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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION
OF SOUTHERN CALIFORNIA EDISON
COMPANY, PURSUANT TO A.R.S. § 40-
252, FOR AN AMENDMENT OF ACC
DECISION NO: 51170 OR, IN THE
ALTERNATIVE, A DECLARATION OF
NO SUBSTANTIAL CHANGE

DOCKET NO: E-20465A-06-0457

NOTICE OF ERRATA

The Staff of the Arizona Corporation Commission ("Staff") hereby files the following
Errata to Proposed Findings of Fact, Proposed Conditions to the CEC, and Closing Argument of
the Arizona Corporation Commission filed on November 30, 2006. This Errata corrects
typographical errors and includes additional matter inadvertently omitted in the previous filing.

RESPECTFULLY submitted this 29th day of January, 2007.

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Keith A. Layton, Esq.
Legal Division
Arizona Corporation Commission
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Arizona Corporation Commission
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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8 IN THE MATTER OF THE APPLICATION OF
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11 COMPANY, PURSUANT TO A.R.S. § 40-252,
12 FOR AN AMENDMENT OF ACC DECISION
13 NO: 51170 OR, IN THE ALTERNATIVE, A
14 DECLARATION OF NO SUBSTANTIAL
15 CHANGE

DOCKET NO: E-20465A-06-0457

**STAFF'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

12 **PROCEDURAL ORDER AND BACKGROUND**

13 On January 5, 2006, the Chairman of the Arizona Power Plant and Line Siting Committee
14 ("Committee"), Laurie A. Woodall (Designee of Attorney General Terry Goddard) ("Chairman
15 Woodall") held a procedural conference in the above captioned matter. Chairman Woodall issued the
16 following procedural order related to the hearing to be held on January 8, 2007:

17 After the Committee has made its preliminary determination on
18 [substantial change], the Committee will address the *issue of*
19 *proposed remedies such as fines, and the amount, if any. The*
20 *Committee will also address the issue of whether the Certificates*
21 *issued in Case 34 and 48 should be amended.*

22 After conclusion of the proceedings on January 8, *counsel for the*
23 *parties in the Copper Bottom Pass matter will submit proposed*
24 *findings of fact and conclusions of law to the Chairman, who will*
25 *craft a proposed decision and findings of fact and conclusions of*
26 *law, for filing and then deliberation and approval by the*
27 *Committee at the February proceedings.*

28 *One remedy urged by Staff, that the Applicant not be permitted to*
use the second circuit of the structures (which staff argues should
be removed) will not be addressed in this proceeding. After
request by Staff, which was not opposed by the applicant, it is
hereby ordered that this proposed remedy for the 06-0457 case
(Copper Bottom Pass) will be addressed by the Committee after it
has heard closing arguments on the Case 130 Palo Verde Devers 2
matter, which will be held on the same day as resumed proceedings

1 on the Cooper Bottom Pass matter on February 27 and 28,
2 2007....¹

3 At the January 8, 2007 hearing, the Committee discussed a procedure for addressing another remedy
4 requested by Staff of the Arizona Corporation Commission (“Commission”) (“Staff”).

5 Staff witness Mr. Olea recommended that Southern California Edison (“SCE” or “Edison”) be
6 required to remove the second circuit from double-circuit towers in Copper Bottom Pass (i.e. all
7 wires, conductors, and other ancillary equipment).² Mr. Olea recommended that the double-circuit
8 towers not be replaced with single-circuit towers. To summarize, Mr. Olea recommended three
9 remedies: (1) prohibit use of the double-circuit towers for a second circuit (i.e. prohibit use of the
10 towers for the Palo Verde Devers 2 (“PVD2”) project); (2) remove the second circuit and all ancillary
11 equipment; and (3) fine SCE in the amount of \$4.8 million.³ Finally, Mr. Olea recommended that
12 SCE’s request to amend Decision No. 49226 in Case No. 34 and Decision No. 51170 in Case No. 48
13 (initial decision and amendment for a Certificate of Environmental Compatibility (“CEC”) for Palo
14 Verde Devers 1 (“PVD1”)) be denied.⁴

