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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for a Permit to Construct Electrical Facilities: Red Bluff Substation Project.	Application 10-11-012 (filed November 17, 2010)

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the category, scope, and schedule of the proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure. Written direct testimony shall be served on March 14, 2011, written rebuttal testimony shall be served on March 28, 2011, further written rebuttal testimony by Southern California Edison Company and First Solar, Inc. shall be served on April 4, 2011, and an evidentiary hearing will be held on April 11, 2011, in San Francisco, California, as set forth more fully in the ruling.

Background

By this application, Southern California Edison Company (SCE) seeks authority to build the Red Bluff project, which includes, among other components, a proposed new 500/220 kilovolt (kV) substation, two new parallel 500 kV transmission lines of about 2,500 to 3,500 feet each to loop the substation into the existing Devers-Palo Verde (DPV) 500 kV transmission line (DVPV1), and two parallel 500 kV transmission lines of about 2,500 to 3,500 feet each to loop the new substation into the proposed Devers-Colorado River 500 kV transmission line (DPV2) into the new substation with another two parallel lines of about 2,500 to 3,500 feet each.

SCE seeks a permit to construct (PTC) the project which, pursuant to General Order (GO) 131-D, only requires that the Commission review and approve the project in compliance with the California Environmental Quality Act (CEQA) and that the project comply with the Commission's electromagnetic field (EMF) guidelines.

The Division of Ratepayer Advocates (DRA) protested the application, in part on the basis that, pursuant to GO 131-D, the requisite authority is a Certificate of Public Convenience and Necessary (CPCN) which would additionally require the Commission to find that the project serves a present or future convenience or necessary pursuant to Pub. Util. Code § 1001 and to establish a cost cap for the project pursuant to Pub. Util. Code § 1005.5.

SCE, and First Solar, Inc. and its wholly-owned subsidiary Desert Sunlight Holdings, LLC (jointly, "First Solar"), filed replies opposing DRA's position that the requisite authority is a CPCN. Pursuant to the ruling of the Administrative Law Judge (ALJ) at the February 10, 2011, prehearing conference (PHC), the parties submitted concurrent opening and reply briefs on this issue on February 15, 2011 and February 22, 2011, respectively.

CEQA requires the lead agency (the Commission in this case) to conduct a review to identify environmental impacts of the project, and ways to avoid or reduce environmental damage, for consideration in the determination of whether to approve the project or a project alternative. CEQA precludes the lead agency from approving a proposed project or a project alternative unless it requires the project proponent to eliminate or substantially lessen all significant effects on the environment where feasible, and determines that any unavoidable remaining significant effects are acceptable due to overriding considerations.

Because the project also requires approval from the federal Bureau of Land Management (BLM), it is also subject to environmental review pursuant to the National Environmental Protection Act (NEPA). Under these circumstances, the state agency may use the environmental impact statement (EIS) that is prepared pursuant to NEPA if that document is prepared before state agency prepares its own environmental impact report (EIR) and if the EIS is supplemented to include address certain CEQA requirements that are not required pursuant to NEPA, notably, the separate discussion of mitigation measures and growth inducing impacts. (CEQA Guidelines § 15221.)

The BLM has issued its draft EIS for public review and comment. That document is hereby identified as Exhibit 1 and received into the evidentiary record of this proceeding. The Commission's Energy Division is reviewing the document and, if it determines that the final EIS satisfies CEQA, the final EIS will be marked for identification and received into the evidentiary record, and the Commission will review and consider the EIS pursuant to CEQA. Energy Division, SCE, and First Solar indicate that they expect the final EIS to issue in mid-March.

CEQA precludes the Commission from approving the proposed project or project alternative unless it requires the project proponent to eliminate or substantially lessen all significant effects on the environment where feasible (CEQA Guidelines § 15091(a)(3)), and determines that any unavoidable remaining significant effects are acceptable due to overriding considerations (CEQA Guidelines § 15093). CEQA requires the Commission to review and consider the environmental review document (the EIS in this case) prior to approving the project or a project alternative, and to certify that the document

reflects the Commission's independent judgment. (CEQA Guidelines §§ 15090 and 15074(a)-(b).)

