

***VIA Hand Delivery and Electronic Mail***

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Re: Draft Environmental Impact Report/Environmental Impact Statement for the Sunrise Powerlink Transmission Line Project

Introduction

These comments are submitted on behalf of the Center for Biological Diversity and the Sierra Club.¹ The joint Draft EIR/EIS (DEIR/EIS) prepared by the California Public Utilities Commission (PUC) and the Bureau of Land Management (BLM) describes how the proposed project would cause at least 50 significant impacts, far more impacts than any transmission project ever approved by the PUC. We thank the agencies for working hard to prepare a thorough DEIR/EIS. We also appreciate the efforts of Aspen Environmental Group in preparing the document, and for being available to respond to questions we have had. The level of professionalism and courtesy throughout the process has been exceptional. As will be explained in more detail in these comments, however, the agencies have produced the DEIR/EIS under exceptionally difficult circumstances that have prevented an adequate analysis of many critical issues. San Diego Gas & Electric Company (“Applicant,” “Company,” or “SDG&E”) has repeatedly failed to provide adequate information, leaving the DEIR/EIS with significant flaws in its analysis and inadequate information for the public to consider. The Center and the Sierra Club describe in these comments gaps in analysis, and discuss significant impacts that could result from the proposed project, including but not limited to: impacts to biological resources, wilderness, visual resources, air quality, water quality, global warming, and cumulative impacts. We do not support any transmission line route alternative and therefore, the mitigation recommendations in this comment letter are only intended to assist in reducing harm from the project in the event that the CPUC / BLM approves a transmission alternative.

¹ The Center for Biological Diversity and the Sierra Club’s Scoping Comments are incorporated into these comments as well.

We request that the DEIR/EIS be re-circulated due to a) the failure to adequately consider the widespread environmental impacts of the October 2007 fires, b) the failure of SDG&E to provide the agencies preparing the DEIR/EIS as well as the public with sufficient species surveys necessary to understand the extent of impacts, c) the failure of SDG&E to use detailed and adequate species surveys to design routes and enable the agencies to design alternatives that reduce the record number of significant and unmitigable impacts of each of the alternatives, d) the failure to adequately disclose how the alternatives will impact permitting under existing and developing multi-species conservation plans in the region, f) the failure to address the full extent of increases in global warming emissions anticipated by the STP, and g) other reasons as discussed in the comments.

The Center has over 40,000 members throughout the United States, many of whom reside in California. The Center is a non-profit organization dedicated to the preservation, protection, and restoration of biological diversity, native species, ecosystems, and public lands. The Center's members and staff regularly use the public lands and waters that will be impacted by the project for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. The Center's members and staff have researched, studied, observed, and sought protection for the public lands along the proposed route and for many of the rare, threatened, endangered and special status species that may be impacted by the project and for the habitats on which these species' survival depends. The Center's staff and members derive scientific, recreational, conservation, and aesthetic benefits from these public lands and from these species' existence in the wild.

The Sierra Club is a non-profit advocacy organization whose mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote responsible use of the Earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Attachment 1 to these joint comments of the Center and the Sierra Club are comments prepared by volunteers from the San Diego Chapter of the Sierra Club. The comments represent just a portion of what may be unprecedented public opposition to a proposed transmission project in California. We ask that the comments receive the same scrutiny and response as the joint comments of our organizations.

The level of opposition to the Sunrise transmission project (STP) is no surprise when stepping away from the many details in the 7500 page DEIR/EIS and looking at the bigger picture. We are unaware of a single instance in the country where a wilderness designation has been removed; approval of the proposed project would be the first time ever, and in the cherished Anza-Borrego Desert State Park (Anza- Borrego). The 50 significant, unmitigable impacts of the project overwhelmingly are more destructive than any other transmission project in California. We have reviewed every transmission project identified in the PUC's public database and found the next most destructive project by number of significant impacts had 20 – and these were visual impacts from another SDG&E project. We ask that the agencies look at this bigger picture in the final EIR/EIS. Our findings are identified in the chart in Attachment 2.² It should

² The projects are all found at <http://www.cpuc.ca.gov/PUC/energy/electric/Environment/Current+Projects/pastproj.htm>. Significant unmitigable impacts were found in the Executive Summaries.

be no surprise that during the opening day of Phase II of the STP hearing, SDG&E's Chief Operating Officer conceded in testimony that environmental concerns were not the Company's priority and he was unable to name a single transmission project in the country with more significant impacts.³

The Center and the Sierra Club support alternatives to the STP that do not rely on long-distance transmission through the fragile and ecologically significant lands proposed for the STP and STP alternative routes.⁴ We ask the Commission to pay closer attention to elements of the Smart Energy 2020 Plan⁵ and the recent announcement by Southern California Edison for a major rooftop solar energy project supported by the Governor.⁶ A combination of these plans with elements of alternatives 1 and 2 of the DEIR/EIS, the no action alternative, and the State loading order as guidance, are far superior to the proposed project and recent additional proposals made by SDG&E. We agree with the conclusion in the DEIR that the proposed plan (as well as other Northern alternatives) is among the most environmentally destructive options for meeting energy needs for the coming decades.

Legal Background

This project requires environmental review under both the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, and the California Environmental Quality Act ("CEQA"), California Public Resources Code § 21000 *et seq.* In addition, a number of other local, state and federal laws and regulations are triggered by the proximity of the project to wilderness areas, federally protected lands, other areas of significant biological and ecological value, and by its impacts to waters of the United States, waters of the States of California, and listed species and their habitats.

NEPA is an action-forcing statute. Its sweeping commitment is to "prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action." Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989). It requires the federal agency to "consider every significant aspect of the environmental impact of a proposed action," Vermont Yankee Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 553 (1978), and to ensure "that the agency will inform the public that it has indeed considered environmental concerns in its decision making process." Baltimore Gas and Electric Company v. NRDC, 462 U.S. 87, 97 (1983). NEPA requires that federal agencies take a "hard look" at the environmental impacts of a project. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). To satisfy NEPA, a federal agency "must explicate fully its course of inquiry, its analysis, and its reasoning." Dubois v. U.S. Department of Agriculture, 102 F.3d 1273, 1287 (1st Cir. 1996).

³ See transcript, April 7, 2008. References to the transcript are to the transcript in the STP proceeding, A.06-08-010.

⁴ We also do not endorse the portion of alternative 2 that would include a transmission line through Anza-Borrego.

⁵ Attachment 3.

⁶ <http://gov.ca.gov/index.php?/press-release/9197/>

NEPA's implementing regulations require agencies to:

[I]nsure the professional integrity, including scientific integrity of the discussions and analysis in environmental impact statements. [Agencies] shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

40 CFR § 1502.24 (Methodology and Scientific Accuracy). Accordingly, NEPA also prohibits reliance upon conclusions or assumptions that are not supported by scientific or objective data. Further, NEPA documents must be "supported by evidence that the agency has made the necessary environmental analysis." 40 CFR § 1502.1. Consequently, federal agencies have a duty to disclose the underlying scientific data and rationale supporting the conclusions and assumptions in an EIS.

Federal agencies are required to "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 CFR § 1502.15. The establishment of the baseline conditions of the affected environment is a practical requirement of the NEPA process. "The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process." Council of Environmental Quality, *Considering Cumulative Effects under the National Environmental Policy Act* (May 11, 1999).

NEPA requires the agencies to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions. 40 C.F.R. §§ 1502.14(a) and 1508.25(c). Importantly, this evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122-1123 (9th Cir. 2002) (and cases cited therein). The purpose of NEPA's alternatives requirement is to ensure agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Env'tl Defense Fund., Inc. v. U.S. Army Corps. of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); *see also, City of New York v. Dept. of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983) (NEPA's requirement for consideration of a range of alternatives is intended to prevent the EIS from becoming "a foreordained formality."); *Utahns for Better Transportation v. U.S. Dept. of Transp.*, 305 F.3d 1152 (10th Cir. 2002), *modified in part on other grounds*, 319 F.3d 1207 (2003). Whether an alternative is "reasonable" or not turns on whether it will accomplish the stated purpose for the project. *City of Carmel-By-The-Sea v. U. S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997).

In conducting a NEPA review, federal agencies must look at cumulative actions and effects. Cumulative actions are those that "have cumulatively significant impacts and should therefore be discussed in the same impact statement." 40 CFR § 1508.25(a)(2). Similar actions include those that have "common timing or geography." *Id.* at § 1508.25(a)(3). A project's "cumulative impact," is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a

period of time. The agency must do more than offer conclusions, it must identify and adequately analyze the cumulative impacts likely to result from past, present and future projects. See Great Basin Mine Watch v. Hankins, 456 F.3d 955 (9th Cir. 2006).

CEQA and NEPA have many similar requirements. However, CEQA mandates many additional specific kinds of impacts to be considered, requires specific analysis of alternatives that would avoid significant impacts to the environment, and requires agencies to minimize or mitigate those impacts that cannot be avoided. Thus, for the most part, if an EIR/EIS meets the standards of CEQA it will also meet the standards for NEPA. However, a document that meets the NEPA standards may not meet the CEQA standards.

An EIR prepared under CEQA must describe and analyze all significant environmental effects on the environment of a proposed project, evaluate alternatives that will avoid those impacts, and describe and analyze measures to minimize or mitigate impacts that cannot be avoided. Pub. Res. Code §21100; 14 Cal Code Regs § 15362. The purpose of an EIR “is to inform the public and its responsible official of the environmental consequences of their decisions before they are made.” Laurel Heights Improvement Association v. Regents of University of California (1993) 6 Cal. 4th 1112, 1123 (emphasis in original) (citations omitted). An EIR should provide decision making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, to list ways in which the significant effects of a project might be avoided or minimized, and to indicate alternatives to the project. Pub. Res. Code § 21061; 14 Cal Code Regs. § 15002. “The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decisionmakers, and the public, with the information about the project that is required by CEQA.” Santiago County Water Dist. v. County of Orange (1981) 118 Cal. App. 3d 818, 829.

California courts have emphasized that an EIR should: disclose all relevant facts; provide a balancing mechanism whereby decision makers and the public can weigh the costs and benefits of a project; provide a means for public participation; provide increased public awareness of environmental issues; provide for agency accountability; and provide substantive environmental protection. Because of the shortcomings discussed below, the DEIR/EIS for the proposed project is inadequate to meet both the procedural and substantive mandates of CEQA.

