



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

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

Docket No. 11-CAI-01

**DOCKET**

**11-CAI-01**

DATE Sept 19 2011

RECD. Sept 19 2011

**NOTICE OF HEARING ON  
BNSF RAILWAY COMPANY'S VERIFIED COMPLAINT  
TO REVOKE CERTIFICATION**

**PLEASE TAKE NOTICE** that the Committee designated by the Energy Commission to conduct proceedings on post-certification and compliance matters relating to the **CALICO SOLAR PROJECT** (Docket No. 08-AFC-13) has scheduled a hearing on *BNSF Railway Company's Verified Complaint to Revoke Certification*, filed with the Commission's Chief Counsel on or about July 20, 2011, as follows:

**Monday, October 3, 2011  
Beginning at 2:00 p.m.**

**California Energy Commission  
Hearing Room B  
1516 Ninth Street  
Sacramento, CA 95814**

**Teleconference Option**

Parties and the Public may attend the hearing in person at the above location or by telephone and/or by computer via our "WebEx" web conferencing system. For details on how to participate by WebEx, please see the "Participation through WebEx" directions attached to this Notice.

**Background**

On or about July 12, 2011, BNSF Railway Company (BNSF) filed a *Verified Complaint to Revoke Certification* (Complaint) with the Energy Commission Siting/Dockets Unit. On or about July 14, 2011, the Siting/Dockets Unit submitted the Complaint to the Energy Commission Compliance Program Manager assigned to the Calico Solar Project (Docket No. 08-AFC-13). On or about July 20, 2011, BNSF filed the Complaint with the Energy Commission Chief Counsel.

The Complaint's primary allegations are: (1) Calico Solar, LLC's<sup>1</sup> "application and supplemental documentation contained material false statements regarding commercial viability and availability of SunCatchers for the Calico Solar Project" (hereinafter, the misrepresentation allegations) and (2) "there has been a 'significant failure' by Applicant to comply with the terms or conditions of approval of the application as specified by the Commission in its December 1, 2010 written decision" (hereinafter, the compliance allegations). (Complaint, ¶ 2.)

By an order dated August 5, 2011, the Siting Committee (also referred to as "Committee") directed the assigned Hearing Adviser to serve the Complaint on Calico. As provided in the Commission Regulations, Calico had 21 days from the date of service to file an answer to the Complaint. The August 5 order also directed Commission Staff to submit an assessment of the complaint's misrepresentation allegations and the answer pursuant to Section 1233.5.<sup>2</sup>

The Committee Order also affirmed Energy Commission Staff's duty under Section 1237 to investigate the Complaint's compliance allegations that Calico failed to comply with conditions of certification.

The Hearing Adviser's Office mailed the Complaint to Calico, Calico submitted a timely answer, **and Commission Staff filed a written assessment of the Complaint and Calico's answer.**

### **Purpose and Scope**

The scheduled hearing will facilitate the Committee's evaluation and an adjudication of the Complaint's misrepresentation allegations. (Section 1230.) The compliance allegations were decided by the Committee in an order dated September 12, 2011. The Committee determined that BNSF's compliance allegations, which were the subject of the Section 1237 Commission Staff investigation, were both insufficiently pleaded. The Committee nonetheless addressed Staff's and Calico's disclosures that Calico has not complied with Condition of Certification REL-1 (REL-1). The Committee determined that the noncompliance was not significant in terms of impact and did not warrant sanctions. The full Commission must determine whether to relieve Calico of its continuing obligation to comply with REL-1.

### **Hearing Statements**

BNSF, Calico, and Intervenor Patrick C. Jackson shall each serve and file a Hearing Statement. The statements must be received by the Hearing Adviser and other parties on the Proof of Service list and the Commission's Docket Unit, 1516 9th Street, MS-4, Sacramento, California 95814-5512, by 12:00 noon on Wednesday, September 28, 2011.

---

<sup>1</sup> The Committee notes that Calico recently changed its name to K Road Calico, LLC.

<sup>2</sup> All regulatory references are to Title 20 of the California Code of Regulations unless otherwise specified.

Each Hearing Statement shall include:

1. A discussion, with reference to legal citations, of the applicable legal standard for determining materiality in siting proceedings before the Energy Commission;
2. The identity of each witness sponsored by the party; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness;
3. An exhibit list identifying exhibits and declarations that each party intends to offer into evidence. The exhibit list shall be submitted in the format shown in the attached sample exhibit list. The Hearing Office can provide the parties with a Word version of the exhibit list template upon request;
4. Proposals for briefing deadlines and other scheduling matters; and
5. Comments, if any, on the Committee's intention to use informal hearing procedures, as described below.

