

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



July 16, 2004

TO: PARTIES OF RECORD IN APPLICATION 03-03-043

Decision 04-07-027 is being mailed without the Dissent of Commissioners Loretta Lynch and Carl Wood. The Dissents will be mailed separately.

Very truly yours,

/s/ ANGELA K. MINKIN  
by LTC

Angela K. Minkin, Chief  
Administrative Law Judge

ANG:hl2

Attachment

Decision 04-07-027 July 8, 2004

**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 Permit to Construct Electrical Facilities with Voltages Between 50 kV and 200 kV: Viejo System Project.

Application 03-03-043  
(Filed March 21, 2003)

**O P I N I O N**

Southern California Edison Company (SCE) requests a Permit to Construct a new substation in the City of Lake Forest and certain new transmission facilities through the City of Mission Viejo. SCE refers to the proposed new facilities as the Viejo System Project. This order grants the permit as the project described in the Final Mitigated Negative Declaration (FMND) and certifies the FMND.

**I. Project Description**

By this application, SCE seeks a permit to construct a substation and additional transmission capacity in the Lake Forest and Mission Viejo areas. The Viejo System project study area consists of the proposed substation site in the City of Lake Forest and a 3.1 mile segment of the existing 220 kilovolt (kV) and 66 kV transmission corridor located between the proposed substation site and the existing Chiquita Substation. The transmission line corridor is located within the Cities of Lake Forest and the City of Mission Viejo. The site of the proposed substation is located in the Foothill Ranch Planned Community within the City of Lake Forest. SCE also proposes to install a telecommunications line from the

proposed substation site to the SCE Irvine Operations Center in the City of Irvine. All portions of the proposed project are located within Orange County, California.

As proposed, the Viejo System Project would replace 19 existing tubular steel poles with 13 four-circuit tubular steel H-frame towers along an existing right of way through the City of Mission Viejo. The project would include the installation of three 66 kV lines on the new towers which would run adjacent to existing lattice towers for 3.1 miles, and construction of four 12 kV underground circuits. The project would include the construction of a new 220/66/12 kV substation in the City of Lake Forest and modifications to the existing Chiquita substation. A detailed project description is contained in Section B.1 of the FMND and Supporting Initial Study. Specific project components are listed below.

Construction of a new 220/66/12 kV unmanned, automated, low-profile substation (Viejo Substation) on a 12.5-acre site in the City of Lake Forest.

Modification of 3.1 miles of the existing 66 kV subtransmission lines located within an existing SCE right-of-way containing 220 kV transmission and 66 kV subtransmission lines, to allow for an additional overhead 66 kV circuit. The existing 66 kV lines are located on tubular steel poles (TSPs) in the right-of-way between the proposed Viejo Substation in the City of Lake Forest and the existing Chiquita Substation in the City of Mission Viejo. Nineteen existing TSPs would be replaced with 13 metal H-frame structures within the existing right-of-way.

Minor modification of the Chino-San Onofre 220 kV transmission line and the San Onofre-Serrano 220 kV transmission line consisting of the replacement of three 220 kV lattice steel towers (LSTs) and the installation of 10 TSPs to loop

the Chino-San Onofre 220 kV circuit into the Viejo Substation and create a by-pass for the San Onofre-Serrano 220 kV circuit.

Construction of four 12 kV underground circuits originating from the Viejo Substation.

Modification of equipment at the existing Chiquita Substation to accommodate the additional line, including one 66 kV circuit breaker, three 66 kV disconnect switches, and one 15-foot steel takeoff structure.

Installation of one Optical Ground Wire (OGW) within the existing 220 kV transmission and 66 kV subtransmission line corridor.

Installation of approximately 4.4 miles of underground fiber optic cable between Viejo Substation and the Irvine Operation Center.

The site of the proposed Viejo Substation is located in an industrial zone in the Foothill Ranch Planned Community of the City of Lake Forest. The Chiquita Substation is located in a Community Facility zone in the City of Mission Viejo. The transmission corridor of the proposed project is located along an existing 220/66 kV transmission facility corridor, and crosses areas zoned for Business Park/Industrial, Community Facility, Light Industrial, Recreation, Residential, and Roadway uses. Significantly, portions of the new H-frame facilities would traverse popular recreation areas and run adjacent to residential neighborhoods in Mission Viejo. These portions of the project would be constructed along an existing right of way where lattice towers are currently located.

