

Decision 09-12-044 December 17, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Southern California Edison Company
(U 338-E) for a Certificate of Public
Convenience and Necessity Concerning
the Tehachapi Renewable Transmission
Project (Segments 4 through 11).

Application 07-06-031
(Filed June 29, 2007)

**DECISION GRANTING A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY FOR THE
TEHACHAPI RENEWABLE TRANSMISSION PROJECT
(SEGMENTS 4-11)**

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**DECISION GRANTING A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY FOR THE
TEHACHAPI RENEWABLE TRANSMISSION PROJECT
(SEGMENTS 4-11)**

1. Summary

This decision grants the application of Southern California Edison Company (SCE) for a Certificate of Public Convenience and Necessity (CPCN) to construct the Tehachapi Renewable Transmission Project (Segments 4-11) (Project) using the Environmentally Superior Alternative, and subject to the mitigation measures and other conditions, described herein. SCE shall file an advice letter after final route selection and final engineering regarding the maximum reasonable and prudent cost (“maximum cost”) of the Project

The Project is a portion of the Tehachapi Renewable Transmission Project (TRTP). The TRTP is designed to provide access to up to 4,500 megawatts (MW) of renewable energy generation, primarily wind energy, from the Tehachapi Wind Resource Area in Kern County and to deliver it to load in Los Angeles and San Bernardino counties. We approved Segment 1 in Decision (D.) 07-03-012 and Segments 2-3 in D.07-03-045, which together form the Antelope Transmission Project (ATP), which will deliver approximately 700 MW of the total TRTP carrying capacity.¹ The ATP is currently under construction, and the first portions were energized this year.

¹ For purposes of this decision, we will use “TRTP” to refer to Segments 1-11 collectively, the “Project” to refer to Segments 4-11 and “ATP” to refer to Segments 1-3.

A statutory framework governs our review of this application. Pursuant to Pub. Util. Code § 1001,² before granting a CPCN we must find a need for the Proposed Project or an alternative evaluated in this proceeding. Section 1002(a) requires that we consider four additional factors: community values; recreational and park areas; historical and aesthetic values; and influence on the environment.

However, § 399.2.5 states that notwithstanding these provisions, an application for a CPCN is deemed necessary if the Commission finds “that the new facility is necessary to facilitate achievement of the renewable power goals established” under the Public Utilities Code. In a prior decision, D.07-03-012, the Commission established a three-prong test for reliance upon § 399.2.5: “(1) that a project would bring to the grid renewable generation that would remain otherwise unavailable; (2) that the area within the line’s reach would play a critical role in meeting the RPS goals; and (3) that the cost of the line is appropriately balanced against the certainty of the line’s contribution to economically rational RPS compliance.”³

SCE has demonstrated that it meets all three of these elements and therefore has established need for the Project.

While application of § 399.2.5 results in a determination of the need for the Project, § 1002 is relevant in determination of the specific route selected for the Project.

² Unless otherwise expressly stated, all references to statutes are to the California Public Utilities Code.

³ D.07-03-012 at 16. RPS refers to Renewables Portfolio Standards.

The review process established by the California Environmental Quality Act (CEQA)⁴ has been the primary means of environmental review. CEQA requires a lead agency to identify and study potentially feasible alternatives and mitigation measures to reduce a project's significant environmental impacts. As the public agency with the greatest responsibility for approving the project, the Commission is the lead agency pursuant to CEQA and is responsible for preparation of an environmental impact report (EIR) in compliance with CEQA. As part of our review, we have evaluated the environmental impacts of the Proposed Project, eleven alternatives (five proposed by the City of Chino Hills), and a No Project Alternative.

The Final EIR identifies an Environmentally Superior Alternative, which we find to be feasible and consistent with the application of § 1002, and adopt herein as the approved route for the Project.⁵ Although the Environmentally Superior Alternative results in significant environmental impacts that cannot be mitigated, we find below that there are substantial benefits that outweigh those impacts and which constitute overriding considerations under CEQA.

⁴ Pub. Res. Code § 21000, *et seq.* CEQA and its federal counterpart, the National Environmental Policy Act (NEPA, 42 USC § 4321, *et seq.*) require the preparation, respectively, of an environmental impact report (EIR) and an environmental impact statement (EIS) to identify alternatives to the proposed project, the potentially significant effects on the environment of the proposed project and its alternatives, and to indicate the manner in which those significant environmental effects can be mitigated or avoided.

⁵ These alternatives are described in detail in Sections 6.3.1 and 7.3 herein.

2. Background

2.1. Procedural History

This proceeding commenced on June 29, 2007, when SCE filed Application (A.) 07-06-031 (Application), its request for a CPCN for authority to construct the Project, which included its Proponent's Environmental Assessment (PEA).

Protests were filed by the Commission's Division of Ratepayer Advocates (DRA); the Acton Town Council (Acton); Aero Energy LLC; the City of Chino Hills, California (Chino Hills); Richland Communities, Inc.; STG Communities II, LLC; and the Watershed Conservation Authority, all of which have been granted party status either at the PHC or by separate ruling. In addition, comments were filed by Californians for Renewable Energy, Inc. (CARE);⁶ the City of Chino, California; the City of Ontario, California; the San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy; Vincent Hill Community Alliance; and the Wildlife Corridor Conservation Authority.

On August 27, 2007, Administrative Law Judge (ALJ) Victoria S. Kolakowski held a Prehearing Conference in Pasadena, California, with Assigned Commissioner Dian M. Grueneich in attendance. A Scoping Memo issued after the Prehearing Conference, as required by statute.⁷ The Scoping Memo established the scope of this proceeding and the schedule, coordinating the CPCN review with the timeline for the concurrent, parallel track CEQA/NEPA review. The Scoping Memo also designated ALJ Kolakowski as the presiding officer.

⁶ This proceeding has two organizations with the acronym CARE. We will refer to Californians for Renewable Energy, Inc. as "CARE" and the Citizens for Alternative Routing of Electricity, a group of Chino Hills residents, as "Citizens."

⁷ *Assigned Commissioner and Administrative Law Judge's Joint Scoping Memo and Ruling (Scoping Memo)*, March 17, 2009.

A Public Participation Hearing (PPH) was held in Chino Hills on March 19, 2009, with 50 individuals presenting testimony and attended by approximately 400 people. Commissioner Grueneich attended, along with representatives of the other Commissioners.

The schedule was revised in a ruling on April 1, 2009 at the request of Chino Hills, to grant additional time to prepare for evidentiary hearings.

Additional parties entered the proceeding after the issuance of the Scoping Memo and PPH. Aerojet-General Corporation (Aerojet), California State Parks Foundation (CSPF) and Hills for Everyone (HFE) were granted party status in a ruling dated April 29, 2009. ALJ Kolakowski notified the service list on May 14, 2009 that Puente Hills Landfill Native Habitat Preservation Authority (Puente Hills) would be granted party status; a ruling memorializing this determination and addressing other procedural matters issued on June 19, 2009.

Ten days of evidentiary hearings were held in July 2009. Parties filed a round of Opening and Reply Briefs following the evidentiary hearings.⁸

The Proposed Decision issued on November 3, 2009. Alta Windpower, LLC (Alta) filed a motion for party status on November 12, 2009, which was granted in an electronic mail message on November 16, 2009.

An En Banc Meeting and separate Final Oral Argument (FOA) were held on November 20, 2009, after which the proceeding was submitted for final decision.

⁸ The following parties filed briefs: (1) Opening Briefs (on or about September 1, 2009): Acton, Aerojet, CARE, Chino Hills, DRA, HFE, Puente Hills and SCE; and (2) Reply Briefs (on or about September 15, 2009): Acton, Aerojet, CSPF, Chino Hills, DRA, HFE, Puente Hills and SCE.

3. Standard of Review and Governing Law

3.1. Burden of Proof

As the Applicant, SCE must demonstrate a need for the Commission to issue the CPCN.⁹ The utility “has the burden of affirmatively establishing the reasonableness of all aspects of its application. Intervenors do not have the burden of proving the unreasonableness of [the utility’s] showing.”¹⁰

Evidence Code § 115 defines burden of proof as follows:

“Burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact ... The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing evidence, or by proof beyond a reasonable doubt.

Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

The preponderance of the evidence is generally the default standard in civil and administrative law cases and we apply that standard in this decision.¹¹

3.2. Section 1001 et seq.

Section 1001 et seq. establishes the framework for a typical CPCN application. The components of that framework are §§ 1001 and 1002(a). Under these provisions, before we can authorize a CPCN, § 1001 mandates that we find

⁹ *Investigation into Methodology for Economic Assessment of Transmission Projects*, D.06-11-018 at 22 [“The Commission has long held that the applicant carries the burden of proof in a certification proceeding, and we reiterate those determinations today.”].

¹⁰ *Southern California Edison Test Year 2006 General Rate Application*, D.06-05-016 at 7.

that the “present or future public convenience and necessity require or will require its construction.” In reaching that ultimate determination, § 1002(a) mandates that we consider four factors: community values; recreational and park areas; historical and aesthetic values; and influence on the environment. The Commission has concluded that § 1002 imposes a “responsibility *independent of CEQA* to include environmental influences and community values in our consideration of a request for a CPCN.”¹² The Commission has determined that the fourth factor – consideration of a project’s “influence on the environment” – is appropriately addressed through the CEQA process.¹³

3.3. Section 399.2.5

Transmission projects that facilitate achieving the state’s renewables portfolio standards (RPS) goals are held to a different standard of need than other transmission projects. Section 399.2.5(a)¹⁴ states that applications for a CPCN for new transmission facilities “shall be deemed necessary to the provision of electrical service for purposes of any determination made under § 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established” in the RPS regulations.

¹¹ California Administrative Hearing Practice, 2d Edition (2005), 365.

¹² *Application of Southern California Edison for CPCN for Kramer-Victor Transmission Line*, (1990) 37 CPUC2d 413, 453.

¹³ *Application of Lodi Gas Storage for CPCN for Gas Storage Facilities*, D.00-05-048, 28 [“[T]he appropriate place for the parties to address [the issue of a project’s influence on the environment] was in the EIR, so that the parties would not duplicate their efforts in both portions of the proceeding.”].

¹⁴ Section 399.2.5 was previously numbered Section 399.25.

A finding that the Project is necessary to achieve the state's RPS goals will serve as a definitive determination of need under §§ 1001 *et seq.*, and will render further consideration of need based upon reliability or economic factors moot.

The Commission considered the application of § 399.2.5 in D.07-03-012. That decision recognized the extraordinary nature of the application of this provision, and established a three-prong test for reliance upon § 399.2.5: "(1) that a project would bring to the grid renewable generation that would remain otherwise unavailable; (2) that the area within the line's reach would play a critical role in meeting the RPS goals; and (3) that the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance."¹⁵

We apply that three-prong test to the Project herein. As demonstrated below, the Project satisfies all three prongs, and meets the standard of review required under § 399.2.5.

4. Need Pursuant to Section 399.2.5

4.1. Need Determination in this Case is for the Entire Project and Not Individual Segments

A preliminary issue is presented by Acton's Opening Brief. One of Acton's primary arguments is that "substantial portions of the proposed TRTP project are NOT actually necessary to achieve the TRTP project objectives"¹⁶ and that "substantial portions of the TRTP project do not qualify for approval under PUC 399.2.5."¹⁷ This raises a key threshold question: do the elements demonstrating

¹⁵ D.07-03-012 at 16.

¹⁶ Acton's Opening Brief at 2.

¹⁷ Acton's Opening Brief, heading for Section 3.0 at 13.

need apply to the entire Project taken as a whole, or to the individual elements or segments of the Project?

SCE presented three major arguments for why an element-by-element analysis would be both impossible and contrary to our stated policies: (1) neither the language of § 399.2.5 nor of the three-prong test in D.07-03-012 suggest such an analysis; (2) it is impossible to implement a requirement that all elements of the project solely serve renewable generation under Federal Energy Regulatory Commission (FERC) regulations and would violate the CAISO's Tariff; and (3) the Commission has stated a pro-active policy supporting transmission development to serve the Tehachapi Wind Resource Area (TWRA).¹⁸

While SCE is correct that the explicit language of § 399.2.5 and of D.07-03-012 does not describe an element-by-element analysis, neither does it foreclose such an analysis. Inherent in both authorities is an expectation that the transmission project legitimately facilitates the state's RPS goals. Section 399.2.5 cannot be used as a regulatory shortcut to find need for transmission facilities that are not legitimately related to delivery of renewable generation simply by attaching those facilities to an otherwise necessary transmission project. Therefore, we are reluctant to adopt a comprehensive statement that individual elements cannot be separately reviewed.

However, in this case there is sufficient evidence in the record to support a finding that all of the elements are part of a whole project, and that individual elements cannot be easily removed without disrupting the entire project. The transmission grid is a complex and interrelated network of facilities that must be

¹⁸ SCE's Reply Brief at 11-17; D.04-06-010. See also D.07-03-012 and D.07-03-045.

appropriately balanced in terms of a variety of factors, including power flow, transient stability, and reactive voltage support.¹⁹ The California Independent System Operator Corporation (CAISO) approved the Project in its entirety, after performing detailed electrical studies of the Project.²⁰ SCE's witness Chacon testified that all elements were necessary to the entire Project.²¹ Acton did not provide testimony on these technical factors to contest this evidence or to validate the electrical reliability of its proposed alternative (known as "TRTP Light").

Based upon the evidentiary record before us, we find that all of the elements of the Project comprise a connected whole, and that an element-by-element need determination is inappropriate in this case.²² However, Acton's arguments regarding potential overbuilding of the Project is considered under the third prong of the test.

4.2. The Three Prong Test of D.07-03-012

As noted above, D.07-03-012 set forth three factors or prongs, each of which must be found in order for the Commission to apply § 399.2.5: "(1) that a project would bring to the grid renewable generation that would remain otherwise unavailable; (2) that the area within the line's reach would play a critical role in meeting the RPS goals; and (3) that the cost of the line is appropriately balanced

¹⁹ See SCE's Reply Brief at 24 for a discussion of studies of some of the factors.

²⁰ Application at 2; SCE's Reply Brief at 18, citing the CAISO's Board of Governors' Approval of the Tehachapi Renewable Transmission Project (January 18, 2007), of which we take official notice pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure.

²¹ Hearing Transcript at 752:12-16.

²² Any alternative studied and considered in the environmental process has been reviewed to determine whether it meets the electrical needs of the project and those which do not meet those needs have been screened out.

against the certainty of the line's contribution to economically rational RPS compliance."²³ We consider each of these factors in sequence below.²⁴

DRA has proposed specific revisions to the test.²⁵ SCE recommends that these revisions be considered in a separate proceeding to allow all interested stakeholders to respond,²⁶ and we agree that the revisions of the test should be handled in a more general proceeding with broader participation.

4.2.1. Project Brings Otherwise Unavailable Renewable Generation to the Grid

SCE presents four major arguments in support of the Project fulfilling the first prong of the test, "that a project would bring to the grid renewable generation that would remain otherwise unavailable:"

- (1) the Commission's prior decisions regarding the TWRA support this conclusion, citing in particular D.04-06-010, D.04-12-007 and D.08-03-012;²⁷
- (2) the Commission's Energy Division (ED) staff's "33% Renewables Portfolio Standard Implementation Analysis Preliminary Results" report issued in June 2009 (33% RPS Staff Report) supports this conclusion;²⁸

²³ D.07-03-012 at 16.

²⁴ CARE questions the need for the TRTP on a holistic basis, arguing that SCE has not demonstrated that transmission is needed to support the renewable projects that it contends meet the "least-cost, best" fit requirements of § 399.14(3) (CARE's Opening Brief at 4). This and similar arguments in CARE's Opening Brief comprise collateral attacks on Commission approved RPS contracts and RPS procurement plans and are outside of the scope of this proceeding.

²⁵ DRA's Opening Brief at 6-8.

²⁶ SCE's Opening Brief at 10.

²⁷ SCE's Opening Brief at 6-7.

²⁸ SCE's Opening Brief at 8-9. This report is in the evidentiary record as CARE-03.

- (3) regional transmission agencies have repeatedly concluded that TRTP is needed to interconnect renewable energy to the grid, citing reports of the California Energy Commission (CEC), the CAISO, and the Tehachapi Collaborative Study Groups;²⁹ and
- (4) the CAISO interconnection queue for the TWRA area demonstrates this need.³⁰

DRA agrees that the Project meets this prong of the test, but disagrees with SCE's reliance upon the CAISO interconnection queue as being appropriate for this test "because it provides little or no indication of the project's viability, financing status, developer experience, or contract status."³¹ DRA instead relies upon Commission-approved RPS contracts, which it contends provide "a far better indicator of the amount of renewable generation that the TRTP would bring to the grid."

DRA notes that the Commission has approved nine RPS contracts that are estimated to produce a maximum of approximately 2300 megawatts (MW) of renewable energy to the grid.³² DRA argues that without additional transmission

²⁹ SCE's Opening Brief at 11-19. Official notice is taken of the CEC's 2007 Strategic Transmission Investment Plan at <http://www.energy.ca.gov/2007publications/CEC-700-2007-018/CEC-700-2007-018-CMF.PDF>; the CEC's 2005 Integrated Energy Policy Report at <http://www.energy.ca.gov/2005publications/CEC-100-2005-007/CEC-100-2005-007-CMF.PDF>; the First Tehachapi Collaborative Study Group Report (2005) at <http://docs.cpuc.ca.gov/Published/Graphics/48819.pdf> the Second Tehachapi Collaborative Study Group Report (2006) at <ftp://ftp.cpuc.ca.gov/tehachapi/>; the CAISO South Regional Transmission Plan for 2006 at <http://www.aiso.com/18db/18dbaedf2cca0.pdf>; and the RETI, Phase 1B Final Report at <http://www.energy.ca.gov/reti/documents/index.html>.

³⁰ SCE's Opening Brief at 9-11.

³¹ DRA's Opening Brief at 3.

³² Exhibit DRA-1 at 3-4.

capacity beyond the 700 MW provided by the ATP, 1590 MW of renewable generation would otherwise be unavailable if the Project was not constructed.³³

DRA's rationale is simple and compelling, and we find that the TRTP is necessary to access Commission-approved renewable resources, and therefore, reaffirm our prior decisions and find that the Project meets the first prong of the test. We do not reach the question of under what circumstances an applicant can rely upon the CAISO interconnection queue for determining need under § 399.2.5.

Acton does not dispute that the TRTP may access 4,500 MW of renewables, but has raised questions regarding whether: (1) significant portions of the capacity will actually serve non-renewable resources, such as the Palmdale Hybrid Power Plant, which may provide 570 MW of conventional generation along with 50 MW of renewables;³⁴ and (2) whether other proposed transmission projects may divert some of these renewables to northern California, thereby reducing the need to transfer them south.

Acton is correct that under FERC tariffs, all transmission is open access, and therefore is committed on a first-come, first-served basis. Nevertheless, the tests under § 399.2.5 and under the three-prong test of D.07-03-012 do not preclude non-renewable resources using the new transmission line. The key is whether the new transmission line is needed to prudently access new renewable resources that are important to the state's RPS needs, and not whether other resources may also be accessed.

