

STATE OF CALIFORNIA

Energy Resources Conservation And Development Commission

DOCKET

08-AFC-13

DATE JUL 29 2010

RECD. JUL 29 2010

In the Matter of:
The Application for Certification
for the Calico Solar Power Project
Licensing Case

Docket No. 08-AFC-13

PETITION TO INTERVENE BY BNSF RAILWAY COMPANY

July 29, 2010

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Attorneys for Intervenor
BNSF Railway Company

Pursuant to sections 1207 and 712 of Title 20 of the California Code of Regulations, BNSF Railway Company ("BNSF") hereby respectfully petitions to intervene in this proceeding. Section 1207(a) provides that:

Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

BNSF is one of two Class 1 railroads operating in California. BNSF's mainline, which is traversed by as many as 80 trains per day, carries interstate commerce from the ports of Los Angeles and Long Beach to U.S. Midwestern, Southwestern, and Eastern markets. The Calico Solar Project (the "Project") proposed by Applicant Calico Solar, LLC ("Calico Solar") seeks to emplace 34,000 SunCatcher solar energy dish systems over 6,215 acres and within one hundred feet of both sides of BNSF's mainline.

Accordingly, BNSF has significant concerns that the construction and operation of the Project do not adversely impact BNSF operations or otherwise impose unacceptable safety risks to BNSF operations and the surrounding environs. To address these concerns, BNSF has coordinated very recently with

Calico Solar as well as with the Commission Staff.¹ This coordination has included the exchange of information, expert reports, and several face to face meetings with representatives from Calico Solar.

BNSF first became aware of the issues of concern to its operations in June 2010. The Notice setting forth the actual schedule for the Prehearing Conference and Evidentiary Hearing was published to the Commission's website on July 13, 2010. That Notice sets forth that the deadline for filing a petition to intervene was July 6, 2010 – a week before the posting of the actual Notice. Although the Notice references by footnote that the date for the Evidentiary Hearing was known as early as the June 15th Committee Conference and Revised Committee Schedule issued on June 3, 2010, BNSF did not even begin to become aware of the underlying issues affecting its operation until late June.

The available information on the Commission's website describes the Project in general terms, but specific plans are not yet available. Indeed, current available documentation does not call out the specific emplacement of SunCatchers and other structures and facilities to support the Project, to include but not limited to transmission lines and hydrogen gas production facilit(ies) and

¹ Although Applicant Calico Solar had made previous piecemeal requests of various employees within BNSF for access to the BNSF Right of Way and to ascertain the potential for obtaining water from BNSF, BNSF was not aware of the nature and scope of this proceeding until June 2010, and the schedule was not posted until July 13th.

transmission line(s).² Moreover, there are several studies that have yet to be produced and are therefore not available for review or comment.

Regardless, BNSF has been working on a cooperative basis in the interim with Applicant Calico Solar and the Commission Staff to address the concerns that BNSF has in relation to the Project. Assuming that these concerns are properly addressed to ensure that BNSF's safety requirements are met through conditions of permit and certification, BNSF anticipates that BNSF and Calico Solar will be able to enter into mutually agreeable agreements regarding access to BNSF land. BNSF believes that the dialogue and interaction process has been and will continue to be productive and cooperative in nature. After consulting with both the Commission Staff and Applicant Calico Solar, BNSF believes it would be more appropriate to appear as an intervenor in this proceeding on a going forward basis so that BNSF can provide the Commission with the requisite evidence to ensure that the Commission addresses BNSF's safety and related issues. BNSF understands that it takes the case as it finds it upon grant of this Petition and seeks intervention to address issues solely related to rail safety and BNSF property. Counsel for Calico Solar has been apprised of this Petition and supports this Petition.

² The SSA called for the construction of one hydrogen gas production facility to be emplaced on an as-yet-to-be-determined site within the Project. (SSA p. C.5-8.) That single hydrogen gas facility would generate hydrogen gas, which would then be transmitted via extensive shallow (approximate 2 ½ foot bgs) subterranean pipelines throughout the Project to the various SunCatchers (the specific emplacement of which was likewise not set forth in the SSA) and would require boring under and hydrogen gas pipeline emplacement under the mainline. This raised significant safety concerns. Applicant Calico Solar recently has represented that it will either: (1) produce hydrogen gas somewhere on site at a location not yet specified and transport the gas via bottles carried on trucks to the respective SunCatchers; or (2) produce hydrogen gas on two separate but as yet unidentified sites on the north and south sides of the BNSF Right of Way and thereafter construct two separate hydrogen gas pipeline systems (one northern and one southern) to transport the hydrogen gas to the respective SunCatchers, without going under the mainline.

Moreover, while the deadline to intervene pursuant to the Notice has passed, the California Code of Regulations specifically provides that the Presiding Member of the Calico Solar AFC Committee "may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, . . . after the deadline provided . . . upon a showing of good cause by the petitioner." 20 CCR §1207(c). BNSF respectfully requests that the Presiding Member grant this Petition given that BNSF: (1) has a significant interest in the Project; (2) has participated in good faith to date; and (3) Applicant Calico Solar does not object to this Petition.

BNSF wishes to participate fully in all phases of this proceeding on a going forward basis. Specifically, the areas regarding which BNSF requests full participation are set forth in separate correspondence submitted on this date to the Commission and include: (1) transmission line safety and nuisance (induction); (2) hazardous materials management (hydrogen); (3) biological resources (desert tortoise); (4) soil and water resources (detention basins); (5) hydrology (subsidence); and (6) transportation (glint and glare).

Filings should be served on BNSF through counsel. BNSF's client representative is Joseph Schnell, Manager Special Projects – Signal, BNSF Railway Company, 2600 Lou Menk Drive, OOB 3, Fort Worth, Texas 76131-2830, telephone 817.353.1918. The Prehearing Conference is set for July 30, 2010 and the Evidentiary Hearing will commence on August 4, 2010. Accordingly, BNSF submits evidentiary declarations in support of this Petition for consideration at the Prehearing Conference and Evidentiary Hearing. BNSF

understands that, under the current Schedule, the Transportation and Cultural Resources SSA Sections will not be published until sometime next week, at the earliest, and that a further Evidentiary Hearing is set for August 18, 2010 to receive the FEIS, Biological Opinion, and any further evidence. In that vein, as set forth in BNSF's correspondence of July 29, 2010, BNSF understands that further studies, to include but not limited to a further study in relation to glint and glare, will be submitted by the Commission Staff after the Prehearing Conference. BNSF respectfully requests the opportunity to comment on and, if appropriate, provide further evidence relating to any such additional studies.

Dated: July 29, 2010

Respectfully submitted,

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APPLICATION FOR CERTIFICATION

For the CALICO SOLAR (Formerly SES Solar One)

Docket No. 08-AFC-13

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

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DECLARATION OF SERVICE

I, Ani Seferyan, declare that on July 29, 2010, I served and filed copies of the attached
PETITION TO INTERVENE BY BNSF RAILWAY COMPANY

dated July 29, 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 documents have 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, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
 by personal delivery;
 by delivering on this date, for mailing with the United States 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 "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address
below (*preferred method*);

OR

- depositing in the mail an original and 12 paper copies, as follows:

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

I declare under penalty of perjury 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.


Ani Seferyan