

Comment Set C63

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VIA U.S. MAIL

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California Public Utilities Commission
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Re: El Casco System Project
Recirculated Draft Environmental Impact Report
Report SCH #2007071076, Dated July 8, 2008

Dear Ms. Mosley:

The purpose of this letter is to advise the California Public Utilities Commission (CPUC) that it is my contention that the Guidelines of the California Environmental Quality Act (CEQA) have been violated with the release of the Recirculated Draft Environmental Impact Report dated July 8, 2008 (recirculated Draft EIR) for the El Casco System Project (Proposed Project), CPUC Proceeding 07-02-022.

The LEGAL AUTHORITY presented by the "Author" of the recirculated Draft EIR for recirculation of the Draft Environmental Impact Report (Draft EIR) is presented in Section A.1.1. which wrongly paraphrases recirculation pursuant to CEQA Guidelines.

The recirculation of an environmental impact report (EIR) is governed by Section 21092.1 of the Public Resources Code. This section states that:

*When **significant new information** is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Section 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Section 21104 and 21153 before certifying the environmental impact report.*

Significant new information is defined in Section 15088.5(a) of the State CEQA Guidelines:

As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement.

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It is my contention that the new information as submitted by Southern California Edison (SCE) regarding the ambient noise levels adjacent to the existing single circuit 115 kV subtransmission line does not satisfy the definition above as being "significant" and therefore it should not be considered as legally authorized.

As defined in Section 15088.5(a) of the State CEQA Guidelines:

New information added to the EIR is not "significant" unless the EIR is changed in a way that:

- (1) deprives the public of a meaningful opportunity to comment on a substantial adverse environmental effect of the project, or
- (2) a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement.

Thus, the new information provided by SCE to the CPUC subsequent to the publication of the Final EIR on April 11, 2008 is not **significant new information** pursuant to CEQA, and therefore the recirculated Draft EIR is in violation of the CEQA Guidelines.

Additionally, the recirculated Draft EIR as released on July 8, 2008 failed to define the "Author" of the report and is in violation of CEQA Guidelines as defined in Section 15129 and is therefore not a legal document. Section 15129 states:

The EIR shall identify all federal, state, or local agencies, or other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm or agency preparing the draft EIR, by contract or other authorization.

It is the responsibility of the CPUC to satisfy the State CEQA Guidelines as defined in Title 14 California Code of Regulations, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act.

Applicable excerpts from the CEQA Guidelines that apply to the illegal release of the recirculated Draft EIR follow.

Section 15000. Authority

*The regulations contained in this chapter are prescribed by the Secretary of Resources to be followed by all state and local agencies in California in the implementation of the California Environmental Quality Act.
These Guidelines are binding on all public agencies in California.*

Section 15002. General Concepts

(a) Basic Purposes of CEQA. The basic purposes of CEQA are to:

- (1) Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.*

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- (2) Identify the ways that environmental damage can be avoided or significantly reduced.
- (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- (f) *Environmental Impact Reports and Negative Declarations.* An Environmental Impact Report (EIR) is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage.
- (1) An EIR is prepared when the public agency finds substantial evidence that the project may have a significant effect on the environment.
- (g) *Significant effect on the Environment.* A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. (See Section 15382) Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not.

15384. Substantial Evidence

- (a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from the information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impact which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

What we can conclude from the CEQA Guidelines presented above and the evidential information developed thus far related to Proceeding 07-02-022, is as follows:

Conclusions:

1. The CPUC, as lead agency for Proceeding 07-02-022, is required by law to follow the State of California CEQA Guidelines.
2. The CPUC has determined that there is significant evidence that the Proposed Project will have a detrimental impact on the environment and has prepared a Draft EIR and an EIR.
3. The Draft EIR released in December 2007 and the Final EIR released in April 2008 both provided substantial information which indicated that environmental issues related to land use, noise, and visual effects give preference to a Partial Underground Alternative in order to reduce significant effects on residential receptors in Sun Lakes Community when compared to the Proposed Project.

