

PATRICK C. JACKSON  
600 N. DARWOOD AVENUE  
SAN DIMAS, CALIFORNIA 91773

PHONE: (909) 599-9914  
E-MAIL: ochsjack@earthlink.net

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| <b>DOCKET</b>    |                    |
| <b>08-AFC-13</b> |                    |
| DATE             | <u>JUL 25 2010</u> |
| RECD.            | <u>JUL 25 2010</u> |

July 25, 2010

California Energy Commission  
Attn: Docket No. 08-AFC-13  
1516 Ninth Street, MS-14  
Sacramento, California 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

[US MAIL & E-MAIL]

Re: Docket No. 08-AFC-13, Application for Certification for the  
Calico Solar Project (Formerly SES Solar 1)

Dear Docket Clerk:

Pursuant to the California Energy Commission's Notice of Prehearing Conference and Evidentiary Hearings (Notice), I am submitting my Prehearing Conference Statement in accordance with the Notice.

I certify under penalty of perjury that all of the comments in the Prehearing Conference Statement are true, correct and complete to the best of my knowledge and belief.

Respectfully submitted,



Patrick C. Jackson, Intervenor

Enclosure

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

In the Matter of:

Application for Certification  
for the Calico Solar Project  
(Formerly SES Solar One)

Docket No. 08-AFC-13

**PREHEARING CONFERENCE STATEMENT**

Two material issues in the Land Use, Recreation and Wilderness section and the Traffic and Transportation section of the Supplemental Staff Assessment (SSA) for the Calico Solar Project (Project) remain disputed and these sections are not ready for Evidentiary Hearings. Within these two topic areas, the two disputed issues are: (I) Hector Road and Access to Private Lands and (II) Records Requested Under the Freedom of Information Act (FOIA).

**I. HECTOR ROAD AND ACCESS TO PRIVATE LANDS**

Section C.8.4.1 of the Land Use, Recreation and Wilderness section of the SSA states, “approximately 2,246 acres of the private lands under San Bernardino County jurisdiction would be surrounded by the proposed project site.”<sup>1</sup> Of these 2,246 acres, approximately 1,280 acres of private lands in Sections 1 and 36 are surrounded by the Project and can only be accessed by Hector Road.<sup>2</sup>

I own land in Section 36 and I along with other private landowners (Private Property Owners) will be landlocked by the proposed Project.

The Applicant, the Bureau of Land Management (BLM), California Energy Committee (CEC) Staff and the Private Property Owners dispute the Private Property Owners use of Hector Road to access the private lands.

In May 2008, SES Solar One, LLC, the original Applicant, entered into an Agreement for Private Crossing (Agreement) with BNSF (Burlington Northern Santa Fe) Railway Company and added gates and barricades at the railway crossing at Hector Road. The gated crossing and

<sup>1</sup> SSA, p. C.8-10.

<sup>2</sup> Sections 1 and 36 are identified as N.A.P. in the Applicant’s exhibits and figures for the Project. These sections are legally described as: Section 1, Township 8 North, Range 5 East, and Section 36, Township 9 North, Range 5 East, San Bernardino Base and Meridian, County of San Bernardino, State of California, according to Official Government Survey.

barricades prevent Private Property Owners from using Hector Road to access their properties landlocking their land. The gated crossing does not meet the legal requirements of California Civil Code 1104.<sup>3</sup>

The Applicant contends it has exclusive use of Hector Road under the terms of the Agreement and proposes to construct and install perimeter fencing, detention basins, drainage improvements and SunCatchers to further block Hector Road.

CEC Staff sides with the Applicant. The SSA states “the recent blockage of this crossing does not result in a conflict with any applicable LORS.”<sup>4</sup> This statement remains disputed as, “[t]he private crossing granted to Calico Solar/Tessera is for the purposes of establishing an access to the western side of the proposed project site.”<sup>5</sup> But “SES withdrew the Solar Three Application in December 2009 and the case file for SES Solar Three was closed by the BLM.”<sup>6</sup> The BLM’s contention “the crossing is a physical access and not a legal access, and has been used in a passive and unauthorized manner” has been refuted.<sup>7</sup> The SSA does not address Hector Road as an existing right of way pursuant to the Federal Land Policy and Management Act (FLPMA) or a designated open route pursuant to the California Desert Conservation Area (CDCA) Plan 1980 as amended.