15 On January 8, 2007, Committee Member Mr. Whalen requested the Committee to defer its
16 deliberation and proposal for a decision regarding Staff’s second recommendation. Mr. Whalen
17 requested that the Committee take up the issue after its decision in Line Siting Case No. 130.⁵ The
18 Committee voted to adopt Mr. Whalen’s recommended procedure.⁶

19 The Committee held hearings in the above captioned matter on December 7, 2006 and January
20 8, 2007. Following the hearing on December 7, 2006, Chairman Woodall and counsel for the parties
21 agreed the Committee would benefit from a limited legal brief. The brief was limited to SCE’s
22 request for a declaration of no substantial change. SCE and Staff filed briefs on January 3, 2007.
23
24

25 ¹ E-mail from Laurie Woodall, Chairman of the Arizona Power Plant and Line Siting Committee, to Keith Layton, Albert
26 Acken, Thomas Campbell, and Michael Mackness, counsel to the parties (January 5, 2007 3:53 p.m. MST) (emphasis
27 added).

28 ² S-12 at 17, ll. 1-9.

³ *Id.*

⁴ *Id.* at 16, ll. 5-7.

⁵ TR 354: 6-21

⁶ TR 354: 22 – 355: 9.

1 In addition to the January 3rd briefs, Edison included legal argument on substantial change in
2 its application.⁷ On July 21, 2006, the Sierra Club Grand Canyon Chapter filed a legal brief on the
3 question of substantial change. On August 9, 2006, Staff filed a response to the Application
4 (“Response”). Staff included legal argument on substantial change.⁸ Edison filed a reply in support
5 of its Application on August 18, 2006.⁹ Edison and Staff both incorporated the earlier briefs in their
6 January 3rd briefs.

7
8 At the hearing on January 8, 2007, Committee Member Mr. Ranger requested a second legal
9 brief.¹⁰ Mr. Ranger requested a brief on “any history of fining companies that have engaged in
10 substantial changes prior to construction and, if so, what amount.”¹¹ He also asked:

11 In the event that these actions are considered to be a substantial
12 change, is there a specific statutory or regulatory fine that you find
13 directly applicable to this different from what Mr. Olea had
14 calculated?¹²

15 Mr. Ranger stated that the Arizona Department of Environmental Quality (“ADEQ”)
16 withholds an opinion on amendment pending review of briefs. He also stated that ADEQ “believe[s]
17 that penalties may be appropriate, although we would like to discuss the amount.”¹³ Committee
18 Member Mr. Arwood also stated:

19 I would like to hear if there is a position that outlines based on a
20 substantial change. However, I am in support of amending. So I,
21 unless the Staff comes up with something that I would change my
22 opinion, I would be in favor of no fine.¹⁴

23 Following the hearing on January 8, 2007, Chairman Woodall ordered briefs addressing Mr.
24 Ranger’s questions to be filed no later than February 2, 2007. On the record, she further held that
25 counsel for the parties could submit evidence on the issues raised by Mr. Ranger.¹⁵

26 ⁷ See Application at 4-6.

27 ⁸ *Staff’s Response to Southern California Edison’s Request to Amend Decision No. 51170, or in the Alternative, a
28 Declaration of No Substantial Change*, Docket No. E-20465A-06-0457, filed August 8, 2006. (“Response”).

⁹ *Edison’s Reply in Support of its Request*, Docket No. E-20465A-06-0457, filed August 18, 2006. (“Reply”).

¹⁰ TR 356: 19-23.

¹¹ TR 362: 12-16.

¹² TR 356: 3-7.

¹³ TR 360: 13-15.

¹⁴ TR 357: 2-6.

¹⁵ TR 363: 17-20.

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2 4. In its application, Edison included legal argument on the question of substantial
3 change. SCE also requested expedited treatment of its application, and requested the Commission to
4 decide the matter in an Open Meeting. SCE specifically noted that Decision No. 51170 did not
5 identify the tower types to be constructed as part of PVD1.

