

Attachment A for WEC_50381

WEC_00102

**SUNRISE POWERLINK PROJECT
(A.06-08-010)
SDG&E'S RESPONSE TO
CALIFORNIA PUBLIC UTILITIES COMMISSION
DATA REQUEST NO. 1**

(January 11, 2007)

GEN-2:

Please provide a copy of any and all documents relating to history, ownership, property rights, and surveys of the existing SDG&E ROW through the Anza-Borrego Desert State Park (ABDSP), defining any terms and conditions associated with the easement.

RESPONSE:

SDG&E's response to GEN-2 is provided in the attached documents.

Entire report is part of the WEC project record.

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SDG&E ATTACHMENT B

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SUNRISE POWERLINK PROJECT (A.06-08-010)
SDG&E'S 9/24/07 SUPPLEMENTAL RESPONSE TO
CPUC ENERGY DIVISION DATA REQUEST #8

ALT-74:

During the second round of scoping meetings, the public identified concerns associated with the width of the existing ROW through the Anza-Borrego Desert State Park. Several commenters stated that there are a number of areas along the existing ROW where the ROW width is reduced to as narrow as 24 feet. In addition, the PEA (pages 5.1-15 and 5.1-17) references three segments (totaling less than 1 mile) of the existing SDG&E ROW that are 24 feet wide.

Please identify all areas within the overall park boundaries where the ROW is less than 100 feet. For each area, identify whether the areas immediately outside of the ROW are private land or Park land. At the identified locations, please identify the width of the SDG&E ROW.

SUPPLEMENTAL RESPONSE:

On March 1, 2007, SDG&E provided its initial response to the CPUC describing the width of the existing SDG&E ROW through the Anza-Borrego Desert State Park (ABDSP).¹ SDG&E has now completed its comprehensive review of available historical materials, including those located at the Federal Archives, State Archives, San Diego Historical Society, California Law Library (historical collection), and documents provided to SDG&E by the California Department of Parks and Recreation (State Parks), the California State Lands Commission (State Lands) and the United States Bureau of Land Management (BLM).

The review of available materials and additional legal review confirm SDG&E's previous response, stating that SDG&E believes that the existing ROW over the segments where the property rights were created by express easements from private parties would be defined to be at least 100 feet.²

Specifically, and as stated in more detail in SDG&E's previous response to CPUC Data Request #8, SDG&E initially suggested in its Proponent's Environmental Assessment (PEA) that the three easements granted to the Southern Sierras Power Company (SSPC) in the 1920s by private parties for the transmission line were only 24 feet wide.

¹ See SDG&E's Response to California Public Utilities Commission Data Request No. 8, ALT-74, dated March 1, 2007.

² In addition to the response provided on March 1, 2007, please also refer to SDG&E's July 25, 2007 supplemental response to CPUC Data Request No. 1, GEN-2, which further describes the property rights for the existing ROW through the ABDSP after receipt and review of the additional records.

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But in fact, the granting documents are silent regarding the width of the ROW, and instead describe only the center line of the ROW without limiting the ROW to a specific width.

Since issuance of the PEA, SDG&E has had the opportunity to conduct a much more thorough review of the historical land records, the language of the easements, and the statutory and case law related to the scope and dimensions of private easements that do not explicitly define width. Upon further review of this information and as stated in our CPUC response, SDG&E continues to believe that the existing ROW over the three segments where the property rights were granted by express easements from private parties is at least 100 feet wide.

