

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

<p>In the Matter of the Application of San Diego Gas &amp; Electric Company (U 902-E) for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project</p>	<p>Application 06-08-010 (Filed August 4, 2006)</p> <p>Application No. 05-12-014 (Filed December 14, 2005)</p>
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**PREHEARING CONFERENCE STATEMENT  
OF CONSERVATION GROUPS**

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Dated: September 13, 2006

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**I. INTRODUCTION**

Pursuant to the August 25, 2006, Administrative Law Judge's Ruling Setting Date for Prehearing Conference Statements and Extended Time for Filing Protests, the Center for Biological Diversity and the San Diego Chapter of the Sierra Club (“Conservation Groups”) submit this Prehearing Conference Statement. In particular, Conservation Groups offer comments on San Diego Gas & Electric Company’s (“SDG&E”) proposed schedule, provide an alternative proposed schedule, and discuss items that should be included within the scope of this proceeding. SDG&E proposes to build, pursuant to the above captioned application, a 500 kV transmission line (“Project”) through the heart of California’s largest park, Anza-Borrego Desert State Park (“Anza-Borrego State Park” or “Park”). This proposal creates the potential for a head-on crash between protecting California’s state parks and meeting its energy demands. Rarely, if ever, has the Public Utilities Commission (“Commission”) addressed an application with a greater potential to degrade California’s environmental values and lower its environmental standards, or a greater opportunity to find innovative solutions that will simultaneously protect California’s environment and our high standard of living.

Further, the Project creates a very complicated regulatory picture. The Project requires concurrent independent proceedings before the Commission, the Imperial Irrigation District (“IID”), the California Department of Parks and Recreation (“DPR”), the US Bureau of Land Management (“BLM”), the US Fish & Wildlife Service (“USFWS”), and the California Independent System Operator (“CAISO”), as well as consultations with many other state and federal agencies. The Project involves complex technical, economic, and environmental analyses of multiple configurations of the Project itself as well as of multiple alternatives to the Project. The regulatory management of the Project will challenge seasoned professionals, but more importantly, it presents a significant public communication challenge to the Commission and other public servants. As the lead agency in this process, the Commission bears the lion’s share of the responsibility for effectively describing and explaining this process to the public.

To meet these challenges the Commission’s Scoping Memorandum should:

- actively foster development of potential energy solutions that can help avoid the impending collision between meeting energy demands and the environment; and
- describe the State of California’s entire process for this matter so that it is rational and understandable to non-experts and promotes greater public participation and understanding.

The Commission’s environmental review of this project under the California Environmental Quality Act (“CEQA”) and the Public Utility Code should uphold California’s finest tradition of environmental review and innovative problem solving. The Commission should challenge its staff and contractors and all interested parties to develop better ways to meet energy demand while protecting the environment. The Commission should aggressively investigate alternative solutions, fully evaluate environmental costs and benefits, and develop a clear understanding of the potential impacts of the Project. The Commission, through the language of its forthcoming Scoping Memorandum, should affirm its commitment to communicate with the public in clear language that is understandable to average citizens. Finally, in this proceeding, the Commission should give full voice to the spirit of CEQA and other environmental and community protection laws.

## II. SDG&E'S PROPOSED SCHEDULE VIOLATES CEQA AND COMMISSION REQUIREMENTS AND IS CONTRARY TO PUBLIC POLICY

The Commission's Rules of Procedure state that it "adopts and shall adhere to the principles, objectives, definitions, criteria and procedures of CEQA, the EIR Guidelines, and the additional provisions of this rule." Commission Proc. Rule 17.1. According to Commission Procedural Rule 17.1(b)(2), the objective of including a CEQA analysis in the Commission's application process is:

To ensure that environmental issues are thoroughly, expertly, and objectively considered within a reasonable period of time, so that environmental costs and benefits will assume their proper and *co-equal* place beside the economic, social, and technological issues before the Commission, and so that there will not be undue delays in the Commission's decisionmaking process.

(Emphasis added). In contrast, SDG&E's proposed schedule (below) appears to view the CEQA process as merely a bureaucratic hurdle that is unlikely to be of benefit to the Commission during its evidentiary hearings. As such, it includes a number of omissions and inappropriate schedule elements.

### SDG&E PROPOSED SCHEDULE

August 4, 2006	File amended application
September 6, 2006	Responses to application (30 days from daily calendar notice)
September 13, 2006	Prehearing Conference
September 22, 2006	Protests (any SDG&E reply due October 2)
September 22, 2006	Scoping Memo
October 4, 2006	CAISO and Intervenor Testimony (60 days from amended application).
November 1, 2006	Rebuttal Testimony, inc. cross-replies among intervenors and CAISO) (4 weeks).
January 8-19, 2007	Hearings
February 23, 2007	Concurrent Opening Briefs (5 weeks)
March 16, 2007	Concurrent Reply Briefs (3 weeks)
March 2007	Draft EIR/EIS (followed by 90 day review period)
May 2007	Draft Decision on Purpose and Need
August 2007	Final EIR/EIS
August 2007	Commission CPCN decision

Conservation Groups object to SDG&E's Proposed Schedule for the following reasons.

**A. Failure to Include CEQA and NEPA Scoping Process in Proposed Schedule**

SDG&E's schedule entirely omits the CEQA and federal National Environmental Policy Act ("NEPA") scoping process, even though the Commission must use this process to help refine the scope of its review and the alternatives to be considered. CEQA Guidelines §§ 15082(c)(1) and 15083. The CEQA Guidelines specify that:

An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

§ 15126.6. In this proceeding it is critical that the Commission integrate CEQA and NEPA scoping efforts with the scope of alternatives examined during evidentiary hearings. Whereas in some CEQA proceedings it might be possible for decision makers to evaluate alternatives on their environmental merits alone without the need for detailed economic and technical analysis of such alternatives, here this would be impossible. Due to the complex and technical nature of the Commission's purpose and need analysis, a failure by the Commission to evaluate an alternative in its evidentiary hearing process would make it impossible for the Commission to adequately evaluate and adopt this alternative in a final decision, regardless of any CEQA analysis of the alternative. Therefore, it is vital that the evidentiary hearing process evaluate the same alternatives as the CEQA/NEPA process. The best way to do this is to issue the Commission's Scoping Memorandum after completion of the CEQA/NEPA scoping public comment process. Since CEQA and NEPA scoping is legally required and of critical importance to the integrity of the Commission's proceedings, the Commission should include it within the hearing schedule and seek to coordinate the CEQA/NEPA scoping report and the Commission's Scoping Memorandum.

