA does not require an agency to quantify specific amounts when the results are speculative and uncertain. (See *Lake County Energy Council v. County of Lake* (1977) 70 Cal.App.3d 851, 854-855.) Moreover, as SDG&E notes, the EIR cites to the CAISO modeling (see EIR at D.11-50), and is therefore not hiding any information from the public, contrary to CBD/Sierra Club's allegations.

We acknowledge, however, that the Decision expands upon the EIR's GHG analysis. As the Decision explains, the EIR gives an incomplete picture of the Sunrise project's actual GHG impacts because it appropriately limited "the scope of review to Sunrise, connected actions and alternatives." (Decision, at p. 164.) Accordingly, it did not analyze "the GHG impacts of Sunrise within the broader policy of the RPS and the systematic grid upgrades need to meet the 33% target by 2020." (*Ibid.*) Relying on this broader policy context, the Decision concludes that, assuming state renewable goals will be met, the use of non-renewable energy on the Sunrise line will not result in additional GHG emissions on a Western Electricity Coordinating Council ("WECC") system-wide basis. This is because if non-renewables are carried on Sunrise, renewable energy would need to be used or developed elsewhere in the system in order to meet the predicted 33% mandate. (Decision, at pp. 164 -167.) The Decision's conclusions are supported by the CAISO modeling. (See Exh. I-16.)

Although the GHG analysis in the Decision differs from the EIR, as discussed, there is no legal error in either analysis. The EIR did an analysis of the impacts of the generation alternatives by looking at those emissions, without considering the GHG impacts of other projects which would be used and developed system-wide in order to meet the RPS mandate. This is appropriate scope for an EIR, the role of which is to consider the environmental impact of the proposed project and related projects, and should terminate discussions where analysis becomes unduly speculative. (Guidelines, § 15145.) Accordingly, regarding the transmission line impacts, beyond construction and

operations and maintenance ("O&M"), the EIR declines to assess the amount of GHG impacts because the generation mix the line would carry is too speculative.

In its discussion of the renewable condition, the Decision's analysis takes the additional step of considering the generation that would be developed and used across the region in addition to the GHG impacts of the project alone. In this way, the Decision's analysis incorporates policy and regional considerations that go beyond the project itself. Thus, based on CAISO modeling, and the CARB *Climate Change Scoping Plan*, the Decision concludes that whether or not the Sunrise line carries renewables, when projects across the rest of the region are considered, there is no substantial difference in the ultimate GHG impacts. Although this analysis goes further than the EIR, both the EIR analysis and the Decision's analysis are legally adequate. There is no prohibition against an agency going beyond the factual analysis in the EIR to incorporate policy forecasts that go beyond the physical impacts of the projects themselves.

Given the WECC-wide GHG perspective, UCAN takes issue specifically with the Decision's conclusion that Sunrise will reduce GHG emissions. According to UCAN, since the Decisions views the "mix of generation (and thus GHG emissions) throughout the WECC" and concludes that renewable development will remain the same with or without Sunrise and whether or not Sunrise carries renewables, it should also conclude that "GHG emissions will be basically the same with and without Sunrise." (UCAN Rehrg. App., at p. 53.)

While both the EIR and the Decision's analysis of the GHG impacts are legally sufficient, we concede that the Decision's discussion is somewhat inconsistent. At times, the Decision adopts the broader WECC-wide perspective while at other points it remains with the EIR's more restricted analysis. We will therefore modify the Decision's GHG analysis, to explain more clearly our position with respect to the GHG impacts of the Sunrise project. One point bears emphasis in particular. Despite statements in the Decision to the contrary, we do not in fact conclude that the Sunrise project will result in lower GHG emissions. Rather, we conclude that Sunrise will facilitate the 33% renewable procurement goal "within a reasonable period of time with the greatest

economic benefits….” (Decision, at p. 270.) We note that the EIR, as certified by us, concludes that the GHG emissions associated with the construction and operation of the line are an unavoidable significant impact of the project. While the purpose of the renewable goal is largely to decrease the GHG emissions, we recognize there is no guarantee at this point about the exact degree to which that will occur. The precise amount of GHG emission savings attributable to as yet undeveloped renewable generation facilities has not been and cannot be accurately quantified or predicted in this proceeding. Therefore, we only conclude that the Sunrise project will facilitate compliance with a 33% renewable procurement goal, and although the purpose of this goal in part is to decrease GHG emissions, we do not and cannot determine the extent to which this will occur.

Bearing this in mind, UCAN’s argument that Sunrise will not lessen GHG emissions because, according to the Commission’s analysis, the renewable mix will essentially stay the same is misplaced. UCAN is correct that we assume compliance with a future 33% renewable mandate, with or without Sunrise. Again, we do not conclude that Sunrise will increase renewable procurement, make compliance with a 33% renewable target possible or lessen GHG emissions. What we conclude is that Sunrise will facilitate renewable compliance in a timely and cost-effective manner. There is no error or inconsistency in this conclusion.

UCAN also argues that there is no modeling to support the comparison of WECC-wide emissions for the alternatives. While this is correct, it is reasonable to conclude, based on CARB estimates, and the modeling that was done, that if RPS goals are met system-wide and development or use of non-renewable energy is approved, those non-renewables will need to be balanced with new development or use of renewable energy. While ultimately, as discussed, the precise system-wide GHG impact is speculative, it is reasonable to conclude that non-renewables will be balanced with renewables in order to meet the predicted 33% RPS mandate.

We acknowledge that we have struggled with the GHG analysis in this proceeding, as the analytic approaches to such analyses for power projects are still being

developed. Yet, we have developed a thorough and coherent view of the ultimate GHG impacts of the Sunrise project and its alternatives, based on the evidence in this proceeding. Accordingly, in today's order we will modify the Decision to clarify the GHG discussion concerning the above points.

VI. ASSESSMENT OF RENEWABLE CONDITION

In addition to challenging the merits of the GHG analysis generally, CBD/Sierra Club allege that we violated CEQA by failing to assess the GHG emission reduction benefits of requiring the transmission line to carry renewable energy specifically. CBD/Sierra Club contend that because there was no data evaluating the GHG impact of the renewable condition there was insufficient data to compare the proposed decisions, as well as the alternatives. SDG&E responds that the Decision and EIR are based on substantial evidence and CBD/Sierra's disagreement is not grounds for rehearing. Specifically, SDG&E notes that there is no reason for the Commission to assess the renewable condition, since it was neither part of the project nor a mitigation measure. SDG&E is correct that CBD/Sierra Club have not shown any legal error.

During a late stage of the environmental review process, as well during the proceeding, CBD and Sierra Club suggested that approval of Sunrise should be conditioned on requiring the line to carry renewable energy – a suggestion that is adopted in Commissioner Grueneich's Alternate Decision, but not in the final Commission Decision. CBD/Sierra Club's point, that the Commission failed to adequately analyze the impacts of conditioning approval of Sunrise on its carrying renewables, is misplaced for two main reasons. First, as SDG&E notes, there is no requirement that the Commission analyze the renewable condition, because it was neither an alternative nor a mitigation measure and the EIR concluded that such a condition was unworkable. Second, as discussed above, the Commission's discussion concluding there would not be a GHG benefit by adopting the renewable condition is adequate and based on substantial evidence.

CEQA requires that an agency analyze the proposed project, "feasible mitigation measures which could minimize significant adverse impacts" (Guidelines,

§ 15126.4), and a reasonable range of alternatives which could "feasibly accomplish most of the basic objectives of the project" (Guidelines, § 15126.6 (c).). "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 School Dist.* (1994) 24 Cal.App.4th 826, 841.)

The renewable condition was not analyzed as an alternative or as a mitigation measure during the environmental review because it was not raised until late in the process, and because when it was raised the EIR judged it to be unworkable. The environmental review process began in 2006 and the original Draft EIR was issued in January, 2008. As CDB/Sierra Club acknowledge, they suggested the renewable condition on August 25, 2008, in comments on the Supplemental Draft EIR. (CBD/Sierra Club Rehrg. App., at p. 4 fn 2.) Because the renewable condition was not suggested or developed until a late stage of the environmental review process, it was not incorporated in the formal screening of alternatives, which occurs early in the preparation of an EIR. (See Guidelines, § 15126.6.) As long as the EIR considered a reasonable range of alternatives, there is no requirement that the EIR assess a hypothetical alternative that no one suggested.

