

STATE OF CALIFORNIA
**Energy Resources Conservation
and Development Commission**

California Energy Commission DOCKETED 11-AFC-4
TN # 66069 JUL 03 2012

In the Matter of:)
)
Application for Certification for the)
Rio Mesa Solar Electric Generating Facility)
)
_____)

Docket No. 11-AFC-04

APPLICANT'S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
FOR CALIFORNIA ENERGY COMMISSION STAFF'S
DATA REQUESTS SET 2B

Christopher T. Ellison
Brian S. Biering
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512

July 2, 2012

Attorneys for Applicant

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)
)
Application for Certification for the) Docket No. 11-AFC-04
Rio Mesa Solar Electric Generating Facility)
)
)
)

APPLICANT’S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
FOR CALIFORNIA ENERGY COMMISSION STAFF’S
DATA REQUESTS SET 2B

On June 11, 2012, Rio Mesa Solar I, LLC and Rio Mesa Solar II, LLC (collectively, the “Applicant”), received the California Energy Commission (“CEC”) Staff’s Data Requests, Set 2B. Except as noted below, the Applicant will respond to these requests on or before July 11, 2012. Pursuant to Title 20, California Code of Regulations, Section 1716(f), Applicant hereby provides notice of its objection to Data Requests 174-178.

Data Requests 174 – 178 Ask Applicant to Engage in Costly Testing of Buried Trash

From the Desert Training Center.

Data Requests 174 – 178 ask the Applicant to test potential buried trash pits from the Desert Training Center (“DTC”) on the Project site. As noted in the Background for Data Requests 174-178, the DTC was active from 1942 – 1944. During overnight training exercises, soldiers may have buried their trash adjacent to bivouac sites. Staff asserts that the buried solid wastes are “resources” that may be disturbed through the installation of heliostats or other ground disturbance activities associated with construction of the Project.

Data Request 174 Requests that the Applicant “submit a plan for staff review and approval for the testing of short-term bivouac sites to determine if subsurface concentrations of

metal objects are present. At a minimum, the plan needs to include a map showing the locations of proposed test sites, justification for site selection, and an explanation of the methodology for testing. If necessary, staff will meet with the applicant and/or their consultant to finalize the test sites and methodology.”

Data Request 175 states that “following staff’s approval of the testing plan (DR174), please test specified sites using metal detectors or magnetometer devices, to identify potential hot spots of subsurface concentrations of metal objects.”

There is no Data Request #176 in Set 2B.

Data Request 177 asks the Applicant to “add the locations of the surveyed features on the site maps for the individual sites.”

Data Request 178 asks the Applicant to “incorporate the findings into the eligibility evaluation of any sites on which they appear, in terms of their potential importance under California Register of Historic Resources Criterion 4 (National Register of Historic Places Criterion D) to provide information on the history of the sites as contributors to the DTC Cultural Landscape.”

Data Request 174 -178 Fail To Meet The Standard Set Forth in Section 1716 of The Commission’s Regulations.

Section 1716 of the Commission's regulations provides:

Any party may request from the applicant any information reasonably available to the applicant which is relevant to the . . . application proceedings or reasonably necessary to make any decision on the . . . application.¹

¹ 20 C.C.R. § 1716(b).

Applicant objects to Data Requests 174 – 178 because these requests call for information which is not reasonably available to the Applicant and which, pursuant to applicable CEQA rules discussed below, is not sufficiently likely to produce valid, historically significant information as to be relevant to any Commission decision in this proceeding.

The information is not reasonably available to the Applicant because it is not information within the Applicant's possession nor which the Applicant can reasonably obtain. To the best of Applicant's knowledge, no person or entity has the requested information. Accordingly, it can only be obtained through very extensive and costly field surveys. Since, by definition, the buried trash is not visible on the ground surface, Applicant would be required to utilize metal detection devices across the project site. In addition, since the project site was within a military testing area, Applicant would need to follow unexploded ordnance protocols for recovering any potential buried trash. Given the large area of the site, this would be a very time consuming and expensive exercise.

This effort is neither justified nor required by CEQA or other applicable law for these types of resources. The resources in question consist of buried trash at military camp sites. Such burials are both numerous and of little historic value. A buried trash pit would typically consist of tin cans and temporary toilets, and it is highly unlikely that the buried trash consists of objects that are rare or significant. Indeed, Staff's only suggestion that this trash is culturally significant rests on the fact that the sites are greater than 50 years old.

Not everything that is older than 50 years is historic or culturally significant. After screening for resources that may be listed in state and local historic resource registries, CEQA directs lead agencies to consider a broader range of factors. These factors are detailed in 14 Cal.

Code Reg. 15064.5(3)(a)(3), which directs the lead agency to consider the following information when evaluating the potential significance of a resource:

- (A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- (B) Is associated with the lives of persons important in our past;
- (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- (D) Has yielded, or may be likely to yield, information important in prehistory or history.

