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November 18, 2009

VIA EMAIL AND U.S. MAIL

Dr. Jerry Pell
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue, SW., Washington, DC 20585
Jerry.Pell@hq.doe.gov

Re: Scoping Comments of Backcountry Against Dumps, The Protect Our Communities Foundation, East County Community Action Coalition and Donna Tisdale on the United States Department of Energy's Energia Sierra Juarez Transmission Line Environmental Impact Statement (DOE/EIS-0414)

Dear Dr. Pell:

Introduction

On February 25, 2009 the United States Department of Energy (DOE) published its Notice of Intent to Prepare an Environmental Impact Statement; Energia Sierra Juarez U.S. Transmission, LLC (NOI) pursuant to the National Environmental Policy Act (NEPA). 74 Fed. Reg. 8517-19. The NOI solicited additional written comments on the scope of the environmental impact statement (EIS) for the proposed federal action of granting a Presidential permit for the Energia Sierra Juarez Transmission Line Project ("ESJ project" or "project"), which includes development of a 500-kV transmission line that would connect the planned 1,250 MW La Rumorosa wind energy project in Baja California, Mexico with San Diego Gas & Electric's (SDG&E) existing Southwest Powerlink transmission line at the proposed ECO Substation and expanded Boulevard Substation in Jacumba, California. The ESJ project would be developed, owned and operated by Energia Sierra Juarez U.S. Transmission, LLC ("ESJ," formerly Baja Wind U.S. Transmission, LLC), a subsidiary of Sempra Energy (Sempra).

Pursuant to the NOI, Backcountry Against Dumps (BAD), The Protect Our Communities Foundation (POC), East County Community Action Coalition (ECCAC) and Donna Tisdale (collectively, "Community Groups") submit these comments on the scope and content of the EIS to be developed for the ESJ project. Community Groups recognize that the official deadline for submitting scoping comments was March 27, 2009, but are aware that DOE will consider comments submitted after that date to the extent practical, as stated in the NOI. Given the factual and legal complexity of the ESJ project and the fact that DOE has not yet published a draft environmental impact statement, Community Groups respectfully request that DOE consider their comments, which follow.

Discussion

A. Purpose and Need

DOE must discuss and take a hard look at the purpose of and need for the ESJ project in the EIS. 40 C.F.R. § 1502.13; *see also Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999) (the permitting agency retains the ultimate “responsibility for defining the objectives of [and need for the] action”). Among other things, DOE must analyze where the electricity transported by the project would be used and whether there is in fact an existing or projected capacity shortfall or other condition in that area that necessitates importation of energy. Relatedly, DOE must address whether ESJ has entered into any power purchase agreements with California utilities.

In addition, DOE must explain why there is a need for the project when it is eminently feasible to transmit electricity produced in the La Rumorosa area along existing transmission lines that are already interconnected directly to the SDG&E electrical grid and have at least 800 MW of spare transmission capacity¹ - a number that could likely be doubled if the lines were reconducted with composite conductors.² These transmission lines are jointly owned and operated by SDG&E and the Comisión Federal de Electricidad (CFE) and comprise one tie connecting CFE’s Tijuana Uno Substation to SDG&E’s Miguel Substation and one joining CFE’s La Rosita Substation with SDG&E’s Imperial Valley Substation. Together, the ties are called Western Electricity Coordinating Council (WECC) Path 45.

Finally, DOE must clarify whether the purpose of the ESJ project is to facilitate the importation into the United States of solely wind energy and/or other renewable energy. DOE must make clear whether the cross-border transmission line could and potentially would be used to transmit energy produced from natural gas, coal or other fossil fuel-based resource.

B. Scope of the EIS and Connected Actions

In its initial application to the DOE for a Presidential permit, Sempra describes the ESJ project as just the transmission line that would electrically connect wind energy generators in the

¹ *See* California Energy Commission Report No. CEC-600-2008-004, June 2008, “Challenges and Opportunities to Deliver Renewable Energy from Baja California Norte to California” (CEC Report), prepared by KEMA Inc. and Bates-White, LLC, *available at* <http://www.energy.ca.gov/2008publications/CEC-600-2008-004/CEC-600-2008-004.PDF>.

