

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



**FILED**

08-19-08

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

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

**ANSWER AND MOTION TO DISMISS OF SAN DIEGO GAS & ELECTRIC  
COMPANY IN RESPONSE TO SHOW CAUSE ORDER**

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August 18, 2008

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Pursuant to the Assigned Commissioner's Revised Scoping Memo and Order to Show Cause,<sup>1</sup> and Rules 11.1 and 11.2 of the Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") hereby answers as directed by the Order to Show Cause, and, denies that it violated Rule 1 or otherwise misled the Commission. Accordingly, SDG&E also moves herein to dismiss Phase 3 of this proceeding initiated by the Order as it relates to the alleged violation of Commission Rule 1.1, on grounds that the facts offered in the Order and its supporting attachments do not support the Order's allegation that SDG&E misled the Commission. In addition, as described in more detail below, SDG&E's inadvertent omission of two attachments from certain *ex parte* notices has been corrected.

**I. EXECUTIVE SUMMARY**

SDG&E responds to the Assigned Commissioner's Order to Show Cause, which alleges SDG&E misrepresented facts regarding power line routing options in its Sunrise Powerlink proceeding to Commissioners' advisors. The Company also responds to allegations of a violation related to certain *ex parte* notices.

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<sup>1</sup> *Assigned Commissioner's Revised Scoping Memo and Ruling Regarding Possible Rule 1.1. and Rule 8.3 Violations; Order to Show Cause* (August 1, 2008) ("Order to Show Cause" or "Order").

As demonstrated below, SDG&E’s communications to Commission advisors have been truthful and the Company denies any suggestion that it made misleading statements. This appears to be the case of a simple misunderstanding. Specifically, the Order incorrectly suggests that SDG&E contradicted its own sworn testimony and public statements in the course of *ex parte* meetings. Additionally, the evidence and declarations presented with the Order do not support the allegations in the Order. Further, the declarations contradict themselves on certain issues, as well as the public record in the proceeding and the declarations of the SDG&E representatives who attended the *ex parte* meetings. SDG&E’s factual and legal response below demonstrates that the Rule 1 allegations against SDG&E and Phase 3 of this proceeding should be dismissed.

At the heart of the issue are impacts surrounding routing options for Sunrise that were outlined in the Commission’s draft environmental impact report (“DEIR”) for the project. The report assessed environmental impacts of SDG&E’s proposed project, along with impacts of proposed alternatives, including an alternate southern route ranked by the DEIR. The time sequence of events relating to the DEIR demonstrates that there is no basis for the alleged Rule 1 violation that SDG&E “appears to have misrepresented that the route went through tribal lands, when in fact an alternate route had been previously and jointly developed and agreed to by SDG&E that did not go through tribal lands.” Order at 7. Specifically, the timeline of events show:

- Jan. 3—DEIR issued. Commission Energy Division identifies its “environmentally superior southern route (‘ESSR’)” that traverses both undisturbed Federal forest land and American Indian reservations.
- Feb. 25—Campo Indian Tribe submits its first comment letter regarding the DEIR and requests that the ESSR route alternative crossing their land be removed.
- March 12—SDG&E submits its direct, public testimony and identifies a “modified southern route” to the one identified in the DEIR and proposes mitigation re-routes to

avoid tribal lands and environmentally sensitive areas in national forests, among other environmental issues.

- Mar. 20—Helicopter tour organized by SDG&E to provide visual references to routing opportunities and constraints of various routes. Tour participants included an advisor and chief of staff to Commission President Peevey, the Commission’s Executive Director and the Director of the Commission’s Energy Division. A fly-over of the DEIR’s ESSR alternative and SDG&E’s Modified Southern Route was conducted. *Ex-parte* notice is served and outlines this information.
- May 13—Commission Energy Division project staff meet with SDG&E to discuss several issues regarding the DEIR. No indication is given that the DEIR would be re-circulated prior to a Final EIR.
- May 20—Commission Energy Division project staff, Aspen environmental, Bureau of Land Management representatives, U.S. Forest Service and SDG&E meet to discuss construction issues and potential routes through the Cleveland National Forest. Energy Division staff never “agrees to” a southern route or agrees to develop a southern route that avoids tribal lands, although options are discussed.
- June 6 and 13—SDG&E provides revised maps of SDG&E’s “modified southern route” to Energy Division staff, as discussed at the May 20 meeting.
- June 10 and 11—As outlined in the Dec. 11, 2007 ruling, a Final EIR was due on or around June 6, 2008. To this end, SDG&E schedules *ex-parte* meetings with Commissioners’ staff to review the need for project and to discuss routing options. SDG&E indicates that its Enhanced Northern Route remains the best option, but its “Modified Southern Route” is the best southern option. There is no discussion of a re-circulated DEIR to include route modifications to the ESSR that might include SDG&E’s suggested modifications. Maps are provided, which show that SDG&E’s Modified Southern Route avoids tribal lands.
- June 20—revised Assigned Commissioner/Administrative Law Judge ruling alludes to the re-circulation of parts of the DEIR.
- July 11—DEIR is recirculated with modified “environmentally superior southern route” that avoids tribal lands, but stated reason for recirculation is new information on a wind project in Mexico and not because the southern route is modified to avoid tribal lands.

As discussed in detail below, this evidence shows there never was an agreement with the Energy Division to develop a southern route and SDG&E was not informed that the DEIR *would* be re-circulated until June 20, 2008, when a public announcement to that effect was issued by the assigned Administrative Law Judge in the proceeding. Instead, SDG&E itself had proposed a



Modified Southern Route that avoided tribal lands, and it discussed that route, the ESSR and the Enhanced Northern Route it has also proposed during each of the meetings with Commissioner advisors, in order to educate those advisors about the need for the project and the challenges faced by the routing options.

The Order also alleges that SDG&E neglected to file appropriate *ex parte* meeting notices reflecting the June *ex parte* meetings with Commissioner advisors. SDG&E learned upon review of the Order and its attachments that SDG&E had inadvertently omitted two documents that had been referenced in the meetings from its filed *ex parte* meeting notices. Upon verification of the missing materials, SDG&E immediately filed and served augmented notices containing the two attachments. These materials consisted of portions of previously-filed documents and the Company's publicly stated positions on the project. SDG&E apologizes for any inconvenience caused by the delay in receipt of those materials, and undertakes to modify its procedures to prevent a reoccurrence of such an omission in the future. SDG&E submits that no further proceedings are warranted for the violation of Rule 8.3.

## **II. INTRODUCTION – THE ALLEGATIONS**

The Order (at 9, ordering paragraph 1) directs SDG&E to appear at a pre-hearing conference and show cause why it should not have fines and other sanctions imposed for violations of Commission Rule 1.1 “for misrepresenting key facts in this proceeding to Commission Staff, and for failing to follow the requirements of Rule 8.3 by not filing proper *ex parte* notices.” Ordering paragraph 2 (*id.* at 9-10) also directs SDG&E “to file and serve its response to the allegations in this ... [Order] addressing the following:

- a. Why, based on the discussion in this ... [Order], and the attached declarations and evidence, the Commission should not find ...[SDG&E] in violation of Rules 1.1 and 8.3;

- b. Why the Commission should not impose monetary sanctions pursuant to Public Utilities Code Sections 701 and 2113....

The “discussion” referenced in ordering paragraph 2 sets forth the Order’s allegation as follows

(*id.*, section 3, “Discussion” at p. 7, emphasis added):

...there is reasonable basis to conclude that SDG&E, through its officers, agents and/or attorneys, misrepresented material facts in its June 2008 *ex parte* meetings with Commission staff regarding the routing of the proposed Sunrise Powerlink Transmission Project, in violation of Rule 1.1. SDG&E appears to have misrepresented that the route went through tribal lands, when in fact an alternate route *had previously been jointly developed and agreed to by SDG&E* that did not go through tribal lands. There is also a reasonable basis to conclude that SDG&E violated Rule 8.3 by failing to properly report its *ex parte* communications.

The *ex parte* communications referenced in the Order are four meetings on June 10 and 11 with advisors from four Commission offices. The Order to Show Cause is supported by twelve attachments, consisting of certain agency and tribal correspondence, timely *ex parte* notices filed and served by SDG&E relating to each of the four meetings, declarations from four Commissioner advisors attending the meetings,<sup>2</sup> and the declaration of Billie Blanchard, Commission Energy Division project manager for the environmental review of the Sunrise application.<sup>3</sup>

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<sup>2</sup> The Order to Show Cause (at 6, n. 23) also references two declarations from Commissioner advisors “A. [Andrew] Campbell” and “R. [Robert] Mason”, but such declarations were not attached to the Order, not posted on the Commission website, or otherwise served on SDG&E.

<sup>3</sup> The declaration of Ms. Blanchard (Order, Attachment 4), as served on SDG&E August 1 and posted on the Commission’s website, though represented as signed and executed July 31 under penalty of perjury, was apparently drafted by someone else, and contained many parenthetical questions inserted in the text, apparently seeking answers from the declarant. On Sunday, August 3, an email served on SDG&E by Assistant Chief Administrative Law Judge Michelle Cook linked to a new version of the Order, which contained a different declaration, again purportedly signed and executed by Ms. Blanchard on July 31. This later version of Attachment 4 did not contain the parentheticals in the earlier-served declaration, and appeared to answer the questions posed in the earlier-served version. The Commission has removed from its website the Blanchard declaration served August 1 and replaced it with that served August 3. The August 1 version of Ms. Blanchard’s declaration is attached hereto as Appendix 1.

Below, SDG&E answers the allegations set forth in the Order.<sup>4</sup> As for the alleged Rule 1 violation, SDG&E emphatically denies that it misled the Commission as alleged. SDG&E submits that the facts set forth in the Order and its attachments do not, and cannot, support the Order's allegation that SDG&E "misrepresented that the route went through tribal lands, when in fact an alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands." SDG&E also offers declarations to provide additional background on the issue, as well as corroboration of the undisputed facts. SDG&E also specifically denies making the misleading statements alleged in the Order. Simply stated, for there to have been an "agreement" on a route around the tribal lands, Energy Division staff would have had to violate Commission procedures (which we believe it did not do). Further, SDG&E proposed in testimony, on March 12, 2008, a specific southern route around tribal lands – thus no one could have been "misled" by the Company's position. Because the facts stated do not support the allegation that SDG&E misled the Commission, SDG&E moves to dismiss the Rule 1 complaint.

As for the Rule 8.3 allegation, SDG&E admits that it inadvertently omitted two handouts from the June *ex parte* meetings from its timely-filed notices concerning those four meetings. SDG&E details below the circumstances surrounding those omissions, which have since been cured by augmented *ex parte* notices filed August 7, 2008.

### **III. THE UNDISPUTED FACTS AND THE PUBLIC RECORD DO NOT SUPPORT THE ALLEGATION THAT SDG&E VIOLATED RULE 1**

As discussed above, the Order's sole allegation that SDG&E violated Rule 1 is that "SDG&E appears to have misrepresented that the route went through tribal lands, when in fact an alternate route had previously been jointly developed and agreed to by SDG&E that did not

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<sup>4</sup> SDG&E attaches supporting declarations and other documents as sequentially numbered "Appendices" hereto.

go through tribal lands.” Order at 7. We set forth in the following sections specific facts relating to this allegation that are undisputed, established by reference to the Commission’s public records, and/or not reasonably subject to dispute. For convenient reference, the fact representations are sequentially numbered. In addition, a timeline is attached to the Declaration of Kevin O’ Beirne.

**A. Neither the Commission nor its staff adopted, or disclosed an intention to adopt, a southern route that avoided entering tribal lands until the July 11, 2008 recirculation of the Draft EIR.**

1. SDG&E’s August 4, 2006 amended application in this docket, and supporting Proponent’s Environmental Assessment (“PEA”)<sup>5</sup> proposed a route for Sunrise<sup>6</sup> from the Imperial Valley Substation to the Peñasquitos Substation that traversed the northern part of San Diego County, including use of an existing transmission corridor through the Anza Borrego Desert State Park (“ABDSP”). Ex. SD-4.<sup>7</sup> As indicated in SDG&E’s amended application and PEA, SDG&E’s evaluation of project routing included evaluation of routes that avoided the

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<sup>5</sup> Under state and federal law (Sunrise will cross federal land), the lead agencies involved in permitting such a project must conduct and publish a review of the environmental impacts of the proposed project. To this end, Commission regulations require the project proponent to include an environmental assessment with its application to build and operate the project. The relevant environmental statutes and regulations require the Commission to (1) notify affected communities, agencies and property owners, (2) hold public hearings to take comments on the project, (3) publish for public comment a draft of its report concerning the results of its review of the environmental impacts of the project, and, after considering all public comments, (4) publish its final report on the environmental impacts of the project. The Commission must consider this report in its final action on the project application. *See*, California Environmental Quality Act (“CEQA”), Cal. Pub. Resources Code §§ 21000 *et seq.*; National Environmental Quality Act, 42 U.S.C. §§ 4321 *et seq.* Staff from the Commission Energy Division’s CEQA unit are assigned to conduct such environmental reviews. The Order’s allegations largely concern events taking place in the context of this environmental review of SDG&E’s Sunrise application.

<sup>6</sup> We reference herein the proposed transmission line that is the subject of this application as “Sunrise” or the “project.”

<sup>7</sup> “Ex.” references herein are to record exhibits identified in this docket.

ABSDP, and the selection of the proposed route was based on the so-called Garamendi principles, including the use of existing rights-of-way, and avoiding additional protected lands that could block or delay Sunrise. *Id.*; PEA at Ch.3; Ex. SD-36 at 7.7-7.36; O’Beirne declaration, Appendix 2 at ¶ 4. Included in the PEA’s evaluation (*id.*, Ch. 3) were routes that avoided the ABDSP by going to the south of the proposed route.

2. At the September 13, 2006 prehearing conference and public participation hearing in Ramona, California, Assigned Commissioner Dian Grueneich specifically directed SDG&E to provide an analysis of at least one route alternative that would avoid the ABDSP. T. 163-164.<sup>8</sup> On October 2, 2006, SDG&E served its analysis describing four routes that would not cross the ABDSP.<sup>9</sup> In addition, discovery requests and informal inquiries from the Commission’s Energy Division in the context of its environmental review of the project reinforced that the Commission was very interested in identifying a southern route that avoided the ABDSP. O’Beirne declaration, ¶ 5.

3. On December 11, 2007, the presiding administrative law judge issued a ruling setting further procedures in this proceeding. This ruling provided that the DEIR<sup>10</sup> for the project would issue January 3, 2008, that applicant’s Phase 2 opening testimony concerning routing and environmental issues would be due March 12, 2008, and the Commission’s Final EIR<sup>11</sup> would be issued in June, 2008.

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<sup>8</sup> References to the record transcript in this proceeding are to [witness surname, where appropriate] “T.” [page/line number(s)].

<sup>9</sup> The analysis concluded that the Proposed Route is superior to each of the four alternatives in 1) meeting project objectives, 2) avoiding existing dwelling units, 3) optimizing the use of existing disturbed transmission lines and other linear features, and 4) having less environmental impact.

<sup>10</sup> See n. 12, *infra*.

<sup>11</sup> Final Environmental Impact Report/Environmental Impact Statement.

4. On January 3, 2008, the Commission issued its DEIR<sup>12</sup> for the project, which identified seven “top-ranked” alternatives, including an “Environmentally Superior Southern Route” (“ESSR”). The ESSR crossed the Cleveland National Forest through previously undisturbed tracts of land and multiple American Indian Reservations.<sup>13</sup> On February 25, 2008, the Campo Indian Tribe submitted a letter in response to the DEIR/EIS opposing a route traversing its land and requesting the Commission to drop that route from consideration.<sup>14</sup> The Campo Tribe repeated this request in April 11, 2008 comments on the DEIR. Order, Attachment 2; Blanchard declaration, ¶ 2; O’Beirne declaration, ¶¶ 6, 7, 8.

5. Until the issuance of the DEIR, at no time did any communication from the Commission, or from any of its employees, indicate what routes the DEIR would identify as “environmentally superior,” the ranking of any alternatives by the DEIR, or otherwise disclose what would be in the DEIR, or even what Energy Division staff would recommend to its management for inclusion in the DEIR. In fact, Energy Division project staff maintained, and maintains to this day, that they would not share such information with SDG&E. O’Beirne declaration, ¶ 10.

6. After release of the DEIR, SDG&E communicated to Energy Division project staff that SDG&E intended to develop and offer, in DEIR comments and testimony, route

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<sup>12</sup> Draft Environmental Impact Report/Environmental Impact Statement, issued January 3, 2008 by the Commission and the U.S. Department of Interior, Bureau of Land Management (“BLM”), prepared by Aspen Environmental Systems (“Aspen”).

<sup>13</sup> DEIR at E.1.1-2, E.1.1-4, E.1.7-1, C-57 to 58, H-76, 1 Fig. Ap. 11C-46, Fig. Ap. 11C-7 and Fig. D.17-2; SD-36 at 10.2-10.7; Blanchard declaration at ¶ \_\_; O’Beirne declaration, ¶ 7.

<sup>14</sup> [http://www.cpuc.ca.gov/Environment/info/aspen/sunrise/deir\\_cmnts/A0006%20Campo%20Kumeyaay%20Nation%20-%20Cuero.pdf](http://www.cpuc.ca.gov/Environment/info/aspen/sunrise/deir_cmnts/A0006%20Campo%20Kumeyaay%20Nation%20-%20Cuero.pdf).

modifications to avoid tribal lands and to propose other modifications to various route alternatives to make a southern route more feasible. O’Beirne declaration, ¶ 11.

7. After release of the DEIR, Energy Division project staff propounded numerous data requests to SDG&E regarding route variations to the south and the north and other environmental matters. O’Beirne declaration, ¶ 11.

8. On March 12, 2008, SDG&E submitted its Phase 2 Direct Testimony and identified a “Modified Southern Route” proposing modifications to the ESSR to avoid tribal lands and to address other feasibility and environmental issues posed by the ESSR. Niggli, Ex. SD-35 at 1.10, Woldemariam, *id.* at 2.42-44; *see generally* Ex. SD-36, Ch. 8,<sup>15</sup> Niggli declaration, Appendix 3, ¶ 4; O’Beirne declaration, ¶ 13; Blanchard declaration, ¶ 3.<sup>16</sup> The purpose of SDG&E offering

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<sup>15</sup> SDG&E’s March 12 testimony summarized the Modified Southern route as follows (Woldemariam, Ex. SD-35 at 2.42):

SDG&E is proposing a segment re-route for the ... [ESSR] that would mitigate direct impacts to Cleveland National Forest lands currently designated as Back Country Non-Motorized Zone and that would avoid all Indian Reservations located along Aspen’s proposed southern route. This re-route would mitigate the feasibility concerns arising from those impacts, but still would require contingent Forest Service approvals. Other route constraints still remain, such as potential impacts to a very large archaeological district, the significant difficulties associated with undergrounding a 230 kV transmission line in Alpine Boulevard, and the infeasibility of locating any future 230 kV underground through Alpine Boulevard.

<sup>16</sup> Ms. Blanchard’s declaration (¶ 3) describes a “Modified Environmentally Superior Southern Route (‘MESSR’)” as being proposed by SDG&E’s March 12 testimony. SDG&E has never used this nomenclature in any of its testimony or briefing, nor are we aware that any other party has used this nomenclature in advocacy or in meetings until it appeared in Ms. Blanchard’s declaration. Ms. Blanchard may have intended to refer to the Modified Southern Route first identified in SDG&E’s March 12 testimony. Indeed, after the May 20 meeting, Energy Division data requests continued to refer to “SDG&E’s Modified Southern Route.” *See* Energy Division Data Request 30 (May 26, 2008) Question 30-1(a) and 30-1(b) (Appendix \_\_ hereto). Moreover, the Recirculated DEIR revises the ESSR to avoid tribal lands, but notes (at 5-10) that the revised ESSR does not adopt all of SDG&E’s “Modified Southern Route,” and it refers throughout to SDG&E’s Modified Southern Route, never using Ms. Blanchard’s “MESSR” nomenclature.

the Modified Southern route was to provide the Commission with a routing option that avoided ABDSP, and had a more realistic chance of being permitted and constructed than the ESSR. Niggli declaration, ¶¶ 4, 13, 15, 16. *See also*, Niggli, Ex. SD-35 at 1.10, Woldemariam, Ex. SD-35 at 2.42-2.44. UCAN also introduced its own southern route alternative in its Phase 2 Direct Testimony. Marcus, Ex. U-100 at 31-40.

9. On March 20, 2008, Mike Niggli, SDG&E's Chief Operating Officer, conducted a tour by helicopter of potential routes for the Sunrise Powerlink for Nancy Ryan, Chief of Staff to President Peevey; Andy Schwartz, Advisor to President Peevey; Paul Clanon, Commission Executive Director; and Sean Gallagher, then Commission Energy Division Director. SDG&E requested the meeting to provide visual references to the routing opportunities and constraints for the project. The tour included overflight of the ESSR and the mitigation re-routes to, among other things, avoid tribal lands, proposed by SDG&E in its March 12 testimony. Niggli declaration, ¶ 2-8. On March 25, 2008, SDG&E filed and served an *ex parte* notice (Appendix 8 hereto) for this helicopter tour that included this summary addressing the southern routing options:

Mr. Niggli described the challenges with the southern route options including engineering and construction obstacles due to rugged terrain in San Diego County; undergrounding through congested areas such as Alpine; land ownership and rights, particularly on tribal lands and designated non-motorized zones; and the reliability risks of co-locating Sunrise with the Southwest Powerlink for nearly 36 miles. He described mitigation re-routes that may address some of these issues.

During the tour, Mr. Niggli demonstrated the route options with maps, and these maps were attached to the March 25 *ex parte* notice. The maps, as well as Mr. Niggli's presentation, included identification of mitigation re-routes to the ESSR, including the Modified Southern Route proposed in SDG&E's March 12 prepared testimony. Appendix 8; Niggli declaration, ¶¶ 3-6.



10. On May 13, 2008 Energy Division project staff met with SDG&E to discuss several issues regarding the DEIR. During the meeting, Energy Division project staff did not indicate that the Commission intended to recirculate the DEIR prior to issuing a Final EIR. O’Beirne declaration, ¶ 15.

11. On May 20, 2008, project staff from Energy Division, Aspen and SDG&E, and representatives of BLM, United States Forest Service, met to discuss construction issues and potential route segments through the Cleveland National Forest (referenced in the Order at 3-4). Energy Division did not “agree to” a southern route at that meeting that would avoid tribal lands, although such routing options were part of the subject matter discussed at the meeting.<sup>17</sup> Not only were SDG&E’s representatives at that meeting unaware of any such “agreement” (*see* O’Beirne declaration ¶ 18; Woldemariam declaration, ¶¶ 4-5; but Ms. Blanchard’s declaration does not mention any such “agreement.” *See* Blanchard declaration.<sup>18</sup>

12. SDG&E is informed and believes that none of the participants at the May 20 meeting had the authority to commit the Commission to publishing a re-route that avoided tribal lands, either by re-circulation or in a Final EIR. O’Beirne declaration, ¶ 18.

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<sup>17</sup> O’Beirne declaration, ¶ 18. As noted, the Order alleges that “SDG&E appears to have misrepresented that the route went through tribal lands, when in fact an alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands.” Order at 7. But none of the Order’s supporting evidence purports to corroborate the Order’s assertion that a re-route avoiding tribal lands “had been jointly agreed to” at the May 20 meeting. Indeed, the sole percipient witness to the May 20 meeting offered by the Order does not testify to any such agreement. *See* Blanchard declaration, Attachment 5 to Order. Nor did any of the other declarations and documents attached to the Order make such an assertion.

<sup>18</sup> The Order at 4 states: “Staff informed SDG&E during the May 20, 2008 meeting, that they would begin the process of revising their ... [ESSR] to reflect the route changes that avoided tribal lands and addressed Forest Service concerns.” The Order cites Ms. Blanchard’s declaration for this statement, but her declaration does not include any such statement.

13. After May 20, 2008, SDG&E received additional data requests from Commission project staff regarding southern routing options as well as northern routing options and other matters. *See* Commission Data Requests 29, 30 and 31 (Appendix 9 hereto). Indeed, one of these data requests stated: “... ***if*** these reroutes are accepted for consideration by the EIR/EIS Team” SDG&E must provide information regarding whether certain re-routes would be included in “SDG&E’s Enhanced Northern Route” and components of “SDG&E’s Modified Southern Route” respectively. Energy Division Data Request 30 (May 26, 2008) Question 30-1(a) and 30-1(b) (Appendix 9 hereto) (emphasis added). O’Beirne declaration, ¶ 19, 20.

14. On June 6 and 13, 2008, SDG&E provided additional maps to Energy Division project staff showing SDG&E’s Modified Southern Route. Blanchard declaration at ¶ 5; Order at 4.

15. During the period February – early June, 2008, Energy Division project staff never informed SDG&E that recirculation of the DEIR was likely to happen. O’Beirne declaration, ¶ 23. Prior to the June 20, 2008 Revised Scoping memo and Ruling of the Assigned Commissioner/Administrative Law Judge, which announced the recirculation of portions of the DEIR, SDG&E expected that Final EIR would be published during the month of June, consistent with the presiding judge’s December 11, 2007 ruling. O’Beirne declaration, ¶ 24.

16. In addition to SDG&E’s Modified Southern Route and UCAN’s southern route proposal, several other proposals in public comments were submitted to the Commission regarding route variations and modifications. O’Beirne declaration, ¶ 14.

17. No Commission employee or official, including Energy Division project staff, ever communicated to any one at SDG&E how the Commission would respond to such proposals, or

whether any of such routing proposals would be included in the Final EIR. O’Beirne declaration, ¶ 14.

