

PAMELA J. WALLS  
County Counsel

OFFICE OF COUNTY COUNSEL  
COUNTY OF RIVERSIDE



KATHERINE A. LIND  
Assistant County Counsel

3960 ORANGE STREET, SUITE 500  
RIVERSIDE, CA 92501-3674  
TELEPHONE: 951/955-6300  
FAX: 951/955-6322 & 951/955-6363

March 7, 2012

California Energy Commission  
Energy Facilities Siting Office  
ATTN: Pierre Martinez, Project Manager  
1516 Ninth Street  
Sacramento CA 95814-5112

<b>DOCKET</b>	
<b>11-AFC-4</b>	
DATE	MAR 07 2012
RECD.	MAR 07 2012

**RE: Mandatory Status Conference Concerning the Rio Mesa Solar Electric Generating Facility, Application for Certification (Docket No. 11-AFC-4) – County of Riverside Written Comments**

Dear Commissioners Peterman and Douglas:

The County of Riverside ("County") received Notice of the Mandatory Status Conference of the Committee scheduled for March 19, 2012 regarding the Rio Mesa Solar Electric Generating Facility ("Project"). Thank you for giving the County the opportunity to participate in review of the Project by providing comments to the Committee for its consideration at the Mandatory Status Conference.

The Notice invited interested agencies, including the County, to address the following:

*Whether, and how, the pending litigation challenging the legality of Riverside County's solar facility development fees will affect Commission evaluation of the project's compliance with the county's land use laws, ordinances, regulations, and standards (LORS).*

It is the County's position that the pending litigation challenging the County's comprehensive, integrated legislative solar power plant program should have no effect on the Commission's evaluation of the Project's compliance with County LORS. Obviously, the mere filing of a lawsuit does not affect the County's solar power plant program. Nor does it affect any of the other LORS previously cited to the Commission by the County. However, if the County's solar power plant program is determined to be invalid or unenforceable, in whole or in part, by the Court, then all components of the program, including General Plan Amendment No. 1080 (Land Use Policy LU 15.15), Ordinance No. 348.4705, and Board of Supervisors Policy No. B-29, shall be deemed invalid in their entirety and shall have no further force or effect. If that occurs, a solar power plant, such as the Project, would not be in compliance with the County's Land Use Ordinance or General Plan.

**SOLAR POWER PLANT PROGRAM**

On November 8, 2011, after the Application for Certification ("AFC") was filed, the Riverside County Board of Supervisors adopted General Plan Amendment No. 1080 (the "General Plan

Amendment” or “GPA”), Land Use Ordinance Amendment No. 348.4705 (the “Zoning Amendment”) and Board of Supervisors Policy No. B-29 entitled “Solar Power Plants” (the “Board Policy”). As determined by the Board of Supervisors, these legislative actions were “adopted as part of a comprehensive, integrated legislative program”. Together, the GPA, Zoning Amendment and Board Policy comprise the Riverside County Solar Power Plant Program (the “Solar Power Plant Program”).

The General Plan Amendment directly addresses solar power plants in the General Plan for the first time by adding a new countywide land use element policy, which provides:

LU 15.15. Permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants in the County of Riverside.

The Zoning Amendment defines “solar power plants” and authorizes solar power plants as conditionally permitted uses with approval of a conditional use permit on lots 10 acres or larger in 19 different zoning classifications, including the W-2 and N-A zones applicable to the Project. Before adoption of the Zoning Amendment, solar power plants were not a permitted or conditionally permitted use anywhere in the unincorporated area of the County, and were prohibited under Ordinance No. 348, the County Land Use Ordinance.

The Board Policy addresses several issues regarding the development of solar power plants. It provides for payments by solar power plant owners in three different circumstances:

1. Where the solar power plant project involves the use of County property.
2. Where the solar power plant project involves the use of County roads or other County right of way.
3. Where the solar power plant project involves a conditional use permit or other land use approval and a development agreement.

The Board Policy also provides incentives and credits to reduce any required payment, and provides for security or other arrangements to ensure that sales and use taxes lawfully owed for construction of a solar power plant are paid and allocated as required by law. Specific exceptions to application of the Board Policy are identified, and any applicant is given a right to request an exception to the Board Policy.

The Board of Supervisors identified that the purposes of the Board Policy “are to implement the . . . General Plan . . . , to ensure that the County does not disproportionately bear the burden of solar energy production, to ensure the County is compensated in an amount it deems appropriate for the use of its real property, and to give solar power plant owners certainty as to the County’s requirements.”

#### APPLICATION OF THE BOARD POLICY TO THE PROJECT

Since the Project would be located on and involves the use of County-owned real property, the County will be requiring the Project proponent to enter into a real property interest agreement consistent with the Board Policy. Such real property interest agreement must comply with the Board Policy and all other applicable laws and procedures related to the granting of a real property interest in County-owned property to a private developer. It is unclear at the present time whether an additional agreement or agreements would be required based upon the Project’s planned use of other County-owned real property or rights of way.



