Decision 10-12-052 December 16, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Southern California Edison Company (U 338 E) for a Certificate of Public Convenience and Necessity for the Eldorado-Ivanpah Transmission Project.	Application 09-05-027 (Filed May 28, 2009)

DECISION GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE ELDORADO-IVANPAH TRANSMISSION PROJECT

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DECISION GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE ELDORADO-IVANPAH TRANSMISSION PROJECT

1. Summary

This decision grants Southern California Edison Company (SCE) a certificate of public convenience and necessity (CPCN) for the Eldorado-Ivanpah Transmission Project, using the Environmentally Preferred Route, as identified in the Final Environmental Impact Report. This route corresponds to the project as proposed by the Applicant.[1] The Eldorado-Ivanpah Transmission Project is to be located in San Bernardino County, California and Clark County, Nevada. The Commission's permitting review for a CPCN for a transmission project by an investor owned utility involves two concurrent processes: (1) a Commission proceeding assessing the project's public interest and cost pursuant to Public Utilities Code § 1001 et seq. and (2) an environmental review pursuant to California Environmental Quality Act (CEQA), Public Resources Code §§ 21000, et seq.

As the Lead Agency in the State of California for the environmental review of the project, the Commission finds the Joint Environmental Impact Report/Environmental Impact Statement prepared by the Commission and the United States Bureau of Land Management for this project meets the requirements of the CEQA, Public Resources Code §§ 21000, et seq. The Commission also finds overriding considerations that merit construction of the project notwithstanding its significant and unavoidable environmental impacts, as detailed in the environmental report. Accordingly, the Commission certifies

[1] Joint FEIR/EIS at 4-7.

the final environmental report in accordance with CEQA Guidelines § 15090. A copy of the final document can be found on the Commission's website at http://www.cpuc.ca.gov/Environment/info/ene/ivanpah/Ivanpah.htm.

We also find that the Applicant has met its burden of proof and that the project is "necessary to facilitate" achievement of the renewable power goals of § 399.11 *et seq.* pursuant to Public Utilities Code § 399.2.5. Consistent with this, we find that the project is eligible for back-stop cost recovery. The role this line will play in achieving the state's 20 percent renewable mandate and our greenhouse gas mitigation goals under Assembly Bill 32[2] serve as the basis for a finding of overriding considerations, recognizing that the Final Joint Environmental Impact Report/Environmental Impact Study (EIR/EIS) determined that the project will have several significant and non-mitigable impacts.[3]

SCE's estimated costs for the proposed construction are approximately $306 million plus contingency and other related expenses. We find that the cost of the line, subject to a reduction in the proposed contingency amount is reasonable. A cost cap is adopted in accordance with Pub. Util. Code § 1005.5 in the amount of $306.338 million plus a 15% contingency.

In addition, pursuant to General Order 131-D and Decision 06-01-042, the Commission certifies that this project is in compliance with the Commission's policies governing the mitigation of electromagnetic field effects using low-cost and no-cost measures.

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[2] Stats. 2006, ch. 488.

[3] Joint FEIR/EIS at 6-3.

Accordingly, the Commission approves the Applicant's request for a certificate of public convenience and necessity.

This proceeding is closed.

2. Background

Southern California Edison Company (SCE or Applicant) is an investor-owned public utility operating an interconnected and integrated electric utility system that generates, transmits, and distributes electric energy in portions of Central and Southern California.[4] In addition to its California properties, SCE separately or jointly owns facilities in Nevada, Arizona, and New Mexico that produce power and energy for use in California.

2.1. The Eldorado-Ivanpah Transmission Project

SCE is proposing to construct the Eldorado-Ivanpah Transmission Project in order to access renewable generation near the southern California-Nevada border.[5] The Eldorado-Ivanpah Transmission Project would primarily consist of (1) the construction of a new 220/115 kV substation, the Ivanpah Substation, in San Bernardino County to serve as a collector hub for solar generation projects identified in the Eastern Mojave Desert Area, know as the Ivanpah Dry Lake

[4] SCE's service territory is located in 15 counties in Central and Southern California, consisting of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Mono, Orange, Riverside, San Bernardino, Santa Barbara, Tulare, Tuolumne, and Ventura Counties, and includes approximately 179 incorporated communities and outlying rural territories. SCE also supplies electricity to certain customers for resale under tariffs filed with the Federal Energy Regulatory Commission.

[5] SCE Application at 1.

Area;[6] (2) removal of 35 miles of an existing 115 kilovolt (kV) transmission line between the new Ivanpah Substation and the existing Eldorado Substation, located near Boulder City, Nevada, and the construction of a double-circuit 220 kV line (28 miles in Nevada and seven miles in California) within expanded rights-of-way, and (3) construction of two separate telecommunication routes (Path 1 and Path 2) to support redundant telecommunications for a Special Protection System (SPS).[7]

The project is intended to provide the electrical facilities necessary to integrate up to 1,400 megawatts (MW) of new renewable generation from the Ivanpah Dry Lake Area[8] and will be configured to allow for future network upgrades to further increase renewable resource integration beyond 1,400 MW.[9] SCE states this project is needed to integrate renewable generation so that it and other utilities meet their goal of 20% by 2010 and 33% by 2020.

Land uses within the area range from open space and conservation/ preserve areas to commercial, public, private, and recreation; utility/energy uses; industrial and mining uses; transportation; and limited residential uses.[10] Lands in the area with special designations include the Mojave National Preserve,

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[6] The phrase "Ivanpah Dry Lake Area" is used repeatedly throughout documents filed by Applicant and within the Joint EIR/EIS. The exact definition of this area is not specified. August 9, 2010 RT 37:16-28; 41:2-7; 54:16-20.

[7] SCE Application at 1-2.

[8] SCE Opening Brief at 8.

[9] SCE PEA at 1.4.

[10] Joint Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) at 3.9-1.

wilderness areas (Wee Thump, Joshua Tree, and South McCullough), and Areas of Critical Environmental Concern (ACECs).[11] The project would be located on lands primarily managed by the U.S. Department of the Interior, Bureau of Land Management (BLM).

2.2. Procedural History

This proceeding commenced on May 28, 2009 when SCE filed Application (A.) 09-05-027, a request for a certificate of public convenience and necessity (CPCN) to construct the Eldorado-Ivanpah Transmission Project.[12] The Commission's permitting review for a transmission CPCN involves two concurrent processes: (1) a Commission proceeding assessing the project's public interest and cost pursuant to Public Utilities Code 1001 et seq. and (2) an environmental review pursuant to California Environmental Quality Act (CEQA), Public Resources Code §§ 21000, et seq. Consistent with CEQA, SCE's Application included a Proponent's Environmental Assessment (PEA), the document presenting the Applicant's environmental review of the project.

On June 22, 2009, the assigned Administrative Law Judge (ALJ) issued a ruling directing SCE to amend its Application to include, among other things, the requisite cost information. This ruling was made pursuant to Rule 3.1 of the Commission's Rules of Practice and Procedure and its General Order (GO) 131-D. This ruling also delayed the start of the protest period until the Application was amended and re-served. SCE filed its amendment on

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[11] *Ibid.*

[12] The docket card for A.09-05-027, including documents filed with the Commission, is available at www.cpuc.ca.gov.

September 22, 2009 and its Application was subsequently noticed in the Commission's Daily Calendar on September 25, 2009 (referred to herein as "Application").

The Commission's Division of Ratepayer Advocates (DRA) filed a timely protest to the Application. Brightsource Energy, Inc. (Brightsource), the parent corporation of several renewable generation developers in the Ivanpah Dry Lake Area, filed a timely response in support of SCE's Application. On December 2, 2009, the assigned ALJ held a prehearing conference at the Commission in San Francisco, California. Several months later, on July 14, 2009, the assigned Commissioner issued a scoping memo, as required by statute,[13] which set forth the following issues to be addressed in the proceeding:

> 1. Does the project serve a present or future convenience and necessity, and meet the requirements set forth in Pub. Util. Code § 399.2.5 and § 1001 et seq.? If so, which project or alternative most effectively or feasibly meets that need?
>
> 2. What are the significant environmental impacts of the proposed project?
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> 3. Are there potentially feasible mitigation measures that will eliminate or lessen the significant environmental impacts?
>
> 4. As between the proposed project and the project alternatives, which is environmentally superior?
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> 5. Are the mitigation measures or project alternatives infeasible? (CEQA Guideline 15091(a)(3).) This issue includes consideration of

[13] *Joint Assigned Commissioner and Administrative Law Judge's Scoping Memo Ruling* (Scoping Memo), December 21, 2009.

the proposed and alternative projects' impact on 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 pursuant to CEQA Guidelines § 15093 that merit approval of the proposed project or a project alternative?

7. Were the environmental documents completed in compliance with CEQA, did the Commission review and consider the FEIR prior to approving the project or a project alternative and does the FEIR reflect the Commission's independent judgment? (CEQA Guideline § 15090.)

8. 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? (GO 131-D, Part X.)

9. If a certificate is granted, what is the maximum cost of the approved project? (Pub. Util. Code § 1005.5(a).)

10. Is coordination required with the Nevada Public Utilities Commission? If so, what coordination must take place?

Consistent with the determination in the Scoping Memo, evidentiary hearings were held for several days in August 2010. A few weeks prior to those hearings, Center for Biological Diversity filed a *Motion to Reconsider and Amend Joint assigned Commissioner and Administrative Law Judge's Scoping Memo Ruling* (dated July 16, 2010). SCE and Brightsource filed timely responses in opposition to the Center for Biological Diversity's motion. A reply was then filed by Center for Biological Diversity. The motion sought permission to present testimony at

hearings on environmental issues that "have not been adequately addressed in the Draft Environmental Impact Report."[14] In support of its request, the Center for Biological Diversity cited to *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1201. In opposing the request by the Center for Biological Diversity, SCE relied on the language of the Scoping Memo.[15] "[Environmental] issues are within the scope of the CEQA review and should be pursued within that environmental review process. No evidentiary hearings or further evidence is needed on these issues."[16] Both SCE and Brightsource offered supplementary testimony in response to the testimony attached to the motion by Center for Biological Diversity. The assigned ALJ, after hearing arguments on the merits of the motion and the responses in opposition, denied the Center for Biological Diversity's motion.[17] We affirm this ALJ's ruling and all other rulings made in this proceeding.[18]

SCE's filing of its CPCN Application also started the required environmental review of the Applicant's request. The environmental review takes place under CEQA. The CEQA review is a concurrent and mostly separate

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[14] Center for Biological Diversity July 16, 2010 motion at 1.

[15] SCE July 21, 2010 response to motion at 4.

[16] SCE July 21, 2010 response to motion at 4.

[17] August 9, 2010 RT 10:5-13.

[18] In this ruling, the assigned ALJ did not enter the testimony offered by Center for Biological Diversity, Brightsource, and SCE into the evidentiary record but preserved it in the file for purposes of potential appeal. This testimony was not subject to cross-examination. Some parties cite these materials in their formal filings, such as opening and reply briefs, in this proceeding. All references to this testimony in opening or reply briefs will be given no evidentiary weight.

analysis from Public Utilities Code § 1001 et seq. In this instance and because the proposed construction would take place on federal lands, the Commission agreed to conduct its environmental review jointly with the federal lead agency, BLM, under National Environmental Policy Act of 1969, as amended (NEPA).[19]

The joint NEPA and CEQA scoping process[20] commenced, respectively, on July 27, 2009 with BLM's publication in the Federal Register of a Notice of Intent to prepare an Environmental Impact Statement (EIS) and on July 24, 2009 with the Commission's issuance of a Notice of Preparation of an Environmental Impact Report (EIR).[21]

BLM and the Commission, together with their environmental consultants,[22] prepared for and jointly held two scoping meetings, on July 28, 2009 in Nipton, California, which is located along the proposed route and on the boundary of the Mohave National Preserve,[23] and on July 29, 2009 in Las Vegas, Nevada.[24] The scoping process, including the related meetings, is intended to ensure that significant public issues, alternatives, and impacts are addressed in environmental documents. The scoping process also determines

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[19] Joint FEIR/EIS at 1-1.