18. It was not until June 20, 2008, when the Revised Scoping Memo and Ruling of the Assigned Commissioner/Administrative Law Judge issued, that SDG&E had any knowledge that the Commission would recirculate the DEIR. O’Beirne declaration, ¶ 24. The sole reason stated by this ruling for recirculation was receipt by the Commission “of new information on the La Rumorosa project.” June 20 Ruling at 1. This ruling made no mention of the ESSR or other routing alternatives that would avoid tribal lands.

19. Until July 11, 2008, when the Commission released the Recirculated DEIR,<sup>19</sup> SDG&E did not know that the Commission had determined to avoid tribal lands by amending the routing alternative for its ESSR.<sup>20</sup> O’Beirne declaration, ¶ 25.

**B. SDG&E did not mislead the Commission in the June *ex parte* meetings.**

20. At the time of the June 10 and 11 *ex parte* meetings that are the subject of the Order, the Final EIR was overdue (per the presiding judge’s December 11, 2007 ruling projecting release of the Final EIR on June 6, 2008), and SDG&E expected the Commission to preserve the procedural schedule by releasing a Final EIR at any moment. At the time of the June 10-11 *ex parte* meetings, no one at SDG&E was aware at the time of these meetings that the Commission had determined to publish, in either a Recirculated Draft EIR or a Final EIR, a revision of the ESSR that avoided direct encroachment on tribal lands. O’Beirne declaration, ¶ 24.

21. SDG&E’s objective in the June *ex parte* meetings was to review the need for the project and to discuss routing options. To this end, SDG&E described why it considered its

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<sup>19</sup> Recirculated Draft Environmental Impact Report/Environmental Impact Statement (July 2008) (“Recirculated DEIR”).

<sup>20</sup> July 11 is 30 days *after* the June 10 and 11 *ex parte* meetings.

Enhanced Northern Route superior to southern routing options, and specifically reviewed the ESSR and SDG&E's Modified Southern Route. SDG&E also "identified a number of challenges that need to be overcome if a southern route is selected, including crossing tribal land, impacts to cultural resources, impacts to undisturbed areas of the Cleveland National Forest, engineering concerns and delay in project completion." Order, Attachments 5-8 at 1; Niggli declaration, ¶ 11; Blattner declaration, ¶¶ 7-18; Larson declaration, ¶¶ 6-9 (Appendix 5 hereto). Skopec declaration, ¶ 3 (Appendix 6 hereto).

22. At each of the *ex parte* meetings, SDG&E used a large map to demonstrate the various Sunrise routing options. This map (Ex. SD-78 in the Sunrise record) included the clear and specific depiction of the ESSR and SDG&E's Enhanced Northern Route. A smaller version of this map was included with the slide show referenced at the meetings (Slide 5; *see* paragraph 21, *supra*), which was also attached to the *ex parte* notices concerning these meetings filed and served on June 13, 2008. Blattner declaration, ¶ 14; Order, Attachments 5-8 at 4. *See also*, Order, Attachments 9-12 (Ryan, Schwartz, Brown and Kinoshian declarations, ¶ 3).

23. At each of the meetings, SDG&E also distributed a detailed map that shows four potential routes for the Sunrise Powerlink: the Proposed Project, SDG&E's Enhanced Northern Route, SDG&E's Modified Southern Route, and the DEIR's ESSR. Order, Attachments 5-8 at 4. Blattner declaration, ¶¶ 14, 19. The detailed map shows the DEIR ESSR crossing tribal lands. The route identified as "SDG&E Modified Southern Route" avoids crossing tribal lands, consistent with the route first proposed in SDG&E's March 12 testimony, and shown to Nancy Ryan, Andrew Schwartz, Paul Clanon and Sean Gallagher by Mr. Niggli on the March 25, 2008 helicopter tour. *See* Niggli declaration, ¶¶ 3-4.

24. Also referenced at the June *ex parte* meetings was a slide presentation on the project, “Sunrise Powerlink Update – June 10, 2008.” Slide 7 is entitled “Southern Routes Face Significant Challenges – SDG&E’s Modified Southern Route Addresses Some.” Ryan, Swartz, Brown and Kinosian declarations at ¶ 3; Blattner declaration, ¶ 19.<sup>21</sup> Finally, SDG&E referenced at the meetings an excerpt from SDG&E’s Phase 2 Opening Brief (May 30, 2008, Attachment A at 355-358) entitled “History of Communications between SDG&E and State Parks regarding Sunrise.”

25. Consistent with its March 12 testimony and other communications referenced above (at ¶¶ 7-8), SDG&E advocated its Modified Southern Route as the best southern routing option in the June *ex parte* meetings. At these meetings, SDG&E also maintained that its Enhanced Northern Route was the best overall routing option for Sunrise. Niggli declaration, ¶¶ 15-16; Blattner declaration, ¶¶ 9-11; Skopec declaration, ¶ 3.

#### **IV. BECAUSE THE UNDISPUTED FACTS DO NOT SUPPORT THE RULE 1 ALLEGATION, THIS ALLEGATION MUST BE DISMISSED.**

The Order’s sole Rule 1 allegation states: “SDG&E appears to have misrepresented that the route went through tribal lands, when in fact an alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands.” Order at 7. The Order appears to support this allegation with the proposition that SDG&E “asserted to at least four of the six advisors ... that any southern route would pass through three tribal lands ...” (*id.* at 5). Not only is this allegation not supported by the proffered facts, but the allegation is contradicted by the Order’s supporting evidence and the public record. Moreover, the allegation itself makes

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<sup>21</sup> This slide presentation was attached to SDG&E’s August 7, 2008 Augmented *Ex Parte* Notice. See paragraph 36 at p. 31, *infra*.

no sense when placed in the context of facts in the Commission’s public records of this proceeding. We show below why these reasons compel dismissal of the Rule 1 allegation.

**A. None of the facts offered with the Order support the Rule 1 allegation**

The Order and attached declarations do not support the allegation that SDG&E misled the Commission staff. Specifically, no declaration offered shows either prong of the allegation, *i.e.*, (1) that SDG&E misrepresented that “the route went through tribal lands” when (2) an “alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands.”<sup>22</sup> The Order (at 4) does cite Ms. Blanchard’s declaration for the proposition that, at a May 20, 2008 meeting, Energy Division project staff stated “they would begin the process of revising their Environmentally Superior Southern Route to reflect the route changes that avoided tribal land and addressed Forest Service concerns.” But this characterization fails to support the allegation for several reasons.

As for the first prong, it was true at the time of the *ex parte* meetings and remains true today that the “Environmentally Superior Southern Route” in the DEIR (the only DEIR then available) crossed tribal lands. Thus, a representation that such route crossed tribal lands was accurate—as admitted in Ms. Blanchard’s Declaration (¶ 3), and confirmed by all of the adviser declarations (at ¶ 3.a.).

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<sup>22</sup> For purposes of the argument in this section, SDG&E assumes that the “route” referred to in the Order is a southern route. Which southern route is not stated, nor is there any way to determine what southern route is referenced from the context, which claims that an “alternate route had been developed and agreed to by SDG&E.” Order at 7. As shown above, the Commission’s records amply demonstrate that there was more than one southern routing option under consideration by the parties and the Commission’s Energy Division. While for purposes of some routing discussions in this case it might be appropriate and useful to refer generally to the single concept of “a southern route,” in this instance the allegation itself presumes more than one routing option. As demonstrated below, this vagueness and imprecision in and of itself compels dismissal of the allegation.

With respect to the second prong, it is inaccurate to say that SDG&E misrepresented facts by failing to state that an “alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands.” To the extent that this statement references SDG&E’s Modified Southern Route, discussed in detail in SDG&E’s March 12, 2008 testimony and shown in the map provided to Commission staff, SDG&E plainly provided staff with information about a southern route that SDG&E considered more feasible from a tribal lands standpoint, albeit subject to concerns including the timing and conditions of Forest Service approvals and potential impact on cultural sites. The declarations of Commission advisors Brown and Kinosian (at ¶ 2.c.), admit receiving the map showing SDG&E’s Modified Southern Route.<sup>23</sup>

To the extent that the statement refers to a southern route purportedly agreed to by Energy Division staff during the May 20 meeting with SDG&E, BLM and Forest Service personnel, there simply was no such agreement. The Order cites Ms. Blanchard’s declaration for the proposition that, at a May 20, 2008 meeting, Energy Division project staff stated “they would begin the process of revising their Environmentally Superior Southern Route to reflect the route changes that avoided tribal land and addressed Forest Service concerns.” Order at 4. But this citation fails to support the allegation for three reasons.

First, Ms. Blanchard’s declaration does not support the statement made in the Order nor does it reflect any Energy Division agreement to adopt a new southern route. In pertinent part, Ms. Blanchard’s declaration states (¶ 5, emphasis added):

During the [May 20] meeting, we talked through all of the Forest Service’s comments. Bob Hawkins, Forest Service’s representative, with the aide [*sic*] of

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<sup>23</sup> In addition, on March 20, 2008, Ms. Ryan and Mr. Schwartz were given a helicopter tour that included the Modified Southern Route, accompanied by maps displaying this route and a presentation by Mr. Niggli. Niggli declaration at ¶¶ 2-6; Appendix 8.

computer mapping tools, pointed out all the areas where the Forest Service wanted to see changes that would decrease impacts. It was a productive meeting. SDG&E agreed to revise the maps to reflect the Forest Service's comments including along the Modified D route and along BCD and the BCD South Options, which circumvent tribal lands. SDG&E began submitting these changes on June 6<sup>th</sup> and 13<sup>th</sup>, *which is an ongoing process at this point in time.*

Ms. Blanchard's declaration simply confirms that SDG&E agreed to revise maps to reflect Forest Service suggestions, that the meeting was "productive," and that consideration of a new route is "an ongoing process at this time." And her declaration is consistent with the recollections of SDG&E representatives attending the May 20 meetings. There was a discussion of re-routes that would address the Forest Service's concerns and SDG&E agreement to revise the maps to show such re-routes, but no Energy Division (or BLM or Forest Service) agreement that the "Environmentally Superior Southern Route" would be amended to include the re-routes.

O'Beirne declaration, ¶ 18; Woldemariam declaration, ¶ 5.

Second, there is no dispute (and nothing in the Order suggests a dispute) that, on June 10-11 when the *ex parte* meetings occurred, the Commission's only "environmentally superior" route for the project was the DEIR's ESSR, and that route went through the lands of three tribes.<sup>24</sup>

Third, even if there were evidence that Energy Division staff represented on May 20 that they would begin developing a southern route to avoid tribal lands and to address Forest Service concerns (which there is not) such a representation does not indicate "agreement" by the Commission or by Energy Division that the Commission would publish in the Final EIR (or by recirculation) an environmentally superior southern route that avoided crossing tribal lands.<sup>25</sup>

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<sup>24</sup> This fact was noted in SDG&E's Phase 2 direct testimony, Ex. SD-36 at 10.2-10.7.

<sup>25</sup> The Order casts its allegation of "agreement in passive voice and does not indicate which persons or parties "jointly agreed to" a southern route that did not go through tribal lands. This ambiguity itself supports dismissal of the allegation. Ms. Blanchard's declaration does



Nor is it warranted to infer such an agreement, given that it would be improper, and beyond staff authority, to commit the Commission to an EIR alternative in this context.

In sum, Ms. Blanchard corroborates the process that the public record describes: that SDG&E has advocated the identification of a buildable southern route for Sunrise that avoids tribal lands, that Energy Division has actively investigated routing options and sought information from SDG&E that could accomplish this, and, given that the Final EIR has not yet issued, that establishing any southern routing alternative is “an ongoing process at this point in time.” Her declaration does *not* support the notion that such a route had been “developed and agreed to” at the time of the subject *ex parte* communications on June 10-11, which took place before the Commission divulged that it would recirculate the DEIR (June 20),<sup>26</sup> and before the Commission recirculated the DEIR (July 11) with a southern re-route that avoided tribal lands.

#### **B. The evidence supporting the Order contradicts the allegation**

As discussed in the previous section, the Order relies on Ms. Blanchard’s declaration to establish the key premise of the Rule 1 allegation: That there was an “agreement” to a southern routing alternative that avoided tribal lands. But in fact, Ms. Blanchard’s declaration not only fails to support that allegation, it squarely contradicts it, pointing instead to a process “still ongoing at this time.” And there is additional evidence presented with the Order that contradicts the allegation.

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not identify any “agreement” except by SDG&E to submit revised maps (*id.*) – not the agreement implied by the Order’s allegation. Does the Order intend to imply an agreement between SDG&E and Ms. Blanchard? Between SDG&E and Energy Division? SDG&E and the Commission? Indeed, the Order can be read to imply that the Forest Service and/or BLM are party to this alleged agreement. Where and how is this agreement memorialized?

<sup>26</sup> Remember, this June ruling did not suggest that the DEIR’s ESSR would be modified and referenced only the La Rumorosa project as the grounds for recirculation.

First, the materials handed out at the subject *ex parte* meetings shows SDG&E's proposed northern route and both the ESSR and SDG&E's Modified Southern Route, and thus that SDG&E advocated a southern route that avoided tribal lands.<sup>27</sup> This contradicts the portion of the allegation that suggests SDG&E failed to disclose routing options other than the ESSR through tribal lands. Moreover, had SDG&E's Modified Southern Route been "agreed to" by the Commission, there would have been no point advocating SDG&E's proposed southern route as demonstrated by the documents. Remember, at the time of the *ex parte* communications, the only routing alternative the Commission had determined to be "environmentally superior" was the DEIR's ESSR.

Second, the four Commissioner advisor declarations attached to the Order specifically contradict the allegation that "SDG&E appears to have misrepresented that the route went through tribal lands." That is, these declarations corroborate that SDG&E discussed southern routing alternatives – including the ESSR and SDG&E's Modified Southern Route - both through and avoiding tribal lands, and did not limit its *ex parte* presentation to a single southern route. Niggli declaration, ¶¶ 13, 15-16; Blattner declaration, ¶¶ 12-13; Skopec declaration, ¶ 3; Ryan, Schwartz, and Brown declarations, ¶¶ 3.c.2) and 5.b.<sup>28</sup> While the Order (at 5), citing advisor declarations, does allege that SDG&E stated that "any southern route would pass through three tribal lands," the Order does not acknowledge this contradiction. Nor does the Order acknowledge SDG&E's consistent and public advocacy to the effect that SDG&E believes that its Enhanced Northern Route better serves the public interest and that of SDG&E's customers.

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<sup>27</sup> Brown and Kinosian declarations, ¶ 3; Niggli declaration, ¶ 15; Blattner declaration, ¶¶ 14, 19.

<sup>28</sup> Ms. Brown's declaration (¶ 6) specifically details SDG&E's discussion of its Modified Southern Route. With a few exceptions such as this, the declarations of the Commissioner advisors attached to the Order have for the most part identical wording and numeration.

Thus it would not be surprising that some Commission advisors perceived that SDG&E spent most of its time explaining why a northern route was superior to any southern route—and particularly the DEIR’s “Environmentally Superior Southern Route.” Discussion during the *ex parte* meetings of SDG&E’s Modified Southern Route, which does not cross tribal land, further contradicts the allegations.

**C. Other facts within the Commission’s knowledge and records contradict the Order’s allegation**

There are several additional items contradicting the allegation that can be established through Commission records or within the Commission’s knowledge. First, the Commission can take official notice of the fact that neither Ms. Blanchard alone, nor Energy Division project staff generally, can bind the Commission by agreement to publishing any ranked alternative to a proposed project in a DEIR, a recirculated DEIR, a Final EIR, or in the Commission’s CPCN decision.<sup>29</sup> This negates the premise of the allegation (not supported by any evidence) that there was an “agreement” regarding the southern route reached at the May 20 meeting with any or all of Ms. Blanchard, Energy Division project staff, or the Commission itself.<sup>30</sup> And absent such an “agreement,” it would not be misleading for SDG&E to advocate a southern route that did not cross tribal land. Indeed, even *if* such an agreement existed with Energy Division project staff, it would not mislead to advocate such a southern route, because, in the end, it is the Commission’s - not staff’s - decision whether to approve this project and what route to authorize. And it is

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<sup>29</sup> The Commission may reject an environmentally superior alternative set forth in a Final EIR if it finds that “overriding considerations” of the public interest require Commission approval of a different alternative. Cal. Pub. Resources Code § 21081(b); Cal. Code of Regs. § 15093(a).

<sup>30</sup> The Order does not state whether the alleged agreement was written or oral. Presumably, if it was written, the Order would have referenced and attached the writing. SDG&E is not aware of either a written or oral agreement.

SDG&E's right to advocate to the Commission the route it believes best serves the public interest.

Second, Energy Division propounded to SDG&E a data request on May 26, 2008 – after the May 20 meeting, that stated: “... ***if*** these reroutes are accepted for consideration by the EIR/EIS Team” SDG&E must provide information regarding whether certain re-routes would be included in “SDG&E’s Enhanced Northern Route” and components of “SDG&E’s Modified Southern Route” respectively. Energy Division Data Request 30 (May 26, 2008) Question 30-1(a) and 30-1(b) (Appendix 9 hereto) (emphasis added).<sup>31</sup> For the Energy Division to issue a data request on the subject of ESSR mitigation re-routes with such a precatory introduction completely contradicts the notion that there was an agreement to any such re-route, much less to SDG&E’s Modified Southern Route.

Third, the Commission can take official notice of the environmental review’s chronology on this project, and can reject the notion that there was a routing “agreement” with SDG&E on May 20, or at any time.<sup>32</sup> To accept the existence of such an agreement would be to admit improper conduct by Energy Division staff (which SDG&E does not believe to be the case). On May 20, the only southern routing alternative formally supported by the Commission was the DEIR’s ESSR. The Commission did not publish its revised ESSR that avoided tribal lands until the release of the Recirculated DEIR on July 11. To accept the existence of such an unwritten “agreement” on May 20 would be to suggest that Energy Division project staff privately shared with the applicant their knowledge of what alternatives the Commission’s published

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<sup>31</sup> That such data requests are “public documents” in this proceeding is beyond dispute. Pursuant to a ruling by the presiding administrative law judge, SDG&E is required to post on its publicly accessible Sunrise website all data requests it receives, together with SDG&E’s non-confidential responses to such requests. *Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling* (November 1, 2006) at 22.

<sup>32</sup> See O’Beirne declaration, ¶ 18 and the chronology attached as Exhibit 1 thereto.

environmental reports would endorse nearly seven weeks before publication.<sup>33</sup> Other than the Order's unsupported assertion, the Order cites no evidence to support the allegation. In fact, no such information was shared with SDG&E. O'Beirne declaration, ¶ 10; Woldemariam declaration, ¶ 5.

**D. The Order's allegations make no sense.**

The allegations that SDG&E allegedly asserted that “any southern route would pass through three tribal lands” (Order at 5) the “Forest Service had rejected any southern alternative circumventing tribal lands” (*id.* at 6) or SDG&E misrepresented that “the route went through tribal lands” when an “alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands” (*id.* at 7) simply make no sense. To accept that SDG&E misled the Commission as alleged, one must accept the following propositions:

First, that in the subject *ex parte* meetings, SDG&E contradicted (1) its March 12 testimony and subsequent cross-examination testimony at hearing, (2) the presentations made during the helicopter tour that were the subject of its March 25, 2008 *ex parte* notice, (3) its June 13 *ex parte* notices, and (4) the information in the handouts that even the Commission advisor declarations state were referenced at the June 10-11 meetings - all of which discussed and referenced SDG&E's Modified Southern Route, which avoided tribal lands .

Second, that Energy Division reached an agreement with SDG&E on what southern routing alternative would be advanced in the Commission's post-DEIR environmental review, a proposition that not only assumes impropriety by staff, but is contrary to the Commission's

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<sup>33</sup> These illogical and unsupported inferences are also contradicted by the declarations of Mr. O'Beirne (¶ 10) and Mr. Woldemariam (¶ 5), who testify that Energy Division in fact never shared such information with them.

environmental review process and the chronology of CEQA actions issued by the Commission in this proceeding.<sup>34</sup>

In sum, the allegation makes no sense and requires believing a number of illogical propositions. The truth, as reflected in the SDG&E declarations and that of Ms. Blanchard, is consistent with common sense - there was no agreement to revise the DEIR's ESSR at the time that SDG&E met with the Commissioner advisors, and thus SDG&E did not fail to disclose any such "agreement."

## **V. MOTION TO DISMISS – THE FACTS ALLEGED IN THE ORDER DO NOT STATE A RULE 1 VIOLATION**

As demonstrated in sections II. and III. above, the facts recited in the Order and its attachments do not support the Order's allegation (at 7) that "SDG&E appears to have misrepresented that the route went through tribal lands, when in fact an alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands." In such circumstances, the law compels summary dismissal of the allegation. And, as discussed below, any differences between the declarations submitted by the Commissioner advisors and those submitted by SDG&E do not relate to the Order's Rule 1 allegation, and, in any event, those differences likely result from misunderstanding or drafting error.

### **A. Based on the undisputed facts, the law compels dismissal of the Rule 1 allegation**

Commission Rule 11.2 specifically acknowledges motions to dismiss based on the pleadings, although the rule supplies no substantive standard for such a motion. In such

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<sup>34</sup> See O'Beirne declaration, ¶ 10 and the chronology attached as Exhibit 1 thereto.

circumstances, the Commission frequently looks to California practice in Superior Court for evidentiary and procedural guidance.<sup>35</sup>

In California Superior Court, federal court, and most other state jurisdictions, on motion of a defendant it is proper for the court to dismiss a civil or criminal complaint where the facts stated in the complaint fail to support the wrong alleged. *See, e.g.*, CAL. CIV. PROC. CODE §§ 430.10(e), 437 (a), (c); CAL. PENAL CODE § 104; FED. R. CIV. P. 12(b)(6), 56.

This Commission has dismissed complaints and other proceedings without evidentiary hearings where the facts stated do not establish a violation of the Public Utilities Code or of Commission decisions.<sup>36</sup> Here, as demonstrated above, the Order has failed to allege facts or provide supporting evidence showing that any statute, commission rule or regulation has been violated. By taking official notice of certain facts within its authority and expertise, the Commission can reach this conclusion from the face of the complaint. In sum, the Order fails to

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<sup>35</sup> “[I]n matters for which no Commission rule has been formulated, we look to the ... [California Code of Civil Procedure] and other generally applicable state law for guidance.” *Pac-West Telecomm v. Pacific Centrex Services*, D.08-01-031, *mimeo* at 2. “The Commission generally refers to California’s Code of Civil Procedure ... for guidance with regard to discovery procedures.” *In re AT&T*, D.02-05-042, *mimeo* at 22. In *East Yolo Community Services District*, the Commission stated that “the Evidence Code or the Code of Civil Procedure and District Court of Appeal decisions interpreting those codes... will be considered persuasive authority.” D.90360, 1 CPUC2d 474 at n.7 (1979).

<sup>36</sup> “In sum, complainant has not shown any violation of law or Commission rule and we dismiss the complaint accordingly. . . . Consequently, no evidentiary hearings are necessary...” *Rudder v. MCI WorldCom*, D.04-07-005, *mimeo* at 5; “[T]he city failed to make any factual or legal allegations in its complaint that MHC has violated any provision of law or any order or rule of the Commission pursuant to Section 1702. It was therefore not error to dismiss the complaint without an oral hearing pursuant to the Commission’s Rules of Practice and Procedure, Article 2.5, section 6.1” (*City of Santa Cruz v. MHC Acquisition One*, D.01-11-034, *mimeo* at 2). “We agree that the amended complaint fails to present facts sufficient to constitute a violation of any law or of any order or rule of the Commission, and for that reason, no hearing is required and the amended complaint should be dismissed.” *King v. Pac Bell*, D.96-07-005, 66 CPUC2d 702 at 704.

state a violation of Rule 1 for which sanctions may be imposed. The Rule 1 allegation therefore must be dismissed, and no evidentiary hearing is necessary.

**B. Other factual discrepancies related by the Order do not require further proceedings.**

The Order (at 6) states that “it appears that those [June 13 *ex parte*] notices fail to include many of the critical details asserted during those meetings.” But, except for identifying a document referenced at the subject meetings but not attached to the *ex parte* notices, the Order does not specify anything else should have been included with or in the notices. Indeed, the “discussion” starting at page 7 of the Order, referenced as the basis for show cause in ordering paragraph 2.a., merely asserts “There is also a reasonable basis to conclude that SDG&E violated Rule 8.3 by failing to properly report its *ex parte* communications.” Other than the inadvertently omitted reference documents, the advisor declarations attached to the Order address no issues that were not also referenced in the June 13 *ex parte* notices, nor do they assert any omissions from the notices. Nothing more appears lacking from the *ex parte* notices, which have now been augmented to cure any deficiency.

Each of the advisor declarations assert in ¶ 5 that SDG&E represented during the June meetings that (1) “the *only* realistic southern route to the project” is the DEIR’s ESSR,<sup>37</sup> and (2) “Forest Services rejected the alternative route that circumvents the Indian tribal land and that the only viable route will have to go through the Indian tribal lands.”<sup>38</sup> But these two assertions are

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<sup>37</sup> Order, Attachment 9, Brown declaration. *See, also*, Order, Attachments 10-12, Schwartz, Kinoshian and Ryan declarations. This, of course, makes no sense and clearly shows a misunderstanding has occurred. To the contrary, SDG&E’s position, reflected repeatedly in the public record, is that the DEIR’s ESSR is not a realistic southern route because it crosses tribal lands and the Forest Service’s Backcountry Non-motorized Zones.

