

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for a Permit to Construct Electrical Facilities With Voltages Between 50kV and 200kV: Valley-Ivyglen 115 kV Subtransmission Line Project.

Application 07-01-031
(Filed January 16, 2007)

And Related Matters.

Application 07-04-028

Application 09-09-022

OPENING BRIEF OF THE CITY OF LAKE ELSINORE

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SUMMARY OF RECOMMENDATIONS

The Commission should:

- (1) find that the visual, aesthetic and land use impacts of the Proposed Project within the City of Lake Elsinore are significant and, accordingly, condition approval of the Proposed Projects on additional mitigation by way of undergrounding of the Proposed Projects;
- (2) find that the Final EIR fails to comply with CEQA because the aesthetics impacts analysis does not adequately account for the degradation of views in the City of Lake Elsinore;
- (3) find that the Final EIR fails to comply with CEQA because it fails to adequately address socioeconomic impacts of the Proposed Projects;
- (4) find that the Final EIR fails to comply with CEQA because it fails to adequately address environmental justice concerns;
- (5) find that the Final EIR fails to comply with CEQA because it fails to adequately address to adequately address and consider alternatives to the Proposed Projects;
- (6) deny Southern California Edison's request for Petition for Modification for the Valley-Ivyglen Project and application for a Certificate of Public Convenience and Necessity for the Alberhill System Project until such time as a legally adequate environmental impact report is prepared.

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OPENING BRIEF OF THE CITY OF LAKE ELSINORE

Pursuant to the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Rule 13.11 and the Assigned Commissioner’s Scoping Memo and Ruling, the City of Lake Elsinore (“City”) hereby submits its Opening Brief concerning Southern California Edison’s (“SCE”) amended Petition for Modification (“PFM”) of the decision granting a permit to construct the Valley-Ivyglen 115 kV Subtransmission Line Project (the “VIG Project”) and SCE’s application for a Certificate of Public Convenience and Necessity (“CPNC”) for the Alberhill System Project (the “ASP Project”). The VIG Project and the ASP Project are collectively referred to herein as the “Proposed Projects.”

Contrary to the conclusions in the Final Environmental Impact Report (“Final EIR”),¹ the Proposed Projects will have unmitigated significant adverse visual, aesthetic and land use

¹ Valley-Ivyglen 115 kV Subtransmission Line and Alberhill System Projects Final Environmental Impact Report, April 2017, A.07-01-031, A.09-09-022, SCH Nos. 2008011082, 2010041031 (“Final EIR”). Excerpts from the Final EIR referenced in this Opening Brief can be found in the City’s *Motion to Request Judicial Notice* (“JN”), Exhibit 1, filed concurrently herewith.

impacts. As a result, they cannot be lawfully approved under the California Environmental Quality Act (“CEQA”)² without conditions imposed to avoid or mitigate those impacts.

While the Final EIR purports to address the visual impacts of the Proposed Projects, the analysis has routinely avoided addressing the combined visual impacts of the VIG Project and the ASP Project. In failing to properly account for the visual impacts of the ASP Project lines being “added” onto the VIG Project poles, the Final EIR understates the visual impacts of the Proposed Projects by failing to correctly show the double circuit configuration. The oversight is then magnified by the Final EIR’s use of an outdated visual assessment yardstick that has been discarded by the same federal agency that invented it. The visual impact analysis and conclusions in the Final EIR can be summarized in a simple phrase: folks will get used to the transmission lines.

Sadly, the Proposed Projects carry the legacy of a generation of poor planning by SCE that has left the City riddled with overhead transmission lines along many of its most traveled streets despite the City’s land use efforts requiring undergrounding in new commercial and residential developments. SCE’s Proposed Projects and, in turn, the Final EIR makes it very clear that substantial adverse aesthetic impacts on the City of Lake Elsinore do not matter.

The City comes to the Commission with a simple request: please find a better balance of interests and equities when evaluating projects that so keenly affect local communities. Affluent Southern California communities do not have to fight to have 115 kV transmission lines undergrounded in areas in where transmission lines are already underground. While the City of Lake Elsinore may not be similarly affluent, undergrounding is nevertheless essential to mitigate the Proposed Projects’ adverse visual, aesthetic and related land use impacts on the City.

I. INTRODUCTION

A. Background on Proposed Projects

SCE successfully applied for a permit to construct the Valley-Ivyglen 115 kV Subtransmission Line Project. The Commission issued its decision in 2010.³ However, in 2014, SCE

² Public Res. Code § 21000 *et seq.*

³ A.07.04.028, *Decision Granting Southern California Edison Company A Permit to Construct the Fogarty Substation and the Valley-Ivyglen Subtransmission Line Project*, August 17, 2010.

determined to realign significant portions of the VIG Project and ultimately submitted an amended Petition for Modification.⁴ The Final EIR describes the VIG Project as follows:

“From the existing Valley Substation, in the City of Menifee, the proposed 115-kV line would traverse in a generally west direction through areas within the City of Menifee, City of Perris, City of Lake Elsinore, and unincorporated areas of western Riverside County to the existing Ivyglen Substation. The proposed route would cross Interstate 215 (I-215), State Route 74 (SR-74), and Interstate 15 (I-15). Fiber optic lines would be installed overhead on the proposed structures and underground in new and existing conduits.”⁵

The VIG Project will enter the City at State Route 74 just east of Interstate 15 and will wind its way along Third Street, Pasadena Street, Nichols Street, and Lake Street. These areas consist mainly of commercial and residential development.

SCE’s stated objectives for the VIG Project, as described in the Final EIR, are to serve projected electrical demand, to increase electrical reliability, and to improve operational and maintenance flexibility on subtransmission lines without interruption of service.

