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January 30, 2012

Commissioner Carla Peterman, Presiding Member
Commissioner Karen Douglas, Associate Member
Hearing Officer Kourtney Vaccaro
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET	
11AFC-04	
DATE	<u>JAN 30 2012</u>
RECD.	<u>JAN 30 2012</u>

RE: Applicant's Comments Regarding Rio Mesa Solar Electric Generating Facility (11-AFC-4)
Issues Identification Report and Staff's Proposed Schedule

Dear Commissioners and Hearing Officer Vaccaro:

Rio Mesa I, LLC, Rio Mesa II, LLC, and Rio Mesa III, LLC, their direct parent, Rio Mesa Holdings, LLC, and its direct parent, BrightSource Energy, Inc. (collectively the "Applicant"), submit the following comments regarding the California Energy Commission Staff Issue Identification Report (hereinafter "IIR") issued on January 25, 2012. As discussed below, Applicant has serious concerns regarding Staff's proposed schedule as set forth in the IIR, and presents a markup to the Staff's proposed dates as part of our comments herein. Applicant believes the modified schedule is a reasonable adaptation of the scheduling strategies the Commission has used to license recent solar thermal projects approved by the Commission. Applicant also provides comments on the issues identified by Staff. While Applicant disagrees with Staff's characterization of some of the issues, Applicant believes that through active dialogue between the parties in this proceeding, these issues can be resolved in a timely fashion. Applicant looks forward to working with the Committee, Staff, and other parties towards the successful resolution of the issues discussed in the IIR, as well as the additional issues described below.

PROJECT SCHEDULE

Applicant is very concerned with the schedule proposed by Staff for the Rio Mesa SEGF licensing process. Applicant has obligations to perform under two approved Power Purchase Agreements (PPA) with SCE and a single PPA with PG&E. The proposed schedule unnecessarily delays a considerable amount of the required review based on the potential for a delay in completion of avian and bat surveys and monitoring tasks. The only issue that has been identified with a potential valid reason that the CEC

and BLM cannot meet the Statutory 12 month review schedule has to do with avian and bat recommended surveys and monitoring. Applicant understands that if left unaltered, that the Renewable Energy Action Team (REAT) recommended surveys may result in a delay for avian and bat final analysis. On January 12, 2012, after the Biological Resources Workshop of January 6, 2012, Applicant submitted a compromise proposal to the REAT for consideration, which Applicant understands was rejected by REAT without comment, except that no further burrowing owl surveys are required. Applicant urges the Committee to review the Applicant's January 12th proposal and encourage the REAT members to reach a compromise solution with the Applicant that does not result in a substantial delay. Certainly any additions to the recommendations for the avian surveys and bat monitoring should not impact the Staff's ability to perform its required analyses in the other topical areas for the project. Applicant remains ready to work with Staff to complete all of the analyses in a prompt and compliant manner.

Applicant has prepared the schedule below which shows three columns: (1) Applicant's proposed schedule; (2) Staff's proposed schedule from the IIR; and (3) a compromise schedule which comes closer to meeting the Commission's mandated one-year schedule. Applicant is prepared to work in a coordinated fashion with the regularly agencies to ensure that the State's Renewable Portfolio Standards and jobs goals are met with respect to the proposed Rio Mesa SEGF.

CEC IIR Activity #	Activity	Applicant's Proposed Schedule	CEC's IIR Schedule	Compromise Schedule
1	AFC Filed	10-14-11	10-14-11	10-14-11
2	AFC Data Adequacy Determination	12-14-11	12-14-11	12-14-11
3	Workshop on Biological Resources – Bird/Bat Survey Protocol	1-6-12	1-6-12	1-6-12
4	Staff files Issues ID Report	1-25-12	1-25-12	1-25-12
5	Perfected POD (BLM)	Jan 2012	Mar 2012	Feb 2012
6	NOI (30-day scoping period) (BLM)	Jan 2012	Apr 2012	Feb 2012
7	Staff Files First Round of Data Requests	Jan 2012	2-3-12	2-3-12
-	CEC Informational Hearing and Site Visit and BLM Scoping Meeting	Jan 2012	-	2-1-12
8	Staff Files Subsequent Rounds of Data Requests and Applicant Submits Data Responses Series of Energy Commission Workshops to Discuss/Address Data and Issues.	-	Mar-Dec 2012	Mar 2012
9	Applicant Conducts and Submits Requested Bird/Bat Survey Information	Feb 2012*	Feb 2012 – Feb 2013	Feb 2012*
-	CEC/BLM Staff Data Request Workshop	Feb 2012	-	Mar 2012
-	Applicant Provides Data Responses	Mar 2012	-	Mar 2012
-	Data Response and Issue Resolution Workshop	Apr 1, 2012	-	Apr 1, 2012
-	Administrative Staff Assessment (SA)/Draft Environmental Impact Statement (DEIS) to staff for review	May 1, 2012	-	May 1, 2012