The presumption behind this direction is that a lead agency will make a judgment about what is important to our history and culture. Some resources are important because they are wonderful examples of architecture or engineering. Others are important for their connection to past people or events. While age is a factor (most historic resources are over 50 years old), age is not a hard and fast rule, and some newer “resources” already have proven their importance. The buried trash at issue in Data Requests 174 – 178 is older than 50 years, but it is not important to our history or culture based on the criteria set forth above. The military camps sites are not “events that have made a significant contribution to the broad patterns of California's history and cultural heritage.” The soldiers that camped at these sites were not famous or historically significant individuals that would qualify as “persons important in our past.” The buried trash does not embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of an important creative individual, or possess high artistic

values. Nor has the buried trash yielded, or is it likely to yield, information important in prehistory or history.


Simply put, CEQA calls upon the Commission to exercise judgment regarding the potential historic value of the resource and the cost and time needed to survey it. The law does not require—indeed, it prohibits—a blind assumption that all resources older than fifty years must be surveyed. The very purpose of these rules as articulated in CEQA is to prevent precisely the type of unreasonable outcome presented here: requiring that an applicant spend substantial time and effort excavating and surveying buried trash. There is simply no basis for concluding that the buried trash is a historic or culturally significant resource.

Consideration of the buried trash is not relevant to this proceeding or a Commission decision on this proceeding. Moreover, testing a large project site for buried trash calls for information that is not reasonably available to the Applicant. For these reasons, Applicant objects to Data Requests 174 – 178.

Dated: July 2, 2012

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  _____

Christopher T. Ellison
Brian S. Biering
2600 Capitol Avenue, Suite 400
Sacramento, California 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512

Attorneys for Applicant

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

APPLICATION FOR CERTIFICATION)
for the RIO MESA SOLAR ELECTRIC)
GENERATING FACILITY)
_____)

Docket No. 11-AFC-04

PROOF OF SERVICE

I, Eric Janssen, declare that on July 2, 2012, I served the attached *Applicant's Notice Pursuant To 20 C.C.R. § 1716(F) For California Energy Commission Staff's Data Requests Set 2B* via electronic and U.S. mail to all parties on the attached service list.

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



Eric Janssen

SERVICE LIST
11-AFC-04

APPLICANTS' AGENTS

BrightSource Energy, Inc.
Todd Stewart, Senior Director
Project Development
1999 Harrison Street, Suite 2150
Oakland, CA 94612
tstewart@brightsourceenergy.com

BrightSource Energy, Inc.
Michelle Farley
1999 Harrison Street, Suite 2150
Oakland, CA 94612
mfarley@brightsource.com

BrightSource Energy, Inc.
Brad DeJean
1999 Harrison Street, Suite 2150
Oakland, CA 94612
e-mail service preferred
bdejean@brightsourceenergy.com

APPLICANTS' CONSULTANTS

Grenier and Associates, Inc.
Andrea Grenier
1420 E. Roseville Parkway,
Suite 140-377
Roseville, CA 95661
e-mail service preferred
andrea@agrenier.com

URS Corporation
Angela Leiba
4225 Executive Square, Suite 1600
La Jolla, CA 92037
Angela_leiba@urscorp.com

COUNSEL FOR APPLICANTS

Ellison, Schneider, & Harris
Christopher T. Ellison
Brian S. Biering
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
cte@eslawfirm.com
bsb@eslawfirm.com

INTERESTED AGENCIES

Mojave Desert Air Quality Management District
Chris Anderson, Air Quality Engineer
14306 Park Avenue
Victorville, CA 92392-2310
canderson@mdaqmd.ca.gov

California ISO
e-mail service preferred
e-recipient@caiso.com

Bureau of Land Management
Cedric Perry
Lynnette Elser
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553
cperry@blm.gov
lelser@blm.gov

Office of Riverside County Counsel
County of Riverside
Katherine Lind
Tiffany North
3960 Orange Street, Suite 500
Riverside, CA 92501
e-mail service preferred
klind@co.riverside.ca.us
tnorth@co.riverside.ca.us

INTERVENORS

Center for Biological Diversity
Lisa T. Belenky, Senior Attorney
351 California Street, Suite 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

ENERGY COMMISSION – DECISIONMAKERS

Carla Peterman
Commissioner and Presiding Member
carla.peterman@energy.ca.gov

Karen Douglas
Commissioner and Associate Member
e-mail service preferred
karen.douglas@energy.ca.gov

Kourtney Vaccaro
Hearing Adviser
e-mail service preferred
kourtney.vaccaro@energy.ca.gov

Galen Lemei
Advisor to Commissioner Douglas
e-mail service preferred
galen.lemei@energy.ca.gov

Jennifer Nelson
Advisor to Commissioner Douglas
e-mail service preferred
jennifer.nelson@energy.ca.gov

Jim Bartridge
Advisor to Commissioner Peterman
jim.bartridge@energy.ca.gov

ENERGY COMMISSION STAFF

Pierre Martinez
Project Manager
pierre.martinez@energy.ca.gov

Lisa DeCarlo
Staff Counsel
lisa.decarlo@energy.ca.gov

Eileen Allen
Commissioners' Technical
Advisor for Facility Siting
e-mail service preferred
eileen.allen@energy.ca.gov

ENERGY COMMISSION – PUBLIC ADVISER

Jennifer Jennings
Public Adviser's Office
e-mail service preferred
publicadviser@energy.state.ca.us