The Bureau of Land Management (BLM) and the Private Property Owners contend private property owners can use Hector Road to access their properties as long as the use does not exceed a level defined as casual use.<sup>8</sup> The BLM however refuses to acknowledge and enforce the Private Property Owners’ right to use Hector Road pursuant to: (1) Unlawful Inclosures of Public Lands Act of 1885, (2) FLPMA or (3) CDCA. The SA/DEIS states, “Currently, open Bureau of Land Management (BLM) routes traverse the project area. Those routes would be closed if any of the action alternatives or California Desert Conservation Area (CDCA) Plan amendments are approved.”<sup>9</sup> [Emphasis added] And, the SSA states, “If the BLM decides to approve the issuance of a ROW grant, the BLM will also amend the CDCA Plan as required.”<sup>10</sup> The closure of Hector Road will prevent Private Property Owners from accessing their lands in Sections 1 and 36 and these private lands will be landlocked.

The Private Property Owners contend Hector Road is a CDCA designated open route and a FLPMA existing right of way and the Applicant and the BLM do not have the authority to block or close Hector Road.<sup>11</sup> The Private Property Owners also contend the BLM does not have the authority to designate an alternative route.<sup>12</sup>

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<sup>3</sup> Patrick C. Jackson Status Report No. 5, pp. 5-7.

<sup>4</sup> SSA, pp. C.8-13, C.8-41.

<sup>5</sup> *Id.*, p C.8-13.

<sup>6</sup> *Id.*, p. B.2-58.

<sup>7</sup> Patrick C. Jackson Status Report No. 5.

<sup>8</sup> Roxie C. Trost February 25, 2010 letter to Shawn R. Jackson, Esq.

<sup>9</sup> SA/DEIS, p. C.11-1.

<sup>10</sup> SSA, p. A-13.

<sup>11</sup> *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735 (10<sup>th</sup> Cir. 2005).

<sup>12</sup> *Center for Biological Diversity v. U.S. Bureau of Land Management*, U.S. District Court for the Northern District of California, Summary Judgment, Case No. C-06-4884 SI.

The Private Property Owners' right to use Hector Road to access private lands remains disputed and the issue requires adjudication.

## **II. RECORDS REQUESTED UNDER THE FREEDOM OF INFORMATION ACT**

On December 13, 2009, I requested records the BLM has on Hector Road under the Freedom of Information Act (FOIA). I have not received all the records and I filed a FOIA appeal with the United States Department of the Interior (DOI) Office of the Solicitor. The appeal is ongoing.<sup>13</sup>

Also on December 13, 2009, I requested records the BLM has on water well quantity testing and water well sites under FOIA. I have not received all the records and I filed a FOIA appeal with the DOI Office of the Solicitor. This appeal is ongoing.<sup>14</sup>

The National Environmental Policy Act (NEPA) requires the BLM to provide information requested under FOIA.<sup>15</sup>

To date, the BLM has not provided relevant and material information in order for the SSA/EIS to comply with NEPA, the California Environmental Quality Act (CEQA), the Warren-Alquist Act or Title 20 California Code of Regulations § 1712(c).

The Memorandum of Understanding Between the U.S. Department of Interior, Bureau of Land Management California Desert District and the California Energy Commission Staff Concerning Joint Environmental Review For Solar Thermal Power Plant Projects states, in pertinent part:

The assessments provided by the Parties must be sufficient to meet all federal and state requirements for NEPA and CEQA and shall be included as part of the joint Preliminary Staff Assessment/Draft Environmental Impact Statement and the joint Final Staff Assessment/Final Environmental Impact Statement.

The BLM's withholding of relevant and material records prevents me and other interested parties from presenting evidence and participating fully in the Prehearing Conference and Evidentiary Hearings as mandated by Title 20 California Code of Regulations § 1711.

## **CLOSING STATEMENTS**

The issue of the Private Property Owners use of Hector Road remains disputed and the Land Use, Recreation and Wilderness section and the Traffic and Transportation section of the SSA are not ready for Evidentiary Hearings. These sections can not proceed until this issue is adjudicated.