Private parties provided the three easements to SSPC in 1924 by express grants.³ The three grants do not specify a particular width of the ROW granted or contain any limitation on voltage of the transmission line and, instead, only describe the location of the center of the ROW. Each of the private easements contains the following language:

[A] right-of-way is hereby granted to the Southern Sierras Power Company, its successors and assigns, with the right to erect and maintain towers or other supports, with wires and fixtures thereon necessary for the purposes of said Power Company, and to clear, grade and keep same free from brush and wood growth to such a width as may be necessary for protection from fire It is understood that the employees of said Power Company, with their equipment, shall, whenever necessary, have the right of access, transportation and travel to and along said right-of-way and the supports and wires thereon, for purposes of inspections, renewals, repairs, additions, etc.⁴

The rules governing the interpretation of easement grants are the same as those governing the interpretation of contracts in general. The California Code provides that a "contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Cal. Civ. Code § 1636. A "contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." Cal. Civ. Code § 1643. Rules of interpretation provide that the "words of a contract are to be understood in their ordinary and popular sense." Cal. Civ. Code § 1644. Where the intent of the parties is not clear

³ Two of the easements were granted by Reta and Ralph Jasper, and the third was granted by George Sawday. Copies of the easements are attached to SDG&E's responses to CPUC Data Request #1, GEN-2, as Exhibit P.

⁴ E.g., Right-of-way # 34663 (January 22, 1924).

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from the express language, the contract and the intent of the parties can be explained by "reference to the circumstances under which [the contract] was made, and the matter to which it relates." Cal. Civ. Code § 1647.

The first step in determining the width of an easement that is silent on the issue is therefore to look at the terms of the grant itself. Cal. Civ. Code § 806 ("The extent or scope of an easement is determined by the terms of the grant or the nature of the enjoyment by which it was acquired"). Where the easement grant does not specify a dimension, "it is proper to consider the whole scope and purpose of the deed creating it, the manifest intent of the parties in its execution and the situation of the property." *Palmer v. Newman*, 91 W. Va. 13, 18 (W. Va. 1922); *Cummins v. Levy*, 116 Cal. App. 2d 610, 613 (Cal. Ct. App. 1953) (citing *Palmer v. Newman*, 91 W. Va. 13 (W. Va. 1922)); see also *Winslow v. Vallejo*, 148 Cal. 723, 725 (Cal. 1906) ("It is of course true that for the purpose of ascertaining the extent and limits of the right granted the entire instrument is to be considered, in view of the circumstances surrounding its execution and the situation of the parties.") As part of this consideration, courts will look to what dimensions are suitable and convenient for the ordinary uses for which the right-of-way was granted. The subsequent conduct of the parties may also be examined to interpret an easement. "Acts of the parties, subsequent to the execution of the contract and before any controversy has arisen as to its effect, may be looked to in determining the meaning. The conduct of the parties may be, in effect, a *practical construction* thereof, for they are probably least likely to be mistaken as to the intent." See 1 Witkin Sum. Cal. Law Contracts § 749. "This rule of practical construction is predicated on the common sense concept that 'actions speak louder than words.'" See *id.*

Applying these principles, given that the grants provided to SSPC do not restrict the ROW to any specified width, SDG&E believes that under California law the width would be defined by reference to the purpose of the easements, the intent of the parties, the nature of the property itself, the circumstances surrounding the grants, and the subsequent conduct of the parties. As reflected in the *Rural Utilities Service Design Manual for High Voltage Transmission Lines*, typical rights-of-way for a 69 kV transmission line throughout the early 1900s and continuing until today were a minimum of 75 to 100 feet.⁵

The surrounding property rights obtained by the company also support the argument that the parties intended that the ROW through the private parcels would be at least 100 feet wide. These segments of the ROW connect on both sides with other segments of the existing ROW where the property rights were expressly reserved by the federal government. The federally-reserved segments are expressly defined to be 100 feet wide. It seems unlikely that SSPC would have intended to obtain easements through these three segments of the ROW that are narrower than the 100-foot ROW immediately adjacent to the parcels on both sides of each parcel. Instead, it is more

⁵ See Rural Utilities Service, RUS Bulletin 1742E-200, Design Manual for High Voltage Transmission Lines, May 2005, attached hereto as Exhibit A.

