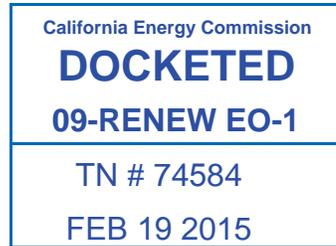


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Subject: DRECP NEPA/CEQA – All Reasonable Alternatives

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The Draft DRECP is in violation of NEPA by omitting a distributed generation alternative.

This NEPA violation must be corrected.

NEPA requires that an EIS examine all reasonable alternatives. This requirement is summarized in answer 2a of the President's Council on Environmental Quality 40 Questions.

**2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency.** If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

2b. Must the EIS analyze **alternatives outside the jurisdiction** or capability of the agency or beyond what Congress has authorized?

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

Parallel requirements are in NEPA:

### **NEPA §1502.1 Purpose.**

*The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and **shall inform decisionmakers and the public of the reasonable alternatives** which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.*

### **§1502.14 Alternatives including the proposed action.**

*This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental*

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*Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:*

*(a) **Rigorously explore and objectively evaluate all reasonable alternatives**, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.*

By omitting a distributed generation alternative, the DEIS is declaring that a distributed generation alternative is unreasonable.

The DEIS appears to base its omission partially on the artificial and arbitrary condition that generating facilities larger than 20 MW are not considered distributed generation<sup>1</sup>. The DEIS states that this definition comes from the 2011 Integrated Energy Policy Report. This report gives no justification for the limit. The 2011 Integrated Energy Policy Report in turn references a Dec 8 2011 presentation by Michael Picker<sup>2</sup>, which also presents no justification. Additionally, an internet search finds that essentially all DG definitions have no wattage limitations. By the DEIS definition, a 21 MW PV facility, with slightly more efficient panels than an adjacent identical 20 MW facility, would not be counted while the 20 MW generator would be counted. The 20 MW limit appears to be arbitrary and artificial.

Starting on page II.8-7 is a discussion of "the most critical barriers to achieving...the goal to install 20,000 MW of new renewable capacity by 2020". Five bullet items follow describing barriers. Three (1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup>) relate to the distribution grid, *even though DG is defined as being independent of the distribution grid* (in both the DEIS (p.II.8-6) and in common knowledge). The 3<sup>rd</sup> and 5<sup>th</sup> items cite generalities, with no analysis to separate reality from opinion.

These irrelevant grid related "barriers" can be summarized:

- 1<sup>st</sup> Item - grid planning is disjointed ... does not consider grid impacts and does not consider benefits of local renewables.
- 2<sup>nd</sup> Item - reliability concerns of sending renewable generation through the grid. Discusses integration of local renewable energy with the grid.
- 4<sup>th</sup> Item - interconnection to the power grid:
  - Is a source of uncertainty
  - Fast Track is needed, else impact studies are required
  - The interconnection process is critical because of the large number of interconnections
  - Alignment between the interconnection and procurement process concerns

The other "barriers" appear to be no more challenging than issues occurring with any project, yet they are cited as unique to "local renewable energy". With no analysis, they appear to be opinion only.

3<sup>rd</sup> Item - a list of potential problems:

- Financing
- Procurement
- Many customers can't get equipment
- Many customers can't purchase renewable energy
- Tax incentives and procurement programs may expire
- Tax incentives and procurement programs may neglect key technologies
- Tax incentives and procurement programs may neglect project sizes

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<sup>1</sup> DEIS page II.8-6.

<sup>2</sup> [www.cfee.net/ documents/Picker.pdf](http://www.cfee.net/documents/Picker.pdf)

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- Tax incentives and procurement programs may neglect project locations

5th Item - permitting:

- Permitting is challenging
- Some jurisdictions are doing renewables, some are not prepared.
- Many jurisdictions don't have renewable energy in planning codes.
- Locals have insufficient time, funds, and understanding of the technology.

The second full paragraph on page II.8-9 specifically states that the DEIS can only consider use of federal lands<sup>3</sup>. Again, this is in violation of the NEPA/CEQ requirement that all reasonable alternatives be analyzed, including "An alternative that is outside the legal jurisdiction of the lead agency..."

This second paragraph also states that a distributed energy alternative would "not respond to BLM's purpose to conserve biological, physical, cultural, social and scenic values..." The reason for this is stated as "...it would not identify and incorporate public lands managed for conservation purposes within the CDCA." Why these two statements should hold is not explained. Their logic defies credibility. Certainly the BLM could "conserve" and "manage" with a DG alternative. In fact, DG could well make conservation and management easier.

The last full paragraph on page II.8-9 states that a DG Alternative could partially meet objectives, with no analysis why it could not meet all objectives. The paragraph also repeats the illogical conclusion that a DG alternative could not provide "long term conservation and management of Covered Species within the DRECP". If anything, a DG alternative could enhance "long-term management".

Conclusion: Analysis supporting rejection of a DG alternative is completely absent; opinions only are presented. The reasons for rejecting a DG alternative are illogical and appear to be an attempt to justify a predetermined conclusion. The rejection is a clear violation of NEPA 40 CFR 1502.14(a): "Rigorously explore and objectively evaluate all reasonable alternatives..." It is in clear violation of CEQ answer 2a (A), which repeats this statement. It is in clear violation of CEQ answer 2b (A): "An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." These regulations are specifically intended to preclude rejections such as this.

This NEPA violation must be corrected.

Sincerely,



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<sup>3</sup> "...the EIR/EIS would not advance the federal orders and mandates that compel the BLM to evaluate renewable energy projects on federally administered lands..."