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March 17, 2010

DOCKET

08-AFC-13

DATE MAR 17 2010

RECD. MAR 18 2010

California Energy Commission
Attn: Docket No. 08-AFC-13
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: 08-AFC-13 Calico Solar Project Letter

Dear Docket Clerk:

Enclosed are an original and one copy of California Unions for Reliable Energy's Status Report No. 6 for the Calico Solar Project. Please process the document and provide us with a conformed copy in the envelope enclosed.

Thank you.

Sincerely,

/s/

Loulena A. Miles

:bh
Enclosures

2309-053a

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

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

Docket No. 08-AFC-13

**CALIFORNIA UNIONS FOR RELIABLE ENERGY
STATUS REPORT NO. 6**

March 17, 2010

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UNIONS FOR RELIABLE ENERGY

INTRODUCTION

California Unions for Reliable Energy (“CURE”) submits this sixth status report pursuant to the Revised Committee Scheduling Order issued on February 2, 2010 regarding the Calico Solar Power Plant Project (“Project”). Although the Staff Assessment/Draft Environmental Impact Statement (“SA/DEIS”) is expected to be issued soon, Calico Solar, LLC (“Applicant”) still has not provided basic information that is mandatory if the Commission is going to comply with its obligations under CEQA and the Warren Alquist Act.

As we said in our March 11, 2010 letter to the Staff Project Manager, the Applicant has not yet informed the Commission where the new 500 kV transmission line or the new 100-acre substation needed for the Project will be located. Neither has the Applicant provided biological or cultural surveys of the affected areas as requested by Staff, nor identified a firm water supply or the impacts of using that water. Additionally, the Applicant has not filed the desert tortoise translocation/relocation plan, the Swainson’s hawk surveys, the golden eagle surveys, the draft incidental take permit application, or the draft rare plant relocation plan requested at the last three status conferences.

The SA/DEIS cannot be legally adequate without this information and should not be published until the Applicant provides all outstanding information needed for a complete, valid analysis of the impacts of the Project. Commission Staff must have an opportunity to review this new information and incorporate it into Staff’s analyses. Further, it is not adequate for Commission Staff to issue an incomplete

SA/DEIS and later supplement the analysis in a SA Addendum/Final EIS without providing an opportunity for all parties and the public to review and comment on the new information and analysis. Deferral of this analysis to a supplemental CEQA and NEPA review will only complicate the proceeding, fragment the analysis, require additional public review and comment, and elongate the process unnecessarily.

Finally the recent alternative reconfiguration formally submitted by Intervenor Defenders of Wildlife should be thoroughly evaluated by Staff prior to the release of the SA/DEIS.

DISCUSSION

a. Transmission Upgrades

CURE notified the Commission on December 11, 2009 that the project description was incomplete and that additional information about the transmission upgrades must be provided. Since then, the Applicant made it clear that basic information about the transmission upgrades necessary for 575 MW of the Project output will not be provided because these aspects of the Project are still at a conceptual level. The Large Generator Interconnection Agreement (“LGIA”) filed by the Applicant on February 26, 2010 further explained that a full ten mile section of the transmission line will *not* be located in an existing Southern California Edison right of way and a new right of way must be established.¹ Moreover, 100

¹ Applicant’s Submittal of the Executed Large Generator Interconnection Agreement, February 26, 2010, Original Sheet No. 61.

acres may be needed for a new substation in an unknown location.² Because the location and description of these transmission upgrades have not been provided by the Applicant, the environmental impacts of these facilities and the necessary mitigation cannot be determined.

Without this information about the Project's proposed (and required) transmission upgrades, Staff simply cannot provide an adequate basis for the Committee to make the findings required for certification of the Project (e.g., compliance with all laws and regulations, and adequate mitigation of impacts); nor can Staff issue a valid SA/DEIS.

b. Water Supply

During a status conference on February 23, 2010, the Applicant indicated that it may rely upon water from the Cadiz well located 65 miles away from the Project site. Almost in the next breath, the Applicant stated that it is actively evaluating its options to use groundwater on or adjacent to the Project site. If the Applicant seeks to use groundwater on or adjacent to the Project site, Staff must fully evaluate in the SA/DEIS the data and analyses associated with on-site groundwater, potentially significant impacts, required mitigation, and compliance with all laws and regulations.

Currently, the Applicant has not supplied the required data and analyses regarding groundwater from the Cadiz Well as a potential source of the Project's water supply. The Applicant's Supplement to its AFC, which was just filed on January 27, 2010, explained that a Federal conformity analysis will be required if

² *Id.* at Original Sheet No. 60.

water from the Cadiz well is transported by truck.³ A Federal conformity analysis would be required because the Mojave air basin is in non-attainment for NO_x and PM₁₀. If the Project relies on trucks to transport the water, then the Project's mobile source emissions will exceed the 100 tons per year threshold for NO_x and approach the threshold for PM₁₀, if not exceed it, thus requiring further analysis and mitigation. Additionally, the AFC Supplement indicates that the Applicant did not model cumulative air quality impacts from mobile sources and the transportation of this water.⁴ The Project's proposed water supply and the required data and analyses must be fully evaluated in the SA/DEIS.

c. Other Missing Documents

Any delay in the release of the SA/DEIS is due solely to the failure of the Applicant to timely submit information related to its proposed Project. The Applicant only recently docketed an Application for Clean Water Act Section 401 Water Quality Certification, a Notification of Lake or Streambed Alteration and the Large Generator Interconnection Agreement. Staff is required to review these submittals and conduct an independent analysis of potentially significant impacts and compliance with all laws and regulations related to this new information for inclusion in the SA/DEIS.

