

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

In the Matter of the Application of San Diego Gas )  
& Electric Company (U 902 E) for a Certificate of )  
Public Convenience and Necessity for the Sunrise )     Application 06-08-010  
Transmission Project )     (Filed December 14, 2005)  
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**APPLICATION OF  
UTILITY CONSUMERS' ACTION NETWORK  
FOR REHEARING OF DECISION 08-12-058**

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## **I. INTRODUCTION**

Pursuant to Public Utilities Code Section 1731 and Rules 16.1 of the Commission's Rules of Practice and Procedure, Utility Consumers' Action Network (UCAN) hereby files this Application for Rehearing of Decision No. (D.) 08-12-058. This decision was mailed on December 24, 2008 and UCAN has filed this timely application within 30 days of the issuance of the decision. This decision rejects a proposed decision by two ALJs (Weissman and Vieth) and an alternative decision by the assigned Commissioner (Grueneich) in granting a CPCN to SDG&E for the construction of a powerline through the southern portion of San Diego & Imperial counties. Instead, it issued a decision that was an exercise in predetermination; its singular determination to approving a transmission line from Imperial to San Diego counties led it to selectively choose from the evidentiary record in order to justify that decision.

The decision commits legal errors in a number of ways. Most importantly, the Commission fails to properly interpret and apply State law in authorizing the CPCN.<sup>1</sup> The appealable deficiencies created by the Commission's December 24<sup>th</sup> decision include the:

1. Failure to apply the proper standard of review (clear and convincing rather than preponderance of the evidence);
2. Failure to properly consider the UCAN No-Project Alternative;
3. Failure to provide parties with sufficient procedural due process to assess means by which the 33% mandate could be suitably and cost-effectively addressed;
4. Ignoring substantive evidence that would have rendered the project cost-ineffective, even assuming a 33% mandate;
5. Lacking the requisite authority to base its decision of a 33% RPS upon the

governor's executive order;

6. Manipulation of the evidentiary record to create facts that didn't exist;
7. Material factual errors throughout the decision;
8. Reliance upon extra-evidentiary facts to justify the decision;
9. Failure to consider the true costs of the Sunrise project to the state's ratepayers;
10. Concluding that the project adds additional renewable energy capacity available to California's utilities when the facts show otherwise;
11. Concluding that the project reduces GHG emissions when the facts show otherwise;
12. Concluding that the project increases reliability when the facts show otherwise;
13. Circumventing the potential seismic dangers attributable to the siting of the line at the Imperial Valley substation;
14. Failure of the CPUC to require SDG&E to compare Sunrise to the UCAN Alternative;
15. Numerous deficiencies of the EIR including the failure to consider the UCAN No-Project Alternative as an environmentally superior alternative to the Southern Route;
16. Failure of the EIR to properly consider overriding considerations;
17. Failure of the EIR to consider SWPL's capacity to import renewable power from Imperial County; and
18. Failure of the EIR to adequately assess distributed generation and demand-side alternatives.

The Commission Rules of Practice and Procedure states the purpose of an application for rehearing "is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."<sup>2</sup> Accordingly, UCAN puts the Commission

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<sup>1</sup> The laws violated include, but are not limited to Public Utilities Code Sections 451, 900, 1000, 1002, 1002.3, 1708, 1757

<sup>2</sup> Rule 16.1(c), Public Utilities Commission Rules of Practice and Procedure.

on notice that it has made a number of material factual and legal errors in D. 08-12-058 and must revise its decision in order to survive judicial review.

Finally, in this filing, UCAN further demonstrates that D.08-12-058 is reviewable by the state's judiciary pursuant to several of the specific subdivisions of Public Utilities Code Section 1757(a):

- The Commission has not proceeded in the manner required by law.
- The decision of the commission is not supported by findings.
- The findings are not supported by substantial evidence in light of the whole record.
- The exercise of discretion in this case was abusive.

## **II. THE COMMISSION APPLIED THE WRONG BURDEN OF PROOF**

The Decision wrongly applies a preponderance of the evidence standard of review and rejects numerous parties' assertions that the CPCN should be evaluated based upon a clear and convincing standard.

Citing D.07-04-049, SDG&E asserted that the Commission has applied the higher, clear and convincing standard only in general rate cases and reasonableness reviews, and has expressly rejected its use for other purposes.<sup>3</sup> The Commission appears to accept the SDG&E argument.

Most of the intervening parties pointed to several rate case decisions and reasonableness review decisions to support their contention that clear and convincing

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<sup>3</sup> *Southern California Edison's Application for Approval of Summer 2007 New Generation RFOs and Cost Recovery*, D.07-04-049. The decision, which modified D.07-01-041 and denied rehearing, among other things determines that the preponderance of the evidence standard applies to review of the contract at issue, whereby Long Beach Generation will repower 260 megawatts of peaking capacity at Long Beach and make this capacity available to Edison for ten years.

evidence is the correct standard of review for Sunrise.<sup>4</sup> The Commission claims that no party refers to a decision on a prior transmission line CPCN.<sup>5</sup> And because this is apparently a case of first impression, the Commission also has no reference to a CPCN for transmission lines.

UCAN submits that the standard or “burden” of proof to which the applicant is to be held is an integral question that warrants addressing by the Commission in this case. The CPUC is charged with ensuring that “All charges demanded or received by any public utility... shall be just and reasonable.” (Public Utilities Code § 451 ) Where a utility fails to demonstrate that its proposed revenue requirements are just and reasonable, the Commission has the authority to protect ratepayers by disallowing expenditures that the Commission finds unreasonable. D.00-02-046, p. 32 (citing *Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1950) 34 Cal.2d 822, 826; *Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1965) 62 Cal.2d 634, 647; *City and County of San Francisco v. Public Utilities Commission* (1971) 6 Cal.3d 119, 126.)

To demonstrate the reasonableness of its application, SDG&E must support each component of its proposed revenue requirements through clear and convincing evidence. To wit:

*See i.e.* D.01-10-031 Ordering Paragraph 26 (“Conclusion of Law 6 [in D.00-02-046] is modified to read: Under the clear and convincing evidence standard, it is PG&E’s obligation to support all aspects of its application through clear and convincing evidence.”) ; D.00-02-046, pp. 64-65 (“We must insist upon PG&E demonstrating, for each component of its proposed revenue requirements, that it produce clear and convincing evidence. To the extent it fails to do so, we cannot grant its requested revenue increase.”)<sup>6</sup>

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<sup>4</sup> UCAN’s citations include: *Pacific Gas & Electric Co. Energy Cost Adjustment Clause Application*, D.82486, 701 (1980) 4 CPUC2d 693; D.00-02-046, *Southern California Edison General Rate Case*, D.83-05-036, (1983) 11 CPUC2d 474, 475

<sup>5</sup> Decision, p. 19.

<sup>6</sup> The Commission laid to rest any question concerning the applicability of this evidentiary burden - the clear and convincing evidence test - to ratemaking cases such as D.01-10-031 (Order Granting Rehearing of and Modifying Decision 00-02-046) and D.00-02-046 (PG&E’s GRC). Rejecting PG&E’s contention that the Commission could have applied a less stringent standard, e.g. the “preponderance of the evidence standard,” the Commission stated, “We have historically, though not wholly consistently, applied the

There should be little controversy over the fact that the ultimate burden of proof of reasonableness, whether it be in the context of test-year estimates, prudence reviews outside a particular test year, CPCN applications or the like, never shifts from the utility which is seeking to pass its costs of operations onto ratepayers on the basis of the reasonableness of those costs.<sup>7</sup>

This burden is one that must be met with clear and convincing evidence. As reiterated in D. 00-02-046:

“The staff sets forth the long-standing and proper rule. It is settled that in order to raise rates it is incumbent on the utility to justify the increase before the Commission. (*Northern Cal. Power Company* (1912) 1 CRC 315.) The utility seeking an increase in rates has the burden of showing by clear and convincing evidence that it is entitled to such increase. The presumption is that the existing rates are reasonable and lawful. Any doubts must be resolved against the party upon who rests the burden of proof.” (*Southern Counties Gas Company* (1952) 51 CPUC 533; *Citizens Utilities Company* (1953) 52 CPUC 637; *Park Water Company* (1955) 54 CPUC 498.)

The Commission reaffirms its commitment to a “clear and convincing” burden of proof when it concludes, “PG&E claims that the clear and convincing standard applies only in after-the-fact reasonableness review proceedings, not in test-year ratemaking proceedings. As an initial statement of the law we resolve this dispute in favor of ORA’s position.” (Decision 00-02-046, p. 36)<sup>8</sup>

Additionally, in PG&E’s test year 1999 general rate case, the Commission concluded: “Under the clear and convincing evidence standard, it is PG&E’s obligation

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clear and convincing burden of proof to utilities seeking general rate increases. ... This standard is applicable to all aspects of PG&E’s showing.” D.01-10-031, pp. 3-4.

<sup>7</sup> (Decision 00-02-046, p.37, citing D.87-12-067, 27 CPUC2d 1 at 21 ) “Whenever the utility comes before this Commission seeking affirmative rate relief, where it faces opposition, its reasonableness showing is naturally a more difficult undertaking.” (Id.)

<sup>8</sup> To meet its evidentiary burden, SoCalGas must “produce evidence having the greatest probative force.” D.00-02-046, p. 38 (quoting *Railroad Commission v. Pacific Gas & Electric Company* (1938) 302 US 388). SoCalGas must overcome the “presumption ... that the existing rates are reasonable and lawful. Any doubts must be resolved against the party upon whom rests the burden of proof.” D.00-02-046, p. 38 (citing *Southern Counties Gas Company* (1952) 51 CPUC 533; *Citizens Utilities Company* (1953) 52 CPUC 637; *Park Water Company* (1955) 54 CPUC 498.) To the extent SDG&E fails to persuade the Commission with

to support all aspects of its application through clear and convincing evidence”.<sup>9</sup> Clear and convincing evidence provides proof beyond a reasonable doubt; it is a higher degree of proof than a preponderance of evidence; it will produce in the mind of a court a firm belief or conviction.<sup>10</sup> SDG&E’s showing in the instant CPCN case must meet this standard, especially in light of the impact that this \$2 billion expenditure will have upon ratepayers’ bank accounts.

The corollary to the “clear and convincing” evidence burden is the Commission’s own evidentiary obligation. Public Utilities Code § 1757(a)(4) provides that the Commission’s findings in a decision must be supported by substantial evidence in light of the whole record. The Commission has interpreted this substantial evidence standard as follows:

We have a regulatory responsibility to ensure [SoCalGas] provides adequate service at just and reasonable rates, and we must view the facts accordingly. Our legislative mandate encompasses promoting the “safety, health, comfort, and convenience of [SoCalGas’] patrons, employees, and the public.” See §451. In construing substantial evidence, we must consider all factors that may have a bearing on this goal. D.01-10-031, p. 5.

Similarly, the Commission must have “adequately considered all relevant factors, and [have] demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute” to survive judicial review. See D.01-10-031, p. 5 (citing *Calif. Hotel & Motel Assoc. v. Industrial Welfare Comm’n* (1979) 25 Cal.3d 200, 212.)

If the Commission’s use of the “preponderance of the evidence” standard is applied, then SDG&E needs only demonstrate a 51% chance of Sunrise being used to develop cost-effective Imperial Valley renewable power and it reaps the enhanced rate base and healthy, guaranteed profit upon a \$2 billion expenditure of state ratepayer

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clear and convincing evidence of the reasonableness of its revenue forecast, the Commission cannot grant its requested revenue increase. D.00-02-046, pp. 64-65.

<sup>9</sup> D.01-10-031, Ordering Paragraph 6, slip op. at 45, modifying D.00-02-046, Conclusion of Law 6, 4 CPUC3d 315, 554.

<sup>10</sup> Black’s Law Dictionary, Revised Fourth Edition, p. 317

monies. This lesser burden of proof is inappropriate and should not have been used by the Commission in D. 08-12-058.

### III. STANDARDS OF REVIEW

Pursuant to Public Utilities Code Section 1001,<sup>11</sup> before granting a CPCN, the Commission must find a need for the Proposed Project or an alternative evaluated in this proceeding. Section 1002(a) requires that the Commission consider four additional factors: community values; recreational and park areas; historical and aesthetic values; and influence on the environment. The Commission failed to properly consider each of these factors.

SDG&E claimed that Sunrise is needed to maintain reliability, promote renewable energy, and reduce energy costs and projects that construction of the line will provide economic benefits to its ratepayers. The CPCN portion of the Commission's proceeding was the forum for economic review and this decision evaluates each of SDG&E's claims.

Public Utilities Code §1757(a)(4) allows court review of Commission decisions in situations where, among other things, "The findings in the decision ... are not supported by substantial evidence in light of the whole record." Findings that are not supported by substantial evidence constitute a prejudicial abuse of discretion.

The California Supreme Court, in review of an environmental dispute, relied on a definition of substantial evidence as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."<sup>12</sup>

This rehearing request also raises the issue of procedural due process. The California Supreme Court has determined that the phrase "opportunity to be heard" in Public Utilities Code Section 1708 "implies at the very least that a party must be

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<sup>11</sup> Unless otherwise expressly stated, all references to statutes are to the California Public Utilities Code.

permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal.”<sup>13</sup> The Commission’s last-minute application of a 33% RPS to justify the CPCN approval has denied intervenors the right, required under Section 1708, to “prove the substance of its protest,” and this constitutes reversible error.<sup>14</sup>

In addition, Section 1757.14 provides that a final Commission decision issued in a quasi-legislative proceeding will be overturned if it is not supported by the findings or if the Commission did not follow the proper process. In granting a rehearing of D.08-12-058, the Commission should take the opportunity to declare that comments on a draft decision are not part of the record and do not constitute a record on which a decision may be based. RPP Rule 14.3 (which is applicable to comments on draft decisions pursuant to RPP Rule 14.3(c)) provides that comments on draft decisions “shall make specific references to the record.” Thus, any new factual information . . . shall not be relied on as the basis for assertions in post-publication comments. Parties’ comments on draft decisions in this matter cannot be, and are not, part of the record as such comments could only make “references to the record.”

#### IV. CPUC REVIEW OF CEQA ISSUES

The Commission acknowledged that the review process established by the California Environmental Quality Act (CEQA)<sup>15</sup> has been the primary focus for environmental review. As lead agency pursuant to CEQA, it evaluated the

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<sup>12</sup> D.02-03-061, slip op. at 10, citing CEQA Guidelines, § 15384(a), and *Laurel Heights Improvement Assoc. of San Francisco v. Regents of the Univ. of Calif.* (1988) 47 Cal.3d 376, 393, quoted above.

<sup>13</sup> *California Trucking Ass’n v. Public Utilities Comm’n*, 19 Cal.3d 240, 244 (1977).

<sup>14</sup> As such, D.04-12-015 also violates P.U. Code Section 1757(2) because the Commission “has not proceeded in the manner required by law” by overruling D.04-07-022 without adequate notice and opportunity to be heard.

<sup>15</sup> Public Resources 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

environmental impacts of the Proposed Project, seven alternatives (two of them solely generation based, “non-wires” alternatives and the rest, transmission based, “wires” alternatives), and a No Project Alternative. CEQA requires a lead agency to identify and study feasible alternatives and mitigation measures to reduce a project’s significant environmental impacts.<sup>16</sup> The CPUC is thus the agency that should be reviewing any challenges to its CEQA decision. The Public Utilities Code expressly allows that an appeal of a Commission decision within 30 days after a decision on rehearing is appropriate.<sup>17</sup>

Similarly, the Public Resources Code acknowledges that appeals of decisions of the Public Utilities Commission are treated differently from other California Environmental Quality Act (“CEQA”) appeals. The Public Resources Code specifically makes an exception for CEQA actions against the Public Utilities Commission and requires that such actions be brought originally in the Supreme Court. Public Resources Code § 21167.6. *See also Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal. 4th 165, 195 (“Public Resources Code section 21168.6 ... provides that mandate issue only from this court in actions under Public Resources Code sections 21168 and 21168.5 against the Public Utilities Commission.”)

The California Public Resources Code, Section 21167(c), also requires that CEQA claims be commenced within 30 days of the filing of a notice of decision. But the California Public Utilities Code establishes a slightly different timeline for filing claims challenging its decisions under CEQA or any other law. Section 1756(a) of the Public Utilities Code allows any aggrieved party to petition for a writ of review within 30 days after the Commission issues a decision on rehearing.

The Public Utilities Code also specifically mandates that an application for a rehearing be made *prior* to taking action in a court of law: “No cause of action arising out of any order or decision of the commission shall accrue in any court to any

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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.

<sup>16</sup> D. 08-12-058, p. 3-4

<sup>17</sup> Pub. Util. Code § 1756(a).

corporation or person unless the corporation or person has filed an application to the commission for rehearing within 30 days after the date of issuance...”<sup>18</sup>

As the Commission issued its decision on December 24, 2008, UCAN’s request for a rehearing on or before January 23, 2009 is timely for both the decision and its appeal of the CEQA issues.

## V. BACKGROUND OF THE DECISION

This proceeding follows a rather torturous path that began on or about late 1995. It officially commenced on December 14, 2005, when SDG&E filed Application (A.) 05-12-014, its initial request for a CPCN for authority to construct Sunrise (2005 Application). Because of critical deficiencies in the 2005 Application, including failure to identify the route for Sunrise or to include a Proponent’s Environmental Assessment (PEA), SDG&E filed an entirely new set of documents on August 4, 2006. Though at times SDG&E’s 2006 filing has been referred to, informally, as an “amendment” to the 2005 filing, it was designated the 2006 filing as a new application and assigned a new proceeding number, A.06-08-010.

On September 6, 2006, responding to requests from the Commission’s Energy Division, SDG&E filed a multiple volume supplement to the 2006 Application. A Scoping Memo was issued after the Prehearing Conference, as required by statute.<sup>19</sup> 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 Steven Weissman as the presiding officer and set two hearing phases, focusing Phase 1 on all issues that could be examined prior to issuance of the Draft EIR/EIS, and Phase 2 on issues tied to the Draft EIR/EIS.

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<sup>18</sup> Pub. Util. Code 1731(b)(1)

<sup>19</sup> *Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling (Scoping Memo)*, November 1, 2006.

On October 2, 2006, SDG&E supplemented the 2006 Application to include and rank four alternative routings that, unlike its initial route, would not pass through Anza-Borrego. On January 19, 2007, SDG&E filed corrections to certain cost/benefit assumptions in the 2006 Application.<sup>20</sup> From 2006 through 2008, SDG&E revised its estimates four times and the CAISO modified its showing continuously throughout. Even as the record in this case closed, the CAISO continued to modify its analytical justifications for the project.

The NEPA and CEQA scoping processes commenced, respectively, on August 31, 2006 with BLM's publication in the Federal Register of a Notice of Intent to prepare an EIS; and on September 15, 2006 with the issuance by Commission Energy Division staff of a Notice of Preparation of an EIR. BLM and Commission staff, together with their environmental consultants, jointly held seven public scoping meetings in October 2006. The subsequent CEQA/NEPA review proceeded with additional public notice and input at milestone intervals, consistent with those environmental laws.

The Draft EIR/EIS on August 3, 2007, issuance of the document was delayed by five months when, in the course of Phase 1 hearings because SDG&E disclosed new information critical to the Commission's environmental review.<sup>21</sup> The Commission and BLM released the Draft EIR/EIR on January 4, 2008. After considering all additional comments, the lead agencies released the Final EIR/EIS on October 14, 2008.

As noted by the Commission in 08-12-058, this proceeding has been heavily-contested, involving lengthy evidentiary hearings and dozens of public meetings. In addition to voluminous testimony, documentary evidence, and two rounds of briefs in connection with the evidentiary hearings, there have been eleven opportunities for public comment, both written and oral, including Public Participation Hearings at five different locations. The Final Environmental Impact Report/Environmental Impact

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<sup>20</sup> Further corrections to the cost/benefit analysis by SDG&E were filed in May 2007, and in July 2007; a brand new set of cost/benefit analyses were submitted by SDG&E in Phase 2; the CAISO also filed, re-filed, and corrected its own cost/benefit numbers several times

<sup>21</sup> *Assigned Commissioner's Ruling Addressing Newly Disclosed Environmental Information*, July 24, 2007.

Statement (Final EIR/EIS)<sup>22</sup> prepared jointly by this Commission and the United States Bureau of Land Management (BLM) is more than 11,000 pages long.<sup>23</sup>

Notably, the final decision summarizes and discusses this extensive record in less than 300 pages.

As will be discussed further below, at no time during the entirety of this three-year process did the Commission ever indicate to the parties that it would base its decision upon a 33% renewable portfolio standard.

## **VI. THE DECISION FAILS TO APPLY THE PROJECT OBJECTIVES**

The Decision cites SDG&E's PEA which identifies eight objectives.<sup>24</sup> Under CEQA and NEPA, lead agencies distilled these project objectives to three Basic Project Objectives that the Commission claims to have used the following objectives in its review of Sunrise:

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<sup>22</sup> The Final EIR/EIS comprises not only the set of documents with that name but also the two prior sets of documents, the Draft EIR/EIS and the Recirculated Draft EIR/Supplemental Draft EIS. Unless specific reference to one of these set of documents is required, the decision refers generically to the EIR/EIS.

<sup>23</sup> D. 08-12-058, p. 4

<sup>24</sup> Section 3.1 of SDG&E's PEA sets forth the eight objectives, which we paraphrase as follows:

- 1) Ensure that SDG&E's transmission system satisfies reliability criteria.
- 2) Provide transmission facilities with a voltage level and transfer capability that (a) allows for prudent system expandability to meet both anticipated short-term (2010) and long-term (2015 and beyond) load growth and (b) supports regional expansion of the electric grid.
- 3) Provide transmission capability for Imperial Valley renewable resources for SDG&E customers to assist in meeting or exceeding California's 20% renewable energy source mandate by 2010 and the Governor's proposed goal of 33% by 2020.
- 4) Reduce the above-market costs associated with maintaining reliability in the San Diego area while mitigating the potential exercise of local market power, particularly the costs associated with older generators such as the South Bay and Encina Power Plants.
- 5) Improve regional transmission system infrastructure.
- 6) Obtain electricity generated by diverse fuel sources and decrease the dependence on increasingly scarce and costly natural gas.
- 7) Avoid, to the extent feasible, the taking and relocation of homes, businesses or industries, in the siting of the transmission line, substation and associated facilities.
- 8) Minimize the need for new or expanded transmission line right-of-way.

**Basic Project Objective 1:** to maintain reliability in the delivery of power to the San Diego region;

**Basic Project Objective 2:** to reduce the cost of energy in the region; and

**Basic Project Objective 3:** to accommodate the delivery of renewable energy to meet state and federal renewable energy goals from geothermal and solar resources in the Imperial Valley and wind and other sources in San Diego County.<sup>25</sup>

As will be discussed below, the Decision did not apply the three stated objectives. Nor did it apply the stated objective of ensuring transmission capability for Imperial Valley renewable resources for SDG&E customers to assist in meeting or exceeding California's 20% renewable energy source mandate by 2010 and the Governor's proposed goal of 33% by 2020, as noted by the Commission in footnote 19 of the Decision.<sup>26</sup>

The Decision goes further citing the need to develop Imperial Valley as a renewable resource and the need to promote 33% RPS compliance in order to facilitate its policy to achieve greenhouse gas (GHG) reductions through renewable procurement in the shortest time possible as the driving factors behind the support of Sunrise.<sup>27</sup> These criteria were first articulated in the Alternate Decision of Commissioner Grueneich – prior to that they were never articulated in a scoping memo or ALJ ruling.

As will be described below, the actual evidentiary record shows that building Sunrise will NOT add additional renewable power to the western grid, it will NOT reduce GHG and, as per SDG&E itself, Sunrise is not needed to import renewable into San Diego. So these last-minute criteria, which the parties never had an opportunity to factually address, turn out not to be met by Sunrise – if the evidentiary record is honored. However, the CPUC chose not to acknowledge those parts of the record that contradicted its predetermination.

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<sup>25</sup> Draft EIR/EIS, ES-3.2.

<sup>26</sup> Decision, p. 13

<sup>27</sup> Decision, p. 3

## VII. FACTUAL AND LEGAL ERRORS IN D. 08-12-058

### *A. Failure to consider the UCAN No-Project Alternative*

The record shows that SDG&E admits that it only needs 300 Mw of new resources beyond the baseline level to meet its reliability needs in 2016, and no more than 106 Mw in 2010-12.<sup>28</sup>

In this proceeding, UCAN devised a set of low-cost, incremental and flexible alternatives which, taken as a package, provide more reliability and comparable renewable benefits of Sunrise at a decidedly lower cost. In contrast, SDG&E chose to address its reliability needs wholly through the construction of a singular 500kV transmission line project through a desert state park.

In Phase I of the proceeding, UCAN set forth a substantially lower-cost, feasible means of increasing SDG&E's import capability by 350MW that could facilitate renewable imports combined with adding an additional 350MW of feasible supply that would address SDG&E's projected energy needs through 2018. UCAN's proposal would provide 350 Mw of new import capability from upgrading Path 44. Thus, UCAN's proposal would meet SDG&E's system reliability needs through the entire period of analysis covered by the EIR in a cost-effective manner while giving it access to Imperial Valley renewable power.

UCAN's alternative involved SDG&E's commitment to (a) post-2008 CPUC-ordered energy efficiency, (b) CPUC-approved AMI, (c) already contracted for dispatchable demand response, (d) already contracted for and CPUC-approved near term peaking capacity, and (e) one under-50 Mw CT from its current RFOs for peaking capacity in 2008 and 2010-2012.<sup>29</sup> SDG&E's numbers in this proceeding ignored numerous demand-side alternatives which should either have been part of the baseline or were likely to be developed prior to 2018 (e.g. the existing EnerNoc contract; the CEC-approved 2008 building standards; post-2008 energy conservation not embedded

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<sup>28</sup> Ex. SD-142, p. 3, "San Diego Area Reliability Surplus" line.

in the CEC forecast; SDG&E-proposed AMI savings not included in SDG&E's demand forecast).<sup>30</sup>

The Decision concurs with much of UCAN's analysis, yet it was silent on the issue of whether the UCAN proposal constituted an acceptable alternative. UCAN believes the basis for the Decision's reluctance to accept the UCAN proposal as an alternative rests upon the feasibility of the proposed Path 44 upgrade. The Decision issues an order requiring SDG&E to take the necessary steps to institute a review of Path 44's rating and, within 90 days of the effective date of this decision, shall report on the status of that review and shall serve the report on the parties (Ordering Paragraph #12). But it errs in that it does not accept the evidence in support of the upgrade presented by UCAN and agreed to by the CAISO. And it errs in that it doesn't conclude that if Path 44's rating is found to be upgradeable, UCAN's proposal constitutes a comprehensive alternative to SDG&E's Sunrise proposal.