SCE has also applied for a CPNC for the ASP Project. The ASP Project begins with the Alberhill Substation just outside of the City’s northern municipal boundary:

“Alberhill Substation is proposed to be built on 34 to 40 acres of a 124-acre property located north of I-15 and the intersection of Temescal Canyon Road and Concordia Ranch Road in unincorporated western Riverside County. The two new 500-kV transmission lines would each extend approximately 1.5 miles northeast to connect the proposed Alberhill Substation to the existing Serrano-Valley 500-kV Transmission Line. The two 500-kV transmission lines would be constructed primarily

⁴ A.07.04.028, *Southern California Edison Company (U 338-e) Amended Petition for Modification of Decision 10-08-009*, May 23, 2014.

⁵ Final EIR, p. 2-14 (JN, Ex. 1, p. 6).

in unincorporated Riverside County, although the transmission lines would pass through the City of Lake Elsinore.”⁶

In addition to the construction of the Alberhill Substation and related 500 kV transmissions lines with dual towers, several miles of 115-kV lines will be added (and for an extended stretch double-up with the VIG Project transmissions lines):

“The proposed 115-kV line modifications and construction would occur southeast from the proposed Alberhill Substation to Skylark Substation (approximately 11.5 miles) and from Skylark Substation to Newcomb Substation (approximately 9 miles). The subtransmission lines would be modified or constructed in unincorporated Riverside County and in the Cities of Lake Elsinore, Wildomar, and Menifee.”⁷

This nearly 21 miles of 115 kV transmission lines will weave through some of the City’s most heavily traveled thoroughfares, including Mission Trail, Malaga Street, Casino Drive, Auto Center Drive, Third Street, Pasadena Street, Nichols Road, and Lake Street all in proximity to established commercial zones and residential neighborhoods. Particularly disheartening is the fact that overhead transmissions lines will be placed in portions of the City that currently have fully undergrounded utilities.

The stated purposes for the ASP project are to relieve projected electrical demand that would exceed current operating limits, to construct a new substation that provides safe and reliable electrical service, and to maintain a dual electrical system that enables each system to provide electricity in place of the other during maintenance and emergency events.⁸ Other intervenors in this matter, notably ORA, TURN and FrontLINES, have disputed SCE’s analysis and related testimony regarding need and reliability. While the City shares their concerns and is keenly interested in the Commission’s ultimate determination of project need, the City has not offered testimony concerning reliability needs within the Elsinore Valley and will not address those issues in its brief.

⁶ *Id.*

⁷ *Id.*

⁸ Final EIR, p. ES-2 (JN, Ex. 1, p. 4).

The Commission subsequently determined to review both the PFM for the VIG Project and the CPNC for the ASP Project in a single environment impact report (“EIR”).⁹ Following an opportunity to comment (including comments by the City) and preparation of responses to comments, the Final EIR for the Proposed Projects was made available in April 2017.

B. Background on the City of Lake Elsinore¹⁰

The City of Lake Elsinore was incorporated in 1888. Its historic downtown contains many building constructed in the early 1900’s while modern shopping centers, commercial centers and new residential areas have sprung up literally just down the street. The City is the fee owner of its namesake lake – Lake Elsinore – which is Southern California’s largest natural lake providing more than 3,000 surface acres of aquatic recreation and more than 14 miles of shoreline.

In 1970, the City had 3,520 residents. Today the City serves as the local agency responsible for overseeing the health, safety and welfare of more than 62,000 citizens within its municipal boundaries.

II. THE PROPOSED PROJECTS WILL HAVE SIGNIFICANT IMPACTS AND THE FINAL EIR IS INCORRECT TO CONCLUDE OTHERWISE

A. The Legal Standard: CEQA Must Be Interpreted Broadly and Strictly Enforced.

“CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity’s potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the

⁹ Final EIR, April 2017, Executive Summary at ES-1 (“The CPUC determined that it would be in the public’s best interest to consolidate the CEQA analyses for the Alberhill System Project CPCN application and the Valley–Ivyglen Project PFM for a previously-approved PTC into a single CEQA document because the components of the proposed Valley–Ivyglen Project are required for construction of the proposed Alberhill Project and the two projects would be constructed during the same period.”) (JN, Ex. 1, p. 3).

¹⁰ See City’s *Motion to Request Judicial Notice* requesting judicial notice of the facts set forth in Section I. B of the Open Brief concerning pursuant to Evidence Code Section 452.

rationale for governmental approval of a project that may significantly impact the environment.”¹¹

To advance these four purposes, CEQA’s dictates must be “strictly enforced.”¹² “Only by requiring [the lead agency] to fully comply with the letter of the law can a subversion of the important public purposes of CEQA be avoided.”¹³ In turn, there is no such thing as a “harmless error” under CEQA; any violation is “necessarily prejudicial.”¹⁴

The Final EIR fails to satisfy the requirements of CEQA on the following grounds: (1) inadequate aesthetics impact analysis; (2) inadequate socioeconomic impact analysis; (3) environmental justice concerns; and (4) inadequate alternatives analysis. As discussed below, because of these failings, revisions to the Final EIR are necessary to comply with CEQA.

B. The Final EIR’s Analysis of the Proposed Projects’ Aesthetics Impacts Fails to Adequately Account for the Degrading of Views to Residents and Patrons of Commercial Developments in the City of Lake Elsinore

Appendix G to the Guidelines for Implementation of CEQA (“CEQA Guidelines”)¹⁵ states in relevant part:

“A project will normally have a significant effect on the environment if it will:
... (b) Have a substantial, demonstrable negative aesthetic effect[.]”

