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

Application of 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)

**REPLY BRIEF OF  
BRIGHTSOURCE ENERGY, INC.  
AND FIRST SOLAR, INC.**

Joseph M. Karp  
Thomas W. Solomon  
Winston & Strawn LLP  
101 California Street, 39th Floor  
San Francisco, California 94111-5894  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
Email: [jkarp@winston.com](mailto:jkarp@winston.com)  
[tsolomon@winston.com](mailto:tsolomon@winston.com)

*Attorneys for BrightSource Energy, Inc. and  
First Solar, Inc.*

September 10, 2010

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**I. INTRODUCTION**

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”) and the *Joint Assigned Commissioner and Administrative Law Judge’s Scoping Memo Ruling* (“Scoping Memo”) issued in this proceeding on December 21, 2009, BrightSource Energy, Inc. (“BrightSource”) and First Solar, Inc. (“First Solar”) (collectively, the “Joint Developers”) respectfully submit this Reply Brief on Southern California Edison Company’s (“SCE”) Application 09-05-027 (“Application”) for a Certificate of Public Convenience and Necessity (“CPCN”) for the Eldorado-Ivanpah Transmission Project (“EITP”).

In the Opening Brief submitted by the Joint Developers in this proceeding on August 27, 2010 (“Joint Developer Opening Brief”), the Joint Developers described the Commission’s three-prong test for establishing the need for a transmission project, and how SCE has met that test, explaining (i) how SCE has demonstrated the need for the EITP based on the applicable statutory framework, (ii) the Commission’s precedent for implementation and application of that

framework, and (iii) the record developed in this proceeding supporting the necessary findings.<sup>1</sup> Accordingly, because the EITP meets the Commission's three-prong test for establishing the need for the project, the Joint Developers requested that the Commission grant the CPCN for the EITP, and find that SCE is eligible for backstop recovery of prudently-incurred EITP costs pursuant to Public Utilities Code Section 399.2.5.<sup>2</sup>

In this Reply Brief, the Joint Developers respond to the arguments presented by the Center for Biological Diversity ("CBD") and the Division of Ratepayer Advocates ("DRA") in their Opening Briefs. Specifically, as discussed below, the Commission should (A) reject CBD's premature argument that the Commission's California Environmental Quality Act ("CEQA") process is inadequate, because the joint Final Environmental Impact Report/Environmental Impact Statement ("FEIR/FEIS") has not yet been issued; (B) reject CBD's argument that distributed photovoltaic generation ("DPV") presents a feasible alternative to the EITP because a DPV-only strategy (1) fails to satisfy project objectives, (2) is insufficient to meet the state's renewable energy goals, and (3) is not more cost-effective than the EITP and associated generation; (C) reject DRA's assertion that the California Independent System Operator ("CAISO") has not approved the EITP because it is inaccurate. As the arguments provided by CBD and DRA do not, in any way, detract from SCE's demonstration that it has met the Commission's tests for determining need under Section 399.2.5 and otherwise met the standards necessary for granting the CPCN, the Commission should grant the CPCN for the EITP and find that SCE is eligible for backstop recovery of prudently-incurred EITP costs pursuant to Public Utilities Code Section 399.2.5.

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<sup>1</sup> Joint Developer Opening Brief at 1-2.

<sup>2</sup> *Id.*

Each of these conclusions is described in greater detail below.

## II. BACKGROUND

On May 28, 2009, SCE submitted Application 09-05-027. In it, SCE requested that the Commission (1) issue a CPCN for the EITP and (2) provide an order explicitly establishing that, pursuant to Public Utilities Code Section 399.2.5, SCE can recover through Commission-jurisdictional rates all prudently-incurred EITP costs that are not recovered in Federal Energy Regulatory Commission (“FERC”) jurisdictional rates.

On June 22, 2009, the Commission issued the *Administrative Law Judge's Ruling Requiring Amended Application*, which required SCE to resubmit its application with additional cost detail. SCE submitted the Application on September 22, 2009, in compliance with this ruling.

A prehearing conference was held on December 2, 2009. Hearings were held on August 9-10, 2010. Opening Briefs were filed on August 27, 2010.

## III. ARGUMENT

### A. **The Commission Should Reject CBD’s Argument That The Commission’s CEQA Process Is Inadequate Because The Argument Is Premature Given That The FEIR/FEIS Has Not Yet Been Issued**

CBD opens its brief with a statement that the Commission should not approve the Application because, it alleges, the Commission’s review of the significant impacts of the EITP do not meet the requirements of CEQA.<sup>3</sup> This broad statement is, as a matter of law, without any meaning at this juncture of the proceeding, as the Commission’s review of the EITP pursuant to

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<sup>3</sup> CBD Opening Brief at 1.

CEQA is not yet complete; it has not yet issued the FEIR. As such, CBD's argument that the Commission's CEQA process is insufficient is premature, and the Commission should reject CBD's request that the Commission reject the Application.

CBD acknowledges that it has already provided detailed comments on the Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/DEIS") to the Commission and BLM.<sup>4</sup> The Commission will consider CBD's comments, along with the comments submitted by other interested parties, and make those revisions that it believes are necessary for it to discharge its obligations under CEQA when it issues the FEIR/FEIS. Setting aside the merits of CBD's arguments, until the FEIR/FEIS has been issued, it cannot be concluded that the CEQA process has been inadequate. Accordingly, the Commission should reject CBD's request that the Commission reject the Application.

