

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

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11-AFC-4	
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In the Matter of:)
)
Application for Certification for the)
Rio Mesa Solar Electric Generating Facility)
)
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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 1B

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March 19, 2012

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

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**APPLICANT’S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
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On February 27, 2012, Rio Mesa Solar I, LLC, Rio Mesa Solar II, LLC, and Rio Mesa Solar III, LLC (collectively, the “Applicant”), received the California Energy Commission (“CEC”) Staff’s Data Requests, Set 1B. Except as noted below, the Applicant will respond to these requests on or before March 28, 2012. Pursuant to Title 20, California Code of Regulations, Section 1716(f), Applicant hereby provides notice of its objections to Data Requests 44, 121, 122, 123, 126, 127, 128, 129, and 130.

A. General Objections

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).

Pursuant to Section 1716, a party may request from an applicant information that is *reasonably available* to it. Section 1716 does not require that an applicant “perform research or analysis on behalf of the requesting party.”²

In evaluating whether a data request involves “discoverable information” or “undiscoverable analysis or research”, the Commission considers four factors: (1) the relevance of the information; (2) whether the information is available to the applicant, or from some other source, or whether the information has been provided in some other form; (3) whether the request is for data, analysis, or research; and (4) the burden on the applicant to provide the data.³

Data Requests 121, 122, 123, 126, 127, 128, 129, and 130 relate to Cultural and Paleontological Resources. Applicant has already provided a comprehensive and detailed good faith analysis of these resources for the purposes of this proceeding. Applicant conducted intensive pedestrian surveys of the cultural resources on the Project Area of Analysis (“PAA”), which took over three months to complete. These surveys involved the participation of more than twenty cultural resource specialists working together to complete a 100-percent cultural resources field inventory of all portions of the entire PAA. Applicant’s assessment also included archival research, Class III pedestrian archeological surveys, and architectural surveys. Applicant’s consultant, URS, and specifically Principal Investigator (“PI”), Rachael Nixon, also coordinated directly with BLM, Energy Commission Siting Division Staff, Landscapes Studies Teams at the CEC and BLM, and other PIs to obtain guidance prior to initiating fieldwork on the Project. Guidance documents and training provided by the agencies were utilized during all fieldwork and reporting activities. Moreover, Applicant was also able to utilize twenty seven

² See Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

³ See Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

previous cultural surveys for the project site that had been prepared either for the previously proposed Sun Desert nuclear project and other or subsequent to the consideration of that project.

Prior to initiating field work for preparation of the Application for Certification, Siting Division Staff and BLM both provided verbal authorization to proceed with the approach outlined in the Applicant's work plan. During initial meetings and discussions with Siting Division Staff and BLM there was never any indication that additional work would be required before preparing the Staff Assessment or ROD. In fact, BLM stated that additional work would be required *after* the ROD had been signed, and based on conversations and previous projects in the area, Applicant understood that the Siting Division Staff would recommend that any additional studies required by BLM would be included in the Staff's proposed Conditions of Certification as activities to be performed following issuance of a Commission Decision and the BLM ROD.

As a result of Applicant's significant efforts to date, the Cultural Resources Technical Report that accompanies the Application for Certification includes the results of an approved approach (for field work and reporting activities) for this project, and compiles a vast body of research conducted by recognized professionals and scholars that are experts in this region. The results of this intensive field and reporting effort took over six months to complete, and the final report consists of 25 volumes and over 25,000 pages of valid data, which is more than sufficient for making informed decisions relevant to this Application. These efforts have cost approximately \$2,500,000. This extraordinary cost is largely the result of the Applicant's efforts to follow the detailed and extensive protocols set forth by the Siting Division Staff and BLM.

Applicant objects to those specific data requests where the information requested is not reasonably available to the Applicant. Certain data requests ask the Applicant to engage in

extensive new research projects entailing significant burdens - time, resources, and cost – on the Applicant. Applicant also objects to those data requests that are not relevant to the proceeding or reasonably necessary to make any decision on the AFC for the Rio Mesa Solar Electric Generating Facility. Without waiving any of these objections, Applicant reserves the right to provide and will endeavor to provide responses, in whole or in part, to some or all of these Data Requests.

