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OFFICE OF THE
SECRETARY
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FEDERAL ENERGY
REGULATORY COMMISSION

VIA UPS

Deputy Chief
National Forest Systems, Forest Service
Washington Office Lands Staff
Mail Stop 1124
1400 Independence Avenue, S.W.
Washington, DC 20250-0003

Subject: Request for Adoption of Alternative
Conditions – Borel Hydroelectric Project
FERC Project No. 382

Dear Deputy Chief:

Enclosed for filing with the USDA, Forest Service, is a **Request for Adoption of Alternative Conditions by Southern California Edison Company to Sequoia National Forest Service Final Conditions Filed With the Federal Energy Regulatory Commission Pursuant to Federal Power Act Section 4(e) For the Borel Hydroelectric Project.**

Sincerely,

Nino J. Mascolo

cc: Magalie R. Salas, Secretary ✓
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

FERC Service List

NJM:yl:LAW-#1262630-v1-Request_for_Hearing_Vermilion.DOC

Enclosure(s)

BEFORE THE
UNITED STATES DEPARTMENT OF AGRICULTURE
NATIONAL FOREST SERVICE

SOUTHERN CALIFORNIA EDISON CO.,)
) FERC Project No. 382
BOREL HYDROELECTRIC PROJECT)
_____)

**REQUEST FOR ADOPTION OF ALTERNATIVE CONDITIONS
BY SOUTHERN CALIFORNIA EDISON COMPANY
TO SEQUOIA NATIONAL FOREST SERVICE FINAL CONDITIONS
FILED WITH THE FEDERAL ENERGY REGULATORY COMMISSION
PURSUANT TO FEDERAL POWER ACT SECTION 4(e)
FOR THE BOREL HYDROELECTRIC PROJECT**

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I.

REQUEST FOR ADOPTION OF ALTERNATIVE CONDITIONS

Southern California Edison Company (SCE) is the owner and operator of the Borel Hydroelectric Project (Project) in Kern County, California. The 12 megawatt project is located on the Kern River, in part on lands within the Sequoia National Forest. The Federal Energy Regulatory Commission (FERC) issued a license to SCE for the Project on September 7, 1979. SCE filed an Application for New License with the FERC on February 26, 2003. On May 20, 2005, the United States Department of Agriculture, Office of General Counsel, Pacific Region, (USDA) filed with FERC final conditions pursuant to Federal Power Act (FPA) Section 4(e) (4(e) Conditions) for the Project. This USDA filing was made on behalf of the Sequoia National Forest staff involved in the licensing process (Forest Service). SCE and Forest Service regional staff have discussed the SCE concerns regarding the 4(e) Conditions. However, to date, no resolution of the differences has been reached.

The USDA recently issued regulations that implement Section 241 of the Energy Policy Act of 2005 (EPAct). The EPAct gives the license applicant the right to seek a trial-type hearing from the USDA regarding material issues of disputed fact in 4(e) Conditions. The EPAct also provides the license applicant with an opportunity to propose alternatives to the 4(e) Conditions. This Request for Adoption of Alternative Conditions concerns the SCE proposed alternatives (Alternative Conditions) to the 4(e) Conditions submitted by the Forest Service.

The USDA implementing regulations for this request are found in 7 CFR Subpart O.

As the Forest Service filed the Project 4(e) Conditions prior to November 17, 2005 and as the FERC has not issued a new license for the Project, SCE has until December 19, 2005 to propose alternatives to the 4(e) Conditions. (7 CFR §1.604(b)). The items to be contained in a request proposing Alternative Conditions are listed in 7 CFR §1.671(b) and include:

1. A description of the Alternative Conditions, in an equivalent level of detail to the Forest Service's 4(e) Conditions.
2. An explanation of how the Alternative Conditions will provide for the adequate protection and utilization of the Sequoia National Forest.
3. An explanation of how the Alternative Conditions, as compared to the 4(e) Conditions, will
 - a. Cost significantly less to implement, or
 - b. Result in improved operation of the Borel Hydroelectric Project.
4. An explanation of how the Alternative Conditions will affect:
 - a. Energy supply, distribution, cost, and use;
 - b. Flood control;
 - c. Navigation;
 - d. Water supply;
 - e. Air Quality; and
 - f. Other aspects of environmental quality.
5. Specific citations to any scientific studies, literature, and other documented information relied on to support the Alternative Conditions.

