

Comment Set E1



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January 24, 2008

VIA E-MAIL & U.S. MAIL

Juralynne Mosley
California Public Utilities Commission
c/o Aspen Environmental Group
30423 Canwood Street, Suite 215
Agoura Hills, CA 91301

Re: El Casco System Project Draft Environmental Impact
Report (SCH No. 2007071076)

Dear Ms. Mosley:

Enclosed please find Southern California Edison Company's (SCE) comments on the Draft Environmental Impact Report (Draft EIR) for the El Casco System Project. In addition to the enclosed comment letter, we have provided a comment table on the Draft EIR (SCE Comments & Suggested Revisions) and a comment table on the proposed Mitigation Measures (SCE Mitigation Measure Comments).

If you have any questions, please do not hesitate to call me at (626) 302-3947. Thank you.

Sincerely,

Christine McLeod

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Re: El Casco System Project Draft Environmental Impact
Report (SCH No. 2007071076)

Dear Ms. Mosley:

This letter and attachments contain the comments of Southern California Edison Company (SCE) on the Draft Environmental Impact Report (Draft EIR) for the El Casco System Project (Project). The California Environmental Quality Act (CEQA) requires that environmental impact reports serve as adequate informational documents for the public and decision-makers. SCE's comments are provided in order to meet this requirement and ensure that the analysis is complete and accurate.

The comments provided below relate to the following issues: (1) the Partial Underground Alternative (PUA); (2) greenhouse gas impacts; (3) the inclusion of certain resource areas; (4) the analysis and mitigation of environmental impacts; and (5) corona noise. More detailed comments on the entire Draft EIR are included in the attached table and are organized by section. (See SCE Comments & Suggested Revisions.) Finally, SCE's comments on the proposed mitigation measures are discussed in a separate table, which is also attached. (See SCE Mitigation Measure Comments.)

I. The PUA Is Neither A Legally Valid Alternative Nor The Environmentally Superior Alternative

The PUA is neither a legally valid alternative nor the environmentally superior alternative, and must therefore be rejected by the CPUC.

A. The PUA Is Not A Legally Valid Alternative Under CEQA

The PUA is not a valid alternative under CEQA for two reasons: (1) the PUA is not an alternative to the Project as a whole; and (2) the PUA fails to feasibly avoid or substantially lessen the significant effects of the Project. Therefore, the PUA was improperly retained for analysis in the Draft EIR.

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1. The PUA Is Not An Alternative To The Project As A Whole

E1-3

The PUA is not an alternative to the project as a whole because it considers undergrounding only a one-mile portion out of an entire 15-mile 115 kilovolt (kV) subtransmission line project component. The Draft EIR's inclusion of this alternative is contrary to the principles of CEQA and CEQA case law.

Pursuant to CEQA, a "project" is defined as the "whole of the action," which has a potential for resulting in a direct physical change in the environment. (Tit. 14, Cal. Code Regs., § 15378(a).) The courts have consistently held this rule applicable to project alternatives. (See Big Rock Mesas Property Owners Ass'n v. Bd. of Supervisors of the County of Los Angeles, 73 Cal. App. 3d 218 (1977) (Big Rock).) In Big Rock, the "project" as a whole involved a 1400-acre residential subdivision. A one-mile portion of the subdivision's primary access road was to be constructed at a steeper gradient than the remainder of the access road. Construction of this steeper grade was contrary to a local ordinance prohibiting grading in excess of 10 percent. The petitioners argued that the EIR failed to comply with CEQA because there was no analysis of an alternative to the portion of the road with that steep grade.

The court flatly rejected the petitioners' argument and upheld the validity of the EIR. According to the court, "the pertinent statute and EIR guidelines require that an EIR describe alternatives to the proposed *project*." (Id. at 227 (emphasis in original).) The court interpreted those guidelines as applicable to the "project as a whole, not to the various facets thereof." Id. Therefore, since an alternative to only one portion of one component of the project was impermissible, the court held that the petitioners' claim lacked merit, particularly since the EIR analyzed various alternatives to the project in its entirety.

Here, the Draft EIR defines the Project as including several components, one of which is the replacement of approximately 15 miles of existing 115 kV subtransmission lines and support structures. However, apparently due to scoping comments voiced by the Sun Lakes Community, the Draft EIR considers as an alternative the undergrounding of just a one-mile stretch of subtransmission lines that traverse the Sun Lakes Community development. This type of piecemeal alternatives analysis is precisely what the court rejected in Big Rock as impermissible under CEQA. Rather, CEQA requires a Draft EIR to discuss "alternatives to the project *in its entirety*." (Id. (emphasis added).)

Identifying a piecemealed alternative as feasible when it benefits only one community and addresses solely a one-mile portion of a 15-mile project component is clearly contrary to both CEQA and court holdings interpreting alternatives. Because the PUA was improperly considered as a feasible alternative, it must be rejected from consideration in the Final EIR.

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2. The PUA Fails To Feasibly Avoid Or Substantially Lessen The Significant Effects Of The Project

E1-4

In addition to the PUA not being a legally valid alternative, the inclusion of this “alternative” in the Draft EIR was legally flawed. An overriding objective of CEQA is that alternatives “avoid or substantially lessen any of the significant effects of the project.” (Tit. 14, Cal. Code Regs., § 15126.6(a).) Because this alternative does not feasibly avoid the Project’s only significant unavoidable impact, it should be rejected and eliminated from the Final EIR.

According to the Draft EIR, the PUA is the environmentally superior alternative because “out of the 11 environmental resource areas analyzed in detail, the Partial Underground Alternative is the preferred alternative in three issue areas.” (DEIR, E-5.) Those areas are land use, visual resources, and noise. With respect to land use and visual resources, however, the Draft EIR determines that the Project will have a less than significant impact. As set forth above, the purpose of an alternative is to avoid significant effects of the proposed project. (Tit. 14, Cal. Code Regs., § 15126.6(a).) CEQA does not require agencies to mitigate impacts that are already deemed less than significant. (Tit. 14, Cal. Code Regs., § 15126.4(a)(3); Leonoff v. Monterey County Bd. of Supervisors, 222 Cal. App. 3d 1337, 1347 (1990).) Instead, CEQA provides that an alternative should be eliminated from consideration if it fails to avoid significant environmental impacts. (Id. at § 15126.6(c).) Therefore, it is irrelevant whether the PUA will lessen the environmental effects attributable to land use and visual resources since the Project will not cause a significant effect in those areas.

In addition to improperly considering the PUA’s ability to lessen land use and visual impacts, the Draft EIR uses an incorrect baseline for purposes of measuring those impacts. Pursuant to CEQA, the impacts of a proposed alternative must be compared with environmental impacts caused by the project itself, not with the existing setting. (Tit. 14, Cal. Code Regs., § 15126.6 (d) (“The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and *comparison with the proposed project.*”) (emphasis added).) Here, with respect to land uses, the Draft EIR concedes that the PUA will preclude land uses for a 10-month period, but that the alternative is still preferred because it would “remove the existing wooden 115 kV subtransmission poles and lines from the golf course.” (DEIR, D.3-41.) As for aesthetics, the Draft EIR acknowledges that construction impacts will result in the “identical number of residences impacted as the Proposed Project” but that some visual impacts would be improved due to the elimination of the existing above-ground wood poles. (DEIR, ES-7.) But these improvements occur only as a result of changing the existing conditions, not by avoiding implementation of the Project. Indeed, the Draft EIR notes that “[i]mpacts associated with the El Casco Substation and new wood poles for the fiber optic cable would be the same as described for the Partial Underground Alternative.” (DEIR, D.3-39.) Since any benefits created by the PUA relate only to existing conditions, and not the Project itself, the PUA should be eliminated from the Final EIR.

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Noise is the only remaining impact area for which the PUA is deemed “preferred” over the Project. The Draft EIR states that the PUA will reduce (but not avoid) the Project’s significant unavoidable noise impact. Yet the Draft EIR still concedes that “extensive construction noise for 10 months would occur at the underground segment.” (DEIR, E-7.) The Draft EIR ignores, however, the fact that short-term noise impacts, while less in duration, may be substantially greater in intensity in comparison to the impacts related to the Project. For instance, the Draft EIR states that the alternative would necessitate a large amount of heavy construction equipment, which in turn, will increase noise levels, impact sensitive receptors, and increase ground-borne vibrations. (DEIR, D.9-23.) Indeed, the Draft EIR fails to balance any marginal long-term improvements to noise impacts that may result from undergrounding a small portion of the Project with the significant short-term impacts that the PUA would cause. Therefore, the PUA does not substantially lessen or avoid the Project’s noise impact.

In addition to the noise impact, the Draft EIR ignores and understates other environmental effects that will be more adverse as a result of the PUA. The Draft EIR acknowledges that the PUA would involve an extended construction period and requires extensive trenching and more grading when compared to the Project. (DEIR, E-6.) As a result, the Draft EIR further concedes that the PUA’s impacts would be greater in intensity in several resource areas. For example, the PUA would result in the highest construction emissions and highest localized impacts to sensitive receptors. (DEIR, E-6.) Therefore, the PUA may in fact create greater impacts than the Project.

