Decision **DRAFT DECISION OF ALJ BROWN (Mailed 5/27/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the San Diego Gas and Electric Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Otay Mesa Power Purchase Agreement Transmission Project.	Application 04-03-008 (Filed March 8, 2004)

OPINION CERTIFYING FINAL ENVIRONMENTAL IMPACT REPORT AND GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE OTAY MESA POWER PURCHASE AGREEMENT TRANSMISSION PROJECT

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Summary

This decision grants the amended application of San Diego Gas & Electric Company (SDG&E) for a Certificate of Public Convenience and Necessity (CPCN) for the Otay Mesa Power Purchase Agreement (OMPPA) Transmission Project (Proposed Project).[1] The CPCN is for the construction of two new 230 kilovolt (kV) electric transmission circuits to connect SDG&E's Miguel Substation with both the Sycamore Canyon Substation and the Old Town Substation in San Diego County. The combined route length for both circuits is approximately 52 miles.

This decision also certifies the Final Environmental Impact Report (FEIR) as the Environmental Impact Report (EIR) for the Proposed Project which is the subject of this amended application and is certified for use by responsible agencies in considering subsequent approvals for the project, or for portions thereof. SDG&E's amended application is granted after weighing the need for the two new electric transmission circuits and the outcome of the EIR. This decision conditions the CPCN on implementation of any mitigation measures set forth in the EIR that are applicable to the CPUC approved project.

[1] Proposed Project, OMPPA Project, Project, and OMPPA Transmission Project are used interchangeably herein. In addition, unless the context requires otherwise, all of the foregoing refer to the "CPUC Approved Project," which includes certain design alternatives proposed by the Environmental Impact Report, supported by SDG&E, and adopted in this decision.

Background

On March 8, 2004, SDG&E filed an application for a CPCN for the proposed OMPPA Transmission Project to construct two new 230 kV electric transmission circuits to connect SDG&E's Miguel Substation with both the Sycamore Canyon Substation and the Old Town Substation in San Diego County. In accordance with the 1970 California Environmental Quality Act (CEQA)[2] and the State CEQA Guidelines, the Commission determined that an EIR needed to be prepared to evaluate the project in accordance with the criteria, standards and procedures of the CEQA and the State CEQA Guidelines. The EIR proceeded on a parallel track with the application.

On May 4, 2004, the City of Chula Vista (Chula Vista) filed a late-filed protest to the application and since then, SDG&E and Chula Vista successfully negotiated a resolution of the disputed issues concerning SDG&E's Proposed Project and entered into a Memorandum of Understanding (MOU). On October 18, 2004, Chula Vista moved to modify its protest and support the Project pursuant to the MOU. On November 18, 2004, SDG&E filed an amended application to modify the Proposed Project and to identify an alternative along the Chula Vista Bayfront as suggested by the Chula Vista and supported by SDG&E. The amended application states that it does not modify the proposed route for the project, or the purpose and need for the Project. In summary, the amendment proposes undergrounding a short portion of the segment traversing the Chula Vista Bayfront as part of the Proposed Project in the

[2] The CEQA statute appears at Cal. Pub. Res. Code Section 21000 *et seq*.

draft EIR instead of the original overhead design which was then analyzed in the EIR as an alternative.

On November 17, 2004, the California Independent System Operator Corporation (CAISO) submitted testimony reporting on its analysis of the Proposed Project and indicating its support.

On January 21, 2005, an Assigned Commissioner Ruling and Scoping Memo (ACR/Scoping Memo) issued establishing dates for submission of testimony and reply testimony and scheduling Evidentiary Hearings (EH). The ruling also granted Chula Vista's motions to intervene and to modify its protest.

Pursuant to the ACR/Scoping Memo, Chula Vista and the Office of Ratepayer Advocates (ORA) submitted testimony on February 22, 2005, and on March 4, 2005, SDG&E and Calpine Corporation (Calpine) submitted reply testimony.

The ACR/Scoping Memo specified that since the project EIR would cover all aspects of the OMPPA Transmission Project and the EIR process afforded interested parties and the public an opportunity to comment on the EIR findings and recommendations, any issue covered in the EIR would not be the subject of EHs.

The remaining issues for consideration in the EHs would be the CPCN aspects that include the need and cost for the Proposed Project. SDG&E scheduled a telephonic pre-EH conference on March 3, 2005, and the parties stipulated that EHs were not necessary and that the parties would submit the CPCN issue on the briefs.

On April 15, 2005, opening briefs were filed by SDG&E, Calpine, CAISO, Chula Vista, and ORA Application. On April 29, 2005, reply briefs

were filed by SDG&E, Calpine, CAISO, ORA and Rohr, Inc., operating as Goodrich Aerostructures Group (Rohr). Pursuant to an Administrative Law Judge (ALJ) ruling, SDG&E was allowed to file a response to Rohr's reply.

Testimony

SDG&E filed and served its application on March 8, 2004, and its amended application on November 18, 2004, with the prepared direct testimony of Robin Manuguid, Victor J. Kruger and Linda P. Brown. On November 17, 2004, CAISO served the prepared testimony of Irina Green. On February 22, 2005, Chula Vista served the testimony of Michael Meacham and ORA served the testimony of Scott Logan. On March 4, 2005, Calpine served the prepared reply testimony of Steven S. Schleimer, CAISO served the prepared reply testimony of Irina Green and SDG&E served the prepared reply testimony of Linda P. Brown.

The only testimony currently in the record of the proceeding is the prepared direct testimony filed as part of SDG&E's application. In the normal course of the proceeding, the remainder of the prepared direct and reply testimony would be moved into the record following cross-examination of the witnesses during the EHs. However, since EHs are not necessary to address any material fact in dispute, the prepared direct and reply testimony will be marked as exhibits and received into the record as marked.

Motions

On March 8, 2005, Rohr filed a motion to intervene in the proceeding on the ground that a portion of the proposed transmission line traverses

the real property owned by Rohr. On March 22, 2005, SDG&E filed a response to the motion asking that if Rohr was allowed to intervene, that the intervention not expand the scope of the proceeding. Specifically, SDG&E wanted to ensure that Rohr's involvement did not necessitate EHs.

Since Rohr articulated a direct and substantial interest in the proceeding which cannot be represented by any other party, Rohr's motion to intervene is granted with the following limitations: no party, including applicant SDG&E shall be prejudiced by Rohr's intervention and the intervention shall not delay the schedule, necessitate EHs or expand the scope of the proceeding.

Rohr did not file an opening brief, but did file a lengthy reply brief on April 29, 2005. SDG&E filed a motion to strike Rohr's reply, or in the alternative to be allowed to file a response to the reply. On May 15, 2005, pursuant to an ALJ ruling, SDG&E's motion to file a response to the reply was granted, and the response that was attached to the motion was accepted for filing.

If there are any outstanding motions that have not yet been addressed in this proceeding they are deemed denied.

Project Description

By this application, SDG&E seeks a CPCN to construct and operate the OMPPA Transmission Project. If approved, the Proposed Project would install (1) a new 230 kV electric transmission circuit that would connect under SDG&E's Miguel Substation with SDG&E's existing Sycamore Canyon Substation; and (2) a new 230 kV electric transmission line that would connect the Miguel Substation to SDG&E's existing

Old Town Substation.[3] Additional Project components would include a new transition station and modifications to the existing Sycamore Canyon, Miguel and Old Town Substations, and two new overhead to underground transition cable poles. The new transition lines would be approximately 52 miles in length, with 42 miles overhead and 10 miles underground.

The Proposed Project can be divided into six different segments:

Segment # 1

Sycamore Canyon Substation to the Fanita Junction: a four mile segment where a new 230 kV electric transmission line will be installed on a vacant position on existing towers between the Substation and the Junction, along with the reconductor of an existing 138 kV line, replacement of nine two-pole wood structures to facilitate the 138 kV reconductor, replacement of one existing lattice tower with two tubular steel poles, installation of three new wood poles at Fanita Junction and installation of a fiber optic line on the existing 230 kV towers.

Segment #2

Fanita Junction to Miguel Substation: a 24-mile segment where a new second 230 kV electric transmission line and a fiber optic line will be installed between the Junction and the Substation in a vacant position on the 230 kV transmission structures approved as part of SDG&E's Miguel-Mission 230 kV #2 Project, that was reviewed under a separate CPCN and EIR analysis in A.02-07-022. On July 8, 2004, the Commission certified the Miguel-Mission 230 kV #2 Project FEIR, including environmental review, but not CPCN authorization, of this second circuit.

[3] Overview of Proposed Project is attached as Attachment A.

Segment #3

Miguel Substation to South Bay Power Plant area: a ten-mile segment where a new ten-mile overhead 230 kV electric transmission line from the Substation to the Power Plant will be installed on approximately 63 new steel tubular poles, 3,000 feet of an existing 138 kV wood pole line leading into the Substation will be realigned and a fiber optic line will be installed atop the new 230 kV structures.

Segment #4

South Bay Power Plant area to Sweetwater River: a three-mile segment where a new underground 230 kV cable and fiber optic line will be installed primarily within SDG&E's right-of-way (ROW) from an overhead to underground transition cable pole located near the Power Plant to an underground to overhead transition cable pole located on the south side of the Sweetwater River. Modification or replacement of up to two existing bridge structures to accommodate the overhead positioning of the new 230 kV line is also proposed.

Segment #5

Sweetwater River to Sicard Street Transition Area: a four-mile segment where the project will modify approximately 30 existing bridge tower structures to accommodate a new overhead 230 kV electric transmission line from just south of the River to the Sicard Street Transition Area, where the line would transition from overhead to underground. Upgrades to an existing 138 kV twinned line on one side of the existing bridge structures to a 230 kV line, reconductor of an existing 138 kV line on the existing bridge structures to accommodate a

reconfiguration of the existing 138 kV lines, and installation of fiber optic lines on the existing bridge structures are also proposed.

Segment #6

Sicard Street Transition Area to Old Town Substation: a seven-mile segment that includes the installation of a new underground 230 kV cable in the city streets from Sicard Street to the Substation, construction of a new 0.1 acre transition station and installation of fiber optic line within the underground duct bank.

In addition to the new 230 kV electric transmission lines and new overhead to underground transition station and cable poles, there are proposed changes to the Sycamore Canyon, Miguel and Old Town Substations, within the existing substation properties, to accommodate the new 230 kV lines.

The Proposed Project would cross the cities of San Diego, Chula Vista, National City and unincorporated areas in the eastern portion of San Diego County, as well as the U.S. Marine Corps Air Station Miramar (MCAS) and is adjacent to the U.S. Navel Station San Diego and the Sweetwater Marsh Natural Wildlife Refuge. The Proposed Project follows an existing SDG&E ROW from Fanita Junction to the Miguel Substation through rough foothills, mesas, steep valleys and ravines. From the Miguel Substation to the South Bay Power Plant, the Proposed Project continues within the SDG&E ROW through residential and urban areas of Chula Vista, where a wide range of land uses are near or adjacent to the Proposed Project route, including commercial and industrial uses, residential developments and parks. From the South Bay Power Plant to the Sicard Street Transition area, the Project continues with the SDG&E ROW near the San Diego Bayfront. Land uses near or adjacent to this segment of the route include commercial, industrial and the Sweetwater

Marsh Natural Wildlife Refuge. From the Sicard Street Transition Area to the Old Town Substation, the Project is located underground within the City of San Diego roadways primarily within commercial and industrial uses.