<sup>38</sup> Order, Attachments 11-12, Ryan and Schwartz declarations ¶ 5a.



flat wrong: they are completely contradicted by other assertions made in the same declarations,<sup>39</sup> as well as SDG&E's consistent published position<sup>40</sup> and the recollections of SDG&E's attendees at the *ex parte* meetings.<sup>41</sup> Given the advisor declarations' internal inconsistency concerning these two assertions, and the overwhelming refutation of these points by extrinsic evidence and simple logic, the most likely explanation is simply a misunderstanding or error in the drafting process that yielded the advisor declarations.<sup>42</sup> And this may explain why these assertions do not appear in the Order as a basis for a Rule 1 violation.

In these circumstances, it appears that the omission of the documents referred to by SDG&E in the meetings is the only specific allegation in the Order that SDG&E violated Rule 8.3. And as discussed below, SDG&E admits to this allegation.

## **VI. SDG&E INADVERTENTLY FAILED TO MEET ALL RULE 8.3 REQUIREMENTS**

As described below, on reviewing and investigating the allegations in the Order, SDG&E determined that it in fact violated Rule 8.3 by inadvertently failing to attach two of the four

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<sup>39</sup> Specifically, the advisor declarations assert that “The Indian tribes impacted by the DEIR ... [ESSR] would fight the Project because it goes through their tribal lands” (Order, Attachments 9-11 at ¶ 5). *See, also*, Order, Attachment 12 at ¶ 5) and “Adopting the DEIR ... [ESSR] encounter [*sic*] significant difficulty and push back from the tribes” (Order, Attachments 11-12 at ¶ 5). And Ms. Brown's declaration (¶ 6) corroborates SDG&E's advocacy of its Modified Southern Route.

<sup>40</sup> SDG&E's Phase 2 Direct testimony (March 12, 2008) Ex. SD-35, 36; March 25, 2008 *Ex Parte* Notice (Appendix 8); June 13, 2008 *Ex Parte* Notices (Order, Attachments 5-8).

<sup>41</sup> Niggli declaration, ¶¶ 4-16; Blattner declaration, ¶¶ 11-18; Larson declaration, ¶¶ 6-11; Skopec declaration, ¶¶ 3-4.

<sup>42</sup> One item that could give rise to a misunderstanding involves the assertion in the advisor declarations that “Forest Services rejected the alternative route that circumvents the Indian tribal land...” Ryan and Schwartz declarations, ¶ 5.b. The Forest Service did initially issue such a rejection (Larson declaration, Ex. 1), but that agency has since undertaken to work with Energy Division and SDG&E to work out the routing issues in the Cleveland National Forest on those routing options that avoid tribal land. Indeed, working out such options with the Forest Service was the principal objective of the May 20, 2008 meeting referenced in the Order. Blanchard declaration, ¶¶ 4-5; O'Beirne declaration, ¶ 16.

handouts it referred to at each of the June *ex parte* meetings that are the subject of this Order. SDG&E filed and served on August 7, 2008 augmented *ex parte* notices attaching the inadvertently omitted handouts.

SDG&E regrets the error and apologizes to the Commission and to all parties interested in this proceeding for this omission.

**A. The violation was inadvertent and was cured**

SDG&E describes in this section the nature of the violation, its discovery, and the remedial action undertaken upon discovery. For convenient reference, we continue in this section with the use of sequentially numbered paragraphs to set forth the pertinent facts.

26. Billy Blattner, SDG&E Manager of Regulatory Affairs prepared copies of four documents to be used for reference during each of the four *ex parte* meetings on June 10 and 11 that are the subject of the Order, and brought copies of these documents to the meetings. Blattner declaration, ¶ 19.

27. The four documents referenced in the meetings are described in detail in paragraphs 22-24 (at pp. 15-16, *supra*).

28. After the meetings, Mr. Blattner prepared Notices of *Ex Parte* Communication for each of these four meetings and supervised their filing and service. These notices were electronically filed with the Commission and served on the proceeding's service list on June 13, within three working days of the meetings, consistent with Rule 8.3 of the Commission's Rules of Practice and Procedure. Blattner declaration, ¶¶ 21-22.

29. Due to an inadvertent administrative oversight, two of the four documents used in the meetings were not attached to the notices filed June 13. The documents included in the notices were the detailed map of the proposed project and routing alternatives (*see* paragraph 23 at p. 15,

*supra*), and the document entitled “What’s the Best Route to a Clean Energy Future?” Blattner declaration, ¶¶ 23-24.

30. The documents that were inadvertently omitted from the notices filed June 13 were the PowerPoint presentation entitled “Sunrise Powerlink Update” and an excerpt from SDG&E’s Phase 2 Opening Brief (May 30, 2008, Attachment A at 355-358) entitled “History of Communications between SDG&E and State Parks regarding Sunrise.” Blattner declaration, ¶ 28.

31. Mr. Blattner provided original versions of the notices and attachments to his administrative assistant, to prepare the documents to be filed and served. Mr. Blattner did not provide his assistant with a separate copy of the large format map (Ex. SD-78) referenced at the meetings, because it was included in the PowerPoint presentation at Slide 5. Blattner declaration, ¶¶ 29-30.

32. To ensure that the notices would include legible electronic copies of the written materials in a file size that would not be rejected by the Commission’s server, Mr. Blattner provided electronic files of the detailed map and the “What’s the Best Route to a Clean Energy Future?” document to his assistant to convert to PDF format. Blattner declaration, ¶ 31.

33. Mr. Blattner’s assistant discovered that she did not have a program on her computer at the time to convert the files to PDF format. She forwarded the files to the Sempra Energy law department for conversion to the PDF format. The law department returned the files in PDF format late in the afternoon on Friday, June 13, 2008. Blattner declaration, ¶¶ 32-34.

34. Mr. Blattner’s assistant electronically filed and served the notices shortly before the close of business on Friday, June 13, 2008. Mr. Blattner believed at the time that all attachments were included with the notices. Mr. Blattner did not reexamine the attachments to the served

Notices, believing them to be complete. He believes that his failure to check the PDF files for completeness immediately prior to filing and service is the flaw in the process that resulted in the omission of the two documents from the filing and service of the *ex parte* notices and attachments. Blattner declaration, ¶¶ 35-36, 40.

35. Mr. Blattner was out-of-state when the Order was issued. Upon returning to his office on Tuesday, August 5, 2008, he reviewed the Order and its attachments, then reviewed his files and consulted with colleagues to investigate the missing attachment cited in the Order (at 6 and n.23) as the basis for the Rule 8.3 violation. He discovered that *two* of the documents he had believed were attached to the notices were inadvertently omitted. Blattner declaration, ¶¶ 37-38.

36. After discovering the omission, and further investigation to confirm that no other attachments or other information was missing from the June 13 *ex parte* notices, SDG&E filed and served an Augmented Notice of *Ex Parte* Communication on August 7, 2008 to correct the oversight. Blattner declaration, ¶ 39.

#### **B. The omission did not harm the public interest**

While SDG&E admits that two documents referenced at the June 10-11 *ex parte* meetings were not attached to SDG&E's June 13 *ex parte* notices, and that this omission violates Rule 8.3, the next issue to be considered is what, if any sanction is appropriate. To that end, the seriousness of the violation must be considered. In mitigation of any sanctions, SDG&E asks the Commission to consider the following facts. First, the omission was corrected as soon as it was brought to SDG&E's attention and verified.

Second, the *ex parte* contacts were timely noticed, and included (per Rule 8.3(a)(3)) a "description of the interested person's, but not the decisionmaker's (or the Commissioner's

personal advisor's), communication and its content.”<sup>43</sup> Therefore all parties had notice and the opportunity to request meetings with the same advisors on the same issues SDG&E addressed in the subject meetings.

Third, the omitted documents consist of an excerpt from SDG&E’s Phase 2 Opening Brief served on all parties, and a recapitulation of SDG&E’s public positions. The omitted material could not have materially disadvantaged other parties in requesting their own *ex parte* communications, or in preparing for such communications. Indeed, if the Commission advisors or others had considered the omission important to other parties, the Commission would have notified SDG&E as soon as it noticed the omission, instead of waiting over six weeks after the notice was served to issue the Order.<sup>44</sup>

**C. The Commission should impose sanctions appropriate for the inadvertent and harmless nature of the violation**

SDG&E will create an *ex parte* “best practices” manual in consultation with the Commission’s general counsel based on similar documents produced by other Commission-regulated entities. We will include in the manual procedures to prevent omissions such as those that occurred in this case.

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<sup>43</sup> The Order (at 6) states that “it appears that those notices fail to include many of the critical details asserted during those meetings.” But, except for specifying a document referenced at the subject meetings but not attached to the *ex parte* notices, the Order does not specify anything else should have been included with or in the notices. Indeed, the “discussion” starting at page 7 of the Order, referenced as the basis for show cause in ordering paragraph 2.a., merely asserts “There is also a reasonable basis to conclude that SDG&E violated Rule 8.3 by failing to properly report its *ex parte* communications.” Moreover, the advisor declarations attached to the Order address no issues that were not also referenced in the June 13 *ex parte* notices, nor do they assert any omissions from the notices, save the inadvertently-omitted reference documents.

<sup>44</sup> Of course, if the Commission had notified SDG&E of the omission earlier, it would not excuse the violation. But it would have saved the Commission from the considerable effort of troubling Commission advisors for declarations and the like on the subject.

## **VII. FURTHER PROCEEDINGS, IF ANY, ARE REQUIRED ONLY TO ADDRESS SANCTIONS RELATED TO THE RULE 8.3 VIOLATION**

### **A. No evidentiary hearings are required to address sanctions**

As discussed above, SDG&E admits to the Rule 8.3 violation referenced in the Order, and proposes appropriate sanctions. No evidence is needed to address this issue, which can be the subject of pleadings and negotiations with the Commission's legal division.

### **B. If the Rule 1 allegation is pursued, due process and fundamental fairness require permitting substantial discovery by SDG&E**

If the Commission chooses to pursue either the Rule 1 violation alleged in the Order, or to conduct further investigation into whether Rule 8.3 was violated, SDG&E will require discovery of the Commission to adequately understand and defend against the allegations. First, SDG&E needs to depose the Commission advisors that attended the subject *ex parte* meetings to determine whether SDG&E made statements that misled the advisors and what they recall about SDG&E's presentation of its Modified Southern Route.<sup>45</sup> Second, SDG&E would require deposition testimony from Ms. Blanchard, from the Commission's consultant Susan Lee of Aspen, and perhaps from others attending the May 20 meeting where the Order's Rule 1 allegation (but not Ms. Blanchard's declaration) claims there was an "agreement" that Energy Division would propose a revised southern route.<sup>46</sup> Third, document discovery, including emails, of all communications sent or received by the advisors concerning the subject *ex parte* meetings, and among Energy Division staff about any alleged "agreement" would be necessary.

---

<sup>45</sup> The Order to Show Cause (at 6, n. 23) also references two declarations from Commissioner advisors "A. [Andrew] Campbell" and "R. [Robert] Mason", but such declarations were not attached to the Order, not posted on the Commission website, or otherwise served on SDG&E. This peculiar reference and omission suggests that depositions of Messrs. Mason and Campbell would be important as well.

<sup>46</sup> Recall that two declarations purportedly executed by Ms. Blanchard have been attached to the Order, although one has since been withdrawn. *See* Appendix 1 and n.3 *supra*.

SDG&E cannot adequately defend against the allegations unless such discovery is granted and therefore has a due process right to such discovery. The Commission cannot deny meaningful discovery on grounds that the information sought intrudes into the Commission's deliberative process. Whether or not the Rule 1 allegation is accurate, in this case, as the respondent defending against a misdemeanor charge, SDG&E is entitled to the Constitutional imperatives of Due Process and the right of Confrontation. The charges must be dismissed unless SDG&E is given access to the information necessary to its defense and upon which the charges are based.<sup>47</sup>

## VIII. CONCLUSION

SDG&E emphatically denies that it violated Rule 1 or that it otherwise misled the Commission. The allegations in the Order, which the Order itself does not clearly identify, are not supported by the declarations purported to support them, are contradicted by the public record as well as the SDG&E representatives who attended the *ex parte* meetings, and are fundamentally illogical.

At best, we believe the allegations arise from simple misunderstanding. It is noteworthy that SDG&E agrees with one of the declarations attached to support the Order, that of the Commission's CEQA project manager for the project, Billie Blanchard. Given the complexity of the docket, it is possible that the Commissioners' advisors did not grasp some of the relevant detail or that their recollections were shaped by other events and influences which took place in the seven weeks between the *ex parte* meetings and the time the declarations were filed.

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<sup>47</sup> The Due Process Clause of the Fourteenth Amendment and the Compulsory Process or Confrontation Clauses of the Sixth Amendment guarantees defendants "a meaningful opportunity to present a complete defense." *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006).

However, there is no basis to conclude that SDG&E misled the Commission, contradicted its public positions or presumed authority was delegated to Energy Division staff based on agreements that were never made.

As for the Rule 8.3 allegations, SDG&E admits that it violated the rule by inadvertent omission of two of the four documents referenced at the subject *ex parte* meetings. SDG&E apologizes for this omission.

Respectfully submitted,

/s/ E. GREGORY BARNES  
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E. Gregory Barnes  
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Attorneys for Applicant  
SAN DIEGO GAS & ELECTRIC COMPANY

August 18, 2008



# APPENDIX 1

AUGUST 1, 2008 VERSION OF  
BILLIE BLANCHARD DECLARATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY (U902-E) for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project

Application A.06-08-010

**DECLARATION OF BILLIE BLANCHARD**

I, Billie Blanchard, declare:

1. I am .
2. On April 11, 2008, the Campo Band of Mission Indians (Campo) submitted their comments on the Draft Environmental Impact Report/Environmental Impact Statement and Proposed Land Use Amendment (Draft EIR/EIS) via a letter addressed to me and Lynda Kastoll of BLM. In the letter, they indicated that they would not longer support any routes that would cross over their land including the southern superior route in the Draft EIR/EIS. San Diego Gas & Electric (SDG&E) in their Phase II Direct testimony addressed Campo's rejection and suggested a Modified Environmentally Superior Southern Route (MESSR), which has always been an alternative to the southern superior route in the Draft EIR/EIS.
3. Since the Campo changed their minds, we too like SDG&E knew that our southern superior route in the Draft EIR/EIS would have to be modified to circumvent the Indian tribal lands. As of May 2008, we [WHO IS WE?] began discussing the necessary changes to the environmentally superior southern route maps.
4. On May 20, 2008, I [AND WHO ELSE FROM CPUC] met with representatives from the SDG&E, BLM (WHO?), Aspen, and USFS (WHO???) to discuss Forest Services' concerns. At the meeting, SDG&E's representatives included Alan Colton, Mark Heidecke, Chris Terzich, Kevin O'Beirne, Bill Torre, Jonathan Woldermariam, Tom Carr, Art Holland, and Jill Larson (on the phone).

5. During the meeting, we talked through all of Forest Services' comments. Bob Hawkins, Forest Services' representative, with the aide of computer mapping tools, pointed out all the areas where USFS (SAME AS Forest Services?) wanted to see changes that would decrease impacts. It was a productive meeting. SDG&E agreed to revise the maps to reflect the Modified D route and along BCD and the BCD South Options, which circumvents the tribal lands. SDG&E submitted these changes on June 6th and 13th.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: July 31, 2008

By: /s/ Billie Blanchard  
Billie Blanchard

# APPENDIX 2

DECLARATION OF KEVIN O'BEIRNE

1 **BEFORE THE PUBLIC UTILITIES COMMISSION**  
2 **OF THE STATE OF CALIFORNIA**  
3

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

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

4 **DECLARATION OF KEVIN O'BEIRNE**  
5

6 I, Kevin O'Beirne, declare that:

7 1. I am employed by San Diego Gas & Electric Company ("SDG&E") as Regulatory  
8 Case Manager for the Sunrise Powerlink Project. I have been the case manager for the Project since  
9 SDG&E filed its application for a Certificate of Convenience and Public Necessity ("CPCN") in  
10 December 2005.

11 2. I am the main point of contact with the California Public Utilities Commission's  
12 ("Commission") Energy Division staff for all communications regarding the Commission's  
13 environmental review of the Sunrise Powerlink project. I have participated in almost all project-  
14 related communications with Energy Division project staff, including emails, meetings and  
15 conference calls.

16 3. Exhibit 1 to my declaration is a timeline I prepared entitled "Sunrise Powerlink –  
17 Chronology of events related to Rule 1 allegations". This timeline illustrates the primary data points  
18 that are described in detail in SDG&E's response to the subject ruling.

19 4. In its August 4, 2006 amended CPCN application and Proponent's Environmental  
20 Assessment ("PEA"), SDG&E's Proposed Project is a northern route starting at the Imperial Valley  
21 Substation and ending at the Penasquitos Substation that traversed the northern part of San Diego  
22 County, including use of an existing transmission corridor through the Anza Borrego Desert State  
23 Park ("ABDSP"). As indicated in SDG&E's amended application and PEA, SDG&E's evaluation of

1 project routing included evaluation of routes that avoided the ABSDP, and the selection of the  
2 proposed route was based on the so-called Garamendi principles, including the use of existing rights-  
3 of-way, and avoiding additional protected lands that could block or delay Sunrise. *Id.*; PEA at Ch.3;  
4 Included in the PEA's evaluation (*id.*, Ch. 3) were routes that avoided the ABDSP by going to the  
5 south of the proposed route.

6           5.       At the September 13, 2006 prehearing conference and public participation hearing in  
7 Ramona, California, Assigned Commissioner Dian Grueneich specifically directed SDG&E to  
8 provide its analysis of at least one route alternative that would avoid the ABDSP. On October 2,  
9 2006, SDG&E served its analysis describing four routes that would not cross the ABDSP. The  
10 analysis concluded that the Proposed Route is superior to each of the four alternatives in 1) meeting  
11 project objectives, 2) avoiding existing dwelling units, 3) optimizing the use of existing disturbed  
12 transmission lines and other linear features, and 4) having less environmental impact. In addition,  
13 discovery requests and informal inquiries from the Commission's Energy Division in the context of  
14 its environmental review of the project reinforced that the Commission was very interested in  
15 identifying a southern route that avoided the ABDSP (*e.g.*, The CPUC/BLM second round of  
16 DEIR/EIS scoping meetings in February 2007, which added communities along potential southern  
17 routes).

18           6.       On January 3, 2008, the Commission issued the Draft Environmental Impact  
19 Report/Environmental Impact Statement ("DEIR"), which identified the top 7 ranked alternatives  
20 including the Commission's "Environmentally Superior Southern Route" ("ESSR").

21           7.       The ESSR crossed Cleveland National Forest through previously undisturbed tracts of  
22 land and multiple American Indian Reservations. The DEIR also discussed certain southern routing  
23 alternatives that avoided tribal lands, but the DEIR did not select such alternatives among its ranked  
24 alternatives.

1           8.       On February 25, 2008, the Campo Indian Tribe submitted a comment letter to the  
2 CPUC and BLM in response to the DEIR opposing a route traversing its land and requesting the  
3 Commission to drop that route from consideration.

4           9.       On March 12, 2008, the United States Forest Service submitted a comment letter to  
5 the Commission on the DEIR. Those comments effectively rejected the DEIR's southern routing  
6 alternatives that would avoid crossing tribal lands if such alternatives traversed "backcounty non-  
7 motorized zones" in the Cleveland National Forest, the most pristine wilderness designation in the  
8 forest's land management plan.

9           10.      Until the issuance of the DEIR, at no time did any communication from the Commission,  
10 or from any of its employees, indicate what routes the DEIR would identify as "environmentally  
11 superior," the ranking of any alternatives by the DEIR, or otherwise disclose what would be in the  
12 DEIR, or even what Energy Division staff would recommend to its management for inclusion in the  
13 DEIR. In fact, Energy Division project staff maintained, and maintains to this day, that they would  
14 not share such information with SDG&E.

15          11.      After the release of the DEIR, SDG&E communicated to Energy Division project staff  
16 that SDG&E intended to develop route modifications to avoid tribal lands and propose other  
17 modifications to various route alternatives to make a southern route more feasible. Commission staff  
18 propounded several data requests to SDG&E regarding route variations to the south and the north as  
19 well as other resource matters (*e.g.*, Energy Division data request sets #24, 26, 27, 28 and 30).

20          12.      On February 29, 2008, I participated in a meeting with Commission project staff,  
21 Aspen, Commission legal staff and the Commission's outside legal counsel and was advised that the  
22 Commission did not plan to recirculate the DEIR.

23          13..     On March 12, 2008, SDG&E submitted its Phase 2 Direct Testimony in this  
24 proceeding and there identified a "Modified Southern Route" that contained mitigation re-routes to

1 avoid tribal lands and address other feasibility and environmental issues created by the ESSR (*see*,  
2 Chapter 8 of SDG&E’s Phase 2 Direct Testimony, Ex. SD-36). In that testimony, SDG&E also  
3 proposed an “Enhanced Northern Route” to address some of the issues of SDG&E’s proposed route  
4 through the ABDSP. On April 11, 2008, SDG&E submitted its fourth comment letter to the CPUC,  
5 BLM and Aspen, which also detailed the ”SDG&E Enhanced Northern Route” and “SDG&E  
6 Modified Southern Route”.

7 14. UCAN also introduced its own southern route alternative in its Phase 2 Direct  
8 Testimony. There were several proposals from public comments to Commission staff regarding route  
9 variations and modifications. Similar to SDG&E’s comments and testimony, no Commission  
10 employee ever communicated to me or, to the best of my knowledge, to anyone at SDG&E, how they  
11 would respond to such proposals and whether they would include them in the Final EIR.

12 15. On May 13, Commission project staff met with SDG&E to discuss several issues on  
13 the DEIR/EIS. During the meeting, Commission project staff did not indicate that the Commission  
14 intended to recirculate the DEIR prior to issuing a Final EIR.

15 16. On May 20, I attended an approximately 3 hour meeting with Energy Division project  
16 staff, BLM, United States Forest Service, Aspen and SDG&E staff to discuss construction issues and  
17 potential route segments through Cleveland National Forest.

18 17. Energy Division project staff did *not*, at the May 20 meeting, or at any other time,  
19 “inform SDG&E that they would begin the process of revising the ESSR to reflect the route changes  
20 that avoided tribal land.” Nor am I aware that any other Commission employee or consultant ever so  
21 informed SDG&E.

22 18. At the May 20 meeting, Energy Division did not “agree to” a southern route that  
23 would avoid tribal lands, although such routing options were part of the subject matter discussed at  
24 the meeting. Moreover, I do not believe that any of the participants at the May 20 meeting had the



1 authority to commit the Commission to publishing a re-route that avoided tribal lands, either by re-  
2 circulation or in a Final EIR.

3 19. After May 20, SDG&E received additional data requests from Commission project  
4 staff regarding southern routing options as well as northern routing options, and other environmental  
5 matters (*see*, Energy Division data request sets #29, 30 and 31)

6 20. For example, in Data Request 30 dated May 26, 2008 propounded on SDG&E, the  
7 Commission stated “*if* these reroutes are accepted for consideration by the EIR/EIS Team” SDG&E  
8 needed to provide information regarding whether certain re-routes would be included in “SDG&E’s  
9 Enhanced Northern Route” and components of “SDG&E’s Modified Southern Route” respectively.  
10 *See*, Data Request 30 dated May 26, 2008, Question 30-1(a) and 30-1(b).

11 21. To the best of my knowledge, at no time did I or anyone at SDG&E and Commission  
12 staff discuss the Commission substituting in its entirety SDG&E’s Modified Southern Route as the  
13 Commission’s ESSR.

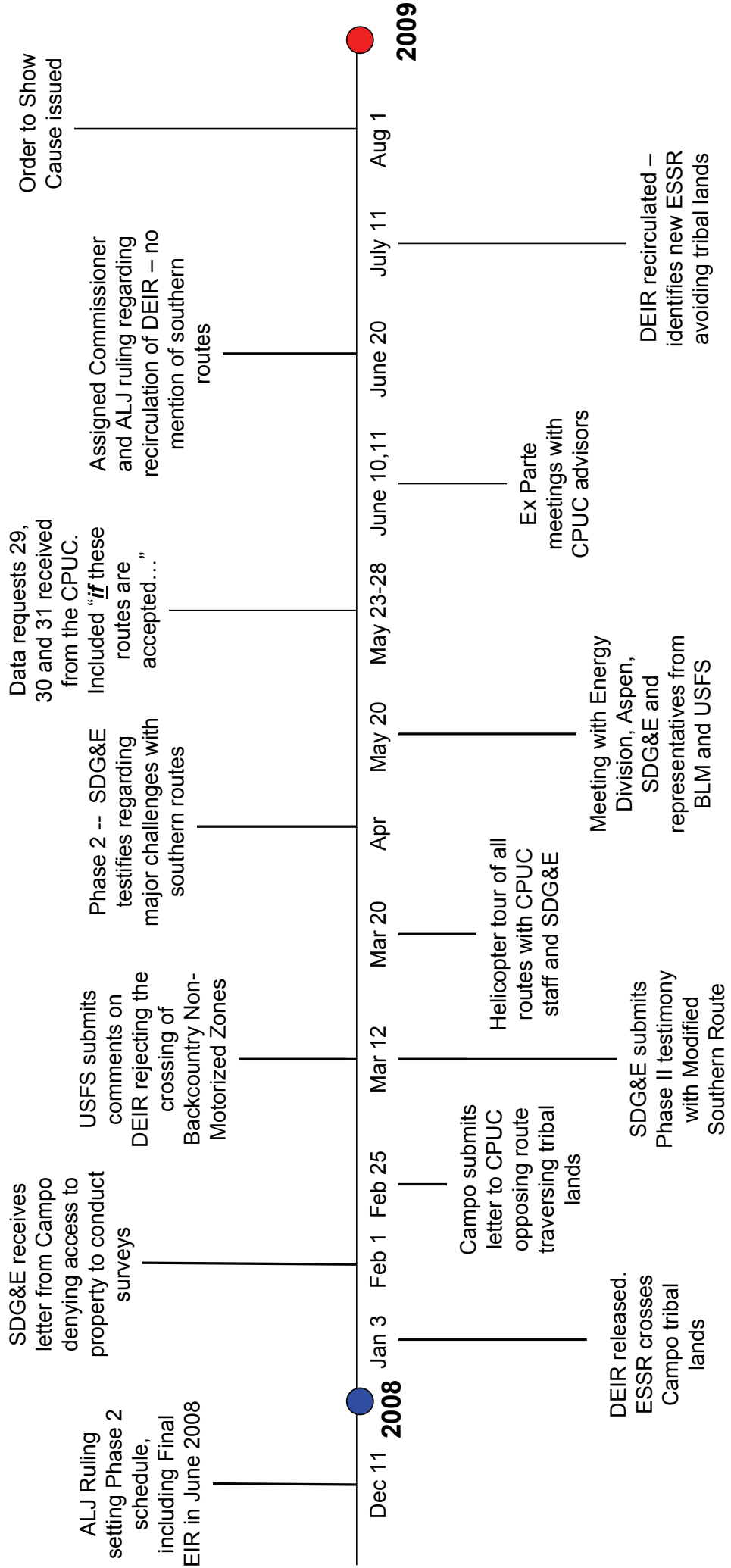
14 22. Although Ms. Blanchard references a “Modified Environmentally Superior Southern  
15 Route” (“MESSR”) in her declaration, I do not know what is meant by that. I have never and, to the  
16 best of my knowledge no one at SDG&E has ever, had a communication with Commission staff  
17 referring to a MESSR. Until I read Ms. Blanchard’s declaration, no employee of the Commission or  
18 any writing from the Commission ever used the phrase or referenced a “Modified Environmentally  
19 Superior Southern Route”, whether in reference to SDG&E’s Modified Southern Route or otherwise.