**B. The Commission Should Reject CBD's Argument That Distributed PV Provides A Feasible Alternative To The EITP**

CBD asserts that "because there are feasible alternatives to the EITP that would substantially avoid many of the significant impacts of the EITP and the connected actions to species and habitats and other resources, the EITP must be denied to comply with the most fundamental substantive requirements of CEQA."<sup>5</sup> CBD describes only one alternative, however, which is "[n]on-transmission dependent renewable energy, specifically solar PV at an industrial scale" – i.e., a DPV-only alternative.<sup>6</sup> This "alternative" is little more than a general procurement strategy, without any of the detail necessary to assess its feasibility or impacts; CBD has not identified any specific project that could be pursued in lieu of the EITP and

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<sup>4</sup> *Id.* at 6-7.

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.* at 16.

associated generation, which includes specific projects in late stages of development. Nonetheless, CBD claims that its DPV-only strategy “achieves the fundamental project objective – compliance with the state-mandate RPS – at lower cost and with far less environmental impact than the proposed EITP and connected renewable generation projects.”<sup>7</sup>

Contrary to CBD’s claim, a DPV-only strategy does not provide a feasible alternative to the EITP because a DPV-only strategy (1) fails to satisfy project objectives, (2) is insufficient to meet the state’s renewable energy goals, (3) is not more cost-effective than EITP and associated generation; and (4) cannot be said to be feasible nor more beneficial than the EITP, as it lacks even the barest minimum of specificity required to reasonably assess feasibility or impacts. Therefore, the Commission should reject CBD’s request that the Application be denied.

**1. A DPV-Only Alternative Would Not Meet The EITP Project Objectives Because It Would Not Permit SCE To Interconnect Proposed Generation As Required To Comply With Its Obligations Under The CAISO Tariff And Executed Interconnection Agreements**

As a threshold matter, a DPV-only strategy is not a feasible alternative to the EITP because it would not satisfy the project objectives for the EITP. As described in SCE’s Proponent’s Environmental Assessment (“PEA”), the project objectives for EITP include:

- “1. Reliably interconnect new solar generation resources in the Ivanpah Dry Lake Area and help enable SCE and other California utilities to comply with California’s RPS in an expedited manner
2. Comply with all applicable reliability planning criteria required by NERC, WECC, and the CAISO”<sup>8</sup>

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<sup>7</sup> *Id.* at 16-17.

<sup>8</sup> PEA at ES-2.

A DPV-only alternative would, of necessity, preclude SCE from reliably interconnecting any proposed solar generation, which would be incompatible with the requirements of both the CAISO tariff<sup>9</sup> and the FERC-jurisdictional executed interconnection agreements to which SCE is a party<sup>10</sup>. As such, CBD's DPV-only strategy is not a feasible alternative, and the Commission should reject CBD's request that the Application be denied.

**2. A DPV-Only Alternative Would Not Be Sufficient To Meet The State's Renewable Energy Goals Because The DPV Capacity Required To Meet The State's Net Short Likely Cannot Be Developed By 2020**

Likewise, CBD's DPV-only strategy is not a feasible alternative to the EITP because it would require the development of a very large amount of DPV capacity, which could not reasonably be expected to be capable of development by 2020, the target established for the state's renewable energy goals. As explained in greater detail in the comments on the DEIR/DEIS submitted by Mr. Arne Olson on behalf of the Joint Developers on September 10, 2010 ("Olson DEIR/DEIS Comments"), approximately 31,000 MWdc of DPV would have to be installed by 2020 to meet the currently forecasted renewables portfolio standard ("RPS") net short of 46,025 GWh.<sup>11</sup> However, there is only approximately 10,000 MWdc of DPV capacity that is likely capable of development by 2020, which would leave the state approximately 30,000 GWh short of its RPS goals under CBD's proposed DPV-only alternative.<sup>12</sup> Thus, contrary to

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<sup>9</sup> See CAISO Fifth Replacement FERC Electric Tariff Appendices U and Y (requiring SCE to study proposed interconnections, tender interconnection agreements, and comply with those interconnection agreements upon execution). The Joint Developers request that the Commission take official notice of this document.

<sup>10</sup> See Exhibit SCE-013, LGIA Among Solar Partners I, LLC; SCE; and CAISO; Exhibit SCE-014, LGIA Among Solar Partners II, LLC; SCE; and CAISO; Exhibit SCE-015, LGIA Among Solar Partners VIII, LLC; SCE; and CAISO.

<sup>11</sup> Olson DEIR/DEIS Comments at 3-4. Note that this also assumes that 5,000 MWac of utility-scale PV generation is installed in the Westlands Water District, which is highly optimistic.

<sup>12</sup> *Id.* at 7-10.

CBD's assertion, a DPV-only alternative does not achieve "compliance with the state-mandate[d] RPS".<sup>13</sup>

To achieve "compliance with the state-mandate[d] RPS" the DPV-only strategy would have to provide sufficient generating capability to satisfy the net short, i.e., the difference between the renewable energy needed to achieve the state's renewable energy procurement goals and the existing level of renewable energy generation. The Commission's Energy Division released its *33% Renewables Portfolio Standard Implementation Analysis Preliminary Results* in June 2009 ("33% Analysis"), which estimated the net short to be approximately 75,000 GWh.<sup>14</sup> Energy Division released an updated net short estimate of 54,259 GWh as part of its proposed Long-Term Renewable Resource Planning Standards in Rulemaking 10-05-006.<sup>15</sup>

DPV alone is likely insufficient to meet the net short and enable California to achieve its RPS goals. As part of the update to the 33% Analysis, Energy Division's consultants E3 and Black and Veatch conducted a study to determine a reasonable estimate of the DPV capacity that could reasonably be developed in California by 2020, concluding that the DPV contribution to the state's RPS goals is likely to be 9,257 MWac.<sup>16</sup> Removing the 540 MWac that CBD states is already in operation,<sup>17</sup> this leaves 8,717 MWac of DPV capacity potentially available in time to

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<sup>13</sup> CBD Opening Brief at 16-17.