³³ DRA's Opening Brief at 4.

³⁴ Acton's Opening Brief at 14.

Acton has raised questions about the impacts of future projects, both related and unrelated to the Project. Those hypothetical projects need to be considered on their own merits, and are too speculative to be considered here.

4.2.2. The Area Within the Project's Reach Plays a Critical Role for Meeting RPS Goals

SCE relies upon its existing Commission-approved RPS contracts in support of the Project fulfilling the second prong of the test, "that the area within the line's reach would play a critical role in meeting the RPS goals."³⁵

DRA argues that the Commission already has determined that the TWRA plays a critical role in meeting the state's RPS goals by approving Segments 1-3 in D.07-03-012 and D.07-03-045, and that the key remaining question is whether the additional increment of transmission capacity provided by the Project plays a critical role in meeting the RPS goals.³⁶ It contends that the increment can be defined either as the net new delivery capacity (4,500 MW less 700 MW for Segments 1-3) or the net RPS contracts not served by Segments 1-3 (2290 MW less 700 MW), and notes that under either definition, the Project plays a critical role.³⁷

SCE and DRA have demonstrated that the area within the Project's reach plays a critical role in meeting California's RPS goals, and therefore we find that the second prong of the test is satisfied.

³⁵ SCE's Opening Brief at 16-17.

³⁶ DRA's Opening Brief at 4.

³⁷ DRA's Opening Brief at 4.

4.2.3. Cost of the Line is Appropriately Balanced Against the Certainty of the Line's Contribution to Economically Rational RPS Compliance

SCE primarily relies upon many of the same authorities as the first prong in its analysis of the third prong, "that the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance." More specifically, SCE argues that the CAISO has approved the TRTP, that the CEC's 2007 Strategic Transmission Investment Plan Commission Report found the TRTP to be one of five strategically important transmission projects, and that the Renewable Energy Transmission Initiative (RETI) Phase 1B Report showed the TWRA to be one of the most economically viable locations for providing new renewable resources with minimal environmental impacts.³⁸

DRA compared the cost of the Project to the ATP and to San Diego Gas & Electric Company's (SDG&E) Sunrise Powerlink Transmission Project (Sunrise Powerlink Project), and concluded that the Project was more cost effective on a dollar per MW basis than those other projects. In addition, DRA notes that with nine Commission-approved RPS contracts, that the area will likely "eventually provide access to a significant level of renewable energy."³⁹

DRA has raised a concern about the Project, noting that a single contract to Alta accounts for about two-thirds of the currently approved contracted power. DRA recommends conditioning the CPCN on a requirement that SCE provide a "construction trigger" on the CPCN per the discussion in D.06-06-034, in which the Commission concluded that the decision of whether to apply such a

³⁸ SCE's Opening Brief at 17-19.

³⁹ DRA's Opening Brief at 5.

construction trigger should be determined on an application-by-application basis.⁴⁰

DRA's concerns are understandable, but we will not provide a construction trigger on the CPCN. First, the potential resources of the TWRA are large enough that even the failure of the Alta contract would not prevent other developers from tapping into this potential. Second, it would be inappropriate to condition the CPCN, even if indirectly, upon the actions of a single third-party developer, as that could bestow undue power onto that developer to delay the Project. Finally, we are concerned that such a trigger may impact the financing of the Project, and the record does not demonstrate that a potential impact on financing is outweighed by other considerations.

Acton challenges the cost-effectiveness of the Project, because Segments 6 and 11 will be built to 500 kV standards and will mostly be operated at 220 kV.⁴¹ SCE has testified that they are building these segments at this level to avoid constructing a line that they may eventually need to tear down and construct at 500 kV.⁴² Acton contends that this is wasteful and that there is no proof that additional capacity will ever be needed. Acton believes that the transmission requirements to access the generation potential of the TWRA is overstated because prior studies do not properly consider the complementary generation characteristics of solar and wind generation. Also, Acton argues that Pacific Gas and Electric Company's proposed Central California Clean Energy Transmission

⁴⁰ DRA's Opening Brief at 5-6.

⁴¹ Acton's Opening Brief at 8.

⁴² See SCE's Reply Brief at 25-26; Hearing Transcript at 1274:25-28.

Project transmission project will access the TWRA and thereby deplete the remaining capacity of the TWRA.⁴³

The transmission lines of Segments 6 and 11 at issue pass through the Angeles National Forest (ANF). Construction in the ANF is particularly difficult due to terrain, requiring significant use of helicopters and potentially impacting biologically sensitive areas. Weighing the costs and benefits of additional structures to ensure relatively simple access to additional transmission capacity to access the TWRA against the difficulties of tearing down and rebuilding these lines, we conclude that SCE's proposal to build these segments to accommodate possible operation at 500 kV is reasonable and prudent.

In light of the above, we find that the cost of the Project is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance, and the third prong of the test is satisfied.

4.2.4. The TRTP Satisfies the Three Prong Test

The Project has satisfied each of the three separate prongs or elements of the test for application of § 399.2.5 set forth in D.07-03-012, and therefore we find that the Project is necessary to facilitate achievement of the renewable power goals set forth in § 399.11 et seq. Hence, under § 399.2.5, the Project is deemed to be necessary.

4.3. Factors Considered Under Section 1002

Section 399.2.5 explicitly supersedes § 1002 in determinations of need for a CPCN.⁴⁴ Nevertheless, parties were permitted to enter testimony regarding those

⁴³ Acton's Opening Brief at 9.

⁴⁴ Section 399.2.5 begins "Notwithstanding any other provision in Section 1001 to 1013, inclusive..."

elements of § 1002 not otherwise considered under CEQA, i.e., community values. Upon review of this testimony, we conclude that those other factors do not outweigh the need for the Project.⁴⁵

It would be almost impossible to construct a transmission line of this length and capacity without impacting either residential communities or public lands set aside for conservation purposes. However, one of the key siting criteria used for determining potential routes for the Project was to maximize use existing rights-of-way (ROW) that already contain transmission lines, to minimize such impacts, consistent with statutory state policies known as the “Garamendi Principles.”⁴⁶

The Garamendi Principles are statewide transmission siting policies that encourage the use of existing ROW by upgrading existing transmission facilities where technically feasible and economically justifiable.⁴⁷

The Legislature and the Governor have also determined that development of renewable resources is vital to the environment of California and to address greenhouse gas problems. In the 33% RPS Staff Report, ED staff has identified the need for four new transmission lines, including the TRTP, to meet the existing 20% RPS goals.⁴⁸ Any individual community’s preference to avoid development

⁴⁵ See Section 7.3, discussing § 1002 in the context of determining the specific route selected for the Project.

⁴⁶ SCE-16 contains excerpts from the CEC Strategic Transmission Investment Plan of November 2007, referenced in fn. 29 above, which cites and applies the Garamendi Principles.

⁴⁷ Cal. Code of Regs. tit. 20, § 2320.

⁴⁸ “33% Renewables Portfolio Standard Implementation Analysis Preliminary Results” (June 2009) at 6-7.

of transmission infrastructure in its boundaries cannot outweigh these important statewide policy goals and the need for the Project.

This is consistent with our decision regarding the CPCN for SDG&E's Sunrise Powerlink Project, D.08-12-058, in which we found that the state statutes preserving wilderness areas such as the Anza-Borrego State Park embody community values under § 1002.⁴⁹

5. Environmental Review Process

Given the magnitude of the Project, Commission staff determined early on that the Proposed Project had the potential to have a significant impact on the environment, requiring preparation of an EIR. Many of the issues raised by protestants are within the scope of the environmental review, and were considered within the environmental review process described below.

Section 1002 issues concerning "influence on the environment" were addressed through the environmental review process. Matters considered as part of the environmental review process were not be the subject of separate written testimony or evidentiary hearings in this proceeding, having been considered fully within the environmental review process.

5.1. California Environmental Quality Act (CEQA)

The Commission is the lead agency for purposes of preparing an EIR in compliance with CEQA.⁵⁰

An EIR is an informational document designed to provide other governmental agencies and the public in general, with detailed information about

⁴⁹ D.08-12-058 at 205 and FOF 24.

⁵⁰ Pub. Res. Code § 21000, *et seq.*

of the environmental impacts of the proposed project, to indicate alternatives to the proposed project, and to identify ways in which significant impacts of the proposed project and alternatives can be minimized. The Final EIR has been admitted into the formal record as Reference Exhibit 3.

The environmental issue areas evaluated in the EIR include agricultural resources, air quality, biological resources, cultural resources, geology, soils and paleontology, hydrology and water quality, land use, noise, public service and utilities, socioeconomics, traffic and transportation, visual resources, wilderness and recreation, wildfire prevention and suppression, and electrical interference and hazards.

In addition to identifying mitigation measures, the EIR evaluates alternatives to the proposed project including alternative routes, the “no project” alternative, alternative system designs (i.e., undergrounding), and alternative construction methods (i.e., increased use of helicopters).

In response to comments received on the Draft EIR/EIS, the Final EIR has been revised to include the analysis of a modified version of Alternative 4C, discussed below, and to incorporate new information published by the CAISO regarding the need for Segment 8B (for all alternatives). The Final EIR also contains all comments received on the Draft EIR/EIS and written responses to all comments.

Additionally, the Final EIR addresses the recent Station Fire (August - October 2009), which affected portions of Segments 6 and 11 of the

project, primarily in the ANF.⁵¹ The Final EIR evaluates whether any changed conditions caused by the fire would result in new significant project-related environmental effects or call for new or revised mitigation measures.⁵² This evaluation identifies minor modifications to mitigation measures to address certain effects created by the fire but concludes that there are no changed conditions caused by the Station Fire that require a recirculation for public review pursuant to CEQA.⁵³

In making its final determination on the application, the Commission considers the information contained in the Final EIR as well as in the formal evidentiary record of this proceeding.

CEQA requires that, prior to approving the project or a project alternative, the lead agency certify that the EIR was completed in compliance with CEQA, that it reviewed and considered the EIR prior to approving the project or a project alternative, and that the EIR reflects the lead agency's independent judgment.⁵⁴ The Commission cannot approve a proposed project or alternative unless it requires the project proponent to eliminate or substantially lessen all significant effects on the environment where feasible, and determines that any remaining significant effects found to be unavoidable are acceptable due to overriding considerations.

⁵¹ The Station Fire, the largest in the history of Los Angeles County, started on the ANF on August 26, 2009. The fire was declared contained on October 16, 2009, just prior to the publication of the Final EIR.

⁵² See Final EIR, Appendix L.

⁵³ See CEQA Guidelines § 15088.5.

⁵⁴ Pub. Res. Code § 21082.1(c)(3), CEQA Guidelines § 15090.

5.2. National Environmental Policy Act (NEPA)

Because the Proposed Project or its alternatives would cross approximately 42 miles of federal-jurisdictional lands within the National Forest System, the United States Forest Service (USFS) is responsible for approval of that portion of the Proposed Project. As the federal lead agency under NEPA,⁵⁵ the USFS is responsible for preparation of an environmental impact statement (EIS). The United States Army Corps of Engineers (USACE) is a cooperating agency under NEPA, because the Proposed Project or its alternatives would cross USACE land.

In order to encourage a greater level of efficiency in reviewing this project request, USFS and the Commission prepared a joint Draft EIR/EIS.⁵⁶ This is both allowed and encouraged under state and federal law. Consistent with its normal protocols, USFS is conducting a detailed review of the impacts of the recent Station Fire and will determine how to proceed upon completion of that review. The USFS will not issue its Final EIS or Record of Decision (ROD) until that review is complete. The Commission and the USFS have agreed that this further review of post-fire conditions by the USFS does not need to delay the Commission's separate decision on the proposed Project.

5.3. Electro-magnetic Fields (EMF)

The Commission's General Order (GO) 131-D contains rules relating to the planning and construction of electric facilities. Section X of GO 131-D requires that the applicant for a CPCN describe the measures taken or proposed by the

⁵⁵ 42 USC § 4321, *et seq.*

⁵⁶ We will refer to the package of Draft EIR/EIS, Final EIR, and other associated environmental documents issued as part of the environmental review collectively as the "EIR/EIS."

utility to reduce the potential exposure to Electro-magnetic Fields (EMFs) generated by the proposed facilities.

5.4. Environmental Review History

On August 31, 2007, the Commission and USFS issued their Notice of Preparation/Notice of Intent (NOP/NOI) for an EIR/EIS for the Project.⁵⁷ The NOP/NOI describes potential environmental effects of the proposed project and alternatives that were evaluated through the EIR/EIS process.

The Draft EIR/EIS was issued on February 6, 2009, and for purposes of NEPA, was noticed in the Federal Register on February 13, 2009. The public comment period on the Draft EIR/EIS ended on April 6, 2009.

The Final EIR was issued on October 30, 2009. It addresses the Station Fire in the ANF that impacted ROWs contained within the Project, and proposes mitigation measures that are equivalent or more effective than the existing mitigation measures, and therefore, do not require recirculation of the Final EIR.⁵⁸

6. The Environmental Review Process Applied to the TRTP

6.1. Project Objectives and Description

The purpose of the Project according to SCE's PEA is to provide the electrical facilities necessary to integrate levels of new wind generation in excess of the 700 MW transmitted by the ATP and up to a total of approximately 4,500 MW in the TWRA for the combined TRTP.⁵⁹

⁵⁷ The NOP, SCE's June 29, 2007 PEA, the Draft EIR/EIS and the Final EIR and other information about the environmental review process, are available at: ftp://ftp.cpuc.ca.gov/gopher-data/envIRON/tehachapi_renewables/TRTP.htm.

⁵⁸ Cal. Code of Reg., tit. 14, §§ 15088.5 and 15074.1(c).

⁵⁹ SCE's PEA at ES-1.

SCE also identified the following objectives for the Project in the PEA:⁶⁰

- Construct the project to reliably interconnect new wind generation resources in the TWRA, and enable SCE and other California utilities to comply with California's RPS programs in an expedited manner.
- Comply with all applicable reliability planning criteria required by the North American Electric Reliability Council (NERC), the Western Electricity Coordinating Council (WECC), and the CAISO.
- Construct facilities in an orderly, rational and cost-effective manner to maintain reliable electric service, by minimizing service interruptions, during construction.
- Address the reliability needs of the CAISO controlled grid due to projected load growth in the Antelope Valley.
- Address the South of Lugo transmission constraints, an ongoing source of concern for the Los Angeles Basin.
- Maximize the use of existing transmission line ROW in order to minimize effects on previously undisturbed land and resources.
- Minimize environmental impacts, through selection of routes, tower types and locations, while still meeting project objectives.
- Where existing ROW is not available, select the shortest feasible route that minimizes environmental impacts.
- Meet project needs in a cost-effective and timely manner.

In addition to the purpose of the Project described by SCE to provide electrical facilities needed to integrate new wind generation, the Project will also accomplish other important objectives related to increasing transmission system reliability in the Antelope Valley and resolving transmission constraints south of

⁶⁰ SCE's PEA at ES-1 to ES-3.

Lugo Substation, which is located in Hesperia, California. Therefore, for purposes of CEQA, the Project's three primary objectives are to:

- Provide the electrical facilities necessary to reliably interconnect and integrate in excess of 700 MW provided by the ATP and up to a cumulative total of approximately 4,500 MW of new wind generation in the TWRA currently being planned or expected in the future, thereby enabling SCE and other California utilities to comply with the California RPS goals in an expedited manner (i.e., 20 percent renewable energy by year 2010 per California Senate Bill 107).⁶¹
- Further address the reliability needs of the CAISO-controlled grid due to projected load growth in the Antelope Valley.
- Address the South of Lugo transmission constraints, an ongoing source of concern for the Los Angeles Basin.

Section 1.2.1 of the Final EIR provides background information on the RPS Requirements, the TWRA, Projected Load Growth and Transmission Constraints, and Executive Order 13212.

6.2. Description of the Studied Alternatives

The environmental documents studied eleven alternatives, including with SCE's Proposed Project (Alternative 2), five proposed by the Chino Hills (Alternatives 4A, 4B, 4C, 4CM and 4D) and the No Project/ Action Alternative (Alternative 1).

⁶¹ FERC Order No. 2003 requires all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to provide interconnection service to electric generating facilities having a capacity of more than 20 megawatts.

6.2.1. The Proposed Project (Alternative 2)

The Proposed Project (also denoted as Alternative 2 in the environmental documents) consists of a 173-mile transmission line crossing Southern California's Kern, Los Angeles and San Bernardino counties.⁶² For descriptive purposes, the Proposed Project is separated into eight distinct segments, referred to as Segments 4 through 11.⁶³ Segments 4 through 8, as well as Segments 10 and 11 of the Proposed Project are transmission facilities, while Segment 9 addresses the addition and upgrade of substation facilities.

The Proposed Project's major components include:

- Two new single-circuit 220-kilovolt (kV) transmission lines traveling in parallel approximately 4 miles over new right-of-way (ROW) to connect the proposed Cottonwind and Whirlwind Substations (the northern portion of Segment 4).
- A new single-circuit 500-kV transmission line, traveling approximately 15.6 miles over new ROW from the proposed Whirlwind Substation to the northern end of the previously approved Antelope - Vincent 500 kV transmission line (ATP) completing the circuit to Vincent Substation (i.e., Vincent - Whirlwind 500 kV transmission line).
- Replacement of approximately 17.4 miles of the existing Antelope-Vincent 220-kV transmission line and the existing Antelope-Mesa 220-kV transmission line with only one new transmission line built to 500-kV standards in existing ROW

⁶² See Draft EIR/EIS, Section 2.2 for a more complete description of the Proposed Project.

⁶³ Segments 1-3 comprise the Antelope Transmission Project, which was addressed in A.04-12-007 and A.04-12-008 and approved in D.07-03-012 and D.07-03-045, as modified in D.09-09-033.

between the existing Antelope Substation and the existing Vincent Substation (Segment 5).

- A rebuild of approximately 31.9 miles of existing 220-kV transmission line to 500-kV standards from the existing Vincent Substation to the southern boundary of the ANF. This segment includes the rebuild of approximately 26.9 miles of the existing Antelope-Mesa 220-kV transmission line and approximately five miles of the existing Rio Hondo-Vincent 220-kV No. 2 transmission line (Segment 6).
- A rebuild of approximately 15.8 miles of existing 220-kV transmission line to 500-kV standards from the southern boundary of the ANF to the existing Mesa Substation. This segment would replace the existing Antelope-Mesa 220-kV transmission line (Segment 7).
- A rebuild of approximately 33 miles of existing 220-kV transmission line to 500-kV standards from a point approximately 2 miles east of the existing Mesa Substation (the "San Gabriel Junction") to the existing Mira Loma Substation (Segment 8A). This segment would also include the rebuild of approximately 7 miles of the existing Chino-Mira Loma No. 1 line from single-circuit to double-circuit 220-kV structures (Segment 8B). A new circuit between Chino Substation and approximately 0.8 mile west of the Mira Loma Substation (6.4 miles) would also be installed on the new double-circuit 500-kV structures built as part of Segment 8A (Segment 8C).
- Construction of the new Whirlwind Substation, a 500/220-kV substation located approximately 4 to 5 miles south of the Cottonwind Substation near the intersection of 170th Street and Holiday Avenue in Kern County near the TWRA (part of Segment 9).⁶⁴

⁶⁴ It is anticipated that Cottonwind Substation will be permitted by Kern County and constructed by a wind developer.

