

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

DOCKET

08-AFC-13

DATE JAN 25 2010

RECD. JAN 25 2010

In the Matter of:

The Application for Certification for the
SES Solar One Project

Docket No. 08-AFC-13

**CURE COMMENTS IN PREPARATION FOR
JANUARY 27, 2010 COMMITTEE CONFERENCE**

January 25, 2010

Loulena A. Miles
Tanya A. Gulesserian
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Facsimile
lmiles@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

Attorneys for the CALIFORNIA
UNIONS FOR RELIABLE ENERGY

I. INTRODUCTION

California Unions for Reliable Energy (“CURE”) submits this comment pursuant to the January 13, 2010 *Notice for a Committee Conference for the Solar One Project* (“Project”).

The California Energy Commission has sited powerplants in California for thirty six years. However, the volume and size of the projects that have been filed at the Commission recently has been unprecedented and has required the Commission to enlist additional staff and work additional hours. The Staff should be commended for the long hours they’ve invested in the review of these projects. Now that there is less than one year remaining for projects to qualify for *American Recovery and Reinvestment Act* funding, enormous pressure is building to move forward on these projects as quickly as possible.

Despite this pressure, the Committee must adhere to the requirements of the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) (“CEQA”) and the Warren-Alquist Act (Pub. Res. Code §§25000 et seq.). The Committee should carefully craft a schedule that allows adequate time for Staff to complete its review of the SES Solar One Project (“Project”).

The Project involves development of fourteen square miles of undisturbed desert land. Sterling Energy Systems Solar One, LLC (“the Applicant”) proposes to grade, mow, pave, and construct an industrial power plant with 30,000 SunCatcher solar dishes, associated equipment and systems, and support infrastructure. The Project site currently supports a number of federally-listed threatened desert

tortoises and many rare special status plants and wildlife species. However, once disturbed, this desert land like all other desert lands will not recover for decades due to the fragile arid conditions. In light of the potential for long-term damage to the desert that will continue long after the Project ceases operating, Staff must take a hard look at the Project's potentially significant impacts and required mitigation measures.

II. DISCUSSION

The Applicant explained in its January 20, 2010 *Response to CEC Staff Status Reports* that it only recently submitted to the Commission many key documents regarding the proposed Project, its impacts, and potential mitigation. The Applicant's basis for these recent filings was staff changes, additional data requests, and the need to revisit Project impacts and mitigation measures. However, the Commission's regulations clearly required this information as part of the AFC.

Appendix B of the Energy Commission's Rules of Practice and Procedure (20 *Cal. Code Regs. § 1742*) sets for the basic information requirements for a power plant application:

- (a) Information on the environmental effects of the proposed facility and mitigation measures proposed by the applicant shall be provided in the application as specified in the appropriate appendix [Appendix B].

Appendix B provides a comprehensive list of specific informational requirements that all applicants seeking certification by the Energy Commission must provide.

Staff's work to ensure compliance with Commission's regulations does not excuse the Applicant's failure to provide the information in the first place. Any delay at this point in the proceeding is due to the Applicant's failure to provide required information. Specifically, the Applicant has failed to conduct protocol surveys required by LORS and only recently docketed studies that the Applicant completed months ago.

Most importantly, because Staff lacked information, the process of evaluating the Project's potentially significant impacts and required mitigation is ongoing. The Commission has made clear that Applicants seeking expedited review under ARRA deadlines must provide, at a minimum, information required in Appendix B as part of the application for certification. As the Commission is well aware, it is the Applicant, not Intervenor or Staff, which has the burden of providing support for its application for the Project.

The following are a few concrete examples of the cause of present delays in this proceeding:

Hydrology Report

The AFC failed to provide basic information concerning Project site hydrology and soils. Specifically, the AFC did not adequately describe the site's natural drainages and how the Project would modify these drainages. On April 23, 2009, the Applicant completed a hydrology report with basic information about the site's hydrology, entitled *Existing Conditions Hydrologic and Hydraulic Study for SES Solar One*. However, **the Applicant did not submit the report to the**

Commission until January 11, 2010. This study provides stormwater drainage information that should have been included in the AFC (*CEC Rules of Practice and Procedure, Appendix B, Sec. (g)(14)(D)*). The Applicant need not have waited for Staff to ask for this information that should have been included in the initial application. Therefore, additional time will be required for Staff, Intervenors and public review of this report.

Burrowing Owl Surveys

California burrowing owl is a protected special status species known to be present on the Project site. Although the Applicant surveyed the Project site for the presence of burrowing owl and found them to be in residence, the Applicant did not follow burrowing owl survey protocols. Commission Rules of Practice and Procedure direct the Applicant to provide “current biological resource surveys conducted using appropriate field survey protocols during the appropriate season(s).” (*CEC Rules of Practice and Procedure, Appendix B, Sec. (g)(13)(D)*.) Now, the Applicant is attempting to complete a truncated burrowing owl survey at the 11th hour in an attempt to satisfy the informational needs of the California Department of Fish and Game, the Bureau of Land Management and the Energy Commission. This survey should have been done correctly at the time the Project application was submitted for review.