## **II. Procedural Matters**

### **A. Procedural Background**

SCE filed this application for a permit to construct the Viejo System Project on March 21, 2003. After reviewing the application and the Proponent's

Environmental Assessment (PEA), Commission staff determined that the project should be reviewed under the California Environmental Quality Act (CEQA).

The Commission contracted with a CEQA consultant, which proceeded to develop an Initial Study. On March 10, 2004, Commission staff issued an Initial Study and Draft Mitigated Negative Declaration (MND) for public comment in compliance with the CEQA and Rule 17.1 of the Commission's Rules of Practice and Procedure. The Commission filed the draft MND with the State Clearinghouse on March 10, 2004. The 30-day review and comment period (CEQA Guidelines § 15105) closed on April 9, 2004. SCE, the City of Mission Viejo and a local citizens group called NOPE submitted comments on the draft MND. Commission staff reviewed the parties' comments and modified the draft MND and Initial Study to reflect these comments.

The Commission held a prehearing conference on March 25, 2004 in Mission Viejo at which NOPE presented a petition signed by an estimated 3,000 local residents. The applicant, attorneys representing Mission Viejo, representatives of NOPE and about 200 local residents attended the prehearing conference. All five members of Mission Viejo's city council, including the mayor, spoke in opposition to the project as proposed. About 20 citizens spoke, most in opposition to the project unless the lines could be undergrounded. Two former members of the city council of Mission Viejo spoke in support of the project. The South Orange County Regional Chambers of Commerce and the City of Lake Forest sent letters in support of the project.

On March 26, 2004, the assigned ALJ joined a tour of the project rights of way, which was attended by representatives of SCE, NOPE and Mission Viejo. Several local residents also joined the tour.

Following the prehearing conference, the Scoping Memo and Ruling issued in this proceeding denied NOPE and Mission Viejo's request for a public participation hearings at which local residents and businesses could present their views on the proposed project. The ruling found that such a hearing was not necessary because the prehearing conference provided an opportunity for more than 200 residents to speak.

Subsequently, NOPE made an informal motion seeking a public participation hearing, arguing that because the prehearing conference was not noticed as a forum for public comment, many members of the local community may have chosen not to attend. In response to this request, the Commission held a public participation hearing on May 25 at 2pm and 6pm in the City of Mission Viejo's City Hall. About 250 local residents attended the hearing and 71 spoke, most either opposing the project or proposing transmission line undergrounding through Mission Viejo. All five members of the city council spoke, proposing the lines be placed underground. Two former members of the city council spoke in support of the project.

Public comments in opposition to the project emphasized the following:

- The transmission lines should be placed underground to protect residents from EMF exposure;
- The existing lines are eyesores in an otherwise pristine community and additional facilities would exacerbate the eyesore;
- Other jurisdictions require undergrounding for health and safety reasons;
- The project would reduce local property values;
- SCE should work with the City of Mission Viejo to reach an agreement about how to proceed in ways that would recognize the city's interests in protecting the community;
- EMFs have been found to cause various forms of cancer;

- Children live and play in the areas of the proposed project;
- The City of Mission Viejo is special with regard to its attention to planning, environmental values, quality of life and commitment to recreation, open space, natural beauty;
- The MND erred in finding the proposal consistent with the city plan because the project would impair views in recreational and open space areas;
- SCE failed to notify all affected residents and has ignored the community's interests;
- The costs of the project should be allocated according to who benefits from it;
- PUC should consider alternatives to the project;
- The need for the project has not been demonstrated and SCE's load growth estimates are flawed.

Following review of comments on the draft MND, Commission staff modified the draft MND to respond to those comments and, in some cases, modified the MND to include additional or different mitigation measures. The Commission staff confirmed that SCE followed Commission rules in its notification to residents. It published the final MND on June 2, 2004.