CEC IIR Activity #	Activity	Applicant's Proposed Schedule	CEC's IIR Schedule	Compromise Schedule
-	NOA of SA/DEIS in Federal Register	Jun 1, 2012	-	Jun 1, 2012
14	PSA/DEIS filed (90-day comment period begins)	Jun 1, 2012	Q2 2013	Q3 2012
-	BLM submits BA to USFWS (Start 135-day consultation)	Jul 1, 2012	-	Jul 1, 2012
15	PSA Workshop/DEIS Public Meetings	Jun 2012	Q3 2013	Q3 2012
16	Close BLM comment period	Sep 1, 2012	Q3 2013	Q4 2012
-	USFWS issues Biological Opinion	Dec 1, 2012	-	Dec 1, 2012
-	Prepare responses to comments and add to FSA/FEIS	Jul 2012	-	Q4 2012
-	Administrative FSA/FEIS internal staff review	Nov 1, 2012	-	Q4 2012
-	NOA of FSA/FEIS in Federal Register	Jan 12, 2012	-	Q1 2013
17	FSA/FEIS distributed	Dec 1, 2012	Q4 2013	Q1 2013
20	Prehearing Conference	Aug 2012	TBD	Q2 2012
21	Evidentiary Hearings	Aug 2012	TBD	Q2 2012
-	Plan Amendment Protest period ends	Mar 2, 2012	-	Q1 2012
22	Committee files PMPD	Dec 1, 2012	TBD	Q1 2013
23	Hearing on the proposed decision	Dec 14, 2012	TBD	Q1 2013
24	Commission Issues Final Decision	Jan 14, 2013	TBD	Q2 2013
25	BLM Record of Decision	Apr 12, 2013	TBD	Q2 2013

*The requested surveys include a full year of avian bird point count data, and additional surveys. Applicant will provide results, as available.

Applicant urges the Committee and Staff to work proactively with us to refine the schedule milestones so that both State and Federal permits can be issued in time to support a commercial on line date that supports the contractual obligations set forth in our PPAs.

CEC AND BLM JOINT REVIEW PROCESS

The Staff Report states that a new joint CEQA/NEPA document template needs to be developed that meets both agencies' needs. The original intent of combining the CEQA and NEPA processes was to create a more efficient process than if the agencies processed an AFC and Right of Way separately. In previous licensing cases, the joint process proved to be inefficient, and Applicant is concerned that a joint process will be a significant impediment to the schedule for this Project. Applicant agrees with the need for a new joint process template, but Applicant is also concerned that creating such a template in the context of this case will create delay and uncertainty. Applicant requests that if the agencies develop a new template, the template should apply to future projects, and not to projects like Rio Mesa SEGF that are currently pending at the respective agencies.

AIR QUALITY

GHG Emissions from Mirror Washing Activities

Applicant will respond to Staff's formal Data Request on this issue, but would like to provide a preliminary response as follows. GHG emissions from mirror washing activities have not been included in total facility GHG emissions because the PSD program applies to emissions from stationary sources. Applicant believes that based on the regulatory definition of a stationary source for the PSD program, mirror washing activities do not qualify as stationary sources. The GHG emissions presented in the AFC (AFC Appendix 5.1B, Table 5.1B-10) were calculated based on total estimated fuel use for all mirror cleaning activities, which is based in turn on estimated hours of engine operation. Separate fuel use estimates for mirror washing machine travel and for water pump activity are not available, so separate emissions calculations cannot be provided. While it might be possible to further estimate the breakdown of fuel use between travel and water pump activities, such an estimate would be speculative at best. Further, because emissions from the mirror washing vehicles are not attributable to the stationary source during either operating mode, and thus are not considered for PSD purposes, any estimate produced would not provide any useful information beyond the estimate of total GHG emissions from mirror washing activities, which has already been provided in the AFC. Therefore, there is no need to break down the total GHG emissions for mirror washing activities into separate components.