6 5. The Sierra Club, Grand Canyon Chapter (the "Sierra Club") requested to intervene.
7 The Sierra Club was granted intervention.¹⁶ On July 21, 2006, the Sierra Club filed a legal brief on
8 the question of substantial change.

9 6. On August 9, 2006, Staff filed a response to Edison's legal argument.

10 7. On August 18, 2006, Edison filed a legal reply in support of its argument in the
11 application and in response to the briefs of the Sierra Club and Staff.

12 8. At an Open Meeting held on October 17, 2006, the Commission assigned the
13 Committee to act as the administrative law judge ("ALJ") in the above captioned matter. On October
14 26, 2006, Chairman Woodall issued a procedural order setting the matter for hearing on December 7,
15 2006. At the end of the hearing on December 7, 2006, Chairman Woodall continued the hearing.
16 The hearing was continued to January 8-9, 2007.

17 9. On November 9, 2006, Edison amended its Application to include a fourteenth
18 double-circuit tower located at the Palo Verde Switchyard.

19 10. On November 16, 2006, pro per Mr. Donald Begalke filed an application to intervene.
20 SCE questioned whether his application was in compliance with the Commission's rules of
21 procedure. After consultation with counsel for the parties and Mr. Begalke, Chairman Woodall
22 denied Mr. Begalke's application on December 7, 2006. Nevertheless, based on the parties' informal
23 discussions, Chairman Woodall permitted Mr. Begalke to provide public comment. Mr. Belgalke
24 provided public comment prior to the start of the evidentiary hearings on December 7, 2006.

25 11. On November 29, 2006, SCE and Staff of the Commission prefiled their respective
26 direct testimony. On January 3, 2007, SCE filed a witness list and witness summaries for its rebuttal
27 case presented on January 8, 2007.

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¹⁶ Staff could not find the application to intervene or the procedural order granting intervention in the docket.

1 12. Hearing on the matter was held on December 7, 2006 and January 8, 2007.

2 13. SCE and Staff filed limited briefs on substantial change on January 3, 2007.

3 14. In April 1977, Edison issued an Environmental Report for the proposed PVD1 project.
4 Edison attached the report as Exhibit B-1 to its application in Case No 34. In Section 9.1.7. of the
5 report SCE included the following statement: "If the situation arises during the approval stages of
6 this project, that construction of more than one line on the proposed corridor is eminent, then SCE as
7 an alternative would propose a multiple-circuit structure such as shown on Figure 9-2 through areas
8 of limited space, such as that encountered through the Copper Bottom Pass area."

9 15. On June 30, 1977, the Commission entered Decision 48059 granting Tucson Gas &
10 Electric's ("TG&E's") request to change the tower type from previously approved single-circuit
11 towers to double-circuit towers for seventeen miles of the route. In the findings of fact, the
12 Commission found "maximized right-of-way utilization and orderly transmission system
13 development will be facilitated by permitting TG&E to utilize double-circuit 345 kV towers within
14 the corridor segment...."¹⁷

15 16. SCE filed an application for the PVD1 project in August, 1977. SCE filed an
16 amendment to the application on January 28, 1978. Hearings were held on March 2-3, 1978.

17 17. On August 3, 1978, the Commission entered Decision No. 49226 approving the CEC
18 issued by the Committee ("Committee") to SCE authorizing construction of a 500 kV transmission
19 line (PVD1) between the Palo Verde Nuclear Generating Station and Devers Substation near Palm
20 Springs, California.

21 18. Decision No. 49226 authorized only single-circuit towers for the construction of the
22 PVD1. Although SCE discussed the possible use of double-circuit towers in Copper Bottom Pass, it
23 did not request approval to construct double-circuit towers.