[20] Joint FEIR/EIS at 7-1. Scoping is required by CEQA for project of "statewide, regional or area-wide significant" per § 21083 of the Public Resources Code and similar federal law.

[21] Joint FEIR/EIS at 7-2.

[22] The Commission and BLM prepared, via their third-party consultant, Ecology and Environment, Inc. a joint EIR/EIS.

[23] Joint FEIR/EIS, Appendix E at 3.

[24] Joint FEIR/EIS at 7-2.

the scope and degree to which these issues raised by the public, alternatives, and impacts will be analyzed.[25] By the close of the scoping period on August 26, 2009, the Commission and BLM received correspondence from public agencies, organizations and private citizens.[26] No verbal comments were received during the scoping meetings.

As a result of the alternative screening process, the Commission and BLM chose seven of the initial 17 alternatives[27] for detailed analysis in the Joint EIR/EIS.[28] The Joint EIR/EIS at Appendix A summarizes the alternatives presented for review, how alternatives were screened out, and provides a record of the screening methodology[29] with conclusions about alternatives carried forward for full EIR/EIS analysis.[30]

The Commission and BLM published the Draft EIR/EIS on April 30, 2010. Comments to the Draft EIR/EIS were submitted by federal and state agencies, private organizations, and environmental groups on or before the end of the CEQA 45-day comment period, June 21, 2010.[31]

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[25] Joint FEIR/EIS at 7-1. This scoping process is discussed in more detail in the Joint EIR/EIS at chapter 7 and is summarized in Appendix E - *Scoping Summary Report*.

[26] Joint FEIR/EIS, Appendix E at 5-14 and Appendix E at Appendix G (Appendix E contains several Appendices, including "G." These Appendices were not published with the Draft EIR/EIS but included in the Final EIR/EIS.

[27] Joint FEIR/EIS at 2-45.

[28] Joint FEIR/EIS at 7-3.

[29] Joint FEIR/EIS, Appendix A-1 at 1-9 (Sec. 2.1 – Alternative Screening Methodology).

[30] Joint FEIR/EIS, Appendix A at 1-1.

[31] These comments can be found at Appendix G, Final Joint EIR/EIS.

The Commission received opening and reply briefs in A.09-05-027 on August 27, 2010 and September 10, 2010.

The Commission released the Final EIR/EIS on November 5, 2010. Federal publication will occur later.

3. Burden of Proof

SCE must demonstrate a need for the Commission to issue the CPCN.[32] The utility "has the burden of affirmatively establishing the reasonableness of all aspects of its application. Intervenors do not have the burden of proving the unreasonableness of [the utility's] showing."[33] Evidence Code § 115 defines burden of proof as follows:

> "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact …. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing evidence, or by proof beyond a reasonable doubt.

Except as otherwise provided by law, the burden of proof in this proceeding requires proof by a preponderance of the evidence. The preponderance of the evidence is generally the default standard in civil and administrative law cases.[34] We apply that standard in this decision.

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[32] *Investigation into Methodology for Economic Assessment of Transmission Projects*, D.06-11-018 at 22, "The Commission has long held that the applicant carries the burden of proof in a certification proceeding, and we reiterate those determinations today."

[33] D.06-05-016 at 7.

[34] CA Admin. Hearing Practice, 2d Ed. (2005) at 365.

4. Analysis

4.1. Statutory Framework

Public Utilities Code § 1001 et seq. establishes the framework for the Commission's review of this CPCN Application. Several statutory components exist within this framework. Sections 1001, 1002(a), 1002.3 and 399.2.5 address the public interest and other related factors. Section 1005.5 guides the Commission's evaluation of costs.

4.2. Public Utilities Code §§ 1001 and 1002

Section 1001 mandates that, before the Commission can authorize a CPCN for the Eldorado-Ivanpah Transmission Project, it must find the "present or future public convenience and necessity require or will require its construction."[35] A finding of need is required before the Commission may issue a CPCN. We find that SCE has demonstrated need pursuant to §§ 1001 and 399.2.5. In reaching a determination under § 1001, the Commission is required by § 1002(a) to consider four factors: (1) community values; (2) recreational and park areas; (3) historical and aesthetic values; and (4) influence on the environment.[36]

Some of these factors are reviewed as part of the CEQA process. However, the Commission has concluded that § 1002 imposes a "responsibility *independent of CEQA* to include environmental influences and community values in our

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[35] Pub. Util. Code § 1001.

[36] Pub. Util. Code § 1002 (Added by Stats. 1981, ch. 573 § 3) provides, in pertinent part: "The commission, as a basis for granting any certificate pursuant to Section 1001 *shall* give consideration to the following factors:" (Emphasis added.) Those factors are noted above.

consideration of a request for a CPCN."[37] The Commission has also determined that, in evaluating the fourth factor, i.e., consideration of a project's "influence on the environment," it is appropriate to rely on the information gathered as part of the CEQA process.[38]

Regarding the Eldorado-Ivanpah Transmission Project, the Draft Joint EIR/EIS addresses not only the environmental impacts of the project but also the impacts on recreational and park areas and historic and aesthetic values. Accordingly, consistent with the Commission's prior statements, the Commission will look to the CEQA documents to inform its decision on the Eldorado-Ivanpah Transmission Project and also independently consider the information included in the CEQA documents when considering these four factors under § 1002(a).

4.2.1. Community Values

In considering the project's compatibility with community values as set forth in § 1002(a), the Commission gives considerable weight to the views of the local community and, in addition, the views of the elected representatives of the area because the Commission views elected representatives as speaking on

[37] *Application of Southern California Edison for CPCN for Kramer-Victor Transmission Line,* (1990) 37 CPUC2d 413, 453. (Emphasis added.)

[38] *Application of Lodi Gas Storage for CPCN for Gas Storage Facilities,* D.00-05-048, 28 ["[T]he appropriate place for the parties to address [the issue of a project's influence on the environment] was in the EIR, so that the parties would not duplicate their efforts in both portions of the proceeding."].

behalf of their constituents.[39] No public or elected officials raised objections to this project in the CEQA public comment process or in the formal proceeding. In support of finding the project consistent with community values under § 1002(a), SCE asserts that the project will play a major role in the timely progress towards the Commission's renewable portfolio standard (RPS) goals.[40] As explained in more detail in Section 4.4.1 below, we agree with SCE that the project will advance the state's renewable energy goals, a program that is codified in state law pursuant to Senate Bill 1078 and modified by Senate Bill 107. However, we do not necessarily agree with SCE that the fact that a given project would advance statewide policy goals necessarily equates to compatibility with community values under the statute. Instead, consistent with past Commission decisions, we look to opinions expressed elected officials, or other representatives of the local community. No elected officials voiced concern regarding this project. Accordingly, while we do not have a basis to affirmatively find that the project advances community values; we believe we can reasonably find that the project is not inconsistent with those values.

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[39] *Application of Southern California Gas Company (U904G) to Amend its Certificate of Public Convenience and Necessity for the Honor Rancho Natural Gas Storage Facility*, Decision 10-04-034; 2010 Cal. PUC LEXIS 144, *18.

[40] SCE Opening Brief at 3-5. California Senate Bill (SB) 1078, Stats. 2002, ch. 516, established the RPS program, which was codified originally in California Public Utilities Code Sections 399.11, *et seq*. SB 1078 directed retail sellers of energy to include within their portfolios at least 20% of their total retail electricity sales from renewable generation sources by 2017. *Id.* In 2006, the Legislature enacted SB 107, Stats. 2006, ch. 464, which accelerated this deadline to 2010.

4.2.2. Recreational and Park Areas

In considering the project's impact on recreational and park area as set forth in Pub. Util. Code § 1002(a), we look to the Joint EIR/EIS as providing the most in-depth analysis of this issue.

Chapter 3.12 of the Joint EIR/EIS, entitled "Recreation," establishes that the Ivanpah-Eldorado Transmission Project "is in an area offering a diverse range of recreational opportunities that include caving, photography, paintings, automobile touring, backpacking, bird watching, hunting, primitive camping, hiking, rock climbing, and off-highway vehicles use."[41] Dry lake beds, such as the Ivanpah Dry Lake, are also popular destinations for long-distance archery, kite buggying, and kite demonstrations.[42] Other impacts on recreation include, for example, off-highway recreational vehicle trails currently authorized by BLM that run through the Ivanpah Solar Energy Generating System (ISEGS).[43]

SCE points out that, while its project presents temporary impacts to recreation resulting from construction of the Ivanpah-Eldorado Transmission Project, that impacts during operation and maintenance of the line would be similar its current operations of existing facilities.[44]

While construction of the project presents potential interference with the recreation and park areas, this impact will be short-term. Accordingly, we find

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[41] Joint FEIR/EIS at 3.12-1 and 3.12-2.

[42] Joint FEIR/EIS at 3.12-3.

[43] The analysis of the factors under § 1002(a)(1) - (4) does not include ISEGS, which was included as part of the Project as a Whole for the CEQA review.

[44] SCE Opening Brief at 5.

that the Eldorado-Ivanpah Transmission Project will not conflict with usages of the recreational and park areas. However, as further explained in Section 6.1.2 of the Final EIR/EIS, the ISEGS project, which is part of the whole of action, would result in significant and unavoidable impacts on land use and recreation due to the permanent conversion of habitat and land used for recreational purposes.[45] Thus while the impact of the Eldorado-Ivanpah Transmission Project when viewed in isolation imposes short-term impacts on recreational and park areas, the whole of the action results in longer term impacts that cannot be avoided.

4.2.3. Historical and Aesthetic Values

We again look to the analysis in the Joint EIR/EIS as providing the most in-depth information of matters related to historical and aesthetic values under Pub. Util. Code § 1002(a). Construction of the Eldorado-Ivanpah Transmission Project would impact cultural resources because of surface and subsurface ground disturbance.[46] This disturbance would result from new road construction, parking in areas off prepared roads, creation and use of temporary laydown areas, and drilling and leveling during construction of tower footings.[47]

SCE has proposed a number of mitigation measures, referred to as Applicant's Proposed Measures, to mitigate these and other similar impacts related to historical and aesthetic values. For example, Applicant's Proposed Measure APM CR-2a provides as follows: Project Final Design would avoid direct impacts on significant or potentially significant cultural resources. To the

[45] Joint FEIR/EIS at 6-3.

[46] Joint FEIR/EIS at 3.5-15.

[47] Joint FEIR/EIS at 3.5-15.

extent practical, all ground-disturbing activities and other project components would be sited to avoid or minimize impacts on cultural resources listed as or potentially eligible for listing as, unique archaeological sites, historical resources, or historic properties.[48] In describing the whole of the action, which includes the ISEGS project, the Joint Final EIR/EIS determines that the project will have non-mitigable impacts on visual resources, and furthermore states that these impacts would be significant and unavoidable, and there is no feasible mitigation to reduce this impact to less than significant levels.[49]

Consequently, after consideration of these facts, the Commission finds that the project, with the various Applicant's Proposed Measures, does conflict, to some degree, with historical and aesthetic values.