Applicant has discussed this issue with staff of EPA Region 9. EPA staff concurs that if the engine or engines in the mirror washing machines are EPA-certified non-road engines, the emissions from those engines are not emissions from a stationary source and therefore are not included in determining whether the Rio Mesa SEGF is subject to PSD review. In the event Applicant decides to use on-road-certified engines in the Mirror Washing machines (MWMs), Applicant will discuss the applicability of GHG emissions from mirror washing activities for PSD review further with EPA staff.

5% PSD Compliance Margin

Applicant has also discussed the 5% PSD compliance margin issue with staff at EPA Region 9. Although EPA sometimes asks permitting agencies (or applicants) to leave a 5% margin as compared with PSD applicability thresholds, they accept lower margins based on the nature of the emissions source, the monitoring requirements, and their perception of the enforcement capability of the local air district. For a project located in the Mojave Desert AQMD, the EPA would focus their review on the emission limits and monitoring requirements contained in the Mojave Desert AQMD draft permit to ensure project emissions remain below PSD trigger levels.

ALTERNATIVES

The Rio Mesa SEGF Application for Certification (AFC) was specifically prepared to address the more stringent requirements related to the Alternatives analysis required under NEPA. Section 6 of the AFC presents a robust alternatives analysis, including the No Project Alternative, three On-Site Alternatives (including the U.S. Army Corps of Engineers Least Environmentally Damaging Practicable Alternative

(LEDPA), nine Off-Site Alternatives, and ten Technology Alternatives. The Alternatives analysis also addresses five alternative routes for accessing the site, five alternative water supply options, three re-route options for Bradshaw Trail, and two alternatives for construction and backup power and telecommunications.

BIOLOGICAL RESOURCES

REAT Agency Request for Additional Survey Data

The Staff Report lists the avian and bat surveys as a major issue for the Project. The Staff Report also indicates “the REAT agencies remain firm on most of the components of their December 16, 2011 request.” To date, this is the only response Applicant has received regarding the Applicant’s January 12, 2012 Counterproposal. The Applicant believes the survey work it has already performed in accordance with BLM approved protocols is sufficient to meet applicable requirements. It appears the December 16, 2011 recommendations by the Renewable Energy Action Team (REAT) and the Staff Report do not reflect the work BrightSource already accomplished with respect to avian surveys, which was submitted to the agencies on October 14, 2011 as part of the Application for Certification for the Project. Applicant requests that the REAT consider the full year of survey data already collected, along with the information presented during the January 6, 2012 Workshop, in their evaluation of the additional 2012 surveys. Applicant believes the work already accomplished, together with the Applicant’s January 12, 2012 additional proposed surveys, provide a robust set of data for the analyses of potential impacts to avian and bat species resulting from the project.

One major issue that is not listed in the Staff Report is the need for a full evaluation of the actual impacts and risks to avian species posed by the Project’s technology. To date, it appears that REAT agencies’ requested surveys have been based on a misunderstanding of the threat posed by a solar thermal tower technology. The requirement to conduct additional surveys beyond what is typically required of projects should be predicated on a complete understanding of the risks posed to those species. While the Applicant remains committed to addressing the REAT agencies’ concerns about avian species, the Applicant reiterates that any survey requirements must be put into the context of the risk posed to avian species. The Applicant is prepared to address the risks posed by the current evolution of the solar thermal power tower technology.

Non-Conformance with the Migratory Bird Treaty Act

Applicant believes the Project is in conformance with the Migratory Bird Treaty Act. In conducting both the spring and fall avian bird point counts in 2011, the Applicant followed BLM’s Solar Facility Bird Point Count Protocol 2009. This protocol was sent to BLM, CEC, FWS, CDFG, Riverside County, RQOCB, and ACOE prior to conducting the surveys. BLM responded that day concurring with the protocols. The other agencies did not respond prior to beginning surveys. A summary of the spring avian bird point count information is included in the Applicant’s AFC. In addition, fall avian bird point counts have now been conducted. Applicant is currently preparing a summary of one full year of avian bird point counts information (covering both spring and fall 2011). This information will be submitted

shortly, and BSE looks forward to reviewing the data with the applicable reviewing agencies. In addition, Applicant understands that applicable avian and bat protection plans (Bird and Bat Conservation Strategy) will need to be prepared prior to the start of construction activities.