One of the fundamental objectives of CEQA is to facilitate the identification of “feasible alternatives or feasible mitigation measures which will avoid or substantially lessen” significant environmental effects. Pub. Res. Code § 21002. Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . .” Public Resources Code § 21002. Consequently, an EIR must accurately identify impacts, provide meaningful alternatives that will avoid those impacts, and provide detailed feasible measures to mitigate or minimize any remaining significant environmental impacts identified in the EIR. See 14 CCR §15126. The agency’s duty to provide a detailed analysis of environmental impacts of the proposed project and to impose enforceable mitigation measures cannot be deferred to a later stage of environmental analysis; it must be provided in the EIR. CEQA requires mitigation measures to be “fully enforceable through permit conditions,

agreements, or other legally-binding instruments.” CEQA Guidelines § 15126.4(a)(2). CEQA requires the adoption of binding mitigation in order to reduce a project’s environmental impacts.

Alternatives

NEPA requires that the EIS “rigorously explore and objectively evaluate all reasonable alternatives” to a proposed plan of action that has significant environmental effects. 40 C.F.R. § 1502.14(a) (2000). This is ‘the heart’ of an EIS.” Natural Resources Defense Council v. U.S. Forest Service, 421 F.3d 797, 813 (9th Cir. 2005).

An EIR, under CEQA, is required to describe a range of reasonable alternatives to the project, which would feasibly attain most of its basic objectives but would avoid or substantially lessen its significant effects. 14 Cal Code Regs § 15126.6(a). The lead agency has a substantive duty to adopt feasible, environmentally superior alternatives. Pub. Res. Code § 21002, 14 Cal. Code Regs. §§ 15002(a)(3), 15021(a)(2). A lead agency cannot abdicate this duty unless substantial evidence supports a finding that the alternatives are infeasible. See, e.g., Citizens of Goleta Valley v. Board of Supervisors, 197 Cal. App. 3d 1167, 1181 (1988). Two of the alternatives retained for analysis as meeting project objectives, the LEAPS Transmission–Only Alternative and the LEAPS Generation and Transmission Alternative are subject to another active proceeding at the PUC, making any decision in A.06-08-010 in favor of the STP premature, as such a decision would essentially pass judgment on the feasibility of the two LEAPS alternatives.

The stated purpose of the project is to increase reliability, reduce costs, and provide access to renewable energy. The STP is not needed to fulfill the stated purposes, and alternatives taking a wholly different approach better fulfill the identified purposes. Unfortunately, the DEIR/EIS fails to fully analyze alternatives that would provide similar benefits through the use of alternative energy sources or decentralized power production such as roof-top solar photovoltaic generation, or alternatives that could lower costs and energy demand in other ways, such as through conservation measures and energy efficiency. Instead, the project proponent proposes to construct a high-voltage line that will permanently scar the landscape, increase fire danger, and significantly impact public lands set aside for preservation, protected species and their habitats, and visual resources.

The announcement by Southern California Edison (SCE) of its rooftop solar program, the Smart Energy 2020 plan, and the California Solar Initiative (CSI) are all examples of alternatives for supplying power to San Diego not fully explored in the DEIR/EIS. A program comparable to SCE’s is achievable in San Diego. We note that the price of the SCE program appears to be even lower than the cost estimate in Smart Energy 2020. Furthermore, the timing of the release of the DEIR/EIS did not allow it to take advantage of the announcement that the CSI now has a record number of people signing up to participate, and multiple solar industry announcements of new solar cell capacity being constructed, with forecasts for substantially reduced costs as capacity increases. Press articles documenting increased capacity and projected reduced costs are attached. Additional options for solar energy without extensive transmission lines include solar energy parks, as highlighted in an attachment to the testimony of Dr. Barry Butler, who testified

on behalf of the Center and Sierra Club, and also in testimony by the Utility Consumer Action Network (UCAN).

Energy Efficiency measures also were not fully explored, including the benefits of efficiency measures outlined in Smart Energy 2020 to reduce energy consumption by using readily available, efficient air conditioning. It appears Sempra Energy itself, in partnership with the PUC, has identified efficiency and upgrades in air conditioners specifically as a significant tool for reducing energy needs. The Wall Street Journal reported on February 11, 2008, that a Sempra program through its Southern California Gas Company subsidiary is working to slash the energy needs of the growing community of Palm Desert by 30% by 2011 and that the program has already achieved 12% of its goal.⁷

Even if a new transmission line were necessary, the DEIR/EIS did not provide an estimate of the externalized costs to other private parties or to the public and to public lands and resources that will be impacted by the proposed project. In order to fairly estimate the economic benefits of this project such costs must be off-set against any savings that could be reaped by SDG&E alone.

More importantly, substantial testimony on multiple non-transmission alternatives to the STP were introduced during phase I of the PUC STP hearing, A.06-08-010, by the PUC's own Division of Ratepayer Advocates and UCAN. Additional options to shorten the proposed line, if it must be built, were advocated by the Ranchos Penasquitos Concerned Citizens. The various alternatives to the line appear on the whole to be environmentally superior to the STP, demonstrate greater reliability and cost effectiveness. We incorporate by reference the Phase I record in A.06-08-010, the alternatives and testimony offered.

Expansion

The Applicant has highlighted the importance it places on possible expansion, yet has concealed from the public and the agencies its expansion plans. Surprise testimony during Phase I of the STP hearing revealed expansion plans not previously announced, delaying the release of the DEIR/EIS for five months. The Commission scolded SDG&E for failing to respond to questions concerning key issues and failing to provide important environmental data for rare plant and animal species, concluding "it cannot do this job alone."⁸ In particular, the Company failed to disclose significant expansion plans.

Incredibly, it appears that after the release of the DEIR/EIS, the Company has revealed another expansion plan not previously considered. At page 6.26 of its direct Phase 2 testimony, the Company demands the agencies consider its expansion plans ("The Commission cannot properly decide this application or routing for this project without considering long-term system growth imperatives.") and then apparently reveals yet another new expansion plan not previously

⁷ See Sempra Energy letter on behalf of Southern California Gas Company to the Public Utility Commission, advice letter No. 3713, February 14, 2007.

⁸ Assigned Commissioner's Ruling Addressing Newly Disclosed Environmental Information," July 24, 2007, page 17, and incorporated by reference in full.

disclosed, as required, for public comment. The Company states, "...an additional high capacity transmission line *beyond Sunrise* could be required to physically deliver these resources...Significantly, the additional line could be co-located in an existing corridor provided a Sunrise Northern route is already established." [emphasis in original]. This new announcement continues a pattern of moving targets presented by SDG&E, making the agencies' responsibility for producing an adequate DEIR/EIS an unreachable goal, and calling into question at this late date whether a complete application was ever fully submitted by the Company.⁹

Other expansion plans may intrude in State Park wilderness. As discussed in the wilderness section, this possible expansion alone should prohibit these options, would delay authorization of the STP, and is in violation of state law.

Biology: Environmental Setting

CEQA requires that the EIR accurately describe the environmental setting of the project. 14 CCR § 15125. An EIR based on an inaccurate description of the environmental setting or baseline may, in turn, lead to an inaccurate description and analysis of the environmental impacts of the project, inadequate review of alternatives, and inaccurate assessment of the mitigation measures needed to avoid or minimize the significant impacts of the project. San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus (1994) 27 Cal. App. 4th 713; Cadiz Land Co. v. Rail Cycle (2000) 83 Cal. App. 4th 74. In San Joaquin Raptor the court found that "the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete and misleading; it does not comply with State CEQA Guidelines section 15125." Id. at 728-29.

NEPA has similar requirements for a "no action" alternative and environmental baseline. As the Ninth Circuit has noted, where an EIS fails to provide accurate, site-specific baseline information regarding the conditions which exist on the project site, there is "simply no way to determine what effect the proposed [project] will have on the environment, and consequently, no way to comply with NEPA." Half Moon Bay Fishermans' Marketing Ass'n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988). Accordingly, a DEIR/EIS must provide a full description of species and ecosystems present in the project area. Here, SDG&E failed to provide the BLM and the PUC with critical baseline information necessary to identify many of the environmental resources in the project area that are likely to be affected by the proposed project and failed to provide adequate baseline information about those environmental resources that are discussed. The problem occurred first when SDG&E failed to submit a Proponents Environmental Assessment for its proposed project, was again identified in the November 1, 2006 scoping order for A.06-08-010, and again identified in the Assigned Commissioners Ruling of July 24, 2007. The authors of the DEIR/EIS were left to do the best they can with available information that does not meet the requirements of CEQA and NEPA.

⁹ Moving targets abound. Early Phase II hearing testimony, incorporated in full by reference through these comments, suggests SDG&E is now suggesting in portions of its testimony that rather than consider a 40 year life of the project, it now considers the project life to be over 50 years. One must question the basis for these changing assumptions, why they are occurring at this stage in the process, whether the changing assumptions are based on new information, and whether SDG&E is picking and choosing the new information it relies upon. For example, we have yet to see the Company present new information demonstrating the reduced costs of solar energy projected into the future, or more economical use of rooftop solar on commercial establishments.

An environmental baseline needs to be established based on up-to-date biological surveys. Thorough, updated protocol-level surveys should be performed during the appropriate seasons for sensitive plant species and vegetation communities and sensitive animal species. Full disclosure of survey methodology and results to the public and other agencies must be implemented to ensure compliance with CEQA and NEPA.

Here, one major problem with the DEIR/EIS is that it describes biological impacts as significant, yet many of the mitigation measures involve surveys. Typically, numerous years worth of surveys are conducted before the DEIR/EIS is completed in order to comprehensively identify the resource conflicts and to craft a proposed project and alternatives that avoid sensitive resources, or at least minimize the impacts to them. If avoidance and minimization of impacts still results in an impact, then mitigation is proposed. However, in the STP DEIR/EIS, biological impacts, such as impacts to rare plants and sensitive plant communities, are assessed from a single survey year in drought conditions. Such an approach is inadequate to properly determine potential impacts and to devise necessary mitigation – the proper approach is to conduct surveys so that they can be used to assess significance, and then mitigating for impacts caused by the project. The DEIR/EIS’s approach is hurried and rushed and certainly is not a comprehensive evaluation of the biological resources nor does it follow for instance, accepted plant survey protocols (CDFG 2000, CNPS 2001). Moreover, failure to conduct sufficient surveys prior to construction of the project also effectively eliminates the most important function of surveys - using the information from the surveys to minimize harm caused by the project and to reduce the need for mitigation. Often efforts to mitigate harm are far less effective than preventing the harm in the first place. In addition, without understanding the scope of harm before it occurs, it is difficult to quantify an appropriate amount of mitigation. In short, the DEIR/EIS failed to have the necessary information before it to adequately assess impacts and to then adequately determine how to avoid, minimize, or mitigate those impacts.

