



CENTER for BIOLOGICAL DIVERSITY

VIA ELECTRONIC MAIL

October 1, 2012

Energy Division
California Public Utilities Commission
505 Van Ness Avenue
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Subject: Center for Biological Diversity Comments on Resolution E-4522 (ALTERNATE) Resolution (the “Alternate Resolution”) of the Energy Division addressing Southern California Edison Company’s Advice Letter (AL) 2339-E (as amended).

To the Energy Division:

The Center for Biological Diversity (the “Center”) provides these comments to the California Public Utilities Commission on the alternate draft resolution E-4522 (Alternate) regarding five PPAs between Southern California Edison and Brightsource Energy, Inc. (“BSE”). The Center supports the alternate decision to the extent it rejects the PPAs for the two propose Siberia projects-- Solar Partners XVIII and Solar Partners XIX (“Siberia” projects) and rejects one Rio Mesa PPA (Solar Partners XVI). The Center opposes the alternate decision to approve one Rio Mesa PPA (Solar Partners XVII); and Solar Partners XX (“Sonoran West” project). The Center requests that the Commission reject the advice letter as amended in its entirety and not approve any of the five PPAs at issue.

The Center is a non-profit environmental organization with more than 320,000 members and online activists, including many members who live and recreate in California. The Center uses science, policy and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center has and continues to actively advocate for increased protections for species and habitats in the California deserts including the threatened desert tortoise, Mojave fringe-toed lizard, golden eagles, migratory birds, many rare plants and other species which will be affected by the proposed projects.

The Center has been actively involved in efforts to limit greenhouse gas emissions and supports the development of renewable energy including solar power as a critical component of those efforts. However, like any project, siting of proposed solar power projects should be thoughtfully planned to minimize impacts to the environment. As the Center has stressed in our participation regarding development of renewable energy projects and transmission, renewable energy projects should avoid impacts to sensitive species and habitat, and should be sited in proximity to the areas of electricity end-use in order to reduce the need for extensive new transmission corridors and the efficiency loss associated with extended energy transmission.

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Only by maintaining the highest environmental standards with regard to local impacts, and effects on species and habitat, can renewable energy production be truly sustainable.

The Center's interests also include science-based conservation planning in the California desert on public and private lands. To that end, the Center is a stakeholder participant in the California Energy Commission process for the preparation of the Desert Renewable Energy Conservation Plan, where appropriate siting of renewable energy projects is a key focus. The Center has also provided comments on the BLM's Solar Programmatic Draft EIS. In addition, the Center has long been actively involved in the planning process for the bioregional plan amendments to the CDCA Plan in the areas where these projects are sited. In particular, the Center has advocated for increased protections for the Mojave fringe-toed lizard, desert tortoise, golden eagle, migratory birds, rare plants, and other species that live in these fragile desert lands from many activities that threaten species' survival and recovery from destruction, degradation, and fragmentation of habitat.

The Center Supports Rejection of the PPAs for the "Siberia" Projects:

The Center supports the alternate decision to the extent it rejects the PPAs for the two propose Siberia projects-- Solar Partners XVIII and Solar Partners XIX ("Siberia" projects) and rejects one Rio Mesa proposed project unit Solar Partners XVI. In addition to the bases for rejection noted in the alternate decision ("conflicts with military training operations at the nearby Marine Corps Air Ground Combat Center and uncertainty regarding transmission availability in the Pisgah area") the Center notes that approval of the PPAs for the Siberia sites would be imprudent because:

- The site is largely intact desert lands which provide habitat for numerous rare, listed, and special status species and these lands should be conserved to support survival and recovery of these species.
- Development at the Siberia site would directly and indirectly impact areas designated as an ACEC and designated critical habitat (for the transmission line) and would be considered a project with "high potential for conflict" under the Secretary of Interior's Instruction Memorandum No. 2011-061 regarding Screening.
- Transmission to access the site would be proposed outside existing identified transmission corridors and across a ACEC/DWMA/designated critical habitat that is set aside for conservation and increased impacts and fragmentation due to a new transmission line is likely unmitigable and could undermine conservation planning desert-wide
- Because a power tower project at this site would conflict with existing over-flight uses of this site for military training, if the proposed project were to go forward at this site, shifting existing military operations to other areas could have significant impacts on the environment that may be unmitigable including increased noise and surface disturbance in other areas.

The “Rio Mesa” Proposed Projects:

The Center supports the alternative decision to the extent it rejects one Rio Mesa PPA (Solar Partners XVI) and urges the Commission to also reject the second Rio Mesa PPA (Solar Partners XVII). The stated basis in the alternate decision for approving this PPA is that, although the PPA is admitted to be “highly uncompetitive” when compared to 2011 solicitation for renewable energy, the decision proposes to approve it “because it comprises a necessary step in the evolution of BrightSource’s technology development to build and finance the third generation power towers with molten salt storage that provide much greater value for California ratepayers”. The Center is particularly concerned because these statements 1) appear to be unsupported by any facts currently before the public, and 2) ignore the existence of other BSE PPAs for proposed projects using the same technology -- higher towers with no storage.

The other BSE PPAs (see Advice Letter 3459-E, May 13, 2009, and CPUC Resolution E-4269, September 24, 2009), approved PPAs for 5 units at two (or possibly more) locations. The resolution approved PPAs for: 1) two units at Coyote Springs in Nevada, and 2) three units at a place “to be determined (TBD)”. BSE is relying on those PPAs in the application to the California Energy Commission (“CEC”) for two proposed units called Hidden Hills (CEC Docket No. 11-AFC-2). In fact, BSE relied on those PPAs to argue against the CEC even considering an alternative project that would include thermal storage at the Hidden Hills site. (Data Responses 2A, 137-140¹) and claimed discussing a 2015 on-line date (which is actually for the Nevada projects not the Hidden Hills projects) as a reason not to consider storage as a component of the Hidden Hills projects.