Elaborating this, the CEQA Guidelines:

“establish a rebuttable presumption any substantial, negative aesthetic effect is to be considered a significant environmental impact for CEQA purposes. We must give great weight to the CEQA Guidelines. [Citation omitted.] Lacking any reason to conclude otherwise, we adopt this provision of the CEQA Guidelines as self-evident. We further conclude it is inherent in the meaning of the word

¹¹ *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285-286.

¹² *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1988) 197 Cal.App.3d 1167, 1176.

¹³ *Id.*

¹⁴ *Resource Def. Fund v. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 897-898.

¹⁵ Cal. Code Regs., title 14, § 15000 *et seq.*

‘aesthetic’ that any substantial, negative effect of a project on view and other features of beauty could constitute a ‘significant’ environmental impact under CEQA.”¹⁶

1. The Final EIR’s Emphasis on Freeway Views
Ignores the Proposed Projects’ True Visual Impacts

CEQA implements state policy that government agencies “[t]ake all action necessary to provide the people of this state with [] *enjoyment of aesthetic [] qualities, and freedom from excessive noise.*”¹⁷ (Emphasis added.) State policy also “[r]equire[s] government agencies at all levels to consider qualitative factors” in CEQA documents and not just quantitative factors.¹⁸ The Final EIR’s aesthetics analysis is fundamentally flawed and violates this policy in exactly the same way that the noise analysis was flawed and violated it in *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comms.* (2001) 91 Cal.App.4th 1344 (“*Berkeley*”).

In *Berkeley*, the EIR used a single methodology to assess the project’s potential noise impacts: a *quantitative* methodology that excluded any *qualitative* analysis of noise impacts on residents “in normally quiet residential neighborhoods,” such as disturbance of their sleep and “peaceful enjoyment of our homes, gardens, and parks.” (*Id.*, at pp. 1372-1375.) When area residents and the Cities of San Leandro and Alameda protested this, the EIR preparers were “steadfast and consistent” in rebuffing those protests, insisting that the EIR need not address or mitigate noise impacts that occurred outside of the noise “corridor” addressed by the EIR’s quantitative noise analysis. (*Id.*, at pp. 1372-1383) Citing the foregoing CEQA policies, the *Berkeley* court rejected the EIR’s single quantitative analysis, finding it deficient for failing to *qualitatively* analyze noise impacts to residents *outside* the noise corridor the EIR studied. (*Id.*)

Repeating the mistakes the *Berkeley* EIR made in addressing noise impacts, the Final EIR incorrectly assumed that the only significant visual impacts created by the Projects are those associated with how the transmission lines will be viewed from the Interstate 15 and State Route 74 highway corridors and thus relied on the Federal Highway Administration’s 1988 *Visual*

¹⁶ *Quail Botanical Gardens Foundation, Inc., v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604.

¹⁷ Public Res. Code § 21001(b).

¹⁸ Public Res. Code § 21001(g)

*Impact Assessment for Highway Projects*¹⁹ while using no other criteria for measuring the Project's aesthetic impacts. In doing so, the Final EIR ignored the fact that over 11 miles of proposed transmission lines will be within the City's municipal boundaries, while virtually none of the transmission lines within the City will be within the Interstate 15 and State Route 74 highway corridors. Consequently, the Proposed Projects are simply ill-suited for analysis using a singular criteria developed for the federal interstate highway system.

Further, this emphasis on views from highway corridors as opposed to the degradation of City residents' and retail patrons' views *where the lines will actually be located* can be seen by the photographs included (and excluded) in the Final EIR:

“Most views focus on the foreground with hills and mountains in the middleground and background. Context photos 9 through 17, and 24-28 (Figures 4.1-2c-e) depict the variety of views within the landscape unit. Lake Elsinore is visible in the middleground from a variety of vantage points, as shown in context photo 24 (Figure 4.1-2d). The City of Lake Elsinore has identified six vantage points in its General Plan, as described below in Section 4.1.1.4, ‘Scenic Vistas’ (City of Lake Elsinore 2011). Context photo 24 (Figure 4.1-2d) shows the view from Vantage Point 1, located at I-15 just west of Railroad Canyon Road, where motorists can see Lake Elsinore.”²⁰

Context photos 9-17 and 24-28²¹ contain a total of 14 photographs from different points in the City, but only one of them includes a small portion of a residential area. None of the photographs depict any significant retail development. Yet, current and future development throughout the City will be substantially impacted aesthetically by the Proposed Projects.

Additionally, the Final EIR ignores “viewer sensitivity” by people viewing the transmission lines in retail centers and only makes a passing reference to “homeowners”:

“Viewer sensitivity is high for views seen by people who are driving for pleasure; people engaging in recreational activities, such as hiking,

¹⁹ See Section II.B.2 herein and footnotes 33 and 34, *infra*.

²⁰ Final EIR, p. 4.1-2 (JN, Ex. 1, p. 20).

²¹ Final EIR, Figures 4.1-2c and 4.1-2e (JN, Ex. 1, pp. 24, 25).

biking, or camping; and homeowners. Viewer sensitivity tends to be lower for views seen by people driving to and from work, as part of their work, or engaged in personal business activities (USFS 1995; FHWA 1988). Views from recreation trails and areas, scenic highways, scenic overlooks, and residential areas are generally assessed as having high viewer sensitivity.”²²

The Final EIR addresses what it calls “viewer groups” that it identifies as those “that would have views of the proposed projects.”²³ The viewer groups are identified and their sensitivity to the views of the Projects are then listed in Table 4.1-1.²⁴ However, the only viewer groups identified are “motorists,” “motorist and other travelers” and “recreationists.”²⁵ No mention is made of the tens of thousands of City residents visually impacted by the Proposed Projects in their community or visual impacts to current and future commercial developments.

