L/abh **Mailed 9/21/07**

Decision 07-09-049 September 20, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SIERRA PACIFIC POWER COMPANY for an Order Authorizing the construction of a tie-line between two existing transmission lines near Hirschdale, in Nevada County, California. (U 903 E)	Application 06-04-017 (Filed April 19, 2006)

ORDER DENYING REHEARING OF DECISION (D.) 07-06-038

I. INTRODUCTION

In this Order we dispose of the application for rehearing of Decision (D.) 07-06-038 ("Decision") filed by Larry and Cheryl Andresen (the "Andresens"). In D.07-06-038, we granted Sierra Pacific Power Company ("SPP") a Permit to Construct ("PTC") a 2/3 mile 60-kilovolt ("kV") power line, pursuant to General Order ("GO") 131-D, near Hirschdale, in Nevada County, California. The project will involve the upgrade of an existing 12.5 kV line, with all construction occurring in the existing SPP electric facility right-of-way. There will be a one-for-one pole replacement of approximately 19 poles, which will be approximately 57.5 feet high. The entire length of the project is approximately 3,500 feet.

The Commission was Lead Agency for the project for purposes of environmental review and the California Environmental Quality Act ("CEQA"). In approving the proposed project we approved and adopted a Final Mitigated Negative Declaration ("FMND") which concluded that, as mitigated, the project would not result in any significant adverse impacts to the environment.

On July 20, 2007, Larry and Cheryl Andresen (the "Andresens") filed a motion for party status and an application for rehearing of D.07-06-038 challenging the Decision on the grounds that: (1) SPP failed to provide notice of its application for a PTC as required by GO 131-D; (2) the Commission failed to prepare an Environmental Impact Report ("EIR") as required by CEQA; (3) the Commission failed to consider alternative routes for the project as required by GO 131-D; (4) the Commission failed to recirculate the draft MND for comment as required by CEQA; and (5) the FMND and the Decision failed to consider undergrounding of the transmission line as required by the Truckee General Plan and Public Utilities Code section 320.[1] In addition, the Andresens request oral argument. A response to the application for rehearing was filed by SPP.

On August 2, 2007, the Andresens filed a request for stay of D.07-06-038 on the grounds that: (1) failure to grant the stay will cause the Andresens serious or irreparable harm; (2) the Andresens are likely to prevail on the merits of the application for rehearing; and (3) on balance, the public interest warrants granting a stay. A response to the request for stay was filed by SPP.[2]

On August 23, 2007, we issued D.07-08-034, granting the Andresens' motion for party status and denying the request for stay. Because we previously addressed the Andresens' motion for party status, the matter will not be revisited here.

We have carefully reviewed the arguments raised by the Andresens and are of the opinion that good cause has not been established to grant rehearing. Accordingly,

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[1] All subsequent section references will indicate the Public Utilities Code, unless otherwise specified.

[2] On August 21, 2007, the Andresens filed a request for official notice of facts regarding a complaint they filed in Nevada County Superior Court against SPP. The complaint concerns a private easement dispute between the Andresens and SPP. On August 20, 2007, the Court issued a temporary restraining order and order to show cause and preliminary injunction ("Order") against SPP pending resolution of the easement dispute. The Order explicitly notes that the issues before the Court are distinct from issues before this Commission. Further, private easement issues have no bearing on the issues on rehearing. Accordingly, the matter is not discussed in this Order.

the application for rehearing of D.07-06-038 is denied. As explained herein, we also deny the request for oral argument.

II. DISCUSSION

A. Notice

The Andresens contend the Decision errs because SPP failed to provide the Andresens with direct mail notice of its PTC project application as required by GO 131-D Section XI.A.1.b. Consequently, the Andresens contend their due process rights were prejudiced because they did not have the opportunity to protest the application or request a public hearing. (Andresen Rhg. App., at pp. 3-4.)

Section XI.A. of the GO sets forth requirements adopted by the Commission to ensure electric utilities provide sufficient notice to affected parties when they file an application for a Certificate of Public Convenience and Necessity ("CPCN") or PTC.[3] In pertinent part, Section XI.A. requires the following forms of notice:

> 1. By direct mail to:
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> a. The planning commission and…
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> b. All owners of land on which the proposed facility would be located and owners of property within 300 feet of the right-of-way as determined by the most recent local assessor's parcel roll available to the utility at the time notice is sent; and
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> 2. By advertisement…
>
> 3. By posting a notice on-site and off-site where the project would be located.