20 23. During the period of February – early June, Commission project staff never informed  
21 me that recirculation of the DEIR was likely to happen. Prior to the June 20 ruling, which announced  
22 the recirculation of portions of the DEIR, the procedural schedule was on track and the Final EIR/EIS  
23 was expected to be published during the month of June.



# EXHIBIT 1

# Sunrise Powerlink – Chronology of events related to Rule 1 allegations



# APPENDIX 3

DECLARATION OF MICHAEL R. NIGGLI

1 **BEFORE THE PUBLIC UTILITIES COMMISSION**  
2 **OF THE STATE OF CALIFORNIA**  
3

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

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

4 **DECLARATION OF MICHAEL R. NIGGLI**  
5  
6

7 I, Michael R. Niggli, declare that:

8 1. I am the Chief Operating Officer of Sempra Energy Utilities, which includes San  
9 Diego Gas & Electric Company (“SDG&E”) and Southern California Gas Company. I have been an  
10 officer of SDG&E since October 2006. I am the SDG&E officer responsible for the Sunrise  
11 Powerlink project. Early in my career I served as the Project Manager for the Southwest Powerlink  
12 project.

13 2. On March 20, 2008, I provided a guided helicopter tour of the transmission line  
14 routing options for the Sunrise Powerlink project to Sean Gallagher, Paul Clanon, Nancy Ryan and  
15 Andy Schwartz.

16 3. The March 20<sup>th</sup> tour covered the Company’s preferred route, described in its March  
17 12, 2008 prepared Phase 2 testimony as the “Enhanced Northern Route” (a northern routing that  
18 traverses the Anza- Borrego Desert State Park), the Environmentally Superior Southern Route  
19 (“ESSR”, as published January 3, 2008 in the project’s Draft Environmental Impact  
20 Report/Environmental Impact Statement), and multiple route segment options on each such corridor.  
21 As the helicopter flew over these routes, I described the lands below and certain areas of interest  
22 with respect to environmental features, construction challenges, regulatory hurdles, and other  
23 pertinent issues. To assist in following the routes and my descriptions, I provided the Commission

1 staff with maps that were referred to throughout the flight, and which depicted the northern and  
2 southern routing options, including route segments that encompass the ESSR and SDG&E's  
3 proposed Modified Southern Route. These maps were attached to the March 25, 2008 *ex parte*  
4 notice submitted for this tour. Included on the maps were areas of particular interest, including  
5 Chocolate Canyon, Star Valley, Cleveland National Forest, Campo Indian Reservation, Anza-  
6 Borrego Desert State Park and the Santa Ysabel Valley.

7 4. One of the alternatives to the ESSR specifically reviewed on the tour, the "Modified  
8 Southern Route" (also described in SDG&E's March 12 Phase 2 testimony) would avoid the Campo  
9 tribal lands. With respect to the ESSR, I noted that the Campo Indian tribe had indicated their  
10 opposition to any route that crossed their tribal lands. I stated that this opposition would make the  
11 ESSR "infeasible" since the Campo tribe has sovereign rights to determine land use within their  
12 tribal boundaries. I noted that the reason for SDG&E developing and filing our "Modified Southern  
13 Route" was to provide a route that avoided the Campo tribal lands and improved our chances of the  
14 project being "buildable", if the Commission should ultimately grant a southern route for the Project.

15 5. I also explained that the Modified Southern Route, although more feasible than the  
16 ESSR, also had many difficult challenges that could render it "unbuildable". These challenges  
17 included the fact that the Modified Southern Route surrounded, on three sides, sensitive Cleveland  
18 National Forest lands designated as "non-motorized back country roadless" areas. I indicated that  
19 my understanding of this federal designation was that such lands were the Federal equivalent of  
20 "wilderness areas". Further, I pointed out that the Modified Southern Route also bordered the  
21 Campo tribal lands on three sides. This latter fact is important because SDG&E has concerns that  
22 cultural resources are likely to be found in areas near the tribal lands.

1           6.       I stated that the Modified Southern Route could be “unbuildable” if these issues,  
2 among others, could not be dealt with successfully.

3           7.       Also during the March 20<sup>th</sup> tour, I addressed differences in system reliability between  
4 the two major route corridors, the routes’ comparative access to geothermal development, and the  
5 logistics of underground construction near the community of Alpine, among other items.

6           8.       At no time during the March 20<sup>th</sup> helicopter tour did a representative of the  
7 Commission indicate that the project’s Draft Environmental Impact Report/Environmental Impact  
8 Statement would be “recirculated” to modify the ESSR, or that the ESSR would be modified in the  
9 Final Environmental Impact Report/Environmental Impact Statement.

10          9.       On June 10, 2008, I participated in a series of meetings with Nancy Ryan and Andrew  
11 Schwartz, advisors to Commission President Peevey, and Lindsay Brown and Robert Kinosian,  
12 advisors to Commissioner Bohn and Robert Mason, advisor to Commissioner Simon. I was  
13 accompanied to these meetings by Dan Skopec (Vice President of Regulatory Affairs), Jill Larson  
14 (Attorney) and Billy Blattner (Manager of Regulatory Relations).

15          10.       During each of the June 10<sup>th</sup> meetings we covered similar material, although some  
16 differences in emphasis occurred among the meetings in order to address specific items of interest of  
17 the advisors and/or the time available for discussion.

18          11.       SDG&E requested the meetings to provide the advisors with an update of the Sunrise  
19 Powerlink Project. To this end we reviewed the need for the project and the routing options  
20 currently under consideration. I recall that the meeting with Commissioner Bohn’s advisors and  
21 Commissioner Simon’s advisor lasted about one hour, and the meeting with President’s Peevey’s  
22 advisors lasted 30-45 minutes.



1           12.     I have reviewed the declarations of each of the four Commissioner advisors related to  
2 the June 10 meetings and attached to the Order to Show Cause. The topics discussed in the  
3 declarations are consistent with my recollection of matters that were covered at the meetings. I am,  
4 however, concerned that certain representations in the declarations concerning the discussion of  
5 challenges related to southern routing options do not accurately depict SDG&E’s position or what  
6 transpired at the meetings. Specifically, I find that three representations concerning SDG&E’s  
7 positions as expressed in the meetings are inconsistent with my recollection.

8           13.     The first, ¶ 5.a. in each of the advisor declarations, represents that “the only southern  
9 route to the project being considered and that is realistic is the [ESSR] ...” (this paragraph’s wording  
10 in the declarations of Mr. Kinosian and Ms. Brown differs slightly, but is to the identical effect).  
11 This representation is contrary to my recollection of what we discussed and, in fact, it was my intent  
12 to convey in the meetings that the ESSR was the *least* realistic of the routes under consideration.

13           14.     The second representation I believe is inaccurate is in Ms. Ryan’s and Mr. Schwartz’s  
14 declarations (¶ 5.b.), which states: “Forest Services [*sic*] rejected the alternative route that  
15 circumvents the Indian tribal land and that the only viable southern route will have to go through the  
16 Indian tribal lands.” The inaccuracy not only repeats the item discussed in the prior paragraph  
17 concerning ¶ 5.a of the advisor declarations, but it also misunderstands the nature of the “rejection”  
18 by the United States Forest Service that we referenced at the advisor meetings. The rejection was in  
19 the context of Forest Service comments on the DEIR, which referred to a route circumventing tribal  
20 lands discussed in the DEIR that traversed “backcounty non-motorized zones” in the Cleveland  
21 National Forest, the most pristine wilderness designation in the forest’s general plan. SDG&E’s  
22 Modified Southern Route avoids such “backcounty non-motorized zones”, and SDG&E has been  
23 working with the Forest Service and Commission Energy Division staff to resolve Forest Service

1 concerns with such a route. Indeed, I understand that was the principal purpose of the May 20  
2 meeting with Energy Division and Forest Service referenced in the Order to Show Cause, and  
3 described by Ms. Blanchard's declaration. Therefore, to date, there has been no rejection by the  
4 Forest Service of SDG&E's Modified Southern Route, as the declarations could be read to imply.  
5 And, as I describe in paragraphs 4 and 5 above, SDG&E's major point, and the reason it developed  
6 and submitted for Commission consideration its "Modified Southern Route" was because tribal  
7 opposition to the ESSR, which crosses sovereign tribal lands, renders the ESSR unbuildable.

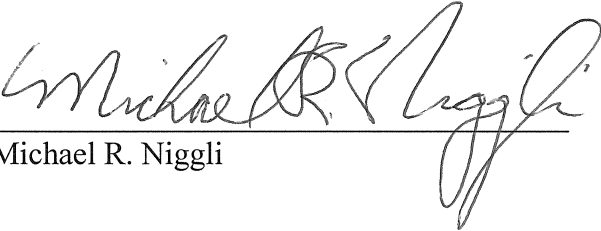
8         15.     The third item that I believe is inaccurate are the statements of Ms. Ryan and Mr.  
9 Schwartz (¶ 3.a. of their respective declarations), and of Mr. Kinosian (¶ 2.a.): after referring to  
10 SDG&E's "Enhanced Northern Route" and the ESSR, the three declarations state that "SDG&E did  
11 not discuss any other routes during the meeting." Again, I recall specifically discussing SDG&E's  
12 Modified Southern Route and that route's advantages over the ESSR during the *ex parte* meetings,  
13 and note that my recollection is confirmed by Ms. Brown's declaration ((at ¶ 6) that details a  
14 discussion of "SDG&E Modified Southern Route."

15         16.     I recall that in the meetings we identified the fact that the ESSR is "infeasible" due to  
16 the continued opposition of the Campo Indian tribe and their sovereign status over tribal lands. We  
17 also identified the need for assistance from the Forest Service to avoid impacting the "non-motorized  
18 back country roadless" area. We noted that federal processing of our route application would require  
19 an amendment to the land use plan, and that this process could delay the project by at least one year,  
20 possibly much longer. I also recall that we said that the Modified Southern Route could be rendered  
21 unbuildable or the Project significantly delayed by factors outside the control of the State of  
22 California, whereas SDG&E's Enhanced Northern Route would be substantially under control of  
23 California state agencies.

1           17.     I have inquired into the facts related to the Order's allegation that SDG&E violated  
2 Rule 8.3. SDG&E did inadvertently omit two attachments from the June 13, 2008 *ex parte* notice  
3 that should have been filed and served with the notice. We did not intend to omit from the *ex parte*  
4 notice any of the materials that were referenced during the meetings. I understand we have since  
5 provided the earlier-omitted materials in an augmented notice filed and served in the proceeding, and  
6 I and apologize to the Commission and to interested parties to the proceeding for the omission and  
7 for any inconvenience in not having these materials earlier.

8           I declare under penalty of perjury under laws of the State of California that the foregoing is  
9 true and correct, except as to those matters stated to be on information and belief, and as to those  
10 matters I believe them to be true and correct.

11           Executed this 18<sup>th</sup> day of August, 2008 at San Diego, California.

12  
13  
14  
  
Michael R. Niggli

# APPENDIX 4

DECLARATION OF  
WILLIAM H. "BILLY" BLATTNER

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2  
3

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

4  
5

**DECLARATION OF WILLIAM H. ("BILLY") BLATTNER**

6 I, William H. Blattner, declare that:

7 1. I am employed by San Diego Gas & Electric ("SDG&E") and Southern California Gas  
8 Company, together the Sempra utilities, as Manager of Regulatory Relations.

9 2. I arranged and attended meetings between representatives of SDG&E and advisors to  
10 President Peevey, Commissioner Bohn, Commissioner Simon and Commissioner Chong to provide  
11 SDG&E's perspective on the major issues in the Sunrise Powerlink proceeding (A.06-08-010/A.05-12-  
12 014).

13 3. Michael R. Niggli, Chief Operating Officer; Daniel F. Skopec, Vice President of  
14 Regulatory Affairs; Jill Larson, Senior Counsel; and I participated in meetings with advisors to President  
15 Peevey, Commissioner Bohn and Commissioner Simon on June 10, 2008.

16 4. I alone represented SDG&E at a meeting with an advisor and intern to Commissioner  
17 Chong on June 11, 2008.

18 5. The meetings with advisors to Commissioners Bohn, Simon and Chong lasted one hour.  
19 The meeting with advisors to President Peevey lasted one half hour.

20 6. The content of each of the four ex parte meetings was substantially the same.

1           7.       Each of the meetings began with a discussion of the three primary goals for the project:  
2 reliability, access to renewables and the ability to achieve Renewable Portfolio Standard goals, and  
3 economic savings to customers.

4           8.       The representatives of SDG&E devoted significant time in each meeting discussing  
5 issues related to routes for the project.

6           9.       We noted that selection of SDG&E's proposed route for the Sunrise Powerlink was  
7 consistent with state law, the proposed route would utilize existing transmission rights of way, and that  
8 State Parks had been consulted throughout the process.

9           10.      We explained that SDG&E proposed in its March 12, 2008 Phase 2 direct testimony an  
10 "Enhanced Northern Route" that would remain entirely within the existing right of way through the  
11 Anza Borrego Desert State Park.

12          11.      We stated that selection of a southern route would transfer environmental impacts, not  
13 eliminate them.

14          12.      We explained that the Draft Environmental Impact Report/Environmental Impact  
15 Statement's ("DEIR") Environmentally Superior Southern Route ("ESSR") crosses tribal lands and that  
16 the Campo Band of Kumeyaay Indians opposes any route that would cross their tribal lands.

17          13.      We explained that SDG&E also proposed in Phase 2 direct testimony a "Modified  
18 Southern Route" that would avoid tribal lands, but would cross sensitive lands in the Cleveland National  
19 Forest.

20          14.      We showed where this "work-around" would be on Exhibit SD-78 from the proceeding, a  
21 large map which showed only the DEIR's ESSR and the SDG&E Enhanced Northern Route. However,  
22 this work-around is clearly shown as the "SDG&E Modified Southern Route" on a map of the Proposed  
23 Project and Alternatives that was also given to the advisors at the meetings.

1           15.     We explained that crossing sensitive lands in the Cleveland National Forest would  
2 require a plan amendment from the United States Forest Service, similar to the plan amendment that  
3 could be required from State Parks if a northern route were selected, except that we believed the process  
4 for amending the Cleveland National Forest plan would be more time consuming, and it was by no  
5 means certain that such a plan amendment would be approved.

6           16.     Based on input from our expert consultants, we explained that there may be cultural sites  
7 that are not on tribal lands that could be impacted by a southern route, including the areas of the  
8 Cleveland National Forest adjacent to the Campo and La Posta reservations and underneath Alpine  
9 Boulevard; should the tribes believe cultural sites would be impacted, they would oppose the project.

10          17.     We explained the engineering limitations and community impacts of construction under  
11 Alpine Boulevard.

12          18.     We explained the engineering challenges associated with the terrain in southern San  
13 Diego County and the limits on expansion of the transmission grid.

14          19.     I was responsible for bringing copies of the documents to be used for reference during the  
15 *ex parte* meetings; there were five documents: (1) a large format map with the description "Within  
16 Existing Transmission Line ROW," which is Exhibit SD-78 in the proceeding; (2) a detailed map  
17 showing four potential routes for the Sunrise Powerlink: the Proposed Project, SDG&E's Enhanced  
18 Northern Route, SDG&E's Modified Southern Route, and the DEIR's ESSR; (3) a printed brochure  
19 entitled "What's the Best Route to a Clean Energy Future?" (4) an excerpt from SDG&E's May 30,  
20 2008 Phase 2 opening brief entitled "History of Communications between SDG&E and State Parks  
21 regarding Sunrise;" and (5) a PowerPoint presentation entitled "Sunrise Powerlink Update." This latter  
22 document included a reduced version of the large format map (Ex. SD-78) at slide five.

1           20.     Except for the large format map, I brought several copies of each document to distribute  
2 for reference at the meetings. I believe that each of the foregoing documents was referenced at each  
3 meeting.

4           21.     I prepared the Notices of Ex Parte Communication for each of these four meetings.

5           22.     These Notices were electronically filed with the Commission and served on parties to the  
6 proceeding within three working days of the meetings, consistent with Rule 8.3 of the Commission's  
7 Rules of Practice and Procedure.

8           23.     Due to in an inadvertent administrative error, two of the four documents used in the  
9 meetings were not attached to the notices.

10          24.     The documents included with the Notices were a detailed map of the Proposed Project  
11 and Alternatives, and a printed brochure entitled "What's the Best Route to a Clean Energy Future?"

12          25.     The detailed map shows four potential routes for the Sunrise Powerlink: the Proposed  
13 Project, SDG&E's Enhanced Northern Route, SDG&E's Modified Southern Route, and the DEIR's  
14 ESSR.

15          26.     The DEIR's ESSR, as shown on the detailed map and in the DEIR, crosses tribal lands.

16          27.     SDG&E's Modified Southern Route, as shown on the detailed map and described in  
17 SDG&E's March 12, 2008 Phase 2 testimony and SDG&E's April 11, 2008 DEIR comment letter sent  
18 to the Commission's Energy Division, does not cross tribal lands.

19          28.     The documents that were inadvertently omitted from the Notices were a PowerPoint  
20 presentation entitled "Sunrise Powerlink Update" and an excerpt from SDG&E's May 30, 2008 Phase 2  
21 opening brief entitled "History of Communications between SDG&E and State Parks regarding  
22 Sunrise."



1           29.     I provided original versions of the Notices and attachments to Cindy Zammit, my  
2 administrative assistant, to prepare the documents to be filed and served.

3           30.     A large format map with the description "Within Existing Transmission Line ROW,"  
4 which is Exhibit SD-78 in the proceeding, was used at the meeting. I did not provide this separately to  
5 Ms. Zammit because it was included in the PowerPoint presentation on page five.

6           31.     To ensure that the Notices would include legible electronic copies of the written materials  
7 of a file size that would not be rejected by the Commission's server, I provided electronic files of the  
8 detailed map and the "What's the Best Route to a Clean Energy Future?" document to Ms. Zammit to  
9 convert to PDF format.

10          32.     Ms. Zammit discovered that she did not have a program on her computer at the time to  
11 convert the files to PDF format.

12          33.     Ms. Zammit forwarded the files to the Sempra Energy law department to convert the  
13 files.

14          34.     The law department returned the files in PDF format late in the afternoon on Friday, June  
15 13, 2008.

16          35.     Ms. Zammit electronically filed and served the Notices shortly before the close of  
17 business on Friday, June 13, 2008. She and I believed at the time that all attachments were included  
18 with the Notices.

19          36.     I did not reexamine the attachments to the served Notices, believing them to be complete.

20          37.     I was out-of-state when the extant ruling was issued.

21          38.     Upon returning to the office on Tuesday, August 5, 2008, I reviewed my files and  
22 consulted with colleagues. I discovered that two documents I believed were attached to the Notices  
23 were inadvertently omitted.

1 39. Upon discovering the omission, SDG&E filed and served four Augmented Notices of Ex  
2 Parte Communication on August 7, 2008 to correct the oversight.

3 40. I believe that my failure to check the PDF files for completeness resulted in the omission  
4 of the two documents from the filing and service of the *ex parte* notices and attachments. I regret this  
5 oversight and apologize for the error.

6 I declare under penalty of perjury under laws of the State of California that the foregoing is true  
7 and correct, except as to those matters stated to be on information and belief, and as to those matters I  
8 believe them to be true and correct.

9 Executed this 18<sup>th</sup> day of August, 2008 at San Francisco, California.

10 A handwritten signature in blue ink that reads "William H. Blattner". The signature is written over a thin blue horizontal line.

11 William H. Blattner  
12  
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# APPENDIX 5

DECLARATION OF JILL LARSON

1 **BEFORE THE PUBLIC UTILITIES COMMISSION**  
2 **OF THE STATE OF CALIFORNIA**  
3

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

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

4 **DECLARATION OF JILL LARSON**  
5

6 I, JILL LARSON, declare that:

7 1. I am an attorney duly licensed to practice law at all times since 1997 before the courts  
8 of the State of California.

9 2. I am employed by the law department of Sempra Energy, parent company to San  
10 Diego Gas & Electric Company (“SDG&E”) and provide legal advice and representation to SDG&E.

11 3. I have been providing legal guidance and representation to SDG&E on environmental  
12 issues on the Sunrise Powerlink Project since SDG&E filed its application for a Certificate of Public  
13 Convenience and Necessity (“CPCN”) in December 2005.

14 4. On June 10, 2008, Michael R. Niggli, Chief Operating Officer; Daniel F. Skopec, Vice  
15 President of Regulatory Affairs; William Blattner, Manager of Regulatory Relations; and I  
16 participated in meetings with advisors to President Peevey, Commissioner Bohn and Commissioner  
17 Simon.

18 5. I recall discussing similar topics as those identified in the declarations of the  
19 Commissioner advisors, however, my recollection differs in certain respects with the declarations’  
20 discussion of the routing alternatives and their implications.

21 6. We generally discussed issues associated with the northern routes and southern routes  
22 contemplated in the Draft Environmental Impact Report/Environmental Impact Statement (“DEIR”)  
23 and in the routes proposed by SDG&E in its March 12, 2008 Phase 2 Direct Testimony.

1           7.       Among other matters, we discussed the DEIR’s Environmentally Superior Southern  
2 Route (“ESSR”) that traverses tribal lands, and that SDG&E had proposed modifications to the  
3 southern routing alternatives in an effort to have the Commission include a more feasible southern  
4 route in its Final Environmental Impact Report/Environmental Impact Statement (“FEIR”).

5           8.       We explained that SDG&E’s “Modified Southern Route” proposed in the Phase 2  
6 proceedings would avoid Campo and La Posta reservations, but would cross sensitive lands in the  
7 Cleveland National Forest requiring an amendment to its land management plan.

8           9.       We stated that selection of any southern route would transfer environmental impacts  
9 from a northern route, not eliminate them, and there would be several challenges in constructing a  
10 southern route, such as cultural resources.

11          10.      Contrary to the concept contained in paragraph 5.a. in each of the advisors’  
12 declarations, I do not recall anyone at SDG&E stating that “the only southern route being considered  
13 and that is realistic is the [ESSR].” In fact, one of the purposes of the advisor meetings was to  
14 demonstrate why SDG&E believed that its Modified Southern Route was more feasible than the  
15 ESSR, and we described the advantages of the Modified Southern Route over the ESSR in each  
16 meeting.

17          11.      I do not recall SDG&E stating that “the Forest Services [*sic*] rejected the alternative  
18 route that circumvents the Indian tribal land and that the only viable southern route will have to go  
19 through the Indian tribal lands.” (Ryan and Schwartz declarations ¶ 5.b.) The Forest Service  
20 comments on the DEIR stated it would not process a special use permit for southern routing  
21 alternatives, including the ESSR, that traversed Backcountry Non-Motorized areas. (Exhibit 1 is a  
22 copy of the Forest Services’ comment letter dated March 12, 2008.) SDG&E believed that the most  
23 viable route was the Modified Southern Route that *avoided* Indian tribal lands *and* Backcountry Non-  
24 Motorized zones.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct, except as to those matters stated to be on information and belief, and as to those matters  
3 I believe them to be true and correct.

4 Executed this 18<sup>th</sup> day of August 2008, at San Diego, California.

5 

6 Jill Larson

# EXHIBIT 1



United States  
Department of  
Agriculture

Forest  
Service

Cleveland National Forest  
SO

**A0009**  
10845 Rancho Bernardo Rd.  
Suite 200  
San Diego, CA 92127-2107  
(858) 673-6180  
(858) 673-6192 FAX  
(800) 735-2922 CRS

File Code: 1950-4

Date: MAR 12 2008

Billie Blanchard, CPUC/Lynda Kastoll, BLM  
Regulatory Analyst/Realty Specialist  
c/o Aspen Environmental Group  
235 Montgomery Street, Suite 935  
San Francisco, CA 94104

RE: Forest Service Preliminary Comments on the Draft Environmental Impact Report /  
Environmental Impact Statement (Draft EIR/EIS) for the Sunrise Powerlink Project. (SCH No.  
2006091071, DOI Control No. DES-07-58)

Dear Ms. Blanchard and Ms. Kastoll:

I have completed my initial review of the Sunrise Powerlink Project Draft EIR/EIS and offer these preliminary comments to the California Public Utilities Commission (CPUC) and Bureau of Land Management (BLM). These preliminary comments may be useful to those parties participating in the CPUC Phase 2 proceedings for the Certificate of Public Convenience and Necessity (Proceeding A-06-08-010). I will be filing detailed comments on the Draft EIR/EIS by April 11, 2008.