The Final EIR addresses “significance criteria” at page 4.1-42. While scenic vistas are considered, missing again from the analysis are impacts to residences and retail centers.

Also missing from the Final EIR’s aesthetics analysis are viewpoints *outside* highway corridors and from streets within the City in which there are no existing overhead transmission lines and streets that have overhead lines on only one side of the street. The Proposed Project’s plan to install lines where none currently exist at all and to add a second set of poles and lines in areas where only one set exists across the street will substantially degrade the existing visual character and quality of those City streets. The EIR’s aesthetics analysis also fails to account for City streets that have existing modest transmission lines capable of future undergrounding at a reasonable cost that will now be burdened with a set of dual transmission lines foreclosing a financially viable potential for future undergrounding.

In the instances in which the Final EIR does disclose visual impacts, that disclosure demonstrates indifference to local impacts within the City in the same way the EIR in *Berkeley*

²² Final EIR, p. 4.1-2 (JN, Ex. 1, p. 20).

²³ Final EIR, p. 4.1-11 (JN, Ex. 1, p. 29).

²⁴ Final EIR, p. 4.1-11 and 12 (JN, Ex. 1, pp. 29, 30).

²⁵ Final EIR, Figure 4.1-1 at p. 4.1-11 and 12 (JN, Ex. 1, pp. 29, 30).

was indifferent to noise impacts outside the noise corridor it analyzed. The Final EIR’s analysis of Key Viewpoint (“KV”) 8 is emblematic of this approach.²⁶ The City carefully conditioned the retail and commercial centers bordered by Third Street and Pasadena Street to underground utilities, as demonstrated by the retail center shown in KV 8 at the corner of Central and Pasadena.²⁷ Those commercial and retail businesses have thrived in this modern business center which meets the aesthetic expectations of both its owners, their patrons, and the community. The Proposed Projects lay waste to those expectations as both projects propose to run transmission lines on double circuit poles down Third Street and the entire length of Pasadena (ASP 3/VIG 4).²⁸

Despite the City’s efforts to successfully implement development of aesthetically pleasing neighborhoods and retail centers in which utilities are routinely undergrounded as exemplified on Pasadena Street,²⁹ the Final EIR’s response in effect says: “we don’t think anyone will notice these transmission lines.” Using the above-referenced federal guidelines for interstate freeways and scenic highways, the Final EIR concludes that visual impacts in the City’s prime business park are somehow “moderately low because it is experienced mostly by people working or traveling in the area for work or personal business.”³⁰

This bias against impacts experienced by both local businesses and the local community is further exemplified in “moderately low” visual sensitivity attributable to the installation of taller power lines on Auto Center Drive (Key Viewpoint 13³¹) “because it is experienced on a regular basis by a moderate number of viewers consisting primarily of local residents, workers, commuters, and people engaged in shopping and business activities who are focused on the

²⁶ Final EIR, Figure 4.1-4i (JN, Ex. 1, p. 53).

²⁷ *Id.*

²⁸ Final EIR, Figure 2.5b (JN, Ex. 1, p. 8).

²⁹ Final EIR, Figure 4.1-4i (JN, Ex. p. 53).

³⁰ Final EIR, p. 4.1-22 (JN, Ex. 1, p. 40).

³¹ Final EIR, Figure 4.1-4n (JN, Ex. 1, p. 58).

activities they are engaged in, rather than the surrounding views.”³² If the Final EIR dismisses the sensibilities of residents, workers, commuters and persons engaged in commerce within the City, whose sensibilities are left to consider when assessing visual impacts?

In sum, the Final EIR’s aesthetic analysis is premised on a position that any aesthetic appeal to undergrounding utilities in neighborhoods and commercial centers is simply illusory. Those users, according to the Final EIR, will simply not notice above-ground poles and transmission lines because they are busy with other tasks.³³ This point of view stands in stark contrast to the development expectations of virtually every city within the State which routinely mandate undergrounding of utilities in new subdivisions and commercial centers. Such undergrounding is performed routinely because undergrounding of utilities is consistent with the community’s development expectations.

2. The “Yardstick” Used to Measure Visual Impacts Is Outdated and Has Been Rejected by the Federal Agency that Created It

Why did the Final EIR miss the mark on aesthetic impacts? Because it utilized an outdated 1988 aesthetic standard³⁴ – now 29 years old – that even its author, the Federal Highway Administration, has abandoned. The Federal Highway Administration’s 2015 replacement *Guidelines for the Visual Impact Assessment of Highway Projects* acknowledge that the 1988 guidelines as simply antiquated: “The new guidelines recommend engaging the public to a higher degree than earlier VIA methods, to achieve a better understanding of how people define visual quality and how they interpret changes to it.”³⁵

³² Final EIR, Table 4.1-2, p. 4.1-24. Apparently sensing its indifference to viewer impacts was a bit too obvious, the Final EIR changed the phrase in the Draft EIR from “who would not have a high concern for visual changes” to “who are focused on the activities they are engaged in, rather than the surrounding views.” As we understand this change, viewers have gone from not caring about the view in the Draft EIR to too busy to care about the view in the Final EIR.

³³ Final EIR, Table 4.1-2 (JN, Ex. 1, pp. 38-43).

³⁴ Final EIR, at p. 4.1-1, referencing the *Visual Impact Assessment of Highway Projects*, Federal Highway Administration, Publication No. FHWA-HA-88-054. See City’s *Motion to Request Judicial Notice*, Exhibit 2, filed concurrently herewith.

³⁵ *Guidelines for the Visual Impact Assessment of Highway Projects*, January 2015, Federal Highway Administration, Publication No. FHWA-HEP-15-029, at p. 1-3. See City’s *Motion to Request Judicial Notice*, Exhibit 3, filed concurrently herewith.