SPP acknowledges that it failed to provide the Andresens with direct mail notice. However, our review of the record does not support the Andresens claim that they had no knowledge of the project until it was too late to participate in the CEQA review or proceeding process. Rather, we find there is evidence that the Andresens did

[3] See *Investigation on the Commission's own Motion into the Rules, Procedures, and Practices Which Should be Applicable to the Commission's Review of Transmission Lines not Exceeding 200 Kilovolts* [D.94-06-014] (1994) 55 Cal.P.U.C.2d 87, 1994 Cal. P.U.C. LEXIS 453.

have knowledge of the project, did effectively protest the project, and did exercise the opportunity to participate in the environmental process. Thus, we are not persuaded that the Andresens due process rights were actually prejudiced by the lack of direct mail notice because they did have actual notice of the project and the opportunity to be heard.[4]

SPP filed its application for a PTC in April 2006. The Andresens claim they did not have knowledge or notice of the proposed project until February 2007, when the Commission issued its Notice of Intent to Adopt a Mitigated Negative Declaration. This claim is contradicted by the August 2006 letter from Mr. Andresen to SPP (also sent to the Commission) regarding the proposed project. The letter demonstrates that the Andresens had knowledge of the proposed project shortly after the application was filed. Further, for CEQA review purposes the nature of the letter effectively serves to protest the project.[5]

Other letters and comments submitted by the Andresens regarding the project also demonstrate that they actively participated in the Commission's environmental review process.[6] The letters again contain various comments, questions, and objections regarding the proposed project. Additionally, in March 2007, the Andresens attended a public meeting at the Truckee Donner Public Utilities District to discuss the project.[7] The meeting was conducted by Commission staff as part of the public CEQA process. Finally, in June 2007, the Andresens sent a letter to the Commissioners containing what they describe as extensive comments regarding the

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[4] Due process requires that affected parties be provided adequate notice and opportunity to be heard. (see *People v. Western Airlines* (1954) 42 Cal. 2d 621, 730; *Railroad Commission of California v. Pacific Gas & Electric Company* (1937) 302 U.S. 388, 394.

[5] See FMND, at p. 2-9, letter from Mr. Andresen to SPP, dated August 16, 2006. We also note that SPP claims Mr. Andresen spoke with them about the project during site visits conducted in August and September 2006. (See Response to Andresen Application for Rehearing, dated August 6, 2007, at p. 4.). The Commission's project manager was present during one of those site visits.

[6] See FMND, at p. 2-7, letter from the Andresens to Mr. John Boccio (Commission CEQA project manager), dated February 20, 2007, at pp. 2-49 to 2-50, and letter from the Andresens to Mr. John Boccio, dated March 19, 2007.

[7] See Andresen Motion for Party Status, dated July 20, 2007, at. p. 3.

project, and their representative spoke at the Commission's public business meeting where the proposed decision for the project was considered and approved.[8]

We do not condone SPP's failure to fully comply with the notice requirements under GO 131-D. That said, we find that the Andresens did have notice of the project in a manner such that they could timely protest and participate in the Commission's environmental review process. Accordingly, we do not agree that the Andresens were denied adequate due process.

B. Requirement for an EIR

The Andresens contend the Commission violated CEQA by preparing a FMND rather than an EIR for the project. To support this contention the Andresens refer to a number of broad CEQA principles, then offer what they argue is "substantial evidence" that the project will cause significant environmental impacts which warranted preparation of an EIR. (Andresen Rhg. App., at pp. 6-9.) As discussed below, we believe preparation of a FMND was appropriate and lawful in this proceeding.

1. General CEQA Principles

The Andresens state generally that CEQA sets a low threshold for preparation of an EIR,[9] and that an agency must prepare an EIR when there is "substantial evidence" to support a fair argument that the project may have a significant effect on the environment.[10] (Andresen Rhg. App., at p. 6.)

We generally agree with these broad statements. However, CEQA also provides for the lawful preparation of a negative declaration ("ND") or mitigated negative declaration ("MND"). CEQA Guidelines Section 15070 states a ND or MND is proper when:

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[8] See Andresen Motion for Party Status, dated July 20, 2007, at p. 3.

[9] See *County Sanitation Dist. No. 2 v. County of Kern* ("*County Sanitation Dist.*") (2005) 127 Cal.App.4th 1544, 1579, 2005 Cal.App. LEXIS 516.

[10] See *No Oil, Inc. v. City of Los Angeles* ("*No Oil, Inc.*") (1974) 13 Cal.3d 68, 75, 1974 Cal. LEXIS 194.