- Upgrades to the existing Antelope, Vincent, Mesa, Gould, and Mira Loma Substations to accommodate new transmission line construction and system compensation elements (part of Segment 9).
- Construction of a new 500-kV transmission line traveling approximately 16.8 miles over new ROW between the new Windhub Substation⁶⁵ and new Whirlwind Substation (Segment 10).
- A rebuild of approximately 18.7 miles of existing 220-kV transmission line to 500-kV standards between the existing Vincent and Gould Substations. This segment would also include the addition of a new 220-kV circuit on the vacant side of the existing double-circuit structures of the Eagle Rock–Mesa 220-kV transmission line, between the existing Gould Substation and the existing Mesa Substation (Segment 11).
- Installation of associated telecommunications infrastructure.

6.2.2. West Lancaster Alternative (Alternative 3)

This alternative was suggested by members of the public prior to the scoping period.⁶⁶ It would re-route the new 500-kV transmission line in Segment 4 along 115th Street West in West Lancaster rather than 110th Street West. This 3.4-mile re-route would increase the overall distance of Segment 4 by approximately 0.4 mile; however, the number of overall structures would decrease by one due to greater spacing between structures compared to the Proposed Project.

⁶⁵ The construction of the Windhub Substation was approved in D.07-03- 045. It was referred to as Substation One in that decision.

⁶⁶ Portions of this Section appear in the DEIR/DEIS at 2-3 and 2-4.

New access and spur roads would need to be created in the area of the re-routed portion of Alternative 3. SCE would attempt to use existing roads to the extent possible and would only need to build new access or spur roads where the existing roads do not provide the required access. Operations and maintenance of Alternative 3, including transmission line and substation components, would be identical to the Proposed Project.

6.2.3. Chino Hills Alternatives (Alternative 4A, 4B, 4C, 4CM and 4D)

Five variations from the route in Segment 8A were suggested by Chino Hills (collectively, Alternative 4 routes). All five, to some extent, reroute the Project from the existing ROW in Chino Hills to the Chino Hills State Park (CHSP) and surrounding properties.

Four routes were considered in the DEIR/DEIS:⁶⁷

- Alternative 4A would place a new double-circuit 500-kV transmission line in Segment 8A through CHSP parallel to an existing double-circuit 220-kV transmission line. This alternative route would require construction of a new 500-kV switching station in CHSP, which would allow the new 500-kV transmission line to connect to existing 500-kV transmission lines located in this area that provide connections to the Mira Loma Substation.
- Alternative 4B represents a refinement to Alternative 4A, in which a new double-circuit 500-kV transmission line in Segment 8A would be routed completely through CHSP parallel to an existing double-circuit 220-kV transmission line. This alternative route would require construction of a new 500-kV switching station, which would be located east of and outside of the CHSP, and would allow the new

⁶⁷ These descriptions are found in the Final EIR at ES-8 and ES-9.

double-circuit 500-kV transmission line to connect to existing 500-kV transmission lines located in this area that provide connections to the Mira Loma Substation.

- Alternative 4C represents a refinement to Alternative 4A, in which a new double-circuit 500-kV transmission line in Segment 8A would be placed parallel to an existing double-circuit 220-kV transmission line up to CHSP (approximately 4.2 miles). At this point, this alternative route would turn east for approximately 1.5 miles, remaining just north of the CHSP boundary, to a new 500-kV switching station. A portion of the existing single-circuit 500-kV transmission lines within CHSP would be re-routed to tie into the new switching station, which would allow the new double-circuit 500-kV transmission line to connect to these existing 500-kV transmission lines to allow power flow to continue on to the Mira Loma Substation. In addition, a portion of the existing 220-kV transmission line within CHSP would be re-routed outside of CHSP, paralleling the new 500-kV transmission line from just west of the CHSP boundary to the new switching station, and would then re-enter CHSP paralleling the re-routed 500-kV transmission lines to reconnect with the existing 220-kV transmission line.
- Alternative 4D represents a refinement to Alternative 4A, in which a new double-circuit 500-kV transmission line in Segment 8A would be placed parallel to an existing double-circuit 220-kV transmission line up to CHSP (approximately 4.2 miles). At this point, the alternative route would turn east and proceed to follow the northern boundary of CHSP for approximately 4.2 miles, then just east of Bane Canyon the alignment would turn southeast and cut across CHSP for approximately 1.3 miles, at which point the new 500-kV transmission line would turn northeast to parallel the existing transmission lines for approximately 0.5 mile (outside CHSP) before terminating at a new 500-kV switching station located immediately east of the boundary of CHSP (same location as Alternative 4B). This switching station would allow the new double-circuit

500-kV transmission line to connect to existing 500-kV transmission lines located in this area to provide connections to the Mira Loma Substation.

6.2.3.1. Alternative 4CM

After the issuance of the DEIR/DEIS, Chino Hills proposed modifications to Alternative 4C. This modified alternative is referred to as Alternative 4C Modified (Alternative 4CM). Alternative 4CM is similar to the original Alternative 4C discussed above, with the exceptions that: (1) the new gas-insulated switching station would be located on Aerojet property approximately 2,500 feet northwest of the location proposed for the original Alternative 4C;⁶⁸ (2) transmission line configurations and access roads would be altered to account for relocation of the switching station; and (3) re-routing of the existing single-circuit 500-kV towers in CHSP to the new switching station would occur utilizing double-circuit 500-kV towers. As with the original Alternative 4C, Alternative 4CM would also diverge from the proposed Project Segment 8A at Mile 19.2, as well as re-route the existing 500-kV and 220-kV transmission lines from within CHSP, through a new switching station located north of CHSP.

6.2.3.2. The Aerojet Property

The Aerojet property is a designated "RCRA" facility that is subject to regulations by the California Department of Toxic Substances Control (DTSC) under the federal Resource Conservation and Recovery Act (RCRA) as an "RCRA facility."⁶⁹ The Aerojet property had previously been used for research and

⁶⁸ The exact location of the switching station has varied as Chino Hills continued to refine the proposal.

⁶⁹ Aerojet Opening Brief at 2.

development of explosives, and for loading, assembling and testing of ordinance for the U.S. Dept. of Defense from approximately 1954 to 1995.⁷⁰

The DTSC has not definitively resolved the issues of whether question of whether unexploded ordinance, known as “munitions and explosives of concern” (MEC) remains on the Aerojet Property in the portions that would be used by Alternative 4CM. The parties have offered differing opinion letters from DTSC in the evidentiary record regarding how long it would take to receive clearances from DTSC necessary to conduct construction activities on the Aerojet property.⁷¹

6.2.3.3. The Chino Hills State Park and the 21st Century Green Proposal

All of the Alternative 4 routes would impact the CHSP. There has been substantial disagreement amongst the parties regarding whether these routes are consistent with the CHSP General Plan. SCE notes that the California Department of Parks and Recreation (CDPR) filed comments in response to the DEIR/DEIS agreeing with the conclusions of the DEIR/DEIS that Alternative 4 is not consistent with the CHSP General Plan.⁷² Chino Hills argues that with implementation of the 21st Century Proposal (see below), Alternative 4 would be consistent with the CHSP General Plan.⁷³

⁷⁰ *Ibid.*

⁷¹ Exhibit Aerojet-8 states at least 11 months; Exhibit CH-84 states 45-60 days. The various timelines assume that no MEC is discovered at the site.

⁷² Exhibit SCE-24 at 4: “we concur with the DEIR/EIS conclusion that implementation of the Chino Hills Alternative 4 is not consistent with the Chino Hills SP General Plan and would be considered a significant and unavoidable impact (Class 1).”

⁷³ Chino Hills’ Opening Brief at 52-54.

The Chino Hills alternatives were supported in the environmental review process by the 21st Century Green Partnership (21st Century), a group founded by Chino Hills and Citizens. In August 2008, 21st Century proposed a package of measures (The 21st Century Proposal), which it claimed were designed to offset the environmental impacts of the Alternative 4 routes. The 21st Century Proposal has four components:

- Land acquisition to expand the CHSP (referred to by 21st Century as Bio-Corridor Expansion);
- Removal of certain existing transmission lines in the CHSP (referred to as View Shed Enhancements);
- Habitat restoration within the CHSP (referred to as Habitat Enhancements); and
- Funding for new personnel (referred to as Operational Enhancements).

The 21st Century Proposal was studied in the Draft EIR/EIS and Final EIR. As stated therein, we do not consider this proposal to constitute mitigation as defined by CEQA because the measures do not reduce or avoid any significant adverse impacts caused by the implementation of the Proposed Project or by the implementation of the five versions of Alternative 4.⁷⁴ Mitigation measures that are designed to improve existing conditions, as well as compensatory benefits unrelated to Project impacts, are outside the scope of CEQA.

More specifically:

- The land acquisition is not needed to mitigate Project impacts on biological resources, which are not significant;⁷⁵

⁷⁴ DEIR/DEIS at 5-44; Final EIR at 5-46.

⁷⁵ Final EIR at 5-47.

- The removal of the existing de-energized transmission lines in CHSP will be performed by SCE pursuant to an existing, legally binding settlement agreement, and therefore is not necessary as mitigation for Alternative 4.⁷⁶
- Habitat restoration to below baseline conditions is not appropriate mitigation under CEQA and does not reduce any impacts of either the Proposed Project or Alternative 4 as defined under the applicable thresholds of significance.⁷⁷
- Contributions of funds to unspecified future programs, improvements or actions is not appropriate mitigation under CEQA (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173; *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 141.)⁷⁸

The 21st Century Proposal is discussed further in Sections 7.3.1.2 and 7.3.3 herein.⁷⁹

6.2.4. Partial Underground Alternative (Alternative 5)

This alternative would utilize Gas-Insulated Line technology to place the proposed overhead lines underground along Segment 8A through the City of

⁷⁶ Final EIR at 5-48.

⁷⁷ Final EIR at 5-49.

⁷⁸ Final EIR at 5-50.

⁷⁹ Although Alternative 4CM was discussed extensively in the written testimony and during the evidentiary hearings, actual descriptions of the 21st Century Proposal in the evidentiary record are fairly limited. See Exhibit SCE-45 (3 pages); Exhibit SCE-57 (5 pages); Exhibit CH-05, pages 3 through 7; and Exhibit HFE-2, page 7, line 10 through page 8, line 6. Nothing in the evidentiary record provides an itemized breakdown of the specific land to be acquired, the habitat to be restored, or the personnel to be funded.

Chino Hills for approximately 3.5 miles to reduce significant visual impacts and address other community concerns.⁸⁰

6.2.5. Maximum Helicopter Construction in ANF Alternative (Alternative 6)

This alternative would utilize helicopter construction within the ANF to the maximum extent feasible.⁸¹ This alternative was requested by the USFS to reduce ground disturbance within the ANF by minimizing new road construction through the use of helicopter construction.

Helicopter staging/support areas have been identified in the vicinity of Segments 6 and 11 to provide for helicopter construction activities within the ANF. A total of 148 new 500-kV towers would be constructed by helicopter under this alternative: 92 along Segment 6 and 56 along Segment 11.

As with the proposed Project, Alternative 6 would traverse approximately 42 miles of USFS lands in the ANF and approximately 6.4 miles of lands that are owned by the USACE.

Invasive plant species will be surveyed for and controlled using manual techniques and approved herbicides within the Project area on USFS lands.

6.2.6. 66 kV Subtransmission Alternative (Alternative 7)

This alternative is comprised of four 66-kV subtransmission line elements, including the following: (1) Undergrounding the existing 66-kV subtransmission line on Segment 7 through the River Commons at the Duck Farm Project (Duck Farm Project) between MP 8.9 and MP 9.9 of Segment 7, in the planned Duck Farm Project area as requested by the Board of Supervisors County of Los

⁸⁰ This description is found in the Final EIR at ES-10.

⁸¹ This description is found in the Final EIR at ES-10.

Angeles to minimize the Project's effects to passive recreation opportunities in the planned Duck Farm Project area; (2) Re-routing and undergrounding the existing 66-kV subtransmission line around the Whittier Narrows Recreation area along Segment 7 (S7 MP 11.4 to 12.025) to provide habitat enhancement for least Bell's vireos as identified by SCE; (3) Re-routing the existing 66-kV subtransmission line through the Whittier Narrows Recreation Area in Segment 7 (S7 MP 12.0 to 13.6) immediately north of the existing 220-kV ROW to reduce the number of structures required (50-foot expanded ROW required); (4) Re-routing the existing 66-kV subtransmission line around the Whittier Narrows Recreation Area along Segment 8A between the San Gabriel Junction at MP 2.2 and S8A MP 3.8 (two routing options are provided in this area) to provide habitat enhancement for least Bell's vireos as identified by SCE.⁸²

As with the proposed Project, Alternative 7 would traverse 42 miles of USFS lands in the ANF; however, this alternative would also traverse roughly 7.9 miles of lands that are owned by the USACE, which is approximately 1.5 miles more USACE lands than the proposed Project or other Project alternatives.

6.2.7. No Project Alternative (Alternative 1)

Selection of the No Project/ Action Alternative would mean that the Project, as proposed, would not be implemented.⁸³ None of the associated Project activities would occur and the environmental impacts associated specifically with the proposed Project would not occur. For example, SCE's existing Antelope-Vincent 220-kV line and the existing Antelope-Mesa 220-kV line would remain in

⁸² This description is found in the Final EIR at ES-10.

⁸³ This Section appears in the DEIR/DEIS at 2-3 and 2-4.

place, as removal of these lines is specifically linked to construction of the proposed Project.

However, the objectives for the Project would remain unfulfilled under the No Project/ Action Alternative. For example, the electrical facilities necessary to reliably interconnect and integrate new wind generation in the TWRA that is currently being planned would not be constructed and therefore SCE and other California utilities may not be able to comply with California's RPS goals on schedule.

In the absence of the Project, SCE still would continue to operate and maintain the existing transmission structures, access, and spur roads for operations and maintenance purposes under a variety of agreements (with landowners and land managers) and permits (USFS and USACE). For example, within the ANF, approximately 80 miles of roads are currently being used to access the existing structures along Segments 6 and 11, which the use and maintenance of is authorized through existing roads permits issued by the USFS.

SCE would also be required to interconnect and integrate power generation facilities into its electric system, as required under Sections 210 and 212 of the Federal Power Act (16 U.S.C. § 824 [i] and [k]) and Sections 3.2 and 5.7 of the CAISO's Tariff. The Final EIR identifies two wind generation projects which had submitted applications to Kern County and others are in the advanced planning stage according to the CAISO Interconnection Queue and are expected to submit applications in the future.

Because of their location within SCE's service territory, these upcoming wind generation projects will need to interconnect to the SCE transmission system or find alternative means for transmitting their power to customers. These wind generation projects cannot be interconnected to the SCE transmission

system without new transmission infrastructure north of Antelope Substation to the TWRA and an increase in transmission capacity south of Antelope Substation. Transmission of power from the Antelope Valley area is currently constrained by the existing Antelope-Mesa 220-kV transmission line, which would be overloaded by the addition of new wind generation resulting in system-wide power flow and reliability problems due to overloading of the existing system, such as curtailed generation, thermal overload, and blackouts.

Therefore, without new transmission infrastructure (north of Antelope Substation) and upgrades to the existing system (south of Antelope Substation), SCE would not be able to interconnect new renewable generation facilities and therefore would not meet RPS requirements and the power needs of southern California.

Under the No Project Alternative, the following events or actions (scenarios) related to electricity generation and transmission are reasonably expected to occur in the foreseeable future:

- As currently conceived, some wind projects in the Antelope Valley and Tehachapi areas may require alternate means of transmitting their electricity, as SCE's capacity to transmit energy from the TWRA would be limited to the 700 MW already approved for the ATP. Any such alternative transmission projects would have to meet the same system reliability requirements.
- RPS goals may not be achieved as access to renewable energy from the Antelope Valley-Tehachapi region would either not be provided or would be delayed, and other sources of renewable energy would have to be developed.
- Other renewable energy resources would need to be identified and transmission studies would need to be conducted to connect these newly identified sources to the

transmission grid, which would likely further limit achievement of the RPS goal by the 2010 deadline.

- The conceptual plan recommended by the Tehachapi Collaborative Study Group would not be fully implemented. This plan is intended to collect power from Tehachapi area wind projects, interconnect facilities into the State's backbone grid, and upgrade the network to reliably deliver that power to load centers. The conceptual plan, which would allow for the transmission of over 4,000 MW of wind power, would not be fully achieved because as SCE's capacity to transmit energy from the TWRA would be limited to the 700 MW that would be carried under the ATP.
- Transmission providers such as SCE, PG&E, or Los Angeles Department of Water and Power would need to accommodate the power load by upgrading existing transmission infrastructure or building new transmission facilities along a different alignment and/or developers of wind generation facilities would need to build their own transmission facilities to connect to the transmission grid.
- The additional reliability needs of the CAISO-controlled grid due to projected load growth in the Antelope Valley would not be met and would have to be accommodated by other transmission upgrades to bring power into the area.
- The reliability issues of the existing Lugo-Mira Loma transmission lines within the Cajon Pass related to voltage collapse as a result of uncontrollable loss of load (in the event of wildfires or other natural disasters in the area) would persist.

As indicated above, under the No Project/ Action Alternative, some currently unspecified plan would need to be developed to provide the transmission upgrades necessary to interconnect renewable generation projects in the Tehachapi area and to also address the existing transmission problems south of Lugo Substation. Similarly, other yet unspecified transmission upgrades

would presumably be proposed in the future to provide the needed capacity and additional reliability to serve growing electrical load in the Antelope Valley. However, at this time, we do not know what alternative transmission might be proposed in the future to accomplish the project objectives if the Project is not implemented.

6.3. Findings of the Environmental Process

6.3.1. The Environmentally Superior Alternative

The EIR/EIS evaluated the various alternatives for each of the eight segments (4-11). The Final EIR identified Alternative 2, the Proposed Project, as the environmentally superior alternative for most of the segments. For Segment 4, it identified Alternative 3 (West Lancaster Alternative) as the environmentally superior alternative. For Segment 7, it identified Alternative 7 (66 kV Subtransmission Alternative) as the environmentally superior alternative. We agree with these conclusions.

For Segments 6 and 11, Alternative 6 (Maximum Helicopter Construction in the ANF Alternative) was determined to be the environmentally superior alternative. Ultimately, however, the preferred method for construction in the ANF would be site-specific and would involve a balancing of the effects on helicopter construction against ground-based construction on sensitive resources. For instance, in areas where road construction would result in unacceptable impacts to sensitive species, such as in the Lynx Gulch area, helicopter construction would be preferred to the degree that it would avoid or minimize such impacts. In other locations, road construction to accommodate construction vehicle access would be preferred to avoid the impacts associated with the establishment of helicopter staging areas. Therefore, the environmentally superior alternative for Segments 6 and 11 is a combination of the helicopter

construction and ground-based construction methods, with the total number of helicopter constructed towers falling within the range characterized by Alternative 2 and Alternative 6 (33 to 148 towers). The USFS will need to determine the specific combination of Alternative 2 and Alternative 6 features that provides the least overall impact to Forest resources. This is basically a decision as to which transmission structures would best be demolished and constructed by helicopter versus by conventional ground-based construction methods. As indicated in Final EIR Section 4.3.2, the environmentally preferable alternative will be identified by the Forest Service in its Record of Decision (ROD).