The CPCN/CEQA Process

Two different regulatory schemes define this Commission's responsibilities in reviewing SDG&E's request for approval of this application: Pub. Util. Code § 1001 *et seq.*, require that before SDG&E can proceed with the OMPPA Project, the Commission must grant a CPCN on the grounds that the present or future public convenience and necessity require, or will require, construction of the project. Pub. Resources Code § 21000 *et seq.* (CEQA) require that the Commission, as lead agency for this project, prepare an EIR or negative declaration assessing the environmental implications of the project for its use in considering the request for a CPCN.[4]

Generally the CPCN requirements in the Public Utilities Code include a determination of whether the project is necessary. Also, before granting a CPCN, the Commission generally considers an analysis of the financial impacts of the Proposed Project on the utility's ratepayers and shareholders. The Commission reviews the expected cost of the project and for those projects estimated to cost more than $50 million, it sets a cap, or a maximum amount which can be spent by the utility on the project without seeking further Commission approval.

[4] See generally *Re Southern California Edison Company*, D. 90-09-059, 37 CPUC 2d 413, 421.

CEQA requires the preparation of an EIR where there is substantial evidence that a project may have a significant effect on the environment. The California Public Utilities Commission (Commission) is the State lead agency responsible for compliance with CEQA and it is its responsibility to determine whether or not to prepare an EIR, and in this case determined it was necessary to prepare an EIR.

In preparing the EIR, the lead agency must consider a reasonable range of alternatives to the Proposed Project, including the "No-Project" alternative. The lead agency must identify all significant and potentially significant environmental impacts expected to result from the Proposed Project, and must identify mitigation measures which if adopted by the CPUC or other responsible agencies could avoid or lessen those impacts. If the EIR concludes that the Project will still have a significant and unavoidable impact on the environment even after all reasonable mitigation measures are applied, any CPCN must be accompanied by a statement of overriding considerations explaining why the project should still be approved by the Commission. In any event, the lead agency cannot approve the CPCN until it has certified that the final EIR has been completed in compliance with CEQA. The CPCN that is finally issued must be conditioned on completion of any adopted mitigation measures applicable to the approved project.

In conjunction with its application, SDG&E filed a Proponent's Environmental Assessment (PEA). The Commission, as lead agency, then retained outside consultants, Dudek & Associates, to prepare an EIR for the Proposed Project as required by CEQA, and to examine alternatives,

including the "No-Project" alternative. The Commission's Energy Division (ED) oversaw the consultant's work.

The EIR Process

The EIR is part of the record, quite voluminous, and will not be reproduced in full here. The EIR consists of two separate documents, the Draft EIR and the Final EIR, which cumulatively make up the EIR. We refer to the cumulative documents as the EIR, unless referring to a particular section or discussion, in which case we will specifically reference either the Draft or Final EIR. This section provides a summary of the EIR process and certifies the EIR.

For purposes of evaluating the project under CEQA, the "Proposed Project" identified in the EIR is the project formally presented in SDG&E's application as modified by the amended application. The EIR assumes that SDG&E will meet all the construction specifications and will complete all applicable mitigation measures.

Draft Environmental Impact Report (DEIR)

The DEIR was released for public review on March 3, 2005. The 1000+ page DEIR was made available for review at several local area libraries and on the project website: http://www.dudek.com/cpuc/sdge-omppa-trans-proj/. In addition, the public could request copies of the DEIR on CD, or could request the separately bound Executive Summary through the mail.

The Notice of Availability (NOA) for the DEIR also included instructions on how, and where, to send written comments on the DEIR and when they were due.

In order to help affected communities understand the Proposed Project and the DEIR, and to explain how the public can participate in the Commission's decision-making process vis-à-vis this application, the DEIR noticed two informational workshops for March 15, 2005, at the Chula Vista, South Branch Library, 389 Orange Avenue, Chula Vista, California.

FEIR

The FEIR, issued May 23, 2005, includes the March 2005 DEIR, Comments, Responses to Comments, and Changes made to the DEIR in response to Comments. Copies of the FEIR are available for review at seven public libraries in the San Diego service area and at the San Francisco office of the Commission and on the Commission's project website: http://www.dudek.com/cpuc/sdge-omppa-trans-proj/.

The FEIR sets forth a detailed schedule of the environmental process. The process began with publication of a Notice of Preparation (NOP) of an EIR on July 21, 2004, which was distributed to the State Clearinghouse (SCH No. 2004071138) and federal, State, local trustees and agencies that may be affected by the Proposed Project. Public Notification of the NOP included direct agency and public notification, newspaper announcements and posting on the project website. The NOP was sent to 15 federal agency departments, 24 State agency departments, 74 local agency departments and special districts, and 18 Native American groups. Public notification was sent to over 3,000 stakeholders including the property owners within 300 feet of the Proposed Project.

Three public scoping meetings were noticed and held on August 3 and 4, 2004, prior to the selection of alternatives and the preparation of the

analysis. Forty-one members of the public, including representatives of organizations and government agencies were documented in attendance at the three scoping meetings.

During the NOP scoping period, July 23 to August 23, 2004, 22 letters were received from agencies and private citizens. In September 2004, a comprehensive Scoping Report was issued summarizing concerns received from the public and various agencies. Notice was given that the Scoping Report was on the Project's website for review.

In November 2004, public notification of SDG&E's amended Project was sent out to the NOP mailing list consisting of federal, State, local agencies, private organizations, interested groups and the general public.

On March 3, 2005 the NOA of the DEIR along with a CD copy of the DEIR was mailed to over 3,500 interested parties, agencies, county and city departments, special districts, property owners and occupants on or adjacent to SDG&E's Proposed Project route in March 2005, the time the DEIR was released. The NOA included information on how to gain access to the DEIR, noticed the March 15, 2005, public meetings and provided information on how to comment on the DEIR. The 45-day public comment period for the DEIR was March 3 through April 16, 2005

The DEIR included a detailed Proposed Project impact analysis as well as an extensive alternative evaluation, including the "No–Project" Alternative. Copies of the full DEIR and Appendices were sent to 25 interested parties and agencies, and to seven libraries used as document repositories. Newspaper Notices, including information on the DEIR, the project website address, and the dates and times of the Informational

Workshops were printed in the San Diego Union Tribune and Star News at the beginning of the public review period in March 2005.

Two public informational workshops were held on March 15, 2005, at the Chula Vista-South Branch Library, Multi-Purpose Room B, 389 Orange Avenue, Chula Vista, California. The purpose of the public workshops was to inform the public about the DEIR and the status of the project and to answer questions prior to the conclusion of the DEIR comment period. Approximately 14 members of the public, including representatives of organizations and government agencies, were in attendance at the workshops.

During the 45-day public comment period the Commission received numerous comments to the DEIR by mail, e-mail and/or facsimile. The comments are reproduced in the FEIR along with responses to the comments.

Comments to the DEIR

Comments were received from the following Public Agencies: San Diego County Archaeological Society; Governor's Office of Planning and Research; City of San Diego Water and Sewer Design; U.S. Dept. of Transportation Federal Aviation Administration; Native American Heritage Commission; California State Lands Commission; City of National City Office of City Managers; City of Chula Vista Office of City Manager; Unified Port of San Diego; Centre City Development Corporation; Dept. of Toxic Substances Control; and U.S. Dept. of the Interior.

Comments were received from the following Community Groups, Non-Profit Organizations and Private Organizations: Chula Vista Marina;

Pacific Southwest Association of Realtors; Highland Partnership, Inc.; Crossroads 11; Anthony's Seafood Group; San Diego Baykeeper; The California Alternatives Corp.; Environmental Health Coalition; San Diego Audubon Society; Rohr; Luce, Forward, Hamilton & Scripps; San Diego Council of Design Professionals; South Bay Forum; San Pasqual Band of Mission Indians; and GMS Realty, LLC.

Comments were received from the following private individuals: Loraine Bales; Sharon McDade Floyd; Louise L. Olson; Frank and Joan Roseman; Marissa Raigoza; R. Joone; Mark Jensen; Michelle Belle; Susan D. Walter; John & Gerolyn Orcutt; Ehren Y. Yee; Kaelan Y. Yee; Kyle A. Yee; Michael L. Yee; Theresa Acerro; and Jack Van Sambeek.

SDG&E also submitted comments.

Each of these comments was included in the FEIR along with responses to the comments by the ED staff [5]and the changes these comments instigated to the FEIR.[6]

Discussion of the EIR

SDG&E's Objectives

SDG&E's stated objectives for the OMPPA Transmission Project are as follows:

1. Provide full dispatchability of resources from the proposed Otay Mesa Generation Project (OMGP) slated to be constructed near SDG&E's Miguel Substation.[7]

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[5] *See* FEIR, Section 3, A-D.

[6] *See* FEIR, Section, 4.

[7] On June 9, 2004,in D.04-06-011, the Commission approved a 10-year Power Purchase Agreement (PPA) between SDG&E and Calpine as part of the approval of a number of resources that were evaluated as part of SDG&E's 2004 Request For Proposal (RFP) for a mix of resources to meet its grid reliability needs. There

2. Provide firm transmission delivery of OMGP to load centers at the Sycamore Canyon and Old Town substations, along with surrounding substations.
3. Prevent the OMGP from compounding intra-zonal congestion at the Miguel Substation.
4. Meet G-1/N-1[8] reliability need due to future load growth.
5. Provide for expansion capability for load growth and possible generation retirement.
6. Minimize load shedding and avoid potential cascading outage during Miguel Corridor outage.
7. Provide cost savings to SDG&E customers by reducing some of the CAISO reliability must run (RMR) contract requirements.

Areas of Known Controversy

CEQA Guidelines 15123 requires the EIR summary to include "[a]reas of known controversy known to the lead agency including issues raised by agencies and the public." Known areas of controversy, which include issues raised during the public scoping process include: potential impacts on the human environment, especially with issues arising from above-ground transmission lines in Chula Vista and below-ground transmission lines in San Diego. Many commenters stated that Chula Vista has previously received a disproportionate amount of effects

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are pending applications for rehearing of D.04-06-011, filed jointly by TURN and The Utility Consumers Action Network, the Alliance for Retail Energy Markets and Chula Vista. Our discussion of this decision is not intended to dispose of or prejudice the pending rehearing applications.

[8] The G-1/N-1 criterion is defined as loss of the largest generating unit with operating adjustments to prepare the system for another contingency, followed by the worst transmission outage. In SDG&E's case, the worst G-1/N-1 that defines its reliability requirements is the overlapping outage of the Encina five unit plus loss of the Southwest power link.

from existing electric lines. Other commenters focused on impacts to existing land use plans, visual and scenic impacts, health concerns related to increased electric and magnetic field (EMF) emissions, biological resources, public services and utility issues, traffic and noise.

Alternatives

CEQA requires that a reasonable range of project alternatives be discussed in the EIR. CEQA Guidelines Section 15126.6[a] states:

> An EIR shall describe a reasonable range of alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.

Following the guidelines, the alternatives were evaluated as to whether they would meet the project's objectives, be feasible and have the potential to substantially lessen any of the significant environmental impacts. The EIR identifies and analyzes such a reasonable range of alternatives; discusses the environmental effects of each alternative; compares the environmental effects of each alternative with the environmental setting, with the effects of each other alternative, and with the Proposed Project; and addresses the relationship of each alternative to the project objectives.

The alternatives considered and carried forward for full EIR evaluation:

SDG&E Design Options

1. Pacific Highway Bridge Attachment Design Alternative

   Under this alternative, the 230 kV line cable would be attached to the Pacific Highway Bridge rather than directional drilled under the San Diego River as proposed in the OMPPA Project. This alternative met all the stated project objectives, was determined to be feasible and would lessen the environmental effects of the Proposed Project by avoiding potentially significant environmental impacts to soils, water

resources and biological resources that could result from directional drilling under the San Diego River. Therefore, this alternative was carried forward for full analysis in the EIR.