> (a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or
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> (b) The initial study identifies potentially significant effects, but:
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> (1) Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and
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> (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

(CEQA Guidelines Section 15070, Cal. Code Regs., tit., 14, §15070 ; Public Resources Code Section 21064.5.)[11]

The Initial Study ("IS") prepared in this proceeding applied the established CEQA assessment criteria used to determine whether a project may have significant environmental impacts.[12] The IS evaluation finds that with project revisions and/or recommended mitigation measures, the proposed project will not have a significant

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[11] Also see *Citizens' Committee to Save Our Village v. City of Claremont* ("*Citizens' Committee*") (1995) 37 Cal.App.4th 1157, 1168, 1995 Cal.App. LEXIS 800, *11. In addition, CEQA Guidelines and the courts recognize that that when the conditions in Guidelines Section 15070 exist, preparing an MND provides efficiencies in the process, and can save the time and cost involved in preparing an EIR. (See Comment to Guidelines Section 15070 and *San Bernardino Valley Audubon Society v. Metropolitan Water District of Southern California* ("*San Bernardino Audubon Society*") (1999) 71 Cal.App.4th 382, 391, 1999 Cal.App. LEXIS 322, *9.

[12] In determining whether a proposed project will have significant environmental impacts, CEQA procedure requires evaluation using the CEQA Environmental Checklist and associated significance criteria. The Checklist requires evaluation under seventeen issue areas: aesthetics (i.e., largely visual impacts); agricultural resources; air quality; biological resources; cultural resources; geology, soils and seismicity; hazards and hazardous materials; hydrology and water quality; land use, planning, and policies; mineral resources; noise; population and housing; public services; recreation; transportation and traffic; utilities and service systems; and mandatory findings of significance. For each issue area CEQA requires application of specific significance criteria, which require designating whether the project will have: no impact; less than significant impact; less than significant impact with mitigation; or potentially significant impact (even with mitigation).

adverse effect on the environment. This finding meets the standard under CEQA Guidelines Section 15070 for the lawful preparation of a MND.

The Andresens disagree, arguing that a negative declaration cannot be upheld if the record contains other "substantial evidence" to the contrary. The Andresens cite to *City of Redlands v. County of San Bernardino* ("*City of Redlands*") (2002) 96 Cal.App.4th 398, 2002 Cal.App. LEXIS 929, in support of this position. In *City of Redlands*, the court determined that a negative declaration was inadequate because it failed to incorporate amendments to a General Plan which in turn would have changed the project description used as the cornerstone of the environmental analysis.[13] We disagree that *City of Redlands* establishes error with the FMND prepared in this proceeding because there is no evidence offered to show that the FMND failed to incorporate key information or used an incorrect project description.

The Andresens also assert that "deference to an agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." The Andresens cite to *Sierra Club v. County of Sonoma* ("*Sierra Club*") (1992) 6 Cal.App.4th 1307, 1318, 1992 Cal.App. LEXIS 672. (Andresen Rhg. App., at p. 7.) *Sierra Club* offers no guidance whether an EIR was required here because the cited principle was not at issue nor was it analyzed by the court. Instead, the court reviewed whether new circumstances or project changes required preparation of a *subsequent* or *supplemental* EIR. Moreover, the Andresens offer no evidence of new circumstances or project changes that might warrant further environmental review for the approved project.

Finally, the Andresens contend that the Commission itself has acknowledged an MND is not appropriate where a project, even with mitigation or revision, may have a significant effect on the environment. They cite *Re PacifiCorp* [D.07-03-043] (2007) __ Cal.P.U.C.3d __, 2007 Cal. PUC LEXIS 418. We do not view *Re PacifiCorp* as relevant here because it involved construction of a new transmission

[13] See *City of Redlands, supra,* 96 Cal.App.4th at pp. 406-410, 2002 Cal.App. LEXIS at *10, *13.

line in a new transmission corridor. Here, the project will add a transmission line in an already existing utility corridor. In addition, *Re PacifiCorp* required poles and associated facilities to be placed where none previously existed. Here, slightly taller poles will be placed in the same locations as existing poles. While the project will require the addition of new conductors and the 60 kV line, the relative pre-project/post-project change in conditions as between the two projects is not comparable. We also note that in *Re PacifiCorp* an EIR was required for only a small potion of the project. A FMND was adequate to review and approve 17 miles of the total 18.6 mile project.[14]

2. Substantial Evidence to Warrant an EIR

The Andresens offer what they believe is "substantial evidence" that the project will have significant environmental impacts related to aesthetics (visual) and tree removal. Thus, they contend an EIR is required. (Andresen Rhg. App., at pp. 7-9.)

In determining whether "substantial evidence" exists, CEQA Guidelines Section 15384 provides:

> (a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not cause by physical impacts on the environment does not constitute substantial evidence.
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> (b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

[14] See *Re PacifiCorp* [D.06-10-047] (2006) __ Cal.P.U.C.3d __, 2006 Cal. PUC LEXIS 525.

