BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion for the purpose of considering policies and rules governing utility construction contracting processes.	R.03-09-006 (Filed September 4, 2003)

ORDER DENYING REHEARING OF DECISION 04-12-056, DENYING MOTION TO INTERVENE, AND DENYING STAY

I. INTRODUCTION

On January 19, 2005, the Southern California Edison Company (SCE), Pacific Gas & Electric Company (PG&E), the San Diego Gas & Electric Company (SDG&E), and the Southern California Gas Company (SoCalGas), collectively the "Applicants," filed applications seeking rehearing of Decision (D.) 04-12-056. The Commission adopted D.04-12-056 on December 16, 2004. In D.04-12-056, the Commission (1) prohibited the use of "reverse auctions" in energy utility construction contract bidding procedures (wherein bidders compete for contracts by lowering their bids until the lowest bid is accepted), and (2) required utilities to ensure the payment of prevailing wages by their construction contractors in all construction.

The Applicants raise three issues. First, the Applicants allege that they were deprived of due process because they were not afforded an adequate opportunity to be heard. Second, Applicants contend that absent their input, the decision is not supported by the evidence and is therefore arbitrary and capricious. Third, the Applicants allege that the Commission's authority to impose the prevailing wage requirement is preempted by federal labor law. In addition, SDG&E and SoCalGas' application for

rehearing alleges that D.04-12-056 wrongly attempts to compel a "sister agency" to enforce the prevailing wages mandated by the Commission. No party challenged D.04-12-056 as it relates to reverse auctions.

We have carefully considered all the arguments presented by Applicants, and while SDG&E and SoCalGas identify a misstatement in the decision, we are of the opinion that no legal error has been demonstrated concerning the decision's conclusions. We will therefore modify D.04-12-056 to correct the misstatement, and deny rehearing of D.04-12-056 as modified.

II. DISCUSSION

A. Due Process

Applicants contend that their right to due process was abridged in several ways. First, Applicants argue that inclusion of issues related to payment of the prevailing wage after the issuance of the scoping memo was unfair and deprived them of due process. Second, Applicants contend that they were not afforded a meaningful opportunity to be heard. Specifically, Applicants contend that they were not afforded the opportunity to conduct discovery or cross examination related to the prevailing wage proposal submitted by the Southern California District Council of Laborers (SCDCL). Applicants further contend that they were deprived of due process because they were not provided adequate time to prepare comments on the prevailing wage proposal submitted by SCDCL. Because of insufficient time to prepare comments, Applicants contend that, in addition to depriving them of due process, the decision is arbitrary and capricious, as well as an abuse of discretion. Finally, SDG&E and SoCalGas assert that the record evidence does not support the decision generally and in particular with regard to potential cost increases and impacts on minority contracting.

1. Inclusion of the prevailing wage issue after the scoping memo was issued.

The Applicants argue that the prevailing wage issue was not properly included in the proceeding as it was developed after the scoping memo issued. In support of this position Applicants assert that inclusion of the prevailing wage issue after

development of the scoping memo violated Rule 6.3 as well as Commission policy.[1] While the Applicants are correct in their assertion that the issue was added after development of the scoping memo, Applicants fail to establish legal error.

First, as noted in D.04-12-056 "the scoping memo issued in this proceeding affirms the scope of the proceeding as including the issues identified in R.03-09-006 and provides that the Assigned Commissioner may 'modify the scope of issues following receipt and evaluation of additional information and testimony.'"[2] By virtue of this statement, all parties were put on notice that additional issues might subsequently be included in the proceeding. Moreover, D.04-12-056 specifically notes that, "[t]his Commission has established new rules or requirements in numerous proceedings without including those changes in the initial rulemaking or scoping memo, but incorporating those changes along the way pursuant to an ALJ or Assigned Commissioner Ruling as was accomplished here."[3]

2. The opportunity to submit comments and additional evidence.

Citing *California Trucking Assn. v. Public Utilities Com.* (1977) 19 Cal. 3d 240, 244, for the proposition that "'a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal,'" SDG&E and SoCalGas argue that the amount of time afforded them to respond deprives them of the minimal due process required.[4] Rather than allege that they were denied an opportunity to comment and present evidence on the prevailing wage proposals, the crux

[1] Rule 6.3 requires that "the Assigned Commissioner shall rule on the scoping memo for the proceeding, which shall finally determine the schedule (with projected submission date) and issues to be addressed."