<sup>14</sup> Exhibit SCE-020, 33% Implementation Analysis Preliminary Results, at p. 7.

<sup>15</sup> *Administrative Law Judge's Ruling Revising the Schedule for the Proceeding and Regarding Staff's Proposals for Resource Planning Assumptions – Part 2 (Long-Term Renewable Resource Planning Standards)* (June 22, 2010), R. 10-05-006, Attachment 1 ("LT RPS Planning Standards"). The Joint Developers request that the Commission take official notice of Energy Division's LT RPS Planning Standards and the related presentation by Energy Division consultants E3 and Black & Veatch at the Commission's June 18, 2010 workshop in R. 10-05-006 (available at <http://www.cpuc.ca.gov/NR/rdonlyres/A0CBE958-E2C4-4AC7-9D56-3AB4D14D723D/0/BVE3PVAassessment.ppt>, last visited September 9, 2010) ("E3/B&V 33% Analysis Update").

<sup>16</sup> LT RPS Planning Standards at 11; E3/B&V 33% Analysis Update at 33.

<sup>17</sup> CBD Opening Brief at 17.

meet California's goals.<sup>18</sup> Assuming a capacity factor of 16.9%,<sup>19</sup> DPV could reasonably be anticipated to contribute approximately 15,486 GWh<sup>20</sup> towards a net short of 54,259 GWh. Thus, even with a full build-out of reasonably expected DPV capacity, the state would be more than 38,000 GWh short of its RPS goals. Accordingly, a DPV-only strategy is insufficient to achieve "compliance with the state-mandate[d] RPS" as CBD asserts,<sup>21</sup> and the Commission should reject CBD's request that the Commission reject the Application.

More broadly, the Commission has already initiated a proceeding to consider high-level changes to the procurement practices of the state's investor-owned utilities. Rulemaking 10-05-006 was established as "the forum in which [the Commission] shall consider the Commission's electric resource procurement policies and programs and how to implement them."<sup>22</sup> If CBD believes that California's investor-owned utilities should pursue a DPV-only procurement strategy, then CBD should be present that proposal in Rulemaking 10-05-006, not in this proceeding. As such, the Commission should reject CBD's assertion that a DPV-only strategy presents a feasible alternative to the EITP and CBD's request that the Commission reject the Application.

### **3. There Is No Evidence That A DPV-Only Alternative Is More Cost-Effective Than The EITP And Associated Generation**

There is no evidence that CBD's DPV-only strategy would be more cost-effective than the EITP and associated generation, yet another reason that this strategy cannot be considered a feasible alternative to the EITP. . While CBD asserts that DPV will achieve compliance with the

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<sup>18</sup> This is equivalent to 10,460 MWdc.

<sup>19</sup> This is the E3/B&V estimate for a 1MW fixed-tilt system in Riverside, CA. E3/B&V 33% Analysis Update at 10.

<sup>20</sup>  $10,460 \text{ MWdc} \times 16.9\% \times 8,760 \text{ hours} / 1,000 = 15,486$

<sup>21</sup> CBD Opening Brief at 16-17.

<sup>22</sup> *Order Instituting Rulemaking*, R. 10-05-006, at 2.

state's RPS goals "at lower cost" than the proposed EITP and associated generation, CBD's Opening Brief does not cite any cost data in support of its claim.<sup>23</sup> To the extent that CBD is relying on the comments submitted on the DEIR/DEIS by Mr. Bill Powers, that simply does not provide evidence that DPV would be more cost-effective than the EITP and associated generation. Indeed, Mr. Powers' comments support the conclusion that EITP and associated generation may be *more* cost-effective than DPV. Accordingly, the Commission should reject CBD's request that the Commission reject the Application.

In his comments on the DEIR/DEIS on behalf of CBD, Mr. Powers states:

"RETI states that the commercially available thin-film PV has a capital cost range of \$3.60 to \$4/Wac, and commercially available single-axis tracking polysilicon PV has a cost range of \$4 to \$5/Wac. These PV costs compare to a capital cost range for solar thermal, assumed to be dry-cooled, of \$5.35 to \$5.55/Wac. RETI indicates the capacity factor for thin-film PV is essentially the same as for dry-cooled solar thermal (assuming the same location)."<sup>24</sup>

Even if Mr. Powers' calculations with respect to comparative pricing for thin-film PV and dry-cooled solar thermal are accurate, Mr. Powers fails to acknowledge that the EITP is not a solar-thermal power plant, and that under applicable open-access interconnection rules, there is no basis for assuming that the EITP will only interconnect solar-thermal projects. While there are solar-thermal projects that anticipate interconnecting to the EITP, there are also utility-scale PV projects, such as First Solar's Desert Stateline project, that intend to interconnect to EITP. Mr. Powers does not adequately address the significant cost-savings of deployment of utility-scale PV relative to DPV. Thus, a comparison of PV and solar-thermal cost estimates fails to provide

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<sup>23</sup> CBD Opening Brief at 16-17.

