

DOCKETED

Docket Number:	09-AFC-07C
Project Title:	Palen Solar Power Project - Compliance
TN #:	202362
Document Title:	Committee Order Granting Petitioner's Motion to Reopen the Evidentiary Record and Setting Revised Schedule
Description:	Order
Filer:	Darlene Burgess
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	5/21/2014 4:30:55 PM
Docketed Date:	5/21/2014



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

***PALEN SOLAR ELECTRIC
GENERATING SYSTEM AMENDMENT***

Docket No. 09-AFC-07C

COMMITTEE ORDER GRANTING PETITIONER'S MOTION TO REOPEN THE EVIDENTIARY RECORD AND SETTING REVISED SCHEDULE

The Palen Solar Electric Generating System (PSEGS) Amendment Committee **GRANTS** the Motion to Reopen the Evidentiary Record (Motion)¹ filed by Petitioner, Palen Solar Holdings (PSH). The remainder of this order explains the rationale for the Committee's decision, provides guidance for the reopened Evidentiary Hearing, and a revised schedule. A separate notice will be issued for the Prehearing Conference and Evidentiary Hearing described in the schedule.

BACKGROUND

The Palen Solar Power Project was certified by the Energy Commission on December 15, 2010, as a 500 megawatt (MW) concentrating solar thermal electric power generating facility using parabolic trough technology. In this amendment the current owner, PSH, seeks to replace the parabolic troughs with two power towers, each 750-foot tall. Heliostats (elevated mirrors guided by a tracking system mounted on pylons) would focus the sun's rays on a solar receiver steam generator at the top of each tower to create steam that would drive steam turbine generators. A limited amount of natural gas would be used prior to sunrise and at other times when the reflected solar energy is insufficient to keep the steam turbine generator system running. The modified project would be called Palen Solar Electric Generating System.

The Committee held evidentiary hearings on the proposed amendment in October and November of 2013, and issued the Presiding Member's Proposed Decision (PMPD) on December 13, 2013. The PMPD recommends denial of the amendment without prejudice. The Petitioner subsequently requested a delay in the schedule to allow it to gather evidence to address insufficiencies identified in the PMPD that related to

¹ TN 201900, filed 3/21/14. Unless otherwise indicated, documents referred to by TN (Transaction Number) are found in this proceeding's docket number 09-AFC-07C.

potential impacts to avian species, and to submit new evidence regarding project benefits. The proceedings were suspended subject to Petitioner's filing of a motion to reopen the evidentiary record. Following a discussion of Petitioner's request during a January 7, 2014 Committee Conference, the Committee limited any new information to be provided at a reopened hearing to the topics of alternatives (specifically, project benefits and feasibility of the alternatives), impacts to avian biological resources, and mitigation of impacts to cultural resources contained in Condition of Certification **CUL-1**.

On March 21, 2014, Petitioner filed its Motion, which proposes the introduction of additional evidence on avian issues, future energy storage, alternatives, and Condition of Certification **CUL-1**. The parties and other interested persons responded to the motion as follows:

Intervenor California Unions for Reliable Energy (CURE) supports Petitioner's motion².

The Center for Energy Efficiency and Renewable Technologies (CEERT)³, Kenneth Waxlax⁴, and Sandy Choudhari⁵ filed comments in favor of approval of the project.

Energy Commission Staff took no position regarding the Motion, but concluded that the new information "does not cause staff to recommend any changes to the significance determinations made in the Final Staff Assessment nor its recommendation that the Commission not adopt a statement of overriding [considerations]." ⁶

Intervenors Center for Biological Diversity (CBD), Basin and Range Watch (BRW), and Colorado Indian Tribes (CRIT), opposed the Motion. The United States Fish and Wildlife Service (USFWS) and the National Park Service (NPS) filed comments to the same effect. Additional comments opposing the Motion were filed by Audubon California⁷, Defenders of Wildlife⁸, the Sierra Club⁹, and the National Parks Conservation Association¹⁰. Marian Fricano¹¹ filed comments recommending protection of birds.

The Proffered Additional Information Is Sufficient to Warrant Reopening the Evidentiary Record

The Committee has wide discretion in deciding whether or not to take additional evidence prior to sending the PMPD to the full Energy Commission for final decision. Any new evidence should be relevant to the issues and findings we are required to

² TN 201976-1, filed 4/7/14

³ TN 201980, filed 4/7/14

⁴ TN 202214, filed 4/23/14

⁵ TN 202296, filed 5/6/14, and TN 202314, filed 5/7/14

⁶ TN 202210, filed 4/23/14

⁷ TN 202289, filed 5/5/14

⁸ TN 202298, filed 5/6/14

⁹ TN 202308, filed 5/6/14

¹⁰ TN 202313, filed 5/7/14

¹¹ TN 202335, filed 5/14/14

address. It may improve the depth or quality of our environmental or LORS¹² analysis or offer the potential to change one or more findings or conclusions.

