

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



California Energy Commission

DOCKETED
11-AFC-2

TN # 69409

FEB 06 2013

ENERGY COMMISSION STAFF

MOTION TO

(1) WITHDRAW MOTIONS

for

**SUBPOENA DUCES TECUM,
EXTENSION OF TIME FOR REBUTTAL TESTIMONY**

or

TO STRIKE TESTIMONY

And

(2) MODIFY ORDER RE EVIDENTIARY HEARINGS**I. INTRODUCTION**

On February 1, 2013, Energy Commission staff (Staff) filed a *Motion for Subpoena Duces Tecum and Motion for Extension of Time for Rebuttal Testimony, or, in the Alternative, Motion to Strike Testimony (Motion for Subpoena)* in this proceeding. This *Motion for Subpoena* was filed primarily to obtain information from the Applicant about potential impacts on avian life from concentrated solar flux at the proposed facility. Since filing the *Motion for Subpoena*, the Applicant has agreed to provide the information sought by Staff. The information would be presented and discussed at Staff's previously-noticed workshop on the issue of impacts of solar flux, which is to be held on February 11, 2013. This commitment by the Applicant is subject to certain limitations and with the expectation of additional time to prepare and respond to rebuttal testimony on the avian solar flux issue in light of the information presented at the upcoming Staff workshop.

Accordingly, Staff respectfully requests the Presiding Member exercise her authority under title 20, California Code of Regulations, section 1203(c), to:

- (1) allow Staff to withdraw its *Motion for Subpoena* without prejudice, and
- (2) Issue an order allowing additional time as agreed to by Staff and the Applicant for all parties to this proceeding to file rebuttal testimony, and the Applicant to file sur-rebuttal testimony, on the solar flux issue.

II. BASIS FOR THIS MOTION

The Applicant has now agreed to produce its expert Mr. Gary Santolo and his documents at Staff's workshop on February 11, 2013. This commitment is reflected in a letter of agreement from counsel for the Applicant submitted to the Presiding Member, dated

February 6, 2013, a true and correct copy of which is attached hereto as Exhibit A. This commitment from the Applicant, accepted in good faith, obviates the need at this time for Staff's *Motion for Subpoena*.

Staff and the Applicant believe additional time is warranted for parties to the proceeding to prepare rebuttal testimony, and the Applicant to prepare sur-rebuttal testimony, on the solar flux issues as they pertain to the flux study conducted by Mr. Santolo.

A proposed order is attached for the convenience of the Presiding Member.

III. DECLARATION

I declare, under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

Executed on February 6, 2013, in Sacramento, California.



Richard C. Ratliff, Staff Counsel IV
Pippin C. Brehler, Senior Staff Counsel
Kerry Willis, Senior Staff Counsel
California Energy Commission

Exhibit A

ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER
1947-2010

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

ATTORNEYS AT LAW

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

BRIAN S. BIERING
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SHANE E. C. McCOIN
SAMANTHA G. POTTENGER

OF COUNSEL:
ELIZABETH P. EWENS
RONALD LIEBERT

February 6, 2013

Commissioner Karen Douglas
Hearing Officer Ken Celli
Hidden Hills Solar Electric Generating System (11-AFC-2)
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Notice of Agreement Between Staff and the Applicant Regarding the February 11, 2013 Workshop.

Dear Commissioner Douglas and Hearing Officer Celli:

We are writing to notify the Committee that Staff and the Applicant have come to an agreement regarding the February 11, 2013 workshop. Staff and the Applicant have agreed as follows:

- Applicant agrees to have Gary Santolo at the workshop and that he will answer reasonable, relevant questions regarding the tests described in his testimony;
- Applicant agrees that Gary Santolo will produce photographs taken as part of the tests for inspection by Staff, government agency representatives and a representative of each formal intervenor at the workshop; provided, however, that Staff and Applicant agree that, due to the nature of the photographs and the potential for abuse of them, the photographs will not be available for inspection by persons other than those specified above and neither Staff nor Parties or other person or entity will obtain custody of or otherwise record or copy the photographs, nor will the photographs be submitted to the Docket or admissible in this proceeding;
- Applicant agrees that Gary Santolo will also produce the following documents at the workshop which will be submitted to the Docket:
 - Notes regarding the tests (with the understanding that there are no notes specifically addressing the placement of the thermocouples); and
 - Notes/records of the thermocouple data, including records beyond 5 seconds;

February 6, 2013

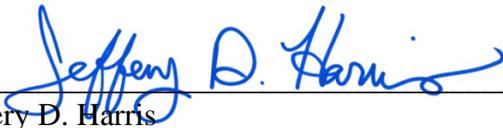
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- Staff agrees to withdraw its *Motion for a Subpoena Duces Tecum and Motion for Extension of Time for Rebuttal Testimony or in the Alternative Motion to Strike Testimony*;
- Optional Rebuttal Testimony addressing the Santolo Report will be due by all parties on February 15, 2013;
- Optional Sur-rebuttal testimony by the Applicant to the Rebuttal Testimony filed by other parties will be due on or before February 20, 2013;
- Both Staff and Applicant agree that no changes to any other dates in the December 21, 2012 Scheduling Order are necessary; and
- Both Staff and Applicant will advocate for the schedule set forth in the December 21, 2012 Scheduling Order without any further modification.

Please contact me at 916-447-2166 if you have any questions regarding this agreement.

Sincerely,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By 
Jeffery D. Harris
Christopher T. Ellison
Samantha G. Pottenger
Attorneys for Applicants

**[PROPOSED] ORDER
GRANTING MOTION TO**

**(1) WITHDRAW MOTIONS
for
SUBPOENA DUCES TECUM,
EXTENSION OF TIME FOR REBUTTAL TESTIMONY
or
TO STRIKE TESTIMONY**

And

(2) MODIFY ORDER RE EVIDENTIARY HEARINGS

For the reasons stated in the Energy Commission Staff's *Motion to (1) Withdraw Motions for Subpoena Duces Tecum, Extension of Time for Rebuttal Testimony, or to Strike Testimony, and (2) Modify Order re Evidentiary Hearings*, filed herein February 5, 2013, the Hidden Hills Presiding Member hereby adopts this Order.

Staff Motions for Subpoena Duces Tecum, Extension of Time for Rebuttal Testimony, or to Strike Testimony, filed herein on February 1, 2013, are withdrawn without prejudice.

Further, the Committee's Notice of Prehearing Conference and Evidentiary Hearing and Order, December 21, 2012, is hereby modified to allow:

- Optional Rebuttal Testimony addressing the avian impacts from solar flux issues will be due by all parties on February 15, 2013;
- Optional Sur-rebuttal testimony by the Applicant to the Rebuttal Testimony filed by other parties will be due on or before February 20, 2013;

Dated: _____

KAREN DOUGLAS
Commissioner and Presiding Member
HHSEGS AFC Committee



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 9/20/2012)

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, Ste. 600
San Francisco, CA 94104
e-mail service preferred
lbelenky@biologicaldiversity.org

Center for Biological Diversity
Ileene Anderson, Public Lands
Desert Director
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
e-mail service preferred
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
e-mail service preferred
sacredintent@centurylink.net

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

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

INTERESTED AGENCIES (con't.)

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

**ENERGY COMMISSION –
DECISIONMAKERS**

KAREN DOUGLAS
Commissioner and Presiding Member
e-mail service preferred
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

Galen Lemei
Advisor to Presiding Member
e-mail service preferred
galen.lemei@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
e-mail service preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Pamela Fredieu, declare that on February 6, 2013, I served and filed copies of the attached Energy Commission Staff Motion to (1) Withdraw Motions for Subpoena Duces Tecum, Extension of Time for Rebuttal Testimony or To Strike Testimony and (2) Modify Order Re Evidentiary Hearings, dated February 6, 2013. 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:

- 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:

- 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