In any event, after CBD/Sierra Club suggested the renewable condition the EIR determined it to be impracticable. This is because it is uncertain what renewables will be available in the Sunrise area and, therefore, to what extent SDG&E will be able to carry renewables on the Sunrise line. This conclusion is supported by SDG&E's statements that uncertainty made it impossible to determine how much renewable energy the line would carry (see EIR, Response to Comments B0041-50, 3-1621) , as well as the EIR's assessment that it is not clear what renewable projects will actually be developed (EIR, at GR 8, 2-43.) Regulatory constraints also make the condition unworkable, since it is CAISO, acting pursuant to FERC tariffs, that determines what power the line carries. (See CAISO CEO Mansour testimony, T.6249:15-19.)

In addition, the Decision concludes, based on evidence in the record, that the requiring Sunrise to carry renewables will not lessen the GHG impacts of the line. Based

on CAISO's response to Request ISO-4 (Exh. I-16), we conclude, "provided the RPS is achieved, WECC-wide GHG emissions are virtually the same whether Sunrise carries energy from renewable or fossil-fuel generators." (Decision, at p. 167.) Thus, even if the renewable condition were feasible there is no indication that it would lessen the GHG impacts of the Sunrise line.

CBD/Sierra Club cite a Minnesota Commission decision where the agency conditioned a powerline's approval on the condition that the line carry renewable energy. (CBD/Sierra Club Rehrg. App., at p. 3.)[4] CBD/Sierra Club's Minnesota example does not show that a similar condition is required, beneficial, or even feasible in regard to the Sunrise line. More significantly, it does not show that our decision not to impose the condition lacks an adequate basis. At this point in the proceeding, parties should not be rearguing policy, but rather must demonstrate legal error. Similarly, CBD/Sierra Club have requested that we take judicial notice of three other recent decisions relevant to the renewable condition. Although we take judicial notice of these decisions, they do support CBD/Sierra Club's claim that we committed legal error by approving the Sunrise line without the renewable condition.

CBD/Sierra Club also rely on the Grueneich Alternate and Dissent, as evidence of differing opinions regarding the condition. However, differing opinions do not invalidate the Commission's conclusions about the renewable condition. Therefore, CBD/Sierra's argument on this point lacks merit.

VII. FAILURE TO ADOPT RENEWABLE CONDITION

In addition to faulting the Decision for failing to adequately analyze the renewable condition, CBD/Sierra Club also allege that our failure to adopt the condition violates CEQA. For many of the reasons discussed above, CBD/Sierra Club are mistaken.

[4] *Order Granting Certificates of Need Subject to Condition* (March 11, 2003) Minnesota Public Utilities Commission, Docket No. E-002/CN-01-1958.

As discussed, we did not consider the renewable condition as mitigation, or as an alternative, or as part of the project. This was because the condition was not suggested or developed until after the EIR was prepared, and at that point the Commission judged that the condition was not feasible. Therefore the authority CBD/Sierra Club cite to the effect that feasible alternatives or mitigation must be incorporated into a proposed project (*Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 440-1) is inapposite. The renewable condition is not an alternative, nor mitigation, nor is it feasible, as the EIR concludes. Similarly, CBD/Sierra Club's complaint that mitigation must be enforceable (CBD/Sierra Club App. Rehg, at p. 10) is misplaced, because the proposed renewable condition is not mitigation, as explained.

CBD/Sierra Club allege an inconsistency between citing the transmission of renewables as an objective of the Sunrise line, while not requiring carrying renewables to be a condition of the project. They cite the Grueneich Alternate and the ALJ Proposed Decision as support for their view that the renewables condition is necessary to guarantee the objective of the project. (CBD/Sierra Club App. Rehg, at p. 9.) As SDG&E points out, however, there is a distinction between making reasonable assumptions regarding future conditions (e.g. there will be renewable development in the Imperial Valley) and requiring that those assumptions will occur (renewable condition). (SDG&E Response, at p.27.) Many of the particulars involved in developing sufficient renewable resources for Sunrise to carry are outside the jurisdiction of the Commission, as SDG&E also notes. Moreover, the Grueneich Alternate and the ALJ Proposed Decision, though they indicate some disagreement on these points, are neither authority nor evidence. CBD/Sierra Club, therefore, cannot rely on them to demonstrate legal error. Accordingly, CBD/Sierra Club have not identified any error in our decision not to adopt the renewable condition.

VIII. I-8 CORRIDOR ALTERNATIVE

CBD/Sierra Club argue that the EIR errs in concluding that its proposed I-8 corridor placement ("CBD I-8 Route") is infeasible. According to CBD/Sierra Club, the EIR's basis for judging the CBD I-8 Route to be infeasible is inadequate. Because the

EIR's conclusion is based on substantial evidence, CBD/Sierra Club's argument lacks merit.

The EIR fully analyzes the I-8 Alternative route, which roughly follows I-8, an east-west interstate highway in the area, as one of the Southern Route alternatives. In the EIR's analysis, portions of the I-8 Alternative eventually comprise the Environmentally Superior Southern Route. CBD/Sierra Club proposed some of the route should be constructed within I-8 right-of-way. The EIR rejects the CBD I-8 Route as infeasible because, "Caltrans staff informed the CPUC that regulations currently prohibit longitudinal easements within restricted access highways except in unusual situations, which would not apply in this case." (EIR, Response to Comments, G0018-5.) In addition, the Campo Band objected to certain portions of the CBD I-8 Route, since they interfered with tribal lands (EIR § H.4.2.2), and the United States Forest Service objected to hazards involved in other portions of the CBD I-8 Route.

CBD/Sierra Club challenge the EIR's reliance on the Caltrans statements and claim that the statements do not provide a sufficient basis for ruling out the I-8 corridor alternative. CBD\Sierra Club argue that no regulations prohibit the easement, but rather Caltrans has a discretionary policy which is included in the EIR in Appendix 1, Attachment 1 B. Because there is no legal prohibition against Caltrans granting the easement, CBD/Sierra Club claim the EIR errs in judging the alternative to be infeasible.

Under CEQA, feasible means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors" (Pub. Resources Code, § 21061.1; see Guidelines, § 15364.) An alternative site is properly excluded as infeasible where the project proponent is unable to acquire use of the site. (*Save Our Residential Env't v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753.)

In this case, whether the Caltrans opinion that the project would not receive approval to be placed along I-8 was based on a regulation or a policy is not dispositive as to whether the placement is feasible. Caltrans is the agency that would need to grant the approval and Caltrans staff stated its opinion, based on its procedure manual, that

permission would not be granted. This provides substantial evidence that SDG&E would not be able to acquire the rights to build along that route.

CBD/Sierra Club cite *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587 to support their view that in order to find it infeasible, the Commission must be legally restrained from approving the I-8 corridor route. (CBD/Sierra Club App. Rehg, at p. 11.) In *Uphold Our Heritage*, however, the court found that the fact that the Town was legally unable to force the project proponent to pursue the alternatives, did not prevent the Town from approving the alternative or denying the proposed project. (*Id.* at pp. 602-3.) As the Court stated, "The fact that Jobs does not wish to proceed with the rehabilitation does not make that alternative legally infeasible." (*Ibid.*) Here, it is not SDG&E that would not wish to proceed. Rather Caltrans, an independent agency neither within SDG&E's nor our control, indicated that it would not grant permission. The EIR is justified in finding the alternative route infeasible on that basis.

Also, as discussed, an EIR need not analyze " ' " 'every imaginable alternative or mitigation measure,' " ' " rather, "it should evince good faith and a reasoned analysis." (*Los Angeles Unified School Dist. v. City of Los Angeles* (1998) 58 Cal.App.4th 1010, 1029.) The EIR reviewed over a hundred potential route alternatives, far beyond the reasonable range of alternatives CEQA requires. As SDG&E points out, even without Caltrans' and others' objections, it would not be error for the EIR not to consider this alternative because an EIR is not required to consider every conceivable variation of alternatives stated. (*Mira Mar Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491.) Because the EIR considers a reasonable range of alternatives, and goes beyond that, its analysis meets the requirements of CEQA whether or not the EIR analyzes CBD's particular I-8 corridor alternative.