### **Format for Presenting Evidence**

Each document shall be numbered and identified on the party's exhibit list as follows:

- BNSF's exhibits shall be numbered consecutively as Exhibits 1 through 99.
- Calico's exhibits shall be numbered consecutively as Exhibits 100 through 199.
- Patrick C. Jackson's exhibits shall be numbered consecutively as Exhibits 200 through 299.

Electronic (i.e., e-mail or compact disk) copies of the exhibits shall be provided to the Committee and other parties no later than noon on Wednesday, September 28, 2011. Copies of the exhibits must also be filed with the Commission's Siting/Dockets Unit by 5:00 p.m. on Wednesday, September 28, 2011 pursuant to Commission docketing requirements. In addition, printed copies of all exhibits shall be provided to the Hearing Adviser no later than 5:00 p.m. on Friday, September 30, 2011.

### **Notice of Committee's Intention to Use Informal Hearing Procedures**

Pursuant to Government Code section 11445.10 et seq. and Section 1217 of the Commission's regulations, the Committee may conduct all or portions of the hearing in an informal manner. For example, the Committee could allow a panel of witnesses sponsored by a single party or by multiple parties to testify at one time, with an exchange of questions and responses between the witnesses and counsel for the various parties instead of formal direct and cross-examination. Other aspects of the hearing may be conducted informally as well at the discretion of the Committee. Any objections to the taking of testimony or evidence in an informal manner shall be filed on or before the deadline for filing Hearing Statements.

## **Petitions to Intervene to Become a Formal Party**

The Energy Commission's decision on the Complaint will be based on the pleadings and evidence presented at the hearing. Only formal parties (BNSF, Calico, and approved Intervenor) may present evidence and cross-examine witnesses at the hearing.

Anyone with an appropriate interest in the Complaint may file a Petition to Intervene and become a formal party. At the hearing, a formal party may offer testimony and documentary evidence, receive documents filed by other parties, and cross-examine witnesses. However, a formal party must also comply with Committee orders, procedures, and filing requirements, and is subject to having its own witnesses cross-examined by other parties.

The deadline to file a Petition to Intervene in this complaint proceeding is noon on Monday, September 26, 2011. Intervenor will take the case as they find it at the time intervention is granted. Persons interested in obtaining intervenor status are therefore encouraged to file their petitions as soon as possible.

## **How to Intervene**

The Energy Commission's Public Adviser's Office will assist any person or organization interested in preparing a Petition to Intervene. For assistance in this process, contact the Public Adviser's Office at (916) 654-4489 or (800) 822-6228 or e-mail: **[[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)]**.

## **Agency and Public Participation**

It is not necessary to be an Intervenor to participate in the public process. Anyone may present public comments at the hearing and/or submit written comments to the Energy Commission's Docket Unit in connection with the hearing. Please include "For the Calico Solar Project Complaint and Investigation, Docket No. 11-CAI-01" on any written comments. Comments made or submitted after the close of the hearing will not be considered in the Committee's proposed decision.

Anyone desiring information on how to participate may contact the Public Adviser's Office.

## **Energy Commission Information**

Contact Lourdes Quiroz if you have a disability and need assistance to participate in this event, at (916) 654-5146 or e-mail: **[[lquiroz@energy.state.ca.us](mailto:lquiroz@energy.state.ca.us)]**.

Questions of a legal or procedural nature should be directed to Kourtney Vaccaro, the Hearing Adviser, at (916) 654-4328 or e-mail: **[[kvaccaro@energy.state.ca.us](mailto:kvaccaro@energy.state.ca.us)]**.

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989 or e-mail: **[[mediaoffice@energy.state.ca.us](mailto:mediaoffice@energy.state.ca.us)]**.

Information concerning the status of the approved Calico Solar Project, as well as notices and other relevant documents, may be viewed on the Energy Commission's Internet web page at:  
**[<http://www.energy.ca.gov/sitingcases/calicosolar/index.html>]**.

Dated: September 19, 2011, in Sacramento, California.



**KAREN DOUGLAS**  
Commissioner and Presiding Member  
Siting Committee



**ROBERT B. WEISENMILLER**  
Chair and Associate Member  
Siting Committee

PARTICIPATION IN THE HEARING  
THROUGH WEBEX  
THE ENERGY COMMISSION'S ON-LINE MEETING SERVICE

1. COMPUTER LOG-ON WITH A DIRECT PHONE NUMBER:

- Please go to <https://energy.webex.com> and enter the meeting number unique to the specific hearing date:

➤ 10/3/11 - meeting number: **924 299 162**

When prompted, enter your information and the meeting password: **calico#1**

After you login, a prompt will appear on-screen for you to provide your phone number. In the **Number box**, type your area code and phone number and click OK. **You will receive a call back on your phone for the audio of the meeting.** International callers can use the "Country/Region" button to help make their connection.