Non-Conformance with the Bald and Golden Eagle Protection Act

Applicant believes the Project is in conformance with the Bald and Golden Eagle Protection Act. Per the recommendation of the BLM, Applicant retained the services of the Wildlife Research Institute (WRI) to conduct eagle surveys in accordance with the FWS's Interim Golden Eagle Technical Guidance¹. Prior to conducting the surveys, this protocol was sent to all biological reviewing agencies (BLM, CEC, FWS, CDFG, Riverside County, RWQCB and ACOE). A summary of the eagle surveys conducted in 2011 is included in the Applicant's AFC. No active golden eagle nests were found within 10 miles of the project site. However, Applicant understands that an eagle protection plan (Eagle Conservation Plan) may be required and the Applicant will prepare one if so required prior to construction.

Availability of Compensation Mitigation for Impacts to Desert Washes

Staff's concern regarding whether sufficient mitigation land exists for the Project is speculative and premature given that the impacts of the Project and any required mitigation for such impacts have yet to be investigated, let alone established.

Section 10 Incidental Take Permit

The Staff IIR states that the Project may require a Section 10 Consultation for the portion of the Project that is not located on federal land. Any federal agency action "authorized, funded, or carried out by such agency" triggers the ESA Section 7 requirement that the agency consult with FWS and National Marine Fisheries Services (NMFS) to ensure that the action is not likely to jeopardize any listed species or result in destruction or adverse modification of its critical habitat. (16 USC § 1536(a)(2).) When there is a federal authorization for a portion of a Project on federal land that is necessary for the entire project to go forward, the entire project will be subject to Section 7, even though part of the project is not located on federal land. The Rio Mesa SEGF will not require a Section 10 consultation because the BLM right of way will be issued for one of the solar towers, the common area and gen-tie line, which are necessary for the entire Project to move forward. The Project can proceed solely under a Section 7 consultation.

CULTURAL RESOURCES

Historic Significance

A complete and thorough architectural history summary is included in the AFC. As part of the historic architecture field surveys, URS surveyed one half-mile from the project footprint and above-ground linears, per the CEC regulations, Appendix B, Section (g)(2)(C), and not one mile as the IIR noted. Based on field work, historic research, review of project plans, and coordination with the engineering

¹ Inventory and Monitoring Protocols; Other Recommendations in Support of Golden Eagle Management and Permit Issuance (Pagel et al. 2010); and the subsequent Draft Eagle Conservation Plan Guidance (Gould, Schmidt 2011)

team, expansion of the indirect historic architecture field survey area may not be necessary at this point, in order to consider the Project's effects and impacts to significant historical resources. The Project and the identified historical resources located within a half-mile search radius do not share a visual relationship with one another, and the Project is not expected to diminish the visual narrative, context, setting, or feeling of historical resources within a half-mile of a historical resource. Several of the historical resources, such as the existing transmission lines, are co-located alongside non-historic period transmission lines and facilities, and are neither in their original setting nor context, nor retain original materials. As a result, the addition of new elements nearby will not diminish the significance of historical resources, particularly from visual or atmospheric effects. In addition, the Project is not expected to have an auditory effect to a historical resource located within a half-mile from the proposed plant. The 'Noise and Vibration' section of the AFC did not find a significant impact from noise and vibration to any sensitive receptor within two-miles of the Project site from the construction or operation of the Project, and the IIR did not identify a 'major issue' regarding noise or vibration. Moreover, the historical resources located within the half-mile consist of a historic road and historic transmission lines, which are property types with construction methods and materials that are less sensitive to noise and vibration effects than other types of historical resources (compared to wood-framed buildings or adobe bricks).

Missing DPRs

Two of the 450+ DPR 523 forms included in Appendix G of the AFC were accidentally omitted. Applicant will provide information for CA-RIV-6613 UPDATE and PVM-MN-120 to Staff as part of its response to a Data Request on cultural resources issues.

Area of Potential Effects (APE)

The IIR indicates that BLM is interested in an "augmented APE and survey for indirect effects that more fully considers the potential visual, auditory, and atmospheric effects to historic properties." Applicant looks forward to discussing this issue in a cultural resources workshop to be scheduled by CEC and BLM Staff as soon as possible, but Applicant does not believe this matter will adversely affect the licensing/permitting schedule.

Re-Route of Bradshaw Trail

The Applicant has proposed to re-route the Bradshaw Trail and has made this clear to CEC, BLM, Tribes, and County, and community groups in several meetings and presentations. The particular section of Bradshaw Trail that Applicant proposes to re-route is a County graded road, which exhibits none of the historic features of a turn of the century stage or wagon road. Moreover, the routing of Bradshaw Trail is not well defined east of the Mule Mountains. The following discussion provides background on various routes all known at various times as Bradshaw Trail.