**B. Failure to Include Agency Consultation and the IID, DPR, BLM, and USFWS Processes in Proposed Schedule**

CEQA and the CEQA Guidelines include a number of schedule requirements for agency

consultation including §§ 15096(b)(2), 15104, 15082(b), 15082(c). SDG&E’s schedule entirely omits any description of a schedule for agency consultation. In addition, SDG&E’s schedule omits:

- The IID process to related to its portion of the Project;
- the DPR process to reclassify land within Anza-Borrego State Park though an amendment of the Park’s General Plan;
- the BLM process to amend its 1980 California Desert Conservation Area Plan, (“CDCA Plan”); and
- U.S. Fish and Wildlife Service (“Wildlife Service”) process to permit “take” of federally listed Threatened or Endangered Species by SDG&E and the CPUC.

Due to the complexity of this proceeding and to ensure adequate administration and public understanding of this proceeding, the Commission should adopt a schedule that identifies critical agency consultation milestones as well as milestones related to IID, DPR, BLM, and USFWS project review.

Conservation Groups specifically request inclusion of Federal Endangered Species Act (“ESA”) consultation with and permitting by the USFWS within the schedule. As discussed in the February 17, 2006 Protest of the Center for Biological Diversity and Sierra Club, the Project will likely result in significant impacts and therefore “take” of federally listed Threatened and Endangered Species. Existing case law indicates that both SDG&E and the CPUC must comply with the ESA prohibition on take of listed species because the CPUC has the lead authority to determine whether the Project will proceed.

Numerous cases have confirmed that entities such as the California Department of Fish and Game and the California Fish and Game Commission are responsible and liable for violations of the ESA, including *Sierra Club v. Yeutter*,<sup>1</sup> *Defenders of Wildlife v. EPA*,<sup>2</sup> *Palila*

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<sup>1</sup> 926 F.2d 429, 43-39 (5<sup>th</sup> Cir. 1991).

<sup>2</sup> 882 F.2d 1294, 1301 (8<sup>th</sup> Cir. 1989).

*v. Hawaii Department of Land and Natural Resources*,<sup>3</sup> and *Loggerhead Turtle, et. al, v County Council of Volusia County, Florida*.<sup>4</sup> In *Strahan v. Coxe, et al.*,<sup>5</sup> concerning state regulated fisheries, the Court ruled:

...the statute not only prohibits the acts of those parties that directly exact the taking, but also bans those acts of a third party that bring about the acts exacting a taking. We believe that...a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA.

It therefore follows that the CPUC must integrate into this proceeding and schedule its and SDG&E's presumed desire to seek permission from the Wildlife Service to take Federally listed species. It also stands that integration of ESA compliance and, for that matter, likely necessary compliance with all other necessary State and Federal regulatory processes with the Project schedule and proceeding will greatly inform and increase the efficiency of this proceeding.

Conservation Groups request the inclusion of agency consultation within the hearing schedule due in part to the Commission's process in Application 04-12-007 for the Antelope-Pardee 500 kV (Segment 1) Transmission Project ("Antelope-Pardee Project"). In this project the Commission issued a Scoping Memorandum and Ruling that established a schedule with a prehearing conference in May, 2005; CEQA scoping hearings in June and July; testimony (including but not limited to testimony on need) and a hearing from July through October; issuance of a DEIR in September (concurrent with the evidentiary hearing process); public participation hearings in October (near the end of the evidentiary hearing process); and briefing and final decision and EIR process extending from November 2005 to March 2006.

In September 2005 the Commission adjusted this schedule slightly due to lower than expected participation in its hearing process and also identified that the US Forest Service ("USFS") had expressed concerns over the project in relation to its Forest Plan. In December 2005 it became clear to the Commission that Southern California Edison ("SCE") had not worked with the USFS enough to ensure that Forest Plan amendments would be addressed in a

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<sup>3</sup> 639 F.2d 495, 497-98 (9<sup>th</sup> Cir. 1981).

<sup>4</sup> No. 01-12164 (11<sup>th</sup> Cir. 1998).

<sup>5</sup> 127 F.3d 155 (1st Cir. 1997).

timely fashion. As a consequence, the Commission bifurcated the proceeding between “need” and “environmental review.” Thus, the Commission delayed public participation in the EIR process until after the Commission’s decision on utility issues and immediately before a final decision, thereby limiting the input of the CEQA process in matters related to “need.”

Conservation Groups anticipate that agency coordination in the present proceeding will be at least as complicated as that faced by SCE in the Antelope-Pardee Project and request that the Commission proactively establish important schedule milestones for agency consultation and the DPR and BLM parallel processes to help prevent a breakdown of coordination between agencies. A failure by SDG&E to timely consult or seek approval from other agencies does not provide adequate legal justification for a bifurcation of this proceeding between “need” and CEQA. In such circumstances, the Commission should delay its evidentiary hearings so that they run concurrently with required CEQA process.

### **C. Failure to Allow for Adequate time for Discovery**

Under CEQA, disclosure of information is of vital importance. *See* CEQA § 21005. As described in the Prehearing Conference Statement of the Utility Consumers’ Action Network (“UCAN”), SDG&E delayed response to and has not adequately responded to multiple information requests. Further, SDG&E did not respond adequately or quickly to Commission requests for the inclusion of additional information in its application until pressed, and even then its response was not entirely complete. Therefore, the Commission should provide in its schedule sufficient time for discovery, including time for enforcement of Commission orders related to discovery. Any delay in discovery should trigger a suspension of the CEQA review period. *See* CEQA Guidelines § 15109.

### **D. Failure to Specify Deadline for Submission of Public Comments to be Used in the Preparation of the DEIR**

The CEQA Guidelines state that:

*Any person*, including the applicant, may submit information or comments to the Lead Agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The Lead Agency *must consider* all information and comments



received.

