STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Hidden Hills Solar Electric Generating System	)	Docket No.: 11-AFC-2
	)	
_____	)	

ENERGY COMMISSION STAFF RESPONSE TO "MOTION IN LIMINE"

September 21, 2012

Richard Ratliff, Staff Counsel IV
Kerry Willis, Staff Counsel III
California Energy Commission
1516 9th St., MS-14
Sacramento, Ca 95814
Phone: (916) 654-3951
Fax: (916) 654-3843

Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

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ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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I. INTRODUCTION

Applicant has labeled its motion with the unwieldy title "Motion in Limine for a Committee Ruling *to Ensure the Final Staff Assessment Conforms to the Substantive Requirements of the California Environmental Quality Act ("CEQA")."* (Emphasis added.)

The title is ironic, and the prayer for relief audacious. Behind the undisputed black letter CEQA citations, the underlying request of this document is quite the opposite: it would have the Committee prevent its independent agency staff from performing the robust alternatives analysis that CEQA requires. Applicant wants an analysis that would impose artificially narrow *applicant* objectives for the "project objectives," impose Applicant's proprietary technology and pre-filing contractual agreements as alternative analysis feasibility boundaries, and thereby relegate all potential alternatives to the analytic scrapheap .

"Front-loading" the Staff analysis with Applicant's objectives would pre-determine the infeasibility of nearly all alternatives. Such truncated analysis would be of no use at all to the public or the Committee, nor would it satisfy CEQA requirements. Applicant would limit the analysis so that it could consider little more than such meaty issues as the shade of color for the perimeter fence. Ultimately, it would leave any final approval of the project exposed to legal challenge on a critical CEQA issue.

The deficiencies of the motion are discussed more fully below, but can be summarized as follows:

(1) Applicant insists that Applicant's project objectives be imposed on the Staff analysis. Staff acknowledges that the objectives of a project proponent are a factor that must be considered in determining alternative feasibility, and is confident Applicant will present evidence on such issues. However, Applicant insists on objectives that are so narrowly drawn for the analytic stage that they preclude any meaningful discussion of potentially feasible project alternatives. Consistent with CEQA principles discussed below, Staff has redrafted Applicants' narrow objectives to include discussion of alternatives that are potentially feasible and would lessen or avoid some of the project's significant impacts.

(2) Applicant states that the PSA has ignored CEQA provisions stating that the statute does not apply to out-of-state projects subject to environmental analysis pursuant to the National Environmental Policy Act. Applicant is incorrect, or largely so, on this issue. Staff agrees (and has consistently stated its agreement) that Nevada side projects are not subject to CEQA and (with the exception of a small section on "growth-inducing impacts") has avoided such analysis. That it has done so is reflected in the paucity of instances cited in Applicant's "Exhibit B," some of which are simply incorrect, and some of which refer to the fact that it is the federal government which will be doing the environmental analysis for project elements in Nevada.

(3) Regarding the "no project" alternative discussion, Applicant (objecting without waiting to actually see the Staff analysis) argues that such analysis must assume the impacts of "full residential build out" of the subdivided lands near the project site. However, the issue of likely future development (or what the CEQA Guidelines describes as "reasonably expected to occur") is one that is colored by the factual context, including

such factual matters as the 40 year duration of the subdivision with no development activity, the availability of water, availability of services and infrastructure, county plans, etc. These factual matters are things that must be considered, and will be considered, in Staff's analysis of the "no project" alternative.

Finally, the Committee should consider the unprecedented nature of Applicant's request: that the Committee engages in pre-publication management of Staff's environmental analysis. This request is as extraordinary as it is unjustified. Applicant knows, or should know, that its recourse for disagreement with Staff's analysis is to file testimony to such effect, and post-hearing briefs. Such disagreement, when it occurs, results in a robust record, and a fully informed decision-maker, aware of its options, with CEQA objectives more likely to be fully satisfied. With such a record, the Commission can properly determine the feasibility of a reasonable range of potential alternatives. That is the CEQA process described in the case law. Applicant's motion would circumvent that process, allowing it to determine the feasibility of alternatives before they are even analyzed by Staff.[1]

II. THE MOTION INVITES THE COMMITTEE TO VIOLATE FUNDAMENTAL PROVISIONS OF THE CALIFORNIA ADMINISTRATIVE PROCEDURE ACT.

The motion ignores fundamental due process precepts of administrative law incorporated into the Commission power plant licensing process. Pursuant to the Administrative Procedure Act, power plant licensing proceedings are adjudicatory proceedings requiring a "determination of facts pursuant to which an agency formulates and issues a decision." (Govt. Code, §11405.20.) In such proceedings, agency "investigative" or "advocacy" functions must be performed by a staff that is separate and

[1] Staff notes that intervenor Center for Biological Diversity (CBD) recently filed extensive comments on the Preliminary Staff Assessment criticizing the document for what it believes to be an overly narrow consideration of alternatives, arguing for much broader consideration. CBD's comments, along with Applicant's motion, underline the difficulty of determining the "reasonable range of alternatives" required by CEQA. However, courts are much less likely to overturn an administrative decision that relies on a "broad" range than one that relies on a narrow and truncated analysis such as that proposed by Applicant.

independent from the "adjudicative function" of the decision-maker. (Govt. Code, § 11425.10, subd. (a)(4).)

Accordingly, in the Commission process Staff functions as an independent party in satisfying its responsibility to provide a legally sufficient and informative analysis that meets CEQA requirements. (Cal Code Regs, tit. 20, § 1712.5.). Of course, if Staff presents an analysis that is, in the view of the assigned committee, insufficient or overly narrow, the committee can and should direct Staff to augment its analysis. However, such oversight responsibility is fundamentally different from decision-maker directory oversight of Staff analytic documents that have not yet been published. Such intervention effectively insinuates the decision-maker into the managerial position of the Executive Director, violating the fundamental agency precepts of "separation of function" discussed above.

Staff must be able to publish its independent analysis, unexpurgated by applicant preference or decision-maker interference. As the Committee knows, it is not required to accept the factual or legal conclusions of Staff's environmental analysis; the Committee or Commission may in its discretion prefer substantial evidence and legal argument provided by other parties, including that of an applicant. But disagreeing with, or even ignoring, Staff's analysis is entirely different from *directing* Staff's analysis. Should such pre-publication management become the case, Staff is no longer an independent party, but one directed by the decision-maker, contravening the "separation of function" requirements of the Administrative Procedure Act.

III. THE MOTION INVITES THE COMMITTEE TO VIOLATE FUNDAMENTAL CEQA REQUIREMENTS.

A. "Project Objectives" under CEQA are not Identical with the Objectives of a Project Proponent.

Applicants are required by Commission regulation to include discussion of project alternatives as part of the Application for Certification (AFC). These AFC analyses routinely and predictably include "objectives" that are narrowly drawn, such that only the AFC proposal itself would be likely to satisfy such objectives. The AFC analyses also frequently provide "strawman" site location alternatives that are invariably described as

worse than the proposed project site. Such AFC analysis is shallow because applicants understandably have no interest in identifying feasible alternatives that could threaten approval of their projects. Staff typically goes well beyond the AFC to present the "reasonable range of alternatives" required by CEQA. Applicant contends that the Staff CEQA analysis and the Commission decision are limited by such a narrowly prescribed analysis of Applicant's own objectives and determinations of potential feasibility. Applicant seemingly insists that Staff must accept and republish Applicant's narrowly drawn AFC analysis.

Such docile "republication" would certainly simplify Staff's analytic task. However, the courts have repeatedly invalidated agency decisions based on alternatives analysis relying on project objectives "defined too narrowly." (See, e.g., Remy & Thomas, Guide to the California Environmental Quality Act (10th ed. 1999) pp. 457-458, and the several cases discussed there.) To be legally sufficient, analysis of project alternatives "must permit informed agency decision-making and informed public participation." (*Laurel Heights Improvement Ass'n. v. Regents of the Univ. of Calif.* (1988) 47 Cal.3d 376, 404-405.) CEQA requires "enough of a variation [of alternatives from the project] to allow informed decision-making." (*Mann v. Community Redevelop. Agency* (1991) 223 Cal.App.3d 1143, 1151.)

A review of Applicant's project objectives illustrates the "narrowness" of the alternatives it would consider:

(1) ". . . construct and operate a nominal 500-megawatt (MW), solar generating facility . . . ."

(2) "To use Brightsource's proprietary technology . . . ."

(3) "To locate the solar generating facility in an area of high solarity."

(4) "To . . . [select] a site of minimal slope . . . ."

(5) "To secure site control within a reasonable timeframe, with reasonable effort, and at a reasonable cost."

(6) "To locate the . . . facility on land identified by local governments as suitable for renewable energy . . . ."

(7) "To assist California [in meeting RPS goals] . . . ."

(8) "To comply with provisions of the power sales agreement to develop a nominal 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."

(9) "To provide renewable power providing grid support by offering power generation that is flexible . . . ."

(10) "To create renewable electricity that will be qualified . . . for tradable renewable energy credits." (AFC, pp. 6-1 and 2.)

Staff agrees with the validity of some (though not all) of these objectives, and has tried to incorporate as many of them as possible into its analysis without overly circumscribing the "reasonable range of alternatives." Each objective listed above in some measure limits the analysis. The objective of a 500 MW facility means that a smaller project would not meet the objective, even if it reduced significant impacts. The objective of "high solarity" limits project site locations to the Mojave Desert areas, where solarity is high, arguably ruling out such alternatives as Central Valley locations on disturbed farmland not currently in use.

Most important, the objective of using "Brightsource's proprietary technology" would be inconsistent with the consideration of other widely used solar thermal generation technologies, or with photovoltaic technologies, even if these technologies would reduce or avoid significant project impacts of "power tower" technology. Moreover, to comply with the various provisions of Brightsource's power purchase agreement, or its seemingly arbitrary objective of an operating date in early 2015 (the PPA is for mid year 2016), may effectively screen out smaller projects, different site configurations that would avoid biological or cultural resources, alternative site locations, and other alternatives of that nature.

Taken together, and "front loaded" on Staff's analysis, Applicant's AFC objectives circumscribe the range of potential alternatives close to the point of nonexistence. All alternatives, either by site location or technology, either do not meet many of Applicant's stated objectives or are not "feasible" based on such objectives. In other words, Applicant insists that its thinly analyzed AFC conclusion that there are no feasible alternatives to the proposed project be adopted by Staff's analysis.

B. Staff was Compelled to Re-draft Applicant's Objectives to Provide a Useful and Legally Sufficient Analysis.

Staff's analysis of alternatives must "describe a range of reasonable alternatives to the project, which would feasibly attain most of the project 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." (Cal. Code Regs., tit. 14, §15126.6.) For its PSA analysis Staff tried to incorporate Applicant's objectives in part, but deleted or altered some to provide the possibility of true project alternative comparisons. The "project objectives" selected by Staff allow consideration of technological alternatives, site alternatives, and configuration alternatives—the "reasonable range" that the Guidelines require. Applicant may question the feasibility of such alternatives, or whether they meet most project objectives, but these are issues the decision-maker—not Applicant--must decide *after* reviewing the analysis and considering counter arguments, including the views of intervenors, agencies, and others.

The cases cited by Applicant are inapposite. Applicant states without equivocation that the cases it cites establish that it is "perfectly acceptable to base a CEQA alternatives analysis on the applicant's underlying business objectives." (Motion, p. 9.) But Applicant overreaches, as the cases it cites suggest quite the opposite. Rather, these cases validate Staff's view that the underlying environmental document (there, the EIR) must include a reasonable range of alternatives, including ones that may ultimately be found to be infeasible, with the decision-maker basing its findings of feasibility on substantial evidence.

In *Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, the EIR *evaluated* the down-sized herd as an alternative. (*Id.* at 1400.) The court upheld the agency's determination that the down-sized herd was economically infeasible based on substantial evidence in the record provided by the project proponent. (*Id.*at 1401.) *Sequoyah Hills*, also cited by Applicant, is likewise entirely consistent with the Staff approach. In that case the EIR *analyzed* a full range of project alternatives based on varied numbers of housing units, and the court upheld the agency's determination that fewer units did not mitigate impacts, was economically infeasible, and inconsistent with statutory requirements. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (2003) 23 Cal.App.4th 704, 713-715.)

Similarly, in *San Francisco Bay Ass'n v. San Francisco Bay Comm'n* ((1992) 10 Cal.App.4th 908, the agency EIR *analyzed* inland alternatives (*id.* at 917-918), and based on substantial evidence and its own analysis found that the project, for specific factual reasons (including the need for saltwater for the aquarium), required a bayfront location. (*Id.* at p. 924.) *In re Delta Programmatic Envt'l Impact Report* (2008) 43 Cal.4th 1143, did not even involve any project proponent "private business plan." Rather, it merely held that than agency alternatives analysis is not "artificially narrow" where the agency refused to analyze an alternative that was directly inconsistent with the entire purpose of the state and federal CALFED program. (*Id.*at pp. 1165-1166.)

Remarkably, in none of these cases was the agency EIR analysis based on a proponent's "business objectives." Rather, in each of these cases the agency included analysis of potential alternatives that might be considered entirely contrary to such "business objectives" to provide the "reasonable range" that CEQA requires. The EIR analysis was not sanitized to exclude alternatives inconsistent with "business objectives"—quite the contrary. Rather, the various agencies evaluated the potential alternatives in the EIR, and the decision-maker ultimately determined feasibility based on substantial evidence in the record. This "two-step" process, discussed further below, is what CEQA requires and what Staff proposes.

A review of the case law supports a careful balancing of the goals of the project proponent with those of the public interest and the goals of CEQA. A CEQA practitioners' treatise summarized the difficult agency responsibility as follows:

> The case law makes clear that well tailored objectives will further CEQA's intent as described in the consideration of project objectives. Thus, agencies should give careful consideration to the crafting of appropriate project objectives that take into account both public and private aims. [Para] . . . . [Para] When a project is privately sponsored . . . the applicant often drafts the project objectives, and the CEQA Guidelines provide no guidance on whether and to what extent the lead agency should accept the applicant's objectives rather than drafting its own to satisfy section 15124.

(Remy & Thomas, Guide to the California Environmental Quality Act (11th ed. 2007) pp. 589-590 [emphasis added].)

Staff has attempted a balancing act in its selection of project objectives that acknowledges some of Applicant's private goals while providing a reasonable range of *potential* alternatives to the project. Such a "reasonable range" was only possible by re-drafting Applicant's objectives to make them more general, thereby allowing the alternatives analysis CEQA requires.

The case law cited by Applicant supports the correctness of Staff's approach:

> The issue of feasibility arises at two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency's later consideration of whether to approve the project. But "differing factors come into play at each stage." For the first phase—inclusion in the EIR—the standard is whether the alternative is *potentially* feasible. By contrast, at the second phase—the final decision on project approval—the decision-making body evaluates whether the alternatives are *actually* feasible. At that juncture, the decision-makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible.

(*Cal. Native Plant Soc. v. Santa Cruz* (2009) 177 Cal.App.45th 957, 981 [emphasis in original, internal citations omitted].)

In other words, in the first step of the two-step process, the "EIR preparer" analyzes a reasonable range of "potentially feasible" projects, just as Staff has done. The second

step is for the Committee (Commission) to make the ultimate determination of alternative feasibility based on the evidentiary record. Applicant's motion would skip both steps of this two-step process, and simply have the Commission rely on Applicant's own self-serving conclusions.

The Commission should reject Applicant's thinly supported AFC conclusion that there are no *potentially feasible* alternatives to be examined. Applicant's contention that only its technology is feasible for the project is undercut by the existence of numerous "solar trough" projects, and by the switch of several licensed thermal projects to photovoltaic generation—a phenomenon with which the Commission is well-acquainted. Applicant's contention that photovoltaic technology cannot be considered as an alternative because the Commission does not license such projects (with notable exceptions) is based on a citation to a single case that is itself inapposite. That case, C*itizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, upheld as reasonable the agency decision-makers' (second step) determination that a *site location* outside of the agency's *territorial* jurisdiction was not feasible. (*Id.*at 575.) The decision in no way limits this agency's ability to exercise its discretion to consider photovoltaic alternatives. Staff believes that it is appropriate for the Committee (and Commission) to decide the feasibility issue based on evidence that has yet to be presented.[2]

C. Power Purchase Agreements and Technological Preferences Should Not Circumscribe CEQA Analysis, and the Courts Have Held that they Cannot Legally do So.

In addition to its power tower technology, Applicant includes among its objectives the power purchase agreement (PPA) that it has for the project. This agreement, which has not been provided to Staff, contains milestone commitments by Applicant to provide a certain amount of power by an agreed date. In essence, the PPA is a contract that Applicant has entered into prior to environmental review of the underlying project.

[2] Without citation, Applicant claims to have provided "substantial evidence demonstrating that neither PV nor a solar trough alternative is 'feasible'." (Motion in Limine, p. 10.) This is evidence that the Committee should consider after it is presented at hearing, along with that presented by the other parties. The treatment of such matters in the AFC is cursory. (AFC pp. 6-24 to 6-26.)

A September 2009 resolution adopted by the California Public Utilities Commission (CPUC) approved the PPA which is apparently the basis for the Hidden Hills AFC. That resolution, like similar resolutions approving PPAs that Staff has seen, contemplates that the project must undergo CEQA review and be "protective of the environment," and assigns no specific site to the project that will fulfill the PPA. (CPUC Resolution E-4269, pp. 2-5.)[3] The CPUC resolution calls for "commercial operation" of the three projects that lack a specific site by July 2016, December 2016, and July 2017, respectively. (*Ibid.*)[4]

Applicant maintains that its PPA agreement, like its technology choice, should be among the project objectives. The PSA did not treat it as such because (1) Applicant has never provided the PPA even in redacted form; (2) it is Staff's understanding that the CPUC provides a process for amending PPA terms, including milestone dates; (3) CPUC resolutions for PPA approval consistently acknowledge that the PPA approvals are conditioned upon CEQA review and subsequent permitting, and frequently acknowledge attendant site-specific risks involved in permit approvals; and (4) CEQA case law significantly limits the ability of project applicants to circumscribe CEQA alternatives analysis by entering into contractual obligations prior to CEQA analysis of project alternatives. This final consideration was the basis for invalidating agency action in well-known decision *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 ("Kings County").

Kings County involved the approval of a coal-fired power plant in the City of Hanford. The City's EIR failed to seriously consider a different generating technology—gas generation—and accurately compare the air quality impacts of such an alternative project to those of the proposed coal plant. (*Kings County,* at p. 736.) The court noted

[3] The PPA approval resolution is for five sites, two of which have specific locations in Nevada ("Coyote Springs"); the other three locations are unspecified.

[4] Although the PPA for the project has a commercial operation date of July 2016 and December 2016, Applicant suggests in its AFC objectives that PPA commercial operation is required in the "first/second quarter of 2015." (AFC, p. 6-2.) The one to-two year difference in dates is not explained.

that the EIR-preparer curtailed its investigation to those alternatives proposed by the applicant, and for that reason did not consider a natural gas alternative. (*Ibid.*)

The court emphatically rejected as "too narrow" the agency's treatment of the gas-fired alternative as infeasible simply because of the applicant's preference for coal and prior contractual agreements:

> An environmentally superior alternative cannot be deemed infeasible absent evidence the additional costs or lost profits are so severe the project would become impractical. [Citation omitted.] Nor can an agency avoid an objective consideration of an alternative simply because, prior to commencing CEQA review, an applicant made substantial investments in the hope of gaining approval for a particular alternative. [Citation omitted.] . . . . [Para.] . . . . [Para.] An applicant who proceeds with the project prior to the completion of the environmental review process in the expectation of certain approval runs the risk of incurring financial losses. Likewise, an applicant's choice to proceed in the face of pending review and the possibility the environmental review process will be found inadequate cannot render an alternative infeasible. (*Laurel Heights Improvement Assn. v Univ. of Calif., supra,* 47 Cal.3d at p. 425 . . . . [Para.] Similarly, although applicants may enter into contracts and agreements prior to the completion of the environmental review process, such contracts or agreements cannot be used to avoid the scrutiny envisioned by CEQA. Environmentally superior alternatives must be examined whether or not they would impede to some degree the attainment of project objectives. [Citation omitted].

(*Kings County* at pp. 736-737.)

The court's discussion continues with the important proviso that the proponent's contract "is not irrelevant," but is a consideration that goes to the more complex issue of alternative feasibility to be determined "in the review process," impliedly at the decisional level. (*Kings County*, at p. 737.) Thus, *Kings County* is entirely consistent with the "two step" alternatives analysis discussed above, and requires the very kind of broader analysis that the Staff will provide in the FSA.

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D. Staff's "No Project" Alternative Will be Based on What is "Reasonably Expected to Occur in the Foreseeable Future" at the Project Site, as Informed by Relevant Facts.

Applicant takes issue with the PSA's treatment of the "no project" alternative. The project site currently has approximately 170 subdivided sites that could be developed under current zoning for residential use. The subdivision exists—in fact, has existed since 1974—and Applicant contends that because it *could* be built out with 170 units in the future, the "no project" alternative must assume, for analytic purposes, that such development will occur. Presumably Applicant prefers such an assumption because "complete build out" might result in similar or greater water use than the solar project itself, thus making the solar project environmentally preferable, from the standpoint of water use, to "no project."

In the PSA Staff did not make this assumption. It did not do so because the subdivision in question has seen no development at all in nearly 40 years, and the county has stated that it does not expect such development in the near future. The reasons are apparent: there is no real county infrastructure, and there are no county services nearer than Tecopa. Moreover, the county requires that sufficient water must be established by well-drilling before a building permit can issue, which may be serve as a barrier for would-be homesteaders.

The CEQA Guidelines require the evaluation of "existing conditions," as well as "what would be reasonably expected to occur in the future if the project were not approved." (Cal. Code Regs., tit. 14, §15126.6, subd. (e)(2).) Given the environmental context and the history of development of the subdivision, Staff has reasonably assumed that any future "build out" of the subdivision will be modest at best. Such an assumption seems quite reasonable, and Applicant is certainly wrong in its emphatic declaration that the environmental analysis must assume full build out without regard to the factors described above. Of course, Applicant has the opportunity to produce evidence to the contrary which the Committee and Commission can then consider.

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E. Staff is Not Analyzing or Requiring Mitigation for Projects in Nevada.

Staff agrees with Applicant that Guideline section 15277 means what it says: that CEQA does not apply to projects "or portions thereof located outside of California" and subject to federal NEPA environmental review. Applicant has suggested that there is fundamental disagreement, but this is incorrect. Exhibit B attached to the motion indicates the seeming paucity of examples Applicant could find to sustain its point: there are several citations to examples that specifically state that analysis in Nevada will be provided by the Bureau of Land Management; other citations to PSA description of impacts on the project site (in California), including biological resources and "waters of the state" at its "eastern boundary" (in California). Other references are inconsequential.

The one exception to the above is with reference to "Growth- Inducing Impacts." Much of this section does discuss the transmission line and gas line project features, which will be built almost entirely in Nevada. Staff included this section to respond to public comment on this issue on a required CEQA element, and as a cautious approach to making sure that the environmental analysis is legally sufficient. The gas line is being built to serve the project in California. It seems prudent to mention it, and discuss its growth-inducing impacts, but Staff will assign no significance to impacts, and require no mitigation, leaving such analysis and mitigation to the federal agencies. Staff believes that such inclusion provides for greater security in the case of legal challenge directed at analytic lapses (courts rarely tackle agencies for "doing too much"), and there is no negative consequence to the Applicant for its inclusion.

To the extent that Staff has included other analysis of project features in Nevada that might prejudice Applicant, Staff acknowledges that such analysis is beyond the scope of CEQA.

Applicant's blustery attribution to Staff of the statement that "CEQA does not stop at the border" (Motion, p. 13) is taken out of context of that PSA discussion. The statement quoted quite clearly meant only that impacts of a project *within California* would include analysis for its effects both within the state and across the border. Applicant has not

disagreed with this approach, which is parallel to that of Applicant's AFC. The AFC includes visual KOP analysis for Nevada receptors and proposes to mitigate water basin impacts with "offset" water rights purchases in Nevada. Other features of Applicant's analysis have appropriately considered cross-border impacts of the power plant. (See, e.g., AFC sections on Traffic and Transportation, Waste), and Staff's analysis does likewise.

IV. CONCLUSION

The motion should be denied.

September 21, 2012

_____/S/_____
Richard C. Ratliff, Staff Counsel IV
Kerry Willis, Senior Staff Counsel

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)

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

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

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

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

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

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

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

Center for Biological Diversity
Lisa T. Belenky, Sr. Attorney
351 California Street, Suite 600
San Francisco, CA 94104
lbelenky@biologicaldiversity.org

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

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

INTERVENORS (con't.)
Cindy R. MacDonald
3605 Silver Sand Court
N. Las Vegas, NV 89032
sacredintent@centurylink.net

Richard Arnold
P.O. Box 3411
Pahrump, NV 89041
rwarnold@hotmail.com

INTERESTED AGENCIES
California ISO
e-recipient@caiso.com

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

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

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

*indicates change

INTERESTED AGENCIES (con't.)

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

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

*Southern Inyo
Fire Protection District
Larry Levy, Fire Chief
P.O. Box 51
Tecopa, CA 92389
sifpd@yahoo.com

ENERGY COMMISSION – DECISIONMAKERS

KAREN DOUGLAS
Commissioner and Presiding Member
karen.douglas@energy.ca.gov

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

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

Eileen Allen
Commissioners' Technical Advisor for Facility Siting
eileen.allen@energy.ca.gov

Galen Lemei
Advisor to Presiding Member
galen.lemei@energy.ca.gov

Jennifer Nelson
Advisor to Presiding Member
jennifer.nelson@energy.ca.gov

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

ENERGY COMMISSION – STAFF

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

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

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

ENERGY COMMISSION – PUBLIC ADVISER

Jennifer Jennings
Public Adviser's Office
publicadviser@energy.ca.gov

DECLARATION OF SERVICE

I, Pamela Fredieu, declare that on September 21, 2012, I served and filed copies of the attached ***Energy Commission Staff Response to "Motion in Limine",*** dated September 21, 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 marked *"hard copy required" or where no e-mail address is provided.

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:

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
michael.levy@energy.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

/s/
Pamela Fredieu, Legal Secretary