(CEQA Guidelines Section 15384 (Cal. Code of Regs., tit. 14, § 15384) Public Resources Code Section 21082.2.)

a. Aesthetic Impacts

The Andresens generally cite to case law to argue if a project interferes with scenic views it is deemed to have an adverse impact on the environment. (Andresen Rhg. App., at p. 7, citing to *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* ("*Quail Botanical Gardens*") (1994) 29 Cal.App.4th 1597, 1604, 1994 Cal.App. LEXIS 1126.), and also to argue that opinions of area residents based on observation is directly relevant to the issue of aesthetic impact. (Andresen Rhg. App., at p. 7, citing to *The Pocket Protectors v. City of Sacramento* ("*Pocket Protectors*") (2004) 124 Cal.App.4th 903, 937, 2004 Cal.App. LEXIS 2074.)

We disagree that either case suggests an error was made in evaluating the potential aesthetic impacts in this proceeding. The facts, and the relative magnitude of the projects at issue, are not comparable to SPP's project.

Quail Botanical Gardens involved the construction of a new housing development, with 40 two-story single family homes to be built adjacent to a 27-acre public park having unobstructed panoramic views of the Pacific Ocean. Similarly, *Pocket Protectors* involved a new housing development, with long double rows of houses to be built flanking a narrow private street. The project here simply replaces existing utility poles and adds conductors and an additional electric power line in a 2/3 mile existing utility corridor.[15]

In addition, although residents' opinions were deemed relevant in each of the cited cases, neither court ultimately relied on those opinions as constituting "substantial evidence" of aesthetic impacts. Instead, each court relied on specific factual information establishing that visual impacts would be more significant than originally

[15] Although the replacement poles will be 9 feet taller than the existing poles, this is generally viewed as an incremental change to the similar existing conditions. It is not a new condition to be imposed on the environment as in *Quail Botanical Gardens* and *Pocket Protectors.*

determined. For example, in *Quail Botanical Gardens,* the court relied on numerous photographs, testimony of an expert surveyor, and specific measurements demonstrating that at certain vantage points in the public park between 60 to 90 percent of the existing panoramic views would be blocked.[16] In *Pocket Protectors,* the court relied on the fact that the project conflicted with the City's Planned Unit Development plan, and testimony of a professional architect having expertise in planning and design issues.[17]

The Andresens do not offer such facts, expert testimony, photographs, or measurements to support their argument. Instead, they contend there is "substantial evidence" of aesthetic impacts by virtue of the fact that Truckee, generally, is a sensitive view corridor. The environmental review does not support the Andresens position. Our review indicates the IS/MND specifically considered whether the existence of designated scenic highways, corridors, and resources in proximity to the project would create significant aesthetic impacts. Visual simulations were also prepared to demonstrate the potential incremental change to existing views. We agree with the IS/MND's finding that potential aesthetic impacts are less than significant.[18]

The Andresens also claim there is "substantial evidence" of aesthetic impacts by virtue of the comment letters submitted by residents of Hirschdale.[19] We do agree that the comments of Hirscdale residents are determinative and they were considered as part of our review of the project. However, we note that many of the comments did not relate at all to aesthetic impacts and those that did offered few specific facts. Commenters generally expressed a belief the project would have visual impacts, or they said only that the line should be undergrounded. Although one letter did include photographs to show that the new line would run directly over the resident's garage, the

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[16] See *Quail Botanical Gardens, supra,* 29 Cal.App.4th at pp. 1605-1606, 1994 Cal.App. LEXIS at *8, *9.

[17] See *Pocket Protectors, supra,* 124 Cal.App.4th at pp. 937-938, 2004 Cal.App. LEXIS *30, *31.

[18] See IS/MND Section 2.1 Aesthetics, at pp. 2.1-1 through 2.1-10.

[19] The FMND reflects approximately 10 separate letters submitted by Hirschdale residents mentioning concerns regarding views. (See FMND Comment Letters B, C, D, E, G, H, I, J, L, M, P. Letters B and L were both submitted by the Andresens.)

pictures also show that the existing line already runs over the garage.[20] Thus, we find no basis to conclude the project will create a significant new impact.

We are also aware the replacement poles will stand at approximately 57.5 feet and contain additional conductors and the 60 kV line, the new poles are only 9 feet taller than existing poles.[21] However, the visual simulations in the IS/MND also show that after pole replacement the electric wires will continue to run above property owner homes and window level, thus not directly obstructing homeowner view lines.[22]

Because the Andresens do not offer the type of information which would establish "substantial evidence" of aesthetic impacts, and because Lead Agencies are afforded some discretion to determine whether evidence offered by citizens meets CEQA's definition of "substantial evidence,"[23] we find the determination not to prepare an EIR for the project was reasonable and thus, lawful.

b. Tree Removal Impacts

The Andresens contend there is "substantial evidence" that trees will be removed during the "operational phase of the project." They argue such evidence raises a fair argument that there may be significant impacts. Therefore, they assert an EIR should have been prepared. (Andresen Rhg. App., at pp. 8-9.)

