



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

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In the Matter of the Application of
SOUTHERN CALIFORNIA EDISON
COMPANY (U-338-E) for a Certificate of
Public Convenience and Necessity for the
Eldorado-Ivanpah Transmission Project

Application No. 09-05-027
(Filed May 28, 2009)

**INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S
COMMENTS ON PROPOSED DECISION OF ALJ DeANGELIS (DECISION DENYING
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE
ELDORADO-IVANPAH TRANSMISSION PROJECT)
AND
ALTERNATE PROPOSED DECISION OF COMMISSIONER PEEVEY (DECISION
GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR
THE ELDORADO-IVANPAH TRANSMISSION PROJECT)**

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Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
Direct: 415-632-5307
Fax: 415-436-9683
lbelenky@biologicaldiversity.org

Jonathan Evans, Staff Attorney
Center for Biological Diversity
351 California ST, Suite 600
San Francisco, CA. 94104
Phone: (415) 436-9682 x318
jevans@biologicaldiversity.org

*Attorneys for Intervenor Center for Biological
Diversity*

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INTRODUCTION

The Center for Biological Diversity (“the Center”) supports adoption of the Administrative Law Judge (“ALJ”) DeAngelis’ Proposed Decision (“PD”) Denying A Certificate of Public Convenience and Necessity for the Eldorado-Ivanpah Transmission Project (“EITP” or “proposed project”). The Center opposes adoption of Commissioner Peevey’s Alternative Proposed Decision (“APD”) Granting A Certificate of Public Convenience and Necessity for the EITP. As the evidence shows, the only decision that can reasonably be reached after full consideration of the evidence presented¹ and the issues addressed in the record is the decision in the PD to deny the application.

¹ As the PD and APD explain, the Center moved to amend the Scoping Memo Ruling in order to provide additional testimony and evidence at hearing, that motion was denied. PD at p. 7-8, APD at p. 8-9. While the Center agrees with the PD in all other respects, the Center disagrees with the ALJ’s decision denying the Center’s motion and reserves all rights to appeal that decision.

In addition, the recently released Final Environmental Impact Report/Environmental Impact Statement (“Final EIR/EIS”), unfortunately, fails to cure many of the omissions and inaccuracies in the Draft EIR/EIS. These shortcomings include, but are not limited to, the identification and analysis of alternatives, impacts to biological resources (including the threatened desert tortoise), segmentation of the review from other connected actions, cumulative impacts, and growth inducing impacts. Because the environmental review is inadequate and incomplete the Commission cannot properly certify the Final EIR/EIS or rely on the analysis and conclusions in the Final EIR/EIS to show that it has considered and adopted feasible alternatives that would avoid significant impacts to the environment as required by CEQA. While the Center agrees with the ultimate conclusion that, if approved, the EITP would have significant unmitigated impacts to environmental resources (including biological resources), the scope of environmental damage is not adequately identified and analyzed and the analysis of feasible alternatives that could avoid many of the significant impacts of the proposed project remains incomplete.² The Center reserves the right to provide additional comments and information to the Commission regarding the inadequacy of the CEQA review up to and including at any hearing at which the approval of the proposed EITP is considered.

COMMENTS

I. The Proposed Decision of the Administrative Law Judge

The Center agrees with the decision to deny the application of SCE for a certificate of public convenience and necessity for the EITP. The Center concurs with the ALJs’ findings and conclusions that the EITP is not needed to meet reliability needs or increased demand, there is insufficient evidence in the record that other transmission alternatives cannot be utilized for the one permitted renewable energy project and the one other project with an approved PPA in the area, untapped transmission capacity may be sufficient to interconnect the existing PPAs, the EITP’s capacity may in the future carry fossil-fuel based generation, the project presents

² The Center appreciates efforts made to expand the “non-wires” alternative analysis in the Final EIR/EIS, however, as the EIR/EIS “screened out” these alternatives from full analysis as feasible alternatives to the proposed project, this change does not cure the many shortcomings in the CEQA review.

unacceptable costs, and alternatives exist for renewable generation that would avoid impacts to species and habitats. PD at 29-30. For these reasons and others, the PD correctly found that the certificate of public convenience and necessity should be denied.