2. Sicard Street Transition Cable Pole Design Alternative

   Under this alternative, the cable pole design would be approximately 145 feet in height and would require a substantially smaller footprint for the single pole design as compared with the 230 kV transition station as proposed. This proposal met all the required criteria for an alternative to be carried forward to full analysis in the EIR.

3. Harbor Drive Bridge Cable Attachment Design Alternative

   This is an alternative to boring under the Harbor Drive Bridge and instead the underground cable would emerge from its underground configuration and attach to the underside of the bridge at the south end and at the north end transition underground. This proposal met all the required criteria for an alternative to be carried forward to full analysis in the EIR.

4. South Bay Power Plant Area to Sweetwater River Overhead Design Alternative

   This alternative would minimize the impacts to the Sweetwater Marsh National Wildlife Refuge because it eliminates boring under the Refuge and supports the two 230 kV lines above ground on the existing bridge structures in the Chula Vista Bayfront. While this alternative would minimize impacts to the Sweetwater Marsh Refuge, its ability to lessen environmental effects of the Proposed Project and legal/regulatory feasibility would depend on its compatibility with applicable land use plans and policies relevant to the City of Chula Vista Bayfront and on the regulatory

feasibility due to coastal permit issues within the City of Chula Vista. Because this alternative would minimize impacts to Refuge, it was carried forward to full EIR analysis.

Transmission System Alternatives

Alternative 7 PVI

This alternative combines an existing 138 kV line with the new 230 kV line on one structure and eliminates existing lattice structures between Proctor Valley Substation to the South Bay Substation and it has the potential to avoid and minimize visual and land use impacts along almost the entire length of the proposed OMPPA Transmission Project in Chula Vista. This alternative would necessitate two actions: (1) installing the new 230 kV monopoles and 230 kV/138 kV conductors; and (2) dismantling and removing the existing 138 kV lattice structures and one of the 138 kV conductors. Under this alternative, one of the existing 138 kV conductors, currently on the lattice structures, would be relocated to the new monopoles, but the other 138 kV circuit would be removed.

By removing the lattice structures and installing the monopoles under this alternative, there would be a beneficial visual change, depending on viewer location and conditions that would range from beneficial to slightly adverse. The removal of the existing lattice towers would substantially reduce the visual effects of the addition of the proposed 230 kV monopoles. This alternative met all the required criteria to be carried forward to full analysis in the EIR.

Alternatives Eliminated from Full EIR Evaluation

SDG&E System Alternative 1

Alternative 1 would require the construction of two 230 kV lines from the Miguel area with one line going to the Sycamore Canyon Substation and other to the Mission Substation. This alternative has the ability to bypass the Miguel Substation by the addition of 230 kV line tap breakers at the Miguel Substation. Although this alternative meets most of SDG&E's objectives and is feasible, it does not lessen any of the significant environmental effects of the Proposed Project, and in fact would create some additional environmental impacts.

SDG&E System Alternative 2

This alternative builds on System Alternative 1 by adding a new 230 kV line between Otay Mesa Substation and the Miguel Substation. This alternative does not lessen any of the impacts of the Proposed Project and adds additional construction-related impacts to sensitive residential neighborhoods.

SDG&E System Alternative 3

This alternative would entail the construction of two 230 kV lines from the Miguel Substation and a new 230 kV/138 kV/69 kV substation at the South Bay Power Plant. This alternative was rejected because it would not meet most of SDG&E's stated objectives.

SDG&E System Alternative 4

This alternative would entail the construction of a new 230 kV line between the Miguel and Sycamore Canyon Substations. This alternative is feasible, but was rejected because it would not meet most of SDG&E's

stated project objectives as it would not offer the full dispatchability and delivery of the OMPP.

SDG&E System Alternative 6

This alternative is the same as System Alternative 5 which was the proposed OMPPA as presented in the May 2004 application, but also adds another new 230 kV line between the Otay Mesa Substation and the Miguel Substation. This alternative would meet stated objectives and potentially the feasibility criteria if the alternative were modified to be consistent with the Recent MOU with the City of Chula Vista. However, it would not avoid or lessen any significant impacts of the Project and would add new impacts between the Miguel and Otay Mesa Substations.

Other Alternatives Considered But Rejected

The DEIR details numerous other alternatives in the Alternatives Screening Report Appendix 2 that were considered, but rejected for full EIR evaluation. These options included the following: undergrounding, structure designs, use of Caltrans Bike Path/Railroad ROW/rerouting to avoid the Sweetwater Marsh, routing alternatives, repowering of South Bay, and energy conservation, demand side management and renewables. The DEIR Alternatives Screening Report discusses in detail how these various alternatives comport, or do not comport, with SDG&E's stated objectives, are feasible or not, and whether they add to or reduce significant environmental impacts.

No-Project Alternative

This alternative assumes that SDG&E would need to make other improvements elsewhere in their system to compensate for the system benefits that would not be realized under the No-Project scenario. There is

the possibility that new generation capacity and/or transmission capacity could be necessary in San Diego County or elsewhere to compensate for existing system limitations and anticipated loads. The impacts of the No-Project alternative would primarily result from operation of gas fired turbine generators and/or development of new transmission. Long term operational impacts from generation would include air emissions and noise as well as visual impacts. Impacts from new transmission facilities would primarily be the same as those of the Proposed Project with the exception of land use and visual, which could be greater if developed within a new transmission corridor.

Environmental Impacts and Mitigation Measures

The DEIR includes summary impact statements, mitigation measures and residual levels of impact after the recommended mitigations are followed. For each significant impact there is a recommended mitigation measure and an indication of whether the impact would be mitigated to a less-than-significant level after implementation of the recommended mitigation. The EIR analyzes the environmental impacts, mitigation measures and significance after mitigation under the following categories: air quality; biological resources; cultural resources; geology, soil and paleontology; hydrology and water quality; land use and recreation; noise and vibration; public health and safety; public services and utilities; socioeconomics; transportation and traffic; and visual resources.

When the analysis presented in the EIR shows that a less than significant impact will occur as a result of the Project, that impact is generally not discussed further and no mitigation measures are identified

in the EIR. When the EIR determines that the Proposed Project could potentially cause significant environmental impacts, the EIR identifies feasible mitigation measures to avoid or reduce the impact to a less than significant level.

The environmental impact assessments for the Proposed Project and alternatives are based on a classification system with the following four associated definitions:

Class I: Significant impact that can not be mitigated to a level that is less than significant.

Class II: Significant impact that can be mitigated to a level that is less than significant.

Class III. Less than significant impact, no mitigation required.

Class IV: Beneficial impacts.

No Impact: No impact identified.

In a number of instances, SDG&E proposed measures to reduce impacts to potentially affected resources or areas and these are termed Applicant Proposed Measures (APM) in the EIR. These actions are considered in the impact assessment as part of SDG&E's Proposed Project description and are different from CEQA mitigation measures described in the EIR.

In summary, the EIR findings are catalogued according to resource issue area, along with the Class I and Class II impacts that would be expected from the construction and operation of the Propose Project, and the comparative effects of the alternatives are presented.

Air Quality: The Proposed Project would generate localized pollutant emissions from construction equipment over the 24-month duration of the construction, but the APMs suggested by SDG&E would reduce these impacts to less than significant levels. The Design Option Alternatives and the

Alternative 7PV1 would both have similar impacts to the Proposed Project.

Biological Resources: In regards to Sensitive Vegetation Communities, Sensitive Plant Species, Sensitive Animal Species, Invasive Plant Species, and Bird Electrocution and Tower/Line Collisions, the impacts would be less than significant,or mitigated to less than significant level. Mitigation along with APMs would reduce indirect impacts due to construction activities to less than significant. With the exception of the South Bay Power Plant to Sweetwater River Overhead Design Alternative, the other design alternatives would have no impact on biological resources. Although the Overhead Design Alternative would result in some impacts to biological resources, they would not be as great as from the Proposed Project.

Cultural Resources: Seventeen cultural resources have been recorded within or adjacent to the proposed OMPPA Project ROW. All of the recorded sites are either pre-historic or historical period archaeological sites and were determined to be ineligible for California Register of Historic Resources or to be non-unique archaeological resources. No Native American sacred sites are known to exist in the project area and none are expected. The likelihood of encountering undiscovered cultural resources during construction is low, except in the Old Town Substation Segment where the likelihood is considered high. APMs and mitigation measures provided would reduce potentially significant impacts to undiscovered cultural resources to less than significant. The cultural impacts under the alternatives are anticipated to be generally the same as the Proposed Project.

Geology, Soils, Palentology: Soil liquefaction is considered a potential seismic hazard along the entire underground cable alignment, Segments #4 and #6, however underground facilities are generally not subject to direct effects of shaking because they are confined by overlying soils. Mitigation has been provided to ensure that potentially significant impacts to geologic hazards and Paleontological resources would be mitigated to less than significant. Geological impacts from the design option alternatives and Transmission System Alternative 7 PV1 would not be different from the Proposed Project. Geologic impacts from the South Bay Power Plant to Sweetwater River Overhead Design Alternative would decrease from the Proposed Project as this alternative would primarily modify existing structures and would not require mitigation for geologic hazards.

Hydrology and Water Quality: Potential impacts from the Proposed Project would include: impacts from soil erosion and sedimentation from construction activity and access roads, potential degradation of water quality through spill of potentially harmful materials used in construction, and groundwater disturbance through project-related excavation and boring. The only potential significant impact was for flood or erosion due to placement of proposed underground cable within various stream channels. Proposed mitigation, along with APMs, is aimed at reducing all the impacts to hydrology and water quality to less than significant. Under the design option alternatives, the impacts to hydrology and water quality would either be the same as for the Proposed Project, or could be mitigated to less than significant. Under Alternative 7 PV1, impacts to hydrology and water quality are anticipated to be greater, but with APMs and provided mitigation, impacts would be less than significant.

Land Use, Agriculture and Recreation: The Proposed Project transverses numerous cities, unincorporated areas, MCAS, is adjacent to the U.S. Navel Station and the Sweetwater Marsh Natural Wildlife Refuge, follows an existing SDG&E ROW through rough foothills, mesas, steep valleys and ravines, and continues through residential and urban areas involving commercial and industrial uses as well as residential developments and parks. Short-term impacts from the project include disruption to the community associated with dust, noise/vibration, public health and safety, traffic and visual quality, and long-term impacts would result from precluding or conflicting with existing and/or planned land uses. These impacts are fully mitigable, and with implementation of all mitigation recommended in the EIR, all impacts to land use and recreation would be less than significant. With the exception of the South Bay Power Plant to Sweetwater River Overhead Design Alternative, the design option alternatives have been developed to reduce such land use impacts, and in particular, the undergrounding in Chula Vista would result in no conflicts or impacts to applicable land use plans and policies. The Overhead Design Alternative would conflict with the applicable land use plans and policies relevant to the City of Chula Vista Bayfront. Alternative 7 PV1 would reduce the long-term disruption of existing land uses and recreational facilities, but the additional construction activities this alternative requires would create greater impacts. However, mitigation measures provided would reduce such construction related impacts to less than significant.

