

September 26, 2012

Dick Ratliff, Esq.
Senior Staff Counsel
Mike Monasmith
Project Manager
California Energy Commission
1516 Ninth Street, MS 2000
Sacramento, CA 95814

California Energy Commission
DOCKETED
11-AFC-2
TN # 67361
SEP 28 2012

Re: Bright Source Energy's (Applicant's) Hidden Hills SEGS (HHSEGS)-
Motion in Limine for Committee Ruling to Ensure the Final Staff
Assessment Conforms to Substantive Requirements of the California
Environmental Quality Act (CEQA)

Dear Messrs. Ratliff and Monasmith:

The Nature Conservancy (Conservancy) is a nonprofit organization dedicated to protecting the lands and waters on which all life depends. For more than fifty years, we have worked to conserve California's rich natural resources, including its fragile desert ecosystems. Several years ago, our science-based approach helped us identify the importance of the Mojave Desert's Amargosa River, which supports a diversity of species, including some found nowhere else on Earth. We have actively engaged in public policy and planning efforts, such as the Desert Renewable Energy Conservation Plan (DRECP), in order to ensure that renewable energy development in the Mojave Desert proceeds in a thoughtful manner that incorporates best management practices.

The Conservancy is not a party to the HHSEGS proceedings. However, relying on our experience on-the-ground in the Mojave Desert and our scientific understanding of its ecology and hydrology, we reviewed the Applicant's Motion in Limine and would like to offer comments limited to the extraterritoriality assertions made by the Applicant in the motion. Specifically, we disagree with Applicant's assertion that CEQA does not apply to the effects of the natural gas pipeline and the transmission line. Furthermore, we contend that it is within the Energy Commission's purview to consider the impacts to Nevada natural resources that are likely to result from HHSEGS. Our analyses in support of these points are articulated below. We also offer our support for the reply briefing submitted to the Energy Commission by the Center for Biological Diversity under separate cover.

Analysis of the Effects of the Natural Gas Pipeline and Transmission Line

Applicant asserts that a natural gas pipeline and a transmission line located in Nevada, but upon which HHSEGS electrical generation in California is dependent, are wholly exempt from Energy Commission consideration because they are to be covered by a future National Environmental Policy Act (NEPA) analysis.

Indeed, California Public Resources Code Section 21080(b)(14) exempts from CEQA "[a]ny project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state." However, this section does not exempt extraterritorial projects without regard to environmental impact. It continues, "Any emissions or discharges that would have a significant effect on the environment in this state are subject to [CEQA]."

14 CCR 15277 interprets Public Resources Code Section 21080(b) (14) this way:

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.* [Emphasis added.]

In this case, the Nevada pipeline and transmission line could directly or indirectly result in discharges or emissions that would significantly affect California, which consequently overrides any CEQA exemption. Specifically, the proposed natural gas pipeline and transmission line is likely to directly or indirectly cause industrial, commercial, or residential development in either California or adjoining Nevada lands whose emissions and discharges would significantly affect California air or water quality.

The extraterritoriality argument is further eroded by the regulation of the Nevada transmission line by California regulators. The proposed transmission line in question, known as the Valley Electric transmission facility, will be regulated by the California Independent System Operator, and the power generated by associated natural gas will be sold into California markets under contracts approved by the California Public Utilities Commission.

Until Applicant presents evidence that adverse effects within California cannot occur as a result of the construction of these

facilities, the Commission should assume that effects in California will occur and conduct a full analysis of the likely effects of the Nevada components. Precluding staff review at this point is at least premature when serious factual and legal questions have been raised that should be subject to an adjudicatory determination and not decided on a pre-trial motion.

Lastly, the absence of even a draft NEPA document also raises questions about whether and the extent to which these Nevada facilities will be analyzed, and particularly whether their effects on California will be probed and subjected to mitigation requirements. Until a NEPA document emerges, the Energy Commission analysis should broadly examine the effects of all components of this integrated project.

Analysis of the Effects of the HHSEGS Project on Nevada Resources

Perhaps most importantly, the quoted statutory and regulatory provisions neither address, nor preclude, Energy Commission review of the adverse effects in Nevada caused by projects located in California. This is a particularly critical distinction, since much of the Energy Commission staff's preliminary analysis relates not to consideration of the gas pipeline or transmission line, but to effects of the California project itself on groundwater and species located in, or that are shared with, Nevada. For a number of reasons it is appropriate and important that the Energy Commission analyze and mitigate the harm of adverse effects in Nevada occasioned by the California project.

Our concern is that this project, and similar projects, located close to the state line and affecting groundwater, air quality, and other shared resources, are in fact bi-state enterprises whose effects should be subject to an integrated analysis rather than a bifurcated or partial consideration. When environmental review stops at the state border, environmental impacts that extend past the state line can often go unconsidered and unmitigated, and overall effects on jointly-owned resources like aquifers are neglected.

In this case, an Energy Commission-led and bi-state analysis is particularly appropriate and important, since the energy and other benefits flow almost entirely to the State of California, while the interests of the State of Nevada in protecting its resources, and the resources it shares with California, are not directly represented.

The Amargosa watershed, split between California and Nevada, includes the Pahrump Basin, which straddles the state line and will be affected by pumping from HHSEGS groundwater wells. In its Application for Certification, Applicant proposed to mitigate its groundwater pumping from the Pahrump Basin in California through action in Nevada. There is every reason to similarly evaluate and mitigate the environmental impacts of HHSEGS on groundwater and other ecological resources in the bi-state area.

Thank you for the opportunity to offer comments on this motion.

Sincerely,

A handwritten signature in black ink that reads "Alfredo B. Gonzalez". The signature is written in a cursive style with a large, stylized initial 'A'.

Alfredo Gonzalez
Director, South Coast and Deserts Region