[2] D.04-12-056, p. 7 (emphasis added).

[3] D.04-12-056 at p. 10, citing R.04-04-003.

[4] SCE endorses this interpretation of *California Trucking* at p. 17 of its Application for Rehearing.

of the complaint is that the time afforded, a week for reply comments and, three weeks later, an additional week for supplemental comments, was insufficient.[5]

However, SDG&E and SoCalGas concede that *Trucking*, only "requires a hearing before the Commission could revise an order resulting from the hearing," and that this rule is inapplicable where, as here, the proceeding is quasi-legislative.[6] This is consistent with the decision reached in *Southern California Edison Co. v. Public Utilities Commission*, (2002) 101 Cal. App. 4th 982. After noting that *Trucking* was concerned with the statutory right to be heard as set forth in sections 1701 through 1708 of the California Public Utilities Code, the court in *Southern California Edison* held that *Trucking* is only applicable where the Commission rescinds a prior order issued after evidentiary hearings. *Trucking* does not apply where, as here, the Commission adopts a new regulation and there has been no "prior" proceeding.[7]

Unfettered by its concession that *Trucking* is not controlling, and without reference to any other source of law, SDG&E and SoCalGas go on to assert that, "[i]n a quasi-legislative proceeding such as this one, hearings may not be required, but minimal due process does require that interested parties be allowed a meaningful opportunity to be heard and to offer evidence on factual matters that serve as the basis for Commission action."[8]

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[5] Some three weeks passed between the time when the Applicants received the documents and the ALJ issued an order allowing supplement comments. Parties were actually in possession of the evidence related to the prevailing wage proposal for approximately one month before the due date for supplemental comments.

[6] Section 1708.5 allows the Commission to adopt a regulations without hearings. In relevant part, section 1708.5(f) provides: Notwithstanding Section 1708, the Commission may conduct any proceeding to adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing … ." Therefore, with regard to D.04-12-056, where the Commission issued regulations and did not rescind a prior order, section 1708.5 is controlling and the holding of *California Trucking* is inapplicable. Consistent with section 1708.5(f) and *Southern California Edison Co. v. Public Utilities Commission*, in the absence of a need for hearings due process is satisfied by the provision of an opportunity to be heard.

[7] *Southern California Edison Co. v. Public Utilities Commission*, (2002) 101 Cal. App. 4th 982, 995

[8] SoCalGas Application for Rehearing, p. 11.

This is a quasi-legislative proceeding which does not require hearings.[9] Where hearings are permitted, such hearings are not subject to the requirements of quasi-judicial adversary proceedings.[10] As a result, the requirements of due process of law are flexible.[11] The time provided Applicants to respond was greater than that established by many of the local rules of court and cannot reasonably be considered arbitrary and capricious. Applicants' assertions, while indicative of the heavy burden occasionally imposed by proceedings, do not show a deprivation of due process.

3. The sufficiency of the record generally and with regard to cost increases and impacts on minority contracting.

a) Substantial Evidence and Public Utilities Code Section 321.1

In its Application for Rehearing SCE further claims that "the [D.04-12-056] Decision proposes to adopt the prevailing wage requirement without an adequate assessment of the consequences that that requirement will have on the utility companies or the ratepayers, as required by Public Utilities Code section 321.1." SCE's contention fails to correctly reflect the relevant law. Public Utilities Code section 321.1 provides:

> It is the intent of the Legislature that the commission assess the economic effects or consequences of its decisions as part of each ratemaking rulemaking, or other proceeding, and that this be accomplished using existing resources and within existing commission structures. The commission shall not establish a separate office or department for the purpose of evaluating economic development consequences of commission activities.

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[9] See *California Slurry Seal Association v. Department of Industrial Relations* (2002) 98 Cal.App.4th 651, 662 and *Southern California Edison Company v. Public Utilities Commission*, (2002) 101 Cal. App.4th 982, 993-995.