§ 15084(c) (Emphasis added). The Commission must allow intervenors and members of the public an opportunity to participate in preparation of the Draft Environmental Impact Report (“DEIR”) through the submission of comments on the PEA. This is particularly appropriate given the large size and complexity of SDG&E’s Proponents Environmental Statement (“PEA”), its difficult-to-use format, and the relatively short period provided for review of the PEA’s adequacy due to late distribution of the PEA and its late amendment by SDG&E. To ensure adequate public participation in this process, a deadline for providing comments to assist in the preparation of the DEIR must be included within the schedule as well.

**E. Failure to Ensure that CEQA and Commission Hearing Processes Run Concurrently**

The CEQA Guidelines, § 15004 (b) and (c), respectively, state:

EIRs ...should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

\* \* \*

The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, *to the maximum extent feasible*, are to run concurrently, not consecutively.

The CEQA Guidelines discussion explaining these provisions includes the following language:

This section codifies the requirement that EIRs and Negative Declarations be prepared before an agency makes a decision on the project and *early enough to help influence the project's plans or design*. For EIRs and Negative Declarations to be effective in serving the purposes of CEQA, the preparation of these documents *must be coordinated* with the planning, review, and approval processes as described in subsection (c). Early preparation is necessary for the legal validity of the process and for the usefulness of the documents. Early preparation enables agencies to make revisions in projects to reduce or avoid adverse environmental effects before the agency has become so committed to a particular approach that it can make changes only with difficulty.

§ 15004 (Emphasis added).

Within the constraints imposed by CEQA the Commission has considerable latitude in which to establish its schedule. CEQA imposes a one-year time limit on the preparation of EIRs, tolling on the day that the Commission accepts SDG&E's application as complete, in this case September 8, 2006, except that an unreasonable delay by a project applicant "shall" suspend this time period or the one-year period may be extended where the project is subject to NEPA, as it is here. Pub. Res. Code § 21100.2; CEQA Guidelines §§ 15108, 15109, 15110, 15224. Within this period the Commission should adapt its schedule so as to coordinate its "planning, review, and approval processes" so that the CEQA process can "influence the project's plans or design" and so that the Commission's evidentiary hearing process and its CEQA process "*to the maximum extent feasible . . . run concurrently, not consecutively.*" CEQA Guidelines § 15004 (Discussion). In a proceeding of this significance the Commission should use its available time to maximize the benefits of CEQA and public participation in its process.

The schedule proposed by SDG&E requests that the Commission issue a DEIR in March 2007 at the very end of the Commission's evidentiary hearing process, followed by a draft decision on purpose and need in May 2007. Given that a 90 day public comment period on DEIR is likely due to NEPA requirements, this means that the Commission would issue its draft decision on purpose and need well before the end of the public comment period on the DEIR. Therefore, the Commission would not have the benefit of hearing public comment on the DEIR while it is formulating its draft decision, nor would public involvement in the CEQA process be able to influence the Commission's evidentiary hearings to any significant degree.

CEQA states that an agency's hearing and CEQA procedures, "to the maximum extent feasible, are to run concurrently, not consecutively." There is no requirement that the Commission complete its evidentiary hearing at the earliest possible date within the one-year period established by CEQA. Rather, just the opposite. Lawful application of CEQA dictates here that the Commission conduct its evidentiary hearings as late as possible in the CEQA process because doing so would significantly inform the Commission's deliberations. If it is feasible for the Commission to conduct its evidentiary hearings later in the CEQA process so that the CEQA process will better inform the Commission's evidentiary hearing process, it should do so.

Should the Commission adopt SDG&E's proposed schedule such that it issues a DEIR after completion of the evidentiary hearing process, the Commission would severely limit the utility of the CEQA process as it relates to the Commission's hearing process. Unless the Commission intends to reopen its evidentiary hearings after completing its DEIR, any information provided through the CEQA process could not influence the scope of the evidentiary hearings nor could any information collected through the CEQA process, such as mitigation costs, quantified adverse community and environmental economic impacts, and/or the economic merits of alternatives, be integrated into the economic and technical debate in the evidentiary hearings. Since it is feasible and reasonable to hold evidentiary hearings later in the CEQA process than the schedule proposed by SDG&E, the Commission should do so.

#### **F. Failure to Include Public Participation Hearings**

SDG&E's proposed schedule fails to identify any public participation hearings or to integrate these opportunities into the Commission's decision making process. It is of paramount importance to the Conservation Groups that the Commission provide ample opportunity for public review, analysis, and comment. The Conservation Groups request that the Commission provide public participation hearings in San Diego and Imperial Counties after the close of any evidentiary hearings. Since the evidentiary hearings will provide the public as well as the Commission with an opportunity to learn more about our energy demands and possible solutions to these demands, it would serve the public interest to allow the public to learn from an evidentiary hearing so that it may integrate this greater understanding into public comments.

While the Conservation Groups appreciate the Commission's obligation to conduct an efficient process, we believe it is incumbent on the Commission to maximize informed public participation by providing adequate time for document review and timing public comment opportunities so as to allow informed comment. Members of the public and community and local environmental groups do not enjoy access to a large professional staff, as does SDG&E, the Commission, and some of the intervenors. Rather, the public and small nonprofits will rely on the expertise of others when gathering the knowledge needed for informed comment. The Commission should time public participation opportunities to allow the public to learn from the experts and include this understanding in their comments.

### **G. Failure to Allow Maximum Time for CEQA Process Allowed by Law**

SDG&E proposes that the Commission issue its final decision in August 2007, less than one year after the date that the Commission found SDG&E's application to be complete. In a proceeding of this importance the Commission should use as much time as legally and reasonably possible to ensure full disclosure of all relevant information and to provide for adequate participation in its process as well as the DPR and BLM processes.<sup>6</sup> A few months difference in the date of this final decision is not likely to create hardship for ratepayers, particularly given the likelihood that the proposed project would not return any net economic benefit until years after SDG&E's proposed operation date. On the other hand, should a few months of additional time be needed to comply with NEPA and significantly improve the CEQA process by allowing integration of CEQA review into the evidentiary hearing process "to the maximum extent feasible," then the Commission should extend the CEQA/NEPA schedule.

