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February 13, 2012

Via E-Mail docket@energy.state.ca.us

California Energy Resources Conservation and Development Commission
Attention: Docket Unit – Docket No. 09-AFC-9
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

DOCKET	
09-AFC-9	
DATE	FEB 13 2012
RECD.	FEB 13 2012

**Re: (Proposed) Commission Decision Affirming that Warren-Alquist Act
Section 25502.3 Applies to Photovoltaic Electrical Generating Facilities**

Dear Commissioners:

On behalf of the thirty-one member counties of the Regional Council of Rural Counties (RCRC), I am writing to express strong opposition to the Hearing Advisor's recommendation for disposition of Solar Trust of America's (Applicant) Motion for Order Affirming Application of Jurisdictional Waiver.

The Applicant filed a motion asking the California Energy Resources Conservation and Development Commission (California Energy Commission) to find that Section 25502.3 of the Warren-Alquist Act allows a photovoltaic (PV) electrical generating facility to voluntarily submit to the California Energy Commission's exclusive certification jurisdiction. Section 25502.3 reads (in part): *".....any person proposing to construct a facility excluded from the provisions of this chapter may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any and all of the provisions of this chapter shall apply to the construction of such facility."*

RCRC believes that the Applicant is in error, as is the Hearing Advisor who agrees with Solar Trust of America that the scope of Section 25502.3 includes a photovoltaic electrical generating facility. The Hearing Advisor's (Proposed) Commission Decision jeopardizes local land use, zoning, and environmental control over these significant projects.

RCRC agrees with California Energy Commission staff (Staff Response to Commission Questions) in which staff opined *"In sum, sections 25501 and 25502.3 must be read in the context in which they were enacted, with the legislative purpose ("grandfathering") in mind, and with respect for the defined terms ("facility") used in those provisions. The provisions were intended to allow "pipeline" projects "excluded" by sections 25501 and 25501.5 to "opt-in" to the Energy Commission's licensing process. They have no other*

purpose.” and “Grandfathered projects are the only projects intended by the legislature to receive a “right” of exclusion and the option to waive it.”

Additionally, RCRC supports the joint comments of the California State Association of Counties and the County of Riverside dated February 2, 2012. Key points made include:

- The California Legislature has not limited the police power of counties over PV facilities through Legislative preemption;
- Preemption requires that the Legislature completely occupy the field, either expressly or by necessary implication;
- The Hearing Advisor’s Proposed Decision would inappropriately deprive counties of their constitutionally conferred police powers;
- Where the Legislature has not conferred jurisdiction on a statutory administrative agency, the agency lacks jurisdiction;
- Jurisdiction cannot randomly be conferred at the option of private, commercial applicants, and
- The proposed decision contradicts the legislative history of the Warren-Alquist Act.

In conclusion, RCRC urges the California Energy Commission to reject the Applicant’s motion and the Hearing Advisor’s recommendation. Please feel free to contact me at (916) 447-4806 or kmannion@rcrcnet.org with any questions.

Sincerely,

A handwritten signature in black ink that reads "Kathy Mannion". The signature is written in a cursive, flowing style.

Kathy Mannion
Legislative Advocate