The City expressly informed the Commission of the Federal Highway Administration’s abandonment of the 1988 visual assessment guidelines used in the Draft EIR and further informed the Commission of the updated 2015 guideline in the City’s comment letter to the Draft EIR. The Response to Comments to the City’s comment letter failed to address the rationale for using the outdated 1988 study. By failing to engage the public and instead relying on outdated and inapplicable guidelines for the Proposed Projects, the Final EIR consistently understates the projects’ visual impacts.³⁶

The use of the 1988 assessment guideline here is remarkably similar to the facts in *Berkeley*, where the EIR relied on a 1991 study evaluating toxic air contaminants (“TAC”). However, during the comment period, the lead agency was alerted by a commentor that the 1991 study had been updated in 1994. Despite being placed on notice of an updated standard, the final EIR failed to acknowledge the updated standards. The court found this a clear error under CEQA:

“the use in the final EIR of data extrapolated from CARB’s 1991 speciation profile # 508 for measuring aircraft emission of TAC's did not meet the standard of ‘a good faith effort at full disclosure’ required by CEQA. (Guidelines, § 15151.) ‘Where comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response.*’ (*Cleary v. County of Stanislaus* (1981) 118 Cal. App. 3d 348, 357 [173 Cal. Rptr. 390], original italics.) By using scientifically outdated information derived from the 1991 profile, we conclude the EIR was not a reasoned and good faith effort to inform decisionmakers and the public about the increase in TAC emissions that will occur as a consequence of the Airport expansion.”

(*Berkeley, supra*, at p. 1367.)

³⁶ The City specifically protested the Draft EIR’s use of the Federal Highway Administration’s 1988 visual assessment guidelines. Final EIR, Appendix M, part M3 Local, beginning on page 9 (JN, Ex. 1, pp. 75-77).

In turn, the Final EIR's use of outdated standards ripples through its analysis of visual impacts. The lack of adequate analysis of the impact of above-ground transmission lines in residential and retail locations is especially noteworthy in three areas within the City.

The first area begins at KV 13 which is a portion of the ASP Project. The segment of the proposed above-ground transmission lines then extends south from KV 13 along segment 4 (ASP 4) connecting to ASP 5 and extending west to the Interstate 15 freeway.³⁷ This area contains some retail development and is also very close to extensive residential development just south of KV 13. Yet, the only point in this area that was photographed and analyzed in the Final EIR is KV 13 at the far northern end of this segment.³⁸ Table 4.1-2 limits its analysis of the entire segment to what is seen in the photo with no analysis of segment ASP 4 south to ASP 5 which contains significant residential development.³⁹

The second area is part of the VIG Project and is in VIG 3 and VIG 4 at and near where these segments meet at a right angle. KV 8 is located along VIG 4 just north of where VIG 3 and 4 meet. KV 8 depicts the intersection of Pasadena Street and Central Avenue, a retail area. The Figure 4.1-4i photograph of this intersection and accompanying visual simulation show the significant aesthetic impact the poles and transmission lines will have in this area where currently there are no lines. In spite of the obvious significant impact on aesthetics, the Final EIR concludes that visual sensitivity in this area is "[m]oderately low because it is experience [sic] mostly by people working or traveling in the area for work or personal business; the area is not a main thoroughfare used to access residential or recreational areas."⁴⁰ Importantly, this analysis ignores the obvious impact to the retail area itself and how the poles transmission lines would be viewed by patrons of the businesses at this location. There is no discussion of the possibility of undergrounding.

The third area contains transmission lines for both Proposed Projects at VIG 5 and ASP 2, beginning in the north at KV 6 and KV 7 and extending south to the point where each of

³⁷ Final EIR, Figure 4.1-3 (JN, Ex. 1, p. 37).

³⁸ Final EIR, Figure 4.1-4n, photograph depicting commercial development only (JN, Ex. 1, p. 58) .

³⁹ Final EIR, p. 4.1-24 (JN, Ex. 1, p. 42).

⁴⁰ Final EIR, p. 4.1-22 (JN, Ex. 1, p. 40).

these segments end, just east of the Fogarty Substation. Final EIR Figures 4.1-4g and 4.1-4h show photographs and visual simulations where one set of transmission lines in each Figure is to be replaced by two, much taller and visually more invasive transmission lines. While the Final EIR concedes that visual sensitivity is “moderately high” at KV 6 and KV 7, there is no analysis of undergrounding in this area.⁴¹ In addition, no analysis of visual impacts south of KV 6 and KV 7 is provided in this segment, even though the City’s General Plan⁴² contemplates residential development south of KV 6 and KV 7.

3. The Final EIR’s Aesthetic Analysis Is Based on Single Circuit Lines/Pole Configurations Even though Much of the Proposed Projects within the City Will Be Configured on Double Circuit Poles

The Final EIR’s visual impact analysis is premised on its review of the simulated views.⁴³ The City has had much to say about both the paucity of views analyzed within key viewpoints within the City and the 1988 Federal Highway Administration “yardstick” used for measuring those visual impacts. But there is another problem. Many of the simulated views are wrong. As shown below, simulated views along the ASP Project alignment show single circuit poles and lines when the Proposed Projects call for double circuit poles.

Key Viewpoint (KV) 6 and KV 7 show simulated single circuit poles marching two by two down Lake Street in Lake Elsinore.⁴⁴ KV 8 shows a simulated single circuit lines and poles running along Pasadena Street in Lake Elsinore which is currently fully undergrounded.⁴⁵

But the Proposed Projects will not look this way. The Final EIR correctly acknowledges that the ASP Project will hang a second circuit on the VIG Project poles when describing ASP Project Segments 2, 3 and 4 within the City:

⁴¹ *Id.*

⁴² City of Lake Elsinore General Plan, adopted December 13, 2011, 1.0 Alberhill District and 3.0 Business District. See City’s *Motion to Request Judicial Notice*, Exhibit 4, pp. 4, 6 filed concurrently herewith.

