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April 11, 2008

CPUC/BLM  
c/o Aspen Environmental Group  
235 Montgomery Street, Suite 935  
San Francisco, CA 94104

Re: Draft EIR/EIS for Sunrise Powerlink Project  
CPUC Case No. 06-08-010

To Whom it May Concern:

Having reviewed the referenced Draft Environmental Impact Report/Environmental Impact Statement [DEIR], I must express my concerns about San Diego Gas & Electric's [SDG&E's] proposed Sunrise Powerlink Project [Project]. As a general matter, the Project's significant environmental impacts do not appear, from the DEIR, to be either susceptible to adequate mitigation or justifiable by overriding considerations. Further, the DEIR has failed to consider all necessary aspects of the Project, in that impermissible piecemealing is evident. Based upon substantial evidence in the DEIR's administrative record, including these comments, it is evident a fair argument can be and has been made that significant impacts may occur that have not yet been adequately evaluated. As a consequence, the DEIR, including the scope of the proposed project, other project alternatives and mitigation, should be amended and recirculated to reflect additional analysis and evidence. See CEQA Guidelines §§15065 and 15088.5.

**I. The DEIR Suggests that a Statement of Overriding Considerations Cannot be Supported.**

A fundamental tenet of environmental law in California, under the California Environmental Quality Act [CEQA], is that where a proposed project would have significant adverse environmental consequences that could not be mitigated, it may only be approved if, with respect to *each such effect*, the record contains substantial evidence to support a finding that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." CEQA, §21081(b); *see also* CEQA Guidelines, §§15091(b) and 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022 (finding must be stated and supported by substantial evidence, and accompanied by an explanation of how the evidence supports the finding).

Thus, the CPUC is required to trace the "analytic route" from raw evidence to its conclusions. 11 Cal. 3d at 515, 113 Cal.Rptr. at 841. As highlighted by the California Supreme Court, these findings requirements will mean the lead agency will "draw legally relevant subconclusions supportive of its ultimate decision" that would "facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions." 11 Cal. 3d at 516. Findings cannot simply contain bare conclusions. See CEQA Guideline Section 15091. *Rio Vista Farm Bureau Ctr. v. County of Solano* (1992) 5 Cal. App. 4th 351, 373; *Sacramento Old City Ass'n v. City Council* (1991) 229 Cal. App. 3d 1011, 1034; *Resource Defense Fund v. LAFCO* (1987) 191 Cal. App. 3d. 886; *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal. App. 3d 433, 440; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App. 3d 1022, 185 Cal.Rptr. 41. Findings can be supported by and incorporate by reference those facts found in the EIR or other documents in the record. However, this assumes that such facts exist in the record. Explicit written findings on an issue may be required when the record does not actually show the reason for the lead agency's action. See *Resource Defense Fund v. LAFCO* (1987) 191 Cal.App.3d 886, 236 Cal.Rptr. 794. See *CEB's Practice Under the California Environmental Quality Act*, V. 1, Ch. 17, Sections 17.22-17.28 (Rev. Nov. 2005).

At page ES-4 of the Executive Summary, the DEIR states that the Project would give rise to "50 significant, unmitigatable impacts." Most troubling among these, as stated at page ES-25, "because total construction GHG [greenhouse gas] emissions exceed the GHG reductions achieved due to avoided power plant emissions over 40 years of transmission line operation, the Proposed Project would cause an overall net increase in GHG emissions and a significant climate change impact." For a Project that has been sold to the public by the proponent as necessary to increase our reliance on renewable energy sources that reduce GHG emissions, this is a devastating conclusion. It calls into grave question the Project's environmental value, even if one assumes that the Project will lead to greatly increased use of renewable generation sources.

I see nothing in the DEIR that would suggest that overriding considerations would, or could, support approval of the Project despite this serious environmental harm, to say nothing of dozens of others. Indeed, the importance of this effect is underscored by the fact that California law, the Global Warming Solutions Act, AB 32, commits the state to a goal of an 80% reduction in GHG emissions by 2050 – exactly corresponding to the life of the proposed Project. It is difficult to imagine overriding considerations so powerful that they could justify knowingly moving California farther from this legislatively mandated goal. Certainly the DEIR reveals none. Unless such facts emerge in a manner that is not apparent in the DEIR, the law would potentially preclude Project approval as currently proposed.