### **B. Standard of Review**

In its prehearing statement, Mission Viejo argues that SCE should not have filed for a "permit to construct" (PTC) for the Viejo System Project and that the application should instead have sought a certificate of public convenience and necessity (CPCN), which requires a more elaborate review process. Mission Viejo reasons that General Order (GO) 131-D requires a CPCN for this type of project because the project does not anticipate "replacing existing structures with similar structures." Mission Viejo also stated concerns that SCE plans to add a fourth 66 kV line at an unspecified later date, pushing the project over the 200 kV

threshold for a more formal review of project need. At the prehearing conference, SCE stated it has no plans to add a fourth line but that adding the fourth 66 kV line at a later date would not require any Commission review or approval.

GO 131-D requires utilities to seek a PTC if the project is designed to operate between 50 kV and 200 kV. A PTC does not require the application to include analysis of need, costs or benefits. A PTC generally anticipates an environmental review and a process for public input. GO 131-D requires utilities to seek a CPCN before construction of transmission line facilities that are designed for “immediate or eventual operation at 200 kV or more.” A CPCN application requires a showing of project need and an analysis of costs and benefits.

When considering whether a project would operate at 200 kV or more for purposes of determining whether to require a PTC or CPCN, the Commission does not cumulatively add the voltage of separate circuits proposed to be installed. That is, the project is considered to operate at a level of 66 kV notwithstanding the number of installed circuits as long as all circuits are 66 kV. Because all circuits SCE proposes to install are 66 kV, the project was appropriately filed as a PTC.

GO 131-D Section III(A) excuses projects larger than 200 kV from CPCN review if those projects anticipate “the replacement of existing power line facilities or supporting structures with equivalent facilities or structures, the minor relocation of existing power line facilities, the conversion of existing overhead lines to underground, or the placing of new or additional conductors, insulators, or their accessories on or replacement of supporting structures already built...” While SCE would replace certain structures as part of the



proposed project, albeit this exception is not relevant in this case because the proposed project is below 200 kV.

For these reasons, the Scoping Memo and Ruling issued in this proceeding on April 8, 2004 found that SCE's application appropriately seeks a PTC. We affirm that ruling.

### **C. Level of CEQA Review**

Mission Viejo and NOPE contend that the Commission should have conducted an environmental impact report (EIR) rather than an MND in this case in order to provide a complete assessment of the project and assess alternatives. NOPE and Mission Viejo allege that the MND does not consider significant environmental impacts and improperly fails to consider reasonable alternatives to the facilities envisioned in the application.

In determining whether to prepare an EIR or an MND for the Viejo Project, Commission staff and its environmental consultants prepared an Initial Study consistent with the CEQA Public Resources Code § 21000 et seq., Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, § 15002), specifically CEQA Guideline § 15063. Under CEQA, an agency shall prepare an MND when the Initial Study shows that there is no substantial evidence that the project may have a significant effect on the environment, or the Initial Study identifies potentially significant effects but the project as agreed to by the applicant prior to public review has been revised to avoid significant effects or the effects have been mitigated to a less than significant level. (CEQA Guideline § 15070) An EIR is required when the project as proposed or revised may have a significant effect.

For the Viejo Project, the Initial Study reviewed potential environmental effects pursuant to the CEQA Checklist significance criteria contained in Appendix G of the CEQA Guidelines. The detailed environmental analysis of

potential impacts and recommended mitigations is contained in Section B.3 of the DMND and Supporting Initial Study. That analysis reflects that with mitigation, any potentially significant effects could either be avoided or reduced to less than significant levels. Additionally, SCE agrees to implement all recommended mitigation measures as a condition of project approval.

In determining whether to conduct an EIR or an MND, Commission staff must apply its judgment in light of the project, its potential impacts and the likelihood of reasonable mitigations. In this case, some parties suggest that the Commission should have conducted an EIR and reviewed alternatives. We affirm the staff's decision to conduct an MND instead in this case because we are convinced that the MND meets the legal requirements of CEQA. However, in recognition that the visual impacts of the project might be considered to be substantial from the standpoint of local residents and businesses, Commission staff reviewed alternative proposals, which are addressed subsequently. We find that some of those alternatives may be feasible. We do not adopt them at this time because Commission staff has not conducted a complete review of their environmental impacts, as CEQA requires. As we are not convinced that the benefits of any of these alternatives will be offset by the potential costs as described below, we decline to reopen the CEQA process to review them in more depth. We therefore certify the final MND as presented to us by the Commission staff.

