

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

In the Matter of the Application of San Diego
Gas & Electric Company (U 902-E) for a
Certificate of Public Convenience and Necessity
for the Sunrise Powerlink Transmission Project

Application No. 05-12-014
(Filed December 14, 2005)

**CONSERVATION GROUP'S RESPONSE IN OPPOSITION
TO MOTION OF SDG&E TO SET PROCEDURES AND
TO DEFER CERTAIN FILING REQUIREMENTS**

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INTRODUCTION

Pursuant to Rules 1.2, 2.1, 3, 17.2, 45, and 87 of the Commission's Rules of Practice and Procedure ("Proc. Rule"), the San Diego Chapter of the Sierra Club and the Center for Biological Diversity ("Conservation Groups") hereby oppose San Diego Gas & Electric Company's ("SDG&E") Motion to Set Procedures and to Defer Certain Filing Requirements ("Motion to Defer"), in which SDG&E proposes: (1) to postpone certain Certificate of Public Convenience and Necessity ("CPCN") information requirements for the above application; and (2) to convene an early prehearing conference to set further procedures.

SDG&E submitted its Application for Certificate of Public Convenience and Necessity ("Application") for the Sunrise Powerlink Transmission Project ("Project" or "Sunrise Powerlink") on December 14, 2005, which the Commission docketed on December 19, 2005. By letter dated January 10, 2006, the Commission extended the protest and pleadings period to February 17, 2006, and as such this Response is timely.

The Conservation Groups submit this Response in Opposition to SDG&E's Motion to Defer because the Commission cannot grant the Motion to Defer and accept the Application without violating its own regulations and California law.

The Conservation Groups previously submitted a Motion for Determination of Applicability of the California Environmental Quality Act on January 20, 2006. Issues raised in that motion are relevant to this Response in Opposition and are hereby incorporated by reference.

The Conservation Groups request that the Commission: (1) deny SDG&E's Motion to Defer; (2) reject the Application; and (3) order SDG&E to submit a complete application that fully responds to the information requirements of the Commission's regulations and state laws.

In the event the Commission desires to further consider the requested deviations contained in the Motion to Defer before making a decision on schedule and scope, the Conservation Groups request that the Commission: (1) order SDG&E to amend its Application to provide a proposed schedule that encompasses both SDG&E's proposed decision on purpose and need and route identification processes; proposed scopes for the decisions on both purpose and need and route location; and a detailed description of the filings and procedures required to bifurcate this proceeding; (2) reschedule or continue the prehearing conference to a date that will allow the Conservation Groups and other intervenors adequate time to consider any revised schedule and scope and fully brief the Commission on this complex matter; and (3) continue the protest period to allow additional parties to evaluate SDG&E's amended Application.

I. BACKGROUND

SDG&E submitted its Motion to Defer pursuant to Commission Proc. Rule 87. The motion requests a radical deviation from established Commission procedures for reviewing applications. SDG&E's overall plan is contained in one sentence on page 5 of its Motion to Defer, where it states "it is possible for the Commission to first determine need for the project by the 3rd quarter of 2006 and then approve the route for the line and ultimately decide this application by late Spring 2007." SDG&E's Proposed Schedule only includes dates for the need decision process and not for the route decision process. SDG&E provides no detailed information about how this entire proceeding would work, and focuses instead on what it plans not to do. SDG&E's requested deviations and their impacts on scope and schedule are described below.

A. Deviations Requested

1. Deviations from General Order 131-D

The Motion to Defer requests, among other things, that SDG&E be permitted to defer seven of the eight filings required by General Order No. 131-D (“GO 131”), including:

- a. A detailed description of the proposed transmission facilities, including the proposed transmission line route and alternative routes, if any; proposed transmission equipment; such as tower design and appearance, heights, conductor sizes, voltages, capacities, substations, switchyards, etc.; and a proposed schedule for certification, construction, and commencement of operation of the facilities.
- b. A map of suitable scale of the proposed routing showing details of the right-of-way in the vicinity of settled areas, parks, recreational areas, scenic areas, and existing electrical transmission lines within one mile of the proposed route.

* * *

- d. A detailed statement of the estimated cost of the proposed facilities.
- e. Reasons for adoption of the route selected, including comparison with alternative routes, including the advantages and disadvantages of each.
- f. A schedule showing the program of right-of-way acquisition and construction.
- g. A listing of the governmental agencies with which proposed route reviews have been undertaken, including a written agency response to applicant’s written request for a brief position statement by that agency.

* * *

- h. A PEA or equivalent information on the environmental impact of the project in accordance with the provisions of CEQA and this Commission’s Rule of Practice and Procedure, Rules 17.1 and 17.3. If a PEA is filed, it may include the data described in Items a through g above.

