

DOCKETED

Docket Number:	09-AFC-06C
Project Title:	Blythe Solar Power Project - Compliance
TN #:	201545
Document Title:	NextEra Blythe Solar Energy Center, LLC's Comments on the Presiding Member's Proposed Decision
Description:	N/A
Filer:	Marie Fleming
Organization:	Galati Blek LLP
Submitter Role:	Applicant Representative
Submission Date:	1/13/2014 11:41:37 AM
Docketed Date:	1/13/2014

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

DOCKET NO. 09-AFC-6C

Petition To Amend the
BLYTHE SOLAR POWER PROJECT

**NEXTERA BLYTHE SOLAR ENERGY
CENTER LLC'S COMMENTS ON THE
PRESIDING MEMBER'S PROPOSED
DECISION**

NextEra Blythe Solar Energy Center, LLC (NextEra Blythe Solar) hereby submits these comments on the Presiding Member's Proposed Decision (PMPD) on its Petition To Amend (PTA) the Blythe Solar Power Project (BSPP). NextEra Blythe Solar supports the PMPD with the following minor modifications.

INTRODUCTION

Page 2

The PMPD references that NextEra Blythe Solar filed the original Petition to Amend. The original Petition to Amend was filed Palo Verde Solar I, a wholly-owned subsidiary of STA Development, LLC while it was in bankruptcy. NextEra Blythe Solar filed the Revised Petition to Amend after it acquired the site. Therefore, we propose the following modifications to the PMPD.

The original Petition was filed on June 28, 2012 by ~~NextEra Blythe Solar Energy Center, LLC~~ **Palo Verde Solar I, LLC** (Applicant or Project Owner), a wholly-owned subsidiary of ~~NextEra Energy Resources, LLC~~ **STA Development, LLC**. A revised Petition was filed, **by NextEra Blythe Solar Energy Center, LLC, a wholly-owned subsidiary of NextEra Energy Resources, LLC after it acquired the project** on April 12, 2013.

PROJECT DESCRIPTION

Page 8

The PMPD refers to the CRS as currently being under construction. The CRS is now completed and the reference should be modified accordingly.

Page 12, Fencing and Security

The second paragraph states that the fence will be designed to “resist” wind and all forces. We recommend the sentence be modified replacing the word “resist” with the “to account for” to more accurately describe the fencing design.

BIOLOGICAL RESOURCES

Page 120, Condition of Certification **BIO-12**

The third line of the condition estimates acreage at 3,976 acres which should be modified to 3,975 acres to be consistent with the subsequent mitigation tables.

Pages 131 through 134, Condition of Certification **BIO-15**

Staff and NextEra Blythe Solar agreed at the evidentiary hearing to define the term “significance” specifically to reference the California Environmental Quality Act (CEQA). NextEra Blythe Solar agreed to other provisions in the condition specifically because the use of the CEQA significance threshold would provide guidance and clarity. Therefore, we request Condition of Certification **BIO-15** be modified as follows.

BIO-15 The project owner shall prepare a Bird and Bat Conservation Strategy (BBCS) and submit it to the CPM for review and approval, in consultation with BLM, CDFW, and USFWS for review and comment. The BBCS shall provide for the following:

- Surveying and monitoring onsite avian use prior to commencing construction to document species composition. The project owner will submit all data gathered onsite to the CPM as specified herein, or as requested by the CPM, and will also make consulting biologists available to answer CPM inquiries.
- Implementation of a statistically robust avian and bat mortality and injury monitoring program to identify the extent of potential avian or bat mortality or injury from collisions with facility structures, including: assessing levels of collision-related mortality and injury with PV panels and perimeter fences.

- Implementation of an adaptive management and decision-making framework for reviewing, characterizing, and responding to mortality monitoring results.
- Identification of specific conservation measures and/or programs to avoid, minimize, reduce or eliminate **CEQA** significant impacts over time and evaluation of the effectiveness of those measures.