SCE proposes the following Alternative Conditions to replace certain of those Forest Service 4(e) Conditions submitted to FERC via letter dated May 20, 2005.

SCE has attempted to modify the Forest Service 4(e) Conditions as little as possible to achieve the Forest Service objectives in a manner that is less costly. SCE provides both the Alternative Condition and a mark-up version of the 4(e) Condition that shows the changes made by the Alternative Condition.

II.

ALTERNATIVE CONDITIONS

A. Alternative Condition No. 7: Surrender of License or Transfer of Ownership

1. Alternative Condition Language

SCE offers the following Alternative Condition to Condition No. 7 proposed by the Forest Service:

Prior to completion of any surrender of this license, the Licensee shall restore National Forest System lands within the Project boundary to a condition satisfactory to the Forest Service, but no greater than a condition comparable to that of the surrounding forest, upon or after surrender of the license, as appropriate. The restoration plan shall identify the measures necessary to be taken to restore National Forest System lands.

In the event of any transfer of the license or sale of the Project, the Licensee shall provide information to the Forest Service that the transferee has sufficient financial stability to perform project operation and maintenance in compliance with the license. If deemed necessary by the Forest Service to assist it in evaluating the Licensee's proposal, the Licensee shall estimate the potential costs associated with project operation and maintenance. In addition, if the transferee does not have independently-audited financial statements, the Forest Service may request that the Licensee provide for an independent audit of the transferee to assist the Forest Service in determining whether the transferee has the financial

ability to fund project operation and maintenance activities.

A redlined version of the proposed Alternative Condition compared to Forest Service Condition No. 7 follows:

Prior to completion of any surrender of this license, the Licensee shall restore National Forest System resourceslands within the Project boundary to a condition satisfactory to the Forest Service, but no greater than a condition comparable to that of the surrounding forest, upon or after surrender of the license, as appropriate. ~~In advance of the proposed~~ The restoration plan shall identify the measures necessary to be taken to restore National Forest System resourceslands, ~~and shall include adequate financial assurances such as a bond or letter of credit, to ensure performance of the restoration measures.~~

In the event of any transfer of the license or sale of the Project, the Licensee shall provide information guarantee ~~or assure that, in a manner satisfactory~~ to the Forest Service, that the ~~Licensee or transferee~~ has sufficient financial stability to perform project operation and maintenance in compliance with the license~~will provide for the costs of surrender and restoration.~~ If deemed necessary by the Forest Service to assist it in evaluating the Licensee's proposal, the Licensee shall ~~conduct an analysis, using experts approved by the Forest Service, to estimate the potential costs associated with project operation and maintenance, surrender and restoration of the Project area to Forest Service specifications~~ In addition, if the transferee does not have independently audited financial statements, the Forest Service may ~~require request that~~ the Licensee to pay provide for an independent audit of the transferee to assist the Forest Service in determining whether the transferee has the financial ability to fund project operation and maintenance activities~~the surrender and restoration work specified in the analysis.~~

2. Provision for Adequate Protection and Utilization of the Sequoia National Forest

Condition No. 7 should be stricken completely because it is unnecessary for the protection and utilization of the Sequoia National Forest. However, in the interest of compromise, SCE offers the Alternative Condition set forth above. Condition No. 7 deals with two separate issues: the surrender of the Project License and the transfer of the Project License.

a) Surrender

Forest Service Condition No. 7 requires that prior to surrendering the Project, SCE "shall restore National Forest System resources to a condition satisfactory to the Forest Service" and "shall include adequate financial assurances such as a bond or letter of credit, to ensure performance of the restoration measures".¹ FERC regulations concerning the surrender of a license require that an application for surrender be filed in the same form and manner as an application for license. (18 CFR §6.1) This includes preparation of any necessary environmental resource reports as would have been required pursuant a license application compiled pursuant to 18 CFR §4.51. The preparation of these reports involves consultation with the affected federal and state resource agencies, which would include the Forest Service (18 CFR §4.51(f)(3), (4), (5), and (6)). Thus, the Forest Service would have the opportunity to provide comments to FERC regarding the surrender application, including making a request for any necessary financial assurances.