² *See* Bill Powers, October 2007, “San Diego Smart Energy 2020: The 21st Century Alternative,” *available at* http://www.etechninternational.org/new_pdfs/smartenergy/52008_SmE2020_2nd.pdf, pp. 54-55.

La Rumorosa area of Baja California, Mexico with the Southwest Powerlink (SWPL) 500-kV transmission line.³ However, DOE must not portray the project so narrowly in the EIS. The proposed transborder transmission line is part and parcel of the proposed wind generation developments in the La Rumorosa area and DOE must consider the impacts of the transmission line and the wind projects together. *See, e.g.*, 40 C.F.R. § 1508.25

DOE must also consider numerous other connected actions alongside the ESJ project in the EIS as well. *See id.*; *Thomas v. Peterson*, 753 F.2d 754, 758-759 (9th Cir. 1985). As a pivotal component of a huge, interconnected set of proposed energy facilities, the ESJ project would trigger a rapid and irreversible expansion of electrical transmission facilities in and around San Diego County. Among other things, this expansion includes the proposed Sunrise Powerlink Transmission Project (SPTP), ECO Substation construction, Boulevard Substation expansion and development of numerous wind, solar, geothermal and other power projects. As proposed, the ESJ transmission line would interconnect up to 1,250 MW of power with the Southwest Powerlink using the proposed ECO Substation.⁴ However, the SWPL currently has limited additional capacity. To create enough capacity on the SWPL for transmission of the La Rumorosa energy requires the construction of the SPTP, which would allow some electricity currently carried by the SWPL to be transmitted via the SPTP.⁵ As such, the ESJ project depends for its operation and success on construction of the SPTP and the ECO Substation and expansion of the Boulevard Substation. And because of this reliance, NEPA requires DOE in its EIS to analyze those three projects alongside the ESJ project as connected actions.⁶

³ 12/18/2007 letter from Joseph H. Rowley to Anthony Como and Sempra's attached Presidential permit application, *available at* <http://www.esjprojecteis.org/documents.htm>.

⁴ *See* U.S. Department of Energy, 9/22/2009, "Energia Sierra Juarez Transmission Line Project: Scoping Report" (Scoping Report), *available at* <http://www.esjprojecteis.org/documents.htm>, p. 4.

⁵ *See* California Public Utilities Commission and U.S. Bureau of Land Management, October 2008, "Final Environmental Impact Report/Environmental Impact Statement and Proposed Land Use Amendment: San Diego Gas & Electric Company Application for the Sunrise Powerlink Project," *available at* <http://www.cpuc.ca.gov/environment/info/aspen/sunrise/toc-feir.htm>, p. B-83.

⁶ Note that in evaluating the impacts of the SPTP, DOE should review the Bureau of Land Management and the California Public Utility Commission's analysis in their Final Environmental Impact Report/Environmental Impact Statement for the SPTP and address any discrepancies or conflicts.

C. Interagency Coordination and Consistency with Federal, State and Local Laws and Policies

NEPA requires that EISs list and discuss all “Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal” (40 C.F.R. § 1502.25(b)), and analyze the consistency of the project with state and local laws and conduct joint environmental review with state and local agencies to the “fullest extent possible.” 40 C.F.R. § 1506.2. Here, ESJ will need to obtain multiple additional permits or other entitlements before it can construct the project. For example, ESJ will need to obtain a certificate of public convenience and necessity (CPCN) from the California Public Utilities Commission (CPUC) before the proposed 500 kV cross-border transmission line can be built. *See* California Public Utilities Commission General Order 131-D § III(A). Approvals will also be necessary from San Diego County, the U.S. Army Corps of Engineers, and the San Diego or Colorado River Regional Water Quality Control Board under the federal Clean Water Act and the California Porter-Cologne Water Quality Control Act. Additionally, consultation with and permitting by the U.S. Fish and Wildlife Service will likely be required under the federal Endangered Species Act and, potentially, the Bald and Golden Eagle Protection Act. DOE must describe these and other required permits and explicate the anticipated interagency review of the ESJ project. DOE should also coordinate its review and permitting of the project with all the other regulatory and consultation agencies involved, as well as with those, such as the BLM, who are involved in the permitting of the SPTP and other connected actions.