### **Introduction**

Although the proposed Sunrise Powerlink Project would not occupy any National Forest System (NFS) lands, several project alternatives would. If an alternative that uses National Forest System (NFS) lands is selected, I must decide whether to issue a special use authorization under the authority of the Federal Land Policy Management Act (43 USC § 1761). The regulations promulgated by the Council on Environmental Quality for the National Environmental Policy Act (NEPA regulations) provide that agencies with jurisdiction by law shall be a cooperating agency (40 CFR 1501.6). The Forest Service is a cooperating agency with the BLM because of our jurisdiction over several of the alternatives. These preliminary comments are offered pursuant to Part 1503 of the NEPA regulations (40 CFR 1503).

Forest Service involvement improves the efficiency of the regulatory review process, and is consistent with direction in Section 1221 of the Energy Policy Act of 2005 (EPA Act) to coordinate the Federal Agency environmental review of proposed transmission projects. I intend to use the Final EIR/EIS to support my evaluation of the selected route if that route occupies NFS lands. If the NEPA analysis conducted by the CPUC/BLM does not meet Forest Service NEPA policy or provide the record necessary to support the findings required by other statutory requirements, a decision regarding the special use authorization would not be likely without preparing a supplement to the EIR/EIS.





### Alternatives Considered

By letter of March 16, 2007, Acting Forest Supervisor Peggy Hernandez provided detailed comments on the proposed alternatives, and recommended that several of the proposed alternatives be eliminated from detailed study because of inconsistencies with the Cleveland National Forest Plan and for other unacceptable environmental effects. Forest Supervisor Hernandez also described the Forest Service special use screening process that would be applied to a proposal before it would be accepted for processing as an application for a special use on NFS lands. As describe in that letter, if an alternative that uses NFS lands is selected, it would first be screened to determine if it would be accepted as an application. I am providing my initial review of the proposed action and alternatives in the context of the criteria I will use to screen the selected alternative for consideration. A complete description of the screening criteria can be found in Title 36 Code of Federal Regulations Section 251 Subpart B.

**Proposed Action** – The Proposed Action does not utilize any NFS lands, and a permit from the Forest Service would not be required.

**CNF Existing 69 kV Route** – This alternative, which is included in the Environmentally Superior Northern Route Alternative, crosses a short (0.5 mile) section of the Cleveland National Forest in an area designated as Developed Area Interface Land Use Zone (LUZ), along the existing 69 kV power line right-of-way (ROW). Utility ROWs are consistent with this land use zone. The Scenic Integrity Objective (SIO) is mapped as High. Although the alternative potentially conflicts with the SIO, additional analysis would be needed to determine if this conflict could be mitigated. The Final EIR/EIS should identify a key viewing point for this alternative and simulate the visual impact after incorporating the design elements identified in the Scenic Conservation Plan required by mitigation measure V-45a.

**BCD Route and BCD South Option** – As identified in Forest Supervisor Hernandez’s March 16 letter, the BCD Route crosses several areas designated Back County Non-Motorized LUZ. Major power lines are not consistent with this zone. It does not appear that the conflict with the Forest Plan could be resolved by reroutes or mitigation, particularly west of milepost 14. The BCD route would not meet the screening criteria and would not be accepted as an application for a special use on NFS lands.

The CPUC and BLM added the BCD South alternative to the analysis after the public scoping period. Although the majority of the BCD South option is consistent with the Back Country LUZ, it utilizes a portion of the BCD route south of “Thing Valley” between milepost 12 and 14 that crosses an area designated as Back Country Non-Motorized. Major power lines are not consistent with this zone. The BCD South Option could also conflict with the High SIO mapped for the area, particularly where it crosses Interstate 8.

In order to accept this route, I would require this route to be rerouted between milepost 12 and 14 to avoid the conflict with the Forest Plan. The Final EIR/EIS should also simulate the visual impact from key view point 79 after incorporating the design elements identified in mitigation measure V-45a, Scenic Conservation Plan. Some specific measures that may be applicable to

this area include changing the support tower type and color, reducing or eliminating roads, and moving the alignment south of Interstate 8 to avoid skylining of support towers.

**Interstate 8 Routes** – As identified in Forest Supervisor Hernandez’s March 16 letter, the Interstate 8 Route on the Cleveland National Forest (primarily west of BCD south at milepost 51 and east of Modified Route D at milepost 71) has numerous conflicts with the Forest Plan, including conflicts with LUZ designations, Proposed Research Natural Areas, and SIO’s. The potential impact of the transmission line on emergency operations in this highly used transportation corridor is of great concern. The Buckman Springs Underground Option would mitigate some of these concerns for a short segment of the route. It does not appear that the remaining conflicts with the Forest Plan could be resolved by reroutes or mitigation, unless an underground route was possible for the entire length. As currently described in the Final EIR/EIS, the Interstate 8 route on the Cleveland National Forest (primarily between BCD south and Modified Route D) would not meet the screening criteria and a proposal to construct a transmission line along this route would not be accepted as an application for a special use on NFS lands.

**Route D** - As identified in Forest Supervisor Hernandez’s March 16 letter, Route D has conflicts with the Forest Plan Back Country Non-Motorized LUZ, and Inventoried Roadless Areas. It also creates an impact parallel to the existing 69 kV line, in conflict with the Forest Plan direction to co-locate facilities to reduce impacts.

The conflict with the Forest Plan direction and Inventoried Roadless Area would be difficult to resolve or mitigate. As described in the March 16, 2007 letter, activities in Inventoried Roadless Areas are subject to the Roadless Area Conservation Rule. Although the Draft EIR/EIS states that no new roads would be constructed in roadless areas (measure T-11a, Draft EIR/EIS page E.3.9-3), the detailed alternative maps in Appendix 11 (Draft EIR/EIS Figure Ap. 11C-72) show an extensive system of roads proposed within the roadless area. Even if helicopters are used to support construction, several new roads in the Inventoried Roadless Area would be required to provide road access to the proposed pulling sites.

As currently described in the Final EIR/EIS, Route D would not meet the screening criteria, and a proposal to construct a transmission line along this route would not be accepted as an application for a special use on NFS lands.

**Modified Route D** - The Modified Route D alternative, which is the primary component of the Environmentally Superior Southern Route Alternative that is located on NFS lands, is generally compatible with the Forest Plan Land Use Zone (LUZ) designations in all areas except the area to the south of Morena Lake near milepost 10. The proposed transmission line and access roads cross through the edge of an area designated as Back Country Non-Motorized. In order to accept this route, I would require a slight modification of alignment, and relocation or elimination of access roads to avoid this conflict.

Modified Route D is co-located along a portion of the route with an existing 69 kV. Co-locating the facilities is consistent with the Forest Plan. A significant portion of Modified Route D is also located within a proposed federal “West-wide Energy Corridor”. The corridor, proposed under

section 368 of the 2005 Energy Policy Act, would be designated by the Chief of the Forest Service through a Forest Plan amendment. Based on the current schedule for the West-wide Energy Corridor Project, the Record of Decision for the corridor designation would be issued sometime in late summer 2008. Utilizing designated corridors for new utility proposals is also consistent with Forest Plan direction.

There are some additional changes in alignment and design to reduce the overall effects of the project on National Forest resources that I am evaluating with my staff. I'll provide those changes in my detailed comments that will be filed by April 11, 2008.

**LEAPS** - As discussed in Section E.7.1.1, I agree that the LEAPS transmission-only alternative could be built by any of a number of entities; however, the applicant on record with the Forest Service is currently the Elsinore Valley Municipal Water District (EVMWD). As noted in the Draft EIR/EIS, my consideration of the transmission-only project is pending the LEAPS hydroelectric project currently before the Federal Energy Regulatory Commission. If the CPUC and BLM were to select the LEAPS transmission-only alternative, a Forest Service decision on that request would be deferred until the FERC process was complete.

#### **Potential Expansion and Mixed Circuit Capacity**

The proposed action and alternatives start in the Imperial Valley with a 500 kV circuit, which transitions through a new substation to a double 230 kV circuit that continues on to northern San Diego County. In all cases, future expansion as described in Section B.2.7, Section E.1.2 and Figures B-1 and E.1.1-6 of the Draft EIR/EIS would be required to utilize the capacity of the 500 kV line. The underlying purpose and need (40 CFR 1502.13) for a 500 kV line to these intermediate substations is only justified if the expansion opportunities are needed. If expansion opportunities are needed, they would qualify as connected actions under NEPA (40 CFR 1508.25(a)(1)), and should be discussed in detail in the Final EIR/EIS.

I recommend that the CPUC and BLM adopt the following changes to the alternatives to clarify the analysis and disclose the effects of future expansion as it relates to the Cleveland National Forest.

The CPUC and BLM should identify and evaluate an option that excludes expansion of the proposed action northwest of the proposed Central East Substation through the Cleveland National Forest along the San Luis Rey River (as shown on Figures B-1, B12a, and B-12b). This route traverses an area constrained by a Critical Biological LUZ below the road, and a Back Country Non-Motorized LUZ above the road. It would be unlikely that a 230 kV or a 500 kV line would fit within the narrow gap between the two constraining land allocations. If the potential for 230 kV or 500 kV expansion is desirable and needed, then a route that is consistent with the Forest Plan should be identified and analyzed.

The superior southern route should be modified to increase the circuit capacity through Alpine to match the capacity of a 500 kV circuit. This could be accomplished by a four circuit 230 kV duct vault as described in Section E.1.2 of the Draft EIR/EIS, or it could be accomplished by switching to an underground gas insulated transmission line (GIL's) operating at 500 kV, using

the same technology proposed for the underground segments of the proposed Telega-Escondido to Valley-Serrano transmission line (LEAPS). The GIL's would require less space than a four duct 230 kV system, require fewer vaults, and would eliminate the need for a 500/230 kV substation.

The CPUC and BLM should drop the Route D alternative from consideration as an expansion area in Section E.1.2. As described above, this route is inconsistent with the Forest Plan and conflicts with the Roadless Conservation Rule. It is unlikely that expansion would be authorized in this area.

The location of the Modified Route D substation should be re-evaluated in light of the potential for expansion through Alpine. Based on Figure E.1.1-6, the most likely expansion scenario would bring an additional circuit south in parallel with the initial 500 kV line, before turning west. A better option would be to locate the substation closer to the likely junction with the western expansion (near milepost 25), eliminating the potential dead-end situation at the proposed substation location.

### **Forest Service Design Considerations for alternatives on NFS lands**

I would like to see the project design, as reflected in the alternative description and detailed alternative maps, incorporate the following design and mitigation measures to minimize impacts to National Forest resources:

**Minimize road construction** – additional access roads should be minimized. Roads will not be authorized on terrain greater than 15% in slope. Temporary roads necessary to access pulling areas will need to be fully restored. These design restrictions should be reflected on the maps in Appendix 11, which currently show an access road to every tower location. Approved access roads will be limited to administrative use only.

**Incorporate measures to reduce visual contrast** – design elements described in the Scenery Conservation Plan required by Mitigation Measure V-45a (Draft EIR/EIS Appendix 12 page 54) should be incorporated into the description of alternatives and evaluated as part of the environmental effects. The current visual analysis is based on the effects of using galvanized lattice towers. The Scenery Conservation Plan requires consideration of several options for support towers, conductors, vegetation clearing, and roads, which should reduce the overall visual impact of the project.

**Avoid sensitive areas** – project related facilities such as roads and staging areas should be designed to avoid known sensitive habitat areas, including riparian zones and meadow areas as described in part by Biological mitigation measure B-2c (Avoid Sensitive Areas, Draft EIR/EIS Appendix 12 page 13). When these sensitive areas are included in identified impact areas as shown on the maps in Appendix 8J, the analysis should describe why those areas cannot be avoided.

**Integrated Vegetation Management** – The Forest Service supports the implementation of Integrated Vegetation Management as described in the Memorandum of Understanding between

the Forest Service, Interior Agencies, and the Environmental Protection Agency. The Draft EIR/EIS should specifically disclose the extent and locations of proposed vegetation management treatments so the effects of project operation on habitat, water quality, and other resources can be evaluated.

**Mitigation specificity and effectiveness** – Future connected actions that are identified in mitigation measures, such as the fuelbreaks required by mitigation measure F-3a (Construct and Maintain Fuelbreaks, Draft EIR/EIS Appendix 12 page 108), should be identified and analyzed in the Final EIR/EIS. Deferring analysis of these connected actions fails to consider the effects of the alternatives as required by NEPA.

### **Other Statutory Requirements**

If an alternative that uses NFS lands is selected by the CPUC and BLM, and accepted as an application by the Forest Service, any potential decision to authorize that use needs to make certain findings related to the consistency of the project with applicable statutes. The Forest Service would use the Final EIS to support the consistency findings that are made in my Record of Decision. Based on my initial review, the analysis of alternatives needs additional disclosure to fulfill other applicable environmental reviews or consultation and to support the findings necessary for compliance with the following statutory requirements (40 CFR 1503.3(c)):

#### **National Forest Management Act - Forest plan consistency**

*Riparian Conservation Areas* – The Forest Plan directs that the Cleveland National Forest manage Riparian Conservation Areas (RCA's) to maintain riparian dependant resources. The Draft EIR/EIS describes the process used to identify and screen projects in RCA's on page E.1.2-5. It is not clear that the five step process was applied and the alternatives screened in accordance with Forest Plan direction. I recommend that the CPUC and BLM identify RCA's for alternatives on NFS lands, and disclose the results of the five step screening process in the Final EIR/EIS. Project design elements and mitigation measures should be evaluated to determine if the project effects are consistent with RCA direction.

#### **Endangered Species Act (ESA) and Forest Service Sensitive Species**

Forest Service policy requires that we complete a Biological Evaluation (an internal Forest Service document that describes the effects of the project on Forest Service Sensitive Species) and the ESA process prior to a decision. The Biological Evaluation is typically completed in conjunction with the Final EIS, and is based on the Forest Service Preferred Alternative. The ESA consultation is also completed around that time, and the results of any Biological Assessments are incorporated into the Final EIS, including the determinations made for the affected species. Ideally any Biological Opinions issued as part of that process are incorporated in the Final EIS, including a description of reasonable and prudent measures if required. If the BLM Preferred Alternative (which remains to be identified) includes NFS lands, I recommend that the Biological Evaluation and Biological Assessment be complete for that alternative, and the results of the consultation be incorporated into the Final EIR/EIS.

**Clean Water Act**

The State Water Resource Control Board designated the Forest Service as the Water Quality Management Agency for NFS lands in California in 1981. The Forest Service meets its obligations for compliance with water quality standards by implementing state certified and Environmental Protection Agency approved Best Management Practices (BMPs). Practice 7-5 requires that special use permits include measures to protect water quality, including conformance with other water quality agency permit requirements.

The Draft EIR/EIS does not delineate jurisdictional waters or wetlands at this time; instead it uses a vegetation proxy to identify potential areas. Based on the proxy, the Draft EIR/EIS concludes that the project or the alternatives would impact jurisdictional waters. Rather than working within the uncertainty caused by using a proxy, I recommend that the CPUC and BLM identify jurisdictional waters and consult with the Army Corps of Engineers and the Regional Water Quality Control Board, and include the results of that consultation in the Final EIR/EIS.

**Clean Air Act**

The Final EIS/EIR should provide a focused air quality impact evaluation of project emissions by alternative, air pollution control district and proximity to wilderness areas. Summarizing construction, operations and maintenance emissions in this manner assists the air districts and federal and state land managers in determining the significance of the project on public health and welfare, the State Implementation Plan (SIP), and wilderness Air Quality Related Values. The Forest Service needs this data to support my findings under the general conformity requirements of the Clean Air Act. Project emission organized in this manner will greatly clarify the need for any mitigation to meet Ambient Air Quality Standards and project compatibility with the various SIPs.

**National Historic Preservation Act (NHPA)**

Forest Service policy requires that compliance with the NHPA be complete prior to a decision to authorize an action. As described in the Draft EIR/EIS Section D.7.7, the BLM, as lead Federal Agency, will be complying with the NHPA in a phased approach as allowed by Section 106 of the NHPA. The Forest Service would typically implement this phased approach under a programmatic agreement executed pursuant to 36 CFR 800.14(b), prior to a decision. I recommend that the CPUC and the BLM identify what method of phased identification will be used, and disclose the details of that method in the Final EIR/EIS. If the CPUC and BLM select an alternative on NFS lands, any decision that I might make to authorize that use would be deferred until the 106 process is complete.

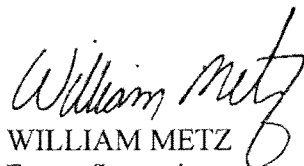
**Conclusion**

The Forest Service offers these preliminary comments on the Draft EIR/EIS for the Sunrise Powerlink Project, and will file additional detailed comments by April 11, 2008. I would require that Modified Route D and the BCD South Option be realigned in specific areas to be consistent with the Forest Plan before accepting those routes for further consideration. I also recommend

several changes to the alternatives to clarify the disclosure of effects associated with future expansion. I would like to see the Final EIR/EIS incorporate and disclose the effects of the alternative after evaluating several design factors. Finally, I recommend additional analysis to support my findings required by other laws should an alternative that uses NFS lands be selected by the CPUC and BLM. This additional analysis is necessary for the Final EIR/EIS to meet Forest Service policy, and to reduce the potential for delay or supplemental analysis.

I would be glad to meet at your convenience to discuss these comments. Please contact Project Manager Bob Hawkins at (707) 562-8699 or by email at [rhawkins@fs.fed.us](mailto:rhawkins@fs.fed.us) to arrange a meeting.

Sincerely,

  
WILLIAM METZ  
Forest Supervisor



United States  
Department of  
Agriculture

Forest  
Service

Cleveland National Forest  
SO

10845 Rancho Bernardo Rd.  
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File Code: 1950-4

Date: April 10, 2008

Billie Blanchard, CPUC/Lynda Kastoll, BLM  
Regulatory Analyst/Realty Specialist  
c/o Aspen Environmental Group  
235 Montgomery Street, Suite 935  
San Francisco, CA 94104

**RE: Forest Service Final Comments on the Draft Environmental Impact Report /  
Environmental Impact Statement (Draft EIR/EIS) for the Sunrise Powerlink Project (SCH  
No. 2006091071, DOI Control No. DES-07-58)**

Dear Ms. Blanchard and Ms. Kastoll:

I have completed my review of the Sunrise Powerlink Project Draft EIR/EIS and supporting documents and offer these final comments to the California Public Utilities Commission (CPUC) and Bureau of Land Management (BLM). These final comments incorporate by reference my initial March 12, 2008 comments, with the following clarification regarding the Interstate 8 (I-8) alignment. On page 3 of my initial comment letter, I described the conflict between the I-8 alignment and the Cleveland National Forest Land Management Plan (LMP). To clarify, the section of the I-8 alignment with the greatest conflict is west of milepost 51 (where the BCD South route crosses the I-8 alignment) and east of milepost 71 (where the Modified Route D route rejoins the I-8 alignment). My final sentence of that section mistakenly referred to the Final EIR/EIS. The corrected sentence (with the correction in italics) is "As currently described in the *Draft* EIR/EIS, the Interstate 8 route on the Cleveland National Forest (primarily between BCD south and Modified Route D) would not meet the screening criteria and a proposal to construct a transmission line along this route would not be accepted as an application for a special use on NFS lands." There is a short section of the I-8 alignment east of milepost 51 on National Forest System (NFS) lands, and that short section is consistent with the LMP land use zones. There is also a section of the I-8 alignment that crosses NFS lands between I-8 milepost 81 and milepost 83, and that section is consistent with the LMP land use zones.

### **Biological Resources**

In my initial comment letter, I discussed the need for the Final EIR/EIS to disclose the effects of the alternatives on Endangered Species and Forest Service Sensitive Species in a context that supports the findings required by law, regulation, and policy. A similar requirement exists for Forest Service Management Indicator Species (MIS). The MIS Report (Appendix 8M) does not provide the information required to support the findings about how the proposed project or alternatives will affect population and habitat trends for the affected species. Disclosure of how the project or alternatives will affect population and habitat trends is required, including





additional analysis beyond the direct effects on the species in terms of acres of habitat destroyed or disturbed.

### **Visual Resources**

The Visual Resource Section discloses the effects of the proposed project and alternatives on impact V-1, Short-term visibility of construction activities, equipment, and night lighting. The LMP describes the “night sky” as a significant resource in the Palomar Place, particularly as it relates to the Palomar Observatory. Other observatories in the area, such as the Mount Laguna Observatory, may also be affected by night lighting, and the Final EIR/EIS should disclose the effect of the proposed project and alternatives on those resources.

Simulation of the visual impacts plays an important role in the assessment and the document provides many good examples of the visual impact of the proposed project and the alternatives. Even with those illustrations, it is difficult to determine the extent to which the proposed transmission lines will be seen throughout a given landscape, and to determine if the transmission line will be visible from key use areas of the National Forest, including recreation sites such as campgrounds, trailheads, trails, and wilderness areas. The Final EIR/EIS should include a “viewshed analysis” and use maps to display the areas where the transmission line will be visible.

In my initial comment letter I requested that the analysis reflect the design elements described by the Scenery Conservation Plan required by Mitigation Measure V-45a. The following comments will identify those areas where I would like to have clarification of the overlapping mitigation measures.

In review of Appendix 12, Full Text of Mitigation Measures, starting with the Visual Resources on page AP.12-50, it appears the Measures V-2d and V-2f, V-2g, and V-3a may not accomplish as much as their titles would imply based on the following discussion.

**V-2d – Construction by Helicopter:** The title implies that application of the mitigation measure would require construction by helicopter, but the full text states that: “In those areas where long term land-scarring and vegetation clearance impacts would be visible to sensitive public viewing locations, or where construction would occur on slopes over 15 percent, San Diego Gas and Electric (SDG&E) will consult with the Authorized Officer and appropriate land management agency, on a site by site basis regarding the use of helicopter construction techniques and the prohibition of access and spur roads. Agency consultations must be conducted and approvals received at least 120 days prior to the start of construction.” The Final EIR/EIS should disclose where this mitigation measure would be applied, and describe how visual resource impacts would be reduced by eliminating roads. The detailed maps in Appendix 11 should reflect the application of this measure.

**V-2f (and V-2g) Reduce land scarring and vegetation clearance impacts on USFS-administered lands:** “Vegetation within the right of way will... be limited to the clearing necessary to comply with the electrical safety and fire clearance requirements. Mitigation will

be incorporated to reduce the total visual impact of all vegetation clearing performed for the power line (USFS Scenery Conservation Plan).”

Based on the text bottom of page E.2.3-16 in discussion of the previously mentioned mitigation measure, the final conclusion is that “However, if site specific conditions indicate that the mitigation measures would not be effective in eliminating unnatural demarcations in the vegetation landscape and reducing the resulting visual impact to a level that would be less than significant, then Mitigation Measure V-2d (Construction by Helicopter) would be required following consultations with the CPUC and USFS as appropriate. As noted above, this mitigation measure requires consultation, and may not result in construction by helicopter. This is particularly true for pulling sites and wire set-up sites that require road access. It would help clarify the effects analysis if those areas that would be constructed by helicopter could be identified in the Final EIR/EIS.

The impact of the fuel breaks proposed in Table D.15-26 for I-8 Alt. from MP 41.4-43.5, 44-47, and 62-63.5 or for Modified D MP10.5013 and 15-16.5 on visual resources is unclear. The implementation of a fuelbreak strategy will have priority, and the degree to which the visual impacts of the fuelbreak system can be mitigated should be disclosed.

**V-3a – Reduce visual Contrast of towers and conductors:** This label is misleading since it addresses using non-specular wires of the conductors and the road approaches to the towers, but not the towers themselves. I suggest that V-3A be labeled as “Reduce Visual Contrast of Conductors” and that the roads be addressed as a separate mitigation line such as “V-3d – Roads to towers will not highlight tower location.”

**V-3b – Use non-specular design to reduce conductor visibility and visual contrast:** I request that all the towers and conductors that are not painted within the context of the Scenery Mitigation Plan be non-specular.

**V-45a – Prepare and implement Scenery Conservation Plan:** Based on statements in the Draft EIR/EIS that limit application of mitigation measure to specific circumstances, designation of measure V-45a at certain points, and describing the impacts with roads in all photo simulations, it is not clear where the requirements of the Scenery Mitigation Plan will apply. My intent is to apply this mitigation measure throughout the Cleveland National Forest.

I recognize that the final details of many of the mitigation measures will be developed as part of the final project design, which won’t be available until after the CPUC decision. However, the project does have an initial design as displayed on the maps in Appendix 11. Applying the design standards and mitigation measures to this initial design will disclose the relative effectiveness of the mitigation, and reduce the uncertainty about project effects. The analysis should highlight areas where the application of mitigation measures will not be effective.

### **Wilderness and Recreation**

The Draft EIR/EIS considers the effects of the proposed project and the alternatives on wilderness in the context of the recreation setting. The 1964 Wilderness Act section 2(c)

**A0009 cont.**

describes the five attributes that define wilderness character, one of which is recreation. The Final EIR/EIS should disclose the effects of the proposed project and the alternatives on the attributes described by the Wilderness Act. Route D traverses an area that has been included in proposed wilderness legislation, and the effect of a transmission line on the potential wilderness character of that area should also be disclosed.

