

STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

<b>DOCKET</b>	
<b>07-AFC-5</b>	
DATE	April 10 2009
RECD.	April 10 2009

In the Matter of: )  
 )  
Application for Certification for the Ivanpah Solar )  
Electric Generating System )  
 )  
\_\_\_\_\_ )  
 )  
Docket No. 07-AFC-5

**APPLICANT'S STATUS REPORT #8**  
**Including**  
**THE APPLICANT'S PROPOSED SCHEDULE**  
**For**  
**THE IVANPAH SOLAR PROJECT**

Jeffery D. Harris  
Ellison, Schneider & Harris L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
Telephone: (916) 447-2166  
Facsimile: (916) 447-3512

Attorneys for the Applicant

## INTRODUCTION AND SUMMARY

The following discussion summarizes the status of the Ivanpah Solar Electric Generating System (the “Ivanpah Solar Project”) Application for Certification [07-AFC-5] proceeding since the issuance of Applicant’s Status Report No. 7 on March 4, 2009. By “Order Directing Comment on a Revised Committee Schedule,” dated March 20, 2009, the Committee, in pertinent part, asked the parties to comment on the following subjects:

We therefore order the parties to address the schedule in their next status reports, due April 10, 2009, and suggest new dates for the FSA/DEIS publication and following events. We invite specific comment on: 1) the merit of issuing a Commission Decision prior to the completion of the BLM's permitting process as the current schedule suggests; and 2) whether a longer period between the publication of the FSA/DEIS and the commencement of the evidentiary hearings is appropriate in order to allow for the complete exchange of direct and rebuttal evidence, and testimony between the parties before the hearings commence and, if so, proposed timetables for the exchanges. (Order, p.1.)

This status report begins with an update of materials requested by Staffs of the CEC and BLM. In response to the two questions posed in the order: (1) there is merit in more closely aligning the final CEC actions with the final BLM actions, as discussed in Section II below; and (2) there is no need to slow down the permitting of this important solar project, given that the CEC processes to be followed are the same processes the Commission follows in every case, as discussed in Section III.

### **I. STAFF-REQUESTED DELIVERABLES: CEQA AND NEPA REQUIRE ENOUGH INFORMATION TO INFORM DECISIONS, NOT DETAILED DESIGN INFORMATION**

On January 15, 2009, CEC and BLM Staff identified seven items that, in Staff’s words, “Critical path deliverables that must be available to BLM and the Energy Commission before they can complete the FSA and DEIS.” The status of these seven items is set forth in Table 1 attached hereto.

The Applicant has submitted to the agencies the Revegetation and Reclamation Plan, the Desert Tortoise Translocation Plan, and the Revised Biological Assessment. The Incidental Take Permit Application, which draws on these first three items, is in preparation. Similarly, the Health and Safety Plan requested by BLM, an item that is typically prepared post-approval, is also nearing completion.

Staff and BLM continue to insist on a high-level of design detail for the Ivanpah Solar Project’s site grading plan, “90% Grading Plans.” While the Applicant continues to

believe that Staff does not require such detailed information to inform the public of the nature and scope of the potential impacts of the Ivanpah Solar Project, Applicant has nevertheless agreed to prepare detailed drawings. The final plan, which draws on the “90% Grading Plans” and which is, in many respects, duplicative of the Regional Board’s Stormwater Pollution Prevention Plan (“SWPPP”), and the Revised Drainage, Erosion and Sediment Control Plan (DESCP) will be completed once the Staffs indicate that they are satisfied with the “90% Grading Plans.” In sum, significant progress has been made on all of the Staff-requested deliverables.

Another issue lingers. The Applicant remains concerned that it is being asked to provide too much detailed design at this stage in the permitting process.

An EIR, or in the case of the CEC’s Certified Regulatory Program, an FSA, “is an informational document that will inform public agency decision makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.” (14 CCR 15121; emphasis added.) How much detail does CEQA require?

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. *The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.* (14 CCR 15151; emphasis added.)

NEPA is similarly an informational, often described as “procedural” document:

Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. (40 CFR 1500.1(c).)