The above point matters all the more due to the fact that the year in which surveys were conducted, 2007, was one of the driest years on record in California. The DEIR/EIS even notes that the drought conditions precluded implementation of US Fish and Wildlife Service approved surveys for the Quino checkerspot butterfly. Likewise, the lack of adequate rainfall would preclude the ability of even seasoned botanists to unequivocally identify species, particularly annual species, which germinate, grow, flower and set seed in a single season. Therefore, while the DEIR/EIS recognizes that the impact to, for instance, sensitive plant communities and sensitive, rare or listed plant species, will be significant, the DEIR/EIS fails to quantify the impact or the significance of that impact on the species or plant community from the proposed action. Quantifying the impact is critical not only for understanding the impact to the species, but for establishing a route that avoids impacts in the first instance, and for establishing appropriate mitigation amounts if impacts cannot be avoided.

Finally, we note that according to the DEIR/EIS: “Survey areas did not always include all of the proposed impact areas (e.g. access roads and staging areas that occur outside of the 200-foot PSA) because, in most cases, these areas were not known at the time of the surveys.” Once all of these areas are identified, how will the PUC and BLM ensure that these areas are surveyed at the

appropriate time of year and under appropriate climate conditions prior to construction, and ensure that any impacts are avoided, minimized, or mitigated?

Biology: Impacts

We concur with conclusions in the DEIR that the proposed project has significant, unmitigable impacts on biological resources, including significant impacts on wildlife and habitat. However, we believe that some issues could have been more fully addressed and therefore we attach as part of these comments the PUC testimony of Ileene Anderson, Jerre Stallcup, Dr. Esther Rubin, Richard Halsey, and Dr. Travis Longcore. These 5 individuals, as part of the PUC proceeding, introduced testimony on behalf of the Center and the Sierra Club that addresses biological issues that were raised in the DEIR/EIS. The testimony discusses issues such as harm to Peninsular bighorn sheep, invasive species impacts, fire impacts, rare plant impacts, avian impacts, and cumulative impacts. See Attachments 4-8.¹⁰ Rather than repeat their statements, we ask that you read their attached testimony and consider the comments they made on our behalf regarding both biological impacts and fire issues. CEQA and NEPA require disclosure of these impacts prior to the public comment period.

We also submit the following comments in addition to the comments described in the submitted testimony (Attachments 4-8):

On page D.2-1, it is unclear if “special status species” includes Cleveland National Forest Management Indicator Species (MIS). If not, these species should be considered as follows as required by Forest Service regulations: 1) Identify which MIS have habitat that would be either directly or indirectly affected by the project alternatives; these MIS are potentially affected by the project; 2) Identify the land and resource management plan forest-level monitoring requirements for this subset of forest MIS; 3) Analyze project-level effects on MIS habitats or habitat components for this subset of forest MIS; 4) Discuss forest scale habitat and/or population trends for this subset of forest MIS, and; 5) Relate project-level impacts on MIS habitat to habitat and/or population trends for the affected MIS at the forest scale.

Page D.2-10 – “Temporary” impacts really can only be considered as such if measures are required to fully restore landforms, soils, and vegetation to pre-disturbance conditions with success criteria and monitoring. Slow growing microbiotic soils, desert scrubs, chaparrals, and any trees will require far more than 5 years of monitoring to ensure successful establishment.

Page D.2-11 – Any federally proposed critical habitat should be considered part of “Special Habitat Management Areas” as this carries regulatory requirements under the federal Endangered Species Act. Where there is a federal nexus (as with the STP), federal agencies must consult with the U.S. Fish and Wildlife Service to ensure that the proposed action will not destroy or adversely impact proposed critical habitat.

¹⁰ As noted earlier, we incorporate by reference Phase 1 testimony submitted by Ms. Stallcup, Mr. David Hogan, and Dr. Barry Butler. These documents and others referenced in this document are available on request.

National Forests and any special National Forest land use category should be considered “Special Habitat Management Areas.”

Page D.2-28 – Chaparral located between mile markers 146 and 148 are southern maritime chaparral according to David Hogan, lead author of the primary article describing this vegetation, Southern Maritime Chaparral (1996).¹¹ Key southern maritime chaparral indicators are present in this area including rare species such as *Arctostaphylos glandulosa* var. *crassifolia*, *Comarostaphylis diversifolia* ssp. *diversifolia*, and *Quercus dumosa*, site conditions such as proximity to the ocean, regular fog, and weathered sandstone soils (Terrace Escarpments). Any impacts to this extremely rare vegetation type should be classified as significant and unmitigable. This area is located within the City of San Diego’s Multiple Habitats Planning Area and so mitigation should be consistent with City of San Diego mitigation requirements¹² at a minimum – 2:1 if offsite mitigation is located inside the MHPA, or 3:1 if offsite mitigation land is located outside of the MHPA. Restoration of this vegetation is unproven, so most if not all mitigation should include off-site acquisition and protection.

Page D.2-42 – Several listed species identified as having a moderate to high potential to occur should be assumed present for the purposes of avoidance and calculating mitigation unless protocol surveys prove the species is not present.

Page D.2-86 – Any impacts to several particularly fragile vegetation communities, mature trees and woodlands, and the habitat of at least one federally listed endangered species should be considered permanent and mitigated accordingly. Impacts to particularly fragile vegetation and habitat for the Quino checkerspot butterfly should be considered permanent irrespective of whether project construction, operation, or maintenance activities are considered “temporary.” Various desert scrub vegetation communities may never fully recover from temporary construction activities, and recovery to maturity of any impacted oak or juniper or other trees or woodlands will take centuries. Prime quino checkerspot butterfly habitat often includes intact microbiotic soil crusts and these may require decades to recover.

Mitigation ratios for impacts to trees and woodlands should be calculated based on a combination of both the acreage covered by the perimeter of the canopy of impacted trees / woodlands and the number of impacted individual trees.

Vernal pools should be avoided to the maximum extent practicable and/or mitigated at 3:1 consistent with local regulations. For example, the City of San Diego mandates that vernal pools be avoided to the maximum extent practicable and then requires 2:1 to 4:1 mitigation for unavoidable impacts. The 2:1 ratio is utilized when no endangered species are present, and the 4:1 ratio is required when endangered species with very limited distributions are present (e.g. San Diego mesa mint). Unavoidable STP impacts to vernal pools should be mitigated with at least 3:1 given the presence of San Diego fairy shrimp and San Diego button celery. One opportunity for vernal pool mitigation / restoration may be available in cooperation with Pardee Homes’s Shaw-Lorenz development vernal pool mitigation around the location of most STP

¹¹ Fremontia 24(4): 3-7

¹² San Diego Municipal Code – Land Development Code – Biology Guidelines

vernal pool impacts in the Del Mar Mesa community. However, routing the line to avoid impacts is far preferable to mitigating for harm caused.

In recent years enormous areas of coastal sage scrub have been lost not only to development but also to unnaturally frequent fire. Based on this, permanent impacts to coastal sage scrub should be mitigated with at least a 2:1 ratio.

Impacts to southern maritime chaparral should be mitigated consistent with local regulations and mitigation ratios. For example, the City of San Diego requires that impacts to maritime chaparral be mitigated at 1:1 for impacts occurring outside of the Multiple Habitats Planning Area with mitigation inside the MHPA; 2:1 for impacts and mitigation both located inside the MHPA or both located outside the MHPA, and; 3:1 for impacts located inside the MHPA with mitigation outside the MHPA.

Temporary impacts to coastal or montane scrubs and any chaparral should also be mitigated at 2:1 with restoration of disturbed sites and other nearby areas (especially in preserves) to buffer any failure of inherently difficult restoration.

Pages D.2-103 & 2-110 – U.S. Forest Service Regional Forester’s sensitive species should be treated as if they are federally listed species to prevent any contribution to a trend towards federal listing.

Page D.2-106 – Please provide documentation that SDG&E’s BIO-APM 3 (“a 15-mile-per-hour speed limit shall be observed on dirt access roads to ... allow reptiles and small mammals to disperse”; D. 2-73) will adequately protect flat-tailed horned lizards from vehicle traffic. According to the DEIR/EIS at D.2-110: “Unlike other iguanid lizards that often flee when approached, the [flat-tailed horned lizard] remains still or may bury itself in loose sand. This reluctance to move, along with its cryptic coloration and body flattening habit, makes the FTHL very susceptible to mortality, especially from vehicles...”

Please add an additional mitigation measure requiring at least a 4:1 mitigation ratio for the loss of any suitable flat-tailed lizard desert habitat (double that considered for desert habitats in the DEIR/EIS) to offset not just the direct loss of suitable habitat but also for habitat and lizard populations indirectly impacted as individuals of the species from surrounding undisturbed areas are killed during STP construction, operation, and maintenance activities, (especially to vehicle traffic), and STP features such as roads and towers attract predatory ravens, round-tailed squirrels, and loggerhead shrikes.

Page D. 2-111 – In many cases the DEIR/EIS concludes that impacts “are significant and not mitigable to less than significant levels (Class I) because adequate mitigation land may not be available to compensate for the impacts.” While we agree with this conclusion, please add additional requirements for habitat compensation that the wildlife agencies, in consultation with the PUC and BLM, shall have the final say on the question of whether habitat is available for mitigation compensation and that the cost of land shall not be a factor in determining the availability of habitat compensation land.¹³

¹³ Cost of land should not be a factor in mitigation throughout our comments, with mitigation focused on the acquisition and proper management of land, rather than a buyout of mitigation responsibilities.

Page D.2-115 – Thank you for the mitigation measure to fund construction of an overpass or tunnel to facilitate movement of Peninsular bighorn sheep movement across Highway 78. Given the significance of impacts to bighorn sheep identified in the DEIR/EIS, please consider additional mitigation measures to construct vegetated overpasses on Highway S-22 and Interstate 8 to facilitate sheep movement. Many highway road cuts on S-22 are very conducive to the construction of sheep overpasses.