⁴³ Final EIR, Figures 4.1-4a through 4.1-4p (JN, Ex. 1, pp. 45-60).

⁴⁴ Final EIR, Figures 4.1-4g and 4.1-4h (JN, Ex. 1, pp. 51-52).

⁴⁵ Final EIR, Figure 4.1-4i (JN, Ex. 1, p. 53).

“Segment ASP2: Double-circuit Valley– Ivyglen 115-kV line segment [footnote (g)]”

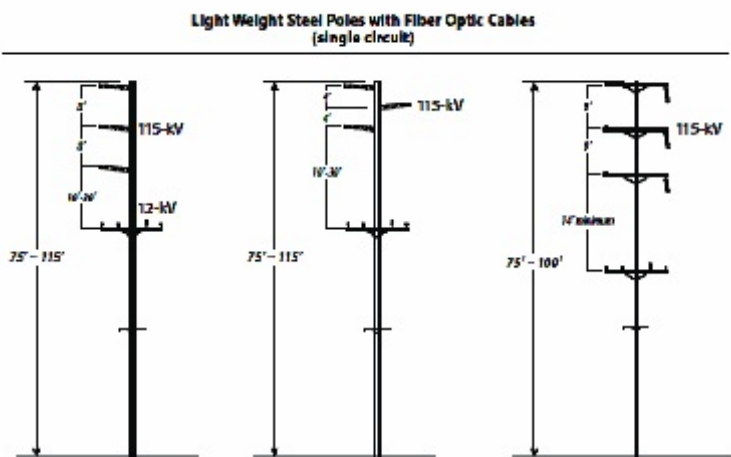
“Segment ASP3: New double-circuit 115-kV line segment and removal of existing single-circuit section of Valley–Elsinore–Fogarty 115-kV line”

“Segment ASP4: New double-circuit 115-kV subtransmission line and removal of existing single-circuit sections of Elsinore–Skylark 115-kV lines”⁴⁶

Footnote (g) referenced above concerning Segment ASP2 further confirms, on page 2-30, that “[p]lacing a second circuit on this proposed Alberhill Project 115-kV segment requires that proposed Valley–Ivyglen Project 115-kV Segments VIG4 and VIG5 are constructed.”

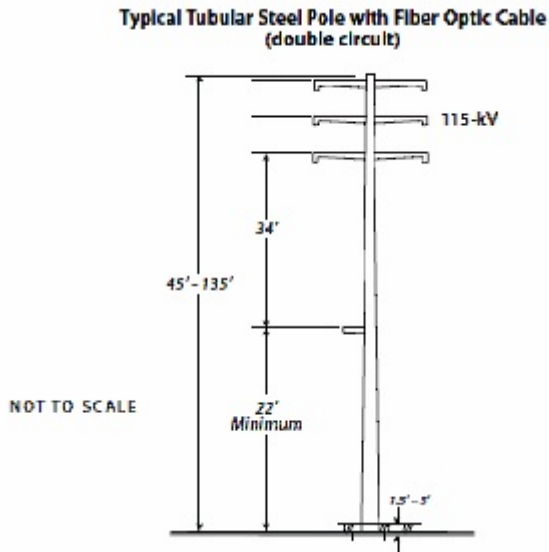
Is there a material difference between a visual impacts of single circuit poles versus double circuit poles? As a point of beginning, there certainly is *a difference*. The Final EIR shows depictions of several single circuit poles and only one double circuit pole on Figure 2.4.

Here is the depiction from the Final EIR (Figure 2-4 [JN, Ex. 1, p. 7]) of a single circuit pole (see pole on far left) that appears to have been used for purposes of the visual simulations for KV 6, 7 and 8:



⁴⁶ Final EIR, p. 2-28 (JN, Ex. 1, p. 10).

Here is the depiction of the only double circuit 115 kV pole depicted in the Final EIR (Figure 2-4 [JN, Ex. 1, p. 7]):



The double circuit poles necessarily include three additional transmission lines along with the additional pole arms.⁴⁷ The City submits that the additional lines and pole arms are sufficiently impactful (that is, the *cumulative impact*) that it alone could swing the visual impact analysis from “less than significant” to “significant.” Because the Final EIR fails to get its visual simulations right at even the most base level for *both* projects (what will the poles and lines actually look like?), the Final EIR once again deprives both stakeholders and decision-makers of a fair and accurate analysis of visual impacts. Notably, the Supreme Court recently rejected an EIR for similarly failing to accurately inform the public of a project’s potential biological impacts, finding such failure constituted a prejudicial abuse of discretion.⁴⁸

⁴⁷ The City acknowledges that the depictions are not “apples to apples” in that the light weight steel single circuit poles shown in the first depiction are made of different material than the tubular steel pole contained in the second depiction. We could not locate a depiction of a sample 115 kV double circuit light weight steel pole in the Final EIR.

⁴⁸ See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918.

4. The Final EIR’s Response to the City Comments to the Draft EIR Fails to Meet the Standards for Good Faith Responses under CEQA

A lead agency must evaluate comments on the draft EIR and prepare written responses for inclusion in the final EIR.⁴⁹ The written responses must describe the disposition of any “significant environmental issue” raised by commentators.⁵⁰ As the court stated in *City of Long Beach v Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 904:

“The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.”