Petitioner's proposed new evidence and evidence on the additional matters we specify in this Order, appears relevant to the issues before us. Until we hear the evidence from all of the parties, we cannot determine if it will affect the analysis, conclusions, conditions, or ultimate result recommended in the PMPD. Petitioner bears the burden of proof of the efficacy of its project and should be afforded an opportunity to address the deficiencies identified in the PMPD. It is therefore appropriate to reopen the record to receive additional evidence.

Topics to Be Considered at the Reopened Evidentiary Hearing

After reviewing the Petitioner's new evidence and the responses to the Motion, we find it appropriate to add to the list of topics previously identified for consideration at a reopened evidentiary hearing. The full list is now:

Avian Impacts. The PMPD identified insufficiencies in the data regarding the impacts to avian species. Petitioner's proposed data would add to the information available to us. Several parties argue that more time is necessary to gather sufficient data and question various aspects of Petitioner's offerings. Those questions are best resolved through the hearing process, not by ruling on arguments contained in pleadings.

Flying Invertebrate Species (Insects). Information from the Ivanpah Solar Electric Generating System (ISEGS) project experience leads staff to believe that insects are adversely affected by the solar flux to degrees not previously recognized and that the conditions should be modified to address those impacts. It is appropriate to receive evidence on those questions.

Curtailment Provision. The Committee desires testimony and comment regarding whether it is feasible or appropriate to add a condition requiring temporary or seasonal cessation of project operations in the event that the adaptive management program provided for in Condition **BIO-16** proves insufficient to mitigate impacts from solar flux below biologically significant levels. We invite the parties to identify what level of mortality would be biologically significant and how such a level should be determined.

Avian Deterrent Strategies. Petitioner offers a list of potential measures to discourage avian species from entering the flux field¹³. Petitioner must identify any of these measures it proposes to incorporate in the project. Parties may address whether inclusion of these deterrent strategies requires further analysis. We desire testimony to assist us in determining whether such measures are feasible and what, if any, environmental impacts they might cause if they were implemented.

¹² Laws, Ordinances, Regulations, and Standards

¹³ TN 201838

Visual Resources (glint and glare). BRW¹⁴ and CRIT¹⁵ cite pilot complaints relating to glare from ISEGS. While the possibility of glint and glare issues is addressed in the PMPD, it is appropriate to consider whether this new information calls into question any of the discussion or the efficacy of the mitigation measures in the PMPD.

Alternatives. Petitioner asserts that the no-project (approved solar trough) and PV alternatives are infeasible in part because they would not satisfy the requirements of its power purchase agreement (PPA). If Petitioner is in danger of losing its PPA by failing to meet construction or other milestones, then we invite Petitioner to submit documents supporting that assertion. Any party seeking a modification of the PMPD's conclusion on economic infeasibility should submit evidence sufficient to support such a modification. All parties may submit evidence on this issue.

Overriding Considerations. We invite the parties to provide additional evidence about the project's benefits, including the potential to add thermal energy storage or other transmission or system benefits that may be offered to support overriding any unmitigated significant environmental impacts or conflicts with LORS.

Natural Gas Consumption. BRW¹⁶, CBD¹⁷, and CRIT¹⁸ cite ISEGS' recent request to amend its permit¹⁹ to allow larger quantities of natural gas to be used to start the steam cycle in the morning and compensate for periodic reductions in solar energy throughout the day²⁰. We wonder if a similar request will be necessary for PSEGS and, if so, prefer to address it now rather than in a subsequent amendment process²¹.

Cultural Resources Mitigation. Petitioner offers a modification to Condition of Certification **CUL-1** that it believes more appropriately directs mitigation toward tribal spiritual and cultural interests, while also providing mitigation for the State's interest in recording important historical sites²². Staff offered a similar modified version of the condition, but doubled the total funding amount from \$2,473,590 to \$5,068,873 without justification for the increase²³. CRIT affirms its position that the cultural impacts would not be mitigated by CUL-1²⁴.

