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VIA FACSIMILE & FEDERAL EXPRESS

Douglas M. Long, Manager
Decision-Making Support Branch
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102-3298

Bruce Kaneshiro, Project Manager
California Public Utilities Commission
c/o Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, California 94104

Re: Mitigated Negative Declaration (the "Negative Declaration") in connection with Southern California Edison's ("SCE") Application No. 96-11-046 (the "SCE Project") regarding the Ellwood Power Plant at Los Armas Road, Goleta, California (the "Ellwood Plant")

Dear Messrs. Long and Kaneshiro:

[\[Begin L&B-1\]](#)

PLEASE TAKE NOTICE that we object to the issuance of the Negative Declaration on behalf of our client Aradon Corporation ("Aradon"), the fee title owner of both the sixteen (16) acres directly west of the Ellwood Plant and of the Sandpiper Golf Course property, which is directly south of the Ellwood Plant. As will be discussed below, there is substantial evidence that the SCE Project, as currently proposed, may have a significant adverse effect on the environment and on the health of persons using or occupying Aradon's property. [\[End L&B-1\]](#) [\[Begin L&B-2\]](#) In such instances, the California Environmental Quality Act ("CEQA") requires the preparation of an Environmental Impact Report ("EIR") and not a mitigated declaration. (See, Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal., 6 Cal 4th 1112, 1123 (1993).) Under CEQA and the guidelines issued thereunder, if a project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. Pub. Res. Code § § 21100, 21151; 14 Cal. Code Regs. § 15064(a)(1). If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared, even if the overall effect of the project is beneficial. 14 Cal. Code Regs. § 15063(b)(1).

[\[End L&B-2\]](#)

[\[Begin L&B-3\]](#)

Aradon's primary objection revolves around the fact that the Negative Declaration completely ignores the impact of the SCE Project on Aradon's 159-unit affordable housing project (the "Sandpiper Housing Project"), previously approved by the County of Santa Barbara and the California Coastal Commission, pursuant to the "Sandpiper Golf Course, Clubhouse, Day Care Center and Residential Development Final Environmental Impact Report", No. 94-EIR-9 SCH #93121097, dated September 1994, prepared by Santa Barbara County Planning and

Development Review Division (the "Sandpiper EIR").[\[End L&B-3\]](#) [\[Begin L&B-4\]](#)
Consequently, the Initial Study fails to address the fact that the Sandpiper Housing Project will face significant safety and financial impacts. Thus, not only is there no substantial evidence, there is no evidence, in the record for the PUC to make a finding that there is no reasonable probability that the SCE Project will not have a significant effect on the environment. Consequently, given the following discussion only the opposite inference can be drawn, which necessitates the preparation of an EIR. See, e.g. No Oil, Inc. v. City of Los Angeles, 13 Cal 3rd 68, 83 n 16 (1974).

[\[End L&B-4\]](#)

[\[Begin L&B-5\]](#)

Specifically, the Negative Declaration fails to address the issue of how increased electromagnetic frequency waves ("EMF") may have an adverse effect on occupants of the housing project. The County of Santa Barbara in the Sandpiper EIR found:

Recent studies from Sweden and Denmark reinforce the hypothesis that exposure to a powerline magnetic field is linked to childhood cancer. A growing body of observations has documented boieffects of fields of 1mG in isolated cells, animals, and humans. A considerable body of epidemiological evidence points to human health hazards from exposures to ambient power frequency magnetic field environments exceeding 2mG (personal communication, G. Bell 1994). In the interim, until scientific evidence provides a clear answer, a policy of prudent avoidance should be applied to projects that have a potential to expose people to elevated magnetic fields in the intensity range that has been correlated with an increased incidence of cancer (1-5mG).

. . . For the purpose of this document, a significant impact caused by EMF would occur if new development is exposed to ELF magnetic fields equal to or greater than 2mG.

The Sandpiper EIR states that when the Ellwood Peaking Facility is running during testing and/or use, the magnetic fields are elevated above 2mG for a distance of 90 feet. Please again refer to the enclosed map. You will note that fifteen (15) units are directly impacted by the magnetic fields generated by the Ellwood Plant. The impact of the Sandpiper EIR was found to be less than significant because the Ellwood Plant is only used for peaking activity of up to one hour/week. In your Initial Study, however, you find that if the Ellwood Plant is sold it will likely be run at maximum capacity. According to Table 3.1 of the Initial Study, this would result in capacity being increased by eleven and one half (11.5%). This increase must be studied to determine whether the impact of ELF magnetic field environment at these sustained levels is still less than a significant impact. If such a finding cannot be made, then appropriate mitigation measures must be included.

[\[End L&B-5\]](#)

[\[Begin L&B-6\]](#)

If the PUC knowingly approves the Negative Declaration in light of the Sandpiper EIR, Aradon will be forced to bring a suit for inverse condemnation against the PUC seeking recovery of the lost units. The PUC's approval of the Negative Declaration will result in a taking as surely as if the PUC had outright condemned Aradon's property. Aradon does not desire to institute such an action against the PUC, particularly when the PUC, like Aradon, does not benefit from the SCE Project. Nevertheless, if the PUC proceeds with the issuance of the current Negative Declaration,

Aradon will have to protect its own economic interest against such action.

