

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

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In the Matter of:

Calico Solar Project
Complaint and Investigation

Docket No. 11-CAI-01

**PATRICK C. JACKSON'S REBUTTAL
COMMENTS TO CALICO SOLAR,
LLC'S OBJECTION TO MR. PATRICK
JACKSON'S (1) PETITION TO
INTERVENE AND (2) REQUEST FOR
INVESTIGATION**

August 28, 2011

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I. SUMMARY

On August 23, 2011, Calico Solar, LLC, (Calico) filed its Objection to Mr. Patrick Jackson's (1) Petition to Intervene and (2) Request for Investigation (Calico's Objection or Objection). Patrick C. Jackson strongly objects to Calico's Objection and respectfully requests the Committee overrule Calico's Objection on the grounds it is: (1) groundless, (2) misleading, (3) contrary to *amicus curiae* and (4) Calico's Objection does not include a declaration under penalty of perjury attesting to the truth and accuracy of the statement of facts contained in the Objection.

II. BACKGROUND

On June 8, 2011, BNSF Railway Company (BNSF) filed a document entitled "Verified Complaint to Revoke Certification" (Verified Complaint) in the matter of the Calico Solar Project (CSP). The Verified Complaint failed to specify whether the document was being filed

pursuant to California Code of Regulations, Title 20, Section 1231 or 1237. The copy of the Verified Complaint docketed with the California Energy Commission indicates the original document included a Verification signed under penalty of perjury attesting to the truth and accuracy of the statement of facts upon which the complaint is based under the laws of the State of California.

On June 8, 2011, Reneé Webster-Hawkins, Assistant Chief Counsel, California Energy Commission, docketed a Memorandum with the subject line “Request to Open a new Complaint & Investigation Proceeding.” Ms. Webster-Hawkins docketed a revised memorandum on June 9, 2011.

On June 14, 2011, Chairman Robert Weisenmiller filed a Service of Complaint and Scheduling Order (Order). In that Order, the Chairman ordered BNSF’s Complaint be treated as a document filed under Sections 1231 and 1237. The Order directed BNSF to perfect its complaint within five days of the order. The Order also directed staff to investigate the allegations raised in the complaint as to whether Calico significantly failed to comply with the terms and conditions of certification within 30 days after receipt of the perfected Complaint. The Order did not direct staff to investigate BNSF’s allegation the “Applicant’s application and supplemental documentation contained material false statements.”

On July 12, 2011, BNSF filed the Verified Complaint to Revoke Certification a second time.

On August 5, 2011, Karen Douglas, Commissioner and Presiding Member, and Robert B.

Weisenmiller, Chair and Associate Member, of the Siting Committee issued Committee Order Directing Service of BNSF Railway Company's Verified Complaint on Calico Solar, LLC, Requiring Energy Commission Staff to Prepare a Written Assessment of the Complaint, and Affirming Staff's Duty to Conduct an Investigation.

On August 10, 2011, pursuant to California Code of Regulations, Title 20, Section 1207(a), Patrick C. Jackson filed a Petition to Intervene in the Compliant and Investigation Proceeding of the Calico Solar Project (CSP). Mr. Jackson's Petition to Intervene contained all information required by Title 20 CCR § 1207(a) which provides:

Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

On August 12, 2011, Energy Commission Staff filed Staff Response to Verified Complaint to Revoke Certification.

On August 13, 2011, Patrick C. Jackson filed a Request for Investigation pursuant to California Code of Regulations, Title 20, Section 1231, which provides in pertinent part:

Any person may also file a request for investigation, including a request for a jurisdictional determination regarding a proposed or existing site and related facilities.

On August 23, 2011, Calico Solar, LLC, (Calico) filed its Objection to Mr. Patrick Jackson's (1) Petition to Intervene and (2) Request for Investigation (Calico's Objection or Objection). (The caption page to Calico's Objection is entitled "Opposition to Petition for

Intervention of Patrick Jackson and Request for Investigation” but the document is entitled “Objection to Mr. Patrick Jackson’s (1) Petition to Intervene and (2) Request for Investigation.” Calico’s Objection constitutes an objection to Mr. Jackson’s Petition to Intervene and an objection and answer to Mr. Jackson’s Request for Investigation.)

