REPLY TO
PUBLIC UTILITIES COMMISSION (PUC)
OF THE STATE OF CALIFORNIA
I.D.# 8518, ENERGY DIVISION RESOLUTION E-4243
JUNE 8, 2009

Honorable Commission
C/O
Mr. Michael Rosauer
Energy Division
California Public Utilities Commission
505 Van Ness Avenue, Fourth Floor
San Francisco, California 94102

Subject: PUBLIC UTILITIES COMMISSION (PUC) OF THE STATE OF CALIFORNIA, I.D.# 8518, ENERGY DIVISION RESOLUTION E-4243
JUNE 8, 2009

Dear Sirs,

This Reply challenges the opinions and interpretations of the SCE staff and PUC staff (hereinafter "Staff"), which comprise the entirety of the Resolution, and which found the proposed expansions were not a project requiring an application, Environmental Impact Report or other descriptions and analysis of the impacts of the proposed expansions under the California Environmental Quality Act.

We ask the Commission to reject the Resolution as submitted and to instruct Staff to prepare a Resolution that corresponds to the law and facts in this case. We ask that such a Resolution be based on an analysis that has been properly prepared, circulated and analyzed under the provisions of the California Environmental Quality Act (CEQA) so that all of the people and agencies of the State of California shall also have an opportunity to review, analyze and respond to the proposed project.

This Reply includes this cover letter and an Alternative Resolution of the People of Ventura County (Exhibit A) which is hereby incorporated by reference. We are also aware that the County of Ventura has submitted a letter contradicting the Staff's mischaracterization of their appeal.

The signers of this letter have filed numerous other documents evidencing the many significant impacts that will result from the proposed project (which have been dismissed as simply "protests" by Staff). We have set forth legal positions contradicting Staff's reliance on exemptions to CEQA and Staff's not finding any exceptions to the exemptions despite the enormous scale and scope of the proposed expansion.

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The 20-page Resolution reflects Staff's opinion of what it wants the Commission to conclude. Staff's Letter describing its conclusions misstates or omits the facts submitted or referred to by the "Protestors which would, if fairly presented, lead the PUC decision-makers to an opposite conclusion regarding CEQA. The documents and facts and legal positions are on file, are part of the administrative record and will not be repeated here.

What will be presented is the common sense view of what is proposed and what has transpired in the processing of a rigged approval by a biased Staff, which defies common sense. Common sense is an essential component of any valid CEQA review by decision makers and courts.

Staff's whole argument is based on the faulty assumption that "incremental" projects are exempt. In the most basic terms the proposed "increment" is at least a 7% increase (e.g. from 70-90-foot towers to 75-95-foot towers) over nine miles of terrain. There is no stated limit to how many increments can be expected, (or have already been implemented in the subject rights of way [ROW's]) under Staff's theory, but it is clear a 7% increase annually would result in doubling of height in 10 years. This is an attempted piecemeal project skirting CEQA requirements.

Staff's "exemption" rests on the equally untenable premise that every existing ROW has already been so "disturbed" that no endangered plant or animal could or would want survive in an SCE Right of Way. There is, consequently, in Staff's myopic view, no need to look for impacts as required by CEQA. Staff believes it is following the Commission's guidance and sees no need to inform the Commission that this practice violates CEQA.

It's not clear whether this Staff assumption (disturbed beyond possible use by sensitive flora and fauna) is based on SCE's lack of stewardship or some other factor. (What could have so disturbed nine miles of ROW? Did SCE use of Agent Orange or other chemicals to clear the ROW, or is the presence of deadly PCB's spilled from the transformers?). Are the ROW's to be fenced? Where? Do they deter all and any wildlife passage through existing corridors?

More importantly, does such disturbance constitute wise use of the ROW's entrusted to SCE? We have no idea because the terms of the ROW's are not examined or disclosed.

No documentation is presented about the date of inception terms and limits within the existing ROW's. How many bordering properties and residents were there when granted? In what year were ROW's acquired? Were they acquired post-CEQA in contemplation of this expansion? What was the effective buffer zone at time of grant that is now being invaded by parallel transmission lines? Was there ever any CEQA analysis done regarding these ROW's, as required by the spirit and letter of the PUC exemption (except as misread by Staff)? What kind of transmission facilities were the Best Management Practices in existence when the ROW's were obtained? Are there better ones now? Who gets to choose them?

The Staff presumption is that incrementally bigger is better because PUC regulations trump any CEQA analysis. In an era where every other Municipal, State and Federal Agency and every private development must not only avoid and mitigate new impacts but reduce existing impacts and establish habitats for continuous improvement and implement best management practices that employ the least impactful technology, Staff feels free to incrementally increase to what ever size can be crammed into existing ROWs.

