

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 (U338E) for a Certificate of
Public Convenience and Necessity for the
West of Devers Upgrade Project and for an
Interim Decision Approving the Proposed
Transaction Between Southern California
Edison and Morongo Transmission LLC.

Application 13-10-020
(Filed October 25, 2013)

**APPLICATION OF THE OFFICE OF RATEPAYER ADVOCATES
FOR REHEARING OF DECISION 16-08-017**

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I. INTRODUCTION AND SUMMARY

The Office of Ratepayer Advocates (ORA) hereby applies for rehearing of Decision (D.) D.16-08-017¹, which grants Southern California Edison Company's (SCE) Application for Certificate of Public Convenience and Necessity (CPCN) for the West of Devers Upgrade Project (WODUP), pursuant to Public Utilities Code Section 1731 and Commission Rules of Practices and Procedure, Rule 16.1. D.16-08-017 was issued on August 29, 2016. Because the Decision approves a proposed transaction with Morongo Transmission LLC pursuant to Public Utilities Code Section 851, ORA, is filing this rehearing application within 10 days of the date of issuance.² As discussed in this rehearing application, D.16-08-017 failed to comply with the California Environmental Quality Act (CEQA) Guidelines and prior Commission decisions by approving the WODUP rather than the Phased Build Alternative. Specifically, the Decision:

1. Fails to comply with the substantial evidence standard required under CEQA by concluding that the Phased Build Alternative, the environmentally superior alternative, is infeasible;
2. Fails to include a Statement of Overriding Consideration, as required under Section 15093 of the California Code of Regulations;
3. Approves project costs that are both unreasonable, unsupported by the record and contrary to the cost effectiveness test adopted in D.07-03-012.

II. BACKGROUND

D.16-08-017 traces the development of the WODUP to SCE's 2005 CPCN application for an interstate transmission line to connect the Riverside and San Bernardino areas of SCE's service territory to the Palo Verde area of Arizona (Application 05-09-015). This project was known as Devers Palo Verde 2 (DPV2) and one of its three major components was an upgrade to SCE's transmission system, west of Devers substation — the WODUP. The Commission approved DPV2 but found the

¹ Also referred to herein as "the Decision."

² Public Utilities Code Section 1731(b)(1).

WODUP segment infeasible because the Morongo tribe would not extend a lease for the right-of-way on the part of the project on tribal land.³

After the Commission approved DPV2, the Arizona Commission denied the portion of the project through the State of Arizona. SCE petitioned the Commission for approval of the California portion alone, but “the Commission determined that the prior finding of economic need did not apply to the California-only project.”⁴ In other words, the economic justification that formed the basis for DPV2 ceased to exist when the project was reduced only to its California-only portion. Although the Commission directed SCE to obtain approval from the California Independent System Operator (CAISO) that the California-only project was necessary for the development of the State’s Renewable Portfolio Standard program, and CAISO declined to provide such approval. The Commission nevertheless found, on its own, that DPV2 would help the State achieve its RPS goals, and D.16-08-017 finds in the Commission’s approval of DPV2 a precursor to the rationale for WODUP. D.16-08-017 states: “However, the Commission [subsequently] determined that the California-only project was nevertheless needed because it would allow access to significant potential renewable resources, particularly proposed largescale solar projects in the Riverside East Competitive Renewable Energy Zones (CREZ)...”⁵

D.16-08-017 concludes the historical background of WODUP by noting that SCE filed the WODUP application after obtaining a new right-of-way agreement from the Morongo tribe that allows existing SCE facilities and the WODUP to cross the Morongo Reservation.⁶ The Decision reaches this conclusion without explaining how the WODUP became a viable transmission project again, once divorced from the economic

³ See, D.07-01-040.

⁴ D.16-08-017, p. 5.

⁵ Id., p. 6. It is important to note that the Commission did not do another CEQA assessment for the California-only portion of DPV2 but relied on the full DPV2 CEQA to go forward with the California only segment. Further, approving the California-only segment was partially done in the hope that the Arizona portion may become viable in the future. Thus, it is more identical to a phase build.

⁶ Id.

justification of DPV2 and in the time since the DPV2 CPCN application was filed in 2005. This background is critical to understanding why the WODUP is inferior to the Phased Build Alternative.

