

January 23, 2003

Attn: Commission's Docket Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Docket # A.01-03-036, Conditional Application of San Diego Gas and Electric Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Valley-Rainbow 500 kV Transmission Project

Dear Clerk:

Enclosed for filing please find an original and eight copies of the Application for Rehearing of Decision 02-12-066. Please date stamp one copy and return to California Independent System Operator in the self-addressed stamped envelope provided.

Thank you.

Sincerely,

Jeanne M. Solé
Regulatory Counsel

Cc: Attached Service List

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

Conditional Application of SAN DIEGO GAS AND ELECTRIC COMPANY for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Valley-Rainbow 500 kV Transmission Project	Application 01-03-036
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APPLICATION FOR REHEARING OF DECISION 02-12-066

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Dated: January 23, 2003

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I. INTRODUCTION AND SUMMARY

In accordance with Pub. Util. Code Section 1731(b) and the California Public Utilities Commission Rules 85 and 86.1, the California Independent System Operator Corporation ("CA ISO") respectfully submits this application for rehearing of Decision 02-12-066. Legal and factual errors underlie the California Public Utilities Commission's ("CPUC" or "Commission") determination in Decision 02-12-006 to deny a Certificate of Public Convenience and Necessity ("CPCN") for the Valley- Rainbow Project, and in particular its view that a reliability need has not been demonstrated. For this reason and because the CA ISO is concerned that the Commission's decision will place the reliability of the system in San Diego at risk, the CA ISO respectfully urges the CPUC to reconsider its decision.

This case involves an application on the part of San Diego Gas and Electric Company ("SDG&E") for a CPCN for a proposed Valley-Rainbow Project. Consistent with the CPUC's Scoping Memo in this matter, this first phase of the proceeding is to address the issue of whether the Valley-Rainbow Project is needed. Decision 02-12-066 concludes that "SDG&E will continue to meet established reliability criteria under conservative supply and demand forecasts within the adopted five-year planning horizon." D.02-12-066 at 2. Accordingly, Decision 02-12-066 "denies without prejudice SDG&E's application for a CPCN to construct the proposed Valley-Rainbow Project" and directs the Energy Division to "cease preparation of the Draft Environmental Impact Report/Draft Environmental Impact Statement for the proposed Valley-Rainbow Project". D.02-12-066 at 3.

Decision 02-12-066 is the first decision by the CPUC since the creation of the CA ISO in which the CPUC denied a CPCN for a project which the CA ISO Governing Board determined to be needed. The CPUC's failure in this case to accord due consideration to the determination of need of the CA ISO Governing Board constitutes legal error. The CPUC's denial of the CPCN for Valley-Rainbow undermines progress towards the often expressed legislative goal of putting into place in California the transmission facilities required to maintain reliability and to facilitate the development of new resources (both conventional and renewable), and thus to support a vibrant state economy.

Further, the CPUC's decision ignores key portions of the factual record. The CPUC denied the CPCN even though it determined that a need will materialize in San Diego by 2008 under reasonable assumptions and could materialize as early as 2005. In denying the application, the CPUC relied on a five year planning horizon, even though the record shows that permitting and construction of the project could take over five years. Moreover, the CPUC considered in developing sensitivity analyses, and in making its decision, only best case scenarios, such as the possibility that new generation could be developed in excess of generating plants already permitted the California Energy Commission ("CEC"). However, it failed to consider worst case scenarios such as the possibility of plant retirements. This failure skewed the decision in favor of denial of the application. The denial of the application, based on these errors, places at risk the reliability of electric service to a significant number of California electricity customers. The Commission's denial of SDG&E's CPCN application will likely result in a reliability

need materializing in San Diego before alternatives to meet the need are considered and can be put into effect.

For these reasons, the CA ISO respectfully requests the CPUC to reconsider its decision to deny the CPCN, and urges the CPUC to accept that a need has been adequately demonstrated and that Phase 2 should proceed. In Phase 2, the various alternatives to meet the needs of San Diego can be identified and assessed, and the best alternative selected. In this manner, San Diego's reliability can be safeguarded in a timely fashion, rather than waiting until reliability needs become dangerously severe.

II. DECISION 02-12-066 IS LEGALLY FLAWED BECAUSE IT FAILS TO ACCORD DUE CONSIDERATION TO THE CA ISO GOVERNING BOARD'S DETERMINATION THAT A PROJECT SUCH AS VALLEY-RAINBOW IS NEEDED.