Thus, the appropriate question on the sufficiency of the documentation Ivanpah Solar Project has supplied should not be, “Is there enough detailed design information to build the project?” Rather, the appropriate question remains, “Is there enough information about the project and its potential effects to inform the public and decision makers generally of the potential effects of the project, possible mitigation, and alternatives? Design-level detail is not required.

In retrospect, Applicant agreed to provide far more information than is required for a FSA/DEIS in hopes of expediting these proceedings. Expedience has been fleeting. Applicant respectfully requests that the Committee press the Staff for clearly articulated justifications for the Staff's insistence on near-final "90% Grading Plans" and other information the Staffs seek especially when one takes into consideration the significant role played by the Chief Building Official (CBO) in reviewing and approving detailed plans such as stormwater civil plans. CEQA and NEPA are clearly focused on conveying sufficient information to inform the public and decisionmakers. They do not demand near final design drawings for public review.

## II. APPLICANT'S PROPOSED SCHEDULE

The FSA/DEIS will be the first environmental document, the functional equivalence of a Draft EIR/EIS. While perfection is a laudable goal, perfection and finality are not required nor appropriate for the *draft* environmental document. Clearly, the schedule for this proceeding keys off the publication of the first environmental document, the FSA/DEIS. Since the publication date is uncertain at this time, the Applicant offers the following proposed schedule (the "Applicant's Proposed Schedule") (attached).

The Applicant's Proposed Schedule lists the significant CEC/CEQA and NEPA milestones and then sets forth proposed dates for each event in succession. For example, since the exact date for publication of the FSA/DEIS is unknown, the Applicant's Proposed Schedule has the next significant event, the CEC's Prehearing Conference scheduled for "15 days after FSA/DEIS issued."

The Applicant's Proposed Schedule satisfies all of the legal requirements applicable under both CEQA and NEPA. The proposed dates satisfy all of the requirements of the Commission's regulations. (20 CCR 1001 *et seq.*) Similarly, from a NEPA perspective, after publication of the draft environmental document, there are, remarkably, only two significant "hard" deadlines set by statute or regulation between the issuance of the *draft and final* environmental document: (1) for the ROW grant, there is a 45-day comment period on the draft environmental document per 40 CFR 1506.10(c); and (2) for the RMP Amendment, there is a 90-day comment period on the draft document per 43 CFR 1610.2(e).

The Applicant's Proposed Schedule, with events following a certain number of days after the proceeding event, will also allow the public to know with greater certainty when they will be required to act following publication of the FSA/DEIS. Of course, the Committee will have to issue an updated schedule once the FSA/DEIS is published to provide actual dates and to avoid events falling on weekends or holidays. Nevertheless, if the Committee adopts the Applicant's Proposed Schedule, the public and the parties will know, for example, that Evidentiary Hearings will begin within 30 days of the CEC's publication of the FSA/DEIS and can plan accordingly.

The Applicant's Proposed Schedule allows for maximum flexibility to coordinate the complex and difficult to synchronize CEC/CEQA and NEPA timelines. For example,

while the Applicant would greatly prefer if the CEC's public release of the FSA/DEIS and the BLM Notice of Availability ("NOA") of the DEIS occurred on the same day, they need not occur in lock-step. Instead, if there is delay in publication of the BLM's NOA, the CEC can nevertheless proceed with its procedures, including the Prehearing Conference, Evidentiary Hearings, and alike, while the NOA makes its way through the BLM's internal approval processes.

Finally, the Applicant's Proposed Schedule more closely aligns the CEC and BLM decision-making timelines. The current schedule for this proceeding has the BLM NOA of an FEIS published on October 2, 2009, months after the Commission Final Decision in "August-September 2009." These timelines are obviously dated, but this one example makes the point: why should the BLM process lag the CEC's approval? It need not lag. Instead, as set forth in the Applicant's Proposed Schedule, the NOA of the FEIS can occur close in time to the Commission's PMPD. Just as the Commission's process allows for revisions between PMPD and Final Decision, NEPA allows for revisions to be accounted for in the federal Record of Decision ("ROD"). The CEC and the BLM should have as a goal the public interest in having their decision-making timelines synchronized, rather than having the BLM lag the CEC. The Applicant's Proposed Schedule accomplished this synchronization.