## II. The DEIR Ignores an Obvious Foreseeable Expansion of the Project, Resulting in Unlawful “Piecemealing.”

It is fundamental law under CEQA that environmental analysis must consider not only the proposed Project as identified by its proponent, but also the “whole of the action” including any “future expansion” that is “a reasonably foreseeable consequence of the initial project” that will “likely change the scope or nature of the initial project or its environmental effects.” *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, and *McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District* (6<sup>th</sup> Dist. 1988) 202 Cal. App. 3d 1136, 1143; *see also* Remy & Thomas’ *Guide to CEQA* (11<sup>th</sup> Ed. 2007) at 92-93; *and see* CEQA § 21065 and CEQA Guidelines §15378.

The proponent’s application expressly states an intention that the Project will lead to a 500 kV “Full Loop” into Southern California Edison territory. See SDG&E August 4, 2006 Application, p. VI-4 (“The Full Loop would complete the 500kv loop through Southern California, connecting SCE’s 500kV Palo Verde-Devers-Valley-Serrano system to SWPL.”) As witness Bill Powers has observed in his Phase II testimony, “the Full Loop described by SDG&E is missing one piece, an interconnection between the Sunrise Powerlink’s Central substation near Lake Henshaw and the LEAPS 500 kV substation on Camp Pendleton’s northern boundary.” Bill Powers, March 12, 2008 Phase II Testimony for Powers Engineering, p. 15. Given that the Full Loop is a stated intention of the Project’s proponent, it can hardly be doubted that the interconnection that Mr. Powers describes is a “reasonably foreseeable” future expansion of the Project. The DEIR acknowledges the foreseeability of this expansion at page B-31, but fails to analyze it within the “whole of the action.” It is obvious that this foreseeable expansion would add environmental impacts beyond those of the Project as proposed. Even if not analyzed as a part of the Project, they should, at a minimum, have been analyzed as “cumulative impacts.” *Arviv Enterprises, Inc. v. South Valley Area Planning Commission* (2002) 101 Cal. App. 4<sup>th</sup> 1333; *see also* CEQA Guideline §§15064 and 15130. There is no reason to believe that the interconnection to SCE territory would, by itself, increase the use of renewables. However, construction of such a connection would likely produce GHG emissions in a manner similar to those resulting from the proposed Project. In all likelihood, then, the disturbing negative impact of the Project on overall GHG emissions over the Project’s life, described in Section I of this comment letter, would be exacerbated by the interconnection to SCE. The DEIR’s failure to analyze this possibility is a significant defect. *See also* CEQA Guidelines §§15082, 15121 and 15124.

In addition, the reasonably foreseeable consequence of the Project, with these additional transmission lines, is a potential environmental impact on or to the La Jolla Indian Reservation. Neither consultation with representatives of the La Jolla Indian Reservation nor analysis of these potential direct or cumulative impacts is reflected in the DEIR. *See* Bill Powers, March 12, 2008 Phase II Testimony, pp. 18, 20 and 21. *See* CEQA §§21104 and 21153, and CEQA Guidelines §§15064.5(d) and 15129.

### **III. The DEIR Fails to Adequately Address an Aggressive, In-Basin Solar Rooftop Initiative.**

As the ALJ reportedly recognized on the first day of testimony in Phase II, the March 27, 2008 application of Southern California Edison in Case No. A-08-03-015 demonstrated the viability of large scale deployment of solar rooftop installations in urbanized areas. Such installations would promote reliability, cost efficiency, and the use of renewables – three purported goals of the proposed Project – but would not require major transmission expansions like the proposed Project, and thus would likely involve few of the Project’s dozens of unmitigatable impacts. Despite this potential, evidenced by both the recent SCE application and the testimony of Bill Powers, the DEIR’s “New In-Area Renewable Generation Alternative,” presented at §E.5, fails to capture the very real possibility of hundreds of megawatts of rooftop solar installations in the San Diego load center, focusing instead on the possible deployment of a questionable solar technology near Borrego Springs. The failure of the DEIR to consider a large scale, in-basin solar deployment is a significant defect because it underestimates the potential for such a plan to achieve the proposed Project’s goals while minimizing environmental impacts. Under CEQA, the Project alternatives that must be considered “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.