SDG&E also asserts that in-basin renewables do not exist to the extent detailed in the All-Source Generation Alternative and, in particular, that the use of solar PV is unrealistic at the build-out levels contemplated; that the use of renewable energy credits (also known as "TRECs") to fulfill its RPS goals is not allowable; and that this alternative is economically infeasible because it will require additional transmission facilities to meet reliability criteria. SDG&E claims that this alternative will cost \$420 million and that over twenty years the incremental costs of this alternative, compared to out-of-basin generation with Sunrise in-service, ranges from \$444 million to \$1.8 billion. Given this alleged infeasibility, SDG&E states it is highly unlikely this alternative will meet SDG&E's post- 2010 reliability needs.<sup>31</sup> If these assertions, apparently accepted by the Commission, are true then UCAN's suggestion to modify the in-basin alternative to reduce the amount of PV is all the more relevant. Yet, the Commission never addresses UCAN's suggestion in the Decision.

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<sup>29</sup> UCAN Phase I Opening Brief, p. 77-156. UCAN Phase II Opening Brief, p. 102-107

<sup>30</sup> See Ex. U-100,

<sup>31</sup> Decision, p. 229

The Commission does acknowledge UCAN's argument that the No Project Alternative is superior to the All-Source Generation Alternative. It recognizes UCAN's assertion that 40% of the All-Source Generation Alternative's costs are due to the 10% that comes from solar PV. UCAN claims that since this alternative provides more MW than needed, the solar PV component could be eliminated to make this alternative less costly than the Proposed Project or other Northern Routes.<sup>32</sup> So, the Decision accepts this part of the evidentiary record. Yet, even though the Commission claims it will discuss UCAN's factual assertions in its Section 15.4.3, that section (and all other sections) are bereft of any such analysis.

The Decision concludes: "However, while this alternative adds newer, more efficient in area generation to the existing generation mix in SDG&E's service territory, the cost of these additions may not be competitive with the out of area resources that could be accessed via a new, high-voltage transmission line. Thus, the cost impacts are highly dependent upon assumptions about the costs of imported power and the cost of the new transmission line."<sup>33</sup> These findings ignore the undisputed facts in the record where UCAN has shown that an in-basin alternative with less PV would be cost-effective not only compared to a CT reference case, but also compared to a Sunrise case with either 20% or 33% RPS.

As set forth in UCAN's briefs in Phase 1 and Phase 2, UCAN showed that its No-Project, No-Action alternative is the optimal alternative on all grounds: cost, environmental impact, reliability and flexibility. It provided evidentiary support for the following contentions:

- SDG&E now admits that by its own calculations, its Enhanced Northern Route is only \$40 million per year cheaper than the GT Reference Case and \$10 million per year cheaper than a GT-CC Reference Case with a 7165 Btu/kwh heat rate, versus claimed benefit of \$142 million per year in Phase 1 for STP versus GT Reference Case. With UCAN's corrections, however, those numbers turn into a \$74 million per year advantage for the GT Reference Case over SDG&E's ENR

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<sup>32</sup> Decision, p. 231

<sup>33</sup> Decision, p. 233

alternative, and An \$81 - \$111 million per year advantage for GT-CC Reference Cases over the ENR alternative. (See Table 1 at the end of Chapter IV and Attachment 2)

- UCAN's alternative, as reflected in Attachment 2, offers a benefit/cost ratio of 3.12 (compared to SDG&E's ENR ratio of .57) and offers annual levelized net benefits of \$22 million per year, in stark contrast to SDG&E's annual net loss of over \$74 million annually).
- SDG&E's own claimed benefit/cost ratio is down from 1.91 to 1.25, and falls to 0.57 with UCAN's corrections to SDG&E's errors and omissions
- SDG&E's Phase II numbers continue to ignore errors pointed out by UCAN in Phase 1 and Phase 2, errors which by themselves when corrected swing the economic balance towards the No Action Alternative. Just as the Phase 1 record that SDG&E's claimed B/C ratio of 1.91 was really less than 1
- The Phase 2 record shows that SDG&E's new B/C ratio of 1.25 is really less than 1.
- SDG&E incorrectly assumes 1000 Mw of increased RA capacity due to STP will be free.
- Phase 1 record from UCAN contradicts this – shows **\$36.5 million/year** cost for the Sunrise-delivered RA, which by itself, wipes out the claimed benefits of STP.
- CAISO Phase 1 testimony also accepted that non-local RA is not free, and used the same unit price as UCAN.
- DRA testimony and cross show that SDG&E would become dependent on Intergen and TdM for Mw to meet the Greater IV-SD local RA area needs post-STP
- SDG&E ignores the economic benefits of upgrading the Miguel inlet capacity, benefits which are largest in the GT Reference Case and non-existent in the Sunrise cases.
- Phase 1 analysis shows estimated benefits from Miguel upgrades of **\$27.5 million per year**.
- SDG&E admitted in Phase 2 that it expects the CAISO-proposed changes to the Miguel transformer RAS to increase inlet capacity at Miguel to 1850-1900 Mw, consistent with what UCAN proposed in Phase 1 and what was analyzed and quantified in the Phase 1 record.
- Unrebutted evidence that the Miguel upgrades will be in place well before 2011.
- SDG&E ignores the economic benefits of upgrading Path 44 instead of building new CTs.
- UCAN's Phase 1 testimony shows economic benefits of substituting Path 44 upgrades for new CTs would be \$11.5 million per year, of which \$5.8 million was from reduced requirements for new CTs;
- UCAN's Phase 1 numbers were based on a \$78/kw-year cost for new CTs. If that number is doubled to match SDG&E's Phase 2 estimates, the net benefit of

upgrading Path 44 instead of building new CTs would be  $\$11.5 + \$5.8 = \mathbf{\$17.3}$  million per year;

- SDG&E ignores STP's impact on natural gas consumers, which UCAN calculated in Phase 1 (with no rebuttal or cross-examination from SDG&E then or since). The Commission must find that this negative impact would total **several million dollars per year**.
- SDG&E ignores its own testimony on achievable AMI load reductions from its GRC, and uses older, lower estimates based on older, lower incentive payments to customers than those adopted in the SDG&E GRC;
- SDG&E continues to ignore its own LTPP testimony, previously brought up in Phase 1 and since approved by the Commission in the LTPP decision of 12/07, that it will have 139 Mw of dispatchable RMR capacity<sup>34</sup> and not the 29 Mw it is now assuming or the 59 Mw (with EnerNoc) that SDG&E and the CAISO assumed in Phase 1. An extra 80 Mw of dispatchable RMR capacity would reduce the number of CTs needed for the GT Reference case by one or two each year, saving approximately 80/322 of the \$44 million per year capital cost of CTs in the GT Reference Case, or \$11 million per year.
- SDG&E made 16 documented changes to its GridView modeling between the Phase 1 Cases 200/201 that it relied upon and its Phase 1 Case 300, all of them in response to UCAN-identified issues. It made a further 20+ changes to Case 300 for Phase 2. However, SDG&E continues to include faulty GridView input assumptions that were identified in Phase 1 but not changed for either Case 300 in Phase 1 or Case 300 in Phase 2.
- SDG&E has reduced its Phase 2 forecast of 2008-2015 IID-area geothermal additions by 185 Mw, to 1600 Mw which is still far above the IVSG projection.
- SDG&E continues to assume multiple new combined cycle plants will be built in the Palo Verde area by 2015 or sooner. UCAN also pointed this out in Phase 1.
- SDG&E continues to assume excessively large coal plant additions throughout the WECC.
- SDG&E failed to model minimum generation requirements for the LA Basin.
- SDG&E assumes too much Imperial Valley geothermal capacity in 2015.
- SDG&E was assuming four new geothermal units of 185-200 Mw each by 2010, and another 1000 Mw on top of that by 2015, much more than the 1075 Mw by 2015 implied by the IVSG report. In response, SDG&E has reduced its Phase 2 forecast of 2008-2015 IID-area geothermal additions by 185 Mw, to 1600 Mw, which is still far above the IVSG projection.
- None of the 1600 Mw in alleged IID-area geothermal is in licensing or has a permit.
- SDG&E improperly relies on too much solar thermal power from the Imperial Valley;

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<sup>34</sup> D.07-12-052, p. 118, line 8.

- The Stirling project continues to founder and has been all-but-abandoned by SCE;
- Stirling’s permit process has slipped another month since the OT was filed;
- The alleged \$100 million cash infusion touted by Stirling only amounts to 5-25 percent of the overall costs of the project;<sup>35</sup>
- SDG&E improperly assumes no new transmission between IID and the CAISO on the northern side of the IID system, even if STP is not built;
- In Phase 2, IID has identified several separate projects it is pursuing to increase deliverability to the north – re-rating the existing lines (200 Mw for no capital cost at all), building a Coachella-Devers interconnection (1200 Mw), and building the Green Path North line from Devers to Hesperia, with a looped-in connection to connect Hesperia to the CAISO grid at both Lugo and Mira Loma.
- The CAISO admitted in Phase 2 rebuttal, that CAISO has been including GPN in its Imperial Valley deliverability analyses since late 2007, because GPN has reached Phase 3 of the three-phase WECC approval process.
- SDG&E continues to rely on Phase 1 estimates of variable RMR costs which overstate make-whole energy costs by about **\$3 million per year**.
- Potential for in-basin solar has been substantially understated by SDG&E.<sup>36</sup>

The UCAN No-Project Alternative is summarized at page 253 of the Decision:

“UCAN states that the EIR/EIS fails to identify and consider factors that would reduce the environmental impacts of the No Project Alternative. According to UCAN, upgrades to Path 44, modifications at the Miguel Substation, and increases in energy efficiency and distributed generation beyond that envisioned in the Draft EIR/EIS are realistic assumptions, and would minimize the No Project Alternative’s environmental consequences. More particularly, UCAN argues that a Path 44 upgrade is likely to occur due to other already proposed system upgrades and will increase SDG&E import capacity by 350 MW and that increasing the Miguel Substation capability to 1,900 MW would increase SDG&E’s ability to import renewables from the Imperial Valley.”

Then UCAN’s alternative proposal is not mentioned again. The discussion of the No-Project Alternative doesn’t address the UCAN proposal. It merely states:

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<sup>35</sup> 25 percent based on Stirling’s estimate of a \$400 million total capital cost for 300 Mw; 5 percent based on SDG&E’s estimate of about \$2 billion for 300 Mw of solar thermal generation. See section V.B.4, below.

<sup>36</sup> UCAN Phase 2 opening brief, pp. 16-19

“Therefore, it meets the first and third Basic Project Objectives. Given the CPCN record, however, the No Project Alternative may not reduce the cost of energy in the region, which is the second Basic Project Objective.”<sup>37</sup>

In fact, the record developed by ALJ Weissman makes it very clear that the UCAN No-Project Alternative does reduce the cost of energy in the region. The Decision cites to the UCAN proposal when it wrote:

UCAN contends that SDG&E understates the import capability of the Southwest Powerlink and, as a result, overstates the need for resources within its service area. In short, UCAN asserts that increasing the assumed transfer capability of the Southwest Powerlink would allow more energy to flow into SDG&E’s service area, reducing the need for either in-area generation, Sunrise, or both.<sup>38</sup> Consequently, UCAN has made several proposals to increase the transfer capability of various parts of the SDG&E system, as summarized below, and the parties spent significant time and effort debating the merits of those proposals in Phase 1.<sup>39</sup>

As to costs (second criteria), the Decision notes UCAN’s findings:

UCAN claims that SDG&E overstates the benefits of Sunrise, understates its costs, and overstates the costs of the baseline combustion turbine case. In Phase 1, UCAN projected Sunrise would cost ratepayers \$81 million per year more than its combustion turbine reference case.<sup>40</sup> In Phase 2, UCAN projects Sunrise will cost ratepayers \$74 million per year more than its combustion turbine reference case and “up to” \$120 million per year more than other alternatives.<sup>41</sup> In contrast, UCAN estimates positive net benefits for its own all-source generation alternative.<sup>42</sup>

But then the Commission makes no factual findings on UCAN’s assertions. It ignores this issue presumably because the assessments were made using a 20% RPS analysis. Because of the last minute switch to a 33% assumption, the Commission

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<sup>37</sup> Decision, p. 254

<sup>38</sup> UCAN Exhibit U-4, 48-50.

<sup>39</sup> Decision, p. 74

<sup>40</sup> UCAN Phase 1 Opening Brief, 302.

<sup>41</sup> UCAN Phase 2 Opening Brief, 4.

<sup>42</sup> Decision, p. 144-145

appears to bypass the economic impact evaluations offered by UCAN even though they are still relevant to a 33% RPS scenario.<sup>43</sup>

The crux of UCAN's proposal is based upon four major proposals:

1. Upgrading the output limit of Miguel substation
2. Upgrading Path 44
3. Development of the NRG Carlsbad plant
4. The availability to SDG&E of out-of-state renewables.

Interestingly, the Decision concurs with UCAN on each of these points:

- We agree with UCAN that the Carlsbad Energy Center, in permitting at the Energy Commission, has a high likelihood of coming online by 2012 or 2013. For that reason, we assume a net increase of 222 MW before Summer 2013 as a result of including the Carlsbad Energy Center in the Analytical Baseline.<sup>44</sup>
- We agree with UCAN that many out-of-state renewables will be deliverable to California without new transmission facilities, as demonstrated by SDG&E's Advice Letter filing requesting approval of two Montana wind contracts for a total capacity of 210 MW.<sup>45</sup>
- Neither SDG&E nor CAISO claims that the Miguel Import Limit Upgrade proposal is infeasible. They concede it has promise and that they planned to study it to ensure that other systems are not affected.<sup>46</sup>
- UCAN predicts that implementing the Miguel Output Limit Upgrade would require a number of upgrades and potential implementation of another Remedial Action Scheme and estimates that the incremental cost of this upgrade would be between \$4 million and \$35 million.<sup>47</sup> SDG&E has not rebutted this evidence. We find UCAN's Miguel Import Limit Upgrade proposal to be reasonable.<sup>48</sup>
- We are not convinced at this time that UCAN's Path 44 proposal presents a viable means to increase import capability into the SDG&E load area and do not adopt it for the Analytical Baseline. However, we agree that a review of Path 44's rating is warranted, particularly since the last one occurred in 2001, and UCAN presents credible evidence that an increase in Path 44's rating may be

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<sup>43</sup> Decision, p. 155

<sup>44</sup> Decision, p. 53

<sup>45</sup> Decision, p. 69

<sup>46</sup> See, e.g., SDG&E Phase 1 Reply Brief, 59; CAISO Phase 1 Reply Brief, 28.

<sup>47</sup> UCAN Phase 1 Opening Brief, 113-114.

<sup>48</sup> Decision, p. 77

possible. We direct SDG&E to take the necessary steps to institute a review of Path 44's rating, and to report within 60 days of the effective date of this decision.<sup>49</sup>

Yet, after an acknowledgement and acceptance of each of UCAN's key points, the Decision declines to accept or reject the UCAN Alternative proposal. The Commission also ignores the fact that SDG&E never evaluated the cost-benefits of the UCAN No Project Alternative or that offered in the EIR.

SDG&E acknowledges that it did not conduct a cost analysis of the EIR's No Project/No Action alternative.<sup>50</sup> In his December 11, 2007 order, the ALJ instructed applicants as follows:

As also set forth in the Scoping ruling, we anticipate examining the following specific areas in Phase 2:

1. A comparison of different modeling efforts, and economic and reliability analyses as informed by the proposed alternatives and mitigation measures in the draft EIR/EIS;
2. Cost-benefit analyses of the proposed project and project alternatives as informed by the proposed alternatives and mitigation measures in the draft EIR/EIS, and by different modeling efforts;

The language couldn't be clearer. A cost-benefit analysis of the proposed project and project alternatives identified in the EIR had to include the "no project/no action alternative". In his questioning of an SDG&E witness, the ALJ raised this issue:

17 Q I also notice you didn't include any  
18 assessment of the no-project/no-action alternative. Why  
19 is that?

20 A Your Honor, the ruling in which we were  
21 directed to perform this economic analysis referred to  
22 the highest -- to compare Sunrise, the proposed project,  
23 to the highest ranked alternatives. In the EIR the  
24 no-project alternative was ranked lower than the  
25 proposed project. So we didn't believe it was necessary  
26 to do that.

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<sup>49</sup> Decision, p. 80

<sup>50</sup> RT at 4167 -4170 (Woldemariam)

27 Q How did you determine that it was ranked  
28 lower?  
1 A That is what the EIR says.  
2 Q Did it have a ranking number on it?  
3 A Yes.  
4 Q What was the number?  
5 A It was below the previous -- I think there  
6 were seven alternatives, and the no-project alternative,  
7 as I recall it, was ranked last.  
8 Q But it didn't have a number on it, did it?  
9 A No.  
10 Q It didn't it refer to Alternatives 1 and 2?  
11 A I'm sorry? The "it" is what I am missing.  
12 Q The description of the no-project alternative.  
13 A I will have to go back and review the EIR to  
14 exactly know what it referred to. But it did include a  
15 lot of the same resources, I do recall that.  
16 Q So why would you conclude that it was being  
17 ranked lower than the proposed project?  
18 A I will have to go back and review my thought  
19 process or go back and look at the EIR, but that was  
20 the conclusion I came to. I thought clearly it was  
21 ranked below the others.<sup>51</sup>

SDG&E's claim is directly contradicted by EIR, p. ES-4: "The No Project/No Action Alternative would have fewer impacts than those of the Proposed Project, the Southern Route Alternative, ...." Mr. Strack essentially admitted this when, after further questioning, he states that the no-project alternative was, indeed, ranked. Only he incorrectly assumed it had been ranked below other alternatives:

3 A As I indicated for that Southern Route, it was  
4 developed late or I became aware of it late in the  
5 process. It wasn't required by your Honor's ruling or  
6 by the EIR, so we did not include it.  
7 And again, the reason I didn't include the  
8 no-project was exactly my reason here, is that we felt  
9 or I felt it was below -- it was ranked below the other  
10 alternatives.<sup>52</sup>

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<sup>51</sup> RT at 4804-4805 (Strack)

<sup>52</sup> Id, at 4806 (Strack)

The ALJ reiterated his concerns on the record, to wit:

28 I went back and looked at a ruling that  
1 I issued last December discussing Phase 2 testimony.  
2 And one of the things that I had asked the company to  
3 prepare was a cost/benefit analysis for the proposed  
4 project and for project alternatives as informed by  
5 the proposed alternatives and mitigation measures in  
6 the Draft EIR/EIS. And I've having trouble  
7 understanding where in SDG&E's testimony there is  
8 cost/benefit analysis of the proposed project  
9 considering mitigation measures.  
10 And is it in there somewhere and I just  
11 haven't figured it out.....

9 I'm not seeing anything in the testimony that provides  
10 an answer to that question: Is the proposed project  
11 cost effective; are any of the alternatives cost  
12 effective.....<sup>53</sup>

9 ALJ WEISSMAN: Yeah. I would like to see an  
10 apples-to-apples comparison among the alternatives using  
11 the same baseline. And I also would like to understand  
12 on a stand-alone basis what the perceived cost/benefit  
13 ratio would be for the individual alternatives in the  
14 proposed project.

SDG&E's response was telling. SDG&E's expert, Mr. Strack, resolutely claims that he believes the No Action alternative would include **all** alternative options, not just a subset of them, and would thus result in a 1670 Mw excess of capacity by 2010. He then disclaims any personal opinion as to whether such a thing would happen in the real world, and disclaims any opinion regarding Path 44, Mexico Light or any other elements in UCAN's very specific no-project/no-action alternative discussed in both phases of this proceeding.<sup>54</sup>

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<sup>53</sup> RT at 4938-4939, 4945

<sup>54</sup> RT at 4684-4690 (Strack)

SDG&E's only legitimate defense for having not done a No-Project alternative comparison is that it would take a new GridView case run.<sup>55</sup> That would not have been an issue had SDG&E complied with the ALJ's December 2007 order. Instead, applicant intentionally chose not to so comply and then in April 2008, it justifies its continued non-compliance by claiming time constraints.

The Commission can reasonably conclude that SDG&E's willfully misinterpreted the EIR and the ALJ's ruling by creating a "straw man" No-Action alternative that was patently unreasonable on its face. Second, SDG&E's willingness to claim ignorance of the viability of key elements of the UCAN proposal shows how little consideration the company gave to STP alternatives. Finally, the Commission should conclude that SDG&E failed to heed the ALJ's directive that SDG&E provide an economic comparison to a reasonable version of the no-project/no-action alternative specified in the EIR. SDG&E's failure to do so not only violated the ALJ's order and instructions but also violates state law and deprives the Commission of a basis upon which to make a factually supported finding of overriding considerations.<sup>56</sup>

*B. No opportunity by parties to evaluate and provide facts relating to the impacts of the last-minute 33% RPM mandate.*

The potential of using a 33% RPS standard was never raised by the Commission during the pendency of hearings. It is not articulated in any scoping memo nor any instruction by the ALJ. In fact, testimony on this would likely have been subject to a motion to strike as it was outside the scope of the 20% RPS assumptions proffered in all of the modeling and analysis conducted.

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<sup>55</sup> RT at 4807 (Strack)

<sup>56</sup> See *Ventura County vs. PUC* (1964) 393 P.2d 168 and *Southern Pacific Co. v. PUC* (1968) 68 Cal.2d 243, both cases stand for the proposition that the Commission has an obligation to consider alternatives and contain separately stated findings of fact on all material issues.

Indeed, SDG&E's Phase 2 brief – written in June 2008, mentioned the 33%RPS standard on just one page out of the 400 pages of its brief.<sup>57</sup> Similarly, it was mentioned just once by the CAISO in its Phase 2 brief.<sup>58</sup> It was not referenced at all in SDG&E's Phase 1 Opening Brief. The CAISO mentioned it twice in its Phase 1 opening brief, in reference to its modeling protocols<sup>59</sup> The report to which the CAISO refers (Center for Resource Solutions 2005 report for the CPUC *Achieving a 33% Renewable Energy Target*) was never entered into the evidentiary record.

The notion of building Sunrise as a means of achieving a 33% RPS target did not become a reality for any of the parties until after the issuance of the October 31, 2008 proposed decision by ALJs Weissman & Vieth and the Alternate Decision by Commissioner Grueneich. When the ALJs based their rejection of the project on the finding that it wasn't needed nor was it cost-effective based upon a 20% RPS requirement, the Commissioners scurried to find some other justification for the project.<sup>60</sup> Commissioner Grueneich seized upon a voluntary application of the 33% standard and that served as the basis for the final decision on December 24<sup>th</sup> – ironically, over the objections of Commissioner Grueneich.

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<sup>57</sup> SDG&E Phase 2 Opening Brief, p. 68. It wrote: "The only practical, near term response to the existing GHG reduction law (AB 32) is to substantially increase renewable resource generation well beyond 20%. Further, many legislators are considering increasing renewable mandates to 33%, or even 50%. With respect to the SDG&E system, this means that an additional high capacity transmission line *beyond Sunrise* could be required to physically deliver these resources to the grid. For example, an increase of renewable portfolio standards from 20% to 33% will require additional import capacity in the San Diego system of 700-1000 MW, depending on the mix of sources."

<sup>58</sup> CAISO Phase 2 Opening Brief, p. 3-4. It wrote: "For purposes of calculating net economic benefits, the CAISO used the Transmission Economic Assessment Methodology ("TEAM") approach to identify a resource plan that would minimize the expected electricity expenditures over the forecast period (*i.e.*, calculate net economic benefits) consistent with (i) CAISO and Western Electricity Coordinating Council ("WECC") reliability standards; and (ii) compliance with California's RPS targets of 20% by 2010 and 33% by 2020

<sup>59</sup> CAISO Phase 1 Opening Brief, p. 38. It wrote: "The specific incremental resources added to the Base Case and the Sunrise case to make these cases RPS compliant were based largely on the Center for Resource Solutions ("CRS") 2005 report for the CPUC *Achieving a 33% Renewable Energy Target*."

<sup>60</sup> The final Decision concedes that Commission acknowledges that Sunrise can't be justified based upon 20% RPS. In fact, it concedes that For example, SDG&E has placed enough in-state projects north of the San Onofre Nuclear Generating Station (SONGS) on its short list to meet its full 20% RPS obligation. These projects do not require Sunrise. Decision, p. 157

Had the parties had an opportunity to address the 33% RPS, they would have been able to show – as UCAN briefly hinted at in its reference to Exhibit 91 -- that SDG&E could have satisfied a 33% RPS requirement even without Sunrise. No such opportunity presented itself after the closing of the record in September 2008. And they could have demonstrated how SDG&E’s own documents show that development of renewable energy in the Imperial Valley would not increase by one MW the amount of renewable energy available to the state’s utilities. Moreover, the facts would have shown that approval of Sunrise would have opened the door to more dirty (carbon-based) power flowing into the state.

Moreover, the Commission never fully explained why a 33% RPS requirement scheduled for 2020 required the construction of the powerline project by 2012. The only reference to the 33% RPS requirement in the record pertains to a 2020 deadline.<sup>61</sup> There is no evidentiary support for the construction of a powerline eightyears early to meet a 2020 requirement. All of these material facts were precluded from analysis because of the Commission’s last-minute switch of the material renewable portfolio standard it would apply.

*C. The Commission lacks the authority to impose a 33% RPS standard upon SDG&E or to base its approval of the CPCN upon such a standard*

As noted by Commissioner Grueneich in her Alternate Decision and the ALJs Proposed Decision, the Commission lacks the authority to impose a 33% RPS requirement on the utility prior to 2020. In fact, it lacks such authority for all of the state’s utilities. She wrote:

“With regard to SDG&E’s implication that Sunrise is needed to meet 33% RPS, existing law only establishes 20% RPS and we have recognized that this

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<sup>61</sup> See Decision, p. 13, footnote 19 and the references in the SDG&E and CAISO briefs above.

Commission has no ability to require utilities to exceed that 20% RPS.<sup>62</sup> Further, while SDG&E could commit to a higher RPS target on its own, SDG&E has not yet done so”.<sup>63</sup>

She goes on to state:

“SDG&E claims that one of Sunrise’s objectives is to provide transmission from Imperial Valley renewable resources to SDG&E’s service area to assist in meeting or exceeding California’s 20% RPS and the governor’s proposed 33% RPS.<sup>64</sup> However, currently SDG&E is not legally obligated to procure renewables at a 33% RPS level.”<sup>65</sup>

The final decision does not dispute these facts. The Commission cannot justify the construction of a transmission line for 2012 upon a RPS requirement not legally compulsory before 2020 without having examined other options available to the utility to satisfy that requirement. No such opportunity was presented to the parties.

To add further insult to procedural propriety, the Decision finds, based on the evidentiary record, that Sunrise is justified on reliability, economic, and 33% RPS grounds *provided that actual Imperial Valley renewable development occurs at the levels projected by CAISO*. Contrary to the AD of Commissioner Grueneich, the Commission opts to not take any affirmative action to ensure Imperial Valley renewable development at meaningful levels. Thus there is no assurance that the justification for building Sunrise will be achieved.

Finally, given the Commission’s deficient authority to order utilities to comply with a 33% RPS standard, it also cannot legally base a decision to impose a nearly \$2 billion project upon the state’s ratepayers upon a nonexistent 33% RPS assumption. The legal justification is non-existent.

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<sup>62</sup> D.08-03-018, 35-36 [The Public Utilities Commission is prohibited by statute (SB 107 enacted in 2006) from requiring that IOUs obtain more than 20% of their power from renewables.”]

