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September 7, 2012

Mr. Kenneth Celli
Hearing Officer
Energy Resources Conservation
and Development Commission
1516 Ninth Street
Sacramento, CA 95814



Re: Response to Requests for Additional Time (11-AFC-2)

Hearing Officer Celli,

In response to your request, Applicant replies as follows to the requests for additional time to respond to Applicant's *Motion in Limine for a Committee Ruling to Ensure the Final Staff Assessment Conforms to Substantive Requirements of the California Environmental Quality Act ("CEQA")* ("the Motion") filed by the Center for Biological Diversity ("CBD") and Ms. Cindy MacDonald:

- Staff and all parties need a timely ruling on the threshold legal issues raised in the Motion as the Committee's order may affect the scope of parties' relevant testimony and the FSA.
- All parties were on notice related to the Motion, the issues that would be presented in the Motion, and the timing for filing the Motion and responses. Specifically, parties were on notice at the August Status Conference that the Motion would be filed no later than August 31, 2012. No party objected to that filing date at the August Status Conference. Scheduling concerns, if any, should have been raised by the parties at that time. None were raised. (Record Transcript, August 16, 2012, Status Conference, pp. 47-53, 55-57.)
- Per Section 1716.5, parties currently have seventeen days to respond to the Motion because the 15th day, the date for filing a response, falls on Saturday, September 15, 2012. These seventeen days include ten business days and two full weekends that avoid court dates and other claims of unavoidable conflicts. Therefore, CBD's request, in essence, seeks to add four more days to the regular Section 1716.5 process, allowing for a filing on Friday, September 21, 2012. In marked contrast, Ms. MacDonald seeks to convert Section 1716.5's 15-day response timeframe into five to nine weeks, which is clearly in contravention of the letter and spirit of the Commission's regulations.

- Responses to the Motion are optional under 1716.5. No party is required to file any response to the Motion.
- Section 1716.5 provides that the Committee must make a ruling within 30 days of the filing of the Motion. Because Applicant will have seven days to respond to the responses filed by the parties, any extension of time beyond the 15 days provided for in Section 1716.5 will diminish the amount of time available for the Committee to issue its Order.
- The Staff confirmed for the Committee at the August Status Conference that it could meet the September 11, 2012 date for the FSA without the need for any additional time. Thereafter, the Applicant voluntarily accepted a five week slip in the date for production of the FSA, which all parties readily accepted, affording concurrently both (1) time for Staff's further consideration of the parties' comments on the PSA and (2) consideration of the Motion. If instead of concurrent review of parties' PSA comments and the Motion, it had been suggested that the two items proceed in serial fashion as some parties now request, resulting in the likelihood of Evidentiary Hearings being put off until calendar year 2013, it is unclear whether the Applicant could have agreed to forego production of the FSA on September 11th. Due process and fundamental fairness, including the Applicant's right to timely consideration of the Application, dictate that further consideration of PSA comments and the Motion proceed concurrently.
- Ms. MacDonald's response suggests that the Motion in Limine somehow undermines the CEC process: "...by granting an extension of response time to the Applicant's motion that is equal to what would be afforded to the parties should the normal regulatory procedures of these proceedings have remained uninterrupted by the Applicant's motion." To the contrary, a proper Motion filed pursuant to Section 1716.5 constitutes "normal regulatory procedures." Motions are also a part of the "normal regulatory procedures" that are provided for in the Commission's regulations.
- Ms. MacDonald's response also suggests that the Motion in Limine "will reduce the general steps and procedures outlined in the Hearing Officer's Draft Proposed Schedule" (p. 6) and that not granting additional time to respond to the Motion will "afford both Applicant and Staff with "additional" privileges" (p. 8). This is incorrect. If anything, the Motion – and the optional response for all parties – affords additional opportunities for public participation pursuant to and consistent with the normal Commission procedures set forth in Section 1716.5 process.

All parties need a timely ruling on the threshold legal issues raised in the Motion. All parties were on notice regarding the date for the filing of the Motion, the need for a timely response, if any, and no party objected to the scheduling for the Motion at the August Status Conference. Accordingly, the Applicant objects to the requests for additional time and requests that the Committee follow the Motion schedule discussed at the August Status Conference, consistent with the requirements of Section 1716.5.

September 7, 2012

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In the alternative, Applicant is willing to agree to CBD's request for four additional days, with responses due on Friday, September 21, 2012, so long as agreement will not substantially delay either the Committee ruling or publication of the FSA.

Sincerely,



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On Behalf of Hidden Hills Solar I, LLC, and
Hidden Hills Solar II, LLC (collectively, the
"Applicant")

STATE OF CALIFORNIA

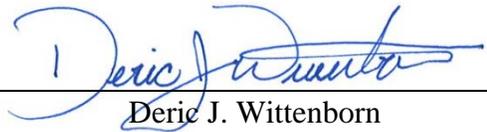
Energy Resources Conservation
and Development Commission

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

PROOF OF SERVICE

I, Deric J. Wittenborn, declare that on September 7, 2012, I served the attached *Response to Requests for Additional Time (11-AFC-2)*, 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.



Deric J. Wittenborn

SERVICE LIST
11-AFC-2

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