In D. 02-12-066, the CPUC notes that it has acknowledged that the CA ISO has responsibility to ensure the reliability of the State's electrical system pursuant to "Pub. Util. Code § 345". D.02-12-066 at 6. Nonetheless, the CPUC accords no weight to the determination of the CA ISO Governing Board that a project such as Valley-Rainbow is needed to maintain reliability. Rather, with minimal discussion, and no recognition of the need to harmonize the respective responsibilities of the CPUC and the CA ISO, D. 02-12-066 states categorically, "Pub. Util. Code § 1001 places an ongoing responsibility on this Commission to evaluate the public convenience and necessity of proposed transmission projects, and therefore we independently assess the record developed in this proceeding to determine whether the Valley-Rainbow Project is needed on the basis of either reliability or economics." D. 02-12-066 at 7.

The CA ISO has never disputed that Pub. Util. Code § 1001 places an ongoing responsibility on the CPUC to evaluate the public convenience and necessity of proposed transmission projects. However, this does not excuse the Commission from affording due consideration to determinations of need of the CA ISO, and otherwise working with the CA ISO to harmonize its siting responsibilities with the CA ISO's responsibilities to maintain reliability and undertake transmission planning. As the CA ISO has argued repeatedly, state law and public policy require that the CPUC afford due consideration to findings of need by the CA ISO. The CA ISO in turn has and will continue to acknowledge the CPUC's important role in determining routes, considering environmental, social and aesthetic impacts, and assessing and selecting among project alternatives.

a. State law requires the CPUC to harmonize its siting responsibilities with the grid reliability and transmission planning responsibilities of the CA ISO.

State law gives the CA ISO responsibility for grid reliability and transmission planning. In particular, AB 1890 transferred responsibility for ensuring grid reliability from the state's investor owned utilities and the CPUC to the CA ISO. Pub. Util. Code § 345 states that "The Independent System Operator shall ensure efficient use and reliable operation of the transmission grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council." Further, Pub. Util. Code § 334 provides explicitly that "[t]he proposed restructuring of the electric industry would transfer responsibility for ensuring short- and long- term reliability away from electric utilities and regulatory bodies to the Independent System Operator . . . "

(emphasis added) and creates the Electricity Oversight Board to ensure that state interests are protected notwithstanding the transfer.

Transmission planning is an integral part of assuring transmission grid reliability. Pub. Util. Code § 345 explicitly notes that the CA ISO must ensure compliance with planning criteria as well as operating reserve criteria, making it clear that the CA ISO has responsibility to provide for transmission planning. Moreover, without adequate facilities it is not possible to "ensure efficient use and reliable operation of the transmission grid." Thus, it would not be possible for the CA ISO to ensure compliance with planning criteria if it did not have a meaningful role in identifying the facilities that must be built to meet the standards, and if its determinations of need are ignored in the siting process.

In addition, AB 1890 required the CA ISO to make appropriate filings with the Federal Energy Regulatory Commission ("FERC") to "request confirmation of the relevant provisions of this chapter and seek the authority needed to give the Independent System Operator the ability to secure generating and transmission resources necessary to guarantee achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council." Pub. Util. Code § 346. Consistent with this directive, the CA ISO filed a comprehensive tariff at FERC that provided for the creation of a transmission planning function led and coordinated by the CA ISO. This section is necessary to give the CA ISO the ability to secure "the transmission resources necessary to guarantee achievement of planning ... criteria", in accordance with Pub. Util. Code § 346.

Further, it was a clear objective of the California legislature in passing AB 1890 that the CA ISO be accepted as an Independent System Operator by the FERC: consistent with FERC nomenclature, AB 1890 named the institution created to operate the transmission system Independent System Operator, see e.g. Pub. Util. Code § 345; the legislation endorsed the characteristics of Independent System Operators that had been articulated by FERC, see e.g. Pub. Util. Code § 330(k); and the legislation required the ISO to obtain appropriate authorization to provide for a competitive electricity market from FERC, Pub. Util. Code § 346. CA ISO coordination of transmission planning was a prerequisite of FERC's recognition of the CA ISO as an Independent System Operator. See 77 FERC 61,204, pp 61,834-36 (November 26, 1996); 80 FERC ¶ 61,128, pp 61,416-35 (July 30, 1997). These factors are further evidence of the clear intent on the part of the California legislature to transfer responsibility for transmission planning to the CA ISO.

Finally, given the FERC directive mentioned above, that the CA ISO must coordinate transmission planning, and subsequent FERC determinations approving the transmission planning section of the CA ISO's tariff, see e.g. 81 FERC ¶ 61,122, pp 61,459 (October 30, 1997); 80 FERC ¶ 61,128, pp 61,430-35 (July 30, 1997), the CA ISO has planning responsibilities under federal as well as state law. Since state and federal law are in accord as to CA ISO responsibility for transmission planning it is unnecessary to discuss federal preemption issues.¹

¹ If state and federal law were in conflict as to CA ISO responsibility for transmission planning, which they are not, federal preemption issues requiring further analysis would arise.