Further, in addition to discussing the required permits and planned interagency review, there are other legal consistency questions that DOE must answer in the EIS. Most prominently, DOE must analyze whether the ESJ project’s transboundary transmission line, which is proposed to be an exclusive-access generator tie, would comport with the common requirement in California and elsewhere in the United States that transmission lines be open access.

D. Alternatives

The ESJ EIS must address a reasonable range of alternatives. *City of Carmel-by-the-Sea v. U.S. Department of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997). The reasonable range of alternatives required by NEPA should include a “reasonable number of examples covering the full range of alternatives.” CEQ Forty Questions, No. 1b. Furthermore, an agency may not limit its consideration to only those alternatives it believes it has the authority to implement. Rather, the alternatives should be wide-ranging and include options that may require additional approvals or participation by others. *Sierra Club v. Lynn*, 502 F.2d 43, 62 (5th Cir. 1974); *see also Alaska Wilderness Recreation and Tourism Ass’n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995). DOE’s analysis of the full range of alternatives to the proposed ESJ project should include, among others, the four alternatives discussed below.

First, DOE should analyze the alternative of undergrounding the proposed cross-border transmission line, at least on the U.S. side of the international border. The benefits of this alternative include reduced fire danger, risk to aircraft, avian mortality and other biological impacts, and improved aesthetics.

Second, DOE should examine the alternative of transmitting the wind power from the La Rumorosa area along existing CFE and SDG&E lines (the WECC Path 45) instead of through a newly constructed generation tie and substation (the ECO Substation and expanded Boulevard Substation). As discussed in the Purpose and Need section of these scoping comments, the CFE lines are already interconnected directly to the SDG&E electrical grid and have at least 800 MW of spare transmission capacity. Furthermore, the amount of spare capacity could likely be doubled if the lines were reconducted with composite conductors. While CFE would charge a small wheeling fee for use of its lines, it could be reduced in exchange for ESJ reconductoring the lines and, in any case, ESJ would be saving on construction costs. This alternative is eminently feasible and would likely have fewer environmental impacts than the proposed project.

Third, DOE should evaluate the possibility of limiting any Presidential permit it issues to only allow transmission of power from renewable energy projects, particularly wind and solar, and not from fossil fuel-based generation. Placing such a condition in the Presidential permit would not only be feasible and environmentally beneficial, it has already been supported by the project proponent, ESJ, and its parent corporation, Sempra.⁷

Finally, DOE should consider the alternative of providing and promoting increased distributed generation in the urban load centers that would be served by the wind power to be conveyed along the ESJ project's transborder transmission line. Expanding distributed generation would serve much the same purposes as the ESJ project, including increased electricity generation and supply of renewable energy. This alternative is eminently feasible, as the California Renewable Energy Transmission Initiative (RETI) has determined that there are up to 27,500 MW of potential distributed generation in small-scale (1-20 MW projects on less than 160 acres) PV facilities alone (in California).⁸

Furthermore, developing distributed generation facilities would have fewer environmental impacts and be far less expensive than constructing and operating a new wind farm, transborder transmission line and substation to import Mexican wind power. As CPUC Commissioner John

⁷ See U.S. Department of Energy, 9/22/2009, "Energia Sierra Juarez Transmission Line Project: Scoping Report" (Scoping Report), *available at* <http://www.esjprojecteis.org/documents.htm>, p. 5.

⁸ California RETI, January 2009, "Phase 1B Final Report," *available at* <http://www.energy.ca.gov/reti/documents/index.html>, p. 1-12.

Bohn has acknowledged, “[u]nlike other generation sources, [distributed generation] projects can get built quickly and without the need for expensive new transmission lines. And . . . these projects are extremely benign from an environmental standpoint, with neither land use, water, or air emission impacts.”⁹ Moreover, distributed generation facilities pose a significantly lower risk of shut-offs and damage from wildfire and thus would improve electrical reliability.

