

Decision 20-09-034 September 24, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In The Matter of the Application of
San Diego Gas and Electric Company
(U902E) for a Permit to Construct the
TL 6975 San Marcos to Escondido
Project.

Application 17-11-010

**DECISION GRANTING SAN DIEGO GAS AND ELECTRIC COMPANY A
PERMIT TO CONSTRUCT THE TIE LINE 6975 SAN MARCOS TO
ESCONDIDO PROJECT**

Summary

This decision grants San Diego Gas & Electric Company's request for a permit to construct the Tie Line (TL) 6975 San Marcos to Escondido project. This proceeding is closed.

1. Proposed Project

Pursuant to Section IX(B) of General Order (GO) 131-D of the California Public Utilities Commission (Commission), and Rules 2.1 through 2.5 and 3.1 of the Commission's Rules of Practice and Procedure (Rules), San Diego Gas & Electric Company (SDG&E) requests a Permit to Construct (PTC) the Tie Line (TL) 6975 San Marcos to Escondido project.

The proposed project involves construction and reconductoring/re-energizing of approximately 12 miles of 69 kilovolt (kV) overhead electric power line from the existing San Marcos Substation to the existing Escondido

Substation. Execution of the projected would include a combination of construction of new overhead single-circuit electric power line structures, rebuild of existing structures from single circuit to double circuit, and reconductoring and re-energizing of existing conductors. The proposed project is broken into three segments¹:

- Segment 1 Rebuild: Rebuild of approximately 1.8 miles of an existing 69 kV circuit power line near the existing San Marcos Substation (TL 680C), add TL 6975 to create a double 69kV circuit, replace wood poles with steel poles, as well as minor work at the San Marcos Substation to accommodate this rebuilt circuit.
- Segment 2 New Build: Addition of approximately 2.8 miles of a new single-circuit 69 kV overhead power line from the end of Segment 1 to the existing Meadowlark Junction.
- Segment 3 Reconductoring/Re-Energizing: Reconductoring approximately 7.4 miles of a de-energized power line segment to the existing Escondido Substation. Segment 3 includes minor work at the existing Escondido Substation to accommodate this new circuit.

SDG&E is proposing this project to 1) mitigate violations of the North American Electric Reliability Corporation Reliability Criteria, 2) eliminate existing congestion in the Escondido/San Marcos area, and 3) improve power service reliability by providing an additional feed to the existing San Marcos substation.²

¹ Proponent's Environmental Assessment at 3-2, November 15, 2017.

² Proponent's Environmental Assessment at 1-1, November 15, 2017.

The project activity is in the cities of Carlsbad, Escondido, San Marcos, and Vista, as well as unincorporated portions of San Diego County.

2. Procedural Background

SDG&E filed Application (A.) 17-11-010, including a Proponent's Environmental Assessment (PEA), on November 15, 2017. On January 04, 2018, SDG&E filed a Compliance Filing including a declaration of advertising, posting, and mailing to affected governmental bodies and property owners giving notice of the application, as required by GO 131-D, Section XI.A. No protests or responses to the application were filed. On February 07, 2020 the assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC). On April 26, 2018, an initial Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) was issued. On March 26, 2020, an updated Scoping Memo was issued.

On April 1, 2019, the California Public Utilities Commission's (Commission's) Energy Division circulated a Notice of Intent (NOI) to adopt a Mitigated Negative Declaration (MND) for the project to the State Clearinghouse, Responsible and Trustee Agencies, Property Owners within 600 feet of the project, and other Interested Parties, and released the Draft MND, including an Initial Study (IS), referred to collectively here as the Draft IS/MND, for an initial 45-day public review and comment period, in compliance with the California Environmental Quality Act (CEQA) and Commission Rule 2.4. Copies of the Draft IS/MND were made available online and for public review at the San Marcos Library, Escondido Public Library, and the Carlsbad City Library. On April 25 and 26, 2019, the CPUC published notices extending the public

comment period on the IS/MND by 15 days, in response to a request from the City of San Marcos, for a total public review period of 60 days. In addition, the CPUC held two public meetings on April 30, 2019 to give agencies, organizations, and individuals the opportunity to express any concerns or questions on the Draft IS/MND in a public setting.