GO 131 (IX)(A)(1). In addition, SDG&E has asked to defer the requirements of other sections of GO 131, including those related to electric and magnetic fields, Section X(A), public notice, Section XI, and the fee required by Proc. Rule 17(j). Although SDG&E has conducted its own type of public outreach, it has not alleged to have provided notice as required by GO 131 XI or to have included the following information required by GO 131 XI(C) in its outreach materials:

C. Contents of Notices

Each utility shall consult with the CACD and CPUC Public Advisor to develop and approve a standard for the notice required by subsections A and B, which shall contain, at a minimum, the following information:

1. The Application Number assigned by the CPUC or the Advice Letter Number assigned by the utility; and
2. A concise description of the proposed construction and facilities, its purpose and its location in terms clearly understandable to the average reader; and
3. A summary of the measures taken or proposed by the utility to reduce the potential exposure to electric and magnetic fields generated by the proposed facilities, in compliance with Commission order; and
4. Instructions on obtaining or reviewing a copy of the application, including the Proponent's Environmental Assessment or available equivalent, from the utility; and
5. The applicable procedure for protesting the application or advice letter, as defined in Sections XII and XIII, including the grounds for protest, when the protest period expires, delivery addresses for the CPUC Docket Office, CACD, and the applicant and how to contact the CPUC Public Advisor for assistance in filing a protest.

Instead, SDG&E sent "courtesy service" of its Application and Motion to Defer to the service lists in R.04-04-003 and I.05-09-005 and distributed materials of its own choosing through a variety of mechanisms. The Conservation Groups anticipate that other protests and public comments will identify the shortcomings of SDG&E's "public involvement" campaign.

SDG&E has requested that the Commission deviate from its standard procedures and ignore in its proposed decision on need the vast majority of the information required by GO 131.

2. Deviations from Procedural Rule 18

SDG&E has asked to defer filing six out of nine categories of materials required by Proc. Rule 18, including:

- (a) A full description of the proposed construction or extension, and the manner in which the same will be constructed.
- (b) The names and addresses of all utilities, corporations, persons or other entities, whether publicly or privately operated, with which the proposed construction is likely to compete, and of the cities or counties

within which service will be rendered in the exercise of the requested certificate.

* * *

The application shall contain a certification that a copy of the application has been served upon or mailed to each such party named.

(c) A map of suitable scale showing the location or route of the proposed construction or extension, and its relation to other public utilities, corporations, persons, or entities with which the same is likely to compete.

(d) A statement identifying the franchises and such health and safety permits as the appropriate public authorities have required or may require for the proposed construction or extension.

* * *

(f) A statement detailing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating associated therewith.

* * *

(g) Statements or exhibits showing the financial ability of the applicant to render the proposed service together with information regarding the manner in which applicant proposes to finance the cost of the proposed construction or extension.

SDG&E has not responded to the final category of materials contained in Proc. Rule 18, which is particularly applicable given the uncertainty of its proposed process:

(p) Such additional information and data as may be necessary to a full understanding of the situation.

SDG&E has requested that the Commission not consider the vast majority of the information required by Proc. Rule 18 prior to the proposed decision on need.

3. Deviations from California Utility Law

Both GO 131 and Proc. Rule 18 have their origins in Pub. Util. Code §1003:

Every electrical . . . corporation submitting an application to the commission for a certificate authorizing the new construction of any

electric plant, line, or extension . . . *shall include all of the following information in the application in addition to any other required information:*

(a) Preliminary engineering and design information on the project.

* * *

(b) A project implementation plan showing how the project would be contracted for and constructed. This plan shall show how all major tasks would be integrated and shall include a timetable identifying the design, construction, completion, and operation dates for each major component of the plant, line, or extension.

(c) An appropriate cost estimate, including preliminary estimates of the costs of financing, construction, and operation. . . .

(d) A cost analysis comparing the project with any feasible alternative sources of power.

* * *

(e) A design and construction management and cost control plan

* * *

(Emphasis added.) §1003 also requires that applicants include in their applications all information required by the Commission, such as that required by GO 131 and Proc. Rule 18.

§1003 does not include any language that suggests that some types of information are more important than other types or that the Commission should consider some types before others. Rather, §1003's comprehensive language and approach to decision-making reveal an intent for the Commission to consider projects as a whole. Likewise, §1002(a) indicates that the Commission must consider community and environmental values as a part of a comprehensive decision by stating:

The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

- (1) Community values.
- (2) Recreational and park areas.
- (3) Historical and aesthetic values.
- (4) Influence on environment

§1002(a) indicates an intent by the legislature to prevent exactly the type of preferential treatment of technical and economic information proposed by SDG&E.

There is no indication in these laws that the Commission may give economic and technical need priority consideration over project design, route, or impacts on communities or the environment. Rather, the structure and language of §1002(a) and §1003 indicate that the Commission must decide to approve or disapprove applications based on consideration of comprehensive information about a project in a unified decision-making process. The law gives no preference to any particular type of information.

B. Effect of Deviations on Scope

The proposed deviations would permit SDG&E to submit all of the foregoing deferred information in July 2006, after the submission of reply briefs and evidentiary hearing on need. SDG&E's statements to the press notwithstanding,¹ adherence to the proposed process would result in SDG&E's physical delivery of the deferred information to the Commission before it makes a final decision on purpose and need, but none of this information would have been the subject of debate within the Commission's hearing on need, nor would the Commission have analyzed this information prior to a such decision, nor would the Commission be allowed to consider this information in its decision on need.

While it is clear about what it does not want to do, SDG&E has not been clear in either its Motion to Defer or Application about how its proposed procedural deviations will actually impact the scope of a Commission decision on purpose and need. SDG&E has provided in

¹ The North County Times reported on January 25 that "SDG&E spokesman Scott Crider [said] that the company will announce its preferred route before the commission makes its decision on whether there is a need for the project." This statement suggests to the public that the Commission will consider the route information in its proposed decision on need, which in fact SDG&E has proposed that it not do.