Modified Route D impact WR-2 (Draft EIR/EIS page E.4.5-3) states that the alternative will be highly visible to hikers on the Pacific Crest Trail (PCT) and to visitors in the Hauser Wilderness. Since this area does not overlap with any of the key viewing points selected for this alternative, the Final EIS/EIR should include additional viewpoints from the PCT and Hauser Wilderness to address the impacts in this key area. The location of the PCT on Figure AP. 11C-77 should be corrected.

The LMP identified Cottonwood Creek as eligible for the Wild and Scenic River System. The LMP direction is to protect the outstandingly remarkable values (ORV's) and water quality of eligible river segments. The Final EIR/EIS should disclose the effects of any alternatives that cross Cottonwood Creek on the ORV's and water quality.

**Cultural and Paleontological Resources**

The technical reports supporting the cultural resource analysis are not complete, and my staff has been informed that they will not be complete until April 11, 2008. Review of this section will be deferred until the technical reports are available for staff review.

**Transportation**

The miles of existing roads used or upgraded, and new roads constructed should be quantified for the alternatives and included in the analysis. Many of the existing roads on the Cleveland National Forest will not be able to handle the construction traffic, and upgrades and increases in footprint will be required to support the anticipated machinery. Road widths ranging from 14 feet in straight section of road to 20 feet at corners or curves would be required to facilitate safe movement of equipment and vehicles. The miles of trails used as roads should also be identified. Mitigation will be required to return trails to their prior configuration. Plans will also be needed for alternative trail alignments during construction. The initial details of those plans should be disclosed in the Final EIR/EIS.

The Final EIR/EIS should quantify the numbers and acres of pull sites, describe the type of land modification needed at each site, and evaluate the impacts to soil compaction and potential sedimentation from these sites. In addition, when pull sites are located close to tributaries, distance from tributaries should be added to the document. Restoration plans for pull sites should be described.

Implementation of Mitigation Measure T-10b, (Draft EIR/EIS, page E.2.9-5) which revises the BCD South Option to avoid placing a tower in the CalTrans right of way, may address the visual resource issues I raised for this segment on pages 2 and 3 of my initial comment letter. It appears however that a portion of this proposed alignment may be inconsistent with the LMP

**A0009 cont.**

land use zone for the area north of I-8. The alignment south of I-8 looks like it is located along a ridge top, which will exacerbate the “skylining” concern in this highly visible area. I encourage the CPUC and BLM to work collaboratively with the Forest Service, CalTrans, and SDG&E to develop a route that addresses all the issues in this area. The modified route should serve as the basis for a revised visual analysis, and modification of the location of key view point 79 may be necessary to accurately reflect the impact of the reroute on visual resources.

The discussion for Route D impact T-11 (Draft EIR/EIS page E.3.9-3) states that 1.5 miles of Route D would pass through an Inventoried Roadless Area (IRA) on the Cleveland National Forest. Based on the maps used to develop the Roadless Area Conservation Rule (36 CFR 294), the Route D alignment crosses approximately 2.5 miles of IRA, including approximately 0.5 miles in the Sill Hill IRA, and 2 miles in the No Name IRA. The Final EIR/EIS should disclose the effect of the Route D alternative on the seven Roadless Area Characteristics outlined by the Roadless Area Conservation Rule. The Final EIR/EIS should also disclose the effect of the Route D alternative relative to the State of California’s roadless area policy.

**Water Resources**

In my initial comments I discussed the need for the Final EIR/EIS to identify Riparian Conservation Areas (RCA’s) on NFS lands for the proposed project and the alternatives. This analysis should include all project activities, including the use of existing roads located within RCA’s. All applicable Best Management Practices (BMPs) should be identified and followed to meet agency direction in Forest Service Handbook 2509.22 Chapter 3.21 (1). These BMPs would be incorporated into the special use permit if an alternative on NFS lands is selected by the CPUC and BLM and authorized by the Forest Service.

The Final EIR/EIS should also disclose the effects of the proposed project and the alternatives on the Beneficial Uses and Water Quality Objectives listed in relevant Basin Plans for the affected watercourses. The project effects on Water Quality Limited Segments should also be disclosed and evaluated.

Given the importance of riparian areas, stream crossings on NFS lands will need individual assessment to develop the current riparian condition, disclose the effects of the project, identify appropriate BMPs, and to plan for effectiveness monitoring of BMPs and riparian condition as long as the road crossings are in use, consistent with mitigation measure H1-i (with Forest Service review and direction).

My staff has identified the following crossings of particular concern. These anticipated impacts occur across several resource areas, and an interdisciplinary review of the crossings should be conducted.

I-8 Alternative: 79 identified watercourse crossings, including (in reference to Wild and Scenic eligibility):

- App 11C-48 pdf; I-8-56, S3075, and access road crosses unnamed tributary of Cottonwood Creek in T.16S., R.5E. Section 28.

**A0009 cont.**

- App 11C-49 pdf; Vicinity of BSW-5.6: Pull site near unnamed tributary and access road crosses unnamed tributary of Cottonwood Creek in T.16S., R.5E. Section 18.
- App 11C-59 pdf; Access roads cross Cottonwood Creek, unnamed tributaries to Cottonwood Creek, and the PCT in T.17S., R.5E. Section 5.
- App 11C-60 pdf; Access roads cross unnamed tributaries to Cottonwood Creek in T.16S., R.5E. Sections 31, 30, and 19.

## BCD Alternative

- App 11C-66 pdf; access roads in T.16S., R.6E. Section 8 cross unnamed tributaries to reservoirs in Thing Valley. The path follows a trail, which would need upgrading. Additional concerns with public trail foot traffic and safety. The roads also pass mapped prospects. Inspections of the area should include abandoned mine adits, etc for safety purposes.
- App 11C-66 pdf; Access roads near S20076 in Antone Canyon, an unnamed tributary upstream of the La Posta Indian Reservation in T.16S., R.5E. Section 13. The water source of the La Posta Indian Reservation and other uses of the tributary should be checked with the Tribe.
- App 11C-66 pdf; Access roads are shown on top of the PCT. Changing the character of the trail to support heavy equipment should be evaluated in the historic and recreation impacts section.

Route D Alternative - 22 major crossings that will need assessments; some specific areas noted:

## App 11C-71.pdf

- Access road off Old Viejas Grade to the east of Poser Mountain follows a trail in T.15S., R.3E. Sections 15/10. The trail follows an unnamed tributary of King Creek. Upgrades will require assessment work, etc.
- Pull sites of D-3 near Forest Service road 15S24 near Capitan Grande Indian reservation in vicinity of unnamed tributary to King Creek near T.15S., R.3E. Sections 3, 4, 9, 10.
- Access road to east of D-3 (private land) near Boy Scout Lake.

## App 11C-72.pdf

- Access Road from Forest Service road 14S09 (Dubois Truck Trail) to S10068 crosses an unnamed tributary of Conejos Creek in T.14S., R.3E. Section 27. The truck trail may need upgrades and runs along drainages.
- Pull sites and access roads near S10065 near headwaters of Conejos Creek in T.14S., R.3E. Section 22.
- Access roads near SR2026 near headwaters of Conejos Creek in T.14S., R.3E. Section 23.

SDG&E proposes measure WQ-APM-6 #4 – which provides that SDG&E will “negotiate with affected landowner to provide alternative water supplies in the event supply wells or springs dry up directly caused by project activities.” Given that springs are developed on the Forest for multiple uses (wildlife, campgrounds, special use permits, etc.), and given that the monitoring necessary to know whether or not the spring is being affected (reduced flow) due to project impacts is significant, it is recommended that the project alignment and roads be surveyed for

springs within ½ mile of the alignment. If the line cannot be moved to avoid springs, then springs will be monitored during construction of a facility or if the construction encounters fractured rocks that could be a part of a spring system.

Work in stream courses is required to have pre-implementation, implementation during construction, and post-implementation effectiveness monitoring. This requirement indicates an earth scientist representative trained in the Forest Service BMP evaluation protocol process should be on site. This requirement also requires an ongoing commitment of the permit holder to continued funding for monitoring and reporting.

The Forest Service will limit operations during the rainy season or during periods of wet soil conditions to reduce the potential for soil compaction, rutting, and loss of soil productivity. The BMP standard on Forest Service system lands specifies the soil is too wet for work when rutting occurs in greater than 10% of the road within an RCA and when rills more than 10 feet in length develop and lead off the road surface. Another standard operating procedure is for the operator to be informed when there is a >30% chance of rain, so additional BMPs can be added to stabilize an area if the precipitation materializes. The Forest Service Permit Administrator will have the authority to stop work and require fixes if degradation occurs.

### **Fire and Fuels Management**

In my initial comment letter, I suggested the Final EIR/EIS should identify the proposed fuelbreaks associated with mitigation measure F3a, “Construct and Maintain Fuelbreaks”. These connected actions are a critical component of the long term management of the proposed project and the alternatives. Although Table D.15-26 indicates milepost locations for fuelbreaks, it is not clear where the actual fuelbreaks will be constructed, if they will be effective, and what effect fuelbreak construction will have on other resources.

Another aspect of the long term management of the area is the relationship between the powerline and fire suppression effectiveness as described by Impact F-3. Although the Wildfire Containment Conflict Model provides a graphical illustration of Impact F-3 in a generalized sense, some simple maps using the data built into the model would help disclose two key factors, namely where fires start (ignitions) and where fires are fought (historical fire perimeters). The Final EIR/EIS should provide a map of ignitions and a map of historical fires for each fireshed evaluated in the analysis using the data referenced in Draft EIR/EIS pages D.15-68 to D.15-69.

The influence of fuel type on the difficulty to control fires should also be evaluated as part of the Wildfire Containment Conflict Model. Consideration of this factor may show some significant differences between the alternatives. For example, the portions of the I-8, LEAPS, and Modified Route D alternatives on the Cleveland National Forest occur in areas of heavy fuels in steep terrain, where fires are difficult to control. The northern alternatives may have different characteristics, and quantifying this factor would add to the comparison of the proposed project and the alternatives.

The summary of the Wildfire Containment Conflict Model is presented in terms of the percent of the route in various conflict classes. Because the alternatives vary in length, and the analysis is

segmented by fireshed, it would be helpful if the Final EIR/EIS would display the total length of conflict areas by alternative in miles rather than percent. This would provide a more accurate disclosure of the magnitude of the conflict based on the classification system used in the analysis and facilitate comparison between the alternatives.

The impact of the proposed project or the alternatives on fire suppression effectiveness is a critical issue for the Forest Service. I encourage the CPUC and the BLM to host a technical workshop between the affected federal, state, and local fire agencies and SDG&E so that the agencies responsible for fire suppression in the area can discuss the analysis and mitigation in a collaborative setting prior to the release of the Final EIR/EIS.

### **Cumulative Impact Analysis of Alternatives**

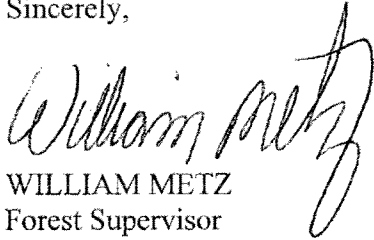
The cumulative effects analysis for the biological resources associated with the Southern alternatives should be quantified. Acres of habitat disturbed by the reasonably foreseeable projects listed in Table G.3 should be summarized and presented in comparison to the acres of habitat disturbed by the various alternatives. The analysis should include cumulative impacts on population and habitat trends for the Forest Service Management Indicator Species.

The analysis of cumulative effects on Water Resources should also be quantified in terms of the cumulative amount of disturbed area, particularly since the analysis concludes that there will be cumulatively significant impacts to water quality (Draft EIR/EIS, page G-143). For those alternatives that cross Forest Service lands, each sub-watershed (preferably at the size level of 500 to 5,000 acres) should be modeled using the Equivalent Roaded Acres method to determine the level of disturbance relative to the Watershed Threshold of Concern. Coefficients within the method are somewhat dependent on the sensitivity of the watershed and parent material to disturbance. This method combines cumulative effects of watershed and soils (dependent on geology).

The narrative description of the reasonably foreseeable projects for Modified Route D on Draft EIR/EIS page G-161 does not match the list of projects in Table G.3 or the projects located near the Modified Route D alignment shown on Map G-9. Some key projects that are not discussed in the Modified Route D cumulative impact analysis include the 2,100 acre Star Ranch subdivision, the Blackwater paramilitary training facility (withdrawn by Blackwater in March, 2008), and the 2,250 acre La Posta Mountain Warfare Training Facility. The Final EIR/EIS should clarify the reasonably foreseeable projects associated with Modified Route D, and revise the analysis accordingly.

This concludes the Forest Service comments on the Draft EIR/EIS and available supporting documents. As always, I would be glad to meet at your convenience to discuss these comments. Please contact Project Manager Bob Hawkins at 707-562-8699 or by email at [rhawkins@fs.fed.us](mailto:rhawkins@fs.fed.us) to arrange a meeting.

Sincerely,



WILLIAM METZ  
Forest Supervisor



# APPENDIX 6

DECLARATION OF DAN SKOPEC

1 **BEFORE THE PUBLIC UTILITIES COMMISSION**  
2 **OF THE STATE OF CALIFORNIA**  
3

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

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

4  
5  
6 **DECLARATION OF DAN SKOPEC**

7 I, Dan Skopec, declare that:

8 1. I am a Vice President of Regulatory Affairs for Sempra Energy Utilities. On June 10,  
9 2008 I attended and participated in ex parte meetings with Lindsay Brown and Robert Kinosian of  
10 Commissioner Bohn's office and Nancy Ryan and Andrew Schwartz of President Peevey's office.

11 2. Michael R. Niggli, Chief Operating Officer; Jill Larson, Senior Counsel; Billy Blattner,  
12 Manager of Regulatory Relations; and I participated in the meetings on June 10, 2008.

13 3. During the meetings, the SDG&E representatives discussed the benefits of building a  
14 northern route in an existing transmission corridor through the Anza-Borrego State Park, and the  
15 comparatively greater challenges of building a southern route. In the meetings, SDG&E specifically  
16 referred to the Environmentally Superior Southern Route put forth in the Draft Environmental Impact  
17 Report/Environmental Impact Statement, and to SDG&E's Modified Southern Route, which was  
18 proposed to avoid tribal land.

19 4. At the meetings, SDG&E also highlighted the permitting challenges of crossing U.S.  
20 Forest Service territory, including possibility of needing a forest plan amendment from the Cleveland  
21 National Forest. The overall intent of the meetings was to demonstrate that like the northern route, any  
22 and all southern routes possessed significant regulatory challenges that should be recognized.

1 5. The meeting with the advisors to Commissioner Bohn lasted about one hour. The  
2 meeting with the advisors to President Peevey lasted about one half hour.

3 6. SDG&E did inadvertently omit two attachments from the June 13, 2008 *ex parte* notice  
4 that should have been filed and served with the notice. We did not intend to omit from the *ex parte*  
5 notice any of the materials that were referenced during the meetings. We have since provided the  
6 earlier-omitted materials in an augmented notice filed and served in the proceeding. As the officer in  
7 charge of SDG&E's San Francisco office, I accept responsibility for the omission and I apologize to the  
8 Commission and to interested parties to the proceeding for any inconvenience in not having these  
9 materials provided earlier.

10

11 I declare under penalty of perjury under laws of the State of California that the foregoing is true  
12 and correct, except as to those matters stated to be on information and belief, and as to those matters I  
13 believe them to be true and correct.

14 Executed this 18<sup>th</sup> day of August, 2008 at San Francisco, California.

15

16

17

18

  
Dan Skopec

# APPENDIX 7

DECLARATION OF  
JONATHAN WOLDEMARIAM

1 **BEFORE THE PUBLIC UTILITIES COMMISSION**  
2 **OF THE STATE OF CALIFORNIA**  
3

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

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

4  
5 **DECLARATION OF JONATHAN WOLDEMARIAM**

6 I, Jonathan Woldemariam, declare that:

7 1. I am employed by San Diego Gas & Electric Company (“SDG&E”) as Technical  
8 Project Manager for the Sunrise Powerlink Project. I have been the Technical Project Manager for  
9 the Project since before SDG&E filed its application for a Certificate of Convenience and Public  
10 Necessity (“CPCN”) in December 2005.

11 2. On January 3, 2008, the Commission issued the Draft Environmental Impact  
12 Report/Environmental Impact Statement (“DEIR”), which identified the top 7 ranked alternatives  
13 including the Commission’s “Environmentally Superior Southern Route” (“ESSR”).

14 3. I worked with the Sunrise project team to develop re-routes to the ESSR that would  
15 avoid tribal lands and Forest Service’s Back Country Non-Motorized Zones within the Cleveland  
16 National Forest.

17 4. On May 20, 2008, I attended an approximately 3 hour meeting with Commission  
18 Energy Division project staff, BLM, United States Forest Service, Aspen and SDG&E staff to  
19 discuss, Forest Service concerns, construction issues and potential route segments through Cleveland  
20 National Forest.

21 5. I have read the declaration of Billie Blanchard submitted in this proceeding dated July  
22 31, 2008. The description of that meeting in Ms. Blanchard’s declaration at ¶ 4 is consistent with my  
23 recollection of the meeting, except I would note that the SDG&E team members listed as attending

1 by phone missed much of the meeting because of telephone difficulties. At that meeting,  
2 Commission Energy Division project staff never informed SDG&E that they would revise the ESSR  
3 to reflect the route changes that avoided tribal land, nor was there any agreement that that Energy  
4 Division project staff would recommend, develop or support revisions to the ESSR that would avoid  
5 tribal lands. In fact, although the Forest Service concerns were discussed, they were not resolved at  
6 that meeting but required SDG&E to follow up with mapping and engineering modifications to  
7 address those concerns. SDG&E continues to work on resolving USFS issues pertaining to the route  
8 segments crossing the CNF.

9 5. At no time did I and Commission Energy Division project staff discuss the  
10 Commission substituting SDG&E's Modified Southern Route as the Commission's ESSR in a  
11 Recirculated DEIR or a Final EIR. Nor am I aware of any such discussions between Energy Division  
12 and SDG&E.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
14 true and correct, except as to those matters stated to be on information and belief, and as to those matters  
15 I believe them to be true and correct.

16 Executed this 18th day of August 2008, at San Diego, California.

17   
18 Jonathan Woldemariam

# APPENDIX 8

SDG&E'S MARCH 25, 2008  
EX PARTE NOTICE

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

In the Matter of the Application of SAN DIEGO  
GAS & ELECTRIC COMPANY (U902-E) for a  
Certificate of Public Convenience and Necessity for  
the Sunrise Powerlink Transmission Project

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

**NOTICE OF EX PARTE COMMUNICATION**

Billy Blattner  
Manager, Regulatory Relations  
SAN DIEGO GAS & ELECTRIC COMPANY  
601 Van Ness Avenue, Suite 2060  
San Francisco, CA 94102  
Telephone: (415) 202-9986  
Facsimile: (415) 346-3630  
Email: [wblattner@semprautilities.com](mailto:wblattner@semprautilities.com)

March 25, 2008



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

In the Matter of the Application of SAN DIEGO  
GAS & ELECTRIC COMPANY (U902-E) for a  
Certificate of Public Convenience and Necessity for  
the Sunrise Powerlink Transmission Project

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

**NOTICE OF EX PARTE COMMUNICATION**

In accordance with Rule 8.3 of the Commission's Rules of Practice and Procedure, San Diego Gas and Electric Company (SDG&E) hereby gives notice of the following *Ex Parte* communication in the above proceeding.

On Thursday, March 20, 2008 at 9:30 a.m., Michael Niggli, Chief Operating Officer for SDG&E, conducted a tour by helicopter of potential routes of the Sunrise Powerlink for Nancy Ryan, Chief of Staff to President Peevey; Andy Schwartz, Advisor to President Peevey; Paul Clanon, CPUC Executive Director; and Sean Gallagher, Energy Division Director. SDG&E requested the meeting to provide visual references to the routing opportunities and constraints. A contract pilot was also in attendance. Transportation costs were billed to the Commission. Communication was oral and written (attached).

Mr. Niggli described the challenges with the southern route options including engineering and construction obstacles due to rugged terrain in San Diego County; undergrounding through congested areas such as Alpine; land ownership and rights, particularly on tribal lands and designated non-motorized zones; and the reliability risks of co-locating Sunrise with the Southwest Powerlink for nearly 36 miles. He described mitigation re-routes that may address some of these issues. Mr. Niggli showed the location of potential geothermal resources near the

Salton Sea and the existing 92kV and 69 kV transmission line running from Imperial Valley to San Diego through the State Park. He pointed out areas of cultural concern and options to avoid impacts. He described the route options in the Santa Ysabel area, the use of existing corridors west of Santa Ysabel and undergrounding in the Ramona area.

To request a copy of this notice, please contact:

Billy Blattner  
601 Van Ness Avenue, Suite 2060  
San Francisco, CA 94102  
Telephone: (415) 202-9986  
Facsimile: (415) 346-3630  
Email: [wblattner@semprautilities.com](mailto:wblattner@semprautilities.com)

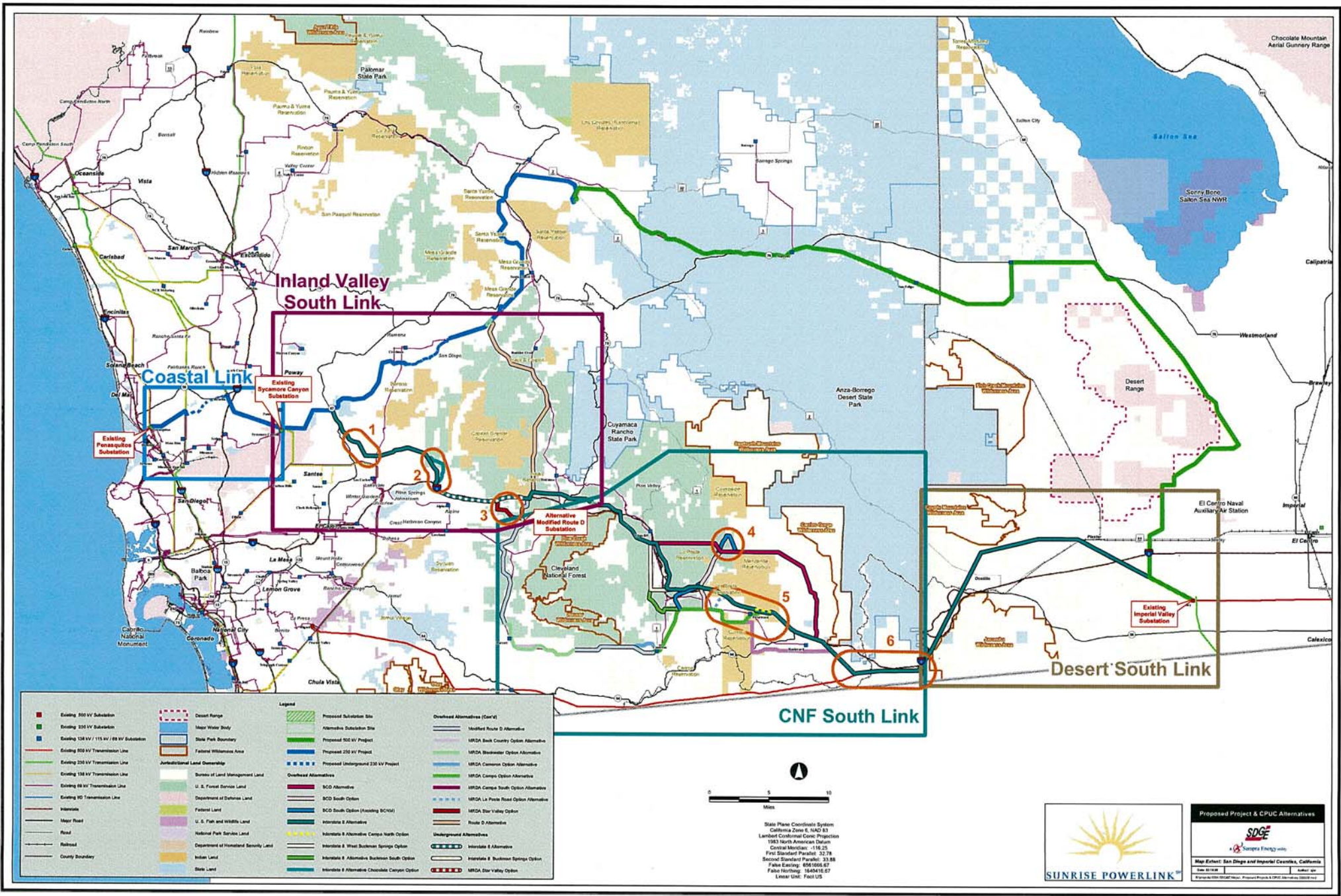
Dated this 25<sup>th</sup> day of March, 2008 at San Francisco, California.