<sup>24</sup> Comments of Bill Powers, P.E. on Eldorado-Ivanpah Transmission Project Draft EIR/EIS (June 21, 2010), at 15 ("Powers Comments").

any evidence that a DPV-only strategy is more cost-effective than building a transmission project to access renewable resources with Commission-approved RPS contracts that resulted from competitive solicitations.

It should be noted that Mr. Powers does acknowledge that the cost of DPV is likely higher than the RETI estimates, noting that the “RETI capital cost values for PV assume 20 MW systems located at distribution substations” and citing a draft Department of Energy (“DOE”) study for the proposition that the cost of a commercial rooftop system could be between \$4.50/Wac and \$5.00/Wac.<sup>25</sup> Using Mr. Powers’ own numbers (his estimate of \$3.60-\$4.00/Wac for a utility-scale thin-film PV project interconnecting to the EITP, such as First Solar’s Desert Stateline project, and his unrealistically low estimate of \$4.50/Wac for a DPV installation), the more cost-effective solution would be the EITP and associated generation. Thus, the Commission should reject CBD’s assertion that a DPV-only strategy is a feasible alternative to the EITP and reject CBD’s request that the Commission reject the Application.

Moreover, there are several flaws in the analysis presented by Mr. Powers. As described in detail in the Olson DEIR/DEIS Comments, Mr. Powers’ analysis repeatedly conflates DPV and utility-scale PV (“UPV”) installations, citing the benefits of DPV installations while referring to resource potential, cost estimates, and project examples from UPV installations.<sup>26</sup> For example, Mr. Powers refers to RETI’s \$3.60 to \$4.00/Wac cost estimate, which is an estimate for large UPV systems of 20 MW or larger.<sup>27</sup> Similarly, Mr. Powers misinterprets the pricing data provided by DOE and fails to disclose that DOE considers the pricing data to reflect

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<sup>25</sup> *Id.* at 16.

<sup>26</sup> Olson DEIR/DEIS Comments at 5.

<sup>27</sup> Exhibit SCE-017, RETI Phase 2B Final Report, at Table 4-8.

“Best-PV System Prices” that do not reflect actual market conditions,<sup>28</sup> particularly in the United States, where DOE expects “a significant gap between average prices in the market and these best-price estimates.”<sup>29</sup> In addition, these price estimates do not reflect the differences in expected insolation between typical locations for UPV installations versus DPV installations. Thus, the costs of DPV are expected to be higher than the estimates cited by Mr. Powers.

A more comprehensive analysis was performed by Energy Division’s consultants E3 and Black and Veatch as part of the E3/B&V 33% Analysis Update. This analysis considered four typical PV installation types and four representative locations and calculated the levelized cost of energy (“LCOE”) for each PV installation type and location based on a consistent set of assumptions regarding project finance, system lifetime, structure of the power purchase agreement (“PPA”), etc.<sup>30</sup> This analysis yielded a low LCOE estimate of \$136/MWh for a 150 MW UPV installation in the Mojave Desert (such as a PV project interconnecting to the EITP) and a high LCOE estimate of \$290/MWh for a 0.5 to 2.0 MW DPV installation in Oakland, California.<sup>31</sup> Even for a relatively larger 5 to 20 MW ground-mounted fixed-tilt project in Riverside, California, the LCOE estimate was \$184/MWh, which is approximately 35% higher than a UPV installation in the Mojave Desert.<sup>32</sup> Because this evidence demonstrates that a DPV-only strategy is *less* cost-effective than the EITP and associated generation, the Commission should reject CBD’s assertion that a DPV-only strategy is a feasible alternative to the EITP and reject CBD’s request that the Commission reject the Application.

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<sup>28</sup> Olson DEIR/DEIS Comments at 10-11.

<sup>29</sup> DOE Solar Vision Study - DRAFT, Chapter 4, at 7.

<sup>30</sup> Olson DEIR/DEIS Comments at 11; E3/B&V 33% Analysis Update at 39-46.

<sup>31</sup> E3/B&V 33% Analysis Update at 46.

<sup>32</sup> *Id.*

**C. The Commission Should Reject DRA's Assertion That The CAISO Has Not Approved The EITP Because It Is Inaccurate**

DRA's Opening Brief asserts that the CAISO has not approved the EITP.<sup>33</sup> As noted in the Joint Developer Opening Brief, this statement is inaccurate.<sup>34</sup> In comments the CAISO submitted to the FERC, the CAISO "confirm[ed] that it has executed the three LGIAs" for the BrightSource Ivanpah projects "and has thereby approved the need for the portions of the [EITP] described in those LGIAs."<sup>35</sup> As such, the Commission should disregard DRA's objection to the Application on this basis.

Furthermore, to the extent that DRA is asserting that the EITP must receive approval from the CAISO Board of Governors rather than the CAISO generally, DRA's assertion is inaccurate. DRA refers to Section 2.1.2.4 of the CAISO Business Practice Manual for the Transmission Planning Process, which in turn refers to Article 24 of the CAISO tariff.<sup>36</sup> The CAISO Transmission Planning Process applies to transmission projects that are proposed by a "Participating TO, Project Sponsor, Market Participant, the CAISO, the CPUC, or CEC," and are approved by the CAISO "where it will (1) promote economic efficiency, (2) maintain System Reliability, (3) satisfy the requirements of a Location Constrained Resource Interconnection Facility, or (4) maintain the simultaneous feasibility of allocated Long-Term CRRs."<sup>37</sup> In contrast, transmission upgrades required to interconnect a generating unit that seeks to interconnect to the CAISO controlled transmission system are determined pursuant to Article 25

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<sup>33</sup> DRA Opening Brief at at 6-7.