The combination of each of these environmentally superior alternatives for the eight segments shall be designated as the Environmentally Superior Alternative. We authorize this route in Section 7.3 below.

6.3.2. Significant Environmental Impacts Not Mitigated

Although the Environmentally Superior Alternative is the least environmentally damaging alternative, it does not mitigate all significant environmental impacts, as described below.⁸⁴

6.3.2.1. Air Quality

Construction of the Environmentally Superior Alternative would result in short-term impacts to ambient air quality. Daily construction emissions from the proposed Project and alternatives, including nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOC), particulate matter (PM₁₀) and fine particulate matter (PM_{2.5}), even after implementation of all feasible

⁸⁴ These impacts are described in the Final EIR at ES-11 to ES-14.

mitigation measures, would remain above the South Coast Air Quality Management District (SCAQMD) daily significance thresholds and the Antelope Valley Air Quality Management District (AVAQMD) daily significance thresholds (except for PM_{2.5} where there is no threshold recommended by AVAQMD). In addition, the NO_x and PM₁₀ emissions from Environmentally Superior Alternative would remain above the Kern County Air Pollution Control District (KCAPCD) daily significance threshold values. Therefore, the daily regional emissions from the Environmentally Superior Alternative would cause significant and unavoidable temporary impacts to air quality in these three jurisdictions.

There are many areas along the Environmentally Superior Alternative where construction would be located near residences, schools, or other sensitive receptors. Construction of the Environmentally Superior Alternative would cause localized emissions above the SCAQMD Localized Significance Threshold values even after mitigating to the maximum extent feasible; therefore, construction of the Environmentally Superior Alternative would have a significant and unavoidable temporary impact on local sensitive receptors.

6.3.2.2. Cultural Resources

Direct impacts to cultural resources from the Environmentally Superior Alternative may be avoided through minor design modifications, and effects would be reduced to a less-than-significant level by avoidance and protection measures. However, it is important to note that if direct impacts to National Register of Historic Places (NRHP) properties eligible under Criterion d (significant data potential) are unavoidable, mitigation through data recovery would reduce impacts. However, under the National Historic Preservation Act (NHPA) regulations, effects would still be considered adverse. Likewise, for

properties eligible for the NRHP under Criteria a, b, or c, application of mitigation measures may not reduce impacts to a less-than-significant level, and effects still would be considered adverse.

6.3.2.3. Noise

Construction noise from the Environmentally Superior Alternative would substantially increase ambient noise conditions for sensitive receptors and increase noise levels within 200 feet of construction activities along the proposed Project and alternative ROWs. During construction, noise levels would violate local standards. Although construction noise would be temporary and would be reduced by implementation of applicant-proposed measures (APMs) and mitigation measures, significant construction-related noise impacts cannot be reduced to a less-than-significant level.

Permanent noise levels along the ROW would increase due to corona noise from operation of the transmission lines and substations in the vicinity of sensitive receptors. Corona noise generated by the Environmentally Superior Alternative would not be in compliance with noise standards of Los Angeles County, and the Cities of Chino, Rosemead, South El Monte and Whittier. Since no feasible mitigation exists to reduce or eliminate the corona noise that would be generated by the Environmentally Superior Alternative, the increase in corona noise levels would result in a significant and unavoidable impact.

6.3.2.4. Visual Resources

Short-term visual impacts on landscape character and visual quality of landscape views as seen from various vantage points due to construction of the Environmentally Superior Alternative would be significant and unavoidable. There are no mitigation measures available to make vehicles, heavy equipment, helicopters, and other related components less visible during construction.

There is no mitigation available to make new transmission lines disappear or become inconspicuous as seen from the numerous vantage points from which the Environmentally Superior Alternative would be visible. The presence of new transmission line structures, conductors, access and spur roads, and new ROWs in landscapes that currently have no transmission line facilities would result in a significant and unavoidable adverse visual impact. However, the majority of the Project area would not experience this level of visual impact since structures already exist in many of the corridors, although impacts may still be considered significant due to the increase in structure size compared to the existing structures.

7. Certification of Final EIR, Project Authorization, Statement of Overriding Considerations, and Related Issues

7.1. Certification of Final EIR

Before approving an application for a CPCN, the Commission must certify the Final EIR.⁸⁵ The Final EIR includes the document “Revisions to the Final EIR”, which is appended hereto as Attachment 3, as a part of the overall Final EIR.

We hereby certify that:

- The Final EIR has been completed in compliance with CEQA.
- The Final EIR was presented to the Commission, and the Commission has received, reviewed, and considered the information contained in the Final EIR.
- The Final EIR reflects the California Public Utilities Commission’s independent judgment and analysis.

⁸⁵ CEQA Guidelines § 15090.

7.2. CEQA Findings of Fact

Based upon the Final EIR, we have prepared a set of CEQA Findings of Fact (CEQA Findings) pursuant to CEQA Guidelines § 15091 regarding each significant impact associated with the authorized alternative, appended to this decision as Attachment 1. We find that the CEQA Findings accurately reflect the independent analysis contained in the Final EIR and are supported by substantial evidence in the administrative record. We adopt them as Findings of Fact in this decision and incorporate them by reference herein.

7.3. Authorization of the Environmentally Superior Alternative

For the Commission to select an alternative other than the environmentally superior alternative identified in the Final EIR, we must find that an environmentally superior alternative is infeasible.⁸⁶ In this case, we authorize the environmentally superior alternative and, therefore, are not required to consider the feasibility of the other alternatives.

Additionally, we find that the Environmentally Superior Alternative satisfies the totality of the criteria under § 1002 as compared to other potentially feasible alternatives.

7.3.1. Section 1002 and the Environmentally Superior Alternative

Section 1002 guides us in our selection of an appropriate alternative. Section 1002 identifies four factors that shall be considered in granting a CPCN: (1) community values; (2) recreational and park areas; (3) historical and aesthetic values; and (4) influence on the environment.

⁸⁶ Public Res. Code § 21081(a)(3).

The only studied alternative to the Environmentally Superior Alternative which meets the basic project objectives and was the subject of active litigation in the evidentiary hearings by parties in this proceeding is Alternative 4CM, which is supported by Chino Hills. HFE supports Alternative 4CM with the caveat that it must be accompanied by the 21st Century Proposal.⁸⁷ Therefore, the Environmentally Superior Alternative is compared to Alternative 4CM herein.

7.3.1.1. Community Values

Community values may be instructive in determining a route amongst several alternatives, notwithstanding the discussion above regarding need.⁸⁸ In terms of the Project and the community of Chino Hills, there is a preference for Alternative 4CM over the Environmentally Superior Alternative.⁸⁹

However, as stated above in Section 4.3, there are overriding statewide values, e.g., the timely implementation of the state's RPS program, which outweigh the community values interest of Chino Hills in this case. As stated herein in Section 7.3.2.4, adoption of Alternative 4CM introduces potential delay in construction of the Project, and hence, of achievement of the state's RPS goals.

7.3.1.2. Recreational and Park Areas

Chino Hills argues that the Environmentally Superior Alternative would have an adverse impact on its local parks, two of which are transected by the

⁸⁷ Acton's TRTP Light proposal is not considered for the reasons set forth above in Section 4.1.

⁸⁸ See Section 4.3 above.

⁸⁹ Chino Hills' Opening Brief at 21-24. This is also supported by the comments of most of those who appeared at the March 19, 2009 PPH in Chino Hills.

Project.⁹⁰ However, as SCE notes, the Project will replace existing 220 kV lattice steel towers (LSTs) with 500 kV tubular steel poles (TSPs) that are already within these parks. Hence, the impacts on local parks, other than visual, are at most incremental changes from impacts from structures that existed prior to the construction of these local parks.

On the other hand, Chino Hills' Alternative 4CM would route the 500 kV line through the CHSP, a state park which benefits the entire region⁹¹ and not only the citizens of one city.

Chino Hills argues that Alternative 4CM actually benefits the CHSP, by rerouting existing transmission lines away from environmentally sensitive areas and through the application of the 21st Century Proposal.⁹²

However, as explained above in Section 6.2.3.3, mitigation measures identified in the EIR will already reduce the relevant environmental impacts to a less-than-significant level, rendering the 21st Century Proposal unnecessary. (See *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.) Further, mitigation, as defined by CEQA, is intended to avoid, minimize, rectify, reduce, or compensate for the adverse effects of a project. Therefore, a "rough proportionality" or "nexus" must exist between the project's impact and the mitigation measure imposed by an agency under *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) and *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825,

⁹⁰ Chino Hills' Opening Brief at 25.

⁹¹ HFE's Opening Brief at 2-3.

⁹² Chino Hills' Reply Brief at 56-68.

834-35 (1987). Both the nature and the extent of the mitigation measure must be reasonably related to the project's impact.⁹³

We cannot legally impose the 21st Century Proposal as mitigation for Alternative 4CM under CEQA. The 21st Century Proposal does not appear to address the specific environmental impacts of Alternative 4CM, as discussed in the Final EIR and in Section 6.2.3 above. In addition, neither Chino Hills nor HFE offered into the evidentiary record a clear description of the 21st Century Proposal sufficient to establish that the "mitigation measures" were reasonably tailored to meet environmental impacts.⁹⁴

In addition, the lack of a nexus between the 21st Century Proposal and the Project creates a risk that FERC would disallow recovery of costs related to the Proposal from transmission charges. SCE ratepayers would then be responsible for approximately \$50 million in backstop cost recovery under § 399.2.5.

Therefore, we find that the factor of recreational and park areas supports the Environmentally Superior Alternative.

7.3.1.3. Historical and Aesthetic Values

There is no apparent difference between the impacts of the Environmentally Superior Alternative and Alternative 4CM in terms of historical values. In terms of aesthetic values, the difference between alternatives rests in who is impacted by the visual differences. The Environmentally Superior Alternative, although designed to minimize visual impacts,⁹⁵ clearly has a greater impact on residents of Chino Hills than Alternative 4CM. However, the visual

⁹³ *Dolan* at 391.

⁹⁴ See footnote 79 above.

⁹⁵ SCE's Reply Brief at 56-58.

impacts within the CHSP are greater for Alternative 4CM than for the Environmentally Superior Alternative.⁹⁶

The CHSP is an important regional resource serving at least 97,000 visitors each year.⁹⁷ One key purpose of parklands is to serve “as a natural respite for the area’s human inhabitants,”⁹⁸ which clearly heightens the importance of visual impacts. Hence, visitors to parks would be more greatly impacted by visual impacts than similarly situated residents, and there are more visitors to the CHSP than there are residents of Chino Hills.⁹⁹ Finally, we note that the affected residents chose to purchase their homes alongside an existing ROW with transmission towers and wires, and therefore, have diminished expectation of a view without transmission lines.

We find that the aesthetic impacts of Alternative 4CM more directly impact the CHSP than the aesthetic impacts of the Environmentally Superior Alternative upon Chino Hills.

7.3.1.4. Environmental Impacts

As set forth in the Final EIR, the Environmentally Superior Alternative is superior to Alternative 4CM in terms of environmental impacts.¹⁰⁰

⁹⁶ See discussion of the CHSP herein at Section 6.2.3.

⁹⁷ HFE’s Opening Brief at 2-3.

⁹⁸ HFE’s Opening Brief at 2.

⁹⁹ There are roughly 79,000 residents of Chino Hills according to its website at: <http://www.chinohills.org/index.aspx?nid=94>.

¹⁰⁰ Chino Hills argues that Alternative 4CM is environmentally superior. Chino Hills’ arguments regarding the relative merits of Alternatives 2 and 4CM were fully considered in the environmental review process, and we will not reconsider them here. However, we note that the Final EIR finds that Alternative 2 is the environmentally superior route for Segment 8A, that the 21st Century Proposal was found to be infeasible,

Footnote continued on next page

7.3.1.5. Conclusion

Balancing these four factors, we conclude that the Environmentally Superior Alternative best satisfies the totality of the criteria under § 1002, and we select the Environmentally Superior Alternative.

7.3.2. Feasibility of the Environmentally Superior Alternative

Chino Hills argues that there are major risks that would render the Environmentally Superior Alternative infeasible. These risks are: (1) construction risks; (2) operational risks (tower collapse); (3) fire prevention and suppression risks; and (4) risk of delay. Puente Hills raises similar argument regarding fire risks in the Puente Hills Habitat.¹⁰¹ Acton also raises similar arguments regarding fire risks in Acton.¹⁰² SCE argues that these risks are overstated and do not render the Environmentally Superior Alternative infeasible.¹⁰³

7.3.2.1. Construction Risks

Chino Hills contends that the construction of a 500 kV transmission line through a 150 foot ROW in a densely populated area is a dangerous “experiment”, citing the uncontested fact that only one other 500 kV transmission line in the United States is in a 150 foot ROW and in that case the transmission line was constructed prior to the neighboring structures,¹⁰⁴ as well as the fact that

and that Alternative 4CM is the only studied alternative that had significant, unmitigable fire safety risks (Final EIR at ES-29).

¹⁰¹ Puente Hills’ Opening Brief at 1-4.

¹⁰² Acton’s Opening Brief at 12-13.

¹⁰³ SCE’s Reply Brief at 59-64.

¹⁰⁴ Chino Hills’ Opening Brief at 8, citing Exhibit CH-49 and Hearing Transcript at 552:18-24.

SCE has never before used a TSP tower for a 500 kV line.¹⁰⁵ In addition, SCE will not be testing every TSP, and the construction contractor might alter the design, engineering or location of the towers.¹⁰⁶

Chino Hills further notes that SCE's PEA specifies a laydown area for construction of the poles of 200 feet by 200 feet, which would not be possible in the Chino Hills ROW.¹⁰⁷ SCE's witness Guditis testified that SCE prefers a 200 foot by 200 foot laydown area but can safely and efficiently use a smaller area of 200 feet by 70 feet, but Chino Hills questions whether such a large reduction in area is adequate.¹⁰⁸ Chino Hills notes that SCE's Guditis characterized the arrangement in his testimony as a "worse case condition"¹⁰⁹ and that SCE under "normal conditions of assembly don't do it that way."¹¹⁰

Chino Hills presents a similar argument regarding the wire pulling operations. SCE's Guditis testified that an area 185 feet by 100 feet would be sufficient for the wire pulling, while Chino Hills questions whether the area is adequate.¹¹¹

Finally, Chino Hills notes that SCE's "Transmission Line Right of Way Requirements - SCE Easements" document requires clearances of "100-foot radius from face of tower footings" - a distance that clearly cannot be met within

¹⁰⁵ Chino Hills' Opening Brief at 8.

¹⁰⁶ Chino Hills' Opening Brief at 8-9.

¹⁰⁷ Chino Hills' Opening Brief at 9-10, citing the PEA, Section 3.3.1.4.3.

¹⁰⁸ Chino Hills' Opening Brief at 10.

¹⁰⁹ Hearing Transcript at 140:11-12.

¹¹⁰ Hearing Transcript at 140:23-24.

¹¹¹ Chino Hills' Opening Brief at 10-11.

a

150 foot wide ROW.¹¹² Chino Hills contends that SCE's characterization of this document as belonging to the commercial management group constitutes the document being "disowned" by SCE.¹¹³

SCE contends that construction within the existing ROW can be accomplished safely and effectively. SCE argues that its witness Guditis' written testimony presents detailed descriptions of how to remove the existing structures, construct the new TSPs, and conduct the stringing operations, all within the existing ROW.¹¹⁴ SCE argues that Chino Hills' expert witness Gonen lacks the relevant experience relevant to the construction of the Project to credibly critique SCE's testimony.¹¹⁵

We find SCE's arguments credible and compelling. The document "Transmission Line Right of Way Requirements - SCE Easements" appears to

¹¹² Chino Hills' Opening Brief at 12, citing Exhibit CH-3, Attachment E at 1.

¹¹³ Chino Hills' Opening Brief at 12.

¹¹⁴ See SCE's Opening Brief at 34-40 for a recitation and analysis of these details.

¹¹⁵ SCE's Opening Brief at 33. Specifically, SCE notes that Gonen has no experience in the construction of a 500 kV double circuit tubular steel pole. (Exhibit SCE-27 at 13.) During the evidentiary hearings, Gonen further acknowledged that: (1) he is neither a civil nor a structural engineer; (2) he has never personally participated in either the removal of a 220 kV transmission line or the erection of a 500 kV double circuit transmission line; (3) he has never personally participated in the construction of a 500 kV double circuit suspension steel lattice tower; (4) he has never participated in wire stringing of a 500 kV double circuit transmission line. (Hearing Transcript at 982:17-987:3.). SCE also refers to Exhibit SCE-27, Questions 1-13, 30-34, wherein Chino Hills acknowledges that Gonen has no experience constructing 220 kV, 345 kV, 500 kV or 765 kV transmission lines, and that Gonen's last transmission line construction experience - on a single 66 kV transmission line and single 154 kV transmission line - was over 40 years ago. (Hearing Transcript at 982:17-987 and 1026:23-1027:3.).

govern commercial operations within existing SCE ROWs by third parties who may have no experience in dealing safely with transmission towers. It is not surprising that SCE would wish to restrict the operation of third parties near transmission towers, as those third parties are not subject to SCE's direction and control. The fact that SCE does not ordinarily permit third parties to operate within 100 feet of a transmission tower does not mean that SCE or its contractors cannot safely do so.

A 150 foot wide ROW may not be ideal and SCE would likely prefer additional space for construction. Nevertheless, ideal conditions are not required to safely and effectively construct the towers in the ROWs in question.

SCE's witnesses have extensive experience with the design, construction, and maintenance of 220 kV and 500 kV transmission lines, while Chino Hills' witness Gonen has extensive experience with transmission line theory. After reviewing each of the exhibits as well as the cross-examination of the witnesses in the evidentiary hearings, we find SCE's witnesses to be more credible at determining safe construction techniques, and that construction of the Environmentally Superior Alternative through Segment 8A is feasible and can proceed safely.