E. Environmental Impacts

NEPA requires federal agencies to take a “hard look” at the environmental impacts of proposed major federal actions and provide a “full and fair discussion” of those impacts. 40 C.F.R. § 1502.1; *see also National Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 733 (9th Cir. 2001). Here, DOE must fully analyze the environmental impacts of the ESJ project, including the impacts from the proposed La Rumorosa wind projects in Mexico and the ESJ project’s numerous other connected actions. Further, DOE must evaluate the impacts in both the United States and Mexico. *See, e.g., Hirt v. Richardson*, 127 F. Supp. 2d 833 (W.D. Mich. 1999); *National Organization for Reform of Marijuana Laws v. United States Department of State*, 452 F. Supp. 1226, 1232-33 (D.D.C. 1978); *cf. Exec. Order No. 12114*, 44 Fed. Reg. 1957 (1979), reprinted in 42 U.S.C.A. § 4321 app. Among others, DOE must thoroughly analyze the impacts discussed below.

1. Fire Impacts

There are a number of potential fire-related impacts that DOE must discuss in the EIS for the ESJ project. First, the proposed transborder transmission line would present a new ignition source that increases the chances of large-scale wildfires along the proposed transmission line route, along which fire risk is already high. Similarly, the proposed La Rumorosa wind projects (including wind turbines and other components), the ECO Substation, and the Boulevard Substation expansion all will increase fire risks in fire prone areas. The high existing fire risk in the Jacumba area - where the ECO Substation is proposed and where the Boulevard Substation is currently located - and significant fire hazard that electrical facilities can pose is exemplified by SDG&E’s recent request to the CPUC for permission to turn off electrical power in the area when fire dangers are high.

Additionally, the ESJ project could present significant obstacles to firefighters responding to wildfires. For example, the proposed transborder transmission line would create a substantial hazard for low-flying spotter and bomber aircraft that apply aerial retardant. It would be impossible to see those power lines in smoke filled canyons, and either pilots would be forced

⁹ CPUC, 6/18/2009, “CPUC Approves Edison Solar Roof Program,” Press Release, available at http://docs.cpuc.ca.gov/published/News_release/102580.htm.

to risk their lives by flying when the lines are not clearly visible or aerial fire suppression would be stymied. Furthermore, in some cases the transborder line and other transmission lines would need to be de-energized before firefighters could enter certain areas, giving the fire more time to spread. In light of the many fire-related impacts, DOE should give serious consideration to an alternative that undergirds any new transmission lines.

2. Biological Impacts

There are many potential biological impacts of the ESJ project that DOE must address in the EIS. In all of its biological analyses, DOE should rely on current population and habitat surveys and up-to-date scientific studies. The EIS must analyze the impacts of the project on threatened, endangered or special status species, including the Quino checkerspot butterfly and the Peninsular bighorn sheep, both of which have proposed and/or designated critical habitat that overlaps with or is adjacent to the proposed routes of the transborder transmission line. Importantly for the Peninsular bighorn sheep, the proposed La Rumorosa wind projects and ESJ project transmission route would be located directly adjacent to (and perhaps overlap with) the Peninsular Ranges of Mexico, an area which the U.S. Fish and Wildlife Service views as “the only possible route for a natural connection with other bighorn sheep populations for the [distinct population segment of sheep] in the U.S.” 74 Fed. Reg. 17288, 17311 (2009).

Additionally and relatedly, the EIS must also evaluate the effects of the ESJ project and its connected actions on avian injury and mortality, including impacts on both special status birds (such as the California condor) and others (such as the golden eagle, which is protected by the Bald and Golden Eagle Protection Act). In its discussion of avian impacts, the EIS should make sure to address risks associated with wind turbines and power lines (e.g. electrocution). The EIS must also assess how the light and noise pollution associated with the project would impact birds and other species.

