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April 16, 2010

DOCKET
07-AFC-5

DATE APR 16 2010

RECD. APR 16 2010

CALIFORNIA ENERGY COMMISSION
DOCKET UNIT

Attn: Docket No. 07-AFC-05
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: Ivanpah Solar Electric Generating System; Docket No. 07-AFC-05

Dear Docket Clerk:

Enclosed are an original and one copy of Reply Brief of California Unions for Reliable Energy. Please process the document and return a conformed copy in the envelope provided.

Thank you for your assistance.

Sincerely,

/s/

Rachael E. Koss

REK:bh
enclosures

2117-045a

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

The Application for Certification for the
IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM

Docket No. 07-AFC-05

**REPLY BRIEF OF
CALIFORNIA UNIONS FOR RELIABLE ENERGY**

April 16, 2010

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Attorneys for the CALIFORNIA UNIONS
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California Unions for Reliable Energy (“CURE”) respectfully submits this Reply Brief on the Application for Certification for the Ivanpah Solar Electric Generating System (07-AFC-5).

I. INTRODUCTION

The Energy Commission should license the Ivanpah Solar Electric Generating System project (“Project”). The California Environmental Quality Act (“CEQA”) makes clear that the economic benefits derived from a project, including the creation of employment opportunities for skilled workers may, in the right circumstances, outweigh the project’s significant adverse effects on the environment. Here, the Project’s particular economic benefits tip the balance in favor of Project approval.

At a time when Californians are suffering from the most devastating economic crisis in recent history, the Project will benefit the local economy and will create a significant number of jobs for highly trained workers. These benefits outweigh the Project’s unavoidable impacts to visual resources, traffic, and land use. As a result, the Project is an ideal candidate for a statement of overriding considerations under CEQA.

II. CEQA PROVIDES FOR OVERRIDE CONSIDERATIONS WHEN A PROJECT’S ECONOMIC BENEFITS, INCLUDING THE PROVISION OF EMPLOYMENT OPPORTUNITIES FOR HIGHLY TRAINED WORKERS, OUTWEIGHS SIGNIFICANT ADVERSE EFFECTS

CEQA requires a balance of a project’s benefits against its unavoidable environmental impacts when determining whether to approve a project.¹ If the

¹ Pub. Resources Code, § 21081; 14 Cal. Code Regs., §§ 15091, 15093.

economic, legal, social, technological, or other benefits, including “the provision of employment opportunities for highly trained workers,” outweigh the impacts, those impacts may be considered “acceptable,” and an agency may make a statement of overriding considerations.² An agency’s determination that a project’s benefits outweigh unavoidable significant impacts “lies at the core of the lead agency’s discretionary responsibility under CEQA.”³ Here, the economic benefits from the Project, particularly from the creation of jobs for skilled construction workers, outweigh the Project’s potentially significant adverse impacts. Thus, the Commission should exercise its authority under CEQA to approve the Project.

In its Opening Brief, Energy Commission Staff (“Staff”) correctly concludes that although the Project will have unavoidable significant impacts to visual resources, traffic, and land use, the Energy Commission should make override findings pursuant to CEQA because the “project has important economic and environmental benefits that outweigh these unavoidable adverse impacts.”⁴ Staff gives deference to the need for increased renewable energy generation as a reason for override findings,⁵ but fails to adequately account for the Project’s enormous economic benefits, principally from the job opportunities for skilled workers. Not every renewable energy project can be licensed simply because it is renewable. If it has significant, unavoidable impacts, the project must provide something more.

The Ivanpah Project does.

² Pub. Resources Code, § 21081; 14 Cal. Code Regs., § 15093.

³ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

⁴ Energy Commission Staff’s Opening Brief, p. 26.