<sup>34</sup> Joint Developer Opening Brief at 9.

<sup>35</sup> *Comments of the California Independent System Operator Corporation* (August 24, 2010), FERC Docket No. EL10-1 ("CAISO Comments"). The Joint Developers requested that the Commission take official notice of these comments in the Joint Developer Opening Brief and renew that request here.

<sup>36</sup> DRA Opening Brief at 6-7.

<sup>37</sup> CAISO Fifth Replacement FERC Electric Tariff § 24.1.

and Appendices S, U, W, and Y of the CAISO tariff.<sup>38</sup> There is no requirement for transmission upgrades identified in an executed interconnection agreement to be approved by the CAISO Board of Governors.<sup>39</sup>

**D. The Commission Should Grant A CPCN For The EITP Because It Meets The Commission’s Three-Prong Test For Need Pursuant To Public Utilities Code Section 399.2.5**

As described in the Joint Developer Opening Brief, the Commission has established a three-prong test for demonstrating the need for a project pursuant to Public Utilities Code Section 399.2.5.<sup>40</sup> Specifically, in Decision 07-03-012, the Commission determined that the 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.”<sup>41</sup>

The Commission should grant the CPCN for the EITP because SCE has demonstrated that the EITP meets each of the requirements under the Commission’s three-prong test for need, and DRA’s conclusion that the three-prong test has not been satisfied is based on inaccurate information.

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<sup>38</sup> CAISO Fifth Replacement FERC Electric Tariff § 25.1.

<sup>39</sup> *Id.*; *see also*, CAISO Comments at 2 (“Once the LGIA is executed, the network upgrades identified in it are considered by the ISO to be needed and are incorporated into the modeling assumptions (base case) for transmission planning studies for the next annual planning cycle.”).

<sup>40</sup> Joint Developer Opening Brief at 2-3.

<sup>41</sup> D. 07-03-12 at 16.

**1. The EITP Will Bring To The Grid Renewable Generation That Would Otherwise Remain Unavailable**

The first prong of the Commission's test requires a demonstration "that a project would bring to the grid renewable generation that would otherwise remain unavailable."<sup>42</sup> As described in the Joint Developer Opening Brief, in Decision 09-12-044, the Commission adopted DRA's own test for the first prong – a transmission project is necessary if there are executed RPS contracts for projects that would not be able to interconnect to the CAISO grid without the transmission project.<sup>43</sup> The Commission noted that "DRA's rationale is simple and compelling."<sup>44</sup>

In this proceeding, the existing interconnection capability of the transmission system in the Ivanpah Dry Lake Area is currently only 80 MW,<sup>45</sup> and there are RPS contracts representing between 727 and 738.5 MW of renewable generation have been executed by SCE and Pacific Gas and Electric Company ("PG&E").<sup>46</sup> Thus, the EITP is necessary to access Commission-approved renewable resources, and up to 658.5 MW<sup>47</sup> of renewable generation would remain unavailable if the EITP is not constructed.

The logic that the Commission found "simple and compelling" in Decision 09-12-044 is equally applicable to this proceeding. Without the EITP, more than 650 MW of renewable generating capacity with executed RPS contracts will be unable to interconnect to the CAISO grid and thus will remain unavailable. As a result, SCE has satisfied the first prong of the

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<sup>42</sup> *Id.*

<sup>43</sup> D. 09-12-044 at 13.

<sup>44</sup> *Id.* at 14.

<sup>45</sup> Exhibit SCE-005, SCE Rebuttal Testimony in Response to DRA Direct Testimony, at Section A., p. 8:22-24.

<sup>46</sup> Exhibit SCE-008, Amendment to SCE Rebuttal Testimony in Response to DRA Direct Testimony, at Table II-1.

<sup>47</sup> 738.5 MW – 80 MW = 658.5 MW.

Commission's test, having demonstrated that the EITP "would bring to the grid renewable generation that would otherwise remain unavailable."

## **2. The Area Within The EITP's Reach Will Play A Critical Role In Meeting The RPS Goals**

The second prong of the Commission's test requires a demonstration "that the area within the line's reach would play a critical role in meeting the RPS goals."<sup>48</sup> As described in the Joint Developer Opening Brief, in Decision 09-12-044, the Commission noted SCE's position that Commission-approved RPS contracts for renewable generation facilities that would interconnect to the TRTP met the second prong of the Commission's three-prong test, and the Commission concluded that the second prong of the test had been satisfied.<sup>49</sup>

Subsequent to the filing of Opening Briefs in this proceeding, the Commission approved the RPS contract between SCE and First Solar for 300 MW of renewable generation, bringing the Commission-approved RPS contracts to 727 to 738.5 MW of renewable generation.<sup>50</sup> The Commission has now approved all of the executed RPS contracts with generation proposing to interconnect to the EITP. Consistent with the Commission's conclusion in Decision 09-12-044 that Commission-approved RPS contracts demonstrated that the area within the TRTP's reach would play a critical role in meeting the RPS goals, the 727 to 738.5 MW<sup>51</sup> of Commission-approved RPS contracts for renewable generation facilities that will interconnect to the EITP demonstrates that the area within the EITP's reach will play a critical role in meeting the RPS goals. Thus, SCE has satisfied the second prong of the Commission's three-prong test.