IX. THE IN-AREA RENEWABLE ALTERNATIVE

According to CBD/Sierra Club, the Decision errs in finding that the In-Area Renewable Alternative is infeasible, and rejecting it in favor of the Approved Route on that basis. They argue that the Commission's reasons for finding that alternative infeasible are inadequate because: (1) the alternative meets all project objectives; (2) the

Decision incorrectly concludes that the alternative would not further the policy goal of reducing GHG emissions; and (3) the cost analysis is flawed, and is, in any event, is an inadequate basis for finding infeasibility.

SDG&E responds that under CEQA, the reasons for finding an alternative infeasible are broader than CBD/Sierra Club suggest. According to SDG&E, the Decision's finding that the In-Area Renewable Alternative will not further the Commission's renewable goals to the same extent as the Approved Route is supported by substantial evidence. In addition, SDG&E maintains that the cost analysis is adequately supported, and that cost is a particularly important factor for Commission-approved projects.

The In-Area Renewable Alternative is "a combination of various San Diego area renewable projects that collectively could provide up to 1,000 MW of nameplate capacity generation by 2016." (Decision, at p. 240.) The EIR concludes that this alternative is potentially feasible, and that it tentatively meets the three basic objectives of the project (i.e. reliability, lower cost energy, delivery of renewables from Imperial Valley). (EIR GR-2.) However, the EIR notes that the agencies must make the final findings regarding feasibility of alternatives. (*Ibid*.)

Upon review, we acknowledge that the Decision's analysis of the feasibility of the In-Area Renewable Alternative is not entirely clear, and there is some inconsistency in the Decision's discussion regarding the extent to which certain project alternatives are met by the In-Area Renewable Alternative. However, we ultimately conclude, based on evidence in the record, that the In-Area Renewable Alternative does not meet the goals of reducing the cost of energy or accommodating renewable energy development in Imperial Valley and other sources in San Diego to the same extent as the Sunrise project. (Decision, at p. 255-256.) On these grounds, the Decision concludes that the In-Area Renewable Alternative, along with the two other high-ranked alternatives, is infeasible. (*Id.* at p. 256.) To the extent language in earlier sections of the Decision is inconsistent with these conclusions it is overruled. Accordingly, we will modify the

Decision to ensure consistency with our ultimate conclusions regarding the In-Area Renewable Alternative.

Beyond the language which will be modified, the Decision's reasoning regarding the infeasibility of the In-Area Renewable Alternative is legally sound and meets the requirements of CEQA. The feasibility of alternatives is considered at two separate stages in the CEQA process. First, alternatives are screened for potential feasibility before preparing the EIR, in order to determine which alternatives merit further review. (Guidelines, § 15126.6 (a).) Later, where there are environmentally superior alternatives, an agency must find them infeasible before approving an environmentally inferior project. (Guidelines, § 15091 (a)(3).) At this later stage, "'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 v. City of San Diego* (1982) 133 Cal.App.3d 401, 417) and the degree to which the project is consistent with the project objectives. (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1503.) Pursuant to CEQA, therefore, it is acceptable for an agency to reject an alternative as infeasible, when the EIR concluded it was feasible for the purpose of environmental review. (*Mira Mar Mobile Community v. City of Oceanside, supra*, 119 Cal.App.4th at p. 491) As with all other CEQA holdings, the feasibility findings must be supported by substantial evidence.

Our conclusion that the In-Area Renewable Alternative is infeasible because it would not facilitate as large an amount of renewable energy is legitimate and based on substantial evidence. Based on CAISO modeling cited within the Decision, the Decision projects that the Approved Route will "facilitate the development of over 1,900 MW of Imperial Valley renewables between 2011 and 2015." (Decision, at p. 255.) In contrast, the In-Area Renewable Alternative proposes a total of 1000 MW, 900MW of which are intermittent. (*Ibid*.) As discussed, facilitating renewable development and, in particular, facilitating the transmission of renewables from the Imperial Valley is a basic project objective.

The higher energy cost of the In-Area Renewable Alternative is also a legitimate basis for our finding of infeasibility and is based on substantial evidence. Assuming a 33% RPS requirement, the Decision concludes that the Approved Route will create a net benefit of $115 million a year, while the In-Area Renewable Alternative would generate significantly less than $93 million, the amount that the lower cost All-Source Generation Alternative would create. These conclusions are based on substantial evidence which includes CAISO modeling, as well as SDG&E's estimates. (See SDG&E Exhibit SD-142, Table 11-6, 14.)

Despite the fact that there is evidence in the record to support our cost conclusions, CBD/Sierra Club argue that the evidence presented regarding the cost of the In-Area Renewable Alternative lacks the required uncertainty analysis. As the Decision notes, that analysis was not performed for the Sunrise project. (Decision at p. 22.) Yet, although an uncertainty analysis was not performed, CAISO and SDG&E otherwise did analyses of the costs of project alternatives. This analysis included consideration of a number of variables, some requested by intervenors. Thus, there is substantial evidence to support the Decision's conclusion that the Sunrise project has greater cost benefits than the In-Area Renewable Alternative.

CBD/Sierra Club's next argument that extra cost is not a sufficient basis for a finding of infeasibility of a project alternative is misplaced. CBD/Sierra Club rely on authority which indicates that a project being more costly does not make it infeasible unless the extra costs make the project impracticable. (*e.g.*, *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736.) However, these cases concern the cost of the project for the project proponent. The Sunrise project is fundamentally different since the cost issue here is the cost of energy that ultimately ratepayers pay, and one major objective of the project, as well as one of the Commission's mandates, is to ensure reasonable prices for the cost of energy for consumers. (See Pub. Util. Code, § 451.) Therefore, whether an alternative will result in lower energy costs is a relevant consideration for judging the feasibility of the alternatives.

The facts that the In-Area Renewable Alternative will result in a lower cost benefit and facilitate less renewable development are sufficient reasons to find that alternative infeasible. Therefore, there is no legal error in the Commission's findings. As discussed, some language concerning whether the alternative meets the project alternatives will be modified, as set forth in the ordering paragraphs, for consistency and clarity.

X. OVERRIDING CONSIDERATIONS

CBD/Sierra Club allege that the Decision's statement of overriding considerations is inadequate. They contend that this required statement of findings is not based on substantial evidence, does not sufficiently describe how the benefits of the project specifically outweigh the unavoidable environmental impacts, and fails to explain how the adopted Sunrise route is preferable to the environmentally superior alternatives. UCAN also alleges that the statement is deficient. We find that although the statement is legally adequate, modification is warranted to more clearly refer to the impacts we are overriding.

CEQA requires that an agency adopt a statement of overriding considerations before approving a project that has unavoidable environmental impacts. The statement must explain how overriding concerns justify approval of the project despite the unavoidable impacts. (Pub. Resources Code, § 21081; Guidelines, § 15091, 15092.) The statement "is intended to demonstrate the balance struck by the body in weighing the 'benefits of a proposed project against its unavoidable environmental risks.' (Guidelines, § 15093, subds. (a) and (c).)" (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222.)

> While the mitigation and feasibility findings typically focus on the feasibility of specific proposed alternatives and mitigation measures, the statement of overriding considerations focuses 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. (*Sierra Club v. Contra Costa County*, *supra*, 10 Cal.App.4th at p. 1222.) A statement of overriding considerations must be supported by

> substantial evidence contained in the final EIR and/or other information in the record. (*Id*. at p. 1223.)

(*Concerned Citizens of South Central Los Angeles v. Los Angeles School Dist.* (1994) 24 Cal.App.4th 826, 847.)

