STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

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

APPLICANT'S STATUS REPORT #11

For

THE IVANPAH SOLAR PROJECT

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INTRODUCTION

The Ivanpah Solar project must have a decision in January 2010 to ensure that this important solar facility can be approved, financed, and constructed.

In order to qualify for significant funding from the federal stimulus program under the American Recovery and Reinvestment Act ("ARRA"), the Ivanpah Solar Project must, pursuant to the statute, commence construction by Dec. 1, 2010. The first construction milestone is the relocation of Desert Tortoise. The resource agencies limit Desert Tortoise relocation to either the Spring or Fall months. In addition to the limited Desert Tortoise relocation window, post-certification requirements, administrative appeals, judicial appeals, financing, construction contracting, mobilization, and related items also severely constrain the commencement of construction. Given these constraints, the Commission must approve the Ivanpah Solar Project in January 2010, in time to allow Desert Tortoise relocation in Spring 2010. Unless the schedule assures that relocation can occur in Spring 2010, the success of the project will be jeopardized.

Delays also severely hinder the State's ability to advance its important Renewable Portfolio Standard ("RPS") and the Greenhouse Gas ("GHG") goals. This project is being counted upon by both of the State's largest Investor-Owned Utilities to achieve their RPS requirements. Further, any delay beyond January 2010 will thwart California's interests in obtaining its "fair share" of the federal ARRA stimulus monies, jeopardize US Department of Energy loan guarantees, and undermine the Ivanpah Solar Projects' ability to deliver renewable power to California.

Having been declared Data Adequate on October 31, 2007, today, July 24, 2009, is Day 632 of this proceeding. We respectfully request that the Committee consider all means possible

including those outlined herein below, to see this long process to completion no later than January 2010.

STATUS OF THE PROCEEDING

In Section I below, we recount the status of the proceeding, including the status of Staff's continuing requests for data. In Section II we once again call the Committee's attention to a few, relatively minor modifications to the Ivanpah Solar Project's schedule that can save up to four weeks time in the current schedule. These relatively minor modifications will also better align the schedule for this proceeding with the Commission's usual and customary practices, and provide a more effective and efficient model for the Commission and the Bureau of Land Management to employ for the many solar projects that are coming into the permitting pipeline. Faced with only one significant regulatory deadline between now and January 2010, we respectfully request that the Committee in its plenary discretion revise its Scheduling Order to take advantage of these changes to streamline the remainder of this proceeding.

I. STAFF'S ADDITIONAL DATA REQUESTS

The Applicant continues to receive requests for additional data. A summary of the status and actions taken to satisfy Staff's additional data requests are summarized below.

- Tortoise Relocation Area Data Request
    - Data Request Received: July 7, 2009, via voicemail message: Staff seeks a Habitat Assessment on the Desert Tortoise relocation area.
    - Actions: Applicant is spending significant time and money to produce the requested information, which will be filed within the timeframes prescribed by Staff.
    - Notes: The Tortoise Translocation area, which was recommended by US FWS, has not changed since the August 2007 AFC filing.

- Regional Board

    - Data Request Received: NA: Staff and Lahontan Regional Water Quality Control Board (RWQCB) are discussing "various permit requirements." (Staff Status Report #10, p. 1)

    - Actions: Applicant met with Lahonton RWQCB on July 17, 2009. The RWQCB confirms they do not require a 401 Water Quality Certification application.

    - Notes: The Committee order states, "Governor Schwarzenegger's Executive Order S-14-08 directs the Energy Commission and Department of Fish and Game (DFG) to create a "one-stop process" for renewable energy permits under its jurisdiction.* * * Now that the Commission Decision is to replace those separate permits, the details must be resolved prior to, rather than following, certification."

      Applicant disagrees with this characterization. The Governor's renewable Executive Order requires the Commission and other agencies to work together to speed, not slow down, renewable permitting. To the extent the Commission desires information from the RWQCB, it is responsible to obtain that information in a timely way that does not delay the schedule. Furthermore, to the extent the RWQCB "approvals" are State law approvals, they have always been preempted by the Commission's filing jurisdiction. To the extent the RWQCB "approvals" are federal approvals, the Commission is preempted by Federal law. The Governor's Executive Order does not modify existing State and Federal law and thus the Commission cannot blame it for slowing down its renewable permitting process.

- CDFG Incidental Take Permit Issues; Streambed Alteration Issues

    - Data Request Outstanding: None. Applicant has supplied information.

    - Actions: Applicant filed a Draft Incidental Take Application on May 27, 2009 (Data Response Supplemental Set 2D) and a Draft Lake and Streambed Alteration Agreement ("LSA," formerly "SAA") on June 2, 2009 (Data Response 1L).

    - Notes: CDFG will make "recommendations" to CEC. However, the Commission's siting authority preempts CDFG on all State law matters.

      Applicant has been meeting with CDFG and the Resources Agency since the Fall of 2008. Discussions with CDFG and the Resources Agency on these issues have been ongoing since March 2009.

The Applicant is hopeful that the Staff will have no additional requests.