PENDING LITIGATION FILED AGAINST THE COUNTY

On February 3, 2012, the Independent Energy Producers Association and Large-Scale Solar Association (collectively, "Petitioners") filed suit against the County. Petitioners are identified as two nonprofit corporations and no applicant for any solar power plant is a petitioner. The petition challenges the legislative action adopting the Board Policy on various grounds. Although the petition does not directly challenge the GPA or the Zoning Amendment, any judgment in the litigation would necessarily affect the entire Solar Power Plant Program. The Board of Supervisors adopted the Solar Power Plant Program as a comprehensive, integrated legislative program and each of its components has been expressly determined by the Board of Supervisors not to be severable.

EFFECT OF PENDING LITIGATION ON EVALUATION OF COMPLIANCE WITH COUNTY LORS

As explained above, absent an adverse judgment, the pending litigation should have no effect on the Commission's evaluation of the Project's compliance with County LORS.

The County continues to have concerns about the Project's overall ability to comply with County LORS, as set forth in the County's letter of January 20, 2012 in response to the Commission's request for agency participation which is incorporated herein by this reference.

Thank you for the opportunity to provide comments on this issue of importance to the County. Should you have any questions concerning this response, please do not hesitate to contact me at (951) 955-6300.

Sincerely,

PAMELA J. WALLS  
County Counsel

A handwritten signature in black ink, appearing to read "Tiffany N. North", followed by a large, stylized circular flourish.

Tiffany N. North  
Deputy County 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 RIO MESA SOLAR  
ELECTRIC GENERATING FACILITY**

**DOCKET NO. 11-AFC-04  
PROOF OF SERVICE  
(Revised 2/27/12)**

**APPLICANTS' AGENTS**

BrightSource Energy, Inc.  
Todd Stewart, Senior Director  
Project Development  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612  
[tstewart@brightsourceenergy.com](mailto:tstewart@brightsourceenergy.com)

BrightSource Energy, Inc.  
Michelle Farley  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612  
[mfarley@brightsourceenergy.com](mailto:mfarley@brightsourceenergy.com)

BrightSource Energy, Inc.  
Brad DeJean  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612  
*e-mail service preferred*  
[bdejean@brightsourceenergy.com](mailto: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](mailto:andrea@agrenier.com)

URS Corporation  
Angela Leiba  
4225 Executive Square, Suite 1600  
La Jolla, CA 92037  
[angela\\_leiba@urscorp.com](mailto: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](mailto:cte@eslawfirm.com)  
[bsb@eslawfirm.com](mailto:bsb@eslawfirm.com)

**INTERESTED AGENCIES**

Mojave Desert AQMD  
Chris Anderson, Air Quality Engineer  
14306 Park Avenue,  
\*Victorville, CA 92392-2310  
[canderson@mdaqmd.ca.gov](mailto:canderson@mdaqmd.ca.gov)

California ISO  
*e-mail service preferred*  
[e-recipient@caiso.com](mailto: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](mailto:cperry@blm.gov)  
[lenser@blm.gov](mailto:lenser@blm.gov)

**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](mailto: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](mailto:ianderson@biologicaldiversity.org)

**ENERGY COMMISSION –**

**DECISIONMAKERS**

CARLA PETERMAN  
Commissioner and Presiding Member  
[CPeterma@energy.state.ca.us](mailto:CPeterma@energy.state.ca.us)

**KAREN DOUGLAS**

Commissioner and Associate Member  
*e-mail service preferred*  
[kldougla@energy.state.ca.us](mailto:kldougla@energy.state.ca.us)

**ENERGY COMMISSION –  
DECISIONMAKERS (cont.)**

Kourtney Vaccaro  
Hearing Adviser  
*e-mail service preferred*  
[kvaccaro@energy.state.ca.us](mailto:kvaccaro@energy.state.ca.us)

Galen Lemei  
Advisor to Commissioner Douglas  
*e-mail service preferred*  
[glemei@energy.state.ca.us](mailto:glemei@energy.state.ca.us)

Jennifer Nelson  
Advisor to Commissioner Douglas  
*e-mail service preferred*  
[jnelson@energy.state.ca.us](mailto:jnelson@energy.state.ca.us)

Jim Bartridge  
Advisor to Commissioner Peterman  
[jbartrid@energy.state.ca.us](mailto:jbartrid@energy.state.ca.us)

**ENERGY COMMISSION STAFF**

Pierre Martinez  
Project Manager  
[pmartine@energy.state.ca.us](mailto:pmartine@energy.state.ca.us)

Lisa DeCarlo  
Staff Counsel  
*e-mail service preferred*  
[ldecarlo@energy.state.ca.us](mailto:ldecarlo@energy.state.ca.us)

Eileen Allen  
Commissioners' Technical  
Advisor for Facility Siting  
*e-mail service preferred*  
[eallen@energy.state.ca.us](mailto:eallen@energy.state.ca.us)

**ENERGY COMMISSION –  
PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser's Office  
*e-mail service preferred*  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)



## DECLARATION OF SERVICE

I, Maria Dusek, declare that on March 7, 2012, I served and filed copies of the attached letter from the County of Riverside regarding the "Mandatory Status Conference Concerning the Rio Mesa Solar Electric Generating Facility, Application for Certification (Docket No. 11-AFC-4) – County of Riverside Written Comments," dated March 7, 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/riomesa/index.html](http://www.energy.ca.gov/sitingcases/riomesa/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 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**


Attn: Docket No. 11-AFC-4  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto: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:

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

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.

  
Maria Dusek