### **H. Failure to Include Additional Project Phases to Accomplish Plan to Construct the "Full Loop"**

The CEQA Guidelines State:

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project,

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<sup>6</sup> Given the Commission's one-year CEQA timeframe, the Federal Energy Regulatory Commission ("FERC") process created by § 1221 of the Energy Policy Act of 2005 is unlikely to require that the Commission accelerate its process to avoid federal preemption. Prior to initiating its process FERC must wait until one year after the Department of Energy ("DOE") issues a report designating federal transmission corridors. This report, in turn, must be based on a transmission congestion study. The DOE has issued a draft study, for which comments are due on October 10, 2006. Given this comment deadline date, it is unlikely that the DOE could respond to comments on the study, issue a final study, and issue a draft and final corridor report before December 2006 at the earliest. This means that FERC could not initiate a proceeding until December 2007, at the earliest – four months after the Commission's one-year CEQA deadline.

but shall in either case comment upon the cumulative effect.

§ 15165. SDG&E's proposed project is the first phase of a long-term plan to build a transmission line between the Imperial Valley Substation and the SCE grid. Construction of a 500 kV transmission line from the Imperial Valley Substation to a connection point on SCE's 500 kV grid would make an uninterrupted "loop" of 500 kV transmission lines circling from Arizona to San Diego, then to Los Angeles and then back to Arizona. The California Independent System Operator ("CAISO") and SDG&E refer to this project as the "full loop."

There are many examples in SDG&E and CAISO documents that the "full loop" is SDG&E's ultimate goal. For example, a SDG&E powerpoint presentation dated July 28, 2005, shows SDG&E's planned major transmission additions, including a line from the "Central Substation" to the "Serrano Valley," which would create the "full loop." SDG&E's current Application filed on August 4, 2006, in the Purpose and Need Volume on pages VI-13 to 15, describes the full loop in the following very favorable terms, but indicates that SDG&E anticipates that completion of the full loop will be the subject of a subsequent proceeding.

Of the Full Loop alternatives originating at Imperial Valley, the best-performing Full Loop alternative went from Imperial Valley to a new "Central" Substation to a new substation in SCE's territory between the Serrano and Valley Substations. This alternative also had the advantage of combining the Sunrise Powerlink (Imperial Valley – Central 500 kV) with the LEAPS transmission. It is this Full Loop alternative, which will be discussed below and will be referred to below as just "the Full Loop Alternative."

\* \* \*

The Full Loop Alternative made the final short list of four alternatives and was the best performing alternative overall. It had very good technical performance. Except for upgrades to the proposed Central Substation, there were no N-1 overloads that were required for this alternative as determined by the TCS. Subsequent studies during the POS found the Sunrise Powerlink was sufficient for the Full Loop. The only exception might be the need for additional 230 kV lines from Central to Sycamore Canyon. In addition to providing additional flow into SDG&E's system (and thus increasing imports into SDG&E's system), the Full Loop Alternative also provided flow into SCE's system at or near a load center, which tended to relieve flow on other portions of SCE's system.

In the Transmission Comparison Study, the Full Loop Alternative had the fewest overloaded elements under the full list of contingencies and even had the added benefit of relieving N-0 and N-1 flows and overloads throughout the region (including other utilities).

With regard to renewables, the Full Loop Alternative provides access to the Imperial Valley renewables (geothermal, solar or wind) resources through the Imperial Valley Substation.

The TCS selected both the Full Loop and the Sunrise Powerlink as the two alternatives for further study. Both were studied in depth by SDG&E during the plan of service analysis. Although performing adequately—technically and economically—the Full Loop was not selected as the preferred alternative. The main reasons were its higher cost, the low probability of operation by 2010 and the need for a Full Loop could not be justified today, under the ISO’s grid reliability criteria or for economic reasons.

The July 28, 2006, CAISO report concurred with SDG&E’s position, but noted it is in the process of further evaluating the full loop proposal. As noted by SDG&E, CAISO has indicated that it considers the construction of the full loop a priority. Since CAISO is the entity that manages the electricity grid in California, its statements about future plans are an important indicator of the State of California’s transmission plans.

The public should understand and be provided an opportunity to comment on the fact that the Project as currently described by SDG&E is merely part of a larger plan to build a transmission line from Imperial Valley to Los Angeles. The existence of the LEAPS process means that the federal government and the State of California are currently considering the construction of a 500 kV transmission line that would be another piece of the “full loop,” but are doing so in a piecemeal fashion without coordinating NEPA or CEQA processes and without providing a forum in which the public can consider the full benefits and costs of such project. Construction of the Project would make construction of the full loop inevitable due to the economic and technical benefits of building one short final link. Such piecemeal approach to project review violates both the spirit and letter of CEQA and NEPA, such that the Commission must include the full scope of the Project within its review.

## **I. Failure to Schedule CAISO Recommendation on the Project**

The CEQA Guidelines state:

Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision-making body, the advisory body shall also review and consider the EIR or Negative Declaration in draft or final form.

§ 15025(c). CAISO is and acts an advisory body to the Commission and to fulfill its obligation under law to ensure grid reliability must make recommendations to the Commission on transmission projects. As an advisory body, it is required to review and consider an EIR before making a recommendation on a transmission project. Also, CAISO's organic language includes the following requirements:

(a) The Independent System Operator, as a nonprofit, public benefit corporation, shall conduct its operations consistent with applicable state and federal laws and consistent with the interests of the people of the state.

(b) To ensure the reliability of electric service and the health and safety of the public, the Independent System Operator shall manage the transmission grid and related energy markets in a manner that is consistent with all of the following:

\* \* \*

(3) Applicable state law intended to protect the public's health and the environment.

\* \* \*

(c) The Independent System Operator shall do all of the following:

(1) Consult and coordinate with appropriate state and local agencies to ensure that the Independent System Operator operates in furtherance of state law regarding consumer and environmental protection.