The CA ISO recognizes that AB 1890 did not, however, revise state law as to transmission facility siting as set forth in Pub. Util. Code § 1001, et seq. Pub. Util. Code § 1001 provides that no electrical corporation shall begin construction of a line "without having first obtained from the [California Public Utilities Commission] a certificate that the present or future public convenience and necessity require or will require such construction". Thus, in CPUC CPCN proceedings, utilities must still show need, as well as address the environmental, social and aesthetic factors that must be considered by the CPUC under the California Environmental Quality Act² and Pub. Util. Code § 1002.

Without a doubt then, there is thus some potential overlap between the CPUC's siting responsibilities, and the responsibilities of the CA ISO to maintain reliability and undertake transmission planning that requires the development of a coordinated approach between the CA ISO and the CPUC. In fact, in legislation passed subsequent to AB 1890, the Legislature has repeatedly required that the CPUC and the CA ISO work cooperatively in undertaking high priority transmission planning tasks. See Pub. Util. Code Section 379.5 (requiring the CPUC to coordinate with the CA ISO to undertake prompt steps to assure an adequate transmission system); Pub. Util. Code Section 383.6 (directing the CPUC to prepare and submit to the Legislature a comprehensive transmission plan for renewable electricity generation facilities in consultation with the CEC, the CA ISO and electrical corporations).

The CPUC itself has repeatedly acknowledged the CA ISO's jurisdiction over reliability. See e.g. D.02-10-066 at 6; D.02-10-065 at 7; D.01-10-029 at 147; D.01-05-059 at 20; and D.99-09-098 at 9. Moreover, the Commission has recognized the potential overlap in responsibilities between the CPUC and the CA ISO. In two October 24, 2002

² Found at California Public Resources Code, Division 13 § 21,000 et. seq.

decisions denying petitions for rehearing submitted by Pacific Gas and Electric Company (“PG&E”), the Commission determined that the CA ISO and the CPUC have concurrent jurisdiction to make a transmission facility need determination pursuant to their statutory mandate. D. 02-10-065 at 8; D. 02-10-066 at 6. Further, in an earlier decision, the CPUC acknowledged that the CA ISO’s jurisdiction over reliability has been conferred by state law and that the CA ISO’s responsibilities are matters of statewide, rather than local concern. D.99-09-028 at 14. Thus, the CPUC’s responsibilities over siting, and the CA ISO’s responsibilities over transmission planning and reliability involve laws of equal dignity. See e.g. Leslie v. the Superior Court of Ventura County, 73 Cal.App. 4th 1042, 1049 (1999); Orange County Air Pollution Control District v. Public Utilities Commission, 4 Cal. 3d 945, 953-4 (1971).

In this context, California case law is clear that “[t]he parts of a statute must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.” See Maricela C. v. Superior Court, 66 Cal.App.4th 1138; 1143-4 (1998). As the CPUC itself has stated “[w]here there is an apparent conflict between two statutes, the courts will attempt to harmonize them by giving effect to both statutes.” D.99-09-028 at 11 (citing San Diego Gas & Electric Company v. City of Carlsbad, 64 Cal. App.4th 785, 789 (1998)). The Court of Appeals has explained in more detail:

Courts have a duty ... to construe the true meaning of [the statutes at issue] ... and to harmonize [them] with the entire statutory scheme of which [they are] a part. In [cases], involving an apparent conflict between two statutes, the principle of paramount importance is that of harmonious construction, by which [the court] must attempt to give effect to both statutes if possible: [the court’s] task . . . is . . . to determine whether ... there is any possible construction that will harmonize two ... provisions of equal dignity. . . . Moreover, where the language of a statutory provision is susceptible to two constructions, [the courts] should apply the one which will render it reasonable, fair and harmonious with its manifest purpose.

Conway vs. City of Imperial Beach, 52 Cal. App. 4th 78, 84-85 (1997)(citations omitted).

Rather than attempting to harmonize the CPUC's statutory duties in the wake of AB 1890 with those of the CA ISO, in D.02-12-058, as in the October 2002 rehearing decisions, the Commission concludes as a result of the potential overlap in responsibilities between the CA ISO and the CPUC, that the CPUC has jurisdiction to independently make CPCN determinations of need without giving any particular consideration to decisions made by the CA ISO. The decisions imply that in order for a transmission line to be built, both the CA ISO and the CPUC must conclude that the line is needed and that in this manner the respective responsibilities of the CPUC and the CA ISO are reconciled.

A mere conclusion that both the CPUC and the CA ISO must determine that a line is needed in order for it to be built does not harmonize the respective responsibilities of the CPUC and the CA ISO. This approach gives no special consideration to the substantial planning work undertaken by the CA ISO, its need determinations, or its unique role in safeguarding grid reliability.