The route reached a stage station that was called the Adobe Station (on the western edge of Palo Verde Mesa (present-day junction of 18th Ave. and Stephenson Boulevard; approximately 6 miles northeast from the SF-299 Project site). According to Delmer G. Ross, *Gold Road to La Paz: An Interpretive Guide to the Bradshaw Trail*, 1992, "unfortunately, no one seems to know the exact routes drivers of stagecoaches

and freight wagons used to reach Adobe Station.” There were likely two routes in the vicinity of the Palo Verde Mesa:

1. Mesa Cutoff (see AFC, follows IID line in sections)
2. Valley Route (see AFC; follows current route to 30th Street)

In addition, a third route is demonstrated on the Documented Trails and Bikeway map prepared by the Riverside County Transportation and Land Management Agency. The “Palo Verde Valley Area Plan Trails and Bikeway” map (January 13, 2010). Map incorporates “Bradshaw Trail” as a regional trail within the proposed system and delineates as “Historic Trail” travelling well north of the Metropolitan Water District and SF-299 sites. These trails serve both as a means of connecting the unique communities and activity centers throughout the County and as an effective alternate mode of transportation.

Furthermore, the Department of Parks and Recreation (DPR) Form for WAPA line survey, 1994 (P 330005191) provides the following analysis: “Trail may represent a significant historical archaeological site given its relationship to early transportation in the region; however, the portion of the site near the project area [WAPA Line and Bradshaw intersection] does not contribute to the qualities that make the site eligible for NRHP status. No cultural materials are presently associated with the original trail in this (WAPA line intersection with Bradshaw Trail) section and no evidence of the original trail remains” (DPR Form P 330005191; July 18, 1994 a segment of the Trail was surveyed by WCRM during an intensive cultural resource inventory for WAPA Blythe-Knob 161-kV transmission).

Backcountry Byway: Part of the National Scenic Byways Program and managed by the U.S. Department of Transportation, Federal Highway Administration. The U.S. Secretary of Transportation recognizes certain roads as All-American Roads or National Scenic Byways based on one or more archeological, cultural, historic, natural, recreational and scenic qualities (established under the Intermodal Surface Transportation Efficiency Act of 1991, and reauthorized in 1998 under the Transportation Equity Act for the 21st Century; National Scenic Byways Program, Federal Register Vol. 60, No. 96 / Thursday, May 18, 1995).

Although established under the Department of Transportation, Federal Highway Administration, Applicant understands that the BLM would have ultimate authority regarding Bradshaw Trail. Current uses of Bradshaw Trail include recreation and camping, though nearly all of the uses are enjoyed west of the proposed project. These uses may include off road driving, wildlife viewing, plant viewing, bird watching, scenic driving, rock hounding, and hiking. Camping facilities are present at Mule-Mountain long-term visitor area and Wiley’s Well Campground, located at the intersection of Bradshaw Trail and Wiley’s Well Road; and Coon Hollow Campground is located approximately 4 miles south of Bradshaw Trail along Wiley’s Well Road.

Finally, BLM recommends that the public access Bradshaw Trail from I-10 at Wiley’s Well exit (17 miles west of Blythe), south to Bradshaw Trail, just past Wiley’s Well Campground, then west towards Indio. BLM does not recommend starting at Bradshaw Trail’s end near Ripley due to its rerouting through and around agricultural fields on private lands. In fact, Bradshaw Trail is a county-graded road, and as found during previous cultural surveys in for the WAPA electric transmission line and TransCanada natural gas

pipeline, the road in the area does not contribute to the qualities that make the site eligible for NRHP status.

Native American Consultation

Applicant recognizes and understands the critical need for consultation with the Native American groups in the Project area and stands ready to facilitate, organize, plan, and implement face-to-face meetings between the Applicant and their representatives.

LAND USE

The IIR notes that the Project will require a General Plan Amendment. In addition, the Riverside County *Request for Agency Participation in the Review of the Rio Mesa Solar Electric Generating Facility, Application for Certification* dated January 20, 2012, states that the “consistency of the Project with the General Plan is a significant County concern and should be evaluated by the CEC.” The Project will not require a General Plan Amendment (GPA) with the County of Riverside, and the Applicant has not requested to amend the County’s General Plan. Riverside amended its General Plan under GPA 1080 on November 8, 2011, as indicated in the IIR on page 10, to expressly allow renewable energy development.

