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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

The Application for Certification for the
SES Solar Two Project

Docket No. 08-AFC-5

In the Matter of:

The Application for Certification for the
SES Solar One Project

Docket No. 08-AFC-13

**CURE COMBINED COMMENTS ON COMMITTEE SCHEDULING
AND INTEGRATING REAT MILESTONES
FOR STIRLING ENERGY SYSTEMS
SOLAR ONE AND SOLAR TWO PROJECTS**

November 5, 2009

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INTRODUCTION

The California Unions for Reliable Energy (“CURE”) submit these comments concerning the scheduling of this proceeding pursuant to the Notice of Committee Conference from October 26, 2009.

DISCUSSION

There is no doubt that at this time in history it is important for us to move away from our fossil fuel based energy economy. However, it is also the obligation of the Commission to take a hard look at the environmental consequences of these Projects, protect sensitive lands and special status species, and focus its resources on the projects that are most likely to result in actual functioning solar power plants. The proposed schedule offered by the Renewable Energy Action Team and the Commission Staff have one significant flaw, that evidentiary hearings are scheduled prior to the completion of the Staff’s assessment of the Project. The Solar One and Solar Two Projects both pose significant environmental issues that likely cannot be resolved on the schedule proposed. The evidentiary hearings cannot go forward until the environmental review is completed by the Energy Commission Staff.

ISSUES SPECIFIC TO SES SOLAR TWO PROJECT

The Solar Two Project site is approximately ten square miles and is rich in cultural history and protected biological resources. The Juan Bautista de Anza National Historic Trail, administered by the National Park Service, runs through

the center of the Solar Two site. In 1776, the Anza party traveled this historic trail to make the first overland trip connecting New Spain to San Francisco. However, this trail was *not identified* by the Applicant in the AFC. Further, Commission Staff found that the applicant's archeological data was deficient and if used would "potentially constitute a breach of public trust."¹

The preliminary results of the Staff's field study indicated approximately thirty additional archaeological sites in the project area that were not discovered in the applicant's initial archaeological surveys. The applicant's failure to do an adequate surveying effort from the beginning has caused substantial delays that undermine the legitimacy of any efforts by the applicant to rush this siting process. This identification and mitigation of these impacts remain unresolved.

The Solar Two project has significant, unresolved, biological resource impacts, as well. Surveys conducted for the Project identified flat-tailed horned lizards within the Project site and along the proposed transmission line route. The flat-tailed horned lizard may soon be relisted as Threatened under the Endangered Species Act.

The FTHL has lost a significant portion of its historic habitat, and much of what remains is highly fragmented. As a result, lands between the Yuha Desert and West Mesa Management Areas have been identified by resource agencies as a potential habitat corridor that should be maintained. Without proper on-site mitigation, the Solar Two Project would eliminate this corridor. The applicant has yet to identify adequate mitigation for the onsite impacts to this species.

¹ Staff data requests to applicant in SES Solar Two Proceeding, June 18, 2009, p. 3.

The Project will also result in significant impacts to the federally endangered Peninsular bighorn sheep. The applicant originally reported that Peninsular bighorn sheep did not occur on the Project site. However, the applicant has subsequently acknowledged that bighorn sheep were actually photographed on the project site. No analysis has been conducted of the Project's impacts to this federally endangered species.

In short, the applicant's statement that "there are no threatened or endangered species present" is as inaccurate and not credible as its cultural and biological surveys.

ISSUES SPECIFIC TO SES SOLAR ONE PROJECT

The Solar One Project site is also extremely rich in biological resources and the many unidentified and unmitigated impacts remain. A total of seven special status wildlife species were identified in the AFC, including federally protected desert tortoise, Mojave fringe-toed lizard, burrowing owl, golden eagle, and Swainson's hawk. The applicant estimated the Project Assessment Area likely supports between 70 and 127 desert tortoises. Moreover, the site sits at the crossroads of a number of biologically important areas in the Mojave Desert including the Pisgah Area of Critical Environmental Concern, the Ord-Rodman Desert Wildlife Management Area, and the Cady Mountains Wilderness Study Area. These areas are considered critically important to the recovery of the threatened desert tortoise and a host of other imperiled species. The applicant has not proposed any workable scheme to mitigate impacts to these species. The

applicant refers to the Ft. Irwin translocation program as a model for mitigation. This program has been discontinued because it resulted in a large die-off of desert tortoise.

Two of the rare plant species that were detected on the Project site, small-flowered androstephium and white-margined beardtongue, have extremely limited distribution and abundance in California. The Project would eliminate many of the remaining known occurrences of these two species. There is ample evidence indicating the Project could jeopardize the continued existence of these species in California.

Pisgah Substation and Transmission Line

A necessary part of this project is the Pisgah Substation expansion and Lugo to Pisgah transmission line. The full project cannot deliver its output without these components. Yet, to date only cursory information has been provided in the AFC and responses to data requests or public workshops about the environmental impacts of expanding the Pisgah substation and the Lugo to Pisgah transmission line. This would include expansion of the existing Pisgah Substation from approximately 5 acres to 40 acres and construction of approximately 67 miles of 500kV transmission line between the existing Pisgah and Lugo substations. This transmission line will pass through sensitive biological communities with special status species including the federally listed desert tortoise.