The PD correctly found that the record failed to adequately address whether alternative transmission capacity is available for the one permitted project and the one other project with an approved PPA. It appears that, there is significant unused capacity on other transmission lines in the area of the proposed project. The PD identifies many existing transmission lines in the vicinity of the Ivanpah Solar Electric Generating System (“ISEGS”) project site that could deliver ISEGS electrical output to SCE. These transmission lines are identified as follows in the PD³:

August 9, 2010 RT 91-92; Draft Joint EIR/EIS at 5-1: “Existing transmission lines in the area include the Eldorado-Baker-Coolwater-Dunn Siding-Mountain Pass 115 kV Transmission Line (which would be altered by the Proposed Project), Eldorado-McCullough 500 kV Transmission Line, Mead-Victorville 287 kV Transmission Line, McCullough-Victorville 1 500 kV Transmission Line, McCullough-Victorville 2 500 kV Transmission Line, Intermountain-Adelanto 500 kV DC Transmission Line, Marketplace-Adelanto 500 kV Transmission Line, Eldorado-Mead 220 kV Transmission Line, Eldorado-Lugo 500 kV Transmission Line (which would be modified for a telecommunication line as part of the Proposed Project), and Nipton 33 kV transmission line. There are also electrical distribution lines in the Nevada portion of the study area, operated by the NV Energy Company.”

As just one example, the LADWP McCullough-Victorville double 500 kV line has a capacity of 2,000 MW.⁴ According to LADWP, this line currently has substantial spare capacity.⁵ The published LADWP firm annual long-term transmission capacity charge is \$46,680 per MW per year.⁶ At this rate, firm transmission rights for the 370 MW Ivanpah project on the LADWP McCullough-Victorville transmission line would cost: \$46,680 per MW × 370 MW = \$17.3 million per year.

³PD at p. 22, n 71.

⁴ Telephone communication between B. Powers, Powers Engineering, and S. McMahon, LADWP OASIS, December 2, 2010.

⁵ Ibid.

⁶ LADWP OASIS - *Product Offerings and General Business Practices - Draft*, June 30, 2006. See LADWP OASIS website (p. 1) (attached hereto as Exhibit 1). Available at http://www.oatioasis.com/LDWP/LDWPdocs/02Products_Offerings_and_General_Business_Practices.pdf

In contrast, the “total estimated cost of SCE’s proposal is \$446 million” for the EITP.⁷ The annual cost associated with this \$446 million capital investment (using an annualization factor of 12.46 percent⁸) is: $0.1246/\text{yr} \times \$446 \text{ million} = \$55.6 \text{ million per year}$. The annual cost to California ratepayers of the EITP, at \$55.6 million per year, would be more than three times higher than the estimated \$17.3 million per year wheeling charge that would be incurred by transmitting electric power generated at Ivanpah over the LADWP McCullough-Victorville line for delivery to the existing SCE transmission system.

The PD also notes that SCE stated that it has a renewable contract with the First Solar, Inc. for 300 MW Desert Stateline project,⁹ planned to be completed by 2015, which would also use the EITP if built.¹⁰ The proposed total output from ISEGS and Desert Stateline (if built) combined would be $370 \text{ MW} + 300 \text{ MW} = 670 \text{ MW}$. Firm transmission rights for the 670 MW of capacity on the LADWP McCullough-Victorville transmission line would cost: $\$46,680 \text{ per MW} \times 670 \text{ MW} = \$31.3 \text{ million per year}$. The annual transmission wheeling charge of \$31.3 million per year that would be paid to LADWP to move the output of 370 MW ISEGS and 300 MW Desert Stateline to the SCE system is also far less than the \$55.6 million per year that California ratepayers would bear for 40 years for the EITP if approved. Because there are less costly transmission alternatives for the renewable energy that may be generated under the approved PPAs, the EITP is unnecessary and the costs to ratepayers and impacts of the proposed project to the environment are wholly unjustified.

As the PD notes, SCE did not provide current data on its compliance with the RPS and the EITP as proposed would not be limited exclusively to renewable energy generation but might

⁷ PD at p. 24.

⁸ E-mail communication from A. Olson, Energy & Environmental Economics, Inc., to B. Powers, Powers Engineering, January 5, 2010. RPS Calculator annualization factor for transmission line with 40-year depreciation life is 12.46 percent. (Attached hereto as Exhibit 2.)

⁹ Desert Stateline which is the only other renewable energy project in the affected area with an approved PPA, has not yet been formally proposed in a CEQA or NEPA document, much less approved. Reliance on that project to support the need for the EITP is speculative at this time.

¹⁰ PD at p. 18.

also carry fossil fuel based generation.¹¹ As such, the asserted “need” for the line to support additional renewable energy generation in the Ivanpah area (which the Center has shown would have significant impacts to biological resources that could be avoided by alternative renewable energy generation) is illusory and unjustified.

The Center need not repeat other arguments made in briefing that support the conclusions of the PD. It will suffice to say that the findings in the PD and the conclusions of law provide the only rational result in this matter—denial of the application.