We disagree with the Andresens conclusions because CEQA review and impact assessments are driven by the project description. Such review is required to cover project construction and any reasonably foreseeable future phases, or consequences of a project that will change the scope or nature of the project or its environmental effects. In this instance, the project involves construction of the transmission line. SPP

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[20] See FMND Comment Letter F, at pp. 2-16 to 2-19.

[21] See IS/MND Section 1.6.2 Poles, at p. 1-6.

[22] See IS/MND Section 2.1 Aesthetics, at pp. 2.1-7 to 2.1-10.

[23] See *Pocket Protectors, supra,* 124 Cal.App.4th at p. 929, 2004 Cal.App. LEXIS at *24, citing to *Citizens for Responsible Development v. Coty of West Hollywood* (1995) 39 Cal.App.4th 490, 499, fn. 2; and *Citizens' Committee to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1170-1171.

did not propose any future phases of the project. The Andresens believe tree removal "might" occur during the life of the transmission line, after its construction. However, as we discuss below, the project review already contemplates all tree removal that is required for construction of the project. The Andresens do not offer any "substantial evidence" that further post-project tree removal is a reasonably foreseeable consequence of the project that would change the scope or nature of the project or its environmental effects.

As evidence of post-construction tree removal, the Andresens refer to a sentence in the IS/MND which states: "[T]rees that could interfere with the safe operation of the power line would be removed pursuant to the National Electric Safety Code."[24] We disagree this sentence constitutes "substantial evidence" because it merely identifies the law that would apply in such a circumstance. It does not support a conclusion that such tree removal *will* in fact occur or even that it is a likely consequence of the project. The FMND addresses all known tree removal and/or trimming that will foreseeably result from the project. To that end, the project was revised to ensure that no trees will be removed in residential areas where the Andresens live.[25] Revised Figure 1-3 specifically identifies any trees that are expected to be removed because of the project.[26] Further, the FMND provides that trees may only be removed within SPP's easement.[27] The quoted sentence merely acknowledges the possibility that established electric industry safety standards could at some point in the future warrant additional tree removal.

The Andresens also argue that post-construction tree removal is likely based on their observation of the area under other transmission lines. However, there is no evidence that trees were removed by SPP under any other particular transmission line after those lines were constructed, or under what circumstances trees may have been

[24] See IS/MND Section 1.9.2. Facility Inspection and Maintenance Procedures, at p. 1-13.

[25] See FMND Comment Letter F, Response F-3, at p. 2-21, and Comment Letter I, Response I-10, at p. 2-39.

[26] See IS/MND, Figure 1-3, at p. 1-5.

removed. Each utility corridor has its own unique characteristics that may or may not require tree removal during the life of a transmission line, and it is impossible to impute post-construction tree removal here based on the observation and appearance of other transmission corridors. Perhaps it could be argued that eventually some tree removal could be needed if existing or new trees grow too close to the facilities. However, whether removal or simply trimming would be required it is at best a matter of speculation. We are directed by CEQA Guidelines Section 15384 which would indicate that speculation, conjecture, or mere possibility do not establish "substantial evidence."

Finally, the Andresens claim the FMND is inadequate because it fails to adopt mitigation measures for potentially significant impacts that could result from any post-construction tree removal. Here, the FMND adopts mitigation measures for potentially significant impacts that could occur from identifiable and foreseeable vegetation and tree removal to occur during construction of the project.[28] As we noted above, the possibility of post-construction tree removal is speculative at best, and is not a reasonably foreseeable consequence of the project. Thus, no further mitigations were required.

C. Requirement to Consider Alternatives

The Andresens contend the Decision errs because we failed to consider alternative routes for the proposed project. In making this argument, they rely on GO 131-D, various Commission decisions, and certain case law. (Andresen Rhg. App., at pp. 4-6.)

The Andresens argue that GO 131-D Section IX.B.1.c. required consideration of alternative routes for the project.[29] This is not correct because Section IX.B.1.c. of the GO applies only to the utility submitting an application for a PTC and

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[27] See FMND Comment Letter I, Response I-10, at p. 2-38.

[28] See IS/MND Section 2.4 Bilological Resources, at pp. 2.4-14 to 2.4-17.