4.2.4. Influence on the Environment

The Joint EIR/EIS serves as the key reference document when considering the fourth factor, influence on the environment, under Pub. Util. Code § 1002(a).[50] As explained in the Joint EIR/EIS, the project will result in unmitigable[51] significant adverse impacts on biological resources, and air quality.[52]

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[48] Joint FEIR/EIS at ES-18.

[49] Joint FEIR/EIS at 3.2-69.

[50] We certify the FEIR/EIS in Section 6 below.

[51] The term "unmitigable" is used to mean that, it is not possible to avoid the effects or mitigate the effects to a point where no significant effects on the environment would occur. See, e.g., Public Resource Code § 21064.5.

[52] Joint FEIR/EIS at 6-1.

The project would impact several special-status wildlife species and their habitat.[53] However, as noted in the FEIR, while the project would impact several special status wildlife species and their habitat, mitigation would reduce these impacts to less than significant with the notable exception of the impacts on the desert tortoise,[54] which is listed as threatened by the federal government under the Endangered Species Act and by the State of California under the California Endangered Species Act.[55] The ISEGS project and Eldorado-Ivanpah Transmission Project together, as analyzed in the Joint EIR/EIS Whole of the Action, would cause increased road traffic, noise, human presence, disturbance, and general degradation of habitat during construction and operation, all of which are contributors to permanent adverse impacts on desert tortoise.[56] The ISEGS project would result in increased noise levels during daytime operational hours, a loss of desert tortoise habitat in the amount of over 3,582 acres, and increased road traffic increasing desert tortoise road kill hazard.[57] The Eldorado-Ivanpah Project increases the potential for raven predation of desert tortoise. However, the operational impacts of both projects would be significantly reduced by mitigation measures. This includes mitigation compensation required of both projects that would offset adverse impacts to desert tortoise. However, impacts on desert tortoise remain significant even after

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[53] *Ibid.*

[54] *Ibid.*

[55] Joint FEIR/EIS at 3.4-46.

[56] Joint FEIR/EIS at 3.4-126, 3.4-127.

[57] *Ibid.*

mitigation mainly due to the construction of both ISEGS and Eldorado-Ivanpah Transmission Project.[58] The Eldorado-Ivanpah Transmission Project and the ISEGS project would require relocation and the more intensively impactful translocation, respectively, of desert tortoises that occur during construction within the fenced construction area of the project. Specifically, SCE proposes as an Applicant's Proposed Measure, that "Any tortoise found on the surface would be relocated to less than 1,000 feet away."[59] Nevertheless, the impacts remain "significant and unavoidable."[60]

In addition to its impacts on the desert tortoise, the Joint EIR/EIS also finds that the construction activities undertaken to build the project would result in exceeding the Mojave Desert Air Quality Management District daily significant thresholds for particulate matter emissions ($PM_{2.5}$, PM_{10}), and nitrogen oxides (NO_X) despite the proposed usage of low-emission equipment and fugitive dust control measures. While these daily thresholds may be violated during the construction period, the Joint EIR/EIS also notes that these impacts would be temporary and confined to those times and locations when/where construction is underway.[61]

After taking all the above into consideration, we find the proposed project will have some adverse "influence on the environment" under § 1002(a). The finding that the project will have some adverse impacts relative to several of the

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[58] *Ibid.*

[59] Joint FEIR/EIS at 3.4-68.

[60] Joint FEIR/EIS at Section 3.4-96.

[61] Joint FEIR/EIS at 3.3-16.

factors identified in § 1002(a) is not necessarily determinative. Further analysis is required under the existing statutory framework to determine whether a project, despite it adverse impacts under § 1002(a) in some areas, is still in the public interest. The analysis under §1002(a) is narrow, looking only to the project specific impacts without consideration of the broader policy context into which the project fits. We now turn the broader analysis permitted by § 399.2.5.

Notably, under the "notwithstanding" provision of Public Utilities Code § 399.2.5, as further discussed below, the Commission may find that this project's furtherance of the state's renewable power goals outweigh the environmental concerns identified under § 1001 et seq.

4.3. Public Utilities Code § 1002.3

The next step in the Commission's analysis of SCE's request for a CPCN for the Eldorado-Ivanpah Transmission Project is § 1002.3.[62] Section 1002.3 requires the Commission to "consider cost-effective alternatives to transmission facilities that meet the need for an efficient, reliable, and affordable supply of electricity, including, but not limited to, demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation…and other demand reduction resources." When an environmental impact report in being prepared,

[62] Section 1002.3, effective January 1, 2006, was enacted in 2005 (Stats. 2005, ch. 366, Sec. 5), three years after § 399.2.5, as part of a larger energy efficiency bill, Senator Kehoe's SB 1037 and provides in full as follows: "In considering an application for a certificate for an electric transmission facility pursuant to Section 1001, the commission shall consider cost-effective alternatives to transmission facilities that meet the need for an efficient, reliable, and affordable supply of electricity, including, but not limited to, demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation, as defined in Section 353.2, and other demand reduction resources."

pursuant to CEQA, an analysis of the non-wires alternatives is preferably included as an alternate to the proposed transmission line projects.

Consistent with § 1002.3, the Commission considered "non-wires" alternatives as part of its environmental review.[63] While a full analysis was not in the Draft EIR/EIS, this analysis was included in the Final EIR/EIS published on November 5, 2010, in response to comments on the Draft EIR/EIS. The evaluation of System Alternatives was modified to include two separate scenarios or sub-alternatives: in-basin generation and demand-side alternatives. These alternatives are further explained in Appendix A-1 to the Final Joint EIR/EIS. Appendix A-1 also explains the rationale for screening-out "non-wires" for further analysis.

Appendix A-1 to the Final Joint EIR/EIS suggests that demand-side and energy efficiency alternatives within the state could potentially result in 2.5 times more generation capacity than the generation capacity near the Ivanpah Dry Lake Area:

> In order to compare the capacity of the demand-side scenario to the capacity of the proposed project, it should be considered the potential capacity of additional renewable generation projects to be constructed in the Ivanpah Valley area and connected to the upgraded EITP transmission line should be considered. The proposed transmission line would be constructed within the Mountain Pass CREZ, which has an estimated generation capacity of 1,200 MW (CAISO 2009). Therefore, if all of the currently proposed demand-side generation projects were constructed and implemented before 2020, they would

[63] Appendix A-1 of Joint FEIR/EIS.

theoretically have 2.5 times over the generation capacity than the proposed project.[64]

During the environmental review process, the Center for Biological Diversity argued that non-wires alternatives exist and are less expensive than the Eldorado-Ivanpah Transmission Project. The Center for Biological Diversity relies on a number of studies, including a Commission report, which concludes that there would be little difference in the cost of meeting state renewable energy targets by relying predominantly on distributed photovoltaic (PV), when current state-of-the-art pricing is assumed, instead of building 10,000 MW of remote solar capacity under the 33% RPS reference case.[65]

The Final Joint EIR/EIS initially finds that demand-side alternatives could theoretically serve any capacity needs met through the potential generation interconnecting with the Eldorado-Ivanpah Transmission Project.[66] However, the conclusion of the Final Joint EIR/EIS is that the non-wires alternative will not be carried forward for full analysis under CEQA because it is highly speculative that the amount of "non-wires" generation needed to off-set the generation in the Ivanpah Dry Lake Area is feasible.[67] Furthermore as noted in the FEIR, the non-wires alternative would fail to meet one of the primary, and in our view, one of the principle objectives of the project, namely the interconnection of the

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[64] Joint FEIR/EIS at Appendix A-1 (Ap1-16).

[65] Joint FEIR/EIS at Comments by Center for Biological Diversity at Appendix G, comment 0024, citing the Commission's, *33% Renewables Portfolio Standard Implementation Analysis Preliminary Results*, June 2009, at 31.

[66] Appendix 1, at Ap. 1-14 through Ap. 1-18 of the Joint FEIR/EIS.

[67] Appendix Ap1 at Ap1-15-Ap1-19 of the Joint FEIR/EIS.

renewable resources in the Ivanpah Dry Lake Area, including four projects with Commission approved PPAs.[68] On this basis, the Commission concludes it has met its obligations under 1002.3 to "consider cost-effective alternatives" to transmission facilities.[69]

4.4. Public Utilities Code § 399.2.5

The next step in the Commission's analysis is to determine whether § 399.2.5 applies here. Section 399.2.5 was originally enacted as § 399.25 on September 12, 2002, as part of SB 1078. Section 399.25 was re-codified as § 399.2.5, but the text remained unchanged.[70] Section 399.2.5 was recently amended, but the amendments are not relevant to the discussion here.[71]

Section 399.2.5 authorizes the Commission to deem necessary those transmission facilities identified in CPCN applications if the proposed facilities are *necessary to facilitate achievement of the State's renewable power goals.* The State's renewable power goals, described, in part, in § 399.11, include the goal "to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010…" Section 399.2.5 also provides a "backstop" cost mechanism allowing the utilities to recover through retail rates any prudently incurred costs that are not approved by the Federal Energy Regulatory Commission for recovery through transmission rates. The Commission implemented the cost recovery provisions

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[68] SCE Opening Brief at 8-9.

[69] Appendix Ap1 at Ap1-15-Ap1-19 of the Joint FEIR/EIS.

[70] Stats. 2008, Ch. 558, Sec. 22. Effective January 1, 2009.

[71] AB 1954 (Skinner/Perez), Stats. 2010, Ch. 460. Effective January 1, 2011.

of § 399.2.5 in D.03-07-033 and in D.06-06-034. Because the proposed project is intended to interconnect renewable generation in furtherance of the state's goal pursuant to § 399. 11, we find that the provisions of § 399.2.5 apply here.

In this proceeding, SCE characterizes the "need" analysis under § 399.2.5 as establishing a presumption of need.[72] Moreover, in a recent case, the Commission stated "Section 399.2.5 explicitly supersedes § 1002 in determinations of need for a CPCN."[73] To clarify, no presumption of need is created and, while § 399.2.5 permits the Commission to, in essence, "supersede" §§ 1001-1013, such authority is only provided *after* the Commission fully considers the requirements of §§ 1001-1013, including the analysis required by § 1002.

Accordingly, the determination of "need" under § 399.2.5, and the availability of backstop cost recovery under that section, necessarily must occur at the *end* of a CPCN proceeding, after the Commission evaluates all of the evidence of need under §§ 1001-1013. This sequence of review brings meaning to the "notwithstanding" provision of § 399.2.5. It is only at the end of the Commission's need analysis under §§ 1001-1013 that the provisions of § 399.2.5 provide the Commission with the authority to find that "notwithstanding" the results of its analysis under §§ 1001-1013, the project may be found "necessary to facilitate" achievement of the renewable power goals of § 399.11 et seq. and, therefore, approved by the Commission.

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[72] SCE Opening Brief at 6, "Among other things, Section 399.2.5 creates a presumption of need for transmission projects that facilitate delivery of renewable energy to the grid."

[73] D.09-12-044 at 18.

We have, above, considered the relevant provisions of §§ 1001-1013. We now turn to the § 399.2.5 analysis, the three-prong test for which projects would qualify as "necessary to facilitate" achievement of the States' renewable power goals under § 399.11 et seq., and thereby qualify for cost recovery under the statute.