While claiming to reconcile the responsibilities of the CPUC and the CA ISO, the CPUC essentially ignores the statutory provisions enjoining the CA ISO to assure achievement of planning criteria because the CA ISO cannot assure such criteria if the CPUC gives no particular consideration to its determinations that additional facilities are needed. The CA ISO does not dispute the CPUC's ability under the CEQA to evaluate and select among alternative facilities to meet needs identified by the CA ISO. However, in order to meet its own statutory responsibilities to maintain reliability, the CA ISO requires that the CPUC afford due consideration to the CA ISO's finding of need.

In fact, in an early case discussing jurisdictional boundaries between the CPUC and the CA ISO, the CPUC acknowledged the need for coordination among the CPUC and the CA ISO in order to assure grid reliability. In D.99-09-028, the CPUC determined that both the CPUC and the CA ISO have concurrent jurisdiction over grid reliability and hence the investigation outages but it noted that “[t]he Commission’s shared jurisdiction with the CA ISO over outages and transmission reliability will require a practical approach Like many of the parties, we have no desire to duplicate the CAISO’s work. . . . As discussed, we are today directing our staff to develop protocols with CAISO to guide us in future outage investigations.” D.99-09-028 at 16. While the CA ISO disagrees with the unduly broad view in D.99-09-028 of the CPUC’s retained jurisdiction over grid reliability, it heartily agrees that where there is a potential overlap in responsibilities, it is incumbent on the entities involved to harmonize their activities.³

In the decisions denying PG&E’s applications for rehearing, the Commission further justifies failing to afford due consideration to CA ISO determinations of need on the basis that CEQA requires the CPUC to consider a “no project” alternative. The CA ISO does not dispute that under CEQA the CPUC is required to evaluate and consider

³ In D. 02-10-065 and D. 02-10-066, the CPUC justifies its view that both the CPUC and the CA ISO must independently make determinations of need based on Orange County Air Pollution Control District v. Public Utilities Commission, 4 Cal. 3d 945 (1971). However, Orange County is distinguishable. In Orange County, the Court ruled that obtaining a permit to construct and operate from the CPUC did not excuse a public utility seeking to build a power plant from complying with applicable regulations relating to emission controls enforced by air pollution control districts. Id. at 954. Orange County thus involved a case in which the CPUC and the air pollution control districts regulated different aspects of the construction and operation of a power plant, and the public utility was required to comply with the regulations of each entity in order to be able to operate. In contrast, in the instant case, the CPUC has misinterpreted the statutory scheme to mean, based on Orange County, that both the CA ISO and the CPUC should independently determine the exact same question, whether there is a reliability need for a new transmission facility. The CPUC has ignored the body of law on statutory construction that requires statutory provisions to be harmonized in a manner that make sense. It does not make sense for both the CA ISO and the CPUC to make independent determinations as to an identical question without harmonizing their activities. Nor does it make sense for the CPUC to ignore the determinations of need made by the CA ISO, the entity to which the Legislature transferred responsibility for reliability and which is charged with assuring the attainment of planning and operating reserve criteria.

“no project” as one alternative. However, this fact does not provide a basis for the Commission’s determination in this case that the Valley-Rainbow project is not needed for reliability without any consideration for the reliability need determination of the CA ISO. First, CEQA requires no more than that the Commission evaluate and consider a “no project” alternative. See CEQA Guidelines 15126.6. This responsibility is in no way inconsistent with the Commission affording due consideration to the CA ISO’s determinations of need.

Further, in the particular case of Valley-Rainbow, CEQA provides no basis whatsoever for a Commission determination that it need not give any weight to CA ISO need determinations, since the CPUC dismissed SDG&E’s application purely on the basis of determining that the project was not needed for reliability. Since it bifurcated the proceeding, at the time it dismissed the application, the CPUC had not even completed its preparation of the Draft Environmental Impact Report; the application was dismissed completely without regard for the potential impacts of different project alternatives including the “no project” alternative. Thus, the CPUC has no basis to argue that in the case of Valley-Rainbow, dismissal of the application was based on a consideration under CEQA of a “no project” alternative and CEQA provides no support for the Commission’s failure to accord any weight to the CA ISO’s determination of need⁴.

In sum, state law requires the CPUC to harmonize its siting responsibilities with the grid reliability and transmission planning responsibilities of the CA ISO. Consistent with this requirement the CPUC should give due consideration to the CA ISO’s determinations of need for transmission projects. The CPUC’s failure to afford due

⁴ Accordingly, this case simply does not raise the question of whether under CEQA, the Commission could dismiss a CPCN application on the grounds that, upon evaluating the impacts of various alternatives, it has determined that a “no project” alternative is superior, notwithstanding its adverse impacts on reliability.

consideration of the need determinations of the CA ISO in D.02-12-066 constitutes legal error.

b. Public policy requires that the CPUC harmonize its siting responsibilities with the grid reliability and transmission planning responsibilities of the CA ISO.

