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June 8, 2009

Commissioner Jeffrey Byron, Presiding Member
Commissioner James Boyd, Associate Member
Ivanpah Solar Electric Generating System (07-AFC-5)
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
07-AFC-5	
DATE	<u>JUN 08 2009</u>
RECD.	<u>JUN 08 2009</u>

Re: Scheduling Order for the Ivanpah Solar Project (07-AFC-5)

Dear Commissioners Byron and Boyd:

On June 2, 2009, the Committee issued its Revised Committee Scheduling Order for the Ivanpah Solar Project (the "Scheduling Order"). Unfortunately, the Scheduling Order fails to advance the very important California public policy interests implicated by this first significant large scale solar proceeding to come before the Commission in more than twenty years. Indeed, the order frustrates clearly stated state and federal objectives that have been repeatedly affirmed by executive and legislative mandates, mandates that stress deadlines and timelines by which these policies are to be implemented. As discussed below, if California is to have any hope of meeting mandated and important public policy objectives in a timely manner, the Committee must issue an order that requires publication of the FSA/DEIS by a date-certain.

At the highest policy levels, it has been crystal clear that without deadlines, progress in implementing the renewable energy California needs will not occur. Despite the urgency for the State to obtain the benefit of time-critical stimulus funding, and to begin to cut its carbon and other emissions by getting renewable energy projects built and on-line, the Scheduling Order declines to state actual deadlines, sending exactly the wrong signal not only to Commission Staff working on the project, but to the renewable energy industry—which is watching this first experiment in the CEC-BLM joint process very closely.

As discussed in the Parties' filings and at the Scheduling Conference, the State of California has extremely important public policy interests at stake. In order to satisfy its very closely related Greenhouse Gas ("GHG") and Renewable Portfolio Standard ("RPS") goals, California needs large-scale solar power plants to be approved, constructed and operating. Every permitting delay faced by renewable projects adds tons of carbon and other emissions to the air that could have been displaced, making attainment of our GHG goals far more difficult, disruptive and expensive. The very lengthy permitting delays faced by renewable projects not

only frustrate the public, who wonder why so few renewable projects are being built and why they take so long, but cause great concern in the financial sector at this already historically difficult time, chilling needed investment in renewable energy companies that has already caused some to fold or to substantially change their business models. These delays also increase the cost of renewable energy, not simply because of the increased risk perceived in contracting that must consider the likelihood of achieving online dates, but also by adding tens of millions of dollars in unnecessary permitting costs. The delay in permitting projects certainly delays new job creation in the Green Energy sector, a result that is completely inconsistent with state and federal economic stimulus policies. California needs economic stimulus immediately, not 2011 or later. If California wants renewable energy to develop within the state, and not drive it to other states that have far more timely, efficient and effective permitting, it must demonstrate its ability to license these important renewable facilities in a timely manner. This policy has most recently been expressed by the Governor in Executive Order S-14-08. It has also been expressed by this Commission in the Memorandum of Understanding between this Commission, Department of Fish and Game, U.S. Fish and Wildlife Service, and the U.S. Bureau of Land Management signed in November 2008.

Further, as the Applicant explained in its filings and during the Scheduling Conference, in order to qualify for significant federal funding from the federal stimulus program, the American Recovery and Reinvestment Act (the "Recovery Act"), the Ivanpah Solar Project must, pursuant to the statute, commence construction in 2010. Given the limitations likely to be placed on the relocation of Desert Tortoise, commencement of construction activities in 2010 will most likely be limited to the Spring and Fall seasons. In order to allow time for administrative appeals, judicial appeals, financing, construction contracting, mobilization, and all of the other potentially long lead time items that are prerequisites to the commencement of construction, the Commission must approve renewable projects like the Ivanpah Solar Project in late 2009 or the beginning of 2010 to have any chance of starting construction and securing California's fair share of Recovery Act monies. California has clearly stated its objective to do everything possible to permit projects to begin construction in 2010 so that they qualify for both the grant and loan guarantee programs. As Governor Schwarzenegger stated succinctly, in May, "I will continue to fight for every stimulus dollar that California deserves." Similarly, Senate President pro Tem Darrell Steinberg said in his January letter to the California's Congressional leaders, "As the economic engine for the country, California should receive more than its fair share of stimulus money from Washington D.C." It is time for the Commission to do its important work to achieve these desired ends and permit projects so they may be built.