Project Water Supply

The Applicant recently determined that it will need to rely upon groundwater at the site as its primary source of water. The Applicant has not conducted any

studies or prepared any analysis of its proposed use of groundwater. The Applicant is only now drilling wells in an effort to evaluate the use of groundwater for the proposed Project. As the Committee is well aware, an adequate analysis of any proposal to use groundwater is critical.

Tortoise Translocation/Relocation Plan

The Applicant has not prepared a desert tortoise translocation/relocation plan. No application for an incidental take permit has been submitted to the U.S. Fish and Wildlife Service. At this point, the Applicant has not provided a date by when these documents are expected to be filed.

Transmission Analysis

The Project will require the construction of a 67-mile transmission line between the Pisgah and Lugo substations. Although the AFC mentioned that the Pisgah substation must be expanded to accommodate the Project's connection to this new transmission line, Southern California Edison clarified that a new substation may be required near the Project site, separate from the Pisgah substation, and that a new, separate substation would impact approximately 100 acres of land in an unknown location. The Applicant only recently docketed information about impacts associated with a new, separate substation. The Applicant did not disclose the location of the new, separate substation.

The Applicant's failure to provide a complete Project description and other baseline information in a timely manner has made it impossible for Intervenors to fully understand the Project during the discovery phase of this proceeding. The

Applicant's approach to providing data severely curtails the ability of the Intervenor to seek clarification or participate meaningfully in the review of the Project.

III. CONCLUSION

At this time, the Applicant has not yet provided significant, important and relevant information regarding its proposed Project. The Applicant's late-filing of information that should have been part of its application, as required by Commission Rules, has resulted in the need for additional time to complete a thorough review of the Project. Therefore, the Commission should craft a schedule that enables Staff to complete its analysis of the Project's potentially significant impacts and required mitigation measures in compliance with the Warren-Alquist Act, including LORS.

Dated: January 25, 2010

Respectfully submitted,

/s/

Loulena A. Miles
Tanya A. Gulesserian
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Facsimile
lmiles@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

Attorneys for the CALIFORNIA
UNIONS FOR RELIABLE ENERGY

DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on January 25, 2010, I served and filed copies of the attached **CURE COMMENTS IN PREPARATION FOR JANUARY 27, 2010 COMMITTEE CONFERENCE** dated January 25, 2010. 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/solarone. The document has been sent to both the other parties in this proceeding as shown on the Proof of Service list and to the Commission’s Docket Unit electronically to all email addresses on the Proof of Service list; and by depositing in the U.S. mail at South San Francisco, CA, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked “email preferred.”

AND

By sending an original paper copy and one electronic copy, mailed and emailed respectively to:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-13
1516 Ninth Street, MS 4
Sacramento, CA 95814-5512
docket@energy.state.us.ca.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA, on January 25, 2010.

_____/s/_____
Bonnie Heeley

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08AFC13
1516 Ninth Street, MS-4
Sacramento, CA 95184
docket@energy.state.ca.us

Felicia Bellows
Vice President, Development
Tessera Solar
4800 North Scottsdale Road
Suite 5500
Scottsdale, AZ 85251
Felicia.bellows@tesseractosolar.com

Camille Champion
Project Manager
Tessera Solar
4800 North Scottsdale Road
Suite 5500
Scottsdale, AZ 85251
Camille.champion@tesseractosolar.com

Angela Leiba
AFC Project Manager
URS Corporation
1615 Murray Canyon Rd., #1000
San Diego, CA 92108
Angela_Leiba@urscorp.com

Allan J. Thompson
Attorney at Law
21 C Orinda Way #214
Orinda, CA 94563
allanori@comcast.net

Jim Stobaugh
BLM-Nevada State Office
PO Box 12000
Reno, NV 89520
Jim_stobaugh@blm.gov

Rich Rotte, Project Mgr.
Bureau of Land Management
Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
Richard_Rotte@blm.gov

James D. Boyd
Vice Chair & Presiding Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
jboyd@energy.state.ca.us

Jeffrey D. Byron
Commissioner & Associate Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
jbyron@energy.state.ca.us

Paul Kramer
Hearing Officer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
pkramer@energy.state.ca.us

Caryn Holmes/Galen Lemei
Staff Counsels
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
cholmes@energy.state.ca.us
glemei@energy.state.ca.us

Christopher Meyer
Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
cmeyer@energy.state.ca.us

Public Adviser
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
publicadviser@energy.state.ca.us

Loulena Miles
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
lmiles@adamsbroadwell.com

Becky Jones
California Department of Fish &
Game
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

Basin & Range Watch
Laura Cunningham
Kevin Emmerich
PO Box 70
Beatty, NV 89003
atmoictoadranch@netzero.net

Patrick C. Jackson
600 N. Darwood Avenue
San Dimas, CA 91773
E-MAIL PREFERRED
ochsjack@earthlink.net

California ISO
e-recipient@caiso.com

Defenders of Wildlife
Joshua Basofin
1303 J Street, #270
Sacramento, CA 95815
jbasofin@defenders.org