Public policy also requires the CA ISO and the CPUC to develop a sensible approach to transmission planning and expansion and to cooperate to promote an efficient and expeditious process for the approval of necessary transmission projects. A failure on the part of the CPUC to accord proper weight to the transmission planning work of the CA ISO will have serious adverse consequences.

First, the CPUC will in essence have to repeat the work that has already been undertaken by the CA ISO, resulting in an inefficient and redundant use of limited resources. Prior to the passage of AB 1890, the CPUC was the only state entity reviewing public utility proposals to add transmission facilities (and hence increase their profits through the addition of plant) and the only state entity concerned with ensuring a reliable electricity system. In that context, it was appropriately the CPUC's sole responsibility to ensure in the CPCN process that the goals of ensuring reliability were properly balanced against the goal of maintaining reasonable electricity costs.

Since the passage of AB 1890, however, the CA ISO, a state created entity independent of the public utilities and with no financial interest in the addition of plant in the state, has been given responsibility for safeguarding system reliability and for transmission planning. To undertake these responsibilities, the CA ISO has a staff of system planners that review reliability needs considering the requirements of the entire state. To avoid a duplication of efforts, the CPUC should recognize the CA ISO's work in

the context of reviewing CPCN applications by giving the CA ISO's determinations due consideration. In this manner the CPUC would recognize the CA ISO's responsibilities and expertise as to transmission planning and reliability, and the statewide and independent nature of the CA ISO's review of system needs.

Further, by giving no particular consideration to CA ISO determinations of need, the CPUC creates the potential for inconsistent results in the different forums, leading to uncertainty and a lack of finality. Resulting delays may only serve to exacerbate the already critical deficiency in transmission infrastructure in the state. In addition, the opportunity is created for forum shopping among affected parties, which also creates inefficiency and uncertainty. Similar concerns would arise from a failure on the part of the CA ISO to respect the CPUC's jurisdiction and expertise to assess environmental, social and aesthetic impacts of proposed transmission projects under Pub. Util. Code Section 1002 and CEQA.

The CA ISO notes moreover, that the recovery of the costs for the transmission projects approved by the CA ISO, and granted siting approval by the CPUC, is generally subject to the jurisdiction of FERC. FERC has repeatedly indicated that in considering whether a transmission line is necessary and its cost thus appropriate for recovery, FERC will look to the determinations of need of Independent System Operators, and Regional Transmission Organizations. See e.g. 98 FERC ¶ 61,332 at 6 (March 27, 2002)(FERC indicated that rolled-in rate treatment for costs of an upgrade proposed by San Diego Gas and Electric Company to be made effective would be subject to a finding by the CA ISO pursuant to its open access transmission access tariff that the facilities are necessary and cost effective). Thus, unless the CPUC and the CA ISO harmonize their activities, there

is the potential for difficulties on the part of public utilities in seeking cost recovery for the transmission projects granted siting approval by the CPUC. This would create additional obstacles to the implementation of needed additional transmission facilities in California.

In fact, as noted above, the CPUC has already described in prior cases the adverse public policy implications from a failure to coordinate between the CA ISO and the CPUC as to matters associated with grid reliability. In D.99-09-028 the CPUC explained with regards to the investigation of outages:

The foregoing lengthy discussion of our jurisdiction and the concurrent jurisdiction of the CAISO demonstrates that it is imperative that we develop protocols with the CAISO for investigating outages promptly. Efforts to enhance system safety and reliability in the San Francisco area and to avoid similar future outages require a coordinated, systemwide effort. An effort fragmented into transmission, generation and distribution, and dealt with separately by different agencies in an uncoordinated manner, would not be in the public interest. Protocols are necessary to clarify and delineate the relationship between the Commission and the CAISO in outage investigations in order to ensure that coordinated, systemwide investigations are undertaken, and that the public welfare is fully protected when outages occur. Such protocols should also enable the Commission, CAISO, the utilities and interested parties to move forward on outage investigation and remediation without costly and time-consuming disputes over which entity is responsible for what. . . .

. . . . The Commission's ongoing process with respect to the outage must take into account CAISO processes which are already in progress.

D.99-09-028 at 17-18.

In sum, state law and public policy requires the CA ISO and the CPUC to work cooperatively to ensure that each entity can effectively undertake its responsibilities under state and federal law, in a manner that is respectful of the roles and expertise of each entity, that promotes regulatory efficiency, and that minimizes the duplication of

efforts and inconsistent results. The CPUC should afford due consideration and deference to the extensive planning work undertaken by the CA ISO consistent with its statutory responsibilities. Conversely, the CA ISO has and continues to acknowledge the CPUC's important responsibilities identifying, assessing and making siting decisions that balance the environmental, social and aesthetic impacts of proposed transmission projects.