7.3.2.2. Operational Risks

SCE argues that Alternative 2 meets or exceeds the requirements of General Order (GO)-95,¹¹⁶ which provides "for the State of California, uniform requirements for overhead electrical line construction, the application of which will insure adequate service and secure safety to persons engaged in the

¹¹⁶ SCE's Opening Brief at 41-50.

construction, maintenance, operation or use of overhead electrical lines and to the public in general.”¹¹⁷

SCE contends that it uses conservative design it uses a combination of conservative design loads, safety factors, and testing to minimize any risk that its transmission lines and structures will fail.¹¹⁸ The design loads for the various components of SCE’s transmission lines are further improved by the incorporation of safety factors, ensuring that the line’s components can actually withstand even greater-than-expected loads, typically by a magnitude of 150-300%, meeting or exceeding the requirements of GO-95.¹¹⁹

SCE cites several ways in which the Project will exceed the minimum requirements of GO-95:

- (1) SCE mandates Grade A construction for all new 500 kV and 220 kV transmission line facilities in California, including the Project, which exceeds GO-95 requirements.¹²⁰ GO-95 construction grades dictate minimum design load cases and safety factors for transmission line elements, including wire tension limits and structural loading.¹²¹ With regard to 500 kV transmission lines,¹²² GO-95 requires Grade A

¹¹⁷ GO-95, Rule 11 at I-3.

¹¹⁸ Exhibit SCE-03 at 7:10-19:14; Exhibit SCE-05 at 3:3-6:9, 8:5-11:14. A design load is the maximum amount of something (e.g., wind or ice), that a structure is designed to withstand.

¹¹⁹ SCE’s Opening Brief at 50, citing Hearing Transcript at 593:13-595:2 and Exhibit SCE-10C, Confidential Exhibits R and T.

¹²⁰ Exhibit SCE-10, Confidential Exhibits R and T, Section 5.1 at 5-1 and 5.5.2 at 5-6; Hearing Transcript at 594:21-25.

¹²¹ See GO-95 Rules 42-43.

¹²² A 500 kV transmission line is classified as a “Class E circuit.” GO-95 Rule 20.5-D1 at II-7.

construction only for those portions of the line that cross, conflict, or share a pole with Class C circuits (i.e., telecommunication lines)¹²³ or that cross major railways.¹²⁴

- (2) SCE will meet or exceed GO-95 structural loading requirements for wind, ice, and design loading by using project-specific meteorological studies and compares to GO-95 to use the most stringent requirements;¹²⁵
- (3) SCE will require structural safety factors that meet or exceed GO-95 requirements, providing larger margins of error;¹²⁶
- (4) SCE plans for conductor loading at only 35% of breaking strength rather than GO-95's 50% requirement;¹²⁷
- (5) SCE plans for additional safety factors in line clearances for the Project, resulting in clearances that meet or exceed GO-95's clearances;¹²⁸ and
- (6) Although GO-95 has no such requirement, SCE requires full-scale pole testing and inspection for all new pole designs that have no representative test history.¹²⁹

Chino Hills counters that no party is contesting the fact that SCE will construct the TSPs in conformance with the standards of GO-95, but that that

¹²³ Class C Communication Public and Private Circuits are defined as circuits used for public or private communication service. GO-95 Rule 20.5-A at II-6.

¹²⁴ GO-95, Rule 42 at IV-5 and Table 3 at IV-6.

¹²⁵ SCE's Opening Brief at 45-47.

¹²⁶ SCE's Opening Brief at 47-48.

¹²⁷ SCE's Opening Brief at 48-49.

¹²⁸ SCE's Opening Brief at 49.

¹²⁹ SCE's Opening Brief at 49-50; Exhibit SCE-03 at 15:18-19; *see also* Hearing Transcript at 567:10-22.

conformance with GO-95 is not a guarantee against pole failure.¹³⁰ Chino Hills notes that SCE has experienced tower failures despite its conformance with GO-95.¹³¹

Chino Hills also notes that improved design does not eliminate the chance of pole failure, but merely reduces them. Chino Hills cites SCE testimony that indicates that its designs increase the standard 50-year “return period” associated with most pole designs to around 150 to 200 years.¹³² Chino Hills contends that this equates to an annual probability of “pole failure” of 1 in 200.¹³³

Chino Hills further notes that pole failure in a residential neighborhood may result in a 195 foot TSP falling over into adjacent property, potentially pulling along conductor into the property.¹³⁴ Chino Hills believes that this may result in threat to the lives, as well as the property, of those residents living along the ROW.

SCE contends that TSPs have a lower chance of collapse in a failure, and will instead fail by bending.¹³⁵ Finally, SCE contends that Chino Hills could not identify a single 500 kV TSP collapse anywhere in the world.¹³⁶

¹³⁰ Chino Hills’ Opening Brief at 17-19., and Hearing Transcript at 579:25 to 580:5.

¹³¹ Exhibit SCE-19.

¹³² Exhibit SCE-05 at 5. The return period is the inverse of the yearly frequency which corresponds to the probability of exceeding a given event (e.g.,) an event with a return period of 50 years has an annual probability of exceedence of 2%. Exhibit SCE-05 at 4.

¹³³ Hearing Transcript at 716:11-22.

¹³⁴ Chino Hills’ Opening Brief at 18.

¹³⁵ SCE’s Opening Brief at 58-59.

¹³⁶ SCE’s Opening Brief at 58.

Chino Hills is correct that improved design does not eliminate all possibility of pole failure. Nevertheless, it is not disputed that the Project will meet or exceed the requirements of GO-95. No specific defect in the Project designs has been alleged. The chances of such a collapse are exceedingly low, indeed unprecedented.

After reviewing each of the exhibits as well as the cross-examination of the witnesses in the evidentiary hearings, we find SCE's witnesses to be more credible at determining the safe operation of the TSPs. We find that the Environmentally Superior Alternative meets or exceed all design requirements, and that operation of the Environmentally Superior Alternative through Segment 8A is feasible, and poses no undue operational risk.

7.3.2.3. Fire Prevention and Suppression Risks

Chino Hills, Puente Hills and Acton have each raised concerns about fire prevention and suppression as risks that they claim render the Environmentally Superior Alternative infeasible.

Chino Hills argues that introducing 195 foot tall TSPs into a 150 foot ROW would severely hamper ground firefighting operations, as well as eliminate the opportunity to use aircraft within the ROW.¹³⁷ Puente Hills makes the same arguments regarding the Puente Hills Habitat,¹³⁸ and Acton makes the same arguments regarding Acton and the area surrounding the Vincent Substation.¹³⁹

¹³⁷ Chino Hills' Opening Brief at 14-17.

¹³⁸ Puente Hills' Opening Brief at 1-4.

¹³⁹ Acton's Opening Brief at 12-13.

SCE contends that the physical characteristics of the 220 kV and 500 kV towers of the Environmentally Superior Alternative make them unlikely to create significant fire risk.¹⁴⁰

SCE notes that the Project mostly replaces existing transmission facilities in SCE ROWs that are well known to firefighters and aviation authorities. SCE argues that the increased height and the existing ROW should provide minimal incremental impacts on both aerial and ground-based fire suppression.¹⁴¹

The Final EIR reviewed fire prevention and suppression, and found that the Environmentally Superior Alternative did not have unmitigable fire-related environmental impacts. Indeed, the only alternatives studied in the environmental process that did have such impacts were Chino Hills' Alternatives 4A-D and 4CM.¹⁴²

After reviewing each of the exhibits as well as the cross-examination of the witnesses in the evidentiary hearings, we find that fire prevention and suppression risks do not render construction of the Environmentally Superior Alternative infeasible, nor will it pose undue risks in this area.

7.3.2.4. Risk of Delay

Chino Hills argues that construction of the Environmentally Superior Alternative would lead to "extensive delays" because Chino Hills has already initiated litigation before the San Bernardino County Superior Court, which has been stayed pending resolution of this proceeding.¹⁴³

¹⁴⁰ SCE's Reply Brief at 59-60.

¹⁴¹ SCE's Reply Brief at 60-61.

¹⁴² Final EIR Section 3.16.8.

¹⁴³ Chino Hills' Opening Brief at 26-28.

SCE responds that Chino Hills' lawsuit is without merit. The Superior Court lacks jurisdiction to block implementation of the Commission's decision pursuant to § 1759. SCE notes that even if Chino Hills prevails, that SCE can upgrade its easement rights through condemnation.¹⁴⁴ SCE notes that adoption of Alternative 4CM would also introduce delays due to the need to update the CHSP General Plan and to obtain DSTC regulatory clearance in order to site a new switching station on the Aerojet property, both of which are addressed above.¹⁴⁵

We are not persuaded by Chino Hills' argument that we should find the Environmentally Superior Alternative infeasible because Chino Hills chooses to delay the Project through its own litigation. By that standard, projects could never be built when opposed by interested parties with the resources to litigate. This would inevitably lead to project siting in locations where the local community did not have the same resources to litigate, or to a complete inability to site transmission lines in the State.

Adoption of Alternative 4CM would face its own delays due to need for approvals beyond our jurisdiction, including but not limited to, the process for obtaining DTSC approvals and for approving amendments to the CHSP General Plan, both processes being uncertain in their ultimate outcomes.¹⁴⁶ In addition, adoption of Alternative 4CM would require acquisition of additional land and

¹⁴⁴ SCE's Reply Brief at 43-44.

¹⁴⁵ SCE's Reply Brief at 44-45.

¹⁴⁶ See Section 6.2.3 above. Chino Hills contends that any delay of 8-12 months would fit within the TRTP schedule. Chino Hills' Opening Brief at 54. SCE contends that a delay of at least 8-12 months puts the completion schedule for the TRTP at risk. SCE's Opening Brief at 104.

ROW, and construction of a switching station. SCE will need to negotiate for the land for the switching station, and possibly condemn the land, which must occur before seeking the DTSC approvals.¹⁴⁷

Construction of the switching station at the location proposed in Alternative 4CM will be difficult. The proposed site is located on a steep gradient and the station will require an area at least 622 feet by 432 feet, according to Chino Hills' witness Arora.¹⁴⁸ This land will need to be leveled,¹⁴⁹ access roads upgraded, and the switching station constructed.

A number of potential factors could result in additional delays. Regarding construction on the Aerojet property, delays would occur if the acquisition of land were delayed; if actual MEC was discovered and clean up required; if additional environmental restrictions needed to be imposed for sensitive species, cultural sites, etc.; and if there were construction delays due to the geological conditions of the site.

Failure to obtain either DTSC approvals for construction on the Aerojet property or necessary amendments to the CHSP General Plan would require that an alternative route for Segment 8 be selected. This selection process could potentially require enhancement of the both the environmental and evidentiary record, and additional regulatory processes before this Commission and potentially elsewhere. Any of these events would add significant delay to

¹⁴⁷ SCE Comments at 2, citing to Exhibits Aerojet-01 at 2-3, Aerojet-03 at 4 and Aerojet-08 at 2-3.

¹⁴⁸ Hearing Transcript at 1594:1-11.

¹⁴⁹ SCE estimates that approximately 700,000 cubic yards of dirt must be removed in order to create a level building site. SCE Opening Brief at 82-83.

completion of the Project. Because this project is necessary to meet the state's RPS law, approval of 4CM and any resulting delay in project completion could mean that the law will not be achieved.

Adoption of the 21st Century Green Partnerships' "mitigation plan" could lead to litigation by other parties, which would introduce additional delays.

Hence, we find that approval of the Environmentally Superior Alternative would not introduce delay rendering it infeasible, but will instead avoid the delay and possible obstruction of the Project completion that would accompany adoption of Alternative 4CM.

7.3.3. Relative Costs of the Environmentally Superior Alternative and Alternative 4CM

Chino Hills contends that the Commission should adopt Alternative 4CM over the Environmentally Superior Alternative due to its determination that Alternative 4CM would cost \$14.9 million less than the Environmentally Superior Alternative.¹⁵⁰ SCE contends that Alternative 4CM would cost at least \$69.3 million more than the Environmentally Superior Alternative, not including the \$50 million for the 21st Century Proposal and any costs for MEC cleanup activities on the Aerojet property.¹⁵¹

First, even if we accepted Chino Hills' estimate, Chino Hills acknowledges that Alternative 4CM would cost more than the Environmentally Superior Alternative if the 21st Century Proposal were also adopted.¹⁵² More specifically,

¹⁵⁰ Chino Hills' Opening Brief at 56.

¹⁵¹ SCE's Opening Brief at 84-85.

¹⁵² We have concluded that we cannot impose the 21st Century Proposal (see above at Sections 6.2.3.3 and 7.3.1.2) but consider it here for purposes of evaluating Chino Hills' cost argument.

Chino Hills estimates that if its anticipated savings were offset against the cost of the 21st Century Proposal, then the remaining cost of the 21st Century Proposal would be \$28.9 million.¹⁵³

Ignoring the 21st Century Proposal, Chino Hills' estimate of the net cost of selecting Alternative 4CM is less than 1% of the total cost of the Project and less than 5% of the total cost of Segment 8, and is not sufficient to override our determination under § 1002 or to find the Environmentally Superior Alternative infeasible.

There is no requirement that the Commission adopt the lowest cost alternative, without regard to environmental and other factors, especially given the limited potential savings in this case. Thus, even if the net cost of Alternative 4CM were, in fact, less than the cost of the Environmentally Superior Alternative, this factor, by itself, would not provide a basis to override our selection of the Environmentally Superior Alternative.¹⁵⁴

7.3.4. Authorization for the Environmentally Superior Alternative

Based on the considerations above, we authorize SCE to construct the Environmentally Superior Alternative as set forth in the Final EIR and described above in Section 6.3.1.

¹⁵³ Chino Hills' Opening Brief at 74.

¹⁵⁴ Furthermore, assuming that Chino Hills has presented a best case scenario for cost savings from adopting Alternative 4CM and that the costs of constructing Alternative 4CM are higher than Chino Hills anticipates, the risks that the costs savings would not materialize do not justify its selection.

7.4. Statement of Overriding Considerations

As explained above, the authorized Environmentally Superior Alternative will have significant environmental impacts that cannot be mitigated. Therefore, the Commission must provide a statement of the overriding considerations that support approval of this CPCN pursuant to CEQA Guideline § 15093.

The Commission recognizes that significant and unavoidable environmental impacts will result from construction and operation of the Environmentally Superior Alternative. Having: (1) adopted all feasible mitigation measures; (2) adopted certain alternatives that reduce the impacts of the project as proposed; (3) recognized all significant, unavoidable impacts; and (4) balanced the benefits of the Environmentally Superior Alternative against its significant and unavoidable impacts, the Commission hereby finds that the benefits of the Project outweigh and override the significant unavoidable impacts for the reasons stated below.

The Commission adopts and makes this statement of overriding considerations concerning the Environmentally Superior Alternative's unavoidable significant impacts to explain why its benefits outweigh its unavoidable impacts.

The Environmentally Superior Alternative will provide substantial benefits, including but not limited to facilitating California's policy goals of renewable procurement within a reasonable period of time at the lowest environmental cost, as well as provide the benefits of the Project's objectives set forth in Section 6.1 above. We set forth the reasons for finding these substantial benefits, with citations to the record, throughout this decision.

The Commission finds that the Environmentally Superior Alternative's unavoidable impacts are acceptable in light of these substantial benefits, which

constitute an overriding consideration warranting approval of the project, despite each and every unavoidable impact. Each benefit set forth above and throughout this decision constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite each and every significant unavoidable impact.

7.5. Mitigation Monitoring

The Final EIR includes a proposed Mitigation Monitoring Plan (MMP) for the mitigation measures it recommends for the proposed project and all alternatives. MMP tables are presented in the Final EIR.¹⁵⁵ These tables, along with the full text of mitigation measures applicable to the Environmentally Superior Alternative, form the Mitigation Monitoring Plan. The Mitigation Monitoring Plan is designed to ensure compliance with the changes in the project and mitigation measures imposed on the authorized project during implementation and recommends a framework for implementation of the Mitigation Monitoring Plan by this Commission as the CEQA lead agency. We adopt the Mitigation Monitoring Plan, which is appended hereto as Attachment 2.

7.6. Electro-magnetic Field (EMF) Issues

The Commission has examined EMF impacts in several previous proceedings.¹⁵⁶ We found the scientific evidence presented in those proceedings was uncertain as to the possible health effects of EMFs,¹⁵⁷ and we did not find it appropriate to adopt any related numerical standards. Because there is no

¹⁵⁵ Final EIR Appendix G.

¹⁵⁶ D.06-01-042 and D.93-11-013.

¹⁵⁷ EIR/EIS Section D.10.21.

agreement among scientists that exposure to EMF creates any potential health risk, and because CEQA does not define or adopt any standards to address the potential health risk impacts of possible exposure to EMFs, the Commission does not consider magnetic fields in the context of CEQA and determination of environmental impacts.

However, recognizing that public concern remains, we do require, pursuant to GO 131-D, Section X.A, that all requests for a CPCN include a description of the measures taken or proposed by the utility to reduce the potential for exposure to EMFs generated by the proposed project. We developed an interim policy that requires utilities, among other things, to identify the no-cost measures undertaken, and the low-cost measures implemented, to reduce the potential EMF impacts. The benchmark established for low-cost measures is 4% of the total budgeted project cost that results in an EMF reduction of at least 15% (as measured at the edge of the utility right-of-way). Section 5.3.1.5 (Table 5.3-5) of the Final EIR sets forth the no- and low-cost mitigation SCE proposed to implement to mitigate EMFs for the Proposed Project. Consistent with its obligations under GO 131-D, SCE included, with its application and Proponent's Environmental Assessment, an EMF Field Management Plan.¹⁵⁸ In this plan, SCE proposes to incorporate various no-cost and low-cost mitigation measures to reduce field levels. The proposed plan does not analyze potential impacts across each of the various alternative route alignments identified in the Draft EIR/EIS and carried forward in the Final EIR.

¹⁵⁸ A.06-08-010, PEA Appendix G and EIR/EIS Appendix 7.

As discussed elsewhere in this order, we authorize SCE to construct the Environmentally Superior Alternative along an alignment that differs in parts from that originally proposed by the utility in the Proposed Project. Given these modifications, SCE shall amend its EMF management plan as needed to apply its no-cost and low-cost EMF management techniques to the Environmentally Superior Alternative.

8. Compliance with Public Utilities Code Section 625

Section 625 provides that a public utility that offers competitive services may not condemn any property for the purpose of competing with another entity unless the Commission finds that such an action would serve the public interest based on a hearing for which the owner of the property to be condemned has been noticed and the public has an opportunity to participate (§ 625(a)(1)(A)). However, an exception is made for condemnation actions that are necessary solely for an electric or gas company to meet a Commission-ordered obligation to serve. In that circumstance, the electric or gas company is required to provide notice on the Commission Calendar if and when it pursues installation of facilities for the purpose of providing competitive services (§ 625(a)(1)(B)).

SCE proposed the Project to meet its obligation to serve its electric customers, and we authorize it for that purpose. In D.01-10-029, the Commission addressed the applicability of § 625 where the utility is implementing a project to meet its obligation to serve, but aspects of the project may have a competitive purpose later. We described that § 625 provides two different levels of notice and oversight and that, “The lesser standard requires that when condemning properties to carry out a commission-ordered obligation, § 625(a)(1)(B) is applicable, which only requires notice be provided to the Commission Calendar.” We conclude that the lesser standard of notice applies for the Project.

9. Specification of Maximum Reasonable and Prudent Cost

While FERC ultimately will decide how much of the costs for this project SCE may recoup in transmission rates, we have jurisdiction pursuant to § 1005.5(a) and the responsibility to specify in the CPCN a “maximum cost determined to be reasonable and prudent” for the Project (maximum cost).