[10] See *Southern Cal. Edison Co. v. Public Utilities Com.*, 2002 Cal. App. LEXIS 4594; *Southern Cal. Edison Co. v. Public Utilities Com.*, 125 Cal. Rptr. 2d 211, 221 (Cal. Ct. App., 2002); *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 388.

[11] *Ibid*; see *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292.

Thus the plain language of section 321.1 does not require either a cost-benefit analysis or consideration of utility specific economic impacts. In contrast to the cost-benefit or utility specific analyses urged by Applicants, D.04-12-056 notes that, "since the enactment of sec. 321.1, the Commission has acted many times pursuant to its existing structures and resources and has not specifically identified a separate economic analysis."[12] D.04-12-056 goes on to hold that "the discussion in this decision regarding the merits of prevailing wages and their ultimate benefits to ratepayers and the problems raised by reverse auction bidding itself constitutes the assessment contemplated by the statute."[13]

SCE takes issue with D.04-12-056's treatment of the Applicants' prior objections (in Comments) that were derived from section 321.1. SCE asserts that, "the utilities' point is this: it is simply not possible for the Commission to assess in any meaningful way the economic effects or consequences of its decision to require the payment of prevailing wages when it (1) allows, without prior or proper notice, the issue to be raised at the eleventh hour; (2) gives the utilities only 9 business days to analyze and respond to hundreds of pages of economic studies; and (3) accepts as 'evidence' unverified factual assertions."[14]

SCE's first assertion goes to whether the information at issue is properly in the record. This inquiry is considered in the context of questions going to the scope of the proceeding in section II(A)(1) above. Similarly, SCE's second assertion, which goes to whether the record evidence is insufficient in light of Applicant's limited time to respond to the information submitted, is addressed in response to due process issues in section "II(A)(2)" herein. Keeping in mind that, SCE does not claim to not have had any opportunity to submit evidence on the issue, and that D.04-12-056 purports to have

[12] *Id.*

[13] D.04-12-056, p. 11.

[14] SCE Application for Rehearing, p. 17.

undertaken an economics impact assessment[15], the relevant inquiry is whether the record supports the required economic assessment.

With regard to general economic impacts, D.04-12-056 notes that "the California Supreme Court has repeatedly recognized the benefits to the public, as well as to the specific employees, conferred by the use of prevailing wage laws in California."[16] Moreover, as noted by the Applicants, the record contains hundreds of pages of documents that SCDCL submitted on the prevailing wage issue.[17] These documents contain the economic impacts analyses which D.04-12-056 relies upon. For example, D.04-12-056 cites exhibits C, E, and G as authority for the finding that "payment of prevailing wages promotes a more efficient and skilled workforce, reducing cost overruns, construction delays and injuries and associated ratepayer liabilities on construction projects…" and that "the payment of prevailing wages does not increase construction costs and that in some instances the payment of prevailing wage to highly skilled and efficient workers have lowered construction costs compared to projects that have not used prevailing wages."[18] In addition to the documents cited in D.04-12-056, the record contains additional economic impact analyses in exhibit F, which examines the impact of Prevailing Labor Wages (PLW) on minority representation, cost over-runs, federal income tax, and the state budget, and in exhibit D which examines the impact of increasing wages on total project cost.

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[15] At page 11 D.04-12-056 states: "Our findings regarding reverse auction bidding and the payment of prevailing wages constitutes an economic assessment sufficient to satisfy sec. 321.1 as we are using existing Commission structures and resources." See also ratepayer impacts, minority contracting, and contract costs discussed at pages
19-21of D.04-12-056.

[16] D.04-12-056, p. 19, citing *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976.

[17] See for example page 15 of SCE's Application for Rehearing.