¹ Neither SCE, the Forest Service, FERC, nor any other party has proposed that the Project be decommissioned or surrendered at the expiration of the next license term.

Moreover, 18 CFR §6.2 requires "Where project works have been constructed on lands of the United States the licensee will be required to restore the lands to a condition satisfactory to the Department having supervision over such lands and annual charges will continue until such restoration has been satisfactorily completed." If SCE were to file an application to surrender the Project license, the FERC would require a decommissioning plan that is approved by the Forest Service.

Consequently, Condition No. 7 is unnecessary for protection of the Sequoia National Forest because it provides no additional protection over that already provided by the FPA. In addition, as Condition No. 7 overlaps with the FPA requirements, it could result in a conflict with FERC requirements because both the Forest Service and FERC would have independent control over the surrender of the Project.

SCE proposes to amend Condition No. 7 to provide that any necessary restoration of Forest lands will occur prior to the "completion" of a surrender rather than prior to the "surrender" process beginning. SCE cannot proceed with any restoration without also receiving FERC approval of an application to surrender the Project. SCE must file an application to surrender the Project, with a restoration plan, before any restoration may occur.

Additionally, while the Forest Service condition provides flexibility as to the extent of restoration that may or may not be required, the condition does not provide an upper limit. The requirement for SCE to restore the Project area "to a condition satisfactory to the Forest Service" as a part of a license surrender should not be used to improve the Project area beyond the general condition of the Forest. SCE understands that many of the current conditions throughout the Forest do not meet the "desired condition" of the Forest's Land Management Plan (LMP). Therefore, a requirement to restore the Project area to a

desired condition may be excessive, and would not be considered necessary for the protection of the Forest. SCE proposes that a reasonable limit is that restoration not be greater than a condition comparable to the surrounding forest.

Finally, the requirement for SCE to provide financial assurances should be removed. As SCE must file an application with FERC to surrender the Project license, this FERC process provides the Forest Service with the assurances that it needs that the Forest lands will receive any necessary restoration. If at the time of the surrender application, the Forest Service continues to believe that financial assurances are necessary, then it may request FERC to impose such a requirement. To do so now is premature and without any showing that financial assurances are necessary to ensure SCE carries out a restoration plan. Moreover, a bond for completing any restoration could be an extremely expensive and unnecessary cost, depending upon the scope of restoration, and could take away money that is needed for the restoration.

b) Transfer

Forest Service 4(e) Condition No. 7 imposes as a condition of the transfer of the Project license that (i) SCE pay for an independent audit of the transferee, (ii) SCE estimate, using Forest Service approved experts, the surrender and restoration costs for the Project, and (iii) SCE or the transferee guarantee the provision of the costs to surrender and restore the Project. If a license transfer were proposed, SCE would need to file an application to transfer the Project with FERC pursuant to 18 CFR Part 9. FERC must review that transfer application to determine if, among other factors, the transferee has the financial stability to operate and maintain the project. The Forest Service may participate in this FERC proceeding to ensure its concerns about a transferee's financial stability are addressed. For example, the Forest Service may request that FERC order the

proposed transferee to provide any necessary financial information, such as an audit. SCE does not have the legal ability to require an independent audit of the transferee, nor has the Forest Service shown when an independent audit would be necessary. As there are FERC requirements that cover this matter, the Forest Service does not need to include 4(e) Condition No. 7 to address the same issue.

Additionally, if SCE were to transfer the Project to another entity, it would be inappropriate to make SCE responsible for the Project's future surrender and restoration obligations. The surrender of a project and restoration of the Project area is essentially what occurs when a project is decommissioned. First, after a transfer, SCE would have no ownership or operational relationship with the Project and SCE should likewise have no future financial responsibility for the Project. Second, the Project would be sold to continue its operation, not to decommission the Project. FERC generally declines to require that a license holder create a decommissioning fund upon receipt of a license.² If the proposed transfer would result in Project decommissioning, SCE would need to file an application to surrender the license. This is currently the situation with the SCE San Geronio Hydroelectric Project. (FERC No. 344; Southern California Edison Company, 106 FERC ¶61,102.)