On August 24, 2011, BNSF filed its Verified Complaint for a third time. This Verified Complaint included a Verification signed under penalty of perjury attesting to the truth and accuracy of the statement of facts upon which the complaint is based under the laws of the State of California.

On August 25, 2011, BNSF filed BNSF’s Comments to CEC Staff Report Regarding BNSF’s Verified Complaint to Revoke Certification.

On August 26, 2011 Calico filed “Calico’s Comments Regarding Staff Response to Verified Complaint to Revoke Certification” (Calico Comments). Calico’s Comments did not answer BNSF’s allegation the “Applicant’s application and supplemental documentation contained material false statements.”

III. PETITION TO INTERVENE

Calico’s Objection begins:

On August 10, 2011, Mr. Patrick Jackson filed a Petition to Intervene in the above captioned complaint proceedings initiated by BNSF. Without referencing any allegation in BNSF’s complaint, Mr. Jackson explains that he is intervening because: ‘I am concerned about my property; my property rights; my health and safety; the health and

safety of visitors to my property; and the rights, health and safety of the public accessing public lands surrounding the Project.'

Calico's Objection implies Patrick C. Jackson needs to reference a BNSF allegation in order to petition to intervene. Title 20, CCR, § 1207(a) does not require the petitioner to refer to any allegations.

Calico's Objection continues:

Section 1207(a) states: 'The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.' 20 CCR 1207(a). Mr. Jackson does not state his 'position' with respect to the complaint as required by Regulation 1207(a), let alone the 'grounds' for that position.

Calico misreads Mr. Jackson's Petition to Intervene (Petition). Mr. Jackson's Petition clearly states his position, interest and grounds. As to Mr. Jackson's "position", his Petition states:

I was an Intervenor in the Project's Application for Certification, Docket No. 08-AFC-13, and currently an Intervenor in the Compliance Proceeding, Docket No. 08-AFC-13C.

I am not a member of any group or organization already a party to this proceeding. I intend to fully participate in all hearings and workshops relating to these matters.

As to Mr. Jackson's "interest" and "grounds" for his position, his Petition to Intervene clearly states:

I have an interest in this proceeding as I own property adjacent to the Calico Solar Project and the Project will have a direct impact on my property. I am concerned

about my property; my property rights; my health and safety; the health and safety of visitors to my property; and the rights, health and safety of the public accessing public lands surrounding the Project.

Calico's contentions Mr. Jackson's Petition to Intervene do not state his position, interest or the grounds for his petition are misleading and groundless.

Calico also contends Mr. Jackson's Petition to Intervene does not meet the California Code of Regulations Section 1231(b). Calico's Objection states:

To the extent that Mr. Jackson seeks to take a position of the complainant, Mr. Jackson's petition to intervene also does not meet the requirements of Regulation 1231(b).

Here again, Calico misreads Mr. Jackson's Petition. Mr. Jackson filed his Petition as an adjacent property owner pursuant to *amicus curiae* and does not seek "to take the position of the complainant." The complainant is required to comply with Title 20, CCR, § 1231(b) not a petitioner.

Calico also contends Mr. Jackson's interest in his property rights and in his health and safety are immaterial. Calico's Objection states:

While Mr. Jackson appears to have attempted to state his 'interest' in intervention as required by Regulations 1207(a), Mr. Jackson's interest in his property rights and in health and safety do not have anything to do with the allegations in BNSF's complaint.