[18] D.04-12-056, p. 20 citing Exhibit C ("Kentucky's Prevailing Wage Law – Its History Purpose and Effect," Peter Philips, Ph.D., University of Utah); Exhibit E ("Kansas and Prevailing Wage Legislation," Prepared for the Kansas Senate Labor and Industries Committee by Peter Philips, Ph.D., University of Utah); and Exhibit G ("The Adverse Economic Impact from Repeal of the Prevailing Wage law in Missouri," Department of Economics, University of Missouri").

b) Construction Costs

SDG&E and SoCalGas also argue that the record on the impact of payment of prevailing wages is inadequate to support the determination that payment of prevailing wages will not increase construction costs. Specifically, SDG&E and SoCalGas assert that the record is inadequate because it does not include information from its contractors that suggests that there would be cost increases associated with payment of the prevailing wage, which SDG&E and SoCalGas discovered after the decision was issued.[19] Here again, SDG&E and SoCalGas claim that they were not afforded an adequate opportunity to participate in the proceeding. The reasons for rejecting this assertion set forth above are again controlling here.

However, SDG&E and SoCalGas additionally point out that, the statement in D.04-12-056 that "[n]o utility respondents have argued that the payment of prevailing wages will increase construction costs or otherwise harm ratepayers" is erroneous and SDG&E and SoCalGas did contend that payment of the prevailing wage would "logically" increase costs to ratepayers.[20] While SDG&E and SoCalGas correctly assert that they contested this issue, the error they identify is factual rather than legal. Accordingly, the statement SDG&E and SoCalGas identify should be corrected to acknowledge and reflect the weight given to SDG&E and SoCalGas' contentions.

c) Minority Contracting – No Due Process Claim

Finally, SDG&E and SoCalGas assert that the record was not adequately developed with regard to minority contracts. In particular, SDG&E and SoCalGas take issue with the statement that "the rules promulgated in this decision are race and gender neutral and comport fully with Section 8281. The utilities provide no basis or cognizable

[19] As described by SDG&E and SoCalGas, neither the proffered evidence nor SDG&E and SoCalGas' statements contradict the evidence of record which suggests that while there may be cost increases, gains in efficiency and reductions in costs associated with decreased injury and better quality work will outweigh any cost increases. See Exhibit B (Project Labor agreements: An Exploratory Study," Institute for Labor and Employment, University of California); Exhibit F (Losing Ground: Lessons for the Repeal of Nine "little Davis-Dacon" Acts," Economics Department, University of Utah), and Exhibit G ("The Adverse Economic Impact from Repeal of the Prevailing Wage law in Missouri," Department of Economics, University of Missouri).

[20] SDG&E and SoCalGas Application for Rehearing, p. 12, citing D.04-12-056, p. 20.

argument how these rules conflict and thus we do not accept their suppositions."[21] SDG&E and SoCalGas base their contention on the statement that they are "aware" that A.M. Ortega Construction Inc., ("Ortega") filed comments on the proposed decision related to minority contracting. SDG&E and SoCalGas do not and cannot claim that the statement in D.04-12-056 is erroneous because D.04-12-056 speaks to utility filings and Ortega is not a utility. Rather, SDG&E and SoCalGas assert that it is unclear whether the Ortega comments were accepted, and that if they were not accepted an interested party was deprived of an opportunity to be heard.

SDG&E and SoCalGas' argument is flawed on several fronts. First and foremost, as SDG&E and SoCalGas acknowledge there is no filing by Ortega on the Commission's website. Indeed, there are no Comments from Ortega in the formal files which SDG&E and SoCalGas have access to, and there's nothing on file anywhere in this proceeding, other than SDG&E and SoCalGas' representation that it is "aware" of such a filing, to suggest that Ortega filed anything, or was even a party, in this proceeding. Moreover, even if we accept SDG&E and SoCalGas' representation that Ortega attempted such a filing, SDG&E and SoCalGas acknowledge that the failure of the Ortega Comments to be included in the record may well result from Ortega's failure to perfect such a filing.[22] Finally, SDG&E and SoCalGas do not assert that any failure to include the Ortega Comments in itself deprived them of the opportunity to be heard in any way. In effect, SDG&E and SoCalGas attempt to place themselves in the shoes of Ortega and claim harm related to the poor fit. Ultimately, rather than make a fact based allegation that Ortega was a party, the Commission wrongly rejected the Ortega filing, or that SDG&E and/or SoCalGas was thereby harmed, SDG&E and SoCalGas argue that the fact that there is no Ortega filing on record somehow shows that it and other parties were deprived of a meaningful opportunity to be heard. This assertion lacks sufficient logical or legal basis to constitute error.