Preparing estimates to surrender and restore Forest lands, and establishing financial resources to ensure such restoration, creates an unnecessary burden. The requirement to determine costs of surrender and restoration costs without a proposal to surrender the Project is premature. Such a requirement presupposes what actions should be taken to surrender the Project without having (i) conducted any environmental analysis, and (ii) considered the needs of the area

² Neither the FPA nor LRMP require the establishment of such funds and guarantees for decommissioning of existing projects with current owners. See FERC Policy Statement "Project Decommissioning at Relicensing", 69 FERC ¶61,336 (December 14, 1994).

at the actual time of surrender, which could be decades after any transfer. For instance, a restoration plan would likely consider the LMP applicable at the time of the Project surrender. LMPs are revised every ten to fifteen years. To estimate restoration costs after consideration of a LMP today is potentially irrelevant for a restoration that will not occur for another 30 to 50 years. Thus, predicting the surrender and restoration measures and imposing a guarantee to cover the speculative costs of those measures at the time of transfer is unreasonable without a true need to surrender the Project.

The opportunity to address the necessary measures associated with Project surrender will occur at the time the Project is actually proposed for surrender. As discussed above, the provision of financial assurances are inappropriate. As SCE must file an application with FERC to surrender the Project license, this FERC process provides the Forest Service with the assurances that it needs that the Forest lands will receive any necessary restoration. Thus, the requirement for providing acceptable assurance is removed.

Therefore, SCE proposes that the second paragraph of Condition No. 7 be removed, or at least modified, as proposed in the Alternative Condition above, to focus on the financial information necessary to determine if a transferee will be able to operate and maintain the Project in compliance with the license terms, as opposed to financing a speculative decommissioning of the Project at some unknown time in the future.

3. Comparison with 4(e) Condition No. 7

a) Cost

The decommissioning costs of the Project have not been calculated. However, SCE expects the costs would be in the range of \$18 to 25 million dollars to remove the Borel Powerhouse, penstock, forebay, and certain

flume sections, fill or remove parts of the canal and two siphons, put the intake structure in a "safe" condition, and restore the area to a condition similar to the surrounding lands.³ A guarantee that the decommissioning costs would be available through a letter of credit or bond would also be costly. Furthermore, to maintain a letter of credit/bond for the duration of the Project operation would present an ongoing cost. If SCE did not assume this cost, but were instead to pass the cost of the guarantee to the buyer, it would reduce the value of the Project and would consequently reduce the sales price to SCE. This loss in value is a "cost" to SCE. Additional costs incurred by SCE would be passed on to SCE's customers in the form of higher electric rates. Similarly, any lost value associated with the transfer of the Project, would reduce the benefits that SCE customers would otherwise have received from the transfer. Once again, this would result in electric rates being higher than otherwise would be the case.

Minor costs are associated with the provision of information at the time of a transfer. The information would be necessary even without the Forest Service Condition No. 7, so no increase in cost arises from the Alternative Condition over the current situation.

b) Project Operation

Neither Forest Service Condition No. 7 nor the Alternative Condition would have any significant impact on Project operation.

4. Alternative Condition Affect on Other Factors

With the exception of energy costs discussed above, the Alternative Condition would have no affect on other power or nonpower resources.

³ This ballpark cost estimate did not undergo engineering analysis, and is depending upon Forest Service, U.S. Army Corps of Engineers, and FERC requirements for the decommissioning of the project works.

5. **Supporting Material**

No additional supporting material is provided.

B. **Alternative Condition No. 8**

1. **Alternative Condition Language**

SCE offers the following Alternative Condition to Condition No. 8 proposed by the Forest Service:

Except to the extent caused by the negligence, willful misconduct, or intentional conduct of the United States, the Licensee shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the Licensee's use or occupancy authorized by this license in accordance with existing federal and state laws. The licensee's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use authorized by this license. Indemnification shall include, but is not limited to the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. Upon surrender, transfer, or termination of the license, the Licensee's obligation to indemnify the United States shall survive all valid claims for actions that occurred prior to such surrender, transfer, or termination.