In its status report on October 27, 2009, Commission Staff acknowledged that impacts of the Lugo to Pisgah transmission line upgrades must be analyzed as part

of the “whole of the project” which the Energy Commission, as CEQA Lead Agency, must review. Staff indicated that data requests will be forthcoming on this issue. Impact identification, alternatives analysis and mitigation of these impacts must be given adequate time and consideration in setting the schedule for this proceeding going forward. CURE is concerned that the Staff’s proposed schedule does not leave any opportunity for Staff and intervenors to ask clarifying data requests concerning these impacts. It is unlikely that all of the issues involved in adding 35 acres plus 67 miles of analysis can be completed on the schedule proposed. Any delays will be due in large part to the applicant’s failure to put adequate information in the record about these impacts.

ISSUES COMMON TO BOTH PROJECTS

The Stirling Energy SunCatcher technology is relatively untested. At the Solar One Project Site Visit and Scoping Hearing on June 22, 2009, Tessera’s Vice President for Development, Felicia Bellows, stated that the SunCatcher units used at the Project site are not currently in commercial operation anywhere in the world. Ms. Bellows also stated that there are only 10 test units operating at that time. In July, 2009, it was announced that the SunCatcher had been radically redesigned so that it is 5000 pounds lighter and has fewer pieces. Sandia scientist Chuck Andraka hailed it as a “crash course on redesign.”² This casts doubt on the reliability and commercial viability of this technology on an industrial scale. In allocating its scarce Staff resources, the Commission should consider the likelihood

² *Next Generation of Solar Dishes use Less Steel*, Sue Major Holmes, Associated Press, July 20, 2009.

that any project it licenses will actually lead to a long term, operational solar energy power plant.

This siting proceeding is the only opportunity for the government and interested parties to study the environmental impacts under the California Environmental Quality Act and this opportunity cannot be short circuited. Much of the delay so far in this proceeding has been due to the applicant's delay in responding to Commission Staff data requests. The Staff's proposed schedules have made reasonable accommodations to expedite the process and should not be shortened.

REAT MILESTONES DOCUMENT PROPOSED SCHEDULE

The Committee notice directed the parties to review the document "Renewable Energy Action Team Milestones to Permit California Renewable Portfolio Standard Energy Projects by December, 2010" ("Milestones document") and submit comments on the suitability of applying the basic concepts to the timing of the Committee hearings.

Schedule A of the Milestones document includes a Staff Assessment Errata ("SAE") document to be prepared by Commission Staff after the Staff Assessment for circulation concurrent with the Bureau of Land Management's Final Environmental Impact Statement. The Milestones document, Schedule A, estimates the SAE to be released two months after the evidentiary hearings would begin. In order for the SAE to comply with Energy Commission regulations, it must be presented as part of the evidentiary hearing phase of the proceeding.

Commission regulations require that the Staff and agency assessments be presented during evidentiary proceedings.³ Further, the Presiding Members' Proposed Decision must be based exclusively on the hearing record.⁴ Finally, at the conclusion of the hearings, the proposed decision must be based upon evidence presented in the hearings.⁵ The Energy Commission regulations do not include the option for a Supplemental Staff Assessment or Errata document to be prepared after the evidentiary hearings and for good reason. From a practical standpoint, it doesn't make sense to move forward with evidentiary hearings before the final Staff Analysis is released. If the SAE document is released after the evidentiary hearings, neither the applicant nor the intervenors would be able to respond to information in the Staff's Supplemental Analysis. If the final Staff Analysis has changed substantially from the original analysis, there may be additional hearings that will be needed leading to a duplication of effort by all parties.

Releasing the SAE after evidentiary hearings fails to comply with the Commission's regulations and does not provide an adequate opportunity for applicant or intervenor participation. It is critical that Staff have fully concluded analysis on an issue prior to evidentiary hearings on that issue.

CONCLUSION

The Energy Commission is evaluating an unprecedented number of power plant applications and is under increasing pressure to do so quickly with limited resources. The Commission is attempting to do the impossible and thus far the Staff

³ Cal. Code Regs., tit. 20, § 1748.

⁴ Cal. Code Regs., tit. 20, § 1751.

⁵ Cal. Code Regs., tit. 20, § 1749.

have done a good job. However, these projects affect lands too important to be rushed. The Committee should adopt a schedule that allows for complete evaluation of the substation and transmission line impacts and all Staff analysis to be subjected to the evidentiary hearings.

Dated: November 5, 2009

Respectfully submitted,

/s/

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DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on November 5, 2009, I served and filed copies of the attached CURE COMBINED COMMENTS ON COMMITTEE SCHEDULING AND INTEGRATING REAT MILESTONES FOR STIRLING ENERGY SYSTEMS SOLAR ONE AND SOLAR TWO PROJECTS dated November 5, 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/solartwo. The document has been sent (1) electronically, and (2) via US Mail by depositing in the US mail at South San Francisco, California, with first-class postage thereon fully prepaid and addressed as provided on the attached Proof of Service list to those addresses NOT marked "email preferred." It was sent for filing to the Energy Commission by sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address shown on the attached Proof of Service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA, this 5th day of November, 2009.

_____/s/_____
Bonnie Heeley

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