

## DOCKETED

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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

**DOCKET NO. 09-AFC-7C**

Petition For Amendment for the **PALEN  
SOLAR ELECTRIC GENERATING  
SYSTEM**

**PALEN SOLAR HOLDINGS, LLC's  
STATUS REPORT 5**

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In accordance with the Committee Order dated January 23, 2014, Palen Solar Holdings, LLC (PSH) has prepared this Status Report 5 to inform the Committee of its efforts to develop additional information requested in the Presiding Member's Proposed Decision (PMPD) and as discussed by the Committee at the Committee Conference held on January 7, 2014 (PMPD Conference).

**Filings Since Last Status Report**

On February 10, 2014, PSH filed the following:

- A table providing a comparison of avian mortality data reported by projects utilizing various solar technologies;
- Testimony providing a more detailed description of the benefits of the PSEGS, including the potential to incorporate thermal energy storage at the project in the future;
- Testimony providing a more detailed description of the reasons why the No Project Alternative and the PV Alternative are infeasible alternatives to the PSEGS; and
- A proposed modification to Condition of Certification **CUL-1** that more appropriately provides mitigation directed towards tribal spiritual and cultural values while also providing mitigation for the State's interest in recording historical important sites.

PSH filed these documents in the form of testimony so that all parties would have ample time to consider them prior to our motion to re-open the evidentiary record. At this time PSH is continuing to gather publicly available avian mortality data. Filed separately with

this Status Report 5 is an updated table providing a comparison of avian mortality data reported through January 2014. With this update, the comparison table provides the following information that was not available as part of the evidentiary record for the Committee to use during its deliberations on the PMPD:

- Avian mortality data for Ivanpah Solar Electric Generating System (ISEGS) for October 2013 through January 2014;
- Avian mortality data for Genesis Solar Energy Project updated through January 2014; and
- Avian mortality data for Desert Sunlight updated through January 2014.

### **Avian Issues**

The Committee provided the following direction at the PMPD Conference concerning the type of avian data it was expecting to augment the existing evidentiary record.

We do acknowledge significant uncertainty around this issue and in the PMPD we granted Petitioner leave to supplement the record with additional information not only about the impacts of solar flux on Avian species, but about how that impact compares to other technologies.<sup>1</sup>

My interest is in having at a minimum a frame of reference that will help orient me in terms of this technology, this location, and how it compares to other technologies in other locations. I'm not looking for the final perfect analysis, I'm not looking for the elimination of uncertainty, but I'm looking for some orientation as to the issues that we currently do not have in our record.<sup>2</sup>

In its Status Report 5, Staff outlined caveats provided by the USFWS regarding the preliminary nature of avian mortality data collected at sites to date. While we agree that the information contained in the table is imperfect, PSH believes it does provide the Committee a useful comparison in line with its direction.

As the Committee is aware, the avian mitigation strategy reflected in the current Conditions of Certification was developed jointly by PSH and Staff. Those conditions require \$1.8 Million of upfront payments and include a strong adaptive management and monitoring program at its core. In addition to the direction provided by the Committee relating to avian mortality data, the Committee also provided direction relating to performance standards that could be used to help address uncertainty and risk.

I strongly support adaptive management and monitoring, I think that's exactly the right way to approach these projects, but I do think that where there are questions and where there's information that we need, we want to think about performance standards, we want to think about other approaches that might help mitigate risk and might give us a way of

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<sup>1</sup> Transcript of the PMPD Conference held on January 7, 2014, page 21.

<sup>2</sup> Ibid., pages 21-22.

addressing some of the scenarios or some of the concerns that staff raised in its assessment.<sup>3</sup>

To that end, PSH has filed, under separate cover, proposed modifications to Condition of Certification **BIO-16b** that specifically outline the incorporation of specific performance standards in the development of the Bird and Bat Conservation Strategy (BBCS), which is the working plan for incorporating the monitoring and adaptive management program designed to reduce avian impacts.

By March 7, 2014 PSH will file a report on bird detection and deterrence technologies currently in use in various applications. This information is intended to provide the Committee with background information on the state of current bird deterrent technology and avenues of future research and development in this field. In the BBCS, PSH will discuss the potential deployment of specific bird deterrent technologies at the PSEGS site as part of the adaptive management program.

As discussed below, PSH believes that it has filed enough additional information to warrant a Staff public workshop to discuss the avian issues as outlined by the Committee. While Staff identified in its Status Report 5 that it was collecting additional ISEGS data that would not be fully available until June 2014, significant progress on the questions posed specifically by the Committee can be made at a workshop prior to June.

### **Future Storage**

The testimony filed on February 10, 2014 addresses the potential for incorporation of thermal energy storage at the PSEGS site in the future. The testimony refers to a drawing demonstrating how the current configuration of the PSEGS power blocks has enough room to accommodate the future installation of thermal energy storage equipment. The drawing is being finalized and will be filed under separate cover on March 3, 2014.