Furthermore, the Applicant still has not submitted a number of other critical documents that would provide information that must be considered by Staff in the SA/DEIS. For example, at the January 27, 2010 Committee Status Conference, the

³ Calico Solar Supplemental Analysis for Application for Certification, January 27, 2010.

⁴ *Id.*

Applicant acknowledged that a desert tortoise translocation/relocation plan had been prepared but had not been filed with the Commission. The translocation/relocation plan is critical because the Project will significantly impact a large and stable population of federally listed tortoises. Further, the Applicant has not submitted the results from Swainson's hawk surveys or golden eagle surveys, its draft incidental take permit application, or its draft rare plant relocation plan. This information should be docketed as soon as it is available. Again, without this information, Staff simply cannot provide an adequate basis for the Committee to make the findings required for certification of the Project (e.g., compliance with all laws and regulations, and adequate mitigation of impacts).

d. SA/DEIS Should be Complete When Issued

Commission Staff and BLM should not release the SA/DEIS until the Applicant has provided a stable and accurate description of the required transmission upgrades and a firm water supply, and until Commission and BLM Staff have reviewed all key documents relevant to the Project's environmental impacts and proposed mitigation. Issuance of a SA Addendum/Final EIS after the public comment period is closed violates the requirements of CEQA and NEPA.

A fragmented and disjointed environmental review undermines informed participation by decisionmakers and the public. "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed

decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.”⁵

When significant new information is added to the EIR following public review but before certification, CEQA requires recirculation of an EIR, or EIR equivalent.⁶ The CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.”⁷

NEPA has a similar requirement. “If a draft [EIS] is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.”⁸ The CEQ regulations further direct that an agency shall prepare a supplement to a draft or final EIS if: 1) there are substantial changes in the proposed action that are relevant to the environmental concerns; or 2) there are environmentally relevant, significant, new circumstances or information that bear on the proposed action or its impacts.⁹

The requirement to circulate new information serves NEPA’s dual purposes: “It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process

⁵ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.

⁶ Pub. Res. Code § 21092.1.

⁷ CEQA Guidelines § 15088.5.

⁸ CEQ Regulations, 40 CFR 1502.9.

⁹ *Id.*

and the implementation of that decision.”¹⁰ “Simply by focusing the agency's attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.”¹¹

Therefore, the BLM and CEC Staff have an obligation to wait until all key documents have been submitted and analyzed before issuing the SA/DEIS to ensure that the environmental impacts of the Project are considered in a orderly and logical way so as to not confuse the public and decisionmakers and to ensure that the analysis in the SA/DEIS is correct. If BLM and CEC Staff instead rush to issue a SA/DEIS without analyzing and incorporating the information that is critical to an adequate analysis of the Project's major environmental impacts, a supplemental analysis will have to be circulated for public review and comment.

e. Alternative Submitted by Defenders of Wildlife

On March 3, 2010, Defenders of Wildlife submitted a Site Reconfiguration Alternative. The Site Reconfiguration Alternative may constitute a feasible mitigation measure that reduces potentially significant impacts from the proposed Project and should be fully analyzed and incorporated into the SA/DEIS. The Site Reconfiguration Alternative is designed to reduce Project impacts to the large population of federally threatened desert tortoise on the current Project site. The Site Reconfiguration Alternative may also alleviate impacts to bighorn sheep that use the proposed Project site for forage.

¹⁰ *Robertson v. Methow Valley Citizens Council* (1989) 490 U.S. 332, 349.

¹¹ *Id.*

CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.¹² If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.¹³ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.¹⁴ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation. Intervenor, Defenders of Wildlife, correctly cited the Commission's responsibility to assess the feasibility of reasonable alternative sites and facilities not proposed by the Applicant.¹⁵ Therefore, Staff should fully evaluate the Site Reconfiguration Alternative in the SA/DEIS.

CONCLUSION

The Applicant has delayed the environmental review process by failing to provide basic information regarding the Project's proposed transmission upgrades necessary for Project operation and the Project's proposed water supply. Indeed, the Applicant has not even decided upon these critical aspects of the Project. The Applicant must indicate for which version of the Project it is seeking approval, and provide data and analyses regarding that version of the Project's potentially

¹² CEQA Guidelines, § 15002(a)(2) and (3); *Berkeley Keep Jets Over the Bay v. Bd. Of Port Comm'rs* (2001), 91 Cal.App.4th 1344, 1345; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1998) 47 Cal.3d 376, 400.

¹³ Pub. Resources Code §§ 21002.1, subd. (a), 21100, subd. (b)(3).

¹⁴ Pub. Resources Code §§ 21002-21002.1.

¹⁵ 20 CCR 1723.5(d) and (e).

significant impacts. Staff must also independently review this information in order to identify the Project's potentially significant impacts and provide feasible mitigation measures. Staff must also incorporate the Site Reconfiguration Alternative submitted by Defenders of Wildlife on March 3, 2010. This information must be included in the SA/DEIS in order to provide the public with a clear and accurate understanding of the Project, its impacts, and feasible mitigation measures during the public comment period. The Applicant is wasting the Commission's time if it seeks to continue without providing this fundamental information and analysis.

If the SA/DEIS is released and circulated for public comment without a stable and accurate project description or consideration of the Project's significant impacts, the SA/DEIS will have to be revised and recirculated for additional public comment.

Dated: March 17, 2010

Respectfully submitted,

/s/

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Attorneys for the CALIFORNIA
UNIONS FOR RELIABLE ENERGY

DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on March 17, 2010, I served and filed copies of the attached California Unions for Reliable Energy Status Report No. 6 dated March 17, 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/calicosolar. 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-1
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 March 17, 2010.

_____/s/_____
Bonnie Heeley

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