Respectfully submitted,

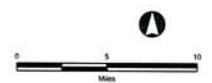
/s/ BILLY BLATTNER

Billy Blattner  
Manager, Regulatory Relations  
SAN DIEGO GAS & ELECTRIC COMPANY  
601 Van Ness Avenue, Suite 2060  
San Francisco, CA 94102  
Telephone: (415) 202-9986  
Facsimile: (415) 346-3630  
Email: [wblattner@semprautilities.com](mailto:wblattner@semprautilities.com)

Attachment



Legend			
[Red Square] Existing 500 kV Substation	[Dashed Red Line] Desert Range	[Green Square] Proposed Substation Site	[Black Line] Overhead Alternatives (Con'V)
[Green Square] Existing 230 kV Substation	[Blue Line] Major Water Body	[Green Square] Alternative Substation Site	[Black Line] Modified Route D Alternative
[Blue Line] Existing 138 kV / 115 kV / 88 kV Substation	[Red Line] State Park Boundary	[Green Line] Proposed 500 kV Project	[Green Line] MPOA Bank Country Option Alternative
[Red Line] Existing 500 kV Transmission Line	[Blue Line] Federal Wilderness Area	[Blue Line] Proposed 230 kV Project	[Green Line] MPOA Broadwater Option Alternative
[Green Line] Existing 230 kV Transmission Line	[Dashed Blue Line] Jurisdictional Land Ownership	[Blue Dashed Line] Proposed Underground 230 kV Project	[Green Line] MPOA Common Option Alternative
[Blue Line] Existing 138 kV Transmission Line	[Green Line] Bureau of Land Management Land	[Green Line] Overhead Alternatives	[Green Line] MPOA Campa Option Alternative
[Red Line] Existing 88 kV Transmission Line	[Light Green Line] U. S. Forest Service Land	[Red Line] BCD Alternative	[Green Line] MPOA Campa South Option Alternative
[Blue Line] Existing 60 kV Transmission Line	[Light Green Line] Department of Defense Land	[Red Line] BCD South Option	[Green Line] MPOA La Pava Road Option Alternative
[Black Line] Interstate	[Light Green Line] Federal Land	[Red Line] BCD South Option (Avoiding BCDM)	[Red Line] MPOA Star Valley Option
[Black Line] Major Road	[Light Green Line] U. S. Park and Wildlife Land	[Red Line] Interstate B Alternative	[Red Line] Route D Alternative
[Black Line] Road	[Light Green Line] National Park Service Land	[Red Line] Interstate B Alternative Campa North Option	[Red Line] Underground Alternatives
[Black Line] Railroad	[Light Green Line] Department of Homeland Security Land	[Red Line] Interstate B Alternative Campa South Option	[Red Line] Interstate B Alternative
[Black Line] County Boundary	[Light Green Line] Indian Land	[Red Line] Interstate B Alternative Buckhorn South Option	[Red Line] Interstate B Alternative
	[Light Green Line] State Land	[Red Line] Interstate B Alternative Chocolate Canyon Option	[Red Line] MPOA Star Valley Option



State Plane Coordinate System  
 California Zone 8, NAD 83  
 Lambert Conformal Conic Projection  
 1983 North American Datum  
 Central Meridian: -116.25  
 First Standard Parallel: 32.78  
 Second Standard Parallel: 33.88  
 False Easting: 656,166.67  
 False Northing: 16,041.67  
 Linear Unit: Foot US

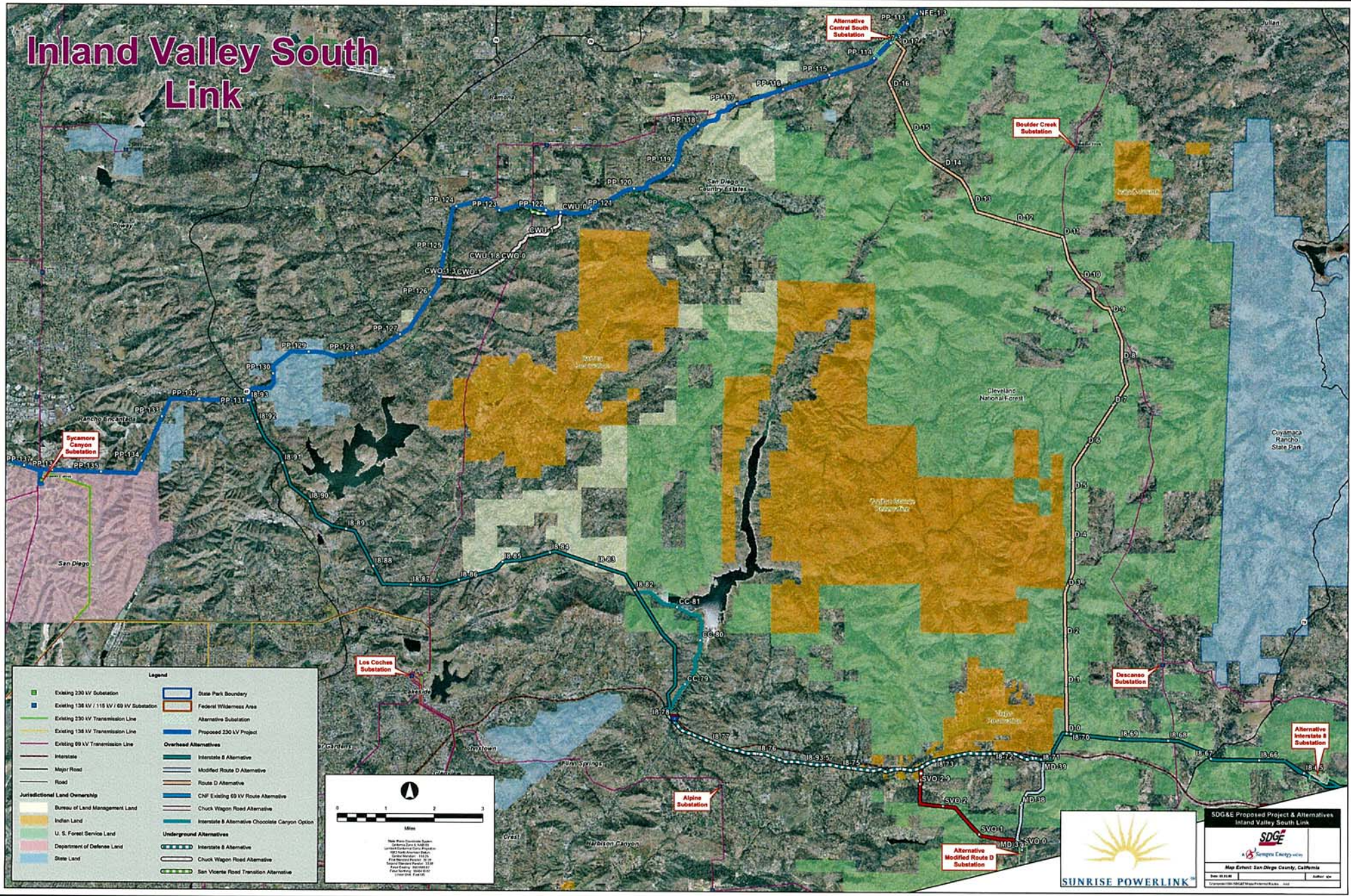
**SUNRISE POWERLINK**

Proposed Project & CPUC Alternatives

Map Extent: San Diego and Imperial Counties, California  
 Date: 8/14/24  
 Prepared by: SDGE/CPUC  
 Project: Sunrise PowerLink

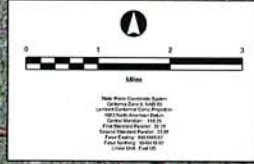


# Inland Valley South Link



**Legend**

- Existing 230 kV Substation
- Existing 138 kV / 115 kV / 69 kV Substation
- Existing 230 kV Transmission Line
- Existing 138 kV Transmission Line
- Existing 69 kV Transmission Line
- Interstate
- Major Road
- Road
- Jurisdictional Land Ownership
  - Bureau of Land Management Land
  - Indian Land
  - U. S. Forest Service Land
  - Department of Defense Land
  - State Land
- State Park Boundary
- Federal Wilderness Area
- Alternative Substation
- Proposed 230 kV Project
- Overhead Alternatives**
  - Interstate 8 Alternative
  - Modified Route D Alternative
  - Route D Alternative
  - CNP Existing 69 kV Route Alternative
  - Chuck Wagon Road Alternative
  - Interstate 8 Alternative Chocolate Canyon Option
- Underground Alternatives**
  - Interstate 8 Alternative
  - Chuck Wagon Road Alternative
  - San Vicente Road Transition Alternative



SDG&E Proposed Project & Alternatives  
Inland Valley South Link

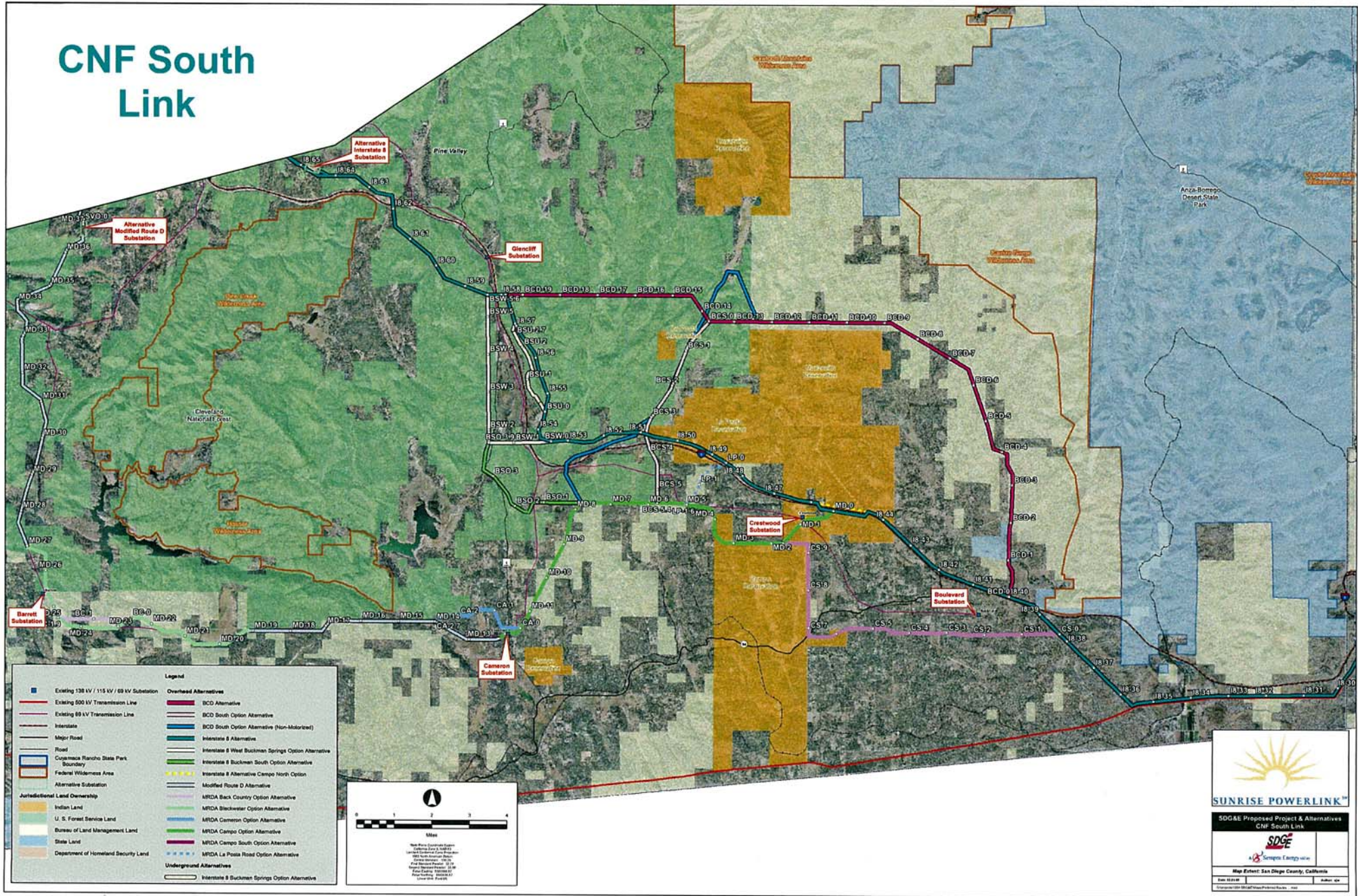
**SDGE**  
San Diego Gas & Electric

Map Extent: San Diego County, California

Scale: 1:50,000

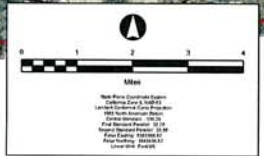


# CNF South Link



**Legend**

Existing 138 kV / 115 kV / 69 kV Substation	Existing 500 kV Transmission Line	BCD Alternative
Existing 69 kV Transmission Line	Interstate	BCD South Option Alternative
Major Road	Road	BCD South Option Alternative (Non-Motorized)
Cuernose Rancho State Park Boundary	Federal Wilderness Area	Interstate 8 Alternative
Alternative Substation	MRDA Back Country Option Alternative	Interstate 8 West Buckman Springs Option Alternative
Indian Land	MRDA Blackwater Option Alternative	Interstate 8 Buckman South Option Alternative
U. S. Forest Service Land	MRDA Cameron Option Alternative	Interstate 8 Alternative Campo North Option
Bureau of Land Management Land	MRDA Campo Option Alternative	Modified Route D Alternative
State Land	MRDA Campo South Option Alternative	MRDA La Posta Road Option Alternative
Department of Homeland Security Land	Interstate 8 Suckman Springs Option Alternative	



**SUNRISE POWERLINK™**

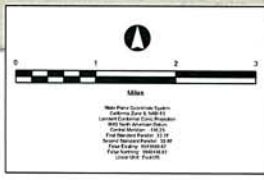
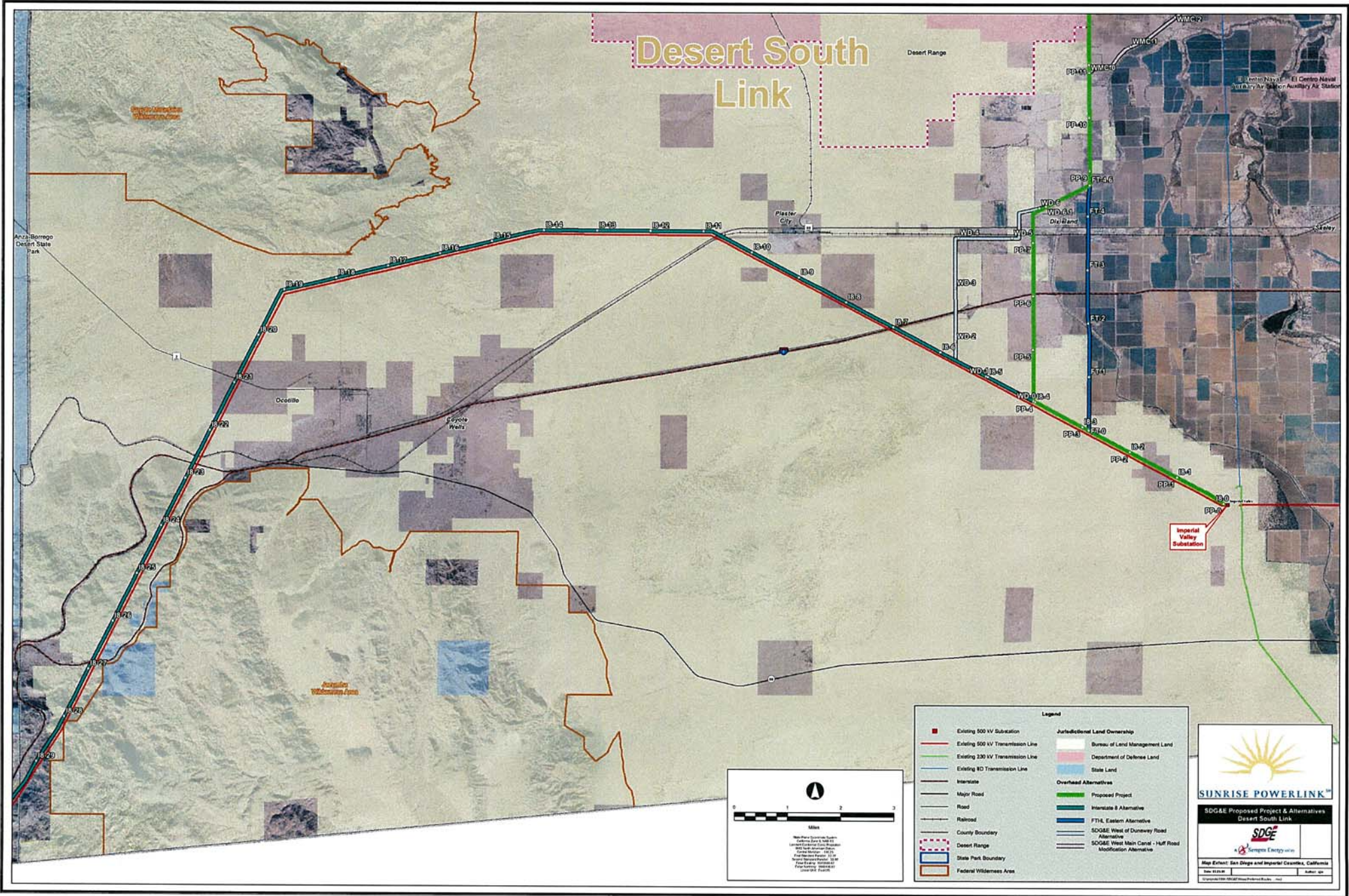
SDG&E Proposed Project & Alternatives  
CNF South Link

Map Extent: San Diego County, California

Scale: 1:50,000



# Desert South Link



**Legend**

<span style="color: red;">■</span> Existing 500 kV Substation	<b>Jurisdictional Land Ownership</b>
<span style="color: red;">—</span> Existing 500 kV Transmission Line	<span style="background-color: #f0f0f0; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Bureau of Land Management Land
<span style="color: green;">—</span> Existing 230 kV Transmission Line	<span style="background-color: #e0e0e0; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Department of Defense Land
<span style="color: blue;">—</span> Existing 80 Transmission Line	<span style="background-color: #c0c0c0; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> State Land
<span style="color: brown;">—</span> Interstate	<span style="background-color: #a0a0a0; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Federal Wilderness Area
<span style="color: grey;">—</span> Major Road	<b>Overhead Alternatives</b>
<span style="color: grey;">—</span> Road	<span style="color: green;">—</span> Proposed Project
<span style="color: grey;">—</span> Railroad	<span style="color: blue;">—</span> Interstate 8 Alternative
<span style="border-bottom: 1px dashed black; width: 20px; display: inline-block;"></span> County Boundary	<span style="color: darkblue;">—</span> FTH, Eastern Alternative
<span style="border-bottom: 1px dotted black; width: 20px; display: inline-block;"></span> Desert Range	<span style="color: lightblue;">—</span> SDG&E West of Dunewey Road Alternative
<span style="border-bottom: 1px solid blue; width: 20px; display: inline-block;"></span> State Park Boundary	<span style="color: lightblue;">—</span> SDG&E West Main Canal - Half Road Modification Alternative

**SUNRISE POWERLINK™**

SDG&E Proposed Project & Alternatives  
Desert South Link

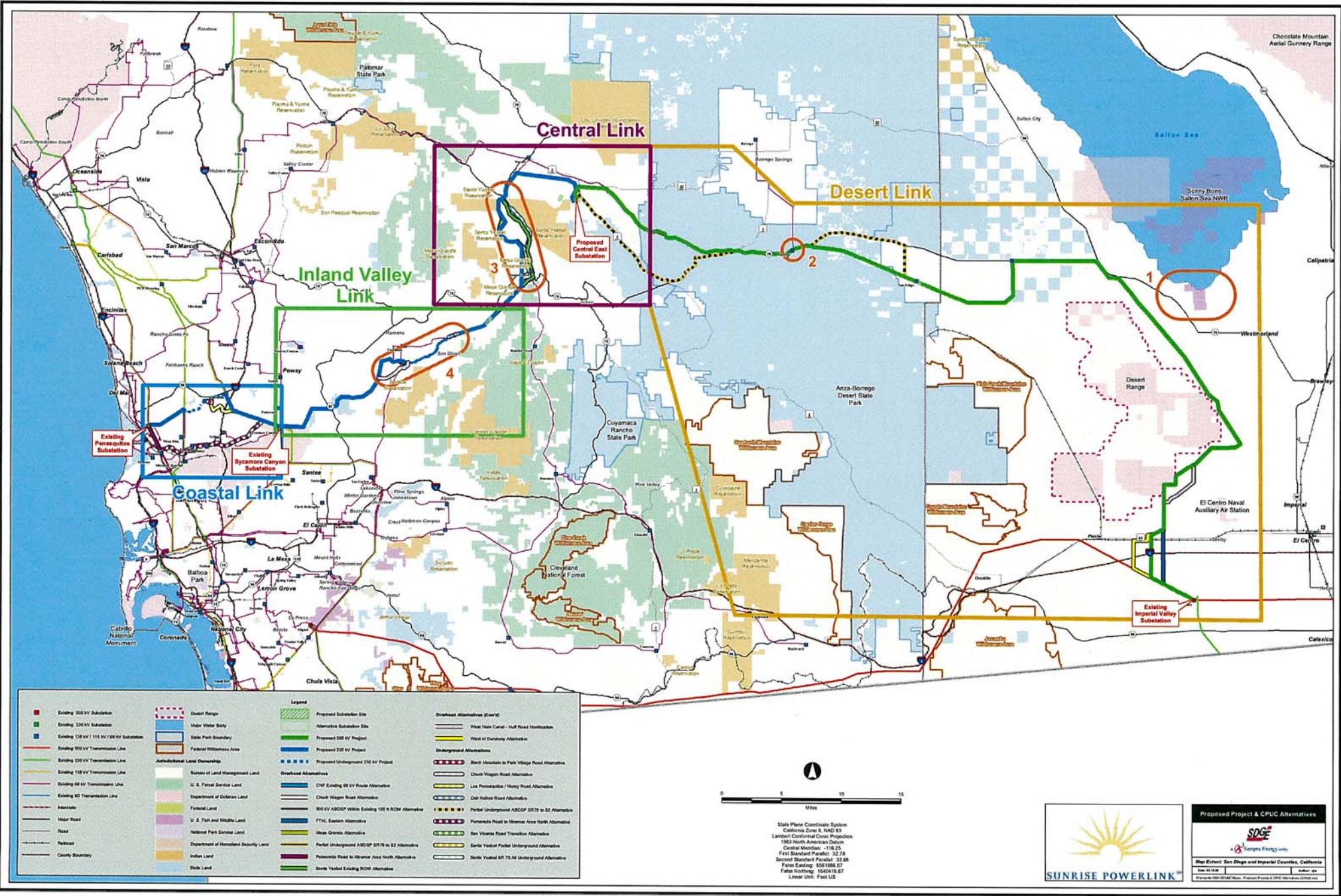
**SDG&E**  
Sage Energy Group

Map Extent: San Diego and Imperial Counties, California

Scale: 1:50,000

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Legend	
	Existing 500 kV Substation
	Existing 230 kV Substation
	Existing 138 kV / 115 kV / 69 kV Substation
	Existing 500 kV Transmission Line
	Existing 230 kV Transmission Line
	Existing 138 kV Transmission Line
	Existing 115 kV Transmission Line
	Existing 69 kV Transmission Line
	Existing 30 kV Transmission Line
	Interstate
	Major Road
	Road
	Railroad
	County Boundary
	Desert Range
	Major Water Body
	State Park Boundary
	Federal Wilderness Area
	Judicial/Local Land Ownership
	Bureau of Land Management Land
	U. S. Forest Service Land
	Department of Defense Land
	Federal Land
	U. S. Fish and Wildlife Land
	National Park Service Land
	Department of Homeland Security Land
	Indian Land
	State Land
	Proposed Substation Site
	Alternative Substation Site
	Proposed 500 kV Project
	Proposed 230 kV Project
	Proposed Underground 230 kV Project
	Overhead Alternatives
	CHV Existing 69 kV Route Alternative
	Chuck Wagon Road Alternative
	900 kV ABCSP Within Existing 100 ft ROW Alternative
	FTN, Eastern Alternative
	Mass Granite Alternative
	Partial Underground ABCSP 5R78 to S2 Alternative
	Pomeroles Road to Imperial Area North Alternative
	State Yucala Existing ROW Alternative
	White Main Canal - Half Road Modification
	West of Duraway Alternative
	Underground Alternatives
	Bank Mountain to Park Village Road Alternative
	Chuck Wagon Road Alternative
	Los Penasquitos / Money Road Alternative
	Oak Hollow Road Alternative
	Partial Underground ABCSP 5R78 to S2 Alternative
	Pomeroles Road to Imperial Area North Alternative
	San Vicente Road Transition Alternative
	State Yucala Partial Underground Alternative
	State Yucala SR 78 to Underground Alternative



State Plane Coordinate System  
 California Zone 6, NAD 83  
 Latest Conformal Corner Projection  
 1983 North American Datum  
 Central Meridian: -116.25  
 First Standard Parallel: 32.78  
 Second Standard Parallel: 33.88  
 False Easting: 5561566.87  
 False Northing: 1640416.87  
 Linear Unit: Foot US