#### **D. Need for Hearings**

The prehearing statements of the City of Mission Viejo and NOPE proposed that the Commission conduct evidentiary hearings in this case. Although NOPE and Mission Viejo presented many objections to the project, these prehearing statements did not identify specific material factual disputes

that would be the subject of evidentiary hearings. Their concerns were either of a general nature or appropriately considered in comments to the draft MND.

Subsequently, NOPE and Mission Viejo submitted comments on the draft MND that proposed specific mitigation measures, which are discussed in more detail in subsequent sections of this order. The Commission modified the draft MND to incorporate some of the mitigation measures advocated by NOPE and Mission Viejo.

After the Commission staff issued the FMND, on June 10, 2004, NOPE filed a motion seeking hearings in this proceeding. NOPE argues that there are outstanding factual disputes relating to the need for the project and the prospects for undergrounding. On the issue of need, NOPE suggests the only documentation SCE has provided to support the project is a load forecast that is outdated and appears to assume exponential growth in Mission Viejo, where growth has tapered off in recent years. NOPE's motion also argues that the FMND does not adequately address undergrounding options from an economic or technical standpoint. It proposes to address these issues in hearings.

SCE responded to NOPE's motion on June 14, 2004 objecting to NOPE's request for hearings.

This order addresses the issues of need and project alternatives NOPE proposes to address in evidentiary hearings. In general, we are convinced by applicant's showing of project need, and find that the potential benefits of further review in this proceeding and possible changes to the project are unlikely to outweigh the costs of delay and project modifications. Accordingly, we do not conduct hearings in this application and issue this order ex parte.

### **III. Need for the Proposed Project**

The Viejo System Project would serve local, rather than system demand.<sup>1</sup> Specifically, the Viejo System Project would serve the electrical needs of South Orange County, now connected to the Santiago System. The Santiago System serves approximately 250,000 metered customers. SCE states the area has experienced exceptional growth and projected peak demand is likely to exceed the operating limits of the transformers that currently serve the Santiago System by 2005. It states the Viejo System Project will relieve the strain on the existing facilities by (1) transferring load on the Santiago System to the Viejo System; (2) relieving load at the 66/12/kV Limestone substation; (3) relieving the San Onofre-Santiago and Barre-Ellis 220 kV transmission lines under abnormal conditions; and (4) allowing load transfers between the Viejo System and the Santiago System under both normal and abnormal system conditions.

As discussed, NOPE and Mission Viejo stated their common concern that SCE has not demonstrated a need for the project and has conducted no cost-benefit analysis. SCE replied that it is not required to provide such analysis under GO 131-D.<sup>2</sup>

The Commission's review of a project for which the utility seeks a permit to construct is normally limited to environmental impacts of the project.

---

<sup>1</sup> Because the project serves local demand and its circuits are 66 kV, the project is considered a distribution facility by the Federal Energy Regulatory Commission. Accordingly, the California Independent System Operator has not analyzed the need for the project.

<sup>2</sup> At the PHC and in response to the ALJ's inquiry, SCE stated the California Independent System Operator (ISO) had not identified a need for this project because the Federal Energy Regulatory Commission has defined projects of this size to be "distribution" and the ISO does not analyze the need for distribution projects.

Although we are within our authority to review other aspects of a project for which a utility seeks a permit to construct, the circumstances in this case do not suggest a more intensive review is necessary. We are convinced by SCE's application that the project is required to accommodate growth in the South Orange County area. Although growth in Mission Viejo may have stabilized in recent years, demand in other areas to be served by the project continues to increase.

The Viejo System Project is not a major capital project. Consistent with our usual practice, we do not require a cost-benefit analysis at this time. We instead follow our usual policy for review of such projects, which provides that the utility assumes the risk for capital costs and an eventual finding by the Commission that the investment was reasonable. For projects like the Viejo System Project, this review is conducted in general rate cases at the time the utility seeks to include a project's costs in rate base. The Commission retains its authority to disallow all or a portion of project expenses in SCE's general rate case following project construction if it finds the project or associated costs are unreasonable.