9.1. Maximum Direct Cost and Administrative Cost of the Project

In setting the maximum cost, the Commission must take several factors into consideration, including the design of the project, the expected duration of construction, an estimate of the effects of economic inflation, the level and complexity of necessary environmental mitigation, and any known engineering difficulties associated with the project.

SCE has provided testimony that the total direct cost without contingency should be set at \$1,162,673,000.¹⁵⁹ The total cost of pension and benefits (P&B) costs, and administrative and general (A&G) costs is \$185,847,000.¹⁶⁰ No party contests these figures, except to the extent that they challenge the need for the Project in part or in whole.¹⁶¹ These figures are supported by testimony that was subject to cross-examination at hearing and appears to be credible.

¹⁵⁹ Exhibit SCE-2 at A-6.

¹⁶⁰ Exhibit SCE-2 at A-6.

¹⁶¹ Acton does urge the Commission to limit the maximum costs to those necessary to achieve the goals of the Project and not to included costs for upgrades necessary to operate segments at higher voltages. As SCE has not requested such costs, they are not included in the total maximum cost.

9.2. Contingency Costs

SCE's estimate of total project costs for the Project includes "contingency costs." Contingency costs are project costs that SCE cannot accurately identify or estimate at this time because SCE has not yet designed the Project in detail, solicited bids, received quotes, or signed contracts. SCE has provided testimony establishing an estimate for the contingency costs, which DRA disputes.

9.2.1. Position of the Parties

9.2.1.1. SCE

SCE's estimate for contingency costs is equal to 32% of total project costs excluding allowance for funds used during construction (AFUDC), P&B costs, and A&G costs. Depending on which route is selected, SCE estimates that contingency costs will be in the range of \$367 million – \$372 million in 2009 dollars.¹⁶²

SCE states that its estimate of contingency costs is based on (1) experience with previous transmission projects; (2) uncertainties in acquiring land and land rights; (3) errors and uncertainties in defining the scope of the project; (4) uncertainties regarding the amount of rework; (5) material price and quantity uncertainties; (6) labor cost uncertainties; (7) market conditions for contractors; (8) outage risk; and (9) environmental and cultural mitigation. SCE's estimate does not cover every unforeseen circumstance (e.g., workforce strikes) or catastrophic events (e.g., earthquakes).

SCE asserts that the Commission has approved similar levels of contingency costs other projects. For example, SCE contends that the

¹⁶² Exhibit SCE-02 at A-6.

Commission approved: (1) a contingency of 18.35% plus an adder of 10% for SDG&E's Sunrise Powerlink Project; and (2) a contingency and adder for SDG&E's Otay Mesa Power Purchase Agreement Transmission Project.

9.2.1.2. DRA

DRA argues that SCE's requested contingency of 32% is unreasonable and should be reduced to something in the range of 5% - 15%. DRA submits that a lower contingency is appropriate because SCE intends to maximize the use of existing transmission ROW for the Project. This should significantly reduce the level of uncertainty regarding the acquisition of land and easements, and for project planning, design, engineering, and construction.

DRA also asserts that SCE's requested contingency of 32% is significantly higher than what the Commission adopted for previous transmission projects. For example, DRA represents that D.08-12-058 adopted a contingency of 10% for SDG&E's Sunrise Powerlink Project;¹⁶³ D.07-01-040 adopted a contingency of 15% for SCE's Devers-Palo Verde No. 2 transmission project; D.05-06-061, adopted a contingency of 5% for SDG&E's Otay Mesa transmission project;¹⁶⁴ D.01-10-029 adopted a contingency of 15% for PG&E's Tri Valley 2002 Capacity Increase Project; and D.01-12-017 adopted contingency of 11.76% for PG&E's Northeast San Jose transmission project.

¹⁶³ DRA disagrees with SCE's contention that D.08-12-058 adopted a contingency of 18.35% plus an adder of 10% for SDG&E's Sunrise Powerlink Project.

¹⁶⁴ DRA disagrees with SCE's contention that D.05-06-061 adopted a contingency plus an adder for SDG&E's Otay Mesa transmission project.

9.2.2. Discussion

The issue before us is the amount of contingency costs to include in the adopted maximum cost for the Project. It is reasonable to include some contingency costs because of the inherent uncertainty in forecasting the total costs for a project as large and complex as the Project. The amount of contingency costs included in the maximum cost should be based on the degree of uncertainty in the estimated costs for Project at this stage of the project's development. Factors that may be considered include: (1) pricing uncertainties for material and labor; (2) project execution uncertainties such as weather delays and equipment breakages; and (3) estimating uncertainties such as quantity calculations.

SCE requests contingency costs equal to 32% of total project costs excluding AFUDC, P&B, A&G costs. We believe this is too high for several reasons. First, the Project consists primarily of new transmission and substation facilities. California electric utilities and their construction contractors have extensive experience with this type of project.

In light of the extensive experience of California electric utilities and their industry partners in constructing transmission lines and substations, we are not convinced that a contingency of 32% is reasonable. Generally, by the time an electric utility files an application for authority to construct a power line or substation, the utility should know the final cost of the proposed project to within 15%.¹⁶⁵ This is particularly true for the Project given that it will be constructed

¹⁶⁵ In SCE's Opening Brief, Table 3 at 26, SCE cites an article from the American Association of Construction Engineers' 1989 Transactions which states that reasonable contingency is 20-25% for the preliminary design stage and 10-20% for the budget stage. Notwithstanding SCE's contention that the project is at the preliminary design phase, its

Footnote continued on next page

largely on existing rights of way. There should be little uncertainty regarding the cost to acquire land and rights of way for the project, and SCE has had access to most or all of route for planning, design, and engineering purposes.

Second, we believe that SCE's contingency of 32% is excessive in the current economic environment. A major purpose of SCE's contingency is to budget for the risk of significant increases in the cost of labor and materials. We believe this risk is small given that the unemployment rate in California is more than 12% and construction activity in the State is at recessionary levels.¹⁶⁶ It is difficult to imagine a credible scenario where the cost of labor and materials increases by 32% over the course of the Project. In our opinion, a contingency of 15% for labor and materials is sufficient under present economic circumstances.

Finally, a contingency of 15% is consistent with Commission precedent. For example, D.08-12-058 adopted a contingency of 18.35% for SDG&E's Sunrise Powerlink Project,¹⁶⁷ D.07-01-040 adopted a contingency of "almost 15%" for

description of the budget phase as "Well defined scope, low risk of scope growth or change, task has been performed many times" more accurately fits the present situation.

¹⁶⁶ See (i) the California Employment Development Department's news release No. 09-055, dated September 18, 2009, which states the unemployment rate in California was 12.2% in August 2009; and (ii) the California Department of Finance's *Finance Bulletin* for September 2009, which states that permits for residential and non-residential construction for the first seven months of 2009 are down 52% and 48%, respectively, from the same months of 2008. We take official notice of these documents pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure and California Evidence Code §452(h).

¹⁶⁷ D.08-12-058 at 92-33 and 274-275; and Exhibit DRA-3 at 75. See also *Comments of San Diego Gas & Electric Company on Alternate Proposed Decision of President Peevey (Comments)* submitted in A.06-08-010 at 3-5. Reading SDG&E's *Comments* together with D.08-12-058 and Exhibit DRA-3 demonstrates that (i) SDG&E requested a contingency of 18.35% plus an adder of 10% for the Sunrise Powerlink Project, and (ii) the Commission adopted SDG&E's requested contingency of 18.35%, but not SDG&E's requested adder of 10%.

Footnote continued on next page

SCE's Devers-Palo Verde No. 2 Project,¹⁶⁸ and D.01-12-017 adopted a contingency of 14.6% for PG&E's Northeast San Jose Project.¹⁶⁹

For the previous reasons, we decline to adopt SCE's proposed contingency of 32%. Instead, we adopt a contingency of 15%. A contingency of 15% applied to the total cost is \$174,400,000.

9.3. Allowances for Funds Used During Construction (AFUDC)

AFUDC represents the estimated cost of debt and equity funds that finance utility plant construction. AFUDC is capitalized as part of the overall cost of plant. Thus, when new plant goes into service, the total capital-related costs, including capitalized finance charges, are included in rate base.¹⁷⁰

A utility may apply to FERC for Construction Work In Progress (CWIP) incentive rate treatment to recover financing charges in current rates while plant is under construction, in lieu of later collecting AFUDC. SCE typically seeks recovery at FERC through the CWIP mechanism, and such cost of capital will not be accrued through AFUDC. Recovering SCE's construction financing charges through CWIP in Rate Base replaces the actual AFUDC that otherwise would be accrued to the project.¹⁷¹

SCE's assertion that the Commission adopted a contingency of 18.35% plus an adder of 10% is incorrect, as is DRA's assertion that the Commission adopted a contingency of 10%. We take official notice of SDG&E's *Comments* pursuant to Rule 13.9 and Evidence Code §452(c).

¹⁶⁸ D.07-01-040 at 46 and 102.

¹⁶⁹ D.01-12-017 at 15 and 31. DRA is incorrect that D.01-12-017 adopted a contingency of 11.76%; the decision adopted a contingency of 14.6%.

¹⁷⁰ See D.09-09-033 at 11-12.

¹⁷¹ Exhibit SCE-2 at 2.

SCE has provided estimates for AFUDC of \$261.82 million, in nominal dollars.¹⁷² No party contested this estimate, except to the extent that they contest the need for the entire Project. Consequently, we find that \$261.82 million, in nominal dollars, is a reasonable current estimate for AFUDC, and is an appropriate proxy for financing costs here.

We do not include this AFUDC estimate in the maximum cost. However, because the cost of financing is a significant portion of the costs of a transmission project which is ultimately recovered from ratepayers, and because if FERC fails to approve recovery, SCE may seek to recover these costs through the backstop cost recovery mechanism under § 399.2.5, we find that such financing costs, either in the form of CWIP or AFUDC, should be fully disclosed in Commission proceedings prior to project approval.

9.4. Maximum Cost

However, SCE has stated in comments that it would like the opportunity to update its cost filings in an advice letter after it has developed a final detailed engineering design-based construction estimate for the final route of the Tehachapi Renewable Transmission Project (Segments 4-11). Hence, SCE shall file with the Commission an advice letter with the revised cost estimate within 30 days of obtaining such data. The advice letter shall be based upon a contingency of 15%, as discussed herein.

¹⁷² See Exhibit SCE-2 at 2.

9.5. Eligibility for Backstop Cost Recovery Under § 399.2.5

SCE requested that the Commission establish that the backstop cost recovery mechanism of § 399.2.5(b)(4) be established for the Project.¹⁷³

§ 399.2.5(b) states:

With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the commission. These actions shall include, but are not limited to:

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

DRA contends that since recovery under § 399.2.5(b)(4) does not occur until after FERC denies recovery in transmission rates, that SCE's request is premature.¹⁷⁴ DRA recommends that the Commission find that the Project is eligible for recovery under § 399.2.5(b)(4) but not guaranteed such recovery.¹⁷⁵

SCE counters that the purpose of § 399.2.5(b)(4) is to provide certainty that prudently incurred costs incurred in pursuit of transmission that fulfills the RPS goals of § 399.2.5(a) will be recovered, if not from FERC-administered transmission rates, then from retail rates under Commission jurisdiction.¹⁷⁶

¹⁷³ Application at 3.

¹⁷⁴ DRA Opening Brief at 12-18.

¹⁷⁵ DRA Opening Brief at 18.

¹⁷⁶ SCE Reply Brief at 4-6.

Section 399.2.5(b)(4) provides the safeguards that DRA requests, by requiring the SCE demonstrate that the costs were “prudently incurred.” SCE is not requesting, nor are we granting, an automatic recovery mechanism for any and all costs associated with the Project. Recovery cannot be made without a prudence review, which should be in the form of an application before the Commission only if SCE fails to recover those costs before FERC.

The language of this provision is not discretionary – it provides a mandate upon the Commission to allow recovery in retail rates of any costs prudently incurred for a transmission project that meets § 399.2.5(a) that are not recovered through FERC-administered transmission costs.

Having found that the Project meets the three-prong test to establish eligibility under § 399.2.5(a), we conclude that the Project is eligible for the backstop cost recovery mechanism of § 399.2.5(b)(4).

10. Testimony and Exhibits

Evidentiary Testimony and Exhibits have been previously admitted into the record during the course of the evidentiary hearings, including exhibits accepted as sealed pursuant to D.06-06-066, and in a post-hearing ruling issued by ALJ Kolakowski on October 30, 2009. Chino Hills’ motion to accept proposed exhibit CH-83 was denied by ALJ Jean Vieth in a ruling on October 29, 2009. We affirm those rulings.

The Draft EIR/EIS and Final EIR will be received into the record of this proceeding as Reference Exhibits A-B, respectively.¹⁷⁷

¹⁷⁷ These documents are available for inspection on the Commission’s website at: ftp://ftp.cpuc.ca.gov/gopher-data/environ/tehachapi_renewables/TRTP.htm.

The testimony is identified as follows and is received into evidence:

Reference Exhibit A – Draft Environmental Impact Report/Environmental Impact Statement issued February 13, 2009.

Reference Exhibit B – Final Environmental Impact Report issued October 30, 2009. (Revisions to the Final Environmental Impact Report are appended hereto as Attachment 3).

11. Comments on Proposed Decision

The proposed decision (PD) of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by Acton, Alta, CARE, Chino Hills, DRA, HFE and SCE by November 23, 2009. Reply comments were filed by Acton, Chino Hills, DRA, HFE and SCE on November 30, 2009.¹⁷⁸

Alta's comments support the PD. DRA's comments largely supported the PD, with the exception of reiterating its previously stated concerns regarding the large potential impact of Alta's contracts, which is discussed in Section 4.2.3. DRA's reply comments are discussed further below.

Acton objects to the PD regarding: analyzing the project segments separately; project need; project cost; and fire prevention and suppression. The

¹⁷⁸ The Natural Resources Defense Council (NRDC) is not a party to the proceeding but submitted a comment letter drafted November 24, 2009. In its letter, NRDC stated that it does not support any of the Chino Hills Alternatives (including 4CM) and believes that based on the formal record each of the five Chino Hills Alternatives described in the Proposed Decision poses an unacceptable risk of adverse impact to Chino Hills State Park. The NRDC letter also stated that NRDC supports removing the existing transmission lines from Chino Hills State Park at the earliest possible time.

comments raise the same arguments presented in Acton's briefs, which have already been adequately addressed.

Acton's comments request that the Commission condition construction of the Project with ensuring safe and reasonable residential access, certain local requirements such as equestrian trail easements, and removal of a billboard unlawfully constructed within the SCE ROW.¹⁷⁹ We agree that these are serious concerns which SCE should address with Acton. We therefore direct SCE to meet with Acton and to identify reasonable measures consistent with state law and Commission orders, and to file an advice letter setting forth these measures, if any, within six months.

CARE objects to the PD as evidencing a pre-judging of the outcome prior to the completion of the environmental review. CARE bases these objections on the PD's recitation of determinations by other entities and processes, such as the CAISO and RETI, as a "post hoc rationalization" of a "pre-decision."¹⁸⁰ This is incorrect. These other decisions, reports, etc. are cited as examples demonstrating independent assessments for the need for the Project. They did not pre-judge or interfere with the separate, independent environmental analysis embodied in the Final EIR, which has guided our ultimate decision on the Project.

CARE further argues that the PD and the Final EIR fail to consider distributed generation and the No Project Alternatives as alternatives in the Final EIR. This is incorrect. The Final EIR considered the full variety of alternatives

¹⁷⁹ Acton's Comments at paragraphs 2-3.

¹⁸⁰ CARE's Comments at 8.

required under CEQA that meet the project objectives, including the No Project Alternative.

CARE correctly notes that the Final EIR failed to address the comments on the DEIR/DEIS submitted by CARE and prepared by its expert Smallwood. This oversight has been corrected and written responses to the comments have been included in the "Revisions to the Final EIR" appended hereto as Attachment 3.

Acton, CARE, Chino Hills and HFE all disagree with the Final EIR's selection of the Environmentally Superior Alternative. Those arguments largely restate the parties' earlier positions, which were fully considered in the PD.¹⁸¹

Acton argues that the Environmentally Superior Alternative does not comply with CEQA in that it "includes infrastructure that creates significant impacts but is unnecessary to achieve any of the project objectives."¹⁸² First, we do not agree that the Environmentally Superior Alternative contains any unnecessary infrastructure. Nevertheless, there are no requirements under CEQA that all infrastructure proposed as part of a project be necessary to meet project objectives.¹⁸³ All that is required is that the EIR analyze a reasonable range of alternatives that avoid or substantially lessen any of the significant

¹⁸¹ These parties contend that the PD failed to adequately consider the testimony that supports their positions, relying largely on what the PD does not say. In the interest of clarity, we have not recited all of the evidence considered in reaching each finding of fact. However, all of the numerous exhibits, comments and briefs have been fully considered. In addition, the parties had the opportunity to address the Commission at the En Banc Hearing on November 20, 2009 for over an hour, and at the FOA for over two hours.

¹⁸² Acton's Comments at paragraph 13.

¹⁸³ See CEQA Guidelines §15124(b).

effects of the project and meet most of the project objectives.¹⁸⁴ The CEQA project objectives were used to screen for potentially feasible alternatives that accomplish most of the Project objectives.¹⁸⁵

Chino Hills argues that the Final EIR should undertake “a scientific rating of the alternatives.”¹⁸⁶ The Final EIR includes a detailed and methodical comparison of Alternatives in Chapter 4 (Comparison of Alternatives). Table 4.2-1 in the Final EIR presents a summary matrix by environmental issue/resource area of the environmental issues and impacts associated with the alternatives. To further compare the environmental impacts of the Project amongst the alternatives, Sections 4.2.1 through 4.2.16 of the Final EIR provides a discussion of the noteworthy differences between the alternatives for each environmental issue/resource area. Finally, Final EIR Table 4.2-2 provides a summary of the alternative comparisons. This methodology results in a thoughtful and careful comparison that is more than adequate to provide decisionmakers with sufficient information to allow for meaningful evaluation and comparison.

Chino Hills’s proposal for an “objective” way to compare impacts essentially amounts to totaling the number of significant impacts under each alternative without regard to their magnitude or the relative importance of the resources involved. This approach is overly simplistic and contrary to common CEQA practice, e.g., practice guidance explaining that “[o]ften, alternatives will reduce some impacts and increase others. When none of the alternatives is clearly

¹⁸⁴ CEQA Guidelines §15126.6.

¹⁸⁵ See Final EIR, Appendix A.

¹⁸⁶ Chino Hills’ Comments at 11.

environmentally superior to the project, it should be sufficient for the EIR to explain the environmental advantages and disadvantages of each alternative in comparison with the project.”¹⁸⁷ Nothing in CEQA suggests that the environmental superiority of an alternative should be based purely on a numerical calculation. We have considered numerous factors in reaching our conclusion, and our determination that Alternative 2 is environmentally superior to Alternative 4CM is supported by the Final EIR and by substantial evidence in the record.

Chino Hills and HFE support Alternative 4CM, coupled with the 21st Century Proposal, and object to the selection of the Environmentally Superior Alternative.