B. Specific Objections

1. Applicant Objects to Data Request 44

On February 27, 2012, Applicant provided its notice of objections to CEC Staff Data Request Set 1A. Among other objections, Applicant objected to Data Request 44. CEC Staff Data Request Set 1B revises Data Request 44, by requesting for weekly surveys from July to May (Set 1A requested surveys from July until April). Applicant reiterates its objection to Data Request 44 because Data Request 44 requests information that is not reasonably available to the Applicant, but instead request that Applicant perform surveys that will be extremely costly and time consuming to perform. The surveys would entail a huge undertaking, requiring multiple resource experts a year or more to complete, at a cost of millions of dollars. In addition to being burdensome, the information requested is not reasonably necessary for the Commission to make a decision in this proceeding. The existing survey results, supplemented with additional information concerning the impact of the project on biological resources (which the Applicant has agreed to provide), will provide the Commission with substantial evidence to evaluate the impact of the Project on avian species. More than a year's worth of additional avian surveys is not reasonably necessary for a Commission decision in this proceeding. Finally, these requests for lengthy additional studies are not consistent with the Commission's statutory directive to

issue a decision on an Application within twelve months of data adequacy.⁴ Therefore, Applicant objects to Data Request 44.

2. Applicant Objects to Data Request 121

Data Request 121 asks Applicant to:

Please conduct an aerial photography/remote sensing study as necessary to locate trail segments in the PAA not otherwise evident in pedestrian surveys, using aerial images and historic maps of the area in rectified GIS layers to determine which trails segments are connected to one another. Provide strategic dating of associated trail features along trail segments within the PAA to identify use dates. Trail segments should be identified and mapped by prehistoric, historic, and modern era formation and use. Provide maps and overlays as an element of the resulting report identifying findings and discussion of trail connectivity and significance.

Applicant objects to this data request because the request is burdensome and not reasonably necessary to a Commission decision. Aerial mapping was already conducted in preparation of the AFC. Moreover, during the intensive pedestrian surveys, Applicant mapped all trails within the PAA (and beyond the PAA when necessary) to their full extent. Applicant's consultant also prepared the DPR 523 series forms reviewing these trails over aerial images to evaluate trail segments, associated resources, use dates, and to determine which trails appeared to link with one another. The method which Applicant employed during the preparation of its Cultural

⁴ Cal. Pub. Res. Code Sec. 25540.6.

Resources Technical Report provided very good results that were used to differentiate prehistoric, historic period, and animal trails. Therefore, further aerial imaging is not necessary for the Commission to evaluate potentially significant impacts to trail segments in the Project Area of Analysis (“PAA”).

3. Applicant Objects to Data Request 122

Data Request 122 asks Applicant to:

Please conduct and provide an expanded record search of trail segments, associated trail features, and petroglyph sites (regardless of proximity to a trail) in a five mile radius of the project boundaries. This data will establish trail trends that will assist staff in determining connectivity to trail segments within the project area.

Applicant objects to this data request because the information requested by staff is not reasonably available to the Applicant. Staff’s request for “an expanded record search of trail segments, associated trail features, and petroglyph sites (regardless of proximity to a trail) in a five mile radius of the project boundaries” will incur undue additional time and cost on behalf of the Applicant. An expanded record search is therefore burdensome.

In addition, the information requested by staff is not reasonably necessary to a Commission decision in this proceeding. Applicant has provided data for all trails within a one-mile radius around the project site and 0.25 mile radius on either side of the transmission line as provided in the CEC’s regulations. The current records search results is sufficient per CEC requirements, and there are no applicable regulatory requirements that require an expanded records search

beyond a one-mile of the Project area. Without waiving its objection to this data request, Applicant will depict the data collected within the one mile radius in a figure that will be submitted on March 28th with Applicant's responses to Staff Data Request 1B.

4. Applicant Objects to Data Request 123

Data Request 123 asks Applicant to:

Please provide a clear, consistent, and substantiated discussion of the entire Xam Kwatcan (Quechan Dream) Trail, including a general discussion of setting and integrity, as well as a detailed discussion of integrity for the segments within and adjacent to the PAA or that may be in view of the project infrastructure. In terms of NRHP or CRHR eligibility, integrity is a measure of the degree to which a property retains or is able to convey the significance defined under one of the four eligibility criteria. There is specific guidance in National Register Bulletin VIII – How to Evaluate the Integrity of a Property, which outlines the seven aspects of integrity that should be used when assessing the integrity of a resource. As this is a joint document, both NRHP and CRHR evaluations must be completed; therefore, the integrity assessment of resources should discuss all seven aspects as directed by the National Park Service. Specific detailed research should be presented for the length of the trail that parallels the project area and should identify any encroachment onto or immediately adjacent to the trail and any light/glow that may result from the

