

STATE OF CALIFORNIA
Energy Resources Conservation and
Development Commission

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In the Matter of:

The Application for Certification for the
IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM

Docket No. 07-AFC-5

PREHEARING CONFERENCE STATEMENT OF THE
SIERRA CLUB

December 23, 2009

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In response to the revised November 23, 2009, Notice of Prehearing Conference and Evidentiary Hearings, this statement identifies issues intervenor Sierra Club intends to raise at the public evidentiary hearings for the Ivanpah Solar Electric Generating System (ISEGS). It is simply a fact of this case that key issues continue to evolve and change as staff and the applicant revise, add and delete project conditions. Revisions were still ongoing at the December 15 and 22, 2009 workshops. Sierra Club does object to the applicant and staff working to narrow disputed issues; however, such a process does make it difficult for the remaining parties to evaluate the overall state of play. Based on this, Sierra Club must reserve the right to respond to revisions to license conditions and/or mitigation/avoidance measures once negotiations are complete.

I. Topic Areas That Are Complete and Ready to Proceed to Evidentiary Hearing

Sierra Club is prepared to proceed to hearing on the topic of alternatives. However, it does not view the alternatives analysis as complete and ready for final

hearing given the confusing and otherwise deficient treatment of the FSA's I-15 alternative, an alternative loosely based on the Sierra Club proposal submitted to Commission and BLM staff in June 2009. The parties were still clarifying their understanding of the relative merits of the I-15 alternative at the workshops.

II. Topic Areas That Are Not Complete and Not Yet Ready to Proceed to Evidentiary Hearing

There remain fundamental unresolved issues in the areas of biological resources, specifically with regard to required mitigation for the desert tortoise and rare and sensitive plant species. The record is incomplete because staff and the applicant continue to revise, add and/or remove license conditions in many topic areas. Given these moving targets, it is impossible to evaluate whether the project will fully comply with relevant federal and state LORS.

III. Topic Areas that Remain Disputed and Require Adjudication

It appears many issues remain in dispute. Sierra Club's testimony focuses on alternatives and attendant impacts on biological resources. The FSA rejected the I-15 alternative which itself was an outgrowth of an alternative Sierra Club's proposed in June 2009.¹ Nevertheless, Sierra Club's testimony shows that this option would avoid many of the project's most significant impacts.² Accordingly, Sierra Club is prepared to adjudicate project alternatives.

IV. Witnesses, Topic Areas, Testimony and Exhibits

A. Witnesses

Sierra Club will sponsor the testimony of biologist Scott Cashen.

¹ The Sierra Club proposed to (1) relocate the Project's three power blocks closer to the areas adjacent to Interstate 15; (2) leave much of the desert tortoise and rare plant habitat undisturbed; and (3) retire the Clark Mountain grazing allotment. *See* Sierra Club proposed alternative June 22, 2009.

² FSA at 4-49.

B. Topic Areas for Cross-Examination

Mr. Cashen will testify on the FSA's alternatives analysis and will present a scientifically valid comparison of the FSA's I-15 alternative's and the proposed project's impacts on biological resources. Mr. Cashen's declaration and curriculum vitae are attached to his direct testimony.

C. List of Exhibits

- 600 Sierra Club's June 2009 letter proposing an alternative to the ISEGS' site configuration
- 601 Nussear KE, TC Esque, RD Inman, LL Gass, KA Thomas, CSA Wallace, JB Blainey, DM Miller, RH Webb. 2009. Modeling habitat of the desert tortoise (*Gopherus agassizii*) in the Mojave and parts of the Sonoran Deserts of California, Nevada, Utah, and Arizona: U.S. Geological Survey Open-File Report 2009-1102, 18 p.
- 602 Collis S, HW Avery. 2000. Proximate constraints affecting the reproductive output and mortality of desert tortoises [abstract]. Proceedings of the Desert Tortoise Council 2000 Symposium. pp. 12-13.
- 603 Curriculum Vitae for Jim Cornett
- 604 Cashen, Scott. Map of areas in the Project and I-15 alternative sites surveyed for desert tortoise burrows.
- 605 LaRue EL, Jr. 1992. Distribution of desert tortoise sign adjacent to Highway 395, San Bernardino County, California. Proceedings of the Desert Tortoise Council 1992 Symposium. pp. 190-204.
- 606 Nicholson L. 1978. The effects of roads on desert tortoise populations. Proceedings of the Desert Tortoise Council 1978 Symposium. pp. 127-129.
- 607 Boarman WI. 2002. Threats to Desert Tortoise Populations: A Critical Review of the Literature. U.S. Geological Survey, Western Ecological Research Center. Sacramento (CA): 86 p.
- 608 Boarman WI, M. Sazaki. 2006. A highway's road-effect zone for desert tortoises (*Gopherus agassizii*). Journal of Arid Environments 65:94-101.
- 609 CDFG. 2009 Oct 27. Comments on the Preliminary Staff Assessment and Recommendations for the Final Staff Assessment for the Ivanpah Solar Electric Generating System (CEC Docket # 07-AFC-5). Letter from Kevin Hunting, Deputy Director, Ecosystem Conservation Division to John Kessler, Program Manager, Siting, Transmission & Environmental Protection Division, California Energy Commission.

610 Thomas KA, T Keeler-Wolf , J Franklin, P Stine. 2004. Mojave Desert Ecosystem Program: Central Mojave Vegetation Mapping Database. Western Regional Center, US Geological Survey. Technical Report.

V. Proposals for Briefing Deadlines and Scheduling Matters

The Sierra Club is prepared to go forward with evidentiary hearings scheduled for January 11 and 12, 2010.

Given the volume of resource issues in this case and their importance, Sierra Club requests that the opening briefs following the evidentiary hearings not be due any earlier than three weeks after the close of the evidentiary hearings.

VI. Proposed Modifications to the Proposed Conditions of Certification

As noted above, staff and the applicant continue to revise key license conditions. Therefore, Sierra Club is unable to assess the conditions related to biological resources as of the date of this filing. Indeed, staff and the applicant were still revising conditions at the public workshops. Sierra Club reserves the right to provide proposed modifications for conditions, and additional proposed conditions once staff and the applicant complete their work.

Dated: December 23, 2009

Respectfully submitted,

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

DOCKET No. 07-AFC-5
PROOF OF SERVICE
(Revised 11/23/09)

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DECLARATION OF SERVICE

I, Violet Lehes, declare that on Dec 23, 2009, I served and filed copies of the attached, Statement dated, Dec 23, 2009. 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 documents have 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:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery or by depositing in the United States mail at ^{San Francisco} ~~Sacramento~~, California 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:

- 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

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

Violet Lehes