BBCS Components

The BBCS shall include the following components:

1. Preconstruction Baseline survey results. A description and summary of the baseline survey methods, raw data, and results.
2. Formation of a technical advisory committee (TAC). The TAC will facilitate concurrent project owner, CPM, and state and federal wildlife agency review of seasonal and annual survey results, development of decision-making framework for evaluating the effectiveness of the adaptive management measures implemented by the project owner, modification of the surveys in response to the results, if necessary, and the identification of additional mitigation responses that are commensurate with the extent of impacts that may be identified in the monitoring studies. A meeting schedule for the TAC will be identified, for regular review of avian and bat injury and mortality monitoring results, and recommend any necessary changes to monitoring, adaptive management, and appropriate adaptive mitigation.
3. Full survey methodology and field documentation, identification of appropriate onsite survey locations, seasonal considerations, and preconstruction data.
4. Avian and bat mortality and injury monitoring, including:
 - (a) Onsite monitoring that will systematically survey representative locations within the facility, at a level that will produce statistically robust data; account for potential spatial bias and allow for the extrapolation of survey results to non-surveyed areas within the solar plant site boundary and the survey interval based on scavenger and searcher efficiency trials and detection rates;
 - (b) Low-visibility and high-wind weather event reporting to document potential weather-related collision risks that

may be associated with increased risk of avian or bat collisions with project features, including foggy, highly overcast, or rainy night-time weather typically associated with an advancing frontal system, and high wind events in which 40 miles per hour winds are sustained for a period of greater than 4 hours;

- (c) Statistically robust scavenger and searcher efficiency trials post-construction to document the extent to which avian or bat fatalities remain visible over time and can be detected within the project area and to adjust the survey timing and survey results to reflect scavenger and searcher efficiency rates;
 - (d) Statistical methods used to generate facility estimates of potential post-construction avian and bat impacts based on the observed number of detections during standardized searches during the monitoring season for which the cause of death can be determined and is determined to be facility-related;
 - (e) Field detection and mortality or injury identification, cause attribution, and handling and reporting protocols consistent with applicable legal requirements.
5. Survey schedule and period. Post-construction monitoring studies included in the BBCS shall be for at least two years following commencement of commercial operation of each individual unit. At the end of the second year, the CPM, in consultation with the TAC, shall determine whether the survey program shall be continued for up to two additional years, based on results of onsite monitoring. The monitoring program may be modified with the approval of the CPM in response to survey results, identified scavenging efficiency rates, or other factors to increase monitoring accuracy and reliability or in accordance with the adaptive management decision-making framework included in the BBCS.
6. Adaptive management. An adaptive management program shall be developed to identify and implement reasonable and feasible measures needed to reduce levels of avian or bat mortality or injury attributable to project operations and facilities to less than **CEQA** significant levels. Any such impact reduction measures must be commensurate (in terms of factors that include geographic scope, costs, and scale of effort) with the level of avian or bat mortality or injury that is specifically and clearly attributable to the project facilities. Adaptive actions

undertaken will be discussed and evaluated in survey reports. The adaptive management program shall include the following elements:

- (a) Reasonable measures for characterizing the extent and significance of detected mortality and injuries clearly attributable to the project.
 - (b) Potential measures that the project owner could implement to adaptively respond to detected mortality and injuries attributable to the project, including but not limited to passive avian diverter installations along the perimeter or at other locations within the project to avoid site use, the use of sound, light or other means to discourage site use consistent with applicable legal requirements, onsite prey or habitat control measures consistent with applicable legal requirements, and additional perch and nest minimizing of project facilities.
7. Adaptive Mitigation: The CPM may require the project owner to implement adaptive mitigation for **CEQA** significant onsite injury or mortality of birds and bats, based on recommendations of the TAC. Any such adaptive mitigation measures must be commensurate (in terms of factors that include geographic scope, costs, and scale of effort) with the level of avian or bat mortality or injury that is attributable to the project facilities. Adaptive mitigation measures undertaken will be discussed and evaluated in survey reports. Such measures shall be approved by the CPM in consultation with the TAC and may include, but not be limited to: (i) restoration of degraded habitat with native vegetation; (ii) restoration of agricultural fields to bird habitat; (iii) management of agricultural fields to enhance bird populations; (iv) invasive plant species and artificial food or water source management; (v) control and cleanup of potential avian hazards, such as lead or microtrash; (vi) retrofitting of buildings to minimize collisions; (vii) retrofitting of conductors and above ground cables to minimize collisions; (viii) animal control programs; (ix) support for avian and bat research and/or management efforts conducted by entities approved by the CPM within the project's mitigation lands or other approved locations; (x) funding efforts to address avian diseases or depredation due to the expansion of predators in response to anthropomorphic subsidies that may adversely affect birds that use the mitigation lands or other approved locations; and (xi) contribute to the Migratory Bird Conservation Fund managed by the Migratory Bird Conservation

Commission. Adaptive mitigation will be discussed and evaluated in survey reports.