The issue of the Private Property Owners use of Hector Road has been ongoing for over

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<sup>13</sup> Patrick C. Jackson Status Report No. 5.

<sup>14</sup> *Id.*

<sup>15</sup> Federal Register, Vol. 75, No. 35, February 23, 2010, p. 8046.

two years and the Applicant and the BLM have not made a good faith effort to resolve this issue. The Applicant and BLM have yet to respond to the comments made in any of the following documents:

- Patrick C. Jackson Status Report No. 5,
- Patrick C. Jackson's Comments on the Staff Assessment and Draft Environmental Impact Statement for the Calico Solar Project Application For Certification (08-AFC-13) San Bernardino County Parts 1 and 2, and
- Patrick C. Jackson's Comments on the Draft Environmental Impact Statement for the Calico Solar Project.

The issue regarding my requests under the Freedom of Information Act has been on going for over seven months and the BLM has not responded to any of the comments made in the preceding documents or to Shawn R. Jackson's April 22, 2010 e-mail to Roxie C. Trost with my April 18, 2010 letter supporting my FOIA requests.

By not providing records I requested under FOIA, the BLM has not made a good faith effort to meet the legal requirements of Title 20 California Code of Regulations § 1712(c) or CEQA Guidelines which state:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.<sup>16</sup> [Emphasis added]

The Land Use, Recreation and Wilderness section and the Traffic and Transportation section of the SSA are not ready for Evidentiary Hearings. These sections can not proceed until my FOIA appeal is resolved by the United States Department of the Interior or, if necessary, judicial review in court.

The Declaration of Service and the Proof of service are attached.

July 25, 2010

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Date



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Patrick C. Jackson  
600 N. Darwood Avenue  
San Dimas, California 91773  
(909) 599-9914 Voice  
(909) 599-9914 Facsimile  
ochsjack@earthlink.net

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<sup>16</sup> 14 Cal. Code Regs. ("CEQA Guidelines"), § 15151.

STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

In the Matter of:

Application for Certification  
for the Calico Solar Project  
(Formerly SES Solar One)

Docket No. 08-AFC-13

**DECLARATION OF SERVICE**

I, **Patrick C. Jackson**, declare that on **July 25, 2010**, I served and filed copies of the attached ***Prehearing Conference Statement***. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent *Proof of Service* located on the web page for this project at:

<http://www.energy.ca.gov/sitingcases/calicosolar/>

The document has been sent to the Commission, as well as all parties in this proceeding as shown on the *Proof of Service*, in the following manner:

**FOR SERVICE TO THE APPLICANT AND ALL OTHER PARTIES:**

- XX sent electronically to all e-mail addresses on the Proof of Service list and  
XX by depositing in the United States mail at **San Dimas, California**, with first-class postage thereon fully prepaid and addressed as provided on the attached *Proof of Service* to the mailing addresses shown on the Proof of Service NOT marked "E-mail Service Preferred."

**AND**

**FOR FILING WITH THE ENERGY COMMISSION:**

- XX sending the original signed document and one electronic copy, mailed and e-mailed respectively, to the address below:

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

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

July 25, 2010

\_\_\_\_\_  
Date



\_\_\_\_\_  
Patrick C. Jackson



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 CALICO SOLAR** (Formerly SES Solar One)

**Docket No. 08-AFC-13**

**PROOF OF SERVICE**  
(Revised 7/12/10)

**APPLICANT**

Felicia Bellows  
Vice President of Development &  
Project Manager  
Tessera Solar  
4800 North Scottsdale Road,  
#5500  
Scottsdale, AZ 85251  
[felicia.bellows@tesserasolar.com](mailto:felicia.bellows@tesserasolar.com)

**CONSULTANT**

Angela Leiba  
AFC Project Manager  
URS Corporation  
1615 Murray Canyon Rd., #1000  
San Diego, CA 92108  
[angela\\_leiba@URSCorp.com](mailto:angela_leiba@URSCorp.com)