The CPUC received over 1,000 mailed letters, e-mails, comment cards, and online comments from members of the public on the Draft IS/MND. Additionally, 15 public agencies/officials, utilities, and interest groups provided comment letters. At the two public meetings, 53 individuals gave oral comments. An e-petition was also filed and included with 266 e-signatures expressing objection to the project and support for an underground alternative. Public input also noted visual issues, issues pertaining to a change in materials (metal vs. wood poles), impact on adjacent preserves, tree and vegetation management, noise, impact on trails, helicopter use, City of San Marcos requirement for nighttime work in streets, emergency evacuation, encroachment permitting, fiscal impacts, and health risks.

Under CEQA, the lead agency “shall evaluate any comments on environmental issues” received from people who have reviewed a draft environmental impact report (EIR) and prepare written responses that “describe the disposition of significant environmental issues raised.”³ CEQA does not require the lead agency to respond to comments received on a draft IS/MND.

³ Pub. Res. Code §21091(d); CEQA Guidelines §15088(c).

Here, however, the CPUC elected to provide written responses to all comments received on the Draft IS/MND.

Energy Division issued the Final IS/MND on January 10, 2020, which included written responses to comments received on the Draft IS/MND.⁴ Revisions in the Final IS/MND also included editorial changes, minor changes to mitigation measures and technical clarifications and corrections. “The Final IS/MND provides corrections and clarity to certain facts set forth in the Draft IS/MND and, if necessary, ensures accuracy. No new significant environmental impacts are identified in this Final IS/MND.”⁵

Opening briefs were served and filed by Robert Pack, the City of San Marcos, and the Applicant on April 21, 2020. Reply briefs were served and filed by Robert Pack, the City of San Marcos, and the Applicant on May 05, 2020.

3. Scope of Issues

The issues to be determined in this proceeding are:

1. Is there any substantial evidence that, with the incorporation of mitigation measures identified in the Mitigation Monitoring, Reporting, and Compliance Program included in the Final Mitigated Negative Declaration and Initial Study, the project will have a significant effect on the environment;
2. Was the Final Mitigated Negative Declaration and Initial Study completed in compliance with the CEQA;

⁴ The Final IS/MND is available at https://www.cpuc.ca.gov/environment/info/esa/TL6975/pdf/final_ISMND/SDGE_TL6975_69kV_Final_IS-MND_web.pdf. The Final IS/MND is received into the record of this proceeding.

⁵ Final IS/MND at 1-1.

3. Does the Final Mitigated Negative Declaration reflect the Commission's independent judgment and analysis; and
4. Is the proposed project designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures?

4. California Environmental Quality Act (CEQA)

To issue a PTC pursuant to General Order 131-D, the CPUC must find that the project complies with CEQA. In evaluating whether to approve the project, CEQA requires the lead agency⁶ (the CPUC in this case) to conduct a review to identify environmental impacts of the project and ways to avoid or reduce environmental damage. If the initial study shows that there is no substantial evidence that the proposed project may have a significant effect on the environment, or if the initial study identifies potentially significant effects and the project proponent makes or agrees to revisions to the project that will reduce all project-related environmental impacts to less-than-significant levels, then the lead agency shall prepare a negative declaration or MND, subject to public notice and the opportunity for the public review and comment.⁷

CEQA requires that, prior to approving the project, the lead agency consider the MND along with any comments received during the public review process, and that the lead agency adopt the MND only if it finds on the basis of

⁶ The lead agency is the public agency which has the principal responsibility for carrying out or approving a project. The lead agency also must decide whether an EIR or Negative Declaration will be required for the project and prepare the appropriate environmental document. CEQA Guidelines (Cal. Code Regs. Tit. 14, Div. 6, Ch.3) § 15367.