#### **IV. Environmental Analysis and Mitigation Measures**

##### **A. The Final MND**

The Commission published the Final MND and Initial Study to consider whether to approve the project. The final MND and Initial Study include all elements required by CEQA. Based on the Initial Study, the environmental impacts associated with the project proposed by SCE may be mitigated so that they are less than significant as that term is used in CEQA. As part of its PEA, SCE proposed Applicant Proposed Measures (APMs) to reduce potentially significant impacts to a level that is less than significant. These measures have

been incorporated into the project description of the final MND. SCE has also agreed to include the staff's recommended mitigation measures. The Commission staff has prepared a Mitigation Implementation and Monitoring Plan to ensure that SCE implements the mitigation measures prescribed. The mitigation measures required by the FMND are included as Section C to the FMND and attached to this order.

In response to comments on the MND, the Commission's consultants worked with Commission staff to analyze several project options, among them, (1) undergrounding the entire project along the existing right-of-way, (2) undergrounding the entire project through city streets and (3) partial undergrounding for approximately 2 miles through Mission Viejo, an option referred to by NOPE as "over-under." Appendix 8 of the final MND summarizes these options and associated potential impacts and mitigations.<sup>3</sup>

The FMND finds the two options for undergrounding the entire project are not feasible because the associated environmental impacts could not be readily mitigated. The FMND finds the partial undergrounding option, which was included in SCE's PEA, is feasible and would eliminate visual impacts of the proposed project along certain critical portions of the project path, namely, in recreational and residential neighborhoods of Mission Viejo that are the subjects of much public concern. Although the FMND finds that partial undergrounding is feasible, it does not analyze the environmental impacts of that undergrounding option to the extent required by CEQA. We would be within our authority to

---

<sup>3</sup> The FMND also considered the option of installing large monopoles rather than H-frame towers. Although technically feasible, this option would not significantly improve visual impacts or present other significant benefits.

direct staff to conduct such an analysis for our consideration and to modify the MND accordingly. We decline to do so, however, because we are not convinced that this option would provide benefits to offset associated costs. The existing lattice towers and monopoles running along the relevant right of way present substantial visual blight in a neighborhood that is considered a model of good community planning and is exceptionally well-maintained. These facilities predated the construction of the community of Mission Viejo and are not the subject of this proceeding. Because those lattice towers are not the subject of this proceeding, ordering partial undergrounding for the Viejo System project would eliminate the need for the existing monopoles and the new, larger H-frame towers - but the existing lattice towers would remain. While undergrounding portions of the project would improve the visual blight along the right of way compared to the proposed project, that improvement would be marginal considering the visual impact of the remaining facilities. On the other hand, the cost of undergrounding could be substantial and the delay associated with CEQA review and more complicated project construction could compromise the reliability of electrical service in the area in the intervening period. Accordingly, we do not order additional environmental review of this project.

Based on the analysis of the Initial Study, the Draft, Revised, and Final MND, and the mitigation measures identified therein and incorporated into the project, the Commission finds that the project will not have a significant effect on the environment if constructed and operated consistent with the findings of, and mitigations described in, the FMND.

#### **B. Electric and Magnetic Fields (EMFs)**

Several parties in Mission Viejo raised concerns regarding the potential health risks associated with EMFs. The Commission currently does not consider

EMFs in the context of CEQA because the scientific community has not resolved the extent to which EMF exposure creates human health risks. Analysis of the risks posed by EMFs by specific facilities is difficult because neither scientists nor public decision-makers have developed standards for EMF exposure. However, recognizing the public's concern regarding potential health effects from exposure to EMFs, the final MND for the Viejo System project provides information, if not risk analysis, regarding EMF exposure associated with that project.

Although the Commission has not adopted any specific limits on EMF and does not analyze EMF impacts as part of the CEQA process, the Commission requires electric utilities to implement low-cost EMF mitigation measures for transmission lines and substations, up to approximately 4% of total project cost. It created the California Electric and Magnetic Fields Program in the California Department of Health Services (DHS) to conduct research and policy analysis on EMF exposure. (See Decision (D.) 93-11-013). A recent report funded by the Commission and conducted by DHS suggests that EMFs may present risks to the general public of various types of cancer and other serious health conditions. In light of these concerns, the Commission is considering whether to reevaluate its current policies and practices.