Noise and Vibration: During the 24-month anticipated construction period, the intermittent construction noise and vibration impacts from the Proposed Project would be potentially significant, but using proper noise suppression techniques and following proposed mitigation measures would reduce the noise and

vibration impacts to less than significant levels. The noise impacts from the construction of the design option alternatives would not be significantly different from the Proposed Project, except for the South Bay to Sweetwater overhead option which would reduce noise and vibration by the elimination of trenching and boring along the route, and that segment requires no mitigation. However, noise from the overhead line operation would slightly increase, but would be less than significant. Noise and vibration would be increased under Alternative 7 PV1 due to the increased duration and disturbance area. However, construction noise and vibration could be mitigated to less than significant and noise from operation of the Alternative would be the same as for the Proposed Project.

Public Health and Safety: Hazardous Materials and Environmental Contamination Environmental contamination is likely to be encountered so mitigation measures have been developed related to project construction to supplement the APMs SDG&E proposed, so that potential contamination from spills during construction and project operation would be prevented, or removed and properly transported so that all impacts would be less than significant. The design option alternatives would either produce the same impacts as the Proposed Project, or if there were significant impacts, they could be mitigated to less than significant. The overhead design from South Bay to Sweetwater would reduce potentially significant impacts due to the possibility of encountering hazardous materials to less than significant since there would not be trenching or boring along the project segment that would have the potential of disturbing existing hazardous materials. Alternative 7 PV1 would create the potential for greater impacts from contamination and hazardous materials due to additional construction activities and larger disturbance area, but with implementation of mitigation measures they would be less than significant.

EMF Issues: TheThe EIR does not consider electro-magnetic fields in the context of CEQA. Presently there are no applicable regulations related to EMF levels from power lines since there is no agreement among scientists that EMF does create a potential health risk and there are no defined or adopted CEQA standards for defining health risks from EMF. Nevertheless, the EIR does present EMF general information as well as project-specific EMF information for the benefit of the public and decisionmakers.

Public Services and Utilities: Project construction has the potential to disrupt utility systems, conflict with planned utilities along the route and restrict access for emergency vehicles. Although the impacts are considered significant, with implementation of the APMs and mitigation measures provided, the impacts would be reduced to less than significant. The design option alternatives present either the same impacts as the Proposed Project, or if the impacts are increased, they can be mitigated to less than significant. Alternative 7 PV1 would produce greater public service and utilities impacts than the Proposed Plan, but the impacts could be mitigated to less than significant.

Population and Housing: Construction activity for the Proposed Project is considered short-term and it is anticipated that all construction personnel would be with-in a two-hour commute and would not impact the population levels and there would be no new regional growth, and no need for new housing. Because all project facilities would occur within SDG&E's existing ROW, no removal or relocation of units or businesses is required. The design option alternatives and Alternative 7 PV1 would produce the same anticipated impacts as the proposed Project.

Transportation and Traffic: Overhead line construction activities would have minimal impacts to area traffic or roadways because the route is in an existing SDG&E ROW. Some temporary land and road closures would be required. Construction related impacts on traffic would be more severe for the underground segment because of the roadway construction. The Proposed Project would result in short-term and permanent elimination of parking spaces, short-term disruption to public transit operations and conflicts with planned roadway improvements. Mitigation is provided to reduce these impacts to less than significant. Under the design option alternatives, some increase the impacts to traffic, others decrease it, and some require road closures. In total, however, with the mitigation provided, the impacts are either eliminated or reduced to less than significant. Under the Alternative 7 PV1 option, traffic related impacts would be greater than under the Proposed Project, but are mitigable, loss of parking spaces is reduced, and conflicts with planned roadway improvements would be the same.

Visual Resources: The Proposed Project presents visual impacts with long-term changes to the aesthetic environment by the addition of transmission structures and circuits. In particular, 21 of 24 key viewpoints in Segment #3 would experience significant Class I visual changes that could not be mitigated to less than significant levels. At four other key viewpoint locations, APMs and mitigation measures would reduce the impacts to less than significant. Under the design option alternatives, the visual impact would be similar to those of the Propose Project and would be minor and less than significant in these localized areas. Alternative 7 PV1, however, would result in additional beneficial visual changes, since the lattice towers, that are more industrial in character, are removed, and replaced with just the proposed monopoles. Depending on viewer location and conditions, the degree of overall change under this

alternative would range from beneficial to slightly adverse when compared with the Proposed Project.

Other EIR Sections

As required by CEQA, the EIR also contains a section addressing the cumulative and growth-inducing impacts of the Proposed Project. For the most part, the EIR determines that the project has very little potential for resulting in cumulatively considerable effects as defined by the CEQA Guidelines, mainly because most of the Project's effects are temporary, and the long-term effects are either not additive to the effects of other projects or are so minor as to not be cumulatively considerable. However, from the Miguel Substation to I-5 the Proposed Project would have significant and unavoidable (Class I) visual impacts to views from a number of local residential neighborhoods, park and recreation areas, and public facilities. Cumulatively, the existing and proposed structures would create a visually dominant industrial corridor through residential areas of Chula Vista. The EIR considered this impact from the Miguel Substation to I-5 to be cumulatively considerable and significant.

Summary Comparison of the Proposed Project and Alternatives

CEQA does not provide specific direction regarding the methodology of alternatives comparison. Each project must be evaluated for the issues and impacts that are most important and this will vary depending on the project type and environmental setting. The comparison presented in the EIR is designed to satisfy the requirements of CEQA Guidelines Section 15126.6[d]. If the environmentally superior alternative had been the No-Project Alternative, the EIR then must identify an environmentally superior alternative (ESA) among the other alternatives.

With the exception of visual impacts caused by the Proposed Project, there were no significant and unmitigable (Class I) environmental impacts identified that would result from the Proposed Project. With one exception, there were no significant and unmitigable (Class I) impacts identified that would result from the alternatives. The South Bay Power Plant to Sweetwater River Overhead Design Alternative is inconsistent with the MOU between SDG&E and Chula Vista concerning the undergrounding of facilities in Segment #4 and therefore would conflict with the applicable land use plans and policies of the Chula Vista Bayfront.. The amended OMPPA Transmission Project proposes undergrounding in Segment #4 to avoid that conflict. However, the conflict can only be mitigated to less than significant by the proposed undergrounding and without that mitigation would result in a Class I significant impact.

Environmentally Superior Alternative

The EIR identified an ESA that consists of the Proposed Project in combination with three design option alternatives, the Pacific Highway Bridge Attachment (Pacific Hwy), Harbor Drive (Harbor Dr.) Bridge Attachment and Sicard Street (Sicard St.) Cable Pole, along with Transmission System Alternative 7 PV1, variation from Miguel to the South Bay Power Plant.

As discussed in more detail in the section that identifies all the options studied, the design options result in the following: under the Pacific Hwy option, the 230 kV line cable would be attached to the Pacific Highway Bridge, rather than directionally drilled under the San Diego River as proposed by the OMPPA Transmission Project; under

the Harbor Dr. option, the proposed 230 kV cable would be attached on the Harbor Drive Bridge, rather than boring underneath the Bridge; and under the Sicard St. option, the design of the transition structures would be less industrial in scale and mass and would take up less space in the parking lot than the structure proposed in the Project.

Transmission System Alternative 7 PV1 would change the structures used in Segment #3, from Miguel Substation to South Bay Power Plant. In summary, 63 new double line transmission steel poles would be developed as proposed in the project, but the transmission system would be reconfigured to allow the removal of the existing lattice towers between Proctor Valley and the South Bay Power Plant. Along with the removal of the lattice towers, one of the existing 138 kV transmission lines currently on the existing lattice towers would be removed, and the other 138 kV line currently on the lattice towers would be installed on the second position of the new steel poles. Additional modifications to the Proctor Valley, Miguel and Los Coches Substations, as well as addition of a second 138 kV transmission line from Miguel to Proctor Valley would be required.

The EIR analysis indicates that there would be long-term significant and unavoidable (Class I) visual impacts from the Proposed Project because the new 230 kV line would be installed in single steel poles that would be viewed in conjunction with the existing 138 kV lattice towers. The lattice towers and steel poles together would create a visually dominant industrial corridor and the differences in form and design between the old and new structures would contribute to the visual disharmony and industrial character of the SDG&E ROW.

Under Alternative 7 PV1, the significant visual impacts of the Proposed Project would be reduced to a level less than significant from the Proctor Valley Substation to west of I-5 and long-term visual changes would be slightly adverse to beneficial along almost the entire length of SDG&E's ROW in Chula Vista, east of I-5. The EIR analysis indicates that the visual changes from the Alternative 7 PV1 would be evident from residential neighborhoods, local community parks and recreation areas, and public schools and institutions. This would result in the SDG&E ROW appearing substantially less industrial in character and form, and more similar in design to other community facilities, such as distribution poles and lighting facilities. When the lattice towers are removed, the visual impact of the new 230 kV double line steel poles would be less than significant when compared to the existing setting, however, significant impacts to biological resources, soil erosion, noise, solid waste disposal, traffic disruption and short-term disruption to recreational facilities would result due to more intense construction. These impacts can be mitigated to less than significant, therefore, this alternative ranks as the ESA transmission system between the Miguel Substation and South Bay Power Plant as it would reduce long-term visual impacts from significant and unavoidable (Class I) to less than significant, while only increasing temporary short-term impacts associated with construction that are easily mitigable to less than significant.

The EIR compares the "No-roject" Alternative to the Environmentally Superior Alternative and determines that overall the ESA is preferred over the "No-Project" Alternative.

Responses to Alternative 7 PV1

Only SDG&E and the Border Generation Group[9] (BGG) oppose Alternative 7 PV1. SDG&E argues that Alternative 7 PV1 would create the following negative results: (1) restrict dispatch by at least 300 MW the output from the South Bay Power Plant (South Bay) because of the removal of one of the existing 138 kV lines; (2) increase RMR costs due to this limited dispatch from South Bay since South Bay output is used to relieve congestion at Miguel Substation; (3) jeopardize reliability because use of a common pole structure from Proctor Valley to South Bay would introduce the potential for a common structure failure; (4) restrict expansion capability for future load growth; (5) lengthen the project schedule by 4-6 months; (6) create an additional round of environmental impacts associated with the installation of new structures and removal of the lattice towers; (7) potentially increase the cost of OMPPA by $50 million; (8) provide only marginal, short-term visual benefits since it removes an existing utility structure and replaces it with a new utility structure—that might need to be partnered with another new utility structure in the short-term to accommodate anticipated future growth.

SDG&E also disputed the value of visual improvements along its ROW that was established in 1960 to support transmission structure alignments, both then, and in the future as SDG&E supports future system growth. SDG&E disagrees with the environmental analysis to the extent it considers the new towers for Segment #3 to be in a "visually sensitive area." SDG&E's position is that the existing lattice towers should not be

[9] Members of BGG are: Coral Power, L.L.C.; Energia Azteca X, S. de R.L. de C.V. and Energia de Baja California, S. de R.L. de C.V.; and Termoelectrica de Mexicali S. de R.L. de C.V..

considered as a visual impact, but instead as the existing condition and baseline from which incremental impacts should be assessed.

BGG supports SDG&E's Proposed Project, including the undergrounding segment and the design options adopted in the DEIR, but agrees with SDG&E that Alternative 7 PV1 should be rejected for many of the reasons articulated by the utility. In particular, BGG is concerned about the potential for increased congestion at the Miguel Substation and increased costs to SDG&E's ratepayers, especially in light of the reduction in RMR savings. From BGG's perspective, the adoption of Alternative 7 PV1 would "undermine the key objectives of the Miguel-Mission transmission project," especially in view of the fact that it would only provide a "marginal, short-term visual benefit."[10]

Numerous agencies/organizations and individuals who submitted comments on the DEIR, however, supported Alternative 7 PV1. Most of those commenting favored both the undergrounding that is proposed for Segment #4, as well as the removal of the lattice towers that is a component of Alternative 7 PV1. In fact, a lot of commenters advocated undergrounding even more of the project than is currently planned to improve the "visual" outlook.