Pub. Util. Code § 345.5. CEQA is California's premier law intended to protect the environment. Therefore, CAISO must act so as not to frustrate the purpose of CEQA. In addition, CAISO must participate in the CEQA agency consultation process, the only process established by the state to ensure that state agencies and agents act in furtherance of state law regarding environmental protection. Moreover, to the extent that CAISO functions as an agent of the State in approving projects, planning, or undertaking activities pursuant to state law, it is subject to CEQA. Neither CAISO nor any state agency may avoid CEQA obligations by transferring them to CAISO. CAISO's complete failure to participate in the CEQA process before making a

recommendation to the Commission utterly ignores CEQA and therefore is a violation of CEQA.

Given CAISO's ongoing insistence that the Commission should grant it great deference in determinations of transmission need, CAISO should also accept responsibility for understanding the environmental impacts of its determinations and recommendations on proposed transmission lines prior to making formal recommendations to the Commission. CAISO cannot simultaneously claim the lion's share of the authority to make transmission line "need" decisions on behalf of the citizens of California while denying that it has any obligation to comply with CEQA. Moreover, there is no procedural reason for CAISO to issue a decision on the merits of a transmission line prior to completion of an EIR, much less before the filing of a complete application. Such early recommendation strongly suggests to the public that CAISO is unconcerned with public process and that it has predetermined its position on the Project prior to gaining a full understanding of environmental and community impacts.<sup>7</sup>

Since consideration of the CAISO report by the Commission would encourage illegal behavior, any recommendation by CAISO to the Commission prior to issuance of a final EIR is untimely under the CEQA guidelines and may not be included in the Commission's record of decision.

Whereas all public agencies are required to follow the CEQA consultation process, CAISO, by virtue of its state-chartered nonprofit status, has avoided compliance with CEQA provisions intended to coordinate inter-agency review. For too long the Commission has failed to describe how CAISO is to engage in Commission proceedings and its CEQA review. The schedule proposed by the Commission should clarify the appropriate time for a CAISO recommendation and CAISO's role in the consultation process.

### **III. Prior Commission Practice Has Resulted in Unjust and Illegal Process**

Conservation Groups are concerned that the Commission has not adequately complied with CEQA in a number of other transmission line proceedings. The most egregious example of Commission disregard for CEQA and public involvement in a transmission line proceeding concerned the Miguel-Mission 230kV #2 Project ("Miguel-Mission Project"), an upgrade to an

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<sup>7</sup> Although CAISO conducted a cursory public outreach campaign, its cursory effort is not in anyway comparable to a full CEQA process.



existing transmission corridor in San Diego County running north from the Miguel substation and then through the eastern suburbs of San Diego.<sup>8</sup> This line was intended to relieve congestion on the transmission grid caused by increased power generation in Mexico.<sup>9</sup>

The Miguel-Mission proceeding arose out of the Transmission Investigation, I.00-11-001, (“Transmission Investigation”), which was triggered by AB 970, a response to the energy scandal earlier this decade. AB 970 required the Commission to identify near-term transmission constraints as well as demand and peak management efforts.<sup>10</sup> After rapidly completing its investigation of near-term upgrades to existing transmission infrastructure, the Commission expanded the scope of this investigation into a catch-all process that included, among other things, evaluation of proposed new transmission lines, at present including seven distinct phases:

- Phase 1: Transmission projects for summer 2001 (Decision (D.) 01-03-077).
- Phase 2: Southwest Power Link (SWPL) reliability need (D.01-10-070).
- Phase 3: Miguel-Mission/Imperial Valley economic need (D.03-02-069).
- Phase 4: Path 15 economic need (D.03-05-083).
- Phase 5: Generic methodology for evaluation of economic need of transmission projects (ongoing).
- Phase 6: Tehachapi transmission for connection of renewable generation (ongoing).
- Phase 7: Transmission plan for renewable electricity generation facilities, as required by Senate Bill (SB) 1038 (ongoing).

As the Miguel-Mission Project, Phase 3 of the Transmission Investigation, progressed apparently it became clear to the Commission that it wanted this new transmission line. Therefore, with the agreement of the Commission, in early 2002 SDG&E filed an application for a Certificate of Convenience and Need (“CPCN”) for this project (docketed by the Commission as Application 02-07-022). By motion, SDG&E requested that the Commission consolidate the evidentiary record in Phase 3 of the Transmission Investigation, and take official notice of the decision of the Federal Energy Regulatory Commission in Docket EL02-54-000 and the California

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<sup>8</sup> Interim Opinion on Transmission Constraints: Mission-Miguel and Imperial Valley Upgrades, Decision 03-02-069 February 27, 2003.

<sup>9</sup> Id.

<sup>10</sup> Section 7 of AB 970 (codified as Pub. Util. Code 399.15) sought to relieve perceived congestion by directing the PUC to identify and reduce near-term transmission constraints as well as to identify and increase demand and peak management efforts. In particular, Section 399.15(a) required the Commission to undertake a variety of near-term improvements to existing transmission lines and related equipment, “including, but not limited to, reconductoring of transmission lines, the addition of capacitors to increase voltage, the reinforcement of existing transmission capacity, and the installation of new transformer banks.” 399.15(b) and (c) required the Commission to undertake demand-

Independent System Operator’s finding of project need and cost effectiveness.”<sup>11</sup> The Commission directed SDG&E to serve only the parties to the Transmission Investigation,<sup>12</sup> thereby apparently not serving notice of Application 02-07-022 on adjacent property holders and local groups and jurisdictions, as the service list for the Transmission Investigation contains no local San Diego parties with the exception of utility representatives.

On February 2, 2003, the Commission determined in the Transmission Investigation that there was an economic need for the Miguel-Mission Project and formally began its process for consideration of Application 02-07-022, including initiation of the CEQA process.<sup>13</sup> In this Decision the Commission acknowledged that “[t]he record provides very little detail describing the basis for SDG&E’s project cost estimates, particularly for the Miguel-Mission project” and so imposed cost caps on the project that would be reviewed in Application 02-07-022.<sup>14</sup> In light of the cost caps, the Commission allowed SDG&E to not file the information required in subparts (c), (d), and (f) of General Order 131-D (“GO131-D”), related respectively to “economic need,” project cost, and right of way acquisition, as it considered these matters resolved by the Transmission Investigation.