<sup>63</sup> Grueneich alternate, p. 155

<sup>64</sup> PEA, Section 3.1. The EIR/EIS distilled this objective into Basic Project Objective 3: to accommodate the delivery of renewable energy to meet state and federal renewable energy goals from geothermal and solar resources in the Imperial Valley and wind and other sources in San Diego County.

<sup>65</sup> Grueneich dissent, p. 2

*D. The Decision manipulates the evidentiary record to create faux facts*

The Decision is replete with examples of how the Commissioners took partial facts and shaped them to justify a desirable outcome. Reliance upon these “faux facts” to justify a \$2 billion expenditure of ratepayer monies is violative of a host of state laws. Examples of these false facts include:

- The Decision recognizes that some parties are concerned that Sunrise will instead be used to support development of new fossil-fired generation. It asserts that the record provides no evidence that this is a likely outcome<sup>66</sup>. This statement is contradicted by the record which shows zero incremental WECC-wide renewable generation due to Sunrise, and the record shows (slightly) more coal generation with Sunrise than without. (see Chapters J-L below for more discussion on this point)
- At footnote 446 at page 157 the Decision states: “In 2016, our adopted Analytical Baseline assumes 33 MW (firm) of solar PV. However, as discussed in note 108 above, SDG&E assumes that SDG&E’s firm capacity under the California Solar Initiative will be between 70 MW and 150 MW. We conservatively assume that SDG&E’s installed capacity will be 70 MW under the California Solar Initiative, meaning that the costs of 37 MW (70 MW – 33 MW) beyond our Analytical Baseline should not be attributable to the All-Source Generation Alternative.” This finding diverges from the record --- and it isn’t conservative at all. By assuming that SDG&E firm capacity under CSI will be at the bottom end of the range estimated by SDG&E (and less than half of SDG&E’s Phase 1 estimate), the Decision maximizes the cost attributable to incremental PV under the All-Source Generation Alternative. As UCAN pointed out in comments on the Compliance exhibit and in comments on the EIR, modifying the All-Source Generation

Alternative to exclude PV over and above CSI levels would dramatically improve its economics, without sacrificing reliability. The Decision has thus purposely ignored an in-basin generation alternative that would be more cost effective than any of the in-basin generation alternatives it discusses (the all-CT reference case, the All-Source Generation Alternative, and the all-renewable generation alternative). It also has violated PU Code Section 1001 et. seq. as well as the Commission's own Loading Order by intentionally understating potential ultraclean distributed generation. This failure of the Decision to undervalue ultraclean distributed generation, as well the Decision's general disregard for the testimony submitted by Powers Engineering, constitutes a failure by the Commission to consider demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation.

- “We subtract \$367 million per year from the assumed capital cost of the All-Source Generation Alternative in each scenario to address the 37 MW of solar PV already paid for in the California Solar Initiative program;<sup>67</sup> First, the \$367 million annual number has no basis in fact. There is no such number in the record. Second, the Decision ignores SDG&E's Phase 1 estimate that CSI produces 150 Mw, and instead seizes upon the lower end of SDG&E's 70-150 Mw phase 2 estimate. By taking the lowest possible number it avoided having wiped out the net \$24 million/year advantage of Sunrise over the All-Source generation Alternative (shown in Lines 12 vs. 13 of Table 14). Even if the Commission believes 70 Mw is the correct CSI number, then voluntarily removing 80 Mw of PV that would not be supplied via CSI would produce the same cost savings, which would then be partially reversed by having to pay for 80 Mw of CTs to replace the foregone 80 Mw of PV. The Decision ignores the latter option, which UCAN pointed out in the record repeatedly.

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<sup>66</sup> Decision, p. 7-8

- The Commission relies upon a 2006 Forecast, and those afterward, which include the impact of expected savings from energy efficiency.<sup>68</sup> However, these forecasts are no longer accurate after 2009. The evidentiary record shows that the CEC forecast explicitly states that it does not include, except indirectly and partially, uncommitted energy efficiency. UCAN repeatedly pointed out this omission, and quantified the difference between the energy efficiency included in the CEC forecast and the energy efficiency expected by the CPUC in its prior decisions.<sup>69</sup> The Decision overlooks this particular inconvenient fact.
- The Decision generally assumed in Phase 1 that the California Solar Initiative would reduce peak demand by approximately 150 MW by 2015, while the November 2007 forecast assumes that it will reduce peak demand in 2015 by only 30 MW.<sup>70</sup> But that fact ignores the evidence that the 30 Mw is not a forecast, but simply a straight-line extrapolation of past solar installation rates. For “consistency “with the *LTPP* Decision, it adopts these determinations of the November 2007 Forecast for purposes of the Analytical Baseline even though the record shows it to be wrong.<sup>71</sup>
- The Decision finds that SDG&E’s Phase 2 estimates of the project’s operating and maintenance costs are reasonable. It diverges from the findings of the ALJs and states that SDG&E’s projections are based on detailed estimates that SDG&E is in the best position to prepare. It agrees with SDG&E and CAISO that UCAN made unreasonable assumptions to arrive at its higher operating and maintenance forecast.<sup>72</sup> This finding ignores UCAN testimony that SDG&E told the CAISO

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<sup>68</sup> Decision, p. 36

<sup>69</sup> see UCAN Phase 1 and 2 briefs and UCAN comments on the compliance exhibit.

<sup>70</sup> Even SDG&E acknowledges that its Phase 2 California Solar Initiative levels are too low and should be at least 70 MW, rather than the 33 MW that the November 2007 Forecast assumes for 2016 and that it uses in this proceeding. See SDG&E Phase 1 Opening Brief, 47-48.

<sup>71</sup> Decision, p. 40

<sup>72</sup> Decision, p. 98

to use O&M as a percentage of capital cost, and that WSCC does likewise. The Commission disregards the fact that SDG&E's rebuttal of UCAN O&M costs only addressed one of several reasons UCAN gave that O&M costs were underestimated, and not the one that UCAN relied upon.<sup>73</sup>

*E. The Decision ignores inconvenient evidentiary facts that contradict its material findings.*

- The Decision makes no mention of the TRCR analysis that shows that SDG&E can import an incremental 1752 Mw of additional renewable resources from the north using its existing transmission facilities, with no upgrades required.<sup>74</sup> This SDG&E filing substantially undermines the Commission's conclusion that SDG&E needs Sunrise to import sufficient renewable power to satisfy a 33% RPS mandate. 1752 Mw is about 35% of SDG&E's roughly 5000 Mw peak load, and thus is far more than enough transmission capacity to allow SDG&E to meet a 20% RPS standard, even with zero imports from the east and zero local RPS generation. It is even enough to meet a 33% RPS standard with zero imports from the east and zero local generation. Thus, SDG&E could meet its RPS obligations, both current and potential, with no new transmission.<sup>75</sup> This

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<sup>73</sup> It also represents a departure from the PD and AD, which reads "We find that SDG&E has significantly understated Sunrise operating and maintenance costs. It is unreasonable to assume that operating and maintenance costs for a 100+ mile long transmission line will be less than \$4 million per year. We adopt UCAN's estimate of \$26.3 million per year for operating and maintenance costs in our Analytical Baseline assumptions. To the extent that \$26.3 million is an overstatement, we find that it compensates for the likelihood that SDG&E has understated its Sunrise capital costs and the need for associated facilities to achieve the projected Local Capacity Requirement reductions."

<sup>74</sup> Ex. U-91, p. 5, line 1 of section C1 of Table 1.

<sup>75</sup> The fact that both SCE and PG&E expect to meet their much larger RPS obligations using renewable resources that are almost entirely from locations north of SDG&E should assuage any conceivable doubts as to whether there are renewable resources available north of San Diego. See also the CAISO's Phase 1 testimony of Dr. Orans, which showed how statewide RPS obligations (including an assumed 26.5% obligation by 2015) could be met without building more than 700 Mw of new renewable resources in the Imperial Valley.

analysis (referenced repeatedly by UCAN as Exhibit U-91) reveals that SDG&E can import an incremental 1752 Mw of additional renewable resources from the north using its existing transmission facilities, **with no Sunrise and with no upgrades required.**

- The Decision also ignores SDG&E's own admission that Sunrise is not necessary for the importation of renewable power. While the CAISO modeling in this case includes 1921 Mw more Imperial Valley renewables with Sunrise than without, the Commissioners did not understand that the CAISO modeling does not indicate that there will be more renewables overall with Sunrise than without. In both its GridView modeling and its RPS modeling,<sup>76</sup> the CAISO assumed that extra IV renewables in the with-Sunrise case would be offset by extra non-IV renewables in the no-Sunrise case. Specifically, in GridView the CAISO's no-Sunrise case has 1690 Mw of extra non-IV renewables, producing 11,019 gwh per year of renewable generation.<sup>77</sup> In the CAISO's corresponding 2015 RPS analysis, building Sunrise allows for an extra 1900 Mw and 9900 gwh (9.9Twh) of renewable energy from the Imperial Valley,<sup>78</sup> but this is offset by a reduction of 7.1 Twh in Tehachapi generation<sup>79</sup> and a reduction of 2.8 Twh in Reno-area renewable generation.<sup>80</sup>

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<sup>76</sup> The CAISO has admitted that its GridView and RPS analyses did not use "scenarios that were entirely consistent." See Ex. I-2, p. 36 of 88, lines 8-16.

<sup>77</sup> Ex. I-2, p. 35 of 88, Table 2.2, bottom line. 1690 Mw = 3670 Mw of non-IV renewables without Sunrise, minus 1980 Mw of non-IV renewables with Sunrise.

<sup>78</sup> CAISO, Ex. I-2, comparing Tables 4.6 (RPS compliance without Sunrise) and 4.7 (RPS compliance with Sunrise). The first line of the latter table shows 9.9 Twh, or 9.9 thousand gwh, of "Imperial-Sunrise" renewable generation. Table 4.4 of Ex. I-2 provides a more precise estimate of the 9.9 Twh: 9864 gwh of energy and 1900 Mw of capacity.

<sup>79</sup> CAISO, Ex. I-2, comparing Tables 4.6 (RPS compliance without Sunrise) and 4.7 (RPS compliance with Sunrise). The "Tehachapi" line of Table 4.6 shows that all 13.8 Twh of potential Tehachapi generation are included in 2015 RPS costs, but the Tehachapi line of Table 4.7 includes only 597/1224. The reduction in 2015 Tehachapi generation in the with-Sunrise table is  $13.8 \text{ Twh} \times (1224-597)/1224 = 7.1 \text{ Twh}$ .

<sup>80</sup> CAISO, Ex. I-2, comparing Tables 4.6 (RPS compliance without Sunrise) and 4.7 (RPS compliance with Sunrise). The "Reno Area" line of Table 4.6 shows that 258/546 of the potential 5.9 Twh of Reno Area generation are included in 2015 RPS costs, but the Reno Area line of Table 4.7 shows that none is

- The Commissioners also chose to overlook the failure of the CAISO to apply a G-1 designation to either Otay Mesa or Palomar. Recognition by the CAISO that both Palomar and Otay as G-1 units would immediately add 232 MW to local SDG&E generation capacity and defer the need for Sunrise by four years.<sup>81</sup> This specific issue was raised by UCAN in Phase 1 and never addressed in the Decision.<sup>82</sup>
- The Decision is also conveniently silent on the fact that the existing SWPL line will soon be able to deliver 1900 Mw to and through the Miguel substation.<sup>83</sup> SDG&E has no contractual obligations to deliver non-renewable capacity to its system over SWPL. An existing Sempra-DWR contract under which Sempra has the right to deliver generation to the CAISO at the Imperial Valley substation, will expire in 2011. Thus, by the time the STP line could be in service, there will be no contractual obstacles to using the entire 1900 Mw of SWPL capacity to deliver renewables. Nor will there be any significant economic obstacles to using all, or virtually all, of SWPL to deliver renewables if there are enough renewables available to fill SWPL.<sup>84</sup>

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included. The reduction in 2015 Reno Area generation in the with-Sunrise table is 5.9 Twh x 258/546, or 2.8 Twh.

<sup>81</sup> Exh. U-100, p. 66

<sup>82</sup> Exh. U-100, p. 63. UCAN's expert testified: This raises a very important question: why should a combined cycle plant be the G-1 unit? Neither Palomar nor Otay Mesa is a single unit; they are each made up of three generating units, two combustion turbines and a steam turbine. An outage of the steam turbine need not cause the combustion turbines to trip off line, and an outage of one combustion turbine should not cause the other to trip off line.<sup>225</sup> Thus, one would think that the G-1 event at Palomar or Otay Mesa would be an outage of one combustion turbine, reducing plant generation by about half of the total capacity, and leaving Encina 5 as still the largest G-1 on the entire SDG&E system.

<sup>83</sup> Ex. U-100, p. 13

<sup>84</sup> If more than 1900 Mw of resources attempt to schedule deliveries over SWPL, some would have to be curtailed using the CAISO's economics-based congestion management protocols. But even then, as demonstrated repeatedly in the Phase 1 record, the low marginal costs of renewable resources mean that they would almost always end up getting priority on SWPL over non-renewable resources.

- The Decision is premised upon the development of 1900 MW of geothermal power in Imperial Valley due to Sunrise.<sup>85</sup> Yet, this premise is contradicted by SDG&E's modeling in both Phase 1 and Phase 2 that consistently shows over 2000 Mw of total geothermal generation in the IID area by 2015, with the same amount of generation with and without Sunrise.<sup>86</sup> EIR alternative 1 has no STP or any other new transmission. Similarly Alternative 3 adds TE/VS but not STP. Alternative 6 adds STP. It is only the CAISO that claims there will be deliverability problems with new IV geothermal.
- In a similar vein, the Decision states that the Final Environmentally Superior Southern Route will facilitate development of 1,900 megawatts (MW) of Imperial Valley renewables by 2015, and that more than half of that development will be of high capacity geothermal resources.<sup>87</sup> But the evidentiary record shows otherwise, since the 1900 Mw of development is based on development starting before 2010, from projects that are not yet even in licensing, as shown in Exhibit U-4, among others.
- It is also silent on the uncomfortable and inconvenient fact that much of the Stirling generation can be delivered via SWPL (assuming Stirling gets built),<sup>88</sup> and the EIR is wrong when it tacitly assumes Sunrise is needed for the Stirling power. The EIR is also in error when it suggests that the 1900 Mw capacity of SWPL is somehow already subscribed, such that no more than 300 Mw of new wind generation can be interconnected to it “in the absence of [Sunrise]”.<sup>89</sup> As discussed below, SDG&E’s affiliate Sempra Generation has a pending Presidential Permit application to import up to 1250 Mw of renewable energy capacity from Mexico and deliver it to the CAISO via SWPL, and has submitted

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<sup>85</sup> Decision, p. 6

<sup>86</sup> Ex. U-86 and TR 4683-4684

<sup>87</sup> Decision, p. 7

<sup>88</sup> Id.

data to DOE showing 860 Mw of new wind generation flowing onto SWPL in eastern San Diego County. The EIR should be revised to address the post-2011 contractual and economic availability of up to 1900 Mw of transmission capacity on SWPL that could be used to deliver renewable generation.

- The Decision assumes that SWPL cannot be used to import renewable power from the Imperial Valley. This assumption flies in the face of the evidentiary record. When UCAN's assertion offered the availability of SWPL in Phase 1, SDG&E described the contention as "without basis".<sup>90</sup> The thrust of SDG&E's assertion is that SWPL is currently importing economic gas-fueled capacity and should not be used to import more costly renewable power.<sup>91</sup> On this point, SDG&E was quite vehement:

UCAN's inference that when these contracts expire, then more than enough transmission capacity will be available to transmit Imperial Valley renewable energy is nonsense. Whether or not these CDWR contracts end in the near or mid-term, these new, efficient plants will not be stranded and the owners of those facilities will continue to generate power that is delivered into the CAISO grid.<sup>92</sup>

But SDG&E is flat out wrong. In light of CAISO transmission rules, renewable power is given priority over fossil-fuel based electricity. Not only could renewables potentially displace the TdM and Intergen contracts but given renewable power priority positions, they *would* be given priority over these gas-based contracts. Moreover, in light of the CAISO's last-minute (and controversial) 1150Mw limiter west of Imperial Valley sub, it is increasingly likely that these two generators may seek alternative markets in Mexico in which

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<sup>89</sup> EIR, p. C-150.

<sup>90</sup> Ex. SD-38, p. 7.5

<sup>91</sup> Id. pp. 7.6-7.8. Much of SDG&E's rebuttal takes umbrage with the notion of SDG&E's contractual obligations. These are non-controversial matters as SDG&E is simply distorting UCAN's testimony rather than disagreeing with it.

<sup>92</sup> Id. p. 7.7

to sell their power after the 2011 expiration of their CDW contracts. It is an error for the Commission to assume that the 1070Mw of TdM/Intergen power is an inviolate certainty to flow to SDG&E for the post-2011 period. For purposes of considering the need for STP, the Commission should avoid making the same error. In particular, the Commission should be aware that, contrary to SDG&E's written testimony, its own modeling shows that renewables will indeed displace most generation from gas-fired plants in Mexico.<sup>93</sup> Again, the Decision is silent on this evidentiary-supported fact.

- Alternatively, if the Commission continues to disregard SDG&E's own GridView modeling with regard to Mexican generation, then the Commission will need to disregard all of SDG&E's GridView modeling. The Commission cannot pick and choose, relying upon GridView to claim economic benefits of tens of millions of dollars per year, then disavowing the parts of the model outputs it doesn't like.
- In footnote 227 at p. 78-79, the Decision references UCAN's suggestion that the addition of a transformer at SDG&E's San Luis Rey Substation (in addition to adoption of the 1,900 MW Miguel Import Limit and apart from the Path 44 Upgrade proposal) would allow the all-lines-in-service rating of the Southwest Powerlink to increase by about 350 MW (from 2,850 MW to approximately 3,200 MW), which also would allow increased imports over the Southwest Powerlink. UCAN Phase 1 Opening Brief, 109-111. Yet, it ends there. The Decision contains no further discussion of what this increased import limit means with regards to economic benefits of Sunrise, or the need for Sunrise to enable

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<sup>93</sup> See Ex. U-111, which cites "Cap. Factor" column, lines labeled "LaRosCC", "LaRosSC", "Thermlct1", "Thermlct2", and "Thermlct3" showing capacity factors for the Mexican generators of 8-20% in 2015 under EIR Alternative 1. See also Ex. U-112, same rows and column, showing capacity factors for the Mexican generators of 11-26% in 2015 for the GT-CC Reference Case with a super peaker 8100 Btu/kwh generator at Carlsbad.

increased dispatch of renewables from IID, which are not subject to the 1150 Mw limiter.

- The Decision relies upon an Analytical Baseline that Path 42 will be upgraded this year to 1,200 MW and that the Dixieland-Imperial Valley line, approved by the Imperial Irrigation District Board, will be in service by the middle of 2010.<sup>94</sup> The importance of this finding is that it means that exports from IID to the CAISO can increase by 1000 Mw without building Sunrise – 600 Mw to SCE and 400 Mw to Imperial Valley. And it contradicts the Decision’s claim that Sunrise will facilitate 1900 Mw of incremental renewables is overstated.<sup>95</sup> The CPUC is not claiming there will be  $1000 + 1900 = 2900$  Mw of new Imperial Valley renewables with Sunrise since that would be more than any party assumed in their modeling.
- The Decision asserts that modeling performed by the CAISO demonstrates total projected reliability benefits of Sunrise to be more than \$200 million per year. <sup>96</sup> However, the CAISO modeling uses incorrect assumptions, as discussed by the Commission itself. The comparison exhibit in Table 13 has the CPUC’s own corrections to the CAISO’s assumptions as well as and UCAN’s comments show further corrections that should have been made to the CAISO models. These adjustments are conveniently overlooked in the Decision.
- It claims that transmission, such as Sunrise, provides “insurance against unexpected high load growth” <sup>97</sup> To the extent this statement implies that generation alternatives will not provide the same benefits ascribed to Sunrise is patently false. The record shows that generation also provides “insurance

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<sup>94</sup> Decision, p. 84

<sup>95</sup> Decision, p. 255

<sup>96</sup> Decision, p. 5

against unexpected high load growth”, as does the UCAN-proposed Path 44 upgrade. As explained below, the ALJs PD makes no such suggestion. The repeatedly used “insurance” phrase appears to have been added by the Commissioners.

- The Decision asserts that the higher ranked alternatives are not estimated to facilitate even half of renewable development that it ascribes to Sunrise.<sup>98</sup> This statement too, is contradicted by the record. All testimony by all parties assumed that equal amounts of renewable development would occur outside of San Diego County whether or not Sunrise was approved; the only differences among parties were whether there would also be equal amounts of development in Imperial County (UCAN and SDG&E said “yes” and the CAISO said “no”).
- The Final EIR/EIS describes the fire risks posed by new transmission in the San Diego backcountry, but the Decision concludes that while there are likely to be increased dual line power outages, the fire risk posed by the Final Environmentally Superior Southern Route is minimized given that the route is comprised of 230 kV and 500 kV lines placed on tall, steel structures.<sup>99</sup> The Decision thus contradicts the testimony and briefs of SDG&E and the CAISO, which claimed that the risks of power outages due to wildfires along the Southern Route were unacceptable. No party presented any evidence to the contrary.
- The Decision stresses that the Commission’s decision in this case is only the first step toward fully developing renewable energy in the Imperial Valley region and that it intends to use its extensive array of regulatory tools to ensure that the

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<sup>97</sup> Decision, p. 6 and again at p. 128, p. 270 and Finding of Fact 16

<sup>98</sup> Id.

<sup>99</sup> Id.

renewable resources enabled by Sunrise are indeed developed on a timely basis.<sup>100</sup> Yet, there is nothing in the decision to support this claim.... including identification of any of these so-called regulatory tools.

- The Commission conveniently avoids mention of the findings by the ALJs that its so-called regulatory tools were systematically circumvented by SDG&E. In fact, the PD places significant weight on the evidence (some of which is confidential) that SDG&E willfully chose to avoid renewable purchases from areas north or south of San Diego so as to bolster its arguments in support of Sunrise.<sup>101</sup> They

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<sup>100</sup> Id, p. 8. It references the tools again at p. 263, but doesn't specify any such tools.

<sup>101</sup> The ALJs wrote: In summary, evidence from Phase 2 of this proceeding establishes that by the first half of 2008 SDG&E had signed contracts for 661 MW of renewables deliverable by 2010 and for 1,212 MW deliverable by 2015. Of the projects deliverable by 2010, 232 MW are online, none are under construction, and 428 MW are still in development.<sup>101</sup> The renewables deliverable by 2010 include 48 MW located in SDG&E's service territory, 162 MW located in-state, north of SONGS, and 450 MW in the Imperial Valley, Mexico, or other locations to the east or south of SDG&E's service area. Thus, that evidence shows that Imperial Valley renewables represent 68% of the MW under contract to meet SDG&E's 2010 RPS. SDG&E has identified almost all of these resources as Sunrise-dependent. Further, 300 MW of the 450 Imperial Valley MW slated for 2010 compliance are tied to a single contract with Stirling Energy Systems. The Stirling contract also comprises 600 MW of the 1,212 MW, contracted for delivery by 2015 in two 300 MW installments.

SDG&E testified that SDG&E was not getting bids from anywhere but the Imperial Valley. However, other evidence contradicts that claim. In fact, SDG&E has received many bids from potential projects located north of SONGS, comprising almost 50% of all bids received (88 out of 190). Even more significantly, these projects comprise approximately 60% of all the capacity offered to SDG&E (7,404 MW out of 12,325 MW for delivery in 2010).<sup>101</sup> In fact, in its last two solicitations (2006 and 2007), SDG&E received nearly as many bids from projects north of SONGS as it did from all of the proposals the Imperial Valley, Mexico, and other locations that would connect to the Southwest Powerlink combined (29 and 33 bids, respectively for a total of 3,276 and 4,641 MW proposed for delivery in 2015). SDG&E testified to the numerous expressions of interest SDG&E has received from sellers north of SONGS.<sup>101</sup> In addition, SDG&E's latest Transmission Ranking Cost Report, which presents information on potential renewable projects (based on information provided by project developers), shows 1,752 MW of potential new projects located north of SONGS.

In fact, SDG&E has placed more than enough in-state, north of SONGS projects on the short list<sup>101</sup> to fulfill its entire RPS obligation through 2010. Nevertheless, SDG&E short-listed more projects, and signed a larger percentage of short-listed projects from the Imperial Valley than from projects north of SONGS. In 2005, SDG&E received 11 more bids from north of SONGS than from the Imperial Valley (15 versus 4) for more capacity deliverable in 2010 (1,486 MW versus 370 MW). However, SDG&E signed contracts with three 2005 bidders from the Imperial Valley but signed only one contract with a 2005 bidder from north of SONGS.

SDG&E points out that in 2007 it received only a few bids for projects north of SONGS. However, SDG&E's testimony about continued interest from developers north of SONGS potentially

conclude that SDG&E has other cost-effective RPS procurement options that are not Sunrise-dependent. Their findings have another dramatic impact – they confirm that the current regulatory tools in place to compel utilities to meet the 20% RPS mandate by 2010 have not worked. Notably, none of this discussion made it into the final Decision.

- It declines to adopt the energy efficiency assumption changes proposed by UCAN and Powers Engineering, for no reason offered other than for consistency with the *LTPP Decision*, which assumes the level of energy efficiency already embedded in the November 2007 Forecast.<sup>102</sup> And then it compounds this erroneous “judgment call” by failing to apply these elevated energy efficiency assumptions to the alternatives offered by UCAN and Powers. Thus, the Commission declines to include proven energy efficiency assumptions to either the baseline or to the proposed alternatives, thus proving that Marie Antoinette wasn’t alone in her “cake-eating” philosophical orientation.
- For consistency with determinations made pursuant to the Long Term Procurement Plan proceeding, the Decision also adopts the demand response savings projected in SDG&E’s most recent Long Term Procurement Plan, which also accounts for AMI and other price-sensitive demand response.<sup>103</sup> Again, the only justification is “consistency” with the LTPP decision, and not consistency

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suggests a developer preference for bilateral contracts rather than participation in formal RFO solicitations.

SDG&E claims to be reconsidering this apparent preference for Imperial Valley renewables. SDG&E’s RPS procurement witness stated: “I believe that the next three or four advice letters that I will file with the Commission for approval of contracts will be -- in the north of SONGS categories in this matrix.”<sup>101</sup> In fact, on June 4, 2008, SDG&E submitted Advice Letter 1997-E requesting Commission approval of two contracts to procure a total of 210 MW from Montana wind facilities. One facility (106.5 MW) is currently under construction and projected to be operational in 2008 or 2009, while the other project is in final engineering. If these projects come online by 2010, both contracts will contribute toward meeting SDG&E’s 2010 RPS. PD, pp. 157-160

<sup>102</sup> Decision p. 42

<sup>103</sup> Decision, p. 45

with the record in this case. And the elevated AMI savings are not acknowledged as part of any alternative.