Volume II of its application a body of information related to the need decision, but does not define what issues will be included in the need process. Until SDG&E presents a clear statement of the issues to be addressed in each phase, it will be very difficult for intervenors and the public at large to understand what SDG&E proposes *to actually include* in the scope of each phase.

Assuming that SDG&E's Volume II roughly defines its proposed scope for the need phase, it can be inferred that the scope might include the following:

- Chapter II – Scope and Cost
- Chapter III – Reliability
- Chapter IV – Renewable Energy
- Chapter V – Economic Benefits
- Chapter VI – Alternatives

As an initial observation, the order of materials presented in SDG&E's Application Volume II suggests a process and scope that is the reverse of how this process should proceed. In order to evaluate the Sunrise Powerlink in light of alternatives, the Commission must begin with an identification of alternatives so that the Commission can compare the Sunrise Powerlink to competing solutions. In contrast, SDG&E's table of contents places its alternatives discussion last.

With regard to scope and cost, SDG&E has provided a range of cost with a variation of \$422 million dollars, nearly half a billion dollars. It is clear from this variation alone that actual design and route will have a substantial impact on project costs, which in turn will have a substantial impact on the Commission's determination of economic benefits. It is not clear how the Commission can make a meaningful decision on the need for this project with such large variability in cost, which can only be resolved by knowing the proposed route.

Further, should the Commission set a cost cap in its decision on need, such a decision would likely also become a default decision on route because the greatest factor in project cost is

line length. Selecting a low cost cap would mean that the only feasible alternative route would be the shortest. If, on the other hand, the Commission decided to select a longer route in its final decision on route, it would then need to reopen and modify its need decision to reconsider cost and economic benefit. Route, cost and economic benefit are inextricably linked in this matter due to the length of this transmission line and available route options. Despite this, it is unclear to what degree SDG&E proposes that the Commission consider route-related issues in the cost element of its decision on need.

With regard to reliability, adding significant transmission capacity will improve reliability, but equally important are questions related to the sources of power, transmission and generation costs, and the societal and environmental costs of these options, which are in turn linked to route location. Without knowing the Sunrise Powerlink's costs and benefits fully, it will not be possible to know whether the alleged reliability improvements are worth the costs.

With regard to renewable energy, the degree to which the Sunrise Powerlink will allow development of renewable resources depends on route and design because renewable resources can be developed only in certain areas of San Diego and Imperial Counties. Should a proposed renewable resource generator be located an excessive distance from the route of the Sunrise Powerlink or from a substation capable of transforming the lower voltage output of renewable energy facilities to the higher voltage of the Sunrise Powerlink, then such generator would not be financially viable. Thus, knowing the actual route and design of the Sunrise Powerlink is a prerequisite to predicting the line's potential impacts on renewable energy development. Further, it does not appear that SDG&E included any substations in its cost estimates, even though such substations would be necessary for the viability of potential renewable energy generation facilities. So, SDG&E's cost estimates may not include all likely costs.

An energy superhighway will not serve local generators or customers if it fails to include on and off ramps. In the absence of knowledge about the location of the highway and highway access, it is impossible to identify its benefits. Should the Commission make a decision on purpose and need based in part on assumptions about renewable energy needs, yet choose a route that cannot support the desired renewable goals, then the Commission would need to re-evaluate its decision on purpose and need in light of the actual route selected. Including renewable energy needs in the scope without consideration of route and design will make comparison of the Sunrise Powerlink to other energy demand solutions untenable.

With regard to economic benefits, the lack of route and design information will make it impossible to compare the costs and benefits of the Project to alternative solutions. SDG&E's range of benefit to cost ratios is of necessity as great as its range of estimated costs. Route location determines line length which also impacts transmission losses, and route location will impact the development of renewable energy qualifying facilities which offset RMR requirements. It is unclear how the proposed purpose and need process would weigh economic benefits and costs absent design, route and environmental information, or what types of information would be permitted in a need determination or reserved for the route determination.

The evaluation of the merits of alternatives to the Sunrise Powerlink also depends on intertwined cost/benefit, route and design issues. An adequate comparison of alternatives in a need decision will be problematic without consideration of the Project's actual route and design. Absent a concurrent environmental review, it will not be possible to consider the environmental impacts and costs of the Sunrise Powerlink relative to alternatives to this project. Given the limitations imposed by a lack of cost, design, route, and environmental data on the Sunrise Powerlink, the scope of the hearings on alternatives will be substantially different from the

Commission's usual procedure, yet SDG&E has not proposed how it might perform these comparisons.

SDG&E's proposed deviations create significant uncertainty in the scope of this proceeding, which SDG&E has not helped to clarify. It is not clear to what degree SDG&E proposes that intervenors be allowed to present environmental, economic, technical, and societal evidence on route and design-dependent factors, and to what degree they would not.

C. Effect of Deviations on Proposed Schedule

In its Application SDG&E included a Proposed Schedule in which the evidentiary and hearing phase of the decision on need would be finished before it provides the deferred information. Also, SDG&E asks that the Commission make a final decision on a Certificate of Public Convenience and Need ("CPCN") regarding "purpose and need" three months later in October 2006. SDG&E's Proposed Schedule states the following:

Proposed Schedule (Rule 6(a)).