In 2010, CAISO again considered upgrades to the west of Devers substation as part of its Large Generator Interconnection Process (LGIP), which studies interconnection requests by large generation developers and determines what upgrades are necessary to connect them to the CAISO grid. Under the CAISO tariff in 2010, CAISO staff would study and approve generator interconnection requests, and the requesting developers would pay the upfront costs for any transmission upgrades that the CAISO found necessary to accomplish their requested connection⁷. Thus, SCE could not have brought the Commission a CPCN application for WODUP on the basis that it was necessary to connect renewable generators to the grid, because SCE had no obligation to develop such upgrades until the generation developers paid for it. In 2011, SCE filed an application at the Federal Energy Regulatory Commission (FERC) for an exception to the CAISO tariff to allow SCE to fund the upfront development cost for the WODUP rather than require the developers requesting connection to pay the upfront cost⁸. FERC approved SCE's request.

SCE then submitted the CPCN application and the agreement with the Morongo Tribe to the Commission for approval, and the Commission prepared the EIR. The EIR concluded that the project as proposed by SCE had significant unavoidable environmental impacts and recommended an environmentally superior alternative, the Phased Build Alternative. D.16-08-017 found and certified that the EIR was prepared, consistent with and, in accordance with CEQA law.²

⁷ The generators' upfront costs are refunded in the first few years after the upgrades become operational.

⁸ EL11-10 Petition of Southern California Edison for Declaratory Order grant rate incentives for Transmission Projects, including West of Devers.

² D.16-08-017, pp. 23-24, Conclusion of Law 2, p. 43.

III. THE DECISION'S CONCLUSION THAT THE PHASED BUILD ALTERNATIVE IS INFEASIBLE IS NOT SUPPORTED BY THE RECORD AND FAILS TO MEET CEQA'S SUBSTANTIAL EVIDENCE STANDARD

The California Supreme Court has held that an agency's finding that an environmentally superior project is infeasible, is a question of law and will be reversed if it is not supported by substantial evidence.¹⁰ The finding in D.16-08-017 that the Phased Build Alternative is infeasible fails this standard because it was contrary to law and was not supported by substantial evidence.

A. D.16-08-017 Fails To Proceed In The Manner Required By Law

In finding the Phased Build Alternative infeasible, D.16-08-017 did not proceed in the manner required by law because it did not follow the legal definition of "feasibility" under CEQA, and the finding was not supported by substantial evidence. As explained by the Supreme Court:

We review the Trustees' decision, as CEQA directs, under the abuse of discretion standard. (See Pub. Resources Code, § 21168.5.) For these purposes, "[a]buse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence."¹¹

D.16-08-017 found the Phased Build Alternative infeasible by concluding (incorrectly) that the WODUP would provide the State with more capacity that may be needed to support the State's increase of the RPS target from 33% by 2020 to 50% by 2030. This contradicts the substantial evidence in the EIR, certified by D.16-08-017, that the Phased Build Alternative could be increased to equal or exceed the capacity of the WODUP, but in phases and only if necessary.¹² The entire explanation in D.16-08-017 that the Phased Build Alternative is infeasible is as follows:

¹⁰ *City of Marina v. Board of Trustees* (2006) 39 Cal.4th 341, 46 Cal.Rptr.3d 365, citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 88, 118 Cal.Rptr. 34, 529 P.2d 66.

¹¹ *Id.*

¹² Final EIR, Appendix 5, p. 2.

Senate Bill 350 (2015) recently increased the RPS to 50% by 2030. Although it is speculative as to how much additional large-scale renewable energy generation will be needed to meet that goal, it is reasonable to expect such resources to seek to locate where transmission is known to be available. As goes the saying, “If you build it, they will come.” Furthermore, notwithstanding that the 50% RPS is an energy-based requirement, it is reasonable to expect renewable energy generation developers and lenders to prefer the security of assured deliverability.

With this in mind, we observe that the environmentally superior Phased Build Alternative would provide 3000 MW [megawatts] of capacity at an estimated cost of \$771 million, while the proposed project with the Tower Relocation and Iowa Street 66 kV [kilovolt] Alternatives would provide 4800 MW of capacity at an estimated cost of \$878 million. (Ex. 2, Appendix A.) Put another way, the proposed project with the Tower Relocation and Iowa Street 66 kV Underground Alternatives would provide 60 percent more capacity than the Phased Build Alternative at an incremental cost of 14 percent. We find it imprudent and infeasible as a matter of policy to fail to seize this opportunity to provide additional infrastructure that will potentially facilitate achievement of the 50% RPS.¹³

An environmentally superior project should be found feasible when it can achieve all the stated objectives that formed the basis of the application at the time it was submitted. Therefore, the Phased Build Alternative is feasible because it can accomplish the stated objectives that the WODUP was intended to achieve, which was to interconnect resources to meet the 33% RPS target by 2020. SCE filed WODUP in 2013, one year before Senate Bill [SB]-350 was introduced in the Legislature.¹⁴

¹³ Id., p. 32.