Although the basic requirements for a statement of overriding considerations are straightforward, evaluating whether the statement is sufficient can be more subjective. As explained, "'There is a sort of grand design in CEQA: Projects which significantly affect the environment can go forward, but only after the elected decision makers have their noses rubbed in those environmental effects, and vote to go forward anyway.' [Citation]" (*Westwood Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683.)

For Sunrise, the statement of overriding considerations is stated on pages 269-271. The Decision states the approved project:

> …will provide substantial benefits in that it will facilitate our 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. As described in Section 9, it will also provide unquantifiable benefits, including 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.

(Decision, at p. 270.) The statement refers to the sections of the Decision where the benefits are specifically discussed, and also refers to how the benefits outweigh "each and every unavoidable impact." (*Ibid.*) Although the specific impacts are not enumerated in the statement, they are contained in Exhibit E to the Decision, which we reference in section 18.2, the section just before the statement of overriding considerations.

Contrary to CBD/Sierra Club's allegations, the statement satisfies the CEQA requirements for a statement of overriding considerations. The overriding benefits – facilitating 30% renewable procurement in the shortest time in a cost effective manner and Southern California reliability improvements – are the broad policy- type benefits that CEQA contemplates. Moreover, the existence of each of the benefits is supported by

substantial evidence which is cited in the Decision sections the statement mentions.[5] The statement also refers to "each and every unavoidable impact," which meets the requirement of Guidelines section 15093. These unavoidable impacts are listed and discussed in Appendix E, as well as the EIR sections H.4 and E.S. 8

CBD/Sierra Club are incorrect in their claim that the statement only discusses GHG impacts. As discussed above, although it does not identify them specifically, the statement refers to all unavoidable impacts, which are described elsewhere in the Decision. The GHG discussion is only separated to explain the Commission's position that despite the unavoidable significant impact, the Sunrise line should also facilitate the reduction of GHG emissions. (Decision, at p. 270-1.) The GHG holdings are also supported by substantial evidence, as discussed below. Moreover, CBD/Sierra's argument that the statement lacks a comparison with environmentally superior alternatives is misplaced. There is no requirement that the statement of overriding considerations contain such a discussion. (Guidelines, § 15093.) Rather, this discussion is part of the required findings pursuant to section 15091. The section 15091 findings and alternative comparison are contained in the Decision at pages 254-257 and in Appendix E.

Despite the general sufficiency of the statement, we note that due to the construction of the Decision, it is not necessarily easy to find the unavoidable impacts to which we refer. While the unavoidable significant impacts of the project as approved are listed in Appendix E, that appendix is not specifically cited in the statement and is quite large in any event. To remedy this, we will add a new Appendix to the Decision, solely containing a list and description of the unavoidable significant impacts of the approved project. We will modify the statement of overriding considerations to specifically refer to

[5] The assertion that it will facilitate renewable procurement is supported in exhibits, Strack, Ex. SD-16, Table 2, at 13, EIR, at 2-43, Exh. I-2, Table 4.3, Table 4.6, and Table 4.7; Compliance Exhibit 1.). The goal of 33% is supported by D.08-10-037 and Gov. Schwarzenegger November 17, 2008 Executive Order S-14-08, and the cost effectiveness of Sunrise fort the 33% goal is supported by CAISO Compliane Exhibit 1 and Update). The claims of reliability benefits are supported by CAISO's Compliance Exhibit 1.

Appendix G, in order to reinforce that we have considered and reviewed each and every unavoidable impact of the project and have chosen to approve the project despite these impacts.

XI. 2007 FIRES

According to CBD/Sierra Club, the EIR and Decision err in failing to consider SDG&E's role in the October 2007 fires in SDG&E's service territory. They argue that since SDG&E's negligence caused the fires, we err in failing to consider SDG&E's past behavior and the likelihood that SDG&E will follow the adopted mitigation measures. In a separate challenge to the fire analysis, UCAN contends, without citation to the record, that the Decision "contradicts" unrebutted testimony that the risks of outages dues to wildfires along the Southern Route are unacceptable. SDG&E counters that: (1) the 2007 fires were caused by fundamentally different types of power lines; (2) the Commission adopted mitigation measures to handle the fire risk; (3) the EIR does consider the 2007 fires Investigation Reports; and (4) the Sunrise CPCN is not the appropriate forum to investigate prior alleged illegal conduct. CBD/Sierra Club and UCAN do not demonstrate legal error in the Commission's fire risk analysis.

Partly because the October 2007 fires occurred during the preparation of the EIR, the preparers were fully aware of the serious fire risks that can result from power lines in SDG&E service territory. Consequently, the EIR has an extensive fire risk analysis, and a separate "Fires and Fuel Management" section. (EIR, § D.15.1). Following this extensive analysis, the EIR finds that the approved route would have the following three significant and unmitigable (Class I) impacts related to fire and fuels management: Impact F-1(Construction and/or maintenance activities would significantly increase the probability of a wildfire); Impact F-2 (Presence of the overhead transmission line would significantly increase the probability of a wildfire); and Impact F-3 (Presence of the overhead transmission line would reduce the effectiveness of firefighting).

The thorough treatment of fire risk in the EIR also resulted in development of ten mitigation measures that are incorporated as part of the approved project and would reduce fire impacts. These are listed in the Decision, as well as the EIR and

include: developing and implementing a Construction Fire Prevention Plan; ensuring coordination for emergency fire suppression; remove hazards from the work area, and; establishing and maintaining adequate line clearances. (Decision, at p. 217.)

Also, as the Decision notes, the 2007 Fires were caused by smaller distribution lines, which are different type of power line and present a more extensive fire risk. (Decision, at p. 211.) UCAN challenges this conclusion and then argues that there is no evidence that the risk of outages from fire is acceptable. (UCAN Rehrg. App., at p. 39.) UCAN's analysis is confused because whether the towers create a fire risk, and whether there is a risk that fire will cause an outage are two separate issues. In any event, both conclusions are supported. The EIR thoroughly explains and analyzes the greater fire risks associated with smaller distribution lines as opposed to larger transmission lines such as Sunrise. (EIR, at p. D15-4.) In addition, the EIR explains that if the line or substation were damaged due to fire SDG&E would be able to reroute electricity using other components of its regional system (as it did after the 2007 fires). (*Id.* at p. D10-171.) Moreover, there would be back-up power generators. (*Ibid.*) Although this analysis specifically concerns the original Proposed Route, the ability to overcome an outage would be the similar for the route as approved. Thus, the Commission has a basis for judging this outage risk to be acceptable, contrary to UCAN's assertions.

Although the EIR considers the earlier fires (EIR, § D.15.1), CBD/Sierra Club argue that the Commission does not adequately consider SDG&E's negligence in the 2007 fires. Their only support for the contention that SDG&E's earlier role is relevant is *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California* (1988) 47 Cal. 3d 376. In *Laurel Heights*, the Court holds that the Regents prior record of violations concerning radioactive materials was relevant to consideration of "the proponent's promises in an EIR," regarding the radioactive materials. (*Id.* at p. 420.)

We acknowledge there is an investigation pending regarding SDG&E's culpability regarding the 2007 fires, but as the EIR explains, an environmental review is not the appropriate forum for determining legal culpability. (EIR, Response to Comment

G0018-26, at 4-824.) In any event, the Decision does not rely on SDG&E's promises regarding fire safety. Rather, we adopt an extensive mitigation monitoring program. (EIR, § D.15.22.) The Commission and other agencies, including the Bureau of Land Management, the California Department of Forestry and Fire Prevention ("CAL FIRE"), United States Forest Service, Imperial and San Diego Counties and city fire agencies, are all agencies that will be responsible for ensuring adherence to and proper implementation of the mitigation measures required as part of the Sunrise Project. SDG&E's past practices are independent of its adherence to the required mitigation measures related to Sunrise.

For these reasons, pursuant to CEQA, the Decision's and the EIR's discussion of SDG&E's past practices in the previous fires, as well as of the fire risk inherent in the Sunrise project, is thorough and legally adequate.

XII. SEISMIC RISK

UCAN also maintains that we did not adequately address the risk that seismic activity would compromise the reliability of the system. According to UCAN, the Decision mistakenly cites to the EIR's discussion of whether Sunrise would *cause* additional seismic risks although that was not UCAN's concern.