24 19. The Bureau of Land Management issued the Right-of-Way ("ROW") Grant for PVD1
25 on February 1, 1980. This ROW deviated from the route previously authorized by Decision No.
26

27 ¹⁷ *In the Matter of the Application of Tucson Gas & Electric Company in Conformance with the Requirements of Arizona*
28 *Revised Statutes § 40-360, et seq., for a Certificate of Environmental Compatibility Authorizing the Construction of a*
Proposed 500 kV Transmission Line from the Arizona-New Mexico Border to Vail Substation (Case No. 12 Before the
Power Plant and Transmission Line Siting Committee.), Docket SC-12, Decision No. 48059, dated July 30, 1977

1 49226 in two different segments: S-5 and S-23. The ROW grant included a provision with the
2 following requirement: "Through Copper bottom Pass and the Pass between Burnt Mountain and the
3 Bighorn Mountains the Grantee will be required to either, (1) construct double-circuit towers upon
4 granting of the right-of-way, or (2) agree to replace the single-circuit towers with double-circuit
5 towers on the same alignment if a second major transmission line is needed."

6
7 20. SCE filed a request to amend Decision No. 49226 on March 3, 1980. SCE sought
8 authorization for the route changes requested by the BLM. Hearings were held on May 9, 1980.
9 Even though SCE was aware that the ROW included a provision on double-circuit towers, the
10 provision was never discussed on the record.

11 21. On July 23, 1980, Commission entered Decision No. 51170, amending the route for
12 the CEC for the portion of the route in segment S-5 and in segment S-23.

13 22. By November 5, 1980, the BLM and SCE were in discussion over the use of double
14 circuit towers in Copper Bottom Pass.

15 23. On July 22, 1981, the BLM issued an amendment to the PVD1 ROW Grant requiring
16 installation of double-circuit towers for towers numbered B-837 through B-849 in Copper Bottom
17 Pass.

18 24. Pursuant to A.R.S. § 40-360, the Committee approves applications, including required
19 and discretionary exhibits identified in Arizona Administrative Code ("A.A.C.") § R14-3-219.
20 A.A.C. § R14-3-219 requires applicants to include any environmental reports as Exhibit B-1, and to
21 identify and describe tower types.

22 25. SCE did not file for an amendment to either Decision No. 49226 or Decision No.
23 51170 to allow construction of double-circuit towers through Copper Bottom Pass in order to comply
24 with the new BLM approval. Construction of the double-circuit towers was completed in late 1981.

25 26. In Commission Decision No. 58793 (1994), known as the Whispering Ranch case, the
26 Commission held, "When necessary 'to enforce compliance [with a CEC and a confirming
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1 Commission decision],’ the Commission’s powers under § 40-252 may be invoked.”¹⁸ The
2 Commission further held “There is long standing precedent for the exercise by the Commission of its
3 powers under [Arizona Revised Statute (“A.R.S.”)] § 40-252 in proceedings of the Siting Act.”¹⁹
4 Finally, the Commission cited two requests to amend the CEC issued in Line Siting Case No. 12 to
5 Tucson Gas & Electric (“TG&E”).

6
7 27. In the Whispering Ranch case, the Commission stated that TG&E “applied for a
8 second modification of [its] CEC to permit a seventeen-mile segment to be constructed with double-
9 circuit 345 kV towers. After hearing pursuant to A.R.S. § 40-252, this application was granted in
10 Decision No. 48059.”²⁰

11 28. SCE submitted six 10-year plan filings as evidence that the Commission was on notice
12 that there were 13 double-circuit towers in Copper Bottom Pass.²¹ In Whispering Ranch, the
13 Commission found:

14 SRP offered these Ten-Year Plan filings apparently to show that
15 the Commission had notice of the planned change in the
16 configuration of the Mead-Phoenix line. However, the filings after
17 the decision to change the configuration do not call attention to the
18 fact that the plans had changed, and each of these reports
19 misleadingly recites that the AC (convertible to DC) line had been
20 approved by the Committee in 1985. Thus, as actual notice of the
21 proposed change, these filings fall far short of being informative.
22 In addition, the filing of a Ten-Year Plan does not relieve SRP of
23 filing requisite applications for permission to construct facilities.
24 The Commission rejects the implied argument that the filing of a
25 Ten-Year Plan somehow shifts the burden to the Commission to
26 seek out a utility and require it to file an application for an
27 amended CEC or for an amendment to a CEC if the applicant’s
28 plans change after the initial granting of the CEC.²²

29 The Ten-Year Plans filed by SCE after Decision Nos. 49226 and 51170 to use double-
30 circuit towers in place of single-circuit towers are misleading in that they invite the inference that the
31 double-circuit towers had been approved in the prior decisions.