¹⁴ SB 350 requires that the amount of electricity generated and sold to retail customers per year from eligible renewable energy resources be increased to 50% by December 31, 2030 from 33% by December 2020.

In any case, the increase in the RPS targets is not a reason to find the Phased Build Alternative infeasible because the Phased Build Alternative can achieve SB-350 objection as well as WODUP can.

B. D.16-08-017 Misconstrues And Misapplies The Term “Feasible” As Used Under CEQA

CEQA defines feasible as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”¹⁵ In stating that the Phased Build Alternative is infeasible because “the proposed project ... would provide 60 percent more capacity than the Phased Build Alternative”, D.16-08-017 misconstrues and misapplies the concept of “feasibility” by focusing on what the inferior project is capable of accomplishing rather than what the superior project is “incapable of accomplishing” in “a reasonable period of time...”

This approach is disingenuous because it plays on the logical assumption that because the inferior project has more capacity, it is capable of accomplishing SB 350 objectives in a reasonable time, while the Phased Build Alternative is not. As the discussion below will show, this conclusion is wrong. The WODUP is no more capable of helping the State accomplish SB-350 objectives, than the Phased Build Alternative.

In *Uphold Our Heritage v. Town of Woodside*,¹⁶ the Court addressed a similar comparison between alternatives, one being more expensive than the other.

[T]he feasibility of the alternatives must be evaluated within the context of the proposed project. "The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." (*Citizens of Goleta Valley v. Board of Supervisors*, supra, 197 Cal.App.3d at p. 1181, 243 Cal.Rptr. 339.)

¹⁵ Pub. Resources Code § 21061.1; CEQA Guidelines § 15364.

¹⁶ 147 Cal.App.4th 587, 54 Cal.Rptr. 3d. 366, at 375.

In order for the Phased Build Alternative to be considered “infeasible”, the Commission failed to state what the Phased Build Alternative is incapable of accomplishing and the timeframe that would be necessary for accomplishing that objective. D.16-08-017 has no discussion of what it considers “a reasonable period of time” for finding the Phased Build Alternative infeasible, and only speculates as to what objective WODUP, rather than the Phased Build Alternative, could accomplish. Indeed, D.16-08-017 never actually states that the Phased Build Alternative is incapable of accomplishing the same objectives or reaching the same capacity which the WODUP was approved for, *in a reasonable time*, if it is found that SB 350 makes it necessary to increase the State’s transmission capacity. Rather D.16-08-017 focused on comparing the physical capacity of the WODUP and the *initial phase* of the Phased Build Alternative, in the hope that it may be presumed that the difference in size makes the WODUP capable of accomplishing more than the Phased Build Alternative. However, as the EIR makes very clear, it is not the difference in transmission capacity size that achieves the objective the project was intended to serve, but the availability of renewable resources to use its capacity. The evidence is unequivocal that these renewable resources do not exist at this time¹⁷, and D.16-08-017 has no discussion of when these resources would be available to take advantage of the additional capacity in the WODUP, if at all. As already noted, the Decision has no discussion of what constitutes a “reasonable period of time” that makes the WODUP feasible and the Phased Build Alternative, infeasible.

There is no evidence in this proceeding that the Phased Build Alternative is not capable of providing the amount of capacity necessary to help the State comply with SB 350¹⁸ in as successful a manner and as reasonable amount of time as WODUP would, given the RPS need for 50% by 2030 under the mandate. Even if the WODUP would

¹⁷ Final EIR, Appendix 5, pp. 2, 22-23.

¹⁸ Senate Bill 350, Clean Energy and Pollution Reduction Act of 2015.

provide 60% more capacity than the Phased Build Alternative¹⁹, the Decision’s contention that the Phased Build Alternative is infeasible is unsupported by the record.

1. The Phased Build Alternative Can Accomplish The Same Objectives Under SB 350 As the WODUP

Even assuming that D.16-08-017 properly relied on the difference in capacity to find the Phased Build Alternative infeasible (which it did not), there is no evidence in the record to support the contention that the Phased Build Alternative cannot achieve the same SB 350 policy objectives as the WODUP.