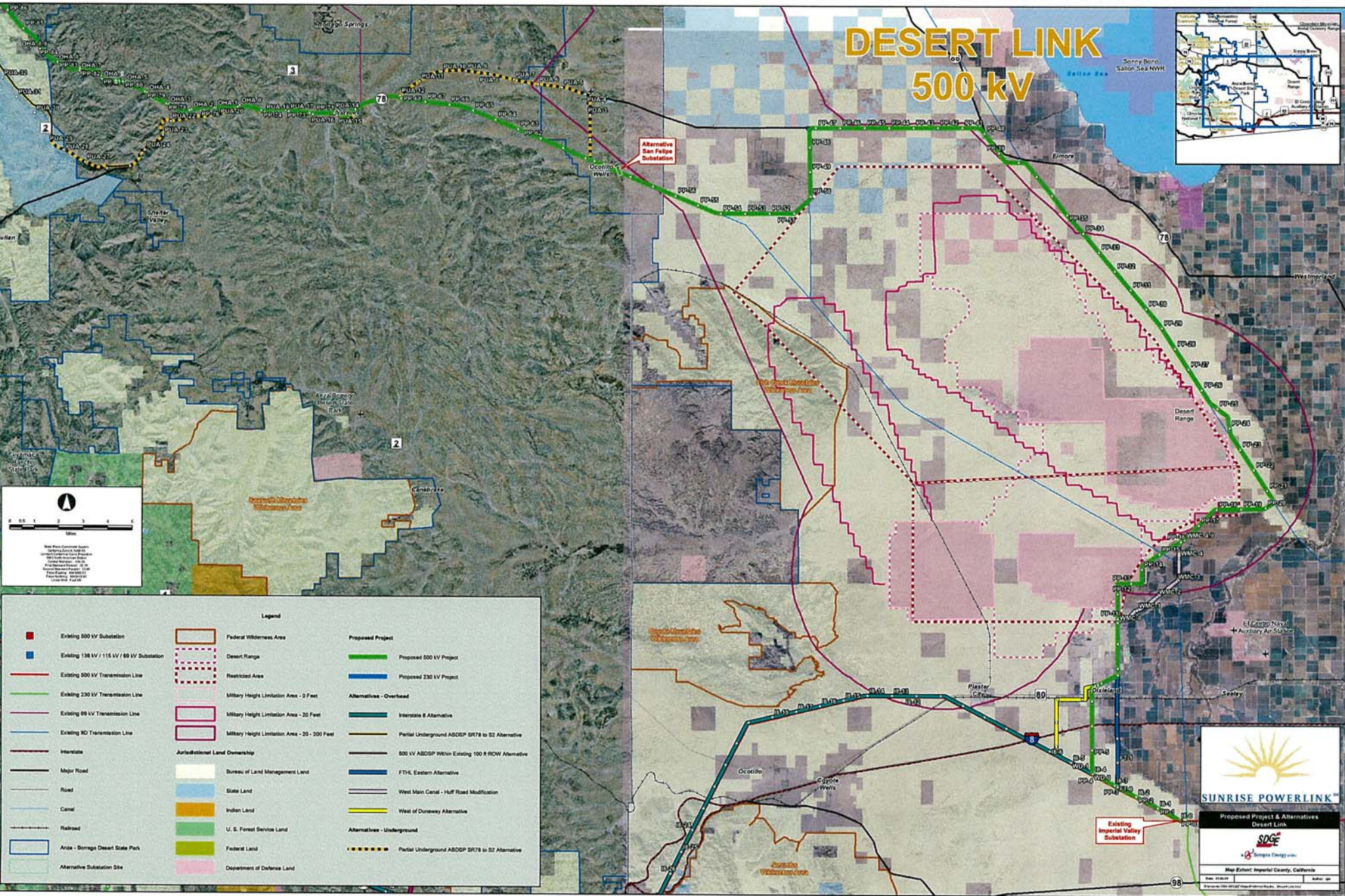


Proposed Project & CPUC Alternatives

Map Shows: Box Design and Imperial Corridor, California  
 Date: 01/18/18  
 Scale: 1" = 10 Miles



# DESERT LINK 500 kV



Legend			
<span style="color: red;">■</span>	Existing 500 kV Substation	<span style="color: green;">—</span>	Proposed 500 kV Project
<span style="color: blue;">■</span>	Existing 138 kV / 115 kV / 69 kV Substation	<span style="color: blue;">—</span>	Proposed 230 kV Project
<span style="color: red;">—</span>	Existing 800 kV Transmission Line	<span style="color: blue;">—</span>	Alternatives - Overhead
<span style="color: green;">—</span>	Existing 230 kV Transmission Line	<span style="color: blue;">—</span>	Interstate 8 Alternative
<span style="color: red;">—</span>	Existing 89 kV Transmission Line	<span style="color: blue;">—</span>	Partial Underground ABOSP SR78 to S2 Alternative
<span style="color: blue;">—</span>	Existing 80 kV Transmission Line	<span style="color: blue;">—</span>	800 kV ABOSP Within Existing 100 ft ROW Alternative
<span style="color: red;">—</span>	Interstate	<span style="color: blue;">—</span>	FTL Eastern Alternative
<span style="color: black;">—</span>	Major Road	<span style="color: blue;">—</span>	West Main Canal - Half Road Modification
<span style="color: grey;">—</span>	Road	<span style="color: blue;">—</span>	West of Dunaway Alternative
<span style="color: blue;">—</span>	Canal	<span style="color: blue;">—</span>	Alternatives - Underground
<span style="color: black;">—</span>	Railroad	<span style="color: blue;">—</span>	Partial Underground ABOSP SR78 to S2 Alternative
<span style="color: blue;">□</span>	Area - Borrego Desert State Park	<span style="color: yellow;">□</span>	Bureau of Land Management Land
<span style="color: green;">□</span>	Alternative Substation Site	<span style="color: lightblue;">□</span>	State Land
<span style="color: red;">□</span>	Federal Wilderness Area	<span style="color: orange;">□</span>	Indian Land
<span style="color: blue;">□</span>	Desert Range	<span style="color: green;">□</span>	U. S. Forest Service Land
<span style="color: red;">□</span>	Restricted Area	<span style="color: yellow;">□</span>	Federal Land
<span style="color: blue;">□</span>	Military Height Limitation Area - 0 Feet	<span style="color: pink;">□</span>	Department of Defense Land
<span style="color: red;">□</span>	Military Height Limitation Area - 20 Feet		
<span style="color: blue;">□</span>	Military Height Limitation Area - 20 - 200 Feet		



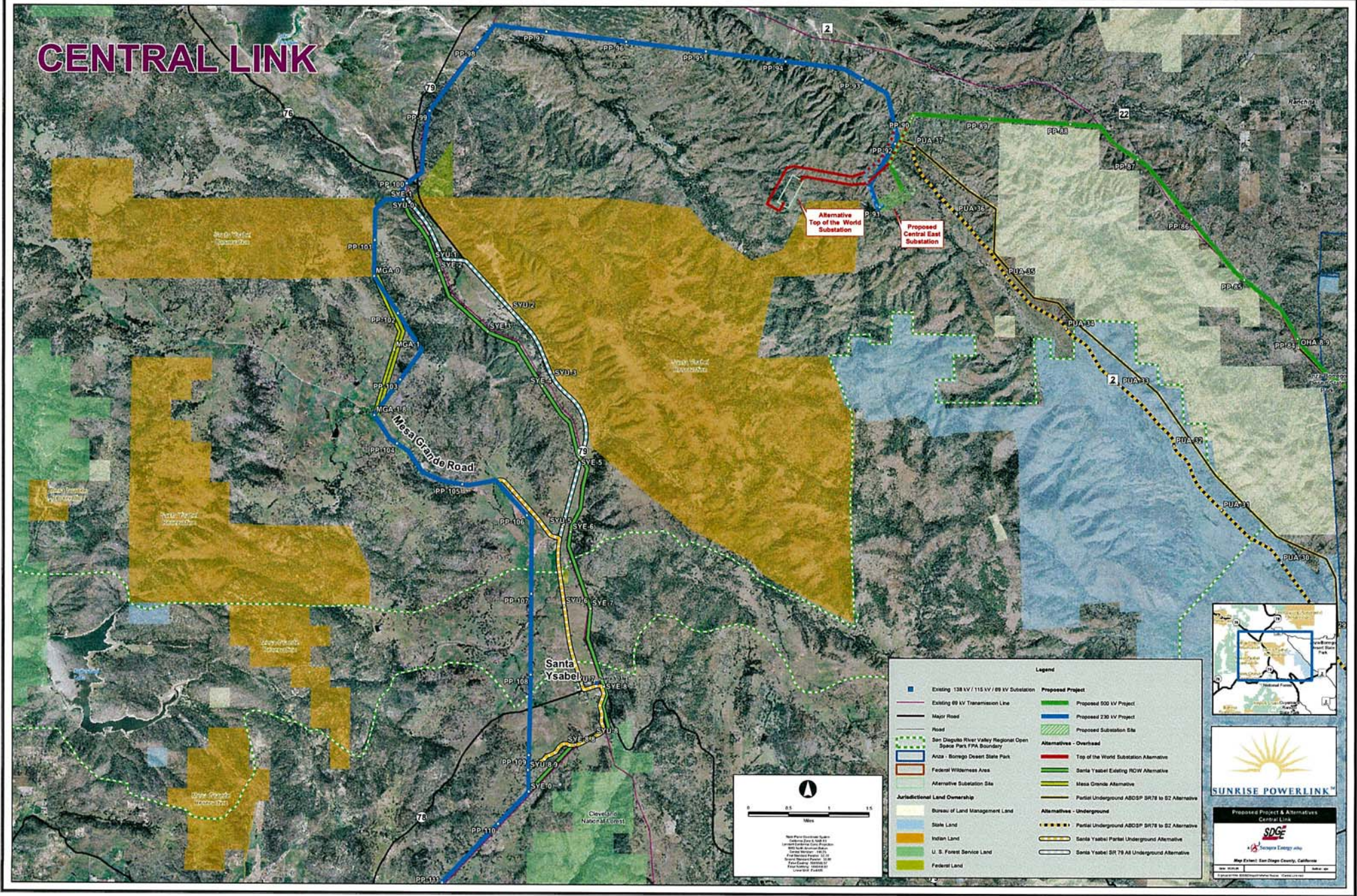
Proposed Project & Alternatives  
Desert Link



Map Extent: Imperial County, California  
 Date: 01/2018  
 Scale: 1:50,000  
 Author: SDGE



# CENTRAL LINK



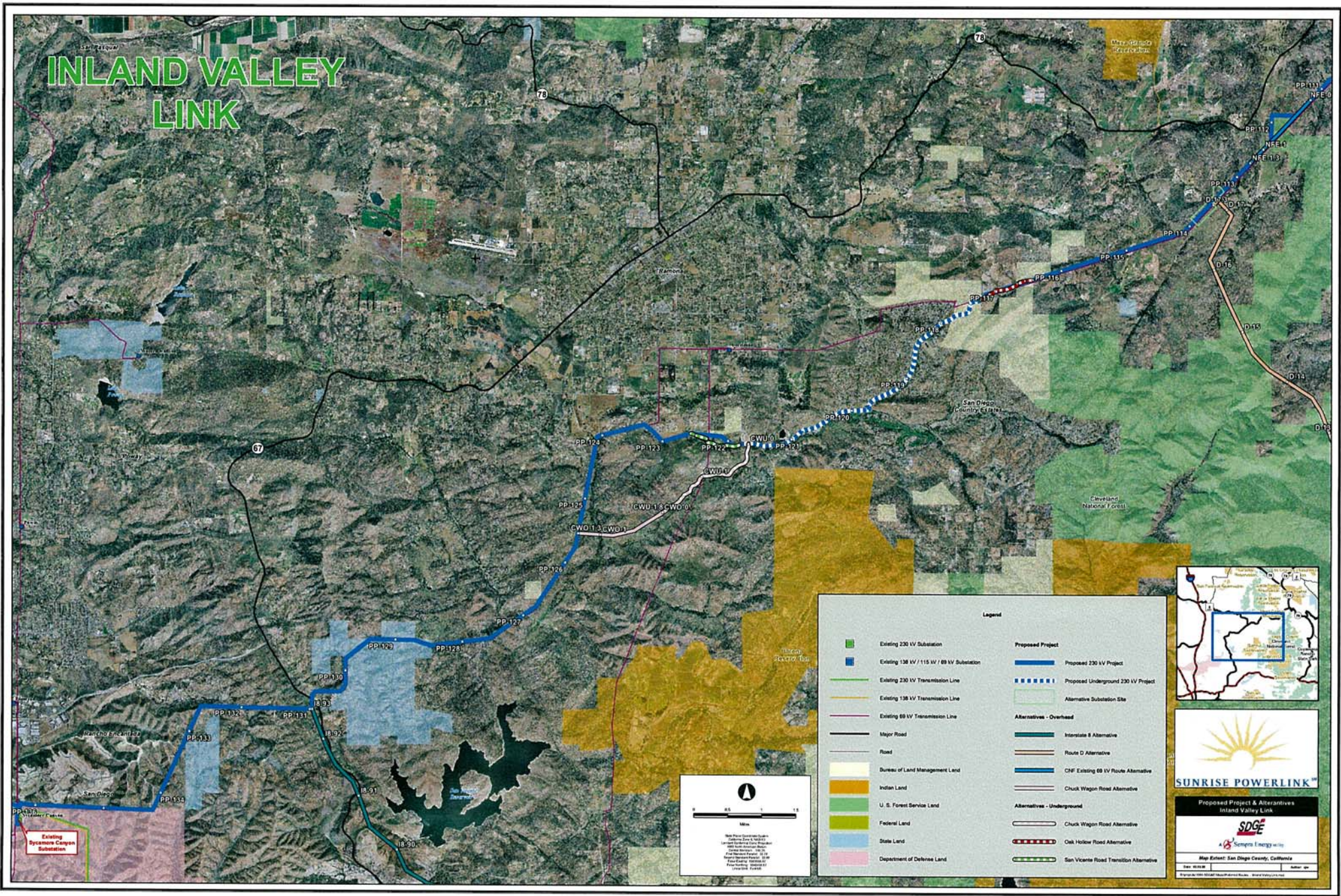
Legend	
	Existing 138 kV / 115 kV / 89 kV Substation
	Existing 69 kV Transmission Line
	Major Road
	Road
	San Diego River Valley Regional Open Space Park FPA Boundary
	Anza - Borrego Desert State Park
	Federal Wilderness Area
	Alternative Substation Site
	Bureau of Land Management Land
	State Land
	Indian Land
	U. S. Forest Service Land
	Federal Land
	Proposed 500 kV Project
	Proposed 230 kV Project
	Proposed Substation Site
	Alternatives - Overhead
	Top of the World Substation Alternative
	Santa Ysabel Existing ROW Alternative
	Mesa Grande Alternative
	Partial Underground ABCSP SR78 to S2 Alternative
	Alternatives - Underground
	Partial Underground ABCSP SR78 to S2 Alternative
	Santa Ysabel Partial Underground Alternative
	Santa Ysabel SR 78 All Underground Alternative



Proposed Project & Alternatives  
**Central Link**  
  
 A Scopus Energy affiliate  
 Map Extent: San Diego County, California



# INLAND VALLEY LINK



**Legend**

	Existing 230 kV Substation		Proposed 230 kV Project
	Existing 138 kV / 115 kV / 69 kV Substation		Proposed Underground 230 kV Project
	Existing 230 kV Transmission Line		Alternative Substation Site
	Existing 138 kV Transmission Line		Interstate 8 Alternative
	Existing 69 kV Transmission Line		Route D Alternative
	Major Road		CHF Existing 69 kV Route Alternative
	Road		Chuck Wagon Road Alternative
	Bureau of Land Management Land		Chuck Wagon Road Alternative
	Indian Land		Oak Hollow Road Alternative
	U. S. Forest Service Land		San Vicente Road Transition Alternative
	Federal Land		
	State Land		
	Department of Defense Land		



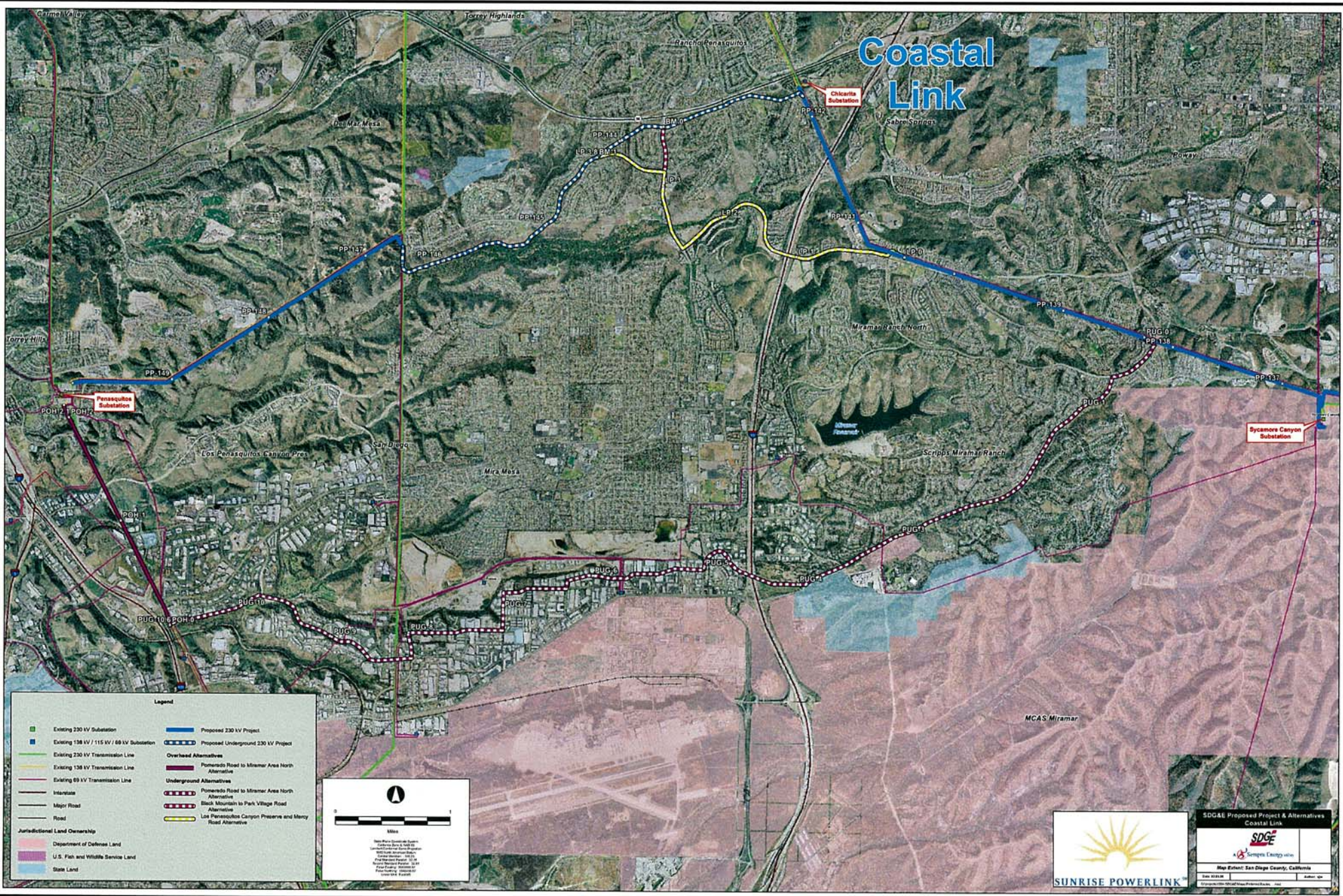
Proposed Project & Alternatives  
Inland Valley Link

Map Extent: San Diego County, California

Date: 08/20/2018 Author: JPN



# Coastal Link



**Legend**

	Existing 230 kV Substation		Proposed 230 kV Project
	Existing 138 kV / 115 kV / 69 kV Substation		Proposed Underground 230 kV Project
	Existing 230 kV Transmission Line		Pomero Road to Miramar Area North Alternative
	Existing 138 kV Transmission Line		Underground Alternatives
	Existing 69 kV Transmission Line		Pomero Road to Miramar Area North Alternative
	Interstate		Black Mountain to Park Village Road Alternative
	Major Road		Los Penasquitos Canyon Preserve and Marcy Road Alternative
	Road		
	Jurisdictional Land Ownership		
	Department of Defense Land		
	U.S. Fish and Wildlife Service Land		
	State Land		

Miles

Scale: 1 inch = 1 mile



SDG&E Proposed Project & Alternatives  
Coastal Link

Map Extent: San Diego County, California

Map Date: 08/14/2014

Author: SDG&E



# **Sunrise Powerlink Map Key**

## **DEIR/EIS Southern Route**

1. San Vicente Reservoir area
2. Chocolate Canyon
3. Star Valley Alternative
4. USFS backcountry non-motorized land use zone
5. Tribal land crossing
6. Common corridor/Jacumba area

## **Proposed Sunrise Powerlink**

1. Geothermal resource area
2. Narrows substation
3. Santa Ysabel
4. Ramona

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **NOTICE OF EX PARTE COMMUNICATION** on each party named in the official service list for proceeding A.06-08-010 by electronic service, and by U.S. Mail to those parties who have not provided an electronic address.

Copies were also delivered to President Peevey, Commissioner Grueneich and the Assigned Administrative Law Judge.

Executed this 25th day of March 2008, at San Diego, California.

/s/ JOEL DELLOSA  
Joel Dellosa

# APPENDIX 9

ENERGY DIVISION DATA REQUEST #30

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



May 26, 2008

Mr. Kevin O'Beirne  
San Diego Gas & Electric Company  
8830 Century Park Court – CP32D  
San Diego, CA. 92123

**Re: Data Request #30 for the SDG&E Sunrise Powerlink Transmission Project,  
Application No. 06-08-010**

Dear Mr. O'Beirne:

The California Public Utilities Commission's (CPUC) Energy Division and its consultant team are currently preparing the Final EIR/EIS for the Sunrise Powerlink Project. We have received SDG&E's Responses to Data Requests No. 1 through 28, and the response to 29 is pending. During the analysis of comments on the Draft EIR/EIS or of Testimony in Phase 2 of the ALJ's proceeding, we have identified additional items that require information from SDG&E; these items are detailed in the attachment to this letter.

This letter constitutes Data Request No. 30. Additional data requests may be necessary as we review additional comments and as Phase 2 testimony continues. We would appreciate receiving your response to this request by May 30, 2008.

30-1 In SDG&E's comment letters on the Draft EIR/EIS, several "mitigation reroutes" are proposed.

a. If these reroutes are accepted for consideration by the EIR/EIS Team, would the following reroutes be included in SDG&E's "Enhanced Northern Route" for purposes of analysis and comparison to other alternatives? For each reroute, please state whether it would be included.

- N6 Private Land Revision
- BLM Gifted Lands
- Around Narrows Substation
- 100-Ft ROW in ABDSP:
- Grapevine Canyon
- Central East Substation ingress/egress
- Top of the World Substation ingress/egress
- Santa Ysabel Partial Underground revision
- Chicarita Cable Pole Alternative (state and illustrate which variation is preferred by SDG&E)
- Coastal Link System Upgrade (if included, clarify the components assumed)



**Sunrise Powerlink EIR/EIS – Data Request No. 30**

b. Would the following reroutes be included as components of the SDG&E Modified Southern Route?

- SWPPL Archaeological Site (Plaster City)
- Jacumba SWPPL Breakaway Point Revision:
- BCD South Option (as currently being revised in conjunction with the US Forest Service)
- Lightner Substation Ingress/Egress
- Peutz Valley (state and illustrate which variation is preferred by SDG&E)
- Star Valley Revision
- USFS Avoidance at Father Joe's (revised version)
- High Meadows Revision
- Highway 67 Hansen Quarry

**Please submit one set of responses to me and one to Susan Lee at Aspen in San Francisco, in both hard copy and electronic format.** Any questions on this data request should be directed to me at (415) 703-2068.

Sincerely,

Billie C. Blanchard, AICP, PURA V  
Project Manager for Sunrise Powerlink Project  
Energy Division, CEQA Unit

cc: Sean Gallagher, CPUC Energy Division Director  
Ken Lewis, CPUC Program Manager  
Steve Weissman, ALJ  
Traci Bone, Advisor to Commissioner Grueneich  
Nicholas Sher/Jason Reiger, CPUC Legal Division  
Lynda Kastoll, BLM  
Susan Lee, Aspen Environmental Group

## VERIFICATION

I, Debra L. Reed, am President and Chief Executive Officer – San Diego Gas & Electric Company (“SDG&E”), and am authorized to make this verification on its behalf. I have reviewed the foregoing application and supporting report. The statements in the foregoing documents are true of my own knowledge, except as to matters upon which are therein stated on information or belief, or about which I have been informed, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of August 2008, at San Diego, California.

/s/ DEBRA L. REED  
Debra L. Reed  
President and Chief Executive Officer  
SAN DIEGO GAS & ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

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

Dated at San Diego, California, this 18<sup>th</sup> day of August, 2008.

/s/ JOEL DELLOSA

Joel Dellosa



California Public  
Utilities Commission

CPUC Home

## CALIFORNIA PUBLIC UTILITIES COMMISSION Service Lists

---

**PROCEEDING: A0608010 - SDG&E - CPCN FOR THE  
FILER: SAN DIEGO GAS & ELECTRIC COMPANY (U902E)  
LIST NAME: LIST  
LAST CHANGED: AUGUST 1, 2008**

[DOWNLOAD THE COMMA-DELIMITED FILE  
ABOUT COMMA-DELIMITED FILES](#)

[Back to Service Lists Index](#)

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## Parties

---

ARNOLD B. PODGORSKY  
WRIGHT & TALISMAN, P.C.  
1200 G STREET, N.W., SUITE 600  
WASHINGTON, DC 20005  
FOR: THE NEVADA HYDRO COMPANY

MICHAEL J. THOMPSON  
ATTORNEY AT LAW  
WRIGHT & TALISMAN, PC  
1200 G STREET, N.W., STE 600  
WASHINGTON, DC 20005  
FOR: THE NEVADA HYDRO COMPANY

SARA FELDMAN  
CA STATE PARKS FOUNDATION  
714 W. OLYMPIC BLVD., SUITE 717  
LOS ANGELES, CA 90015  
FOR: CA STATE PARKS FOUNDATION

S. NANCY WHANG  
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11355 WEST OLYMPIC BLVD.  
LOS ANGELES, CA 90064  
FOR: THE CITY OF SANTEE

ARTHUR FINE  
MITCHELL SILBERBERG & KNUPP LLP  
11377 W. OLYMPIC BLVD.  
LOS ANGELES, CA 90064-1683  
FOR: DAVID H. BATCHELDER

THOMAS A. BURHENN  
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[TOP OF PAGE](#)  
[BACK TO INDEX OF SERVICE LISTS](#)