- It accepts the arguments of CAISO and SDG&E that the construction of Sunrise would encourage the development of renewable resources in the Imperial Valley. It acknowledges that even with the problems associated with the CAISO interconnection queue,<sup>104</sup> there has been a significant increase in development activity in the Imperial Valley since SDG&E announced the Proposed Project.<sup>105</sup> However, this acknowledgement is not true, unless it counts signing up for the CAISO queue as “development activity.” Yet, in Section 6.12.2 it concedes that being in the CAISO queue is no guarantee of development.<sup>106</sup>
- The CAISO assumes 200 MW of incremental geothermal capacity and 180 MW of solar thermal capacity per year from 2011 through 2015.<sup>107</sup> The Commission accepts this assertion. Yet, the Commission fails to mention that CAISO also assumes 600 Mw of new geothermal generation with or without Sunrise (see Section 6.10.1)<sup>108</sup>. It also ignores the showing by UCAN that none of this geothermal generation has CEC permits except one project that was permitted in 2003 but never started construction. So it is purely speculative with no evidentiary basis other than conflicting CAISO testimony.
- While the Decision acknowledges that the precise level of annual resource additions is uncertain, it accepts an assumption about the level of incremental renewables from the Imperial Valley by 2015 for the purposes of modeling.<sup>109</sup> But this statement is factually unsupported. There is no evidence given for any

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<sup>104</sup> CAISO Exhibit I-10, 7-10.

<sup>105</sup> Decision, p. 68

<sup>106</sup> Decision, p. 70

<sup>107</sup> Id.

<sup>108</sup> Decision p. 66

of the 1500 Mw of projected new geothermal development – either the 600 Mw that’s supposed to happen no matter what or the additional 1000 Mw that’s supposed to happen because of Sunrise.

*F. The Decision is marred by material and specific factual errors*

- The decision claims that a 20 MW Bull Moose Biomass Facility is projected to be online by 2010.<sup>110</sup> It misses the fact that the contract is actually for 27 Mw; the original contract was amended to increase the capacity.
- It refers to a 49 MW contract with the Miramar II Peaker, which was submitted to the Commission for approval on June 16, 2008.<sup>111</sup> However, the Miramar 2 CT was approved by the CPUC in late 2008, and projected to be on-line by 2010.<sup>112</sup>
- It subtracts \$367 million per year from the assumed capital cost of the All-Source Generation Alternative in each scenario to address the 37 MW of solar PV already paid for in the California Solar Initiative program;<sup>113</sup> Yet, the \$367 million annual number has no basis in fact and no evidentiary support in the record.
- The Decision assumes that with a renewable procurement at the level of 33% Renewable Portfolio Standard (RPS), the Final Environmentally Superior Southern Route will generate net benefits of over \$115 million per year – citing to Table 13, Section 11.4.1. in footnote 3. However, this is a factual error. The net benefits cited may be the ones found in Table 14, which shows net benefits of

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<sup>109</sup> Decision, p. 69

<sup>110</sup> Decision, p. 26

<sup>111</sup> Decision, p. 27

<sup>112</sup> See UCAN’s Phase 1 brief, which cited the then-existing record regarding Miramar 2, and projected that Miramar 2 will be on line before 2012.

\$117 million per year (not \$115) million relative to the CT case (line 12 versus line 1), but only \$24 million per year relative to the in-basin generation case (line 12 versus lines 13 or 13b). And the \$24 million figure is only such because of selective assumptions discussed elsewhere. UCAN comments on the CAISO compliance filing showed the correct number would be less than \$0.

- The Decision asserts that “we agree with the Final EIR/EIS that the All-Source Generation Alternative will greatly increase GHG impacts relative to Sunrise,”<sup>114</sup> because “while building transmission lines causes significant GHG emissions, building and operating a new fossil fueled power plant would cause substantially more GHG emissions.”<sup>115</sup> EIR does not actually say quite what the Decision claims that it says. The EIR actually says that GHG emissions would be greater from a new fossil-fired power plant than from Sunrise if (and only if) “the electricity delivered by the transmission line can be generated without GHG emissions. This would be possible only if the line is fully subscribed with renewable power, when in fact it would not carry 100 percent renewable power.”<sup>116</sup>

*G. Factual divergences from the ALJs’ Proposed Decision reveal the weaknesses of the Decision’s logical bases*

An underlying assumption of CAISO’s model is that the lowest cost renewables should be delivered first. Given that assumption, the Decision finds that it would be inconsistent to assume that higher cost renewable energy in the Imperial Valley would be delivered just because Sunrise is built. Therefore, for the purposes of estimating the potential savings from accessing least cost renewable resources, it is most appropriate to

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<sup>114</sup> Decision, p. 175.

<sup>115</sup> Decision, p. 174, citing EIR/EIRS, p. 2-44.

<sup>116</sup> EIR, pp. 2-44 and 2-45.

assume that the savings are at worst zero.<sup>117</sup> This finding reverses a finding made in the ALJ's PD and the Grueneich AD.<sup>118</sup> More importantly, it flatly contradicts the assumption elsewhere in the Decision that Sunrise will lead to increased Imperial Valley renewable development. Here the Decision says that building Sunrise will NOT lead to Imperial Valley renewable development if that development is not cost-justified. But the CAISO concluded that Imperial Valley renewable resources are not cost-competitive against the other renewables that would make up a least-cost 20% RPS portfolio. So the Decision is assuming here (but not elsewhere), that in a 20% RPS world, or even a 26.5% RPS world, building Sunrise will NOT lead to incremental renewable development. This is an inherent contradiction that is never resolved in the Final Decision.

The Commission goes on to contort its logic – logic that neither the PD nor the Grueneich AD would attempt. At page 138, the Decision states: “It would be incorrect to interpret this finding as implying that Imperial Valley renewable energy will not be delivered if Sunrise is built and the RPS remains at 20%.” Yet, that’s exactly what it does imply.

It goes further to reference a discussion at Section 4.3, stating that the evidence in this case suggests that significant renewable development in and around the Imperial

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<sup>117</sup> Decision, p. 137

<sup>118</sup> Those drafts rejected the CAISO's renewable cost stating: “As we discuss above in Section 6.13, we do not adopt CAISO's Alternative Renewable Costs, or its assumption that only 25% of out-of-state renewables will be available to California. Instead, we adopt CAISO's CRS Renewable Costs used in CAISO's initial modeling effort and we assume that 50% of out-of-state renewables will be available to California. Thus, we do not adopt the final results of CAISO's RPS compliance cost modeling. However, our conclusions about RPS compliance savings are virtually the same regardless of whose assumptions we use here. Under every scenario modeled by CAISO, Sunrise produces no RPS compliance savings under 20% RPS. In fact, it appears that Sunrise generates substantial “negative benefits” or costs. DRA pointed out that CAISO's model for the Compliance Filing did not allow RPS compliance benefits to be less than zero for the 20% RPS cases.<sup>118</sup> Such an assumption is unreasonable. When we remove this modeling limitation, we find that building Sunrise will generate higher RPS compliance costs than the reference case, meaning that Sunrise causes RPS compliance costs or negative benefits under 20% RPS. This result rests on CAISO's assumption that construction of Sunrise encourages development of higher cost Imperial Valley renewables in lieu of lower cost renewable resources that could be developed elsewhere. Applying our adopted Analytical Baseline assumptions, we conclude that Sunrise will generate \$90 million per year in RPS compliance costs at 20% RPS.”

Valley will be facilitated by Sunrise, even if the RPS remains at 20%. But the record shows that the CAISO's own numbers show RPS costs will be millions of dollars per year higher than if Imperial Valley renewable resource development hadn't happened. The Decision understands the problem it has created and equivocates by saying: "Rather, the model is best regarded as an estimate of potential savings given a number of idealized assumptions. *The model is not intended to provide an accurate picture of the future.* (emphasis added)"<sup>119</sup>

The Decision also states: "Similarly, the model's finding that Sunrise will generate no renewable resource savings assuming a 20% RPS should not be taken out of context. While the CAISO's modeling approach is valid for the purposes of calculating potential renewable resource savings, in reality there could be cost savings as a result of the construction of Sunrise due to differences between the modeling assumptions and the way in which the RPS program operates. The fact that several contracts with Imperial Valley resources have already been approved suggests that there are relatively attractive renewable resources in the Imperial Valley."<sup>120</sup> But that fact doesn't follow at all. The evidentiary record shows that the contract prices for the contracts brought to the Commission were attractive, but will not in fact be met because the real costs of those resources will be higher than the contract prices. This conclusion is supported by evidence in the record regarding the contract price for Sterling (which is confidential) and the CAISO assumptions regarding solar costs (public) and the CEC staff assumptions regarding Sterling costs (public, and much higher than the CAISO numbers).<sup>121</sup>

As to the very challenging issue of GHG emissions addressed fully in the PD and the Grueneich AD, the Final Decision glosses over the concerns raised in the other decisions. It states: "The principal finding supported by this analysis is that, provided the RPS is achieved, WECC-wide GHG emissions are virtually the same whether

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<sup>119</sup> Decision, p. 127

<sup>120</sup> Decision, p. 138

<sup>121</sup> This issue is discussed in greater depth in the ALJs Proposed Decision at pp. 154-160. This entire discussion was excised from the Commission's final decision.

Sunrise carries energy from renewable or fossil-fired generators. It does not support the contentions of some parties that Sunrise will lead to increased GHG emissions, beyond those resulting from its construction and ongoing operation and maintenance activities.”<sup>122</sup> But based upon the evidentiary record, *it does* -- 933,000 tons is greater than 358,000 tons. Calling them “virtually the same” doesn’t make them actually the same. This entire section diverges from the PD, which states, in relevant part, “The Final EIR/EIS points out that this estimate is uncertain because it is based on CAISO’s assumption that the utilities will comply with 26.5% RPS whether or not Sunrise is built.”<sup>123</sup> The Final EIR/EIS thus suggests its projections of reduced GHG emissions are dependent on actual development of renewable resources, and potentially a change in the RPS law. The Final EIR/EIS concludes that absent this projected level of renewable resources, Sunrise may not offset the estimated 109,000 tons of construction-related CO<sub>2</sub> emissions”.<sup>124</sup> It concludes that “Given the uncertainty of delivering renewables over this line, we find that approval of Sunrise under 20% RPS is contrary to our GHG emission reduction goals, and may serve to undermine those goals by facilitating the sale of coal- fired generation to California.”<sup>125</sup>

At p. 173, the Decision continues to state: “The record before us clearly demonstrates that one of the main goals of Sunrise is to access renewable resources – *much of which are base load geothermal resources* – that otherwise would not be available without transmission upgrades.” (emphasis added) But the record shows that there are *no* geothermal projects in the CAISO queue, no geothermal projects in licensing at the CEC, and the one geothermal project with a CEC permit has had that permit since 2003 and has not yet started construction. Also, new geothermal projects connected to the IID system would not be subject to the CAISO’s 1150 Mw limiter. Also, new geothermal generation in excess of about 600 Mw would not be deliverable via Sunrise, because the current IID-Imperial Valley interconnection can only handle about 200 Mw

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<sup>122</sup> Decision, p. 167

<sup>123</sup> Final EIR/EIS, Sec. D.11-50.

<sup>124</sup> PD, p. 165, citing Final EIR/EIS, D.11-55.

and the Decision assumes this amount will only increase 400 Mw due to the future Dixieland-Imperial Valley 230 kV line. Thus there is no basis at all in the record for believing that substantial amounts of baseload geothermal will be built and delivered over Sunrise or SWPL. In sum, the decision concludes the existence of baseload geothermal resources that are nowhere to be found in the evidentiary record.

*H. Decision relies upon extra-evidentiary facts, in violation of its own Rules of Practice & Procedure*

As noted in UCAN's December 8<sup>th</sup> comments on the Peevey Alternate, the Commissioner's office had accepted SDG&E's proposed \$696 **per inch** cost to underground a section of the proposed line. In the final decision, the Commission backed off from fully accepting this outrageously priced figure without any probative analysis at all. In footnote 687 at page 274, the Commission indicates that it will monitor the costs of this one adjunct. However, it misses the other point raised by UCAN, i.e. the illicit basis for this additional \$91 million. Specifically, SDG&E's November 20<sup>th</sup> comments requested that the cost cap be increased by \$91 million to account for the cost of an extra two miles of underground 230 kV line under the east end of Alpine Blvd. On top of that, SDG&E sought – and the Peevey alternate accepts -- a 10% contingency for all costs, including the 2.4 miles of Alpine Blvd. undergrounding. That makes the total cost for the extra two miles of undergrounding a startling \$105 million. But neither the request for the additional \$91 million nor the 10% contingency was expressly raised by SDG&E during the hearings phase.

The Decision references SDG&E Exhibit 35 Attachment 3-4 as the source of this \$91 million but, in fact, that cost is not presented in Exhibit 35. Thus, the Commission must answer the question as to from whence it derived the \$91 million. And, unless answered, the Commission must remove it as being inappropriate for being inserted

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<sup>125</sup> PD, p. 169

into the record after the evidentiary record has closed. As noted above, the Commission's own rules prohibit it from accepting new facts during the comment period.

Another example of extra-evidentiary facts materially affecting the record is the Commission's own incorporation of an action by CARB which, the Decision maintains, compels the Commission to move forward with a 33% strategy. At page 6, the Decision states:

On December 11, 2008 by a unanimous vote CARB adopted the Scoping plan, which incorporates this recommendation. Thus, this state and this Commission are committed to achieving GHG reductions in the energy sector, in part, through renewable procurement at 33% RPS levels.

There is no citation to a specific CARB document or action. The Commission may arguably justify its use of this fact on the basis that it is an action by another California agency and thus falls within the penumbra of judicial notice. However, the reference is inappropriate because it misstates the action by CARB. Contrary to the description in the Decision, the CARB decision incorporates the 33% objective into the formula through which it will derive carbon caps. It is but one factor. The carbon caps, themselves, should theoretically drive the utilities towards greater adoption of renewable - with or without transmission lines. But contrary to the CARB action *compelling* the Commission to build transmission lines, the CARB carbon targets may actually reduce the need for more transmission, as the utilities will be an economic incentive to procure renewables for delivery into California without necessitating actual delivery of that power to their own service areas. To mischaracterize extra-evidentiary material may be worse than the single act of basing a decision on extra-evidentiary facts.

*I. The Decision fails to consider the true costs of Sunrise to the state's ratepayers*

During oral argument, Commissioner Simon may have posed the seminal question of the case. He essentially sought to determine whether the PD or the alternate provide any comparative cost analysis between combustible turbines and the renewable sources in the Imperial Valley on the preferred route, the Sunrise route and the southern route. More to the point, he sought to assure that the Commission has the necessary empirical backing to support lower cost to ratepayers while balancing the Commission's environmental goals. His question is not answered in the final Decision.

What Commissioner Simon's question addressed is the fact that if the AD were adopted, the state's ratepayers would absorb more than just the \$1.7 billion+ price tag for Sunrise. As discussed above, ratepayers also will be obligated to contract for the 1900 MW of power that will need to be contracted for in the Imperial Valley to justify the \$1.7 billion price tag. Put another way, Simon was attempting to establish the total cost of Sunrise, both the line and the power that will be purchased as a result of Sunrise. And that answer is not found in the final decision nor in any of the documents submitted by proponents.

The answer is, however, in the evidentiary record. It is important as it reflects the premium that California ratepayers will have to pay if Sunrise is built. SDG&E and the CAISO have focused their analysis solely on the cost to ratepayers if Sunrise is built vs. if Sunrise isn't built. But both of their assumptions assume that the state's ratepayers will be responsible for the purchase of the 1900 MW of renewable energy.

The answer to this question, as discussed in UCAN's comments, is the \$393 million per year figure multiplied by 58 years, or a total 40-year cost of **\$22.7 billion**. So the Sunrise question becomes a \$23 billion question; the record shows that building Sunrise and accelerating a 33% RPS standard will cost the state some \$23 billion – or about 4 cents per kilowatt hour for every state ratepayer. Yet, the final decision makes

no such assessment and pursuant to state laws, including Public Utilities Code Section 1002.3, it should have.

*J. Sunrise does not add additional renewable energy capacity to California*

Commissioner Chong expressed concerns that without the development of Imperial Valley renewable energy, the state might not have access to sufficient renewables to achieve its renewable portfolio goals. However, the evidentiary record shows just the opposite: Sunrise does promote the development of renewable in the Imperial Valley but only by cannibalizing renewable power that might otherwise be developed in the Tehachapi and Reno regions. Sunrise does not add more renewable power than would otherwise be available to California. This was explained in UCAN's Comments on the Proposed Decision.....and subsequently ignored in the final Decision.

While the CAISO modeling in this case includes 1921 Mw more Imperial Valley renewables with Sunrise than without, the Commissioners did not understand that the CAISO modeling does not indicate that there will be more renewables overall with Sunrise than without. In both its GridView modeling and its RPS modeling,<sup>126</sup> the CAISO assumed that extra IV renewables in the with-Sunrise case would be offset by extra non-IV renewables in the no-Sunrise case.

Specifically, in GridView the CAISO's no-Sunrise case has 1690 Mw of extra non-IV renewables, producing 11,019 gwh per year of renewable generation.<sup>127</sup> In the CAISO's corresponding 2015 RPS analysis, building Sunrise allows for an extra 1900

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<sup>126</sup> The CAISO has admitted that its GridView and RPS analyses did not use "scenarios that were entirely consistent." See Ex. I-2, p. 36 of 88, lines 8-16.

<sup>127</sup> Ex. I-2, p. 35 of 88, Table 2.2, bottom line. 1690 Mw = 3670 Mw of non-IV renewables without Sunrise, minus 1980 Mw of non-IV renewables with Sunrise.

Mw and 9900 gwh (9.9Twh) of renewable energy from the Imperial Valley,<sup>128</sup> but this is offset by a reduction of 7.1 Twh in Tehachapi generation<sup>129</sup> and a reduction of 2.8 Twh in Reno-area renewable generation.<sup>130</sup>

### *K. Sunrise does not reduce GHG emissions*

The Decision asserts that “we agree with the Final EIR/EIS that the All-Source Generation Alternative will greatly increase GHG impacts relative to Sunrise,”<sup>131</sup> because “while building transmission lines causes significant GHG emissions, building and operating a new fossil fueled power plant would cause substantially more GHG emissions.”<sup>132</sup> The Decision and the EIR/EIS are both wrong.

First of all, the EIR does not actually say quite what the Decision implies that it says. The EIR actually says that GHG emissions would be greater from a new fossil-fired power plant than from Sunrise if (and only if) “the electricity delivered by the transmission line can be generated without GHG emissions. This would be possible only if the line is fully subscribed with renewable power, when in fact it would not carry 100 percent renewable power.”<sup>133</sup> So the Decision is citing an EIR conclusion that the EIR itself admits is not based on the facts of the case.

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<sup>128</sup> CAISO, Ex. I-2, comparing Tables 4.6 (RPS compliance without Sunrise) and 4.7 (RPS compliance with Sunrise). The first line of the latter table shows 9.9 Twh, or 9.9 thousand gwh, of “Imperial-Sunrise” renewable generation. Table 4.4 of Ex. I-2 provides a more precise estimate of the 9.9 Twh: 9864 gwh of energy and 1900 Mw of capacity.

<sup>129</sup> CAISO, Ex. I-2, comparing Tables 4.6 (RPS compliance without Sunrise) and 4.7 (RPS compliance with Sunrise). The “Tehachapi” line of Table 4.6 shows that all 13.8 Twh of potential Tehachapi generation are included in 2015 RPS costs, but the Tehachapi line of Table 4.7 includes only 597/1224. The reduction in 2015 Tehachapi generation in the with-Sunrise table is  $13.8 \text{ Twh} \times (1224-597)/1224 = 7.1 \text{ Twh}$ .

<sup>130</sup> CAISO, Ex. I-2, comparing Tables 4.6 (RPS compliance without Sunrise) and 4.7 (RPS compliance with Sunrise). The “Reno Area” line of Table 4.6 shows that 258/546 of the potential 5.9 Twh of Reno Area generation are included in 2015 RPS costs, but the Reno Area line of Table 4.7 shows that none is included. The reduction in 2015 Reno Area generation in the with-Sunrise table is  $5.9 \text{ Twh} \times 258/546$ , or 2.8 Twh.

<sup>131</sup> Decision, p. 175.

<sup>132</sup> Decision, p. 174, citing FEIR/FEIRS, p. 2-44.

<sup>133</sup> EIR, pp. 2-44 and 2-45.

Second, comparing transmission line emissions to power plant emissions is completely misleading. As the record in this case shows, building Sunrise or any alternative to it other than expanded energy efficiency (which the Decision rejects) has no effect on customer loads. So when comparing the All-Source Generation Alternative to a Sunrise alternative, one needs to look at how each of those alternatives would affect the mix of generation (and thus GHG emissions) throughout the WECC. As the Decision admits, neither the CAISO nor SDG&E have done the kind of WECC-wide grid modeling that would be needed to accurately quantify GHG emissions (and changes to them) from any alternative.<sup>134</sup>

Third, the record in this case is clear that both the CAISO and SDG&E have assumed that if 33% RPS is required by 2020, then it will be achieved with or without Sunrise. The only difference between them is how much of the 33% RPS target will be met with Imperial Valley renewables. But for GHG purposes, it doesn't matter where renewables are located – GHG is a global issue.

Thus, without any modeling at all to support its contention, the Decision could, and should have, concluded that since WECC-wide renewables will be the same with or without Sunrise, and since loads will be the same with or without Sunrise, then non-renewable generation will also be effectively the same with or without Sunrise. The bottom line: GHG emissions will be basically the same with and without Sunrise.<sup>135</sup>

Finally, the Commission effectively maintains that the CAISO and SDG&E are both wrong and approves Sunrise with the expectation that it will facilitate more WECC-wide renewables. The Commission appears to have relied upon CAISO modeling to reach its conclusion that, with a 33% RPS target, Sunrise will save \$24

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<sup>134</sup> Decision, p. 175.

<sup>135</sup> Any differences will be due to the small increase in coal generation attributable to Sunrise, as offset (or not) by reduced transmission losses due to Sunrise. See Ex. U-100. Note that by being located close to the load center, the All-Source Generation Alternative would also tend to reduce transmission losses, and thus reduce the GHG emissions associated with those losses.

million per year compared to the All-Source Generation Alternative.<sup>136</sup> Yet, the CAISO modeling assumed the same level (though not the same location) of renewables with and without Sunrise.

If the Commission wanted to reject the CAISO's RPS assumption for purposes of GHG impacts, then it would also have to reject it for purposes of economic impacts. If approving Sunrise is going to cause more renewables to be built WECC-wide (and not just in the Imperial Valley), then approving Sunrise is going to greatly increase electricity procurement costs,<sup>137</sup> and the Commission will just have traded one error in the Decision (claiming Sunrise has lower GHG impacts than the All-Source generation alternative) for another (claiming Sunrise has lower costs than the All-Source generation alternative). Either way, the Commission's justification for finding lower GHG impacts is without evidentiary support – even from the applicants.

*L. Decision's assumptions about reliability benefits are unsupported by the record*

The Decision adopts a Southern Route. In its Phase 2 testimony, SDG&E asserted that a Southern Route would have enormous reliability costs – an expected cost of \$1.4 billion and a 90% chance of a cost in excess of \$360 million.<sup>138</sup> Now that the Commission has adopted a Southern Route, SDG&E has said not one word about the costs and infeasibility it previously alleged. With regard to SDG&E, the fact that the applicant is willing to accept a permit for a project that their own witness said would

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<sup>136</sup> Decision, Table 14, showing the with-Sunrise case as \$115 million/year better than the Reference Case, and the All-Source Alternative as \$91 million/year better than the Reference Case.  $\$115 - \$91 = \$24$  million per year.

<sup>137</sup> UCAN has previously raised this issue, and quantified it, in responding to questions raised by Commissioner Simon. See discussion above.

<sup>138</sup> SDG&E, 3/12/08, Oatman testimony, p. 13.20.

have expected reliability costs of \$1.4 billion means that they do not believe their own witness's testimony.<sup>139</sup>

With regard to the Decision itself, the Commission's willingness to disregard reliability testimony on some subjects, while granting SDG&E and CAISO testimony great weight on other matters without serious review, throws into question the Commission's own factual integrity. UCAN provided examples of violations of reliability criteria with the Sunrise project in place, but they are neither acknowledged nor discussed in the Decision.<sup>140</sup> Elsewhere, UCAN went to great lengths to rebut reliability concerns raised by both SDG&E and the CAISO regarding its Path 44 proposal, and to point out prior analyses of the cost to upgrade the key Path 44 constraint, the 13-mile long Barre-Ellis 230 kV line.<sup>141</sup> But the Commission did not address the content of UCAN's testimony, merely saying that it couldn't reach a conclusion and directing SDG&E to perform further studies.<sup>142</sup>

The capriciousness of the Commission's decision with regard to Path 44 is demonstrated by posing the question: If UCAN is correct that a Path 44 alternative that would provide 350 Mw of reliability to SDG&E for a little over \$100 million and the Commission has already approved SDG&E spending up to \$1.9 billion to provide no more than 1000 Mw of reliability (and maybe zero, if DRA is correct) then has the Commission authorized an unnecessary project? Given that the Commission has approved the CPCN without making the Path 44 alternative a condition precedent, it would appear that it will disregard its own instruction that the utility examine the feasibility of the Path 44 upgrade.

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<sup>139</sup> At a minimum, the Decision should refuse to allow SDG&E recovery of the amounts paid to Mr. Oatman, since the Company should not be allowed to use ratepayer money to sponsor testimony that the company does not itself believe.

<sup>140</sup> See, for example, the confidential exhibit containing an SDG&E analysis showing violations of frequency dip criteria with Sunrise in place, in Ex. U-20. See also the confidential section of Ex. U-4, fn. 318, regarding N-1-1 overloads with Sunrise in service. RPCC also introduced testimony showing overloads with Sunrise in service.

<sup>141</sup> See the 25+ pages of Ex. U-3, section II.B, regarding UCAN's Path 44 upgrade proposal.

<sup>142</sup> Decision, p. 80.

The Decision also assumes that no more than 600 Mw of new renewables will be developed in the Imperial Valley area in the absence of Sunrise. However, both SDG&E and CAISO modeling during the proceeding showed that much more than 600 Mw of new renewables can be delivered over the existing CAISO-controlled transmission grid, assuming that sufficient IID-to-CAISO transmission interconnections are built.<sup>143</sup> Without new IID-to-CAISO interconnections beyond those assumed in the Decision, it will not be possible to deliver more than 625 Mw of new renewable generation from IID to the CAISO at Imperial Valley substation even if Sunrise is built, as discussed in the section below regarding IID-to-CAISO deliverability.

With new IID-CAISO interconnections, it will be possible to deliver up to 600 Mw of new renewable generation from the IID service area to the SCE portion of the CAISO control area via an upgraded Path 42,<sup>144</sup> and another 400 Mw of new renewable generation from the IID service area to the Imperial Valley substation via the new Dixieland-Imperial Valley line.<sup>145</sup> The CAISO has indicated, and the Commission has accepted, that it will also be possible to schedule up to 1150 Mw of generation from resources directly connected to the CAISO grid at or west of the Imperial Valley substation.<sup>146</sup> The record is thus clear that the 1150 Mw of allowable direct-connected resources not only **could** be renewables, but would be **expected** to be renewables if that many renewable resources were built.<sup>147</sup>

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<sup>143</sup> Ex. U-4, section IV.A.1.