project activities and be visible from the trail. Include any previous documentation or evaluations of the resource. Please complete any evaluations, provide copies of completed DPR 523 forms for the resource, and ensure that it contains a discussion of the significance of the resource under CEQA Section 15064.5(a)(3), (A)(B)(C) & (D). Please evaluate whether the integrity will be significantly impacted by construction of the proposed project such that the significance of the resource will be materially impaired. In addition, please assess impacts to the trail segments that cross the project area and other impacts to Native Americans that utilize the trail, including aesthetic considerations such as, but not solely limited to, visual impacts. All trail research should be closely coordinated with affiliated tribes.

Applicant objects to this data request because the information requested by Siting Division Staff is not necessary to a decision in this proceeding. Applicant has already provided an extensive, clear, consistent and substantial assessment of the Xam Kwatcan (Quechan Dream) Trail in the Cultural Resources Technical Report (page 2-43). This assessment was based on careful study by URS cultural resource experts of USGS maps, Confidential Figures 2.8-2, 5-1 and 5-2 of the Cultural Resources Technical Report and a published article by James Cleland (2007) that focuses specifically on the Xam Kwatcan Trail. Moreover, Applicant's research and survey determined that Xam Kwatcan trail no longer exists within or near the PAA, and has never been previously recorded within or near the PAA. Since there is no evidence that this trail

exists within or near the PAA, the requested information is not necessary to a Commission Decision.

4. Applicant Objects to Data Requests 126, 127, 128, and 129

Data Requests 126, 127, 128, 129 and 130 relate to Paleontological Resources. The Background to these data requests notes staff's desire for more information concerning the extent and thickness of paleontological deposits on site. The background section to these data request states that subsurface investigations and land surveying will likely be required.

Data Request 126 asks Applicant:

Please provide a plan for review and approval that will be used to adequately delineate the recently discovered paleontological resource.

Data Request 127 asks Applicant:

Please provide a map at a scale of 1:24,000 that delineates the areal extent of the recently discovered paleontological resource within the project perimeter.

Data Request 128 asks Applicant:

Please provide a map at a scale of 1:24,000 that shows the thickness of the recently discovered paleontological resource within the project perimeter.

Data Request 129 asks Applicant:

Please describe the density of the fossils throughout the paleontological resource using both the areal extent and thickness of the deposit.

Applicant objects to data requests 126, 127, 128 and 129, which in the Background section request for excavations and evaluation of the thickness and density of recently discovered paleontological resources. The information requested by staff is not reasonably available to the Applicant. Further delineation of the paleontological resource cannot be reasonably done without significant excavations, which would be extremely time consuming and expensive. Moreover, since the installation of the heliostat field will be minimally invasive there will be no significant impact on paleontological resources within the field and a more detailed delineation of these resources is completely unnecessary.

In addition, Applicant will not be grading in the heliostat fields, which comprise the majority of the project site. Applicant will be vibrating the pylons for the heliostats, which is a minimally invasive construction technique. Applicant does not intend to undertake the excavations contemplated in this data request because the significant excavations contemplated in these data requests would foreclose Applicant's ability to use the vibration technique. Consequently, Applicant would need to lay foundations for the heliostats which would increase the Project's overall environmental impacts and construction costs. Since these data request requires Applicant to gather information which is not reasonably available to Applicant, Applicant objects to these data requests.

Finally, Applicant did not include objections to data requests 97 and 98, which request that Applicant prepare and implement a research design for subsurface investigations. Based on the Data Request and Issues Resolution Workshop on March 1st, Applicant understands that staff is requesting a geoarchaeological research design for the subsurface investigation of landforms and associated buried archaeological sensitivity in the Project area, and Applicant will be submitting that for staff's review and approval within 60 days of March 1st workshop. The plan will focus on areas where subsurface impacts (grading, foundations, etc.) are likely to exceed 1-meter in depth. Applicant understands that staff is not requesting Applicant to include the heliostat reflector field in the research area.

Dated: March 19, 2012

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By _____



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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

APPLICATION FOR CERTIFICATION)
for the RIO MESA SOLAR ELECTRIC) Docket No. 11-AFC-04
GENERATING FACILITY)
_____)

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on March 19, 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 1B* 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.



Karen A. Mitchell

SERVICE LIST

11-AFC-04

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