Below is SDG&E's proposed schedule for obtaining the CPCN sought by this application:

December 14, 2005 File Application
January 13, 2006 Responses to Application (30 days from daily calendar notice)
January 25, 2006 SDG&E Response to Protests, if necessary
January 31, 2006 Prehearing Conference
February 10, 2006 Scoping Memo
March 3, 2006 Supplemental Testimony, if needed (3 weeks)
April 7, 2006 Intervenor Testimony (5 weeks)
April 28, 2006 Rebuttal Testimony (3 weeks)
May 15 – 26, 2006 Hearings, if needed
June 30, 2006 Opening Briefs (5 weeks)
July 21, 2006 Reply Briefs (3 weeks)
July 2006 File PEA
September 2006 Draft Decision on Purpose and Need
October 2006 Final Decision on Purpose and Need

Application p.15. Obviously, this schedule does not include dates related to a decision on route, nor does it provide that this Application will continue past October 2006.

There are two possible interpretations of this schedule: (1) SDG&E intends to amend this Application (and schedule) in July 2006 and seek a second CPCN from the Commission as part of this Application; or (2) SDG&E intends to file a second application seeking a CPCN on route. SDG&E's assertion that it will file additional information in July 2006 suggest the former interpretation, whereas the "final decision" language in SDG&E's Proposed Schedule suggests the latter. The Conservation Groups are not aware of any reason why SDG&E is unable to prepare a schedule that encompasses both need and route.

In contrast to the Proposed Schedule, SDG&E's website, which is a substantial element in its public involvement campaign, provides a remarkably different schedule (as of January 27, 2006):

- 4th Quarter 2005 – File "Need" statement for the Sunrise Powerlink with the California Public Utilities Commission
- February 2006 – Complete public process and select final proposed route and alternate route for transmission line
- Mid-2006 – File formal application (Certificate of Convenience and Public Necessity) and required environmental review documents with the California Public Utilities Commission
- Late 2006 – Decision by the California Public Utilities Commission on the Sunrise Powerlink
- 2007-2010 – Construct Sunrise Powerlink
- 2010 – Energize Sunrise Powerlink

www.sdge.com/sunrisepowerlink. This schedule indicates that SDG&E will not file an application until July 2006, when in fact it has done so already. Also, it suggests that it expects a final decision on all matters by the end of 2006 so that it can start construction in 2007.

In contrast, SDG&E's December 2005 Application requests a CPCN on "purpose and need" in October 2006, and a final decision in late Spring 2007. It seems unlikely that the

Commission could complete a CPCN on route and an entire CEQA process between July 2006 and December 2006. It would appear that not even SDG&E is clear about what it expects to happen.

Given SDG&E's unnecessary lack of clarity about its schedule and its failure to extend the Proposed Schedule past October 2006, the most that can be said for certain about its schedule is that it would permit SDG&E to bifurcate this process between "purpose and need" and "route." It is not possible to predict the procedural and substantive issues that might arise from this unusual proceeding absent more detail about how the schedule might work.

SDG&E's proposed deviations from the Commission's procedural rules create great uncertainty in the Commission's application review process and related CEQA process. Further, SDG&E's lack of clarity about schedule and scope make informed participation in this process extremely difficult, particularly for non-expert members of the public.

II. THE MOTION TO DEFER FAILS TO COMPLY WITH PROCEDURAL RULE 87 AND THEREFORE MUST BE DENIED

SDG&E submits its Motion to Defer pursuant to Proc. Rule 87, which states in full:

These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases *and* for good cause shown, the Commission may permit deviations from the rules. Rules may be amended at any time by the Commission.

(Emphasis added.) SDG&E's Motion to Defer requests a deviation from the requirements of a number of procedural rules including but not limited to Rules 15, 17 and 18. In order to permit such deviation the Commission must find that this is a "special case" *and* show "good cause."

Where, as here, an applicant requests sweeping deviations from long-established procedural rules the Commission should carefully circumscribe its authority to permit such deviations, particularly since these rules were promulgated through a rulemaking process intended to

implement a broad range of state law. Moreover, the last sentence of Proc. Rule 87 makes clear that amendments to the rules may only be made by the Commission itself and not its staff or a single Commissioner. Deviations that amount to amendments should not be permitted.

As described below and in our related Motion for Determination of Applicability of the California Environmental Quality Act (“CEQA Motion”), such sweeping deviation is in violation of California law and the Commission’s regulations and therefore it is not within the Commission’s discretion to permit the requested deviations. The Commission may either rule on the legality of the requested deviations, or in the alternative, simply find that SDG&E’s Motion to Defer has failed to meet the requirements of Proc. Rule 87 without addressing potential violations of state law and regulations.

Proc. Rule 87 does not define “special case,” but to impose meaningful limits on the Commission’s discretion it must mean that the situation which an application seeks to address is different from what is typical, to a degree that justice requires flexibility. Stated another way, SDG&E’s Application must respond to a situation that is unusual relative to the situation faced by other similar applications. It cannot mean that the applicant itself has created a situation that makes the application unusual.

Proc. Rule 87 also does not define “good cause” but it does state that the rules be liberally construed to allow “just, speedy, and inexpensive determination of the issues presented.” Further, “good cause” is commonly defined as meaning that the reasons given are neither trivial nor specious, but rather that they have real merit relative to the degree of deviation sought.