This Resolution is clearly out of step with every other modern processing trend and the goals for CEQA as adopted and expanded by the Legislature and case law. No water utility reasonably expects it can oversize its pipelines or sewers to accommodate future growth and expansion, just because it fits, without an EIR. Caltrans cannot reasonably expect to expand freeways with 7% wider lanes and 7% higher bridges to accommodate oversized loads, add diamond lanes without shoulders to the geographical limits of its existing ROW's that only "incrementally increase" traffic, without CEQA studies.

Private Developers cannot reasonably expect to increase lot sizes 7% and reduce open space buffers without an EIR. Who else except the PUC would expect to develop in Fire Zones without an impact analysis? Where are the studies that show good stewardship of SCE in the existing ROW's justifying expansion?

The California Legislature, Republican and Democratic Administrations, the Electorate and non-voting public will all decry the Staff assumptions on which the special arcane PUC-privileged exemption is based when they come to light in the litigation that will surely follow this Resolution if adopted.

What happens if the Staff's end run around CEQA is allowed by the PUC? The most important thing that won't be studied is: Are there better less impactful alternatives? Why would SCE and PUC ever explore Best Management Practices and Technologies, if they can simply finesse every expansion as "Incremental"?

In every other modern discipline, smaller is better. Unfettered expansion is the demon that has generated the concerns about global warming and carbon footprints recognized by every other State Agency, the Governor, and its Attorney General. SCE, like an out of step 1950's-era auto manufacturer, not only wants to put bigger fins on its 1959 Cadillac; it wants to widen its wheelbase like a Hummer, increase its profile like an SUV, increase its engine size and fuel consumptions and get rid of the shoulders on highways so it can create a double-wide diamond lane just for hydrocarbon-based fuel driven vehicles: all under the guise of incremental electric utility efficiency.

Where is the discussion of the SCE's "Prius" as an alternative to its upsized Cadi-Hummer? Where is the discussion about integrating proposed SCE work with other utilities' plans? What alternate ROW's should be established for future expansion that is not "incremental?" What habitat conservation plans, mitigation areas, alternate uses for existing ROW's can ever be contemplated, studied, planned or implemented if no other California Agency has the right to review PUC projects?

The Federal Government, and all of its agencies, by the way, have the right under The National Environmental Policy Act (NEPA) to review matters affecting interstate power transmission. Does SCE claim the same exempt status regarding NEPA and federally threatened or endangered species? What about the National Forest Service's adjacent lands? Are they getting notice, full discussion of impacts and copies of all documents and studies being prepared by SCE?

The CEQA exemptions for the PUC clearly only allow continuance of existing service and maintenance of existing facilities. The exceptions make it clear these exemptions are not to be used as cover-ups for expansion, upgrades or evasion of investigation of significant impacts: yet that is just what Staff is doing.

It is clear even without CEQA fact-finding and fact-based analysis that undeniable significant impacts will come from the many miles of power line upgrades, expansion and increased size of necessary facilities. It is also clear that the SCE Priests' wishful and unscientific "analysis" begins with their belief in the righteousness of their mission and ends with their tortured exegesis of the PUC Bible, particularly General Order 131-B. 2.(g). Because their conclusions are not justified by the facts, Staff mischaracterizes the facts and relies on textual arguments. Their finding of unwarranted exemption from the laws of the land is based a semantic argument about a band of angels dancing on the head of a semi-colon, and is not a valid statutory interpretation that will be upheld in a court of law.

Under these Priests' new belief-system, any end justifies an incremental increase and non-believers are dismissed rhetorically based on hearsay, assumptions and past practices, without the rigorous and unbiased analysis that CEQA requires. Under the criteria embodied in the Staff beliefs, no project within an existing ROW would ever have to be studied, because there is no need to investigate whether circumstances have changed, whether there are better alternatives, what can be seen or not seen, what can be occupied or not occupied in the already-nuked SCE ROW's.

Based on the Staff responses in the Resolution, the "significant impact" world of SCE is apparently limited only to endangered species and includes no increment aesthetic, viewshed, buffer zone or overburdening of ROW until the enormous incrementalized facilities begin to block the sun or until ROW fences are electrified and begin taking ground-walking mammals as well as raptors.

The fact that more and upgraded electrical transmission facilities are required throughout the state to accommodate wind and solar power from remote locations, and the cost of better and more efficient modes of best management practices and technologies for their transmission, does not imbue the SCE Priests with a greater calling or increase the immutability of their exemptions. The improvements to the grid that are required in the 21st Century and under recent State and Federal legislation are the very projects CEQA is required for. CEQA cannot be sidestepped by the Staff's creeping incrementalism. EIR's and their alternatives analysis are required to alert other agencies of SCE ROW and power facilities upgrades to evaluate ways to eliminate and or reduce potentially significant environmental impacts.