First, the notion that the State would need 60% more capacity than the Phased Build Alternative can provide, is clearly contradicted by D.16-08-017, which concedes “it is speculative as to how much additional large-scale renewable energy generation will be needed to meet that goal.”²⁰ If the Commission does not yet know how much additional large scale resources the State would need to meet SB 350 mandate, then the Commission cannot say that the “additional 60%” capacity the WODUP would provide over the Phased Build Alternative is necessary for meeting the mandate. In fact, ORA presented substantial evidence in the record to show that the State has no need for either the WODUP or the Phased Build Alternative because both would be surplus to the State’s need for new resources under SB 350²¹.

The WODUP is not necessary to “facilitate” or integrate renewable generation because such generation can connect and support RPS goals without new transmission investment. The generators output can be delivered for any hour where the unlikely extreme events modeled by the deliverability study do not exist²².

¹⁹ ORA disagrees with this assumption and includes in its discussion of the substantive evidence standard, an explanation why the Decision erroneously concludes that the WODUP provides 60% more capacity than the Phased Build Alternative.

²⁰ *Id.*

²¹ See A.13-10-020, ORA’s Opening Brief, stating that “The grid has no need for system generation capacity, and the resources being used as justification of WODUP are inferior sources of capacity (especially considering ELCC [Effective Load Carrying Capability]), p. 21.

²² *Id.*, p. 26.

Second, the speculation in D.16-08-017 that “it is reasonable to expect such [SB 350] resources to seek to locate where transmission is known to be available” does not make the Phased Build Alternative infeasible, as transmission interconnection is not necessary for renewable resources to comply with SB 350.

WODUP would be a colossal misuse of transmission investment resources. As ORA stated in its Rebuttal Testimony, there is increasing recognition among utility industry experts, regulators and policymakers that building transmission to help intermittent resources provide resource adequacy is not a cost-effective mechanism for renewable procurement. These industry experts are recognizing that it is inefficient to build expensive transmission projects to obtain deliverability status for renewable projects when there is no immediate or long-term need for such system capacity²³.

The California Energy Commission (CEC) acknowledged this approach in the 2013 Integrated Energy Policy Report (IEPR).

Requiring full deliverability for future [power purchase agreements] for renewable generators in the state may not be a cost-effective strategy and modification of deliverability requirements should be considered in light of the billions of dollars in transmission investment the requirement triggers²⁴.

Further, the acknowledgement in D.16-08-017 that “the 50% RPS is an energy-based requirement ...” also contradicts the contention that the Phased Build Alternative is infeasible because it provides 60% less capacity than the WODUP. Under an energy only requirement (EO), even assuming that transmission is necessary for meeting the State’s reliable energy needs, it does not matter that WODUP would provide 60% more capacity than the Phased Build Alternative.

Currently, the California market has excess system capacity, so the electric system does not need the generation capacity that the WODUP FCDS would provide. While there may be some value to the purchaser of power from a particular

²³ *Id.*, p. 25.

²⁴ California Energy Commission 2013 Integrated Energy Policy Report (CEC-100-2013-001-CMF), dated January 14, 2014, pp. 122-123. See also ORA’s Opening Brief, p. 26.

generator that is deemed to supply Net Qualifying Capacity (NQC), that value is expected to be small. As Dr. Wagle identified, the Commission's 2014 LTPP does not identify a need for additional system generation capacity before 2033 and there will almost certainly be other resources added for local capacity and flexible capacity need that will push the need out even further.²⁵

Stated simply, the Decision improperly relies on the proposition that the WODUP would provide 60% more capacity than the Phased Build Alternative as a basis for determining feasibility since the CAISO has only just started the first study to understand where and how new resources may be developed to achieve SB-350 mandate. Therefore, the Commission's reliance on SB 350 to justify approval of a project that would have significant unavoidable environmental impacts is surprising and illogical if the transmission planning process yet to identify the needed transmission to accommodate the 50% renewable target.

2. The Phased Build Alternative Could Deliver As Much Capacity As The WODUP Within A Reasonable Period Of Time

The claim in D.16-08-017 that the WODUP provides 60% more capacity to help meet SB 350 renewable compliance than the Phased Build Alternative is misleading. As the Decision itself clearly stated, under the Phased Build Alternative, the Commission would approve a modified version of the WODUP that would increase the capacity of the line to 3000 MW, but authorize SCE to request additional "phases" to be added as needed.²⁶ Therefore, if the State needs an additional 1,800MW or 60% more capacity than 3000 MW initial Phased Build Alternative capacity, why can't the additional capacity be developed in subsequent phases of the Phased Build Alternative?