As UCAN states, the Decision cites to a portion of the EIR which discusses Sunrise's impact on seismic activity (Decision, at p. 281), and that this discussion does not address UCAN's main point. In any event, in other areas the EIR addresses UCAN's concern about the impact of seismic activity on the Sunrise project and SDG&E's system. In the Public Health and Safety section, the EIR notes that the lines must meet the requirements of Commission General Order 95, which delineates safety standards for overhead lines considering all risks including earthquakes. (EIR, at p. D.10-169.) The EIR also finds that overhead lines are generally flexible and are not generally damaged in earthquakes. (*Id.* at p. D.10-171.) Finally, regarding dangers to the SDG&E system resulting from earthquake caused damage to a Sunrise substation or transmission line, as with the fire risk discussed above, the EIR states that if the line or substation were

damaged SDG&E would be able to reroute electricity. (*Ibid.*) In these passages, the EIR adequately analyzes the impact of a seismic event on the Sunrise Project.

XIII. NO PROJECT ALTERNATIVE COST-ANALYSIS

UCAN also complains that SDG&E ignored the ALJ and failed to do a cost-analysis comparison of its Proposed Project versus the EIR's No Project Alternative. UCAN argues that because we did not have this cost analysis, we lacked a basis to evaluate the No Project Alternative. UCAN's allegation lacks merit because there is a sufficient basis to conclude that the Sunrise project is more cost-effective than the No Project alternative.

As explained in the EIR, the No Project Alternative is a menu of options that would replace the Sunrise project, but contains more options than would be required to replace Sunrise. (See EIR, at p. ES-74.) Thus, the In-Area All-Source Generation Alternative, In-Area Renewable Generation Alternative and LEAPS Transmission-Only Alternative are all possible configurations of the No Project Alternative. (*Ibid.*) Because the record contains cost-studies that evaluate the cost-effective of these alternatives (see Decision, at p. 161, Table 15), likely configurations of the No Project Alternative have in fact been analyzed. Therefore, contrary to UCAN's argument, the Decision has an adequate basis for judging the cost-effectiveness of the No Project Alternative.

UCAN also reprises its complaint that the EIR, as opposed to the Decision, fails to analyze the cost-effectiveness of UCAN's separate No Project Alternative, or the EIR No Project Alternative. (UCAN Rehrg. App., at p. 66.) As discussed below, and the EIR already notes, such an economic analysis is not the role of an *Environmental* Impact Report (EIR, 3-850), and CEQA does not require a cost-benefit analysis of the project. The only economics the EIR considers is whether the alternatives are economically feasible (possible, capable of being accomplished). (See *Kings County Farm Bureau v. City of Hanford*, *supr*a, 221 Cal.App.3d at p. 736.) Outside the EIR, the Commission must consider the cost-effectiveness of project alternatives (see Pub. Util. Code, § 1002.3), but, as discussed, it has done so.

XIV. OTHER UCAN CEQA ALLEGATIONS

Although UCAN alleges that the environmental review of the Sunrise project is inadequate in a number of respects, it cites no authority supporting its assertions. (See UCAN Rehrg. App., at pp. 63-102.) UCAN asserts that the EIR is deficient for failing to adequately assess the cost of the Sunrise project, the justification for the Sunrise project, and other non-environmental merits of the project and various alternatives. These arguments are misplaced because an EIR is an *environmental* document, which is not charged with exhaustively evaluating the costs and non-environmental merits of the project and its alternatives. (Guidelines, § 15131; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 689-690.)

Similarly, UCAN provides no legal justification for its contentions that the EIR does not sufficiently consider various UCAN alternatives, proposals and suggestions. The environmental process included numerous scoping meetings and public comment opportunities, and the EIR provides exhaustive responses to UCAN's comments. (See, e.g., Responses to Comments B0011.) As a result the environmental process lasted two years and produced an 11,000 page document. "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." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.) Moreover, as discussed, an EIR need only consider a reasonable range of alternatives, and not every conceivable variation of alternatives stated. (*Mira Mar Community v. City of Oceanside, supra*, 119 Cal.App.4th at p. 491.) The EIR considers dozens of alternatives, far more than CEQA requires. To the extent any of the many elements of the UCAN's "No Project Alternative," in particular, were not evaluated in the manner or to the extent UCAN suggested, this does not demonstrate any error or defect in the EIR.[6]

[6] UCAN's arguments concerning inadequate consideration of its suggested No Project Alternative lack merit for other reasons as well. First, UCAN fails to present a coherent statement about the contents of its

(footnote continued on next page)

UCAN fails to support its unrealistic view of the role of an EIR with any case, statute, regulation or any other legal authority. Accordingly, its arguments challenging the EIR lack merit.

XV. UCAN EVIDENTIARY AND MISCELLANEOUS CHALLENGES

UCAN alleges that several of the findings in the Decision are not supported by the record or rely on improper evidence. We have reviewed each and every argument UCAN raises in its rehearing application regarding evidentiary support for the findings of the Decision and are of the opinion that modifications, as described below, are warranted to: (1) clarify the costs subtracted from the All-Source Generation Alternative to address the solar photovoltaic ("PV") already paid for in the California Solar Initiative ("CSI") program; and (2) clarify the statement that the higher ranked alternatives are not estimated to facilitate half of the renewable development as Sunrise. We find that the other contentions in UCAN's rehearing application regarding the evidence in the record lack merit.

Several of UCAN's allegations do not specify a ground for legal error as required pursuant to Public Utilities Code section 1732 and Rule 16.1(c) of the Commission's Rules of Practice and Procedure. (See e.g., UCAN Rehrg. App., at p. 37 (allegations regarding GridView modeling); pp. 37-38 (allegations regarding San Luis Rey Substation proposal); p. 38 (allegations regarding CAISO's modeling of reliability benefits); pp. 40-41 and 44-45 (allegations regarding findings in ALJ's PD); pp. 43-44 (allegations regarding net benefits of Sunrise); p. 43 (allegations regarding Bull Moose Biomass Facility Contract); p. 43 (allegations regarding Miramar II Peaker).) Several of UCAN's allegations regarding the evidentiary record do not demonstrate any legal error in the Decision but rather attempt to relitigate issues in the proceeding and ask the

---

(footnote continued from previous page)

No Project Alternative. Also, contrary to UCAN's assertions, the EIR considers all of UCAN's proposals to an appropriate extent. Beyond UCAN wanting the EIR to do more extensive analyses and agree with UCAN's assessments, UCAN does not support its claim of legal error.

Commission to reweigh the evidence in the record. (See e.g., UCAN Rehrg. App., at pp. 54-58.) In many instances, UCAN does not deny that certain findings in the Decision are supported by record evidence but rather asserts that the Decision errs because it ignores evidence presented by UCAN or Powers Engineering. (See e.g., UCAN Rehrg. App., at p. 31 and 41 (allegations regarding energy efficiency assumptions); pp. 31-32 (allegations regarding operating and maintenance costs); p. 34 (allegations regarding Otay Mesa and Palomar designations); pp. 38 and 55 (allegations regarding CAISO modeling of reliability benefits).)

The fact that there may be evidence in the record that conflicts with the findings of the Decision does not constitute legal error. Given the volume of the evidentiary record in this proceeding, the evidentiary record in this case is replete with positions and facts that are conflicting. Where there is conflicting evidence in the record, it necessarily holds true that some of the evidence in the record will conflict with whatever conclusion the Commission reaches. It is for the Commission to weigh the evidence and come to a reasonable determination based on evidence in the record. (*Eden Hospital Dist. v. Belshe* (1998) 65 Cal.App.4th 908, 915.) There is no legal error where there is substantial evidence supporting the Commission's determinations. (Pub. Util. Code, § 1757(a)(4); see also *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) UCAN's allegations challenging the Commission's findings on evidentiary grounds do not demonstrate a lack of evidence supporting the Commission's determinations and therefore do not demonstrate any legal error.