**APPLICANT'S COUNSEL**

Allan J. Thompson  
Attorney at Law  
21 C Orinda Way #314  
Orinda, CA 94563  
[allanori@comcast.net](mailto:allanori@comcast.net)

Ella Foley Gannon, Partner  
Bingham McCutchen, LLP  
Three Embarcadero Center  
San Francisco, CA 94111  
[ella.gannon@bingham.com](mailto:ella.gannon@bingham.com)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)  
Jim Stobaugh  
BLM – Nevada State Office  
P.O. Box 12000  
Reno, NV 89520  
[jim\\_stobaugh@blm.gov](mailto:jim_stobaugh@blm.gov)

Rich Rotte, Project Manager  
Bureau of Land Management  
Barstow Field Office  
2601 Barstow Road  
Barstow, CA 92311  
[richard\\_rotte@blm.gov](mailto:richard_rotte@blm.gov)

Becky Jones  
California Department of  
Fish & Game  
36431 41st Street East  
Palmdale, CA 93552  
[dfgpalm@adelphia.net](mailto:dfgpalm@adelphia.net)

**INTERVENORS**

County of San Bernardino  
Ruth E. Stringer, County Counsel  
Bart W. Brizzee, Deputy County Counsel  
385 N. Arrowhead Avenue, 4<sup>th</sup> Floor  
San Bernardino, CA 92415-0140  
[bbrizzee@cc.sbcounty.gov](mailto:bbrizzee@cc.sbcounty.gov)

California Unions for Reliable Energy  
(CURE)  
c/o: Loulena A. Miles, Marc D. Joseph  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Ste. 1000  
South San Francisco, CA 94080  
[lmiles@adamsbroadwell.com](mailto:lmiles@adamsbroadwell.com)

Defenders of Wildlife  
Joshua Basofin  
1303 J Street, Suite 270  
Sacramento, California 95814  
*e-mail service preferred*  
[jbasofin@defenders.org](mailto:jbasofin@defenders.org)

Society for the Conservation of  
Bighorn Sheep  
Bob Burke & Gary Thomas  
P.O. Box 1407  
Yermo, CA 92398  
[cameracoordinator@sheepsociety.com](mailto:cameracoordinator@sheepsociety.com)

Basin and Range Watch  
Laura Cunningham & Kevin Emmerich  
P.O. Box 70  
Beatty, NV 89003  
[atomicloadranch@netzero.net](mailto:atomicloadranch@netzero.net)

Patrick C. Jackson  
600 N. Darwood Avenue  
San Dimas, CA 91773  
*e-mail service preferred*  
[ochsjack@earthlink.net](mailto:ochsjack@earthlink.net)

Gloria D. Smith, Senior Attorney  
Sierra Club  
85 Second Street, Second floor  
San Francisco, CA 94105  
[gloria.smith@sierraclub.org](mailto:gloria.smith@sierraclub.org)

\*Newberry Community Service District  
Wayne W. Weierbach  
P.O. Box 206  
Newberry Springs, CA 92365  
[newberryCSD@gmail.com](mailto:newberryCSD@gmail.com)

**ENERGY COMMISSION**

ANTHONY EGGERT  
Commissioner and Presiding Member  
[aeggert@energy.state.ca.us](mailto:aeggert@energy.state.ca.us)

JEFFREY D. BYRON  
Commissioner and Associate Member  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

Paul Kramer  
Hearing Officer  
[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)

Lorraine White, Adviser to  
Commissioner Eggert  
*e-mail service preferred*  
[lwhite@energy.state.ca.us](mailto:lwhite@energy.state.ca.us)

Kristy Chew, Adviser to  
Commissioner Byron  
*e-mail service preferred*  
[kchew@energy.state.ca.us](mailto:kchew@energy.state.ca.us)

Caryn Holmes  
Staff Counsel  
[cholmes@energy.state.ca.us](mailto:cholmes@energy.state.ca.us)

Steve Adams  
Co-Staff Counsel  
[sadams@energy.state.ca.us](mailto:sadams@energy.state.ca.us)

Christopher Meyer  
Project Manager  
[cmeyer@energy.state.ca.us](mailto:cmeyer@energy.state.ca.us)

Jennifer Jennings  
Public Adviser  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)