A. SDG&E Has Failed to Justify the Proposed Deviations

In its Motion to Defer and Application SDG&E has completely failed to describe Proc. Rule 87’s requirements or expressly discuss why this is a “special case” with “good cause”

shown. It does provide, however, a number of reasons in its Motion to Defer why it desires the proposed deviations, including:

- “San Diego region needs this project for system reliability in 2010, as well as access to renewables and for substantial energy cost savings.”
- “So that SDG&E can complete a robust public participation process to select the best route for the project”
- “[T]o commence the detailed engineering and design of the project without delay”
- “[D]eliver the economic benefits of the project as soon as the line comes into service.”
- To “enhance administrative efficiency”
- “[B]egin the months-long process of retaining an environmental consultant”
- “[T]o determine need for the project by the 3rd quarter of 2006 and then approve the route for the line and ultimately decide this application by late Spring 2007.”

The Application recites these reasons in slightly different ways but provides no additional reasoning.

While the foregoing are reasons why SDG&E wants to build the Sunrise Powerlink and bifurcate this proceeding, none of the reasons arise out of an unusual situation that makes this Application a “special case,” nor do they describe why these reasons are “good cause” for the sweeping deviations sought. The following addresses SDG&E’s reasons sequentially.

SDG&E’s primary reasons for the deviations are to provide for system reliability, access to renewables, and to achieve cost savings by avoiding congestion pricing. All new transmission line applications in California are likely to address these same needs. SDG&E fails to allege how the situation it faces with regard to reliability, renewables, or cost is so compellingly different that the Commission is justified in completely changing its application process. There is nothing about the situation addressed by this Application that make it atypical. The Commission’s standard procedural rules are designed to address exactly this type of situation.

SDG&E also asserts that it needs time to complete its public involvement process. This is a reason of SDG&E's own making and therefore cannot make this a "special case." SDG&E was fully capable of beginning this process early enough to complete it before the submission of its Application. Nothing in a voluntary public outreach process justifies wholesale changes in the Commission's application procedures, nor can it substitute for the Commission's own legal obligations to engage the public.

SDG&E asserts that a bifurcation would permit it to commence detailed engineering and design without delay. SDG&E did not and does not need to wait to begin this effort; rather it may, as have all new transmission line applicants before it, begin such work immediately. That an early decision might reduce SDG&E's risk of performing work on a project that fails to be approved would be equally applicable to all other similar applications and does not justify the proposed deviations.

SDG&E asserts that the deferment and bifurcation will allow it to deliver the economic benefits of the project as soon as the line comes into service. As with all transmission lines, the economic benefits can only come into being after the line comes into service. Therefore, there is nothing inherently "special" about SDG&E's situation.

SDG&E asserts that the deviations will enhance administrative efficiency. This relates to the alleged benefits of the deviation and not to the situation in which SDG&E finds itself. Presumably, the Commission considered administrative efficiency when it promulgated its regulations and should not alter its considered judgment based on an unsupported and controversial assertion. Also, the experimental nature of the proposed process is more likely to confuse and delay the administrative process than increase efficiency.

SDG&E asserts that the deferment and bifurcation will allow the Commission to begin the process of hiring an environmental consultant. All similar applications must provide for the hiring of an environmental consultant; there is no special reason why the bifurcation is necessary to accomplish this task.

SDG&E asserts that it needs a final decision on “purpose and need” by October 2006 with a final decision on route related matters by the Spring of 2007. SDG&E provides no reason why this schedule is critical to a degree that the application differs from other similar applications. There is no energy crisis. SDG&E’s contention that the region faces a shortfall in power by 2010 is a matter of significant debate. However, such debate is all the more reason to require SDG&E to comply with the rules, not deviate from them. If the Commission is to determine whether the Sunrise Powerlink Project is really needed, more information and analysis is necessary up front so that nothing is overlooked.

None of the reasons given by SDG&E for the deviation from Rule 87 make the Application a “special case” or provide “good cause,” particularly given the wholesale radical alteration of Commission procedure sought by SDG&E. Rather, there is great risk that the proposed deviation will increase uncertainty and delay, frustrate the public, decrease the Commission’s credibility with the public, and work to counter the goals of the legislature to provide for a fair and open process that gives equal consideration to the technical, economic, and environmental merits of a project as a whole. If SDG&E is required to comply with the same requirements that previous transmission line applications have met, no injustice will be done.

B. Commission Precedent Does Not Support the Proposed Deviations

In an effort to make its proposed deviations sound normal, SDG&E cites Miguel Mission # 2, A.02-07-022, and a closely related matter, Otay Mesa Power Purchase Agreement

Transmission Project, A.04-03-008. SDG&E did not reference a similar application, Antelope-Pardee 500 kV (Segment 1) Transmission Project, A.0412-007, perhaps because the ruling to bifurcate this proceeding was issued two days before SDG&E filed its Application.

These examples do not make the proposed bifurcation process common nor do they justify bifurcation here, because the circumstances in these matters are very different. Instead, these rulings serve to demonstrate how bifurcation might be appropriate in unusual situations.

