

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

**DOCKET**

**09-AFC-5**

DATE MAR 17 2010

RECD. APR 07 2010

Application for Certification for the IVANPAH )  
SOLAR ELECTRIC GENERATING SYSTEM )  
 )  
\_\_\_\_\_ )

Docket No. 07-AFC-5

**RESPONSE TO THE INTERVENORS  
OBJECTION TO THE BRIEFING SCHEDULE**

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On March 17, 2010, a subset of the Intervenors in this proceeding (the “Joint Intervenors”) filed a document curiously styled as an “Expedited Objection To Revised Briefing Schedule And Request To Continue The Briefing Schedule.” Drafted during a time when the Joint Intervenors claim to be short of time for briefing, the “Objection” raises arguments that are inaccurate and deceptive.

Even the title of the document is factually misleading. While there has been a “revised” briefing schedule in this proceeding, the schedule was revised to provide the parties with *additional* time to file briefs. The briefing schedule for this proceeding was set in January. Specifically, during the hearing on January 14, 2010 at which the Intervenors were present, the Committee discussed the briefing schedule with the parties. In the course of this discussion, the Committee announced the briefing schedule. The Hearing Officer informed the parties that opening briefs would be due “three weeks after the transcripts are available”<sup>1</sup> and reply briefs would be due ten days after opening briefs.<sup>2</sup> The Hearing Officer further informed the parties that the specific date the briefs would be due would not be announced by a formal order. Instead, “when the transcripts are available I will send out a document under my signature. I won’t ask the Committee to get involved in that. Just telling you when they [the transcripts] were received. And in that email I will provide the specific deadline date.”<sup>3</sup>

None of the Intervenors’ present at the hearing objected to the three week time period following the receipt of the transcripts in which to file an opening brief on the matters that had been heard and received into evidence up to and including January 14, 2010.<sup>4</sup> None of the Intervenors present at the hearing objected to the ten day period following the filing of opening

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<sup>1</sup> 1/14 Record Transcript (“RT”) 343.

<sup>2</sup> 1/14 RT 344.

<sup>3</sup> 1/14 RT 343-344.

<sup>4</sup> 1/14 RT 343-346.

briefs in which to file reply briefs.<sup>5</sup> And none of the parties objected to receiving notice of the specific filing dates by email from the Hearing Officer.<sup>6</sup>

Intervenors concede that they received the transcripts on February 8, 2010. However, because the specific deadline was not confirmed until March 2, 2010, the Committee generously has granted parties an additional sixteen days (on top of the original three weeks) to file opening briefs. The Committee also granted additional time for reply briefs, extending the deadline from ten to eighteen days. The manner in which these deadlines were set (by email from the Hearing Officer following receipt of transcripts) did not bypass the Commission's normal procedures. This notice of the briefing schedule followed the procedures of which the parties were expressly informed on January 14, 2010.<sup>7</sup>

In summary, a briefing schedule has been set in accordance with the procedures announced at the January 14, 2010 hearing. While it is true that the Committee has generously extended this schedule, such an extension does not constitute a departure from normal procedures or a cause of reversible error.

For the matters which they are required to brief on March 24, 2010, the evidentiary record has been closed since January 14, 2010, and the transcripts have been with the Parties since February 8, 2010.

For any matters that may arise as a result of the March 22, 2010 Evidentiary Hearing, the Committee Order of March 11, 2010, provides, consistent with the briefing schedule set in January, an **additional three weeks** for briefing: "Reply Briefs are **DUE at 5:00 p.m. on Monday, April 12, 2010.** In addition to responding to the opening briefs, the reply briefs "may

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> For additional argument and factual recitations on these matters, see also the Applicant's *Opposition To Intervenors' Motion To Compel A Prehearing Conference, Set A Briefing Schedule And Clarify Other Procedural Matters*, filed and served on March 4, 2010.

address *any new issues raised by the evidence presented at the March 22, 2010 Evidentiary Hearing.*” (Bold and underline emphasis in original; italicized emphasis added.)

When they were granted party status, the Intervenors accepted certain duties and responsibilities. Chief among those duties and responsibilities are the following: “Each party shall have the responsibility to comply with the requirements for filing and service of documents, the presentation of witnesses and evidence, and any other reasonable conditions which may be imposed by order of the presiding member.” (20 CCR 1712(c); emphasis added.) The Intervenors are required to meet the duties and responsibilities that are central to party status.

The briefing schedule was set in January, not March. The briefing schedule was extended, not truncated. The matters to be briefed on March 24, 2010, were closed on January 14, 2010 and transcripts were provided on February 8, 2010. Any matters to be briefed that may arise as a result on the limited reopening of the record on March 22, 2010 will be briefed three weeks after the close of that Hearing on April 12, 2010. The only surprise is that the Joint Intervenors would divert their resources away from briefing to file such a motion.

Dated: March 17, 2010

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  \_\_\_\_\_

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**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on March 17, 2010, I served the attached *RESPONSE TO THE INTERVENORS OBJECTION TO THE BRIEFING SCHEDULE* 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

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