The Final EIR describes the future capacity expansion phases under the Phased Build Alternative as follows:

²⁵ Id., citing Ex. 7. ORA's Prepared Testimony, p. 48.

²⁶ D.16-08-017, p. 22.

Allow for future capacity expansion of the existing corridor with several optional future phases. These phases would be implemented as generation projects become certain and capacity is clearly required. Because the Phased Build Alternative would accommodate projects now defined in the CAISO's 2024 Reliability Base Case, it may be 10 years or more before additional upgrades are needed. The configuration of future transmission expansion that may be required cannot now be predicted, and would depend on many factors, including type and location of future renewable generation, the type and location of future transmission upgrades by SCE or other parties, and the regulatory systems in place that define transmission capacity requirements (i.e., energy only versus full capacity deliverability)²⁷.

The additional capacity that SCE could add in subsequent phases, if needed, could easily exceed the 1800 MW difference between the Phased Build Alternative and the WODUP. There is nothing in the record to suggest that, if needed, SCE would be unable to add such additional capacity to the project by 2030, fifteen years from the date of the Final EIR or as needed. D.16-08-017 does not state any timeframe when such additional capacity might be needed for SB-350 compliance or when such addition would be too late. As the EIR noted, the CAISO's 2024 Reliability Base Case makes such an addition unnecessary and D.16-08-017 defended the EIR's conclusion in this regard.²⁸

Further, the record is unequivocal that the State would not need such additional capacity by 2019 when the WODUP is scheduled to come on line, as proposed by SCE. The Phased Build Alternative, i.e. the first phase thereof, would be constructed to come on line as quickly as the WODUP. In this respect, it is important to note that the WODUP is scheduled to come on line in 2019, but the PD seeks to use a year 2030 target and unknown resources both to justify the project and find the Phased Build Alternative infeasible. What SCE and large generation developers do with the WODUP in 2019

²⁷ Final EIR, Appendix 5, p. 2.

²⁸ D.16-08-017, p. 25.

would have little bearing on how the State and generators meets the SB-350 mandate by 2030.

IV. THE DECISION FAILS TO MEET THE SUBSTANTIAL EVIDENCE STANDARD UNDER CEQA IN FINDING OVERRIDING CONSIDERATIONS FOR BUILDING THE WODUP RATHER THAN THE PHASED BUILD ALTERNATIVE

D.16-08-017 states the following benefits as overriding considerations for building the WODUP despite its significant unavoidable environmental impacts:

[A] allow SCE to comply with its generator interconnection requests, [B] facilitate deliverability for renewable energy resources identified in the Commission’s renewable portfolios in furtherance of California’s 33% RPS, and [C] provide infrastructure that will potentially facilitate achievement of California’s new 50% RPS.²⁹

There is no evidence in the record to support the contention that the Phased Build Alternative does not provide the same benefits. In considering whether there is evidence in the record to find overriding considerations, it is important to note that at issue is not whether the WODUP provides these benefits, but rather whether it does so any more than the Phased Build Alternative or, stated differently, whether the Phased Build Alternative provides the same benefits. The evidentiary standard is the substantial evidence test,³⁰ but the Decision does not identify a single instance where either the initial phase or subsequent phases of the Phased Build Alternative would not provide the same benefits as the WODUP. In this proceeding, there is no evidence at all that the WODUP provides these benefits over the Phased Build Alternative.³¹

²⁹ *Id.*, pp. 33-34.

³⁰ *City of Marina v. Board of Trustees*, supra, 39 Cal.4th 341.

³¹ D.16-08-017, stating: “As discussed at length in Part 4, above, ...” Part 4 of the Decision discusses Project Need in two parts: A. Need Based On Generation Interconnection Requests; B. Need Based On State Policy Goals.