[29] This section of the GO applies to the proposed construction of transmission lines between 50 kV and 200 kV.

states a general requirement that the application contain, among other things, a comparison of the proposed project with alternative routes.[30] Even if Section IX.B.1.c. could be viewed as also requiring the Commission to consider alternative routes, it was not necessary to consider alternatives in this instance because an exception applied to eliminated such a requirement. Specifically, GO 131-D Section III.B.1.g. provides in pertinent part:

> 1. Compliance with Section IX.B. is not required for:
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> g. power line facilities or substations to be located in an existing franchise, road-widening setback easement; or public utility easement; or in a utility corridor designated, precisely mapped and officially adopted pursuant to law by federal, state or local agencies for which a final Negative Declaration or EIR finds no significant unavoidable environmental impacts.

This project is to be located in an existing SPP utility easement and corridor for which a FMND was prepared finding no significant unavoidable environmental impacts. (See D.07-06-038, at p. 4 and IS/MND Section 1.7, at p. 1-8, respectively.) Further, because the Commission was not required to prepare an EIR for the project, CEQA does not require consideration of alternative routes. The established scope and content requirements for MNDs do not require an analysis of alternatives.[31]

Next, the Andresens cite to Commission decisions and a Commissioner scoping memo for other projects to contend an alternatives analysis was required here.[32] The

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[30] GO 131-D Section IX.B. provides in pertinent part:

> 1. The application for a permit to construct shall also include the following:
> c. Reasons for adoption of the power line route or substation location selected, including comparison with alternative routes or locations, including the advantages and disadvantages of each.

[31] See CEQA Guidelines Section 15071, Cal. Code of Regs., tit. 14, § 15071, regarding scope and contents of a MND, and Public Resources Code Section 15126.6 regarding consideration and discussion of alternatives to the proposed project in connection with preparation of an EIR.

[32] *Re Pacific Gas & Electric Company* [D.99-12-024] (1999) __ 3 Cal.P.U.C.3d 774, 1999 Cal. PUC LEXIS 753 [Order Denying Rehearing of D.99-08-023, which authorized the North San Jose Capacity Project]; *Re Southern California Edison* [D.07-03-012] (2007) __ Cal.P.U.C.3d __, 2007 Cal.PUC LEXIS 282 [authorizing the Antelope-Pardee Project]; *Re PacifiCorp* [D.07-03-043], *supra*, 2007 Cal.PUC

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cited decisions and scoping memo involve four projects where we did consider alternative routes, at least for certain portions of the total project routes. However, we do not view any of those projects to be comparable because none involved locating the proposed transmission facilities in an existing utility transmission easement. All involved construction of new transmission lines in new transmission corridors, and the alternatives analysis was required in connection with preparation of an EIR. Our determination to consider alternatives for the referenced projects is not indicative of, or controlling with respect to, the proper level of review for the project in this proceeding.

Finally, the Andresens argue generally, that it is a basic purpose of CEQA to "inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities." (Andresen Rhg, App., at pp. 4-6, citing to CEQA Guidelines Section 15002(a)(1) and *County of Amador v. El Dorado County Water Agency* ("*County of Amador*") (1999) 76 Cal.App.4th 931, 946, 1999 Cal.App. LEXIS 1065, *18.) They also assert it is the policy of the State to "consider alternatives to the proposed actions affecting the environment: and that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which would substantially lessen the significant environmental effects of such projects." (Andresen Rhg. App., at pp. 4-6, citing to Public Resources Code Sections 21001(g) and 21002; and *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* ("*Citizens of Goleta*") (1990) 52 Cal.3d 553, 565, 1990 Cal. LEXIS 5658, *13.)

We find nothing in the Decision and the FMND which subverts these broad policies. Because the Andresens have not shown the project will have impacts not already identified by the FMND, we have adequately informed decision-makers and the public about any potentially significant impacts associated with the project. Because the

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LEXIS 418 [authorizing the Yreka – Weed Project]; and *Re Southern California Edison,* Scoping Memo and Ruling of Assigned Commissioner, dated August 26, 2005 (A.05-04-015/I.05-06-041)[regarding the Devers-Palo Verde No. 2 Transmission Line Project].

Commission was not required to prepare an EIR, we were not required to consider alternatives to the project. Further, consistent with the cited cases we adopted mitigation measures to reduce all potentially significant impacts to a less than significant level.

We also find that *County of Amador* and *Citizens of Goleta* are not relevant. The Andresens demonstrate no factual similarity of the facts in either case to the facts in this proceeding. *County of Amador* involved a project to provide additional water supply. A District EIR was found to err because among other things, it failed to adequately describe the baseline environment and historic operations.[33] Unlike *County of Amador*, there is no evidence or argument offered to indicate that the baseline environment or historic operation of the existing line is described incorrectly in the FMND.