Page D.2-132 – Barring protocol surveys that definitively conclude that arroyo toads are absent, any areas considered in the DEIR/EIS as moderately to highly likely to be occupied by the arroyo toad should be considered occupied and mitigated accordingly. Also, we are unable to determine any basis to differentiate between the level of necessary mitigation for impacts to arroyo toad wetland breeding habitat vs. arroyo toad upland burrowing habitat – both types of habitat are equally important to the persistence of the species. Based on this, and based on the conclusion in the DEIR/EIS that “...arroyo toads may move between 1 and 2 kilometers into adjacent upland habitats to aestivate...”, 3:1 mitigation should be required for permanent impacts to BOTH wetland and uplands arroyo toad habitat, and a total of 3:1 should be required for temporary impacts to both wetland and upland habitat including 1:1 restoration. However, as described in the testimony of Ms. Anderson, it is far preferable and necessary to conduct adequate surveys in the first instance so every effort can be made to avoid occupied habitat.

Page D.2-135 – Stephens’ kangaroo rats are extremely vulnerable to mortality from vehicles even when vehicles move at a slow rate of speed and especially at dusk and dawn. Please add additional mitigation measures including mandatory 5mph speed limits and speed bumps on any STP related access roads in suitable Stephens’ kangaroo rat habitat, barring SDG&E access to STP access roads between 1 hour before sunset and 1 hour after dawn except in emergencies, and provide double the mitigation contemplated in the DEIR/EIS for any habitats suitable for Stephens’ kangaroo rats to offset indirect effects.

Page D.2-147 – Thank you for mitigation measures in the DEIR/EIS to reduce the harmful effects of the STP on sensitive bird species. Please add additional mitigation measures such as undergrounding the STP beyond those areas identified in the environmentally superior route segments, and/or consolidating or undergrounding existing lower voltage distribution lines using trenchless technology in areas of high raptor use and bird migrations to address the combined cumulative effects of bird electrocutions and collisions resulting from the STP and numerous other existing power lines. We recommend undergrounding existing distribution lines to offset any above ground segments of the STP with at least a 1:1 ratio. The same undergrounding of additional portions of the STP and/or existing distribution lines will also reasonably improve mitigation to reduce the risk of wildfire.

Page D.2-130 – Quino checkerspot butterfly host plant *Plantago erecta* is extremely common in many areas of the Coastal Link between miles 147 and 148 based on field visits to the Los Penasquitos Canyon Preserve on April 8, 2008. Quino protocol surveys should be required here or the species should be assumed present and mitigated accordingly. Again, however, it is better to avoid impacts by routing the line around occupied areas.

Page D.2-242 – The one known population of the Quino checkerspot butterfly near Jacumba is considered extremely important to the persistence of the species given apparent adaptations of this population to harsher climate conditions that may prove important for the species to persist in the face of global warming. This population appears to be located at or extremely close to the proposed Jacumba substation, and construction of the substation in this location or in this unit of critical habitat would require a jeopardy determination by the U.S. Fish and Wildlife Service. The location of the Jacumba substation out of any suitable quino habitat in this area is essential.

The DEIR/EIS does not adequately address the impacts of lights on power line poles, causing both light pollution for humans and impacts on birds and other species.

The DEIR/EIS does not adequately consider impacts from moving distribution lines to accommodate the STP, including co-locating transmission lines with distribution lines.

The DEIR/EIS says that APLIC guidelines shall be followed, yet construction and routing plans for the STP do not follow APLIC guidelines. Insufficient surveys were conducted, including surveys recommended by SDG&E in its PEA, Appendix C, to protect birds. Further, lines appear to be placed in a vertical array in portions of the project, contrary to APLIC recommendations to play lines in a horizontal array to reduce avian collisions. See testimony of Dr. Longcore in Phase 2 of the STP hearing (Attachment 8).

Visual Resources

Page D.3-49 – The STP will significantly impact views of scenic areas (especially from Key Viewpoints into protected natural areas – Anza-Borrego Desert State Park, the Cleveland National Forest, ACECs, wilderness, open space preserves, and others) – and more mitigation could reasonably be provided to reduce this harm. Please add an additional mitigation measure requiring the purchase of private inholdings within impacted protected natural area and that are visible from the Key Viewpoints to offset STP impacts by reducing the likelihood of future development and associated visual impacts.

Wilderness and Recreation

We concur with conclusions in the DEIR/EIS that the proposed project has significant, unmitigable impacts on wilderness, including significant impacts on wildlife and habitat. We also agree the impacts on the recreational use of wilderness areas are significant and unmitigable, including impacts to visual resources, noise, and the solitude sought by those who visit wilderness. We also agree that the proposed route or any expansion into Anza-Borrego Desert State Park would result in exceeding the existing easement and require, for the first time in California history, the de-designation of a wilderness area. D.5-22. Wilderness status of land that would be crossed by the proposed route is sufficient, as a stand alone issue, to eliminate consideration of this alternative.

The DEIR/EIS identifies approximately 50.2 acres of State Wilderness land that would be required for de-designation because a wider Right of Way would be necessary. ES-27. Power lines are not to be found within wilderness areas. D.5-21, citing the Anza-Borrego Final General Plan. The existing easement is specifically excluded from wilderness areas. D.5-23. The

Commission has no authority to change wilderness boundaries. Wilderness boundaries may only be changed by the Legislature or the State Park and Recreation Commission. Criteria that must be met to change a wilderness boundary effectively eliminates the ability of State Parks to de-designate wilderness for the proposed STP. If the legislature were to consider the first ever de-designation of wilderness anywhere, let alone in one of the most loved state parks in the state, the likelihood of success would be highly uncertain and clearly controversial. SDG&E has testified that given the choice between the immediate selection of an alternative route and the delayed selection of its proposed route, it would seek the alternative route.¹⁴

The DEIR/EIS proposes mitigating any loss of wilderness with a 5:1 ratio of replacement lands for lands removed from wilderness. Any ratio, however, does not account for or change the Commission's lack of jurisdiction. Quantity of habitat does not replace high quality habitat, and the precedent set would be fundamentally inconsistent with the purpose of wilderness designation. We are opposed to any action that removes or infringes on wilderness lands, including their use as pull sites, access roads, and for other activities associated with power line construction, operation, or maintenance. Moreover, California legislation is emphatic in regard to protection of wilderness. The state code mandates that the California wilderness preservation system "shall be administered for the use and enjoyment of the people in such manner as will leave [the wilderness areas] unimpaired for future use and enjoyment as wilderness, provide for the protection of such areas, [and] preserve their wilderness character,"¹⁵

It is axiomatic, of course, that a massive powerline directly degrades wilderness, would not leave Anza-Borrego's wilderness "unimpaired for future use and enjoyment," nor would a powerline help "preserve the wilderness" for present and future generations. The proposed power line and its attendant infrastructure (such as roads and support vehicles), would likewise fly in the face of the definition of state wilderness as:

an area where the earth and its community of life are untrammled by man, where man himself is a visitor who does not remain. A wilderness area... is an area of relatively undeveloped state-owned land which has retained its primeval character and influence or has been substantially restored to a near natural appearance, without permanent improvements or human habitation, other than semi-improved campgrounds and primitive latrines, and which is protected and managed so as to preserve its natural conditions¹⁶

De-designating the wilderness areas in order to avoid the obvious inconsistencies, however, would not cure the problem—the inherent contradiction between power lines and wilderness can

¹⁴ Phase I testimony of James Avery.

¹⁵ Cal. Pub. Resources Code § 5093.33 (2007).

¹⁶ Cal. Pub. Resources Code § 5093.33 (2007).; *see also* Cal Pub Resources Code § 5019.68 (2007) (same); Cal. Pub. Resources Code § 5001.8 (2007) (prohibiting the use of motor vehicles in state wilderness).

not be fixed by reclassifying the land in question. That too would violate state law seeking to “leave [the wilderness areas] unimpaired for future use and enjoyment *as wilderness*...”¹⁷

Wilderness is not the only issue, however. State law is likewise emphatic in its protection of state parks in general. Cal. Pub. Resources Code § 5019.53 (2007) declares:

The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples of ecological regions of California, such as the . . . southwest mountains and valleys, . . . foothills and low coastal mountains, . . . desert and desert mountains.

Each state park shall be managed as a composite whole in order to restore, protect, and maintain its native environmental complexes to the extent compatible with the primary purpose for which the park was established. (emphasis added).

Section 5019.53 clearly establishes that California’s state parks are set aside for their “outstanding natural, scenic, and cultural values” and are to be managed as a “whole” in order to enhance those values. It is self-evident that the construction of a 500 kilovolt power line through Anza-Borrego will not benefit the “natural, scenic, and cultural values” of the park nor will it help “restore, protect, and maintain [the park’s] native environmental complexes.” Instead, it would cause habitat fragmentation, edge effects, disruption of ecological processes, and air, noise, and water pollution.

The California Code also states:

Improvements that do not directly enhance the public’s enjoyment of the natural, scenic, cultural, or ecological values of the resource, which are attractions in themselves, or which are otherwise available to the public within a reasonable distance outside the park, shall not be undertaken within state parks.¹⁸

That clear mandate is reiterated in Anza-Borrego Desert State Park’s General Plan:

The purpose of Anza-Borrego Desert State Park is to preserve the unique and diverse natural, cultural, and scenic resources of this Western Colorado Desert Region and to provide opportunities for high quality recreation that supports a healthy natural environment. This desert park environment nurtures peaceful solitude, astronomical clarity, amazing forms of life, glimpses of the past, and a tremendous scope for the imagination. Therefore, management of Anza-Borrego

¹⁷ Cal. Pub. Resources Code § 5093.33; *see also* Cal. Pub. Resources Code § 5093.31 (“In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas on state-owned lands within California, leaving no areas designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the State of California to secure for present and future generations the benefits of an enduring resource of wilderness.”)

¹⁸ Cal. Pub. Resources Code § 5019.53 (2007).

Desert State Park will be based upon the goal of preserving, instilling an appreciation for, and making available these treasured qualities and experiences for present and future generations.

Moreover, even the California Energy Commission has designated ABDSP a “no touch zone” that should be avoided by transmission lines.¹⁹

In short, any and all impacts to state wilderness, and to state parks, from the proposed project or any alternatives must be considered significant and unmitigable. This *includes* the Overhead 500 kV ABDSP Within Existing ROW alternative because it too will infringe directly on both the park and wilderness via a) construction and permanent structures where there appears to be no existing legal right-of-way, b) pull sites and temporary and permanent roads located outside of any ROW, c) motor vehicles, d) helicopters, and e) visual scarring from the nearby presence of towers and conductors. This would be inconsistent with Public Resources Code section 5093.36(b) and the Anza-Borrego General Plan.