Patrick C. Jackson strongly objects to this statement on the grounds it is argumentative. Mr. Jackson's property rights and health and safety are material to this proceeding. The record

in the Compliance Proceeding, Calico Solar Project, Docket No. 08-AFC-13C, shows Mr. Jackson became ill in September 2010 and was diagnosed in January 2011 as having contracted Valley Fever. The Compliance Proceeding record also shows Mr. Jackson believes he was exposed to the Valley Fever fungus, *Coccidioides immitis*, when he visited his property during the Applicant's grading of Hector Road and access roads to Wells #1, #2 and #3 and the Applicant's geotechnical excavations. If the California Energy Commission finds BNSF's allegation is valid and the Applicant's application and supplemental documentation contain material false statements, the finding of fact will show intent on the part of the Applicant to deprive Mr. Jackson of his property rights, health and safety with the construction and operation of the CSP. The finding of fact will also show the Applicant's intent to deceive the Parties in the Original Proceeding and ongoing Compliance Proceeding, the people of California and American taxpayers who will fund the CSP.

Calico contends Mr. Jackson's Petition to Intervene is insufficient as the Petition does not state the "reason" for the Petition. Calico's Objection states, in part:

Further, Mr. Jackson has not stated any reason why he has any information to offer that will help advance the evaluation of BNSF's complaint. If the presiding member deems Mr. Jackson's participation relevant, then Mr. Jackson may be allowed to testify or comment without becoming a party, 20 CCR § 1236.5, but Mr. Jackson should not be allowed to become a party when his petition gives no reason to conclude that he should be allowed to participate at all.

This statement by Calico is misleading on two grounds. First, California Code of Regulations, Title 20, Section 1207(a) does not require a petitioner to give the "reason" or divulge the information the petitioner has at the time of petitioning to intervene or might present during the course of the proceeding. Mr. Jackson's Request to Intervene clearly states he intends

to “fully participate in all hearings and workshops” and in doing so present evidence at the appropriate time. And second, while “Mr. Jackson may be allowed to testify or comment without becoming a party,” Mr. Jackson cannot file data requests, testify under oath or present witnesses and cross-examine witnesses without becoming a party.

Calico argues in its Objection Mr. Jackson’s Petition is premature. Calico’s Objection states:

A decision with respect to Mr. Jackson’s Petition to Intervene is also premature as a practical matter. For numerous reasons BNSF’s complaint is substantively and procedurally invalid. There is no reason why Mr. Jackson should be made a party prior to the Commission’s decision with regard how to address the complaint.

Calico’s argument relating to Mr. Jackson’s Petition being premature is moot. As pointed out earlier, Chairman Robert Weisenmiller filed a Service of Complaint and Scheduling Order (Order) regarding the BNSF’s Complaint on June 14, 2011, and BNSF re-filed its Verified Complaint on August 24, 2011.

IV. REQUEST FOR INVESTIGATION

Calico contends Mr. Jackson’s Request for Investigation does not comply with California Code of Regulations, Title 20, Section 1231(b). On this point, Calico’s Objection states:

Mr. Jackson also filed a ‘Request for Investigation’ on August 13, 2011, simply referencing BNSF’s complaint. This document makes no factual allegations or legal claims, and accordingly this document does not meet the requirements of Regulation 20 CCR § 1231(b).

Calico's argument is misleading. As to "factual allegations" and "legal claims," California Code of Regulations, Title 20, Sections 1231(b)(3) and (4) provide:

- (b) The complaint or request for investigation shall include:
 - (3) a statement of the facts upon which the complaint or request for investigation is based;
 - (4) a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based; . . .

BNSF's Verified Complaint includes all allegations and legal claims for the complaint and are a matter of record. A restatement of the statements and evidence in BNSF's Verified Complaint would be cumulative.

Mr. Jackson's Request for Investigation meets all the requirements of California Code of Regulations, Title 20, Section 1231(b) as Mr. Jackson's Request for Investigation clearly states:

A full investigation into BNSF's allegation as to whether the 'Applicant's application and supplemental documentation contained material false statements' is necessary for the Parties, Intervenors, interested agencies, entities and persons and the public to better understand and fully participate in this proceeding and the Compliance Proceeding.

