

ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON
ANNE J. SCHNEIDER
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
GREGGORY L. WHEATLAND
CHRISTOPHER M. SANDERS
LYNN M. HAUG
PETER J. KIEL

ATTORNEYS AT LAW
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE (916) 447-2166 FAX (916) 447-3512

ELIZABETH P. EWENS, OF COUNSEL
BRIAN S. BIERING
TERESA W. CHAN
SHANE E. GONWAY
KATHRYN C. COTTER
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SAMANTHA G. POTTENGER

February 3, 2010

DOCKET	
07-AFC-5	
DATE	FEB 03 2010
RECD.	FEB 03 2010

Paul Kramer
Hearing Officer
Ivanpah Solar Project (07-AFC-5)
1516 Ninth Street
Sacramento, CA 95814

Dear Hearing Officer Kramer:

As you know, there were some very fruitful and intriguing discussions on the last days of the Commission’s Evidentiary Hearings for the Ivanpah Solar Project on the myriad of complex issues associated with Alternatives, and the related topics of Biological Resources and Visual Resources.

The written and oral testimony of the Staff and Intervenors focused heavily on the impacts associated with Ivanpah 3, the northernmost, nominal 200 MW plant. For example, the Staff and Intervenors have stated that Ivanpah 3 contains more rare plants and ephemeral washes than the Ivanpah 1 and Ivanpah 2 sites. Given this focus by the other Parties, the Applicant has, since the close of Evidentiary Hearings, continued to exercise due diligence by examining reduced footprint configurations to offer further mitigation addressing these concerns.

Based upon this due diligence review, the Applicant has identified a reduced footprint configuration that merits further consideration by the Commission and the BLM, focusing on the project area of most concern to the Parties, Ivanpah 3. The Applicant’s reduced footprint configuration for Ivanpah 3 has come to be known during our due diligence review as the “Mitigated Ivanpah 3” configuration or “Mitigated 3.”

While the Applicant continues to believe that the impacts associated with the nominal 200 MW Ivanpah 3 plant are reduced to a level of less than significant with the mitigation proposed in our testimony, the Mitigated 3 configuration provides numerous additional environmental benefits, and further avoids and minimizes potential impacts. Among the more important benefits, the Mitigated 3 configuration would:

- Further avoid and minimize potential impacts to Desert Tortoise;

- Further avoid and minimize potential impacts to rare plants by completely avoiding the most densely populated plant communities in the northernmost portions of Ivanpah 3;
- Further avoid and minimize the potential impacts to a significant number of large ephemeral washes located in the northernmost portions of Ivanpah 3, simplifying the Low Impact Design's objectives of allowing stormwaters to flow through the project site;
- Further avoid and minimize potential impacts to the northernmost areas that would have required the most grading and large rock removal;
- Reduce the number of power towers from five towers to just one tower, a significant reduction from a Visual Resources perspective; and thereby,
- Further avoid and minimize the potential Visual Resources impacts associated with glare and reflectivity.

We are expediting the preparation of a filing that will explain the substantial mitigation benefits of the Mitigated 3 configuration. We intend to file this document with both the Commission and the BLM before the close of the comment period on the BLM's Draft Environmental Impact Statement on February 11, 2010.

Concurrent with that filing, the Applicant also anticipates filing a request to re-open the California Energy Commission's evidentiary record to introduce the Mitigated 3 configuration into evidence. We will recommend that the Committee allow an appropriate period to comment on the Mitigated 3 configuration. Because the Mitigated 3 configuration will reduce potential impacts within the existing project footprint, we will request that the Mitigated 3 configuration be received into evidence by stipulation, followed by a 14 day comment period. If, however, any party contests the introduction of the proposal into evidence by stipulation, we would anticipate the need for only one day of additional Evidentiary Hearings on the proposed Mitigated 3 configuration.

The only substantive issues that are significantly impacted by the proposed Mitigated 3 configuration are Biological Resources and Visual Resources, and even here the reductions in potential environmental impacts are decidedly positive. Therefore, we recommend that the Commission continue on the current briefing schedule for all subjects other than Biological Resources and Visual Resources.

For Biological Resources and Visual Resources, in order to allow all parties to brief these issues in the context of the Mitigated 3 configuration, we recommend that the Committee extend the deadline for opening briefs on these issues to 14 days after the close of the comment period on the Mitigated 3 configuration, or ten days after publication of the transcript for the Evidentiary Hearing on the Mitigated 3 configuration, whichever comes last. We recommend that the Committee also extend the deadline for the Reply Briefs on these two subjects to 10 days after the submittal of Opening Briefs on these two subjects.