Finally, not only would reclassification of wilderness areas be contrary to state policy and law, it could require lengthy proceedings beyond the CPCN process. This is because the proposed project would require an amendment to the Anza-Borrego General Plan and a re-designation of State Wilderness by the California State Park and Recreation Commission. State Parks would also need to consider additional intrusions, such as those identified above, that would impinge upon wilderness and other ecologically and culturally significant areas. However, the State Parks Department is not an agency dedicated to multiple uses of the land, and therefore would be required to assess the STP in accordance with its own laws, policies and General Plans that mandate preservation of the Park’s resources. In other words, any proceeding regarding the STP would have to thoroughly examine the Project through the lens of the Parks Department’s mission and purposes. For instance, the California Code mandates that

each state agency with jurisdiction over any area designated as a wilderness area shall be responsible for preserving the wilderness character of the wilderness area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.²⁰

This means that the State Parks Department is vested with the authority and responsibility to preserve the wilderness character of state wilderness within Anza-Borrego. The addition of a 500 kilovolt transmission line and its operation and maintenance, of course, would do just the

¹⁹ California Energy Commission July 2, 2007, comments. See Attachment 9.

²⁰ Cal. Pub. Resources Code § 5093.36 (2007). *See also* Cal. Pub. Resources Code § 5093.33 (2007) (“wilderness area shall continue to be subject to the jurisdiction of the state agency or agencies having jurisdiction thereover immediately prior to its inclusion in the system. The secretary shall adopt guidelines for the management of wilderness areas. Each state agency or agencies having jurisdiction over a wilderness area shall adopt regulations for the management of such areas consistent with the guidelines adopted by the secretary and the objectives of this chapter. Such regulations shall include provisions to protect endangered or rare native plant and animal species.”)

opposite. Therefore, any proceeding before the State Parks Department regarding the STP would take considerable time and would likely (as it should) result in the prohibition of any part of the STP on state park or wilderness land.

Finally, the DEIR/EIS acknowledges that “the statutory or recorded easement through the majority of [Anza-Borrego] is 100 feet, but may be narrower or even non-existent in several areas...” B-9.²¹ Nonetheless, the DEIR/EIS, for the purposes of its analysis, assumes that SDG&E’s ROW in Anza-Borrego is 100 feet throughout. We note here that SDG&E has not yet established that it has a 100 foot easement throughout Anza-Borrego. Instead, SDG&E’s easement is likely less than 100 feet in certain areas, and non-existent in other areas. This is important because one of the Anza-Borrego alternatives, the Overhead 500 kV ABDSP Within Existing ROW alternative, would not achieve what SDG&E believes it would achieve, avoidance of inconsistency with the Anza Borrego General Plan. Instead, because a) SDG&E has not established a ROW throughout the entirety of Anza-Borrego, b) has not established that such a ROW would be 100-feet, and c) has not established that the change in scope and use (from a wooden monopole to a 500 kv H-frame) of the ROW would be allowed, impacts to Anza-Borrego, both the park and its wilderness, would be much more significant than the description of the Overhead 500 kV ABDSP Within Existing ROW alternative suggests. The final EIR/EIS should make clear that impacts to the park and wilderness may be more severe because SDG&E has not established a ROW, let alone a 100-foot ROW, throughout Anza-Borrego. Similarly, the final EIR/EIS should make clear that there may be additional inconsistencies with the Anza-Borrego General Plan due to the failure thus far of SDG&E to establish a ROW throughout Anza-Borrego.

Fire and Fuels Management

In addition to the comments of Richard Halsey made on our behalf (Attachment 7), we submit the following additional comments regarding Fire.

Page D.15-84 & 15-87 – The text of mitigation measure F-1d is not entirely clear but appears to require that all “brush” and dead and decaying vegetation shall be removed from the entire STP right-of-way and construction work areas. Please clarify whether this is a correct interpretation of this mitigation measure and whether this would be considered a permanent impact. If this is a correct interpretation, please explain whether the level of vegetation removal contemplated here is reflected in Table D.2-7.

Assuming this is an accurate interpretation, this mitigation measure would result in an extraordinary level of habitat destruction that does not appear to be considered for the purposes of calculating impacts or mitigation to habitat, species, water quality, visual resources, and many other issues elsewhere in the DEIR/EIS. Removal of all “brush” in the right-of-way, presumably at least including all coastal sage scrub and chaparral vegetation, would not only be extremely

²¹ Not only may the ROW be narrower or even non-existent in several areas, SDG&E’s assertion that it has “prescriptive easements” is incorrect. A title obtained by prescription is a legal title, not just a mere assertion of rights, and is available as the basis of an action to quiet title. As of yet, SDG&E has failed to obtain such title, and until they do so, they have no prescriptive easement over State Park land.

harmful to these resources and dependent species, this measure would also be counterproductive for the purposes of reducing the risk of fire.

This mitigation, as well as that at F.3a (page D.15-87 – “Construct and maintain fuel breaks”) would essentially create enormous harmful and counterproductive fuel breaks in many segments of the STP “within ¼ miles of the transmission centerline...” harming resources and providing a super highway for invasions by highly flammable weeds.

Fuel breaks are typically ineffective when it comes to controlling wildfire under conditions when control is most essential. According to Keeley et al. (2004)²²: “Under extreme weather conditions, there is overwhelming evidence that young fuels, or even fuel breaks... will not act as a barrier to fire spread.” The creation of fire lines and fuel breaks through mechanical thinning (a.k.a. mastication) as would likely be required over so great an area encourages invasion by exotic weeds through soil disturbance and the introduction and spread of seed.²³ Merriam et al. (2006)²⁴ found that exotic plants made up as much as 70% of plant cover in twenty four fuel breaks distributed throughout California. According to Keeley²⁵ (2006b, citing Keeley 2001, Keeley 2004), “The fact that fuel breaks typically form long corridors makes them ideal mechanisms for transporting non-native species into remote wildlands. ...following fires these fuel breaks represent a major source area for alien invasion of adjacent wildlands” when they provide linear connections between disturbed areas and when reduced fuels in the breaks burn at lower temperatures providing “safe sites for alien propagules during wildfires [and] ensuring survivorship of seed banks.” Exotic weeds in turn are highly flammable and likely to increase the likelihood of wildfire. According to Keeley (2006a)²⁶: “...[A]lien grasses increase the probability of burning...” The conversion of native shrublands to exotic grasslands harms

²² Keeley, J.E., C.J. Fotheringham, and M.A. Moritz. 2004. Lessons from the 2003 wildfires in southern California. *Journal of Forestry* 102(7):26-31.

²³ Backer, D. M., S. E. Jensen, and G. R. McPherson. 2004. Impacts of fire suppression activities on natural communities. *Conservation Biology* 18:937-946; Harrod, R. J., and S. Reichard. 2002. Fire and invasive species within the temperate and boreal coniferous forests of western North America. Pages 95-101 in K. E. M. Galley and T. P. Wilson, editors. *Proceedings of the invasive species workshop: the role of fire in the control and spread of invasive species*. Miscellaneous publication 11. Tall Timbers Research Station, Tallahassee, Florida; Keeley, J.E. 2006a. Fire management impacts on invasive plant species in the western United States. *Conservation Biology* 20:375-384.

²⁴ Merriam, K. E., J. E. Keeley, and J. L. Beyers. 2006. Fuel breaks affect nonnative species abundance in California plant communities. *Ecological Applications* 16:515-527.

²⁵ Keeley, J.E. 2006b. South coast bioregion, pp. 350-390. In N.G. Sugihari, J.W. van Wangtendonk, K.E. Shaffer, J. Fites-Kaufman, and A.E. Thoede (eds), *Fire in California's Ecosystems*. University of California Press.; Keeley, J.E. 2004. Invasive plants and fire management in California Mediterranean-climate ecosystems. No pagination in M. Arianoutsou and V. P. Panastasis, editors. *Ecology, conservation and management of mediterranean climate ecosystems*. Millpress, Rotterdam, Netherlands; Keeley, J.E. 2001. Fire and invasive species in Mediterranean climate ecosystems of California. Pages 81-94 in K.E.M. Galley and T.P. Wilson, editors. *Proceedings of the invasive species workshop: the role of fire in the control and spread of invasive species*. Miscellaneous Publication No. 11. Tall Timbers Research Station, Tallahassee, FL.

²⁶ Keeley, J.E. 2006a. Fire management impacts on invasive plant species in the western United States. *Conservation Biology* 20:375-384.

biodiversity and increases erosion, landslides, and other harmful landform changes.²⁷ The only way to limit the invasion and establishment of exotics in regularly cleared / maintained fuel breaks would be through the regular application of massive and harmful quantities of herbicides, and even this measure is not likely to be totally effective. The resulting harm of this type of clearing and maintenance to people, wildlife, water quality, and many other values would be virtually incalculable. Please consider replacing this mitigation measure with grants to local fire agencies to increase staffing and improve equipment.

Grants for the creation of defensible space for vulnerable residences are not likely to be effective and may be counterproductive by continuing to a trend of diverting attention from other important elements to improve the fire resistance of at-risk homes – construction features and design of the home itself vs. modification of surrounding vegetation. California law already requires a minimum of 100 feet of vegetation modification around residences in high fire risk areas. Based on this, and based on the need to improve public education about the importance of treating structures vs. only surrounding vegetation, please modify this mitigation measure to increase the amount of funding per home to provide meaningful support for fire resistant modifications to existing homes such as fire resistant roofing, fire shutters, double pane windows, eave boxing, removal of attic vents and/or installation of alternatives, water sprinklers and generator supported water systems, removal or replacement of wood fencing and decks with alternatives, and much more.

Policy Consistency/Plan Amendments

In regard to the Anza- Borrego General Plan, we support some of the DEIR/EIS's findings regarding inconsistency of the STP (and its Anza- Borrego alternatives) with the General Plan. For instance, Biota Guideline 1a of the Anza- Borrego General Plan requires that park staff "preserve sensitive species and habitats and encourage their recovery." Bighorn sheep critical habitat was established in order to promote not only the survival, but the recovery of the species. The significant harm to the sheep's critical habitat from STP (and its Anza- Borrego alternatives) would inhibit that recovery. The DEIR/EIS therefore correctly stated that impacts to bighorn sheep critical habitat would be inconsistent with Guideline 1a. We also agree with the DEIR/EIS that STP (and its Anza- Borrego alternatives) would be inconsistent with Biota Guideline 1b due to the conflicts with the Guideline's directive for proactive efforts for protection and recovery of rare native species.