Further, the Decision does not include a statement of overriding considerations as CEQA requires when a lead agency finds that there are overriding considerations to support building a project with significant unavoidable adverse environmental effects.³²

A. There Is No Substantial Evidence In The Record That Generation Interconnection Requests Provide Overriding Benefit Considerations For Approving The WOD Upgrade

D.16-08-017 claims that one of the overriding considerations that supports approving the WODUP over the Phased Build Alternative is the need to “allow SCE to comply with its generator interconnection requests.” As a preliminary matter, SCE has no obligation under the CAISO tariff to build new transmission infrastructure to meet generation interconnection requests. Although SCE sought FERC authorization to fund the upfront cost of building the WODUP, there is no evidence in the record that FERC required SCE to build the WODUP to meet any capacity need requested by developers, regardless of the significant unavoidable environmental impact that such capacity might have in the State of California. There is also no evidence on the record that the Phased Build would not allow SCE to comply with the generators interconnection request.

California Code of Regulations, Section 15091(a)(3) provides that the lead agency must specify the economic, legal, social, technological, or other considerations that form the basis for the benefit it relies on as overriding consideration. This requirement is important because Courts have stated that the kind of evidence that would suffice to support overriding consideration depends on the category of the particular benefit. For instance, if the lead agency relies on an economic benefit, the record must include an economic analysis.³³ Although the claim that potential future interconnection requests place an obligation on SCE to build WODUP to the maximum possible capacity appears

³² CEQA Guidelines, Section 15093.

³³ *Uphold Our Heritage v. Town of Woodside*, *supra*, 147 Cal.App.4th 587, 54 Cal.Rptr. 3d. 366, at 375.

to be a policy consideration, it could also arguably be considered a legal and economic consideration. It fails on all categories.

If the claimed benefit of connecting generation interconnection requests is a legal consideration, the Decision must identify the legal requirement that places large generator interconnection process (LGIP) requests above CEQA requirements for purposes of selecting between project alternatives. It must do so bearing in mind that CEQA was intended to be interpreted in a manner that provides the fullest possible protection to the environment within the reasonable scope of the statutory language.³⁴ D.16-08-017 is bereft of such legal analysis. It does not identify any statute or Commission decision that imposes such obligation on SCE. Indeed, the only Commission decision on point unequivocally states that the Commission will not rely on interconnection requests to support the development of new transmission infrastructure.

We do not approve construction of transmission lines based on evidence of generator interconnection requests, which have most recently elected a certain amount of speculation, rather than firm commitments to development.³⁵

As already noted, the notion that SCE has to comply with speculative generation interconnection requests cannot suffice as an economic benefit of overriding consideration because there is no economic analysis in the decision.

B. There Is No Substantial Evidence In The Record That Deliverability Of Renewable Resources In Furtherance Of California's 33% RPS Portfolio Provides Overriding Considerations For Approving The WODUP

The only evidence D.16-08-017 presents to support the claim that deliverability of renewables in furtherance of California's 33% RPS portfolio constitutes an overriding benefit that supports building the WODUP is that the proposed project has been approved by CAISO's LGIP and its successor-process, the Transmission Planning Process (TPP).

³⁴ *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247.

³⁵ Decision Modifying Decision 07-01-040 Granting Certificate of Public Convenience and Necessity, D.09-11-007, p. 12.

Every renewable generation portfolio provided to the CAISO by the Commission has selected renewable projects in the Riverside East and Imperial Valley areas and triggered the need for the proposed project.³⁶

However, the EIR is unequivocal in stating that the Phased Build Alternative provides all the same policy benefits of providing deliverability of renewable resources in furtherance of California's 33% RPS portfolio as studied and approved by CAISO.

Basic Project Objective 1, Increase system deliverability:

The Phased Build Alternative would allow SCE to fully deliver about 3,000 MW of the output from new generation projects, so it fully achieves Basic Project Objective 1 by providing an increase in deliverability that is 1,400 MW over the present capability of 1,600 MW and at least 2,200 MW over the capability of the WOD 220 kV corridor before the Proposed Project was planned, which was limited to approximately 550 MW. Based on power flow modeling completed for this alternative (see results in Table A3 in Attachment 2 to this appendix), this alternative satisfies the CAISO's 2024 Reliability Base Case, which includes specific generation projects that the CAISO has determined to be most likely to be constructed plus a scenario of 1,400 MW from IID to the CAISO.

Section A.2.1.4.1 of this EIR describes the generation projects whose capacity is expected to be carried by the Proposed Project, and explains how these projects are categorized for the EIR. Table Ap. 5-3 shows the projects accommodated and likely to be made deliverable by the Phased Build Alternative.³⁷

ORA made these same arguments in its brief, but primarily used them to argue that the neither the WODUP nor the Phased Build Alternative should be approved. As between the WODUP and the Phased Build Alternative, D.16-08-017 provides no analysis to refute the evidence in the EIR, and the Decision certified and approved the EIR as supported by substantial evidence.

