

William D. Ross
Karin A. Briggs
Danielle N. Schenker
David P. Schwarz

Kypros G. Hostetter
Of Counsel

Law Office of
William D. Ross
520 South Grand Avenue, Suite 300
Los Angeles, CA 90071-2610
Telephone: (213) 892-1592
Facsimile: (213) 892-1519

Palo Alto Office:

400 Lambert Street
Palo Alto, California 94306
Telephone: (650) 843-8080
Facsimile: (650) 843-8093

File No: 19/36.1

June 13, 2012

VIA U.S. & ELECTRONIC MAIL

kldougl@energy.ca.gov

cpeterman@energy.ca.gov

docket@energy.ca.gov

Commissioner Karen Douglas, Presiding Member
Commissioner Carla Peterman, Associate Member
California Energy Commission Docket Unit
Hidden Hills Solar Electric Generating System (Docket No. 11-AFC-2)
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
11-AFC-2	
DATE	<u>JUN 13 2012</u>
RECD.	<u>JUN 13 2012</u>

Re: Hidden Hills Solar Electric Generating System, Docket No. 11-AFC-02; Southern Inyo Fire Protection District's Reply to Applicant's May 29, 2012 Analysis of Cooperation Agreement and Reimbursement for Costs

Dear Commissioners Douglas and Peterman:

This communication sets forth the reply of the Southern Inyo Fire Protection District (the "District")¹ to the Applicant's May 29, 2012 response (the "Applicant's Response") to the District's May 17, 2012 request for reimbursement of costs (the "Request") under Title 20 California Code of Regulations² section 1715. Though the District is pursuing a cooperation agreement with the Applicant, the purpose of this communication is to reserve the rights of the District and to clarify certain inaccuracies contained in the Applicant's Response, in the event that the Applicant and the District are unable to enter into a cooperation agreement.

I. The District is the Designated Provider of Fire and Emergency Medical Services to the Project Site

The District, which was formed in 1993³, is the local agency authorized to provide fire

¹ This office serves as Special District Council to the District

² All section references are to Title 20 of the California Code of Regulations.

³ The District is governed by the Fire Protection District Law of 1987 (Health & Safety Code section 13800 *et seq.*) and was formed on August 3, 1993 by Inyo County Local Agency Formation Commission Resolution 93-1, consistent

prevention, fire suppression, and emergency medical services in an approximately 1,250 square mile area, including the site of the Hidden Hills Solar Electric Generating System (the "Project"). The District operates on a very limited budget, and is staffed by only one full-time employee, a handful of paid-call and volunteer firefighters, and an administrative officer.

The Project is located on 3,277 acres and is expected to employ up to 380 employees. A project of this magnitude must not only comply with all applicable fire standards, but will also strain the District's limited resources. For this reason, on May 15, 2012 the District submitted the Request, with respect to costs associated with the representation, analysis, and mitigation of the impact of the Project upon the District. In the event that the District and the Applicant are unable to agree to a satisfactory cooperation agreement, the District requests that the Commission resolve the matter with a written order, consistent with section 1715(e).

II. Timeliness of the District's Request

Section 1715 allows local agencies (here, the District) to be reimbursed for certain costs incurred in accordance the services performed by that local agency.

The Applicant mischaracterizes section 1715(c)(2) in its assertion that proposed budgets not filed within 21 days of receiving a request for review from the commission "must be denied." Applicant's Response p 2. Nowhere does the regulation indicate that failure to file an application within 21 days of receiving a request for review acts as an absolute bar to reimbursement. In fact, section 1715 (c)(2) expressly states that the timeliness will *not* bar reimbursement, stating in part that:

A local agency's failure to file a proposed budget within the time period specified herein *shall not prevent it from receiving reimbursement*; however, failure to use the approval process described in this section *creates a risk* that the local agency will not be reimbursed for work already performed. (emphasis added).

The plain meaning⁴ of this section is that the District is not barred from receiving reimbursement for *additional* expenses, and any nonconformity with "the approval process" only "creates a risk" that the District will not be reimbursed for *past* work. The District respectfully requests that, should the District and the Applicant fail to enter into an acceptable cooperation agreement, the Commission utilize its inherent discretion (*see* section 1715(e)) and allow the

with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code section 56000, *et seq.*, formerly the Cortese-Knox Local Government Reorganization Act of 1985).