⁵ *Id.*

Amidst the worst economic conditions since the Great Depression and staggering unemployment in California (currently 12.5 percent among the general population and vastly higher for construction workers⁶), the Project's construction workforce demand will provide much needed high quality jobs for skilled workers. According to the AFC, the Project will employ highly trained workers, including pipefitters, electricians, boilermakers and ironworkers for four years,⁷ and "will provide approximately \$197 million in construction payroll, at an average salary of \$50 per hour (including benefits)."⁸ At peak construction, the workforce will reach nearly 1,000.⁹

Because this Project will be built using a Project Labor Agreement, most of the construction workers will be California residents, predominantly from San Bernardino County. This was the basis for revising Condition of Certification TRANS-1, since most workers will not be travelling to Nevada on Friday afternoon when the highway is congested. Instead, they will be headed to their homes in California. More importantly, it means that the huge construction payroll will help the California economy and the state's general fund, and construction workers will get health benefits and training.

Further, as Staff acknowledged, the Project will have a "positive effect on the local and regional economy" from an "increase in local expenditures, payrolls, and

⁶ California Employment Development Department, News Release 10-07, March 26, 2010, available at http://www.edd.cahwnet.gov/About_EDD/pdf/urate201003a.pdf.

⁷ AFC, p. 5.10-15.

⁸ AFC, pp. 5.10-24-26.

⁹ AFC, p. 5.10-15.

taxation during construction and operation of the facility.”¹⁰ Despite San Bernardino County’s claim that it will not benefit economically from the Project,¹¹ San Bernardino County, along with Clark County, will profit from the Project’s \$41 million in annual local construction expenditures and, because the Project will be built using a Project Labor Agreement, \$137.9 million in spending by construction workers.¹² It is estimated that the Project will produce \$77 million of revenue from locally purchased construction materials and \$6 million in local sales tax from construction purchases.¹³ These are considerable economic benefits.

When balancing the benefits and significant adverse effects of the Project, the Commission should account for the Project’s economic benefits, including the creation of high quality jobs for skilled workers. Pursuant to CEQA, courts have upheld overriding considerations that were based on a variety of policy considerations including the provision of new jobs¹⁴ and creating a stronger tax base.¹⁵ Here, construction of the Project will result in substantial economic benefits to the local community. Above all, the Project will create much needed “employment opportunities for highly trained workers.”¹⁶ The Project fits squarely into the plain language and policy considerations of CEQA’s provision for overriding considerations. The Commission should find that the Project’s economic benefits

¹⁰ Exh. 300, p. 6.8-19.

¹¹ Opening Brief of Intervenor County of San Bernardino, pp. 17-20.

¹² AFC, pp. 5.10-25-29. Exh. 65, p. 88, 89.

¹³ *Id.*

¹⁴ *Markley v. City Council of the City of Los Angeles* (1982) 131 Cal.App.3d 656, 672; *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671; *City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037.

¹⁵ *Towards Responsibility in Planning v. City Council*, 200 Cal.App.3d 671.

¹⁶ Pub. Resources Code, § 21081.

outweigh the Project's potentially significant adverse impacts, and adopt a statement of overriding considerations pursuant to CEQA.

III. CONCLUSION

CEQA mandates that the Commission balance the Project's benefits against its unavoidable adverse impacts. The Project will provide considerable economic benefits to individual skilled workers, as well as to the local and state economy, during a time of extreme economic hardship. The Commission should exercise its authority under CEQA to find that the Project's substantial economic benefits outweigh its potentially significant adverse effects, and approve the Project.

Dated: April 16, 2010

Respectfully submitted,

_____/s/_____
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DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on April 16, 2010, I served and filed copies of the attached REPLY BRIEF OF CALIFORNIA UNIONS FOR RELIABLE ENGERY, dated April 16, 2010. 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, via electronic service and U.S. Mail with first-class postage thereon fully prepaid, addressed to the name and address of the person served, for mailing that same day in the ordinary course of business, the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "emailed preferred." An original paper copy and one electronic copy was mailed and emailed respectively to the Commission as addressed below.

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years of age and not a party to the proceeding.

_____/s/_____
Bonnie Heeley

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