PALEONTOLOGICAL RESOURCES

All paleontological resources on site (inclusive of the Project’s linear features) have now been excavated and have been or are in the process of being curated. In addition, Applicant understands that paleontological monitoring will be required during construction and that a Paleontological Resources Monitoring and Mitigation Plan (PRMMP) will be prepared and submitted for review to the applicable reviewing agencies. No impacts are anticipated to the project schedule due to paleontological resources.

TRAFFIC AND TRANSPORTATION

Applicant intends to prepare a Glint and Glare Study in response to a Data Request received by Staff. We look forward to discussing this issue further with Staff during the Discovery process. Also, see further discussion of this issue under “Visual Resources” below.

TRANSMISSION SYSTEM ENGINEERING

The California Independent System Operator (CAISO) manages the process for determining what if any network upgrades are required for proposed new generation. The current process utilizes a “Queue

Cluster” (QC) system, where the CAISO and Participating Transmission Owner review transmission system impacts in light of a group of projects within a QC. The Project submitted its Interconnect Request (IR) into QC-3. CAISO elected to combine the projects within QC-3 and QC-4 for analysis of required network upgrades. Because the network upgrades are performed based on the need for a group of projects, each project is allocated a portion of the costs of required upgrades, if any. The QC process does not target any specific upgrade to any specific project and therefore an environmental analysis by the CEC of network upgrades for RMS would not be valid. Finally, the CPUC will likely be the CEQA lead agency for review of any required network upgrades through its CPCN process with the transmission system operator.

WATER RESOURCES

The Staff IIR notes that in recent licensing cases, staff has considered the Bureau of Reclamation’s accounting surface rule as a means for determining whether there is a use of, or impact to, the Colorado River. Staff acknowledges that applicant used a computer model to create a more detailed flow analysis. Staff contemplates using the same computer modeling to determine whether staff agrees with Applicant’s results, but notes that learning to use the model could require significant time for discovery. Staff should not deviate from the practice of using the Bureau of Reclamation’s surface rule in other siting cases simply because another issue area may result in a delay of the siting case. Applicant believes that the project’s use of dry cooling and relatively small annual use of groundwater, combined with the robust analysis already conducted by Applicant, justifies Staff’s use of the Bureau of Reclamation accounting rule.

WORKER SAFETY AND FIRE PROTECTION

Applicant understands the issues and concerns raised by both the Staff and Riverside County and looks forward to discussing them more fully during the Discovery process. Applicant intends to prepare and submit a Fire and Emergency Risk Analysis in response to a Data Request submitted by CEC Staff and does not anticipate this issue will affect the licensing schedule.

VISUAL RESOURCES

Glint and Glare Analysis

The Rio Mesa SEGF solar field heliostats are designed to reflect sunlight toward the solar receiver at the top of the tower, and the mirrors are programmed to be operated in a way that their reflectivity would never be directed toward ground level viewers located outside of the Project site. Under some infrequent circumstances, it could be possible that heliostats that are not in operation might reflect sunlight onto ground level areas within the Project site. However, in cases in which this might occur, the level of light concentration will not be high because the heliostat surfaces will be shaded to some degree by surrounding heliostats, reducing the amount of light that is reflected. In any case, because of the

orientation of the heliostats inward, toward the solar tower, even under this rare scenario, the light would not be directed outward from the Project site, and thus would not create glint and glare conditions that would adversely affect roadway users or casual observers.

To ensure that the heliostats will be operated in a way that avoids the possibility for inadvertent direction of unacceptable levels of light toward ground level locations surrounding the Project site, Applicant could prepare a Heliostat Positioning Plan (HPP) similar to that implemented for the Ivanpah Solar Electric Generating System. The HPP would identify heliostat movements and positions, including those that would occur during reasonably possible malfunctions, which could lead to potential exposure of observers at locations outside the site. The HPP would include a description of how the programmed heliostat operation would avoid potential exposure of viewers outside the site to unacceptable levels of reflected light. The HPP would also include a monitoring plan that would obtain field measurements in response to legitimate complaints, verify that the plan would avoid creation of hazards related to reflected light, and provide requirements and procedures to document, investigate, and resolve complaints.

As mentioned previously, Applicant intends to prepare a Glint and Glare Study in response to a Data Request expected from Staff. Applicant looks forward to discussing this issue further with Staff during the Discovery phase of this siting case.

Bradshaw Trail

Please refer to the previous response regarding Bradshaw Trail under “Cultural Resources.”

BLM Instruction Memorandum 2011-061

The Staff Report notes staff’s disagreement with the Applicant that the Project will not cause significant visual effects. Applicant believes this an important area for continued dialogue, particularly with respect to the framework for determining whether the impact will be significant.

BLM ISSUES

Joint CEQA/NEPA Document and Process

The Staff Report states that a new joint CEQA/NEPA document template needs to be developed that meets both agencies’ needs. The original intent of combining the CEQA and NEPA processes was to create a more efficient process than if the agencies processed an AFC and Right of Way separately. In previous licensing cases, the joint process proved to be inefficient, and Applicant is concerned that a joint process will be a significant impediment to the schedule for this Project. Applicant agrees with the need for a new joint process template, but Applicant is also concerned that creating such a template in the context of this case will create delay and uncertainty. Applicant requests that if the agencies develop a new template, the template should apply to future projects, and not to projects like Rio Mesa SEGF that are currently pending at the respective agencies.

Donated Lands

Applicant has confirmed that the Project (inclusive of linear features) does not affect any donated lands. The nearest donated lands (LWCF acquisition or BLM acquired) in the vicinity of the project are approximately seven (7) miles to the southwest. Applicant can provide a figure showing the locations in response to Staff's Data Request.

Potential Unavoidable Cultural Resource Impacts

Applicant anticipates that the issue of subsurface testing will be addressed at the cultural resources workshop and looks forward to participating in that discussion.

BLM Designated Utility Corridor Impacts

Applicant has completed and submitted a Draft Conflict Corridor Analysis at the request of the BLM.

Substation Tie-In

Based on recent discussions with SCE and other projects in the area that have applied (or plan to apply), for interconnection at Colorado River Substation (CRS), Applicant has established the following:

CRS will be built in two phases. Phase One will include eight interconnection Bays and Phase Two will add eight more bays, for a total of sixteen interconnection bays when the substation is fully constructed. There are currently two projects with executed LGIA that are assigned to Phase One interconnection bays number 1, 6, 7 & 8 which leaves four bays that are currently not assigned to a specific project. Rio Mesa SEGF is slated to occupy two of the unassigned bays in CRS Phase One.

Impacts to Biological Resources

The IIR states that publication of a joint PSA/DEIS will not occur until after the provision of one year of survey results. As noted above under "Biological Resources", Applicant believes the work already accomplished, together with the Applicant's January 12, 2012 additional proposed surveys, provides a robust set of data for the analyses of potential impacts to avian and bat species resulting from the project. Under Applicant's proposal, the agencies would review data provided to date while the Applicant conducts additional surveys. Moreover, the additional avian survey data requested for the Project should not delay the preparation of the PSA/DEIS for other topical areas. The Applicant requests that the agencies conduct their analyses of other topical areas as expeditiously as possible, and not wait for the final set of avian survey data.

Wildlife Habitat Management Plan

Applicant was not previously aware of this land use designation and is working to understand the particular boundaries and guidelines associated with the WHMAs outlined in the Northeastern Colorado Desert Coordinated Management Plan (NECO Plan). We look forward to discussing the WHMAs near the Project in future workshops with CEC and BLM staff.

Unsurveyed Federal Land

To date, Applicant has performed the following land surveys:

<u>Survey</u>	<u>Completion date</u>
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Boundary survey MWD land	Feb- 9, 2011
ALTA/ACSM Land Title survey MWD land	Mar- 17, 2011
Boundary survey BLM (Augmentation lands)	May- 27, 2011
Detailed Topographic (1' contour) survey	Jun-2, 2011
Survey and Legal description of transmission corridor	Nov-1, 2011

Applicant is now in the advanced stages of obtaining title insurance for any non public land to be used by the project.

Transmission Rights of Way

Applicant is aware of two electrical transmission lines and one underground natural gas transmission pipeline in the Project area. The owners of the electrical transmission are Western Area Power Authority (WAPA) on the east side and Imperial Irrigation District (IID) on the northwest side respectively, the Gas Pipeline is owned by North Baja Pipeline (NBPL) company, a subsidiary of TransCanada Corporation and is located east of the WAPA line. Applicant is coordinating directly with each line owner to ensure no ROW conflicts will occur. Further, Applicant has decided to not develop any solar field facilities east of the WAPA/NBPL lines and to add a buffer to the west of the WAPA line that will accommodate any future expansion. Applicant will develop a small area east of the NBPL line to house the Project Common facilities but, as mentioned above, this is done in direct coordination with NBPL. The Applicant has proposed a relocation of a portion of the F-Line 161kv electric transmission line owned and operated by Imperial Irrigation District (IID). IID notified Applicant that it agreed to the reroute of the F-Line at Applicant's expense in a June 9, 2011 letter. The entire area that would be subject to a reroute has already been surveyed as part of the environmental surveys conducted for the Project. The Applicant, or IID will file an SF-299 for a T-line ROW adjacent to the Project boundary, but within the area of the conducted environmental surveys. Once the transmission line is relocated, IID will relinquish the existing 50 foot ROW that exists within the solar field of Rio Mesa Solar 3.

Footprint on BLM Lands

The Project will overlap with two pending BLM ROW applications for solar energy projects: the Desert Quartzite project by First Solar Development (CACA 049397) and the Sonoran West project by BrightSource (CACA 051967). The Desert Quartzite project, a proposed 600 MW solar photovoltaic (PV) facility on approximately 7,274 acres, is located to the immediate north of the Project and south of I-10. The Sonoran West project, a proposed 1,000 MW solar electric generating facility on approximately 4,703 acres, is located to the northwest of the project site.

BrightSource is working with First Solar to site the gen-tie line within the area that overlaps with the First Solar ROW application. Furthermore, solar generation is not expected to occur on the areas of overlap because they are physically divided from the rest of the Desert Quartzite site by two existing transmission lines. As a result, the 220 kV gen-tie line is not anticipated to create a meaningful conflict with the ROW application for the Desert Quartzite project. However, the BLM will make any final determinations needed regarding overlap between the 220 kV gen-tie line buffer and the Desert Quartzite project.

Additionally, Geographic Information System (GIS) analysis identified approximately 16 feet of overlap between the northernmost portion of the Project solar fields and the southernmost portion of lands included in the ROW application for the Desert Quartzite project. The approximate 16 feet of overlap is most likely attributable to an inaccuracy in the files used in the GIS analysis. There does not appear to be any substantive overlap between the two projects at this location. However, BLM will make any final determinations needed regarding overlap at this location.

GIS analysis identified approximately 72 acres of overlap between the 1,300-foot gen-tie line buffer and lands included in the BLM ROW application for the Sonoran West project. Seventy two acres represents approximately 1.5 percent of the area within the approximately 4,703-acre ROW application for Sonoran West. Because the overlap calculations include a 1,300-foot buffer for the 220 kV gen-tie line, the total area of overlap is considered a conservative estimate. The overlap is located adjacent to the newly approved SCE CRS in the northeastern corner of lands included in the ROW application for Sonoran West. The Project will not construct the 220 kV gen-tie line, make any improvements, or otherwise use the land within the approximately 72-acre area of overlap. Therefore, the 220 kV gen-tie line is not anticipated to conflict with the ROW application for the Sonoran West project. Moreover, BrightSource, as the applicant for both projects, will ensure there are no conflicts.

CONCLUSION

Applicant is pleased to provide these comments. Disagreement about schedule and the issues posed by a major renewable energy project are not unusual at this stage of a licensing project. The issues identified in the Staff Report and those described by the Applicant can be resolved in a timely manner through dialogue, and the Applicant looks forward to providing additional information to address these issues. The Applicant will also strive to provide the Committee, Staff and other parties with information to better understand the potential impacts of the technology the Project will employ. Through the diligent efforts of the Applicant, staff, and the other agencies, the Project can be permitted in a timely fashion in furtherance of California and the Federal Government's guidance to encourage large-scale renewable energy projects like the Rio Mesa Solar Electric Generating Facility.

Sincerely,



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**APPLICATION FOR CERTIFICATION
FOR THE *RIO MESA SOLAR*
*ELECTRIC GENERATING FACILITY***

**DOCKET NO. 11-AFC-04
PROOF OF SERVICE
(Revised 1/23/12)**

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DECLARATION OF SERVICE

I, Eric Janssen, declare that on, January 30, 2012 I served and filed copies of the attached "Applicant's Comments Regarding Rio Mesa Solar Electric Generating Facility (11-AFC-4) Issues Identification Report and Staff's Proposed Schedule", dated January 30, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at:

[<http://www.energy.ca.gov/sitingcases/riomesa/index.html>].

This document has been sent to the other parties in this proceeding (as shown on the attached 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 electronic copies 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
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1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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:

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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.



Eric Janssen