HFE contends that Alternative 4CM is environmentally superior, based upon the fact that Alternative 4CM, coupled with the 21st Century Proposal, would “significantly improve environmental conditions in the Park”¹⁸⁸ and “would leave Chino Hills State Park in better condition than it is now.”¹⁸⁹

However, the California Supreme Court has expressly rejected the idea that an alternative should be found “environmentally superior” because it would more effectively address existing environmental problems. (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1168.) In *In re Bay-Delta*, the Supreme Court stressed the importance of distinguishing “between preexisting environmental problems..., on the one hand,

¹⁸⁷ 1 Kostka & Zischke, *Practice Under The California Environmental Quality Act* (2d ed Cal CEB 2008), § 15.37.

¹⁸⁸ HFE’s Comments at 3.

¹⁸⁹ HFE’s Comments at 4.

and adverse environmental effects of the proposed [project],” explaining that existing environmental problems “would continue to exist even if there were no [proposed project], and thus under CEQA they are part of the baseline conditions rather than program-generated environmental impacts that determine the required range of alternatives.” (*Id.* at 1167-68.) Hence, improvement of existing conditions is not a factor in determining the environmentally superior alternative under CEQA.

Chino Hills and HFE contend that Alternative 4CM, coupled with the 21st Century Proposal, is consistent with the CHSP General Plan.¹⁹⁰ This is not a question that the Commission can definitively resolve, as the interpretation of the CHSP General Plan is not within our jurisdiction. However, the only evidence that we have in the record regarding the CHSP General Plan is a letter from CDPR stating that Alternative 4 is inconsistent with the CHSP General Plan.¹⁹¹ Ultimately, the question of interpretation and potential amendment of the CHSP General Plan will be a matter for CDPR and/or the State Park and Recreation Commission to resolve, and the parties’ various arguments for whether the use is in compliance would be left for future, uncertain resolution by a process outside of our control.

Both Chino Hills and HFE object to the PD’s determination that the 21st Century Proposal cannot be imposed by the Commission.¹⁹² Those arguments largely restate the parties’ earlier positions, which were fully considered in the PD

¹⁹⁰ Chino Hills’ Comments at 14-18; HFE’s Comments at 4.

¹⁹¹ See footnote 72 above.

¹⁹² HFE argues that the PD completely ignores the benefits of Alternative 4CM and provides a legally flawed analysis of the 21st Century Proposal. HFE’s Comments at 8.

in Section 6.2.3.3 and Section 7.3.1.2. However, several additional arguments were raised that warrant further discussion.

HFE argues that the 21st Century Proposal is legally required because “the EIR/S proposes no mitigation for Alternative 4CM’s impacts within the Park.”¹⁹³

To the contrary, the Final EIR identifies mitigation for all of Alternative 4CM’s significant impacts. HFE misunderstands the PD to say that Alternative 4CM would have no impacts. In fact, the PD recognizes the impacts of Alternative 4CM absent mitigation and determines that the mitigation identified in the Final EIR fully mitigates these impacts. As HFE itself states, the Commission “has wide latitude to determine the proper mitigation measures for a group of impacts.”¹⁹⁴ In this case, we have determined that the proper mitigation measures for the impacts of Alternative 4Cm are those identified in the Final EIR.

Further, HFE argues that restoration of degraded habitat is reasonable mitigation for impacts to habitat. We agree; therefore, restoration and compensation for project impacts are already required under the EIR’s Mitigation Measure (MM) B-1a, which is identified in the Final EIR as mitigation for Alternative 4CM, as HFE is apparently aware.¹⁹⁵ As stated in herein, we cannot require mitigation to “below baseline conditions”, i.e., that mitigation cannot be designed to improve existing conditions but only to mitigate impacts of a proposed project.

¹⁹³ HFE’s Comments at 10.

¹⁹⁴ HFE’s Comments at 13-14.

¹⁹⁵ See citation to FEIR, Section 3.4-129 in HFE’s Comments at 12.

HFE states that the 21st Century Proposal “proposes to improve conditions in areas where habitat *has been* degraded by invasive species or other disturbances.”¹⁹⁶ As we have noted, we will not impose mitigation to improve conditions that are already degraded, only mitigation that will alleviate impacts caused by the Project.

Chino Hills argues that “the Mitigation Plan elements would not be superfluous to the mitigation measures established in the FEIR.”¹⁹⁷

As we have previously stated, the “Bio-Corridor Expansion” and “Habitat Enhancement” components of the 21st Century Proposal are not necessary because they would not provide meaningful additional mitigation of Project impacts beyond the measures identified in the EIR. Restoration and compensation are already identified as full mitigation for the impacts of Alternative 4CM under MM B-1a. Under MM B-1a, land acquired for compensation could include lands identified in the 21st Century Proposal; however, the acreage of lands acquired/restored depends on the actual ground disturbance that occurs during construction and would be orders of magnitude less than what is proposed in the 21st Century Proposal. By restoring and/or compensating for all disturbance caused by the Project, impacts associated with loss of habitat and native vegetation communities would be less than significant. The 21st Century Proposal would require substantial additional land acquisition with no relationship between the amount of land to be acquired and the project impacts. We cannot legally require such measures.

¹⁹⁶ HFE’s Comments at 12, emphasis added.

¹⁹⁷ Chino Hills’ Comments at 16.

An EIR is not required to discuss mitigation measures for less than significant environmental impacts.¹⁹⁸ In fact, once mitigation has been identified that reduces project impacts below the level of significance, imposition of further mitigation may disproportionately burden the project applicant.¹⁹⁹ Further, to the extent measures set forth in the 21st Century Proposal would alter existing conditions and impacts not caused by Alternative 4CM, we may not legally impose them under CEQA and related state and federal constitutional provisions.

The mitigation set forth in the Final EIR and the MMP already provides sufficient mitigation to ensure enforcement of all mitigation measures. Chino Hills has not provided evidence that funding and endowment to hire an environmental scientist and a ranger would actually mitigate any of the impacts of Alternative 4CM.

Chino Hills argues that the 21st Century Proposal meets the Nollan/Dolan test, arguing that it has demonstrated a rough proportionality of 3 to 1 for replacement habitat to impacted habitat, and that the Commission has authorized such replacement in the past.²⁰⁰ HFE makes similar arguments in its comments.²⁰¹ HFE argues that the 21st Century Proposal is sufficiently specific to qualify as mitigation under CEQA. However, HFE provides no evidence to support its

¹⁹⁸ See *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1517.

¹⁹⁹ See CEQA Guidelines § 15126.4(a)(4)(B); *Dolan; Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

²⁰⁰ Chino Hills' Comments at 20.

²⁰¹ HFE's Comments at 15-17. See, *Dolan*, 512 U.S. at 378 (agency must have specific evidence establishing a nexus).

claim that the 21st Century Proposal is “a reasonable, enforceable plan or program that is sufficiently tied to the actual mitigation of the ... impacts at issue.”²⁰²

These arguments ignore or misinterpret the nexus requirements set forth in the U.S. and California constitutions and the established application of this doctrine in the context of CEQA. The CEQA Guidelines clearly state, “Where the mitigation measure is an ad hoc exaction, it must be ‘roughly proportional’ to the impacts of the project.” (CEQA Guidelines § 15126.4(a)(4)(B).) The U.S. Supreme Court did not purport to limit this requirement or the holding of *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854 in its decision in *Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528. U.S. Supreme Court cases are not authority for propositions not considered therein. (*Landgraf v. USI Film Products* (1994) 511 U.S. 244, 265)

Moreover, despite Chino Hills’ and HFE’s arguments to the contrary, we have been unable to find any nexus between the 21st Century Proposal and the impacts of the TRTP that would not already be mitigated by measures identified in the EIR, which our “wide latitude” to determine the proper mitigation measures allows us to adopt. Because the mitigation measures in the Final EIR already mitigate the impacts of 4CM to less than significant levels, there is no legal or factual basis to require additional habitat restoration or acquisition in unrelated areas of the CHSP.

Specifically, we have seen no evidence that Alternative 4CM would impact the land proposed for acquisition under the 21st Century Proposal; we have seen no evidence that Alternative 4CM would impact the three canyons proposed as habitat restoration areas in the Plan (Water Canyon, Brush Canyon and Lower

²⁰² HFE’s Comments at 13.

Aliso Canyon); we have seen no evidence that creation of a fund for new park personnel will mitigate the impacts of Alternative 4CM; and we have seen no evidence that removal of existing transmission facilities will mitigate the visual impacts of Alternative 4CM. On this record, we cannot impose the 21st Century Proposal on SCE.

HFE argues that the PD should require SCE to remove the existing de-energized transmission lines in the Park as a condition of project approval, rather than assuming that SCE will remove these lines under the 1982 settlement agreement to which SCE and HFE are parties. Yet HFE has previously stated that “under CEQA the effects of these existing lines are not considered impacts of the TRTP”²⁰³ and that “SCE’s obligation to remove these lines is independent of its obligation to mitigate the environmental impacts of the TRTP.”²⁰⁴ Therefore, HFE concedes that there is no nexus between the impacts of the TRTP and the removal of the existing lines. Accordingly, the CPUC has no authority require removal of these lines as a condition of approving the TRTP.²⁰⁵

Nevertheless, SCE is under an *existing* obligation to HFE and the CHSP to remove these lines, pursuant to the 1982 settlement with HFE. SCE has not fulfilled this element of the settlement for a period of over 29 years.

Therefore, we direct SCE to meet and confer with the Department of Parks and Recreation, the CHSP, and with HFE to develop a plan for fulfillment of SCE’s prior obligations, and to report to the Director of Energy Division every

²⁰³ HFE’s Opening Brief at 5.

²⁰⁴ HFE’s Opening Brief at 4.

²⁰⁵ See CEQA Guidelines § 15126.4(a)(4)(A); *Nollan v. California Coastal Commission* (1987) 483 U.S. 825.

six months regarding the progress of fulfillment of this obligation until its completion satisfactory to the Director of Energy Division.

HFE argues that the PD errs in finding that community values favor the Environmentally Superior Alternative, as both the Environmentally Superior Alternative and Alternative 4CM would both provide the same transmission capacity. However, this overlooks the impact of the uncertainty and delay that adoption of Alternative 4CM would introduce into the RPS program. The PD has been revised to highlight our reliance upon that delay as a factor in the determination in Section 7.3.1.1.

Chino Hills reiterates its previous arguments regarding construction risks, operational risks, and fire prevention and suppression risks, which were adequately considered in the PD in Section 7.3.2, as well as regarding the cost of Alternative 4CM, which was adequately considered in Section 7.3.3.

It appears that Chino Hills misunderstands the PD's treatment of §399.2.5 in consideration of route selection, arguing that the PD ignores Section 1002 factors.²⁰⁶ Section 7.3.1 of the PD provides a full comparison of the Environmentally Superior Alternative with Alternative 4CM under Section 1002.

Chino Hills objects to what it perceives as a double standard, whereby the PD considers the General Plan for the CHSP but not the General Plan for Chino Hills. This disregards the fact that there is a significant difference in the roles that these General Plans must play in our deliberations. The General Plan for the CHSP is considered because we cannot authorize SCE to take actions in the CHSP incompatible with the CHSP General Plan. In contrast, we can authorize SCE to

²⁰⁶ Chino Hills' Comments at 3.

construct the Environmentally Superior Alternative through an existing ROW in Chino Hills.

Chino Hills disputes this conclusion and objects that the PD fails to adequately consider the delay posed by its litigation before the San Bernardino County Superior Court, arguing that SCE cannot rely upon §1759 absent an investigation of the plaintiff's claims, a finding that the utility has complied with the ROW grant, and that further action was unnecessary, citing *Koponen v. Pacific Gas and Electric Company* (2008), 165 Cal.App.4th 345, 358.

We disagree with Chino Hills's interpretation of § 1759. Nevertheless, we have considered Chino Hills' arguments regarding the ROW grant. Our findings and conclusions are based upon the evidentiary record of this proceeding, which included a consideration of the language of the easement grants. In granting the CPCN, the PD considered that evidence, including the language of the easement provision from Exhibit CH-54, which includes provisions regarding reconstruction, enlargement, and improvement of the transmission lines within the ROW, and contains no limiting language which would support a finding of an overburdening of the easement. We therefore now explicitly find that construction of the Environmentally Superior Alternative is consistent with the language of the easement provision found in Exhibit CH-54. This finding is based upon the evidentiary record and upon the other findings of fact and conclusions of law contained herein.

Chino Hills argues that we cannot modify the terms of an easement obtained by contract.²⁰⁷ We have not done so herein. However, Chino Hills

²⁰⁷ Chino Hills' Comments at 22.

cannot add additional terms to the easement obtained by contract, and we do not believe that the San Bernardino County Superior Court will reconstruct the contract.

SCE supports the PD with limited revisions. SCE has requested certain revisions to the PD, the CEQA Findings of Fact and the Final EIR to clarify the information presented therein. Where appropriate, we have implemented these minor modifications. All modifications to the Final EIR are reflected in the “Revisions to the Final EIR” appended hereto as Attachment 3.

In addition, SCE requested revisions to support future implementation through condemnation, most of which have been adopted. More specifically, Findings of Fact 44-46 and Conclusions of Law 23-25 are adopted to support implementation.

SCE requests that the PD be modified to apply the 15% contingency upon costs derived from final route selection and engineering designs. SCE proposes that it be allowed the opportunity to update its cost estimates through an advice letter following adoption of a final route and completion of engineering, similar to the process set forth in D.07-01-040 regarding SCE’s Devers-Palo Verde No. 2 Transmission Project.

DRA objects to the proposal, arguing that the PD was properly reasoned, and that adoption of SCE’s proposed ordering paragraph would remove the maximum cost language.²⁰⁸ DRA offered a counter-proposal based upon our decision authorizing SDG&E’s Sunrise Powerlink Project, whereby we would

²⁰⁸ DRA Reply Comments at 4.

adopt a maximum cost and authorize an advice letter process to potentially adjust that maximum cost upon final route selection and engineering designs.

We find SCE's proposal to be a reasonable recommendation. We recognize DRA's concerns, but see minimal benefit in adopting a maximum cost figure with conditions which would nevertheless effectively require supplementation by a subsequent advice letter. Hence, we adopt SCE's proposed revisions to the PD regarding contingency, with direction that SCE use a 15% contingency level.

12. Assignment of Proceedings

Dian M. Grueneich is the assigned Commissioner and Victoria S. Kolakowski is the assigned ALJ in these proceedings.

Findings of Fact

1. SCE filed an application for a CPCN for authority to construct the Tehachapi Renewable Transmission Project, Segments 4-11 (Project), which included its PEA, on June 29, 2007.
2. Segments 1-3 of the Tehachapi Renewable Transmission Project were approved in D.07-03-012 and D.07-03-045.
3. On August 27, 2007, ALJ Kolakowski held a PHC in Pasadena, California, with assigned Commissioner Dian M. Grueneich in attendance.
4. A Scoping Memo was issued on March 17, 2009 after the PHC. The Scoping Memo established the scope of this proceeding and the schedule, coordinating the CPCN review with the timeline for the concurrent, parallel track environmental review pursuant to the CEQA and NEPA. The Scoping Memo also designated ALJ Kolakowski as the presiding officer.
5. A PPH was held in Chino Hills on March 19, 2009, with 50 individuals presenting testimony and attended by approximately 400 people. Commissioner Grueneich attended, along with representatives of the other Commissioners.

6. The schedule was revised in a ruling on April 1, 2009 at the request of Chino Hills, to grant additional time to prepare for evidentiary hearings.

7. 10 days of evidentiary hearings were held in July 2009.

8. All of the elements of the Project comprise a connected whole, and all elements are necessary to the entire Project.

9. The Commission has approved nine RPS contracts that are estimated to produce a maximum of approximately 2300 MW of renewable energy to the grid. 1590 MW of renewable generation would otherwise be unavailable if the Project was not constructed.

10. The Commission already has determined that the TWRA plays a critical role in meeting the state's RPS goals by approving Segments 1-3 in D.07-03-012 and D.07-03-045. Both the net new delivery capacity (4,500 MW less 700 MW for Segments 1-3) and the net RPS contracts not served by Segments 1-3 (2290 MW less 700 MW) demonstrate that the incremental capacity plays a critical role in meeting the RPS goals.

11. The CAISO has approved the Project, the California Energy Commission's 2007 Strategic Transmission Investment Plan Commission Report found the Project to be one of five strategically important transmission projects, and the RETI Phase 1B Report showed the TWRA to be one of the most economically viable locations for providing new renewable resources with minimal environmental impacts.

12. Energy Division staff's "33% Renewables Portfolio Standard Implementation Analysis Preliminary Results" issued in June, 2009 identified the TRTP as one of four transmission projects needed to meet the state's existing 20% RPS goals.

13. DRA compared the costs of the Project to the Antelope Transmission Project and to SDG&E Sunrise Powerlink Transmission Project, and concluded that the Project was more cost effective on a dollar per MW basis.

14. The Garamendi Principles are statewide transmission siting policies that encourage the use of existing ROW by upgrading existing transmission facilities where technically feasible and economically justifiable. SCE followed the Garamendi Principles in siting the Project.

15. The transmission lines of Segments 6 and 11 at issue pass through the ANF. Construction in the ANF is particularly difficult due to terrain, requiring significant use of helicopters and potentially impacting biologically sensitive areas. Segments 6 and 11 will be built to 500 kV standards and mostly operated at 220 kV.

16. The Commission and the USFS prepared a joint Draft EIR/EIS.

17. Consistent with its normal protocols, USFS is conducting a detailed review of the impacts of the recent Station Fire in the ANF and will determine how to proceed upon completion of that review. The USFS will not issue its Final EIS or ROD until that review is complete.

18. For purposes of CEQA, the Project's three primary objectives are to:
(a) provide the electrical facilities necessary to reliably interconnect and integrate in excess of 700 MW and up to approximately 4,500 MW of new wind generation in the TWRA currently being planned or expected in the future, thereby enabling SCE and other California utilities to comply with the California RPS goals in an expedited manner (i.e., 20 percent renewable energy by year 2010 per California Senate Bill 107); (b) further address the reliability needs of the CAISO-controlled grid due to projected load growth in the Antelope Valley; and (c) address the

South of Lugo transmission constraints, an ongoing source of concern for the Los Angeles Basin.

19. The 21st Century Proposal does not mitigate or avoid any significant adverse impacts caused by the implementation of the Proposed Project or by the implementation of the five versions of Alternative 4.

20. SCE is committed to removing the non-energized transmission lines in the CHSP.

21. The land acquisition proposed in the 21st Century Proposal is not needed to mitigate impacts on biological resources, which are not significant.

22. The habitat restoration proposed in the 21st Century Proposal would not reduce any impacts of either the Proposed Project or Alternative 4 as defined under the applicable thresholds of significance.

23. A set of CEQA Findings of Fact are attached as Attachment 1, and accurately reflect the independent analysis contained in the Final EIR and are supported by substantial evidence in the administrative record.