In determining the scope of this proceeding, I have considered the pleadings, the transcript of the PHC conducted on February 10, 2011, the parties' briefs on the issue of the requisite permitting authority, and the requirements of CEQA.

Necessary Authority to Construct

SCE requires a PTC to construct the Red Bluff Substation project. A CPCN is only required for the construction of "major" electric transmission facilities which are designed to operate at 200 kV or more. (GO 131-D, Section III.A.) The new over-200 kV transmission lines at issue in this application consist of two sets of parallel 500 kV transmission lines of about 2,500 to 3,500 feet each to loop the substation into DVPV1 and DPV2, each within a corridor approximately 1,000 feet wide, and are not "major" facilities. Given their relatively limited length[1] and the context of the overall project, the transmission line segments are not major facilities that independently require a CPCN. However, construction of the new 500/220 kV substation requires a PTC pursuant to GO 131-D, Section III.B.

The ALJ invited briefs on the threshold issue of whether a CPCN is required for substations which are designed to operate at 200 kV or more. Although the language in GO 131-D and in Decision (D.) 94-06-014 which adopted it is ambiguous on this point, the procedural record of D.94-06-014

[1] GO 131-D does not define what constitute a "major" transmission line for purposes of Section III.A, although Section III.B loosely defines a "minor" power line *relocation* (as opposed to a new power line) as one that is up to 2000 feet long.

strongly suggests that CPCNs were not required for substations before the enactment of GO 131-D, and GO 131-D was intended to require only a PTC in order to construct a substation, and only if the substation has a high side voltage of over 50 kV. Thus, the fact that the proposed Red Bluff substation is designed to operate at 200 kV or more does not, in and of itself, lead to the requirement of a CPCN for this project.

SCE argues that the 500 kV transmission loop-in lines are exempt from requiring a CPCN because they are "minor relocations of existing facilities." (GO 131-D, Section III (A).) Such characterization of the construction of the new transmission loop-in lines is contrary to the plain meaning of the term "relocation[] of existing facilities."

Regardless, SCE argues that the Commission precedent supports exempting transmission line facilities associated with substations from requiring a CPCN on the basis of the "minor relocation of existing power line facilities" exemption, referring to D.08-12-031 (Application (A.) 07-02-022, El Casco System Project); D.04-07-027 (A.03-03-043, Viejo System Project); D.10-06-014 (A.08-01-029 (Devers-Mirage 115 kV Subtransmission System Split Project); and the "Disney Relocation." To the contrary, the El Casco and Devers-Mirage decisions are silent as to the applicable exemption, the Viejo decision explicitly states that that the "minor relocation" exemption does not apply (D.04-07-027, at 7), and the Disney relocation patently involved the relocation of an existing line and did not entail a substation. Furthermore, the Commission has required CPCNs for other transmission line projects that entailed new substations: D.88-01-062 granted a CPCN for the 5.3 mile Tesla-Newark 230 kV transmission line to connect to a new Vineyard substation (pursuant to GO 131-C), and D.06-09-022 granted a CPCN for the Silvergate Project which included a new

230 kV Silvergate substation that would be interconnected to an existing 230 kV transmission line.

SCE argues that requiring a CPCN for over-200 kV transmission loop-in lines would effectively negate GO 131-D's provision that the construction of substations of any voltage requires only a PTC, because over-200 kV substations necessarily require loop-in lines of similar voltage to connect to the electricity grid. Conversely, however, exempting over-200 kV transmission loop-in lines, regardless of length, from the CPCN requirement by virtue of associating a new substation with the project would effectively and unreasonably negate GO 131-D's provision that major over-200 kV transmission lines require a CPCN and, therefore, a finding that the project is needed.

The more reasonable reconciliation of GO 131-D's provisions exempting substations from CPCNs and requiring CPCNs for over-200 kV transmission lines is to require a CPCN for projects that involve the construction of "major" transmission lines, regardless of whether they also involve the construction of a substation. In this case, in view of the relatively short length of the new transmission line segments and in the context of the overall project, the transmission loop-in lines are not "major" facilities that require a CPCN. Construction of the Red Bluff Project will require a PTC.