All three of these applications arose out of the Commission's Transmission Investigation, IO 00-11-001 ("Transmission Investigation"), which process identified transmission problems, evaluated alternate solutions, and determined need and costs for select projects in response to AB 970, itself a reaction to the "energy crisis." The Commission has treated the applications that arose from this process differently from other applications because the Commission's prior efforts to evaluate these particular projects in the Transmission Investigation served as a determination of need. For these unique projects it made no sense to reconsider need issues. The Commission allowed deviations from standard procedures in order to recognize its prior efforts to evaluate and determine need for these particular projects. The process started by AB 970 resulted in a situation in which it made administrative sense to permit the submission of partial applications.

The Sunrise Powerlink was not considered in the Transmission Investigation and therefore the Commission has not already decided anything about it. No state law has mandated a special need assessment for the Sunrise Powerlink. Likewise, the Commission has not undertaken a regional or statewide process to determine which of the many transmission options capable of addressing the power demand issues in southern California will best serve the people of California. Attempting to address regional power needs through a bifurcated purpose and

need decision will bias the process toward the applicant and against alternative solutions and is therefore not appropriate. Unlike the Transmission Investigation related applications, the situation here does not require a deviation from the Commission's procedural rules for the purposes of administrative efficiency or justice.

Miguel Mission involved only the upgrade of existing transmission line in existing rights of way, and in the Otay Mesa proceeding, SDG&E merely sought approval of the addition of another circuit to these same existing transmission facilities as contemplated by the Miguel Mission application. Further, SDG&E submitted a PEA and all project information not already decided by the Commission, and the Commission certified a FEIR that encompassed the Otay Mesa upgrades. Neither of these process were billion-plus dollar green-field transmission lines likely to impact a wide swath of communities and parks.

In the Antelope-Pardee 500 kV Project the assigned Commissioner bifurcated the proceeding between need and environmental review but did so in light of the Transmission Investigation's prior determinations on need and cost and only well after the filing of a complete application and in response to a six month delay in progress on the EIR caused by inadequate communications between SCE and the U.S. Forest Service. It does not appear that any party contested the bifurcation ruling. This situation is nothing like that faced by the SDG&E Application and therefore does not serve as precedent for the proposed deviations. Whereas the Transmission Investigation provided a "special case" and the Commission's prior efforts on cost and need constituted "good cause," a similar situation does not exist here.

Given SDG&E's failure to show that its Application addresses a "special case" for which "good cause" exists to radically change the Commission's long-standing procedures, the

Commission may not grant the deviations sought by SDG&E and therefore must deny the Motion to Defer and reject SDG&E Application pursuant to Proc. Rule 3.

III. GRANTING THE MOTION TO DEFER WOULD VIOLATE CALIFORNIA LAW

SDG&E requests that the Commission bifurcate review of its project into two phases: one in which the Commission is asked to make a “Final Decision on Purpose and Need” (Application page 15) and a second in which the Commission will determine the route, design, and environmental impacts of the Sunrise Powerlink. Granting such bifurcation would represent no mere procedural change but instead would alter the nature of the decision making process required by California law and regulation, and therefore be a violation of law.

A. The Proposed Deviations Violate the Public Utility Code and Commission Regulations

The Commission is charged with implementing a variety of statutory provisions in its application review process, including but not limited to: Pub. Util. Code §§ 399.25, 451, 1001, 1002, 1002.3, and 1003. In particular, §1003 states that every application “*shall include all of the following information . . .*” whereafter it lists a variety of general categories of information that form the basis for the information requirements of GO 131 and Proc. Rule 18. The clear intent of these laws is that the Commission thoroughly consider as a whole the technical, economic and environmental aspects of a proposed electrical transmission line before deciding whether or not to issue a CPCN.

The Commission’s long-standing requirements for applications require that all required information be included in the application at the time it is filed. Section IX(A)(1)(a-h) of GO 131 specifies that applications for a CPCN for transmission lines “shall also include” eight categories of information. Proc. Rule 18 specifies that applications for a CPCN for transmission

lines “shall contain” nine categories of information. In addition, as described on pages 3-6, *supra*, applications “shall” also comply with a number of additional information and notice requirements.

The term “shall” is used as the strongest directive in statutory and regulatory language. Agencies have no discretion to ignore such directives absent extraordinary circumstances, such as those caused by a separate legislation, (*e.g.*, AB 970). *See Larson v. State Pers. Bd.*, (1994) 28 Cal. App. 4th 265, 276 (“The ordinary meaning of ‘shall’ or ‘must’ is of mandatory effect...”); *see also Austin v. Department of Motor Vehicles*, (1988) 203 Cal. App. 3d 305, 309 (“As was so precisely put by the trial judge, ‘shall’ means ‘shall.’ The word ‘shall’ is ordinarily ‘used in laws, regulations, or directives to express what is mandatory.’” (citations omitted)). In this instance, SDG&E has failed to demonstrate anything special let alone extraordinary such that the Commission’s “shall” language should be ignored. Moreover, SDG&E has failed to “include” or “contain” within the Application the vast majority of information required by law and regulation. Such extensive deviation from the law’s “shall” mandate goes far beyond a limited procedural exception and instead amounts to a fundamental change in the legally required application review process.