In addition to considering only those alternatives that substantially lessen significant environmental impacts, a lead agency may only consider alternatives that are “feasible.” (Citizens of Goleta Valley v. Bd. of Supervisors, 52 Cal. 3d 553, 565 (1990).) The law defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account, [among other criteria] economic factors.” (Save Round Valley Alliance v. County of Inyo, 157 Cal. App. 4th 1437 (2007).) Accordingly, the Draft EIR may not simply conclude an alternative is preferred based on certain perceived environmental benefits without also determining whether the alternative is feasible. While the Draft EIR notes that there are “no legal or regulatory feasibility concerns” associated with the PUA (DEIR, C-27), the Draft EIR makes no mention of the approximately \$9 million cost increase that construction of this alternative would involve. The \$9 million would be absorbed by SCE’s ratepayers as a whole for the sole benefit of a small community.¹

Thus, as set forth above, consideration of the PUA as an alternative is legally defective on not just one, but numerous grounds under CEQA: (1) the alternative relates solely to a small portion of one component of a multi-component project; (2) the Draft EIR considers the alternative as “preferred” for Project impacts already deemed to be less than

¹ There may also be feasibility issues because the PUA would require acquisition of easement rights for underground facilities.

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significant; (3) the Draft EIR ignores and understates environmental effects may in fact be more adverse as a result of the PUA; (4) the Draft EIR incorrectly compares the impacts of the alternative to existing conditions, rather than the Project itself; and (5) the Draft EIR fails to properly consider the feasibility of implementing the alternative. For any of these reasons, the PUA must be eliminated from consideration in the Final EIR.

E1-4
Cont.

B. The PUA Is Not The Environmentally Superior Alternative

Contrary to the conclusion in the Draft EIR, the PUA is not the environmentally superior alternative. Specifically, the Draft EIR contains the following errors in the analysis: (1) it incorrectly finds that the PUA would improve land use, noise, and visual impacts; (2) it understates the impacts of the PUA; and (3) its comparison of alternatives is misleading.

1. The PUA Does Not Improve Land Use, Noise, Or Visual Impacts

E1-5

Contrary to the Draft EIR's assertion, the PUA does not improve land use, noise, or visual impacts. With respect to land use, the Draft EIR finds the PUA is preferred based on a faulty analysis. The analysis utilizes inappropriate significance criteria (as discussed below), relies on an incorrect baseline (as discussed above), and is misleading and inconsistent. With respect to the significance criteria, the Draft EIR assumes that the disruption of recreational activities is an appropriate significance threshold. (DEIR, D.3-21.) Thus, the PUA is preferred because it would "ultimately benefit the Sun Lakes Country Club golf course." (DEIR, D.3-41.) However, this criterion is not included in the CEQA Guidelines Environmental Checklist Form and skews the analysis in favor of the PUA (an alternative that was specifically designed to benefit the golf course). The Draft EIR does not offer any explanation for why this criterion is utilized. (See Chaparral Greens v. City of Chula Vista, 50 Cal. App. 4th 1134, 1143 (1996) (determinations in an EIR must be supported by substantial evidence).)

Even assuming the significance criterion is appropriate, the benchmark for the analysis is not. The existing environmental setting includes the subtransmission line through the Sun Lakes golf course. In fact, the 115 kV right-of-way has been utilized since 1939 and the existing structures have been in place since 1971 (i.e., the subtransmission line predates the golf course). Because the Project merely replaces the existing line, the Project does not result in a significant land use impact. Therefore, any benefits to the golf course of removing the existing line if the PUA is adopted are irrelevant to assessing that alternative's environmental superiority relative to the Project.

Furthermore, the land use analysis is misleading because it focuses solely on the duration of impacts and does not consider intensity. Thus, the Draft EIR concludes that the "short-term" impacts of the PUA to recreational uses are preferred as compared to the "long-term" impacts of the Project. Yet, the analysis does not account for the relative intensity of the impacts. Even though an impact may be short in duration, it may still be

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significant. Given all these flaws in the land use analysis for the PUA, the Final EIR should find that the Project is preferred for land use.

As for noise impacts, the Draft EIR's conclusion that the PUA is preferred is based entirely on the premise that corona noise from an overhead 115 kV line is significant. As discussed in detail below (page 14), this premise is not supported by scientific evidence. The Project would not result in a significant noise impact; therefore, the PUA is not preferred in this resource area. The Final EIR should be revised accordingly.

Finally, the conclusion that the PUA is preferred for visual resources is flawed because it is internally inconsistent. The Draft EIR recognizes that the transition structures (i.e., riser poles) for the PUA would "introduce considerable structural complexity and industrial character" to the area. (DEIR, D.12-41.) Importantly, these transition structures are only required for undergrounding and would not be required for the Project. The discussion further notes that the structures would "introduce additional visual contrast, structural prominence and view blockage." (DEIR, D.12-41.) Importantly, the Draft EIR even acknowledges that visual impacts of the PUA would be more adverse for those residing outside the Sun Lakes Community. The discussion states that "views of the transition structures from points external to the Sun Lakes development would experience the negative impact of the structures without the positive benefit of the removal of the existing line." (DEIR, D.12-38.)

Despite these statements regarding the adverse effects of the transition structures, and the fact that the Project does not include these structures, the Draft EIR reaches the clearly inconsistent conclusion that the PUA would result in less than significant visual impacts and is preferred over the Project in this resource area. (DEIR, D.12-41 and E-7.) Thus, the Draft EIR incorrectly determined that the minimal benefit to those residing immediately adjacent to the golf course outweighs the adverse impact to those residing elsewhere. Given the PUA's additional visual impacts and the absence of any significant visual impact from the Project that the PUA would avoid, the Final EIR should designate the Project as preferred for visual resources.

2. The Draft EIR Understates The Impacts Of The PUA

The Draft EIR understates the impacts of the PUA, leading to the mischaracterization of the PUA as the environmentally superior alternative. As noted above, the analysis repeatedly fails to account for both the intensity and duration of impacts. For example, the Draft EIR recognizes that the PUA requires an extended construction period that involves more extensive trenching and grading than the Project. (DEIR, E-6 to E-8.) Although these impacts are characterized as "short-term" because they occur during construction, they may be significant due to the extensive ground-disturbing activities (which would increase impacts in nearly every resource area). The Final EIR should thoroughly discuss the adverse impacts of the PUA regardless of their duration.

**E1-5
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E1-6

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3. The Comparison Of Alternatives Is Misleading

E1-7

The Draft EIR's comparison of alternatives is misleading because it does not adequately take into account areas where the Project is the preferred alternative. The Draft EIR states that the PUA is preferred in three of the 11 environmental resource areas analyzed. While SCE disagrees with this statement, even assuming the PUA is preferred in three areas, no mention is made of areas where the Project is preferred. The Draft EIR explicitly notes (in Table E-2) that the Project is preferred with respect to cultural resources but fails to mention this in the comparison of alternatives discussion. Stating that the PUA is preferred in three areas without mentioning that the Project is preferred in at least one area is misleading. The discussion should offset the areas where the PUA is preferred by accounting for areas where the Project is preferred.

II. The Draft EIR's Analysis Of Greenhouse Gases Is Flawed

For the reasons discussed below, the Draft EIR's analysis of greenhouse gases is flawed and should be revised in the Final EIR.

A. Analysis Of Global Climate Change Based On A Quantitative Threshold Is Premature And Speculative

E1-8

Including an analysis of global climate change based on a quantitative threshold in the Draft EIR is premature and speculative. Because of the enormous complexities related to global climate change, the California legislature has charged numerous State and local agencies with the task of developing regulations to address greenhouse gas emissions. For instance, the California Global Warming Solutions Act of 2006 ("AB 32") charges the California Air Resources Board ("CARB") with the responsibility to monitor and regulate sources of greenhouse gas emissions in order to reduce those emissions. CARB has also been tasked to establish a "scoping" plan for achieving reductions in greenhouse gas emissions by January 1, 2009, and regulations for reducing greenhouse gas emissions by the year 2020 by January 1, 2011. In addition, AB 32 directs CARB to recommend a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply by January 1, 2009. (Cal. Health & Safety Code, § 38561 (e).) Furthermore, California Senate Bill 97, passed in August 2007, requires the Office of Planning and Research to prepare and develop CEQA guidelines for the feasible mitigation of greenhouse gas emissions, including but not limited to, effects associated with energy consumption. Those guidelines are to be certified and adopted by January 1, 2010.

Despite the large amount of regulations still to be adopted by State and local agencies on this issue, the Draft EIR summarily concludes that the Project will have a significant impact on global climate change. This conclusion, however, is clearly premature given the fact any significance thresholds and feasible mitigation measures are not to be adopted until some time in the future.