In short, it is both federal and state policy to do everything reasonably possible to expeditiously provide all necessary permits for projects to begin construction in 2010 to capture California's fair share of the Recovery Act monies. The Scheduling Order does not comply with these policy directives. Moreover, there is no reason for the scheduling delays.

In its Status Report No. 9, the Applicant very clearly identified the issue that should be the focus of this committee: *“This proceeding is at a dead stand still until the Staff publishes – or is required to publish – the FSA/DEIS.”* Unfortunately, and read fairly, the Scheduling Order has, in effect, no deadlines nor schedule at all. It is totally discretionary.

The schedule for this proceeding is “To Be Determined” by the Staff in their sole and absolute discretion. Specifically, “Staff files Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS)” forty-five days after “Staff notifies parties that all information necessary to finish the Final Staff Assessment/Draft Environmental Impact Statement (FSA/DEIS) has been submitted.” (Scheduling Order, P. 4.)

The Scheduling Order vests the schedule for this proceeding with the Staff. The work will expand to fill the available time. The available time should not simply be whatever time the Staff deems it needs. As the Applicant has demonstrated in its filings, the Staff has all of the information it needs to draft the FSA/DEIS. It should be noted that the FSA/DEIS is an informational document, not a decision document. Holding the FSA/DEIS hostage for more information neither serves the process nor the public well; in fact, getting the available information to the public sooner would provide much greater benefit—and be much more consistent with *all* of the state and federal policies and interests at stake, including climate change, renewable energy, and economic stimulus.

As explained in Status Report No. 9, on January 15, 2009 via email, the Staffs of the CEC and the BLM sent the Applicant a Table listing items that the Staffs stated they needed before the FSA/DEIS could be released (the “January 15th Table”). As of May 19, 2009, every item requested on the January 15th Table had been filed. Since the Scheduling Conference, the only additional information requested by either BLM or CEC Staff is input and output data relating to hydrology models. This information was provided to BLM consultants on June 2, 2009. Since Staff has not requested any additional information previously identified as necessary to complete the FSA, the 45 day clock should have already been started.¹

Forty-five days, as requested by Staff, from May 19, 2009 would be June 29, 2009. The Committee could, consistent with the Staff-requested forty-five days, issue a revised Scheduling Order ordering publication of the FSA/DEIS on Monday, June 29, 2009. In the alternative, by telephone on June 3, 2009, Staff informed the Ivanpah Solar Project that it has no more specific

¹ The Scheduling Order also contains too much time for certain activities. For example, the Scheduling Order gives the Staff three opportunities to file testimony: the FSA, “Opening” testimony and rebuttal testimony. The time between the filing of the FSA/DEIS should follow usual Commission practices of FSA, other parties’ testimony and optional rebuttal testimony. Evidentiary hearings can begin within 3-4 weeks of publication of the FSA/DEIS, if this proceeding is given appropriate focus and priority. Similarly, the creation of a 90-day comment period on the “FSA” is outside what is allowed by the Commission regulations. A joint process cannot be converted to a single process by adding new “comment periods” outside the scope of the Commission’s authorities.

information requests. Accordingly, the Committee could and should issue a revised Scheduling Order requiring publication of the FSA/DEIS, on or before July 17, 2009.

We trust that the Committee, taking all of the issues into consideration, will act to set real deadlines that will allow this project to move forward, and let the world know that California is serious not just about paper policies, but getting the work done to turn those policies into reality.

Sincerely,

A handwritten signature in blue ink that reads "Jeffery D. Harris". The signature is written in a cursive, flowing style.

Jeffery D. Harris
Ellison, Schneider & Harris L.L.P.

Attorneys For the Applicant

cc: Service list

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the IVANPAH)
SOLAR ELECTRIC GENERATING SYSTEM) Docket No. 07-AFC-5
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_____)

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on June 8, 2009, I served the attached *Letter dated June 8, 2009 to Committee regarding Scheduling Order 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



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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APPLICATION FOR CERTIFICATION
FOR THE *IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

DOCKET No. 07-AFC-5

PROOF OF SERVICE
(Revised 5/27/09)

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