Citizens of Goleta involved proposed development of a resort hotel on undeveloped oceanfront land. The Supreme Court reviewed the original and supplemental EIRs and determined whether they adequately considered a reasonable range of alternative sites.[34] *Citizens of Goleta* offers no guidance because the Commission was not required to prepare an EIR or consider alternatives, thus there is no issue here regarding what would constitute a reasonable range of alternatives under an EIR analysis.

D. Requirement to Recirculate

The Andresens contend the Commission violated CEQA by not recirculating the IS/MND after "substantial revisions" were made in response to comments by the California Regional Water Quality Control Board ("RWQCB"). (Andresen Rhg. App., at pp. 9-10.)

CEQA Guidelines Section 15073.5(b) governs when an agency is required to recirculate an MND for further comment prior to adoption. The requirement is triggered after any "substantial revision," which is defined as:

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[33] See *County of Amador, supra,* 76 Cal.App.4th 931, 1999 Cal.App. LEXIS at *10.

[34] See *Citizens of Goleta, supra,* 52 Cal.3d 553, 1990 Cal. LEXIS at *5.

> (1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance; or
>
> (2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(Cal. Code of Regs., tit. 14, § 15073.5, subd. (b).)

Guidelines Section 15073.5(c) also provides that recirculation is *not* required when the following types of changes or revisions are made:

> (1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
>
> (2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.
>
> (3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.
>
> (4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(Cal. Code of Regs., tit. 14, § 15073.5, subd. (c).)

The Andresens specifically claim that the RWQCB identified "significant new impacts" which resulted in FMND revisions adding several "new mitigation measures." We disagree. Comment Letter N in the FMND reprints the complete RWQCB comments on the draft IS/MND,[35] with written responses and any associated revisions to the FMND immediately following.[36] The particular comments (and revisions) are at issue: comments N-3, N-4, and N-12.

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[35] See FMND, Comment Letter N, at pp. 2-54 to 2-59.

[36] See FMND, at pp. 2-60 to 2-66.

Comment N-3 pertains to IS/MND Section 1 (Project Description) and Section 1.8.1.3. (Access Roads). As is customary in environmental review documents, these are preliminary sections which provide an overview of the proposed project, and a discussion of the planned construction methods and practices, equipment, site locations, and schedules. The cited sections describe the project staging area and indicate that SPP's construction plan calls for the site to be cleared of all vegetation using a hydroaxe. A footnote in the draft document defined a hydroaxe as a type of vegetation cutting machine typically mounted on a rubber tire vehicle or bulldozer.[37]

Contrary to the Andresen's claim, nothing in Comment N-3 mentions a new significant impact. In pertinent part, RWQCB's comment requests clarification regarding the type of equipment to be used on the site, due to concern regarding soil compaction. The Andresens claim the FMND was revised to add a new mitigation measure requiring the use of only rubber tire vehicles. (Andresen Rhg. App., at p. 10.) This is not correct. The FMND merely revised the footnote defining hydroaxe to eliminate the use of bulldozers. This was simply a minor project revision or modification to the planned equipment list which falls within the parameters of Guidelines Section 15073.5(c)(1) and/or (c)(4).

The relevant portion of Comment N-4 pertains to project overview sections of the IS/MND regarding planned vegetation removal.[38] The draft IS/MND project description stated in part: [T]ree removal will be done by hand using chain saws" and "the removed trees would be lopped and scattered within the ROW."[39] RWQCB's comment appears to request clarification regarding whether any tree felling and scattering would occur near jurisdictional water areas. To address the RWQCB's concern, the FMND modified the above-quoted sentences to clarify that felling should be done

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[37] See IS/MND, Section 1.8.1.1.Staging Area and helicopter Pad, at p. 1-8, and fn. 2.

[38] See FMND Comment Letter N, N-4, at p. 2-55 referring to IS/MND Section 1.8.1.5. Vegetation Removal.

[39] See IS/MND, Section 1.8.1.5. Vegetation Removal, at p. 1-9.

directionally away from drainage channels or wetland features and no lopped material should be deposited in such areas. Such a clarification and refinement of the contemplated construction procedure falls within Guidelines Section 15073.5(c)(2) and (c)(4).

Comment N-12 pertains to Section 2.4 of the draft IS/MND regarding Biological Resources which provided that: "[T]ree clearing would be done by hand, using a chain saw and vegetation clearing by using a hydroaxe."[40] The comment stated that the use of heavy equipment in wetlands or across ephemeral channels could create a significant impact. The Andresens claim the FMND adds a new mitigation measure to require vegetation clearing to be done by hand rather than by hydroaxe. However, this is not correct. The FMND merely revised the quoted sentence to eliminate the use of hydroaxe. Again, this is a minor revision or modification of the construction method which falls within the parameters of Guidelines Section 15073.5(c)(2) and/or (4).