In summary, while many urged the Commission to adopt Alternative 7 PV1, the only justification for the increased cost of this alternative was to improve the "visual" impact. On the other hand, SDG&E and BGG had numerous arguments in support of overriding the DEIR's recommendation that the ESA should incorporate Alternative 7

[10] BGG April 18, 2005, letter, p. 4, quoting comments by SDG&E in its April 8, 2005, comments on the DEIR.

PV1, including the risks of increased congestion, delays in the construction timetable and increased costs--for a "marginal, short-term visual benefit."

Adequacy and Certification of the FEIR

The FEIR must contain specific information according to the CEQA Guidelines Sections 15120 through 15132.[11] The various elements of the FEIR satisfy these CEQA requirements. The FEIR consists of the DEIR, with revisions in response to comments and other information received. Section 3 of the FEIR contains the comments received on the draft EIR and individual responses to those comments.[12]

The Commission must conclude that the FEIR is in compliance with CEQA before granting SDG&E a CPCN for the Proposed Project to ensure that the environmental document is a comprehensive, accurate and unbiased tool to be used by the lead agency and other decisionmakers in addressing the merits of the Project. The document should embody "an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors."[13] It must be prepared in a clear format and in plain language.[14] It must be analytical rather than encyclopedic, and emphasize alternatives over unnecessary description of the project.[15] Most

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[11] Cal. Admin. Code Sections 15122-131.

[12] CEQA Guidelines Section 15132.

[13] *Id.*, Section 15142.

[14] *Id.*, Sections 15006(q) and (r), 15120, 15140.

[15] *Id.*, Sections 15066, 15141; Pub. Res. Code Section 21003(c).

importantly, it must be "organized and written in such a manner that [it] will be meaningful and useful to decisionmakers and the public."[16]

We believe the FEIR meets these tests. It is a comprehensive, detailed, and complete document that clearly discusses the advantages and disadvantages of the Proposal by SDG&E and the various alternatives. We find that the FEIR is the competent and comprehensive informational tool that CEQA requires it to be. The quality of the information therein is such that we are confident of its accuracy. We have considered that information in approving the SDG&E Proposed Project as described in this decision.

We hereby certify the EIR for the Otay Mesa Power Purchase Agreement Transmission Project.

Recommended Mitigation Measures

CEQA requires that agency approval of SDG&E's Proposed Project or an alternative may require modifications or mitigations to avoid or reduce to less than significant levels, significant environmental effects on the environment. The EIR identified potential environmental impacts for the Proposed Project and various alternatives in the areas of air quality; biological resources; cultural resources; geology, soil and paleontology; hydrology and water quality; land use and recreation; noise and vibration; public health and safety; public services and utilities; socioeconomics; transportation and traffic; and visual resources. The mitigation measures recommended in the EIR to address the potentially significant impacts for the Proposed Project, with the design options, are adopted as part of our

[16] Pub. Res. Code Section 21003(b).

approval. The mitigated measure for the project as approved by the Commission are attached to this decision as Attachment B. The adoption and implementation of these mitigation measures, was assumed in the determination of impact levels in the EIR. With mitigation, it was concluded that all potential environmental effects, except for the visual impacts along Segment #3, could be mitigated to less than significant levels. Therefore, implementation of these mitigation measures is a condition of the approval of this Project.

As previously mentioned, as part of the project application SDG&E proposed its own mitigation measures. These APMs, along with the additional mitigation measures recommended in the EIR are adopted to ensure that potential impacts are reduced to less than significant levels except for visual impacts. The Commission will assure implementation and compliance with all the mitigation measures as part of the associated Mitigation Monitoring, Compliance and Reporting Program.

Statement of Overriding Considerations

CEQA requires that specific findings be made if a lead agency decides to approve a project which will have significant impacts. Section 21081 of the California Public Resources Code states:

> [N]o public agency shall approve or carry out a project for which an Environmental Impact Report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:
>
> The public agency makes one or more of the following findings with respect to each significant effect:

> Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects as identified on the environment.

Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

The project we approve today is the Proposed Project, with design alternatives to include: the Pacific Highway Bridge Attachment; the Harbor Drive Bridge Attachment and Sicard Street Cable Pole design option, recommended as part of the environmentally superior alternative, but without the Transmission System 7 PV1 Alternative from Miguel to South Bay Power Plant. Further, for the project we approve today, we adopt and require as a condition of our approval all applicable recommended mitigation measures to avoid or reduce potentially significant environmental impacts to less than significant levels, except for visual impacts that remain significant.

In addition, we recognize that approval of this project will result in significant and unavoidable visual impacts that cannot be mitigated to a level considered less than significant. Notwithstanding the existence of this significant and unavoidable visual impact, we find that for the reasons discussed below, primarily related to reduced RMR costs and reduced congestion at the Miguel Substation, the benefits of the Proposed Project outweigh the unavoidable adverse environmental effects, and therefore find the adverse environmental effects to be acceptable.

Succinctly put, Alternative 7 PV 1 proposes to improve the visual impact of the power lines from the Miguel Substation to the South Bay Power Plant area by reconfiguring the poles that support the power lines by removing the existing 138 kV lattice towers, and removing one, of two, existing 138 kV lines that is currently attached to the lattice tower, and replacing the lattice towers with 63 new double line transmission steel poles. The remaining 138 kV line would then be attached to the new steel pole along with a new 230 kV line. This alternative potentially would remove the "visual disharmony" that might occur if the 63 new steel poles coexisted with the lattice towers. However, adoption of this alternative could increase the cost of the Proposed Project by an estimated $50 million and potentially delay the project by four to six months. We are also persuaded that this alternative is inconsistent with two of SDG&E's key objectives for the Proposed Project which we find compelling: reducing congestion at Miguel and reducing RMR costs.

SDG&E's comments to the DEIR state that South Bay generation is used to relieve congestion at the Miguel substation. If one of the existing 138 kV lines is removed, as Alternative 7 PV1 suggests, the dispatchability

of South Bay generation is reduced and this has the potential for contributing to congestion at Miguel—and that leads to increased RMR costs for SDG&E ratepayers. SDG&E is concerned that if there is no South Bay generation at 138 kV, and there is flow on the 230 kV transmission line from Imperial Valley to Miguel, the 138 kV line from Proctor Valley to Los Coches would overload under the N-2 contingency condition. If Alternative 7 PV1 is adopted, SDG&E fears that the import limitations at Miguel that would be necessary to mitigate overloads based on the 230 kV N-2 outage would have to be stricter than they would otherwise be under the Miguel-Mission #2 230 kV transmission project. From SDG&E's perspective, the result from Alternative 7 PV1 would be that the transfer capability at Miguel would be reduced, intra-zonal congestion at Miguel would be increased, and there would be a corresponding increase in costs to SDG&E ratepayers.

In addition, in its comments to the DEIR, SDG&E also argues that any "visual benefits" from Alternative 7 would be "short-lived" due to the "high probability that new structures will be constructed in this designated transmission corridor,"[17] in view of the need for transmission expansion based upon projected load growth in San Diego. As discussed earlier in this decision, SDG&E disagrees with the EIR conclusions regarding visual impacts. Nevertheless, under any analysis, SDG&E urges the Commission to reject the estimated $50 million price-tag for marginally improving the visual impact of one 10-mile segment for what it anticipates will be for a relatively limited short-term period.

[17] SDG&E's April 8, 2005, letter commenting on the DEIR, pp. 5-6.

BGG's April 18, 2005, comments on the DEIR mirror the concern that if Alternative 7 is adopted, the key objectives of the Miguel-Mission transmission project would be undermined because of the increased congestion at the Miguel substation. The members of BGG have an interest in OMPPA because their Mexicali generation facilities have suffered from congestion at the Miguel substation. BGG argues that the proposed removal of one of the existing 138 kV lines under Alternative 7 would reduce the dispatchability of South Bay generation and thereby contribute to congestion at Miguel. BGG also argues that in light of SDG&E's projected future needs for transmission facilities in the same corridor, that Alternative 7 should be rejected because it would only bring short-term visual benefits and would not meet the key objectives of the Proposed Project.

The EIR is used to guide decision-making and inform the public by providing an assessment of the potential environmental impacts that may result from a Proposed Project, but it is up to the Commission to determine the best option, taking into consideration the totality of the issues, including the costs of delay and implications for reliable grid operations. As discussed above, we are persuaded that the Alternative 7 PV1 could delay the Project completion date, would cost substantially more than the Proposed Project--costs that will be imposed on SDG&E ratepayers, and could create the risk of reducing necessary dispatch from South Bay as well as possibly restricting expansion capability.

Consistent with Public Resources Code Section 21081, the CEQA Guidelines (Section 15126(a)) state: "An EIR describes a reasonable range of alternatives to the project, or to the location of the project, which would

feasibly (italics added) attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." Feasibility is defined by the CEQA Guidelines as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account, economic, environmental, legal, social, and technological factors."[18]

Therefore, applying these standards and balancing the Proposed Project against Alternative 7 PV1, in considering cost-effectiveness concerns, congestion costs, possible delays in construction time against what might only be a "marginal, short-term visual benefit," we conclude that SDG&E's Proposed Project, with the design option alternatives recommended in the EIR, but without Alternative 7 PV1, should be adopted.

In summary, for the reasons discussed above, we choose to approve the design for Segment #3 as set forth in the Proposed Project, instead of Alternative 7 PV1, because the proposed design provides cost/economic, timing, reliability, growth potential and other benefits that we feel outweigh the significant and unavoidable visual impacts of the combination of the lattice towers and the steel poles.

Intervention by Rohr

As previously discussed in this decision, on March 8, 2005, Rohr filed a Motion to Intervene, and this decision grants that motion. On April 14, 2005, Rohr commented on the DEIR for the Proposed Project. Rohr operates an aircraft parts manufacturing facility in Chula Vista and

[18] CEQA Guidelines Section 15021 *et seq.*

owns property on which a portion of SDG&E's proposed 230 kV line is to be installed. Rohr's comments address alleged material adverse potential impacts from OMPPA that Rohr claims were not identified, analyzed or mitigated in the DEIR, and Rohr presented several Project alternatives that would mitigate these potential impacts. In particular, Rohr raised concerns about the potential impact to hydrology and water quality--including potentially significant impacts on the flow and direction of groundwater and associated effects on the movement and concentration of existing contaminants and on land subsidence.

The FEIR included Rohr's comments, as well as others from experts/consultants retained by Rohr to review and analyze the DEIR. In summary, the response to the Rohr collective comments addressed each salient point raised. The response informed Rohr that the DEIR addressed each and every concern Rohr had with the Proposed Project and that the Commission prepared and will adopt a Mitigation Monitoring and Reporting Plan (MMRP) to mitigate or avoid identified significant project-related environmental effects. The response also informed Rohr that no new information was provided in the comments that had not been considered, so the DEIR was not going to be recirculated.

On April 29, 2005, Rohr filed a reply brief addressing arguments made in SDG&E's opening brief in support of the OMPPA Project as currently proposed and the adequacy of the DEIR for the Project. In particular, Rohr takes issue with the undergrounding of Segment No. 3 which will require open-cut trenching and backfilling of the conduits for the underground wires, and again asks that the DEIR be recirculated. As referenced above, Rohr asked in its comments to the DEIR that the DEIR

be recirculated, and the ED and CEQA consultants responded to the comments indicating that Rohr had not raised any new information that necessitated recirculating the DEIR pursuant to CEQA Guidelines Section 15088.5, and the MMRP as proposed would mitigate or avoid the environmental effects Rohr feared might result due to the undergrounding activities.