Furthermore, although UCAN repeatedly alleges that the Decision ignores its evidence, the fact that the Decision does not discuss certain record evidence does not demonstrate that there is legal error. There is no legal requirement that every piece of evidence in the record be mentioned in the Decision. (See *Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 540.)

A. Subtraction from Cost of All-Source Generation Alternative to Account for Solar PV in CSI Program

UCAN contends that the Decision's finding that SDG&E's firm capacity will be 70 MW under the CSI program diverges from the record. (UCAN Rehrg. App., at p. 29.) UCAN also alleges that subtracting $367 million from the assumed capital cost of the All-Source Generation Alternative to address the 37 MW of the solar PV already paid for in the CSI program is not based on the record. (UCAN Rehrg. App., at pp. 30 and 43.)

UCAN's contention that the Decision's finding regarding SDG&E's firm capacity under the CSI diverges from the record lacks merit. The record supports the Decision's finding that SDG&E's firm capacity will be 70 MW under the CSI. There is evidence in the record that the Commission has allocated CSI funds such that SDG&E will receive enough funding to acquire 180.3 MW (nameplate). (SDG&E Exhibit SD-27, p. 6; see also D.06-12-033, Appendix B, Table 11.) There is evidence in the record that based on historic data, firm peak delivery from those solar PV units will be 39% of nameplate. (SDG&E Exhibit SD-27, p. 6.) 39% of 180.3 MW is 70 MW. Therefore, the Commission properly relied on the record and made the finding that SDG&E's firm capacity under the CSI will be 70 MW.

The Analytical Baseline had originally assumed that SDG&E's installed capacity under the CSI would be 33 MW by 2016. Therefore, the Decision makes the finding that 37 MW (70 MW-33MW) should not be attributable to the All-Source Generation Alternative. To account for the 37 MW that the Decision determines should not be attributable to the All-Source Generation Alternative, the Decision relies on CAISO's Center for Resource Solutions ("CRS") Renewable Costs for solar PV for use in its Analytical Baseline. (Decision, at p. 157, fn. 447.) Using CAISO's CRS Renewable Costs for solar PV, the Decision determines that $367 million per year should be subtracted from the assumed capital cost of the All-Source Generation Alternative. (Decision, at p. 157.)

However, based on a review of the record evidence, we find that $367 million per year does not accurately reflect the cost of 37 MW based on CAISO's CRS

PV costs. Based on CAISO's CRS PV Costs, we find that $368 million (2010$) should be subtracted from the assumed capital cost of the All-Source Generation Alternative to address the 37 MW of the solar PV that the Decision determines was already paid for in the CSI program. The $368 million is based on evidence in the record.[7] We modify the Decision, as set forth in the ordering paragraphs below, to accurately reflect the costs of 37 MW of solar PV based on CAISO's CRS Renewable Costs for solar PV.

UCAN also alleges that the Commission's adoption of 70 MW of CSI adopts the lower end of SDG&E's Phase 2 estimate of 70 MW to 150 MW and ignores SDG&E's Phase 1 estimate of 150 MW, thus requiring SDG&E to pay for 80 MW of Combustion Turbines ("CT") to replace the 80 MW of PV. (UCAN Rehrg. App., at p. 30.) This allegation lacks merit. We did not "remove" 80 MW of CSI. Rather, we relied on a different assumption for PV in the Decision than the parties presented in Phase 1. There is no reason to add back in CT costs since those costs are already reflected.

[7] The $368 million (2010$) is derived as follows: (1) Calculate the cost of PV in the CSI program (70 MW by 2016, added from 2007-2016 in 7 MW increments at a cost of $9,140 per installed firm kW (2006$)). The cost of PV of $9,140 per installed firm kW (2006$) is based on PV costs of $19,330 per installed firm kW (2006$) multiplied by (200 $/MWh / 423 $/MWh) in order to scale the costs to reflect CAISO's CRS levelized costs for PV. Per Exhibit Compliance 1, SDG&E's levelized costs for PV were 423 $/MWh and CAISO's CRS levelized costs for PV were 200 $/MWh. $19,330 $/kW (firm installed 2006$) is based on the following: $2,197,000,000 (2010 $) (from Exhibit Compliance 1) * (1.02 ^ (2006 - 2010)(to convert 2010 $ to 2006 $) / (210 MW (installed capacity from Exhibit Compliance 1) * 50% (firm capacity associated with PV divided by installed capacity from SDG&E Exhbit SD-6, p. IV-14)). Installed costs per firm kW are escalated at 2% per year per CAISO, Exhibit I-12, p. 7. Thus, installed costs of the CSI for the period from 2007-2016 equals $643 million (NPV 2010$) using a discount rate of 8.13% per Exhibit Compliance 1; (2) Calculate the cost of PV in the Analytical Baseline (30 MW firm by 2015, added from 2006 at 3 MW per year (i.e., 33 MW by 2016), using the same costs as those assumed in (1). Thus, the installed costs of the PV in the Analytical Baseline equals $276 million (NPV 2010$). Therefore, the "sunk costs" of the CSI program equals the difference between the costs calculated in steps (1) and (2) above (i.e., $643 million - $276 million). Thus, the sunk costs equal $368 million (NPV 2010$) ($368 million rather than $367 million due to rounding). The net cost of the All-Source Generation Alternative is the difference between the costs calculated in step (1) above and the "sunk costs" previously discussed. (All references to Exhibit Compliance 1 in this footnote are references to Exhibit Compliance 1, Section_4_Workpapers-Rebuttal (Modified for DEIR)_Final_v3, "DEIR Renewable Costs" Tab.)

B. Statement that higher ranked alternatives will not facilitate half of the renewable development as Sunrise

UCAN alleges that the Decision's statement that the higher ranked alternatives are not estimated to facilitate half of the renewable development as Sunrise is contradicted by the record. (UCAN Rehrg. App., at p. 39.)

The record supports that the higher ranked alternatives are not estimated to facilitate as much renewable development as Sunrise. We found that Sunrise would facilitate the development of over 1,900 MW of Imperial Valley renewables between 2011 and 2015.[8] We found that the higher ranked alternatives: the All-Source Generation Alternative, the In-Area Renewable Alternative, and the LEAPS Transmission-Only Alternative, would not facilitate as much development of renewables as Sunrise. (Decision, at pp. 255-256.) The All-Source Generation Alternative proposed the development of 203 MW of solar PV in San Diego's service area. (Decision, at p. 255.) The In-Area Renewable Alternative proposed the development of a total of 1,000 MW of renewable resources in San Diego's service area, 900 MW of which were intermittent solar and wind resources. (Decision, at p. 255.) The LEAPS Transmission-Only Alternative was not projected to increase the development of renewables. (Decision, at p. 256.)

Since Sunrise is projected to facilitate the development of 1,900 MW of renewables and the In-Area Renewable Alternative is projected to facilitate the development of 1,000 MW of renewables, UCAN is correct that Sunrise is not estimated to facilitate *more than half* of the renewable development as all of the higher ranked alternatives. Therefore, we modify the Decision, as set forth in the ordering paragraphs

[8] During the proceedings, CAISO presented testimony that if Sunrise is developed, 900 MW of solar thermal and 1,000 MW of geothermal resources would come on line by 2015, which would result in an additional 9,900 GWh of renewable generation from the Imperial Valley. (See Exh. I-2, Table 4.3, Table 4.6, and Table 4.7; Compliance Exhibit 1, Section_4_Workpapers-Rebuttal (Modified for DEIR)_Final_v3, "Table 4.3" Tab.) CAISO assumed that absent Sunrise, this incremental 1,900 MW of renewable generation does not come online in the Imperial Valley. (See Exh. I-2, Table 4.6 and Table 4.7.)

below, to delete language that the three top ranked alternatives would not facilitate even half the amount of renewable development as Sunrise.

XVI. CONCLUSION

We have exhaustively considered every allegation UCAN and CBD/Sierra Club raise in their applications for rehearing. The applications for rehearing have identified particular areas where modifications to the Decision are warranted and we will order modifications as detailed below. There is no legal error in the Decision as modified, and accordingly we deny the applications for rehearing. Any holdings in the Decision that are inconsistent with our holdings today are hereby superseded.