III. DECISION 02-12-066 IMPROPERLY IGNORES KEY PORTIONS OF THE FACTUAL RECORD.

The CPUC's decision ignores key portions of the factual record. The CPUC denied the CPCN even though it determined that a need will materialize in San Diego by 2008 under reasonable assumptions and could materialize as early as 2005. There is no rational basis for this determination. Moreover, the CPUC considered in developing sensitivity analyses, and in making its decision, only best case scenarios, such as the possibility that new generation could be developed in excess of generating plants already permitted by the CEC. It failed to consider worst case scenarios such as the possibility of plant retirements. This failure improperly skewed the decision in favor of denying the application.

a. The Commission's Five Year Planning Horizon does not Recognize the Long Permitting and Construction Lead Times for a Major Backbone Transmission Project such as Valley-Rainbow.

The Commission's decision acknowledges that a "planning horizon should not be mechanically applied but rather requires an exercise of judgment based on the facts of

each project before [the Commission]”.⁵ The Commission then concludes that a reliability need has not been demonstrated because in its view need for the project using a reasonably foreseeable forecast arises in 2008. D. 02-12-066 at 52. The Commission acknowledges that if no new generation is added to San Diego, need could arise as early as 2005, but then using only optimistic sensitivity analyses considers that need could be delayed beyond 2008.

The analysis above ignores a number of key portions of the factual record. First, the Commission includes no discussion of the lead times involved in permitting and building a large high voltage backbone transmission project such as Valley-Rainbow, and how adoption of a five-year planning horizon will discourage such projects.

Most of the reliability witnesses agreed that permitting and construction of a major project such as Valley-Rainbow takes five to six years. Tr. (Miller) at 895: 16-25; (Stephenson) at 1108: 1-4; (Schmus) at 1210: 24-28. Since the permitting process alone can take two to three years (the need phase alone took over a year in Valley-Rainbow, and had the case proceeded to phase two at least another year would have elapsed prior to a final decision), this means that to be in place in time to meet an identified need, utilities should be submitting their CPCN applications with the Commission at least five to six years in advance of the year of need. By adopting a strict five year cut-off, as it did in the case of Valley-Rainbow, the Commission will either 1) discourage utilities from proposing long-lead time facilities since they are unlikely to be permitted in time to meet an identified need or 2) encourage utilities to wait until a need could become critical prior to applying for a CPCN. The Commission’s decision ignores the witnesses testimony

⁵ The CA ISO appreciates the Commission’s modification of the draft decision to acknowledge this important concept.

regarding the lead times required to construct major back bone facilities and contains no discussion of how a five year planning horizon will impact the permitting of long-lead time facilities in California.

Moreover, with a need arising in 2008, it is clear that SDG&E could only meet this deadline in time, if the Commission allowed it to proceed to Phase 2 in this case, or if it immediately refiled its application. Dismissing the application in these circumstances is not a good use of resources, and creates the risk that, reluctant to immediately refile its application, SDG&E will wait to file any further application until there is little possibility of putting the project in place in time to meet a need in 2008. And of course if need arises sooner than 2008, there will be no ability to build the project in time to keep the SDG&E area from falling out of compliance with reliability criteria.

b. D.02-12-066 Ignores Pessimistic Sensitivities.

The Commission's decision also ignores the factual record in considering only optimistic sensitivities and not considering pessimistic ones. In D.02-12-066, the Commission includes only one remotely "pessimistic" sensitivity case, that of no new generation. Moreover, the Commission improperly characterizes a number of its "reasonable" assumptions as conservative. In this regard the Commission ignores important portions of the factual record regarding potential retirements of existing generation, the potential for a more aggressive load rebound than projected by SDG&E, the fact that Mexico is unlikely to upgrade a key path for the benefit of California and the potential that Mexico will continue to import from California rather than export.

i. *D.02-12-066 Ignores the Possibility that Existing Generation May Retire*

D. 02-12-066 makes no adjustment in the “reasonably foreseeable forecast” scenario for the retirement of generation, and includes no sensitivity analysis that recognizes the possibility of generating unit retirements. D.02-12-066 dismisses the possibility of retirements because neither SDG&E nor the CA ISO pointed to specifically contemplated retirements. D.02-12-066 at 26. The fact that it is difficult to pin point retirements with certainty does not provide a basis for altogether ignoring the possibility of retirements (in fact in a relatively recent decision by the Commission regarding Southern California, the Commission determined that scenarios assuming generating unit retirements are more credible than scenarios that do not make such assumptions. See D. 01-10-070 at 33, findings of fact # 8).