[21] *Ibid*. p. 13, citing D.04-12-056, p. 12.
[22] *Ibid*. p. 14.

B. Federal Preemption.

Applicants argue that the prevailing wage requirement found in D.04-12-056 is preempted by federal law. Specifically, Applicants argue that the prevailing wage requirement set forth in D.04-12-056 contravenes sections 158(b)(1) and (d) of the National Labor Relations Act (NLRA) in that it interferes with the collective bargaining process.[23] In particular, citing *The Chamber of Commerce of the United States v. Harvey Bragdon,* (9th Cir., 1995) 64 F.3d 497, Applicants argue that in establishing a prevailing wage requirement D.04-12-056 engages in a regulatory action that interferes with the collective bargaining process, and is therefore subject to federal preemption.

While Applicants contend that D.04-12-056 is preempted by the National Labor Relations Act (NLRA), no party contends that the NLRA contains an express preemption clause. Instead, Applicants argue that D.04-12-056 is subject to either *Garmon* preemption, which preempts state laws that attempt to regulate conduct which is either arguably protected or prohibited by the NLRA (*San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959) and see *Dillingham Construction N.A., Inc. v. County of Sonoma,* (9th Cir. 1999) 190 F.3d 1034, 1040), or *Machinist* preemption which prohibits state interference in an activity which Congress intended to be unregulated.[24]

[23] 29 U.S.C. section 158(b)(1) provides that "it shall be an unfair labor practice for a labor organization or its agents … to restrain or coerce employees in the exercise of the rights to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees." Section 158(d) provides that: "[f]or the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification. "

[24] *Intl. Assoc. of Machinists & Aerospace Workers, v. Wisconsin Employment Relations Comm.*, 427 U.S. 132 (1976). And see *Contract Services Network Inc. v. Aubrey,* (9th Cir. 1995) 62 F.3d 294, 298.

However, neither the *Garmon* nor *Machinist* doctrines apply to regulations that set minimum substantive labor standards that are consistent with the legislative goals of the NLRA.[25] As a general matter, California's prevailing wage law which D.04-12-056 seeks to effectuate qualifies as a minimum labor standard that is not subject to preemption. (See *People v. Hwang* (1994) 25 Cal.App.4th 1168, 1182.)

Applicants wrongly rely on *Chamber of Commerce of the United States v. Harvey Bragdon* (9th Cir. 1995) 64 F.3d 497 to argue that D.04-12-056 is preempted under the *Machinists* doctrine. As noted in the rehearing application filed by SDG&E and SoCalGas, "in *Bragdon*, the Contra Costa County (County) Ordinance required employers to pay prevailing wages on certain types of private construction projects." In contrast to *Bragdon*, D.04-12-056 does not reach all private contractors. SDG&E and SoCalGas specifically acknowledge that in *Associated Builders and Contractors of Southern California, Inc. v. Henry P. Nunn,* (9th Cir. 2004) 356 F.3d 979 the courts found an exception to the *Bragdon* preemption because contractors could completely avoid the applicability of the regulations at issue. Indeed, SDG&E and SoCalGas quote the *Nunn* court's statement that 'California contractors are, for example, under no obligation to hire apprentices from state-approved programs for private construction projects or for public projects in most circumstances. The Contra Costa scheme, in contrast, was applicable to all workers on private construction projects, and the employers were mandated to pay them all the prevailing wage rates.'[26] Accordingly, because it does not affect all private contractors (only those doing business with utilities), does not violate the collective bargaining process, and does not establish the prevailing wage in a particular locality, contrary to Applicants contentions, D.04-12-056 falls squarely within the preemption exception identified in *Nunn*.

Applicants' reliance on *Garmon* preemption is similarly misplaced. In addition, D.04-12-056's prevailing wage requirement qualifying as a minimum labor

[25] See *Rondout Electric, Inc. v. NYS dept. of Labor,* (2nd Cir. 2003) 335 F.3d 162, 167.