On July 13, 2016, the City timely submitted a 13-page comment letter to the Commission, care of Ecology and Environment, Inc.⁵¹ As would be fairly surmised from the arguments above, a significant portion of those comments concerned the Proposed Project’s visual impacts within the City and the inadequacy of the Draft EIR’s analysis of those impacts. Despite providing detailed comments based on good faith community concerns, the response was simply indifference. The following is the whole of the response to the City’s visual impact comments:

- “248-2: In cases where a visual impact was identified, mitigation was included to reduce the impact, which included either undergrounding or other measures. See Section 4.1, Aesthetics. In addition, the CPUC considered undergrounding alternatives. See Chapter 5.0, Comparison of Alternatives.
- 248-3: See response to comment 248-2.

⁴⁹ Public Res. Code, § 21091(d); CEQA Guidelines §§ 15088(a), 15132; see also *Cleary v County of Stanislaus* (1981) 118 Cal.App.3d 348.

⁵⁰ Public Res. Code § 21091(d)(2)(B); CEQA Guidelines §§ 15088(c), 15132(d) & 15204(a).

⁵¹ Final EIR, Appendix M, part M3 Local, beginning on page 9 (JN, Ex. 1, pp. 74-86).

- 248-4: See response to comment 248-2.
- 248-5: See response to comment 248-2.
- 248-6: See response to comment 248-2.
- 248-7: See response to comment 248-2.
- 248-8: See response to comment 248-2.”⁵²

When a significant environmental issue is raised in comments that object to the draft EIR’s analysis, the response must be detailed and must provide a reasoned, good faith analysis.⁵³ Failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA’s informational purpose and may render the EIR legally inadequate.⁵⁴ The response above falls well short of the good faith mandated by CEQA and the CEQA Guidelines. “Where comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response.*”⁵⁵ To paraphrase the Supreme Court, [r]ather than sweep disagreements under the rug, [SEC] must fairly present them in its EIR. It is then free to explain why it declined to accept [the City’s] suggestions.⁵⁶

* * *

In sum, the Final EIR’s analysis of visual impacts is legally inadequate for three reasons: (1) it fails to provide a sufficient survey of key views by largely ignoring viewpoints from businesses and residents and impacts to those local viewers; (2) it uses an outdated and now rejected paradigm for evaluated view impacts; and (3) its simulated views do not show the

⁵² Final EIR, Appendix L Response to Comments, pp. 18-19 (JN, Ex. 1, pp. 88-89).

⁵³ CEQA Guidelines § 15088(c).

⁵⁴ See *Flanders Found. v City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Ass'n v City Council* (1983) 143 Cal.App.3d 1013, 1020.

⁵⁵ *Banning Ranch Conservancy v. City of Newport Beach, supra*, 2 Cal.5th at p. 940 (quoting *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842, and accord, *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935).

⁵⁶ *Id.*

Proposed Projects double circuit poles and lines. Moreover, the Final EIR's response to the City's comments on visual impacts fall well short of the "good faith" legal requirement.

C. The Final EIR Fails to Address Socioeconomic Impacts of the Proposed Projects

CEQA requires analysis of reasonably foreseeable indirect physical impacts as well as direct impacts.⁵⁷ Indirect impacts that must be considered include social or economic effects that result in a physical change in the environment.⁵⁸ While economic and social effects ordinarily do not need to be discussed in an EIR, physical changes to the environment caused by a project's economic or social effects are considered secondary impacts that must be included in an EIR's impact analysis if they are significant.⁵⁹

The Proposed Projects will have significant aesthetic impacts on the commercial uses along Mission Trail, Malaga, Casino Drive, Auto Center Drive, Third Street and Pasadena Street. Additionally, impacts on residential development along Nichols Road and Lake Street will likewise be heavily impacted, as this is the City's western gateway bordered by large master planned communities.⁶⁰

The commercial uses impacted by the placement of transmission structures and lines will be less attractive and have less appeal to shoppers than non-impacted sites. These transmission lines will make ingress and egress more difficult. Signage restrictions due to conflict with the overhead transmission lines will also result in reduced visitors and profitability to the commercial uses. As a result, those commercial uses will only be able to draw lower quality tenants, and/or commercial development will be shifted away from the freeway frontage to other sites. Consequently, businesses along the commercial corridors in the City will have reduced income.

⁵⁷ CEQA Guidelines § 15064(d).

⁵⁸ CEQA Guidelines § 15064(e).

⁵⁹ CEQA Guidelines § 15064(e).

⁶⁰ City of Lake Elsinore General Plan, adopted December 13, 2011, 1.0 Alberhill District and 3.0 Business District. See City's *Motion to Request Judicial Notice*, Exhibit 4, filed concurrently herewith.

Development for residential uses will also be less successful due to the Proposed Projects, as people do not find the transmission structures and lines attractive and they fear the health and safety consequences of living near the high EMFs. Property values along the Proposed Projects' area will be reduced and planned development will falter.

As a result of the aesthetic and hazard impacts, the planned and foreseeable land uses in the Proposed Projects' area will not be desirable or economically viable. Blight or urban decay may then occur, as land lies underdeveloped, people move from existing residences and the vacancy rate of existing commercial buildings increases. In *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, the court decertified EIRs for failure to consider urban decay. The court held that "land use decisions that cause a chain reaction of store closures and long-term vacancies, ultimately destroying existing neighborhoods and leaving decaying shells in their wake" must be studied, as they may constitute significant impacts.⁶¹

D. The Final EIR Fails to Address Environmental Justice Concerns

In 1999, the State of California enacted legislation establishing environmental justice as an aspect of state law. California law defines environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."⁶²

Government Code section 65040.12 (e) provides: "For the purposes of this section, 'environmental justice' means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."