CEQA Guidelines Section 15088.5 requires recirculation of an EIR prior to certification when significant new information, as defined, is added to the EIR after public notice is given to the availability of the draft EIR for public review but before certification. Examples of significant new information include in pertinent part: a new significant environmental impact; a substantial increase in the severity of an environmental impact; a feasible project alternative or mitigation measure considerably different from others analyzed that would clearly lessen the environmental impacts of the project; or if the draft EIR was so fundamentally and basically inadequate and conclusory in nature so as to preclude meaningful public review and comment.

Having reviewed Rohr's comments and the EIR, we find that the Final EIR adequately and appropriately addressed Rohr's comments and concerns and agree that no recirculation of the EIR is warranted by the CEQA Guidelines. Accordingly, no further action is required by the Commission on Rohr's comments.

CPCN

Generally, the CPCN requirements in the Public Utilities Code include a determination of whether the project is necessary and what is the

financial impact on the ratepayers. The need and cost of the Proposed Project, as distinct from the environmental issues, were briefed by the parties. This section briefly summarizes the positions of those parties filing briefs on the CPCN issues.

Pub. Util. Code § 1002 requires the Commission to give consideration to community values, recreational and park areas, historical and aesthetic values, and influences on the environment. These considerations are among those analyzed as part of the CEQA review process and do not need to be addressed again as part of the CPCN.

Need for the Project

In brief, SDG&E's Proposed Project, OMPPA, consists of two new 230 kV electric transmission circuits, approximately 52 miles in total length, to connect SDG&E's Miguel Substation with both the Sycamore Canyon Substation and the Old Town Substation. In D.04-06-011, the Commission approved the OMGP and a gen-tie from the new plant to the Miguel Substation. The question before the Commission is whether the new 230 kV lines are necessary both to allow for full deliverability of the product from OMGP and to meet SDG&E's local reliability and resource adequacy needs.

SDG&E

SDG&E touts the need for the OMPPA Project because the two new 230 kV lines will do the following:

(1) Provide full dispatchability of resources from the proposed OMGP for delivery into the San Diego LRA;

(2) Provide firm transmission delivery of the OMGP to Load Centers at the Sycamore Canyon and Old Town Substations, along with surrounding substations;

(3) Prevent the OMGP from compounding Intra-Zonal Congestion at the Miguel Substation;

(4) Meet G-1/N-1 reliability requirements expected from future load growth;

(5) Provide for expansion capability for load growth and potential generation retirement;

(6) Minimize load shedding and avoid potential cascading outages during Miguel corridor outages; and

(7) Provide cost savings to SDG&E customers by reducing ISO RMR contract requirements.

SDG&E touts many reasons why OMPPA will provide benefits to its customers and the most important justification is that the new transmission system will satisfy SDG&E's local reliability and resource adequacy needs. In addition, when OMGP is constructed and fully operational, it can only qualify as an RMR source if it is fully deliverable. OMPPA will allow for the full dispatchability of OMGP and the potential savings when OMGP is an RMR source is anticipated to be $20 to $25 million dollars annually—even after the annual projected costs of $25 million for OMGP are factored in. Also, OMPPA allows the full output of OMGP to be delivered into SDG&E's LRA concurrently with the aggregate output from other local resources and imports that are required to meet the CAISO's G-1/N-1 reliability criterion, both in the near future and as part of SDG&E's long-term planning.

In addition, the two, new transmission lines, one running from the Miguel Substation towards the South Bay Power Plant and then on to the Old Town Substation, and the second running north through the Miguel corridor towards the Sycamore Canyon Substation, will provide numerous other benefits for SDG&E customers. Other anticipated advantages from OMPPA include the following: reduced exposure to cascading outages and damages to transmission equipment along the Miguel corridor; improved system voltages; and increased grid operation flexibility and future grid expansion capability.

CAISO

In Decision (D.) 04-06-011, when the Commission approved OMGP, it was aware that some transmission upgrades would be necessary to make the power from the plant fully deliverable and to meet SDG&E's local reliability needs. Therefore, in D.04-06-011, the Commission directed the CAISO to inform the Commission as the "[w]hether that upgrade should be the two 230 kV lines proposed in [this application], or some alternative."[19] In this application for OMPPA, CAISO submitted testimony on the Proposed Project, and other alternatives, for rendering OMGP generation deliverable and for realizing other potential benefits.

The CAISO testimony reached the following conclusions:

> OMPPA provides for the full output of OMGP under nearly all system conditions;
>
> OMPPA will provide for the firm transmission delivery of OMGP generation to SDG&E load centers;

[19] D.04-06-011, pp. 65-66.

OMPPA will prevent OMGP from increasing transmission congestion north of the Miguel Substation;

OMPPA, with generation from OMGP, can serve to reduce current RMR costs by allowing displacement of a portion of existing RMR generation in SDG&E's service area;

OMPPA will provide higher operational flexibility during scheduled outages;

> OMPPA will reduce the need to trip additional generation and load for a Miguel corridor outage; and
>
> OMPPA was superior to other alternatives in meeting these objectives.[20]

From the CAISO's perspective, when the Commission approved OMGP in D.04-06-011, the Commission was deciding the "need' for some Transmission Project, whether it be OMPPA or a functionally equivalent alternative, in order to provide for the deliverability of OMPA. Without transmission upgrades, OMGP can not be utilized to serve load in the San Diego LRA because of congestion—especially at Miguel. Therefore, CAISO prepared its testimony with the focus on whether OMPPA constitutes the appropriate alternative. CAISO's analysis of the Proposed Project finds that it would render OMGP fully deliverable and therefore OMGP could displace existing RMR generation in SDG&E's service territory.

In addition, CAISO performed a thorough analysis of proposed alternatives to determine the most optimal electrical solution to achieve the benefits envisioned by D. 04-06-011. In its testimony, CAISO concluded that OMPPA was the superior alternative.[21] The CAISO Board of Governors approved OMPPA, by a unanimous vote, at a Board meeting on May 6, 2005.

Calpine

Calpine also concluded that the Commission already determined the need for some transmission upgrades when it approved OMGP in

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[20] CAISO testimony, p. 8.

[21] *Id.*

D.04-06-011. Accordingly, Calpine focused its testimony in this proceeding on what is the most appropriate means to ensure that OMGP is fully deliverable and that SDG&E's customers realize the full range of benefits that OMGP can provide. From Calpine's perspective, OMPPA will ensure that the output from OMGP is fully deliverable to SDG&E's load centers and will provide SDG&E's customers with annual net RMR savings of $20-25 million. Since no other party has identified, much less proposed, a viable alternative to OMPPA that would provide these benefits, Calpine urges the Commission to approve OMPPA.

Chula Vista

Chula Vista fully supports SDG&E's Proposed Project as it comports with the City's MOU with SDG&E concerning the placement of the overhead and underground lines as they transverse Chula Vista and is consistent with the City's local planning and land use. In addition, Chula Vista defers to the determination by CAISO that OMPPA is necessary to satisfy SDG&E's local reliability and resource adequacy needs.

ORA

ORA is the only party to the proceeding who has concerns as to whether there is a "need" for OMPPA—especially in light of SDG&E's escalating cost estimates. ORA is troubled by the fact that SDG&E's initial cost projections went from about $128 million[22] to $209 million—and that estimate does not include the additional estimated $50 million the ESA with Transmission Alternative 7 PV1 would cost.

[22] The figure of $128 million was advanced by SDG&E witness Korinek in the RFP proceeding as an estimate of what OMPPA would cost.

ORA is correct in its determination that the Commission did not predetermine the need for OMPPA when it approved OMGP. ORA argues that in point of fact, SDG&E's application for OMPPA is premature, as SDG&E did not provide any alternatives to assist the Commission in determining whether OMPPA provides economic benefits, reliability benefits and whether the cost is reasonable. From ORA's perspective, OMPPA may be necessary in the future, but SDG&E did not show that it is cost-effective now. ORA urges the Commission to defer approval of OMPPA until post 2008/2010, the time period we identified in the RFP proceeding when SDG&E needs OMGP's full resources for its grid reliability. ORA suggests that if the full amount of OMGP's power is not needed now, or even from 2008-2010, that it is premature to approve OMPPA now.

Reply Briefs

CAISO, ORA, Calpine, SDG&E and Rohr filed reply briefs. Except for Rohr's brief, all the other briefs focused on ORA's opposition to the Proposed Project.

SDG&E summarizes ORA's opposition to the Proposed Project as: (1) not needed to assure full deliverability of OMGP; (2) no adequate study of alternatives; and (3) too costly. SDG&E argues that these arguments have no merit in this application proceeding as they are more properly a request for reconsideration of the RFP decision, D.04-06-011. SDG&E refers to D.04-06-011 to support its contentions that OMPG was approved for grid reliability and RMR savings, neither of which can occur unless OMGP is fully deliverable. SDG&E quotes the decision, p. 82, that ". . . the output of Otay Mesa will not be fully deliverable and cannot fully satisfy

SDG&E's local reliability needs, without some transmission system upgrade. Whether that upgrade should be the two 230 kV lines proposed in A.04-03-008, or some alternative, will be determined during the course of the Commission's review of A. 04-03-008, which determination will be informed by the CAISO's own transmission planning process." Therefore, SDG&E urges the Commission to dismiss ORA's arguments against the Proposed Project and approve it.

In its reply brief, CAISO disputes all of ORA's arguments that OMPPA is not needed. CAISO argues that the Commission intended OMGP to supply SDG&E with capacity that could contribute to meeting reliability criteria and that cannot happen without timely construction of some transmission system upgrade. From CAISO's perspective, the only issue before the Commission in this proceeding is whether that upgrade should be the two 230 kV lines as proposed in the Project, or some alternative. CAISO also responds to ORA's criticisms that the ISO failed to conduct its own economic analysis of whether OMPPA was "needed" and failed to study other alternatives for reducing the congestion that OMPPA is designed to relieve. CAISO argues that it was appropriate for it to accept the resource adequacy need determination by the Commission when it approved OMGP in D.04-06-011, so that all CAISO looked at was economic factors in selecting the optimal transmission alternative to deliver power from OMGP.

In addition, CAISO opposes ORA's recommendation that OMPPA be deferred. CAISO claims that unless OMPPA is energized concurrently with the 2008 operation date of Otay Mesa, SDG&E ratepayers will fail to realize the full extent of the projected RMR cost savings—an important

justification for the Commission's approval of OMGP.[23] In summary, CAISO urges the Commission to approve OMPPA as needed as the electrically optimal solution to achieve the objectives for approving OMGP.

Calpine also disputed ORA's arguments against approval of OMPPA primarily on the ground that the full benefits of OMGA for local grid reliability and RMR savings can not be fully realized without transmission upgrades.

ORA's reply brief reiterated its position that given the expense of OMPPA, and the fact that the full output of OMGP will not be needed for local grid reliability until post 2008, it is premature to approve the Proposed Project now. In addition, ORA posts that the claimed benefits of OMPPA are speculative, especially given the lack of a need determination or proper cost study.

Cost

SDG&E provided testimony in its amended application, filed November 18, 2004, to support a Project cost of $161,384,000 that included the costs of undergrounding in Chula Vista. On March 4, 2004, SDG&E again updated its projected cost estimate to $209,818,000 to reflect recent cost increases in labor and materials, in particular a rise in the cost of steel poles of almost 77% and increased trench depths for the undergrounding segment of the project, and to capture new information as the Project moved to final design. In addition, SDG&E alerts the Commission to the fact that the DEIR, which issued March 3, 2005, identified an ESA, with

[23] D.04-06-011, p. 77.

numerous design options and Transmission Alternative 7 PV1 that is estimated to cost an additional $50 million.

While SDG&E does not support the adoption of Transmission Alternative 7 PV1 for a variety of reasons, including the fact that it is estimated to increase the cost of the Proposed Project by $50 million, SDG&E does inform the Commission that if it chooses to go with Transmission Alternative 7 PV1, the Commission will need to increase funding for the OMPPA project to $260 million. SDG&E requests a margin over any good faith estimate provided.

ORA

Of all the intervenors providing comments to the Commission, only ORA vehemently opposed OMPPA, and the primary ground on which ORA based its objection was the cost. ORA is especially concerned that the projected costs of the Proposed project keep escalating exponentially going from $128 million in the fall of 2003 when SDG&E filed its motion for approval of OMGP, to $209,818,000 in the spring of 2005 when SDG&E filed its updated testimony. ORA is also perplexed that no other party seemed concerned about the price, or that, from ORA's perspective, SDG&E has not presented an adequate cost effectiveness study of the Project.

In its testimony, ORA suggested that if the Commission is going to approve OMPPA, that it impose a cost cap of about $161 million.[24] This figure was the projected cost presented in SDG&E's amended application filed in November 2004. In its brief, ORA does not again argue for a cost

[24] ORA testimony, p. 7.

cap, but instead argues against the project because that cost cap is not even realistic just six-months later. From the interest of the ratepayer, ORA is concerned about the amount of the final bill for OMPPA and whether that final cost is justified by the anticipated benefits of the new transmissions lines.

Chula Vista

Chula Vista's only comments on the cost of OMPPA are that, as categorized by CAISO, it is a reliability upgrade, and as such, is a cost appropriately paid for by ratepayers. While Chula Vista acknowledges that the projected cost of OMPPA has increased significantly since the application was filed in March of 2004, the increase from $128 million to $162 million was for the undergrounding segment that goes through Chula Vista's waterfront and is part of the MOU between the City and the utility. Chula Vista notes that the increase from $162 million to $209 million is due to the cost of steel poles and increased land and labor costs and should not cause the project to fail. Chula Vista also argues against a cost cap, indicating that for the same reasons a cost cap was not appropriate for the Miguel Mission line, no cap is appropriate here.

CAISO

CAISO performed a thorough analysis of what would be the most optimal electrical solution to achieve the benefits from OMGP and concluded that OMPPA was the superior alternative. CAISO, however, did not perform a comprehensive review of the cost of OMPPA, but instead reviewed the costs included by SDG&E for the Project and for

alternatives and concluded "that such cost estimates appeared "reasonable.""[25]

Calpine

Calpine did not comment on the reasonableness of the projected costs of OMPPA, but did argue in its comments that the anticipated net RMR savings to SDG&E customers of $20-25 million per year, in conjunction with the other system wide benefits that the Project will bring, justify approval of the Project.

Discussion of Proposed Project Need and Cost

It is clear that we determined that SDG&E "needed" the Otay Mesa Generating Plant when we approved the 10-year Power Purchase Agreement (PPA) in D.04-06-011. However, even though SDG&E asked us to approve OMPPA as a condition precedent to approving the PPA, we chose to defer consideration of OMPPA to this separate application. When we approved OMGP, it was part of a "mixed portfolio [that] will ensure that SDG&E has adequate, reliable, and reasonably priced energy, including reserves, and is consistent with the Energy Action Plan, AB 57, and Pub. Util. Code Section 454.5."[26] Also, in D.04-06-011, we discussed new, cleaner, efficient power sources, such as Palomar and Otay Mesa, as a way to reduce SDG&E's RMR costs and to achieve and maintain adequate reserve levels. While we acknowledged that SDG&E might not need all of OMGP's output when it comes on line in 2008, we did find that the 10-year

[25] ISO testimony, p. 18, ISO Opening Comments, p. 7.

[26] D. 04-06-011, pp. 54-55.

PPA provides "insurance" for SDG&E and its ratepayers that is well worth its cost.[27]

In addition, as already quoted earlier in the decision, we did not predetermine the outcome of this application for approval of OMPPA when we approved OMGP in D.04-06-011. However, we clearly recognized in that decision that the output of OMGP "is not fully deliverable, and cannot fully satisfy SDG&E's local reliability needs, without some transmission system upgrade."[28] This is now the proceeding to determine if OMPPA is the appropriate upgrade based on need and cost.

We are convinced by the application, the testimony presented, and the briefs filed that OMPPA is the appropriate upgrade to realize the full potential of Otay Mesa for grid reliability and RMR savings, to reduce congestion and to provide for expansion capability for load growth. No party presented any viable alternatives to OMPPA in terms of "need" for a transmission upgrade, and the EIR found no environmental impact justification to reject OMPPA. Therefore, based on the need component of the CPCN requirement, we find that SDG&E's Proposed Project meets that requirement.

As discussed earlier in this decision, in addition to the benefits the Proposed Project will provide to SDG&E from OMGP, OMPPA is also needed to ensure local reliability and resource adequacy needs; to reduce exposure to cascading outages and damages to transmission equipment

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[27] *Ibid.*, p. 55.

[28] *Ibid.*, p. 65.

along the Miguel corridor; to improve system voltages; and to increase grid operation flexibility and future grid expansion capability.

While we were not persuaded by ORA's arguments that OMPPA was not needed, perhaps at all, and certainly not now, we did take seriously ORA's arguments that the cost of OMPPA should be of concern. We also noticed that the cost projections for OMPPA went from $128 million in the RFP motion to $209 million in the recent cost updates--just span of 18-months. While we appreciate the fact that a portion of that cost increase is related to the undergrounding of Segment #4, a cost not anticipated until the MOU with Chula Vista, the remainder of the increase for inflation in the cost of materials and labor is of concern. However, no party challenged SDG&E's cost estimate as being unreasonable or out-of line. ORA's criticism was not that the costs were inflated by SDG&E, but that the costs, especially the rapidly escalating costs, were not justified by the speculative benefits of the Project.

Keeping in mind the geometric increase in the projected cost for OMPPA over the past 18-months, we determine that it is reasonable to find that a CPCN is justified for the Proposed Project at this time, rather than to defer such a decision to when the full output of OMGP is needed. Based on anticipated continuing rising costs in labor and materials, we find that it is in the best interest of the ratepayer to approve the Proposed Project now, rather than waiting. We will approve a cost cap of $209,818,000 million, with a contingency amount of 5%. This authorization does not include the anticipated costs of $50 million for Transmission Alternative 7 PV1, which the FEIR identified as a component of the ESA. We are not approving Alternative 7 PV1 as we found overriding

considerations in favor of rejecting it—one of those considerations being the cost. If SDG&E can bring the Proposed Project to completion within this funding authority, it does not need to seek further authorization.

Conclusion

We hereby grant SDG&E a CPCN for the Otay Mesa Power Purchase Agreement Transmission Project consisting of the Proposed Project with the following design alternatives: the Pacific Highway Bridge Attachment, the Harbor Drive Bridge Attachment and Sicard Street Cable Pole design option, recommended as part of the ESA, but not to include the ESA recommended Transmission System 7 PV1 Alternative from Miguel to the South Bay Power Plant. In addition, we certify the EIR, adopt the Mitigation Monitoring Compliance and Reporting Program, and adopt the Statement of Overriding Considerations to approve the project notwithstanding significant and unavoidable visual environmental impacts.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Comments on Draft Decision

The draft decision of ALJ Brown was mailed to the parties on May 27, 2005. Comments were received on June 16, 2005 from: CAISO; Calpine; ORA; Rohr; and SDG&E. Reply comments were received on June 21, 2005 from Calpine and SDG&E.

SDG&E fully supports the PD and only suggests non-substantive technical and typographical changes in its comments. Many of these recommendations have been incorporated into the decision.

In its comments, CAISO expressed support for the PD, and particularly noted that the PD recognized that CAISO performed a thorough analysis of alternative electrical solutions prior to selecting the OMPPA as the superior upgrade to achieving the benefits of the OMGP. Calpine's comments also supported the PD because the PD finds that OMPPA will allow SDG&E and its customers to realize the full range of benefits from OMGP as well as assisting SDG&E in meeting local reliability and resource adequacy needs, allow for future load growth, reduce exposure to cascading outages, improve system voltages and increase grid operation and flexibility.

ORA, on the other hand, urged the Commission to deny SDG&E's application for a CPCN for OMPPA at this time and instead direct SDG&E to study lower cost transmission alternatives. ORA argues that since the operation of OMGP is not dependant on the transmission upgrades that are the subject of the instant application, there is sufficient time to reexamine the economics of OMPPA. As referenced in its briefs, ORA is particularly concerned with the escalating cost of OMPPA and opines that it might be prudent to either reconsider alternative transmission options, or at the very least, defer approval of the Propose Project until OMGP is delivering power and then evaluate the cost of OMPPA against the benefits from full deliverability of OMGP.

Both Calpine and SDG&E addressed ORA's opposition to the Proposed Project in their reply comments. SDG&E suggests that ORA is really trying an end-run to the June 9, 2004, decision (D.04-06-011) that approved the Otay Mesa Generating Plant because ORA is re-circulating the same arguments now, in opposition to OMPPA, that it presented in opposition to OMGP—that the Commission should study less-costly alternatives. SDG&E urges the Commission to disregard ORA's comments and approve OMPPA.

Calpine's reply comments also focused on ORA's comments that the PD should be rejected until transmission alternatives are evaluated or until the value of the upgrades exceeds the costs. In particular, Calpine speaks to alternative transmission options and argues that even CAISO performed a thorough analysis of optimal electrical solutions to achieve the full benefits from OMGP and concluded that the Proposed Project was the "superior alternative." In addition, Calpine suggests that no other party, including ORA, identified, or proposed, an alternative to the Proposed Project that would achieve the same benefits as the transmission upgrades in the PD would provide. Calpine also restates the net benefits that the OMPPA will provide to SDG&E's customers.

Rohr's comments also recommend against approval of the PD, but on the ground that the EIR is inadequate. Rohr argues that the PD is erroneous in its determination at p. 68, that the "contents of the FEIR comply with the requirements of CEQA [and] the FEIR should be certified for the Project in compliance with CEQA." Rohr is concerned that the FEIR fails to adequately address some environmental issues and mitigation measures involving Rohr's property. Rohr's primary

consideration is that the "open trench installation" of the 230kV conduits on Rohr's property could cause groundwater problems, and to obviate this concern, Rohr wants SDG&E to do Horizontal Direction Drilling (HDD) for the conduits. Rohr raised these same concerns in its comments to the DEIR and in its brief and wants the Commission to require that the DEIR be redrafted and then re-circulated for additional review and comment before a final decision is made.

The Commission's ED, along with the outside consultants Dudek & Associates, thoroughly perused Rohr's comments to the PD to determine whether Rohr raised any new issues that Rohr had not already raised in its comments to the DEIR and to assess whether the FEIR Response to Comments adequately addressed Rohr's concerns. In summary, ED, along with the consultants, determined that the FEIR, and in particular the Response to Comments section, was prepared with full knowledge of the shallow groundwater conditions within the vicinity of the Rohr property and impacts and mitigation measures were identified accordingly. Because the DEIR identified potential impacts that could result from the excavation activities on the Rohr site, the FEIR provides Mitigation Measures, HAZ-2a, HAZ-2b, and HAZ-3a which include standard mitigation requirements to prepare a Phase II Environmental Site Assessment, have an environmental monitor with OSHA training onsite, and observe for contaminated soil. With implementation of these measures, the FEIR concludes that any impact would be reduced to less than significant.