⁷ CEQA Guidelines §§ 15070-15073.

the whole record that there is no substantial evidence that the project will have a significant effect on the environment and that the MND reflects the lead agency's independent judgment and analysis.⁸ If the lead agency adopts an MND, CEQA requires that it also adopt a program for monitoring or reporting on the changes or conditions required to mitigate or avoid significant environmental effects.⁹

Here, the Draft IS/MND for the proposed project determined that the project would have no significant impacts or less than significant impacts with respect to aesthetics, agriculture and forestry resources, air quality, energy, greenhouse gas emissions, land use and planning, mineral resources, and population and housing. The Draft IS/MND identified potentially significant impacts during and after construction of the proposed project to biological resources, cultural resources, tribal cultural resources, geology, soils, seismicity, and paleontological resources, hazards and hazardous materials, hydrology and water quality, noise, public services, recreation, transportation and traffic, utilities and service systems, and wildfires. Based on the analysis documented in the Draft IS/MND, the CPUC recommended mitigation measures to reduce these impacts to a less-than-significant level, and SDG&E agreed to implement these measures as part of the project.¹⁰ The Final IS/MND includes all mitigation

⁸ CEQA Guidelines § 15074(a)-(b).

⁹ CEQA Guidelines § 15074(d).

¹⁰ In its PEA, SDG&E identified Applicant Proposed Measures (APMs) to avoid or reduce potential impacts associated with the project. In some instances, those APMs have been superseded by CPUC-recommended mitigation measures, as described in the Draft IS/MND. Those APMs that have not been superseded are considered part of the project for the purpose of the IS/MND.

measures recommended in the Draft IS/MND with a few minor modifications. The Mitigation Monitoring, Reporting, and Compliance Program (MMRCP), included in Chapter 4 of the Final IS/MND and attached to this decision as Attachment A, provides a detailed implementation plan to ensure that the identified mitigation measures and APMs are properly implemented. With SDG&E's implementation of the identified APMs and mitigation measures and compliance with the MMRCP, all project-related environmental impacts, would be avoided or reduced to a less-than-significant level with the incorporation of feasible mitigation measures.

Since circulation of the Draft IS/MND, there have been no "substantial revisions" to the MND, as defined in CEQA Guidelines Section 15073.5, and there is no evidence the project may have a significant impact on the environment that cannot be mitigated or avoided. The CPUC finds that recirculation of the MND is not required pursuant to State CEQA Guidelines Section 15073.5.

5. Environmental Document

At issue in this proceeding is whether the prepared MND is consistent with CEQA.

An MND may be prepared when "the initial study has identified potentially significant effects on the environment, but: (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of

the whole record before the public agency that the project, as revised, may have a significant effect on the environment.”¹¹

For CEQA purposes “substantial evidence” means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.”¹²

Having evaluated the evidence in the record before the Commission, including the comments submitted on Draft IS/MND and the written responses to those comments,¹³ as well as the parties’ opening and reply briefs, the Commission’s preparation of an MND is supported by substantial record evidence. This includes the Commission’s analysis on aesthetics, wildfire risk, noise impact, and cumulative impacts. The Final IS/MND includes detailed Master Responses documenting the substantial evidence that supports the analysis of visual character and quality along the project route and explaining the reasons that wildfire risk from the project would be less than significant.¹⁴ The analysis in the Draft IS/MND also demonstrates that noise mitigation measure MM NOI-1 is sufficient to reduce noise impacts below the level of

¹¹ Pub. Resources Code, §§ 21064.5, 21080(c).

¹² CEQA Guidelines, § 15384(a), emphasis added; *see also* Pub. Resources Code, § 21082.2.

¹³ Final IS/MND, at 2-1 to 2-201

¹⁴ *Id.*, at 2-2 to 2-11.

significance.¹⁵ Finally, the IS/MND's approach to cumulative impacts is adequate and complies with CEQA.

The record also shows that Commission demonstrated thorough independent analysis that no significant environmental impacts from the proposed project remain after incorporation of SDG&E's applicant proposed measures and the CPUC's imposed mitigation measures.