Commission staff should investigate all facts pertaining to BNSF's allegation including but not limited to the statement of facts set forth in the BNSF Complaint and its Exhibits.

The Commission has the authority to conduct an investigation and act on the investigation pursuant to Section 25534(a)(1) of the Public Resources Code and Sections 1230, 1232, 1233.5, 1234, 1235 of Title 20, California Code of Regulations.

BNSF's Verified Complaint and Mr. Jackson's Request for Investigation are two legally separate documents and each document includes all the required statement of facts

and legal references.

V. DECLARATION

As a procedural matter, Calico's Objection constitutes as an answer to Mr. Jackson's Request for Investigation and Calico's Objection does not meet the requirements of California Code of Regulations, Title 20, Section 1233(b)(3) which provides:

- (b) The answer shall include: . . . (3) a declaration as provided in Section 1231(b)(8).

Calico's Objection does not include a declaration under penalty of perjury attesting to the truth and accuracy of the statement of facts contained in the Objection.

VI. CONCLUSION

Mr. Jackson has the right to petition to intervene in this proceeding under California Code of Regulations, Title 20, Section 1207(a). Calico Solar, LLC, cannot interfere to deprive Mr. Jackson of that right.

Mr. Jackson has the right to request an investigation under California Code of Regulations, Title 20, Section 1231. Calico Solar, LLC, cannot interfere to deprive Mr. Jackson of that right.

Mr. Jackson strongly objects to Calico's Objection and respectfully requests the Committee overrule Calico's Objection on the grounds it is: (1) groundless, (2) misleading, (3)

contrary to *amicus curiae* and (4) Calico's Objection does not include a declaration under penalty of perjury attesting to the truth and accuracy of the statement of facts contained in the Objection. The Committee has the authority to overrule Calico's Objection pursuant to California Code of Regulations, Title 20, Section 1235 and Public Resources Code, Section 25218(e).

The record in the Compliance Proceeding, Calico Solar Project, Docket No. 08-AFC-13C, shows Calico did not object to Mr. Jackson's Petition to Intervene in that proceeding.

Mr. Jackson also respectfully requests the Committee conduct a full investigation into BNSF's allegation the "Applicant's application and supplemental documentation contained material false statements." The Committee has the authority to conduct hearings and to investigate BNSF's allegation pursuant to California Code of Regulations, Title 20, Sections 1230 through 1236.5.

VII. VERIFICATION

I, Patrick C. Jackson, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on August 28, 2011, at San Dimas, California.

Original Signed By

Patrick C. Jackson

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

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DECLARATION OF SERVICE

I, **Patrick C. Jackson**, declare that on **August 28, 2011**, I served and filed copies of the attached ***Patrick C. Jackson's Rebuttal Comments to Calico Solar, LLC's Objection to Mr. Patrick Jackson's (1) Petition to Intervene and (2) Request for Investigation***. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service located on the web page for this project at: <http://www.energy.ca.gov/sitingcases/calicosolar>

The document has been sent to Michael J. Levy, all the other parties in this proceeding (as shown on the Proof of Service) and to the Commission's Docket Unit, in the following manner.

FOR SERVICE TO THE APPLICANT AND ALL OTHER PARTIES:

XX sent electronically to all e-mail addresses on the Proof of Service and

XX by depositing in the United States mail at **San Dimas, California**, with first-class postage thereon fully prepaid and addressed as provided on the attached Proof of Service to the mailing addresses shown on the Proof of Service.

FOR FILING WITH THE ENERGY COMMISSION AND CHIEF COUNSEL:

XX sending the original signed document and one electronic copy, mailed and e-mailed respectively, to the addresses below:

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I declare under penalty of perjury that the foregoing is true and correct.

August 28, 2011

Date

Original Signed By

Patrick C. Jackson



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**FOR THE CALICO SOLAR PROJECT
COMPLAINT AND INVESTIGATION**

Docket No. 11-CAI-01

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