There is no suggestion in §1002(a), §1003 and related laws and regulations that the Commission may determine that there is a need for a project before reviewing all required information. AB 970 may have unintentionally created an exception for specific projects related to the Transmission Investigation, but it did not alter the Commission’s rules. There is no provision in California law recognizing the availability of an option to bifurcate decisions on project need on the one hand and project route, design, and environmental considerations on the other; rather, the clear language of both the utility laws and CEQA calls for a process in which

the Commission considers all aspects of an application at the same time. The detailed information requirements contained in these laws manifests an intention that a decision on project need be made in full consideration of a complete set of clearly identified, detailed information about a proposed project. There can be no sweeping bifurcation in the Commission's consideration of SDG&E's Application because permitting the deviations would violate California law.

B. Violation of CEQA

The Commission is required by state law and its own regulations to comply with CEQA. As described in our CEQA Motion, granting the Motion to Defer will constitute a violation of CEQA and therefore is not within the Commission's discretion. The CEQA Motion is hereby incorporated into this motion.

IV. SDG&E'S APPLICATION CONTAINS INSUFFICIENT INFORMATION ABOUT ITS PROPOSED BIFURCATED PROCESS AND ITS EFFECT ON SCOPE AND SCHEDULE TO PERMIT INFORMED PARTICIPATION IN THE PREHEARING CONFERENCE

SDG&E proposes a radical unproven process for consideration of its Application. As described in the Background section, above, SDG&E's proposed course of action is vague, and SDG&E has provided no details as to how the proposed procedural changes would work practically or the effect the changes would have on established Commission procedure, including scope and schedule definition. For example, SDG&E has not provided a schedule beyond October 2006, nor has it indicated how the subsequent route proceeding would integrate into a decision on need. SDG&E's conflicting website schedule also confuses this matter. Overall, SDG&E's complete failure to expressly discuss scope creates uncertainty and raises questions about what concerns will and will not be addressed in this proceeding.

In the absence of clarification about how it proposes to proceed with the review of its entire project, it is not possible for the Conservation Groups and their members or anyone else to adequately understand the implications of SDG&E's Motion to Defer or to comment meaningfully on SDG&E's Application. Also, it is not possible for the Conservation Groups and their members to comment adequately on the merits of SDG&E's Proposed Schedule and the appropriate scopes of the need and subsequent route location decisions. There is no practical reason why SDG&E cannot provide a schedule that continues through construction and a proposed scope that provides more detail than that the proceeding will address "purpose and need." Given the unusual nature of SDG&E's request, the burden of defining this process should rest initially with SDG&E, and not with the Commission, the intervenors, or the general public. Prior to making a decision on schedule or scope, the Commission must order SDG&E to clarify its schedule and scope for both phases of the Project, and also provide an opportunity for the filing or amendment of protests based on these clarifications.

V. **THE PROPOSED DEVIATIONS WOULD GIVE UNFAIR ADVANTAGE TO SDG&E RELATIVE TO OTHER APPLICATIONS**

Should the Commission permit the requested deviations in this proceeding but deny such deviations in other proceedings proposed by competing projects², this difference in process would result in non-equivalent decisions and therefore create a bias based not on project merit but on the Commission's alteration of process. The proposed deviations will change how and when the Commission evaluates, compares, and acts on information in the Application. Rather than consider the Application as a whole the deviations would allow the Commission to consider

² SDG&E's assertion that the Project is not "intended" to compete with other projects would appear to be a first attempt at limiting the Commission's consideration of alternatives to the project. SDG&E's intent is irrelevant. Proc. Rule 18(b) specifies that applicants identify projects that are "likely to compete." SDG&E's Application is non-responsive in this regard and any subsequent application must comply with this requirement.

information in a sequential fashion with little to no opportunity for reconsideration of prior decisions in the light of subsequent information. The process would not be iterative.

Such a fundamental change in process would have a substantial effect on the Commission's decisions on convenience and necessity. As such, it is very likely that the proposed deviations would produce a substantially different final decision as compared to the use of the standard application review process. Granting SDG&E's Motion to Defer would also establish a precedent that could lead to many future requests by other utilities for similar deviations. This would create a substantial risk of inequity, favoritism, and poor decision making. Sweeping changes to Commission procedure should be considered carefully in a formal rulemaking, not on an *ad hoc* basis.

VI. THE PROPOSED PROCESS IS VAGUE AND UNPROVEN AND THEREFORE CREATES A RISK OF DELAY IN PROVIDING RELIABLE CLEAN POWER

SDG&E's proposed bifurcation has created uncertainty and confusion, as has its "public involvement" campaign, thereby hindering the Commission's consideration of this matter.

A. The Effect of the Proposed Deviations on this Proceeding

SDG&E's failure to provide a comprehensive schedule and scope highlights the core complexity of its proposal: the ability of the Commission to distinguish between matters related to a decision on "purpose and need" versus those related to a decision on route location and design – and how the Commission might dovetail these two processes.

Contrary to SDG&E's position, the specific routing and design details of transmission lines determine many of the merits of this Project and the merits in turn determine how successfully the Project will address the public's convenience and necessity. Here, a variety of route and design configurations and alternatives to the Project exist. These can only be compared to the Project adequately if the Project's route, design, and impacts are known. In this

situation, there is no clear line between “purpose and need” and project design and routing. The details of design and route have a substantial impact on the merits of the Project.