4 The same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules of administrative agencies. *Ganey v. Doran* (1987) 191 Cal.App.3d 901, 908. If the language is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute). *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

District to be reimbursed for all of its expenses, both past and future.

Due to the District's small size and limited resources, it does not have a large administrative staff and does not have employed counsel. Stated plainly, the District was unaware of the narrow time constraints of section 1715(c)(2) and asks that the Commission view any delay as excusable neglect. Otherwise, a chilling effect may occur on local governmental agencies, particularly special districts, by prohibiting them from properly determining the impact of facilities, like the Project, with the specified services they provide and the resulting impact that taxpayers would have to assume.

III. The District's Costs are Eligible for Reimbursement

The Applicant is correct that section 1715(b) exempts certain expenses from reimbursement, including: (1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters which the agency is requested to review or not within the area of the agency's expertise; (2) expenses for which it receives payment from other sources; (3) expenses incurred in advocating a position as a formal intervener to the proceeding; or (4) entertainment and first class travel expenses.

However, the District is not seeking reimbursement for costs that are characterized as "ineligible."

First, the District is not defending any position, let alone defending any position that is not related to the matters in which it was requested to review or matters outside its area of expertise. As the local agency having jurisdiction for providing fire prevention, fire suppression, and emergency medical services to the Project site⁵, the matters in which the District has provided input are directly within its areas of expertise.

Second, the expenses are not of the nature in which the District would otherwise be guaranteed to receive payment from other sources, as a potential cooperation agreement may or may not adequately compensate the District.

Third, the expenses do not relate to the advocating of positions as a formal intervener. Rather, the District, as an interested party, is providing input as requested by the Commission and is ensuring that the Project complies with applicable state law, including but not limited to (1) the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*, "CEQA"); (2) the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25000 *et seq.*); and (3) the Emergency Medical Services Act (Health and Safety Code section 1797 *et seq.*).

⁵ Consistent with Health and Safety Code sections 13861 and 13862 and Inyo County Local Agency Formation Commission Resolution 93-1.

Commissioner Karen Douglas, Presiding Member
Commissioner Carla Peterman, Associate Member
June 13, 2012
Page 4


Fourth, the costs are not related to entertainment. Although travel expenses are included, they were not “first class travel expenses” and were carried out at the cheapest rate available.

Additionally, the District’s Request, which was transmitted to both the Applicant and the Commission, sets forth District’s costs and provides formulas, estimates, and the rationale for the corresponding costs. If necessary, the District will happily provide additional information to clarify any confusion that may result from these calculations.

IV. Conclusion

The District maintains that its requested reimbursement is in conformity with section 1715. Nonetheless, the District continues to pursue a cooperation agreement with the Applicant without the need for involvement by the Commission, thus avoiding utilizing important agency resources.

Very truly yours,



William D. Ross

WDR:dps

cc: Larry Levy, District Chief
levy2717@access4less.net

Mr. Ron Coleman
ron@fireforceone.com

Jeffery D. Harris, Esq.
jdh@eslawfirm.com

Samantha G. Pottenger, Esq.
sgp@eslawfirm.com

Clay Jensen, Senior Director
cjensen@brightsourceenergy.com

Mr. Mike Monasmith, Senior Project Mgr.
mmonasmi@energy.ca.gov

Mr. Richard Ratliff, Staff Counsel IV
dratliff@energy.ca.gov

DECLARATION OF SERVICE

I, Le Chaune Metoyer, declare that on June 13, 2012, I served and filed a copy of the attached Letter to Commissioner Karen Douglas and Commissioner Carla Peterman Regarding Southern Inyo Fire Protection District's Reply to Applicant's May 29, 2012 Analysis of Cooperation Agreement and Reimbursement for Costs, dated June 13, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/slitngcases/hydrogen_energy/index.html].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For Service to all other parties:

Served electronically to all e-mail addresses on the Proof of Service list;

Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person serve, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date of those addresses **NOT** marked "e-mail preferred."

AND

by sending an electronic copy to the e-mail address below (preferred method); **OR**

by depositing an original and 12 paper copies in he mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT

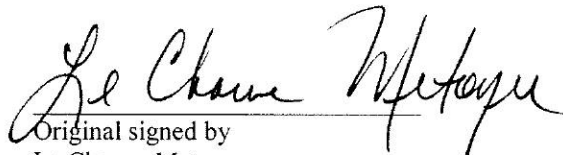
Attn: Docket No. 11-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street, MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Original signed by
Le Chaune Metoyer



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

**APPLICATION FOR CERTIFICATION
FOR THE HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM**

**DOCKET NO. 11-AFC-02
PROOF OF SERVICE
(Revised 6/5/2012)**

APPLICANT

BrightSource Energy
Stephen Wiley
1999 Harrison Street, Suite 2150
Oakland, CA 94612-3500
swiley@brightsourceenergy.com

BrightSource Energy
Bradley Brownlow
Michelle L. Farley
1999 Harrison Street, Suite 2150
Oakland, CA 94612-3500
bbrownlow@brightsourceenergy.com
mfarley@brightsourceenergy.com

BrightSource Energy
Clay Jensen
Gary Kazio
410 South Rampart Blvd., Suite 390
Las Vegas, NV 89145
cjensen@brightsourceenergy.com
gkazio@brightsourceenergy.com

APPLICANTS' CONSULTANTS

Strachan Consulting, LLC
Susan Strachan
P.O. Box 1049
Davis, CA 95617
susan@strachanconsult.com

CH2MHill
John Carrier
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833-2987
jcarrier@ch2m.com

COUNSEL FOR APPLICANT

Ellison, Schneider and Harris, LLP
Chris Ellison
Jeff Harris
Samantha Pottenger
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
cte@eslawfirm.com
jdh@eslawfirm.com
sqp@eslawfirm.com

INTERVENORS

Jon William Zellhoefer
P.O. Box 34
Tecopa, CA 92389
jon@zellhoefer.info

Center for Biological Diversity
Lisa T. Belenky, Sr. Attorney
351 California Street, Ste. 600
San Francisco, CA 94104
e-mail service preferred
lbelenky@biologicaldiversity.org

Center for Biological Diversity
Ileene Anderson, Public Lands
Desert Director
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
e-mail service preferred
ianderson@biologicaldiversity.org

Old Spanish Trail Association
Jack Prichett
857 Nowita Place
Venice, CA 90291
jackprichett@ca.rr.com

INTERVENORS (con't.)

Cindy R. MacDonald
3605 Silver Sand Court
N. Las Vegas, NV 89032
e-mail service preferred
sacredintent@centurylink.net

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

Great Basin Unified APCD
Duane Ono
Deputy Air Pollution Control Officer
157 Short Street
Bishop, CA 93514
dono@gbuapcd.org

County of Inyo
Dana Crom
Deputy County Counsel
P.O. Box M
Independence, CA 93526
dcrom@inyocounty.us

Nye County
Lorinda A. Wichman, Chairman
Board of County Supervisors
P.O. Box 153
Tonopah, NV 89049
lawichman@gmail.com

Nye County Water District
L. Darrel Lacy
Interim General Manager
2101 E. Calvada Boulevard
Suite 100
Pahrump, NV 89048
llacy@co.nye.nv.us

INTERESTED AGENCIES (con't.)

National Park Service
Michael L. Elliott
Cultural Resources Specialist
National Trails Intermountain
Region
P.O. Box 728
Santa Fe, NM 87504-0728
Michael_Elliott@nps.gov

**ENERGY COMMISSION –
DECISIONMAKERS**

KAREN DOUGLAS
Commissioner and Presiding Member
e-mail service preferred
karen.douglas@energy.ca.gov

CARLA PETERMAN
Commissioner and Associate Member
carla.peterman@energy.ca.gov

Ken Celli
Hearing Adviser
ken.celli@energy.ca.gov

Galen Lemei
Advisor to Presiding Member
e-mail service preferred
galen.lemei@energy.ca.gov

Jim Bartridge
Advisor to Associate Member
jim.bartridge@energy.ca.gov

**ENERGY COMMISSION –
STAFF**

Mike Monasmith
Senior Project Manager
mike.monasmith@energy.ca.gov

Richard Ratliff
Staff Counsel IV
dick.ratliff@energy.ca.gov

***Kerry Willis**
Staff Counsel
kerry.willis@energy.ca.gov

**ENERGY COMMISSION –
PUBLIC ADVISER**

Jennifer Jennings
Public Adviser's Office
e-mail service preferred
publicadviser@energy.state.ca.us