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<sup>48</sup> D. 07-03-12 at 16.

<sup>49</sup> D. 09-12-044 at 15.

<sup>50</sup> Resolution E-4347 (September 7, 2010) (approving the First Solar/SCE Desert Stateline RPS contract without modification).

<sup>51</sup> This is the sum of the 427 to 438.5 MW of previously-approved RPS contracts and the 300 MW under the recently-approved RPS contract between SCE and First Solar.

### 3. The Cost Of The EITP Is Appropriately Balanced Against The Certainty Of The EITP's Contribution To Economically Rational RPS Compliance

The third prong of the Commission's test requires a demonstration "that the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance."<sup>52</sup> In this proceeding, SCE has presented evidence that (i) the CAISO has approved the fundamental components of the EITP<sup>53</sup> through the execution of Large Generator Interconnection Agreements ("LGIA") with BrightSource for the Ivanpah projects,<sup>54</sup> (ii) the RETI Phase 2B Final Report shows that the Mountain Pass Competitive Renewable Energy Zone ("CREZ") is one of the most economically viable locations for new renewable generation with minimal environmental impacts,<sup>55</sup> and the Nevada-Southwest area includes additional economically viable renewable generation,<sup>56</sup> and (iii) the CAISO interconnection queue includes 1,280 MW of renewable resources already under development that intend to interconnect to the EITP.<sup>57</sup> In addition, RPS contracts for 727 to 738.5 MW of renewable generation have been approved by the Commission.<sup>58</sup>

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<sup>52</sup> D. 07-03-12 at 16.

<sup>53</sup> The BrightSource LGIAs approved by the CAISO include all of the EITP, except the third 220 kV/115 kV transformer bank at the Ivanpah substation and the stringing of the second circuit between Ivanpah and Eldorado substations. Exhibit SCE-005, SCE Rebuttal Testimony in Response to DRA Direct Testimony, at Section A., p. 7:1-11. These two components of the EITP are required to enable the EITP to interconnection 1,400 MW of generating capacity, but would not be constructed until LGIAs identifying the need for these components have been executed. Transcript, Chacon, Vol. I., pp. 88:9-90:10.

<sup>54</sup> Exhibit SCE-005, SCE Rebuttal Testimony in Response to DRA Direct Testimony, at Section A., pp. 7:26-8:8; Exhibit SCE-013, LGIA Among Solar Partners I, LLC; SCE; and CAISO; Exhibit SCE-014, LGIA Among Solar Partners II, LLC; SCE; and CAISO; Exhibit SCE-015, LGIA Among Solar Partners VIII, LLC; SCE; and CAISO.

<sup>55</sup> Exhibit SCE-017, RETI Phase 2B Final Report, at p. 1-12 (Figure 1-5).

<sup>56</sup> *Id.* at p. 1-7 (Table 1-3).

<sup>57</sup> Exhibit SCE-005, SCE Rebuttal Testimony in Response to DRA Direct Testimony, at Section A., p. 4:1-16; Exhibit SCE-009, CAISO Generation Queue. This includes renewable generation in both California and Nevada. See Exhibit SCE-010, CAISO Queue – San Bernadino; Exhibit SCE-011, CAISO Queue – Nevada.

<sup>58</sup> See Section III.D.2., *supra*.

Given the Commission's application of the third prong in Decision 09-12-044, the CAISO's approval of the fundamental components of the EITP, the potential renewable generation to which the EITP would provide access, and the 727 to 738.5 MW of Commission-approved RPS contracts that will interconnect to the EITP (upon which PG&E and SCE are relying to achieve the state's RPS goals), SCE has satisfied the third prong of the Commission's three prong test for determining project need, having demonstrated that the cost of the line is appropriately balanced against the certainty of the line's contribution to economically rational RPS compliance.

**4. The Commission Should Reject DRA's Assertion That The Three-Prong Test Has Not Been Satisfied Because DRA's Conclusion Is Based On Inaccurate Information**

DRA asserts that the Commission's three-prong test has not been satisfied because "DRA finds zero megawatts that can be cited for justification for the [EITP]."<sup>59</sup> As an initial matter, the Commission should reject this assertion because SCE has already demonstrated that the EITP meets the Commission three-prong test for need under Public Utilities Code Section 399.2.5 under applicable Commission precedent, as described in Sections III.D.1.-3., above. Moreover, the Commission has already approved the RPS contracts for each of the projects about which DRA has concerns.<sup>60</sup> The Commission's review of these RPS contracts included a comprehensive review of the viability of each of the underlying projects.<sup>61</sup> In addition, the Commission should reject this assertion because DRA's conclusion is based on inaccurate information.

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<sup>59</sup> DRA Opening Brief at 13.

<sup>60</sup> See Section III.D.2., *supra*.

<sup>61</sup> See e.g., D. 09-06-018 at 20 ("Energy Division considers project viability in its evaluation of advice letters seeking approval of contracts. In particular, Energy Division requires each utility to use a specific template when submitting an advice letter.").