On March 24, 2004, the Commission confirmed that the Application 02-07-022 process would be dramatically truncated to include only the project’s CEQA process and review the project’s compliance with the cost cap and milestone requirements established in the Transmission Investigation, such that the “application” would not encompass a full consideration of all the data required by GO 121-D.<sup>15</sup> In accordance with these rulings the Commission conducted the CEQA scoping process in the autumn of 2003 (seven months after its decision on “need” in the Transmission Investigation), issued a Draft Environmental Impact Report (“DEIR”) in April 2004 (a full fourteen months after its “need” decision), and issued a final EIR

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side management and peak demand reduction efforts, respectively.

<sup>11</sup> Administrative Law Judge’s Ruling Requesting Additional Service of Motion, A.02-07-022, Sept. 17, 2002.

<sup>12</sup> Id.

<sup>13</sup> Interim Opinion on Transmission Constraints: Mission-Miguel and Imperial Valley Upgrades, Decision 03-02-069. February 27, 2003.

<sup>14</sup> Id.

<sup>15</sup> Joint Assigned Commissioner and Administrative Law Judge’s Ruling and Scoping Memo, A.02-07-022, March 24, 2004.

and decision in July 2004.<sup>16</sup> The Application 02-07-022 process did not include any reconsideration of the Commission's decision related to the "public convenience and necessity" of the project. In its final decision, the Commission did not select the "environmentally preferred route" for the project because it asserted that doing so would cause undue delay.<sup>17</sup>

Shortly before the Commission was scheduled to act on a final decision in Application 02-07-022, the Cities of Chula Vista and Santee as well as a number of citizen groups attempted to intervene in this proceeding.<sup>18</sup> Due to the late date of their request to intervene the Commission denied their intervention and subsequently dismissed a request for rehearing.<sup>19</sup>

It is apparent from this sequence of events that the Commission made its decision on the "public convenience and necessity" of the Miguel-Mission Project on February 2, 2003, limited this determination to a finding of "economic need" despite "very little detail" on cost estimates, and then began its CEQA process seven months later. Further, it appears that the Commission did not notify adjacent property owners or communities about its Transmission Investigation proceeding on the Miguel-Mission Project prior to its February 2, 2003 decision in the Transmission Proceeding, thereby violating the due process rights of hundred or perhaps thousands of citizens. Instead it appears that local public notice was not initiated until the CEQA scoping process in approximately September 2003.<sup>20</sup> It is difficult to see how this EIR served any purpose other than as a rubber stamp to a done deal.

As a model of administrative efficiency and fairness, the foregoing process was an abject failure. The Commission started consideration of this matter in early 2002 and completed this process in mid-2004, a period of two and one-half years. It appears that the primary reason for this unusually long process was its bifurcation into two separate proceedings, such that the "need" and CEQA process ran sequentially rather than concurrently. Despite this long process, SDG&E failed to provide adequate cost estimates, forcing the Commission to rely on cost caps

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<sup>16</sup> Opinion Certifying Final Environmental Impact Report and Granting a Certificate of Public Convenience and Necessity for the Miguel Mission Project, Decision 04-07-026 July 16, 2004.

<sup>17</sup> Id. at 18.

<sup>18</sup> Order Dismissing Applications for Rehearing of Decision (D.) 04-07-026 and Denying Pending Motions, Decision 05-02-023 February 10, 2005.

<sup>19</sup> Id.

<sup>20</sup> The contents of the scoping and DEIR notice for the Miguel-Mission Project are not known as regards providing notice for Application 02-07-022 or citizens' rights to participate as parties in the application consideration process.

and milestones to protect the public interest. The likely benefits of this project to the public will not be determinable until completion of construction.

It appears that the Commission for all practical purposes made its decision on this project before notifying any local interests, and when it did engage local interests in its CEQA process it may not have described their right to formally intervene in the severely truncated application hearing (as distinct from participation in CEQA hearings). The result was that a number of local interests attempted to intervene in the Commission application proceeding in the eleventh hour. Due to concerns about delay the Commission claimed an inability to consider even the modest changes requested by local residents and governments. If such changes were considered earlier in the Transmission Investigation, delay would not have been an issue. The confinement of the DEIR process to the last three months of a two and one-half year effort precluded any serious consideration by the Commission of any but minimal changes in this project. This process severely disadvantaged local participation, placed undue economic risk on ratepayers, de-prioritized community participation, and de-prioritized environmental concerns.

Conservation Groups relate this long history from a desire to encourage that the Commission establish a predictable formalized process for consideration of transmission line applications that appropriately integrates CEQA, NEPA, and ESA requirements and ensures that the Commission will provide meaningful public participation in its complex proceedings.

#### **IV. CONSERVATION GROUPS' ALTERNATIVE PROPOSED SCHEDULE**

Conservation Groups offer the following alternative proposed schedule as a means to address the above noted deficiencies in SDG&E's proposed schedule. Conservation Groups have not attempted to integrate agency consultation or the DPR and BLM processes into their proposed schedule due to a lack of information about them.

Conservation Groups have attempted to create a schedule that identifies logical steps in the Commission's decision making process. It is apparent from the Valley-Rainbow decision (No. 02-12-066 December 19, 2002) that the Commission's decision making process embodies two distinct efforts:

- 1) An assessment of baseline conditions and planning assumptions: this includes a determination of future regional demand for increased energy in light of a planning

horizon, existing circumstances, and possible scenarios derived from planning assumptions about the likely future development of generation and transmission infrastructure; followed by

- 2) An evaluation of the proposed project and alternatives thereto: this includes a determination of the merits of the proposed project in light of an evaluation of alternatives for addressing future regional energy demands.

Such process is rational and typical of governmental planning processes. It is clear from the Valley-Rainbow decision that the Commission determined that San Diego's ratepayers did not need a new transmission line because regional demand for energy could be provided by other planned energy infrastructure projects. It is also clear that the Commission struggled to reconcile the competing analyses of SDG&E, CAISO, and various intervenors. The fact that these analyses failed to rely on common baseline assumptions and failed to analyze similar alternatives made comparison of them unnecessarily problematic.