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B. The Draft EIR Relies On An Arbitrary Significance Threshold For Climate Change

E1-9

The Draft EIR relies on an arbitrary significance threshold in concluding the Project will have a significant impact on global climate change. Despite the Draft EIR's statement that there are "no State or local air district criteria for assessing the climate change impacts of projects," the Draft EIR still concludes that the "project will result in greenhouse gas emissions substantially exceeding baseline greenhouse gas emissions." (DEIR, D.2-16.) The Draft EIR arrives at this conclusion without comparing the Project emissions to any legitimate significance threshold. Instead, the Draft EIR simply concludes that a single molecule of SF₆ gas would result in a net increase of greenhouse gas emissions, thereby causing a significant impact. (DEIR, D.2-23.) This conclusion runs contrary to case law that holds it is not necessarily true that even where cumulative impacts are significant, any level of incremental contribution must be deemed cumulatively considerable. (Communities for a Better Env't v. Cal. Res. Agency, 103 Cal. App. 4th 98 (2002).)

The Draft EIR's conclusion that even a de minimis amount of SF₆ gas would contribute to global climate change also runs contrary to the CPUC's own performance standards for air quality. According to the Draft EIR, the CPUC has adopted greenhouse gas requirements in the form of an Emissions Performance Standard for any long-term power commitments made by the State's electrical utilities. Specifically, the Draft EIR states that "[u]tilities are not allowed to enter into a long-term commitment to buy baseload power from power plants that have CO₂ emissions greater than 1,100 pounds per megawatt-hour." (DEIR, D.2-14.) Thus, the CPUC clearly contemplates significance thresholds for greenhouse gas emissions that are greater than zero. As a result, the Draft EIR's conclusion that even a single molecule of SF₆ gas would cause a significant impact runs contrary to the spirit and intent of the CPUC's own policies and guidelines.

In the absence of project-specific significance thresholds, the analysis of potential Project impacts should focus on compliance with State and local plans aimed at reducing greenhouse gas emissions. The California Climate Action Team was formed in response to AB 32. Its goal is to evaluate the impacts of climate change on California and examine adaptation measures that would best prepare the State to respond to adverse consequences of climate change. Because the Climate Action Team's guidelines serve as the primary State guidance to date, the Final EIR should analyze the Project in light of whether it is consistent with the applicable greenhouse gas reduction measures recommended by the Climate Action Team.

Specifically as to SF₆ gas emissions, not only does SCE voluntarily report these emissions, it has developed measures to monitor and prevent leakage. SCE currently tracks SF₆ gas leakage on a system-wide basis. The company's SF₆ Gas Management Guidelines require proper documentation and control of SF₆ gas inventories, whether in equipment or in cylinders. Inventories are documented on both a quarterly and a yearly

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basis. SCE assumes that any SF₆ gas that is purchased and not used to fill new equipment is needed to replace SF₆ gas that has inadvertently leaked from equipment already in service. This allows SCE to track and manage SF₆ gas emissions. SCE currently voluntarily reports these emissions to the California Climate Action Registry, which was created by the California legislature to help companies track and reduce greenhouse gas emissions.

SCE has taken proactive steps in the effort to minimize greenhouse gas emissions since 1997. In 1997, SCE established an SF₆ Gas Resource Team to address issues pertaining to the environmental impacts of SF₆. The team developed the Gas Management Guidelines (discussed above) that allow for rapid location and repair of equipment leaking SF₆ gas. In addition, in 2001, SCE's parent corporation, Edison International, joined the U. S. Environmental Protection Agency's voluntary SF₆ gas management program, committing SCE to join the national effort to minimize emissions of this greenhouse gas. Importantly, SCE's SF₆ emissions in 2006 were 41 percent less than in 1999 while the inventory of equipment containing SF₆ gas actually increased by 27 percent during that same time period.

SCE has made a significant investment in not only improving its SF₆ gas management practices but also purchasing state-of-the-art gas handling equipment that minimizes SF₆ leakage. The new equipment has improved sealing designs that virtually eliminate possible sources of leakage. SCE has also addressed SF₆ leakage on older equipment by performing repairs and replacing antiquated equipment through its infrastructure replacement program. It is expected that the Project will have zero (or at most a negligible amount of) SF₆ leakage as a result of the state-of-the-art equipment and SCE's SF₆ gas management practices.

By requiring SCE to continue to comply with the guidelines and measures enacted to date, the CPUC will ensure that the Project's impacts on global climate change remain minimal, while still allowing State and local agencies to develop regulations and thresholds as provided by AB 32. Until those regulations and thresholds are developed, any determination that the Project will have a significant unavoidable impact on climate change is premature. Because the Project will comply with existing mitigation and the Climate Action Team guidelines, the Final EIR should conclude that the Project's impact on climate change is less than significant and no mitigation measures should be imposed.

III. The Draft EIR Improperly Evaluates Resource Areas That Are Beyond The Scope of CEQA

The Draft EIR improperly evaluates resource areas that are beyond the scope of CEQA, and these areas should be removed from the Final EIR.

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Cont.

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A. The Analysis Of EMF Should Not Be Included In The Draft EIR

E1-10

The Draft EIR improperly includes an analysis of electric and magnetic fields (EMF). EMF is not a CEQA issue. In fact, the Draft EIR recognizes that EMF is not considered an impact in the context of CEQA (DEIR, ES-26, D.7-26 and E-3), but the discussion of EMF is included within the Draft EIR for “informational” purposes. However, including this information within the Hazards and Hazardous Materials Section (or anywhere within the main body of the document) only misleads the public and is beyond the scope of CEQA. Indeed, as also recognized in the Draft EIR, there are no federal or State standards relating to human exposure to EMF, and there is a lack of consensus in the scientific community regarding this issue.

It is also inappropriate for the Draft EIR to include any comparison between the Project and alternatives with respect to EMF impacts. The Draft EIR states that: “EMF levels along the underground portion of the ROW within the Sun Lakes community would be reduced compared to the Proposed Project.” This statement is contrary to the intent of the CPUC with respect to EMF issues. CPUC decisions D.93-11-013 and D.06-01-042 established a “no-cost and low-cost” EMF policy whereby 4% of the total project cost is utilized as a benchmark for developing low-cost EMF reduction measures. In addition, these decisions provide that any low-cost reduction measures must be 15% or greater at the utility right-of-way while meeting the 4% cost criterion. The Project complies with the CPUC’s EMF policies and a comparison of the level of EMF impacts is not relevant. Furthermore, the PUA is not an appropriate low-cost measure because it exceeds the 4% threshold.

For these reasons, the Final EIR should not include an analysis of EMF, especially as it relates to the comparison of alternatives.

B. A Discussion Of Terrorism Impacts Should Not Be Included In The Draft EIR

E1-11

The Draft EIR improperly analyzes terrorism as an environmental impact, and this discussion should not be included in the Final EIR. Although highly speculative that the Project itself will increase the risk of terrorism at this site, the Draft EIR improperly includes a discussion of the potential environmental impacts associated with a terrorist attack on the Project. Pursuant to CEQA, economic and social effects need not be included in an EIR unless the proposed project causes an economic or social effect that will then cause a physical change in the environment. (Tit. 14 Cal. Code Regs., § 15131.) Crimes (in this case, terrorism) are considered “social” effects pursuant to case law. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, 140 Cal. App. 4th 911 (2006).) Accordingly, the Draft EIR should only analyze terrorism if it is demonstrated that the Project increases risk of terrorism and that the increased risk causes a corresponding physical change on the environment.

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While the Draft EIR notes that the U.S. Department of Homeland Security considers an attack on a substation or transmission tower as a possible terrorist objective, the Draft EIR fails to explain why the Project would cause an increased risk beyond that which currently exists. CEQA requires the impacts of a proposed project to be compared against a baseline environmental setting. (Tit. 14 Cal. Code Regs., § 15125.) Here, the baseline setting includes the existing 15 miles of subtransmission lines. Because there is no substantial evidence to support the determination that mere replacement of the subtransmission lines and the installation of a new substation could possibly increase risk of terrorism, an analysis of this risk should be eliminated from the Final EIR.

Further, not only does the Draft EIR fail to use the correct baseline in its terrorism analysis, it also fails to include a discussion of the Project's benefits, as well as the disincentive to terrorism that the Project will create. When the Project is completed, the El Casco 115 kV System will directly feed five downstream substations (Banning, Maraschino, Zanja, Crafton Hills, and Mentone). Four of these substations (Maraschino, Zanja, Crafton Hills, and Mentone) are currently fed from the Vista 115 kV System (sourced from SCE's Vista Substation in Grand Terrace), while Banning Substation is currently connected to the Devers 115 kV system (sourced from SCE's Devers Substation near Desert Hot Springs). Throughout SCE's territory, there are approximately 42 total "systems" in operation. As discussed in the Draft EIR, the Vista 115 kV System currently directly serves 15 downstream substations and approximately 150,000 metered customers. (DEIR, A-1.) The Devers 115 kV System currently directly serves 12 substations and approximately 160,000 metered customers. (DEIR, A-2.)