Additionally, although CEQA does not require evaluation of project alternatives in an IS/MND, in response to comments requesting alternatives or design improvements that would address concerns communicated in the Draft IS/MND, the CPUC issued Data Requests 12 and 13 to SDG&E seeking additional information. SDG&E's response to Data Request 12 indicated that it is not feasible to locate the TL6975 conductor on the existing TL13811/13825 poles in the Segment 2 right of way (including as an underbuilt line); that the underground option described in the PEA was technically feasible but not proposed because the cost would be potentially two or three times greater than that of the Project; and identifying additional aesthetic considerations that were incorporated into the proposed pole locations, heights, and finishes.¹⁶

Adoption of the Final MND complies with the requirements of CEQA. The mitigation measures set forth in the MMRCPP (Attachment A to this decision)

¹⁵ This is addressed in the Draft IS/MND at 3.13-3.12-25 (2019), available at https://www.cpuc.ca.gov/environment/info/esa/TL6975/pdf/SDGE_TL6975_69kV_DraftIS-MND.pdf. The Draft IS/MND is received into the record of this proceeding.

¹⁶ SDG&E's response to Data Request 12 is available at https://www.cpuc.ca.gov/environment/info/esa/TL6975/pdf/DR12/TL6975_DR12_102419.pdf, and is received into the record of this proceeding.

are designed to reduce or eliminate the potentially significant environmental impacts of the proposed project and meet the criteria set forth in CEQA Guidelines § 15370.

The Commission's Final IS/MND is appropriate and complies with CEQA.

6. Electromagnetic Field

Section X(A) of General Order 131-D requires that applications for a PTC include a description of the measures taken or proposed by the utility to reduce the potential exposure to electric and magnetic fields (EMF) generated by the proposed facilities.¹⁷ In accordance with Section X(A) of General Order 131-D, CPUC Decision 06-01-042 (EMF Decision), and SDG&E's EMF Design Guidelines prepared in accordance with the EMF Decision, SDG&E is required to prepare a Field Management Plan (FMP) that identifies the "no-cost" and "low-cost" magnetic field reduction measures proposed as part of the final engineering design for the project. Low-cost measures have been defined as mitigation measures that cost 4 percent or less of the total project cost, which is also referred to as the 4 percent benchmark.¹⁸

Analysis of measures taken to reduce EMF exposure by SDG&E is available in its Application for PTC. SDG&E's FMP developed in support of the TL 6975 project considered the inherent benefits, as compared to the status quo, of many of the poles being increased in height which would be considered a no-cost benefit of the project. Additionally, SDG&E identified that increasing the

¹⁷ This is addressed in the Draft IS/MND at 2-61 to 2-61 and in the Final IS/MND at 2-11 to 2-12.

¹⁸ D. 06-01-042 defines "low-cost" measures to mitigate EMF exposure for new utility transmission and substation projects.

height of poles 5 feet above design would reduce the EMF by more than 15 percent at the edge of the right-of-way. This was considered a low-cost measure that was adopted.

The other measures considered for reduction EFM exposure substantially exceeds the low cost 4 percent benchmark. As a result, other measures were rejected by SDG&E. According to SDG&E, no other low-cost measures are available for this project. A copy of the FMP for this project is attached as Appendix C of the Final IS/MND.

7. Administrative matters

The Commission's Energy Division may approve requests by SDG&E for minor project refinements that may be necessary due to the final engineering of the project, so long as such minor project refinements are located within the geographic boundary of the study area of the IS/MND and do not, without mitigation, result in a new significant impact based on the criteria used in the Final IS/MND; substantively conflict with any mitigation measure or applicable law or policy; or trigger an additional discretionary permit requirement. A minor project refinement should be strictly limited to a minor project change that will not trigger other discretionary permit requirements, that does not increase the severity of an impact or create a new impact, and that clearly and strictly complies with the intent of the mitigation measure. SDG&E shall seek any project changes that do not fit within these criteria by a petition to modify today's decision. A change to the project that has the potential for creating significant environmental effects will be evaluated to determine whether supplemental CEQA review is required. Any proposed deviation from the

approved project and adopted APMs or mitigation measures, including correction of such deviation, shall be reported immediately to the CPUC and the mitigation monitor assigned to the construction for their review and CPUC approval.

All rulings by the assigned Commissioner and ALJ are affirmed herein.

8. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Stevens in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 25, 2020 by a joint filing of Robert Pack, Rancho Dorado Owners' Association, San Elijo Hills Community Association; the City of San Marcos; and San Diego Gas & Electric Company. Reply comments were filed on August 31, 2020 by the City of San Marcos and San Diego Gas & Electric. The Commission considered the comments and reply comments, and no modifications have been made to the proposed decision.

9. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Brian Stevens is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. All environmental impacts related to the proposed project are less than significant or reduced to less-than-significant levels with incorporation of feasible mitigation measures (*see* Mitigation Monitoring, Reporting and Compliance Program, Attachment A to this decision).

2. The proposed project will have either no significant impacts or less than significant impacts with respect to aesthetics¹⁹, agriculture and forestry resources²⁰, air quality²¹, energy²², greenhouse gas emissions²³, land use and planning²⁴, mineral resources²⁵, and population and housing.

3. With the implementation of the mitigation measures identified in the Mitigation Monitoring, Reporting, and Compliance Plan in the Final IS/MND and attached to this order as Attachment A, potentially significant impacts to biological resources²⁶, cultural²⁷ and tribal cultural²⁸ resources, geology, soils, seismicity, and paleontological resources²⁹, hazards and hazardous materials³⁰, hydrology and water quality³¹, noise³², public service³³, recreation³⁴,

¹⁹ Draft IS/MND at 3.1-1 to 3.1-30.

²⁰ *Id.* At 3.2-1 to 3.2-8.

²¹ *Id.* At 3.3-1 to 3.3-14.

²² *Id.* At 3.6-1 to 3.6-12.

²³ *Id.* At 3.8-1 to 3.8-14.

²⁴ *Id.* At 3.11-1 to 3.11-8.

²⁵ *Id.* At 3.12-1 to 3.12-6.

²⁶ *Id.* At 3.4-1 to 3.4-52.

²⁷ *Id.* At 3.5-1 to 3.5-42.

²⁸ *Id.* At 3.18-1 to 3.18-8.

²⁹ *Id.* At 3.7-1 to 3.7-32.

³⁰ *Id.* At 3.9-1 to 3.9-18.

³¹ *Id.* At 3.10-1 to 3.10-18.

transportation and traffic³⁵, utilities and public services³⁶, and wildfires³⁷ will be reduced to less than significant levels.

4. The proposed project is designed in compliance with the Commission's policies governing the mitigation of EMF effects.

5. The Final IS/MND was completed in compliance with CEQA requirements.

6. The Commission has reviewed and considered the information contained in the Final IS/MND including comments received during the public review period.

7. On the basis of the whole record before it (including the Initial Study and all comments received), the Commission finds that there is no substantial evidence that the project will have a significant effect on the environment.

8. The Final IS/MND reflects the Commission's independent judgment and analysis.

9. The Commission's preparation of an MND was supported by substantial record evidence.

³² *Id.* At 3.13-1 to 3.13-32.

³³ *Id.* At 3.15-1 to 3.15-14.

³⁴ *Id.* At 3.16-1 to 3.16-10.

³⁵ *Id.* At 3.17-1 to 3.17-20.

³⁶ *Id.* At 3.19-1 to 3.19-16.

³⁷ *Id.* At 3.20-1 to 3.20-20.

Conclusions of Law

1. SDG&E should be granted a permit to construct the TL 6975 project in conformance with the mitigation measures attached to this order.
2. CEQA requires that, prior to approving the project, the decisionmaking body of the lead agency shall consider the proposed MND together with any comments received during the public review period. The decisionmaking body shall adopted the proposed MND only if it finds on the basis of the whole record before it (including the Initial Study and any comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the MND reflects the lead agency's independent judgment and analysis.
3. The Final IS/MND should be adopted by the Commission in this decision.
4. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Final Mitigated Negative Declaration is adopted.
2. The mitigation measures included as part of the Final Mitigated Negative Declaration and the Mitigation Monitoring, Reporting, and Compliance Plan attached to this order as Attachment A are adopted.
3. San Diego Gas & Electric Company is granted a permit to construct the Tie Line 6975 project in conformance with the mitigation measures attached to this order.
4. Application 17-11-010 is closed.

This order is effective today.

Dated September 24, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners