STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION FOR THE HIDDEN HILLS SOLAR ELECTRIC GENERATING SYSTEM

Docket No. 11-AFC-02

RESPONSE TO "MOTION IN LIMINE"

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I. "MOTION IN LIMINE" AND RESPONSE SUMMARIES

MOTION'S SUMMARY #1

In the "Motion", the summary of Applicant's first requirement demands the Commission order Staff's analysis, and consequently the Final Staff Assessment (FSA), to incorporate and conform to the following objective:

"That the FSA's statement of project objectives must include the objectives "sought by the proposed project," including development of a 500 MW net solar thermal energy project using Applicant's proprietary technology, as required by CEQA Guidelines Section 15124(b)." (1)

SUMMARY RESPONSE

The Motion seeks to insert a new project objective not included in the original AFC files. Not once does the AFC Project Objectives mention "solar thermal" but instead, uses solar electric generating facility four times and "generic" renewable energy terms five times. The only constant is "500 MW solar"; therefore, this appears to be the underlying purpose. Applicant also fails to define the "proprietary technology" CEQA must conform to. Consequently, the PSA's alternative analysis conforms to "most of the basic" AFC project objectives and underlying purpose.

The allowance of inserting significantly different project objectives "ad hoc" would result in undermining the AFC process, power plant siting objectives, adverse cumulative impacts and death to CEQA.

The Motion puts forth factual and legal errors regarding Applicant's business purposes,

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(1) 14 CCR 15124(b): A statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

objectives, commercial deadlines, and/or PPA requirements. Some of the Motion's arguments rests on unverified and confidential information. However, online research has provided limited information regarding Bright Source's PPA's, which include non-competitive rates, revocation of PPA's and one-of-a-kind "sweetheart deals".

The Motion fails to provide evidence to support allegations that PSA does not conform to the substantial requirements of the CEQA equivalency process used for power plant siting purposes or that granting the Motion would serve the public interest in any way. Therefore, the Motion's arguments should be dismissed due to lack of merit and denied.

MOTION'S SUMMARY #2

In the "Motion", the summary of Applicant's second requirement demands the Commission order Staff's analysis, and consequently the FSA, to incorporate and conform to the following objective:

> "2. That the FSA's analyses of alternatives must exclude from detailed consideration alternatives that are not feasible or reasonable, as required by CEQA Guidelines Section 15126.6(a)."(2)

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(2) 14 CCR 15126.6(a): Alternatives to the Proposed Project. An EIR shall describe 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 but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

SUMMARY RESPONSE

Applicant edits "potentially feasible" to just feasible, narrowing the scope of interpretation.

The Motion supports its arguments by setting aside any legal requirements or constraints outside Applicant's own considerations and demands the public interest, the environment and adverse impacts be treated as secondary considerations.

The FSA will be Inyo County's CEQA document for rezoning purposes. Restricting the alternative analysis may subject the County to legal ramifications.

There is no legal requirement or "iron clad rule" that mandates CEQA must conform to pre-negotiated business contracts or that an EIR cannot be prepared if contracts are absent. PPA amendments to Ivanpah, including significant reductions in power output, were the direct result of changes made during regulatory review and Conditions of Certification, not the other way around as the Motion is trying to suggest.

All comparative data and analysis between the proposed project and alternatives is now inadequate and/or invalid as it provided comparisons with a design Applicant abandoned.

Applicant alleges AFC alternative analysis is "legal", the PSA's expanded analysis is "illegal". Staff is an independent party and is required to do an independent review. Applicant may be seeking to intimidate or harass Staff and as such, should be restrained in accordance with Public Resource Code §§ 25218(f). Motion also seeks to circumvent the Presiding Members authority. Therefore, the Motion's arguments should be dismissed due to lack of merit and denied.

MOTION'S SUMMARY #3

In the "Motion", the summary of Applicant's third requirement demands the Commission order Staff's analysis, and consequently the Final Staff Assessment, to incorporate and conform to the following objective:

3. That the FSA's evaluation of the No Project Alternative must include a discussion of what would be reasonably expected to occur on the Project site in the foreseeable future – residential use, based on approved land use plans that permit development on 170 parcels – as required by CEQA Guidelines Section 15126.6(e).

SUMMARY RESPONSE

A historical account of proposed projects and planning efforts over the last 60 years were all ultimately deemed "infeasible" due to the existing environment.

Applicant's "build" scenario depends on a) The Wiley Trust Fund and it's associated affiliates to initiate large scale real estates sales of individual parcels during a heavily depressed real estate market to break up one of the largest privately held tracts of land in the Pahrump Valley for over 60 years, b) the complete absence of transmission lines or access to power throughout the proposed project site necessary to service the private wells: no power, no water, c) overcoming other significant obstacles such as high permitting fees for service, cost of well development, lack of existing infrastructure and other services including phone, internet, television, in an area that is "lightly serviced" by the County.

The Motion inaccurately characterizes both the historical and existing conditions to create the illusion of a "No Project Alternative" scenario that is both highly speculative and remote. Therefore, the Motion's arguments should be dismissed due to lack of merit and denied.

MOTION'S SUMMARY #4

In the "Motion", the summary of Applicant's fourth requirement demands the Commission order Staff's analysis, and consequently the Final Staff Assessment, to incorporate and conform to the following objective:

2. That the FSA must exclude analysis of all Project components located outside of the Commission's jurisdiction in the sovereign State of Nevada, as mandated by CEQA Guidelines Section 15277.(3)

SUMMARY RESPONSE

The Motion sets forth as series of flawed arguments that combine two distinctly different subject matters, NEPA review of the gas and transmission lines with project siting and regulatory review under CEQA. The BLM Scoping Notice on the Valley Electric Transmission and Gas Pipeline does not support the Motion's assertion of NEPA review of the proposed project. To the contrary, BLM's comments indicate they encourage Staff to review impacts to Nevada and provide additional recommendations for analysis and mitigation in the FSA.

Applicant attempts to confuse ***description*** with ***analysis*** in the PSA. Applicant's confusion and lack of clarity resulted in requiring the PSA to analyze a) proposals that may or may not exist, b) analyze impacts to two different set of circumstances and locations, and, c) analyze components and impacts that may or may not be located in California. Staff has a legal duty to analyze the proposed project site's vicinity in conformance with federal laws.

(3) 14 CCR 15277: CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an Environmental Impact Statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

The proposed project's "zone of impact" includes Nevada. Analysis included in the FSA would support jurisdictional cooperation and agreements, such as MOU's between the CEC and BLM to prevent lapses in jurisdictional authority in order to protect shared public interest and public trust values in the decision making process and final decisions. The Motion's intent to heavily utilize Nevada and its resources while simultaneously restricting analysis of impacts to Nevada *is highly predatory, to say the least*. Therefore, the Motion's arguments should be dismissed due to lack of merit and denied.

II. OBJECTIVES SOUGHT BY THE PROPOSED PROJECT

1. STATEMENT OF FACTS

In the Motion's Statement of Facts, Applicant expands upon their summary assertion by stating that staff included "a set of purported project objectives significantly different than the "objectives sought by the project," in the AFC. (PSA, p.6.1-3.) Several key objectives constituting the underlying purpose of the Project were eliminated, including the use of BrightSource's proprietary technology in a utility-scale project, compliance with power purchase agreement provisions, and achievement of a targeted first/second quarter 2012 commercial on-line date. (AFC, p. 1-3; also see HHSEGS Data Response Set 2A, Data Response 137-140.)"

The Applicant further alleges that, "Instead, for the purposes of the PSA, Staff included a generic set of project objectives relating to the *Commission's* 'underlying purpose….to fulfill its role in implementing California's Renewables Portfolio Standard (RPS) program.' (PSA, p. 6.1-2)".

Under the heading, "The PSA Improperly Replaces Applicant's Project Objectives With A Generic Set Of Policy Objectives", the Motion argues that, "The result of this legal error is an *unreasonable* range of analyzed alternatives that would not meet most of the "objectives sought by the project" in at least three out five instances, a clear violation of the "reasonable range" requirement of CEQA Guideline Sections 15124(b) and 15126.6(a)."

The Motion also argues that, "Applicant's Business Purposes Are An Acceptable Project Objective". It supports this argument by stating, " California courts have long recognized that it is perfectly acceptable to base a CEQA alternatives analysis on the applicant's underlying business objectives".

Finally, the Motion adds, "The "objectives *sought by the project*" cannot, however, be summarily dismissed simply by characterizing them as the Applicant's mere "preference." Rather, the Project Objectives are the entire reason the Applicant filed an AFC in this proceeding. Absent these objectives, there is no project. To dismiss the project's important, foundational objectives as mere "preference" is to misunderstand the alternatives analyses fundamental purpose – to identify whether there are alternatives to the project that avoid or substantially lessen any of the significant effects of a project but which would feasibly *attain* most of the basic objectives sought by the project. (*See,* 14 C.C.R. §§ 15124,15126.6) (emphasis added).)"

2. FULL RESPONSE

A. Motion Seeks To Create A New Project Objective

One of the primary foundations of Applicant's argument revolves around accusing staff of "re-writing" the objectives sought by the proposed project in such a manner that they become "significantly different" than what is contained in the AFC files. The irony of this accusation is, the Applicant's argument is based on their own re-write of the project objectives in the Motion through fusing two completely distinct objectives into one, which results in framing the "project's objectives" in a significantly different way and consequently, requires a significantly different interpretation.

Specifically, Applicant combines the first, or primary objective found in the AFC files, "To safely and economically construct and operate a net 500 MW, solar electric generating facility in California capable of selling competitively priced renewable energy, consistent with the procurement obligations of California's publicly owned and privately owned utilities," with a

second objective, “To use BrightSource’s proprietary technology in another utility-scale project, further proving the technical and economic viability of the technology.” (AFC files, Project Objectives, p. 1-3 and 1-4).

Now, Applicant seeks to significantly narrow the scope of the “objectives sought by the project” by redefining it to mean, “development of a 500 MW net solar thermal energy project using Applicant’s proprietary technology”. Furthermore, Applicant seeks to carry this forward by attempting to require Staff conform to this new definition, and subsequent interpretations, in the CEQA equivalency process and the FSA.

The new definition dramatically transforms the project objectives and subsequent interpretations by substituting “Solar electric” with “solar thermal”, “facility” has been re-written to mean a “project”, “selling competitively priced renewable energy” has morphed into “Applicant’s proprietary technology” and “consistent with the procurement obligations of California’s publicly owned and privately owned utilities” has been reinterpreted to accuse Staff of creating “a generic set of project objectives relating to the *Commission’s* ‘underlying purpose….to fulfill its role in implementing California’s Renewables Portfolio Standard (RPS) program.’

1. Hidden Hills Application For Certification: Project Objectives

Within the Applicant’s own list of project objectives provided in both the AFC files and the Motion’s Exhibit A (Comparison of Objectives), there are four project objectives that specifically reference the term “solar electric generating facility” and five project objectives that use “generic” references to renewable energy generation.

For comparison purposes, there are *no* references or project objectives whatsoever that cite a "solar thermal energy project" and only one objective cites the use of the Applicant's "proprietary technology".

Excerpts From Hidden Hills SEGS AFC Project Objectives

a) Solar Electric Generating Facility

1. "To safely and economically construct and operate a net 500 MW, solar electric generating facility in California,,,,,"
2. "To locate the solar electric generating facility in an area of high solarity."
3. "To locate the solar electric generating facility on land that has been identified by local governments as suitable for renewable energy."
4. "To comply with provisions of power sales agreements to develop a net 500 MW solar generating facility…."

b) "Generic" Renewable Energy Generation

1. "….electric generating facility in California capable of selling competitively priced renewable energy."
2. "To assist California in repositioning its generation asset portfolio to use more renewable energy in conformance with state policies…."
3. To provide renewable power capable of providing grid support…"
4. "To locate the solar electric generating facility on land that has been identified by local governments as suitable for renewable energy."
5. "To generate renewable electricity that will be qualified as meeting the RPS requirements of the CEC…."

As clearly illustrated above, Staff's alternative analysis significantly conforms to "most of the project objectives" as stated in the AFC files, outlined by CEQA and in conformance with applicable LORS. Therefore, Staff's project objectives and subsequent analysis falls well within the AFC project objectives, contrary to the Motion's allegations.

With respect to the Motion's argument that, "The result of this legal error is an *unreasonable* range of analyzed alternatives that would not meet most of the "objectives sought by the project" in at least three out five instances, a clear violation of the "reasonable range" requirement of CEQA Guideline Sections 15124(b) and 15126.6(a)", the Motion never describes or provides evidence as to what are the "three out of five instances" actually are. Neither does the Motion provide clear direction as to how Staff's "unreasonable range" of alternatives fail to meet the basic project objectives outlined in the AFC files nor does it mention that all prior alternative analysis should be considered inadequate and/or obsolete as it compared a system and facility that was abandoned by the Applicant and thus, has invalidated prior responses and data.

Furthermore, Applicant's Boiler Optimization Plan states the facility will only generate electricity for 3,000 full-load hours annually, the equivalent of 8.2 hours per day. (*See* 2012-04-09 Supplemental Data Response, Set 2, TN-64558, p. 133).

The alternatives carried forward in the PSA for "full analysis" can feasibly generate comparable electrical hours without the significant and prolific adverse environmental, biological, social, and visual impacts of the proposed project's footprint and design.

Finally, it also appears that Applicant has misunderstood the purposes and objectives of the application proceedings, which are clearly outlined in the Commission's "Procedures For Considering Applications For Certification". (See 20 C.C.R. §§ 1741 *et. al.*) By the Motion's

definition, this entire set of regulations governing the Commissions duties are merely a "generic" set of purposes, objectives and statutory requirements Staff "arbitrarily and with prejudice" threw into the PSA that don't apply to the Applicant, just everybody else.

B. Discerning The Underlying Purpose

The first, or primary objective provided in the AFC files was both general and specific enough to conform to the substantive requirements of the CEQA equivalency siting process.

Yet the only portion of this objective that remained intact through the Motion's fusion of "objectives sought by the project" and subsequent arguments is the reference to "500 MW's solar". Since this seems to be the only portion of the first two project objectives the Applicant was satisfied with maintaining, logic would suggest this basic objective is the underlying purpose of the Application for Certification that is <u>*also*</u> capable of conforming to the substantive requirements of the CEQA equivalency process used for siting purposes and regulatory review. (*See* §§ 14 C.C.R. 15126.6(a), Public Resource Code §§ 25509.5(d), §§ 25514(d).)

The Motion goes on to seek further misdirection in Argument "A. The PSA Arbitrarily And Improperly Rejects Applicant's Project Objectives" and Exhibit A by again relying on the original AFC objectives to justify their summary argument, an argument that demands but fails to support requiring the Commission to order Staff to include a new project objective in the FSA that significantly narrows the scope by restating the project's primary objective to only mean the "development of a 500 MW net *solar thermal* energy project *using Applicant's proprietary technology."* (Also see Motion's, "The PSA Improperly Replaces Applicant's Project Objectives With A Generic Set of Policy Objectives').

C. Applicant's "Proprietary Technology"

While §§ 14 CCR 15124(b) requires "a statement of objectives sought by the proposed Project", the Applicant is attempting to create an interpretation of this statute to mean a project's objectives most conform solely to the most narrow definitions an Applicant can create. In this case, Applicant cites that the project's objectives must be defined, and subsequent analysis and alternatives to be considered, must conform solely to an Applicant's alleged "proprietary technology."

However, there are several key issues that must be considered before the Applicant's allegations that the "proprietary technology" is in fact, the only system, design and alternative that Staff, the Commission, the environmental review process and the public be allowed to consider in the FSA.

1. Applicant Fails To Clearly Define "What" This Proprietary Technology Is

The Application For Certification and associated documents fail to clearly define what the Applicant's "proprietary technology" actually is. Neither are there any specific definitions or references to system components (if any) in the AFC files that clearly describes or define whatever criteria the Applicant is alluding to with respect to their "proprietary technology" either.

However, over one year after filing the AFC, the Applicant finally provides a vague reference in the Motion by stating it is; "concentrated solar thermal technology". But what specifically is the "proprietary technology" the Applicant is demanding now be the sole focus of the "objectives sought by the proposed project"?

2. The "Proprietary Technology": What It Is And What It Is Not

Prior to filing the AFC for the Hidden Hills SEGS, the Applicant stated the company had "consider[ed] a variety of design and operating limits" (*See* AFC files, 6.0 Project Description, 6.5 Alternative Project Configurations, p. 6-22.)

Here, the Applicant describes why in the original design, they rejected using less boilers, despite noted benefits in both emissions and costs. The Applicant also describes why they rejected a smaller sized facility. (*Id*.)

Later, the Applicant reversed course by redesigning the facility in the Boiler Optimization Plan that embraced ideas they had originally rejected. This included reducing the number of boilers, and significantly altering the power block arrangement. It also dramatically reduced the number of Mirror Washing Machines (MWM) from the original number of 42 to merely 16. (*See* 2012-04-09 Supplemental Data Response, Set 2, TN-64558, p. 106).

With respect to the "power towers", a central component of the Applicant's current and previous design systems, the height of these towers also appears to be variable. In the Israel based demonstration facility established in 2008, the tower height was about 200 feet (excluding the boiler on top)(4). In the Ivanpah design, Tower I and Tower II is projected to be 312 and 459 feet, respectively.(5)

Now, the tower heights have climbed to 750 feet in the Hidden Hills and Rio Mesa SEGS. This design change is hailed by the Applicant as, "an important technological advancement",

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(4) Bright Source Energy, SEDC Fact Sheet, http://www.brightsourceenergy.com/stuff/contentmgr/files/0/95d865cbc9f36febf5d469fe529c0bc8/files/sedc_fact_sheet.pdf

(5) Ivanpah AFC, Project Description, pg. 2-5 http://www.energy.ca.gov/sitingcases/ivanpah/documents/applicant/AFC/Volume1/ISEGS_002_ProjDesc.pdf

which Applicant claims will "….substantially reduce mirror shading and allows more heliostats to be placed per acre. More megawatts can be generated per acre and the design is more efficient overall." (*See* AFC Files, Project Description, p. 1.) However, there is no evidence or data in the AFC files, subsequent documents or through internet searches that support this claim.

Other known design variations include changes to heliostat dimensions, 7.2 ft high and 10.5 ft. wide for the Ivanpah SEGS (*See* Ivanpah AFC, Project Description, p. 2-4 and 2-5) and 12 ft. high by 8.5 ft. wide for the Hidden Hills SEGS (*See* Hidden Hills AFC, Project Description, p. 2-7).

As a result of all these variations, as well as the available data contained in the HHSEGS AFC files and subsequent documents, it is impossible to distinguish exactly what the Applicant is demanding be solely considered as the "proprietary technology".

However, an online search of Bright Sources' website finally yielded results as to what Bright Source claims is specific to their "proprietary technology". It boils down to a solar receiver and software program(s) that control the heliostat assemblies allowing them to both track the sun and focus radiation to a predetermined point. (*See* Exhibit A)

With respect to the "concentrated solar thermal technology" referenced in the Motion, the power towers actually fail to be included in the "proprietary technology" descriptions. Most likely, this is because both power towers and parabolic troughs are defined as "concentrated solar power technologies" in a 2003 report published by the DOE.(6)

Within this report, a power generation system that uses power towers is described as, "Solar power towers generate electrical power from sunlight by focusing concentrated solar radiation on

(6) "Assessment of Parabolic Trough and Power Tower Solar Technology Cost and Performance Forecasts" prepared by Sarget & Lundy LLC Consulting Group and published by the National Renewable Energy Laboratory, a U.S. Department of Energy Laboratory (operated by Midwest Research Institute, Battelle and Bechtel), October 2003.

a tower-mounted heat exchanger (receiver). The system uses hundreds to thousands of sun-tracking mirrors called heliostats to reflect the incident sunlight onto the receiver." This type of facility dates back to 1982 and fossil fuel "hybridization" are also incorporated in the designs .

So, in essence, "power tower" designs were around before Bright Source ever came into existence, "concentrated solar thermal technology" describes at least three kinds of systems and obviously, Applicant cannot claim power towers as their own "proprietary technology" as other companies such as Solar Reserve(7) are also creating renewable energy plants that incorporate them as well.

Also, it is clear that every component of the Applicant's "systems and designs" are variable; tower heights, heliostat dimensions, heliostat field configurations, power block configurations, the number of boilers, the number of MWMs, and a variety of conventional equipment. Therefore, the evidence points to the only project objectives that could be defined as the Applicant's exclusive "proprietary technology" is the software program that controls the heliostat positions to track the sun and focus radiation to a predetermined point and a receiver.

D. Applicant's Business Purposes Are An Acceptable Project Objective

As already sufficiently described in the previous text, Staff's alternative analysis and project objectives were reasonably based on the project objectives described by the Applicant in the AFC files.

In response to the Motion's arguments that the underlying business objectives are "perfectly acceptable to base CEQA alternatives on' and that, "To dismiss the project's important, foundational objectives as mere "preference" is to misunderstand the alternatives analyses

(7) Solar Reserve at: http://www.solarreserve.com/what-we-do/csp-technology/

fundamental purpose…", the Motion has presented no evidence to support its assertion that alternatives analyzed in the PSA would fail to reasonably create revenue generation through electrical production based on alternatives analyzed by Staff.

E. Power Purchase Agreements And Commercial Online Dates

When the Motion expands to arguments used to support Summary 1, the Applicant also highlighted two other objectives they considered as necessary for the FSA to conform its analysis to, these being, "compliance with power purchase agreement provisions" and "achievement of a targeted first/second quarter 2015 commercial on-line date."

There is no disputing that the purpose of submitting an Application For Certification is to acquire a "business license" in order to sell a particular product for the purposes of generating revenue. In this instance, that product is electricity.

The generation of electricity is also a critical infrastructure component that provides significant public benefits and licensing power production facilities can serve the public interest as much as the Applicant's.

However, the perceived "need for power" should not be so overwhelming that any amount of environmental impact, socio-economic imbalance and predatory policies can be tolerated in any degree. In other words, there are limits to what society should be willing "to pay" for the production of power and these factors must be weighed against exclusive commercial interests.

1. Applicant's Argument Rests On Confidential Information

Applicant asserts that "compliance with power purchase agreement provisions" is a critical component of the project objectives that must be appropriately weighed by Staff in their

evaluations of what alternatives can be deemed "feasible" in relation to CEQA. However, the specific provisions of the Power Purchase Agreement (PPA) are confidential.

Over the course of the HHSEGS AFC process, several discussions have ensued surrounding the technical and legal issues resulting from analyses and decision making based on confidential and publicly undisclosed information. However, the only subject matter that was the focus of these legal "confidentiality issues" pertained to cultural and historic resources. The issue of a wide variety of confidential designations related to the specifics of financial and legal documents such as the PPA's or the California Independent System Operator Cluster 4 Phase I Study Results have never been discussed or considered. (*See* Application for Confidential Designation For Cluster 4 Phase I Study Results, TN-64218, 3/20/12)

As a result, the degree of accuracy with respect to the Applicant's claims surrounding the specific requirements of their PPA is currently unknown and again, yet another aspect of the decision making process regarding the proposed project is being kept hidden from public disclosure due to confidentiality claims.. However, after a lengthy online search for any terms and conditions that might be applicable, some general information was found.

2. Feasibility Of Amending PPA's And Commercial Online Dates

Amending a previously approved PPA, including changes to its projected commercial online date, has proven to be a relatively short, perfectly legal and feasibly attainable process.

For example, an amendment to the PPA between Bright Source and PG&E regarding the Ivanpah SEGS was filed on July 9, 2010, and approved by December 29, 2010, a process that took about six months to achieve.(8)

(8) Advice Letter 3703-E From State of California Public Utilities Commission To Pacific Gas & Electric, http://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_3703-E.pdf

A similar amendment process occurred between Bright Source and Southern California Edison regarding the terms of the PPA's that apply to the Rio Mesa SEGS, another Bright Source facility with an AFC currently undergoing review by the CEC. This amendment was filed on November 28, 2011(9) with a Resolution adopted on August 23, 2012.(10)

In other words, an amendment to a PPA can be reasonably expected to be complete within less than a year, less than half the time of the projected construction schedule for the proposed project.

The Applicant also argues Staff must consider only alternatives that would feasibly meet the objective of "achievement of a targeted first/second quarter 2015 commercial on-line date."

CEQA guidelines require that "most of the basic project objectives" be considered in the alternative analysis. The feasibility that all technical and legal factors surrounding the complexity of licensing a power plant, two environmental review processes and any additional regulatory and permitting procedures necessary for making the Hidden Hills SEGS even marginally feasible all occurring in "perfect alignment" with the Applicant's projected commercial on-line date, a date that was established before Applicant had even chosen a siting location, is highly questionable.

Not only does the proposed project require CEC regulatory review, it also requires a separate BLM environmental review to install the gas and transmission lines that are critical for implementation of the facility. To date, the BLM's Draft Environmental Impact Statement is currently running three months over schedule with a projected extension of an additional three months before publication.

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(9) Advice 2339-E-C (U 338-E), Southern California Edison To Public Utilities Commission of the State of California Energy Division, http://www.sce.com/NR/sc3/tm2/pdf/2339-E-C.pdf

(10) Public Utilities Commission Of the State of California, Resolution E-4522, http://docs.cpuc.ca.gov/word_pdf/COMMENT_RESOLUTION/171282.pdf

There is also the separate CAISO coordination required to incorporate Nevada based Valley Electric Association into their system that the proposed project must connect to.

Finally, there are additional considerations such as potential appeals and legal entanglements, changes to the proposed design and/or systems as a result of the final Conditions of Certification, potential engineering and design delays, being able to timely obtain all necessary permits, potential setbacks in construction schedules (inclement weather, manufacturing and equipment delays, etc.), all these considerations clearly indicate that there is inherently a wide variety of built in potential risks, setbacks and delays that can contribute to the reality that the commercial on-line target date cannot be feasibly or reasonably guaranteed.

Requiring that Staff's environmental review and impact analysis, including a reasonable range of potentially feasible alternatives, to be restricted by factors that cannot be restricted or controlled in any other phase or component of the proposed project's construction and implementation is undoubtedly artificially narrow and cannot be considered "reasonable" in relation to the substantive requirements of CEQA.

While there is no disagreement that the commercial aspects of the project are important to the Applicant and the generation of additional renewable energy serves the public interest, CEQA requires the commercial interests of the proposed project must be placed in context of the proposed project as a whole, not as a lead and exclusionary objective.

Given the fact that the Applicant has already amended most of its previously negotiated PPA's, including changes to commercial online dates, claims that the FSA must strictly conform to previously negotiated commercial online dates "post hoc" is contrary to the evidence. Clearly, an amended PPA can be reasonably and feasibly secured in a reasonable period indicating the Motion's claims are without merit.

3. Negotiated Terms of the PPA's

The Hidden Hills SEGS is of similar design to the Rio Mesa SEGS, also currently before the Commission for approval. While little specific data is available regarding the actual terms and agreements of the PPA's signed for the Hidden Hills SEGS, there is some independent review regarding the competitiveness of the Rio Mesa SEGS PPA's. If the Hidden Hills PPA's are formulated anywhere near the conclusions reached for Rio Mesa, it is NOT in the public interest to pursue a restricted analysis based primarily on the Applicant's business objectives!

The following excerpts were taken from Sedway Consulting's independent evaluation of both Bright Source's "proprietary technology" overall and the Rio Mesa SEGS PPA's.(11)

> "…the Rio Mesa Solar 1 and 2 PPAs were clearly uncompetitive with other solar thermal offers and the overwhelming majority of bids in SCE's 2011 RPS solicitation." (p. 5)

> "Sedway Consulting concluded that the Sonoran West PPA is less attractive, with the Rio Mesa Solar 1 and 2 PPAs having the worst valuation of the five BSE amended PPAs. Although *none of the BSE amended PPAs had renewable premiums and viability characteristics that would have put them on SCE's 2011 RPS short list*, it is important to remember that there is a difference between shortlisted projects/PPAs and fully negotiated contracts". (p. 6) [emphasis added.]

> "Regarding whether or not Sedway Consulting recommends the approval of the BSE amended PPAs, it comes down to a question of how much the CPUC wants to advance

(11) Advice 2339-E-C (U 338-E), Southern California Edison To Public Utilities Commission of the State of California Energy Division, Independent Evaluation Report for Southern California Edison's BrightSource Amendment, Sedway Consulting. http://www.sce.com/NR/sc3/tm2/pdf/2339-E-C.pdf

solar thermal technology in California. If the CPUC wants to promote this technology, Sedway Consulting concludes that the Siberia 1 and 2 PPAs are quite competitive with the solar thermal offers in SCE's 2011 RPS solicitation. The Sonoran West PPA represents a less attractive option, and the Rio Mesa Solar 1 and 2 PPAs are the most expensive, least competitive options." (p. 6)

Based on significant concerns regarding both the process surrounding these amendments and how the conclusions were reached, protests were filed with the Energy Division of the California Public Utilities Commission. The first protest was filed on June 8, 2012, by the Natural Resource Defense Council, Defenders of Wildlife and the Sierra Club. The second protest was filed on June 22, 2012, by the Western Power Trading Forum followed by an August 16, 2012 letter containing comments on Draft Resolution E-4522. Here, the WPTF recommended rejecting the amended PPA's for the Rio Mesa SEGS and all the BSE PPA's completely. (*See* Exhibit B).

4. Bright Source's PPA's And Sweetheart Deals

Based on the available information, Applicant's concerns regarding the potential impacts of analysis, alternatives and final decisions that may result in having to renegotiate totally new PPA's for the Hidden Hills SEGS may have legitimate merit as apparently, these PPA's were a one-of-a-kind "sweetheart deal" that was unsuccessfully protested by the Division of Ratepayer Advocates

Specifically, the PPA's negotiated for the Rio Mesa SEGS are between Bright Source and Southern California Edison. The PPA's for the Hidden Hills SEGS appear to be between Bright Source and Pacific Gas & Electric (PG&E). While terms and conditions of all these PPA's are

shrouded in confidentiality and kept secret from the public, a few significant details were released shortly after Bright Source and PG&E negotiated the PPA's that are likely to be in effect for the Hidden Hills SEGS.

According to the New York Times, embedded in these contracts are the first-of-its-kind royalty agreements, which include PG&E agreeing to pay Bright Source a "higher electrical rate if Bright Source failed to secure a Department of Energy loan guarantee" and "PG&E receiving royalties based on worldwide sales and licensing of Bright Source's power tower design". (12)

If the PPA's between Bright Source and Southern California Edison were generally independently assessed in such an unfavorable light, one can only guess how poor the PPA's between Bright Source and PG&E are to the ratepayer and/or general public. Given the current economic "downgrading" of competitiveness regarding power towers designs and the one-of-a-kind deals Bright Source secured in 2009 (not to mention PG&E's interest and financial gain with every Bright Source application that is approved), it becomes easy to see why the Applicant is attempting to demand the FSA restrict the alternative analysis under the guise of CEQA requirements.

The Applicant's assertions regarding the feasibility of ever being able to secure such lucrative PPA's again most likely has legitimate merit. The questions are, how do these one-of-a-kind deals serve the public interest as a whole and why should the substantial requirements of CEQA and informed decision-making be significantly subordinated to the primary objective of supporting lucrative one-of-a-kind deals?

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(12) "A Rare Peek At Green Economics", Todd Woody, New York Times, August 24, 2009, accessed online 9/11/12 http://green.blogs.nytimes.com/2009/08/24/a-rare-peek-at-green-energy-economics/

F. CEQA, Alternative Analysis And Power Plant Siting Objectives

The Applicant's attempt to insert significantly different new definitions of the proposed project's objectives from the originally stated objectives is not only inappropriate, it would result in seriously undermining the spirit and intent of CEQA and the CEC's regulatory review and siting requirements.

For example, the AFC's original primary objective stated, "To safely and economically construct and operate a net 500 MW, solar electric generating facility in California capable of selling competitively priced renewable energy, consistent with the procurement obligations of California's publicly owned and privately owned utilities". This objective conforms to the substantive requirements of the CEQA equivalency process for purposes of power plant siting.

Since the very first statement in the AFC's primary objective is "to safely and economically construct and operate a net 500 MW", a wide range of alternatives can be considered. Through the inclusion of "selling competitively priced renewable energy", reasonable alternatives such as the Bloom Energy Servers (or fuel cells) can also be considered and the "solar electric" objective allows consideration of photovoltaic panels and parabolic troughs. Even the Applicant's "new" definition of "concentrated solar thermal technology" allows at least two equivalent alternatives, that being parabolic troughs and the addition of molten salt storage systems.

Additionally, because the original AFC objectives were separated, a feasible alternative might be the use of the Applicant's "proprietary technology", (a computer software program that allows heliostat's to track the sun) that still controls the same heliostats assemblies <u>but substitutes photovoltaic panels in the place of the mirrors.</u>

According to Applicant, the primary problem with photovoltaics is, "Intermittency and variability of PV plants, especially those that use fixed-axis technologies that cannot track the sun over the course of the day, brings into question their suitability for large-scale generation." (*See* 2012-02-09 Data Response Set 2A, TN-63608, p. 27).

However, the utilization of tracking systems on PV panels is reported by one company as increasing the efficiency of the panels by up to 45%.(13) This would also comply with many of the AFC's other project objectives that include generating "solar electric" power in the facility design.

All of these alternatives would allow "most of the project's objectives" to meet the substantive requirements of CEQA in relation to the CEC's responsibilities for siting procedures. (*See* California Code of Regulations, §§ 14 CCR 15126.6(a).)

However, if the CEC allows the Applicant to substitute the new definition into the AFC project objectives as they are now requesting, "development of a 500 MW net solar thermal energy project using Applicant's proprietary technology", all other alternatives are immediately eliminated save one. By granting this "all or nothing" demand, there is no possible way that an alternative analysis can conform to "most of the project's objectives" if those objectives are allowed to be squeezed into such a rigid, narrow and inflexible scope.

Applicant seeks to confine interpreting CEQA to mean the FSA and decision-making process must center around an economic and commercial analysis that solely benefits Applicant's financial interests but simultaneously seeks to restrict analysis of adverse social, economic, and environmental impacts to the overall public interest to the greatest extent possible.

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(13) Linak, http://www.linak.com/techline/?id3=2236

While the Applicant demands the FSA conform solely to its business and economic objectives, granting these demands will significantly affect the ability of the FSA to support "informed decision-making" regarding adverse economic, social and environmental impacts to both the general public and/or ratepayer as well as the potentially feasible alternatives that may relieve, reduce or mitigate the multitude of adverse impacts associated with the proposed project.

For example, since Bright Source Energy was founded in 2006, the cost of photovoltaic panels have dropped *so dramatically* that the "reasonably competitiveness" associated with the cost of constructing and operating "power tower" design systems are being seriously questioned in the current solar market industry. In fact, "solar thermal" designs are now being replaced by photovoltaic systems such as in the Blythe Solar Power Project (09-AFC-6C) formerly approved by the CEC in 2010.(14) As a result, it is not surprising the Applicant is desperately seeking to exclude an analysis that would consider a photovoltaic alternative.

G. Reasonably Foreseeable Cumulative Impacts: Death To CEQA

While the proceeding arguments have focused on the site-specific issues and implications related to the Hidden Hills SEGS Application for Certification and the first issue raised in the Applicant's Motion, there are some very reasonably foreseeable long-term consequences and impacts to future siting procedures and proposals the CEC should consider.

First, it will set precedent and open the door for all future Applicant's, regardless of the initially stated objectives, to change, re-arrange, re-write, and re-define what those project objectives should "now be" at any point during the AFC process. This in turn may cause

(14) Notice of Receipt, Petition To Amend The Energy Commission Decision For the Blythe Solar Power Project (09-AFC-6C), 6/28/12, http://www.energy.ca.gov/sitingcases/solar_millennium_blythe/compliance/notices/2012-06-29_NOR_Petition_to_Modify_for_PV.pdf

continually re-writing and alternative analysis to be performed by Staff as they are ordered again and again to "edit" the analysis until it meets whatever objectives Applicant's "re-submit" until they have successfully narrowed the alternative analysis to such a marginal scope that only one "alternative" remains; the Applicant's. In effect, this would allow the CEC to re-write CEQA and circumvent laws designed to balance the protection of the environment and the public interest with the inherent self-interest of an Applicant or even an entire industry.

Second, it will also set precedent and open a floodgate for all future Applicant's to demand that even the smallest or least significant variation of a system, design, concept, idea, piece of equipment, technological component, etc. can be deemed the Applicant's "proprietary system", "proprietary technology", "proprietary facility", and so forth. Consequently, the Applicants will then be able to demand that all analysis and alternatives revolve around their "proprietary whatever's" and they will be able to cite support for this kind of restriction by referring back to the CEC's decision regarding the Hidden Hills SEGS if Applicant's Motion is granted.

Therefore, the Motion's arguments should be dismissed due to lack of merit and denied.

II. ANALYSIS OF REASONABLE AND FEASIBLE ALTERNATIVES

1. STATEMENT OF FACTS

In the Motion's introduction, Applicant states legal errors occurred in certain sections of the PSA that, " fail to present an informational document that will "inform public agency decision-makers and the public generally of the significant environmental effect of a project." (14 C.C.R. § 15121(a).)

The Motion also alleges that, "The PSA's alternatives analyses also include alternative technologies that are not feasible given technological, economic, and timing issues. (*See,* for example, PSA, pp. 6.1-62, 71.)

The introductory allegations are further elaborated upon in the section titled, "B. The PSA Analyzes And Promotes Alternatives That Are Legally Infeasible, In Contravention of CEQA."

Within this text, Applicant states:

> "As explained above, CEQA mandates that an EIR evaluate a "reasonable range" of project alternatives. (14 C.C.R. § 15126.6(a).) In determining this range, the California Supreme Court counsels that "local agencies shall be guided by the doctrine of feasibility" and should not consider alternatives "whose implementation is remote and speculative," because unrealistic alternatives do not contribute to useful analysis. (*In re Bay Delta*, 43 Cal.4th at 1163.)"
>
> "CEQA defines the term "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors." (14 C.C.R. § 15364.) In short, CEQA requires that project alternatives analyzed in the FSA be both reasonable and

feasible. The PSA's proposed PV and Solar Trough alternatives fail to satisfy these mandatory requirements, resulting in consideration of infeasible alternatives. Therefore, the Committee must issue an order ensuring that the FSA does not suffer from the same failure as the PSA."

"The Applicant has provided substantial information demonstrating that neither a PV nor a solar trough alternative is "feasible," as that term is defined by CEQA Guideline Section 15364."

"Applicant may be required to initiate a new CEQA process before another agency."

"Moreover, the HHSEGS Application is before this Commission precisely because the Applicant's solar thermal technology can deliver renewable energy with specific attributes, in particular superior Resource Adequacy value, which these infeasible alternatives cannot. (HHSEGS Data Response Set 2A, Data Responses 137-140.)"

2. FULL RESPONSE

A. Alleged Legal Errors of the PSA

Applicant alleges the PSA failed to present an informational document that will inform public agency decision-makers and the public generally of the significant environmental effect of a project. The Applicant then converts this alleged failure to mean the PSA failed to centralize its environmental impact analysis around the Applicant's commercial, technological and economic interests. The Motion then carries this allegation one step further by expanding on this artificially narrow concept by alleging, "The PSA's alternatives analyses also include alternative technologies that are not feasible given technological, economic, and timing issues."

In order to make these allegations, Applicant sets aside the primary component of CEQA's requirements, the need to take into account environmental factors and impacts. (It also casts off social considerations as well.) The Motion supports its legal arguments by setting aside any legal requirements or constraints outside Applicant's own considerations.

By mandating Staff set aside analysis of the adverse environmental, social and economic impacts of the proposed project design that affect the public at large, which in turns leads to examining potentially feasible alternatives that may be capable of satisfying most of the project objectives while reducing those impacts, the Motion is requesting the Commission restrict the FSA to conform to the economic and commercial interests of the Applicant over any serious analysis of environmental, social or larger economic considerations.

Obviously, Applicant is seeking to create an artificially narrow definition of the interpretation of CEQA in relation to siting procedures in order to exclude significant CEQA criteria from the decision-making process. Granting that exclusion cannot be reasonably considered in conformance with the substantive requirements of CEQA.

The Motion argues that alternative technologies are infeasible because, "The substantial lead time in project development, the required renegotiation of existing PPA's to accommodate a different proprietary technology, and additional permitting requirements alone render the PV and solar trough alternatives incapable of being accomplished in a reasonable period, as is required by CEQA."

With respect to "lead time" for project development, only a general plan has been developed, not a site specific engineering design. As Applicant explained at the Inyo County public meeting in held in Tecopa on August 29, 2012, the actual designs of the facility are not drawn until ***after***

the permitting process is complete for the very reason that *the permitting process will most likely result in design changes*.

Additionally, the Applicant reconfigured large portions and major components of the original design in less than ninety days in the Boiler Optimization Plan, which can hardly be considered an unreasonable time period. This calls into question the accuracy of the Motion's allegation that the "lead time" for project development or design revisions are wholly "infeasible".

Finally, the Motion never includes or defines what additional "permitting requirement's" it is referring to that make analysis of alternative technologies "infeasible" as the CEC *is* the permitting agency and authority and the AFC is the required permitting process.

B. The Legal Feasibility of Conforming To CEQA Without PPA's

In the AFC Project Objectives, Applicant cites one of *their* objectives is,

> "To comply with provisions of power sales agreements to develop a net 500 MW solar generating facility that can interconnect to the CAISO Balancing Authority with the potential of achieving a commercial on-line date as soon as possible, targeted for the first/second quarter of 2015."

However, there is no legal requirement in CEQA that demands a robust environmental review and rigorous alternative analysis must conform to confidential agreements made in pre-negotiated PPA's prior to initiating the CEC regulatory review process.

A developer may proceed with the substantive requirements of CEQA's environmental review and the CEC's siting procedures regardless of the status of its PPA's.

There is no evidence to support Applicant's claims that just because pre-negotiated PPA's contain certain terms, conditions or confidential agreements, it is therefore "illegal" for a CEQA

review process or environmental document to consider alternatives outside the scope of these agreements or that the clauses in these confidential contracts require exclusively confinement of what can be considered "feasible" within the FSA.

As already stated, there appears to be wide latitude in what can be amended in PPA's and the entire process can be reasonably, feasibly, and legally secured in a timely manner.

Additionally, Applicant continues to play word games in the Motion by substituting CEQA's "potentially feasible" with an "edited" version that seeks to redefine CEQA's parameters to just "feasible". This one, tiny edit causes significant changes to CEQA's interpretation.

Another noteworthy consideration is, one of the reasons Bright Source and PG&E submitted amendments to the PPAs for the Ivanpah SEGS was a direct result of changes made to the design during the BLM and CEC permitting and approval processes as described below by Arroyo Seco Consulting, the Independent Evaluator of the amended PPA's(15) :

> "Bright Source approached PG&E with a set of proposed changes to the existing contracts for output from the Ivanpah 1 and 3 projects. To a large extent these changes were driven by changes to the design of the projects that resulted from accommodations that the developer made to mitigate concerns raised during the joint permitting process undertaken by the California Energy Commission and the U.S. Bureau of Land Management." (p. H-51")

(15) Advice Letter 3703-E From State of California Public Utilities Commission To Pacific Gas & Electric, Appendix H, Independent Evaluator Report, Pacific Gas And Electric Bilateral Contract Evaluation, Advice Letter Report Of The Independent Evaluator On Amendments to Contracts With Subsidiaries of BrightSource Energy, Inc., Arroyo Seco Consulting, p. H-51, July 9, 2010,http://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_3703-E.pdf

> "Among other things, the proposed amendments would change the guaranteed commercial operation dates of the project, to July 2013 for Ivanpah 1 and to December 2013 for Ivanpah 3. The contract capacity of Ivanpah 1 would be revised upward to 118 MW from the original PPA's 110 MW, and the contract capacity of Ivanpah 3 would be revised downward from the original PPA's 200 MW to 130 MW. The latter size reduction is consistent with the Biological Mitigation Proposal submitted by Bright Source to the U.S. Bureau of Land Management and the California Energy Commission in February 2010 during the projects' permitting process." (p. H-53)

The fact of the matter is, amendments to the Ivanpah PPA's were the direct results of design changes induced by the environmental review, regulatory requirements and siting decisions, not the other way around as the Motion is now trying to suggest.

These design changes also significantly altered the amount of power Ivanpah 3 had originally intended to produce, clearly indicating that design changes and alternatives that reduce the amount of power produced at the site are both potentially feasible and feasible.

Therefore, Applicant's argument that the FSA committed a "legal error" by not restricting the PSA analysis of alternatives to center around its commercial contracts is not legally justified. The Applicant's attempt to carry this flawed argument further by demanding the FSA must not publish or even consider any analysis or alternative in the decision making process that fails to conform to the legal terms and "post-hoc" conditions of PPA's Applicant was solely responsible for signing prior to initiating the AFC process is both factually and legally incorrect.

Finally, the Hidden Hills SEGS siting location has no feasible "interconnect to the CAISO

Balancing Authority". It has a potentially feasible interconnect to CAISO, contingent on the approval of two separate and complicated proposals that require a) an out of state utility system to join CAISO and, b) a federal permitting process that may or may not approve the installation of gas and transmission lines necessary to make the proposed project feasible. If the CEC is to accept Applicant's proposed CEQA criteria of only analyzing feasible objectives versus potentially feasible objectives, application's such as the one submitted for the HHSEG would have to be summarily rejected on the grounds that no feasible CAISO interconnect currently exists at the project site.

C. Alternatives: Inadequate Data, Invalid And/Or Obsolete Analysis

The Applicant claims that they have provided substantial information regarding alternative technologies that demonstrate their lack of feasibility in relation to the Hidden Hills SEGS, most of which was supplied through data requests responses during the discovery period, which ended April 2, 2012.

What the Motion fails to mention, and the Commission must fully consider is, the alternative information and comparative analysis provided during the discovery period was done *prior* to the Applicant's "Boiler Optimization Plan", a system wide change strategically submitted on the final day of discovery. Therefore, no additional data requests were possible regarding potential changes that may have occurred between Applicant's design revisions and any former comparison analysis or data regarding alternative technologies. Consequently, because adequate data no longer exists due to changes that may have occurred as a result of the Boiler Optimization Plan in comparison to previously reviewed potentially feasible alternatives, all previously submitted information and data must be considered inadequate, invalid and/or obsolete.

For further consideration, within the text of the Boiler Optimization Plan, Applicant provides a comparison "checklist" of affects resulting to the AFC technical disciplines induced by the system wide revisions. Curiously ***absent*** from this checklist was the alternative analysis section and Applicant remained strangely silent on any potential changes, affects or impacts.

Finally, in regards to the Motion's allegations that, "Applicant's solar thermal technology can deliver renewable energy with specific attributes, in particular superior Resource Adequacy value, which these infeasible alternatives cannot", the Motion fails to reference or clearly define what "specific attributes" or the proposed project's "superior Resource Adequacy value" actually is.

1. Alternative Analysis And Strategic Eliminations

First, Applicant provided data regarding alternative technologies that compared a design system that no longer exists, which rendered the previous responses inadequate and/or obsolete. Next, Applicant seeks to strike alternative technologies from the record prior to the Evidentiary Hearings and thus, would effectively eliminate any further opportunity for questions to be raised regarding the adequacy of data or potentially feasible alternatives.

How does this strategy conform to the substantive and legal requirements of CEQA deemed necessary for informed decision-making?

D. A Reasonable Range of Alternatives

The Motion asserts that, "Since the utility-scale PV and solar trough alternatives are legally and practically infeasible, both should be eliminated from detailed consideration in the FSA." Yet the Applicant fails to follow through by defining or substantiating exactly how a utility-scale PV and solar trough alternative are legally infeasible within the guidelines of CEQA, the CEC's

permitting authority or even the majority of its own stated project objectives with the sole exception of using their commercial contracts as the "legal" benchmark.

Additionally, the Motion's provides no evidence that, "Applicant may be required to initiate a new CEQA process before another agency", merely because the FSA ***considers*** alternatives to the proposed project.

1. Ironclad Rules And Defining "Reasonable"

The Motion argues that legal errors occurred in the PSA when Staff included alternative technologies and compared their merits, advantages and disadvantages to the proposed project. Yet, within the Applicant's own Alternative section in the AFC files, Applicant provides discussions, comparisons and merit analysis of eight alternative technologies, including photovoltaic's and parabolic troughs. With respect to these solar technologies, Applicant cites these technologies as being "used in similar projects in California." (*See* AFC Files, 6.0 Alternatives, p. 6-24.)

In the PSA, Staff only carried five project alternatives forward for full analysis; 1) The No-Project Alternative, 2) An Alternative location in Sandy Valley, 3) Solar Power Tower with Energy Storage Alternative (at the proposed site), 4) Solar Photovoltaic Alternative (at the proposed site), and 5) A Parabolic Trough Alternative (at the proposed site).

While Applicant did not consider the AFC files inclusion of alternative technologies such as photovoltaic's or parabolic troughs "illegal" during their AFC analysis, the Motion alleges that when Staff carried these "similar projects" forward for full analysis, it became illegal. Carrying this hypocritical notion one step further, the Motion then goes on to say that, to even consider these similar technologies or any other alternative is so profoundly "infeasible", they should not

even be allowed to be published or disclosed in the FSA or decision-making process in strict opposition to the plain language contained in §§ 20 C.C.R. 1723.5(6)(c) [Any party or person may propose modifications in the design, construction, location, or other conditions to protect public health and environmental quality, to ensure safe and reliable operation, or to meet the standards, policies, and guidelines established by the commission…], despite these technologies meeting most of the basic objectives outlined in the AFC Project Objectives.

First, there is no "ironclad rule" governing the nature or scope of the alternatives to be discussed. CEQA provides guidelines, not absolute rules, in order to allow the decision-making process to have flexibility so that the site-specific and unique context of every proposal may be evaluated on its own merit.

Second, an environmental document does not need to consider every conceivable alternative to a proposed project. However, that does not mean it is illegal to do so.

Because there is no "ironclad rule" on how the lead agency may select a range of project alternatives for examination, there is no merit to the Motion's allegation that Staff's committed a "legal error" in their selection of a range of alternatives ***Staff believes*** are within a reasonable range, ***are*** potentially feasible and meet ***most*** of the basic objectives of the proposed project. (*See* §§ 20 C.C.R. 1723.5(6)(d).)

Additionally, the PSA limited the preliminary range of alternatives carried forward in the PSA to those that "would avoid or substantially lessen any of the significant effects of the project". (*See* §§ 14 C.C.R. 15126.6(f).)

2. The FSA Is Inyo County's CEQA Document

In addition to the FSA being the primary CEQA equivalency document for review and purposes of siting and regulatory purposes, it will also be the CEQA document the County of Inyo will tier its decision-making process to as well. Specifically, the General Plan Amendment and Rezoning changes necessary to ensure County conformance with the AFC and applicable LORS (*See* Exhibit C).

Since the FSA will be the CEQA document for the County, restrictions and/or omissions in the FSA at this stage of the decision making process may cause legal complications to the County if the FSA fails to fully disclose, discuss, analyze or provide mitigation measures relative to the County's requirements, needs and applicable LORS.

E. Staff's Role As An Independent Party

The Motion's allegations continue to fail to be legally supported as outlined in the California Code of Regulations, §§ 20 C.C.R. 1723.5(6)(d), which states:

"The staff shall conduct an *independent* environmental assessment of the applicant's proposals and present a report on its findings at the hearings. The report shall summarize the principal adverse environmental effects of the applicant's siting proposals, evaluate the potential mitigation measures available to the applicant, and assess the feasibility of reasonable alternative sites and *facilities other than those proposed by the applicant*, which the staff believes may substantially lessen or avoid the principal adverse effects of the applicant's proposal. Any person may suggest one or more of such alternatives to the staff and committee for consideration in the staff report." [Emphasis added.]

Clearly, the PSA was well within its legal bounds and in fact, in conformance with Staff's required duties.

With little evidence supporting the assertion's contained within the Motion, Applicant may be attempting to bully, intimidate and/or censor Staff's independent environmental review and alternative analysis prior to the publication of the FSA. As a result, to ensure that Staff is fully protected, the Commission should seriously consider exercising their authority to, "Adopt rules and regulations, or take any action, it deems reasonable and necessary to ensure the free and open participation of any member of the staff in proceedings before the commission" as the Motion may be seeking to inhibit the FSA and Staff's duties to the Commission to provide a fair and objective environmental review and assessment of the proposed project. (*See* Public Resource Code §§ 25218(f).)

F. Motion Seeks To Subordinate The Presiding Members Authority and Duties

The Motion seeks to restrain, inhibit, censor, restrict, re-formulate, re-write, and limit important and even critical information necessary to examine the proposed project, its' impacts, how those impacts can be disclosed, and what mitigation measures can be considered in the decision making process.

The Motion is seeking to do this by targeting the FSA prior to publication. While the FSA is a significant component of what information will be incorporated for consideration prior to issuing the Presiding Member's Proposed Decision, it does not represent the Commission, it has no authority to make decisions nor can its publication cause legal action to be taken against it solely by its release for review.

The Motion seeks to argue that it is ***Staff*** who will determine the outcome of the proceedings, not the Presiding Member. Thus, the Motion's allegations seek to arbitrarily transfer the decision making authority of the Presiding Member to Staff and the FSA.

The Presiding Member's Proposed Decision shall contain the committee's ***responses*** to significant environmental points raised during the application proceedings, not the FSA. (Emphasis added.) (*See* §§ 20 C.C.R. 1725.5).

If the FSA is prohibited from publishing an independent assessment and review of the proposed project, is censored from fully disclosing its impacts, is restricted from examining alternatives and potentially feasible mitigation measures, what will the Presiding Member have to base its responses and decisions from?

III. NO PROJECT ALTERNATIVE

1. STATEMENT OF FACTS

In the Motion's Statement of Facts, Applicant expands upon their summary assertion under the heading, "C. The Alternatives Section Violates CEQA Because The No Project Alternative Arbitrarily Fails To Consider The Project Site's Existing Land Use Entitlements And What Would Reasonably Be Expected To Occur In The Foreseeable Future If The Project Were Not Approved."

Arguments used to support the Motion's allegations include, "Unlike all other alternatives, however, the No Project alternative must be evaluated irrespective of its feasibility" and "In assessing the No Project alternative, CEQA requires the FSA to analyze 'what would reasonably be expected to occur on the Project Site in the foreseeable future if the Project were

not approved, based on current plans and consistent with available infrastructure and community services." (14 C.C.R. § 15126.6(e).)"

The Motion then provides the following description of the project site as, "The Project Site is currently subdivided into 170 individual parcels that range in size from 2.5, 20 and 40 acres, and can be developed under current zoning, as single family residences, farms, and livestock ranches. (Inyo County Code § 18.12.020.) Because there is no municipal- or county-operated water or sewer service to the property, applicable law permits private groundwater wells and septic systems to serve these needs, just like other existing residential lots in the Charleston View area. (Inyo County Code §§ 14.28.050, 15.24.020.) No further discretionary permits are required for residential development of these 170 parcels."

2. FULL RESPONSE

A. History of Development Attempts In The Proposed Project Area

The proposed project site is located on "one of the largest holdings of private land in the Pahrump Valley" originally totaling about 18,000 acres and now known as Hidden Hills. In 1941, Roland Wiley took possession of the land as a result of legal entanglements resulting from the death of the former owner, John Yount. (16)

Around this period, Yount's development in the area was described as "[he] had planted alfalfa on the property but much of it had died because the water was so close to the surface" and "there were about 400 cattle on the ranch, and they were in poor condition because of lack of good feed." (*Id*).

(16) A History of Pahrump Nevada, R.D. McCracken (1990), p. 71-76

For the next 50 years, Wiley held on to the majority of the land as an investment but also attempted to develop the area on several fronts, none of which succeeded. In the 1950s, he tried to create a Game Preserve stocked with 5,000 pheasants in efforts to promote a hunting destination, but failed. (*Id*.) This was followed by the installation of a large network of gravel roads used to promote land sales aimed at developing the area for both residential and agricultural use. This too generally failed but the gravel roads still exist in and around the proposed project site. (*See* Exhibit D)

The only success story of development in the area occurred when a portion of Wiley's land was sold to a developer named Bob Fisher, who installed transmission lines and a community water system in the area now known as Charleston View.

In the 1980's, Wiley sold off additional land to the largest real estate development company in the Pahrump Valley at the time, Preferred Equities Corporation (PEC). PEC established a sales office directly adjacent to what is now being developed as St. Theresa in order to make a concentrated push to develop the Charleston View area, an effort that also ultimately failed.

Over the years, Wiley also attempted to initiate and/or negotiate various agricultural projects such as the area now known in the AFC files as "Orchard Well". There was also a proposal to develop large fields of alfalfa and/or cotton on approximately 12,000 acres in 1980 but it too was never approved.(17)

In 1993, Wiley passed away and tax attorney Stephen Scow has primarily manages the assets for the Wiley Trust Fund and its related affiliates ever since.

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(17) Environmental Impact Report: Hidden Hills Agricultural Development Project, Prepared for Inyo County by Boyle Engineering, Final Analysis, 8/19/80.

In 2005, Hidden Hills was the subject of three separate but concurrent development proposals, all of which hoped to exploit the area's proximity to Las Vegas by creating golf courses and large housing tracts. None of these proposals ever reached fruition due to insufficient water, lack of available infrastructure and the area's potentially hazardous flood zones.

Finally, in 2010, the Wiley Trust Fund "pre-selected" Bright Source and presented them with a "package" aimed at promoting development in the area for solar energy.(18)

Logic suggests that since all previous efforts to develop the area for both residential and agriculture uses have failed due to the existing environmental conditions, it is highly likely that representatives from the Wiley Trust Fund saw the current solar development bubble as possibly their last hope for reaping any sort of large scale profit from an area that had consistently failed to be deemed "feasible" over the course of a wide range of previous planning or development efforts.

B. Available Infrastructure: No Service

The Motion presents arguments based on existing zoning at the project site, which allows for the development of single family residences, farms, and livestock ranches on 170 parcels. Since no other large scale development plans are reasonably foreseeable and large scale residential and agricultural development plans have been determined to be infeasible in the past, the only potential development possible on the project site using the Motion's "build" scenario is if the contingent parcels now controlled by the Wiley Trust Fund and its related affiliates are broken apart and sold off individually in piecemeal fashion.

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(18) "Bright Source Energy Files Application For Solar Plant", M. Waite, Pahrump Valley Times, August 10, 2011. http://pvtimes.com/news/bright-source-energy-files-application-for-solar-plant/

Given the fact that less than 4,000 acres have been disposed of since Wiley first assumed control of the land in 1941 and little to no land has been sold since his passing in 1993, the willingness of the current owner(s) to break up these parcels for individual sale in the reasonably foreseeable future is both highly remote and speculative.

In order to for these parcels to be developed as the Motion suggests, first the Wiley Trust Fund and its related affiliates would have to initiate large scale real estate sales to make these properties available as individual parcels. There is no historical or current evidence available that suggests the owner(s) of the property of the proposed project site are looking to dissolve one of the largest contingent tracts of land available in the Pahrump Valley for merely "single family residential dwellings, farms or livestock ranches.".

Additionally, buyers would have to be both financially capable and willing to take on the significant challenges associated with developing this raw land during an economically depressed real estate market that currently offers highly competitive pricing and value.

However, in the event that this highly improbably series of events were to occur at some distant point in the future, there is one other significant point regarding the potential feasibility of the Motion's no project alternative "build" scenario that must be considered, this being the utter lack of infrastructure that is critically necessary in order to make this speculative scenario even remotely possible.

While there is no denying the Motion contains the partial truth regarding a property owners right to drill a well or install a septic tank or the likelihood that Inyo County would issue a permit to drill a well, the critical infrastructure component required to make this even remotely feasible is wholly absent throughout the entire project site, this being any electric power supply or

transmission lines necessary to service new wells in the area. No power, no water; it's that simple.

The ability to access electrical power throughout the entire area, including in Charleston View "proper", has proven to be a highly formidable task. I know of only one individual that was able to successfully jump through all the regulatory hoops and fees required to obtain electrical service in the last decade. Though he had access to an existing transmission line, he estimated it cost him close to $10,000 dollars before it was all said and done, which also included a one time school tax levied by Inyo County. While that property had access to an existing transmission line, the proposed project site has no existing transmission lines and therefore, no access to the power necessary to make all the individual wells operational as the Motion suggests.

Historically, Southern California Edison has been unwillingly to expand on the electrical power supply or add additional transmission lines in the area. This is one of the main reasons the area has become prone to "squatters" as referred to in the Inyo County letter to the CEC dated February 16, 2012, regarding Socio-Economic Impacts To Inyo County (*See* Memo From Inyo County Health And Human Services). The letter also described the area of the proposed project site as "sparsely populated, and presently only very lightly served by County agencies and departments from offices and stations located at significant distances from the site."

Not only is the area "very lightly served" with respect to services provided by the County, it also has no phone service (unless cell phones are utilized and even then, reception is highly intermittent), limited to no internet access and extremely limited television reception. This results in additional expense for those who might consider tackling the inherent obstacles of attempting to develop the proposed project site for single family residential use.

As a result, while it is "conceivable" that the 170 parcels could be developed at some point in the future, given the long list of inherent obstacles and adverse conditions that must be overcome in order for this to occur, it is highly remote and speculative to consider the Motion's "build" scenario as reasonably foreseeable or remotely feasible under existing conditions.

Under CEQA guidelines, the "no project alternative" analysis must be based on what can be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services (*See* §§ 15126.6(e)(2). It is not obliged to examine "every conceivable variation" of the no project alternative (*See* §§ 15126.6(a) and (Residents Ad Hoc Stadium Com. v. Board of Trustees (1979) 89 Cal.App.3d 274, 286-288, 152 Cal.Rptr. 585) and whose implementation is remote and speculative.

Just because the proposed project site is currently zoned for single-family residential use, farms and livestock ranches doesn't mean it is reasonably foreseeable or feasible to "build" in the existing environmental as existing conditions, resources, infrastructure and available services significantly prohibit such types of development at the site for over 60 years.

Naturally available feed is not sufficient to support livestock ranches, water is insufficient to support large scale agricultural development (and most any other kind of development), power is unavailable to service wells for residential use and the Wiley Trust Fund and its associated affiliates would have to first initiate a large scale real estate action to make these properties available on an individual basis.

As such, the arguments used in the Motion's "no project alternative" are based on partial truths used as a springboard to develop a highly remote and speculative "build" scenario that is not

supported by either historical or current evidence, by the currently available infrastructures or services and cannot be considered reasonably foreseeable or even potentially feasible any time in the near or distant future.

Therefore, the Motion's attempt to limit the FSA's analysis of the "no project alternative" by creating a highly remote and speculative "build" scenario should be dismissed from further consideration and denied due to lack of merit.

IV. EXCLUDING ANALYSIS OF PROJECT IMPACTS IN NEVADA

2. STATEMENT OF FACTS

In the Motion's Statement of Facts, Applicant expands upon their summary assertion under the heading, "D. The PSA Improperly Analyzes Environmental Impacts Of Project Components Located In Nevada That Are Expressly 'Exempt" From CEQA".

Arguments used to support the Motion include:

"The protestation in the PSA that "CEQA does not stop at the border" is simply incorrect. (PSA, p. 1.1-4.) In fact, CEQA expressly exempts from further consideration projects or portions thereof located in neighboring under the exact fact pattern in the HHSEGS project case. Specifically, Public Resources Code section 21080 expressly *exempts* from CEQA review project components located in another state -- if those project components will be the subject of environmental review under the National Environmental Policy Act (NEPA) or a similar state law."

"As set forth in detail in Exhibit B, the PSA ventures into Nevada extensively in the Biological Resources, Cultural Resources, Growth-inducing Impacts, Land Use, Noise and Vibration, Soils

& Surface Water, and Visual Resources sections. One answer to the question of why is the PSA nearly 1,400 pages long is plainly that the PSA has ventured far and wide from the project site in California to analyze project components located in Nevada. This excursion into Nevada is inconsistent with CEQA's express exemption."

"In this case, the BLM will conduct a thorough review under NEPA of potential environmental impacts from the HHSEGS linear facilities that will be located in Nevada. These linear facilities are not expected to result in emissions or discharges that will have a significant effect on California. Therefore, pursuant to Section 21080(b)(14), these portions of the HHSEGS project are wholly exempt from review under CEQA. Since these out-of-state components are expressly exempt from CEQA, the Committee should order that all analysis of the environmental effects of such components located in Nevada be stricken from the FSA."

"Further, the Commission may exclude from detailed consideration an alternative located outside of its decision making authority as infeasible. (*See, Goleta Valley*, 52 Cal.3d at 575 (upholding agency rejection of alternative outside of agency's permit jurisdiction).)"

2. FULL RESPONSE

A. Scope of NEPA And BLM Review

The Motion argues that the PSA improperly analyzes impacts of the proposed project in Nevada that are currently undergoing NEPA review, which results in violations as set forth by the California Code of Regulations §§ 14 CCR 15277 and Public Resources Code §§ 21080.

However, the Motion sets forth as series of flawed arguments to support these allegations that begins by "mixing apples and oranges" of two distinctly different subject matters and treating them as if they are one and the same.

The first subject matter is the separate NEPA analysis of the proposed gas and transmission lines. The Motion gives predominately superficial examples, including Exhibit B, in order to introduce this connective element to the proposed project, which is then used as a contextual base to launch a set of distorted allegations and flawed arguments put forth with the intent of requiring the CEC to prohibit Staff and the FSA from analyzing *any and all impacts* of the proposed project to Nevada – period.

The Motion's arguments then seeks to rest by connecting *any element associated with analyzing the proposed project impacts to Nevada* with BLM's NEPA review of the gas and transmission lines. Simultaneously, the Motion presents no evidence to support the assertion that impacts from the proposed project to Nevada are actually being analyzed under NEPA or under any other Nevada law or Nevada based agency.

One such glaring example of this is how the Motion equates the length of the PSA with Staff's analysis of potential impacts from the project to Nevada, when it states: "One answer to the question of why is the PSA nearly 1,400 pages long is plainly that the PSA has ventured far and wide from the project site in California to analyze project components located in Nevada. This excursion into Nevada is inconsistent with CEQA's express exemption."

CEQA does not prohibit analysis of the project's impacts into Nevada if those impacts are not being reviewed under NEPA or under any other law or agency in Nevada.

According to the Scoping Notice published on BLM's website on October 11, 2011, BLM is *not* conducting a NEPA analysis of the impacts of the proposed project in either California or Nevada, only the gas and transmission lines. (*See* Exhibit E)

In fact, the available evidence clearly supports a contrary position taken by BLM as is readily apparent in the July 16, 2012, comments regarding the PSA. These comments specifically request a wide variety of analysis to be further incorporated in the FSA - including potential impacts of the proposed project to Nevada and its resources.

The BLM comments also supported various recommended mitigation measures in the PSA that resulted from Staff's inclusion of potential impacts of the proposed project to Nevada, measures specifically tailored to protect Nevada resources. BLM went even further by also providing additional recommendations for analysis and mitigation that sought to encourage Staff ***not*** to scale back on any analysis or proposed mitigation measures as the Motion is trying to suggest but instead, encouraged Staff to expand on them in the FSA.

In fact, the Motion references and supports exactly this position when it quotes the PSA in Exhibit B, Growth Inducing Impacts (p. 4.4-2), which states: "The BLM has raised concerns about impacting the nearby mesquite thickets during construction of the gas pipeline and transmission line." Who did the BLM raise those concerns too? CEC Staff.

Why would BLM raise concerns to CEC Staff if these issues are being addressed in BLM's NEPA review?

In other words, BLM has not presented any evidence that "CEQA stops at the border" because of a NEPA review of the gas and transmission lines. In fact, the evidence plainly indicates their position is in direct opposition to the allegations put forth in the Motion.

B. Descriptions Versus Analysis

The AFC files and subsequent documents are a cornucopia of both descriptions and analysis

regarding the proposed projects impacts *to* Nevada, *from* Nevada and *throughout* Nevada. In fact, the entire project hinges on Nevada, its resources, its services, its facilities, its infrastructure, and of course, Nevada's inability to protect itself from the CEC's sole jurisdiction regarding project approval and the Conditions of Certification.

The Motion and Exhibit B continually confuse *describing* components of the proposed project with *analyzing* the impacts of the proposed project with a few noted exceptions, most of which can be reasonably explained.

One such example of *confusing descriptions* of the proposed project *with analyzing impacts* of the proposed project occurs in Exhibit B, Cultural Resources (p. 5), which states:

> " The available archaeological evidence indicates a great deal of variability in the Native American use of different portions of the project area through time. A relatively sparse veneer of toolstone acquisition debris on the present surface of the proposed facility site indicates a transitory Native American use of that area, while the presence and moderate frequency of fire pit ruins, stone tool production and maintenance debris, and fragmentary stone tools demonstrate a much more extensive use of the discontinuous mesquite woodland along the fault zone to the immediate northeast of the facility site, through which the transmission line and natural gas pipeline for the proposed project would be built."

Here, Staff is describing the existing environmental conditions in the project site vicinity and merely includes a *description* of the fact that the proposed transmission lines and natural gas pipeline will run through a portion of this area. *There is no analysis of the impacts* that the proposed gas and transmission lines will have on these resources, only a description of these components as occurring in the project vicinity.

In other examples presented in Exhibit B, Staff must both describe and analyze certain components of the proposed project because they cause direct and indirect impacts to resources based in California such as was found in Exhibit B's "Noise and Vibration (p. 4.7-11). Here, it states: "All water pipes and gas pipes would be underground and therefore silent during plant operation. Noise effects from electrical connection lines typically do not extend beyond the lines' right-of-way easements and would be inaudible to receptors."

For the record, those "receptors" are the residents who live in California that will be subject to the impacts of the proposed project Staff is required to analyze under CEQA.

It also appears that Applicant is so desperate to grasp at any straw to support the flawed arguments presented in the Motion that they included a PSA reference that committed the "crime" of mentioning a "gas pipe" that would lie underneath the towers located at the center of the project site. With respect to the right-of-way easement the PSA is discussing, it sits directly on the state line, just a few hundred feet from some of those same "receptors", a.k.a., the residents, the Motion seeks to strip analysis (and subsequent protection) from in the FSA review.

Additionally, some of the Staff analysis included in the PSA regarding impacts from the gas and transmission lines are a direct result of Applicant submitting a proposal to change the location of various components to Nevada in the Boiler Optimization Plan. After submission, Applicant then turned around and stated they could change these components back to California. As of today, it is still unclear just where exactly the gas and transmission lines will be located.
The Applicant's confusion and lack of clarity resulted in requiring the PSA to analyze a) proposals that may or may not exist, b) analyze impacts to two different set of circumstances and locations, and, c) analyze components and impacts that may or may not be located in California.

Of final note, CEQA requires the proposed project be analyzed in conformance with federal laws. Federal laws apply to all states and all agencies, regardless of their jurisdictional boundaries. As such, Staff has an obligation and legal duty to analyze, disclose impacts and report on conformance and compliance of the proposed project with federal laws.

Some of these laws include: The Migratory Bird Treaty Act, The Bald and Golden Eagle Protection Act, The Endangered Species Act, The Wild Free-Roaming Horse and Burro Act, The Clean Water Act, The Clean Air Act, The Antiquities Act of 1906, The National Historic Preservation Act, The Archaeological Resource Protection Act, The Native American Grave Protection and Repatriation Act, etc. Therefore, Staff cannot be legally prohibited from analyzing and recommending mitigation measures that may apply to Nevada if they are required for conformance with federal law.

For all these reasons, the Motion's arguments should be dismissed from further consideration due to lack of merit and denied.

C. CEC Is The Lead Agency

According to the CEC Hidden Hills SEGS website page, the CEC is the lead agency for the facility certification process. The Lead Agency is the public agency that has the greatest responsibility for preparing environmental documents under CEQA, and for carrying out, supervising, or approving a project.

Under CEQA, when a project involves two or more public agencies, ordinarily only one agency can serve as the lead agency. CEQA thus distinguishes lead agencies from responsible agencies. Regarding this distinction, the CEQA guidelines provide that when a project involves two or more public agencies, the agency carrying out "the project" shall be the lead agency even if

the project is located within the jurisdiction of another public agency. (*See* 14 C.C.R. §§ 15051(a), 14 C.C.R. §§ 15051(b)(1), 14 C.C.R. §§ 15051(c).)

Under these principles, courts have concluded that the public agency that shoulders the primary responsibility for creating and implementing a project is the lead agency, even though other public agencies have a role in approving or realizing it. (Eller Media Co. v. Community Redevelopment Agency (2003) 108 Cal.App.4th 25, 45-46, 133 Cal.Rptr.2d 324 [community agency charged with responsibility for redevelopment measures within designated area was lead agency regarding billboard placement, even though city issued building permits for billboards]; Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation & Park Dist. (1994) 28 Cal.App.4th 419, 426-429, 33 Cal.Rptr.2d 635 [state agency that determined duck hunting policy, rather than wildlife district that enforced it, was lead agency regarding duck hunting policy]; City of Sacramento v. State Water Resources Control Bd. (1992) 2 Cal.App.4th 960, 971-973, 3 Cal.Rptr.2d 643 [state agency that created pesticide pollution control plan, rather than water district that enforced it, was lead agency regarding plan].)

By every known criteria, the CEC is the lead agency of the proposed project. A NEPA review of the coordinating gas and transmission lines does not subordinate the CEC's responsibilities to CEQA, to conduct adequate project review or strip away its authority as the lead agency charged with its supervision, approval or denial.

With respect to the Motion's claims that, "[The] Commission may exclude from detailed consideration an alternative located outside of its decision making authority as infeasible. (*See, Goleta Valley,* 52 Cal.3d at 575 (upholding agency rejection of alternative outside of agency's permit jurisdiction).)", Applicant provides no reasonable trail of logic to this inclusion or

evidence to support its purpose in the Motion. The CEC has statutory responsibility and permitting jurisdiction in California for licensing thermal power plants 50 megawatts or larger which includes being able to consider, and require as a Condition of the Permit, any change, modification, addition, subtraction, alteration or component of any facility subject to their licensing procedures. (*See* Public Resource Code §§ 25514(d) and §§ 25523(a).)

D. Analysis Supports Jurisdictional Cooperation And Compliance

When Applicant first introduced the idea of filing the "Motion In Limine" to the Committee at the August 16, 2012, Status Conference, Applicant's attorney, Mr. Harris, provided personal musings about some of the "legal thresholds" and complications the proposed project site invoked when he stated, "As we've described it in the past, this project's location is sort of a law school exam. It's sort of perfect. There are state issues, there's federal issues, it's right on the California/ Nevada border, all kinds of fun stuff." (p. 15-16)

So what does this actually mean? It means the Applicant believes it is the "perfect" legal storm that can be used to pit one agency against another, invoke legal jurisdictional restraints across state, federal and private property lines, prohibit appropriate review and public disclosure in any single document related to the proposed project and its impacts (such as is now occurring with the "Motion In Limine"), as well as attempting to prevent the incorporation of analysis (and subsequent mitigation measures), that may protect shared resources by citing a "lack of authority" at every stage along the way.

And here is the fact of the matter – Applicant might be successful if the CEC is not careful. How will they do it? Just like this……..

The BLM *has no jurisdiction to impose mitigation measures on private property*. The BLM also lacks jurisdiction with respect to the State of Nevada's water right laws. Even BLM has to apply to the Nevada State Engineer for appropriation of water rights. Therefore, because the proposed project site is located in California, if approved, the project may then tap directly into the Pahrump Valley Groundwater Basin without any accountability to Nevada or to the BLM.

One the other hand, *only* the CEC can issue Conditions of Certification on the private land the proposed project will be sited on. In turn, these Conditions may help protect Nevada resources such as the Pahrump Valley Groundwater Basin, as well as resources under federal management for the benefit of people all across the Nation such as the Stump Springs Area of Critical Environmental Concern (ACEC).

If the Applicant's Motion is successful in prohibiting the FSA from analyzing the proposed project's impacts to Nevada, then the CEC will be unable to consider *all of the environmental impacts* associated with the proposed project because some of them will occur across the state line. This in turn will prevented the disclosure of, as well as recommendations put forth in the FSA, to mitigate potential adverse project impacts. Thus, the BLM, the State of Nevada, the town of Pahrump, and the surrounding biological, cultural and environmental impacts will stand without any representation whatsoever and no measures can be put in place to protect them from potentially adverse impacts or effects.

For example, in Water Supply-8, Staff recommends including water monitoring wells in two locations that would be sited on BLM land (BLM Mesquite Bosque Well 1 & 2). The BLM went further in their comments by requesting additional wells be placed in the monitoring network proposed by Staff in the PSA. Specifically, BLM requested:

> "We recommend that additional wells be included in the monitoring network. East of the project site on Nevada BLM land, we suggest five additional monitoring wells to supplement the CEC-proposed wells. Specifically, the BLM suggests two additional wells directly up-gradient from Power Block 1 and two additional wells directly up-gradient from Power Block 2 to supplement CEC-identified BLM Mesquite Bosque Wells 1 and 2, respectively. These wells should be placed at regular intervals 0.5 to 1.5 miles from the project boundary. One additional well should be installed east of Stump Springs ACEC….."

In Bio-24, Staff recommends consultation with the BLM Nevada and California State leads for Soil, Water, Air and Riparian Programs, and the BLM Southern Nevada District Hydrologist and Botonist. network between California and Nevada.

If the Motion is granted, the FSA could no longer include this recommendation as a Condition of Certification – even though the BLM has specifically requested that Stump Springs be included in the water monitoring plan as well as recommending additional wells be added to the PSA's initial well monitoring network proposal.

So how does the CEC, the BLM and California and Nevada officials resolve these "legal thresholds" and jurisdictional dilemma's in order to protect the public trust?

One idea is to impose a Condition of Certification that a Memorandum of Understanding (MOU) be developed between the CEC and the BLM to ensure there is no lapse in resource protection due to questions surrounding legal jurisdiction or authority. The MOU could include agreements for interstate monitoring of resources as well as establishing significant thresholds that could trigger appropriate mitigation measures.

This same premise could be used to negotiate agreements between Nevada and California, including monitoring and compliance with the Nevada State Engineer regarding precious water resources in an area historically and predominately utilized by Nevada residents. (*See* 14 C.C.R. §§ 15051(d).)

However, these options will not be possible if the FSA cannot appropriately disclose the proposed projects impacts for consideration in the decision making process.

If the CEC grants the Motion's request to eliminate any Staff analysis of impacts to or from Nevada, then they will inadvertently prevent viable solutions or options that are still currently available to protect the public trust and shared public trust resources in an environment that does not distinguish itself between any of these real or imagined borders.

On the other hand, if the Motion is denied, then the FSA may proceed with analysis that discloses the environmental impacts in the vicinity of the proposed project, which can then provide a foundation for an informed decision-making process. Analysis of the impacts in the FSA can then be used to support the Presiding Members Proposed Decision and Conditions of Certification that allow all affected state and federal agencies to negotiate agreements and have a say in how to mitigate any potential adverse impacts directly or indirectly resulting from the proposed project, should it be approved.

Only the CEC has jurisdictional authority on the private land the proposed project may be sited on. It is well within the CEC's jurisdiction to negotiate agreements and require consultation with other agencies, including state and federal agencies that have potentially overlapping concerns and issues – but perhaps not jurisdictional authority - regarding the potential, direct and indirect impacts of the proposed project to shared resources. In fact, if the proposed project is approved,

coordination with Nevada will be essential for making the proposed project even marginally feasible.

Furthermore, "in considering applications for certification, the commission shall give the greatest consideration to the need for protecting areas of critical environmental concern, including, but not limited to, unique and irreplaceable scientific, scenic, and educational wildlife habitats; unique historical, archaelogical, and cultural sites; lands of hazardous concern; and areas under consideration by the state or the United States for wilderness, or wildlife and game reserves." [Emphasis added.] (*See* Public Resource Code §§ 25527(b))

So one of the questions that ranks high in my mind at this time is, why would the CEC be willing to abdicate its duties and authority by granting the Motion when no evidence has been presented in the Motion or any currently available documents to indicate they are required too?

E. A Proposed Alternative

In the event the CEC ultimately decides the Motion has legal grounds to prohibit, censor, restrict and/or deny any Staff analysis of the proposed project's impacts in the surrounding vicinity, including Nevada, and believes it must legally grant the Motion's request to strike from the record any analysis of impacts that may occur outside the CEC's jurisdiction, the following alternative is presented for consideration and potential adoption in the CEC's responsive decision to the Motion.

All the available data in the AFC files and subsequent documents clearly illustrate how the utilization of Nevada and its resources are essential to the construction and operation of the proposed HHSEGS facility.

If Staff and the FSA cannot analyze or mitigate impacts from the proposed project due to jurisdictional limitations of the CEC and the Motion's request to strike all references to impacts to Nevada must be legally granted, then the CEC should require the FSA to equally strike all references of Nevada as well.

This would allow the FSA to be limited to only those components of the proposed project that the CEC has jurisdiction over and/or are located exclusively in California. This would require that vast sections of the AFC files, subsequent documents and all Staff analysis that deals with Nevada based components required to serve the project be stricken from the record in the FSA.

This would include:

a) No traffic analysis on Nevada roadways,

b) No Nevada based waste treatment, hazardous waste or waste disposal facilities.

c) No Nevada based housing facilities.

d) No Nevada based workforce.

e) No Nevada based socio or financial impacts.

f) No Nevada based water data.

g) No Nevada based land for desert tortoise relocation.

h) No Nevada based mitigation land.

i) No Nevada based infrastructure components.

j) No Nevada based transmission, gas lines, right-of-ways, or utility corridors to serve the proposed project, only California locations and availability.

k) No Nevada based growth-inducing impacts.

l) No Nevada based reasonably foreseeable projects in the cumulative impact analysis.

m) No Nevada based fire, medical or emergency services.

n) All maps, project description locations and any other illustration, depictions or analysis of the "zone of impact" included in the AFC files or subsequent documents that mention Nevada, depend on Nevada, or analyze Nevada in any way must be stricken from the FSA so that Staff may analyze the proposed project exclusively from California based data and within the constraints of the CEC's jurisdiction and authority.

A much shorter version is, the proposed project is completely infeasible without extensively utilizing Nevada during both the construction and operational phase. The Motion's intent to heavily utilize Nevada and its resources while simultaneously restricting analysis of impacts to Nevada *is highly predatory, to say the least*.

Therefore, in efforts to protect the public interest and public trust values from a "legal threshold" that may inadvertently allow corporate predation on the public due to "cracks" in the current regulatory system, and the CEC determines they must legally withdraw any impact analysis or references to Nevada, then they should consider this alternative proposal to accommodate both the requests of the Motion (to deny analysis of impacts and mitigation measures related to Nevada) while simultaneously protecting the public interest by striking from the record any references to Nevada in the FSA or any other component not related to the CEC's exclusive jurisdiction and/or the substantive requirements of CEQA.

With respect to how this alternative protects the public interest and shared public trust values between both Nevada and California as well as federally protected resources, I believe that striking any reference of Nevada from the record in the FSA and Staff evaluating the proposed

projects feasibility based solely on California based data, services, and infrastructure components would render the proposed project so infeasible, the Application for Certification would have to be summarily rejected in its entirety.

However, I will admit, this alternative proposal still doesn't address BLM's specific requests to Staff regarding recommendations in the FSA to protect resources in Nevada under BLM's jurisdiction. I haven't been able to figure out a way to exclude BLM's comments, issues and concerns from the FSA and Conditions of Certification equation other than, BLM obviously believes the NEPA review the Motion refers to is not addressing these issues and/or lacks authority to implement them and that is why they are asking Staff and the CEC to address them instead.

EXHIBIT A

http://www.brightsourceenergy.com/how-it-works

BrightSource's system uses proprietary software to control thousands of tracking mirrors, known as heliostats, to directly concentrate sunlight onto a boiler filled with water that sits atop a tower. When the sunlight hits the boiler, the water inside is heated and creates high temperature steam. Once produced, the steam is used either in a conventional turbine engine to produce electricity or in industrial process applications, such as thermal enhanced oil recover (EOR). By integrating conventional power block components, such as turbines, with our proprietary technology and next-generation solar field design, projects using our systems are able to deliver cost-competitive, reliable and clean power when needed most. In addition, by integrating our technology with natural gas or other fossil fuels through a process referred to as hybridization, projects using our systems are able to further increase output and reliability.

Proprietary Technology

http://www.brightsourceenergy.com/elements-of-a-breakthrough

- Solar Receiver/Boiler: Concentrated sunlight converts water in a boiler to high-temperature steam.
- Heliostats: Software-controlled field of mirrors concentrate sunlight on a boiler mounted on a central tower.
- Optimization/Control Software: Optimization software and solar field integrated control system manage heliostat positioning to optimize concentrated sunlight on the boiler.

EXHIBIT B
Western Power Trading Forum
Comments On Draft Resolution E-4522
August 16, 2012

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August 16, 2012

Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Attention: Tariff Unit

Re: Western Power Trading Forum Comments on Draft Resolution E-4522

Dear Sir or Madam:

On July 20, 2012, Draft Resolution E-4522 of the Energy Division addressing Southern California Edison Company ("SCE") advice letter (AL) 2339-E, as amended by AL 2339-E-A, AL 2339-E-B, AL 2339-E-C and AL 233-E-D was circulated to interested parties for comment. The accompanying cover letter directed that comments were due on August 14, 2012 and that the matter will be on the agenda at the August 23, 2012 Commission meeting. A subject index listing the recommended changes to the Draft Resolution and an appendix setting forth the proposed findings and ordering paragraphs is attached hereto as Appendix A to these comments.

The Draft Resolution addresses SCE's supplemental Advice Letter 2339-E-C, which modifies five Power Purchase Agreements ("PPAs") between BrightSource Energy and SCE. AL 2339-E-C was submitted to the Commission on November 28, 2011, seeking approval of five 200 megawatt (MW) solar thermal facilities for a total of 1,000 MW. On June 8, 2012, the Natural Resources Defense Council, Defenders of Wildlife, and the Sierra Club (collectively, the "Environmental Groups") submitted a joint protest letter objecting to the approval by the Commission of the Siberia Power Purchase Agreements, as requested by SCE in Advice Letter 2339-E dated April 6, 2009, and as amended most recently by Advice Letter 2339-E-D on February 1, 2012. On June 22, 2012, the Western Power Trading Forum ("WPTF")[1] added its protest in response to a June 15, 2012 email sent by Jason Simon of the Energy Division that notified interested parties that Energy Division was re-opening the protest period for the subject Advice Letter 2339-E-C.

[1] WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

The Draft Resolution denies cost recovery for PPAs associated with the Solar Partners XVI (Rio Mesa 1) and Solar Partners XVII (Rio Mesa 2) projects that propose to utilize solar power tower technology without molten salt storage. The Draft Resolution concludes the Rio Mesa 1 and 2 projects "compare poorly on price and value relative to other solar thermal projects offered to SCE at the time the amended and restated PPAs were being negotiated and executed"[2] as other offers were said to be "materially higher in value."[3] Conversely, the Draft Resolution approves PPAs for the three Siberia PPAs that employ solar power tower technology with molten salt storage ("Storage PPAs").

The Draft Resolution states that the Energy Division evaluated the proposed PPAs on ten different criteria. Among these criteria were consistency with SCE's 2011 RPS Procurement Plan; price reasonableness and value; the Independent Evaluator's requirements and recommendations; and Procurement Review Group ("PRG") participation. The July 22 cover letter that accompanied the Draft Resolution states that "Comments shall focus on factual, legal or technical errors in the proposed Draft Resolution." Accordingly, WPTF believes that the Draft Resolution incorrectly or fails to apply several of the criteria listed as important to review of the PPAs and therefore is not only internally inconsistent, but also makes factual errors and omissions that must be corrected in the final Resolution to be issued with regard to Advice Letter 2339-E-C.

a. The Draft Resolution Incorrectly Concludes the Rio Mesa 1 and 2 and Sonoran West Power Purchase Agreements are Consistent with the SCE 2011 RPS Procurement Plan

WPTF believes that the conclusion that the PPAs are consistent with SCE 2011 RPS Procurement Plan is incorrect. Specifically, the Draft Resolution is internally inconsistent as to the dates of commencement of deliveries. First, at p. 9 it says, "Siberia 1 and Siberia 2 are proposed to interconnect at the Pisgah Substation and reach commercial operation by December 31, 2016." Next, at p. 10 it says, "Sonoran West is proposed to interconnect at the Colorado River Substation and reach commercial operation by March 31, 2017." Nevertheless, at p. 12 it concludes, "All of the BSE Contracts are contracted to initially deliver energy and capacity beginning in late 2015, which coincides with SCE's preference outlined in its 2011 RPS procurement Plan." Therefore the conclusion that "the BSE Contracts are consistent with SCE's 2011 RPS Procurement Plan appears to be incorrect as the three approved PPAs do not coincide with SCE's preference for deliveries beginning in late 2015.

[2] Draft Resolution, at p. 2.
[3] Ibid.

b. Price Reasonableness and Value

There are several items of error in the Draft Resolution regarding its treatment of the price reasonableness and value of the PPAs that demonstrate inconsistency with SCE's 2011 RPS solicitation, the Commission's rules, or, at a minimum, an undue lack of transparency. First, the Draft Resolution states that "all five PPAs are uncompetitive with contracts that SCE shortlisted from its 2011 RPS Solicitation."[4] Regardless of this fact, it then approves three of the PPAs on the grounds that the three approved contracts are competitive "[w]hen benchmarked against other solar thermal projects offered in SCE's 2011 RPS Solicitation."[5] This limited comparison with other solar thermal projects contradicts SCE's least cost-best fit methodology. In SCE's 2011 Written Description of Renewables Portfolio Standard Proposal Evaluation and Selection Process and Criteria, Appendix A to its 2011 RPS solicitation, SCE describes its methodology as follows:

> SCE performs a quantitative assessment of each proposal individually and subsequently ranks them based on the proposal's benefit and cost relationship. Specifically, the total benefits and total costs are used to calculate the net levelized cost or "Renewable Premium" per each complete and conforming proposal. Benefits are comprised of separate capacity and energy components, while costs include the contract payments, debt equivalence, congestion cost, and transmission cost. SCE discounts the annual benefit and cost streams to a common base year. The result of the quantitative analysis is a merit-order ranking of all complete and conforming proposals' Renewable Premiums that helps define the preliminary short list.[6]

Effectively, by approving the three Storage PPAs, the Draft Resolution establishes a preference for solar thermal technology using molten salt storage. This constitutes an undisclosed technology "carve-out" inconsistent with SCE's stated methodology that should properly be adopted after a more complete vetting by the Commission. Moreover, had this fact been known to parties that bid in the 2011 RFP, more projects using such a technology might have been offered and a fairer competitive analysis conducted. However, by establishing this preference on a *post hoc* basis, the Draft Resolution forecloses the possibility of a true competitive bid process. Saying that the three approved PPAs are "competitive with other comparable solar thermal contracts offered to SCE"[7] simply does not afford the level of protection to ratepayers that should be provided by the Commission. It is akin to approving a tidal project or a space solar project that beats other tidal or space solar projects even though they are grossly uncompetitive

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[4] Id at p. 13.
[5] Id at 15.
[6] SCE's 2011 Renewable Portfolio Standard Procurement Plan, R.08-08-009 (May 4, 2011) at Appendix A, p. 2 (2011 LCBF Written Report).
[7] Id at p. 16.

with other renewable technologies. The Commission owes ratepayers a more rigorous analysis as to price reasonableness and value than is contained in the Draft Resolution.

Second, qualitative factors, such as potential dispatchability from the Storage PPAs, cannot wholly supersede the quantitative analysis and technology neutrality. SCE notes that "the presence of demonstrated qualitative attributes may justify moving a proposal onto SCE's short list of proposals if (a) the initial proposal rank is within reasonable valuation proximity to those selected for the short list and (b) SCE consults with, and receives general support from, its PRG prior to elevating the proposal based on qualitative factors."[8] At a minimum, the Draft Resolution should confirm that such criteria were met.

Third, on the one hand, the Draft Resolution states with respect to the Storage PPAs that "these projects incorporate molten salt storage capacity which will allow SCE to optimize generation from these facilities based on changing system requirements. This unique attribute decreases renewable integration risk and provides more value for ratepayers." [9] The clear implication is that the Commission assigned some level of renewable resource integration value to the Storage PPAs. Yet, D.11-04-030 precludes the use of integration costs and the Draft Resolution specifically states "the Commission assumes zero value for avoided integration costs for comparison purposes."[10] As such, the Draft Resolution should be clear how the value of the unique attributes of the Storage PPAs were applied in the evaluation process.

c. The Draft Resolution Ignores the Independent Evaluator's Recommendation with regard to the Sonoran West Contract and its Entirely Tepid Recommendation for Approval of Rio Mesa 1 and 2.

The Draft Resolution cites but then ignores the fact that the Independent Evaluator recommended rejection of the Sonoran West PPA.[11] Furthermore, it overlooks the salient fact that the Independent Evaluator's recommendation for approval of the Rio Mesa 1 and 2 projects was remarkably tepid. As noted by WPTF in its protest, the Independent Evaluator concluded that at best the contracts were "competitive relative to SCE's other solar thermal options in its most recent solicitation,"[12] which says nothing with respect to their overall reasonable pricing. According to the IE, none of the five contracts warranted placement on the short list, suggesting that they failed the market test and should be rejected by the Commission.

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[8] 2011 LCBF Written Report at p. 6.
[9] Draft Resolution, at p. 3.
[10] Draft Resolution at p. 14.
[11] Id at p. 18.
[12] See, Sedway Consulting, Inc. independent Evaluation Report for Southern California Edison's BrightSource Amended PPAs ("IE Report"), at p. 6.

d. The Draft Resolution Fails to Indicate whether SCE's Procurement Review Group Approved of the PPAs.

The Draft Resolution states merely that, "Pursuant to D.02-08-071, SCE's Procurement Review Group participated in the review of the BSE Contracts, and SCE has complied with the Commission's rules for involving the PRG."[13] WPTF does not know whether the SCE Procurement Review Group (PRG) approved or disapproved of the proposed PPAs, although it suspects the latter may be true given the fact that two of the named members of the PRG later protested the PPAs (Division of Ratepayer Advocates and The National Resources Defense Council). Whatever the facts may be, the Draft Resolution should not omit the important information as to what the PRG actually recommended. Doing so degrades the importance of the PRG process and suggests that its role has become one of form, but not substance.

Conclusion

In conclusion, WPTF believes that the Draft Resolution is internally inconsistent and draws conclusions that are not justified by the underlying facts. We reiterate the recommendation in our June 22, 2012 protest. If the any of the five contracts are to be considered for Commission approval, such consideration should only occur after they have been demonstrated to be winners in a competitive RFO. The Advice Letter should be rejected so that the sponsors can make a determination as to whether to offer the projects in next renewable RFO conducted by SCE.

WPTF thanks the Energy Division for its attention to the issues discussed herein.

Very truly yours,

Daniel W. Douglass

Daniel W. Douglass
Counsel for the
WESTERN POWER TRADING FORUM

cc: Commissioner Michael R. Peevey
Commission Timothy Alan Simon
Commissioner Michel Peter Florio
Commissioner Cather J. K Sandoval
Commissioner Mark J. Ferron
Edward Randolph - Director of the Energy Division
Karen V. Clopton - Chief Administrative Law Judge
Frank R. Lindh - General Counsel
Jason Simon - Energy Division
Service List – R.11-05-005

[13] Draft Resolution, at p. 19.

Appendix A

Subject index listing the recommended changes to the Draft Resolution

WPTF recommends that the Commission reject all five PPAs discussed in the Draft Resolution.

Proposed findings and ordering paragraphs

WPTF suggests the following modifications to the proposed findings and ordering paragraphs:

1. The BSE Contracts are inconsistent with SCE's 2011 RPS Procurement Plan, approved by D.11-04-030.
2. The PPAs include the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
3. SCE did not adequately utilize its LCBF methodology at the time the BSE Contracts were negotiated and executed.
4. The Commission finds that the price and value of the Rio Mesa ~~2~~1 and Rio Mesa 2 contracts are not competitive with other comparable solar thermal contracts offered to SCE or other renewable contract proposals that were shortlisted in SCE's 2011 RFO.
5. The Commission finds that the price and value of the Siberia 1, Siberia 2 and Sonoran West contracts are not competitive with ~~other comparable solar thermal contracts offered to SCE~~ other renewable contract proposals that were shortlisted in SCE's 2011 RFO.

~~6.Payments made by SCE under the Siberia 1, Siberia 2 and Sonoran West contracts are fully recoverable in rates over the life of the PPAs, subject to Commission review of SCE's administration of the PPAs.~~

~~6.SCE must seek approval from the Commission to amend any BSE PPA through a Tier 2 Compliance filing if the point of interconnection changes. SCE must verify with an Independent Evaluator that the renewable premium for the PPA(s) is not negatively impacted. If the renewable premium is negatively impacted for the PPA(s), SCE must file a supplemental Tier 3 Advice Letter requesting approval of the amended and restated PPA(s).~~

~~6.SCE must file a Tier 2 Compliance filing within 10 days of Commission approval of the Siberia 1 and Siberia 2 and Sonoran West PPAs to amend the PPAs to include the required contract modifications.~~

~~6.Projected generation from the BSE Contracts meets the need requirements of SCE's RPS portfolio.~~

~~10.~~6. The Independent Evaluator recommends rejecting Rio Mesa 1 and Rio Mesa 2 and Sonoran West, and recommends approving Siberia 1 and Siberia 2.

~~11.~~7. Consistent with D.06-05-039, an Independent Evaluator (IE) oversaw SCE's RPS procurement process. Additionally, the IE reviewed the proposed contracts and compared the proposals to the results of the most recent bids received consistent with D.09-06-050.

8. Pursuant to D.02-08-071, SCE's Procurement Review Group participated in the review of the BSE Contracts, and SCE has complied with the Commission's rules for involving the PRG.

~~12.~~9. SCE's Procurement Review Group recommended that .

~~10.The proposed PPAs meet the conditions for EPS compliance established in D.07-01-039 because the facilities will produce electricity at a capacity factor of less than 60 percent and are therefore not a base load power plant as defined in Public Utilities Code Section 8340(a).~~

~~10.Because the Siberia 1, Siberia 2 and Sonoran West contracts are greater than 10 years in length, the contracts will contribute to SCE's long term contracting requirement established in D.12-06-038.~~

~~10.Procurement pursuant to the PPAs is procurement from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.~~

~~10.The immediately preceding finding shall not be read to allow generation from a non RPS eligible renewable energy resource under the PPAs to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with the PPAs.~~

~~17.~~10. The protests of Advice Letter (AL) 2339-E-C by the Division of Ratepayer Advocates (DRA) and the Western Power Trading Forum (~~WFTR~~WPTF) are accepted because the Commission concurs that the amended and restated BSE Contracts should be compared to ~~comparable~~ projects resulting from SCE's 2011 RPS Solicitation.

~~18.~~11. The protest of Advice Letter (AL) 2339-E-C by the National Resources Defense Council (NRDC), Defenders of Wildlife and The Sierra Club is accepted because the Commission concurs that environmental concerns exist that may increase the risk of permitting delays potentially resulting in project failure.

~~19.~~12. Protest letters from The Wilderness Society, the Center for Biological Diversity, and the Desert Protective Council will not be considered because they failed to serve their protest to the service list as required.

~~20.~~13. The comment letter submitted by the California Wind Energy Association (CalWEA) is not accepted because it is out of scope.

~~21.~~14. The response letter submitted by the United States Department of Defense (DOD) is accepted because the Commission views any potential conflict with military training operations as a potential siting risk that can potentially decrease the viability of the Siberia projects.

~~22.~~15. The Rio Mesa 1, ~~and~~ Rio Mesa 2, Siberia 1, Siberia 2 and Sonoran West power purchase agreements should be rejected in their entirety.

~~16. The Siberia 1, Siberia 2 and Sonoran West power purchase agreements should be approved with modifications.~~

~~24.~~16. AL 2339-E, as amended by AL 2339-E-A, AL 2339-E-B, AL 2339-E-C and AL 2339-E-D are ~~approved in part with modifications and~~ not approved ~~in part~~.

Therefore it is ordered that:

1. The power purchase agreements between Southern California Edison Company and Solar Partners XVI LLC and Solar Partners XVII LLC, as proposed in Advice Letter 2339-E, and amended by Advice Letters 2339-E-A, 2339-E-B, 2339-E-C and 2339-E-D, are not approved.
2. The power purchase agreements between Southern California Edison Company and Solar Partners XVIII LLC, Solar Partners XIX LLC, and Solar Partners XX LLC as proposed in Advice Letter 2339-E, and amended by Advice Letters 2339-E-A, 2339-E-B, 2339-E-C and 2339-E-D, are not approved ~~with modifications~~.

~~3. SCE must seek approval from the Commission to amend any BSE PPA through a Tier 2 Compliance filing if the point of interconnection changes. SCE must verify with an Independent Evaluator that the renewable premium for the PPA(s) is not negatively impacted due to a change in the point of interconnection. If the renewable premium is negatively impacted for the PPA(s), SCE must file a supplemental Tier 3 Advice Letter requesting approval of the amended and restated PPA(s).~~

~~4. SCE must file a Tier 2 Compliance filing within 10 days of Commission approval of the Siberia 1 and Siberia 2 and Sonoran West PPAs to amend the PPAs to include the required contract modifications.~~

EXHIBIT C
Inyo County/BSE Agreement Excerpt
July 10, 2012

AGREEMENT BETWEEN COUNTY OF INYO,
AND
BRIGHTSOURCE DEVELOPMENT, LLC.
FOR THE PROVISION OF ENVIRONMENTAL REVIEW
AND PROCESSING SERVICES

INTRODUCTION

WHEREAS, BrightSource Development, LLC of 1999 Harrison Street, Suite 2150, Oakland, CA 94612 ("Applicant") has submitted an Application for Certification ("AFC") to the California Energy Commission ("CEC") for the 500 megawatt Hidden Hills Solar Energy Generating System ("HHSEGS Project") which is located in the County of Inyo.

WHEREAS, Applicant has the need for the Environmental Review and Processing services of the County of Inyo ("County") in connection with its application for a general plan amendment and rezoning that is related to the HHSEGS ("Application").

WHEREAS, by this Agreement, Applicant and County intend to provide for the provision of environmental review and processing services of the County in connection with the Application, all as set forth in this Agreement.

AGREEMENT

THEREFORE, in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK

The County shall provide to Applicant those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Attachment A describes the environmental review and processing services that will be performed by the County in connection with the Application and a budget for performing such review and services ("GPA Budget").

Work or services under this Agreement may be performed either by its own employees (hereinafter collectively referred to as "Employees or employees") or, upon approval of the Applicant, by one or more additional County Contractors ("County Contractors"). Applicant approves the use of County Contractors Gruen Gruen + Associates and Greg James, Attorney, to perform work or services under this Agreement. County has the right in its sole discretion to determine which employee(s) are qualified and capable, and to determine which employee(s) of those which are deemed qualified and capable, are to actually perform the work and services under this Agreement. Applicant has no right to designate, or require the work or services to be performed by, a particular County Department, class of County employees, or particular employee(s). Further, County need not obtain Applicant's approval prior to or after incurring any travel and/or per diem, or overtime expenses in performing work or services under this Agreement.

Services and work provided by the County under this Agreement will be performed by: (i) County employees; or (ii) County contractors hired by County in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

This Agreement is for the provision of environmental review and processing services in connection with the Application . Under the California Environmental Quality Act ("CEQA"), the CEC is the Lead Agency and County is a responsible agency, except for the exclusive jurisdiction of the Commission to certify the HHSEGS Project. (CEQA Guidelines section 15381; Public Resources Code section 25500). As a responsible agency, the County will consult with the CEC, will rely on the CEC's environmental document in acting upon the Application and will prepare and issue its

EXHIBIT D
Hidden Hills Ranchos Development Brochure
Late 1950's/ Early 1960's

Hoot greets fly-in buyers on large all year "Hidden Ranch" airport, Los Angeles 90 minutes, Las Vegas 20 minutes. See Mt. Whitney and L.A. U.S. charts.

This rancho you buy TODAY will give to you and your children FOOD, PROFIT, SECURITY and ENJOYMENT for generations to come.

Old Ranch Headquarters.

- Deep fertile, level, rock-free soil *and* in sunny Southern California.
- Underground water for development.
- Healthful, smog-free climate. 2600 feet elevation.
- Only 55 minutes from fabulous Las Vegas, Nevada. 30 minutes to free government-owned Tecopa Hot Springs.
- Summer and winter sports of Mt. Charleston and Lake Mead — 90 minutes.
- Every Rancho fronts a graded road, in a planned community. No survey or other expense.
- Large all-year Government approved airport.
- You will be investing in a fertile California valley with a *rich future* of profit, enjoyment and real pride of ownership.

Sparkling clear water from one of several wells.

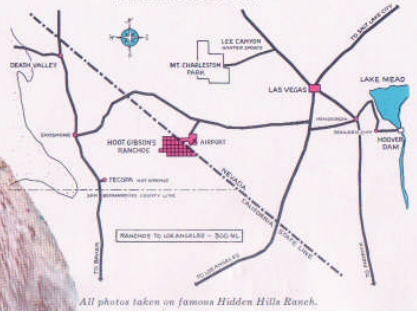
Ten acre Hoot Gibson Rancho under development

Buy fertile land as wise men do…
And let inflation work for you.

$10.00 DOWN and $10.00 PER MONTH

2½ ACRE RANCHO FULL PRICE ONLY $990

Use the Enclosed Order Form



One of the many Historical Landmarks along the "Path of Pioneers" — dated about 1820 — old adobe Indian ruins.

All photos taken on famous Hidden Hills Ranch.

EXHIBIT E
BLM Scoping Notice on Valley Electric Association's
Hidden Hills Transmission Project

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT NEWS RELEASE
Las Vegas Field Office

Release Date: 10/11/11

Contacts: Hillerie C. Patton , 702-515-5046 , hillerie_c_patton@blm.gov

BLM Seeks Comments on Valley Electric Association's Hidden Hills Transmission Project

Las Vegas –The Bureau of Land Management (BLM) Las Vegas Field Office is opening scoping on a Valley Electric Association transmission project proposed on public lands in the southern Pahrump and Sandy valleys in Clark and Nye counties, Nev. A Notice of Intent to Prepare an Environmental Impact Statement, published in the October 11, *Federal Register.* Publication of the notice initiates the beginning of a 60-day scoping period which will close December 12.

The public is being asked to help identify potential issues regarding the applicant's request for a right-of-way (ROW) authorization for the construction, operation, maintenance, and termination of transmission infrastructure improvements, both 230 kilovolt (kV) and 500 kV, and a natural gas pipeline to support the development of the Hidden Hills Solar Electric Generating Project. The 3,275-acre solar-project site would be located on privately-owned land; however, the transmission and natural gas lines, once they leave the site, would be located on public land managed by the BLM.

Scoping meetings will be announced at least 15 days in advance through local media and on the BLM website at www.blm.gov/nv.

Written comments may be mailed to the BLM, Southern Nevada District, Renewable Energy Project Manager, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, or emailed to ValleyElec_HiddenHillsEIS@blm.gov. For more information, please call Greg Helseth at 702-515-5173.

The BLM manages more land - over 245 million acres - than any other Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska. The Bureau, with a budget of about $1 billion, also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM's multiple-use mission is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations. The Bureau accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

--BLM--

Las Vegas Field Office 4701 N. Torrey Pines Drive Las Vegas, NV 89130

Last updated: 10-11-2011

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 9/20/12)

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*indicates change

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***Southern Inyo Fire Protection District**
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DECLARATION OF SERVICE

I, *Cindy R. MacDonald* , declare that on *September 24, 2012*, I served and filed copies of the attached *Response To "Motion In Limine"* , dated *September 24, 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/sitingcases/hiddenhills/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:

__X__ 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 served, 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 to those addresses **NOT** marked "e-mail preferred."

AND

For filing with the Docket Unit at the Energy Commission:

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

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

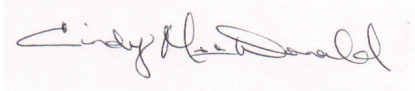
A. CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-AFC-02
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

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
mchael.levy@energy.ca.gov

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



Cindy R. MacDonald