24. The Final EIR was issued on October 30, 2009.

25. The Final EIR identified Alternative 2, the Proposed Project, as the environmentally superior alternative for all but two of the segments. For Segment 4, it identified Alternative 3 (West Lancaster Alternative) as the environmentally superior alternative. For Segment 7, it identified Alternative 7 (66 kV Subtransmission Alternative) as the environmentally superior alternative.

26. For Segments 6 and 11, Alternative 6 (Maximum Helicopter Construction in the ANF Alternative) was determined to be the environmentally superior alternative. Ultimately, however, the preferred method for construction in the ANF would be site-specific and would involve a balancing of the effects on helicopter construction against ground-based construction on sensitive resources.

For instance, in areas where road construction would result in unacceptable impacts to sensitive species, such as in the Lynx Gulch area, helicopter construction would be preferred to the degree that it would avoid or minimize such impacts. In other locations, road construction to accommodate construction vehicle access would be preferred to avoid the impacts associated with the establishment of helicopter staging areas. Therefore, the environmentally superior alternative for Segments 6 and 11 is a combination of the helicopter construction and ground-based construction methods, with the total number of helicopter constructed towers falling within the range characterized by Alternative 2 and Alternative 6 (33 to 148 towers). The USFS will need to determine the specific combination of Alternative 2 and Alternative 6 features that provides the least overall impact to Forest resources. This is basically a decision as to which transmission structures would best be demolished and constructed by helicopter versus by conventional ground-based construction methods. As indicated in Final EIR Section 4.3.2, the environmentally preferable alternative will be identified by the Forest Service in its Record of Decision (ROD).

27. SCE's witnesses have more extensive experience with the design, construction and maintenance of 220 kV and 500 kV transmission lines than do Chino Hills' witnesses. SCE's witnesses' testimony is credible that the Environmentally Superior Alternative may be safely and effectively constructed within the existing ROW in Chino Hills.

28. The Environmentally Superior Alternative will be constructed with standards that meet or exceed General Order 95.

29. The Environmentally Superior Alternative can be safely and effectively operated.

30. The Environmentally Superior Alternative almost entirely replaces existing transmission lines with larger transmission structures, which will result in incremental impacts on fire prevention and suppression which do not render it infeasible.

31. The Environmentally Superior Alternative is feasible.

32. Construction of the Environmentally Superior Alternative is consistent with the language of the easement provision from Exhibit CH-54, which includes provisions regarding reconstruction, enlargement, and improvement of the transmission lines within the ROW.

33. Alternative 4CM would cost more than the Environmentally Superior Alternative if the 21st Century Proposal is also adopted.

34. The best case relative savings over the Environmentally Superior Alternative for adoption of Alternative 4CM without the 21st Century Proposal would be \$14.9 million, which is less than 1% of the total cost of the Environmentally Superior Alternative. Alternative 4CM could potentially cost over \$69.3 million more than the Environmentally Superior Alternative.

35. The Final EIR was completed in accordance with CEQA.

36. The Final EIR was presented to the Commission, and the Commission has received, reviewed, and considered the information contained in the Final EIR.

37. The Final EIR reflects the Commission's independent judgment and analysis.

38. Significant and unavoidable environmental impacts will result from construction and operation of the Environmentally Superior Alternative; however, the Commission has adopted all feasible mitigation measures; adopted certain alternatives that reduce the impacts of the Environmentally Superior Alternative; recognized all significant, unavoidable impacts; and balanced the

benefits of the Environmentally Superior Alternative against its significant and unavoidable impacts.

39. The benefits of the Environmentally Superior Alternative outweigh and override its significant and unavoidable impacts, for the reasons set forth in the statement of overriding considerations in Section 7.4 herein.

40. The proposed Mitigation Monitoring Plan in the Final EIR is designed to ensure compliance with the changes in the project and mitigation measures imposed on the authorized project during implementation and recommends a framework for implementation of the Mitigation Monitoring Plan by this Commission as the CEQA lead agency.

41. Contingency costs are an appropriate element of the total estimated cost of Project.

42. A reasonable level of contingency costs for TRTP is 15% of the total estimated costs for Project excluding AFUDC, P&B, and A&G costs. SCE has not demonstrated that its requested contingency of 32% is reasonable.

43. The reasonable maximum cost for the Environmentally Superior Alternative pursuant to § 1005.5(a) is \$1,522,920,000 (in 2009 dollars), excluding AFUDC. AFUDC is estimated at \$261.82 million, for an estimated total project cost of \$1,784,740,000.

44. The public interest and necessity require the Tehachapi Renewable Transmission Project (Segments 4-11).

45. The Tehachapi Renewable Transmission Project (Segments 4-11) are planned or located in a manner that will be most compatible with the greatest public good and the least private injury.

46. The properties sought to be acquired by SCE are necessary for the Tehachapi Renewable Transmission Project (Segments 4-11).

Conclusions of Law

1. The Commission has jurisdiction over the proposed transmission project pursuant to § 1001 *et seq.*

2. The preponderance of the evidence standard, the default standard in civil and administrative law cases, is the applicable standard of review here.

3. An element-by-element need determination is inappropriate in this case, as the Project comprises a connected whole project.

4. SCE's proposal to build Segments 6 and 11 to accommodate possible operation at 500 kV is reasonable and prudent in light of the costs and benefits of additional structures to ensure relatively simple access to additional transmission capacity to access the TWRA compared to the difficulties of tearing down and rebuilding lines.

5. A finding that the Project is necessary to achieve the state's RPS goals under § 399.2.5 will serve as a definitive determination of need under §§ 1001 *et seq.*, and will render further consideration of need based upon reliability or economic factors moot.

6. The Commission considered the application of § 399.2.5 in D.07-03-012. Recognizing the extraordinary nature of the application of this provision, it established a three-prong need test for reliance upon § 399.2.5: "(1) that a project would bring to the grid renewable generation that would remain otherwise unavailable; (2) that the area within the line's reach would play a critical role in meeting the RPS goals; and (3) that the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance."

7. The Project will bring to the grid renewable generation that would remain otherwise unavailable.

8. The area within the Project's reach, the TWRA, will play a critical role in meeting California's RPS goals.

9. The cost of the Project is appropriately balanced against the certainty of its contribution to economically rational RPS compliance.

10. The Project meets the three-prong need test of D.07-03-012, as set forth in Conclusion of Law 6 herein.

11. Further review of post-fire conditions by the USFS should not need to delay the Commission's separate decision on the Project or issuance of the Final EIR.

12. Compensatory benefits unrelated to project benefits are outside of the scope of CEQA.

13. Habitat restoration below baseline conditions is not appropriate mitigation under CEQA.

14. Contributions of funds to unspecified future programs, improvements or actions is not appropriate mitigation under CEQA.

15. The 21st Century Proposal may not be legally imposed as mitigation for Alternatives 4A, 4B, 4C, 4CM or 4D.

16. Chino Hills' argument that selection of the Environmentally Superior Alternative will introduce undue delay should be rejected, as the delay would be due to its own litigation, and does not adequately consider the potential delays from adopting Alternative 4CM, including potential changes to the CHSP General Plan, obtaining clearances to build on the Aerojet property, or potential litigation by others.

17. There is no requirement that the Commission adopt the lowest cost alternative, without regard to environmental and other factors.

18. The Final EIR has been completed in compliance with CEQA and should be certified.

19. The CEQA Findings of Fact in Attachment 1 should be incorporated into this decision.

20. Section 1002 guides the Commission in selection of an appropriate alternative.

21. The community values of an individual community should not outweigh statewide values, including the RPS program.

22. Balancing the factors of § 1002, the Commission should select the Environmentally Superior Alternative.

23. The public interest and necessity require the Tehachapi Renewable Transmission Project (Segments 4-11).

24. The Tehachapi Renewable Transmission Project (Segments 4-11) is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.

25. The properties sought to be acquired by SCE are necessary for the Tehachapi Renewable Transmission Project (Segments 4-11).

26. Once SCE has developed a final detailed engineering design-based construction estimate for the final route of the Project, SCE should, within 30 days, file with the Commission an advice letter with the revised cost estimate and seek an adjustment of the maximum reasonable and prudent costs pursuant to § 1005.5(b).

27. SCE should amend its EMF Management Plan as needed to apply its no-cost EMF management techniques to the Environmentally Superior Alternative.

28. The Mitigation Monitoring Program in the Final EIR should be adopted.

29. Consistent with our interpretation of § 625 in D.01-10-029, the appropriate standard of notice for Project is that prescribed by § 625(a)(1)(B), which only requires notice to the Commission Calendar.

30. The Commission has jurisdiction and responsibility pursuant to § 1005.5(a) to specify a “maximum cost determined to be reasonable and prudent” for the Project.

31. The Project is eligible for the backstop cost recovery mechanism of § 399.2.5(b)(4).

32. Acton has requested that the Commission condition construction of the Project with ensuring safe and reasonable residential access, certain local requirements such as equestrian trail easements, and removal of a billboard unlawfully constructed within the SCE ROW. The Commission should direct SCE to meet with Acton and to identify reasonable measures consistent with state law and Commission orders addressing these issues, and to file an advice letter setting forth these measures, if any, within six months.

33. SCE should meet and confer with the Department of Parks and Recreation, the CHSP, and with HFE to develop a plan for fulfillment of SCE’s prior settlement obligations to remove transmission structures within the CHSP, and to report to the Director of Energy Division every six months regarding the progress of fulfillment of this obligation until its completion satisfactory to the Director of Energy Division.

34. Application 07-06-031 is closed.

O R D E R

IT IS ORDERED that:

1. The request of Southern California Edison Company for a certificate of public convenience and necessity to construct the proposed Tehachapi Renewable

Transmission Project (Segments 4-11) is granted for the routing alternative identified in the Final Environmental Impact Report as the Environmentally Superior Alternative, subject to:

- a) Southern California Edison Company amending its Electro-magnetic Field Management Plan for the proposed Tehachapi Renewable Transmission Project (Segments 4-11) to apply its no-cost Electro-magnetic Field management techniques to the Environmentally Superior Alternative.
- b) all feasible mitigation measures identified in the Final Environmental Impact Report and the Mitigation Monitoring Program being imposed upon construction of the Environmentally Superior Alternative. The Mitigation Monitoring Program is adopted herein.

2. The Final Environmental Impact Report prepared for the Tehachapi Renewable Transmission Project (Segments 4-11) is certified.

3. We adopt as a reasonable maximum cost for the Tehachapi Renewable Transmission Project (Segments 4-11) pursuant to § 1005.5(a) of \$1,522,920,000 (in 2009 dollars), excluding allowance for funds used during construction. Allowance for funds used during construction is estimated at \$261.82 million, for an estimated total project cost of \$1,784,740,000.

4. Once Southern California Edison Company has developed a final detailed engineering design-based construction estimate for the final route of the Tehachapi Renewable Transmission Project (Segments 4-11), Southern California Edison Company shall, within 30 days, file with the Commission an advice letter with the revised cost estimate and seek an adjustment of the maximum reasonable and prudent costs pursuant to Public Utilities Code Section 1005.5(b).

5. The California Environmental Quality Act Findings of Fact for the Tehachapi Renewable Transmission Project (Segments 4-11) in Attachment 1

accurately reflect the independent analysis contained in the Final Environmental Impact Report and are supported by substantial evidence in the administrative record, and are incorporated as findings herein.

6. The documents that constitute the Final Environmental Impact Report for the Tehachapi Renewable Transmission Project (Segments 4-11) are received as Reference Exhibits on the effective date of this decision, as follows:

- (a) Draft Environmental Impact Report/Environmental Impact Statement – Reference Exhibit A; and
- (b) Final Environmental Impact Report – Reference Exhibit B.
- (c) Revisions to the Final Environmental Impact Report – Attachment 3.

7. Southern California Edison shall meet with the Acton Town Council to identify reasonable measures consistent with state law and Commission orders addressing issues of residential access, equestrian trails and improper structures on existing rights of way, and shall file an advice letter setting forth these measures, if any, within six months.

8. Southern California Edison shall meet with the Department of Parks and Recreation, the Chino Hills State Park, and with Hills for Everyone to develop a plan for fulfillment of Southern California Edison Company's prior settlement obligations to remove transmission structures within the Chino Hills State Park, and shall report to the Director of Energy Division every six months regarding the progress of fulfillment of this obligation until its completion satisfactory to the Director of Energy Division.

9. Application 07-06-031 is closed.

This order is effective today.

Dated December 17, 2009, at San Francisco, California.

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

Concurrence of Commissioner Rachelle B. Chong
Decision Approving Tehachapi Renewable Transmission Project
Item 60
December 17, 2009

I am voting today to support the Proposed Decision in the Tehachapi Renewal Transmission Project matter. Approval of this large project is an important and necessary step towards achieving California's overall Renewable Portfolio Standard goals.

The importance of moving forward with the Tehachapi project was clearly proven in this proceeding's record, as reflected by the fact there was relatively little controversy regarding whether the project is needed, and that its primary objective is to support renewable generation development. Increased renewable energy generation is key to meeting our climate change goals under AB 32. It will also produce significant green jobs for the region.

In making my decision, I gave considerable consideration to the issue of how the transmission line should be routed in the Chino Hills area. I thank all the stakeholders who came to the public meetings on this project to express their views. I have heard the deep concern of the City of Chino Hills, its residents, and the local environmental groups. The majority of this project will be sited in existing right-of-ways, including the utility's proposed route through Chino Hills. While this is a difficult decision, I agree with the Proposed Decision's conclusion that the line

should be sited in the existing utility right-of-way in Chino Hills, consistent with the Garamendi Principle.²⁰⁹

I am sympathetic to the fact that homeowners object to living near transmission right-of-ways and power lines. Having said that, I would have preferred a situation where a city had not chosen to permit homes to be built immediately abutting a transmission right-of-way. In short, the City of Chino Hills bears some responsibility for creating today's problem. Further, quizzically, the prime alternative (Alternative 4CM) suggested by the homeowners is to put the line through the nearby public Chino Hills State Park. This alternative raises new complications.

In view of the forgoing, my reasons for supporting the route under the Proposed Decision are threefold: First, State policy regarding transmission siting prioritizes the use of existing right-of-ways.

Second, I was persuaded that adopting Alternative 4CM through Chino Hills State Park would cause delays, or at the very least create unacceptable risk of delay, in the ability to timely achieve a 20% or 33%, RPS goal by 2020 for the utility at issue.

Of the multiple delays argued by some parties, those of most concern to me relating to Alternative 4CM are the time needed for the State Park to amend its general plan, and the time needed for Department of Toxic Substances Control to give its clearance on adjoining Aerojet

²⁰⁹ Cal. Code of Regs., tit. 20, § 2320.

property to be used for the construction of a new switching station and other facilities.

Third, I agree with the Proposed Decision and the final EIR, that the 21st Century Proposal component of Alternative 4CM does not appear to be a lawful imposition of mitigation under CEQA. Of the infirmities with the Proposal noted in the Proposed Decision, examples include mitigations which go further than to alleviate actual impacts caused by the project and mitigations which otherwise fail to meet the “nexus” requirements articulated by the U.S. Supreme Court and under CEQA.²¹⁰

All this said, the process of considering Alternative 4CM did bring to light a here-to-fore unfulfilled 1982 commitment by Edison to remove certain out-of-service poles and equipment in Chino Hills State Park. I am glad to see that Southern California Edison has agreed it is long overdue in making good on its decades-old commitment. I urge Edison to move forward quickly on this. I am pleased to see that in the decision, the Commission will track Edison’s progress until the removal of the utility facilities is complete.

Dated December 17, 2009, at San Francisco, California.

/s/ RACHELLE B. CHONG
Rachelle B. Chong
Commissioner

²¹⁰ See e.g., *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391; *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, 834-35. See also CEQA Guidelines § 15126.4(a)(4)(B).

Concurrence by President Michael R. Peevey

A.07-06-031

The 5-0 vote by the Commission on Southern California Edison Company's application for a CPCN authorizing Segments 4 through 11 of the Tehachapi Renewable Transmission Project was an important milestone in moving this state closer to a greener future through the use of renewable energy resources and reductions in greenhouse gas. The 173 miles of new or improved infrastructure will allow up to 4,500 megawatts of potential wind, or other renewable generation, into the southern California area from the Tehachapi Wind Resource Area in Kern County. The approval of this project brings the state closer to achievement of its renewal power goals.

While this CPCN maximizes the use of existing right-of-ways (ROW), thereby minimizing effects on previously undisturbed land and resources and reducing environmental impacts, the use of the ROW was not without controversy. A portion of Segment 8A proposes to utilize a ROW that currently runs through a populated area of the City of Chino Hills. SCE intends to replace a currently existing, but de-energized, 220kV transmission line in this ROW with a double-circuit 500kV transmission line. The City of Chino Hills, along with other intervenors including Hills for Everyone and the Puente Hills Landfill Native Habitat Preservation Authority, proposed an alternate route. This proposal, Alternate 4CM, reroutes the transmission line into Chino Hills State Park and obviates the need for using the ROW that runs between houses, schools, churches and parks in the City.

Alternate 4CM is a modification of Alternate 4C. As modified, Alternate 4C proposes a new 4.2 mile double-circuit 500 kV transmission line that would be placed parallel to an existing double-circuit 222 kV transmission line up to Chino Hills State Park (CHSP). This alternate route would then turn east for approximately 1.5 miles to a new 500 kV switching station. A portion of the existing single-circuit 500 kV transmission lines within CHSP would be re-routed to tie into the new switching station, which would allow the new double-circuit 500 kV transmission line to connect to these existing 500 kV transmission lines to allow power flow to the Mira Loma Substation. Alternate 4C was modified so that the new switching station would be located on Aerojet property approximately 2,500 feet

northwest of the location proposed in Alternate 4C, and then the transmission lines and towers were altered to account for the relocation of the switching station.

The proponents of Alternate 4CM presented cogent and compelling arguments in support of re-routing the line away from the residential area of Chino Hills and into CHSP. However, utilizing the Aerojet property and running the new lines through CHSP presented vexing issues and complexities. The Aerojet property had previously been used for research and development of explosives and for loading, assembling and testing of ordnance for the U.S. Dept. of Defense from approximately 1954 to 1995. Therefore, the property is subject to regulations by the California Department of Toxic Substances Control (DTSC) and DTSC has not definitely resolved the question of whether unexploded ordinance remains on the Aerojet property in the portions that would be used by Alternate 4CM. Parties offered differing opinions regarding how long it would take to receive clearances from DTSC necessary to construct the switching station. In addition, Alternate 4CM would impact the CHSP and there was substantial disagreement among the parties regarding whether the route was consistent with the CHSP General Plan and how long it would take to resolve this issue. Neither the Aerojet property issue nor the CHSP General Plan are within the jurisdiction of this Commission and therefore we have no say or control on how or when these complex issue might be addressed.

In balancing my sympathies for the residents of Chino Hills and their desire to re-route the transmission line and towers away from their homes and businesses, I also had to weigh the time vagaries associated with resolving the Aerojet property and CHSP general plan issues along with achievement of the state's renewable power goals. In the end, I cast my vote for approval of the CPCN using the existing ROW, the Environmentally Superior Alternative, to avoid delay and possible obstruction of the project's completion.