Paul Kramer
February 3, 2010
Page 3

Closing the Hearing Record in this proceeding on January 14, 2010 was a significant milestone, one for which the Applicant is grateful. In recognition of the significance of this important milestone, Applicant's due diligence work since the close of Evidentiary Hearings has endeavored to avoid the need to re-open the Hearing Record for any purpose, no matter how limited. Nevertheless, the Applicant firmly believes that the refined configuration will offer such substantial benefits in the form of mitigation that merit a limited reopening of the record. By directly addressing and potentially resolving the concerns of many parties, the Mitigated 3 configuration may ultimately reduce areas of controversy and expedite the conclusion of this proceeding.

We thank the Committee, BLM and all of the parties for their hard work to date. We look forward to bringing these proceedings to an expeditious and thoughtful close to allow construction of this important project to commence in time for the fall 2010 Desert Tortoise relocation window.

Sincerely,

A handwritten signature in blue ink that reads "Jeffery D. Harris". The signature is written in a cursive style and is positioned above a horizontal line.

Ellison, Schneider & Harris L.L.P.
Jeffery D. Harris
Greggory L. Wheatland
Attorneys for the Applicant

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

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

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on February 3, 2010, I served the attached *Letter to Paul Kramer regarding Mitigated Ivanpah 3* via electronic and U.S. 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

SERVICE LIST
07-AFC-5

APPLICANT

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

Steve De Young
Todd A. Stewart
Ivanpah Solar Electric Generating System
Director, Environmental, Safety and Health
1999 Harrison Street, Ste. 2150
Oakland, CA 94612
sdeyoung@brightsourceenergy.com
tstewart@brightsourceenergy.com

APPLICANT'S CONSULTANTS

John L. Carrier, J. D.
2485 Natomas Park Dr. #600
Sacramento, CA 95833-2937
jcarrier@ch2m.com

COUNSEL FOR APPLICANT

Jeffery D. Harris
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
jdh@eslawfirm.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

Tom Hurshman, Project Manager
Bureau of Land Management
2465 South Townsend Ave.
Montrose, CO 81401
tom_hurshman@blm.gov

Raymond C. Lee, Field Manager
Bureau of Land Management
1303 South Highway 95
Needles, CA 92363
Raymond_Lee@ca.blm.gov

Becky Jones
California Department of Fish & Game
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

INTERVENORS

California Unions for Reliable Energy
Tanya A. Gulesserian
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com

Western Watersheds Project
Michael J. Connor, Ph.D.
P.O. Box 2364
Reseda, CA 91337-2364
mjconnor@westernwatersheds.org

Gloria Smith, Joanne Spalding
Sidney Silliman, Devorah Ancel
Sierra Club
85 Second Street, 2nd Floor
San Francisco, CA 94105
E-mail Service Preferred
gloria.smith@sierraclub.org
joanne.spalding@sierraclub.org
gssilliman@csupomona.edu
devorah.ancel@sierraclub.org

Joshua Basofin
Defenders of Wildlife
1303 J Street, Suite 270
Sacramento, CA 95814
E-mail Service Preferred
jbasofin@defenders.org

Basin and Range Watch
Laura Cunningham
Kevin Emmerich
P.O. Box 70
Beatty, NV 89003
atomicoadranch@netzero.net

Center for Biological Diversity
Lisa T. Belenky, Sr. Attorney
Ileene Anderson, Public Lands Desert Director
351 California Street, Ste. 600
San Francisco, CA 94104
E-mail Service Preferred
lbelenky@biologicaldiversity.org
ianderson@biologicaldiversity.org

California Native Plant Society
Greg Suba, Tara Hansen & Jim Andre
2707 K Street, Suite 1
Sacramento, California, 95816-5113
E-mail Service Preferred
gsuba@cnps.org
thansen@cnps.org
granite@telis.org

County of San Bernardino
Bart W. Brizzee, Deputy Co. Counsel
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415
bbrizzee@cc.sbcounty.gov

ENERGY COMMISSION

Jeffrey D. Byron
jbyron@energy.state.ca.us

James D. Boyd
jboyd@energy.state.ca.us

Paul Kramer
pkramer@energy.state.ca.us

John Kessler
jkessler@energy.state.ca.us

Dick Ratliff
ratliff@energy.state.ca.us

Public Adviser
publicadviser@energy.state.ca.us