Conservation Groups note that the Prehearing Conference Statement of UCAN includes the following concern:

UCAN urges the Commission to require SDG&E to amend its application to address [issues related to baseline scenarios and alternatives], and perhaps other, issues at the front-end of the process so that intervenor testimony and rebuttal testimony can be built off of a complete set of scenarios. Otherwise, the Commission will be presented with an evidentiary record in which intervenors present their own set of alternatives with disparate cost data and SDG&E rushes to create a quick rebuttal that either mischaracterizes or misinterprets the underlying data. The Commission is left with a convoluted record of very technical but important cost and need analysis.

(Page 4.) Conservation Groups' alternative proposed schedule is intended to provide such "front-end" process to avoid the "convoluted record" of concern to UCAN.

A failure to establish a set of common assumptions and alternatives will result in the parties to this proceeding providing analyses to the Commission that are not comparable, thereby making rational decision making on this matter extremely difficult if not impossible. It simply makes sense to determine baseline assumptions prior to beginning complex analysis, particularly where the methodology of such analyses is dissimilar. By requiring that parties use known baseline assumptions and analyze a common set of alternatives the Commission will be able to

better understand differences in analytical results. Further, such process would increase the efficiency of the Commission's hearings.

**A. Proposed Alternative Schedule**

The following schedule is based on a phased approach that attempts to identify existing steps in the Commission's analytical process. It provides separate phases for:

- prehearing process, discovery, and CEQA/NEPA scoping;
- identification of regional power needs and planning assumptions; and
- evaluation of alternatives that could redress these needs, including SDG&E's proposed project.

It provides for a twelve-month process from the date of approval of the application to the date of issuance of a decision on a CPCN, with a final decision envisioned in September 2007. It rationally integrates the Commission's process with CAISO analysis and CEQA, NEPA, DPR, and BLM processes and community participation requirements. Conservation Groups have not yet had the opportunity to fully research the schedule implications of the Parks Department's recent assertion that it is a responsible agency under CEQA for the Project, nor the implications of necessary integration of ESA compliance by SDG&E and the CPUC with this proceeding, Conservation Groups therefore reserve the right to suggest an amended schedule as more information on these issues comes to light.

Although Conservation Groups' alternative proposed schedule is far more detailed than SDG&E's proposed schedule and it requests two shorter evidentiary hearings rather than one long one, it is not Conservation Groups' intent to increase Commission process but rather to describe and order existing process. While parties with extensive experience in Commission proceedings may not need such detail, less experienced parties and participating members of the general public do require greater explanation of Commission process than is provided by SDG&E's cursory proposed schedule.

<b>Fall 2006</b>	<b>Prehearing Process &amp; Discovery</b>
August 4, 2006	Application Filed
September 8, 2006	Application Deemed Complete

September 13, 2006	Prehearing Conference/Public Participation Hearing
September 15, 2006	Issue CEQA Notice of Preparation
September 22, 2006	Protest Deadline
September 29, 2006	SDG&E Response to Protests, if Necessary
October 2 to 5, 2006	CEQA/NEPA Scoping Hearings
October 20, 2006	CEQA/NEPA Scoping Comments Due
October 27, 2006	CPUC Scoping Memo
October to December	Discovery
November, 2006	CEQA/NEPA Scoping Report
<b>Winter 2006/2007</b>	<b>Phase I Begins – Planning Horizon, Regional Need, Identification of Feasible Alternatives, and Assumptions for Phase II Analysis</b>
November 1, 2006	SDG&E Supplemental Phase I Testimony Served, if Necessary
December 1, 2006	DRA/CAISO/Intervenor Testimony Served
December 15, 2006	Rebuttal Testimony served
January 8 to 12, 2007, as needed	Phase I Evidentiary Hearings/Oral Argument, as Needed
January 24, 2007	Phase I Public Participation Hearing
January 26, 2007	Phase I Briefs Due
February 9, 2007	Phase I Reply Briefs Due
February 23, 2007	Phase I Ruling: Determination of Forecast Regional Demand for Power, Identification of Assumptions and Scenarios for Economic and Reliability Analysis; Selection of Alternatives for Phase II Evaluation and CEQA Analysis
<b>Spring/Summer 2007</b>	<b>Phase II Begins – Economic, Reliability, Community and Environmental Evaluation of Alternatives to Meet Regional Needs</b>
March 23, 2007	SDG&E Supplemental Phase II Testimony served
March 2007	DEIR Served
April 20, 2007	DRA/Intervenor/CAISO Phase II Testimony served

May 4, 2007	Phase II Rebuttal Testimony served
May 14 to 18, 2007, as needed	Phase II Evidentiary Hearings/Oral Argument, as Needed
May 28 to June 1, 2007	CEQA/NEPA and Public Participation Hearings
June 2007	DEIR Comment Period Closes
June 18, 2007	Concurrent Opening Briefs
June 22, 2007	Concurrent Reply Briefs
August 2007	Final EIR
August 2007	CAISO Recommendation on Project
August 2007	Draft Decision on CPCN/Certifying Final EIR issued
September 2007	Final Commission Decision on CPCN/Certifying EIR

**B. Description of Phase I of Alternative Proposed Schedule**

Phase I comprises a baseline analysis intended to serve as a foundation for an efficient Phase II analysis of project need. In particular, Phase I would determine:

- The appropriate planning horizon;
- Baseline assumptions for existing and future demand and existing resources;
- A set of scenarios (including a preferred scenario) that identify planned future generation, transmission and conservation enhancements, to be used in the evaluation of the proposed project and its alternatives;
- Projected energy shortfalls that would result in unacceptable reliability, congestion and cost impacts given the baseline assumptions and forecast scenarios;
- A set of feasible alternatives to redress identified energy shortfalls for subsequent detailed analysis in Phase II; and
- A description of Commission processes that may have an impact on the Commission’s CPCN analysis, such as proceedings related to renewable portfolio standards, the million solar roofs program, demand management and conservation programs, and global



warming gas emission reduction programs, consideration of which is required by Pub. Util. Code § 1002.3.