A redlined version of the proposed Alternative Condition compared to Forest Service Condition No. 8 follows:

Except to the extent caused by the negligence, willful misconduct, or intentional conduct of the United States,
~~The Licensee shall indemnify, defend, and hold the~~
United States harmless for any violations incurred under any such laws and regulations or for judgments, claims,

or demands assessed against the United States in connection with the Licensee's use or occupancy authorized by this license in accordance with existing federal and state laws. The licensee's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use authorized by this license. Indemnification shall include, but is not limited to the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. Upon surrender, transfer, or termination of the license, the Licensee's obligation to indemnify the United States shall survive all valid claims for actions that occurred prior to such surrender, transfer, or termination. ~~This paragraph shall survive the termination of this license, regardless of cause.~~

2. Provision for Adequate Protection and Utilization of the Sequoia National Forest

SCE's Alternative Condition makes the scope of the indemnity language consistent with Forest Service regulations that are designed to adequately protect the forest lands. Forest Service regulations at 36 CFR §251.56(d) provide that indemnity language should be "in accordance with state and federal laws". The Alternative Condition conforms to the Forest Service regulations. The edit in line one clarifies that the indemnity would not apply to the extent that the damages or losses are caused by the United States, such as when a Forest Service employee damages SCE Project works. The language in the last sentence regarding the applicability of the indemnity after the license is surrendered, terminated, or transferred is too broad. It must be tied to actions that occurred during the period when SCE was the license holder. The substituted language on this issue is from Condition No. 8 of the September 30, 2005, Final 4(e) Conditions for SCE's Portal Hydroelectric Project. The indemnification that remains will fully protect the

Forest Service from all damages caused by SCE during the construction, maintenance and operation of the Project, which will adequately protect the Sequoia National Forest.

3. Comparison with 4(e) Condition No. 8

a) Cost

Although SCE cannot determine the cost of potential future damages for which SCE might be liable under the Indemnity clause, that cost could be significant. SCE should not be forced to indemnify the Forest Service for costs associated with actions of Forest Service employees. For example, the potential damages from a Forest Service employee started fire are in the tens of millions of dollars. Thus, the Alternative Condition language could be significantly less costly to SCE compared to Forest Service Condition No. 8.

b) Project Operation

The Alternative Condition will have no different impact on Project operations compared to Condition No. 8.

4. Alternative Condition Affect on Other Factors

Any additional costs incurred by SCE due to Condition No. 8 would be passed on to SCE's customers in the form of higher electric rates. The Alternative Condition would likely result in energy cost savings to SCE customers.

5. Supporting Material

No additional supporting material is provided.

C. Alternative Condition No. 9

1. Alternative Condition Language

SCE offers the following Alternative Condition to Condition No. 9 proposed by the Forest Service:

The Licensee has an affirmative duty to protect the land, property and interests of the United States from damage arising from occupancy and use of the license.

In addition to the general requirements of Articles 22 and 24, the Licensee is liable for and shall pay, after being afforded an opportunity to review Forest Service claimed costs, all damages, costs and expenses associated with damage to the land, property and interests of the United States caused by or in connection with the occupancy or use authorized by the license, including but not limited to damages, costs and expenses resulting from fire, in accordance with existing federal and state laws. Such damages, costs and expenses shall include, but not be limited to:

1. Fire suppression costs
2. Rehabilitation and restoration costs
3. Value of lost resources
4. Abatement costs
5. Investigative and administrative expenses
6. Attorneys' fees

The Licensee's liability under this condition shall not extend to acts or omissions of third parties outside of Licensee's control. Licensee's contractors or employees of contractors are not considered third parties. Damages will be determined by the value of the resources lost or impaired, as determined by the Forest Service. The basis for the damages will be provided to the Licensee. The Licensee shall have an opportunity to review the basis for the Forest Service's damages, costs and expenses, and to meet and confer with the Forest Service to resolve any questions or disputes regarding such damages, costs and expenses. After the opportunity for review, the Licensee shall promptly pay to the United States such damages,

costs and expenses upon written demand by the United States.

A redlined version of the proposed Alternative Condition compared to Forest Service Condition No. 9 follows:

The Licensee has an affirmative duty to protect the land, property and interests of the United States from damage arising from occupancy and use of the license.