### **Cultural Resources**

On February 10, 2014 PSH filed proposed revisions to Condition of Certification **CUL-1**. The revisions specifically address the following guidance provided by the Committee at the PMPD Conference.

The PMPD did not resolve the dispute over staff's proposed cultural resource mitigation CUL-1. Petitioner argues that CUL-1 would be burdensome and open-ended and has insufficient nexus to the impact. The Committee shares many of these concerns, and I want to explain that briefly.

As I see it, there are at least two interests the Committee needs to consider when we look at cultural resource impacts; one is the generalized state interest in the conservation and documentation and better understanding of the many and varied cultural and historical resources

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<sup>3</sup> Ibid., page 30.

within the State of California. And the other is a particularized set of interests and concerns of Native Americans, in this case, which is different in important respects from the State interests in these same resources and landscapes. CUL-1 seems too oriented towards the State interests and not as well suited to the Native American concerns that the Committee heard in this proceeding.<sup>4</sup>

The Committee also stated:

The PMPD found that the PSEGS project would have a disproportionate impact on Native Americans, therefore, to the extent possible, we think the mitigation should be devised to address the impact of the project on Native Americans. Of course, I don't necessarily mean that in an exclusive sense, but I mean that in terms of the orientation of what impact we are trying to address: what is the nexus here between the impact and mitigation?

I also think that it is important that mitigation not be open-ended. Staff did propose I think in the briefing process a cap on cultural mitigation, I think the parties should talk about that, as well.<sup>5</sup>

Lastly, the Committee expressed a strong desire to work with the Native American community and that it has a strong voice in the mitigation:

The Committee would like the tribes to have a significant voice in developing the mitigation proposal for cultural resource impacts. Ideally, CRIT and other interested Native American tribes could take an opportunity now to work with staff and Applicant to devise such a mitigation approach. Alternatively, staff and the Petitioner could think about framing the condition in a way that is open to and responsive to input from tribes that could be sought potentially post-certification should this project be approved.<sup>6</sup>

PSH proposed revisions to Staff proposed Condition of Certification **CUL-1** addresses each item raised by the Committee. It provides a cap on cultural mitigation using the estimates in Staff's Opening Brief and redistributes the mitigation funds with roughly one-third towards Staff interests and two-thirds devoted to Native American cultural and spiritual interests. This redistribution is more in line with the Committee direction and the impact the Committee has identified. PSH's proposed revisions also create a Native American Committee that can work with the CPM to direct the cultural funds to be used for activities such as, but not limited to, the following:

- An Annual Traditional Cultural Properties workshop among interested Native American tribes. This would/could include field trips to sites of interest, sharing

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<sup>4</sup> Ibid., pages 17-18.

<sup>5</sup> Ibid., pages 19-20.

<sup>6</sup> Ibid., page 19.

of information among the tribes and an opportunity to expose their youth or other tribal members to these concepts and locations.

- Purchase of private lands that have important sites as determined by the Native American Committee.
- Funding of improvements (cleaning up) some important sites, such as Corn Springs Petroglyphs, North Chuckwalla Petroglyphs and McCoy Springs.
- Fencing important sites to prevent vandalism.

PSH strongly believes that the Native American community should determine how best to distribute the mitigation funds to promote its cultural and spiritual interests and the mitigation funds should be heavily weighted toward those interests.

PSH has had one productive conference call with Counsel representing the Colorado River Indian Tribes (CRIT) to discuss these revisions and looks forward to further feedback. To that end, PSH is encouraged that the Staff is willing to conduct a Staff public workshop in March.

### **Schedule**

As discussed above, PSH believes that a Staff public workshop should be scheduled to discuss the avian mortality data, any ISEGS data collected by Staff, proposed revisions to Condition of Certification **BIO-16b**, avian performance standards, and revisions to Condition of Certification **CUL-1**. As the Committee is aware, PSH has been requesting Staff to schedule such a workshop since the PMPD Conference. Staff exhibits reluctance to schedule a workshop in its Status Report 5, relying on the potential additional information that may be collected at ISEGS in the coming months. While PSH acknowledges such information may be helpful, it is not critical to accomplishing the specific objectives outlined by the Committee at the PMPD Conference. Therefore, we respectfully request the Committee to order Staff to schedule a comprehensive workshop as soon as possible in March. Please note that, due to scheduling conflicts with members of the PSH team, PSH requests workshops be scheduled on March 17, 18, 19 or 31.. Following the workshop, PSH anticipates filing a formal motion to reopen the evidentiary record with a proposed schedule for the remainder of the proceedings.

Dated: February 28, 2014

Respectfully Submitted,



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Counsel to Palen Solar Holdings, LLC