4.4.1. Three Prong Test

In D.07-03-012,[74] the Commission established the following three prong test for which projects would qualify as "necessary to facilitate" achievement of the State's renewable power goals under § 399.2.5, and thereby qualify for the cost recovery under the statute:

> (1) that a project would bring to the grid renewable generation that would otherwise remain unavailable; (2) that the area within the line's reach would play a critical role in meeting the RPS goals; and (3) that the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance.[75]

The first prong requires that the Eldorado-Ivanpah Transmission Project bring to the grid renewable generation that would otherwise remain unavailable. Unlike other recent transmission projects, this project is not being developed to meet demand.[76] The main purpose of the project is to bring yet-to-be constructed wind and thermal solar projects to the CAISO-controlled grid. SCE's current

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[74] D.07-03-012 (The decision approving Segment 1 of the Tehachapi Renewable Transmission Project.)

[75] D.07-03-012 at 16. Applied in D.07-03-045 and D.09-12-044.

[76] The Final EIR/EIS finds that accessing renewable energy is the purpose of the project with "energy demand met by other means." (Final EIR/EIS at 6-9.)

interconnection capability in the Ivanpah Dry Lake Area is limited to approximately 80 MW via the existing line between the Mountain Pass Substation and the Eldorado Substation, on the Eldorado-Baker-Cool Water-Dunn Siding-Mountain Pass 115 kV transmission line.[77]

The renewable generation projects identified for potential interconnection with the Eldorado-Ivanpah Transmission Project are in various stages of development. No projects are presently generating renewable electricity. Some of these renewable generation projects present an initial start date of a few years away, perhaps as early as 2013,[78] while other projects are more speculative.

In the context of renewable energy development, it is often the case that transmission must be planned and permitted before generation fully commits to an area. This is the situation here. Furthermore, in this case generation developers, and by extension, their financial backers, need assurance that if generation is built, their projects will be able to bring their energy to market. Once planned and permitted, transmission to the Ivanpah Dry Lake Area is likely to increase interest in a renewable generation development. Consequently, in this case, the Commission is looking to the renewable potential for the area that the transmission line will serve as an indicator of the need for the proposed line. Our analysis continues to emphasize the amount of generation already under RPS contracts with the investor owned utilities, and, in this case, gives

[77] Exhibit SCE-5, Section A at 8:20-26.

[78] The initial synchronization may occur a few months early, in November 2012. SCE Advice Letter 2339.

some weight to the number of interconnection requests in the area as an indicator of future growth.

Based on Commission-approved PPAs, the reasonably foreseeable capacity that can be expected to interconnect to Eldorado-Ivanpah Transmission Project is considerable. Four solar projects totaling 717 MW[79] of renewable generating capacity in the Ivanpah Dry Lake region have CPUC-approved PPAs with investor owned utilities. All of these projects have filed interconnection requests with the CAISO and are seeking interconnection to the CAISO system through Eldorado-Ivanpah Transmission Project.[80] Notably, and consistent with the requirements and applicability of § 399.2.5, all of these projects were approved in part because of the contribution they are expected to make toward California's 20% RPS goals.[81]

We disagree with DRA's position, as presented in briefs, that these projects are not sufficiently mature or certain to justify a need determination for the proposed transmission project.[82] These generation projects have Commission approved PPAs, and as such have been assessed and were ultimately endorsed by the Commission based not only on cost relative to other resource options, but

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[79] Exhibit SCE-8.

[80] Exhibit SCE- 14

[81] The 717 MW of capacity, as reflected in Exhibit SCE-8, are represented by four PPAs, two with SCE, Solar Partners 1 and Desert Stateline, and two with PG&E, Brightsource PPA 1 and Brightsource PPA 2. These projects were approved via Resolutions E-4261, E-4347, and E-4266, respectively. Each resolution contains language expressly recognizing the role these projects are anticipated to play in meeting the 20 percent RPS goal. (See, E-4261 at 8, E-4347 at 7, and E-4266 at 9.)

[82] DRA Opening Brief at 10-13.

also on the basis of project viability. As such we find that these projects are strongly indicative of a line that if built, will be utilized.

This conclusion is further supported by information regarding potential generation projects in the Renewable Energy Transmission Initiative (RETI) Phase 2B report regarding the region's resource potential. DRA also makes a number of arguments questioning whether the energy from the projects that are anticipated to interconnect to Eldorado-Ivanpah Transmission Project will deliver energy to California end use customers.[83] The extent to which projects will serve end use customers consistent with the eligibility requirements of the RPS program are fully addressed when the Commission reviews contracts submitted by the utilities as part of their RPS procurement activities. We find DRA's concerns in this regard to be misplaced and out of scope to the extent they have failed to demonstrate that the resources anticipated to utilize this line are ineligible under the RPS.

Of the projects with Commission approved PPAs, we note that the project by Brightsource's subsidiary companies, the Ivanpah Solar Energy Generating System project or ISEGS, is the project furthest along in the permitting process, having received the necessary permits or approvals by the California Energy Commission and BLM. ISGES initiated construction soon after October 27, 2010.[84] ISEGS alone could serve to satisfy the first prong the Commission's test under § 399.2.5, that a proposed transmission project would

[83] DRA Opening Brief at 7-9.

[84] http://www.brightsourceenergy.com/images/uploads/press_releases/Ivanpah_Groundbreaking_Press_Release.pdf.

bring to the grid renewable generation that would otherwise remain unavailable. However, as stated by Brightsource, other transmission options exist for the project.[85]

While other transmission options may exist, we find that the substantial amount of renewable capacity represented not only by Brightsource's ISEGS project, but also by the capacity associated with the other Commission-approved renewable PPAs in the region results in the need for additional transmission capacity. This has been confirmed by the CAISO, which, in its studies responding to these projects' respective interconnection requests, has indicated that Eldorado-Ivanpah Transmission Project would be required.[86]

It is also notable, that in addition to those projects with approved PPAs, there is approximately 964 MW of renewable generation in the CAISO Generation Queue[87] that would, if realized, potentially interconnect to Eldorado-Ivanpah Transmission Project. Furthermore, the region has been identified in the RETI Phase 2B report as having substantial renewable potential,

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[85] Brightsource June 21, 2010 comments to the Joint FEIR/EIS at 2, included in Joint FEIR/EIS in Appendix G at comment 0016.

[86] DRA Exhibit C-302-A CAISO confidential documents:

Interconnection System Impact Study, Generation Interconnection DPT2 Project Final Report at ii, iii.

Interconnection System Impact Study, Generation Interconnection, LLC., DPT1 Project Final Report at ii, iii.

Interconnection System Impact Study, Generation Interconnection, Ivanpah Solar Electric Generating System 3 Final Report at ii, iii.

[87] Exhibits SCE-9, 10 and 11.

with an estimated 958 MW of potential in the Mountain Pass Competitive Renewable Energy Zone (CREZ) and 5,042 MW of potential in the Nevada-Southwest area.[88]

Having approved renewable PPAs expressly seeking interconnection to a given transmission facility is helpful in ensuring that lines built to access renewables are fully utilized and the risk of stranded costs is reduced accordingly. Here, we not only have Commission-approved PPAs that collectively exceed the available capacity of the existing CAISO system, but strong commercial interest in the region as evidenced by the CAISO interconnection queue, and a regional assessment, RETI, that confirms the region has substantial renewable resource potential to justify this interest. Based on this information, and the limited capacity available on SCE's existing lines, to facilitate interconnection of these resources to the CAISO system, additional transmission capacity is needed.

In light of the forgoing discussion, we conclude that Eldorado-Ivanpah Transmission Project meets the first and second prongs of the three prong test used to determine if a project meets the "necessary to facilitate" language of § 399.2.5. The Eldorado-Ivanpah Transmission Project satisfies the first prong of the test because it will facilitate interconnection with those generation projects with Commission-approved PPAs located in the area. Furthermore, the considerable amount of renewable potential in the region, beyond those projects with Commission-approved PPAs, as demonstrated by the substantial amount of

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[88] RETI Phase 2B Final Report, 1-10 – 1-12. http://www.energy.ca.gov/2010publications/RETI-1000-2010-002/RETI-1000-2010-002-F.PDF.

generation in the CAISO Generation Queue, and the results of the RETI Phase 2B study, convinces us that the project satisfies the second prong.

Accordingly, we find that the Applicant has established by a preponderance of the evidence that Eldorado-Ivanpah Transmission Project is needed to bring to the grid renewable generation that would otherwise remain unavailable and that the area within the line's reach would play a critical role in meeting the state's RPS goals.

We now turn to the third prong, regarding whether the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance. Based on the existing PPAs, as well as the identified resource potential in the region, we believe the line would, if built, contribute toward economically rational RPS compliance. This leaves the question of whether or not the costs of this line are reasonably balanced against this opportunity. As described in more detail below, we find that the cost of the project, as modified herein, is reasonable given the project scale and scope, thus satisfying the third prong. In light of the forgoing discussion we find that the project meets the requirements of the three prong test and is, thus, "necessary to facilitate achievement of the renewable power goals established in Article 16."

4.4.2. Back-Stop Cost Recovery

After the Commission determines a transmission project is "needed" under § 399.2.5, the project is then eligible for backstop cost recovery for prudently incurred transmission costs "resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by

[Federal Energy Regulatory Commission]…"[89] Thus, SCE must seek to recover costs for transmission projects through Federal Energy Regulatory Commission jurisdictional rates and, if Federal Energy Regulatory Commission denies recovery, § 399.2.5(b)(4) permits recovery of transmission rates through the retail rates governed by the Commission.

The provisions of § 399.2.5 apply to new transmission facilities "necessary to facilitate achievement of the renewable power goals." These renewable power goals are set forth in § 399.11. As explained in the preceding section, we find that the Applicant has demonstrated that the project is needed, consistent with the requirements of § 399.2.5. Therefore we find that the project is eligible for backstop cost recovery.

Section 399.2.5 (b)(4) ensures retail rate recovery of prudently-incurred costs for projects the Commission finds to be necessary to facilitate RPS compliance to the extent that cost recovery is not otherwise available.

There is no question that the Eldorado-Ivanpah Transmission Project qualifies for cost recovery under § 399.2.5(b)(4). D.06-06-034 defined certain types of facilities that would qualify for cost recovery under § 399.2.5(b)(4), including:

> High voltage, bulk-transfer transmission facilities, whether classified as network or gen-tie, that are designed to serve multiple RPS-eligible generators where it has been established that the amount of added transmission capacity will likely be utilized by RPS-eligible generation projects within a reasonable period of time …. (D.06-06-034, mimeo., Finding of Fact 8).

[89] Pub. Util. Code § 399.2.5(b)(4).

As described above, we find that the Eldorado-Ivanpah Transmission Project is necessary as that term is used in the context of § 399.2.5, because it will be used interconnect renewable resources that will contribute to the 20% RPS goal. That the proposed project is a high voltage, bulk-transfer transmission facility is not disputed. Consequently, it is appropriate to provide SCE assurance of recovery of prudently incurred costs, and we do so here.

Section 399.2.5 also requires the Commission to direct "the utility…to seek the recovery through general transmission rates of the costs associated with the transmission facilities." Therefore, we direct SCE to first seek cost recovery at Federal Energy Regulatory Commission through general transmission rates for the costs incurred in building this project. Further, we reiterate our finding in D.06-06-034: "§ 399.25 is not meant to substitute for the existing cost recovery mechanisms available to support transmission development, nor is it intended to change the ultimate cost responsibility of generators and utility ratepayers." (*Id.* at p. 28). "Nothing in this decision is intended to relieve renewable generators from their responsibility for their fair share of the costs of non-network transmission facilities necessary to interconnect the generator with the network." (*Id.* at Findings of Fact 7.)