Since route location, design, cost, and environmental impacts are all inherently a part of an evaluation of need, it is unlikely that the Commission will be able to clearly delineate the scopes of the need and route proceedings. At present, this delineation is not at all clear to the Conservation Groups, particularly as the Commission, to our knowledge, has not previously attempted this process. Although the Commission may be able to define parts of these scopes before this long process commences, it is almost certain that issues will remain that the Commission will need to address on an *ad hoc* basis.

The Commission also faces a risk of significant disputes during this proceeding and after any final decision on need (on both procedure and substance) as well as ongoing contention about the schedule and scope during the proposed need and route proceedings. Moreover, a Commission decision to bifurcate this proceeding between need and route would have far reaching implications for CEQA compliance that are of interest to many groups not directly involved in this proceeding (for example, such a process could be used to restructure the CEQA process applicable to highway construction). The contention resulting from the proposed deviations could delay a final decision, as well as delay the implementation of constructive energy solutions desired by San Diegans, including the Conservation Groups and their members, who are also ratepayers. The Commission’s adherence to its standard decision making process would provide certainty and predictability and avoid unnecessary conflict.

Also, it is entirely unclear what SDG&E’s legal rights would be should the Commission make an affirmative final and binding decision on purpose and need but subsequently deny a CPCN based on route location concerns. Should the Commission’s decision on route location

and design conflict with its decision on need, it is unclear how the Commission would conform its decisions. These uncertainties create a risk of contention extending beyond the Commission's final decision.

It appears that SDG&E is inappropriately attempting to recreate a situation not unlike that established by the Transmission Investigation/AB970, where the Commission first made a decision on need in a separate proceeding without the benefit of full consideration of alternatives included in the Transmission Investigation. However, the situation which created AB970 and the Transmission Investigation no longer exists, and no similar situation compels the Commission to use those unusual procedures.

B. The Effect of the Deviations on Public Participation

The confusion caused by SDG&E's Application has already manifested itself in the public's uncertainty about what the Sunrise Powerlink will impact and the procedures to be used by the Commission. GO 131 XI requires that SDG&E send notice containing specific materials to concerned citizens. Although SDG&E has conducted and is conducting a "public involvement" campaign, it has not alleged that it has complied with the Commission's notice requirements, either with regard to who should receive the notice or the contents of the notice, particularly with regard to information about the Commission's process and instructions on participation in this process. Instead, SDG&E is attempting to "involve" the public in ways that do not appear to inform citizens of their rights under law, as required by GO 131 XI.

SDG&E's move to bifurcate the Commission's decision here seems in part to be an attempt to delay and focus public involvement until after the hearings on need and after it selects a route, which it proposes to occur after the record closes on a decision on need. This approach appears to have backfired. Instead of engaging the citizens of one route, SDG&E has managed

to engage the citizens along a number of routes, only increasing opposition to its Project and adding to the confusion surrounding the Application. The early decision on need is especially of concern to citizens who feel that not participating in a need determination would prejudice their efforts should their communities be selected for location of the route of the Project.

It appears that SDG&E's "public involvement" campaign has had limited success in actively involving the public. For example, according to SDG&E's November 14, 2005 presentation on the Project, attendance at its public events in developed areas of the County to date totaled 60 individuals representing 50 organizations; in contrast, self-organized community meetings in rural areas have been attended by hundreds of citizens notified primarily by word-of-mouth and community email groups. Further, public participation has skyrocketed in recent community group meetings in which SDG&E has presented its case, due again to community efforts. It does not appear that SDG&E's community involvement campaign succeeded in engaging concerned citizens to actively participate in this process, and therefore citizens have begun to take matters into their own hands. By experimenting with the Commission's standard application procedure, SDG&E may have made the Commission's engagement with local communities much more difficult.

SDG&E is asking the Commission to plough a great deal of new procedural ground. New procedures almost invariably result in increased administrative inefficiency and delayed decision making, particularly where the changes are not fully vetted through a rulemaking process. Granting SDG&E's requested deviations will increase the risk of confusion, unintended consequences, and delay.

CONCLUSION

For the reasons stated above, the Conservation Groups respectfully request that the Commission: (1) deny SDG&E's Motion to Defer; (2) reject the Application; and (3) order SDG&E to submit a complete application that fully responds to the information requirements of the Commission's regulations and state laws. In the event the Commission desires to further consider SDG&E's requested deviations before making a decision on schedule and scope, the Conservation Groups request that the Commission: (1) order SDG&E to amend its Application to provide a proposed schedule that continues through construction; proposed scopes for the decisions on both need and route; and a detailed description of the filings and procedures required to bifurcate this proceeding; (2) reschedule or continue the prehearing conference to a date that will allow the Conservation Groups and other intervenors adequate time to consider any revised schedule and scope and fully brief the Commission on this complex matter; and (3) continue the protest period to allow additional parties to evaluate SDG&E's amended Application.

Dated: January 27, 2006

Respectfully submitted,

The San Diego Chapter of the Sierra Club
and the Center for Biological Diversity

By: /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 1.) cover letter to the Honorable ALJ Kim Malcolm and 2.) "CONSERVATION GROUP'S RESPONSE IN OPPOSITION TO MOTION OF SDG&E TO SET PROCEDURES AND TO DEFER CERTAIN FILING REQUIREMENTS" to the following parties:

All parties of record in R.04-04-003 and I.05-09-005 and A. 05-12-014.

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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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 27th day of January, 2006, at San Francisco, California.

/s/ Justin Augustine
Justin Augustine