II. KNOWING THE IMPORTANCE OF A DECISION IN JANUARY 2010, THE COMMITTEE SHOULD MODIFY THE SCHEDULING ORDER TO COMPORT TO THE COMMISSION'S USUAL AND CUSTOMARY SCHEDULING PRACTICES

Applicant understands and appreciates the fiscal and resources constraints facing the Commission, in general, and the Staff, in particular. The Applicant's parent company, BrightSource Energy Inc., has articulated its concerns over the Commission's lack of resources to key decision makers, and is working with other key stakeholders to ensure the Commission and other state and federal agencies have the resources they need to effectively and efficiently process renewable energy applications. BrightSource is committed to continuing to do so going forward. It seems self-evident that if the State values meeting its inter-related and indivisible policy goals of reducing greenhouse gas emissions, meeting the aggressive RPS goals, and the less glamorous but paramount goal of energy reliability, the Commission should not be asked to do much more with so much less.

Fortunately, the Commission can and should control its own fiscal fate by following its usual and customary practices, avoiding new and unnecessary additional procedures in this case. Specifically, the procedures going forward in this case should more closely mirror the Commission's "Model" 12-month siting schedule (the "Commission's Model Schedule)."[1]

To begin, the Commission's Model Schedule does not call for any "Issues Resolution Workshops", like the workshop scheduled for July 31, 2009. While Staff maintains that the extra workshop will be conducted "in stride" with the production of the FSA/DEIS, it is clear that limited Staff resources will be directed away from FSA/DEIS production to put on a workshop that is undoubtedly outside the Commission's usual and customary practices. Having been

[1] Available on the Commission's website at: http://www.energy.ca.gov/sitingcases/6-MONTH_12-MONTH_SPPE_PROCESS.PDF.

noticed, the Workshop should continue, but with the admonition that the Workshop should not delay the publication of the FSA/DEIS.

The bell having already been rung for an extraordinary "Issues Resolution Workshop," we turn from this issue to offer for the Committee's consideration the following two specific changes to the Commission's scheduling order that can save four weeks with no substantial impact on the Commission, the Staff or the Parties by following its usual and customary practices.

First, the Commission's Model Schedule proceeds orderly from FSA (which by regulation serves as the Staff's testimony), to all other Parties Testimony to Prehearing Conference and Evidentiary hearings in just ten days. The Committee's Order has seven weeks (49 days) for these events, not ten days. While the Committee may believe that ten days is not sufficient for this case, seven weeks is clearly an extreme and unjustified departure from the Commission's Model Schedule; surely, the time can and should be reduced considerably to bring it into closer compliance with the Commission's template. To do so, the Commission should follow its usual and customary practices as follows:

Tbd, concurrent with BLM publication of NOA of DEIS	Staff files FSA/DEIS
FSA/DEIS + 2 weeks	Opening testimony and preliminary identification of contested issues filed and served (all parties other than Staff)
FSA/DEIS + 3 weeks	All Parties file Prehearing Conference Statement (Monday) and Prehearing Conference (Thursday)
FSA/DEIS +4 weeks	Evidentiary Hearings

By simply following the Commission's usual and customary practices, the Committee Order can and should be revised to save three weeks.

Second, the Commission can save yet another week by reducing briefing times from three weeks to two weeks. Since the parties need only brief contested issues, two weeks is more than

sufficient time for briefing, especially given the fact that efforts used to create pre-filed testimony will further expedite briefing. Given the importance to the State of expediting renewable energy permitting, as evidenced by the Governor's Executive Order and many other State policy issuances, a two-week period is eminently reasonable.

2 weeks after Evidentiary Hearings close	Post hearing briefs filed

Combined with the three weeks gained by following the Commission's usual and customary testimony practices described above, the one week saved in the briefing schedule will save four weeks – an entire month in a schedule where weeks matter.

These are just two modest suggestions to expedite this proceeding. Fortunately, the Commission controls its own destiny, and is not constrained by "hard" regulatory deadlines with only a single exception. The only significant regulatory deadline between now and the Commission's final decision is a thirty (30) day comment period on the Presiding Member's Proposed Decision ("PMPD"). There are, for example, no prescribed time frames between the end of Evidentiary Hearings and publication of the PMPD. The Commission has plenary authority to find other means, in addition to those suggested by the Applicant here, to shorten the timeframes in its own schedule. Clearly, the remainder of the schedule, and responsibility to assure that it is completed in a timely fashion that will contribute towards achieving the State's RPS, GHG and ARRA Stimulus "fair share" goals, sit squarely on the Commission's shoulders.

CONCLUSIONS

Far from what some unfamiliar with the Commission's hard work to date have described as a "rush" to approve the Ivanpah Solar Project, today is actually Day 632 of a proceeding that is required by statute to take no more than 365 days. As discussed above, we believe the Committee should make the minor changes to the Ivanpah Solar Project's schedule as described

in Section II and take whatever additional actions it has at its disposal, and in its plenary discretion, to expedite the remainder of this proceeding.

January 27, 2010, the Commission's likely second Business Meeting in 2010, will be Day 819 of this proceeding. In this case, days matter. The Ivanpah Solar Project must have a decision in January 2010, and urges the Commission to ensure that it can issue its final decision in a January 2010 meeting.

July 24, 2009

Respectfully submitted,

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PROOF OF SERVICE

I, Karen A. Mitchell, declare that on July 24, 2009, I served the attached *Applicant's Status Report # 11 for the Ivanpah Solar Project* via electronic mail and United States Mail to all parties on the attached service list.

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

Karen A. Mitchell

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

DOCKET NO. 07-AFC-5
PROOF OF SERVICE
(Revised 7/20/09)

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