Residents of the Cities of Murrieta, Murrieta Springs, Perris, Menifee and Wildomar, along with portions of the County of Riverside, would benefit from the Proposed Projects to the detriment of residents of the City of Lake Elsinore. While those residents would gain increased power reliability from the Proposed Projects, Lake Elsinore's residents will potentially suffer from exposure to high levels of EMFs, aesthetic impacts, decline in property values, reduced

⁶¹ *Bakersfield Citizens for Local Control v. City of Bakersfield*, *supra*, 124 Cal.App.4th at p. 1204.

⁶² Gov. Code § 65040.12(e); see also Public Res. Code § 71110.

socioeconomic conditions and blight. The Final EIR should have analyzed whether the City's residents are disproportionately exposed to the Proposed Projects' impacts as compared to the residents of these other benefitted communities.

E. The Final EIR Fails to Adequately Address Alternatives to the Projects, Especially with Regards to Undergrounding

CEQA requires the adoption of all feasible alternatives and mitigation measures that substantially reduce the environmental impacts of projects.⁶³ The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible.⁶⁴

CEQA also requires an EIR to include a reasonable range of alternatives to the project or to the location of the project which reduce the environmental impacts of the project.⁶⁵ Further, "the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly."⁶⁶

The Proposed Projects include the undergrounding of transmission lines outside the City. Indeed, VIG Alternatives B-1, B-2, C, and M all involve undergrounding.⁶⁷

Originally, "the Alternatives Screening Report considered 14 alternatives for the proposed Valley-Ivyglen Project and retained 9 of those alternatives for consideration in the EIR. The Alternatives Screening Report considered 33 alternatives for the Alberhill Project and retained five of those alternatives for consideration in the EIR."⁶⁸ Of the nine VIG project alternatives, three more were eliminated as identified on Page 3-4 of the Final EIR, leaving only

⁶³ Public Res. Code § 21002; CEQA Guidelines § 15126.6(a).

⁶⁴ *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 883.

⁶⁵ CEQA Guidelines § 15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.

⁶⁶ CEQA Guidelines § 15126.6(b).

⁶⁷ Final EIR, see Sections 3.3.2, 3.3.3, 3.3.4, and 3.3.5 (JN, Ex. 1, pp. 15-16).

⁶⁸ Final EIR, p. 3-2 (JN, Ex. 1, p. 13).

Alternatives B-1, B-2, C, M, and the no project alternative for consideration in the Final EIR. Of the five ASP project alternatives, three more were eliminated as identified on page 3-5 of the Final EIR, leaving only Alternatives B, DD, and the no project alternative for consideration in the Final EIR.

The remaining alternatives were then compared under Section 5 of the Final EIR. As noted, Alternatives B-1, B-2, and C to the VIG Project all involved undergrounding in areas outside the City of Lake Elsinore. Though it analyzes undergrounding alternatives in certain areas, the Final EIR never presents any undergrounding through Lake Elsinore, other than Alternative M to the VIG Project which calls for undergrounding the entire VIG project.⁶⁹

Clearly, then, undergrounding *is* technically feasible. And undergrounding the 115 kV lines, at least through portions of Lake Elsinore, would reduce impacts to aesthetics, socioeconomic, and urban decay to less than significant.

The Final EIR's analysis of Land Use and Planning for Alternative M states that "[u]ndergrounding the entire alignment would neither create nor avoid a land use conflict that would result in significant environmental impacts. Impacts would be the same under this alternative as for the proposed project."⁷⁰ This conclusion is clearly false.

The undergrounding of the Proposed Projects would avoid many of the land use conflicts of the Proposed Projects. Only by manipulating the aesthetic impact analysis with the Federal Highway Administration's antiquated 1988 visual impact assessment guidelines⁷¹ was the Final EIR able to reach the preposterous conclusion that undergrounding was an environmental "wash" when compared to the Proposed Projects.

Additionally, the Table 5-1 Summary of the Valley-Ivyglen Project Alternatives Analyses and Determination is misleading.⁷² For example, this table states that the VIG Alternative M impacts on Biological Resources, Cultural Resources, Hazards and Hazardous Materials, and Transportation and Traffic are "greater" than the Proposed Projects, but fails to

⁶⁹ Final EIR, p. 3-9 (JN, Ex. 1, p. 16).

⁷⁰ Final EIR, p. 5-27.

⁷¹ See Section II.B.2 herein.

⁷² Final EIR, p. 5-3 (JN, Ex. 1, pp. 66-67).

point out that these impacts can be mitigated to less than significant levels with the mitigation measures similar to those developed for the Proposed Project.⁷³ It is clear that the comparison of project alternatives is biased toward the Proposed Projects.

In summary, the Final EIR fails to comply with CEQA's directive to "describe a reasonable range of alternatives to the project, or to the location of the project."⁷⁴

III. CONCLUSION

The City appreciates the opportunity to participate in this proceeding and to present its positions to the Administrative Law Judge and the Commission. This proceeding is very significant to the City, as the outcome here is of critical importance to its citizens and the continued economic prosperity of the City.

The City cannot overstate the importance of the lack of transmission line undergrounding, particularly in developed area where all utilities have been mandated to be undergrounded. Thus, for the foregoing reasons, the City respectfully urges the Commission to deny the PFM and CPNC until such time as an EIR that complies with CEQA has been prepared or, alternatively, to impose mitigation measures that require undergrounding of transmission lines in the most egregiously impacted areas of the City.

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Respectfully Submitted,

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FOR: CITY OF LAKE ELSINORE

⁷³ Final EIR, pp. 5-24 through 5-20 (JN, Ex.1, pp. 68-72).

⁷⁴ CEQA Guidelines § 15126.6(a).