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likely that the parties would have intended to create a contiguous ROW of equal width. A wider easement would have been more reasonable under these circumstances than a 24-foot-wide easement, given the difficulties of performing maintenance and repair functions within a smaller easement area. These conclusions are consistent with the conduct of the parties for the past seventy-three years. In fact, the land records of both the California Department of Parks and Recreation and SDG&E reflect a 100-foot-wide ROW throughout ABDSP.⁶

SDG&E further notes that, in certain circumstances, California property law has allowed for increased use within the existing bounds of an easement, where the new or increased use comports with the original purpose of the easement and constitutes an increase in the use of that easement that was or should have been contemplated by the parties. See, e.g., *Faus v. City of Los Angeles*, 431 P.2d 849 (Cal. 1967) (reviewing past decisions governing the issue and concluding that easements created by conveyance should be assumed to have intended to accommodate future needs consistent with the purposes of the original grant). California courts have acknowledged that, without language expressly preventing it, what is convenient and necessary for the ordinary uses of the right-of-way may change over time. *Edgcomb v. Lower Valley Power & Light*, 922 P.2d 850, 857-58 (Wyo. 1996); see also *Pacific Gas & Elec. Co. v. Crockett Land & Cattle Co.*, 70 Cal. App. 283 (Cal. Ct. App. 1924) (public service corporations "should be encouraged rather than embarrassed in the betterment of their property in order that they may carry out the purposes for which they were created.").⁷

As set forth above, SDG&E believes that the language of the granting documents, the purpose of the easements, the intent of the parties, the nature of the property itself, the circumstances surrounding the grants and the subsequent conduct of the parties, support the conclusion that the width of the ROW acquired over the three parcels is not limited to 24 feet, but is at least 100 feet.

⁶ See, e.g., copies of California Department of Parks and Recreation land records at CPUC Data Request #1, GEN-2, Exhibit N.

⁷ See also *Bello v. ABA Energy Corp.*, 16 Cal. Rptr. 3d 818, 827 (Cal. Ct. App. 2004) ("It is important to remember that the 'modern' trend - which began in California in . . . 1894 - is to construe public rights of way to accommodate technological advancement in the conveyance of goods and people, an approach that has been adopted invariably by California courts in right-of-way decisions since *Gurnsey*."); *Salvaty v. Falcon Public Television*, 212 Cal. Rptr. 31, 34 (Cal. Ct. App. 1985) ("The Supreme Court [in *Faus*] rejected plaintiffs' contention that the change of use terminated the easement, stating: '[o]ur courts have been receptive to the contention that changed economic and technological conditions require reevaluation of restrictions placed on the use of real property'. As the court analyzed the problem, the real issue was whether the use in a particular case was consistent with the primary object of the grant."); *Norris v. State of California ex rel. Dept. Pub. Wks*, 261 Cal. App. 2d 41 (1968).

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RUS BULLETIN 1724E-200
**DESIGN MANUAL FOR
HIGH VOLTAGE TRANSMISSION LINES**

ELECTRIC STAFF DIVISION
RURAL UTILITIES SERVICE
U.S. DEPARTMENT OF AGRICULTURE

Revised May 2005

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Bulletin 1724E-200

Page 5-7

5.2.5 Examples of Horizontal Clearance Calculations: The following examples demonstrate the derivation of the horizontal clearance in Table 5-1 of this bulletin.

To determine the horizontal clearance of a 115 kV line to a building (category 2.0 of RUS Table 5-1), the clearance is based on NESC Table 234-1 and NESC Rule 234.