We affirm, consistent with D.06-06-034, that, notwithstanding the likelihood of cost recovery through Federal Energy Regulatory Commission wholesale rates, it is appropriate for SCE to continue to track its project costs consistent with the terms of the memorandum account approved by the Commission in response to SCE Advice Letter 2345-E.[90] Both the statute and

[90] CPUC Resolution E-3405 (December 17, 2009).

D.06-06-034 anticipate that first Federal Energy Regulatory Commission would act, and that this Commission would step in only if Federal Energy Regulatory Commission disallows recovery of some costs. Thus, any consideration of cost recovery by this Commission would only come after Federal Energy Regulatory Commission had finished its work.

5. California Environmental Quality Act

CEQA and § 1002(a) require the Commission to consider the influence of the Applicant's request on the environment.[91] Toward that goal, CEQA requires the Commission, as the Lead Agency, to conduct a review to identify environmental impacts of the project and ways to avoid or reduce significant environmental damage. This review is documented in a joint EIR/EIS. The EIR/EIS serves to disclose any environmental impacts associated with a proponent's project, list mitigation measures to minimize any significant environmental effects of the project, and provide project alternatives. This information is used to assist the Commission in determining whether to issue a CPCN. CEQA precludes a lead agency from approving a proposed project unless the lead agency 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. CEQA requires that, prior to approving the project or a project alternative, the lead agency certify that the environmental review was conducted in compliance with CEQA, that it reviewed and considered the

[91] Public Resources Code §§ 21000, et seq.

EIR prior to approving the project or a project alternative, and that the EIR reflects its independent judgment.[92]

5.1. Applicant's Proponent's Environmental Assessment, Project Objective, Project as a Whole, and Alternatives

5.1.1. Proponent's Environmental Assessment and the Statement of Objectives

SCE filed a PEA with its Application. A PEA is required to contain a statement of objectives. The purpose of the statement of objectives is to help the lead agency develop a reasonable range of alternatives to evaluate and aide the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should also include the underlying purpose of the project. (CEQA Guidelines § 15124.) SCE's project objective is reproduced below:[93]

> 1. Comply with the state-mandated Renewables Portfolio Standard (RPS) (i.e., 20 percent renewable by year 2010 per California Senate Bill 107[1]) in an orderly, rational, and cost effective manner, while also considering the need for maintaining reliable electric service during the upgrade and/or construction of new facilities.
>
> 2. Integrate planned renewable generation resources[2], including up to 1,400 MW from the Ivanpah Dry Lake Area with a Power Purchase Agreement (PPA) executed by a California Public Utilities Commission (CPUC) jurisdictional Private Transmission Owners (PTO), in a manner that minimizes potential environmental impacts

[92] Pub. Res. Code § 21082.1(c)(3); CEQA Guidelines § 15090.

[93] The below excerpt is from SCE's PEA (at 1-1 and 1-2) for "project objective." This language is different than the PEA "project objective" found in the EIR/EIS (at 1-8 at Section 1.2.1).

and impacts to existing and planned residences, where feasible, by maximizing the use of existing transmission corridors in order to:

a) maximize the use of existing, previously disturbed transmission line right-of-way (ROW) to minimize effect on previously undisturbed land and resources;

b) select route and tower locations with the lowest potential for environmental impacts while still meeting Proposed Project objectives; and

c) select the shortest feasible route that minimizes environmental impacts and Proposed Project costs.

3. Interconnect and deliver energy from up to 1,400 MW of renewable resources located in the Ivanpah Dry Lake Area in a way that complies with all applicable North American Electric Reliability Council (NERC)/Western Electric Coordinating Council (WECC) Planning Standards, and in a manner that minimizes transmission line crossings.

4. Support the State of California Greenhouse Gas Reduction Program.

5. Assist the BLM in meeting the federal directive to develop 10,000 MW of renewable generations.

5.1.2. The Project Objective

The Commission, together with the BLM, adopted the following objectives for the project:

Based on the content of the PEA and related federal and state objectives, the CPUC and the BLM have abridged the objectives for the proposed project to the following:

1. To connect renewable energy sources in the Ivanpah Valley area in compliance with Executive Order 13212, EPAct, the Federal

Power Act, California Senate Bill 1078, and California Senate Bill 107;

2. To improve reliability in compliance with applicable standards, including NERC, WECC, CAISO, and SCE standards; and

3. To maximize the use of existing ROW and designated utility corridors to minimize impacts on environmental resources. [94]

5.1.3. Project as a Whole

Both CEQA and NEPA stipulated that assessment is not limited to only the project components. Under CEQA, a "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment"[95] The Joint EIR/EIS incorporates the ISEGS project as part of the "whole of the action" and describes the relevant features of the ISEGS project found in the Final Staff Assessment/Draft EIR (FSA/DEIR) of the ISEGS project conducted by the CEC and the BLM.[96] The FSA/DEIS conclude that the ISEGS project would result in significant impacts.[97] Given the geographical proximity and the overlapping schedules of the Eldorado-Ivanpah Transmission Project, it is reasonable to assume that the Eldorado-Ivanpah Transmission Project, when

[94] Joint FEIR/EIS at 1-11.

[95] CEQA Guidelines § 15378(a).

[96] CEC Application for Certification 07-AFC-5.

[97] Joint FEIR/EIS at 2-37.

considered in combination with ISEGS, would contribute cumulatively significant impacts.[98]

5.2. Applicant's Proposed Measures

Applicant's PEA proposes specific procedures to the project construction plans to minimize the environmental impact from the proposed project. These specific procedures are referred to as Applicant's Proposed Measures (APMs). The PEA's impact analysis assumes that the applicable APMs would be implemented to reduce air quality impacts. We adopt the APMs as part of our review of the proposed project and Applicant is required to comply with the APMs and the other mitigation measures contained in the Mitigation Monitoring, Reporting, and Compliance Program. The Commission shall monitor compliance with the Plan periodically throughout the duration of construction activities.

6. Certification of Final Joint EIR/EIS

The Commission must certify the Final Joint EIR/EIS. (CEQA Guidelines § 15090.)

We hereby certify that:

- The Final Joint EIR/EIS has been completed in compliance with CEQA.
- The Final Joint EIR/EIS was presented to the Commission, and the Commission has received, reviewed, and considered the information contained in the EIR/EIS prior to approving the project.

[98] *Ibid.*

- The Joint Final EIR/EIS reflects the Commission's independent judgment and analysis.

7. CEQA Findings

Based upon the Joint Final EIR/EIS, we have prepared a set of CEQA Findings pursuant to CEQA Guidelines § 15091 regarding the significant impact associated with the proposed project. These findings are set forth in Attachment B to this decision. We find that the CEQA Findings accurately reflect the independent analysis contained in the Final Joint EIR/EIS and are supported by substantial evidence in the administrative record. We adopt them as Findings of Fact in this decision and incorporate them by reference herein.

7.1. CEQA - Environmentally Superior Alternative

CEQA imposes a general duty on public agencies to avoid or minimize, to the greatest extent possible, the environmental effects of projects they approve.[99] This duty generally is implemented by identifying and then adopting mitigation measures and/or alternatives to the project that will avoid or reduce environmental impacts.[100] To this end, CEQA requires that the Joint EIR/EIS identify an environmentally superior alternative among the alternatives evaluated.[101] There were 18 alternatives evaluated in the Joint FEIR/EIS. In

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[99] *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 98; Pub. Res. Code § 21002; 14 Cal. Code Regs. ("CEQA Guidelines") § 15021.

[100] Pub. Resources Code §§ 21100(b)(3), (4), 21003(c) [EIR should emphasize feasible mitigation measures and alternatives]; CEQA Guidelines §§ 15002(f), (h), 15126.4, 15126.6; *Laurel Heights Improvement Assn. v. The Regents of the University of California* (1988) 47 Cal.3d 376, 400-403.

[101] Joint FEIR/EIS at Section 4; CEQA Guidelines §§ 15126.6(a) and (e)(2).

contrast with the other routing and telecommunication alternatives evaluated in this Draft EIR/EIS, the proposed project would have less land disturbance and less significant impacts on sensitive biological resources, and it would meet all of the project's objectives.[102] Neither of the two remaining alternatives, which include the No Project alternative and the non-wires alternative, meets the project objectives. Therefore, the proposed route was determined to be the environmentally superior alternative among alternatives that would meet the Commission's project objectives as set forth in the Joint EIR/EIS.[103]

7.2. CEQA – Significant Environmental Effects, Statement of Overriding Consideration, and Rationale

Although the Environmentally Superior Alternative is the least environmentally damaging alternative, it does not mitigate all significant environmental impacts as described below and as further described in the Final Joint EIR/EIS. The whole of action, which includes the proposed Eldorado-Ivanpah Transmission Project as well as ISEGS, has significant and unavoidable adverse impacts on a number of areas including air quality, biological resources, land use, and visual resources. These impacts are summarized below.

Air Quality: Though impacts on air quality resulting from the whole of the action would not be long-term, the project would result in significant and unavoidable adverse impacts on air quality due to temporary emission increases of NOx, volatile organic compounds (VOCs), and PM10, associated with construction activities. These emissions would contribute to a cumulatively considerable net increase of a criteria pollutant in a non-attainment area, and

[102] Joint FEIR/EIS at 4.7.

[103] *Ibid.*

temporary impacts on ambient air quality. As such the whole of the action/cumulative action will result in significant and unavoidable impacts to air quality.[104]

Biological Resources: The whole of the action would significantly and adversely affect biological resources, in particular resulting in unmitigable significant and unavoidable impacts to the desert tortoise. These impacts are caused primarily by construction activities of the two projects. Overall, the impacts on biological resources, with the notable exception of the impacts on the desert tortoise, from the whole of the action would be less than significant.[105]

Land Use: The whole of the action is found to have significant and unavoidable impacts on land use, largely resulting from the permanent conversion of habitat and recreational lands.[106]

Visual Resources: The whole of the action is found to have significant and unavoidable impacts on visual resources. The FSA for ISEGS project would result in significant and unavoidable visual impacts affecting the following viewer groups: the Primm Valley Golf Course, viewpoints in the Mojave National Preserve on the eastern face of Clark Mountain, and viewpoints in the Stateline Wilderness Area, including the Umberci Mine, and the middleground distance view on Highway I-15.[107] Additionally, the ISEGS project would result in lighting impacts for viewers in the Mohave National Preserve, because FAA safety lighting for the ISEGS project would result in an adverse and unavoidable impact on nighttime views. Collectively, then, the impact of the whole of the

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[104] Joint FEIR/EIS at 3.3-34.

[105] Joint FEIR/EIS at 3.4-127.

[106] Joint FEIR/EIS at 5-88.

[107] California Energy Commission (CEC) and Bureau of Land Management (BLM) 2009. Final Staff Assessment/Draft Environmental Impact Statement of the Ivanpah Solar Electric Generating System Project (CEC-700-2008-013-FSA). October Section 6.12, and California Energy Commission (CEC) 2010. Final Staff Assessment Addendum for the Ivanpah Solar Electric Generating System. March Section 6.

action on these viewers, including light impacts, would be significant and unavoidable. Importantly there are no feasible mitigation measure to reduce this impact to less than significant levels.[108]

7.3. Statement of Overriding Considerations

As explained above, the authorized Environmentally Superior Alternative and the combined Environmentally Superior Alternative and ISEGS project will have significant environmental impacts, a number of which cannot be mitigated. Therefore, the Commission must provide a statement of the overriding considerations pursuant to CEQA Guidelines § 15093. The Commission will not provide a statement of overriding consideration for the ISEGS project as this project has already been reviewed and certified.