Verification: Prior to the start of construction, a draft BBCS shall be submitted to the CPM for review and comment in consultation with CDFW, BLM, and USFWS. A final BBCS shall be submitted to the CPM within 60 days of construction commencement. The project owner shall provide the CPM with copies of any written or electronic transmittal from the USFWS, BLM, or CDFW related to the BBCS within 30 days of receiving any such transmittal.

Reporting Protocol: Verification of Survey Results (including preconstruction bird and bat use, mortality monitoring, and golden eagle monitoring): All survey results and complete reports, including raw data, shall be submitted to the CPM after each survey season and in an annual summary report throughout the course of the study period, or as otherwise directed by the CPM. The results of onsite injury and mortality monitoring will be reported monthly or more frequently, if requested by the CPM. The reports will include all data required as part of the monitoring program. Post-construction monitoring studies included in the BBCS shall be for at least two years following commencement of commercial operation of each individual unit. The BBCS shall define the circumstances under which additional years of monitoring would be necessary. The Monitoring Study shall continue until the CPM, in consultation with CDFW, BLM, and USFWS, using the criteria included in the BBCS, concludes that the cumulative monitoring data provide sufficient basis for estimating long-term bird mortality for the project. The reports will include all monitoring data required as part of the monitoring program.

The reports shall also assess any adaptive management measure implemented during the prior year as approved by the CPM. After the second year of the monitoring program, the CPM shall meet and confer with the TAC and shall use the criteria contained in the BBCS to determine if subsequent monitoring periods are warranted

If a carcass or injured special status species is found at any time by the monitoring study or project operations staff, the project owner, Designated Biologist, or other qualified biologist that may be identified by the Designated Biologist shall contact the CPM, CDFW and USFWS by email, fax or other electronic means within one working day of any such detection. Verification of other injuries or mortalities shall be within 48 hours, or as otherwise directed by the CPM.

Page 179, Condition of Certification **BIO-27**

Condition of Certification **BIO-27** allows alternative mitigation such as the in lieu fee program for habitat compensation. In order to allow flexibility for other programs that the

resource agencies may develop, we recommend the Condition of Certification proposed by Staff and included in the PMPD for the Palen Solar Electrical Generating System (PSEGS), reproduced below with minor wording clarification, replace the version of **BIO-27** currently in the BSPP PMPD.

BIO-27 The Project owner may choose to satisfy its mitigation obligations by paying an in-lieu fee instead of acquiring compensation lands, pursuant to Fish and Game code sections 2069 and 2099. Alternately, the CPM, in conjunction with the BLM, CDFW, and USFWS, may approve the project owner's use of another mitigation program or any other applicable in-lieu fee provision, provided that the Project's in-lieu fee proposal or mitigation program is found by the CPM to mitigate the impacts identified herein. If the in-lieu fee proposal or mitigation program is found by the CPM, in coordination with the BLM, CDFW, and USFWS to be in compliance, and the Project Owner chooses to satisfy its mitigation obligations through the in-lieu fee *or mitigation program*, the Project Owner shall provide proof of the in-lieu fee payment *or compliance with other mitigation program* to the CPM prior to construction related ground disturbance.

Verification: If electing to use this provision, the Project owner shall notify the CPM that it would like a determination that the Project's in-lieu fee proposal *or other mitigation program* would mitigate for the impacts identified herein. Prior to site mobilization and construction related ground disturbance the Project Owner shall provide proof of the in lieu fee payment *or other mitigation program* to the CPM.

SOIL AND WATER RESOURCES

Page 196, Verification to Condition of Certification SOIL&WATER-7

The reference to the land treatment units in the verification should be deleted as the land treatment units have been deleted from the project.

Soil and Water Resources, Appendices B, C and D

Appendices B, C and D to the Soil and Water Resources section of the PMPD include the Waste Discharge Requirements for use of the evaporation ponds. Minor corrections to the PMPD are necessary to capture changes to reflect the modified project. We understand that Staff will be proposing new Appendices to address these concerns.

CONCLUSION

NextEra Blythe Solar thanks for the Committee for timely processing the PMPD and for considering these comments and urges the Commission to adopt the PMPD with the following modifications at the Commission Business Meeting on January 15, 2014.

Dated: January 13, 2014

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Scott A. Galati", with a horizontal line extending to the right from the end of the signature.

Scott A. Galati
Counsel to NextEra Blythe Solar Energy Center, LLC