The DEIR/EIS, however, also found that STP (and its Anza- Borrego alternatives) would be consistent with Biota Goal 1, which requires park staff to protect the native biota of Anza- Borrego. We feel that the harmful impacts to native plants and animals from the Project and its alternatives, such as the impacts to bighorn sheep, as well as the inconsistency with many of Biota Guidelines, demonstrates a clear inconsistency with Biota Goal 1. We likewise disagree that STP (and its Anza- Borrego alternatives) would be consistent with Biota Guideline 1c which requires park staff to ensure that the conservation of native biota is incorporated into all future developments, management plans, and visitor-use patterns throughout ABDSP, and that the

²⁷ Keeley, J.E. 2006a. Fire management impacts on invasive plant species in the western United States. *Conservation Biology* 20:375-384.

protection of sensitive species and habitats receives the highest priority. The harmful impacts to sensitive species such as bighorn sheep from STP (and its Anza- Borrego alternatives) are directly contrary to the mandate to give such species highest priority. Similarly, Biota Guideline 1d requires that management strategies will be developed to counteract declines or loss of native biota if those declines are the result of human actions and appear to indicate a compromised native species or ecological system. Again, STP (and its Anza- Borrego alternatives) would be directly contrary to that because they would promote loss of native biota. Therefore, the Draft EIR/EIS should have found an inconsistency with Biota Guideline 1d. Finally, Biota Guideline 1e demands that Desert and Montane Riparian, Palm Tree Oases, Mesquite Bosques, Cienegas, Montane Vernal Pools and Meadows, Desert Ephemeral Playas, small Springs and Seeps, Sand Dunes, and significant wildflower areas be managed for their biological significance and protected as critical resources that support the extraordinary biological diversity of California. Again, STP (and its Anza- Borrego alternatives) are directly contrary to that – the presence of a transmission line of the size and scope of the proposed Project, along with eight new miles of access roads, would inhibit such management and protection.

The Anza-Borrego General Plan also has goals and guidelines that address invasive species. We believe that due to the high likelihood of the introduction of invasive species due to STP (and its Anza- Borrego alternatives), there would be an inconsistency with Ex. Biota Goal 1, which mandates the reduction of the presence and further invasion of exotic species in the Park.

We also note that Biological Processes Goal 1 asks park staff to protect the natural processes associated with the Park and to allow those processes to function in a manner that supports the region's native biodiversity. STP (and its Anza- Borrego alternatives) are directly contrary to such a goal because, for instance, they could severely impact Peninsular bighorn sheep. Biological Processes Guideline 1a underscores that point by seeking the perpetuation and enhancement of natural processes and requiring that they be incorporated into future developments, management plans, and visitor use patterns throughout ABDSP. We believe STP (and its Anza- Borrego alternatives) are not consistent with this Guideline. STP (and its Anza- Borrego alternatives) by their very nature, will not enhance the natural processes of the Park. Likewise, Biological Processes Guideline 1b seeks adequate space and time for organisms to respond in an adaptive manner to changes in habitat, climate, the human element, and other environmental variables. The STP (and its Anza- Borrego alternatives) would inhibit that by limiting space for species such as the bighorn sheep.

We are aware that the DEIR/EIS believes that APMs and mitigation measures can overcome some of the inconsistencies we addressed above. We do not agree with that assessment because we do not believe that those measures can undo the significant damage that would be done from STP to the native flora and fauna of Anza- Borrego. Moreover, as discussed above, STP and its Anza- Borrego alternatives are inherently contrary to the Anza- Borrego General Plan's Goals and Guidelines, and consequently, no amount of mitigation or other measures will solve the problem.

In addition to the Anza- Borrego General Plan comments above, we submit the following:

Pages D.16-8 – D.16-36 – In the event that the STP is approved in a manner that remains inconsistent with other federal plans, STP mitigation should include amendments to relevant plans to offset impacts resulting from the inconsistencies. For example, any amendments to the BLM’s California Desert Conservation Area plan that reduce the extent of Class III visual resource management areas to accommodate the STP should include amendments that increase Class III areas by an equivalent amount elsewhere in the CDCA plan.

Page D.16-12 & others – In some circumstances, conclusions with regard to the consistency of the STP with state or federal plans do not appear consistent with other conclusions in the DEIR/EIS. For example, on page D.2-111 the DEIR/EIS concludes that impacts to flat-tailed horned lizard habitat “are significant and not mitigable to less than significant levels (Class I) because adequate mitigation land may not be available to compensate for the impacts.” In contrast, the DEIR/EIS concludes on page D.16-12 that the STP would be consistent with the Flat-Tailed Horned Lizard Rangewide Management Strategy because habitat compensation will be provided. Conclusions in section D.16 should be carefully reviewed and the STP should be found inconsistent with any state or federal plan when relevant impacts would result in any Class I impacts.

Page D.16-95 – The STP would be patently inconsistent with the City of San Diego MSCP Subarea Plan contrary to statements in the DEIR/EIS. For example, according to the subarea plan “All proposed utility lines ... should be designed to avoid or minimize intrusion into the MHPA. These facilities should be routed through developed or developing areas rather than the MHPA, where possible. If no other routing is feasible, then the lines should follow previously existing roads, easements, rights of way, and disturbed areas, minimizing habitat fragmentation.” The DEIR/EIS’ consistency determination responds to the second portion of this MSCP requirement, but not at all to avoid the MHPA in the first place – at no point does the DEIR/EIS explain why the location of the STP outside of the Los Penasquitos Canyon or Del Mar Mesa preserves for the purpose of avoiding impacts to the MHPA is not possible. The MSCP also requires that “...utilities and facilities within or crossing the MHPA shall be planned, designed, located, and constructed go minimize environmental impacts.” The STP is clearly inconsistent with this requirement as adequate surveys for several plants and animals as well as in some areas where there will be STP impacts outside of the right-of-way have not been conducted and so impacts have not been determined and so certainly can’t be avoided or minimized.

Growth Inducing Impacts

The DEIR/EIS states that “the Proposed Project would facilitate growth indirectly by removing obstacles to population growth through the additional increased capacity of electric power that it would make available.” F-35. However, the DEIR/EIS gives little more information and does not provide any analysis of the impact of increased capacity and additional substations in areas where sprawl development is already taking a heavy toll on the natural environment. Instead, the DEIR/EIS simply concludes that growth is expected to occur with or without implementation of the proposed project. CEQA requires more. In fact, SDG&E’s own testimony, both prepared and during cross examination of witness Kemp during Phase 1 of the hearing demonstrates that at least according to SDG&E, the STP will stimulate growth, sprawl, and the attendant increased

traffic, construction, and emissions. No analysis in the DEIR/EIS discusses this sprawl and whether it is consistent with state GHG emission goals and the Imperial County General Plan.

Global Warming.

The project will result in foreseeable and quantifiable emissions of carbon dioxide and other greenhouse gases during both construction and the lifetime of the project. These emissions, although small in comparison to worldwide greenhouse gas emissions, will contribute directly and cumulatively to the increase in atmospheric greenhouse gases, and will thus contribute directly, indirectly, and cumulatively to global warming. Under CEQA, it is irrelevant that the emissions associated with the project are small in comparison to total emissions. On the contrary, CEQA's cumulative impact analysis requirement exists to capture precisely this type of impact that may be individually small but cumulatively significant. Kings County Farm Bureau v. City of Hanford (1990) 221 Cal. App. 3d 692, 721. ("The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality."). We agree with the conclusion in the DEIR/EIS that the proposed STP would have a significant and unmitigable impact. We also agree that any increase in GHG emissions above zero is a significant impact at a time when State law and policy requires substantial GHG emission reductions. We refer you to *The California Environmental Quality Act: On the Front Lines of California's Fight Against Global Warming*, Sept. 2007, from the Center for Biological Diversity.²⁸ The STP would violate AB 32 by locking in an overall increase in greenhouse gas (GHG) emissions, particularly when feasible alternatives exist that will lead to GHG reductions.

Assembly Bill 32 (AB 32) is the California Global Warming Solutions Act of 2006. The Act requires that greenhouse emissions in California must be reduced to 1990 levels by 2020.²⁹ The Governor, through Executive Order, has required reducing those levels another 80% by 2050.³⁰ It is difficult to overstate the importance of AB 32 and the Governor's actions. The legislature, in passing AB 32, declared:

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.³¹

²⁸ The report is at the CBD website and included as attachment 10 to these comments.

²⁹ Cal. Health & Saf. Code § 38550 (2007).

³⁰ Executive Order S-3-05, Governor of the State of California, June 1, 2005; <http://gov.ca.gov/index.php?executive-order/1861/>

³¹ Cal. Health & Saf. Code § 38501(a) (2007).

The dramatic reductions in greenhouse gas emissions and the ambitious schedule necessary to meet the requirements of AB 32 and the Governor's Executive Order requires that energy projects must be carefully scrutinized. This is particularly critical in the case of the STP, a massive infrastructure investment that SDG&E witness William Kemp testified will impact the state for the next 50 – 100 years.³² The evidence in both the DEIR/EIS and Phase 1 of the STP proceeding demonstrates that rather than reduce greenhouse gas emissions, approving the STP will cause massive GHG emissions from its construction that exceed any savings that may occur over time, and will increase coal production and the atmospheric release of carbon dioxide, the most pervasive of greenhouse gases.³³

UCAN expert David Marcus used SDG&E's own modeling to demonstrate that fossil fuel alternatives to the STP would produce 8000 Gwh less coal generation in 2020 than the STP alternative. Mr. Marcus compares this amount to operating a 1000 Mw coal plant.³⁴ If a renewable energy only alternative or no action alternative is selected, the savings would of course be greater.