[26] SDG&E and SoCalGas Application for Rehearing p.8, quoting *Nunn* at 990-991.

standard that is not subject to preemption, the NRLA does not preempt actions taken by a state when, as is presently the case, the state acts as a proprietor or market participant.[27] As noted in *Bldg. & Constar. Trades Council v. Associated Builders & Contras.*, 507 U.S. 218, 231, "to the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a prehire agreement, a public entity as purchaser should be permitted to do the same." This is appropriate since, as acknowledged in *Bldg. & Constr. Trades*, those contractors who do not wish to enter into prevailing wage agreements may choose to take their business elsewhere. Because the Commission acts on behalf of ratepayers who will bear the cost of the construction at issue, and oversees the utilities' construction expenditures by, among other things, reasonableness reviews, in issuing D.04-12-056 the Commission acted as a market participant or private purchaser and, consistent with *Bldg. & Constr. Trades*, is exempt from *Garmon* preemption.

C. Lack of Jurisdiction.

Among the Applicants only SDG&E and SoCalGas allege that in D.04-12-056 the Commission wrongly seeks to compel a "sister agency" to enforce its prevailing wage provisions. SDG&E cites as the basis for this assertion language in D.04-12-056 that states, "By requiring the payment of prevailing wages on utility construction projects (a practice that Southern California Edison notes it already follows) the appropriate state standards and enforcement authorities would ensure compliance."[28] SDG&E and SoCalGas argue that this language is inconsistent with Finding of Fact No. 6, and requires the Commission to use the Department of Industrial Relations (DIR) or Division of Labor Standards as its enforcement arm, in contravention of California Labor Code section 1720, or act in the shoes of those agencies.

The SDG&E and SoCalGas allegation that D.04-12-056 represents an attempt by this Commission to direct the actions of other state agencies is misplaced.

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[27] *Dillingham Constr. N.A. v. County of Sonoma*, 190 F.3d 1034 citing *Associated Builders & Contractors*, 507 U.S. at 227; *Wisconsin Dep't of Indus. v. Gould, Inc*, 475 U.S. 282, 289-91, 89 L. Ed. 2d 223, 106 S. Ct. 1057.

[28] SDG&E and SoCalGas Application for Rehearing p.9, citing D.04-12-056 p. 26.

SDG&E and SoCalGas ignore the following sentences in D.04-12-056 which explain that:

> "Utilities merely would require the payment of prevailing wages in their construction bid packages and contract documents. Upon request, utilities would provide that information compliance data to the Commission. The normal and already – available enforcement mechanism – and the utilities' obligations under Rule 1 of our rules of practice and procedure – would provide all the enforcement necessary without the creation of any additional processes or requirements."

On its face D.04-12-056 references only "appropriate state standards setting and enforcement authorities". The fact is D.04-12-056 neither grants nor usurps any other agency jurisdiction. Moreover, D.04-12-056 makes no mention of the Department of Industrial Relations, the Division of Labor Standards, or section 1720. If SDG&E and SoCalGas believe either of those departments lack jurisdiction over them and one of those entities brings an action, SDG&E and SoCalGas' challenge rests in the civil courts rather than the Commission. Nonetheless, in an abundance of caution we will remove the language cited by SCE from the decision.

IT IS THEREFORE ORDERED that:

1. The statement at page 20 of D.04-12-056 that "[n]o utility respondents have argued that the payment of prevailing wages will increase construction costs or otherwise harm ratepayers" is deleted.

2. The statement at page 9 of D.04-12-056 that "[b]y requiring the payment of prevailing wages on utility construction projects (a practice that Southern California Edison notes it already follows) the appropriate state standards and enforcement authorities would ensure compliance" is deleted.

3. The Applicants' requests for rehearing of D.04-12-056, as modified herein, are denied.

4. The stay of D.04-12-056 as requested by SCE in its January 19, 2005 motion is denied.

5. The Motion to Intervene filed by the Northern California District Counsel of Labor is denied.

6. This proceeding is closed.

This order is effective today.

Dated May 5, 2005, at San Francisco, California.

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

Commissioner John A. Bohn recused himself from this agenda item and was not part of the quorum in its consideration.