³⁶ D.16-08-017, p. citing Ex. 11, p. 6.

³⁷ Final EIR.

C. There Is No Substantial Evidence In The Record That Infrastructure Provided By The WODUP Will Potentially Facilitate Achievement Of California’s New 50% RPS In A Manner That The Phased Build Alternative Cannot

The record is unequivocal that SB 350 will not need more capacity from the WODUP over the Phased Build Alternative, some of which have already been stated above. For instance, large transmission interconnection is no longer an effective tool for RPS compliance; if the WODUP is not constructed and it is not yet clear how many more resources would need to be added over contracted resources to achieve SB 350, resources from other parts of the state would compensate for any shortfalls from the Riverside East area. As ORA noted in its Opening Brief, CAISO has only just started the first study on how best SB 350 compliance can be achieved.

The most compelling evidence yet that reduced capacity of the initial phase of the Phased Build Alternative still allows it to achieve the same benefits as the WODUP in facilitating the State’s 50% RPS goal is in the Final EIR.

[T]he [Phased Build] alternative is designed to meet the same project objectives as the Project described in the ROW Agreement and DCA and the tower structures would be exactly the same as SCE’s Proposed Project on Reservation lands...³⁸

Further, a footnote in Appendix 5 of the EIR shows that the EIR considered the effect a smaller alternative to the WODUP would have on RPS integration but found none:

2. The EIR/EIS preparers asked CPUC RPS Staff to test the “RPS Calculator” to show how future renewable resource portfolios might change with a smaller upgrade to WOD than SCE has proposed. With RPS Calculator V.5: there would be no additional transmission capacity needed elsewhere in the state to make up for generation decreased in Riverside East; and renewable generation in Westlands or other zones (including San Diego South and Solano) would replace the generation decreased in Riverside East, using existing

³⁸ Final EIR, Appendix 5, p. 5-53, discussing Legal and Regulatory Infeasibility.

transmission capacity available in the other zones. With RPS Calculator V.6.1: there would be no impact on the generation selected in Riverside East or elsewhere.³⁹

Ordinarily, an agency could choose to find a project infeasible for policy reasons because the substantial evidence standard gives a lot of deference to factual and environmental considerations in the EIR.⁴⁰ However, the factual and environmental considerations in the EIR do not allow adoption of the policy reasons stated in D.16-08-017 for finding the Phased Build Alternative infeasible. Therefore, D.16-08-017 conclusion that the Phased Build Alternative is infeasible is not entitled to any deference under the substantial evidence test.⁴¹

D.16-08-017 concedes that the EIR is supported by substantial evidence:

We have reviewed and considered the information contained in the EIR, as well as parties' challenges to the adequacy of the EIR as discussed below. *We find that substantial evidence supports the EIR's findings, and we certify that the EIR was completed in compliance with CEQA*, that we have reviewed and considered the information contained in it, and that, with the revisions to the mitigation measures reflected in the Mitigation Monitoring, Compliance, and Reporting Plan attached to this order, it reflects our independent judgment.⁴² [Emphasis added.]

D.16-08-017 does not provide any analysis of what resources are currently under contract and available to come online in the various parts of the State for purposes of SB-350 or what resources can be imported from outside the State. Therefore, it should not speculate about how much capacity the approved project would need to contribute to SB-350 over the capacity that the superior project would provide. Speculation is not evidence.

³⁹ *Id.*, p.5-52, footnote 2.

⁴⁰ See *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal. 3rd 376, 393, 409, 253 Cal. Rptr. 426.

⁴¹ *City of Marina v. Board of Trustees*, supra, 39 Cal.4th 341.

⁴² D.16-08-017, pp. 23-24.

D. The Decision Fails To Comply With Section 15093 Of The California Code Of Regulations

California Code of Regulations Section 15093 requires the Commission to prepare a statement of overriding considerations explaining the benefits that support approving WODUP despite its significant unavoidable adverse environmental effects. Specifically, the relevant sections provide as follows:

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

D.16-08-017 did not include a Statement of Overriding Considerations, and therefore fails this requirement. As the Regulation provides, findings in the Decision is not a substitute for the required statement. The requirement that a Statement of Overriding Considerations be attached to the decision is not a trivial one. CEQA's purpose is not just to generate paper but to compel governmental agencies to make decisions with environmental consequences in mind.⁴³

V. NEITHER THE PROJECT COST NOR THE NEED FOR THE PROJECT IS SUPPORTED BY THE RECORD

As ORA has consistently argued, WODUP is not needed for either reliability or to meet the State's RPS goals. Most California investor owned utilities are fully contracted to meet their 33% RPS requirement without the WODUP even being built. Thus, D.16-08-017 has focused its discussion of need on SB 350 and requests by large

⁴³ *Bozung v. LAFCO* (1975) 13 Cal.3d 263.

generators for full capacity deliverability (FCD) of their potential resources, which allocates more capacity as reserves rather than actually conveying energy, therefore giving the impression that more transmission will be needed.