DRA argues that the BrightSource DPT1 project will not connect to the EITP “[d]ue to FERC disapproval” of the LGIA.<sup>62</sup> This is inaccurate. FERC never disapproved of the LGIA, and in fact issued an order on rehearing on August 23, 2010, approving the original LGIA.<sup>63</sup>

DRA also argues that the BrightSource Ivanpah 1 and 3 should not be considered because there is insufficient information concerning interconnection and permitting.<sup>64</sup> This is also inaccurate. SCE, CAISO, and BrightSource affiliates have executed LGIAs for all three Ivanpah projects, and these LGIAs have all been filed with FERC.<sup>65</sup> Likewise, DRA’s statement that permitting status cannot be determined for Ivanpah 1 and 3 is inaccurate. BrightSource submitted a single application for permits for all three Ivanpah facilities, and all three facilities are awaiting action on the Presiding Member’s Proposed Decision issued by the California Energy Commission.<sup>66</sup>

The Commission should reject DRA’s assertion that the three-prong has not been satisfied because DRA’s assertion is based on inaccurate information. Moreover, the Commission should grant the CPCN for the EITP because SCE has already demonstrated that the EITP meets the Commission’s three-prong test for need under Public Utilities Code Section 399.2.5.

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<sup>62</sup> *Id.*

<sup>63</sup> *Order on Compliance Filing, Granting Rehearing, and Accepting Large Generator Interconnection Agreement*, 132 FERC ¶61,150 (2010).

<sup>64</sup> DRA Opening Brief at 12-13.

<sup>65</sup> Exhibit SCE-013, LGIA Among Solar Partners I, LLC; SCE; and CAISO; Exhibit SCE-014, LGIA Among Solar Partners II, LLC; SCE; and CAISO; Exhibit SCE-015, LGIA Among Solar Partners VIII, LLC; SCE; and CAISO.

<sup>66</sup> *See* Presiding Member’s Proposed Decision (August 3, 2010), CEC Docket Number 07-AFC-05, (available at: <http://www.energy.ca.gov/2010publications/CEC-800-2010-004/CEC-800-2010-004-PMPD.PDF>, last visited September 9, 2010) (noting that subsidiaries of BrightSource submitted a single Application for Certification for three solar-thermal power plants known as Ivanpah 1, 2, and 3). The Joint Developers request that the Commission take official notice of this document.

**E. The Commission Should Find That SCE Is Eligible For Backstop Recovery Of Prudently-Incurred EITP Costs Because The EITP Meets The Commission's Three-Prong Test For Need**

As discussed in the Joint Developer Opening Brief and Section III.D., above, SCE has demonstrated that the EITP meets the Commission's three-prong test for meeting the requirements of Public Utilities Code Section 399.2.5. The Commission has previously explained that the language of Public Utilities Code Section 399.2.5(b)(4) "is not discretionary – it provides a mandate upon the Commission to allow recovery in retail rates of any costs prudently incurred for a transmission project that meets [Public Utilities Code] § 399.2.5(a) that are not recovered through FERC-administered transmission costs."<sup>67</sup> Applying this mandate to this proceeding, the Commission should explicitly find that SCE is eligible for backstop recovery of prudently-incurred EITP costs pursuant to Public Utilities Code Section 399.2.5 because the EITP meets the Commission's three-prong test.

**IV. CONCLUSION**

For the reasons set forth above, the Commission should (A) reject CBD's argument that the Commission's CEQA process is inadequate because the argument is premature, given that the FEIR/FEIS has not yet been issued, (B) reject CBD's argument that DPV presents a feasible alternative to the EITP, because DPV fails to satisfy project objectives, is insufficient to meet the state's renewable energy goals, and is not more cost-effective than the EITP and associated generation, (C) reject DRA's assertion that the CAISO has not approved the EITP because it is inaccurate, (D) grant the CPCN for the EITP because the project satisfies the Commission's three-prong test for a determination of need under Section 399.2.5, and (E) find that SCE is

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<sup>67</sup> D. 09-12-044 at 75 (analyzing a previous SCE request for backstop cost recovery).

eligible for backstop recovery of prudently-incurred EITP costs pursuant to Public Utilities Code  
Section 399.2.5.

Dated: September 10, 2010

Respectfully submitted,

/s/ Joseph M. Karp

Joseph M. Karp  
Thomas W. Solomon  
Winston & Strawn LLP  
101 California Street, 39th Floor  
San Francisco, California 94111-5894  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
Email: [jkarp@winston.com](mailto:jkarp@winston.com)  
[tsolomon@winston.com](mailto:tsolomon@winston.com)

*Attorneys for BrightSource Energy, Inc. and  
First Solar, Inc.*

## Certificate of Service

I hereby certify that I have this day served a copy of the:

**REPLY BRIEF OF BRIGHTSOURCE ENERGY, INC.  
AND FIRST SOLAR, INC.**

on all known parties to A.09-05-027 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on September 10, 2010, at San Francisco, California.

/s/ Marcus Hidalgo  
Marcus Hidalgo



California Public Utilities Commission

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### Parties

ANGELA WHATLEY  
ATTORNEY  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVE.  
ROSEMEAD, CA 91770  
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

ADRIANNA KRIPKE  
LATHAM & WATKINS, LLP  
600 WEST BROADWAY, SUITE 1800  
SAN DIEGO, CA 92101  
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

MARION PELEO  
CALIF PUBLIC UTILITIES COMMISSION  
LEGAL DIVISION  
ROOM 4107  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214  
FOR: DRA

LISA BELENKY  
CENTER FOR BIOLOGICAL DIVERSITY  
351 CALIFORNIA STREET, SUITE 600  
SAN FRANCISCO, CA 94104  
FOR: CENTER FOR BIOLOGICAL DIVERSITY

JOSEPH M. KARP  
ATTORNEY  
WINSTON & STRAWN LLP  
101 CALIFORNIA STREET, 39TH FL  
SAN FRANCISCO, CA 94111-5894  
FOR: BRIGHTSOURCE ENERGY, INC. /  
NEXTLIGHT RENEWABLE POWER, LLC D/B/A  
FIRST SOLAR, INC.