D. 02-12-066 acknowledges that Encina units 1-5 and South Bay units 1-4 represent 1,635 MW of SDG&E’s existing in-basin generation and are between 24 and 48 years of age. D.02-12-066 at 23. While witnesses were not able to pin point particular likely dates of retirement, several witnesses expressed their expert opinion that some of these very old units would retire, particularly as new generation comes on line. Mr. Miller explained in his rebuttal testimony that much of the 2337 MWs of existing generation in San Diego “is antiquated and inefficient when compared to modern combined cycle generating plants. When new and more efficient generation comes on line elsewhere in the Western Interconnection, the older and less efficient generation will be operated less and may be retired. Therefore, the existing generation cannot be assumed to be available indefinitely to meet the long-term needs of the area.” Ex. 101, CA ISO Rebuttal Testimony at 5:22-28. These views were echoed by Office of

Ratepayer Advocates (“ORA”) witness Mr. Weatherwax who opined that new generation is more efficient and would out compete the older plants in San Diego. See e.g. tr. (Weatherwax) at 1143: 2-3. The CA ISO has explained repeatedly that concern about potential retirements is one of the considerations that led the CA ISO to determine that a need could materialize by 2006 in the San Diego area, and becomes increasingly certain after that.

The possibility of retirements has been startlingly confirmed recently, with a determination by Duke Energy South Bay (“DESB”) to place South Bay Unit 4, a 299 MW unit, into extended cold shut down status. This information became available after the close of hearings, and after briefing, when DESB on October 31, 2002, made its annual filing with FERC in docket ER03-117-000 to update its rates under its Reliability Must Run (“RMR”) Agreement with the CA ISO. In the next to last page of that filing, DESB explains that it intends to place South Bay Unit 4 into extended cold shut down status in 2003. Its plans for 2004 are not yet known. The Commission should take administrative notice of this filing which is available on the FERC website at <http://feris.ferc.gov>. It validates the concerns expressed by Mr. Miller that the old inefficient units in the San Diego area are unlikely to be able to compete with new, efficient units in the Western Interconnect and cannot be relied on to remain in the San Diego area indefinitely⁶. The Commission’s failure to consider the possibility of

⁶ The inability of the older units to compete with newer more efficient generation is further supported by the substantial additional capacity that opted in 2003 to convert under the RMR Agreement from Condition 1 status to Condition 2 status. Condition 1 RMR Units are paid a fraction of their fixed costs and may participate freely in market transactions. See RMR Agreement Section 3.1 and Schedule B. Condition 2 RMR Units are paid all of their fixed costs, are restricted from participating in market transactions and may not retain any revenues from such participation. Id. Accordingly, Condition 2 Units are those that cannot successfully compete in the market. In late November, the CA ISO received notices from four RMR Owners electing Condition 2 status for their RMR Units in 2003. As required under the RMR Agreement, the CA ISO filed a report of these notices with the FERC on December 5, 2002 in Docket ER03-244-000.

retirements, even as a sensitivity case, is clearly contrary to the factual record and significantly skewed the Commission's assessment of the propriety of proceeding to Phase 2.

ii. D.02-12-066 Fails to Consider that Load May Grow Faster Than Forecasted by SDG&E.

Similarly, the Commission failed to consider the possibility that SDG&E's load forecast understates the rebound in load following an unprecedented reduction, even though early information indicated that the rebound might be more pronounced than what had been forecasted by SDG&E.

As is recognized in D. 02-12-066, in 2001, SDG&E experienced the largest one-year decline in its load in 50 years and there is no historical precedent to provide direction about how load will rebound from the 2001 level. D.02-12-066 at 50. SDG&E forecasted that load will rebound from this decline, resulting in growth rates in 2003, 2004, 2005 and 2006 of 4.21%, 4.69%, 3.79% and 3.38% respectively. See Exhibit 1, Prepared Testimony of San Diego Gas and Electric Company, at III-7. D.02-12-066 accepted this forecast and acknowledged that "[t]he evidence supports a finding that electricity consumption between October 2001 and April 2002 exceeded SDG&E's October 2001 forecast by 2.1%". D. 02-12-066 at 49. Moreover, SDG&E testified that historically, SDG&E's forecasts have tended to under forecast, not over-forecast demand. Exh. 5, Prepared Rebuttal Testimony of San Diego Gas and Electric Company, at III-7-8.

The CPUC should take official notice of this filing. While the identity of the Owners providing notice and Units changing status was, consistent with the RMR Agreement, submitted to FERC on a confidential basis, the CPUC received an un-redacted version of the filing, also in accordance with the RMR Agreement. To the extent the units in question are located in San Diego, the change in condition of the units will significantly increase RMR costs, supporting the argument set forth in the CA ISO briefs that the CPUC should not without proceeding to Phase 2 and providing for a full assessment of alternatives, blindly accept that an ongoing reliance on existing, old and inefficient units is the best approach for addressing San Diego's reliability needs.