Therefore **IT IS ORDERED** that:

1. CBD/Sierra Club's March 26, 2009, June 16, 2009 and July 1, 2009 motions requesting judicial notice are granted.

2. The last sentence on page 6 continuing on page 7 of the Decision beginning with "In contrast, the higher ranked alternatives…" is modified to state:

> In contrast, the higher ranked alternatives are not estimated to facilitate as much renewable development.

3. Footnote 91 on page 39 of the Decision is modified to state: "SDG&E Phase 2 Opening Brief, pp. 178-79."

4. The second sentence of the second full paragraph on page 138 of the Decision beginning with "As discussed in Section 4.3…" is modified to state:

> As discussed in Section 6.10, the evidence in this case suggests that significant renewable development in and around the Imperial Valley will be facilitated by Sunrise, even if the RPS remains at 20%.

5. The third bullet point on page 157 of the Decision is deleted, and replaced with the following:

> We subtract $368 million (2010$) from the assumed capital cost of the All-Source Generation Alternative in each scenario to address the 37 MW of solar PV already paid for in the California Solar Initiative program

6. The second sentence of footnote 446 on page 157 of the Decision beginning with "However, as discussed in note 108 above…" is modified to state:

> However, as discussed in note 92 above, SDG&E assumes that SDG&E's firm capacity under the California Solar Initiative will be between 70 MW and 150 MW.

7. The second sentence of footnote 447 on page 157 of the Decision beginning with "Assuming SDG&E's estimated…" is deleted.

8. The discussion in section "**12.1.2 Discussion**" on page 170 of the Decision is deleted, and replaced with the following:

> We adopt the construction-related CO_2 emission estimates in the EIR/EIS. We also agree with SDG&E that the construction-related CO_2 emission estimates in the Draft EIR/EIS are conservative given the lack of a reference case in which additional transmission is built to meet the RPS targets. However, as noted by SDG&E, there is insufficient information in the record to support a modification of these estimates.
>
> We agree with Conservation Groups that construction-related GHG emissions should be mitigated to the maximum extent possible, and we have addressed that in the EIR/EIS mitigation measures.
>
> While we agree with DRA and UCAN that GridView modeling has a number of faults, we do find it provides useful high level information. In the Compliance Exhibit, CAISO did not update its 2015 GridView modeling, but it did correct the emission rate errors from Phase 1. Its final quantification of GHG emissions matches that of the Final EIR/EIS and is within 5 tons of SDG&E's own correction.[467] However, although we anticipate that such reductions will eventually result from Sunrise, as the Final EIR/EIS notes, this benefit must be considered uncertain. (Final EIR/EIS D.11-55.)
>
> CAISO modeling has shown that Sunrise could potentially carry significant fossil fueled power because of its projected availability and cost, and a portion of this power

[467] CAISO's Compliance Exhibit finds Sunrise would reduce CO2 emissions in 2015 by 8,949 tons.

may be coal fired. However, as noted above, CAISO modeling also indicates that whether Sunrise carries renewable energy from the Imperial Valley or energy from fossil-fired generators, Sunrise in combination with renewable penetration of 26.5% results in reductions in operational CO_2 emissions relative to the base case in 2015. The range of GHG savings relative to the base case runs from 8,950 tons CO_2 per year if Imperial Valley renewables are developed to 23,325 tons of CO_2 emissions per year if Imperial Valley renewables are replaced instead with renewables developed elsewhere.[468] Again, although we do not consider these figures dispositive, we note they strongly contradict the assumption that there will be any GHG benefit to requiring Sunrise to carry renewables. We, therefore, do not think it reasonable to impose the "Minnesota approach" offered by Conservation Groups as a solution, at least not on the basis of the CAISO analysis, 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.

We note that, in accord with the Final EIR/EIS, we must consider the GHG impact of Sunrise to be a significant adverse impact of the project. This finding is based on the direct GHG emission impacts of the project which could be evaluated – specifically the GHG emissions associated with construction and non-transmission O&M activities of the Sunrise line. Thus, in approving Sunrise in accordance with the CEQA requirements, we must override the impact of these additional GHG emissions and find that any environmentally superior alternatives are infeasible. We do both of these in today's decision.

Yet, notwithstanding this holding, we also find that, although not fully quantifiable, it is likely that the Sunrise line will facilitate longer-term GHG emission reductions, in accord with CAISO's projections. Although these benefits are too uncertain to be quantified fully in the EIR we are

[468] CAISO Exhibit I-16.

> convinced, based on CAISO modeling, that the Sunrise project will assist California to meet and exceed its RPS and GHG reduction goals.
>
> We remain fully committed these goals. While we decline to mandate specific requirements about what types of energy Sunrise should carry, we believe it is appropriate to adopt measures aimed at ensuring that the investment in Sunrise supports achievement of the RPS and the AB32 GHG reduction targets. The record before us clearly demonstrates that one of the main goals of Sunrise is to access renewable resources – much of which are base load geothermal resources – that otherwise would not be available without transmission upgrades. We want to be certain that construction of Sunrise will facilitate the development of renewable resources in the Imperial Valley.
>
> Section 17 outlines our approach, which relies upon three elements. First, we expect SDG&E to follow through on specific commitments made by its CEO Debbie Reed at the November 7, 2008 Oral Argument.[469] We will also implement increased scrutiny of the renewable procurement process and, if needed, adopt specific requirements to ensure that all of California's IOUs contribute to timely development of Imperial Valley renewables. Finally, we issue a directive to the assigned commissioner in R.08-08-009, the proceeding addressing implementation of the RPS program, to propose programmatic reforms that will support this objective.

9. The last sentence is the first paragraph on page 175 on the Decision, beginning with "We also agree…" is deleted and replaced with:

> While we adopt the conclusions in the Final EIR/EIS regarding the GHG impacts of the alternatives, we note that these conclusions only provide a partial view of the impact of these projects. In addition to the inherent difficulties of comparing the emission impacts of transmission versus generation alternatives, we note the there is no WECC-wide GHG emissions analyses for the alternatives.

[469] SDG&E reiterated these commitments in comments filed November 20, 2008 and December 8, 2008.

10. The first paragraph in section "**15.4.3. Discussion**" on page 232 of the Decision is deleted and replaced with:

> The All-Source Generation Alternative largely meets the first Basic Project Objective, to maintain reliability. While the EIR/EIS indicates that this alternative also meets the second Basic Project Objective, to reduce energy costs, further analysis has shown that this alternative will not reduce energy costs to as great an extent as Sunrise assuming compliance with a 33% RPS mandate. (See Table 15.) In addition, although this alternative promotes renewable energy to some extent, it does not facilitate as large an amount of renewables as Sunrise does, and it does not facilitate delivery of power from new renewable sources in the Imperial Valley. Therefore, the All-Source Generation Alternative does not fully meet the third Basic Project Objective.

11. The following sentence is added to the end of the first full paragraph on page 234 of the Decision:

> Moreover, as stated earlier, we note that, due to the uncertainties of the GHG analysis, these conclusions provide only a partial view of the GHG impacts of this alternative.

12. The first paragraph in section "**15.5.3. Discussion**" on page 240 of the Decision is deleted and replaced with:

> The In-Area Renewable Alternative, like the All-Source Generation Alternative, largely meets the first Basic Project Objective – reliability. While the EIR/EIS indicates that this alternative also meets the second Basic Project Objective, to reduce energy costs, further analysis has shown that this alternative will not reduce energy costs to as great an extent as Sunrise. With respect to the third Basic Project Objective, although this alternative promotes renewable power development in the in basin San Diego area, it does not facilitate delivery of power from new Imperial Valley renewables and it does not facilitate as large an amount of renewables as Sunrise does. Therefore, this alternative does not fully meet the third Basic Project Objective.