<sup>144</sup> Decision, p. 84

<sup>145</sup> Id.

<sup>146</sup> Decision, pp. 74-75, correctly describing the limiter as applying to “generation connected to the Imperial Valley Substation or the Imperial Valley-Miguel portion of the Southwest Powerlink” and generation “directly interconnected to the Imperial valley substation.” See the CAISO’s description of the limiter as applying to generation directly connected to the CAISO-controlled grid (and thus not to generation connected to the IID grid). Ex. I-8, pp. 22-23. SDG&E also understands that the limiter does not apply to generation, renewable or otherwise, interconnected to the IID, APS, or CFE systems. Ex. U-99, last page, SDG&E response to UCAN DR41-6.

<sup>147</sup> The reason for this is that the marginal cost of renewables is less than the marginal cost of fossil-fueled generation, and thus renewable generation can be expected, on purely economic grounds, to always gain transmission priority over non-renewables in the CAISO’s transmission markets. See the CAISO’s explanation that if 1250 Mw of wind were interconnected to the SWPL line, and all of it were generating at once, only 100 Mw of the wind would be curtailed (down to the 1150 Mw limit), while all the natural gas generation directly connected to the Imperial Valley substation would be curtailed. Ex. I-8, p. 23. The

Thus, the Decision itself indicates that some 2375 Mw of new renewables could be delivered from the Imperial Valley area to the CAISO grid in the absence of Sunrise: 600 Mw via Path 42, and 1775 Mw via SWPL (up to 1150 Mw direct-connected to the CAISO grid, 400 Mw from the IID system via the new Dixieland-Imperial Valley line, and 225 Mw via the existing IID-Imperial Valley line from El Centro to Imperial Valley substation<sup>148</sup>).

Beyond what is in the Decision itself, the record of the proceeding indicates that additional amounts of renewables could be delivered from the IID area to SDG&E via SWPL if there were adequate IID-Imperial Valley interconnections, such as those assumed by SDG&E.<sup>149</sup> To its credit, the Decision endorses UCAN's proposal to expand usable SWPL capacity to 1900 Mw, and additional IID-Imperial Valley interconnections would allow all of that capacity to be used for renewables.<sup>150</sup> It would also be possible for renewable generation delivered to the CAISO grid at Imperial Valley to flow east on SWPL to Palo Verde, and then to CAISO customers via the Palo Verde-Devers line(s). The record shows that when generation is delivered to SWPL from the proposed Sempra wind generators in Mexico, only 29 percent of the generation would flow west on SWPL towards SDG&E, and the other 71 percent would flow east towards Palo Verde.<sup>151</sup>

Finally, it would also be possible for approximately 1000 Mw of new renewable generation to be built in the Imperial Valley and delivered to loads inside the Imperial

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CAISO thus admits that even "highly efficient combined cycle generation" would be curtailed before wind generation.

<sup>148</sup> Ex. U-55, SDG&E response to UCAN DR4-24b.

<sup>149</sup> Ex. SD-6, Table IV-27: SDG&E assumes a new 230 kV line from Highline to El Centro to Imperial Valley substation. See also Ex. IID-2

<sup>150</sup> Ex. U-100,. Note that SDG&E's attempted rebuttal of UCAN's testimony (Ex. S-xx, 3/28/08, pp. 7.2-7.3, incorrectly claims that the existing 1070 Mw of gas-fired generation directly connected to the Imperial Valley substation has a "priority deliverability designation." This is incorrect - as the CAISO explained, it is the 1070 Mw of gas-fired generation that would be expected to be curtailed if the 1150 Mw limiter were binding, not renewables. Ex. I-8, p. 23.

<sup>151</sup> Sempra presidential permit application, power flow modeling with and without new wind generation interconnected to SWPL, See Ex. U-100, section II.B.1.d.ii, stating that "adding 400 Mw of Mexican wind generation increases flows into Miguel by 115 Mw (the other 285 Mw effectively flows east towards IV

Valley itself, without requiring transmission over the CAISO grid.<sup>152</sup> With tradeable renewable energy credits (TREC)s, as referenced in the Grueneich PD, that would be additional renewable generation available for sale to CAISO customers even if it were physically not delivered to the CAISO grid.

In total, the Decision errs in finding that Sunrise is necessary to deliver any reasonably expected amount of renewable energy – the existing loads in the Imperial Valley plus the existing two 230 kV lines and two 500 kV lines, plus the Decision-expected new 230 kV lines to SCE and Imperial Valley, collectively offer ample means to deliver several thousands of Mw of new renewable resources from the Imperial Valley to loads. SDG&E concluded as much two years ago when it declined to include the cost of new renewables in the Imperial Valley as a cost attributable to the Sunrise project.<sup>153</sup> SDG&E concluded that there were no extra Imperial Valley renewable costs attributable to building Sunrise, because “so long as IID upgrades their internal transmission network, renewable resources will be added in the Imperial Valley ... whether or not the Sunrise Powerlink is built.”

*M. Projections of geothermal power from Imperial Valley are contradicted by the record*

As mentioned above, the Decision’s assumption of geothermal power being made available to SDG&E from the IID service area to SDG&E is not factually accurate. But the depth of that inaccuracy is revealed by scrutiny of the evidentiary record. The Decision asserts that its approval of “the Final Environmentally Superior Southern Route will facilitate development of 1,900 megawatts (MW) of Imperial Valley renewables by 2015, and that more than half of that development will be of high capacity geothermal resources.” That 1900 Mw is the additional development attributed

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and Arizona, reducing IV-to-SWPL flows by 285 Mw).”  $115/400 = .2875$ , or 29 percent.  $285/400 = .7125$ , or 71 percent.

<sup>152</sup> Ex. U-55, SDG&E response to UCAN DR4-24b.

<sup>153</sup> Ex. U-55, SDG&E response to UCAN DR4-24b

to Sunrise, on top of 600 Mw of geothermal expected to be developed whether or not Sunrise is approved (see Ex. U-4, citing SDG&E and CAISO modeling of geothermal development). Thus, the Decision is relying upon construction of some 1600 Mw of new geothermal generation to justify the construction of the Sunrise line and that geothermal generation will not be deliverable to SDG&E.

In fact, the record shows that none of the geothermal generation expected by the Decision would be directly interconnected to the CAISO. There are no Imperial Valley geothermal projects in the CAISO's interconnection queue (as per Ex. U-52). There is no claim in the record by any party that new geothermal projects would be located anywhere other than in the IID control area. SDG&E suggested in its testimony that a northern route for Sunrise might facilitate direct interconnection of geothermal projects to Sunrise (and IID objected to such a proposal) but SDG&E's suggestion is now moot since the Commission rejected all Northern Routes.

If the expected 1600 Mw of new geothermal projects, which have been assumed by the Commission to result from approval of Sunrise, are built, they would need to be delivered to the CAISO grid via IID-CAISO interconnections. The only current interconnections between IID and the CAISO are limited to 600 Mw via SCE (Path 42) and 225 Mw via the Imperial Valley substation.<sup>154</sup> The Decision assumes that the only upgrade to the IID-Imperial Valley substation would be a 400 Mw increase due to construction of the proposed Dixieland-Imperial Valley 230 kV line.<sup>155</sup> That would bring the total deliverability from IID to the Imperial Valley substation to about **625 Mw** (225 Mw plus 400 Mw) not 1600 Mw.

Delivering 625 Mw into the CAISO grid from IID at Imperial Valley would not require Sunrise to be built. The existing SWPL can easily handle 625 Mw, as discussed in the section on deliverability of renewables via SWPL. The 1150 Mw limit on total

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<sup>154</sup> Ex. U-55, SDG&E response to UCAN DR4-24b.

<sup>155</sup> Decision, p. 84. See also Ex. IID-2. Separately, the Decision states that it expects deliverability from the CAISO to the SCE system to be increased to about 1200 Mw through upgrades to Path 42. Such upgrades would not be dependent on Sunrise, and would allow delivery of additional geothermal generation from IID to the CAISO even without Sunrise.

injections into the CAISO grid from projects directly connected to Imperial Valley substation or SWPL does not apply to projects interconnected to the IID grid.<sup>156</sup> Even if it did, 600 Mw is much less than 1150 Mw.

The Decision thus errs in claiming that “high capacity geothermal resources” will be enabled by Sunrise. The existing and expected (per the Decision) delivery capacity from IID to SDG&E via the Imperial Valley substation will be about 600 Mw after the Dixieland-Imperial Valley 230 kV line is built, just enough to handle the increased geothermal generation expected (by the Decision) to be built with or without Sunrise. None of the additional 1000 Mw of geothermal expected by the Commission on top of that will be deliverable to the Imperial Valley substation, and thus none of it will be deliverable via Sunrise. Accordingly, a Sunrise line, even if built, will be insufficient to “facilitate development” of 1000 Mw of incremental geothermal generation.

The record is also clear that there are no new geothermal projects in the CAISO interconnection queue.<sup>157</sup> There are no new geothermal projects in licensing at the CEC (Ex. D-106), and no future applications are expected either.<sup>158</sup> Of the 139 Mw of geothermal projects less than 50 Mw in size in the IID queue (projects that would not require a CEC permit), only 26.5 Mw have interconnection agreements with IID.<sup>159</sup> The one IID-area geothermal project that does have a CEC permit received that permit in December 2003,<sup>160</sup> more than 5 years ago. It has not started construction and has no projected construction start date,<sup>161</sup> and has been removed from IID’s interconnection queue.<sup>162</sup>

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<sup>156</sup> See Ex. I-8, pp. 22-23, where the 1150 Mw limiter is described as applying to “all generation connected to the Imperial Valley substation, if more than 1150 Mw is connected to that substation.” Generation connected to the IID grid is not connected to the Imperial Valley substation, nor to any other part of the the CAISO grid or the CAISO control area.

<sup>157</sup> Ex. U-98, last 6 pages, CAISO interconnection queue as of 4/18/08.

<sup>158</sup> See Ex. D-106, the CEC project listing, “Projects Planned” section.

<sup>159</sup> Ex. U-4, section IV.B.3, last sentence and fn. 333.

<sup>160</sup> Ex. U-4, section IV.B.1, first sentence and fn. 321.

<sup>161</sup> Ex. D-106, “Approved/Not under Construction” section, item 7.

<sup>162</sup> Ex. U-4, section IV.B.1 and fn. 322, citing IID’s response to UCAN DR1-11.

Thus there is no evidentiary basis in the record for assuming 600 Mw of new geothermal generation with or without Sunrise,<sup>163</sup> let alone 1600 Mw of new geothermal generation with Sunrise, all by 2015.

*N. The seismic risk issue raised by UCAN is circumvented in the Decision*

In its application, SDG&E did not address the potential for seismic activity to compromise the integrity of this project. Oddly, the CAISO had not addressed this matter either. UCAN pointed out that the very pronounced danger of seismic activity in the Imperial Valley is magnified by the fact that SDG&E proposes to place the terminus of almost 3000MW of capacity in one of the most seismically active areas in the United States.<sup>164</sup>

The Commission rejects UCAN's concerns with a one-sentence reference to the EIR at the end of its decision. This tacked-on rejection states: "We disagree. The Final EIR/EIS (hereinafter, EIR) addresses seismic risk impacts at Imperial Valley Substation in Section D.13.5". It then cites the EIR language upon which it relies:

Although the Imperial Valley Substation is subject to seismic risks related to groundshaking from the nearby active San Andreas and San Jacinto fault zones, and the Brawley seismic zone, no new geologic or seismic impacts would result at the existing Imperial Valley Substation due to the operation of new line structures and equipment similar to the respective structures already in place within the existing fenced area of the substation.<sup>165</sup>

This reference to the EIR is flatly wrong in a number of ways. First, the EIR is addressing whether the project would impact the geologic integrity around the Imperial

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<sup>163</sup> Ex. U-4, section IV.B.1 and fn. 323 has further discussion of the timing of new geothermal projects, demonstrating that there will be no large new geothermal projects online by the end of 2010, despite SDG&E's projection of four of them by that date and the Imperial Valley Study Group's projection of three of them by that date. Since Ex. U-4 was written almost two years ago, its conclusions with regard to new geothermal plants by the year 2010 would now apply to the year 2012.

<sup>164</sup> UCAN Phase 2 Brief, pp. 194-198.

<sup>165</sup> Decision, p. 280-281

Valley Substation. UCAN never suggested that the Sunrise line would *cause* an earthquake. Such a claim would be nonsensical. UCAN's Phase 2 brief explains only that the Imperial Valley substation would be exposed to a lengthy outage due to widely predicted geologic events in that region. That anticipated outage would undermine the operational viability of two of the three major transmission links into San Diego.

Specifically, the Decision blatantly ignores the evidentiary supported fact that an earthquake at the Imperial Valley substation can only cause an N-1 outage of SWPL, an outage that is planned for and survivable by the SDG&E system. Once Sunrise is built, an earthquake at the Imperial Valley substation could cause an N-2 outage of both Sunrise and SWPL together. Such an event would be a category C event that could lead to large load dropping on the SDG&E system. SDG&E has testified that an N-2 of both SWPL and Sunrise would require it to drop up to 1000 Mw of customer load. That is a new impact to the viability of the transmission system that does not exist at present in the absence of Sunrise.

Thus, rather than address the issue raised by UCAN in the hearings, the CPUC miscites the EIR and avoids addressing the issue. The reason for this circumvention is compelling: There is no evidence in the evidentiary record that rebuts UCAN's contentions about seismic risk but for a self-serving statement by an SDG&E engineer.

## VIII. CEQA DEFICIENCIES

As noted by the Decision, CEQA requires a lead agency to identify and study feasible alternatives and mitigation measures to reduce a project's significant environmental impacts.<sup>166</sup>

- violated CEQA by failing to properly identify and analyze mitigation measures that would significantly reduce the Project's greenhouse gas emissions.
- violated CEQA by approving the Sunrise powerline without an enforceable mitigation measure requiring the line to carry some amount of renewable energy.
- violated CEQA by failing to analyze UCAN's feasible alternative likely to substantially avoid many of the significant environmental impacts of the Project and by failing to adequately respond to UCAN's comments regarding the alternative
- the overriding considerations violated CEQA by failing to present substantial evidence to support the dismissal of environmentally superior Project alternatives.

### *A. CPUC's Failure to Require SDG&E to compare its alternative to the EIR No Project/No Action Alternative*

As discussed above, SDG&E acknowledges that it did not conduct a cost analysis of the EIR's No Project/No Action Alternative.<sup>167</sup> In his December 11, 2007 order, the ALJ instructed applicants to provide a comparison of different modeling efforts, and economic and reliability analyses as informed by the proposed alternatives and mitigation measures in the draft EIR/EIS; as well as to perform cost-benefit analyses of the proposed project and project alternatives as informed by the proposed alternatives and mitigation measures in the draft EIR/EIS, and by different modeling efforts.

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<sup>166</sup> Decision, p. 3

<sup>167</sup> RT at 4167 -4170 (Woldemariam)

The language couldn't be clearer. A cost-benefit analysis of the proposed project and project alternatives identified in the DEIR had to include the "no project/no action alternative". In his questioning of an SDG&E witness, the ALJ raised this issue:

17 Q I also notice you didn't include any  
18 assessment of the no-project/no-action alternative. Why  
19 is that?

20 A Your Honor, the ruling in which we were  
21 directed to perform this economic analysis referred to  
22 the highest -- to compare Sunrise, the proposed project,  
23 to the highest ranked alternatives. In the DEIR the  
24 no-project alternative was ranked lower than the  
25 proposed project. So we didn't believe it was necessary  
26 to do that.

27 Q How did you determine that it was ranked  
28 lower?

1 A That is what the DEIR says.

2 Q Did it have a ranking number on it?

3 A Yes.

4 Q What was the number?

5 A It was below the previous -- I think there  
6 were seven alternatives, and the no-project alternative,  
7 as I recall it, was ranked last.

8 Q But it didn't have a number on it, did it?

9 A No.

10 Q It didn't it refer to Alternatives 1 and 2?

11 A I'm sorry? The "it" is what I am missing.

12 Q The description of the no-project alternative.

13 A I will have to go back and review the DEIR to  
14 exactly know what it referred to. But it did include a  
15 lot of the same resources, I do recall that.

16 Q So why would you conclude that it was being  
17 ranked lower than the proposed project?

18 A I will have to go back and review my thought  
19 process or go back and look at the DEIR, but that was  
20 the conclusion I came to. I thought clearly it was  
21 ranked below the others.<sup>168</sup>

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<sup>168</sup> RT at 4804-4805 (Strack)

SDG&E's claim is directly contradicted by DEIR, p. ES-4: "The No Project/No Action Alternative would have fewer impacts than those of the Proposed Project, the Southern Route Alternative, ...." Mr. Strack essentially admits this when, after further questioning, he states that the no-project alternative was, indeed, ranked. Only he incorrectly assumed it had been ranked below other alternatives:

3 A As I indicated for that Southern Route, it was  
4 developed late or I became aware of it late in the  
5 process. It wasn't required by your Honor's ruling or  
6 by the DEIR, so we did not include it.

7 And again, the reason I didn't include the  
8 no-project was exactly my reason here, is that we felt  
9 or I felt it was below -- it was ranked below the other  
10 alternatives.<sup>169</sup>

The ALJ reiterated his concerns on the record, to wit:

28 I went back and looked at a ruling that  
1 I issued last December discussing Phase 2 testimony.  
2 And one of the things that I had asked the company to  
3 prepare was a cost/benefit analysis for the proposed  
4 project and for project alternatives as informed by  
5 the proposed alternatives and mitigation measures in  
6 the Draft EIR/EIS. And I've having trouble  
7 understanding where in SDG&E's testimony there is  
8 cost/benefit analysis of the proposed project  
9 considering mitigation measures.

10 And is it in there somewhere and I just  
11 haven't figured it out.....

9 I'm not seeing anything in the testimony that provides  
10 an answer to that question: Is the proposed project  
11 cost effective; are any of the alternatives cost  
12 effective.....<sup>170</sup>

9 ALJ WEISSMAN: Yeah. I would like to see an  
10 apples-to-apples comparison among the alternatives using  
11 the same baseline. And I also would like to understand  
12 on a stand-alone basis what the perceived cost/benefit

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<sup>169</sup> Id, at 4806 (Strack)

<sup>170</sup> RT at 4938-4939, 4945

13 ratio would be for the individual alternatives in the  
14 proposed project.

SDG&E's only legitimate defense for having not done a No-Project Alternative comparison is that it would take a new GridView case run.<sup>171</sup> That would not have been an issue had SDG&E complied with the ALJ's December 2007 order. Instead, applicant intentionally chose not to so comply and then in April 2008, it justifies its continued non-compliance by claiming time constraints.

The Commission can reasonably conclude that SDG&E's willfully misinterpreted the EIR and the ALJ's ruling by creating a "straw man" No-Action Alternative that was patently unreasonable on its face. Second SDG&E's willingness to claim ignorance of the viability of key elements of the UCAN proposal shows how little consideration the company gave to STP alternatives. Finally, the Commission should conclude that SDG&E failed to heed the ALJ's directive that SDG&E provide an economic comparison to a reasonable version of the no-project/no-action alternative specified in the EIR. SDG&E's failure to do so not only violated the ALJ's order and instructions but also violates state law and deprives the Commission of a basis upon which to make a finding of overriding consideration.

UCAN raised the same concern with the DEIR - it had not performed a cost-effectiveness or cost-benefit analysis of the UCAN No-Project Alternative. It responded: "NEPA does not require an EIS to perform a monetary cost-benefit analysis."<sup>172</sup> Thus, the EIR is not in a position to establish whether the UCAN No-Project alternative is superior on an economic basis.

### *B. EIR's Failure to Review SDG&E's Justifications for Sunrise*

SDG&E has long claimed that Sunrise should be approved based on a triad of justifications: that it will maintain reliability, promote renewable energy, and reduce

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<sup>171</sup> RT at 4807 (Strack)

costs.<sup>173</sup> The DEIR accepted these three justifications as the “Basic Project Objective[s]” for STP or any alternative.<sup>174</sup> The EIR made no changes to this assessment. However, in each case the EIR fails to adequately quantify the extent to which Sunrise is necessary to achieve the objective, and the extent to which Sunrise achieves the objective.

*C. The EIR’s No Action Alternative doesn’t include the UCAN No-Project Alternative*

The DEIR identified a half-dozen different options that are environmentally preferable to SDG&E’s proposed project. These were identified as Options 1-5 on pp. ES-2 to ES-4, plus the No Action alternative on p. ES-4. In addition, as shown below, it is possible to identify alternative Southern Routes other than the “Environmentally Superior Southern Route” in the EIR that are still environmentally preferable to the proposed project. Thus the key questions before the Commission are whether these environmentally preferable alternatives are also economically preferable, and whether they are feasible.

In Phase I of this proceeding, SDG&E identified three classes of benefits which it claims Sunrise would provide:

- operational savings,
- reliability, and
- deliverability for future renewable energy projects.

The costs to construct and operate the Sunrise project would offset these benefits. The EIR, and other post-Phase I data discussed below, show that not only has SDG&E understated the cost to construct Sunrise, but also that other alternatives can provide the same three classes of benefits at a lower cost. UCAN commented that the Commission could find environmentally superior alternatives to SDG&E’s proposed

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<sup>172</sup> Final EIR/EIS , p. 3-850 see B0011-2 and B0011-10

<sup>173</sup> EIR, p. ES-19.

line that will impose lower costs upon the state's ratepayers and not despoil Anza-Borrego State Park.

At DEIR, p. ES-3, the DEIR identified a plethora of other mitigation measures besides undergrounding which would be required to reduce the environmental impacts of SDG&E's proposed line. UCAN has no independent estimate of what these measures would cost to implement, but their costs would surely be collectively significant. SDG&E's preliminary estimate is that these DEIR measures would increase the cost of the proposed project by some \$200 million, in 2011 dollars.<sup>175</sup> Thus, the previously disclosed \$1.265 billion cost of SDG&E's proposal would now be over \$1.5 billion because of deferral to 2011 plus mitigation costs.<sup>176</sup> Deferral to 2012 would raise the cost of SDG&E's proposal to over \$1.6 billion.<sup>177</sup>

The EIR improperly responded that:

"The cost of the Proposed Project is not evaluated or decided within the CEQA/NEPA process" (EIR, 3-850)

UCAN submits that while the CEQA process doesn't require the EIR to develop cost estimates, it does have a legal obligation to consider them when presented in the record. In this case, the EIR did not consider cost issues raised by UCAN and other parties in the record when developing and assessing the options. If it had, it would have placed greater weight on the UCAN proposal.

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<sup>174</sup> EIR, p. ES-20.

<sup>175</sup> SDG&E, 3/7/07, attachment to response to UCAN DR35-12. The \$200 million figure consists of \$94 million for "environmental mitigation" and \$106 million for "construction mitigation" and is "additive" to previously provided SDG&E cost estimates.

<sup>176</sup> \$1.265 billion for a 2010 on-line date, per Ex. SD-6, p. V-11. \$200 million in mitigation costs, in 2011 dollars. Additional escalation from 2010 to 2011 for the \$1.265 billion figure of over 5 percent, based on the increase in Sunrise revenue requirements shown in confidential attachment JJS-4 to Ex. SD-28C. 5% of \$1.265 billion is \$63 million. \$1.265 billion + \$200 million + \$63 million = \$1.528 billion.

<sup>177</sup> The previous footnote documents a 5%+ percent per year escalation rate, based on Ex. SD-28C, and a \$1.528 billion capital cost for a 2011 in-service date. 5 percent of \$1.528 billion is over \$76 million, which would make the total cost with a 2012 in-service date more than \$1.6 billion.

*D. The “3-legged stool” of benefits quantified by the EIR are in error*

SDG&E has long claimed that Sunrise should be approved based on a triad of justifications: that it will maintain reliability, promote renewable energy, and reduce costs.<sup>178</sup> The EIR accepts these three justifications as the “Basic Project Objective[s]” for Sunrise or any alternative.<sup>179</sup> However, in each case the EIR fails to adequately quantify the extent to which Sunrise is necessary to achieve the objective, and the extent to which Sunrise achieves the objective.

At DEIR, p. ES-20, the EDIR listed one of the three “Basic Project Objectives” as “to accommodate the delivery of renewable energy ... from geothermal and solar resources in the Imperial Valley and wind and other sources in San Diego County.”<sup>180</sup> However, the eight SDG&E objectives do not include any mention of wind energy, or any mention of renewable energy resources outside of Imperial County.<sup>181</sup> And neither the eight SDG&E objectives nor the three EIR “Basic Project Objectives” mention renewable resources in Mexico. Nevertheless, UCAN believed that SDG&E is now claiming increased deliveries of Mexican wind generation along with eastern San Diego wind generation and Imperial County renewable generation as project benefits, if not objectives. Thus the discussion below deals with the deliverability of renewable generation with and without Sunrise from all three areas (northern Baja for wind, eastern San Diego County for wind, and Imperial County).

In Phase I of this proceeding, the CAISO admitted that construction of the planned GPN line by IID and LADWP would enable the delivery of up to 2000 Mw of new generation from Imperial County to the Southern California grid. What has changed since Phase I is that the CAISO now expects GPN to be built with or without Sunrise,<sup>182</sup> so that access to the next 2000 Mw of new IV generation will exist with or

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<sup>178</sup> EIR, p. ES-19.

<sup>179</sup> EIR, p. ES-20.

<sup>180</sup> EIR, p. ES-20.

<sup>181</sup> SDG&E PEA, as summarized in EIR, p. ES-19.

<sup>182</sup> CAISO, 12/28/07, 2010-12 LCR analysis, p. 64 of 77, at <http://www.caiso.com/1cc2/1cc2dab86fd50.pdf>.

without Sunrise. In addition to the generic 2000 Mw of wind deliverability identified by the CAISO in Phase I, a recent CAISO deliverability study shows 1561 Mw of specific wind and solar projects planned for delivery to SDG&E that can be fully delivered in the presence of Green Path North.<sup>183</sup> Those 1561 Mw include only projects with CAISO queue positions up to 150, and do not include the additional 400-1250 Mw of deliverable imports of wind energy from Mexico in the Sempra proposal to import Mexican wind generation (400 Mw in Sempra Presidential Permit Application, Exhibit E and in CAISO queue project number 159A; 1250 Mw in text of Sempra Presidential Permit Application).<sup>184</sup>

GPN is not part of any of the alternatives identified in the EIR. Based on the Phase I testimony of IID regarding its commitment to pursuing GPN,<sup>185</sup> the fact that GPN has already reached the third (and final) step in WECC review and approval,<sup>186</sup> and the fact that the CAISO is now assuming GPN will be built as part of its LCR and deliverability studies,<sup>187</sup> it would seem to be appropriate to consider construction of GPN as a project that will be built with or without Sunrise. It is certainly appropriate to consider GPN as part of the No Action Alternative, a project that will be built if Sunrise is not built. In either case, achieving the EIR's "Basic Project Objective" number three does not require the construction of Sunrise, and that objective can be met in the absence of Sunrise, including the No Project Alternative.<sup>188</sup>

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<sup>183</sup> CAISO Deliverability Study for SCE and SDG&E, SDG&E tab, updated 2/28/08 per cell L2. See <http://www.caiso.com/1f47/1f4791af23910.xls>.