In addition to the general requirements of Article 22 and 24, the Licensee is ~~strictly~~ liable for and shall pay, after begin afforded an opportunity to review Forest Service claimed costs, all damages, costs and expenses associated with damage to the land, property and interests of the United States ~~occasioned~~caused by or in connection with the occupancy or use authorized by the license, including but not limited to damages, costs and expenses resulting from fire, in accordance with existing federal and state laws. Such damages, costs and expenses shall include, but not be limited to:

1. Fire suppression costs
2. Rehabilitation and restoration costs
3. Value of lost resources
4. Abatement costs
5. Investigative and administrative expenses
6. Attorneys' fees

The Licensee's liability under this condition shall not extend to acts or omissions of third parties outside of Licensee's control. Licensee's contractors or employees of contractors are not considered third parties. Damages will be determined by the value of the resources lost or impaired, as determined by the Forest Service. The basis for the damages will be provided to the Licensee. ~~The Licensee shall accept transaction registers certified by the appropriate Forest Service official as evidence of costs and expenses.~~—The Licensee shall have an opportunity to review the basis for the Forest Service's damages, costs and expenses, and to meet and confer with the Forest Service to resolve any questions or disputes regarding such damages, costs and expenses. After the opportunity for review, the Licensee shall promptly pay to the United

States such damages, costs and expenses upon written demand by the United States.

2. **Provision for Adequate Protection and Utilization of the Sequoia National Forest**

The SCE Alternative Condition should be accepted so that Condition No. 9 is consistent with Forest Service regulations at 36 CFR §251.56(d). The text that liability is in accordance with federal and state laws ensures that Condition No. 9 will not be interpreted to exclude the ordinary rules of negligence in California. Furthermore, the general liability clause in the Forest Service regulations does not provide for strict liability. Strict liability is only applicable to high risk uses. (36 CFR §251.56(d)(2)). Even if the Project were a “high risk”, the regulation only allows for strict liability for a maximum of \$1 million after a risk assessment has been performed. To SCE’s knowledge, the Forest Service has not conducted such a risk assessment. Furthermore, FERC does not consider the Project diversion to be a high hazard dam; likely because the Project diversion is inundated within Lake Isabella most of the time. In fact, the hazards likely associated with the Project are associated with the locations where the Project canal runs through populated areas, which are areas outside the Sequoia National Forest.

Next, the word “occasioned” was replaced with “caused” to make it clear that the SCE Project construction, operation, and maintenance actions must be the cause of the damages for the liability to be triggered. Two sentences were then added to provide that SCE is not responsible for third party caused damages. The third party damage exclusion and the right to review and verify the Forest Service costs were taken from Condition No. 9 of the Portal Hydroelectric Project (Project No. 2174) Final 4(e) Conditions submitted to FERC on September 30, 2005.

Additionally, SCE understands that Forest Service “transaction registers” do not always accurately show costs and expenses attributable to specific

actions. The Forest Service must be required to show the actual costs and damages that are incurred in order to seek recover of those costs from SCE, if SCE is responsible. If a transaction register provides that information, it will be part of the "basis for damages" that is provided to SCE. However, making "transaction registers" a per se acceptable cost is unjustified. With the Alternative Condition changes, the damage provision assures the Forest Service will fully protected from damages caused by SCE Project operations in the manner contemplated by the Forest Service regulations designed to protect national forest land.

3. Comparison with 4(e) Condition No. 9

a) Cost

As written, Condition No. 9 could cost significantly more than the Alternative Condition. For example, if the Forest Service interpreted Condition No. 9 as being a strict liability provision, SCE would be responsible for costs not caused by SCE acts or omissions. Additionally, if the transaction registers are not an accurate reflection of Forest Service costs, SCE could pay more than was necessary to address its Project impacts.

b) Project Operation

Neither Condition No. 9 nor the Alternative Condition would have an affect on Project operation.

4. Alternative Condition Affect on Other Factors

Any additional costs incurred by SCE due to Condition No. 9 would be passed on to SCE's customers in the form of higher electric rates. The Alternative Condition would likely result in energy cost savings to SCE customers.

5. Supporting Material

No additional supporting material is provided.

D. Alternative Condition No. 21.A.

1. Alternative Condition Language

SCE offers the following Alternative Condition to the last part of Condition No. 21.A “Fire Management and Response Plan” proposed by the Forest Service, as follows:

Investigation of Project Related Fires

The Licensee agrees to fully cooperate with the Forest Service on all fire investigations. The Licensee shall produce upon request all material and witnesses, not subject to attorney client or attorney work product privileges, over which Licensee has control, related to the fire and its investigation including:

- All investigation report
- All witness statements
- All photographs
- All drawings
- All analysis of cause and origin
- All other, similar materials and documents regardless of how collected or maintained

The Licensee shall preserve all physical evidence and give custody to the Forest Service of all physical evidence requested. The Forest Service shall provide the Licensee with reasonable access to the physical evidence and documents the Licensee requires in order to defend any and all claims, which may arise from a fire within the Project boundaries, to the extent such access is not precluded by ongoing criminal or civil litigation.