DRA highlights in its prepared testimony that SDG&E provides no analysis of greenhouse gas emissions in its PEA or elsewhere in its Application. SDG&E does not contest this assertion, instead referring to California's "recent" commitment to reducing greenhouse gases.³⁵ SDG&E witness Strack states in his prepared Phase 1 testimony that by "adding the Sunrise Powerlink...some coal-fired generation...can be ramped up."³⁶ Mr. Strack elaborates on this theme further in his testimony during cross-examination by the DRA, agreeing not only that the STP alternative results in more coal production than other alternatives, but that approving the STP will, over time, result in more coal production throughout the West.³⁷ Mr. Strack explained that "when you – add Sunrise Powerlink, you allow more lower cost generation from the Desert Southwest principally to reach the California load center...by adding a line, you're allowing that coal to run a little bit more than it otherwise would."³⁸

Actions that cause an *increase* in coal production are inconsistent with the requirements of AB 32 and the mandate of *reducing* emissions to 1990 levels by 2020. Locking in an infrastructure

³² SDG&E June 15, 2007 Rebuttal Testimony Volume 1 of 2 – Public, Updated on 7/6/07, William Kemp, Exhibit SD- 15, page 5.

³³ "CO₂ is the most pervasive of the GHGs, [greenhouse gases] and the most widely reported and verified of the GHGs at this time." CPUC *Interim Opinion on Phase I Issues: Greenhouse Gas Emissions Performance Standard*, D.07-01-039, January 25, 2007, page 227, finding of fact 10.

³⁴ UCAN Testimony of David Marcus (Redacted), Exhibit U- 04, page 211.

³⁵ SDG&E June 15, 2007 Rebuttal Testimony Volume 2 of 2 – Public, Updated on 7/6/07, Jan Strack, Exhibit SD-16, page 7.

³⁶ SDG&E June 15, 2007 Rebuttal Testimony Volume 2 of 2 – Public, Updated on 7/6/07, Jan Strack, Exhibit SD-16, page 29.

³⁷ Testimony of SDG&E witness, Jan Strack, Tr. pages 1368-1372.

³⁸ Testimony of SDG&E witness, Jan Strack, Tr. page 1371.

that encourages additional coal production for the next 50-100 years moves the State even further from meeting the goal of reducing emissions 80% below 1990 levels by 2050 and of providing a leadership role in taking measures to reduce GHG emissions throughout the West. It also must be noted that the spirit of all of the State's GHG initiatives recognizes the trans-boundary impacts of global warming – California is seeking to reduce emissions of GHG pollutants throughout the West, and not merely take actions to lower its own emissions while simultaneously increasing emissions elsewhere.

The STP, if approved, would likely lead to violations of AB 32 similar to two enforcement actions previously brought by the Attorney General's office. The basis of each action emphasizes the same concerns raised by the CEC. A petition was filed by the State of California, through the Attorney General's office, on April 13, 2007, alleging the County of San Bernadino has, despite the enactment of AB 32, failed to:

...disclose the effects of the General Plan update on emissions of greenhouse gases, makes no attempt to quantify or even to estimate the current levels of greenhouse gas emissions in the County, makes no attempt to quantify or even to estimate the increases in greenhouse gas emissions that the full execution of the General Plan will cause, makes no attempt to analyze the effects of those increases on global warming or the greenhouse gas emissions reductions required by AB 32, and neither adopts all feasible mitigation measures...nor makes findings supported by substantial evidence in the record that such mitigation measures are infeasible, all in violation of CEQA.³⁹

The State and County settled the matter on August 21, 2007, agreeing on a series of specific measures the County must take to reach compliance with AB 32 and CEQA.⁴⁰

Critical information sought by the Attorney General's office in the San Bernadino case is absent from the initial application initiating this proceeding in 2005, the amended application filed in 2006, the Proponent's Environmental Assessment (PEA),⁴¹ the record from the Phase I hearing, and the DEIR/EIS. There is insufficient evidence Imperial County has planned for the

³⁹ *The People of the State of California v. County of San Bernadino*, Petition for writ of mandate, paragraph 5, April 13, 2007,

⁴⁰ Settlement, <http://ag.ca.gov/newsalerts/release.php?id=1453&year=2007&month=8> (See pdf of Agreement at bottom)

⁴¹ Rule 2.4 of the Commission's Rules of Practice and Procedure requires submission of a PEA. The PEA shall include all information and studies required by the Commission's Information and Criteria list. Rule 2.4(b). Section V.3 of this list requires in depth analysis of all impacts which may be significant. Section V.4 of this list identifies air pollution resulting from transmission lines as a possible significant effect, and that cumulative effects must be considered. The widespread national and international attention to the issue of global warming, the applicant's own emphasis on renewable energy in its application, and the Commission's 2005 policy statement on global warming, discussed later in this section, provided ample notice to the Applicant that the PEA and an adequate application must provide detailed analysis of this issue as part of the Phase I proceeding, and not be reserved for analysis only after the release of the Draft Environmental Impact Report and Phase II of this proceeding. California has long argued that greenhouse gases are air pollutants and the U.S. Supreme Court has agreed with California, the Center for Biological Diversity, and other States and organizations who filed suit on this issue. See, Massachusetts, et al. v. Environmental Protection Agency, 127 S. Ct. 1438; 167 L. Ed. 2nd 248 (2007).

substantial growth SDG&E's witnesses have testified will occur if the STP application is approved, and no evidence Imperial County accounts for this growth in its General Plan. The only reasonable conclusion from this record is the STP will lead to many of the same deficiencies as those leading to the lawsuit against the County of San Bernadino.

The Attorney General's office also filed an appeal and ultimately settled allegations the Contra-Costa County Board of Supervisors violated CEQA and the requirements of AB 32 in approving an EIR allowing ConocoPhillips to expand an oil refinery without properly documenting environmental impacts of the project, and failing to mitigate for increased greenhouse gas emissions.⁴² The appeal involved a single facility that purportedly would also be providing a benefit in producing clean fuel. In the present case, SDG&E has testified its proposed STP will result in increased greenhouse gas emissions from coal facilities throughout the West. Further, it concedes it did not model likely carbon dioxide costs as part of its transmission planning.⁴³ Until such information is available, the STP suffers the same deficiencies as the ConocoPhillips project, and possibly greater deficiencies because of the 50-100 year lifespan of the project and multiple facilities impacted by the project.

The increase in coal production SDG&E concedes will occur if the STP is approved is also at odds with the PUC's *Policy Statement on Greenhouse Gas Performance Standards*, issued on October 6, 2005 — 10 months prior to SDG&E's submission of the amended application in this proceeding. The Commission stated:

[T]here are approximately 30 proposed coal fired plants across the West, some of which are planned in anticipation of meeting demand in California. *The carbon dioxide emissions from just three 500 MW conventional coal-fired power plants would offset all of the emissions reductions from the IOUs' energy efficiency programs* and would seriously compromise the State's ability to meet the Governor's GHG goals. As the largest electricity consumer in the region, California has an obligation to provide clear guidance on performance standards for utility procurement.⁴⁴ (emphasis added)

The impact of the STP would, by itself, when compared to other fossil-fuel dependent options in front of the Commission, consume two-thirds of all investor owned utility efficiency measures throughout the state as identified by the Commission.⁴⁵ SDG&E concedes the STP would encourage the development of conventional power plants the Commission anticipated in its Policy Statement.⁴⁶ Similarly, approval of the STP could also be viewed as single-handedly

⁴² Settlement, California Department of Justice, September 11, 2007, <http://ag.ca.gov/newsalerts/release.php?id=1466&year=2007&month=9> (See pdf of Agreement at bottom of page)

⁴³ Testimony of SDG&E witness, Jan Strack, Tr., page 1378. It appears the limited modeling for CO₂ done by SDG&E was to assess its economic impact, and not the environmental impact of increased emissions.

⁴⁴ See <http://www.cpuc.ca.gov/PUBLISHED/REPORT/50432.htm>

⁴⁵ Mr. Marcus' testimony described at the beginning of this section found the STP would be responsible for nearly 1000 Mw of additional coal generation, the equivalent of two of the three 500 MW coal-fired plants described in the Commission's policy statement.

⁴⁶ Exhibit SD- 2, page I-22.

eliminating at least two-thirds of the energy savings anticipated by the Commission's three year program adopted in a ground breaking 2007 rulemaking to encourage energy efficiency.⁴⁷

California law not only regulates overall greenhouse gas emissions, but also establishes greenhouse gas emission performance standards on generating facilities through Senate Bill 1368.⁴⁸ The legislation specifically references California's leadership among other states, declaring "as the largest electricity consumer in the region, California has an obligation to provide clear guidance on performance standards for procurement of electricity by load-serving entities."⁴⁹ Among other things, the legislation limits the financial commitment utilities can make to any generator that does not meet emission performance standards established by the PUC.⁵⁰ The PUC issued an initial decision implementing SB 1368 in January 2007, describing efficiency performance standards as akin to an appliance efficiency standard.⁵¹ The standard effectively eliminates long term contracts from coal generating facilities.⁵² It was the clear intent in passing this legislation not to encourage the "ramping up"⁵³ of coal production, even for short term contracts.

The calculations used by the Commission and BLM in the DEIR/EIS to calculate GHG emissions were those of the California Independent Systems Operator (CAISO). These numbers are substantially lower than those presented by UCAN during the Phase I proceeding. The CAISO and DEIR/EIS calculations are based on the assumption that the STP will carry 900 MW of renewable energy from the proposed Stirling concentrated solar power facility. Page D.11-51. It is assumed this energy would replace fossil fuels. Testimony of Phase I demonstrated that even if Stirling were to receive financing and permits from the BLM – of which they have neither – the technology simply isn't ready to operate on a large scale.⁵⁴ The delivery of renewable energy anticipated by CAISO simply isn't going to happen as anticipated because the technology isn't ready for commercial operation. Tellingly, in a recent submittal to the PUC,

⁴⁷ *Interim Opinion On Phase I Issues: Shareholder Risk/Reward Incentive Mechanism for Energy Efficiency Programs*, September 21, 2007, PUC Rulemaking 06-04-010.

⁴⁸ SB 1368 was approved by the Governor on September 29, 2006 and is found in the Public Utilities Code, beginning at Section 8340.

⁴⁹ Cal. Pub. Util. Code § 8340(m)

⁵⁰ Cal. Pub. Util. Code Section 8341(a).

⁵¹ CPUC *Interim Opinion on Phase I Issues: Greenhouse Gas Emissions Performance Standard*, D.07-01-039, January 25, 2007, pages 32 and 226.

⁵² CPUC *Interim Opinion on Phase I Issues: Greenhouse Gas Emissions Performance Standard*, D.07-01-039, January 25, 2007, page 226, paragraphs 2 and 3.

⁵³ SDG&E June 15, 2007 Rebuttal Testimony Volume 2 of 2 – Public, Updated on 7/6/07, Jan Strack, Exhibit SD-16, page 29. Mr. Strack's testimony discusses the ramping up of coal. Purchases of coal for delivery outside of CA enabled by the STP would not be limited to short-term contracts.