In response to Rohr's objections to the FEIR, SDG&E presents an alternative suggestion that would allow the Commission to certify the

FEIR now. The Phase II environmental and geotechnical investigation that the FEIR requires as a mitigation measure is scheduled for July 2005. This study will determine if open trench techniques are appropriate, or if there is sufficient justification for the more costly HDD. In either installation method, SDG&E commits to implementing all Commission-imposed mitigation as well as other reasonable and prudent measures to alleviate Rohr's concerns.

Upon careful consideration of Rohr's comments and the replies from SDG&E and the ED and Dudek & Associates, we are satisfied that the FEIR properly addressed all environmental issues, recommended feasible mitigation measures and its analysis of cumulative impacts is adequate. In responding specifically to Rohr's comments, we are further persuaded that the Phase II investigation can properly resolve the trenching vs. horizontal drilling issue and that all of Rohr's concerns were adequately covered in the Response to Comments section of the FEIR and that re-drafting and re-circulation of the DEIR is not required.

Findings of Fact

1. On March 8, 2004, SDG&E filed an application for a CPCN for the proposed OMPPA Transmission Project to construct two new 230 kV electric transmission circuits to connect SDG&E's Miguel Substation with both the Sycamore Canyon Substation and the Old Town Substation in San Diego County.

2. In accordance with CEQA and the State CEQA Guidelines, the Commission is the lead agency under CEQA with respect to the environmental review of the project and preparation of the FEIR and has conducted an environmental review of the project in conformance with

CEQA. The FEIR consists of the DEIR, revised to incorporate comments received by the Commission from the proponent, agencies and the public, and the responses to comments. The FEIR has been completed in accordance with CEQA Guidelines Sections 15120 through 15132.

3. On November 18, 2004, SDG&E amended its application to reflect an alternative to the Proposed Project that proposes undergrounding a short portion of a segment that transverses the City of Chula Vista's Bayfront.

4. The EIR and the application proceeding for the CPCN proceeded on parallel timelines.

5. In lieu of Evidentiary Hearings on the CPCN, parties submitted testimony and reply testimony, and opening and reply briefs. The matter was submitted upon the filing of reply briefs on April 29, 3005.

6. The OMPPA Project is needed to provide full dispatchability of resources from the proposed OMGP that could be delivered into the San Diego LRA; provide firm transmission delivery of OMPG to load centers; prevent intra-zonal congestion at the Miguel Substation; meet G-1/N-1 reliability criterion; provide for expansion capability; minimize load shedding and avoid potential cascading outages during Miguel Corridor outage; and provide cost savings in reduced RMR costs.

7. The only Class I environmental impact from the Proposed Project was the visual impact along Segment #3 if 63 steel poles are added to the existing lattice towers in the transmission corridor. However, for some key viewpoint locations, APMs and mitigation measures would reduce the impacts to less than significant.

8. The EIR proposes an "Environmentally Superior Alternative" for Segment #3, Alternative 7 PV1, that when the existing lattice towers are

removed would result in reducing the overall visual impacts from the key viewpoint locations to less than significant. It is within the discretion of the Commission to adopt this Alternative or some other variation.

9. The degree of overall change from the existing conditions along Segment #3 to those under Alternative 7 PV1 would range from beneficial to slightly adverse when compared to the Proposed Project.

10. The ESA of the EIR (Alternative 7 PV1) is not adopted in this decision because it would provide minimal, short-term visual benefits that do not support the Alternative when balanced against the totality of the considerations attendant to the Proposed Project and alternatives, including, cost-effectiveness concerns, delays in construction, potential reduction in dispatch from the South Bay plant with a corresponding increase in RMR costs, problems with reliability, and restrictions to expansion capability for future load growth.

11. The FEIR analyzes the environmental impacts, mitigation measures and significance after mitigation under the following categories: (1) air quality; (2) biological resources; (3) cultural resources; (4) geology and soils; (5) public health and safety; (6) hydrology; (7) noise; (8) transportation and traffic; (9) public services and utilities (10) land use, agriculture, and recreation (11) population and housing; and (12) visual resources The FEIR contained mitigation measures that would avoid or reduce all environmental impacts except specified visual impacts of the Proposed Project and Class I land use impacts of the South Bay Power Plant to Sweetwater River Overhead Design Alternative, to less than significant levels.

12. If an agency approves a project which will have significant and unavoidable environmental impacts it must determine that the benefits of the project outweigh the significant unavoidable impacts pursuant to Public Resources Code Section 21081 and adopt a Statement of Overriding Considerations.

13. The mitigation measures identified in the FEIR are feasible and reasonable.

14. As lead agency under CEQA, the Commission is required to monitor the implementation of mitigation measures adopted for this project to ensure full compliance with the provisions of the monitoring program.

15. The Mitigation Monitoring, Compliance and Reporting Plan in the FEIR conforms to the recommendations of the FEIR for measures required to mitigate or avoid environmental effects of the project as modified and adopted that can be reduced or avoided.

16. The FEIR must contain specific information according to the CEQA Guidelines Sections 15120 through 15132. The Commission must conclude that the FEIR is in compliance with CEQA before approving SDG&E's application for a CPCN for the OMPPA Project.

17. We believe the FEIR meets these tests and we find that the FEIR is the competent and comprehensive informational tool that CEQA requires it to be and the quality of the information therein is such that we are confident of its accuracy.

18. We have considered that information in the FEIR in evaluating the SDG&E's Proposed Project as described herein in this decision.

19. The FEIR reflects the Commission's independent judgment and analysis on the issues addressed in the FEIR, and the Commission has

reviewed and considered the information in the FEIR before issuing this decision on the project.

20. The OMPPA Project, as adopted today, is needed to provide full dispatchability of resources from OMGP for delivery into the San Diego LRA; provide firm deliverability of OMGP to Load Centers; reduce intra-zonal congestion at Miguel Substation; meet G-1/N-1 reliability requirements for future growth; provide for expansion capability for load growth; minimize load shedding and avoid potential cascading outages during Miguel corridor outages; and provide RMR cost savings.

21. The economic benefits of OMPPA outweigh the economic costs.

22. SDG&E's estimate that the Project will cost $209,818,000 is reasonable. Because the record shows the cost of transmission projects has increased considerably over the past 18 months, it is reasonable to adopt as a cost cap SDG&E's estimate, plus a 5% adder for a contingency against future increases to the price of inputs to the construction process.

Conclusions of Law

1. The procedures employed for this project are in conformance with CEQA. The contents of the FEIR comply with the requirements of CEQA and represent the Commission's independent judgment. Accordingly, the FEIR should be certified for the Project in accordance with CEQA.

2. The Commission has jurisdiction over the Proposed Project pursuant to Pub. Util. Code Section 1001 et seq.

3. The Commission, under CEQA Guidelines Section 15021, has an obligation to balance economic, social/community factors, timing of need, along with the environmental information presented in the FEIR to make

the ultimate determination regarding whether the Proposed Project is to be approved.

4. The Commission retains authority to approve SDG&E's mitigation plan to ensure that the OMPPA Project does not affect the environment adversely.

5. Commission's approval of SDG&E's application for a CPCN, as modified herein, is in the public interest.

6. The approval of the application, as provide herein, should be conditioned upon the completion of the mitigation measures identified in the FEIR. Those mitigation measures should be adopted and made conditions of project approval.

7. With respect to those mitigation measures referenced in the immediately preceding Conclusion of Law that are within the responsibility and jurisdiction of another public agency, such mitigation measures can and should be adopted by that other agency.

8. Construction of the project approved herein will result in significant and unavoidable visual impacts that cannot be mitigated to less than significant levels.

9. Benefits of the project identified in the Statement of Overriding Considerations outweigh the significant and unavoidable impacts of the project and justify its approval.

10. SDG&E should be granted a CPCN for the OMPPA Project because of its beneficial impact on the operation of the state's electric system, and in particular, SDG&E's electric system.

11. There are no internal disputed facts and EHs are not required.

O R D E R

IT IS ORDERED that:

1. The Final Environmental Impact Report (FEIR), which consists of two separate documents, the Draft EIR and the Final EIR, is certified as the Environmental Impact Report (EIR) for the Otay Mesa Power Purchase Agreement Transmission Project (OMPPA), which is the subject of this application and is certified for use by responsible agencies in considering subsequent approvals for the project, or for portions thereof.

2. The Statement of Overriding Considerations is adopted and certified as part of the FEIR.

3. A Certificate of Public Convenience and Necessity is granted San Diego Gas & Electric Company (SDG&E) to construct the OMPPA Project consistent with the environmental and regulatory requirements set forth herein.

4. SDG&E shall, as a condition of approval, build the project in accordance with the alternative design options as described in the FEIR, but not with Alternative 7 PV1. In addition, SDG&E shall comply with the mitigation measures applicable to the Proposed Project, as specified in the DEIR, FEIR, and Mitigation Monitoring and Reporting Program adopted and certified by this Order.

5. The Executive Director shall supervise and oversee construction of the project insofar as it relates to monitoring and enforcement of the mitigation conditions described herein. The Executive Director may delegate his duties to one or more Commission staff members or outside staff. The Executive Director is authorized to employ staff independent of

the Commission staff to carry out such functions, including, without limitation, the on-site environmental inspection, environmental monitoring, and environmental mitigation supervision of the construction of the project. Such staff may be individually qualified professional environmental monitors or may be employed by one or more firms or organizations. In monitoring the implementation of the environmental mitigation measures described in the DEIR and FEIR, the Executive Director shall attribute the acts and omissions of SDG&E's employees, contractors, subcontractors, or other agents to SDG&E.

6. SDG&E shall comply with all orders and directives of the Executive Director concerning implementation of the environmental mitigation measures described in the DEIR and FEIR.

7. The Executive Director shall not authorize SDG&E to commence actual construction until SDG&E has entered into a cost reimbursement agreement with the Commission for the recovery of the costs of the mitigation monitoring program described in Section G of the FEIR, including, but not limited to, special studies, outside staff, or Commission staff costs directly attributable to mitigation monitoring. The Executive Director is authorized to enter into an agreement with SDG&E that provides for such reimbursement on terms and conditions consistent with this decision in a form satisfactory to the Executive Director. The terms and conditions of such agreement shall be deemed conditions of approval of the application to the same extent as if they were set forth in full in this decision.

8. SDG&E's right to construct the project as set forth in this decision shall be subject to all other necessary state and local permitting processes and approvals.

9. SDG&E shall file a written notice with the Commission, served on all parties to this proceeding, of its agreement, executed by an officer of SDG&E duly authorized (as evidenced by a resolution of its board of directors duly authenticated by a secretary or assistant secretary of SDG&E) to acknowledge SDG&E's acceptance of the conditions set forth in Ordering Paragraphs 1 through 9, inclusive, of this decision. Failure to file such notice within 75 days of the effective date of this decision shall result in the lapse of authority granted by this decision.

10. The Executive Director shall file a Notice of Determination for the project as required by the California Environmental Quality act and the regulations promulgated pursuant thereto.

11. A cost cap for the Project is set a $209,818,000, plus 5% of this amount. If SDG&E can bring the Project to completion within this funding authority, it does not need to seek further authorization.

12. Application 04-03-008 is closed.

This order becomes effective immediately.

Dated _____, at San Francisco, California.

Attachment A to Brown A0403008