A redlined version of the proposed Alternative Condition compared to applicable subpart to Forest Service Condition No. 21.A follows:

Investigation of Project Related fires

The Licensee agrees to fully cooperate with the Forest Service on all fire investigations. The Licensee shall produce upon request all material and witnesses, not subject to attorney client or attorney work product privileges, over which Licensee has control, related to the fire and its investigation including:

- All investigation report
- All witness statements
- All photographs
- All drawings
- All analysis of cause and origin
- All other, similar materials and documents regardless of how collected or maintained

The Licensee shall preserve all physical evidence and give custody to the Forest Service of all physical evidence requested. The Forest Service shall provide the Licensee with reasonable access to the physical evidence and documents the Licensee requires in order to defend any and all claims, which may arise from a fire within the Project boundaries, to the extent such access is not precluded by ongoing criminal or civil litigation.

2. Provision for Adequate Protection and Utilization of the Sequoia National Forest

SCE understands that the Forest Service believes it is appropriate to have SCE create a Fire Management and Response Plan to address fires that may occur on Project lands. SCE has worked with the Forest Service previously to develop such plans to the satisfaction of the Forest Service and FERC. However, Condition No. 21.A. could be interpreted to require SCE to waive any material that is legally confidential under the attorney client or the attorney work product privileges. SCE's concern regarding this issue was raised in the context of discussions with the Forest Service about 4(e) Conditions for other SCE hydroelectric projects. Thus, SCE's Alternative Condition makes sure that there is

no implied waiver of the attorney client or attorney work product privilege when SCE is to provide material and documents to the Forest Service. The Alternative Condition also ensures that SCE has reasonable access to data provided to the Forest Service. For example, SCE may need that data if a private party were to sue SCE alleging that SCE actions resulted in a fire that damaged the personal property of the private party. In fact, the September 30, 2005 Final 4(e) Condition No. 16.A. for the Portal Project contains similar language to the Alternative Condition.

3. Comparison with 4(e) Condition No. 21.A.

a) Cost

SCE cannot estimate the increased costs associated with Condition No. 21.A. However, the costs could be significantly more than the Alternative Condition. For example, if SCE were required to provide litigation strategy documents developed for a lawsuit concerning a fire on Project lands, the chance of successfully defending a lawsuit diminished. Thus, SCE could be subject to paying significant costs due to losing a lawsuit based upon the provision of privileged documents.

b) Project Operation

Neither the Alternative Condition nor Condition No. 21.A. would have any impact on Project operation.

4. Alternative Condition Affect on Other Factors

Any additional costs incurred by SCE due to Condition No. 21.A. would be passed on to SCE's customers in the form of higher electric rates. The

Alternative Condition would likely result in potential energy cost savings to SCE customers.

5. Supporting Material

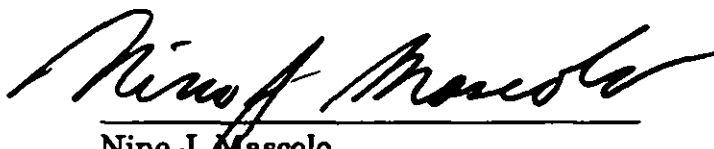
No additional material is submitted in support of the Alternative Condition.

III.

CONCLUSION

The SCE Alternative Conditions were carefully crafted to ensure that the Borel Hydroelectric Project operations would be carried out in a manner that provides adequate protection of the Sequoia National Forest. The Forest Service 4(e) Conditions exceed that level of protection and as a result have the potential to significantly increase the cost of SCE to operate the Borel Project. Those higher costs would be passed along to SCE's customers in the form of higher rates. SCE has an obligation to keep its electric rates reasonable. The acceptance of the Alternative Conditions will help SCE achieve this goal while not creating any additional burdens on the Sequoia National Forest.

Respectfully Submitted



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