2. COMPUTER LOG-ON FOR CALLERS WITH AN EXTENSION PHONE NUMBER, ETC:

- Please go to <https://energy.webex.com> and enter the unique meeting number:

➤ 10/3/11 - meeting number: **924 299 162**

When prompted, enter your information and the meeting password: **calico#1**

*After you login, a prompt will ask for your phone number. Click "CANCEL."*

- ***Instead** call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the top left area of your screen after you login.*

\*\*\*\*\*

\*

3. TELEPHONE ONLY (NO COMPUTER ACCESS):

- *Call 1-866-469-3239 (toll-free in the U.S. and Canada) and when prompted enter the meeting number:*

➤ 10/3/11 - meeting number: **924 299 162**

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. To see if your computer is compatible, visit [<http://support.webex.com/support/system-requirements.html>].

Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814 - 1-800-822-6228 - WWW.ENERGY.CA.GOV

Docket Number: 11-CAI-01

Date: \_\_\_\_\_

Project Name: CALICO SOLAR PROJECT COMPLAINT AND INVESTIGATION

**SAMPLE EXHIBIT LIST**

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
<b>BNSF RAILWAY COMPANY'S EXHIBITS</b>					
1					
<b>K ROAD CALICO, LLC'S EXHIBITS</b>					
100					
<b>INTERVENOR PATRICK C. JACKSON'S EXHIBITS</b>					
200					

**SUBMIT ALL EXHIBIT LISTS IN WORD FORMAT**



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

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

**Docket Nos. 11-CAI-01  
(Revised 9/15/11)**

**APPLICANT/RESPONDENT**

\*K Road Calico Solar, LLC  
Daniel J. O'Shea  
Managing Director  
2600 10th Street, Suite 635  
Berkeley, CA 94710  
[dano@kroadpower.com](mailto:dano@kroadpower.com)

**APPLICANT'S CONSULTANT**

URS Corporation  
Angela Leiba  
AFC Project Manager  
4225 Executive Square, #1600  
La Jolla, CA 92037  
[angela\\_leiba@URSCorp.com](mailto:angela_leiba@URSCorp.com)

**APPLICANT'S COUNSEL**

Allan J. Thompson  
Attorney at Law  
21 C Orinda Way, #314  
Orinda, CA 94563  
[allanori@comcast.net](mailto:allanori@comcast.net)

Bingham McCutchen, LLP  
Ella Foley Gannon  
Three Embarcadero Center  
San Francisco, CA 94111  
*e-mail service preferred*  
[ella.gannon@bingham.com](mailto:ella.gannon@bingham.com)

**INTERVENOR**

\*Patrick C. Jackson  
600 Darwood Avenue  
San Dimas, CA 91773  
*e-mail service preferred*  
[ochsjack@earthlink.net](mailto:ochsjack@earthlink.net)

**COMPLAINANT**

BNSF Railway Company  
Cynthia Lea Burch  
Katten Muchin Rosenman, LLP  
2029 Century Park East,  
Suite 2700  
Los Angeles, CA 90067-3012  
[cynthia.burch@kattenlaw.com](mailto:cynthia.burch@kattenlaw.com)

**INTERESTED**

**AGENCIES/ENTITIES/PERSONS**

Society for the Conservation of  
Bighorn Sheep  
Bob Burke  
Gary Thomas  
1980 East Main Street, #50  
Barstow, CA 92311  
*e-mail service preferred*  
[cameracoordinator@sheepsociety.com](mailto:cameracoordinator@sheepsociety.com)

Basin and Range Watch  
Laura Cunningham  
Kevin Emmerich  
P.O. Box 70  
Beatty, NV 89003  
*e-mail service preferred*  
[atomicoadranch@netzero.net](mailto:atomicoadranch@netzero.net)

California Unions for Reliable  
Energy (CURE)  
c/o Tanya A. Gulesserian  
Marc D. Joseph  
Adams Broadwell Joseph  
& Cardozo  
601 Gateway Boulevard,  
Suite 1000  
South San Francisco, CA 94080  
*e-mail service preferred*  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)

Sierra Club  
Gloria D. Smith  
Travis Ritchie  
85 Second Street, Second floor  
San Francisco, CA 94105  
*e-mail service preferred*  
[gloria.smith@sierraclub.org](mailto:gloria.smith@sierraclub.org)  
[travis.ritchie@sierraclub.org](mailto:travis.ritchie@sierraclub.org)

Newberry Community  
Service District  
c/o Wayne W. Weierbach  
P.O. Box 206  
Newberry Springs, CA 92365  
*e-mail service preferred*  
[newberryCSD@gmail.com](mailto:newberryCSD@gmail.com)

Defenders of Wildlife  
Kim Delfino  
1303 J Street, Suite 270  
Sacramento, California 95814  
*e-mail service preferred*  
[kdelfino@defenders.org](mailto:kdelfino@defenders.org)