Generally, the magnetic field levels for the existing Viejo System transmission lines are substantial, up to 45 milligauss from 150 feet of the lines. Because of low-cost mitigations proposed by SCE, the new facilities would reduce existing EMF substantially except in areas within 60-110 feet of the lines, as the FMND describes. Although this decision does not require SCE to underground the Viejo System project, placing transmission lines underground could reduce EMFs beyond the reductions estimated for the project as proposed and adopted herein, depending on their location and configuration. The FMND



speculates as to how undergrounding might affect EMF exposure generally, but does not provide detailed analysis of EMF impacts associated with the underground options reviewed in its Appendix 8.

#### **V. Comments on Draft Decision and Assignment of Proceeding**

Administrative Law Judge (ALJ) Kim Malcolm published the draft decision in this proceeding on June 17, 2004 in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. The Commission reduced the 30-day publication period otherwise required by Article 19 of the Commission's Rules of Practice and Procedure and consistent with Rule 77.7(f)(8). In this case, the Commission reduced the publication and notice period because it has provided several opportunities for public review and comment on the issues raised by the application, consistent with CEQA. Parties had the opportunity to file opening comments on the draft decision within 10 days of its publication.

#### **VI. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Kim Malcolm is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. The Viejo System Project will serve an area in South Orange County where local growth in demand cannot be met with existing distribution and transmission facilities. Without additional distribution facilities, loads within the South Orange County area may routinely exceed existing power line and substation capacity.

2. The Viejo System Project will upgrade SCE's system and will provide safe and reliable electric service to the South Orange Country area while minimizing

environmental impacts if the project is constructed in accordance with the final MND certified herein.

3. The FMND reflects the independent judgment of this Commission.
4. The contents of the FMND conform to the requirements of CEQA.
5. The FMND identified no significant environmental effects of the project that could not be avoided or reduced to non-significant levels by changes to the project that have been accepted by SCE.
6. The Commission has considered the FMND in considering whether to approve the Viejo System Project.
7. The Viejo System Project application appropriately seeks a permit to construct rather than a CPCN because the project is for distribution facilities that operate at less than 200 kilowatts.
8. The partial undergrounding proposal made by NOPE may be feasible but would require additional environmental review before it could be approved.
9. The Commission does not require evidentiary hearings in this proceeding to comply with CEQA or other relevant law, or to consider whether to substantially modify the proposed project or reject the authority requested herein.

### **Conclusions of Law**

1. The FMND has been processed and completed in compliance with the requirements of CEQA.
2. The Viejo System Project should be granted a permit to construct, subject to the Mitigation Implementation and Monitoring Plan included in the FMND.

**O R D E R**

**IT IS ORDERED** that:

1. The Final Mitigated Negative Declaration (FMND) is identified as Exhibit 2 and is received into evidence.
2. The FMND related to the application in this proceeding is adopted pursuant to the requirements of the California Environmental Quality Act (CEQA).
3. The mitigation, monitoring, and reporting program included in the FMND is adopted.
4. Southern California Edison Company (SCE) is authorized to construct the power lines and associated substation and substation modifications known as the Viejo System Project, subject to the mitigation measures described in the FMND to avoid or mitigate the reasonably foreseeable adverse environmental affects of the project.
5. The Executive Director shall supervise and oversee construction of the project insofar as it relates to monitoring and enforcement of the mitigation conditions described in Section C of the FMND. The Executive Director may delegate his duties to one or more Commission staff members or outside staff. The Executive Director is authorized to employ staff independent of the Commission staff to carry out such functions, including, without limitation, the on-site environmental inspection, environmental monitoring, and environmental mitigation supervision of the construction of the project. Such staff may be individually qualified professional environmental monitors or may be employed by one or more firms or organizations. In monitoring the implementation of the environmental mitigation measures described in the FMND, the Executive

Director shall attribute the acts and omissions of SCE's employees, contractors, subcontractors, or other agents to SCE.

6. SCE shall comply with all orders and directives of the Executive Director concerning implementation of the environmental mitigation measures described in the FMND.

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

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

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

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

11. Application 03-03-043 is closed.

This order is effective today.

Dated July 8, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

I will file a dissent.

/s/ LORETTA M. LYNCH  
Commissioner

I will file a dissent.

/s/ CARL W. WOOD  
Commissioner