The Commission recognizes that significant and unavoidable environmental impacts will result from construction and operation of the Environmentally Superior Alternative. Having: (1) adopted all feasible mitigation measures; (2) recognized all significant, unavoidable impacts; and (3) balanced the benefits of the Environmentally Superior Alternative against its significant and unavoidable impacts, the Commission hereby finds that the benefits of the project outweigh and override the significant unavoidable impacts for the reasons stated below. The Environmentally Superior Alternative will provide substantial benefits, including, but not limited to, facilitating California's renewable energy goals within a reasonable timeframe as well as advancing the state's efforts to reduce its carbon emissions consistent with Assembly Bill 32 (Stats. 2006, ch. 488).

[108] Joint FEIR/EIS at 3.2-68 and 3.2-69

The Commission finds that the Environmentally Superior Alternative's unavoidable impacts are acceptable in light of these substantial benefits, which constitute an overriding consideration warranting approval of the project.

7.4. Mitigation Monitoring

The Final EIR/EIS includes a proposed Mitigation Monitoring Plan (Final EIR/EIS, Appendix E.) for the mitigation measures it recommends for the Proposed Project. The tables are presented in the Final EIR. These tables, along with the full text of mitigation measures applicable to the Environmentally Superior Alternative, form the Draft Mitigation Monitoring Plan. The plan is designed to ensure compliance with the changes in the project and mitigation measures imposed on the authorized project during implementation. It also recommends a framework for implementation of the Mitigation Monitoring Plan by this Commission and by BLM as the CEQA and NEPA Lead Agencies, respectively. We adopt the Mitigation Monitoring Plan.

8. Electric and Magnetic Fields

The Commission has examined the impact of electric and magnetic fields (EMF) in several previous proceedings.[109] The Commission found the scientific evidence presented in those proceedings was uncertain as to the possible health effects of electromagnetic fields and did not find it appropriate to adopt any related numerical standards. Because there is no agreement among scientists that exposure to EMF creates any potential health risk, and because CEQA does not define or adopt any standards to address the potential health risk impacts of

[109] D.06-01-042; D.93-11-013.

possible exposure to EMF, the Commission does not consider magnetic fields in the context of CEQA and determination of environmental impacts.

The Commission requires, pursuant to GO 131-D, that all requests for a CPCN include a description of the measures taken or proposed by the utility to reduce the potential for exposure to EMF generated by the proposed project. The Commission developed an interim policy that requires utilities, among other things, to identify the no-cost measures undertaken, and the low-cost measures implemented, to reduce the potential EMF impacts. The benchmark established for low-cost measures is 4% of the total budgeted project cost that results in an EMF reduction of at least 15% (as measured at the edge of the utility right-of-way). SCE's Field Management Plan, included at Exhibits SCE-3 and incorporated into the design of the proposed project, addresses the EMF mitigation measures that will be taken in connection with the proposed project.

We adopt SCE's Field Management Plan for the proposed project and require SCE to comply with it.

9. Costs

SCE has provided sufficient evidence to support its cost estimate for the project, including SCE's preliminary total estimated costs—excluding Allowance for Funds Used During Construction (AFUDC) costs for the proposed route and all alternatives, as required by Pub. Util. Code § 1005.5(a).[110] With the exception of AFUDC, all cost estimates are provided in 2009 constant dollars. In addition, SCE's cost estimating methodology is appropriate. Consistent with Commission practice, SCE did not include AFUDC costs for purposes of estimating the total

[110] Exhibit SCE-1 (Chien) at 12.

maximum reasonable and prudent costs. It is also appropriate for SCE to use deflation factors to convert actual expenditures in future years to their equivalent value in 2009 dollars.

As part of SCE's direct costs estimate, SCE incorporates the costs associated with complete redundancy for the Special Protection System (SPS).[111] The SPS system includes a primary telecommunications line that will run along the new 220 kV line and a second telecommunications line, the redundant line, that will traverse approximately 35 miles in California and Nevada. The redundant telecommunications line is referred to as Telecom Path 2. Telecom Path 2 would be built along the existing SCE 500 kV Eldorado-Lugo transmission line and transmitted via microwave facilities.[112]

SCE explains that the Telecom Path 2 is strongly encouraged by the North American Electric Reliability Corporation (NERC)/Western Electricity Coordinating Council (WECC) Planning Standards but also indicates that "precontingency generation curtailment" might be an alternative to the additional line.[113] DRA argues that Telecom Path 2 is not needed and, as a result, the costs should be excluded.[114] DRA's arguments points to generation curtailment or load shedding as a reasonable and acceptable alternative to construction of Telecom Path 2.[115]

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[111] Exhibit SCE-1 at 12.

[112] Joint FEIR/EIS at 2-35.

[113] SCE Reply Brief at 20.

[114] DRA Opening Brief at 4 and Reply Brief at 2.

[115] DRA Opening Brief at 4-5.

In contrast to DRA, SCE states that the SPS is critical to enabling the Eldorado-Ivanpah Transmission Project to be fully utilized.[116] SCE argues that because the SPS only disconnects renewable resource under abnormal conditions, which, by definition are rare, the SPS ensures the ability of the line to be fully utilized during normal operating conditions. SCE has adequately demonstrated the prudency of the Special Protection Systems and its consistency with CAISO planning standards and NERC/WECC planning standards.

Regarding SCE's proposed contingency, it suggests a 35% contingency, citing to SCE's recent experience with the Antelope-Pardee Transmission Project 1 (Antelope 1) and Antelope-Pardee Transmission Project 2 and 3 (Antelope 2 and 3).[117] SCE further suggests that the amount of contingency as a percentage of the cost estimate will decrease as the project scope is better defined. SCE's requested contingency exceeds the amounts, generally between 5% and 15%, recently adopted by the Commission and requested by applicants for similar transmission projects in California.[118] Consistent with precedent, we adopted a contingency of 15%.[119] This contingency will be applied to the total project costs of $306.338 million, as noted at Exhibit SCE-1.

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[116] SCE Reply Brief at 20-22.

[117] SCE Opening Brief at 30.

[118] DRA Opening Brief at 13.

[119] D.09-12-044 at 69-71.

SCE also requests that the Commission find that its preliminary cost estimates of $306 million (constant 2009 dollars), excluding contingency and corporate overhead,[120] qualify as reasonable and prudent under California Public Utilities Code Section 1005.5(a). This "reasonable amount" is sometimes referred to as a "cost cap."[121] In the future, if circumstances warrant, SCE would request the Commission to consider an appropriate request from SCE for an increase of the reasonable and prudent cost cap pursuant to Section 1005.5(b). We adopt as reasonable a cost cap under § 1005.5 the total amount noted in Attachment A to Exhibit SCE-1, direct costs of $306.338 million plus a 15% contingency.

10. Public Utilities Section 625 Notice Requirements

SCE states it will comply with the applicable notice requirements in California Public Utilities Code Section 625, should SCE become aware of any need to condemn property for competitive purposes during this process. We affirm that SCE must comply with Section 625 as needed.

11. Comment Period

The alternate proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments on the Proposed Decision and Alternate Proposed Decision were filed on December 6, 2010 by Southern California Edison, jointly by Brightsource and First Solar, the Division of Ratepayer Advocates, the Center for Biological Diversity, and Western Watersheds Project,

[120] Exhibit SCE-1 at 19.

[121] Exhibit SCE-1 at 20:7-8.

and reply comments were filed on December 13, 2010 by Southern California Edison, jointly by Brightsource and First Solar, the Center for Biological Diversity, and the Division of Ratepayer Advocates.

SCE's comments focused primarily on the Proposed Decision which denies the SCE's application. In particular, SCE argues that the requirement implied by the PD, that available capacity on the transmission systems of other transmission providers must be fully evaluated before a CPCN can be granted, is unduly burdensome and would, if adopted create a significant barrier to renewable development. SCE notes in particular that neither SCE nor CAISO can conduct system impact studies to evaluate the affect of interconnecting renewables to third party transmission systems, like LADWP and NV Energy, both of which own high voltage transmission in the vicinity of the proposed project. Similarly, SCE notes the CPUC has no authority to compel these entities to conduct such studies. Lastly, on this point, SCE argues that the approach taken in the PD would force generators to pursue interconnection studies with multiple transmission system providers in a given region, dramatically increasing the time, cost and uncertainty associated with the interconnection process. To the extent projects are able to interconnect, it will lead to a piecemeal solution and upgrades to the transmission system to facilitate renewable compliance, contrary to the intent of § 399.2.5. SCE disputes the PD's finding that the line is not needed based on the speculative nature of the projects that would use the line if built. SCE also argues that the PD's characterization of Desert Tortoise fragmentation is incorrect. In light of these arguments SCE supports the Alternate Proposed Decision.

Brightsource and First Solar also support the APD and make many similar arguments as those of SCE regarding the PD. Brightsource and First Solar argue

that the PD strays from the intent of the § 399.2.5 by introducing a new standard/requirement for approval, namely requiring SCE to analyze available capacity on non-CPUC jurisdictional transmission systems, which creates additional project development barriers rather than facilitating renewable development. This, in their view, also conflicts with the SCE's obligations pursuant to the CAISO tariff and the Federal Power Act, namely that SCE take the appropriate steps to interconnect these resources when interconnection is requested. They further argue that the approach proposed in the PD is impractical given the fact that these third-party facilities are not subject to these requirements, creating a great deal of uncertainty in the interconnection process. Brightsource and First Solar suggest that the PD conflicts with Commission precedent noting that the approach in the PD regarding third party transmission system capacity was not imposed in the case of decisions granting CPCNs for Tehachapi segments 1-3 and Tehachapi segments 4-11. Because the PD would essentially force developers to engage in multiple interconnection processes, Brightsource and First Solar allege it would dramatically increase the regulatory burden to transmission development to the detriment of project developers. In the case of this application in particular, denying the CPCN will adversely impact the ability of Brightsource to move forward because it creates uncertainty as to how and if Brightsource will be able to interconnect thus putting at risk the commercial arrangements between Brightsource and DOE which are largely contingent on the timely approval of EITP.

DRA supports the PD denying the application and opposes the APD. DRA supports the approach taken in the PD, in particular agreeing that because there may be sufficient capacity on existing transmission systems in the region to deliver energy from the Brightsource project it is unnecessary and premature to

grant the CPCN for EITP. DRA also argues that the other projects with approved PPAs and the potential in the region is too uncertain to be used to justify the line or meet the criteria established for making a need determination pursuant to § 399.2.5.

DRA goes on to argue that because, in its view, the necessity of the line to deliver renewable energy pursuant to the first two prongs of the three prong test is suspect, the requirement that the costs of the line be reasonably balanced against the potential to achieve economically rational RPS compliance cannot be met.

DRA also raises a number of technical concerns with the proposed project noting that no CAISO study has been performed on the EITP as a whole, and the system impact study that has been done is, in DRA's view, grossly flawed. They also note that CAISO has not approved the project as a whole, and lastly, DRA argues that there has been insufficient consideration of Alternatives, in particular, a westward path alternative.