3. Greenhouse Gas Emissions and Climate Change

It is essential that the EIS calculate the amount of greenhouse gas emissions the project and its connected actions would cause and examine the impacts of those emissions on global climate change. As part of this analysis, DOE must quantify the fugitive emissions of sulfur hexafluoride (SF₆) from the transborder transmission line and the substation to which it would connect. Further, studies have begun to show that undisturbed alkaline desert areas, such as the Mojave Desert and the La Rumorosa area, sequester carbon dioxide (CO₂) in surprising quantities.¹⁰ DOE must assess the degree to which the project and its connected actions,

¹⁰ Richard Stone, 6/13/2008, “Have Desert Researchers Discovered a Hidden Loop in the Carbon Cycle?,” *Science*, Vol. 320, pp. 1409-10, available at http://www.ecostudies.org/press/Schlesinger_Science_13_June_2008.pdf.

particularly the Boulevard area substations and the La Rumorosa wind projects, would impact the sequestering properties of the soils on which they would be developed.

4. Air Quality

In addition to greenhouse gases, the EIS must also evaluate the impacts of the ESJ project on local air quality and public health. Most specifically, DOE must analyze the particulate matter emissions that would occur during construction of the project from, among other things, excavation, grading and off-road vehicle use.

5. Water Supply and Quality

DOE must identify how much water the ESJ project would require for construction and operation of the project as well as any landscaping, revegetation or mitigation measures. This includes the water required for constructing and operating the transborder transmission line as well as the proposed La Rumorosa wind farm, the ECO Substation and the Boulevard Substation expansion. DOE must also identify and assess the short- and long-term viability of the proposed sources from which the demanded water would be supplied. Additionally, DOE must analyze the impacts of the project's construction and operation on the quality of both surface water and groundwater, including seeps and springs relied on by local residents and wildlife. DOE must also discuss the water quality-related permits required for the project and how DOE plans to coordinate with the permitting agencies in developing the EIS.

6. Visual and Aesthetic Impacts

The transborder transmission line, La Rumorosa wind projects and Boulevard area substations all have the potential to severely diminish the serene aesthetics and expansive unobstructed vistas in the region. DOE must consider these impacts and their various causes, including the sheer height and overall size of the facilities and their nighttime lighting fixtures. And DOE should analyze these viewshed impacts from multiple vantage points, including popular scenic vistas as well as the places (homes, roads, etc.) frequented by residents of the region, such as the citizens of Boulevard, California. Further, DOE should give serious consideration to an alternative that undergrounds any new transmission lines.

7. Conservation Initiatives

In the EIS, DOE must consider the impacts of the ESJ project on the region's conservation initiatives. Most specifically, DOE should analyze the impacts of the project on the proposed binational park that is the ultimate goal of the Las Californias Binational Conservation

Initiative.¹¹ The entire ESJ project, from the La Rumorosa wind farms along the generator tie to the ECO and Boulevard Substations, would be or already is located directly adjacent to the potential site of the binational park, which would link Parque Constitución de 1857 in Mexico (just south of the La Rumorosa area) with BLM lands, the Cleveland National Forest, and Anza-Borrego Desert State Park wilderness areas in San Diego County. Given that the ESJ project and the numerous connected and cumulative actions are likely to greatly increase development pressures in the region and have major biological and aesthetic impacts, including habitat fragmentation, they could seriously hinder the creation of the park - or at least reduce its size. This could occur in at least two ways: making land acquisition and consolidation more costly and difficult, and reducing the attractiveness of some areas for inclusion in the park. This is a readily foreseeable potential impact of the ESJ project and must be analyzed in the EIS.

8. Wilderness Areas

In addition to examining the ESJ project's impacts on the region's conservation initiatives, DOE must evaluate the project's effects, including turbine and other noise, on the region's wilderness areas. Of particular concern are impacts to the Carrizo Gorge Wilderness area, which is located directly adjacent to the sites of both the proposed ECO Substation and Boulevard Substation expansion. Other potentially impacted wilderness and environmentally sensitive areas include the Jacumba Wilderness Area and the Table Mountain Area of Critical Environmental Concern.

9. Noise

DOE must analyze the noise impacts from both the construction and operation of the ESJ project. In so doing, DOE should assess the magnitude and type of impacts on both people (adjacent property owners, visitors, workers, etc.) and wildlife, including the Peninsular bighorn sheep, golden eagles and California condors.