Proposed Clarifications and Additions to the Proposed Findings of Fact in the ALJ’s Proposed Decision

The Center offers these proposed clarifications and additions to the proposed the findings of fact in the PD. [additions in bold]

Proposed Clarifications to the Findings of Fact

4. The potential **renewable** generation identified by RETI is too theoretical to justify the construction of a line prepared to transmit 1,400 MW especially when no evidence exists that, at some point in the future, fossil-fuel generation will **not** interconnect to the available capacity **rather than renewable energy**.

12. In balancing the environmental costs and benefits, we find the Center for Biological Diversity argument convincing that, while renewable power **generation** in the Ivanpah Dry Lake Area offers environmental benefits **in reducing GHG emissions**, renewable power opportunities exist in **other** areas that do not negatively impact **threatened or endangered species and occupied habitat**.

Proposed Additional Finding of Fact

XX. Information provided in this matter did not adequately account for anticipated increases in energy efficiency and decreases in solar energy costs associated with providing significant increases in the amount of local area renewable generation.

¹¹ PD at p.5.

II. The Alternative Proposed Decision

The Center strongly disagrees with many of the findings of fact and conclusions of law in the ADP. In large part, the inaccuracies in the ADP stem from reliance on the inadequate CEQA analysis, particularly the fact that the CEQA analysis improperly segmented the environmental analysis and thereby failed to address the full impacts of the project as a whole and the “de facto” solar zone that would be created by the EITP.

The APD acknowledges that the EITP, if permitted, would be a magnet for additional renewable energy generation in the Ivanpah Dry Lake Area.¹² However, the APD is fundamentally flawed because while it relies on the potential for additional renewable generation in the Ivanpah area of up to 964 MW in the “CASIO Generation Queue” (beyond the already approved PPAs¹³) to justify the alleged “need” for the line on the one hand,¹⁴ it recommends certification of the Final EIR/EIS that fails to address the significant environmental impacts of the build-out of those projects (or the Desert Sunlight project) on the environmental resources of the Ivanpah Dry Lake Area. Thus, assuming for the sake of argument alone that the EITP were necessary to facilitate achievement of the renewable power goals (which the PD found it was not and the Center does not concede), the Final EIR/EIS is not be adequate to support a decision to approve the proposed project as a whole when properly framed. The Center fully briefed many of the issues regarding CEQA compliance as related to the Draft EIR/EIS, including segmentation and growth inducing impacts, and will not repeat them here. The Center reserves the right to provide additional comments and information to the Commission on the Final EIR/EIS.

The Center does not offer any revisions to the proposed findings of fact and conclusions of law in the Alternative Proposed Decision because any finding granting the application is

¹² APD at p. 27-28.

¹³ The APD discusses these as “four projects with Commission approved PPAs”, ADP at p. 23, but they represent the same two projects discussed in the PD (ISEGS and Desert Sunlight) as three of the PPAs are for units of the ISEGS project.

¹⁴ APD at p. 30.

inconsistent with the evidence and law. The Center reserves the right to raise any legal and/or factual arguments regarding the sufficiency or accuracy of any finding of fact or conclusion of law presented in the alternative proposed decision.

CONCLUSION

The Center for Biological Diversity urges the Commission to adopt the Administrative Law Judge DeAngelis' Proposed Decision Denying A Certificate of Public Convenience and Necessity for the Eldorado-Ivanpah Transmission Project.

Dated: December 6, 2010

Respectfully submitted,

/s/ Lisa T. Belenky

Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
Direct: 415-632-5307
Fax: 415-436-9683
lbelenky@biologicaldiversity.org

Jonathan Evans, Staff Attorney
Center for Biological Diversity
351 California ST, Suite 600
San Francisco, CA. 94104
Phone: (415) 436-9682 x318
jevans@biologicaldiversity.org

*Attorneys for Intervenor Center for Biological
Diversity*

Exhibits:

Exhibit 1: LADWP OASIS - *Product Offerings and General Business Practices - Draft*, June 30, 2006. See LADWP OASIS website (p. 1) available at http://www.oatioasis.com/LDWP/LDWPdocs/02Products_Offerings_and_General_Business_Practices.pdf

Exhibit 2: E-mail communication from A. Olson, Energy & Environmental Economics, Inc., to B. Powers, Powers Engineering, January 5, 2010. RPS Calculator annualization factor for transmission line with 40-year depreciation life is 12.46 percent.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S COMMENTS ON PROPOSED DECISION OF ALJ DeANGELIS AND ALTERNATE PROPOSED DECISION OF COMMISSIONER PEEVEY on all parties identified on the attached service list(s) by transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this 6th day of December, 2010, at San Francisco, California.

/s/ Lisa T. Belenky