⁵⁴ See testimony of Dr. Barry Butler, (Attachment 11 to these comments), and additional exhibits submitted by the Center and Sierra Club during Phase 1 documenting that papers commissioned by both the PUC and CEC reached the same conclusions as Dr. Butler.

SDG&E opposed PUC draft resolution E-4160 in part because it requires utilities to demonstrate the viability of prospective power purchase agreements. The PUC approved the resolution over SDG&E's objections on April 10, 2008.⁵⁵

During Phase I, SDG&E argued that even if Stirling fails, the energy queue will replace the project with other, unidentified renewable projects. But Imperial County has submitted letters to the Commission saying it has not received applications for such projects, and SDG&E elsewhere in its testimony concedes the energy queue is unreliable. SDG&E also testified it could not guarantee renewable energy ultimately would use the STP and would oppose any efforts to require such use, or even guarantee a certain percentage of the use of the line would be fossil fuels.⁵⁶ Renewable energy should not be assumed to replace fossil fuels in calculating the project GHG emission impacts.

In addition to promoting the increased use of coal, another factor not considered in the DEIR/EIS estimate of GHG emissions was the likelihood the STP would lead to increases in liquefied natural gas (LNG). SDG&E Chief Operating Officer Niggli, in response to questions from the administrative law judge during cross examination on April 7, 2008, conceded that the a major part of Sempra's corporate plans include an infrastructure supporting expansion of its gas operations. Mr. Niggli also admitted the Company has no plan in place to meet state GHG requirements and the STP conceivably may carry more fossil fuel energy than renewable energy. The likely link between the STP and increased LNG production will lead to substantial GHG emissions not calculated in the DEIR/EIS.

The link to LNG is described in the Smart Energy 2020 Plan, among other places in Smart Energy Attachment B, which includes a Sempra produced map linking the STP to its natural gas pipelines, and Attachment C, which describes the lifecycle GHG burden from LNG. In addition, we understand an August 23, 2007 report from Carnegie Mellon University concludes that lifecycle LNG emissions imported from abroad and used for electricity generation could have 35% higher lifecycle GHG emissions than coal. These emissions are not included in the DEIR/EIS calculations for project GHG emissions.

The GHG emission benefits appear to include the La Rumorosa wind projects. The DEIR/EIS suggests there is limited capacity on the SWPL, and the projected wind projects will only occur if the STP is constructed, thereby freeing up capacity. As discussed elsewhere, the STP will free capacity for LNG and increased coal production, thereby increasing GHG emissions. To achieve GHG reductions, existing capacity should be used to replace fossil fuel generated power with renewable energy, rather than create a double increase in GHG emissions: first, by constructing the STP, and then by using the increased capacity to increase fossil fuel generated power. A

⁵⁵ SDG&E's opposition to the resolution was submitted on April 1, 2008, and its objection is at page 6. See also the CBD and Sierra Club Phase 1 brief, filed November 9, 2007, pages 9-15, and associated references, outlining the reasons the Stirling project will fail.

⁵⁶ See Phase I opening day testimony of James Avery, and Phase 2 opening day testimony of COO Niggli. It is our understanding that the Tehachapi project supported by SCE is already subscribed with wind power agreements. This approach, also used and endorsed in Minnesota (see our phase 1 brief, pages 35-36, November 9, 2007), represents viable renewable projects and some assurance the project is for renewable energy. However, it does not address the unprecedented, destructive impact the STP alternatives would have on public lands.

decrease in emissions is easily achieved by allowing existing fossil fuel contracts on the SWPL to expire as scheduled in 2011, and replacing this generation with power from the La Rumorosa wind projects or other renewable sources, as determined after appropriate environmental reviews are completed. The STP, as structured with increased GHG emissions and no assurances of renewable energy use, places the PUC in the position of violating AB 32 and state policy if it were to approve of the project.

The calculations include presumed GHG emission benefits from the Esmeralda-San Felipe Geothermal Project. However, not considered is whether there is adequate transmission for geothermal projects without Sunrise. Both DRA and UCAN testified there is sufficient transmission without constructing the STP, and without the GHG emissions that would occur in the construction process. The ISO also testified to the availability of about 700 MW capacity without the STP. If this project is likely to occur without the STP, it should not be considered a GHG emission credit for the STP. The Center and the Sierra Club have protested a clause in the pending contract for the Esmeralda project which would make approval of the STP a condition precedent. In support of our position in the protest of this contract clause is the report of the Independent Evaluator, which concluded that the STP is not needed for delivery of this energy.⁵⁷ Therefore, no GHG reductions should be attributed to this project. SDG&E presents a far more restrictive view of existing capacity, but even it concedes the capacity may exist.

Impacts of sulfur hexafluoride (SF₆) do not appear to be fully accounted for in the GHG emission calculation in the DEIR/EIS, though the problem is noted. Even small quantities of SF₆ releases are significant because of the GHG intensity of this pollutant. The California Air Resources Board has identified the need to identify and account for SF₆ releases but is not scheduled to develop a strategy until 2011. D.11-16. Inability to account for these releases is exasperated because SDG&E, unlike other investor owned utilities in California (PG&E and SCE), has refused to participate in a volunteer program to monitor these releases and reduce these releases. D.11-53 and 54. While the DEIR/EIS recognizes the problem, it must also include the likely releases of this pollutant and GHG contributions in its calculations. SDG&E should not be rewarded for its failure to account for likely releases of this GHG pollutant.

GHG emissions from fires likely to result from construction or operation of the line over its life also are apparently not accounted for in the DEIR/EIS. These fires, as discussed elsewhere in these comments and in testimony submitted by the Mussey Grade Road Alliance (MGRA) in both Phases 1 and 2 of A.06-08-010, and testimony of the Center and Sierra Club in Phase 2, are foreseeable. The October 2007 fires are but one example. Three of these fires are already reported by CAL FIRE as originating from SDG&E operations. We note that in questioning of the MGRA witness on April 8, 2008, it became apparent that SDG&E had control of the data it insinuated was necessary to calculate a risk of fire during the life of the STP, but destroyed much of that data only to criticize calculations made based on remaining data. Again, such conduct

⁵⁷ See SDG&E advice letter 1963 to the PUC; related protest letters, and Supplemental Advice Letter 1963-E-A, which attaches the Independent Evaluator's report. Also note that SDG&E included a similar clause making approval of the STP a condition precedent to its contract for the first 300 MW of power generated by the Stirling project, but then conceded in its phase 1 testimony that the STP was not actually needed to deliver this energy. Presumably the 300 MW of power will be available for other renewable projects, if they materialize, when the Stirling project fails to meet its contractual obligations as previously discussed in these comments.

must not be condoned and fire risk, and associated GHG emissions, should be calculated with consideration that risks will increase over the life of the project as the impacts of climate change are felt in temperature, potential for violent weather, and increased fuels from habitat conversion. See Phase 2 testimony of Richard Halsey and Dr. Mitchell.

The mitigation relied upon to reduce the increase in carbon releases is carbon credit trading markets. However, the DEIR/EIS recognizes these markets are not fully formed, regulated, or enforceable. D.11-52- 53. We agree with this conclusion.

The impacts on GHG emissions also fail to consider the competition the STP would create to make other renewable energy choices less competitive. Power carried on the STP would directly compete with efficiency measures, the California Solar Initiative, and in-basin renewable energy options, including projects similar to the recently announced SCE rooftop solar program. The STP increases overall GHG emissions while in basin and rooftop solar projects would reduce the emissions, increase energy reliability, and increase public safety risks posed by a power line in what was described by both conservation group witness Halsey and SDG&E fire expert Mortier in Phase 2 testimony as the most severe fire risk region in the country, with evidence that the risk will increase with climate change over the life of the project.⁵⁸ The public subsidy necessary to construct the line would be better spent on in basin solar options that reduce the carbon footprint of the State. Money directed to the STP reduces available and potential funding for projects that will reduce GHG emissions, and makes it more difficult for these projects to compete when there is an abundance of cheap fossil fuel made available by the increased transmission.

The DEIR/EIS also does not consider creative funding mechanisms that may be utilized to make in-basin solar options increasingly available. The City of Berkeley recently instituted a change in city taxes to allow homeowners to install solar cells without increasing their energy costs. Similar programs in California are now being used by private companies to allow homeowners to install solar cells without the traditional upfront costs associated with solar installation.⁵⁹

By concluding that growth will occur with or without the STP, the DEIR/EIS does not appear to account for growth SDG&E's own witness, Mr. Kemp, presented in Phase 1 testimony that the STP will spur additional growth and cumulative impacts, including GHG emissions associated with growth. This growth, if believed likely by the PUC, should also be accounted for in GHG emission estimates. The CEC has identified land use patterns as a significant source of GHG emissions. It can be concluded from Mr. Kemp's testimony that the impacts of sprawl in Imperial County resulting from the STP have not been accounted for in the calculations used in the DEIR/EIS.

The STP alternatives are contrary to law and to the GHG emission policies of the PUC, CEC, the Governor, and the Attorney General's office and should be rejected for these reasons. While we

⁵⁸ See prepared testimony of Richard Halsey and cross examination testimony of Mr. Mortier on April 8, 2008.

⁵⁹ See, as one example, funding mechanisms by Solar City, among others, at <http://www.grist.org/feature/2008/04/11/?source=daily>

agree with the DEIR/EIS finding that GHG emissions present a significant unmitigable impact, and that any increase in GHG emissions must be considered significant, the public should have an opportunity to comment on the full scope of these increases.

Conclusion.

All STP alternatives represent an unprecedented impact on public lands, fail to provide assurances for the increased use of renewable energy, violate AB 32 requirements to reduce GHG emissions, hinder progress in achieving increased use of renewable energy in an environmentally appropriate manner, and present a substantial risk of catastrophic fires. The Center and the Sierra Club thank the PUC and BLM for identifying many of the environmentally destructive aspects of the proposed STP in all of its forms, request that deficiencies in the DEIR/EIS be addressed and the corrected document be recirculated for public comment, and that the agencies select environmentally superior, non-transmission alternatives to meet the energy and environmental needs of the region.

Thank you for your consideration of these comments. Please send all future notices and correspondence to our attention at Center for Biological Diversity, 1095 Market Street, Suite 511, San Francisco, CA 94103.

Sincerely,

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