Currently, a terrorist attack aimed at Vista Substation, for example, would directly affect 150,000 customers due to the outage of the main source substation for the region. However, after the four substations are transferred from the Vista System to the El Casco System, which would serve approximately 80,000 customers, any attack on the Vista System would now only directly affect 70,000 customers (as opposed to 150,000 customers). Similarly, transferring Banning Substation from the Devers System to the El Casco System would eliminate any impact to the customers served out of Banning Substation in the event of an attack on the Devers Substation. Therefore, the Project would reduce and diffuse the impact that a terrorist attack would have on the electrical infrastructure in the area. As a result, there is less incentive for a terrorist attack on the electric system.

The inclusion of a terrorism analysis in the Draft EIR is also contrary to CEQA's basic principle that an EIR is not required to analyze impacts that are too speculative. Rather, pursuant to CEQA, if a particular impact is too speculative for evaluation, the lead agency should simply "note its conclusion and terminate discussion of the impact." (Tit. 14 Cal. Code Regs., § 15145.) Here, even if the EIR could trace a chain of cause and effect from the Project to an increased risk of terrorism, it is simply too speculative to ascertain what environmental effects may result from that attack. Therefore, the Draft EIR's discussion of terrorism impacts is misguided.

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The Draft EIR attempts to justify its terrorism analysis by noting a recent decision issued pursuant to the National Environmental Policy Act (“NEPA”). (San Luis Obispo Mothers for Peace v. NRC, 449 F.3d 1016 (9th Cir. 2006).) That decision held that it is reasonable to include a terrorism analysis in an environmental impact statement. However, CEQA is more focused on physical changes in the environment, while NEPA is more focused on related “human” impacts. (Compare 40 C.F.R. § 1508.8 with Tit. 14 Cal. Code Regs., § 15358(a).) Yet, in interpreting either statute, case law holds that the clear statutory or regulatory language is the first and best authority as to its meaning. (Wildlife Alive v. Chickering, 18 Cal. 3d 190, 202-203 (1976).) Thus, regardless of the NEPA decision cited in the Draft EIR, CEQA’s plain language requires the Draft EIR to include social effects only to the extent there is a direct causal link between those effects and some physical change in the environment.

In the NEPA decision cited in the Draft EIR, the court held that a terrorism analysis should be included because the mere presence of a nuclear power plant and storage facility would increase the possibility of a terrorist attack. (San Luis Obispo Mothers for Peace v. NRC, 449 F.3d at 1031.) Indeed, as the court noted, the Nuclear Regulatory Commission requires nuclear power plants to have security plans in place to protect against radiological sabotage. (Id.) By contrast, here, there is no substantial evidence to demonstrate that the Project will increase the possibility of a terrorist attack beyond that which already exists.

Because there is no causal link between the Project, an increased risk of terrorism and a physical change in the environment, the Final EIR should not include a terrorism analysis. In addition, because of the highly speculative nature of any physical changes that could theoretically occur from a terrorist attack, any terrorism analysis should be eliminated from the Final EIR.

IV. The Draft EIR Does Not Comply With CEQA In Analyzing And Mitigating Environmental Impacts

The Draft EIR does not comply with CEQA in analyzing and mitigating environmental impacts. Specifically, the Draft EIR utilizes inappropriate significance criteria and imposes excessive mitigation measures.

A. The Significance Criteria Are Not Supported By Substantial Evidence

Certain significance criteria utilized in the Draft EIR are not supported by substantial evidence, and their use is inconsistent with the CPUC’s rules concerning the preparation of CEQA documents. The Commission’s Rules of Practice and Procedure state that projects will be consistent with CEQA and the CEQA Guidelines. (CPUC, Rule 2.4.) In addition, the CPUC’s Information and Criteria List Appendix 1 identifies the significance criteria utilized in CEQA Guidelines Appendix G. That approach is consistent with CEQA Guidelines Section 15064.7(b). That Guideline states as follows: “Thresholds of

**E1-11
Cont.**

E1-12

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significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence." Therefore, consistent with this section, the CPUC has indicated that the CEQA Guidelines Appendix G will be utilized as part of its environmental review processes.

Yet, a number of the significance criteria utilized in the Draft EIR are not derived from Appendix G and, in fact, vary from the significance thresholds identified for the following resource areas:

- Land use
- Air quality
- Transportation and traffic

To deviate from the thresholds identified in Appendix G and CPUC past practice, the Draft EIR must provide substantial evidence to support that decision. (See CEQA Guidelines § 15064.7(b); see also CEQA § 21082.2(c) (argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence).) The Draft EIR offers no explanation and instead summarily states that thresholds were selected based on past environmental impact assessments. Therefore, as discussed in SCE's Comments & Suggested Revisions, the analysis of environmental impacts in the Final EIR should be revised in accordance with the significance criteria set forth in CEQA Guidelines Appendix G. Alternatively, the Final EIR should explain why the significance criteria utilized in the Draft EIR are appropriate.

B. The Analysis Must Evaluate The Project And Alternatives In Their Entirety

CEQA requires that an EIR evaluate the impacts of a project as a whole. The same applies to the analysis of an alternative. However, the Draft EIR repeatedly fails to comply with CEQA in this respect. Specifically, in several instances, the analysis of the PUA evaluates the impacts of this alternative only as they relate to the one-mile underground segment of the 115 kV subtransmission line. (See SCE Comments & Suggested Revisions.)

C. Mitigation Measures Are Improperly Imposed And Should Be Removed

The Draft EIR includes mitigation measures for impacts that are already less than significant without mitigation. Under CEQA Guidelines Section 15126.4(a)(3), where potential impacts are "less than significant" as determined by environmental review and analysis, no mitigation measures are required. Moreover, mitigation measures must be "roughly proportional" to the impacts of the project. (Dolan v. City of Tigard, 512 U.S.

**E1-12
Cont.**

E1-13

E1-14

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374 (1994).) Therefore, mitigation measures for already less than significant impacts should be removed from the Final EIR. (See SCE Mitigation Measure Comments.)

E1-14
Cont.

V. The Noise Analysis Is Incorrect Because It Overstates the Proposed Project Impacts

E1-15

The Draft EIR incorrectly concludes that the Project would create a significant unavoidable noise impact due to corona noise from the 115 kV subtransmission line. The Project would not create a significant unavoidable noise impact, and the Final EIR should be revised accordingly.

The Draft EIR states that a corona noise impact is significant if it would “[c]ause a substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the project.” (DEIR, D.9-10.) The Project would not contribute to a substantial increase in ambient noise levels. The Draft EIR states that corona noise is typically 40 to 50 dBA for a 500 kV line. (DEIR, D.9-17.) Therefore, it follows that the noise generated by a 115 kV line would be significantly less than 50 dBA, which is equivalent to a sound somewhere between a whisper and the ambient noise inside an average home. (See fact sheet on transmission line noise created by Aspen Environmental Group for the Tehachapi Renewable Transmission Project.)

In addition, corona noise is generally understood to occur in transmission lines with voltages greater than 200 kV, and even then, predominantly during foul weather. Therefore, if any corona noise were to occur on the 115 kV line, it would likely require extremely foul weather. In this case, the foul weather itself would likely create higher ambient noise than any corona noise created by the 115 kV lines.

As an example, the final EIR for the Jefferson-Martin 230 kV Transmission Line Project concluded that the highest noise level due to corona noise at the location of a sensitive receptor would be 46 dBA in rain or fog. Even though this determination was for a 230 kV line, the final EIR found that the potential impact for corona noise would be less than significant because “this would not be above the ambient noise levels in the project area, and it would not be in excess of standards in the local general plans or noise ordinances.” The same rationale should apply to the Project, which involves a lower voltage 115 kV line with lower corona noise potential than for a 230 kV line. Thus, the Project’s corona noise impact would be less than significant because it would not substantially increase ambient noise levels and would not exceed noise ordinances.

Further, the assumption in the Draft EIR that noise is a significant impact on transmission lines less than 200 kV runs counter to the premise of General Order 131-D. Section B.1 of this order (relating to exemptions from the permit to construct requirement) assumes that certain work on subtransmission projects between 50 and 200 kV will not result in significant unavoidable impacts. Thus, for example, electric utilities in California are exempt from permit to construct (PTC) requirements under Exemption G, which allows

E1-16

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for construction of new (or reconductoring of existing) facilities in “an existing... easement.” Another example is Exemption B, which involves replacement of existing facilities with similar facilities. Through the CPUC’s implementation of CEQA in General Order 131-D, the exemptions that electric utilities currently enjoy from the PTC requirements assume that the CEQA resource categories such as noise will have less than significant impacts for projects eligible for the exemptions.

For the foregoing reasons, the Draft EIR’s conclusion that corona noise would be a significant unavoidable impact is contrary to both scientific evidence and the CPUC’s prior decisions. Therefore, the Final EIR should find that corona noise from the Project would be less than significant.

VI. Conclusion

SCE appreciates your time and attention in addressing its concerns regarding the Draft EIR for the El Casco System Project.