### **III. THERE IS NO NEED TO ALLOW FOR EXTRA TIME BETWEEN PUBLICATION OF THE FSA/DEIS AND THE COMMENCEMENT OF THE EVIDENTIARY HEARINGS**

There is no need to slow down the permitting of this important solar project. The CEC processes to be followed as set forth in the Applicant's Proposed Schedule are *the same processes the Commission follows in every case*. The fact that BLM has a 90-day comment period (per NEPA) that is running concurrently does not affect the nature or the scope of the Evidentiary Hearings or the time required to prepare for such hearings.

It is the goal of the Applicant to have as many issues as possible settled before Evidentiary Hearings. As a matter of law, the Commission's Evidentiary Hearings are aimed at developing a record where there are material facts in dispute, and the Commission has plenary authority in the conduct of the Evidentiary Hearings. (Public Resources Code 25521; 20 CCR 1748.) Matter of laws and arguments on non-factual matters should be presented in briefs, not Evidentiary Hearings.

There will be few, if any, factual matters that will require Evidentiary Hearings. The Applicant asks the Commission to be mindful of the potential for those who oppose the project to try to "stall" by seeking to litigate issues when, in fact, no facts are in dispute. Fortunately, the Committee has plenary authority to determine whether there are indeed any factual matters that merit hearing.<sup>1</sup>

---

<sup>1</sup> For example, the Committee can require any "proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden

April 10, 2009

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  \_\_\_\_\_

Jeffery D. Harris  
Ellison, Schneider & Harris L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
Telephone: (916) 447-2166  
Facsimile: (916) 447-3512  
Attorneys for Applicant

---

of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision....” (20 CCR 1748 (e).)

**TABLE 1**  
**STATUS OF DELIVERABLES**

<b>Document</b>	<b>Status</b>
Revegetation and Reclamation Plan*	Submitted to agencies as Data Response Set 2G on January 28, 2009 Comments received from agencies on March 24, 2009.
Desert Tortoise Translocation Plan*	Submitted to agencies as Supplemental Data Response Set 2A, on March 19, 2009.
Revised Biological Assessment*	Applicant's draft submitted to agencies on April 1, 2009.
Incidental Take Permit Application*	In preparation. Will be submitted late April 2009.
Health and Safety Plan*	In preparation. Will be submitted the week of April 20, 2009.
90% Grading Plans*	Meetings held onsite and in Primm, Nevada on March 25, 2009. Agencies preparing comments on draft plans.
Revised Drainage, Erosion and Sediment Control Plan*	First submitted to agencies as Data Response Set 1B on February 11, 2008. Revised and re-submitted to agencies as Data Response Set 2B on July 22, 2008. Being updated and will be re-submitted late April 2009.

\* "Critical path deliverables that must be available to BLM and the Energy Commission before they can complete the FSA and DEIS," Staff list dated January 15, 2009.

**APPLICANT’S PROPOSED SCHEDULE**  
**Ivanpah Solar Project**  
**April 9, 2009**

<b>EVENT</b>	<b>CEC CERTIFICATION SCHEDULE</b>	<b>BLM NEPA SCHEDULE</b>
Preliminary Staff Assessment (“PSA”) issued	December 5, 2008 (Day 401)	
PSA Workshops	January 9, 2009 (Day 436)	
Final Staff Assessment (“FSA”) issued as “FSA/DEIS”	TBD	
BLM Notice of Availability (“NOA”) of the Draft Environmental Impact Statement (“DEIS”) published in Federal Register; starts 90-day comment period		TBD (As close in time to the issuance of the FSA/DEIS)
Prehearing Conference	15 days after FSA/DEIS issued	
Evidentiary Hearings	30 days after FSA/DEIS issued	
Briefs Filed	15 days after close of Evidentiary Hearings	
PMPD issued	60 days after close of Evidentiary Hearings	
Hearing on PMPD	14 days after PMPD issued	
BLM DEIS 90-day comment period concludes		90 days after NOA of DEIS
Comment period on PMPD concludes	30 days after PMPD issued	
BLM NOA of the FEIS published in Federal Register		60 days after close of DEIS comment period
Governor’s Consistency Review period begins		60 days after close of DEIS comment period
30-day protest period for FEIS		30 days after NOA of FEIS
CEC Decision	60 days after Issuance of PMPD	
Governor’s Consistency Review period concluded		60 Days after NOA of FEIS
BLM ROD issued		60 Days after NOA of FEIS
BLM issuance of ROW grant and RMP Amendment as “Full Force and Effect”		60 Days after NOA of FEIS