10. Economic Consequences

Local tourism and recreation are a major source of income for the local businesses in the region encompassing the ESJ project area. However, the aesthetic, noise, fire, biological and other environmental impacts of the project and its connected actions would reduce the attractiveness of the region for tourism and recreation and would thus threaten the financial viability of many of the small businesses in the area that provide recreation- and tourism-based services. Furthermore, these environmental impacts would also likely cause a reduction in

¹¹ For more information on the Las Californias Binational Conservation Initiative see the Conservation Biology Institute's website:
<http://www.consbio.org/what-we-do/las-californias-binational-conservation-initiative>.

property values throughout the region. As these economic impacts are intimately interrelated to the natural and physical environment effects of the ESJ project, DOE must analyze them in the EIS. *See* 40 C.F.R. § 1508.14.

11. Cumulative Impacts, Growth Inducing Effects and Other Indirect Impacts

As discussed above, the ESJ project is a key component of an enormous proposed expansion of electrical transmission facilities in and around San Diego County. Among other things, this expansion includes the proposed Sunrise Powerlink Transmission Project (SPTP), ECO Substation construction, Boulevard Substation expansion and development of numerous wind, solar, geothermal and other power projects. Considered together, these related projects will cause many significant cumulative impacts, and DOE must evaluate these impacts in the EIS for the ESJ project. Among the most important issues to be addressed in the cumulative impact analysis is the increased cumulative fire danger, given Southern California's rapidly growing fire vulnerability and the numerous fires in the region have already been caused by electricity generation and transmission facilities. DOE must also evaluate the cumulative biological, visual, water, air quality, climate change, noise, economic, conservation initiative and other impacts.

Relatedly, DOE must examine the growth inducing and other indirect impacts of the ESJ project. With respect to growth inducing impacts, DOE must assess the project's capacity to induce increased population, as well as the industrial growth the project would spur. As for other indirect impacts, DOE must evaluate the likelihood of and impacts from the future use of the project's transboundary transmission line to carry electricity generated from fossil fuels, such as liquefied natural gas (LNG). Unless DOE disapproves ESJ's Presidential permit application or places a condition in the permit prohibiting the transmission over the line of fossil fuel-based electricity, there is a distinct possibility that a new *gas-fired* power plant would be built in the vicinity of the La Rumorosa area and transport its electricity output to the U.S. via the ESJ project transmission line and ECO and Boulevard Substations. This possibility is made all the more likely by the project's proximity to both the proposed transboundary transmission line and the ECO and Boulevard substations of Sempra's Bajanorte G ducto LNG pipeline and a new water line that runs through Sempra's leased land just inside Mexico, directly south of the

proposed site for the ECO Substation and Boulevard Substation expansion. The LNG pipeline runs from Sempra's Baja California LNG import terminal, through which Sempra will receive LNG from Indonesia pursuant to a long-term contract.

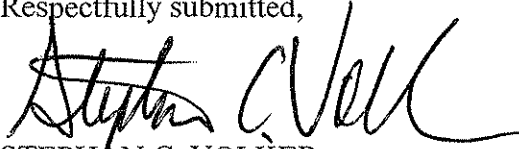
Conclusion

Community Groups commend DOE for deciding to prepare a full EIS. It is essential that the EIS address all of the ESJ project's direct and indirect effects to satisfy NEPA's requirements. The ESJ project is a stepping stone to a massive expansion of electrical transmission facilities in and around San Diego County that will have significant individual and

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transmission facilities in and around San Diego County that will have significant individual and cumulative impacts. For this reason, DOE must make every effort to identify all the facilities, plans and projects related to the ESJ project and take a hard look at the need for and impacts of the project in light of and in combination with the other related existing, ongoing and future energy projects. Community Groups urge DOE to carefully consider our comments and fully address in the EIS all the issues we have identified.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephan C. Volker". The signature is written in a cursive style with a large, sweeping "V" at the end.

STEPHAN C. VOLKER

Attorney for Backcountry Against Dumps, the
Protect Our Communities Foundation, East County
Community Action Coalition, Donna Tisdale

SCV:taf