Very truly yours,



Linda J. Anabtawi

cc: Christine McLeod
Scott Lacy
Ted Heath

LJA:lja:#1455935

Enclosure(s)

**E1-16
Cont.**

Responses to Comment Set E1 – Southern California Edison Company

E1-1 Thank you for your comments on the Draft EIR. Please find responses to all environmental issues raised in Responses E1-2 through E1-16 below.

E1-2 The Partial Underground Alternative (“PUA”) is a legally valid alternative, ~~and the Draft EIR’s conclusion that it is the environmentally superior alternative is supported by substantial evidence and analysis.~~ Please see Responses E1-3 and E1-4 for detailed discussion.

The Environmentally Superior Alternative has been re-evaluated and is identified in the Recirculated Draft EIR, Section E (July 2008) as the Proposed Project. Please see General Response GR-1 for a discussion regarding the change in determination of the Environmentally Superior Alternative.

E1-3 As explained in Section C.4.2.2 of the Draft EIR, the PUA “would contain the same elements as the proposed El Casco System Project..., except for the approximately one-mile portion of the alignment through the Sun Lakes community beginning just east of Highland Springs Avenue and ending just east of S. Riviera Avenue and west of S. Highland Home Road.” This description clearly explains that the underground portion of the route is not an alternative to the entire Proposed Project, but is rather one component of the PUA, which is an alternative to the project as a whole. Accordingly, the Draft EIR evaluates the potential impacts of the underground component of the PUA and compares those impacts to the impacts that would be caused by the Proposed Project along that same segment of the route. This analysis results in an accurate comparison of the impacts of the PUA versus the impacts of the Proposed Project and is appropriate under CEQA.

In *Big Rock Mesas Property Owners Ass’n v. Board of Supervisors* (1977) 73 Cal.App.3d 218, petitioners challenged an EIR on the grounds that it failed to specifically evaluate an alternative to the grading and access components of a larger project. The Court held that the EIR was adequate because it evaluated a reasonable range of alternatives to the project as a whole and included measures to mitigate impacts from grading and access.

The *Big Rock* decision is inapposite with respect to the PUA. As explained above, the PUA is not an alternative to only one portion of the project, but is an alternative to the project as a whole. Moreover, the fact that an EIR is not required to evaluate alternatives to any particular component of a project does not mean that it should ignore alternatives that reduce or eliminate impacts from that component. Such an interpretation would be contrary to CEQA. (See CEQA Guidelines § 15126.6(c) [the Lead Agency shall select alternatives that “could avoid or substantially lessen one or more effects” of the project as proposed].)

Finally, we are not aware of any authority rejecting, or even discussing, the concept of a “piecemealed alternative.” EIRs often include options for reducing environmental impacts by eliminating various components of the proposed project. While such options are sometimes called “mitigation measures,” they may be characterized as project alternatives as well. Under CEQA, whether such measures are called mitigation or alternatives is not imperative; it is the substance of the analysis that matters. (See *City of Rancho Palos Verdes v. City Council* (1976) 59 Cal.App.3d 869, 892.)

E1-4 As a point of clarification, the Proposed Project would result in a total of ~~four~~ three significant and unavoidable impacts (Impacts AQ-1, AQ-2, and AQ-3 ~~and~~ N-3). Additionally, while the CEQA Guidelines provide that the range of potential alternatives “shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects” (CEQA Guidelines §15126.6(c)), they do not limit the discussion of alternatives to those that fit within these parameters. (CEQA Guidelines §15126.6(a) [“There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.”]; see also 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2006) §15.7, p. 736 [“Although an EIR should focus on alternatives that will reduce or avoid environmental impacts of the proposed project, this does not prevent an EIR from also presenting alternatives that will provide greater project benefits at increased environmental cost.”].)

Moreover, there may be impacts of a proposed project which are identified as potentially significant at the outset of preparation of an EIR and which are later determined to be less than significant. As the range of alternatives must necessarily be selected before the analysis in the Draft EIR has been conducted, it is reasonable to discuss alternatives that have the potential to reduce or avoid the potentially significant impacts of the project, even if such impacts are not found to be significant in the Draft EIR.

For example, the Notice of Preparation (“NOP”) for the El Casco Project summarized the potential impacts that the CPUC believed could arise from implementation of the Proposed Project. Among these were the following:

- “There is the potential for the Proposed Project to have an adverse effect on scenic vistas in the immediate vicinity of the Proposed Project route or in sufficiently close proximity such that views from and to those vistas would be adversely affected by the Proposed Project.” (NOP, Attachment 1.)

Therefore, the PUA, which was designed to reduce impacts of the proposed route through the Sun Lakes community, was appropriately evaluated as a potential alternative to the Proposed Project that could avoid or substantially lessen one or more of the Proposed Project’s potentially significant effects.

With respect to baseline, the Recirculated Draft EIR appropriately compares the impacts that would be caused by the PUA to those that would be caused by the Proposed Project. (See CEQA Guidelines §15126.6(d).) While discussion of potential benefits is not required by CEQA, EIRs often discuss the potential benefits of a project and its alternatives in addition to potentially significant adverse impacts. This is not the equivalent of using an improper baseline. While the Recirculated Draft EIR acknowledges that the PUA would ultimately benefit the Sun Lakes golf course as it would remove the existing wooden 115 kV subtransmission poles and lines from the course, it does not interpret this ultimate benefit over baseline conditions to mean that the Proposed Project would have a significant impact. Rather, the EIR concludes on page D.3-27 that the Proposed Project would not result in a substantial long-term reduction in recreational values. Please note that whether the operational benefits of the removal of overhead subtransmission lines through the Sun Lakes Country Club golf course outweigh the significant adverse impacts of the PUA will be a decision for the decisionmakers at the time of project approval. The same is true with respect to aesthetic impacts and noise impacts. Please note that in the Recirculated Draft

EIR, the environmental superiority of alternatives is based on a comparison of significant impacts that would result from the Proposed Project and the alternatives identified in the EIR. It does not consider whether the Proposed Project or an alternative would improve existing environmental conditions. The language in Table E-2 was revised in the Recirculated Draft EIR to reflect these principles. This resulted in changes to the preferences assigned to land use and visual impacts. The preference assigned to noise impacts has also been changed based on the updated impact analysis in Section D.9 of the Recirculated Draft EIR, which changed in light of the new information provided by SCE on May 23, 2008. In response to this new information, the impact of corona noise on sensitive receptors was downgraded from a Class I (significant and unavoidable) to a Class III (less-than-significant) impact. Please see General Response GR-1 for a discussion regarding the change in determination of the Environmentally Superior Alternative. Please see response E1-15 for a more detailed discussion of the Draft EIR's noise analysis.

With respect to the comment regarding feasibility, a determination that an alternative is not economically feasible must be supported by evidence and analysis showing that the economic constraints are so great that the alternative cannot reasonably be implemented. (*Uphold Our Heritage v. Town of Woodside (Jobs)* (2007) 147 Cal.App.4th 587, 598-599; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1357; *Citizens for Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-1181.) Mere evidence of increased costs or lost profitability to the applicant is not sufficient to support a determination of infeasibility; the evidence must indicate that the increased costs or lost revenues “are sufficiently severe as to render it impractical to proceed with the project.” (*Citizens for Goleta Valley*, 197 Cal.App.3d at 1181; *Uphold Our Heritage*, 147 Cal.App.4th at 599.)

Please also note that an EIR must discuss alternatives “even if these alternatives...would be more costly.” (CEQA Guidelines § 15126.6(b).)

Also, please see the responses to the remainder of Comment Set E1, and responses to Comment Sets E-2 through E-5.

E1-5 Please see Response to comment E1-12 and E1-34 for an explanation of why of the significance criteria utilized in the analysis are appropriate. Please see Response to comment E1-4 for an explanation of why the baseline utilized in the analysis is correct.

The significance criteria utilized in the land use analysis are based on the checklist questions provided in Appendix G of the CEQA Guidelines, and have been tailored to suit the unique qualities and characteristics of the project, as is appropriate under CEQA. These same significance criteria have been used by the CPUC in a wide range of EIRs.

With regard to the land use analysis, while it is true that both the severity and the duration of impacts to recreation resources under the construction of the Partial Underground Alternative would be greater than the Proposed Project, the construction impacts for the underground portion of the Partial Underground Alternative would cease after approximately 10 months. Please note that because the long-term environmental impacts of the Proposed Project and the Partial Underground Alternative are so similar, the determination of the Environmentally Superior Alternative in the Recirculated Draft EIR considered short-term construction impacts. The Partial Underground Alternative would result in greater short-term construction impacts in all resource areas analyzed in the EIR over a longer period of

time due to the intense construction activities that would occur during the 10 month construction period required to construct this alternative. In addition, short-term construction impacts for the Partial Underground Alternative would be significant and unavoidable with respect to land use. Whether the operational benefits of the removal of overhead subtransmission lines through the Sun Lakes Country Club golf course and the enhancement to the recreation resource that this would represent outweigh the significant adverse impacts of the PUA will be a decision for the decisionmakers at the time of project approval.