In its comments, CBD agrees with the PD that the applicant has failed to demonstrate that the project is needed. In particular, CBD agrees with the PD's conclusion that because there may be sufficient transmission capacity on other transmission providers' systems to interconnect the "one permitted project and the one project with an approved PPA" there is insufficient basis to conclude that the project is needed. CBD presents information regarding the existing transmission facilities in the region and presents information indicating that there is substantial capacity on LADWP's system to interconnect resources. CBD also presents cost information regarding the relatively lower cost of interconnecting to LADWP's system than building EITP. CBD also argues that because the line cannot be guaranteed to only carry renewables, especially given

the, in CBD's view, highly speculative nature of renewable projects that would utilize EITP and the fact that SCE did not provide data on its compliance with the RPS, it should not be approved.

CBD also reiterates a number of arguments regarding the insufficiency of the Final EIR/EIS. Regarding the Peevey APD specifically, CBD argues that the APD is trying to have it both ways; accepting the approach taken in the EIR in which a number of projects were deemed too speculative to be included in the CEQA review, but viewing these same projects as sufficiently certain to warrant finding the line is needed in order to interconnect them. Western Watersheds Project focused on alleged deficiencies in the final environmental document.

Most of the arguments raised in comments are squarely addressed in the discussion above providing our rationale for approving this project. While a number of parties oppose approval on the grounds that the resource potential and the renewable projects that would interconnect to EITP are too speculative, we flatly disagree. The approved PPAs in the region combined with the projects in the CAISO queue and the resource potential identified in the region provide a compelling basis to determine that this line, when built, will interconnect a substantial amount of renewable energy that would otherwise go undelivered, and thus can play an instrumental role in achieving the state's renewable energy goals.

We also won't belabor the discussion regarding whether the potential availability of transmission capacity on other entities' systems provides a basis for rejecting the CPCN. As SCE as well as Brightsource and First Solar point out, denying a project on the grounds that there might be transmission capacity available on non-CAISO transmission systems introduces substantial uncertainty into the interconnection process by effectively requiring project developers to

pursue multiple interconnection requests with various transmission owners in a region. This approach also creates tremendous uncertainty for transmission owners, like SCE, which are subject to the CAISO tariffs in that there is not currently a means by which they can assess available capacity on other systems before submitting an application for a CPCN as they, CAISO, nor this Commission, have the authority or other means of facilitating the level of coordination this would require. Additionally, the information CBD provides in its comments regarding the availability and economics of transmission capacity on LADWP's system is new information and is not part of the evidentiary record in this proceeding.

DRA's arguments regarding the insufficiency of the CAISO impact studies do not provide a compelling basis to deny or postpone approval of the CPCN. Though we do not dispute the basic fact that the system impact studies conducted thus far evaluated the system impacts below the line's full proposed capacity for generator interconnection, we note that additional generation projects seeking to use the line in the future will need to undertake studies before being interconnected to ensure that doing so will not result in adverse system impacts, pursuant to CAISO Tariff Appendix Y –LGIP For Requests In A Queue Cluster Window.[122] This is a less than ideal approach in that such subsequent generator interconnections might require further upgrades somewhere on the network in order to maintain reliability and deliverability, affecting the economic and environmental consequences of the overall transmission project in ways not assessed in the limited interconnection studies that have been presented. Such

[122] See CAISO Tariff Appendix Y,http://www.caiso.com/27c3/27c3ee0763210.pdf.

further assessment would appear to require some speculation regarding the specific nature of the generation projects that will ultimately use the line, but would provide valuable information for assessing the full transmission project. However, given urgent circumstances in the present case combined with evidence regarding further renewable resources and commercial activity in this area, suspending consideration of this line pending an additional system impact study that evaluates the potential impacts if the line is used to its full rated capacity will lead to unacceptable delays. We believe the approach taken here, coupled with the interconnection protocols to which projects seeking to use this line are subject, provide adequate safeguards to prevent adverse system impacts due to full subscription of the line's capacity while ensuring that the near term projects that will interconnect can do so safely and without negatively effecting grid reliability.

With respect to DRA's concerns regarding how CAISO approval of the line occurs, in general we agree that under ideal circumstances major projects like EITP would emerge from the CAISO's overall integrated Transmission Planning Process (TPP) which provides a more holistic and open forum, and a more transparent basis, to consider and compare the various transmission lines that could be built to access high-potential renewable resource areas. However, we also recognize the practical reality that the timing for that integrated process does not currently align well with the exigencies of developing the substantial initial round of renewable projects in the Ivanpah Valley Region, particularly given the availability and terms of federal funding like the DOE loan guarantees. In this case, a number of relatively advanced renewable projects have sought interconnection to SCE's system via the Large Generator Interconnect Procedures and the line is being proposed, and a CPCN being requested in response to those

interconnection requests but additionally recognizing that from an economic standpoint, the line should be efficiently sized to support an amount of renewable generation that we can realistically anticipate being developed in the region in the not-too-distant future, to avoid piecemeal infrastructure development. For these reasons we disagree with the DRA's position that we should wait for relevant action from the CAISO's TPP, or its proposed revised TPP (RTPP) before considering this project. We also note that DRA's contention, that the CAISO has not approved this line, is misleading. While the project did not come out of the TPP, CAISO did enter into Large Generator Interconnection agreements that require SCE to pursue EITP.

However, having said that, use of the narrower generator interconnection process to design and implicitly approve (when LGIAs are submitted to FERC) very large transmission projects costing hundreds of millions of dollars and sized well beyond current generator interconnection needs is not a desirable alternative to studying, planning and approving such projects through the more holistic, transparent and open TPP. This is especially true when we are seeing high cost estimates, when more such renewable generation-supporting projects are anticipated, and when we have already expressed support for competitive opportunities to develop such transmission.

With respect to DRA's concerns regarding the elimination of westward alternatives from consideration, we believe the appropriate forum for this issue was in the context of the EIR/EIS. The determination to exclude the westward alternative was made in that context and parties were given full opportunity to participate in that process. We do not believe we need to readdress the basis for the determination of which alternatives were carried forward here. Similarly, to the extent Western Watersheds Project raises concerns in its comments related to

the insufficiency of the EIR/EIS we believe those issues are addressed in the Final EIR/EIS which we certify in this decision, and do not need to be further addressed here.

Regarding CBD's argument that the projects the Commission relies on to justify a need determination for EITP should also be incorporated into the EIR/EIS, we are not persuaded. This argument implies that the standard for determining need under § 399.2.5 requires that the renewable projects that support such a finding be sufficiently advanced for inclusion as a connected action in the CEQA context. However, no such equivalency is required. For example, the substantial renewable resource potential of an area could reasonably serve as the basis to find that a given transmission project is necessary to facilitate economically rational development for achieving the goals of the RPS program consistent with § 399.2.5. In our view, including as connected actions various hypothetical projects that may emerge is not required in the CEQA review. These projects were not sufficiently advanced to merit inclusion in the EIR/EIS. In addition, CBD's reasoning ignores the fact that the EIR/EIS is developed in a dynamic environment which can change while the review is being conducted and finalized. Those projects that were sufficiently advanced at the time the scope and baselines were established for conducting the environmental review should be included in the EIR/EIS, however this represents a subset of the projects that may be considered in making a need determination pursuant to § 399.2.5. This is driven both by the relative breadth of what projects and resources are considered in making a need determination, under § 399.2.5, recognizing our desire to build transmission in a manner that anticipates future development, as well as the fact that our consideration of the CPCN necessarily occurs after a substantial amount of time has passed since the

EIR/EIS process was initiated. As result of this, projects that were not well-defined when the scope and baselines were set for the EIR/EIS have since become more defined. However, as a practical and legal matter we are not obligated to include these emerging projects in the EIR/EIS. To do so would lead to a potentially open-ended environmental review process. The EIR/EIS conducted for this project appropriately included those projects that were sufficiently advanced at the time to be incorporated into the environmental review. In contrast, the need determination under § 399.2.5 considered a much broader set of projects including those projects that were well-defined at the time the environmental review was initiated, those projects that have since that time become relatively more well defined, as well as projects that are less mature, but which still reflect and validate the extensive renewable resource potential in the area, as well as the commercial interest in developing that potential in the region.

12. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Regina M. DeAngelis is the assigned ALJ in this proceeding.

Findings of Fact

1. The Eldorado-Ivanpah Transmission Project is necessary to promote the safety, health, comfort, and convenience of the public.

2. The Eldorado-Ivanpah Transmission Project is a high-voltage, bulk transfer, transmission facility designed to serve multiple renewable projects in the Ivanpah Dry Lake region.

3. The transmission capacity on the CAISO system that is currently available to interconnect resources in the Ivanpah Dry Lake Area is approximately 80 MW.

4. As proposed, the Eldorado-Ivanpah Transmission Project would provide sufficient transfer capability to transmit up to 1,400 MW of renewable capacity.

5. At present there are four renewable energy projects, representing 717 MW of capacity, with Commission approved power purchase agreements that are seeking interconnection to the CAISO system in the Ivanpah Dry Lake Area.

6. These power purchase agreements were approved in part because of the role that deliveries from these projects are anticipated to play in the realization of the state's 20% RPS goals.

7. At present there are 6 projects representing 964 MW of capacity requesting interconnection to the Eldorado-Ivanpah Transmission Project CAISO interconnection queue.

8. RETI identified the Mountain Pass Competitive Renewable Energy Zone, which is located in the California portion of the Ivanpah Dry Lake Area, as having significant renewable potential, in excess of 950 MW of potential capacity.

9. The Renewable Energy Transmission Initiative also identified an additional 5,402 MW of renewable capacity in the Nevada Southwest.

10. In light of the limited existing available transmission capacity on SCE's system, absent the Eldorado-Ivanpah Transmission Project, the renewable generation projects with Commission approved power purchase agreements will not have a means to deliver their energy to load centers, and, as a result, would be subject to significant delay and risk of contract failure.

11. The Eldorado-Ivanpah Transmission Project may play an important role in the development of renewable resources in the Ivanpah Dry Lake Area beyond those projects with Commission approved power purchase agreements.

12. Once an interconnection request is submitted to the CAISO, numerous studies are required before an interconnection agreement can be reasonably executed.

13. The time between submission of an interconnection request and execution of and interconnection agreement takes approximately two years.

14. The cost of the Eldorado-Ivanpah Transmission Project is justified based upon the high degree of the certainty that the project is needed to ensure development of RPS-eligible resources in the Ivanpah Dry Lake Area.

15. The project alternatives considered in the Final EIR/EIS constitute a reasonable range of feasible alternatives, as required by the CEQA Guidelines.

16. The environmentally superior alternative for the Eldorado-Ivanpah Transmission Project as identified in the Final EIR is the applicant's proposed project.

17. The environmentally superior route poses less harm to the environment than do the other routes proposed by SCE and/or considered in the Final EIR/EIS, while still meeting the project objectives.

18. The proposed route includes no-cost and low-cost measures (within the meaning of D.93-11-013, and D.06-01-042) to reduce possible exposure to EMF.

19. SCE agrees to comply with the mitigation measures described in the Final EIR/EIS.

20. The Commission has reviewed and considered the information in the Final EIR/EIS before approving the project.

21. In determining whether to grant a CPCN for the proposed project, we have given express consideration to community values, recreational and park areas, historic and aesthetic values, and influence on the environment.

22. The Final EIR identifies significant environmental effects of approved route that can be mitigated or avoided such that they become not significant.

23. Specific findings with respect to all significant or potentially significant environmental effects of the project as proposed and of the various alternative routes studied in the Final EIR/EIS are set forth in Attachment B to this Decision, CEQA Findings of Fact. We adopt the CEQA Findings of Fact included in Attachment B as if fully set forth herein.