### **IV. The DEIR Fails to Adequately Analyze and Consider the Need for Reasonably Feasible Mitigation.**

Many of the DEIR’s conclusions that certain impacts have been mitigated, or that other mitigation is infeasible, are not supported by the record. Furthermore, other reasonably feasible mitigation has yet to be fully explored. I refer the CPUC to the various comments in the record prepared by experts in their field to demonstrate why further analysis and clarification on the mitigation proposed is critical to a determination of the adequacy of the proposed Project and alternatives. Mitigation should consider reasonable and feasible on-site mitigation measures as well as appropriate off-site measures. *See* CEQA Guidelines §§15091, 15097 and 15126.4. For example, the Greenhouse Gas Emission impacts associated with the proposed project and its cumulative effect needed to be more fully analyzed. This would and should have included an analysis of the impacts associated with the Full Loop and the impacts associated with sources of energy generation.

The proposed project’s carbon dioxide emissions (both direct, indirect and cumulative) should be adequately quantified in order to determine appropriate on-site and off-site mitigation. For example, the project mitigation does not adequately address, where feasible, GHG indirect or cumulative impacts from sources of energy generation such as coal generation, other fossil fuels, liquefied natural gas and solar troughs. Solar troughs, for instance, require a substantial water supply which in turn will require substantial energy consumption to get the water to the solar thermal plant. *See* Bill Powers March 12, 2008 Phase II Direct Testimony pp. 3 and 4. Such energy reliance is a potential consequence of the Project as proposed. The GHG reduction

benefits of the proposed Project should be compared against the GHG increases associated with the proposed Project, in order to analyze the net effect and feasible mitigation. *See Bill Powers San Diego Smart Energy 2020*. If, after analyzing and requiring all reasonable and feasible on-site mitigation measures for avoiding or reducing greenhouse gas-related impacts, the CPUC determines that additional mitigation is required, then the CPUC should consider additional off-site mitigation. Examples of off-site mitigation might include, after appropriate analysis, funding off-site mitigation projects (e.g., other alternative energy projects, or energy or water audits for existing projects) that will reduce carbon emissions; conducting an audit of SDG&E's other existing operations and agreeing to retrofit; or, purchasing carbon "credits" from another entity that will undertake mitigation. *See Office of the California Attorney General Global Warming Measures* at page 4, Updated: 3/11/08. For an example of concerns and recommendations raised by the California Attorney General on recent projects relating to GHG, see Attorney General Comments on the Chevron Energy and Hydrogen Renewal Project and Draft Environmental Impact Report (Project No. 1101974; SCH# 2005072117), dated July 9, 2007 and March 6, 2008; Attorney General Comments on the Great Valley Ethanol Final Environmental Impact Report, Hanford, Kings County, dated February 19, 2008; and, Attorney General Comments on the Notice of Preparation of EIR For American Ethanol Inc. Com Ethanol Plant, dated January 28, 2008.

## V. Conclusion

The DEIR, despite the shortcomings outlined in these comments, reaches numerous important conclusions and raises and analyzes countless important issues. Most important, it concludes that the proposed Project ranks nearly at the bottom of the various alternatives in terms of environmental impacts. Further, it suggests nothing that would justify approval of this apparently environmentally inferior proposal in spite of the environmental harms identified. If anything, as discussed here, the DEIR may underestimate the environmental superiority of at least some alternatives. In light of this, it seems likely that, absent major new revelations, the Project cannot be approved as currently proposed.

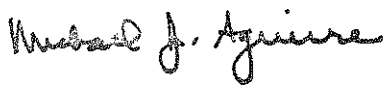
In a March 25, 2008 letter, I expressed my concern to SDG&E over its apparently imminent failure (stated in a recent SEC filing) to meet state requirements to include 20% renewables in its generation portfolio by 2010. SDG&E, as a franchised utility, owes the City a contractual duty to comply with all applicable laws regarding the use of its facilities in City right-of-way. The City has, for years, been critical of SDG&E's exclusive reliance on transmission expansions as a means of increasing use of renewables.

Based upon substantial evidence in the DEIR's administrative record, including these comments, it is evident a fair argument can be and has been made that significant impacts may occur that have not yet been adequately evaluated. As a consequence, the DEIR, including the scope of the proposed project, other project alternatives and mitigation, should be amended and recirculated to reflect additional analysis and evidence. *See CEQA Guidelines Section 15065 and 15088.5.*

Thank you for considering these comments.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By   
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