D.16-08-017 states that the failure to provide such FCD status would lead to the failure of these resources to support RPS goals⁴⁴. However, this statement is misleading as it gives the incorrect impression that the Commission-approved PPAs seeking FCDS will fail in the absence of the WODUP. There is no evidence that such is the case.

Further, the notion that “generation projects [are] under contract for FCDS status” erroneously suggested that having “FCDS status” means a particular resource is under contract to come online, when having an FCDs does not even mean the resource will be built. FCDS status is only a term describing the type of interconnection a generator may request and be reflected in its interconnection agreement. Having such a status in an interconnection agreement does not equate to having a buyer for the generator power output under a PPA.

Regarding the 50% RPS target, the record is very clear that the portfolios and resultant transmission planning for transmission projects to support it have not been done.⁴⁵ Therefore any reliance on the 50% RPS to justify the WODUP is highly speculative as the Decision itself admits, and such reliance is not supported by the record. The Commission is required to determine whether the materials, equipment, labor and scope of activities necessary to construct WODUP are prudent and reasonable, as well as whether “the cost of the line is appropriately balanced against the certainty of the lines contribution to economically rational RPS compliance.”⁴⁶

The cost of the WODUP has changed considerably from its initial estimate at \$384 million when it was studied by CAISO to \$650 million when SCE sought an exception from CAISO tariffs at FERC in 2011, and its current estimate of \$1.01 billion in

⁴⁴ D.16-08-017, pp. 15-16.

⁴⁵ Ex. 11 [CAISO’s Millar] p. 4:20-24.

⁴⁶ D.07-03-012.

D.16-08-017. There is no evidence in the record to support these cost changes, much less show why they are reasonable. The situation is further complicated by the fact that SCE anticipates an investment of about \$400 million by the Morongo tribe which may or may not occur.

How does a transmission project that was supposedly cost effective and reasonable at \$384 million when it was studied, remain reasonable and cost effective at \$1.01 billion six years to seven years after the initial study, when none of the underlying resource justifications for the project has improved?

D.16-08-017 dismisses the concern, based on SCE's assertion that the issue of cost reasonableness is determined at the FERC where the Commission regularly participates.

ORA challenges the reasonableness of the cost based on its assertion that the West of Devers Upgrade Project is not needed and on its assertion that the cost of the proposed project is excessive relative to other transmission projects, as discussed in Part 4, above. These challenges go to the issue of need and not to a determination of a reasonable cost of constructing the approved project.

SCE notes that the reasonableness of costs and the associated ratemaking and revenue requirement associated with the project will be under FERC jurisdiction, where the Commission routinely participates as an intervenor.⁴⁷

While it is true that the FERC ultimately resolves the cost of transmission projects, the Commission does not abnegate its obligation for reasonableness determination of such costs in determining whether to approve the project in the first place. Thus, the Commission devised a three prong test in D.07-03-012 to assess the reasonableness of building transmission infrastructure to support renewable energy resources. Such a test is important for renewables resources transmission projects because they are not usually subject to traditional cost assessments that are typically done for reliability and economically driven transmission projects. Absent such an assessment, there is no way

⁴⁷ D.16-08-017, p. 36.

for the Commission to examine the prudence and continuing escalation of cost for this or similar projects.

Therefore, ORA also seeks rehearing since the Commission has failed to determine whether this project meets the three-prong-test in D.07-03-012, one of which specifically asks whether “the cost of the line is appropriately balanced against the certainty of the lines contribution to economically rational RPS compliance.”

VI. CONCLUSION

Because the Commission has abused its discretion in approving the WODUP in violation of the requirements of CEQA and without regard to the cost effectiveness tests of D.07-03-012, the Commission should grant rehearing and issue a decision approving the environmentally superior Phased Build Alternative.

Respectfully submitted,

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