Scope of Issues

The issues to be determined in this matter are:

1. What are the significant environmental impacts of the proposed project?
2. Are there potentially feasible mitigation measures that will eliminate or lessen the significant environmental impacts?
3. As between the proposed project and the project alternatives, which is environmentally superior?

4. Was the EIR (or EIS) completed in compliance with CEQA, did the Commission review and consider the EIR (or EIS) prior to approving the project or a project alternative, and does the EIR (or EIS) reflect the Commission's independent judgment? (CEQA Guideline § 15090.)
5. Are the mitigation measures or project alternatives infeasible? (CEQA Guideline 15091(a)(3).) This issue includes consideration of community values pursuant to Pub. Util. Code § 1002(a)(1).
6. To the extent that the proposed project and/or project alternatives result in significant and unavoidable impacts, are there overriding considerations that nevertheless merit Commission approval of the proposed project or project alternative? (CEQA Guideline § 15093.)
7. Is the proposed project and/or project alternative designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures? (General Order 131-D, Part X.)

Need for hearing and Further Evidence

Issues nos. 1, 2 and 3: These issues are properly addressed in the course of the CEQA/NEPA environmental review process and preparation of the EIS (or EIR, if one becomes necessary). Upon completion of the final EIS (or draft and final EIR, if one becomes necessary), Energy Division shall submit it to the ALJ for admission into the evidentiary record and review and consideration by the Commission. No evidentiary hearings or further evidence is needed on these issues.

Issue no. 4: The Commission will review the EIS to determine whether it was completed in compliance with CEQA, whether it reflects the Commission's independent judgment, and whether to approve the proposed project or project alternative. To the extent that parties or other persons challenge the conduct of the CEQA process and the completion of the EIS in compliance with it, such

challenge should be pursued within that environmental review process, *i.e.*, in comment on the draft EIS. No evidentiary hearings or further evidence is needed on this issue.

Issue nos. 5 and 6: The BLM issued the draft EIS on August 27, 2010. According to the draft EIS, the proposed project and all of the alternatives considered have significant unmitigatable environmental impacts on air resources, cultural resources, and visual resources. Although the draft EIS identifies the proposed project as BLM's "preferred alternative," Appendix C to the draft EIS presents this Commission's (draft) determination that the environmentally superior alternative under CEQA includes an alternative generation tie line connection (designated as "GT-A-2") and could include either the proposed solar farm layout (designated as layout "B") or an alternative to it (designated as layout "C").

Pursuant to CEQA Guideline § 15093, if the Commission approves a project which results in significant unmitigatable environmental impacts, it must state the overriding considerations for doing so, i.e., the specific economic, legal, social, technological, or other benefits of the project that outweigh the adverse environmental impacts. Pursuant to CEQA Guideline § 15091, the Commission may not approve a project *other* than the environmentally superior alternative unless the mitigation measures or the alternative is infeasible.

With regard to the issue of overriding considerations, SCE shall, and any other party may, provide written direct testimony setting forth the specific economic, legal, social, technological, or other benefits of the proposed project that may outweigh its unavoidable adverse environmental impacts.

With regard to the issue of infeasibility of mitigation measures or project alternatives, any party may present written direct testimony setting forth the

specific economic, social or other considerations that render the environmentally superior project or mitigation measures are infeasible pursuant to CEQA Guidelines § 15091. Such testimony may include the proposed and alternate projects' impacts on community values (see Pub. Util. Code § 1002(a)(1).)[2] Such testimony shall *not* relate to legal or technological feasibility to the extent that those issues are addressed in the draft EIS; challenges on these bases should be raised in should be pursued within that environmental review process.

Issue no. 7: SCE previously filed, as Appendix G to its application, its field management plan for complying with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures. Parties may present written testimony challenging SCE's compliance on this issue.

Schedule

- **Phase 1 – Issues nos. 1, 2, 3, and 4**

Issue nos. 1, 2, 3, and 4 do not require hearings or the taking of further evidence beyond the final environmental document which, at this time, is anticipated to be the BLM's final EIS.

First Solar indicates that it requires all of its construction permits by no later than mid-August 2011 in order to obtain federal financing for its project. First Solar further indicates that its other permitting agencies, who are "responsible agencies" and must consider the Commission's certified environmental document pursuant to CEQA (see CEQA Guidelines § 15050), require approximately four months to review the Commission's certified

[2] The considerations listed in Pub. Util. Code § 1002(a)(2) through (4) fall within the scope of the environmental review under CEQA and will be considered within that review process.

environmental document in order to be able to issue their permits by mid-August 2011.

In the interest of securing just and speedy determination of issue nos. 1, 2, 3, and 4, the proceeding schedule will be bifurcated to allow briefing and the issuance of an interim Commission decision resolving these issues as soon as possible after the issuance of the BLM's final EIS.

When the BLM's final EIS issues,[3] the Energy Division shall immediately submit two copies to the ALJ along with a statement indicating whether Energy Division endorses the document as complying with CEQA or whether it intends to conduct an independent environmental review, and the ALJ shall immediately admit the document into the record.

Within three days of BLM's issuance of the final EIS, any party that contests that the final EIS complies with CEQA shall file an opposition to reduction or waiver of public review and comment pursuant to Rule 14.6(b) or (c)(2). If no party files a timely opposition, the ALJ shall issue a proposed decision resolving issue nos. 1, 2, 3, and 4 without briefs, and public review and comment on the proposed decision shall be waived pursuant to Rule 14.6(c)(2). Otherwise, the issues may be briefed pursuant to the schedule for submitting briefs on the other issues in the proceeding.

This schedule may be modified by the presiding officer as required to promote the efficient and fair resolution of the application.

- **Phase II – Issue nos. 5, 6, and 7**

[3] All parties are responsible for ensuring that they are on the BLM's service list for service of the final EIS.

SCE shall, and First Solar may, present written direct testimony on issue no. 6 (overriding consideration). Concurrently, all parties may present written direct testimony on issue nos. 5 (infeasibility) and 7 (EMF compliance).

All parties may present written testimony in rebuttal to the written direct testimony.

SCE and/or First Solar may present written testimony in rebuttal to other parties' written rebuttal testimony on issue no. 6.

The following schedule is adopted here and may be modified by the presiding officer as required to promote the efficient and fair resolution of the application:

Issues 5, 6 and 7	
All parties' direct testimony	Served March 14, 2011
All parties' rebuttal testimony	Served March 28, 2011
SCE/First Solar rebuttal testimony to other parties' testimony	Served April 4, 2011
Cross-examination estimates (by email to ALJ and service list)	No later than April 7, 2011
Evidentiary hearing	April 11, 2011 9:00 a.m. Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, California
Concurrent opening briefs	May 2, 2011
Concurrent reply briefs	May 9, 2011
Proposed decision	No later than July 19, 2011
Commission decision	(anticipated) August 18, 2011

If parties stipulate to the admission of written testimony without cross-examination,[4] the presiding officer may remove the evidentiary hearing from calendar and set, after consultation with the parties, set a shorter time for concurrent opening and reply briefs. In any event, the proceeding should be resolved within 18 months of this scoping memo as provided by Pub. Util. Code § 1701.5.

Parties

Any person who is not yet a party to the proceeding and who wishes to participate in the proceeding by presenting or cross-examining evidence on issue nos. 5, 6 and/or 7, and/or by briefing any of the identified issues, should file a motion to become a party pursuant to Rule 1.4 of the Commission's Rules of Practice and Procedure.

Intervenor Compensation

Notices of intent to claim intervenor compensation are due by no later than March 14, 2011, pursuant to Rule 17.1(a).

Category of Proceeding/*Ex Parte* Requirements and Need for Hearing

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding and that hearings are needed. (Resolution ALJ 176-3264, November 19, 2010.) Accordingly, ex parte communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

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[4] Parties who do not provide a timely cross-examination estimate will be deemed to have waived cross-examination.

Assignment of Proceeding

Commissioner Michael Peevey is the assigned commissioner and ALJ Hallie Yacknin is the presiding officer to the proceeding.

Therefore, **IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. These proceedings are categorized as ratesetting.
4. Hearings are needed, as described above.
5. The presiding officer is Administrative Law Judge Hallie Yacknin.

Dated February 25, 2011, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a hard copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated February 25, 2011, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

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