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36 ¹⁸ *Re Salt River Project Agricultural Improvement and Power District*, Case No. 70, Decision No. 58793 at 15
(September 21, 1994) (“*Whispering Ranch*”), 1994 WL 711473 (Ariz. C.C.) at *3 (quotations omitted) (bracketed
language in the original).

37 ¹⁹ *Id.*

38 ²⁰ *Id.*

²¹ See Exhibits SCE-5 through SCE-8.

²² *Whispering Ranch case*, 1994 WL 711473 (Ariz. C.C.) at *9.

1 30. Statements concerning modifications to facilities previously authorized (in CECs
2 issued by the Committee) made in a Ten-Year Plan do not constitute notification to the Commission
3 that an applicant such as SCE is requesting authorization for such modifications.²³
4

5 31. In Whispering Ranch, the Commission found:

6 Precedent in previous Siting Act proceedings indicates that an
7 issue of such moment as the conversion from DC to AC should
8 have prompted SRP either to apply to the Committee for an
9 amended CEC or, at the very least, to invoke the Commission's
10 power under A.R.S. § 40-252 to modify the existing CEC by
11 modification of Decision No. 54792.²⁴

12 The TG&E case should have prompted SCE to invoke the Commission's power under A.R.S. § 40-
13 252 to modify the existing CEC by modification of Decision Nos. 49226 and 51170.

14 32. At no time since the decision was made to construct double-circuit towers did SCE
15 seek authorization from either the Committee or the Commission to build the towers until the issue
16 was raised by Chairman Woodall in Case No. 130.

17 33. In its case, SCE argued that the double-circuit towers were not a substantial change
18 because only 3% of the towers for the project were double-circuit towers. SCE also argued that BLM
19 is the only affected entity and it required the double-circuit towers. SCE noted that BLM did not
20 require an updated environmental assessment, therefore did not consider double-circuit towers a
21 substantial change.

22 34. In its case, Staff argued that double-circuit towers are a substantial change by
23 definition. Staff also argued that the Commission in Whispering Ranch considered double-circuit
24 towers a substantial change. Staff noted that the Commission held:

25 This same reasoning makes the decision of WAPA, in its
26 'Environmental Analysis of the Changes to the Proposed Mead-
27 Phoenix Transmission Project, February 1990' ('1990
28 Environmental Analysis'), not to file a supplemental
29 environmental impact statement also irrelevant. Again, the
30 decision is for the Committee, not WAPA, as to whether an
31 application for an amended CEC must be filed.²⁵

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²³ *Id.* at *19.

²⁴ *Id.* at *16.

²⁵ *Id.*

1 35. On January 8th the Committee made preliminary determinations for a recommended
2 opinion and order and by majority vote found: (1) double-circuit towers are a substantial change to
3 the CEC issued in Case No. 34 and amended in Case No. 48; (2) the CEC should be amended to
4 allow construction of double-circuit towers in Copper Bottom Pass for PVD1; and (3) no fine should
5 be imposed on Edison.

6 36. The Committee found that affected persons under the Whispering Ranch test include
7 persons affected by (1) the environmental factors in A.R.S. § 40-360.06, (2) the balancing test in
8 A.R.S. § 40-360.07, (3) the jurisdiction of the Committee and the Commission, and (4) the public
9 interest. In *Whispering Ranch*, the Commission noted that:

10 The decision of SRP to convert this line from DC to AC without
11 applying for an amended CEC undermines the very foundations of
12 the Siting Act. SRP's action in fact deprives the Committee and,
 ultimately, the Commission of their statutory powers.²⁶

13 Similarly, SCE's decision to build double-circuit towers without prior approval deprived the
14 Committee and the Commission of their statutory powers. Enforcing compliance with Commission
15 decisions is in the public interest.