24. The environmental mitigation measures identified in the Final EIR/EIS, and set forth in detail in Attachment A to this Decision, are feasible and will avoid some of the significant environmental impacts that would otherwise result from the approved project.

25. The Mitigation Monitoring Plan set forth in Chapter 9 of the Final EIR/EIS conforms to the recommendations of the Final EIR/EIS for measures required to mitigate or avoid those environmental effects of the project that can be reduced or avoided.

26. Notwithstanding the adoption in this Decision of all feasible mitigation measures identified in the Final EIR/EIS, and set forth in detail in Attachment A, there are certain adverse environmental impacts of the project being approved in this decision that cannot mitigated to a less than significant level. The project's unavoidable adverse environmental impacts are acceptable in light of the substantial benefits the project provides, particularly its role in facilitating compliance with the state's Renewables Portfolio Standard and meeting the greenhouse gas mitigation goals pursuant to Assembly Bill 32, which constitute an overriding consideration warranting approval of the project, despite each and every unavoidable impact.

27. As the State's lead agency under CEQA, the Commission is required to monitor the implementation of mitigation measures adopted for this project to ensure full compliance with the provisions of the monitoring program.

28. The Commission will develop a detailed implementation program for the Mitigation Monitoring Plan. This program will be called the Mitigation Monitoring, Reporting and Compliance Program (MMRCP).

29. The Final EIR reflects the Commission's independent judgment and analysis.

Conclusions of Law

1. The Commission has jurisdiction over the proposed project pursuant to, inter alia, Pub. Util. Code §§ 399.25 and §§ 1001 et seq.

2. In order to award a certificate under § 1001, the Commission must find that the present or future public necessity require or will require construction of the line.

3. Section 399.2.5 authorizes the Commission to deem necessary those transmission facilities identified in applications if the proposed facilities are necessary to facilitate achievement of the State's renewable power goals.

4. Section 399.2.5 also provides a "backstop" cost mechanism allowing the utilities to recover through retail rates any prudently incurred costs that are not approved by the Federal Energy Regulatory Commission for recovery through transmission rates.

5. The Commission implemented the cost recovery provisions of § 399.2.5 in D.03-07-033 and in D.06-06-034.

6. Section 399.2.5 does not create a presumption of need and the authority under § 399.2.5 is only exercised *after* the Commission fully considers the requirements of §§ 1001-1013, including the analysis required by § 1002.

7. Section 399.2.5 recognizes that in order to achieve RPS goals, it may be necessary for the Commission to approve new transmission projects in anticipation of future renewable energy projects, and to provide additional assurances of recovery of reasonable construction costs.

8. Because § 399.2.5 exists in a broader statutory context – one that requires ambitious renewable portfolio development, reasonable rates, and environmental protection -- we interpret this code section in a manner that strikes a reasonable balance.

9. In D.06-06-034 we identified two types of transmission projects that could be needed to facilitate RPS compliance and were therefore eligible for cost recovery. Those projects included "high-voltage, bulk-transfer, multi-user transmission facilities… proposed to access known, concentrated renewable resource areas…"

10. D.06-06-034 also noted that the degree of certainty required for a showing of RPS need "will depend on the magnitude of costs at stake," and that "in certain cases it will be necessary to consider the status of the RPS compliance to date…"

11. In order to rely on § 399.2.5 to establish the need for a project, we find that a proponent must demonstrate: (1) that a project would bring to the grid renewable generation that would otherwise remain unavailable; (2) that the area within the line's reach would play a critical role in meeting the RPS goals; and (3) that the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance.

12. The Eldorado-Ivanpah Transmission Project satisfies the requirements of Pub. Util. Code § 399.2.5.

13. The Commission retains authority to approve SCE's EMF mitigation plan to ensure that it does not create other adverse environmental impacts.

14. The Final EIR/EIS should be approved.

15. Project approval should be conditioned upon the completion of the mitigation measures set forth in Attachment A. These mitigation measures are feasible and will minimize or avoid significant environmental impacts. Those mitigation measures should be adopted and made conditions of project approval.

16. After considering and weighing the values of the community, the impacts to parks and recreational areas, the impacts on historical and aesthetic values, and the environmental impacts caused by the project, we conclude that the CPCN for the Eldorado-Ivanpah Transmission Project as described in this decision should be approved.

17. The Commission is the Lead Agency for compliance with the provisions of CEQA.

18. The Draft EIR/EIS analyzing the environmental impacts of the Proposed Project was processed in compliance with CEQA.

19. A Final EIR/EIS on the Proposed Project was processed and completed in compliance with the requirements of CEQA.

20. The Draft EIR/EIS and the Final EIR/EIS (which includes the Mitigation Monitoring, Reporting and Compliance Program and EMF Field Management Plan) should be adopted in their entirety.

21. SCE should be granted CPCN for the proposed route of the Eldorado-Ivanpah Transmission Project, with mitigation set forth in the Mitigation Monitoring Plan.

22. SCE should obtain all necessary permits, easement rights or other legal authority for the project site prior to commencing construction.

23. Possible exposure to EMF has been reduced by the no-cost and low-cost measures SCE will include in the project that are specified in Appendix B of its Application and pursuant to D.93-11-013, and D.06-01-042.

24. SCE's EMF management plan for the Eldorado-Ivanpah Transmission Project is adopted.

25. Based on the completed record before us, we conclude that other alternatives identified in the Final EIR/EIS are infeasible or and/pose more significant environmental impacts than the route we select in this decision.

26. Section 399.2.5(b)(4) ensures retail rate recovery of prudently-incurred costs for projects the Commission finds to be necessary to facilitate RPS compliance to the extent that cost recovery is not otherwise available.

27. The determinations made in D.06-06-034 regarding implementation of the cost recovery provisions of § 399.2.5 apply here.

28. Section 399.2.5 requires the Commission to direct SCE to seek the recovery through general transmission rates of the costs associated with the transmission facilities.

29. Section 399.25 is not meant to substitute for the existing cost recovery mechanisms available to support transmission development, nor is it intended to change the ultimate cost responsibility of generators and utility ratepayers. Nothing in this decision is intended to relieve renewable generators from their responsibility for their fair share of the costs of non-network transmission facilities necessary to interconnect the generator with the network.

30. Notwithstanding the likelihood of cost recovery through FERC wholesale rates, it is appropriate for SCE to continue to track its project costs through the

memorandum account approved by the Commission on December 17, 2009 in response to SCE Advice Letter 2345-E on December 17, 2009.

31. Both § 399.2.5 and D.06-06-034 anticipate that first FERC would act, and that this Commission would step in only if FERC disallows recovery of some costs. Thus, any consideration of cost recovery by this Commission would only come after FERC had concluded its consideration of cost recovery for the project.

32. The Commission has authority to specify a "maximum cost determined to be reasonable and prudent" for the Eldorado-Ivanpah Transmission Project pursuant to Pub. Util. Code § 1005.5.

33. The Commission should approve a maximum reasonable and prudent cost cap under § 1005.5 of $306.338 million plus a 15% contingency for this project.

34. Commission approval of SCE's application, as modified herein, is in the public interest.

35. This order should be effective immediately so that construction of the project can begin.

36. Application 09-05-027 should be closed.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is granted to Southern California Edison Company to construct the Eldorado-Ivanpah Transmission Project, following the environmentally superior route described in the Final Joint Environmental Impact Report/Environmental Impact Statement, including the Draft and the Final Joint Environmental Impact Report/Environmental Impact Statement Mitigation Monitoring Plan and the Electric and Magnetic Fields Field Management Plan.

2. Southern California Edison Company shall, as a condition of approval, comply with all applicably mitigation measures specified in the Final Environmental Impact Report/Environmental Impact Statement and as directed by the Commission's Executive Director or designee(s). Southern California Edison Company shall work with the Commission's Energy Division to create detailed maps for use in construction and mitigation monitoring.

3. The Mitigation Monitoring Plan included as part of the Final Environmental Impact Report is adopted.

4. Pursuant to Pub. Util. Code § 1005.5(a), the maximum cost cap (in 2009 dollars) determined to be reasonable and prudent for the Eldorado-Ivanpah Project, is $306.338 million plus a 15% contingency.

5. The Energy Division shall supervise and oversee construction of the project insofar as it relates to monitoring and enforcement of the mitigation measures described in the Final Joint Environmental Impact Report/Environmental Impact Statement in accordance with the Mitigation Monitoring Plan set forth in Chapter 9 of the Final Joint Environmental Impact Report/Environmental Impact Statement. The Energy Division may delegate its duties to one or more Commission staff members or outside staff. The Energy Division is authorized to employ staff independent of the Commission staff to carry out such functions, including, without limitation, the on-site environmental inspection, environmental monitoring, and environmental mitigation supervision of the construction of the project. Such staff may be individually qualified professional environmental monitors or may be employed by one or more firms or organizations. In monitoring the implementation of the environmental mitigation measures described in the Final Joint Environmental Impact Report/Environmental Impact Statement, the Energy Division shall

attribute the acts and omissions of Southern California Edison Company's employees, contractors, subcontractors, or other agents to Southern California Edison Company. Southern California Edison Company shall comply with all orders and directives of the Energy Division concerning implementation of the environmental mitigation measures described in the Joint Environmental Impact Report/Environmental Impact Statement.

6. The Energy Division shall supervise and oversee the construction of the Eldorado-Ivanpah Transmission Project insofar as it relates to monitoring and enforcement of the mitigation measures described in the Final Environmental Impact Report/Environmental Impact Statement. The Energy Division may designate outside staff to perform on-site monitoring tasks. The Commission project manager (Energy Division, Environmental Projects Unit) shall have the authority to issue a Stop Work Order on the entire project, or portions thereof, for the purpose of ensuring compliance with the mitigation measures described in the Final Environmental Impact Report/Environmental Impact Statement. Construction may not resume without a Notice to Proceed issued by the Environmental Projects Unit of the Energy Division.

7. Southern California Edison Company's right to construct the Eldorado-Ivanpah Transmission Project as set forth in this decision shall be subject to all other necessary state and local permitting processes and approvals.

8. Southern California Edison Company shall file a written notice with the Commission, served on all parties to this proceeding, of its agreement, executed by an officer of Southern California Edison Company duly authorized (as evidenced by a resolution of its board of directors duly authenticated by a secretary or assistant secretary of Southern California Edison Company) to acknowledge Southern California Edison Company's acceptance of the

conditions set forth in the Ordering Paragraphs of this decision. Failure to file such notice within 75 days of the effective date of this decision shall result in the lapse of the authority granted by this decision.

9. Consistent with Pub. Util. Code § 399.2.5, the Commission shall ensure that Southern California Edison Company is eligible to recover, through rates, any reasonable and prudent costs related to the Eldorado-Ivanpah Transmission Project that the Federal Energy Regulatory Commission determines not to reflect in authorized transmission rates. Southern California Edison Company shall account for these costs, and seek any needed future recovery, in the manner described in Section 4.4.2 of this decision.

10. The Final Environmental Impact Report/Environmental Impact Statement for the Eldorado-Ivanpah Transmission Project is certified pursuant to the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000 et seq.

11. The Draft Environmental Impact Report/Environmental Statement and the Final Environmental Impact Report/Environmental Statement are received into evidence. These documents are Exhibits ALJ-1 and 2 respectively.

12. The Energy Division shall file a Notice of Determination for the project as required by the California Environmental Quality Act and the regulations promulgated pursuant thereto.

13. Upon satisfactory completion of the project, Southern California Edison Company shall file a notice of completion with the Executive Director by the Energy Division.

14. Application 09-05-027 is closed.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners