

# ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER  
1947-2010

CHRISTOPHER T. ELLISON  
JEFFERY D. HARRIS  
DOUGLAS K. KERNER  
ROBERT E. DONLAN  
ANDREW B. BROWN  
GREGGORY L. WHEATLAND  
CHRISTOPHER M. SANDERS  
LYNN M. HAUG  
PETER J. KIEL

ATTORNEYS AT LAW  
2600 CAPITOL AVENUE, SUITE 400  
SACRAMENTO, CALIFORNIA 95816  
TELEPHONE: (916) 447-2166  
FACSIMILE: (916) 447-3512  
<http://www.eslawfirm.com>

BRIAN S. BIERING  
CRAIG A. CARNES, JR.  
JEDEDIAH J. GIBSON  
CHASE B. KAPPEL  
SHANE E. C. McCOIN  
SAMANTHA G. POTTENGER

OF COUNSEL:  
ELIZABETH P. EWENS  
CHERYL L. KING  
MARGARET G. LEAVITT  
RONALD LIEBERT

March 28, 2012

|                 |                    |
|-----------------|--------------------|
| <b>DOCKET</b>   |                    |
| <b>11-AFC-2</b> |                    |
| DATE            | <u>MAR 28 2012</u> |
| RECD.           | <u>MAR 28 2012</u> |

Commissioner Karen Douglas, Presiding Member  
Commissioner Carla Peterman, Associate Member  
Hearing Officer Ken Celli  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

RE: Applicant's Comments Regarding California Energy Commission Staff's Hidden Hills Solar Electric Generating System (11-AFC-2) Status Report #3

Dear Commissioners and Hearing Officer Celli:

Hidden Hills Solar I, LLC and Hidden Hills Solar II, LLC (collectively, the "Applicant") submit the following comments regarding the California Energy Commission Staff's Status Report #3 ("Staff's Status Report #3") dated March 16, 2012.

According to Staff's Status Report #3, Staff has "determined that the Hidden Hills Preliminary Staff Assessment ("PSA") cannot be published on applicant's proposed date of April 13, 2012."<sup>1</sup> Keeping in mind that it is the Committee, not the Staff, that is responsible for setting the schedule in licensing proceedings, we interpret Staff's statement to be a request for extension of time in which to file the PSA.

Applicant objects to Staff's request for an extension of time to file the Preliminary Staff Assessment and urges the Committee to require issuance of the PSA on April 13, 2012.

The date set by the Committee in the Scheduling Order for this proceeding provided for publication of the PSA on February 29, 2012.<sup>2</sup> Staff stated in its Status Report #1, that it would not be able to publish the PSA until April 13, 2012.<sup>3</sup> Staff reaffirmed this date in Status Report 2,<sup>4</sup> and in each of the

<sup>1</sup> [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2012-03-16\\_Staffs\\_Status\\_Report\\_03\\_TN-64174.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2012-03-16_Staffs_Status_Report_03_TN-64174.pdf)

<sup>2</sup> [http://www.energy.ca.gov/sitingcases/hiddenhills/notices/2011-11-16\\_Scheduling\\_Order.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/notices/2011-11-16_Scheduling_Order.pdf)

<sup>3</sup> [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2012-01-17\\_status\\_report\\_01\\_TN-63392.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2012-01-17_status_report_01_TN-63392.pdf)

<sup>4</sup> [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2012-02-21\\_CEC\\_Status\\_Report\\_02\\_TN-63660.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2012-02-21_CEC_Status_Report_02_TN-63660.pdf)

Commissioner Karen Douglas, Presiding Member  
Commissioner Carla Peterman, Associate Member  
Hearing Officer Ken Celli  
March 28, 2012  
Page 2

Scheduling Conferences held on January 24, 2012 and February 28, 2012.<sup>5</sup> Applicant agreed to the extension of time requested by Staff. Therefore, April 13 is not the “applicant’s proposed date.” It is, first and foremost, the Staff’s proposed date, a date that the Staff has consistently reaffirmed for the past three months, and to which Applicant agreed to propose for adoption by the Committee.

Applicant objects to Staff’s request for an extension of the time to file the PSA for the following reasons.

First, this Application was accepted as data adequate on October 5, 2011 and the statutory deadline for issuance of a decision on this Application is October 4, 2012. The Applicant is required by the terms of its power sales agreements to develop a net 500 MW solar generating facility that can be expeditiously interconnected to the CAISO Balancing Authority. An extension of the date for issuance of the PSA, especially if coupled with further delays in the issuance of the Final Staff Assessment (“FSA”), would place the HHSEGS project at substantial risk of not receiving a Final Commission Decision in 2012, which is a critical component to fulfilling the schedule obligations of the power purchase agreement.

Second, the PSA is substantially complete and there is no cause for delay in issuance of the PSA. There will be 21 technical areas in the PSA.<sup>6</sup> Staff’s status report addresses only 8 of these areas as being potentially incomplete for publication in the PSA by April 13.<sup>7</sup> Presumably the other 13 technical areas are substantially complete and are ready for publication on or before April 13.

Of the remaining 8 technical areas, two areas, by the Staff’s own admission, are “almost complete.” These sections are land use and waste management. While these subjects may have a few minor details to be wrapped up in the next few weeks, Staff has cited no reason for why these sections cannot be completed by April 13. For the remaining 6 technical areas, Applicant disagrees with Staff that there are “major gaps in data.” Applicant believes that Staff has sufficient data to conduct its analysis for each technical area, and certainly enough data to conduct its *preliminary* analysis for each technical area. In the interest of a complete record, the Applicant has attached hereto “Attachment A”, which sets forth responses to each of the items identified by Staff as “outstanding”.

Third, the *Preliminary* Staff Assessment is, as its title implies, just a *preliminary* or draft report. It is not intended to be absolutely complete and final in every detail. Instead, it is intended to be a working draft, subject to revision, refinement and additions, through workshops and written comments on the

---

<sup>5</sup> 1/24 RT 20:5-6.

<sup>6</sup> Staff’s Status Report #1, p. 15.

<sup>7</sup> The Applicant notes that the majority of the purported deficiencies are in the subject of Cultural Resources, and that most, if not all of the requested information, must be filed under confidential protection, as required by State law. Thus, it appears that in large part, the information “gaps” relate to information that cannot become part of the hearing record, given its mandated, confidential designation.

Commissioner Karen Douglas, Presiding Member  
Commissioner Carla Peterman, Associate Member  
Hearing Officer Ken Celli  
March 28, 2012  
Page 3

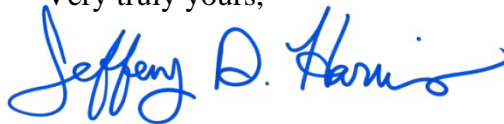
draft.<sup>8</sup> While the Staff *prefers* the PSA-FSA model, as a matter of law, the Commission's regulations require only a single final staff assessment.<sup>9</sup>

Fourth, Staff's statement to the contrary notwithstanding, there is indeed a "scheduling advantage" to the filing of a PSA on April 13. If the PSA is filed on April 13, Staff may supplement the PSA with additional information either in a Supplement to the PSA or in the FSA. Publication of the PSA on April 13 will allow the parties to consider Staff's position and analysis on the vast majority of subjects that are already substantially complete. If the issuance of the entire PSA is indefinitely deferred, then these discussions are also deferred.

Fifth, Staff's request for an extension of the PSA date assumes that the time between issuance of the PSA and FSA will be shorter than the time Staff previously proposed. Frankly, given that Staff has been unable to meet the Committee's timeline for issuing the PSA, the Committee should be skeptical of Staff's ability to meet an accelerated schedule between the PSA and FSA.

The last review of the Commission's siting process by an independent third-party recognized the value of moving forward with applications in a timely manner.<sup>10</sup> Specifically, the State Auditor noted, "To its credit, the energy commission did not wait for resolution of all issues before moving forward with the processing of applications."<sup>11</sup> Accordingly, in response to Staff's requested extension of time, the Applicant hereby respectfully requests that the Committee issue an order that requires publication of the Preliminary Staff Assessment on the Staff's requested and the Staff agreed to date of April 13, 2012.

Very truly yours,



Jeffery D. Harris

Attorneys for Applicant

---

<sup>8</sup> For example, as described in a Commission press release in regards to the High Desert Power Plant: "The Preliminary Staff Assessment (PSA) is a draft staff document, not a Committee proposed decision or a Commission final decision. This analysis was prepared by Commission staff in accordance with the Public Resources Code and the California Environmental Quality Act. Based upon an analysis of the information currently available, the draft PSA presents preliminary conclusions and proposed conditions that apply to the design, construction, operation and closure of the proposed facility. The PSA does not presently discuss all aspects of the proposed project."

<sup>9</sup> 20 C.C.R. § 1747.

<sup>10</sup> California State Auditor's Report on Energy Commission Siting Process, August 20, 2001, available at [http://www.energy.ca.gov/siting/documents/2001-08-24\\_STATE\\_AUDITOR.PDF](http://www.energy.ca.gov/siting/documents/2001-08-24_STATE_AUDITOR.PDF).

<sup>11</sup> California State Auditor's Report on Energy Commission Siting Process, August 20, 2001, pp. 23-24.

**APPLICANT'S COMMENTS REGARDING CALIFORNIA ENERGY COMMISSION  
STAFF'S HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2)  
STATUS REPORT #3**

**ATTACHMENT A**

**RESPONSES TO STATEMENTS MADE BY STAFF IN SPECIFIC TECHNICAL AREAS**

Applicant responds below to the statements made in Staff's Status Report #3 regarding the technical areas of biological resources, cultural resources, land use, socioeconomics, traffic/transportation, water resources, waste management, and alternatives.

**I. BIOLOGICAL RESOURCES**

In the area of biological resources, Staff states that "Applicant has not yet responded to several important data requests."<sup>12</sup> Applicant is concerned that this statement incorrectly suggests that Applicant has been nonresponsive to Staff's Data Requests.

Applicant has responded to all of the data requests related to biological resources contained in Staff Data Requests Sets 1A-2C. Of these data requests, Data Requests 52, 56, 59 and 67 were requests for provision of ongoing reports and surveys, such as the Winter 2012 Bat Survey report referenced by Staff in Status Report #3. As stated in Data Response 56, Applicant was assured by Staff that its agreement to provide these additional, staff-requested studies would not result in any delays in production of either the PSA, and on this basis the Applicant agreed to provide them.<sup>13</sup> Therefore, publication of the PSA should not be delayed as a result of these studies.

In regards to Data Requests 87 and 88 relating to potential impacts to state waters, as explained in Applicant's December 7, 2011 transmittal, the delineation process for state waters was delayed for reasons beyond Applicant's control, and Applicant provided notice that additional time would be needed to respond fully to the data requests. In a workshop held on February 22, 2012, the Center for Biological Diversity identified some concerns regarding water ponding on the Project site. To address these concerns, Applicant met with the California Department of Fish and Game ("CDFG") on March 13, 2012 to discuss the ponding areas, had an expert evaluate the ponding areas, and has incorporated this analysis into its State waters delineation report. A draft of the state water delineation was provided to the CDFG prior to the meeting and the final report was docketed on March 23, 2012. In summary, Applicant has been actively working to respond to Staff's data requests on state waters. Moreover, the information relating to the state waters delineation is not of such magnitude or complexity as to cause a delay in the issuance of the PSA. Therefore, publication of the PSA should not be delayed as a result of these state waters delineation.

---

<sup>12</sup> Staff's Status Report #3, p. 2.

<sup>13</sup> Applicant's Data Response 56, [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2011-12-05\\_Applicants\\_Data\\_Response\\_Set\\_1B\\_TN-63056.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2011-12-05_Applicants_Data_Response_Set_1B_TN-63056.pdf).

**APPLICANT'S COMMENTS REGARDING CALIFORNIA ENERGY COMMISSION STAFF'S HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2) STATUS REPORT #3 ATTACHMENT A**

Regarding Staff's statements relating to the water use mitigation plan requested by Staff's Data Request 40, Applicant has previously identified potential mitigation measures, such as retirement of water rights, in response to Staff's Data Request 40. Applicant also stated that while it "anticipate[d]" that a water mitigation plan would be submitted in January 2012, Applicant has repeatedly emphasized that the water mitigation plan should and would be developed with guidance from the agencies.<sup>14</sup> In January, BLM held a water mitigation meeting/conference call in which the Applicant and Staff participated. As a result of that meeting, BLM stated that it would prepare a list of recommended mitigation measures for consideration by Staff. This list was provided to Staff on March 12, 2012 and to the Applicant on March 15, 2012. Now that Applicant has received this guidance from BLM, Applicant believes that it can move forward with the agencies in further discussing appropriate mitigation for the Project. Applicant anticipates submitting a response to the BLM's letter by March 30, 2012.

Moreover, it is unclear why the status of the water mitigation plan would result in delay to the biological resources section of the PSA, given that there is no evidence that the Project will significantly impact groundwater dependent vegetation, phreatophytes, or any other special status plants and wildlife.<sup>15</sup> Staff's Data Request 50 specifically asked Applicant to describe "what monitoring and mitigation would be proposed if it is found groundwater-dependent vegetation could be significantly impacted."<sup>16</sup> Applicant responded to this data request on November 17, 2011. To date, Staff has not requested any additional information relating to either Data Request 50 or the corresponding response by Applicant. Therefore, publication of the PSA should not be delayed, because Staff has sufficient information regarding the Project's potential impacts in this area.

As to Staff's Data Requests Set 2D, these data requests were filed by Staff on March 9, 2012. Applicant will be responding to these Data Request in accordance with the Commission's regulations. Applicant should not be penalized by a delay in the issuance of the PSA because the Staff was late in issuing these data requests. Furthermore, Staff has been on notice of the February PSA publication date established in the Committee's Scheduling Order since November. To the extent the information contained in the responses to those Data Requests are relevant, such information can be included in the FSA.

## **II. CULTURAL RESOURCES**

Applicant is extremely concerned with the statements made in Staff's Status Report #3 relating to cultural resources for two reasons.

First, Staff's Status Report #3 states that the "volume of information" Applicant provided on January 23, 2012 in response to Data Requests 115-117 "has precluded staff from completing their review,"<sup>17</sup> and that demands on Staff's time due to other projects have been "escalating in

---

<sup>14</sup> 2/28 RT 60:1-25.

<sup>15</sup> Set 1A, Data Responses 48-50; Set 1C, Data Responses 82-86.

<sup>16</sup> Data Response 50, p. 43; [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2011-11-17\\_Data\\_Response\\_Set\\_1A.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2011-11-17_Data_Response_Set_1A.pdf)

<sup>17</sup> Staff's Status Report #3, pp. 4-5.

**APPLICANT'S COMMENTS REGARDING CALIFORNIA ENERGY COMMISSION STAFF'S HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2) STATUS REPORT #3 ATTACHMENT A**

January and February of this year.”<sup>18</sup> Applicant is troubled that these issues were not raised in Staff’s Status Reports #1 or #2, or at either the January or February Status Conferences, and that these issues are affecting Staff’s work on the HHSEGS Project to such a vast degree.

Second, Applicant is concerned that Staff’s Status Report #3 states that the cultural section of the PSA will not be completed ostensibly as a result of Applicant’s failure to respond to certain cultural resources data requests made by Staff. As will be explained in detail below, Applicant has responded to the vast majority of Staff’s cultural resources data requests, objected to others that Applicant feels are burdensome, not relevant, or not reasonably necessary for a Commission decision in this proceeding, and is awaiting direction from Staff on others. Therefore, publication of the PSA should not be delayed as a result of alleged deficiencies in the information Applicant has provided to Staff.

**A. Data Requests 98 and 104**

In particular, Staff’s Status Report #3 states that it is “preclude[d]” from completing its cultural resources analysis because of “inadequate” and “truncated” responses by Applicant. Staff asserts that because of Applicant’s response to Data Request 98, “much of the information provided in the applicant’s Cultural Resources Data Responses is truncated and does not provide staff with a complete or comprehensive picture of the resources or their context.”<sup>19</sup> Staff also claims that the “absence of information or field study” requested by Data Request 104 has prevented the completion of the cultural resources section of the PSA.<sup>20</sup>

Applicant provided a complete response to Data Request 98, in addition to 25 other cultural resources data requests on January 6, 2012. As to Data Request 104, Applicant provided notice of its objection to this data request on December 27, 2011 on the basis that a map or field study of toolstone distribution on the Project site was not reasonably available to the Applicant, would not provide any detail necessary to the evaluation of the cultural resources on the Project site, and is not reasonably necessary for a Commission decision in this proceeding. However, Applicant committed to providing Staff with the information reasonably available to Applicant by January 20, 2012, and did so.<sup>21</sup>

Staff had ample time to review both Applicant’s notice of objection and Applicant’s responses to the data requests to evaluate whether additional information or a petition to compel additional information from the Applicant was required. Staff did not file additional data requests or a petition to compel further response from the Applicant in relation to the data requests. If Staff truly felt that information requested in Data Requests 98 or 104 was necessary for the “completion of this portion of the PSA”, Staff should have filed a petition pursuant to Section 1716 of the Commission’s regulations, or at a minimum, raised the issue in Status Report #2, or at either the January or February Status Conferences. Staff should not be permitted to excuse its

---

<sup>18</sup> Staff’s Status Report #3, p. 5.

<sup>19</sup> Staff’s Status Report #3, p. 4.

<sup>20</sup> Staff’s Status Report #3, p. 4.

<sup>21</sup> December 27, 2011 letter; [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2012-01-20\\_Data\\_Response\\_Set\\_1D-2\\_TN-63425.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2012-01-20_Data_Response_Set_1D-2_TN-63425.pdf).

**APPLICANT'S COMMENTS REGARDING CALIFORNIA ENERGY COMMISSION STAFF'S HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2) STATUS REPORT #3 ATTACHMENT A**

delay in drafting the cultural resources section of the PSA on some pretense that Applicant has not provided data necessary for Staff's analysis.

**B. Data Requests 105 and 106**

Staff's Status Report #3 states that the information requested by Data Requests 105 and 106 "is particularly important given Staff's concerns about cumulative and potentially unmitigable impacts to the Stump Springs ACEC."<sup>22</sup> At a workshop held on December 16, 2011, Applicant voiced its concerns to Staff regarding the relevance, breadth, scope, and cost of the new study requested in Data Requests 105 and 106. Both parties agreed to a compromise. Staff agreed that the lengthy and costly study requested in Data Requests 105 and 106 was not necessary if Applicant agreed to provide other information outlined by Staff. Staff committed to providing a more sharply focused and clarified Data Requests 105 and 106 to Applicant. On December 27, 2011, Applicant filed a notice of objection to Data Request 105 and 106 to preserve its rights.<sup>23</sup> Applicant objected to Data Requests 105 and 106 as burdensome, as it would require Applicant to perform specialized research and analysis that would require two to three resource experts a year or more to complete, at a cost of \$500,000 to \$2,000,000 to obtain the information requested by Staff. Applicant also objected to Data Request 105 as requesting information not reasonably necessary for the Commission to make a decision in this proceeding, as the subject area in Data Request 105 is located far outside the project boundaries and will not be disturbed by the project.

At the January 18, 2012 workshop in Tecopa, Staff indicated that Data Requests 105 and 106 were "likely to be revised" by Staff. After the January 28th Status Conference, cultural resources experts from both parties met to discuss Data Requests 105 and 106, in addition to other data requests; however, Staff did not provide any further guidance on its informational needs for Data

---

<sup>22</sup> Staff's Status Report #3, p. 3.

<sup>23</sup> Data Request 105 requested the following:

105. Please develop and submit, for staff review and approval, a research design for the investigation of the paleohydrology, aboriginal water management, paleoecology, and ethnobotany of the portion of the step fault zone that stretches from Mound Spring to Stump Spring. The research design should include collaboration among professionals in the disciplines of Quaternary geology or science, geoarchaeology, economic or ethnobotany, and Great Basin or Southwest archaeology. The research design should, at a minimum, set out contexts, theory, and field methods appropriate to the investigation of the research themes above, and other themes as appropriate to establish the character and relative importance of the step fault zone, through prehistoric and historic times, for the acquisition, preparation, and consumption of multiple, key natural resources. It should facilitate the acquisition of information on the age of the mesquite groves and coppice dunes that encase them, whether the mesquite trees exhibit any physical evidence that would indicate whether and how the groves were actively managed, the antiquity of the use of springs and seeps in the step fault zone and the chronology of their flow rates, whether physical evidence exists that would indicate whether and how flows may have been actively managed in the pursuit of such goals as increasing surface flows or irrigating horticultural plots, and how the predominant vegetation associations along the step fault zone may have changed through time.

Data Request 106 requested: "Once staff has approved the proposed research design, please execute the study and provide a technical report of the field and laboratory data, as well as analyses and interpretations of that data relative to the original research design."

**APPLICANT'S COMMENTS REGARDING CALIFORNIA ENERGY COMMISSION STAFF'S HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2) STATUS REPORT #3 ATTACHMENT A**

Requests 105 and 106. In its Status Report #2, Staff acknowledged that further clarification from Staff was necessary to respond to Data Requests 105 and 106, and stated that such direction would be “forthcoming.”<sup>24</sup> However, despite repeated attempts from Applicant to obtain direction from Staff as to what information was needed, Staff has not responded. Applicant questions whether this information is truly vital to Staff’s cultural resources analysis, given that such direction has yet to be given. Therefore, publication of the PSA should not be delayed as a result of Data Requests 105 and 106.

**C. Data Request 125**

Staff’s Status Report #3 states that a response to Data Request 125 has not been received.<sup>25</sup> This is incorrect. On December 27, 2011, Applicant objected to Data Request 125 as Applicant had already provided sufficient information on the Old Spanish Trail in the AFC, Supplement B, and in the confidential cultural resources technical report, and on the basis that “a complete history” of the Old Spanish Trail dating back to “prehistoric times” was not relevant or reasonably necessary for the Commission to make a decision in this proceeding. Notwithstanding this objection, Applicant submitted additional information on January 6, 2012. In addition, in response to a statement from the Old Spanish Trail Association that mule trace might be present on the Project site, Applicant committed to providing an additional report that would summarize in one report the available information on the Old Spanish Trail-Mormon Road. Therefore, there is already substantial information in Staff’s possession regarding the Old Spanish Trail from which Staff can base its analysis. To the extent that this analysis may change as a result of the Applicant’s report on the Old Spanish Trail, which will be submitted on March 30, 2012, such change may be included in Staff’s FSA. Therefore, publication of the PSA should not be delayed as a result of Data Request 125.

Finally, Applicant is unaware of any issues that have been raised by BLM Nevada regarding the “actual alignment of the National Register listed trail within the project site,” and would appreciate guidance and information from Staff on this issue.

**D. Data Requests 127 and 128**

On December 27, 2011, Applicant provided notice of its objection to Data Requests 127 and 128. As part of its efforts to work with Staff, Applicant agreed to provide a work plan as requested in Data Request 127 for Staff to review, and then to carry out the field investigation as required by Data Request 128. Applicant had been previously informed by Staff in a workshop that review of cultural resources work plans submitted to Staff’s cultural resources data requests could be reviewed and turned around in 48 hours. Applicant submitted a work plan in response to Data Request 127 on February 6, 2012.

To date, Applicant has not received any input from Staff on the work plan. Response to DR 128 is necessarily predicated upon approval of DR 127. Applicant questions whether this information is necessary to complete Staff’s cultural resources analysis, given that Staff has yet to either

---

<sup>24</sup> Staff’s Status Report #2, p. 4.

<sup>25</sup> Staff’s Status Report #3, p. 4.



**APPLICANT'S COMMENTS REGARDING CALIFORNIA ENERGY COMMISSION STAFF'S HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2) STATUS REPORT #3 ATTACHMENT A**

comment on or approve Applicant's work plan submitted in response to Data Request 127. In any case, Applicant has already provided substantial information on the cultural resources found on the Project site. To the extent that the additional information requested by Staff on those resources may change Staff's analysis, Staff's revised conclusions can be set forth in the FSA. Therefore, the PSA should not be delayed pending Staff's approval of Data Request 127.

**E. Data Request 137**

Data Request 137 requested additional information on Sandy Valley as an alternative site. Applicant's Data Response 137 submitted on February 9, 2012 described Applicant's assessment of the cultural sensitivity of the Sandy Valley alternative site based upon recorded resources within the vicinity of the alternative site and from cursory observations of the general environmental setting of the site.<sup>26</sup> A request for additional cultural analysis of this area has not been received by Applicant.

In fact, at the February Status Conference, Staff indicated that it was satisfied with Applicant's response to Data Request 137, had sufficient information to proceed with analysis of a Sandy Valley alternative site, and that there would be "no more data requests due to Sandy Valley."<sup>27</sup> Therefore, as Staff has all of the necessary information relating to the Sandy Valley alternative site, there should be no cause for delay of the PSA on this basis.

**III. LAND USE**

This is the first of two issues identified by Staff as "almost complete," and the factual circumstances are not in dispute: As stated in Applicant's March 2, 2012 letter to Inyo Planning Director Joshua Hart:

Nevertheless, we are willing to voluntarily submit to review of the Project under the County's General Plan Amendment and Rezoning Procedures, so that the County can advise the Commission that the Project is in conformance with Inyo County's General Plan and Zoning Ordinance. We do note that by voluntarily agreeing to participate in these County proceedings, we do not waive our right to contend before the Commission or in a court of law that the Project is currently consistent with the General Plan and Zoning Ordinance. In addition, should the County be unable to approve the General Plan Amendment or Rezoning, or if the County is unable to complete its review in accordance with a schedule mutually agreed between the County and the Commission, or should the County require the Applicant to make payments or take actions which are not authorized under existing law, or should the County's approval be subject to legal challenge by any third party, the Applicant reserves its right to

---

<sup>26</sup> Applicant's Data Response Set 2A, Data Response 137, pp. 13-14, available at [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2012-02-09\\_Applicants\\_Data\\_Response\\_Set\\_2A\\_TN-63608.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2012-02-09_Applicants_Data_Response_Set_2A_TN-63608.pdf).

<sup>27</sup> 2/28 RT 20:8-24; 21:1-3.

**APPLICANT'S COMMENTS REGARDING CALIFORNIA ENERGY COMMISSION STAFF'S HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2) STATUS REPORT #3 ATTACHMENT A**

request that the Commission approve the project pursuant to Public Resources Code section 25525.

Staff's Status Report #3 properly summarizes these facts. Accordingly, Staff needs no additional information to finish this section of the PSA.

**IV. SOCIOECONOMICS**

It is unclear from Staff's Status Report #3 as to why the Socioeconomics section of the PSA cannot be drafted by April 13. Staff's Status Report #3 states that "Staff has requested more information from the applicant on where the construction workforce will come from, as a greater California workforce would likely impose greater burdens on [Inyo] County." To date, Applicant has only received one data request on the construction workforce for the Project, Data Request 24.<sup>28</sup> This data request requested that Applicant "provide a table similar to Table 5.10-16 in the AFC that identifies the number of construction workforce by craft or trade needed per month for project construction." Applicant has received no other data request from Staff on construction workforce. Therefore, information on where the construction workforce will come from should not be the cause of Staff's requested delay to issue the PSA.

As to Data Requests 95 and 96, Applicant has been in discussions with the Southern Inyo Fire Protection District ("SIFPD") to receive an assessment of the Project's potential impacts to emergency response by the District, but has been unsuccessful. In Staff's Status Report #1, Staff stated that it anticipated receiving "feedback" from the SIFPD in February regarding the Project, and that SIFPD would be responding to the Staff's letter and needs assessment form that was sent to SIFPD on September 30, 2011. Information from the SIFPD was submitted to Staff on February 15, 2012. As a result of the information received, Applicant has retained a consultant, Wes Alston with Pacific Development Solutions Group, to conduct a risk and needs assessment for the Project. It is anticipated that this information will be submitted to Staff in early April. However, it is unclear to Applicant why this discrete subject should hold up publication of the larger socioeconomics section on April 13. Staff can include in the FSA the updated fire response information after receipt of the risk and needs assessment, and still fulfill its responsibilities to the rest of the public. Therefore, information on SIFPD issues should not delay issuance of the PSA.

**V. TRAFFIC/TRANSPORTATION AND VISUAL RESOURCES**

Staff's Status Report #3 states that "incomplete data responses to Data Requests 148, 149, 154" were provided by the Applicant, which "will require additional time for resolution." This is incorrect.

Applicant provided full and complete responses to Data Requests 148, 149, and 154 on March 6, 2012, and also responded to previous data requests on glint and glare in Data Response 37. Therefore, Staff has substantial information on which it can draft its analysis for the PSA, and publication of the PSA should not be delayed.

---

<sup>28</sup> [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2011-10-17\\_Data\\_Request\\_Set\\_1A\\_TN-62595.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2011-10-17_Data_Request_Set_1A_TN-62595.pdf)

**VI. WATER RESOURCES**

As stated above, Applicant has identified potential mitigation measures, such as retirement of water rights, in response to Staff's Data Request 40. Applicant also stated that while it "anticipate[d]" that a water mitigation plan would be submitted in January 2012, Applicant has repeatedly emphasized that the water mitigation plan should and would be developed with guidance from the agencies.<sup>29</sup> In January, BLM held a meeting/conference call on water issues in which the agencies, including Staff, and the Applicant participated. At that meeting, BLM committed to provide mitigation recommendations that it believed may be required for the HHSEGS Project. The BLM recommendations were submitted to Staff on March 12, 2012 and received by the Applicant on March 15. Now that Applicant has received this guidance from BLM, Applicant believes that it can move forward with the agencies in further discussing appropriate mitigation for the Project, especially in light of the results of the pump test conducted by Applicant in February. While the final pump test report is still being finalized, Applicant has provided the data from the pump test to Staff for review. This data is sufficient for Staff to complete its analysis, and any augmentation of Staff's conclusions based on the final report that is in production can be incorporated into the FSA.

**VII. WASTE MANAGEMENT**

This is the second of two issues identified by Staff as "almost complete."

Staff's Status Report #3 identifies two issues that will impact Staff's ability to complete the waste management section of the PSA. The first is that Staff is working to "verify an additional cost increase of \$52,000 per year" to the County for waste collection as a result of the Project. It should be noted that the Project itself will not generate any wastes to be collected by the County. All wastes generated on-site will be collected and disposed of by the Project at an appropriate land fill. Whether or not \$52,000 is an accurate figure for the County's waste collection services is not relevant to any decision that the Commission must make in this proceeding as the Project will not generate wastes that will be collected by the County. Therefore, Staff should be able to complete this section of the PSA, and publication of the PSA should not be delayed pending resolution of this issue.

The second issue is that CalRecycle has asked that its requirements for Inyo County be addressed in the PSA. This is the first time that Applicant has heard of this issue, and it is not clear to the Applicant whether these requirements are related to the Project, or solely applicable to Inyo County. However, Applicant notes that the CalRecycle requirements applicable to the Project and the Project's ability to comply with applicable LORS are identified and discussed in Sections 5.14.2.2, 5.14.2.3, 5.14.4.2.1, 5.14.5, and 5.14.7 of the AFC. Therefore, Staff should be able to complete this section of the PSA, and publication of the PSA should not be delayed pending resolution of this issue.

---

<sup>29</sup> 2/28 RT 60:1-25.

**APPLICANT'S COMMENTS REGARDING CALIFORNIA ENERGY COMMISSION STAFF'S HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM (11-AFC-2) STATUS REPORT #3 ATTACHMENT A**

**VIII. ALTERNATIVES**

Applicant is encouraged by the amount of work done for the alternatives section to date, and it appears from Staff's Status Report #3 that Staff has all of the information it needs to draft this section.

Applicant is somewhat concerned, however, that Staff states that it has "[r]eviewed *and edited* the applicant's [basic] project objectives to *alter or eliminate* those that clearly support development of the proposed project."<sup>30</sup> While potentially innocuous, this statement about editing, altering or eliminating the Applicant's basic project objective is disquieting.

The "basic project objectives," which frame the alternatives analysis, must be the Applicant's basic project objectives. Section 15126.6(a) of the CEQA Guidelines requires the reviewing agency to focus on "a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project." The failure of an alternative to meet most of the basic project objectives is a proper basis to eliminate an alternative from detailed consideration. Thus, the project proponent's basic project objectives form the foundation for the consideration of alternatives.

The concerns about editing, alteration or elimination of the Applicant's basic project objectives, while disquieting, are not related to Staff's information needs for production of the PSA. Therefore, with the information provided, Staff should be able to complete this section of the PSA in time for publication by April 13.

---

<sup>30</sup> Staff's Status Report #3, p. 9.

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

Application for Certification for the HIDDEN )  
HILLS SOLAR ELECTRIC GENERATING ) Docket No. 11-AFC-2  
SYSTEM PROJECT )  
\_\_\_\_\_ )

**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on March 28, 2012, I served the attached *Applicant's Comments Regarding California Energy Commission Staff's Hidden Hills Solar Electric Generating System Status Report #3* 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

**SERVICE LIST**  
**11-AFC-2**

**APPLICANT**

Stephen Wiley  
BrightSource Energy  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612-3500  
[swiley@brightsourceenergy.com](mailto:swiley@brightsourceenergy.com)

Andrew Miller  
Michelle L. Farley  
BrightSource Energy  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612-3500  
[amiller@brightsourceenergy.com](mailto:amiller@brightsourceenergy.com)  
[mfarley@brightsourceenergy.com](mailto:mfarley@brightsourceenergy.com)

Clay Jensen  
Gary Kazio  
BrightSource Energy  
410 South Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145  
[cjensen@brightsourceenergy.com](mailto:cjensen@brightsourceenergy.com)  
[gkazio@brightsourceenergy.com](mailto:gkazio@brightsourceenergy.com)

**APPLICANT'S CONSULTANTS**

Susan Strachan  
Strachan Consulting, LLC  
P.O. Box 1049  
Davis, CA 95617  
[susan@strachanconsult.com](mailto:susan@strachanconsult.com)

John Carrier  
CH2MHill  
2485 Natomas Park Drive, Suite 600  
Sacramento, CA 95833-2987  
[jcarrier@ch2m.com](mailto:jcarrier@ch2m.com)

**COUNSEL FOR APPLICANT**

Chris Ellison  
Jeff Harris  
Samantha Pottenger  
Ellison, Schneider and Harris, LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816-5905  
[cte@eslawfirm.com](mailto:cte@eslawfirm.com)  
[jdh@eslawfirm.com](mailto:jdh@eslawfirm.com)  
[sgp@eslawfirm.com](mailto:sgp@eslawfirm.com)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

Great Basin Unified APCD  
Duane Ono  
Deputy Air Pollution Control Officer  
157 Short Street  
Bishop, CA 93514  
[dono@gbuapcd.org](mailto:dono@gbuapcd.org)

Dana Crom, Deputy County Counsel  
County of Inyo  
P.O. Box M  
Independence, CA 93526  
[dcrom@inyocounty.us](mailto:dcrom@inyocounty.us)

Lorinda A. Wichman, Chairman  
Nye County Board of County Supervisors  
P.O. Box 153  
Tonopah, NV 89049  
[lawichman@gmail.com](mailto:lawichman@gmail.com)

L. Darrel Lacy  
Interim General Manager  
Nye County Water District  
2101 E. Calvada Blvd., Suite 100  
Pahrump, NV 89048  
[llacy@co.nye.nv.us](mailto:llacy@co.nye.nv.us)

Michael L. Elliott  
Cultural Resources Specialist  
National Park Service  
National Trails Intermountain Region  
P.O. Box 728  
Santa Fe, NM 87504-0728  
[Michael\\_Elliott@nps.gov](mailto:Michael_Elliott@nps.gov)

**INTERVENORS**

Jon William Zellhoefer  
P.O. Box 34  
Tecopa, CA 92389  
[jon@zellhoefer.info](mailto:jon@zellhoefer.info)

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

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

Jack Prichett  
Old Spanish Trail Association  
857 Nowita Place  
Venice, CA 90291  
[jackprichett@ca.rr.com](mailto:jackprichett@ca.rr.com)

**ENERGY COMMISSION –  
DECISIONMAKERS**

Karen Douglas  
Commissioner and Presiding Member  
*e-mail service preferred*  
[kldougl@energy.state.ca.us](mailto:kldougl@energy.state.ca.us)

Carla Peterman  
Commissioner and Presiding Member  
[cpeterma@energy.state.ca.us](mailto:cpeterma@energy.state.ca.us)

Ken Celli  
Hearing Officer  
[kcelli@energy.state.ca.us](mailto:kcelli@energy.state.ca.us)

Galen Lemei  
Adviser to Commissioner Douglas  
*e-mail service preferred*  
[glemei@energy.state.ca.us](mailto:glemei@energy.state.ca.us)

Jim Bartridge  
Adviser to Commissioner Peterman  
[jbartrid@energy.state.ca.us](mailto:jbartrid@energy.state.ca.us)

**ENERGY COMMISSION STAFF**

Mike Monasmith  
Senior Project Manager  
[mmonasmi@energy.state.ca.us](mailto:mmonasmi@energy.state.ca.us)

Richard Ratliff  
Staff Counsel IV  
[dratliff@energy.state.ca.us](mailto:dratliff@energy.state.ca.us)

**ENERGY COMMISSION – PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser's Office  
*e-mail service preferred*  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)