16 37. The Committee found that double-circuit towers are substantially different in subject
17 matter than single-circuit towers. A.R.S. § 40-360(10) defines "transmission line" to include "a
18 series of new structures erected above ground and supporting one or more conductors designed for
19 the transmission of electric energy." A.R.S. § 40-360.03 requires applications to be in a form
20 prescribed by the Commission and to include information with respect to proposed facilities. A.A.C.
21 § R14-3-219(4)(b)(iii) requires a description of the "maximum height of supporting structures and
22 minimum height of conductor[s] above ground." The Commission's discussion of "subject matter"
23 in *Whispering Ranch* is informative on this prong of the test:

24 The change from a 500 kV DC line to a 500 kV AC line....results
25 in a number of differences between the line SRP is building and
26 the line the Committee and the Commission in 1985 authorized it
 to build. *The towers themselves are changed somewhat in design
 and in dimensions....*The converters (which change direct current

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²⁶ *Id.* at *15.

1 to alternating current) *are not needed at this time, thereby saving*
2 *considerable present expense.*²⁷

3 38. In Exhibit B-1 of the application in Case No. 34 and in Exhibit B-1 of the application
4 in Case No. 48, SCE identified differences in effects of double-circuit towers from the effects of
5 single-circuit towers. In Whispering Ranch, the Commission noted:

6 SRP went to great lengths to differentiate DC from AC lines and to
7 highlight the lack of biological and health effects from DC
8 lines....Having made such a point of the differences in biological
9 effects between DC and AC current in its 1985 presentation, SRP
10 is now on shaky ground in arguing that the difference is so
11 insignificant that the utility can proceed without applying for a new
12 CEC or a modification to the existing CEC.²⁸

13 At the hearing in Case No. 34, SCE emphasized on several occasions that it was only constructing a
14 single-circuit system; and a second line was not needed or contemplated at that time. After review of
15 Exhibit B-1, and consideration of testimony in Case No. 34 and in this case, the Committee did not
16 find the effects of double-circuit towers in Copper Bottom Pass significantly different from single-
17 circuit towers.

18 39. The Committee found that SCE did not violate Decision Nos. 49226 and 51170
19 willfully or with any evil intent. The Committee did not find that the facts of the case supported a
20 monetary fine.

21 PROPOSED CONCLUSIONS OF LAW

22 1. The Commission has jurisdiction over the subject matter of this application under §
23 40-360.01 et seq.

24 2. The Commission has authority to alter or amend Decision Nos. 49226 and 51170
25 under A.R.S. § 40-252.

26 3. The Commission has articulated the standard that it applies in A.R.S. § 40-252 cases
27 for CECs as follows: The standard for determining whether a decision granting a CEC must be
28 amended is whether the proposed change is a 'substantial' change. The primary Commission case on
the question of substantial change is the Whispering Ranch case. The question of what constitutes a

²⁷ *Whispering Ranch* at *11.

²⁸ *Id.* at *14.

1 substantial change must be made on the facts of each particular case using the criteria set forth in the
2 Administrative Procedures Act (A.R.S. § 41-1025). In addition to the above articulated standard, the
3 Commission found in Whispering Ranch that the decisions to amend the CEC in Case No. SC-12
4 may also be used on the question of substantial change.

5 4. The double-circuit towers in Copper Bottom Pass are a substantial change from the
6 CEC issued in Decision No. 49226, and amended in Decision No. 51170.

7 5. The CEC issued in Decision No. 49226 and amended in Decision No. 51170 is hereby
8 amended to authorize construction of 13 double-circuit towers in Copper Bottom Pass.

9 6. SCE violated Decision Nos. 49226 and 51170 because the decisions did not authorize
10 construction of double-circuit towers. SCE also violated A.R.S. § 40-360.07(A) because it did not
11 get approval to construct double-circuit towers prior to construction.

12 7. The facts of this case do not support a monetary fine.

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14
15 CONCLUSION

16 Staff respectfully requests the Committee to adopt the above proposed findings of fact and
17 conclusions of law based on the Committee's preliminary decisions.

18
19 RESPECTFULLY submitted this 29th day of January, 2007.

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21 

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**Original and twenty-five (25) copies
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