With regard to noise, please see Response E1-15 for details. ~~The PUA is preferred over the Proposed Project with respect to noise.~~ Also, see Response E1-4. The PUA is not considered preferable to the Proposed Project with respect to noise. As stated in the commenter's letter, the original Draft EIR's conclusion that the PUA is preferred over the Proposed Project for the issue area of noise was based on the premise that corona noise from the Proposed Project would be a significant and unavoidable impact. As described in Section D.9, Noise, of the Recirculated Draft EIR, SCE provided information that there is currently corona noise generated along the section of the line between the Banning and Maraschino Substations. Therefore, corona noise is part of the existing baseline conditions in this area. SCE provided further information that concludes that corona noise generated by the Proposed Project would be lower than the corona noise generated by the existing line. Thus, the impact of corona noise was downgraded from a Class I (significant and unavoidable) to a Class III (less-than-significant) impact in the Recirculated Draft EIR, and the Proposed Project is preferred in the issue area of noise.

With regard to visual resources, as stated in the discussion of Impact V-16 in Draft EIR Section D.12 (Visual Resources), the visual impact on views external to the Sun Lakes Development (from South Highland Home Road in this case) would be adverse. However, with removal of the existing facilities, the incremental visual change would not be significant though it would be adverse. Whether the overall positive visual benefit that would be experienced by the majority of residences and all of the golfers along the ROW within the development, as a result of the removal of the existing facilities as illustrated in Draft EIR Figure D.12-16 outweigh the PUA's significant impacts is a decision for the decisionmakers at the time of project approval.

- E1-6** The Draft EIR does not understate the impacts associated with the PUA as is reflected by the detailed analysis contained in the 11 issue area subsections of Draft EIR Section D (Environmental Analysis) and Section D.9 (Noise) of the Recirculated Draft EIR. All impacts related to the PUA, both short-term construction-related and long-term operation-related, are thoroughly discussed in the Section D of the Draft EIR and Section D.9 (Noise) of the Recirculated Draft EIR.

The Environmentally Superior Alternative has been re-evaluated and is identified in the Recirculated Draft EIR, Section E (July 2008) as the Proposed Project. Please see General Response GR-1 for a discussion regarding the change in determination of the Environmentally Superior Alternative.

- E1-7** The comment correctly notes that Table E-2 identifies the Proposed Project as being preferred with respect to cultural resources, because Proposed Project construction would have the least potential to impact undiscovered cultural resources when compared to the PUA or the CPUC's Northerly Route Alternative. Operation and maintenance of the Proposed Project would result in no long-term cultural resource impacts, which is identical

conclusion for the PUA. It should be noted that text narrative and tabular data presented in Draft EIR Section E were considered equally when conducting the comparison of alternatives. Therefore, since Table E-2 acknowledges that the Proposed Project is preferred for undiscovered cultural resources, it is not necessary to revise any text in Section E.

Please note that Tables ES-2 and E-2 of the Recirculated Draft EIR identifies the Proposed Project as preferred for all 11 issue areas, which is used in determining the Environmentally Superior Alternative (Proposed Project). The Partial Underground Alternative is no longer preferred in any issue area. Please see General Response GR-1 for a discussion of the change in the Environmentally Superior Alternative.

E1-8 SCE confirms that the California legislature has directed various public agencies such as the California Air Resources Board (CARB) to address climate change, and that throughout California, public actions are needed and are being taken to manage greenhouse gas emissions in order to reduce the adverse environmental effects of global climate change. Although the state is in the process of adopting regulations for GHG, the California Attorney General has asserted that an EIR should consider, analyze, and where appropriate, mitigate the impacts caused by a project on GHG and climate change. Given that CEQA requires the CPUC to analyze the project's potentially significant impacts on the environment, that the project would cause GHG emissions, and that GHG emissions contribute to climate change, it is not premature or speculative for the CPUC to analyze the project for impacts to global climate change.

The method of analysis in CEQA documents is subject to lead agency discretion and will evolve as GHG regulations are formed. It is always the responsibility of the lead agency to select a threshold of significance and identify feasible mitigation measures. Determining significance depends on defining what would be a "substantial" level of greenhouse gas emissions. CEQA provides some direction on the use of "substantial" but the law leaves the lead agency to decide whether one molecule, one ton, or some other level is significant. Among the various possible definitions of "substantial," the Draft EIR determined that any level of net GHG increases could be called "substantial." The threshold in the Draft EIR was selected because no guidance is available from any resource agency to support an explicit threshold, and given CARB's mandate to reduce statewide emissions to 1990 levels, a project causing any net increase could contribute to CARB missing this goal since it would contribute to GHG increases, contrary to CARB's mandate. The "no net increase" approach to managing emissions is common for stationary sources of traditional, criteria air pollutants like ozone precursors or particulate matter, where major sources can only be permitted after demonstrating sufficient emission reductions or offsets. Satisfying the GHG threshold in the Draft EIR would ensure that the project causes no net increase. The passage of Senate Bill 97 confirmed the requirement that environmental documents analyze the impacts of GHG emissions. SB 97 requires the Office of Planning and Research (OPR) to develop guidelines for the feasible CEQA mitigation of GHG emissions, but until these guidelines become available in late 2009, project-related GHG emissions should be considered in this current, albeit limited, regulatory context.

The conclusion of a significant impact is not premature because while mitigation measures to reduce or offset GHG were considered, none were found to fully mitigate the project's GHG emission increases. Feasible mitigation measures are available and known to reduce or offset GHG emissions. For example, the Final EIR includes revisions to clarify that a cap-and-trade program could be used to cost-effectively reduce GHG emissions from the

electricity sector, but allowances and offset programs for carbon trading in California are still in the developmental phase (as found by CPUC in Rulemaking R. 06-04-009). Providing offsets for GHG pollutants was considered but rejected because it is a relatively untested strategy at this time. As such, this potential mitigation strategy was not identified in the Draft EIR.

E1-9 See Response E1-8 for the rationale supporting the significance criterion in the Draft EIR. The threshold of significance seeks no net increase of GHG emissions, and this could be achieved if emissions of SF₆ were either eliminated or fully offset by reductions in GHG. SCE suggests that the Proposed Project's emissions of SF₆ should be considered "de minimis" but does not provide any rationale for what level of SF₆ emissions would qualify as "de minimis." SCE does not identify any feasible alternatives to SF₆ emissions or strategies to reduce GHG in a way that would offset the effects of the Proposed Project's SF₆ emissions. Without any alternatives to eliminate the Proposed Project's SF₆ emissions or offset the effects, the conclusion of a significant impact remains appropriate.

The GHG Emissions Performance Standard established by CPUC (Draft EIR, p. D.2-14) does not contemplate a significance threshold that is greater than zero, as asserted by the comment. Historically, baseline GHG emissions from fossil fuel-fired electricity generation have been above 1,100 pounds per megawatt-hour. Compliance with the Emissions Performance Standard ensures that power purchases achieve a level of GHG lower than the historic baseline level of GHG from fossil-fuel fired electricity generation. By forcing power purchases to comply with the Emissions Performance Standard, the CPUC is leading the utilities in a direction of GHG reduction when compared to utilities' actions without the standard. In this way, new power purchases result in emissions lower than the baseline emissions, which is consistent with the "no net increase" approach used in the Draft EIR.

The Draft EIR (Section D.2.2.4) describes climate change policies and regulations in place at this time and considers them in the analysis of GHG impacts. SCE's efforts to manage SF₆ emissions are noted and recognized. The California Climate Action Team guidelines were reviewed (Draft EIR, p. D.2-13), and they do not include any specific actions that would apply to the El Casco System Project. Without any specifically applicable GHG reduction measures set forth by the Climate Action Team, there is no additional information on the Proposed Project's consistency that is needed in the Final EIR. Mitigation Measure AQ-3 would ensure that SCE's efforts to manage SF₆ continue to be implemented and verified for the El Casco System Project.

E1-10 The CPUC recognizes that there is a great deal of public interest and concern regarding potential health effects from exposure to electric and magnetic fields ("EMF") from power lines. To address public concerns about EMF, the EIR provides information regarding EMF associated with electric utility facilities and the potential effects of the Proposed Project related to public health and safety. As the EIR explains, potential health effects from exposure to electric fields from power lines is typically not of concern since electric fields are effectively shielded by materials such as trees, walls, etc. Therefore, the information in the EIR related to EMF focuses primarily on exposure to magnetic fields from power lines. However, it does not consider magnetic fields in the context of CEQA or determination of environmental impacts. This is because there is no agreement among scientists that EMF does create a potential health risk and because there are no defined or adopted CEQA standards for defining health risk from EMF. As a result, EMF information is presented in

response to public interest and concern. Disclosure of such information is consistent with the EIR's role as "an informational document." (Pub. Res. Code § 21061.)