Since a Phase I interim ruling would not make any determinations on need for the Project but rather would be investigative in nature, it would not violate CEQA.

### **C. Description of Phase II of Alternative Proposed Schedule**

Phase II includes a detailed analysis of alternative solutions identified in Phase I in light of energy demand scenarios and the planning horizon also identified in Phase I. Phase II would result in a final determination on whether or not to issue a CPCN.

Phase II allows comparable economic and reliability modeling of alternatives by the parties as well as detailed analysis of route-specific economic and environmental costs. This concurrent evidentiary hearing and CEQA process allows community input early enough to permit changes to the Project and its alternatives that might affect economic and technical analyses, such as undergrounding, mitigation, alternative design, and costs to communities and the environment. The Phase II process would:

- Evaluate the relative merits of the Project and identified alternatives;
- Provide an opportunity for the different modeling efforts and economic and reliability analyses to be rationally compared to each other;
- Determine whether the applicant's proposal best serves the public's convenience and necessity or whether an alternative provides greater benefits; and
- Grant or deny a CPCN.

### **D. Advantages of Alternative Proposed Schedule**

This alternative proposed schedule is intended to rationalize, streamline and increase the efficiency of the Commission's CPCN application review. The advantages of the proposed process include:

- An initial focus strictly on the existing situation, which once fully described streamlines subsequent project and alternative evaluation and comparison;

- Facilitation of comparison of economic and reliability analyses in that all analyses of whatever type (CAISO, DRA, other intervenors) would use identical starting assumptions and examine identical alternatives with regard to identical generation and transmission scenarios, thereby avoiding having to rerun models to create apples to apples comparisons;
- A rapid startup of Commission review because information about existing and forecast power needs, resources, and possible alternatives required for Phase I is readily available to the Commission and is not route or design dependent; during Phase I the applicant and intervenors will have time to carefully examine the existing situation and develop alternatives that might better fit existing situation;
- An early go/no go decision point (after Phase I) by both the applicant and Commission; if the Phase I analysis indicate a lack of need for more transmission resources, the process could end before commitment of substantial resources for detailed economic, reliability or CEQA analysis;
- Encourages utilities to evaluate the underlying situation early on and make a better case for the Commission to undertake complete evaluation of solutions;
- An increased likelihood that full applications will only be prepared when there is a likelihood of need, thereby reducing waste caused by preparing applications for unneeded projects;
- Early public education about existing circumstances and possible alternatives; and
- A reduced likelihood of conflicts caused by non-concurrent evidentiary hearing and CEQA processes and an increased likelihood of innovative solutions, thereby also reducing the likelihood of subsequent rehearing and/or litigation.

## **V. COMMENTS ON SCOPE**

Conservation Groups in their prior pleadings have described a number of their concerns, and these concerns are incorporated herein. Conservation Groups request that this proceeding consider the following additional matters and that each of these matters be included within the Commission's evidentiary hearings, both with regard to written and oral testimony:

- SDG&E power demand assumptions for the San Diego region;
- The amount of and timeframe for renewable energy development in Imperial and San Diego Counties requiring increased transmission capacity and the viability of SDG&E's existing renewable energy contracts, including reconsideration of Commission Resolution E-3965, December 15, 2005, as it relates to SDG&E's contract with Stirling Energy Systems;
- The incentives and disincentives of the Project on the development of proposed renewable energy facilities in southern California;
- The capacity of existing and proposed competing transmission lines to transmit renewable energy from Imperial Valley;
- The amount of energy demand that can be met with in-basin renewable energy, energy conservation, efficiency measures, and demand management;
- The economic impacts to the Park and other preserves and related economic interests caused by the Project and its alternatives;
- The economic and health impacts of increased air emissions caused by the Project and its alternatives;
- The economic impacts and policy and legal implications of impacts on other protected habitat/HCP/MSCP lands and State or Federally listed species of the Project;
- The economic cost of wildfires that might result from the Project and its alternatives;
- The economic and environmental impacts of in-basin generation options; and
- The economic and physical impacts of global warming on California that could result from additional reliance on out-of-basin fossil-fuel power generators in other states and in Mexico, particularly in light of current and future California global warming laws and policies.

## **VI. Evidentiary Hearings Should be Located in San Diego and/or Imperial Counties**

Conservation Groups request that all evidentiary hearings be held in San Diego County to ensure full access to the proceedings by members of the public and community and nonprofit intervenors. As previously discussed, active public participation is vital to the quality of this

proceeding. Travel to San Francisco will present a significant financial burden to the Sierra Club, San Diego Chapter, as well as other local community intervenors.

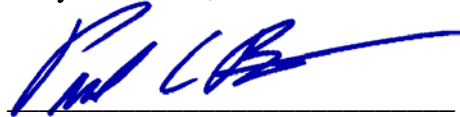
### SUMMARY

For the foregoing reasons Conservation Groups respectfully request that the Commission:

- 1) reject SDG&E's proposed schedule and instead adopt Conservation Groups' alternative proposed schedule, or another schedule that complies with California and federal law and that will permit full, fair participation in this process by all parties, including non-experts;
- 2) include within the scope of its evidentiary hearings the matters identified above; and
- 3) conduct all public participation and evidentiary hearings in San Diego and/or Imperial Counties.

Respectfully submitted,

By:



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Date: September 13, 2006

/s/ Justin Augustine

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### **CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the California Public Utilities Commission's Rules of Practice and Procedure, I have served a true copy of CONSERVATION GROUPS' COVER LETTER, "CONSERVATION GROUPS' MOTION FOR LEAVE TO SUBMIT LATE-FILED PREHEARING CONFERENCE STATEMENT", and "PREHEARING CONFERENCE STATEMENT OF CONSERVATION GROUPS" to all parties on the service list for Application No. 06-08-010/A. 05-12-014. Service was completed by email where available or by placing true copies, enclosed in a sealed envelope with first-class postage prepaid, to be deposited in the United States mail, or by hand delivery. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13<sup>th</sup> day of September, 2006, at San Francisco, California.

/s/ Justin Augustine  
Justin Augustine