As noted above, the Center does not believe that the facts before the public support the assumption that a “step” in the technology is “necessary.” Even assuming for the sake of argument alone that building one unit of this design is a “necessary step” in the applicant’s technology design evolution, the applicant has provided no evidence that more than one unit of the technology would need to be constructed before moving on to the next step of its technology. It is impossible for the Center to reconcile the alternate draft’s logic that PPA for one uneconomic or “highly uncompetitive” unit at Rio Mesa should be approved because it is “necessary” to move the BSE technology forward when additional PPAs were already approved that appear to commit the California rate payers to five (5) additional “highly uncompetitive” units using this same uneconomical technology.

The Commission should also be aware that in August the USFWS filed a series of questions with the CEC² in a joint process for the Hidden Hills and Rio Mesa proposed projects regarding the impacts of

¹ Available at http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2012-04-05_Applicants_Data_Response_Set_2A-3_TN-64505.pdf The Center is a party/intervenor in the California Energy Commission (“CEC”) process for the Rio Mesa Solar Electric Generating Facility Licensing Case (Docket 11-AFC-04) and is actively participating in that process and the upcoming environmental review.

² http://www.energy.ca.gov/sitingcases/riomesa/documents/others/2012-09-06_Intervenor_Center_for_Biological_Diversitys_Follow_Up_Comments_on_the_08-28-2012_Joint_Workshop_TN-67021.pdf

power towers on avian species, stating:

“We are concerned about the increasing number of power tower projects that are proposed or undergoing permitting review, given the outstanding questions about the impacts of utility-scale application of this technology. As such, it would be beneficial to the permitting process for pending and future projects, including Hidden Hills and Rio Mesa, to gather monitoring data that answer some of the questions about avian physiological tolerance and behavioral response to power towers, from already approved projects, before approving more projects. Increasing our knowledge about potential impacts from this technology would further our ability to complete science-based analyses of direct, indirect, and cumulative effects to the avian community, as required by our joint public trust responsibilities. Therefore, we suggest that the Agencies limit the number of power tower projects that are considered for permitting and development until we obtain a more detailed understanding of this technology and its impacts, based on at least a couple years of scientifically robust monitoring.”

In addition, to the issues raised above, the Center also objects to the approval of any PPA for the BSE Rio Mesa project because the site is largely on intact desert lands and in close proximity to the Colorado River migratory flyaway and an important unit of the National Wildlife Refuge System, the Cibola National Wildlife Refuge. The Center has serious concerns regarding the potential risk of the proposed projects’ 750-foot high solar-thermal power towers and associated heliostats to kill and harm birds. Of particular concern is that waterfowl and migratory birds, many of which are protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, are attracted to significant riparian habitat along the nearby Colorado River and in the Cibola National Wildlife Refuge, located only 5.6 miles northwest of the Rio Mesa Project.

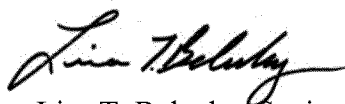
Moreover, we have recently seen devastating impacts to desert kit fox due to distemper that appears to have originated at the nearby Genesis solar project site. Although the Center raised concerns regarding lack of adequate analysis of impacts to desert kit fox during the CEC process for that project, those concerns were summarily dismissed. Surveys of the Rio Mesa site, as proposed, found over 193 desert kit fox burrow complexes and the significant impacts to this species from the projects are one of the many significant biological issues that have not yet been fully evaluated for the Rio Mesa projects. Similarly, cultural resource issues and water resource issues have not been adequately addressed for this site to date.

The “Sonoran West” Project:

There is no firm project proposal yet for the Sonoran West site or the thermal storage technology that BSE has stated it intends to propose for that site. The Center has not yet had the opportunity to investigate all the potential biological impacts at this site, although it appears to be proposed in a crucial sand transport corridor, or potential additional environmental impacts from the new technology. Nonetheless, the Center is concerned that there may be significant cumulative impacts issues as well as others in this area.

In light of the above, the Center requests the Commission adopt a decision denying approval of all of these SCE/BSE PPAs.

Sincerely,



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Proposed Changes to Findings:

1. The BSE Contracts are not consistent with SCE's 2011 RPS Procurement Plan, approved by D.11-04-030.

5. The Commission finds that the price and value of the Siberia 1, Siberia 2 and Sonoran West contracts are not competitive with other comparable solar thermal contracts offered to SCE and other contracts recently approved by the Commission.

6. BSE has not shown that commercial financing and EPC agreements for BSE's third generation power towers depend on first commercially financing and securing an EPC agreement for second generation power towers.

8. DELETE:
9. DELETE:

10. DELETE:

11. Projected generation from the BSE Contracts does not meet the need requirements of SCE's RPS portfolio.

24. The Rio Mesa 1, Siberia 1 and Siberia 2 power purchase agreement should be rejected in their entirety.

25. The Rio Mesa 2 and Sonoran West power purchase agreements should be rejected in their entirety.

26. AL 2339-E, as amended by AL 2339-E-A, AL 2339-E-B, AL 2339-E-C and AL 2339-E-D are not approved.

Proposed Changes to Draft Resolution (Alternate):

1. The power purchase agreements between Southern California Edison Company and Solar Partners XVI LLC, Solar Partners XVII LLC, Solar Partners XVIII LLC, Solar Partners XIX LLC, and Solar Partners XX LLC, as proposed in Advice Letter 2339-E, and amended by Advice Letters 2339-E-A, 2339-E-B, 2339-E-C and 2339-E-D, are not approved.