As a point of clarification, the analysis of EMF related to the PUA presented in Section D.7 does not suggest that the PUA be implemented as EMF mitigation. Instead, it acknowledges that EMF levels at the edge of the ROW within the Sun Lakes Community would be lower for the PUA (0.2 mG) than for the Proposed Project (5.7 mG). Therefore, the fact that the PUA would exceed 4 percent of the cost of Proposed Project construction is not relevant. Further, while CPUC decisions D.93-11-013 & D.06-01-042 set limits for the costs of reducing EMFs, these are not absolute limits. The CPUC has stated, "ORA recommends that the Commission not consider 4 percent as an absolute cap." (D.06-01-042, section IV.)

The discussion of EMF presented in Section D.7 of the original Draft EIR was based on data provided in SCE's Field Management Plans (FMP) for the Proposed Project and alternatives (see Draft EIR Appendix 5), which are based on the requirements of CPUC Decision 93-11-013 as incorporated into both the CPUC and SCE EMF Design Guidelines. Both the SCE EMF Design Guidelines (Table 6-1, Criteria to Determine Whether a Field Management Plan is Required) and CPUC EMF Design Guidelines (Table 3-1, Criteria to Determine Whether a FMP is Required) contain identical criteria and FMP preparation instructions and requirements. The EMF data included in the Draft EIR was intended to present information showing the differences in the estimated EMF levels generated (as determined by SCE) by the Proposed Project and alternatives. As described in Draft EIR Section C (Alternatives) and Appendix 1 (Alternatives Screening Report), the Partial Underground Alternative was designed and evaluated in the EIR based on requirements of the CEQA Guidelines (Section 15126.6(a)), and was not introduced or evaluated as a "no-cost or low-cost step to reduce EMF levels" as required by CPUC Decision 93-11-013 and incorporated into both the CPUC and SCE EMF Design Guidelines.

E1-11 The Draft EIR appropriately analyzes the impacts of a terrorist attack under CEQA. As a preliminary matter, terrorist attacks on infrastructure are not "highly speculative" events, but rather reasonably foreseeable potential events identified in the policies and procedures of Homeland Security. (See http://www.dhs.gov/xprevprot/programs/editorial_0827.shtm; *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission* ("NRC") (9th Cir. 2006) 449 F.3d 1016, 1030 ["[I]t was unreasonable for the NRC to categorically dismiss the possibility of terrorist attack on the Storage Installation and on the entire Diablo Canyon facility as too 'remote and highly speculative' to warrant consideration under NEPA."].)

Whereas *San Luis Obispo Mother's for Peace v. NRC* dealt specifically with requirements under NEPA, California Courts frequently rely upon federal cases construing NEPA in determining the scope of application of CEQA. (See *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 200; *Friends of Mammoth v. Board of Supervisors of Mono County* (1972) 8 Cal.3d 247; see also *City of Carmel-by-the-Sea v. U.S. Department of Transportation* (9th Cir. 1997) 123 F.3d 1142, 1163.)

Furthermore, CEQA does not limit the information that may be included in an EIR, and the CEQA Guidelines specifically provide that "[e]conomic and social information *may be included in an EIR or may be presented in whatever form the agency desires.*" (CEQA Guidelines § 15131, emphasis added.) The Draft EIR acknowledges that a discussion of "the potential for the Proposed Project to be vulnerable to terrorist attacks, and thereby expose people and property to damage or destruction" is "not specifically required by

CEQA to be included in EIRs. However, in an effort to provide information to the public and decision makers, CPUC has provided a brief assessment of such issues.” (Section F.2.) Such a discussion is entirely appropriate under CEQA. (Pub. Res. Code § 21061 [“The purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment;...”].)

Moreover, while purely economic and social effects are not treated as environmental effects under CEQA, a terrorist attack on a transmission line has the potential to cause physical environmental effects, including fires, air pollution, power outages, release of hazardous substances, and/or death, all of which are proper topics of discussion under CEQA. (See Pub. Res. Code §§ 21068, 21100(d), 21060.5.) Further, “human” impacts are not strictly a NEPA issue area; CEQA requires a Lead Agency to find that a project may have a significant effect on the environment where “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” (CEQA Guidelines § 15065(a)(4).)

In this instance, however, the Draft EIR ultimately concludes “the overall risk of an attack on the El Casco System is not considered likely.” (Section F.2.3.3). In making this conclusion, the analysis incorporates existing infrastructure into the baseline. The analysis states that “since other electrical distribution system infrastructure is located in the same general area, development of the Proposed Project is unlikely to inherently increase the likelihood of a terrorist attack on local electrical infrastructure.” (Section F.2.3.3). Analysis of these impacts is proper because the Proposed Project would significantly alter the existing infrastructure. The existing 60-65 foot wooden towers would be replaced by towers ranging from 65-85 feet, and a completely new substation would be built.

With respect to the comment regarding project benefits, CEQA leaves the discussion of a project’s benefits largely to the discretion of the lead agency. “[D]iscussion of a project’s potential benefits is not required by CEQA or the Guidelines...Overstating the benefits or describing them at great length may taint the remaining analyses...” (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2006) § 13.34, p. 663.)

E1-12 Please note that the checklist provided in Appendix G of the CEQA Guidelines is “only a suggested form” with a list of “sample” questions to help a lead agency determine whether an EIR should be prepared for a particular project; it is not a mandatory set of thresholds. (See CEQA Guidelines, Appendix G.) The CEQA Guidelines explain that “[s]ample forms for an applicant’s project description and review form for use by the lead agency are contained in Appendices G and H...These forms are only suggested, and public agencies are free to devise their own format for an initial study.” (14 Cal. Code Regs. § 15063(f).) Moreover, case law makes clear that a lead agency should not rely exclusively on Appendix G. (See *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109-1112.) Accordingly, the significance criteria used in an EIR is not limited to the questions provided in Appendix G.

Please also note that the CPUC has not adopted any significance criteria “for general use” pursuant to CEQA Guidelines § 15064.7 or otherwise. The CPUC’s Information and Criteria List explicitly states that “[t]here [are] no strict criteria for determining the significance of an impact. The determination ultimately requires the exercise of reasoned

judgment taking into account the nature of the project and environmental setting.”¹ (Information and Criteria List, Section V.4.) In addition, the Information and Criteria List sets out the requirements for preparation of a Proponents’ Environmental Assessment (“PEA”) and does not govern preparation of an EIR. (See CPUC Rules of Practice and Procedure, Rule 2.4(b).)

CEQA gives the lead agency discretion to determine appropriate significance criteria. “The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not always possible because the significance of an activity may vary with the setting.” (14 Cal. Code Regs. § 15064(b).) Therefore, “a lead agency has the discretion to determine whether to classify an impact described in an EIR as ‘significant,’ depending on the nature of the area affected.” (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 493.)

The significance criteria used in the Draft EIR are largely derived from Appendix G, which provides a good framework for determining a project’s environmental impacts. However, the EIR has tailored Appendix G to suit the unique qualities and characteristics of the project. The impact analyses themselves explain how the environmental impacts would arise and provide evidence and support for usage of the criteria applied. The impact analyses for Air Quality, Land Use, and Transportation and Traffic can be found in Sections D.2.3.3, D.3.3.3, and D.11.3.3 of the Draft EIR respectively.

E1-13 Please see Response E1-3, which explains that the underground portion of the PUA route is one component of the PUA, which is an alternative to the Proposed Project as a whole. Response E1-3 also explains that this is appropriate under CEQA.

Because Comment E1-13 does not identify the “several instances” that the Draft EIR evaluates the impact of the PUA only as they relate to the one-mile underground segment of the 115 kV subtransmission line, the CPUC cannot specifically respond to those instances. However, the Draft EIR clearly explains that the PUA “would contain the same elements as the proposed El Casco System Project..., except for the approximately one-mile portion of the alignment through the Sun Lakes community.” (Section C.4.2.2) Therefore, it is appropriate for the analysis to compare the potential impacts of the underground component of the PUA with the potential impacts of the Proposed Project along that same portion of the route.

E1-14 There were only two instances in the Draft EIR where mitigation was presented associated with Class III impacts. Both instances occurred in the Visual Resources Section (D.12). Mitigation Measures V-1a and V-1b were recommended for Impact V-1 because this impact is significant without mitigation for the substation and staging areas. Therefore, mitigation Measures V-1a and V-1b have not been deleted. However, as this impact is less than significant (Class III) for the subtransmission line, loop-ins, and fiber optic route, the text has been revised as described in Response E2-109 (also see Section 4.0). For Impact V-10, the text has been changed back to an adverse but less than significant (Class III) visual impact as shown in Section 4.0 of the Final EIR.

¹ The comment references an “Appendix 1” to the CPUC’s Information and Criteria List. Please note that no such appendix exists.