<sup>184</sup> CAISO Deliverability Study for SCE and SDG&E, SDG&E tab, updated 2/28/08 per cell L2, lines 11, 13, 18, 19, and 22; the 12/18/07 Sempra Presidential Permit Application is available at [http://www.oe.energy.gov/DocumentsandMedia/Sempra\\_Application\\_\(PP-334\).pdf](http://www.oe.energy.gov/DocumentsandMedia/Sempra_Application_(PP-334).pdf).

<sup>185</sup> See UCAN Phase I brief and IID testimony in Phase I.

<sup>186</sup> See IID redirect testimony in Phase I.

<sup>187</sup> CAISO, 12/28/07, 2010-12 LCR analysis, p. 64 of 77, at <http://www.caiso.com/1cc2/1cc2dab86fd50.pdf>; CAISO Deliverability Study for SCE and SDG&E, at <http://www.caiso.com/1f47/1f4791af23910.xls>

<sup>188</sup> At least one Commissioner has long since recognized that delivery of renewable generation from the Imperial Valley does not require two new 500 kV lines out of the Imperial Valley on top of the two 500 kV lines that already exit the Valley (Imperial Valley-Miguel and Imperial Valley-North Gila). See Attachment A, quote from California Energy Circuit reporting on the February 2006 testimony by Mr. Peevey to the California Senate Energy, Utilities and Telecommunications Committee.

Neither GPN, the Dixieland Project (adopted by the Commission) , nor the Highline-Knob-North Gila line appear to be part of any of the alternatives analyzed in the EIR. Given the commitment of both IID and the state to the development of renewable resources, it would seem likely that as much of those three projects as needed to deliver renewables will be built in the No Action case, and possibly even if Sunrise is built. Thus Sunrise would not be needed to achieve the EIR's "Basic Project Objective" number three,<sup>189</sup> and that objective could be met in the absence of Sunrise, including the No Action case.

Finally, the EIR fails to consider that delivering renewables is only a valid goal if those renewables actually exist. By far the biggest Imperial County renewable project under contract to SDG&E (or anyone else)<sup>190</sup> is the 900 Mw proposed Stirling Energy Systems (SES) solar project. Seven months ago, the CEC's August 2007 "Energy Facility Status" report showed the planned AFC filing date for the SES project was three months away, in November, 2007.<sup>191</sup> Now the CEC's March 6, 2008 "Energy Facility Status" report shows the planned AFC filing date for the SES project is still two months away, in May 2008.<sup>192</sup> At that rate, of course, SES will likely not file its AFC application, let alone get a permit and build anything, in the time frame contemplated by the parties to the contract.<sup>193</sup> Moreover, a recent trade press article about a competing solar thermal technology suggests that the SES project may be economically uncompetitive even within its own particular niche (solar dish systems). This report calls into further

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<sup>189</sup> Indeed, IID is apparently quite concerned about the converse – that Sunrise will cause its new transmission projects to become stranded assets because the grid does not need both the Sunrise project and IID's new transmission projects. The obvious solution, to both assuage IID's fears and save CAISO ratepayers money, is to deny SDG&E permission to build the Sunrise project as proposed.

<sup>190</sup> Ex. U-48.

<sup>191</sup> Ex. U-43.

<sup>192</sup> [http://www.energy.ca.gov/sitingcases/all\\_projects.html](http://www.energy.ca.gov/sitingcases/all_projects.html).

<sup>193</sup> See confidential Ex. SD-7C, p. III-11, showing that SDG&E previously projected an initial Stirling generation on line date which is now impossible to achieve.

question whether SES could comply with its contract obligations to SDG&E even if it filed an AFC and received approval from the CEC.<sup>194</sup>

Thus, the need for Sunrise (or anything else) to meet the EIR's "Basic Project Objective" number three is diminished if not eliminated. The EIR did not appear to take this recent information into account.<sup>195</sup>

The EIR responded to these concerns by stating:

B0011-4 The comment notes that the Green Path North project may be built with or without the Sunrise Powerlink Project, but it does not provide new information on whether Green Path North would improve the deliverability of power into the San Diego territory. The Green Path Coordinated Projects were considered as a potential alternative, but eliminated as shown in the Draft EIR/EIS Section C, Table C-3, and in Section 4.9.27 in Appendix 1 (Alternatives Screening Report) of Volume 6 of the Draft EIR/EIS, because it would not meet most project objectives of the Sunrise project. The comment does not provide any new information demonstrating how Green Path North would satisfy most of the basic project objectives, as required for CEQA analysis of any alternative.

B0011-5 Similar to Green Path North (see Response to Comment B0011-4), the projects identified by the comment for the IID service territory are not considered alternatives to the Proposed Project because they would have limited ability to satisfy basic project objectives, as required for CEQA analysis of any alternative.. While the upgrades proposed by IID would improve the deliverability of renewable power from IID to the SCE territory, the IID projects would not support the other basic objectives of improving reliability or reducing the cost of energy in the San Diego territory. The IID projects would not expand the deliverability of this power to load centers in San Diego County.

B0011-6 The comment identifies a likelihood of project failure for the Stirling Energy Systems (SES) Solar Two LLC (described in Draft EIR/EIS Section B.6.1.1). The Stirling project and Sunrise Powerlink are considered to be connected because the power purchase agreement between SES and SDG&E is

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<sup>194</sup> Energy Prospects West, 2/19/08, at [http://www.energyprospects.com/cgi-bin/package\\_display.pl?packageID=2516](http://www.energyprospects.com/cgi-bin/package_display.pl?packageID=2516). See also the brief and testimony of CBD in Phase I of this proceeding for extensive discussion of the implementation difficulties facing the SES project.

<sup>195</sup> The EIR **does** identify four locations within the proposed Stirling solar array containing human remains. EIR, Appendix 9B, Table Ap.9B-37. SDG&E has identified the presence of a single site containing human remains as a possible barrier to the feasibility of the Environmentally Superior Southern Route (SDG&E, 3/7/08 response to UCAN DR36-1, referencing EIR p. E.1.7-2, which in turn references site CA-SDI-1706. While UCAN does not see how SDG&E can be right that a site with human remains is, per se, a fatal barrier to feasibility (given that the EIR identifies multiple sites with human remains along the SDG&E-proposed route; see EIR Appendix 9B, Tables Ap.9B-2, -6, -10, -11, -12, -13, -18, and -20), the presence of human remains on the proposed Stirling site may well impose some further constraints on Stirling development beyond those already identified.

contingent on SDG&E gaining approval for Sunrise. However, the EIR/EIS does not presume that Stirling is automatically triggered by Sunrise or that Stirling will be successful in developing the solar project. See also General Response GR-5 (Status of Development of Renewable Generation in the Imperial Valley, Eastern San Diego County, and Northern Mexico).

Each of these assessments is in error. Green Path North had to have been considered and was not. Similarly, the Commission adopted the assumption for its Analytical Baseline that Path 42 will be upgraded this year to 1,200 MW and that the Dixieland-Imperial Valley line, approved by the Imperial Irrigation District Board, will be in service by the middle of 2010.<sup>196</sup> The EIR erred in not so adopting, as per UCAN's recommendation.

Finally, the EIR's reliance upon the Stirling project was an error. While Stirling may well be completed, it will not be completed in the timeline envisioned by the EIR. Moreover, it failed to consider UCAN's argument that if Stirling **is** built on schedule, then it will be generating before Sunrise can be finished in 2011-12, undercutting SDG&E's claim that the Sunrise line is needed to deliver Stirling's output.<sup>197</sup>

*E. Sempra's 500 KV line to Mexico from SWPL, and a 500/230 kV substation in Mexico means that Sunrise is not needed to deliver renewables*

Since the completion of Phase I of this proceeding, and just prior to the publication of the DEIR, Sempra Generation has filed an application to DOE for a Presidential Permit to build a new 500 kV transmission line from Mexico to the U.S. to deliver up to 1250 Mw of wind generation from Baja California to the existing SWPL line in San Diego County. At DEIR, pp. ES-9, ES-30, ES-31, the DEIR treated development of wind generation in Mexico and eastern San Diego County as a

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<sup>196</sup> Decision, p. 84

<sup>197</sup> SDG&E says "SDG&E's contract with Stirling Energy Systems could deliver as much as 900 MW of solar power from the Imperial Valley to our region, but not unless the Sunrise Powerlink is built." See [http://www.sdge.com/sunrisepowerlink/info/Myth\\_v\\_Fact.pdf](http://www.sdge.com/sunrisepowerlink/info/Myth_v_Fact.pdf).

“connected action” which would result from approval of Sunrise or the Northern or Southern Environmentally Preferred Routes, and includes a discussion of an expected new Jacumba 230/500 KV substation to connect that generation to SWPL.<sup>198</sup> However, the actual Presidential Permit Application identifies a different substation type and location,<sup>199</sup> and undercuts the EIR assumption that wind generation connected to SWPL would only occur if a new 500 KV line from Imperial Valley to San Diego (Sunrise, or a Northern Route or Southern Route alternative) is built.

The Sempra “Presidential Permit” application referenced above shows a powerflow for a 2009 case in which 860 Mw of wind generation is interconnected to the SWPL line and over 2000 Mw flows into Miguel via SWPL. That powerflow has only 400 Mw of Sempra wind generation in Mexico, with the other 460 Mw coming from U.S. wind sources,<sup>200</sup> even though the Application is for 1250 Mw.<sup>201</sup> Thus, at least the first 860 Mw of new wind renewable generation interconnecting to SWPL appears not to require construction of Sunrise (unless Sempra is misleading the DOE regarding the viability of a 2009 interconnection to SWPL). We note that this directly contradicts the Phase 1 testimony of SDG&E witness Linda Brown, and partially contradicts the EIR finding that a new substation at Jacumba is a related action triggered by the construction of Sunrise. The DEIR wrongfully asserted that “the existing SWPL could accommodate approximately 300 Mw of wind generation,”<sup>202</sup> but the Sempra application suggests the real number is at least 860 Mw. Thus the representations to DOE in the Sempra application imply that Sunrise is not needed to meet the Basic

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<sup>198</sup> See, e.g., DEIR, pp. ES-9, -30, -31.

<sup>199</sup> The 12/18/07 Sempra Presidential Permit Application, available at [http://www.oe.energy.gov/DocumentsandMedia/Sempra\\_Application\\_\(PP-334\).pdf](http://www.oe.energy.gov/DocumentsandMedia/Sempra_Application_(PP-334).pdf), shows the substation as 500 KV only (but with a 230 KV option), and shows it located immediately west of the Imperial County border, at about mile 30 of the I-8 Southern Route alternative. This location is about 5 miles east of the Jacumba substation location identified in the EIR.

<sup>200</sup> CAISO Queue projects 106A and 112, whose sources are shown by the CAISO as being in San Diego County. See Sempra Application, Exhibit E, and the 2/29/08 CAISO queue, available at <http://www.caiso.com/14e9/14e9ddda1ebf0.pdf>.

<sup>201</sup> The Sempra application promises DOE that a powerflow reflecting the full 1250 of planned Mexican wind generation by Sempra will be provided to due in the “first quarter of 2008.”

<sup>202</sup> DEIR, p. C-150.

Objective number three, and that objective number three can be met in the absence of Sunrise, even in the No Action Alternative.

The Sempra application shows that adding 400 Mw of Mexican wind generation increases flows into Miguel by 115 Mw (the other 285 Mw effectively flows east towards IV and Arizona, reducing IV-to-SWPL flows by 285 Mw).<sup>203</sup> Adding another 850 Mw of Sempra Mexican wind generation, if it had the same proportional impact,<sup>204</sup> would increase flows into Miguel by another 244 Mw,<sup>205</sup> which would exceed the SWPL line rating and the allowable flows through the Miguel transformers and Miguel outlet lines.<sup>206</sup>

Building a Southern Route would allow Mexican and U.S. wind generation to connect to the Southern Route as well as to SWPL, and thus would provide alternatives to overloading SWPL and/or Miguel. A Southern Route alternative would also create the option of phasing construction, with the Jacumba-Sycamore Canyon section built first if increased Mexican generation precedes increased IV renewable generation, as the CAISO queue suggests will be the case.<sup>207</sup>

Both the DEIR and the Sempra application show proposed sites for the Jacumba substation which are in the area of San Diego County where the Southern Route and SWPL are still immediately parallel to one another.<sup>208</sup> Starting the Southern Route at Jacumba instead of Imperial Valley would save at least 30 miles of 500 kV construction costs, and eliminate environmental impacts in Imperial County. Starting construction of the Southern Route at Jacumba would still allow eastern San Diego and Mexican wind

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<sup>203</sup> Sempra Application, Exhibit E.

<sup>204</sup> Sempra has not yet provided DOE with powerflows with the full 1250 Mw of proposed Mexican generation on line, which would show whether the assumed proportionality actually holds true.

<sup>205</sup>  $115/400 \times 850 = 244$  Mw.

<sup>206</sup> 2067 Mw with 400 Mw of Mexican wind, plus 244 Mw more with 1250 Mw of Mexican wind, equals 2311 Mw. 2311 Mw exceeds the N-0 rating of SWPL (2250 Mw), the SDG&E-asserted Miguel outlet capacity (1900 Mw) and the currently allowable flow through the Miguel transformers prior to the UCAN-proposed (and CAISO-endorsed) transformer cross-trip proposal (1400-1750 Mw).

<sup>207</sup> The CAISO queue shows 1160 Mw of wind interconnections to SWPL with planned operating dates in 2008-09 that are earlier than any planned dates for interconnections at the IV substation (and also earlier than any proposed operating date for Sunrise). See CAISO queue, 2/29/08, at <http://www.caiso.com/14e9/14e9ddda1ebf0.pdf>, projects 106A, 112, 159A (Sempra), and 183.

<sup>208</sup> Between mileposts 30 and 40. See EIR, Figure ES-17, p. ES-57.

to be delivered over SWPL and/or the Southern Route (EIR Basic Project Objective 3). It would allow generation interconnected at Jacumba to count for reliability (since there would be two transmission lines, in different corridors, connecting Jacumba to Miguel and Sycamore Canyon respectively). If the wind generation projections in the CAISO queue are true, then just the projects proposed to interconnect at Jacumba or west of it would be enough to meet the EIR's Basic Project Objective 1 (maintain reliability).<sup>209</sup> A Southern Route starting at Jacumba would also satisfy EIR Basic Project Objective 3 (deliver new renewables). And it would presumably meet Objective 2 as well (reduce costs), because of its lower construction costs.<sup>210</sup> The DEIR never identifies, let alone addresses, the option of a Southern Route from Jacumba to Sycamore Canyon as an alternative to Sunrise.

The EIR responded to UCAN's concerns by stating:

Section 5.3.3 (UCAN's Modified Southern Routes) in the RDEIR/SDEIS addresses the option of a SDG&E building a 500 kV transmission line from Jacumba to Sycamore Canyon as suggested by UCAN in this comment. The analysis of UCAN's Modified Southern Routes concludes that additional in-area generation would be needed to maintain reliability in the delivery of power to San Diego County (Basic Project Objective No. 1). UCAN's option of adding wind generation in Mexico along with the Jacumba to Sycamore Canyon route would function much like a variation of the New In-Area Renewable Generation Alternative evaluated in the Draft EIR/EIS, except without the solar components and with the wind location changed from the Crestwood area to Mexico. No additional analysis of UCAN's option is needed because the New In-Area

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<sup>209</sup> The existing wind project in eastern San Diego County, Kumeyaay, has an installed capacity of 48 Mw (CAISO queue, 2/29/08, project 18) and provides 10 Mw of capacity for reliability purposes (Ex. SD-6, p. IV-25). At that ratio of reliable capacity to installed capacity, the 1361 Mw of CAISO queue wind projects in San Diego County and Mexico with planned on-line dates before 2010 (CAISO queue, 2/29/08, projects 32, 106A, 112, 159A, and 183) would provide  $1361 \times 10/48 = 284$  Mw of reliable capacity, and the 820 Mw of projects with 2010-11 planned on-line dates and planned SWPL interconnections (CAISO queue, 2/29/08, projects 209 and 215) would provide another  $820 \times 10/48 = 171$  Mw of reliable capacity. (Another 500 Mw of Mexican wind planned to interconnect at Miguel would provide a further  $500 \times 10/48 = 104$  Mw of reliable capacity). 559 Mw of new firm capacity from wind projects connected to SDG&E within San Diego County would be enough to meet SDG&E's reliability needs until 2018 with CAISO numbers (CAISO Phase I OB, p. 21, Table V-1, line 22), and beyond that with UCAN numbers (UCAN, Phase I OB, Table 1).

<sup>210</sup> As far as the economics of access to low cost generation in Arizona, neither Sunrise as proposed nor a southern route starting in Jacumba increases transmission capacity east of Imperial Valley, so presumably either provides the same amount of access to low-cost Arizona and New Mexico generation.

Renewable Generation Alternative in the Draft EIR/EIS is a similar, though broader alternative to the Proposed Project that would meet most objectives.<sup>211</sup>

This statement is wrong. It is more than just a variation of the in-area renewable generation alternative because it would make lower-cost renewable power available to the basin and it would help develop otherwise untapped renewable resources in Eastern San Diego County. The failure to conduct additional analysis constitutes a legal error.

*F. The existing SWPL capacity is sufficient to meet EIR Basic Project Objective 3*

At DEIR, p. C-146, the DEIR asserted that “the objectives of the proposed project would remain unfulfilled under the No Project/No Action Alternative,”<sup>212</sup> and implies that no new Imperial Valley generation (and only 300 Mw of eastern San Diego County wind generation connected to SWPL) could be developed in the absence of a new 500 kV line between Imperial County and San Diego.<sup>213</sup> These assertions were incorrect and brought to the staff’s attention in UCAN’s Comments.

UCAN maintained that the existing SWPL line will soon be able to deliver 1900 Mw to and through the Miguel substation.<sup>214</sup> SDG&E has no contractual obligations to deliver non-renewable capacity to its system over SWPL. An existing Sempra-DWR contract under which Sempra has the right to deliver generation to the CAISO at the Imperial Valley substation, will expire in 2011. Thus, by the time the Sunrise line could be in service, there will be no contractual obstacles to using the entire 1900 Mw of SWPL capacity to deliver renewables. Nor will there be any significant economic obstacles to

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<sup>211</sup> EIR, p. 3-851

<sup>212</sup> DEIR, p. C-146.

<sup>213</sup> DEIR, p. C-150.

<sup>214</sup> CAISO, 3/11/08 response to UCAN DR8-2b.

using all, or virtually all, of SWPL to deliver renewables if there are enough renewables available to fill SWPL.<sup>215</sup>

In short, SDG&E's web site was wrong when it claims Stirling generation can't be delivered via SWPL (assuming Stirling gets built),<sup>216</sup> and the DEIR was wrong when it tacitly assumes the same thing. The DEIR was also wrong when it suggests that the 1900 Mw capacity of SWPL is somehow already subscribed, such that no more than 300 Mw of new wind generation can be interconnected to it "in the absence of [Sunrise]".<sup>217</sup> As discussed above, SDG&E's affiliate Sempra Generation has a pending Presidential Permit application to import up to 1250 Mw of renewable energy capacity from Mexico and deliver it to the CAISO via SWPL, and has submitted data to DOE showing 860 Mw of new wind generation flowing onto SWPL in eastern San Diego County. The EIR responded to the UCAN concerns thusly:

The comment notes that the existing SWPL could be used to achieve the Basic Project Objective of delivering renewable power. No revision is needed to the Draft EIR/EIS because it does not contradict this position. The Draft EIR/EIS includes analysis of Non-Wires Alternatives that would partially rely on the existing SWPL to deliver renewable power, where available. Other local generation of renewable energy would also be used in the Non-Wires Alternatives to supplement SDG&E's efforts to comply with the RPS.<sup>218</sup>

This response is incomplete. While UCAN is pleased that the EIR appears not to disagree with UCAN's assertion, it did not go far enough by conceding this point. The EIR should have been revised to address the post-2011 contractual and economic availability of up to 1900 Mw of transmission capacity on SWPL that could be used to deliver renewable generation. It is in error to have referenced this as an issue of whether Sunrise was needed at all.

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<sup>215</sup> If more than 1900 Mw of resources attempt to schedule deliveries over SWPL, some would have to be curtailed using the CAISO's economics-based congestion management protocols. But even then, as demonstrated repeatedly in the Phase 1 record, the low marginal costs of renewable resources mean that they would almost always end up getting priority on SWPL over non-renewable resources.

<sup>216</sup> See SDG&E, [http://www.sdge.com/sunrisepowerlink/info/Myth\\_v\\_Fact.pdf](http://www.sdge.com/sunrisepowerlink/info/Myth_v_Fact.pdf).

<sup>217</sup> DEIR, p. C-150.

*G. EIR inadequately assessed UCAN's No Project Alternative.*

The DEIR identified “reduce[ing] the cost of energy in the region” as “Basic Project Objective 2.”<sup>219</sup> However, the DEIR contained almost no analysis of the extent to which the proposed project would actually do so, nor does it contain any analysis of the extent to which alternatives (including the No Action Alternative) would do so. Thus the DEIR does not contain any information that would allow the CPUC to compare alternatives based on their degree of success in meeting this basic project objective.

The UCAN briefs, along with the rest of the Phase I record, contained a vast amount of information on the relative impacts on energy costs of different alternatives. However, since the Environmentally Superior Southern Route and the Environmentally Superior Northern Route were not analyzed in Phase I, there is still nothing in the record regarding their economic net benefits.

UCAN raised attention to recent CAISO documents addressing “RMR” valuation and Miguel substation as they shed light on the deficiencies of the EIR analysis – or lack thereof. It showed that the “RMR” benefit calculated by SDG&E was only a proxy for the real capacity cost benefit of Sunrise, which would be a reduction in local RA requirements and an offsetting increase in non-local RA benefits. UCAN then argued that SDG&E’s quantification of the “RMR” benefit was grossly overstated, with the real difference between local and non-local capacity values being under \$30 per kw-year.<sup>220</sup> Recently, the CAISO pointed out that the California IOUs in R.05-12-013 have proposed valuing non-local capacity as worth only \$24/kw-year more than non-local capacity.<sup>221</sup> The CAISO has now endorsed the same approach for valuing demand response.<sup>222</sup> But if demand response in an CAISO local area is only worth \$24/kw-year more than

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<sup>218</sup> EIR, p. 3-852

<sup>219</sup> DEIR, p. ES-20.

<sup>220</sup> See the UCAN Opening Brief in Phase I. With a claimed 1000 Mw increase in N-1 import capacity due to Sunrise, each \$1/kw-year difference between local and non-local capacity costs would equate to a \$1 million per year “RMR” benefit.

<sup>221</sup> CAISO, 11/19/07, p. 5 of filing in R.07-01-041 re valuation of demand response, available at <http://www.caiso.com/1c9b/1c9be90135310.pdf>.

<sup>222</sup> Ibid.

demand response outside of that area, then logic dictates the same difference in value should apply for generation. And that would mean that the value of Sunrise in allowing RA requirements to be met non-locally would be only \$24 million per year, not the \$56-61 million per year (in 2006 dollars) claimed by SDG&E.<sup>223</sup> There is no mention of this inconsistency in the EIR.

As to the Miguel substation, UCAN explained that much of the claimed operational economic benefits of Sunrise could be achieved by increasing SDG&E's import and outlet capability at the Miguel substation.<sup>224</sup> In Phase 1, specifically, UCAN called for increasing the inlet capability at Miguel from its current 1400-1750 Mw up to 1900 Mw in all hours by changing the SPS that protects the Miguel transformers from overloads.<sup>225</sup> UCAN also called for further analysis of the outlet capability at Miguel and measures that would enable it to be increased above the current 1900 Mw.<sup>226</sup> While the EIR acknowledges that reducing energy costs is one of the three "Basic Project Objective[s],"<sup>227</sup> neither the EIR analysis of the proposed project or alternatives ever addresses modifications at Miguel and how they could help meet this Basic Project Objective.<sup>228</sup>

The CAISO had admitted that its modeling of flows into Miguel tends to overstate those flows when compared to actual flows, which means that its models tend to overstate congestion at Miguel compared to actual congestion levels.<sup>229</sup>

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<sup>223</sup> Ex. SD-6, Table IV-4, p. IV-28.

<sup>224</sup> See UCAN 's Phase I Opening Brief.

<sup>225</sup> Id.

<sup>226</sup> Id.

<sup>227</sup> DEIR, p. ES-20.

<sup>228</sup> Instead the EIR summarily rejects further consideration of alternatives which increase import capacity into Miguel on the grounds that they would not increase reliability (true) and would not reduce costs or allow imports of renewables (false, at least for the UCAN proposals, as shown in UCAN's Phase I testimony and briefs). See, e.g., p. C-124, rejecting an increase in SWPL capacity with no discussion of its impacts on cost or renewable deliverability. The EIR appears not to have considered that raising Miguel import capability up to the level of outlet capability which already exists would not increase outlet congestion, and would provide opportunities to reduce costs. Nor does the EIR appear to have considered actions SDG&E is already planning, or could undertake in the future, which would increase the outlet capacity at Miguel and thus decrease congestion. See UCAN's Phase 1 OB.

<sup>229</sup> See the CAISO's January 2008 web posting at <http://www.aiso.com/1f42/1f42e565fff0.pdf>, which shows that the CAISO's post-MRTU modeling, both as designed ("open loop") and as now proposed to

Unlike the EIR, the CAISO has considered the opportunities for increasing imports into Miguel. In its 2008 Transmission Plan, the CAISO has endorsed modifying the SPS at Miguel to reduce congestion there, which is precisely what UCAN recommended back in June of 2007.<sup>230</sup> In the same document, the CAISO indicates that its Board has approved construction of a new transformer at Miguel substation, a project that will increase the outlet capacity there.<sup>231</sup> More recently yet, the CAISO has clarified that its intended modification to the Miguel SPS is the same modification UCAN proposed, tripping one transformer after a forced outage of the other.<sup>232</sup> The CAISO intends its modification of the Miguel SPS to increase the flow capacity and SWPL and through the Miguel transformers to 1900 Mw, on a permanent basis.<sup>233</sup> For purposes of analyzing the basic objectives of the SDG&E proposal as well as the EIR's no-project alternative, the EIR must give added weight to this new information.

UCAN also raised concerns about the DEIR's definition of "reliability". It pointed out how new options and data continue to weaken the alleged need for Sunrise for reliability purposes. For example, at DEIR ES-20, the DEIR identified "maintain[ing] reliability in the delivery of power to the San Diego region" as "Basic Project Objective 1." However, the DEIR did not appear to quantify, anywhere, how many Mw of new transmission, generation, or demand-side resources will be needed

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be revised ("partially closed loop") will tend to overstate flows into Miguel by hundreds of Mw, and thus overstate congestion at Miguel. See p. 15 of 15 for a graphical example. The CAISO's January 2008 analysis suggests that considerable economic value from decreased congestion could be achieved simply by better CAISO modeling of the existing grid, without needing to build anything at all.