At rest:

$$\begin{aligned}\text{NESC Horizontal Clear.} &= \text{NESC Basic Clearance (Table 234-1)} + .4(\text{kV}_{\text{L-G}} - 22)/12 \\ &= 7.5 \text{ feet} + .4(69.7-22)/12 \text{ feet} \\ &= 7.5 \text{ feet} + 1.59 \text{ feet} \\ \text{NESC Horizontal Clear.} &= 9.09 \text{ feet}\end{aligned}$$

$$\begin{aligned}\text{RUS Recommended Clearance} &= \text{NESC Horizontal Clearance} + \text{RUS Adder} \\ &= 9.09 \text{ feet} + 1.5 \text{ feet} \\ &= 10.59 \text{ feet (10.60 feet in RUS Table 5-1)}\end{aligned}$$

Conductors displaced by wind:

$$\begin{aligned}\text{NESC Horizontal Clear.} &= \text{NESC Basic Clearance (Table 234-1)} + .4(\text{kV}_{\text{L-G}} - 22)/12 \\ &= 4.5 \text{ feet} + .4(69.7-22)/12 \text{ feet} \\ &= 4.5 \text{ feet} + 1.59 \text{ feet} \\ \text{NESC Horizontal Clear.} &= 6.09 \text{ feet}\end{aligned}$$

$$\begin{aligned}\text{RUS Recommended Clearance} &= \text{NESC Horizontal Clearance} + \text{RUS Adder} \\ &= 6.09 \text{ feet} + 1.5 \text{ feet} \\ &= 7.59 \text{ feet (7.6 feet in RUS Table 5-1)}\end{aligned}$$

5.3 Right-of-Way (ROW) Width: For transmission lines, a right-of-way provides an environment allows the line to be operated and maintained safely and reliably. Determination of the right-of-way width is a task that requires the consideration of a variety of judgmental, technical, and economic factors.

Typical right-of-way widths (predominantly H-frames) that have been used by RUS borrowers in the past are shown in Table 5-2. In many cases a range of widths is provided. The actual width used will depend upon the particulars of the line design.

TABLE 5-2
TYPICAL RIGHT-OF-WAY WIDTHS

	Nominal Line-to-Line Voltage in kV				
	69	115	138	161	230
ROW Width, ft.	75-100	100	100-150	100-150	125-200

5.4 Calculation of Right-of-Way Width for a Single Line of Structures on a Right-of-Way: Instead of using typical right-of-way width provided in Table 5-2, widths can be calculated using either of the two methods below. They yield values that are more directly related to the particular parameters of the line design.

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West-Wide Corridor DEIS
Argonne National Laboratory
9700 S. Cass Avenue
Building 900, Mail Stop 4
Argonne, IL 60434

January 9, 2008

To Whom It May Concern:

I would like to express my support for the designation of two additional energy corridors as part of the West-Wide Corridor designation process.

- a) Corridor from Garrison, Montana south past Mill Creek Substation to the Dillon, Montana area.
- b) Corridor from a point along existing 500 kV transmission lines near Townsend, Montana to the Mill Creek Substation.

The expanded use of these two corridors present major opportunities for the region and for the overall security of the western United States utility grid.

The above referenced routes are significantly less environmentally sensitive than other areas of the state. These routes run parallel to existing infrastructure currently owned by Northwestern Energy or Bonneville Power Administration which previously served the Anaconda Copper Mining Company Smelter located in Anaconda, Montana. By constructing adjacent to existing industrial infrastructure, pristine lands in other areas can remain so while still providing the avenues for upgrading and constructing the necessary electrical systems. The designation of these routes through less sensitive areas expedites any developer's potential plans, decreasing costs and timeframes.

Thank you for the opportunity to comment.

Sincerely,

Curt Biozjak

Name

1202 Claire Dr

Address

anaconda, mt 59711

City, State Zip

103-001

WEC_00104



West-Wide Corridor DEIS
 Argonne National Laboratory
 9700 S. Cass Avenue
 Building 900, Mail Stop 4
 Argonne, IL 60434

January 9, 2008

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Thank you for the opportunity to comment.

Sincerely,

Name

Address

City, State Zip

Paul Bygott
 1202 Elaine Dr
 Anaconda, Mt 59711

104-001