[\[End L&B-6\]](#)

[\[Begin L&B-7\]](#)

In summation, from a review of the analysis undertaken in connection with the Sandpiper EIR, the PUC cannot help but infer that the SCE Project, as proposed, creates the potentially significant effect that increased EMFs may have an adverse effect on the Sandpiper affordable housing project and, consequently, the people who are to live there. [\[End L&B-7\]](#) [\[Begin L&B-8\]](#) Pub. Res. Code § 21083(c) and Cal. Code Regs. § 15065(d) state that a lead agency must make a finding of significance if a project's impacts may cause substantial adverse effect on human beings. Thus, given the total absence of discussion and evidence to the contrary, the PUC must find that the SCE Project, as proposed, creates a finding of significance. Even if the PUC determines that there is a real need for additional electrical capacity, that finding alone is not sufficient. 14 Cal. Code Regs. § 15063(b)(1) provides that if any aspect of the project may result in a significant impact on the environment, and EIR must be prepared even if the overall effect of the project is beneficial. Consequently, in connection with the SCE Project as proposed, the PUC must prepare an EIR and not a negative declaration. Lastly, because units will be lost, approval of the current SCE Project will expose the PUC to significant financial exposure on its own account.

[\[End L&B-8\]](#)

[\[Begin L&B-9\]](#)

Notwithstanding the foregoing discussion, it is possible that if SCE agrees to modify its project description to mitigate the effects of 2mG magnetic field environments, then Aradon can be made comfortable with a mitigated negative declaration. Absent the foregoing, however, Aradon demands the preparation of an EIR.

[\[End L&B-9\]](#)

Very truly yours,

/s/

Kevin J. Lamb
of LAMB & BAUTE LLP

KJL:mdg

cc: Robert Y. Nagata, Esq.
Mr. John V. Stahl
Mr. Brian J. Bosse

L&B - LAMB & BAUTE LLP

L&B-1.

There is no basis for concluding that the project may have a significant impact on the occupants of the Aradon property that is of concern to the commentor. See responses to L&B-2, L&B-3, and L&B-5.

L&B-2.

As noted in the Environmental Checklists Section of the Initial Study (4.1 through 4.16), the CPUC determined that the project will have no impact that cannot be mitigated to a less than significant level. Being the lead agency conducting the CEQA review of the proposed project, the CPUC determined that under *CEQA Guidelines* § 15070(b)(1), the appropriate action was to issue a Mitigated Negative Declaration.

L&B-3.

The Sandpiper Housing Project was fully considered in the Initial Study, as were all projects located within one mile of the Ellwood facility (as shown in Table 4.16.1). The Ellwood facility is already limited to only 200 hours of operation per year by the Santa Barbara Air Pollution Control District (SBAPCD) permit. A change in ownership of the plant would not change the permitted limit of 200 hours of operation per year. As detailed in Sections 4.1 through 4.16 of the Initial Study, the CPUC determined that the project would not have a significant impact on residents or occupants near the Ellwood facility.

L&B-4.

Please see responses to L&B-2, L&B-3 and L&B-5.

L&B-5.

Many more studies of the health effects of EMF exposure have been completed since the County conducted its EIR for the Sandpiper development in 1995; none of those provided conclusive evidence that EMF exposure causes any health effects. L&B is incorrect in stating that the Initial Study found “that if the Ellwood facility is sold it will likely be run at maximum capacity.” As noted on page 3.6 of the Initial Study, “This Initial Study evaluates the impacts associated with the tendency of new owners of the divested plants to operate at higher levels than Edison would operate the plants under restructuring without divestiture. The maximum levels at which new owners could operate are those presented as the technically feasible maximum capacity factors.

However, ... it is not expected that operations would reach these levels at each plant, and operations may not reach such levels at any particular plant. It is merely the possibility that operations could increase within this range of capacity factors that is evaluated in this Initial Study.” In addition, as described on page 4.9.11 of the Initial Study, the CPUC has expressly declined to adopt a CEQA threshold for EMF exposure, and is not bound by the Santa Barbara County threshold.

L&B-6.

Please see responses to L&B-2, L&B-3 and L&B-5. The commentor is incorrect that the CPUC's approval of the Mitigated Negative Declaration would constitute a taking (under the U.S. Constitution) of Aradon's property. To begin with, there is no substantial evidence that the sale of the Ellwood plant would result in a significant impact. Second, Edison has the right currently to operate the Ellwood Plant to its permitted capacity as would a new owner. Third, it is not clear that any information in the Mitigated Negative Declaration and Initial Study would cause Aradon to lose the opportunity to build certain housing units. Even if that were to occur, it would not be due to action by the CPUC, but would stem from regulations and decisions of the County of Santa Barbara. Thus, the appropriate body from which to seek relief, if any were warranted, would be Santa Barbara County and not the CPUC. Finally however, and most importantly, any loss of units by Aradon clearly would not constitute a taking of property since Aradon would not be precluded from all use of its property, and would continue to enjoy an economically viable use of its land.

L&B-7.

Please see responses to L&B-3 and L&B-5

L&B-8.

Please see responses to L&B-2, L&B-3, L&B-5 and L&B-6.

L&B-9.

Please see responses to L&B-2, L&B-3 and L&B-5.