<sup>230</sup> CAISO 2008 Transmission Plan, January 2006, p. 71, line 2; available at <http://www.caiso.com/1f52/1f52d6d93a3e0.pdf>. See also the CAISO's 11/20/07 Short Term Plan presentation, p. 18 of 23, for more and clearer detail; available at <http://www.caiso.com/1c9b/1c9bd6101b920.pdf>.

<sup>231</sup> Ibid., p. 61; see also p. 20 of the presentation from the SDG&E Grid Assessment Stakeholder Meeting of 11/20/07, preceding CAISO approval of the new transformer, in which the new transformer is specifically described as a project that "increases Miguel outlet capability;" available at <http://www.caiso.com/1c9b/1c9bd50412490.pdf>. The CAISO documents do not quantify the increase in Miguel outlet capacity, but 6½ years ago in I.00-11-001, two experts who also appeared in Phase I of this proceeding testified that various transmission upgrades would increase the outlet capacity of Miguel to 2250 Mw, which suggests that the current 1900 Mw limit is by no means fixed in stone. See testimony of Linda Brown and Richard Lauckhart, 9/17/01, p. 5.

<sup>232</sup> CAISO, 3/11/08 response to UCAN DR8-2a.

year by year to meet the reliability objective. Because reliability is usually the driving force in determining how large an alternative needs to be (except for very lumpy alternatives like Sunrise itself), the EIR does not contain enough information to determine if the various alternatives have been properly sized. Just because Sunrise is proposed to increase SDG&E import capacity by 1000 Mw, that does not mean that every alternative needs to be 1000 Mw in size in order to meet the reliability requirements of the SDG&E area and thus satisfy Basic Project Alternative 1.

UCAN's Opening Brief in Phase I discussed at length the importance of quantifying the baseline conditions - what will happen with or without Sunrise - in order to properly determine the annual reliability requirements of the SDG&E area. Both UCAN and DRA concluded in their Phase I briefs that the SDG&E area needs far less than 1000 Mw over the next decade to meet its reliability requirements.<sup>234</sup> The CAISO, purporting to start from the CEC's 1-in-10 (90/10) load forecast, showed a reliability need of only 588 Mw a decade from now in 2018, even after retiring the existing 702 Mw South Bay 1-4 units.<sup>235</sup> Since the actual adopted CEC 1-in-10 forecast is some 190 Mw lower in 2018 than the numbers reported in the CAISO brief, the CAISO's own methodology would now imply a 2018 reliability need of under 440 Mw.<sup>236</sup> Since the closing of the record in Phase I, several additional documents and developments have come to UCAN's attention which further reduce the need for Sunrise to meet

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<sup>233</sup> CAISO, 3/11/08 responses to UCAN DR8-2b (increase to 1900 Mw) and UCAN DR8-2d (increase is not temporary).

<sup>234</sup> Indeed, CAISO and SDG&E numbers also show a reliability need well under 1000 Mw, as discussed in the UCAN Phase I Opening Brief.

<sup>235</sup> CAISO, Phase I OB, p. 21, Table V-1, lines 1 (CEC 1 in 10 forecast), 16 (-702 Mw for South Bay retirement), and 22 (deficiency of 100 Mw in 2011, increasing to 588 Mw in 2018).

<sup>236</sup> 588 Mw shown in the CAISO OB (see previous footnote), minus 190 Mw for the lower 1-in-10 CEC forecast in 2018 which the CAISO now acknowledges (see CAISO, March 2008, 2009 CAISO Transmission Plan Draft Study Plan, p. 21, Table 2-4, showing 5727 Mw for SDG&E in 2018, versus the 5917 Mw shown in the CAISO OB), plus 39 Mw for the rooftop solar already included in the adopted CEC forecast (<http://www.energy.ca.gov/2007publications/CEC-200-2007-015/CEC-200-2007-015-SF2.PDF>, p. 143; added in to avoid double-counting the rooftop solar on line 2 of Table V-1 of the CAISO OB) equals 437 Mw.

SDG&E's reliability requirements over the next decade.<sup>237</sup> For the reasons below, the CPUC must reassess the EIR assumption that 1000 Mw are required for all alternatives.

The EIR responded to UCAN's concerns as follows:

The Draft EIR/EIS considers that the Proposed Project would satisfy the three basic project objectives. The Draft EIR/EIS then considers alternatives that could accomplish "all or most" of the basic project objectives (as explained in Section C.2.1, CEQA Requirements for Alternatives.) The extent to which each alternative accomplishes the objectives, consideration of the costs and benefits, and the specific flexibility or effectiveness of each alternative, is not addressed in the EIR/EIS but will be considered in the general proceeding. Analyzing the degree to which any alternative, including the No Project/No Action Alternative, reduces energy costs is beyond the scope of the EIR/EIS. See Response to Comment B0011-2 and General Response GR-12.<sup>238</sup>

Implementing the identified modifications at the Miguel Substation may reduce the cost of energy delivered to the region, but this would not by itself accomplish "all or most" of the basic project objectives. Accordingly, these modifications to the Miguel Substation would not qualify as an appropriate project alternative as that term is used under CEQA and NEPA, while they could occur as part of the No Project/No Action Alternative.

The Draft EIR/EIS considers the Proposed Project and the alternatives against SDG&E's stated objectives and CPUC's Basic Project Objectives. The need for the project is the focus of the general proceeding. Increasing import capability or generation by any specific amount (such as 1,000 MW) is not a threshold of satisfying basic project objectives. The Draft EIR/EIS considers and evaluates alternatives that could provide approximately equivalent levels of capacity, but no specific import threshold was used to screen alternatives. Relatively small upgrades that would provide incremental increases in the import capability were considered and included in the No Project/No Action Alternative of the Draft EIR/EIS (Section C.6.2 and Table C-4).<sup>239</sup>

These responses are boilerplate language that fails to address the specific points that UCAN raised. UCAN's issues were not limited to costs – they were operational in nature. The EIR appears to have entirely missed the relevance of UCAN's points and

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<sup>237</sup> This issue is particularly important in light of SDG&E's claim at the 2/25/08 meeting with Commissioner Grueneich that reliability is SDG&E's **primary** reason for wanting to build Sunrise.

<sup>238</sup> EIR, p. 3-852

the comparative benefits of UCAN's No-Project Alternative. The modifications to Miguel were part of an overall package of upgrades that were never designed to "accomplish "all or most" of the basic project objectives " on a stand-alone basis. Moreover, it is abundantly clear that while small upgrades were considered, the specific upgrades and the detailed mix of elements offered by UCAN as an alternative to Sunrise were NOT considered. The EIR errs repeatedly in casting each of UCAN's recommendations as stand-alone remedies when, in fact, UCAN presented a bundle of actions that – when viewed as a whole – presented an environmentally superior alternative to any stand-alone transmission proposal.

*H. The EIR undervalues new supply side alternatives within the SDG&E service area - up to 282+ Mw of renewable or DG generation are overlooked*

In its comments on the DEIR, UCAN raised a number of instances where the DEIR had undervalued new supply-side alternatives. For example, the DEIR identified one existing SDG&E contract for a 20 Mw biomass facility.<sup>240</sup> However, SDG&E had signed two additional contracts for new biomass facilities which will produce an additional 10 Mw.<sup>241</sup> Those contracts were not included in the Phase I record, and did not appear to be in the DEIR either.<sup>242</sup>

Moreover, the DEIR also did not identify any future wind projects that it expects to be interconnected to the SDG&E system with or without Sunrise.<sup>243</sup> However, there was one pending wind project in the SDG&E service area that would not be dependent on SWPL for its deliveries. According to the CAISO, all 201 Mw of that project's

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<sup>239</sup> EIR, p. 3-853

<sup>240</sup> DEIR, p. A-11.

<sup>241</sup> SDG&E, 12/6/07 press release, reported at <http://www.renewableenergyworld.com/rea/news/story?id=50766>.

<sup>242</sup> The EIR does identify specific biomass project locations and sizes for potential biomass additions, but does not identify them as having contracts already, or address their likelihood of occurring with or without Sunrise.

<sup>243</sup> DEIR, pp. A-10, A-11 list existing and pending SDG&E resources. They list an existing wind project, but no future wind projects.

capacity will be deliverable (CAISO queue project #32; reported by the CAISO to be fully deliverable.<sup>244</sup> With the same effectiveness factor as the existing Kumeyaay wind project in the same area (10 Mw of reliable capacity from 48 Mw of installed capacity),<sup>245</sup> 201 Mw of installed capacity would equate to 42 Mw of RA capacity.

At DEIR, pp. C-27, C-140, C-141, the DEIR stated that there is the potential for about 35 Mw of new DG over and above the 17 Mw already forecasted by SDG&E for the year 2016.<sup>246</sup> However, the 35 Mw figure appeared to be much too low. What the DEIR actually showed is that a “base case” based on existing incentives and expectations will result in 15 Mw **per year** of new DG capacity.<sup>247</sup> Based on the 50 percent credit for reliability used in the DEIR,<sup>248</sup> that would mean new DG additions of 7.5 Mw per year on a firm capacity basis, versus the 1 Mw per year assumed by SDG&E.<sup>249</sup> UCAN pointed out that if SDG&E is underestimating DG additions by 6.5 firm Mw per year, then the understatement from 2010 to 2016 is 39 Mw, not 35 Mw, and the understatement by 2018 would be 52 Mw.

Perhaps more importantly, the 39-52 Mw understatement of DG based on the data cited in the DEIR is an understatement in the “base case” which involves business as usual. The DEIR reported that in an “Increased Incentives Case” there would be about 200 Mw of DG by 2018, which is more than 90 Mw more than SDG&E projects (on a firm capacity basis).<sup>250</sup> And in a “High Deployment Case” DG by 2018 reaches about 170 Mw on a firm capacity basis, more than 150 Mw higher than SDG&E projects.<sup>251</sup> Thus, in terms of DG potential the DEIR underestimated the actual potential shown by its own data, by at least 115 Mw. The 35 Mw of “additional reliable DG”

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<sup>244</sup> CAISO Deliverability Study for SCE and SDG&E, at <http://www.aiso.com/1f47/1f4791af23910.xls>.

<sup>245</sup> The existing wind project in eastern San Diego County, Kumeyaay, has an installed capacity of 48 Mw (CAISO queue, 2/29/08, project 18) and provides 10 Mw of capacity for reliability purposes (Ex. SD-6, p. IV-25).

<sup>246</sup> DEIR, pp. C-27, -140, C-141.

<sup>247</sup> DEIR, p. C-141.

<sup>248</sup> Ibid.

<sup>249</sup> SDG&E assumes firm DG capacity grows from 11 Mw in 2010 to 17 Mw in 2016, or 1 Mw per year. DEIR, p. C-140.

<sup>250</sup> DEIR, p. C-141.

<sup>251</sup> Ibid.

referenced in the EIR is what the CEC study **expects** to occur over a period of under 6 years, and the total feasible potential in the “High Deployment” case is 2.5-3 times as much.

At DEIR, p. Ap1-306 the DEIR points out, the 150 Mw of rooftop solar assumed by SDG&E in Phase I is itself less than the combined CSI/NSHP targets for the SDG&E service area. This was wrong. SDG&E’s Phase I testimony included 150 Mw of reliability value from rooftop solar capacity by 2015,<sup>252</sup> based on an installed capacity of 300 Mw. SDG&E based its 300 Mw figure for installed capacity on a draft CPUC decision setting an SDG&E goal of 332 Mw by 2016.<sup>253</sup> UCAN pointed out in its comments that a very recent RETI analysis also assumed SB1 levels will be achieved, in a report vetted by SDG&E.<sup>254</sup> The DEIR assumed that 10 percent of the technical PV potential in the SDG&E could be developed by 2016,<sup>255</sup> which would correspond to over 230 Mw of firm capacity,<sup>256</sup> some 80+ Mw more than SDG&E’s modeling includes.

The DEIR also indicates that SDG&E could install rooftop PV itself as a means of further accelerating solar development.<sup>257</sup> On February 19<sup>th</sup>, 2008 LADWP announced initiatives to do just that.<sup>258</sup> Southern California Edison followed suit with an ambitious 250MW plan the following month. SDG&E too has the ability to affirmatively influence how soon it meets, and then surpasses, the SB1 goals which has not been sufficiently considered in the DEIR.

The EIR responded to UCAN’s numerous concerns as follows:

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<sup>252</sup> See, e.g., Ex. SD-6, p. IV-11.

<sup>253</sup> Ex. SD-6, p. VI-26.

<sup>254</sup> [http://www.energy.ca.gov/reti/ssc\\_meetings/2008-02-27\\_meeting/2008-02-17\\_BLACK+VEATCH\\_PHASE\\_1A\\_STATUS\\_REPORT.PDF](http://www.energy.ca.gov/reti/ssc_meetings/2008-02-27_meeting/2008-02-17_BLACK+VEATCH_PHASE_1A_STATUS_REPORT.PDF), pp. 9 (Linda Brown participation for SDG&E), 20 (assumes SB1 statewide goal of 3000 Mw installed is met by 2016, with half of installed capacity countable for RPS purposes)

<sup>255</sup> DEIR, p. C-70.

<sup>256</sup> DEIR, p. Ap1-306.

<sup>257</sup> DEIR, pp. Ap1-306, -307.

<sup>258</sup> <http://www.latimes.com/news/local/politics/cal/la-me-green20feb20,1,1943355.story?ctrack=4&cset=true>. The LADWP program calls for an investment by the municipal utility of \$270 million in rooftop solar.

The reasonable range of potentially feasible alternatives considered in the Draft EIR/EIS includes projects and facilities that are well-defined and that may be developed depending on decisions made by individual sponsors. New biomass or wind power purchase agreements made recently by SDG&E are evidence of the potential feasibility of the renewable projects. The Draft EIR/EIS provides decision-makers with an analysis of the environmental impacts of these components as part of Non-Wires Alternatives, but no revision is needed because the Draft EIR/EIS it is not intended for use as the CEQA or NEPA document that would allow approval of any specific biomass or wind project.

B0011-14 The comment debates the range of distributed generation (DG) that could be developed and forecasts a high deployment case of over 100 MW of additional reliable resources in excess of that expected in the Draft EIR/EIS. The level of DG shown in the Draft EIR/EIS (in the New In-Area All-Source Generation Alternative and in Section C.5.9.1) would involve many small DG projects at a pace more aggressive than what SDG&E anticipates. Whether a high deployment case of DG like that in the comment would improve the performance of the No Project/No Action Alternative is a subject of the general proceeding and beyond the scope of the EIR/EIS. Because a higher level of DG would not change the conclusion that DG alone could not provide sufficient in-area generation to satisfy the reliability objective (p. C-141), no change is needed in the analysis of the No Project/No Action Alternative in the Draft EIR/EIS. As identified in the description of the No Project/No Action Alternative (Table C-4), increased DG deployment would be expected to occur under this scenario.

B0011-15 The comment identifies varying forecasts and recent information from SDG&E on the range of solar photovoltaic generation that could be developed and describes how SDG&E has the ability to affirmatively influence whether it achieves a deployment scenario in excess of that expected in the Draft EIR/EIS. The 210 MW of nameplate capacity solar photovoltaic generation assumed in the Draft EIR/EIS (in the Non-Wires Alternatives and the No Project/No Action Alternative) is realistic, yet still very aggressive. The descriptions of the Non-Wires Alternatives (Sections C.4.10.1 and C.4.10.2 and Sections E.5 and E.6) show that 105 MW of firm capacity is assumed achievable in the short-term, instead of the 230 MW of firm capacity that is mentioned in the comment.

Depending on development timing, the 210 MW incremental nameplate capacity would be a market penetration target on the order of five to ten percent of the technical potential for PV installation levels in San Diego County. This would be a significantly greater level of installed PV than either SDG&E or the CSI predict. The scenario described in the comment would provide higher levels later which would improve the performance of the Non-Wires Alternatives and the No Project/No Action Alternative. The performance of alternatives including solar PV is a subject of the general proceeding and beyond the scope of the EIR/EIS. The function of the EIR/EIS is to evaluate and compare the environmental impacts of the Proposed Project and its alternatives. The final determination

regarding the project's and the alternatives' ability to implement project objectives is left to the Administrative Law Judge and the CPUC. As identified in the description of the No Project/No Action Alternative (Table C-4), increased photovoltaic deployment would be expected to occur under this scenario.

These general responses did not address UCAN's points about the undervaluation of DG energy. The position that "the performance of alternatives including solar PV is a subject of the general proceeding and beyond the scope of the EIR/EIS " is simply wrong given that the EIR was charged with evaluating alternatives. And stating that "no revision is needed because the Draft EIR/EIS it is not intended for use as the CEQA or NEPA document that would allow approval of any specific biomass or wind project" entirely misses the point about the assumptions that the EIR makes in its ranking of alternatives and its ultimate failure to have assessed the UCAN No-Project Alternative.

### *I. EIR understates demand-side options*

In its comments, UCAN pointed out that the DEIR, at p. C-148, concluded that SDG&E cannot achieve more than 200 Mw of load reduction from AMI and other Demand Response (DR) programs,<sup>259</sup> and that SDG&E has already included 595 Mw of Energy Efficiency (EE) programs (by 2015) in its "baseline peak electricity forecast."<sup>260</sup> The EIR is inaccurate; both the Phase I record and subsequent documents suggest that the EIR substantially underestimates EE and DR potential.

Both SDG&E and the CAISO concluded in Phase I that SDG&E can only reduce its future loads by 59 Mw using dispatchable demand response (DR), while UCAN argued that a minimum of 63 Mw of future dispatchable DR should be counted from

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<sup>259</sup> EIR, p. C-148.

<sup>260</sup> EIR, p. C-147.

existing contracts.<sup>261</sup> UCAN pointed out that SDG&E's own LTPP testimony called for 139 Mw of dispatchable demand response.<sup>262</sup> The Commission's LTPP decision has endorsed that number, accepting that SDG&E will have 139 Mw of dispatchable demand response in each year from 2008-16, inclusive.<sup>263</sup>

The DEIR, in contrast to the LTPP decision, refers only to AMI as a form of demand response, and does not quantify any expected future capacity value for dispatchable demand response.<sup>264</sup> UCAN assumes the DEIR authors were not disputing the 59 Mw of dispatchable demand response included in the SDG&E and CAISO Phase I testimony. Even so, the LTPP decision shows that the Commission expects some 80 Mw of future dispatchable demand response over and above the 59 Mw counted to date by the CAISO and SDG&E.<sup>265</sup>

Also, AMI, or price-responsive DR, is SDG&E's biggest single load-reduction program. In D-07-04-043, the Commission approved over half a billion dollars of SDG&E expenditures to implement AMI. The EIR asserts that AMI will reduce SDG&E's peak demand by about 200 Mw, but no more.<sup>266</sup> However, in D-07-12-052 the Commission quantified the expected price-responsive demand reductions for SDG&E (i.e., AMI impacts) as 233 Mw in 2010, increasing an average of 2 Mw per year to 245 Mw in 2016.<sup>267</sup> By 2018, the number would up to about 249 Mw. Thus the 200 Mw figure in the DEIR is some 49 Mw too low by 2018. In addition, as demonstrated in the Phase I record, SDG&E has testified in its General Rate Case proceeding that its

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<sup>261</sup> See UCAN Opening Brief in Phase I. Exhs. U-41 and U-42 provide evidence for potential DR in excess of the 139 Mw figure in SDG&E's LTPP filing and in D.07-12-052.

<sup>262</sup> Ibid.

<sup>263</sup> Line 8 of Table SDGE-1 of D.07-12-052, available at [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/76979-01.htm#P842\\_189748](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/76979-01.htm#P842_189748).

<sup>264</sup> EIR, pp. C-147, C-148.

<sup>265</sup> The UCAN Phase I Opening Brief counted 63 Mw of dispatchable demand response, so the 139 Mw figure in D.07-12-052 is also 76 Mw higher than UCAN's Phase I number.

<sup>266</sup> EIR, p. C-148.

<sup>267</sup> Line 7 of Table SDGE-1 of D.07-12-052, available at [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/76979-01.htm#P842\\_189748](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/76979-01.htm#P842_189748). Note that there is an apparent typo in the table value for 2015, which is shown as 232 Mw even though the prior year is 240 Mw and the following year is 245 Mw. UCAN believes the intended number for 2015 was 242 Mw, not 232 Mw.

proposed incentive rates for AMI would produce even greater demand response than the numbers shown in the LTPP decision, up to a little over 300 Mw.<sup>268</sup> Thus the DEIR underestimated AMI impacts by a full 100 Mw.

The DEIR asserted that energy efficiency (EE) savings of 595 Mw by 2015 have been built into SDG&E's demand forecast, and that no further energy efficiency savings "is foreseeable under the No Project/No Action Alternative."<sup>269</sup> The DEIR also concluded "the [EE] savings goals established by the CEC are presently somewhat higher than the maximum achievable savings potential expected to be achievable in the SDG&E service territory."<sup>270</sup> However, as discussed at length in the Phase I record, it is not true that the CEC's most recent demand forecast for SDG&E incorporates 595 Mw of EE savings, and it is not true that 595 Mw of EE savings exceeds the technical potential of the SDG&E service territory.<sup>271</sup>

Since the close of the record in Phase I, D.07-12-052 has concluded that the CEC's 2007 IEPR forecast<sup>272</sup> "embeds ... committed EE and approximately 100% of uncommitted EE."<sup>273</sup> However, as already discussed in UCAN's Phase I opening brief, the actual IEPR forecast strongly suggests that the post-2009 EE embedded in the CEC demand forecast is less than 100 percent of the CPUC's EE goals. The difference amounts to some 144 Mw by 2018.<sup>274</sup>

The 144 Mw understatement of future energy efficiency is the difference between what is in the CEC demand forecast and what would be there using the CPUC's

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<sup>268</sup> See UCAN Phase I Opening Brief and Ex. U-66 (testimony of SDG&E witness Willoughby).

<sup>269</sup> EIR, p. C-147.

<sup>270</sup> Ibid., citing a 2004 CPUC decision.

<sup>271</sup> See UCAN Phase I Brief, and Exs.U-67 and U-68 regarding EE

<sup>272</sup> This is the same demand forecast introduced in Phase I as updated Ex. U-47.

<sup>273</sup> Footnote 1 to Table SDGE-1 of D.07-12-052, available at

[http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/76979-01.htm#P842\\_189748](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/76979-01.htm#P842_189748).

<sup>274</sup> See UCAN Phase I Opening Brief. See also <http://www.energy.ca.gov/2007publications/CEC-200-2007-015/CEC-200-2007-015-SF2.PDF>, p. 138, Table 24, which is the final version of the document included, in an earlier version, as updated Ex. U-47 in the Phase I record. Table 24 shows incremental energy conservation embedded in the adopted CEC IEPR forecast is 158 Mw from 2008 to 2013, and another 154 Mw from 2013 to 2018. In contrast, SDG&E claims that its modeling has accounted for 223 Mw of uncommitted energy efficiency from 2008 to 2013, and another 233 Mw from 2013 to 2018. See

adopted goals for future energy efficiency. But the CEC has adopted even larger goals for future energy efficiency. Since the close of the Phase I record, the CEC has formally adopted the 2007 IEPR, including a recommendation that “energy efficiency targets for 2016 equal to 100 percent of economic potential.”<sup>275</sup> As shown in the final staff forecast of SDG&E energy efficiency and demand response potential,<sup>276</sup> the technical potential by 2016 is some 418 Mw more than the cost-effective level of demand reduction.<sup>277</sup> Just achieving the cost-effective level of demand reduction (and not the additional 418 Mw of technical potential), would result in a 1-in-2 SDG&E peak load of 4697 Mw in 2016.<sup>278</sup> That would be only 190 Mw above the CEC demand forecast for 2007.<sup>279</sup> In other words, the CEC believes SDG&E has the ability to hold its net load growth to 190 Mw from 2007-2016,<sup>280</sup> and recommends that doing so should be state policy.

The CEC’s 1-in-10 forecast is 8.8 percent higher than its 1-in-2 load forecast.<sup>281</sup> Thus the 4697 Mw of CEC-forecasted peak load with full economic energy efficiency achieved by 2016 would translate into a peak load of about 5110 Mw with 1-in-10

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SDG&E, Ex. SD-6, p. VI-16, Table VI-1. Thus SDG&E is claiming credit for 144 Mw more energy efficiency savings than are actually contained in the adopted CEC forecast.

<sup>275</sup> CEC, IEPR, 12/5, 07, Executive Summary, available at [http://www.energy.ca.gov/2007\\_energyypolicy/index.html](http://www.energy.ca.gov/2007_energyypolicy/index.html).

<sup>276</sup> CEC, “Achieving All Cost-Effective Conservation For California, 12/07, publication CEC-200-2007-019-SF, available at <http://www.energy.ca.gov/2007publications/CEC-200-2007-019/CEC-200-2007-019-SF.PDF>. A draft version of this report was previously introduced in Phase I as Ex. U-67.

<sup>277</sup> Updated Ex. U-67: CEC, “Achieving All Cost-Effective Conservation For California, 12/07, publication CEC-200-2007-019-SF, p. B-80, available at <http://www.energy.ca.gov/2007publications/CEC-200-2007-019/CEC-200-2007-019-SF.PDF>. The 418 Mw is the difference between remaining technical and economic potential in 2016 (804 vs 388 Mw), showing that remaining economic potential is less than half of remaining technical potential. The 418 Mw figure also appears as the difference between the numbers in the bottom right-hand corner of the table for 2016 peak demand with all technical potential achieved (4281 Mw) and with all cost-effective potential achieved (4697 Mw).

<sup>278</sup> Ibid.

<sup>279</sup> Ibid. The 2007 CEC forecast is shown as 4507 Mw on the line entitled “Baseline Demand Forecast – CEC 2007.” 4507 Mw is 190 Mw less than 4697 Mw shown for 2016 on the line entitled “Demand (Mw) After All Cost-Effective.”

<sup>280</sup> If one adds 8.8 percent to account for the difference between 1-in-2 and 1-in-10 forecasts, the load growth in the 1-in-10 forecast from 2007 to 2016 would still be only 208 Mw.

<sup>281</sup> Revised Ex. U-47; UCAN OB. See also <http://www.energy.ca.gov/2007publications/CEC-200-2007-015/CEC-200-2007-015-SF2.PDF>, p. 144. This is the final version of the document whose earlier drafts are in the record as Ex. U-47 and revised Ex. U-47.

temperature conditions.<sup>282</sup> By comparison, SDG&E has assumed a 2016 peak demand of 5330 Mw.<sup>283</sup> Thus SDG&E has overstated its 2016 peak demand by some 220 Mw by understating demand reduction that would occur if it complies with the CEC's IEPR policy. And the EIR is erroneous in not incorporating this most recent data into its assessment.