Notwithstanding this evidence, none of the sensitivity analyses in D.02-12-066 consider that SDG&E's load forecast may under estimate the rebound in load. Instead, D.02-12-066 describes use of SDG&E's load forecast as conservative. D.02-12-006 at 53. This view is inconsistent with the factual record. While the CA ISO does not quibble with use of the SDG&E load forecast as reasonably foreseeable, the record supports an acknowledgement that higher peak loads than those forecast by SDG&E are possible and consideration of this factor in making the overall assessment of need.

iii. D.02-12-066 Mischaracterizes its Conclusions about Support from Mexico as Conservative.

Finally, D.02-12-066 characterizes the fact that it did not consider support from Mexico in its analysis as conservative. D.02-12-066 at 53. This characterization is inconsistent with the record.

D.02-12-066 accurately list the ways in which generation from Northern Mexico could be available to San Diego during an outage of the South-West Power Link ("SWPL"), a facility that, consistent with grid planning standards, must be considered to be out of service for purposes of determining reliability needs in San Diego. During an outage of SWPL, SDG&E can only access resources that are directly connected at Miguel Substation, connected to and able to flow through the Comision Federal de Electricidad ("CFE") transmission system, or connected to Imperial Valley Substation and able to flow through the CFE system. D.02-12-066 at 38.

As D.02-12-066 notes, there is no reliable information from which to conclude that new resources will be directly connected at Miguel Substation. Thus, much of the debate during the hearing centered over the appropriate expected levels of exports from Mexico, and the ability generation from plants connected on the Eastern portion of Path

45 (i.e. connected to the Imperial Valley or La Rosita substations) to flow through the CFE system during an outage of the SWPL.

D.02-12-066 styles its determination not to rely on support from Mexico as conservative because it assumes that CFE will not upgrade its east-west transmission system. D.02-12-066 indicates that the evidence demonstrates that it is in CFE's interest to make such an upgrade. D.02-12-066 at 53. This statement is inconsistent with the factual record. Further, D.02-12-066 acknowledges the CA ISO's testimony that in 2001 CFE exported to California only 3% of the time, D.02-12-066 at 41. However the decision fails to consider this fact in its analysis, and altogether ignores the evidence presented by the CA ISO that in fact Mexico imported significant power from California in summer 2000 and 2001.

While Save Southwest Riverside County, City of Temecula and Pechanga Development Corporation (jointly "SSRC") speculated that CFE will upgrade its transmission system east-to-west, and D.02-12-066 adopts this speculation, there is no evidence in the record that CFE plans to do so. To the contrary, Mr. Miller testified that while the CA ISO has been in frequent discussions with CFE regarding upgrades to the system to accommodate deliveries of the substantial new generation planned in the Mexico/US border area, the CA ISO is unaware of any plans for upgrading from La Rosita to the west. Tr. (Miller) at 908: 17-20. In fact, such upgrades would primarily provide a back-up path to California during an outage of a California line that occurs infrequently, tr. (Miller) at 909: 21-25; the existing path appears to be adequate for CFE's generation, tr. (Miller) at 908: 26-28; 909: 1. Moreover, upgrading the path, which is about 100 miles long, would be costly, tr. (Miller) at 908: 20-21, whereas lower cost

upgrade technology could be available to address the limitations in the system for CFE's purposes, tr. (Schmus) at 1223: 8-16. Thus, there is no evidentiary basis for any optimism that CFE will upgrade the path from La Rosita substation to the west in a manner that makes this a reliable path for power into California during an outage of SWPL, and the Commission's determination not to consider through flow support from Mexico is reasonable, rather than conservative.

In addition, the CA ISO presented data that although in 2001 CFE had a surplus approximating 200MW, it imported power from California 97% of the time during the summer, and 45% of the time during the summer, imports from California exceeded 200 MW. Exh. 102, Surrebuttal Testimony of Jeffrey C. Miller on Behalf of the California Independent System Operator, Attachment: Assessment of the Ability of the CFE System to Support the San Diego Area During Outages of the Southwest Power Link at 10. In deeming conservative its determination not to consider support from Mexico in the Valley-Rainbow need analysis, the CPUC thus disregarded the possibility that in fact, California might be exporting to Mexico during the summer.

In sum, D.02-12-066 considers best case scenarios but ignores certain important worst case scenarios including the possibility of generation retirements and more aggressive load growth than projected by SDG&E. These failures skew the analysis in favor of denying the application since possibilities are considered that would delay the need for the line, but factors that would bring the need forward are not given adequate weight. In this regard, D. 02-12-066 is inconsistent with the factual record and should be revised.

IV. CONCLUSION.

The CA ISO respectfully urges the Commission to reconsider its decision in Valley-Rainbow and allow the parties to proceed to Phase 2 to evaluate the alternatives to meet the reliability need that could materialize as early as 2005 if no new generation is added, if existing generators cease to operate, or if load growth is more robust than was projected by SDG&E. A broader review of the record, as described herein, and the finding by the CA ISO Governing Board that a project such as Valley-Rainbow is needed strongly support this outcome.

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