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4. It is the CPUC's legal responsibility to make findings and their final decision based on whether the adverse environmental effects of the Propose Project have been substantially reduced or if not, why not.

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I am a Professional Engineer and Registered Environmental Assessor II, legally commissioned by the State of California to protect the health and safety of the citizens of California in the professional functions I perform. The CPUC has the same responsibilities with regards to regulating the power industry in California. It would be irresponsible for the Commission to allow SCE to construct the El Casco System Project as proposed using an above ground transmission line design located in the 50-foot wide right-of-way traversing through the Sun Lakes Community.

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If the illegal recirculated Draft EIR dated July 8, 2008 and it's erroneous results are allowed to be entered into public record, I formally request that a public hearing again be held in Banning, California. The purpose of this hearing would be to allow the public to express their issues of concern, as originally articulated by Administrative Law Judge Victoria S. Kolakowski at the August 1, 2007 prehearing conference.

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I have prepared and submitted this comment letter on behalf of the thousands of Sun Lakes' residents who will be adversely impacted if the CPUC approves the El Casco System Project as proposed by SCE.


I implore the CPUC to:

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- (1) Resend the recirculated Draft EIR dated July, 2008, and
- (2) Make your (CPUC) legal responsible decision for the Propose Project based on the results of the Draft EIR released in December 2007 and the Final EIR released in April 2008, the result of both public documents indicating the Partial Underground Alternative as the Environmental Preferred Alternative.

I certify/verify under penalty of law that I have personally prepared and am familiar with the information submitted in this document. I am the original protestant in Proceeding 07-02-022. The statements in this document are true of my knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

Respectfully submitted,


8/21/08

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Responses to Comment Set C63 – Edward H. Leonhardt

- C63-1** Please refer to General Response GR-1 for a detailed explanation of the change to the Environmentally Superior Alternative. The CPUC determined that the El Casco System Project EIR should be recirculated in light of new noise information provided by SCE and the change in the determination of the Environmentally Superior Alternative. It is within the CPUC’s discretion as Lead Agency to determine what is “significant” and to allow every opportunity for the public to comment on this new information and the changes to the originally published Draft and Final EIRs, thus complying with CEQA §15088.5(a). Nothing in CEQA limits what the Lead Agency may circulate for public review.
- C63-2** Like the original Draft and Final EIRs, the Recirculated Draft EIR was prepared by Aspen Environmental Group pursuant to Public Resources Code § 21082.1(a) and CEQA Guidelines §15084(d). All iterations of the EIR have been independently reviewed and analyzed by the CPUC and reflect the CPUC’s independent judgment. (See Pub. Res. Code §21082.1(c)(1), (2); CEQA Guidelines §15084(e).) Where, as here, the revisions to the original EIR are limited to a few chapters or portions of the EIR, only those sections that have been modified must be recirculated per CEQA Guidelines §15088.5(c). Originally published Draft EIR Section K (List of Preparers) identified all individuals and their associated firm who prepared all Draft and Final EIR documents. As no changes to this section occurred as a result of the new information provided by SCE to CPUC, it was not included in the Recirculated Draft EIR. Therefore, the Recirculated Draft EIR was in full compliance of CEQA Guidelines §15129.
- C63-3** Please refer to Response to Comment C63-1 and General Response GR-1 regarding the legal requirements for recirculation under CEQA and the specific reasons for recirculating the Draft EIR for the Proposed Project in compliance with CEQA regulations. The inclusions of certain provisions of the CEQA Guidelines in the comment is acknowledged.
- C63-4** The CPUC, as the Lead Agency, has complied with CEQA and the State CEQA Guidelines in preparing and circulating the EIR.
- C63-5** The comment correctly notes that the CPUC has determined that there are significant and unavoidable (Class I) impacts associated with the Proposed Project and the alternatives, as analyzed throughout the EIR.
- C63-6** Please refer to General Response GR-1 for a detailed explanation of the change to the Environmentally Superior Alternative and updates to the information and preferences denoted in Recirculated Draft EIR Tables ES-2 and E-2, Proposed Project vs. CPUC’s Northerly Route Alternative Option 3 and Partial Underground Alternative (replaces original Draft EIR Table ES-3 and E-2, Proposed Project vs. CPUC’s Northerly Route Alternative Option 3 and Partial Underground Alternative). Section E.2.2 (Environmentally Superior Alternative), under subheading “Conclusion,” does acknowledge that the Partial Underground Alternative “would improve existing conditions by removing the existing 115 kV subtransmission line wood poles along a one mile portion of the route through the Sun Lakes Community”; however, the improvement in existing conditions is not considered in the determination of the Environmentally Superior Alternative for the reasons explained in General Response GR-1 and Recirculated Draft EIR Section E.1 (Comparison Methodology).