One example of the sort of new energy efficiency measures that are not included in the CEC baseline forecast, but are highly likely to occur in the 2008-18 period, are the Building Standard revisions which the CEC proposes to implement this year. Since the close of the Phase I record, the CEC has estimated that the 2008 Building Standard Revisions will result in a reduction in statewide peak demand growth of 131.8 Mw per year.<sup>284</sup> Since SDG&E represents about 7.25 percent of statewide peak load,<sup>285</sup> that would correspond to about 102 Mw for SDG&E over the next decade.<sup>286</sup> The EIR appears to have failed to incorporate this additional peak demand reduction into its assessment.

The EIR responded to UCAN's concerns tersely:

The comment debates the level of demand response and energy efficiency that is feasible. The levels of demand response and energy efficiency assumed in the Draft EIR/EIS (in Sections C.5.9.2 and C.5.9.3) are based on the overall savings goals presented in D.04-09-060 and SDG&E's baseline forecasts from 2006. As the comment notes, a higher level of demand response and energy efficiency could be achievable. The description of the No Project/No Action Alternative in the Draft EIR/EIS (Section C.6.2.1) shows that an increase in demand-side actions could occur in the absence of the Sunrise project. The EIR/EIS needs no further quantification of load reduction forecasts because the higher levels of demand response and energy efficiency contemplated by the comment would improve

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<sup>282</sup> 4697 \* 1.088 = 5110.

<sup>283</sup> Ex. SD-26, Table H-1, "90/10 After CSI and Demand Response" line.

<sup>284</sup> CEC, 11/7/07, Impact Analysis, 2008 Update to the California Energy Efficiency Standards for Residential and Non-residential Buildings, p. 5; available online at [http://www.energy.ca.gov/title24/2008standards/rulemaking/documents/2007-11-07\\_IMPACT\\_ANALYSIS.PDF](http://www.energy.ca.gov/title24/2008standards/rulemaking/documents/2007-11-07_IMPACT_ANALYSIS.PDF).

<sup>285</sup> See <http://www.energy.ca.gov/2007publications/CEC-200-2007-015/CEC-200-2007-015-SF2.PDF>, p. 5, Table ES-3, which shows SDG&E loads as 7.25% of state loads in 2008 (4568 Mw out of 62945 Mw) and 7.77% of statewide load growth in 2008-18 (695 Mw out of 8943 Mw). This is the final version of the document whose earlier drafts are in the Phase I record as Ex. U-47 and revised Ex. U-47.

<sup>286</sup> 131.8 Mw/year x 10 years x .0725/San Diego share x 1.07 for associated T&D loss reduction = 102 Mw.

the performance of the No Project/No Action Alternative. The performance of the No Project/No Action Alternative is a subject of the general proceeding and beyond the scope of the EIR/EIS. The function of the EIR/EIS is to evaluate and compare the environmental impacts of the Proposed Project and its alternatives. The final determination regarding the project's and the alternatives' ability to implement project objectives is left to the Administrative Law Judge and the CPUC.<sup>287</sup>

While not contesting UCAN's observations, it continued to accept lower demand-side projections as per SDG&E's 2006 forecasts. And it erred in maintaining that "the performance of the No Project/No Action Alternative is a subject of the general proceeding and beyond the scope of the EIR/EIS." In order to have fairly evaluated the UCAN Alternative, the EIR had to have evaluated the accuracy of the demand-side options and considered them in formulating alternatives.

### *I. Transmission alternatives provide reliability*

In one of the more interesting issues raised in the EIR, UCAN pointed out in its comments that the DEIR confirmed that upgrading Path 44 is "technically, legally and regulatorily viable." UCAN had presented evidence that the Path 44 upgrade option was both a viable and a cost-effective option. This option would increase SDG&E import capacity by 350 Mw to 2850 Mw,<sup>288</sup> which may well be all that is needed to meet SDG&E's reliability requirements for many years to come, particularly if the CEC's IEPR goals for energy efficiency can be met.<sup>289</sup> The DEIR did not appear to incorporate this fact into its assessment.<sup>290</sup> However the EIR appears to have accepted the viability of the Path 44 upgrade:

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<sup>287</sup> EIR, p. 3-854

<sup>288</sup> UCAN Phase I Opening Brief. Note that the EIR incorrectly describes the Path 44 Upgrade proposal as intended to increase SDG&E's import limit by 300 Mw, not 350 Mw. EIR, p. Ap1-263.

<sup>289</sup> As discussed above, the IEPR calls for achieving 100 percent of cost-effective EE and DR by 2016, which in SDG&E's case would hold load growth in 2007-2016 down to only 208 Mw (or about 23 Mw per year). With load growth slowed that much, a 350 Mw increase in import capability would match the load growth over a 15 year period.

<sup>290</sup> Besides ignoring the degree to which a Path 44 upgrading would meet Basic Projective Objective 1, the EIR also misdescribes the Path 44 upgrading option itself. The EIR mischaracterizes the requirements for a Path 44 upgrade as including a Viejo-Chino loop-in to Talega, having unknown SCE-area upgrade

The Draft EIR/EIS incorporates the Path 44 Upgrades as part of the No Project/No Action Alternative. The No Project/No Action Alternative is a viable alternative that decision-makers may select; its environmental impacts are fully analyzed in Section E.8 of the Draft EIR/EIS. The Draft EIR/EIS is in agreement with the comment that the No Project/No Action Alternative (Table C-4) with its full menu of demand-side and supply-side actions could achieve “all or most” of the basic project objectives, including reliability. Further quantifying the level of import capability that could be achieved with the Path 44 Upgrades and the level import capability that is needed for the region’s future are subjects of the general proceeding and beyond the scope of the EIR/EIS. The function of the EIR/EIS is to evaluate and compare the environmental impacts of the Proposed Project and its alternatives. The final determination regarding the project’s and the alternatives’ ability to implement project objectives is left to the Administrative Law Judge and the CPUC.<sup>291</sup>

Yet, this response is evasive and in error when it states: “Further quantifying the level of import capability that could be achieved with the Path 44 Upgrades and the level import capability that is needed for the region’s future are subjects of the general proceeding and beyond the scope of the EIR/EIS.” As is evident in the EIR, the staff did not incorporate the Path 44 upgrades in conjunction with the other recommendations made by UCAN. And it did not consider this package of measures as a less environmentally damaging alternative.

*J. The EIR understates the advantages, including environmental ones, of the UCAN No Action Alternative*

The EIR concludes that the No Project Alternative would be environmentally preferable to any of the Northern or Southern Routes, including the proposed project.<sup>292</sup> However, because the EIR contains little in the way of analysis about the No Action Alternative, UCAN is concerned that the EIR may have overlooked a very robust and environmentally superior alternative. The discussion below addresses various aspects

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requirements in addition to Barre-Ellis, increasing SDG&E’s import capability by only 300 Mw, and requiring modifications at the Del Amo substation in Los Angeles County (EIR, p. C-151). Each of these assertions is wrong, as already shown in UCAN’s Phase 1 testimony and briefs.

<sup>291</sup> EIR, p. 3-854-855

of a No Action Alternative that are either discussed only briefly in the EIR, or are incorrectly underestimated or rejected by the EIR.

The EIR's first "Basic Project Objective" is to "maintain reliability in the delivery of power to the San Diego region."<sup>293</sup> But the DEIR did not appear to quantify just how much capacity would be required to do so.<sup>294</sup> The issue of required new capacity was a major issue in Phase I, with both UCAN and DRA arguing that SDG&E does not need **any** new resources for years to come, beyond those already in the procurement pipeline (Otay Mesa, peakers approved by the CPUC in 2007, approved in-basin renewables).<sup>295</sup> But the EIR appears to simply assume that, because Sunrise would (allegedly) increase firm import capacity to SDG&E by 1000 Mw, each alternative to Sunrise must do so as well.<sup>296</sup> This assumption is fundamentally incorrect.

The DEIR concluded, correctly,<sup>297</sup> that upgrading Path 44 will require upgrading the Barre-Ellis 230 KV line.<sup>298</sup> The DEIR then indicates that upgrading Path 44 is one likely component of a No Action Alternative, but indicates there are "no sponsors" for doing so.<sup>299</sup> However, the DEIR was wrong. Unbeknownst to the authors of the DEIR, SCE has proposed to the CAISO to upgrade Barre-Ellis, the key to increasing the Path 44 import capacity to SDG&E, and the CAISO knows it.<sup>300</sup> A specific method is currently under development to mitigate Barre-Ellis overloads, which will involve either increasing the capacity of the Barre-Ellis line or taking other measures to decrease flows

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<sup>292</sup> DEIR, pp. E-66, E-67.

<sup>293</sup> DEIR, p. ES-20.

<sup>294</sup> See discussion above.

<sup>295</sup> See Phase I briefs of UCAN and DRA.

<sup>296</sup> See, for example, pp. C-143 and C-144, where an all solar alternative is described as a 1020 Mw alternative, with no discussion of whether a smaller sized project would also meet Basic Project Objective 1.

<sup>297</sup> But see UCAN's 6/1/07 testimony regarding Path 44 and the evidence that upgrading Barre-Ellis might **not** be required in order to upgrade Path 44.

<sup>298</sup> DEIR, pp. Ap1-263 and -264. UCAN notes in passing that the description of the Path 44 upgrade option on pp. Ap1-263 and -264 appears to be in error (but not fatally so) in several respects, as can be seen from a comparison of the EIR to UCAN's Phase I Opening Brief and Phase I testimony regarding Path 44.

<sup>299</sup> DEIR, p. C-147.

<sup>300</sup> See the CAISO's 2008 Transmission Plan, January 2008, at p. 63; available at <http://www.caiso.com/1f52/1f52d6d93a3e0.pdf>. The proposed on-line date for the Barre-Ellis upgrade is prior to the summer of 2012.

over the Barre-Ellis line. The CAISO and SCE intend to resolve the Barre-Ellis overload issue this year (2008).<sup>301</sup>

Similarly, the CAISO has recently identified the Felicita Tap-Bernardo 69 kV line as a limiting facility that is creating a local reliability need of 75 Mw (2010) to 86 Mw (2012) within the SDG&E area.<sup>302</sup> Thus, SDG&E now has a reliability incentive to upgrade the Felicita Tap-Bernardo 69 kV line whether or not Sunrise is built. Because SDG&E has identified this line as a requirement for a Path 44 upgrade, the CAISO's identification of it as a local reliability constraint increases the chance that SDG&E will upgrade the line, thereby making the Path 44 upgrade both more likely to occur and less costly.<sup>303</sup> The DEIR also failed to mention either SDG&E's or UCAN's analysis of the intra-SDG&E upgrades required for the Path 44 upgrade, let alone the CAISO's identification of some of those same upgrades as desirable for other reasons.

Finally, the October 2007 fires damaged some of the same 69 kV facilities that SDG&E says would need to be rebuilt to accommodate a Path 44 uprating.<sup>304</sup> To the extent that SDG&E has, for example, replaced burnt wood poles with new steel poles, it may already have incurred some of the costs that it claims would be needed for a Path 44 uprating, and thus reduced the incremental cost of such an uprating. The DEIR had no discussion of Path 44 uprating costs or viability and whether they are already being covered by transmission upgrades and rebuilds undertaken for other purposes (e.g., fire recovery or meeting normal load growth).

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<sup>301</sup> CAISO, 3/11/08 response to UCAN DR8-1.

<sup>302</sup> CAISO, 12/28/07, 2010-2012 Local Capacity Technical Analysis, at p. 75 of 77 at <http://www.caiso.com/1cc2/1cc2dab86fd50.pdf>.

<sup>303</sup> The same page of the 12/28/07 CAISO analysis cited in the previous footnote also indicates that another local reliability sub-area within the SDG&E system will require the Kearny gas turbines to stay in service to meet the sub-area reliability requirements. *Ibid.*, p. 75 of 77. If the Kearny GTs are required for local reliability, then the chance they will be retired is much reduced, contradicting SDG&E's Phase I testimony (Ex. SD-15, Thomas testimony) and decreasing the size of the No Action Alternative required to meet EIR Basic Project Objective 1. However, the EIR has no discussion of the prospects of the Kearny units remaining in service.

<sup>304</sup> See Phase I, Ex. U-29 (Yari) re specific transmission line rebuilds SDG&E claims would be needed for a Path 44 uprating; see SDG&E response to ED DR set 22 for tables listing the facilities damaged in the October 2007 fires.

As discussed above, UCAN's proposed version of a No Project Alternative includes modifications at Miguel which would help the No Project Alternative meet EIR Basic Projective Objectives 1 (reduced cost) and 3 (delivery of renewables). The DEIR neither acknowledged the role that Miguel modifications could play as part of a No Action Alternative,<sup>305</sup> nor acknowledged the recent actions that SDG&E and the CAISO have been taking to increase inlet and outlet capacity at Miguel. The DEIR also fails to incorporate the analysis contained in the Sempra Generation Presidential Permit Application, also discussed above, showing projected flows into and out of Miguel in excess of 2000 Mw in 2009, well above the current 1750 Mw inlet limit and 1900 Mw outlet limit.<sup>306</sup>

As discussed in greater depth above, the DEIR dramatically understated energy efficiency and demand response options,<sup>307</sup> seemingly in ignorance of the UCAN Phase I analysis, the CEC's IEPR (and supporting documents) and the CEC's 2008 Building Standard revisions analysis.<sup>308</sup> These energy efficiency and demand response measures contribute directly to meeting Basic Project Objectives 1 (reliability) and 2 (cost reduction), and by reducing the need to import capacity may also free up transmission line space for use by renewables, thereby contributing to Basic Project Objective 3. They are also at the top of the CEC/CPUC Energy Action Plan loading order. Thus, the DEIR needed to be revised to include quantify the incremental potential for increased EE and DR above the levels included in SDG&E's with-Sunrise case, and that incremental potential should then be included as needed and appropriate in a revised No Action Alternative. In particular, the DEIR should have been revised to take account of the post-2009 energy efficiency (EE), dispatchable demand response (DR), and price-

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<sup>305</sup> See DEIR, p. C-147, where the summary of the potential components of the No Project/No Action Alternative has no mention of Miguel.

<sup>306</sup> Sempra Presidential Permit Application, 12/18/07, Exhibit E. Since the Application was not filed until two weeks before the EIR publication date, and was not noticed in the Federal Register until after the EIR is published, UCAN is not suggesting that the EIR's failure to reflect the data in the Application is any reflection on the authors of the EIR.

<sup>307</sup> DEIR, pp. C-27, C-28, C-142, C-143, C-147, C-148. Note that p. C-147 omits EE and DR even as **components** of a No Action alternative.

<sup>308</sup> See the discussion above.

related demand response (AMI), which were discussed and described in UCAN's Phase I testimony and brief, as discussed above.

The DEIR assumed that 10 percent of the technical PV potential could be developed by 2016,<sup>309</sup> which would correspond to over 230 Mw of firm capacity,<sup>310</sup> some 80+ Mw more than SDG&E's modeling includes. In contrast, SDG&E assumes 150 Mw of firm solar rooftop capacity by 2010, based on 300 Mw of nameplate capacity. That is less than the combined CSI/NSHP targets for the SDG&E service area.<sup>311</sup> The final EIR had to reflect the potential for up to 230 Mw of rooftop solar by 2016, and more thereafter, as part of a No Action Alternative.

The DEIR also indicated that SDG&E could install rooftop PV itself as a means of further accelerating solar development, but suggests there may be legal obstacles to doing so, without so specifying those hurdles.<sup>312</sup> Recent initiatives by LADWP to implement SB1 with utility-owned rooftop solar<sup>313</sup> are further evidence that the SB1 targets can be achieved, and suggest that the DEIR may have overstated the legal barriers to utility-installed rooftop solar. The DEIR should have been revised to examine the LADWP program for its implications regarding SDG&E's solar options.

The DEIR stated that there is the potential for about 35 Mw of new DG over and above the 17 Mw already forecasted by SDG&E for the year 2016.<sup>314</sup> However, the 35 Mw figure appears to be much too low. What the EIR actually shows is that a "base case" based on existing incentives and expectations will result in 15 Mw per year of new DG capacity.<sup>315</sup> Based on the 50 percent credit for reliability used in the DEIR,<sup>316</sup> 15 Mw per year of nameplate capacity would mean new DG additions of 7.5 Mw per year on a

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<sup>309</sup> DEIR, p. C-70.

<sup>310</sup> DEIR, p. AP1-306.

<sup>311</sup> DEIR, p. Ap1-306.

<sup>312</sup> DEIR, pp. Ap1-306, -307.

<sup>313</sup> See discussion and footnote above.

<sup>314</sup> DEIR, pp. C-27, -140, C-141.

<sup>315</sup> DEIR, p. C-141.

<sup>316</sup> Ibid.

firm capacity basis, versus the 1 Mw per year assumed by SDG&E.<sup>317</sup> But if SDG&E is underestimating DG additions by 6.5 firm Mw per year, then the understatement from 2010 to 2016 is 39 Mw, not 35 Mw, and the understatement by 2018 would be 52 Mw.

As importantly, the 39-52 Mw understatement of DG based on the data cited in the EIR is an understatement in the “base case” which involves business as usual. As discussed above, the EIR reports that in an “Increased Incentives Case” there would be about 200 Mw of DG by 2018, which is more than 90 Mw more than SDG&E projects (on a firm capacity basis).<sup>318</sup> And in a “High Deployment Case” DG by 2018 reaches about 170 Mw on a firm capacity basis, more than 150 Mw higher than SDG&E projects.<sup>319</sup> Thus, in terms of DG potential the EIR underestimates the actual potential shown by its own data, by at least 115 Mw. The 35 Mw of “additional reliable DG” referenced in the EIR is what the CEC study **expects** to occur over a period of under 6 years, and the total feasible potential in the “High Deployment” case is 2.5-3 times as much. The EIR should be revised to correctly describe the underlying study.

At DEIR, p. C-147, the DEIR indicated that there is no known sponsor for new in-basin renewable generation projects.<sup>320</sup> However, there are two new in-basin projects not mentioned in the DEIR which not only have a project sponsor, they have contracts with SDG&E for their output.<sup>321</sup> In addition, the DEIR itself describes several specific biomass projects and their sponsors.<sup>322</sup> Finally, CAISO queue project #32 is a 201 Mw wind project with a specific sponsor, albeit one whose name is confidential.<sup>323</sup>

At DEIR, p. C-76, the DEIR lists various in-basin conventional generation projects as potential components of a No Action Alternative, but rejects other projects as potential alternatives because “they may not be feasible in the 2010 time frame.”<sup>324</sup>

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<sup>317</sup> SDG&E assumes firm DG capacity grows from 11 Mw in 2010 to 17 Mw in 2016, or 1 Mw per year. DEIR, p. C-140.

<sup>318</sup> EIR, p. C-141.

<sup>319</sup> Ibid.

<sup>320</sup> EIR, p. C-147.

<sup>321</sup> See discussion above of new biomass contracts with SDG&E announced by SDG&E in December 2007.

<sup>322</sup> Envirepel and the City of San Diego; see EIR, pp. C-73 and C-74.

<sup>323</sup> See project #32 in the 2/29/08 CAISO queue, at <http://www.aiso.com/14e9/14e9ddda1ebf0.pdf>.

<sup>324</sup> EIR, p. C-76.

Feasibility by 2010 should not be a precondition for inclusion in the No Action Alternative.<sup>325</sup> Even if some new resources are needed by 2010, which both UCAN and DRA strenuously deny,<sup>326</sup> no party claims that 1000 Mw of new resources are needed even by 2020 for SDG&E reliability purposes. Thus a No Action Alternative can (and undoubtedly would) consist of a mix of resources from both the demand and supply side (as well as new transmission such as the Path 44 upgrade), with those resources phased in over time.

Without a 2010 on-line date as a constraint for inclusion in the DEIR, a variety of additional in-basin generation opportunities exist. For example, the CAISO interconnection queue currently includes the following 5 non-renewable projects totaling 1140 Mw within the SDG&E service area (besides those already mentioned in the EIR):<sup>327</sup>

Queue project #90, a 93 Mw CT

Queue project #150, a 43 Mw CT

Queue project #190, a 330 Mw CT project at Otay Mesa

Queue project #226, a new 620 Mw combined cycle project at Escondido

Queue project #274, a 54 Mw combined cycle project at Palomar<sup>328</sup>

The Final EIR's response to UCAN's discussion of the package of measures that needed to be considered in the EIR was largely duplicative of earlier responses:

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<sup>325</sup> Indeed, UCAN doubts that the **proposed** project is feasible by 2010, particularly in light of the 2/25/08 statement to Commissioner Grueneich by counsel for the California State Department of Parks and Recreation that there is still an eight months to one-year permitting process with the State Parks and Recreation Commission to be gone through. SDG&E's own analysis of mitigation costs for its proposed Sunrise route is based on a 2011 on-line date (SDG&E, 3/7 attachment to SDG&E's 3/6/08 reply to UCAN DR35-12), and presumably doesn't take into account the time required for an ABDSP General Plan amendment.

<sup>326</sup> See UCAN and DRA Opening Briefs in Phase I.

<sup>327</sup> CAISO, 2/29/08 interconnection queue, at <http://www.caiso.com/14e9/14e9ddda1ebf0.pdf>.

<sup>328</sup> This project is listed with a 2008 on-line date. UCAN suspects it is the capacity increase at the existing Palomar combined cycle plant previously discussed in UCAN's Phase I direct testimony and Opening Brief. Whether it is or not, it is not mentioned in the EIR, but should be. It is either part of the base case (projects that will be built no matter what happens in this proceeding), in which case it reduces the needed size of the No Action Alternative, or else it is a potential component of the No Action Alternative.

See Response B0011-17 and General Response GR-12 for information on how reliability is considered in the comparison of alternatives, including the relative reliability performance of the No Project/No Action Alternative. Increasing import capability or generation by any specific amount (such as 1,000 MW) is not a threshold of satisfying basic project objectives. The Draft EIR/EIS considers and evaluates alternatives that could provide approximately equivalent levels of capacity, but no specific import threshold was used to screen alternatives. Relatively small upgrades that would provide incremental increases in the import capability were considered and included in the No Project/No Action Alternative. The comment asserts that the No Project/No Action Alternative is a viable alternative, and the Draft EIR/EIS does not contradict this.

The environmental impacts of the No Project/No Action Alternative are fully analyzed in Section E.8 of the Draft EIR/EIS. Also, note that the Draft EIR/EIS concludes that the impacts of the No Project/No Action Alternative are comparable to those of the three highest ranked alternatives in terms of the fewest impacts.

B0011-19 The description of the No Project/No Action Alternative considers transmission projects and upgrades that are foreseeable, and the comment identifies the work that SCE and SDG&E have done that may have partially initiated the Path 44 Upgrades part of the alternative. The Draft EIR/EIS does not attempt to quantify the value of these transmission projects aside from determining that they are a predictable action under the alternative.

B0011-20 See Response to Comment E0011-11.

B0011-21 See Response to Comment E0011-16.

B0011-22 See Response to Comment E0011-15.

B0011-23 See Response to Comment E0011-14.

B0011-24 See Response to Comment E0011-13.

B0011-25 Please see General Response GR-1 (Project Objectives and Feasibility of the New In-Area All-Source Generation Alternative). As explained in that General Response, the CPUC and BLM agree that the particular scenarios defined in the non-wires alternatives are not the only possible scenario for assembling generation resources to serve the San Diego area. The resources selected for analysis were intended to demonstrate the feasibility of this alternative and to define the types of environmental impacts that result from construction and operation of generation, for comparison with transmission line impacts.<sup>329</sup>

None of these responses acknowledges the legitimate bases for revisions to the DEIR that should have been but are not reflected in the EIR. The failure of the EIR to make these revisions led to the EIR's failure to consider the UCAN No Project

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<sup>329</sup> EIR, pp. 3-384-3-385

Alternative – as well as other alternatives -- as a feasible option to the Southern Route and thus failed to comport with CEQA.

*K. The Commission's statement of Overriding Considerations is deficient*

The EIR identifies 41 significant, unmitigable environmental impacts in the Southern Route selected by the Commission.<sup>330</sup> CEQA requires that Commission justify its choice of the southern route in a statement of overriding considerations. The Commission's statement of overriding considerations is flawed because it is not supported by the evidentiary record and failed to consider less environmentally damaging alternatives, such as the UCAN No-Project alternative.<sup>331</sup> In fact, the Decision spends approximately two pages discussing its justifications for the Southern Route and never articulates the factors that led it to determine that the overriding considerations are supported by the evidentiary record and that it had exhausted all reasonable and less intrusive alternatives.

## **IX. CONFLICT OF INTEREST CAUSED BY HELICOPTER TOUR**

As divulged by SDG&E in its March 25, 2008 ex parte notices, the applicant conducted a tour on March 20, 2008 at 9:30 a.m. Michael Niggli, SDG&E's Chief Operating Officer accompanied Nancy Ryan, Chief of Staff to President Peevey; Andy Schwartz, advisor to President Peevey; Paul Clanon, CPUC Executive Director; and Sean Gallagher, Energy Division Director. Allegedly, the transportation costs were billed to the Commission for \$1003 for more than four hours of flight time for these five individuals. However, this cost is not representative of the true cost of a chartered

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<sup>330</sup>EIR Executive Summary, pages ES-5 and ES-6

<sup>331</sup> Decision, pp. 249-250

four-hour helicopter tour for five people. The invoice was obligated to reflect the true market value of the tour and it did not.<sup>332</sup>

Thus, these PUC employees were beneficiaries of unreported gifts. This created a situation in which they were in violation of regulations of the Fair Political Practices Commission Title 2, Division 6 of the California Code of Regulations. Having received the gift from SDG&E, these CPUC employees were legally prohibited from participating in the Commission administration of the Sunrise application. Their participation was illegal and serves to invalidate the December 24<sup>th</sup> Commission decision in this proceeding.

## X. CONCLUSION

For the above reasons, it is UCAN's position that the Commission should reconsider and revise D. 08-12-058 and find that the proposed Sunrise powerline project cannot be approved absent findings of fact and conclusions of law on all material facts and feasible alternatives presented in this case. These deficiencies, plus the failure to properly administer the EIR/EIS process requires the Commission to reverse its decision and reopen the record for additional fact finding.

Respectfully submitted,

Dated: January 23, 2009

/s/

Michael Shames  
On behalf of UCAN  
3100 Fifth Ave. Suite B

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<sup>332</sup> The true value of this flight is further complicated by the fact that the helicopter service, Blackhawk Helicopter, appears to be heavily reliant upon SDG&E for its business. At its website, it notes; "All point to point charter operations, photo missions, and tour flights have been suspended for the time being. Blackhawk Helicopters is concentrating their efforts on powerline /pipeline patrols and external load operations. Charter, photo and tour flights may begin again in the future as additional helicopters are added to our fleet. Thank you for your understanding and support". ([www.blackhawkhelicopters.com/](http://www.blackhawkhelicopters.com/)) Thus this vendor is fully committed now to powerline/pipeline patrols in San Diego which are almost exclusively the province of SDG&E.

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### CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **APPLICATION BY UTILITY CONSUMERS' ACTION NETWORK FOR REHEARING** on all parties identified in A.06-08-010 on the attached service list by electronic mail and by overnight mail to the assigned Commissioner(s) and Administrative Law Judge(s). Dated at San Diego, California, this 23rd day of January, 2009

/s/  
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