E1-15 Please refer to General Response GR-1 for a detailed description as to the methodology used to evaluate noise impacts in the originally published Draft and Final EIRs, and how new information provided by SCE subsequent to publishing of the originally published Draft and Final EIRs regarding the ambient noise levels adjacent to the existing single-circuit 115 kV subtransmission line and those calculated for the Proposed Project resulted in a change of noise analysis based on this new information. Furthermore, as discussed in Recirculated Draft EIR Section D.9 (Noise), recent information provided by SCE shows that the Proposed Project would result in a decrease in corona discharge noise over corona noise generated by the existing 115 kV subtransmission line. Modeling conducted by SCE subsequent to the release of the Final EIR, as described in Section D.9 (Noise) of the Recirculated Draft EIR, indicates that the line from Banning Substation to Maraschino Substation currently produces corona noise at approximately 31 dBA under the centerline of the equipment. Corona noise generated by the Proposed Project would be approximately 24 dBA. Therefore, a reduction in existing ambient noise conditions immediately adjacent to the proposed Project ROW would occur. As discussed General Response GR-1 and presented in the Recirculated Draft EIR, the change in noise analysis resulted in less-than-significant (Class III) operational noise impact for the Proposed Project and a change to the Environmentally Superior Alternative.

~~The Draft EIR analyzed corona noise from the Proposed Project and alternatives based on information provided in the Proponent's Environmental Assessment (PEA), filed by SCE as part of their application for a Permit to Construct (Application No. A.07 02 022). The Draft EIR analysis also considered existing noise sources within the ROW. Page 3.11 2 of the PEA states that "In general, the proposed 115 kV line route would pass through uninhabited areas with relatively low ambient noise levels" and in some areas would "pass adjacent to residential neighborhoods." In addition, the subtransmission line would pass through several recreation areas, including the Norton Younglove Reserve and the Sun Lakes golf course. It should be noted that during public scoping prior to preparation of the Draft EIR, members of the Sun Lakes community located adjacent to the proposed ROW expressed concern about corona noise associated with the Proposed Project.~~

~~As stated in the recent Yreka Weed Transmission Line Upgrade Project, Southern Portion DEIR (July 2007), during adverse weather conditions such as fog or rain, 115 kV transmission lines have been estimated to typically generate between 30 and 40 dBA at 90 feet from the outer conductor (WIA, 1998).~~

~~As noted on Draft EIR Page C 20, "It should be noted that there is a buried high pressure natural gas line co located with SCE's existing 115 kV subtransmission line through the Sun Lakes community. These two utilities are within a 100 foot utility corridor that runs east to west through the Sun Lakes community. SCE retains an easement along the northern 50 feet of the corridor, while the Southern California Gas Company retains the easement along the southern 50 feet of the corridor." The ROW through the Sun Lakes community was visually depicted in Draft EIR Figure C 4. Based on this information as presented in the Draft EIR and field observations, residential receptors would range in distance from approximately 25 50 feet from the proposed new double circuit 115 kV subtransmission line.~~

~~Ambient noise conditions are generated by major noise sources near receptors, such as vehicle traffic and nearby land uses. As shown in Draft EIR Figure C 4, the residential sensitive receptors located within the Sun Lakes community located approximately 25 50~~

~~feet from the proposed new El Casco System Project double circuit 115 kV subtransmission line are not located in proximity to roadways containing considerable traffic or any noise generating land uses. Due to the positioning of the proposed El Casco ROW, these residential structures shelter roadway noise from the backside of the receptors facing the ROW. The land uses in the immediate vicinity of these receptors are a golf course, open space land, and other residential sensitive receptors. These conditions warrant considering the Sun Lakes community receptors as a rural residential type receptor. Therefore, ambient noise conditions at these locations were assumed to be extremely low during the nighttime hours (likely below 40 dBA), as shown in Draft EIR Figure D.9 2 that designates rural residential as having ambient noise levels below 40 dBA.~~

~~As stated in the Federal Transit Administration (FTA) 1995 publication Noise and Vibration Impact Assessment: "...noise levels attenuate at a rate of 6 dBA every doubling of distance." Using this general principle, noise levels would elevate at a similar rate. As the sensitive residential receptors within the Sun Lakes community would be located over half the distance as those used in the Yreka Weed Transmission Line Upgrade Project Southern Portion DEIR (a maximum of 40 dBA at 90 feet during adverse weather conditions), it is assumed that receptors approximately 25 50 feet from the proposed new El Casco System Project 115 kV subtransmission line could experience maximum adverse weather condition corona noise levels no more than 43 46 dBA.~~

~~Therefore, based on (1) the immediate distance of residential receptors within the Sun Lakes community to the proposed El Casco System Project 115 kV subtransmission line, (2) the likely potential for these receptors to experience maximum adverse weather condition corona noise levels up to 43 46 dBA from the proposed El Casco System Project, and (3) the likelihood of low ambient noise conditions below 40 dBA at these receptors during evening and nighttime hours, the Proposed Project could result in an increase in noise levels to these receptors in excess of those deemed allowable by the City of Banning noise ordinance (City Ordinance #1138) which states "Loud, unusual, and unnecessary noises are also prohibited, including equipment causing noise increases of more than 5 dBA over the ambient" and exceed the Draft EIR threshold of significance criteria identified in Draft EIR Section D.9.3.1, which states "cause a substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project."~~

~~Corona noise is highly variable and dependent on atmospheric conditions as well as condition of the conductors, insulators, and other components of the transmission line. Therefore, it is not known what the exact level of corona noise would be at a given time along the proposed 115 kV subtransmission line route, and it cannot be concluded that it would be "significantly" less than 50 dBA.~~

~~The Draft EIR references the PEA when it states that corona noise is typically 40 to 50 dBA for a 500 kV line (page 3.11 16). However, as noted in the fact sheet on transmission line noise referenced by the commenter, and adopted by the CPUC and LADWP for transmission projects, the 40 to 50 dBA range is for a typical transmission line during relatively dry conditions. During high humidity conditions (over 80 percent), this noise can increase to 60 dBA or more.~~

~~Weather conditions are highly variable in general and vary from day to day and year to year. For an example of recent wet weather conditions in the Proposed Project area, year 2007 archived meteorological data for the City of Riverside was obtained from the National~~

Weather Service (NWS) for the nearby City of Riverside, which is located approximately 24 miles west of the City of Banning. Equivalent detailed NWS meteorological data for the City of Banning is not available. Therefore, due to the proximity of the City of Riverside to the City of Banning, similar or identical weather conditions would be expected. As shown in the table below, from March through July, the area experienced 50 percent or more foggy days during each month.

City of Riverside Wet Weather Days: February 2007 Through December 2007			
	Days of Haze	Days of Fog	Days of Rain
February	13	11	4
March	19	15	0
April	26	20	1
May	25	20	0
June	26	18	0
July	20	5	0
August	13	4	0
September	6	3	2
October	9	5	0
November	14	14	1
December	3	1	2

Source: National Weather Service [online]: <http://www.weather.gov/climate/index.php?wfo=sgx> accessed February 28, 2008

Note: The factors and criteria determining the moisture content and hours per day classifying haze, fog, and rain conditions is not specified in the data by the NWS.

The commenter notes that “if any corona noise were to occur on the 115 kV line, it would likely require extremely foul weather. In this case, the foul weather itself would likely create higher ambient noise than any corona noise created by the 115 kV line.” However, as noted above, corona noise is particularly pronounced during periods of high humidity including fog and light rain; thus the assertion that the “foul weather” would create higher levels of ambient noise is generalized and incorrect.

Noise impacts of the Proposed Project and alternatives were evaluated based on existing noise sources from within the Proposed Project and alternative ROWs near adjacent sensitive receptors and applicable information contained within the PEA and recent subtransmission line project environmental analyses completed for the CPUC and SCE. The subtransmission line currently in place does not carry current between Maraschino and Banning Substations, except in the event of an emergency. Thus, corona noise is not a typical component of the ambient noise environment near the sensitive receptors located adjacent to this portion of the subtransmission line route. Because the Proposed Project and alternatives would introduce corona noise as a new permanent noise source within the ROW in areas that do not currently experience it on a regular basis, this would be considered a new permanent source of noise that could cause a substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project, as described above, and was considered to be significant. Because there is no feasible mitigation to reduce or eliminate the corona noise that would be generated by the Proposed Project or alternatives (as described in Section D.9 of the Draft EIR), this impact was determined to be significant and unavoidable.

E1-16 With respect to the exemptions provided in General Order (“G.O.”) 131-D, Section B.1, please note that such exemptions are not absolute. They are expressly qualified by the

exceptions to the exemptions set forth in Section B.2 of G.O. 131-D, including conditions under which there is “a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” Therefore, the G.O. 131-D exemptions do not “assume” that any project will have less-than-significant environmental impacts.

Moreover, the application of such exemptions is irrelevant to the El Casco System Project, as SCE did not file for an exemption, but instead submitted an application for a Permit to Construct under G.O. 131-D, Section IX.B. The Recirculated Draft EIR’s conclusions on noise are consistent with CPUC policy and procedures. Please note that the analysis of noise presented in the Recirculated Draft EIR in light of the new information provided by SCE presents the Proposed Project as the Environmentally Superior Alternative, and that corona noise is no longer considered a significant (Class I) impact of the Proposed Project.