RANDOLPH WU  
FIRST SOLAR DEVELOPMENT  
1111 BROADWAY ST., 4TH FLOOR  
OAKLAND, CA 94607  
FOR: FIRST SOLAR DEVELOPMENT, INC.

### Information Only

CASSANDRA SWEET  
DOW JONES NEWSWIRES  
EMAIL ONLY

LAURA B. RENGER  
SOUTHERN CALIFORNIA EDISON COMPANY  
EMAIL ONLY

EMAIL ONLY, CA 00000

MRW & ASSOCIATES, LLC  
EMAIL ONLY  
EMAIL ONLY, CA 00000

JANICE SCHNEIDER  
LATHAM & WATKINS LLP  
555 ELEVENTH STREET, N.W., STE. 1000  
WASHINGTON, DC 20004-1304

PUBLIC PARTNERSHIPS  
99 ABW/CCY  
4430 GRISSOM AVE, STE 101  
NELLIS AFB, NV 89191

CASE ADMINISTRATION  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVENUE, ROOM 370  
ROSEMEAD, CA 91730

RICHARD TOM  
ATTORNEY  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVE., PO BOX 800  
ROSEMEAD, CA 91770

LAURA GODFREY  
LATHAM & WATKINS LLP  
600 WEST BROADWAY, SUITE 1800  
SAN DIEGO, CA 92101-3375

MARC D. JOSEPH  
ATTORNEY AT LAW  
ADAMS BROADWELL JOSEPH & CARDOZO  
601 GATEWAY BLVD. STE 1000  
SOUTH SAN FRANCISCO, CA 94080

THOMAS W. SOLOMON  
ATTORNEY AT LAW  
WINSTON & STRAWN LLP  
101 CALIFORNIA STREET, 39TH FLOOR  
SAN FRANCISCO, CA 94111-5894

CALIFORNIA ENERGY MARKETS  
425 DIVISADERO STREET, SUITE 303  
SAN FRANCISCO, CA 94117

KATHLEEN MOODY  
FIRST SOLAR DEVELOPMENT  
1111 BROADWAY ST., 4TH FLOOR  
OAKLAND, CA 94607

EMAIL ONLY, CA 00000

JOSEPH BETZLER  
SOUTHERN CALIFORNIA EDISON COMPANY  
EMAIL ONLY  
EMAIL ONLY, CA 00000-0000

STEVEN D. GARLAND  
COLONEL  
4430 GRISSOM AVE, STE 101  
NELLIS AFB, NV 89191

JAMES B. WOODRUFF  
VP REGULATORY AND GOVERNMENT AFFAIRS  
NEXTLIGHT RENEWABLE POWER, LLC  
1055 EAST COLORADO BLVD., 5TH FLOOR  
PASADENA, CA 91106  
FOR: NEXTLIGHT RENEWABLE POWER,  
LLC/FIRST SOLAR, INC.

ANDREA MORENO  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVENUE  
ROSEMEAD, CA 91770

ANNE BEAUMONT  
LATHAM & WATKINS LLP  
600 WEST BROADWAY, STE. 1800  
SAN DIEGO, CA 92101-3375

DON LIDDELL  
DOUGLASS & LIDDELL  
2928 2ND AVENUE  
SAN DIEGO, CA 92103

JENNIFER ROUDA  
ECOLOGY AND ENVIRONMENT, INC  
130 BATTERY ST, 400  
SAN FRANCISCO, CA 94111

ELIZBETH GOBESKI  
LATHAM & WATKINS LLP  
505 MONTGOMERY ST., STE. 2000  
SAN FRANCISCO, CA 94111-6538

HILARY CORRIGAN  
CALIFORNIA ENERGY MARKETS  
425 DIVISADERO ST. SUITE 303  
SAN FRANCISCO, CA 94117-2242

LISA BODENSTEINER  
ASSIST GENERAL COUNSEL  
FIRST SOLAR, INC.  
1111 BROADWAY, 4TH FLOOR  
OAKLAND, CA 94607

**State Service**

.....

ANNE GILLETTE  
CALIFORNIA PUBLIC UTILITIES COMMISSION  
EMAIL ONLY  
EMAIL ONLY, CA 00000-0000

HENRY "HANK" PIELAGE  
CALIF PUBLIC UTILITIES COMMISSION  
ELECTRICITY PLANNING & POLICY BRANCH  
ROOM 4102  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

KARL MEEUSEN  
CALIF PUBLIC UTILITIES COMMISSION  
EXECUTIVE DIVISION  
ROOM 5217  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

MONISHA GANGOPADHYAY  
CALIF PUBLIC UTILITIES COMMISSION  
ENERGY DIVISION  
AREA 4-A  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

REGINA DEANGELIS  
CALIF PUBLIC UTILITIES COMMISSION  
DIVISION OF ADMINISTRATIVE LAW JUDGES  
ROOM 5105  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

SCOTT LOGAN  
CALIF PUBLIC UTILITIES COMMISSION  
ELECTRICITY PLANNING & POLICY BRANCH  
ROOM 4209  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

YULIYA SHMIDT  
CALIF PUBLIC UTILITIES COMMISSION  
ENERGY PRICING AND CUSTOMER PROGRAMS BRA  
ROOM 4104  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214

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