SCE figures it can minimize the project's exposure by placing a copy of its plans in the local library and sending 10-day notices to abutting landowners under PUC regulations instead of CEQA disclosures. Oversized infrastructure always seems wise to the builders; as does efficient use of every cubic inch of ROW's from the center of the earth to the heavens. Such transcendental concepts of the Common Law doctrines of easements have thankfully changed and are appropriately modified by new statutory requirements such as CEQA, everywhere except in the small minds of Staff which deliberately continue to see no impacts, anywhere.

Under CEQA Staff is not empowered to determine whether impacts are significant or unavoidable. All a CEQA exemption determination or initial review by Staff or an Advice Letter can do is determine if the activity is a project as defined by CEQA, if the project qualifies for one of CEQA's exemptions and if there are potential impacts to the environment. They are not to decide whether the extent of an impact is "reasonable", (the prevailing Staff rationale in the Resolution for not instituting CEQA analysis) or if the incremental impacts need to be studied. Any potential significant impact requires CEQA analysis.

The SCE documents and this Resolution describe hundreds of significant and unavoidable impacts which Staff has improperly taken upon itself to analyze, discuss and "resolve" by dismissing them all as exempt (without exception) and reasonable. In this process Staff is unquestionably making conclusions that pre-determine which admittedly significant impacts are 'reasonably" significant enough to no longer fall into the exempt category of maintenance of existing facilities, and not fall within one of the exceptions (Staff found none!).

This is a task that can be performed only by decision makers with accompanying findings. Under CEQA such decisions must come only after unbiased expert fact-finding and wide distribution of the proposed project's facts, possible impacts, proposed mitigation and alternatives to agencies statewide, and fact based findings of overriding considerations.

The Resolution is clearly not a carefully weighed finding by conscientious and reasonable decision makers defining impacts, mitigation and overriding considerations based on the circumstances, incorporating or responding to other agencies comments. It is an SCE whitewash on a blank check, enabling and encouraging limitless future activity within exiting ROW's, far beyond any intended consequences of the cited exemptions or the original ROW's.

NO ALTERNATIVES

Despite the many acknowledged protests from citizens and municipalities pointing out the flaws in its assumptions, SCE has not acknowledged a single impact or made a single revision to its multi-million dollar project extending over miles with untold impacts to countless species, including plants, animals and Californians. Not a single alternative has been studied.

ROW Grantors and their successors have right to expect not only prudent stewardship but improvements and best management practices in any expansion. They are faced with the prospect of incremental intrusions for centuries hereafter without consideration of any alternatives.

Only an EIR can tell us if sections of the expanded facilities could be designed to mitigate its impacts, by preserving wildlife corridors, focusing access for servicing and maintenance, minimizing fire dangers or undergrounding sections near residents to restore or improve viewsheds.

Unless utilities are required to look for them, better alternatives and mitigation will never be discovered or implemented. So long as they are without CEQA oversight, they will jam more facilities into existing ROW's, shrinking existing buffers and safety factors, regardless of unknown unstudied consequences.

SCE and the PUC are so paranoid about preserving the "exemption without exception" that they will never admit the need to gather more facts and consider any other alternatives. SCE has decided to stick its head in pre-CEQA sand and thumb its behind at the many protestors; it has chosen to rationalize its decisions with legal arguments based on a semi-colon rather than gather more facts.

Until ordered by the Commission or a Court, Staff will never investigate, reveal or discuss the terms or limits of existing ROWs, consider alternative facilities, consider revising routes or evaluate acquiring new, less impactful, ROW's in concert with other agencies.

One clear reason for this *hubris* no public utility would dare adopt is that the governing boards of the PUC are packed with SCE representatives and sympathizers who believe the electrical utilities needn't follow the same laws as other agencies. Times have changed but these inside directors haven't. It's time to remove those inside directors and replace them with unbiased outside directors who respect CEQA.

SCE's confidence in its position and the outcome indicates this approach is, and has been, in effect throughout its system for years. It's clear that the PUC is allowing ROW's all over California to be routinely overburdened without CEQA analysis. SCE's "exempt incremental upgrades with no exceptions" are in fact the very piecemeal environmental analysis prohibited by CEQA statutes and Guidelines and Case Law; yet Staff now proposes that such piecemeal analysis be validated and enshrined by the PUC in Resolution E-4243.

Unless the PUC gets its own house in order and respects the responsibility for unbiased fairness in administration that comes with preemption, there will be no alternatives for the public except letters to the editors, legislation and initiatives to repeal the preemptions the PUC is mismanaging.

We urge you to reject Resolution E-4243, adopt our Alternative Resolution (Exhibit A) and direct Staff to prepare an Environmental Impact Report for this Project under CEQA.

Sincerely,

David J. Tanner
President