13. The last sentence in the last full paragraph of page 240 of the Decision beginning with "Because…" is deleted.

14. The first paragraph in section "**15.10.3. Discussion**" on page 253 of the Decision is deleted and replaced with:

> Our conclusions with respect to the All-Source Generation and In-Area Renewables apply here. The fossil fired and renewable in-area generation identified in these EIR/EIS alternatives is neither unrealistic nor unduly speculative and sufficient levels of both can be brought online in time to meet SDG&E's reliability needs, which we find to be less urgent than SDG&E asserts. Since only about 1,000 MW of in basin generation or transmission import capacity is necessary to replace the Proposed Project, and since a combination of the two top ranked alternatives can provide that amount, the No Project Alternative has adequate resources. Therefore, it largely meets the first Basic Project Objective. It does not fully meet the third Basic Project Objective because it does not facilitate delivery of power from new Imperial Valley renewables and does not facilitate as large an amount of renewables as Sunrise does. Given the CPCN record, however, the No Project Alternative may not reduce the cost of energy in the region, which is the second Basic Project Objective. Unlike the parties, we do not factor development of the LEAPS Transmission-only Alternative into our assessment of likely development under the No Project alternative because as discussed in Section 17.6, we find that the CPCN record renders the LEAPS Transmission-only Alternative less attractive economically than the EIR/EIS suggests.

15. The second sentence of the second paragraph on page 255 of the Decision, beginning with "The three top ranked alternatives…" is deleted and replaced with the following:

> The three top ranked alternatives would not facilitate the amount of renewable development that the Final Environmentally Superior Southern Route will facilitate.

16. The first full paragraph on page 256 of the Decision, beginning with "The All-Source Generation Alternative…" is deleted.

17. The following sentences are added to the discussion on page 270 of the Decision, at the end of the last full paragraph:

> The significant unavoidable impacts of the Environmentally Superior Southern Route are listed in Appendix G attached to this Decision. The impacts include impacts on Biological Resources, Visual Resources, Land Use, Wilderness and Recreation, Agriculture, Cultural and Paleontological Resources, Noise, Air Quality, Water Resources, and Fire and Fuels Management. We are aware of each and every one of the impacts listed in Appendix G.

18. The word "will" on page 270 of the Decision, on the third line from the bottom, is deleted and replaced with the word "could."

19. Finding of Fact 28 on page 280 of the Decision is deleted and replaced with:

> The Final Environmentally Superior Southern Route 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.

20. Finding of Fact 13(c) on pages 284 and 285 of the Decision is deleted and replaced with:

> subtracts $368 million (2010$) from the assumed capital cost of the All-Source Generation Alternative in each scenario to address the 37 MW of solar PV already paid for in the California Solar Initiative Program;

21. References to Section 17.6 throughout the Decision in footnote 583 on page 208, the first full sentence on page 254, and in footnote 652 on page 256 are modified to refer to Section 15.6.

22. References to Section 17.11 throughout the Decision in footnote 4 on page 3, the third sentence on page 261, and the first sentence of the first paragraph on page 270 are modified to refer to Section 15.11.

23. Rehearing of Decision 08-12-058, as modified herein, is denied.

24. Any holdings in the Decision that are inconsistent with our holdings today are hereby superseded.

This order is effective today.

Dated July 9, 2009, at San Francisco, California

MICHAEL R. PEEVEY
President
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

Comr. Grueneich will file a dissent.

/s/ DIAN M. GRUENEICH
Commissioner

Dissent of Commissioner Dian M. Grueneich
on Order Denying Sunrise Rehearing Applications

The "Order Modifying Decision 08-12-058 and Denying Rehearing of Decision, as Modified" (Order Denying Rehearing) that this Commission approves today perpetuates the basic internal inconsistency in the Commission's decision 08-12-058 (Sunrise Decision) approving the Sunrise Powerlink transmission line (Sunrise). As explained in my dissent to the Sunrise Decision, my Alternate Decision for granting a certificate of public convenience and necessity (CPCN) for Sunrise avoided these inconsistencies and other legal errors in the Sunrise Decision.

This Commission Determined Sunrise Was Needed To Carry Imperial Valley Renewables

The Sunrise Decision was based on the finding that Sunrise was needed for California to meet a 33% renewable portfolio standard (RPS). The economic and policy justification for the Sunrise Decision was that Sunrise would carry 1,900 MW of Imperial Valley renewable resources to meet a 33% RPS, and that a 33% RPS was necessary for California to achieve its greenhouse gas (GHG) reduction objectives. Everything in the Sunrise Decision hinges on this justification.

The Sunrise Decision's economic and environmental justifications for the line are dependent upon Sunrise carrying Imperial Valley renewables. The Sunrise Decision finds that if, and only if, the 1,900 MW of Imperial Valley resources are developed and delivered on Sunrise, Sunrise will generate $115 million per year in net benefits for ratepayers. The Sunrise Decision also finds that Sunrise is not needed for reliability in San Diego until 2014,[1] nor is it needed to meet a 20% RPS given that other less expensive and less environmentally damaging options are available.[2]

[1] The Sunrise Decision notes some uncertainty with this conclusion. See e.g., Sunrise Decision Finding of Fact 7. However, the economic downturn that has continued since the analysis in the Sunrise Decision was prepared has resulted in significant load drops throughout California, thus reinforcing the Sunrise

(footnote continued on next page)

Thus, the Sunrise Decision is clear that absent Sunrise carrying Imperial Valley renewable resources – resources above and beyond what is needed to meet a 20% RPS - Sunrise makes no sense. It makes no economic sense; it makes no environmental sense.

Contrary To The Renewable Justification For Sunrise, The Commission Now Clarifies That For GHG Reduction Purposes It Is Irrelevant Whether Or Not Sunrise Carries Renewables

The rehearing applicants, Center for Biological Diversity, Sierra Club, and Utility Consumers' Action Network all raise the GHG emission risks presented by Sunrise. The record shows that Sunrise could easily carry existing fossil-fired generation and facilitate the development of new fossil-fired resources outside the state. Existing transmission lines will connect Sunrise to out-of state resources, not only in the Southwestern U.S. but also to two existing gas fired plants totaling over 1,000 MW of capacity in Baja California in Mexico. Thus, the risk that Sunrise will increase, rather than decrease, GHG emissions is real and significant. This is one of the reasons my Alternate Decision proposed mechanisms to ensure that Sunrise carries Imperial Valley renewables. My proposal was, among other things, a mitigation measure to address GHG emission concerns by ensuring that Sunrise delivered on its GHG reduction promises.

The Order Denying Rehearing justifies the Commission's failure to mitigate GHG emissions in the manner I proposed by stating that GHG emissions under a 33% renewable regime will be the same, system wide, regardless of whether or not Sunrise carries renewables. So, in other words, under the GHG analysis supporting the Sunrise Decision, and clarified in the Order Denying Rehearing, the Commission refuses to impose feasible GHG mitigation measures through renewable procurement mechanisms that the Commission controls, arbitrarily states that such measures are infeasible, and

---

(footnote continued from previous page)

Decision's finding of no reliability need until 2014. If anything, given the magnitude of load drops, the projection of a need in 2014 is significantly overstated.

instead states that it is irrelevant whether or not Sunrise carries renewables or fossil-fired power.

The Commission's conclusion is clearly at odds with the rest of the Sunrise Decision, which finds that the sole economic justification for approving Sunrise is that Sunrise will carry extensive amounts of Imperial Valley renewable power.

This conflicting analytical approach creates a fundamental and fatal inconsistency in the Sunrise Decision. The changes made to the Sunrise Decision in the Order Denying Rehearing do not eliminate the internal inconsistency.

Conclusion

There are other portions of the Order Denying Rehearing with which I disagree and which do not accurately characterize the Decision or the record. One example is the statement that the Sunrise Environmental Impact Report (EIR) "judged" the renewable condition contained in my Alternate Decision as "unworkable" and "determined it to be impracticable." This assertion – repeated in various forms throughout the Order Denying Rehearing - is not in the EIR. Moreover, the EIR was finalized prior to issuance of my Alternate Decision.

I thus dissent from the Order Denying Rehearing.

Dated July 9, 2009, at San Francisco, California.

/s/ DIAN M. GRUENEICH
Dian M. Grueneich
Commissioner

D0907024 Appendix G

(footnote continued from previous page)

[2] See, e.g., Sunrise Decision Finding of Fact 18.