Defenders of Wildlife  
Jeff Aardahl  
46600 Old State Highway,  
Unit 13  
Gualala, California 95445  
*e-mail service preferred*  
[jaardahl@defenders.org](mailto:jaardahl@defenders.org)

**INTERESTED  
AGENCIES/ENTITIES/PERSONS  
(cont.)**

County of San Bernardino  
Jean-Rene Basle, County Counsel  
Bart W. Brizzee, Principal Assistant  
County Counsel  
385 N. Arrowhead Avenue, 4th Fl.  
San Bernardino, CA 92415-0140  
[bbrizzee@cc.sbcounty.gov](mailto:bbrizzee@cc.sbcounty.gov)

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

BLM – Nevada State Office  
Jim Stobaugh  
P.O. Box 12000  
Reno, NV 89520  
[jim\\_stobaugh@blm.gov](mailto:jim_stobaugh@blm.gov)

Bureau of Land Management  
Joan Patrovsky, Specialist/  
Project Manager  
CDD-Barstow Field Office  
2601 Barstow Road  
Barstow, CA 92311  
[jpatrovs@blm.gov](mailto:jpatrovs@blm.gov)

California Department of  
Fish & Game  
Becky Jones  
36431 41st Street East  
Palmdale, CA 93552  
[dfgpalm@adelphia.net](mailto:dfgpalm@adelphia.net)

California Energy Commission  
Kerry Willis  
Senior Staff Counsel  
*Staff Attorney for Calico  
Amendment proceeding (08-  
AFC-13C)*  
*e-mail service preferred*  
[kwillis@energy.state.ca.us](mailto:kwillis@energy.state.ca.us)

California Energy Commission  
Stephen Adams  
Senior Staff Counsel  
*Staff Attorney for Calico  
Amendment proceeding (08-  
AFC-13C)*  
*e-mail service preferred*  
[sadams@energy.state.ca.us](mailto:sadams@energy.state.ca.us)

California Energy Commission  
Craig Hoffman  
*Project Manager for Calico  
Amendment proceeding (08-  
AFC-13C)*  
*e-mail service preferred*  
[choffman@energy.state.ca.us](mailto:choffman@energy.state.ca.us)

California Energy Commission  
Caryn Holmes  
Staff Counsel IV  
*e-mail service preferred*  
[cholmes@energy.state.ca.us](mailto:cholmes@energy.state.ca.us)

**ENERGY COMMISSION  
SITING COMMITTEE,  
COMMITTEE ADVISERS,  
HEARING OFFICER**

KAREN DOUGLAS  
Commissioner and Presiding Member  
*\*e-mail service preferred*  
[kldougla@energy.state.ca.us](mailto:kldougla@energy.state.ca.us)

ROBERT B. WEISENMILLER  
Chair and Associate Member  
*\*e-mail service preferred*  
[rweisenm@energy.state.ca.us](mailto:rweisenm@energy.state.ca.us)

Kourtney Vaccaro  
Hearing Officer  
*\*e-mail service preferred*  
[kvaccaro@energy.state.ca.us](mailto:kvaccaro@energy.state.ca.us)

Galen Lemei, Adviser to  
Commissioner Douglas  
*\*e-mail service preferred*  
[glemei@energy.state.ca.us](mailto:glemei@energy.state.ca.us)

Eileen Allen, Adviser to  
Chair Weisenmiller  
*\*e-mail service preferred*  
[eallen@energy.state.ca.us](mailto:eallen@energy.state.ca.us)

**ENERGY COMMISSION STAFF**

Christine Stora  
Project Manager  
*e-mail service preferred*  
[cstora@energy.state.ca.us](mailto:cstora@energy.state.ca.us)

Kevin W. Bell  
Senior Staff Counsel  
*e-mail service preferred*  
[kwbell@energy.state.ca.us](mailto:kwbell@energy.state.ca.us)

**PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser  
*e-mail service preferred*  
[publicadviser@energy.state.us](mailto:publicadviser@energy.state.us)

DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on September 19, 2011, I served and filed copies of the attached NOTICE OF HEARING ON BNSF RAILWAY COMPANY'S VERIFIED COMPLAINT TO REVOKE CERTIFICATION, dated September 19, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [<http://www.energy.ca.gov/sitingcases/calicosolar/investigate/index.html>].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

*(Check all that Apply)*

For service to all other parties:

X  Served electronically to all e-mail addresses on the Proof of Service list;

X  Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "e-mail preferred."

**AND**

For filing with the Docket Unit at the Energy Commission:

X  by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); **OR**

     by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**

Attn: Docket No. 11-CAI-01

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, §§ 1720**

     Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission

Michael J. Levy, Chief Counsel

1516 Ninth Street MS-14

Sacramento, CA 95814

[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

*Original Signed By:* \_\_\_\_\_

RoseMary Avalos

Hearing Advisers Office