E. Undergrounding

The Andresens contend the Decision errs because we failed to examine the possibility of undergrounding the transmission line as contemplated by Policy 2.7 of the Truckee 2025 General Plan as well as Public Utilities Code section 320. (Andresen Rhg. App., at pp. 10-11.)

The Andresens are wrong that the FMND failed to examine the Truckee 2025 General Plan. Policy 2.7 requires that electric facilities serving new development be undergrounded, whenever feasible. The FMND explicitly identifies Policy 2.7 and explains why it was not triggered to require undergrounding for this project.[41] The FMND also explains that because the transmission line is under 100 kV and in an existing right-of-way, it is exempt from the applicable Truckee Development Codes.[42]

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[40] See IS/MND Section 2.4 Biological Resources, at p. 2.4-17, subd. (c).

[41] See IS/MND, Section 2.1 Aesthetics, at pp. 2.1-4 to 2.1-5.

[42] See IS/MND, Section 2.9 Land Use, Planning, and Policies, at pp. 2.9-3 to 2.9-4.

The Andresens also suggest Policy 2.7 requires undergrounding because the transmission line is being installed to serve Glenshire, where at least one lot (number 213) currently has a permit pending for development. However, neither the project objective[43] nor evaluation of potential impacts to population and housing[44] suggests the transmission line is intended to serve new development. It is our understanding the facilities are intended to improve transmission system reliability because the existing facilities are old (approximately 70 years old), and difficult to access and maintain.[45]

It is also incorrect that the FMND failed to examine section 320. Section 320 provides in pertinent part that it is the policy of this state to underground all new electric facilities when located within proximity to a designated state scenic highway, whenever feasible and not inconsistent with sound environmental planning. The FMND explicitly identifies section 320 and explains that it does not apply to require undergrounding because there are no officially designated state scenic highways in close enough proximity to the project to require undergrounding.[46] It goes on to explain that Interstate 80 is an eligible scenic route; however, at its closest the transmission line is 2,500 feet away and the tops of the new poles would be lower than the elevation of the roadway, thus having only a minor effect on the viewshed.[47]

Based on our consideration of both the Truckee 2025 General Plan and Public Utilities Code section 320, we reaffirm our finding that neither applied to require undergrounding of the project.

F. Request for Oral Argument

The Andresens request oral argument on the application for rehearing because they contend D.07-06-038 "departs from existing Commission precedent without

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[43] See IS/MND, Section 1.2 Project Objective, at p. 1-2.

[44] See IS/MND, Section 2.12 Population and Housing, at pp. 2.12-1 to 2.12-4.

[45] See *ante*, fn. 43.

[46] See IS/MND Section 2.1 Aesthetics, at p. 2.1-2.

[47] See IS/MND, Section 2.1 Aesthetics, at p. 2.1-5.

adequate explanation by failing to require an analysis of alternative routes for the transmission line." (Andresen Rhg. App., at p. 11.)

Rule 16.3 of the Commission's Rules of Practice and Procedure provides that the Commission has complete discretion to determine the appropriateness of oral argument in any particular matter.[48] The Rule provides the following criteria as guidance:

> (1) If the applicant for rehearing seeks oral argument, it should request it in the application for rehearing. The request for oral argument should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission because the challenged order or decision:
>
> (a) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;
>
> (b) changes or refines existing Commission precedent;
>
> (c) presents legal issues of exceptional controversy, complexity, or public importance; and/or
>
> (d) raises questions of first impression that are likely to have significant precedential impact.

(Cal. Code of Regs., tit. 20, § 16.3, subd. (a).)

As previously discussed, our CEQA review was lawful and there was no requirement that alternative routes be considered in approving the proposed project. We see no basis to establish that D.07-06-038 departs from existing precedent, and the application for rehearing otherwise fails to explain how oral argument will materially assist us in resolving the application. For these reasons, we deny the request for oral argument.

III. CONCLUSION

For the reasons stated above, the application for rehearing of D.07-06-038 is denied. The request for oral argument is also denied.

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[48] See Rule 16.3(a) of the Commission's Rules of Practice and Procedure, Cal. Code of Regs., tit. 20, § 16.3, subd. (a).

Therefore **IT IS ORDERED** that:

1. The application for rehearing of D.07-06-038 is hereby denied.
2. This proceeding, Application (A.) 06-04-017, is closed.

This order is effective today.

Dated September 20, 2007, at San Francisco, California.

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