C63-7 If the CPUC approves a project that will result in one or more significant environmental impacts, it must prepare a statement of overriding considerations and make certain findings required by Public Resources Code §21081. The Recirculated Draft EIR, Subsection A.3.3 (Decision-Making Process), explains that:

The recirculated Final EIR will be used by the CPUC, in conjunction with other information developed in the CPUC's formal record, to act on SCE's application for a Permit to Construct. Under CEQA requirements, the CPUC will determine the adequacy of the recirculated Final EIR and, if adequate, will certify the document as complying with CEQA.

It should be noted that environmental impacts identified for a project may not always be mitigated to a less-than-significant level. When this occurs, impacts are considered significant and unavoidable. If a public agency approves a project that has significant unavoidable impacts, the agency shall state in writing the specific reasons for approving the project, based on the Final EIR and any other information in the public record for the project. This is termed a "statement of overriding considerations" and is used to explain the specific reasons why the benefits of a proposed project make its significant unavoidable impacts acceptable. The statement is prepared, if required, after the Final EIR has been completed but before action to approve the project has been taken. The statement of overriding considerations and the CEQA required Findings of Fact (CEQA Guidelines §15091) would be included in the CPUC's Proposed Decision on the El Casco System Project.

C63-8 Your opposition to the Proposed Project has been noted. It is important to note that the El Casco System Project recirculated EIR is an informational document; it does not make a recommendation regarding the approval or denial of the project. The purpose of the EIR is to inform the public on the environmental setting and impacts of the Proposed Project and alternatives. The EIR will be used by the CPUC in conducting the proceeding to determine whether to grant SCE's requested "Permit to Construct" (PTC).

C63-9 The decision to recirculate the Draft EIR was made by the CPUC as the Lead Agency as required by CEQA Guidelines §15088.5(a). Commissioner, Dian M. Grueneich and ALJ, Victoria S. Kolakowski were fully informed of this decision. The final hearing on SCE's PTC for the El Casco System Project will be open to the public and public comment will be considered at that time. Notice of this hearing will be provided by mail to parties on the proceeding's service list and to the general public by way of the Commission's Daily Calendar which is available on the Commission's website: <http://www.cpuc.ca.gov/PUC/events.htm>.

C63-10 As discussed in Recirculated Draft EIR Section A.1.2 (Public Noticing Requirements), the Recirculated Draft EIR was noticed in the same manner as the previously circulated Draft EIR (December 2007) (CEQA Guidelines § 15088.5(d)) and consultation was completed pursuant to CEQA Guidelines §15086. Notice of the Recirculated Draft EIR was provided to all organizations and individuals who previously requested notice in writing and by at least one of the methods specified in CEQA Guidelines §15087(a); i.e., publication in a newspaper of general circulation, posting, and/or direct mailing to neighboring property owners. All of the noticing procedures set forth in CEQA Guidelines §15087 for circulation of a draft EIR has been complied with for the Recirculated Draft EIR as well. Additionally, the Lead Agency provided notice to every agency, person, or organization that commented on the original Draft EIR.

It is important to note that the El Casco System Project recirculated EIR is an informational document; it does not make a recommendation regarding the approval or denial of the Project. The purpose of the EIR is to inform the public on the environmental setting and impacts of the Proposed Project and alternatives. The EIR will be used by the CPUC in conducting the proceeding to determine whether to grant SCE's requested "Permit to Construct" (PTC).