¹⁴ TN 201958

¹⁵ TN 201973

¹⁶ TN 201958, filed 4/4/14

¹⁷ TN 201972, filed 4/7/14

¹⁸ TN 201973, filed 4/7/14

¹⁹ 07-AFC-05C, TN 201928, filed 3/26/14

²⁰ [cite to amendment petition]

²¹ Our regulation regarding amendment requires a finding "that there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not known and could not have been known with the exercise of reasonable diligence prior to Commission certification." California Code of Regulations, title 20, section 1769(a)(3)(D).

²² Motion, TN 201900, filed 3/21/14, pp. 4-6

²³ Staff Response to Motion, TN 202210, filed 4/23/14, Appendix C, p. 19

²⁴ CRIT Responses to Motion, TN 201973, filed 4/7/14, and TN 202225, filed 4/23/14

At this time, it appears that there is no consensus among the affected parties. Staff should offer evidence to explain the funding increase it recommends. Staff and Petitioner are invited to address CRIT's objections and explain the nexus between the impacts to the Pacific to Rio Grande Trails Landscape and the mitigation contained in Condition of Certification CUL-1.

Informal Hearings

Petitioner, in its Supplemental Response, requests that the Committee "not utilize its informal hearing procedures but allow all parties to engage in direct and cross-examination."²⁵ We find that the informal format has been effective in recent cases and intend to use it at the reopened hearing. Specifically, the Committee finds the dialogue between expert witnesses particularly helpful. We will, however, allow the parties' representatives to ask questions of the expert witness panels in lieu of direct and cross-examination. The informal hearing process will generally proceed in the following order:

1. All parties' experts on the topic at hand are sworn in as a panel;
2. Petitioner's experts would provide a brief opening statement summarizing the key points and conclusions of their testimony;
3. Staff's experts would provide a brief opening statement summarizing the key points and conclusions of their testimony;
4. Intervenors' experts would provide a brief opening statement summarizing the key points and conclusions of their testimony;
5. Open discussion between the expert panelists led by the Committee;
6. Attorneys may follow up with questions of their own or other expert witnesses to the extent the Committee finds the questioning productive.
7. At the conclusion of the attorney's examination of the experts, the Committee may ask witnesses additional questions or allow panelists to ask additional questions of each other and to offer follow-up answers.

CONCLUSION and ORDERS

In the interest of creating a full and complete record, the Petitioner's Motion to Reopen the Evidentiary Record and Scheduling Order is **GRANTED**, subject to the further Orders below:

²⁵ TN 202307, filed 5/6/14, p. 6

1. The evidentiary hearing is limited to the following topics as described above:
 - a. Avian impacts
 - b. Flying invertebrate species (insects)
 - c. Curtailment provision
 - d. Avian deterrent strategies
 - e. Visual Resources (glint and glare)
 - f. Alternatives (PPA milestone status and economic feasibility)
 - g. Overriding considerations
 - h. Natural gas consumption
 - i. Cultural Resources mitigation (Condition of Certification **CUL-1**)

2. The Petitioner and Energy Commission Staff are **ORDERED**, and the other parties are encouraged, to submit evidence on each of the above topics.

Schedule

The parties shall adhere to the attached schedule, which among other things, sets deadlines for filing testimony, Prehearing Conference statements, Opening Briefs and Reply Briefs. Briefs are encouraged, but not required.

SO ORDERED.

Dated: May 21, 2014, at Sacramento, California

Original Signed By:

KAREN DOUGLAS
Commissioner and Presiding Member
Palen Solar Electric Generating System
Amendment Committee

Original Signed By:

DAVID HOCHSCHILD
Commissioner and Associate Member
Palen Solar Electric Generating System
Amendment Committee

**REVISED COMMITTEE SCHEDULE
PALEN SOLAR ELECTRIC GENERATING SYSTEM AMENDMENT
09-AFC-7C**

PLEASE TAKE NOTICE that the Committee has established the following schedule which **supersedes** all prior schedules:

<u>EVENT</u>	<u>DATE</u>
All Parties File Testimony	6/9/14
All Parties File Rebuttal Testimony	6/16/14
All Parties File Prehearing Conference Statements with Exhibit Lists	6/23/14
Prehearing Conference #	6/30/14
Evidentiary Hearings (EH) #	7/8/14 – 7/9/14
All Parties File Opening Briefs	2 weeks after the transcripts are published
All Parties File Reply Briefs	3 weeks after the transcripts are published
Presiding Members Proposed Decision (PMPD) published	TBD*
Committee Conference on PMPD	TBD*
Close of Public Comment Period on PMPD	TBD*
Errata/Revisions to PMPD, if necessary	TBD*
Final Adoption Hearing by the California Energy Commission	TBD*

*TBD = to be determined.

#Subject to separate formal notice

May 21, 2014