**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**

APPLICATION FOR CERTIFICATION  
FOR THE *IVANPAH SOLAR ELECTRIC  
GENERATING SYSTEM*

DOCKET No. 07-AFC-5

PROOF OF SERVICE  
(Revised 3/25/09)

**APPLICANT**

Solar Partners, LLC  
John Woolard,  
Chief Executive Officer  
1999 Harrison Street, Suite #500  
Oakland, CA 94612

Steve De Young, Director  
Project Manager  
Ivanpah SEGS  
Environmental, Safety  
and Health  
1999 Harrison Street, Ste. 2150  
Oakland, CA 94612  
[sdeyoung@brightsourceenergy.com](mailto:sdeyoung@brightsourceenergy.com)

**APPLICANT'S CONSULTANTS**

John L. Carrier, J. D.  
2485 Natomas Park Dr. #600  
Sacramento, CA 95833-2937  
[jcarrier@ch2m.com](mailto:jcarrier@ch2m.com)

**COUNSEL FOR APPLICANT**

Jeffery D. Harris  
Ellison, Schneider  
& Harris L.L.P.  
2600 Capitol Avenue, Ste. 400  
Sacramento, CA 95816-5905  
[jdh@eslawfirm.com](mailto:jdh@eslawfirm.com)

**INTERESTED AGENCIES**

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

Tom Hurshman,  
Project Manager  
Bureau of Land Management  
2465 South Townsend Ave.  
Montrose, CO 81401  
[tom\\_hurshman@blm.gov](mailto:tom_hurshman@blm.gov)

Sterling White, Field Manager  
Bureau of Land Management  
1303 South Highway 95  
Needles, CA 92363  
[sterling\\_white@blm.gov](mailto:sterling_white@blm.gov)

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

**INTERVENORS**

California Unions for Reliable  
Energy ("CURE")  
Tanya A. Gulesserian  
Marc D. Joseph  
Adams Broadwell Joseph &  
Cardozo  
601 Gateway Boulevard, Ste 1000  
South San Francisco, CA 94080  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)

\*Joanne Spalding  
Sidney Silliman  
Sierra Club  
85 Second Street, 2<sup>nd</sup> Fl.  
San Francisco, CA 94105  
[joanne.spalding@sierraclub.org](mailto:joanne.spalding@sierraclub.org)  
[gssilliman@csupomona.edu](mailto:gssilliman@csupomona.edu)  
**E-mail Preferred**

\*Joshua Basofin, CA Rep.  
Defenders of Wildlife  
1303 J Street, Ste. 270  
Sacramento, CA 95814  
[jbasofin@defenders.org](mailto:jbasofin@defenders.org)

**ENERGY COMMISSION**

JEFFREY D. BYRON  
Commissioner and Presiding  
Member  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

JAMES D. BOYD  
Vice Chairman and  
Associate Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

Paul Kramer  
Hearing Officer  
[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)

John Kessler  
Project Manager  
[jkessler@energy.state.ca.us](mailto:jkessler@energy.state.ca.us)

Dick Ratliff  
Staff Counsel  
[dratliff@energy.state.ca.us](mailto:dratliff@energy.state.ca.us)

Elena Miller  
Public Adviser  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

**DECLARATION OF SERVICE**

I, Mary Finn, declare that on April 10, 2009, I served and filed copies of the attached Applicant's Status Report #8. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

**[[www.energy.ca.gov/sitingcases/ivanpah](http://www.energy.ca.gov/sitingcases/ivanpah)]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

**(Check all that Apply)**

**FOR SERVICE TO ALL OTHER PARTIES:**

  x   sent electronically to all email addresses on the Proof of Service list;

  x   by personal delivery or by depositing in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

**AND**

**FOR FILING WITH THE ENERGY COMMISSION:**

  x   sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

**OR**

       depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. \_\_\_\_\_  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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

  
\_\_\_\_\_