

**DOCKET**

**08-AFC-13**

DATE MAR 23 2010

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STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

In the Matter of

The Application for Certification for the  
Calico Solar Project

Docket No. 08-AFC-13

INTERVENOR DEFENDERS OF WILDLIFE

Status Report No. 2

March 23, 2010

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Pursuant to the Committee Schedule, Defenders of Wildlife (“Defenders”) hereby submits Status Report No. 2 for the proposed Calico Solar Project.

**1. The Committee Schedule Does Not Comply With CEC Regulations Requiring Both a Staff Report and Final Staff Assessment.**

The schedule for this project is extremely ambitious, deviates significantly from the CEC’s normal regulatory process, and provides little opportunity for parties or the public to participate. The CEC has significantly curtailed the transparency of this proceeding and the parties’ ability to effectively engage in it. Most importantly, the CEC has opted to complete only one draft of the staff assessment for the project and release it shortly before the evidentiary hearing. CEC regulations require that the staff complete and circulate two documents between the time the application for certification is accepted and the evidentiary hearing. The staff must present the results of its initial assessment in a staff report and distribute a notice of availability to all interested persons. 20 CCR § 1742.5(b)(e). Additionally, at least 14 days before the hearing, or pursuant to the schedule, the staff must publish its report as the final staff assessment and distribute it to interested agencies, parties, and to any person who requests a copy. The regulations explicitly mandate two separate public documents – a staff report and a final staff assessment.

In the past, staff has executed its duties pursuant to the aforementioned regulations by completing a preliminary staff assessment and a final staff assessment. This bifurcation allowed the parties ample opportunity to address staff’s initial analysis. It also fulfilled the requirements of CEQA under the CEC’s certified regulatory program. The preliminary staff assessment and final staff assessment are equivalent to a draft EIR and final EIR, respectively.

The Committee Schedule is also lacking a timeline for public comment on the Staff Assessment (only a DEIS public comment period is designated). An EIR prepared pursuant to a certified regulatory program must be circulated for at least a 30-day review period. Cal. Pub. Res. Code § 21080.5. *Ultramar, Inc. v. South Coast Air Quality Management Dist.*, 17 Cal. App. 4th 689, 699.

Finally, the current Committee Schedule does not provide the parties with an opportunity to cross-examine witnesses or submit evidence related to the Supplemental Staff Assessment. The CEC is required to publish each staff assessment and reopen the evidentiary record to address it.

The Committee should formally notice the newest version of the Committee Schedule, currently in draft form, which provides the parties with an opportunity to address the Supplemental Staff Assessment at a hearing.

**2. Necessary Documentation Has Not Been Submitted.**

The applicant filed its revised project layout on March 10, 2010. This is a very late date in the proceeding to receive a map with the project boundaries. The late submission makes the Commission staff's and parties' job of assessing the project very difficult. Additionally, the Applicant stated in its Status Report #6, submitted on March 11, 2010, that it is currently undertaking surveys for golden eagles, bighorn sheep, rare plants and desert tortoise. This new information will presumably be coming into the record and Defenders will assess it at that time.

**3. The Applicant Has Not Submitted A Reasonable Range of Alternatives**

The Applicant has yet to submit private land site alternatives for the project. As Defenders stated previously, the Renewable Energy Transmission Initiative has determined that siting renewable energy facilities on degraded private land should be a priority for the State. In light of this policy and the proposed project's significant impacts on biological resources, any reasonable range of alternatives for this project should include private land sites.

Additionally, the CEC should analyze several site reconfiguration alternatives that may avoid or minimize impacts to rare plants, desert tortoise, bighorn sheep, and other species. Defenders submitted the Site Reconfiguration Alternative on March 3, 2010. In its March 11, 2010 Status Report, the Applicant expressed its concern with an alternative submitted by "one of the intervenors" (presumably Defenders). The Applicant stated that the alternative was "late in the proceeding and will delay release of the SA/DEIS, and it is infeasible."<sup>1</sup>

First, Defenders timely submitted the Site Reconfiguration Alternative. Agencies must have adequate information to perform an alternatives analysis, the purpose of which is to explore options for a project that would avoid or minimize environmental impacts. Lead agencies are required to

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<sup>1</sup> Applicant's Status Report Six, page 3, March 11, 2010.

analyze a reasonable range of alternatives to a project, or to the location of the project, that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of the significant effects of the project. CEQA Guidelines, § 15126.6(a)(f). The alternatives analysis hinges on **information** concerning the significance of a project's impacts. As stated above, the Applicant has yet to complete several surveys which will inform whether impacts to biological resources are significant. In particular, surveys for bighorn sheep are still outstanding, although Defenders recommended the Applicant complete such surveys on multiple occasions, including a July 7, 2009 scoping comment letter, a September 28, 2009 letter regarding the Issues Resolution Workshop, and a February 22, 2010 Status Report. If the Applicant has been attentive to these recommendations, and to Defenders' recommendations for completing a robust alternatives analysis, then the submission of this alternative aimed in part at reducing impacts to bighorn sheep should cause no undue surprise.

Indeed, the lateness of the Applicant's biological surveys is a deficiency created solely by the Applicant. Defenders submitted the Site Reconfiguration Alternative using the minimal biological information that has been provided by the Applicant to date. There is a disturbing lack of environmental information in this case. If anything, Defenders submitted the Site Reconfiguration Alternative prematurely and without proper information. Additionally, as CURE has noted, the Applicant submitted a revised project layout on March 10, 2010. Commission staff and the parties cannot adequately assess the project until the project description is finalized and the wildlife surveys are completed. An EIR (or in this case its functional equivalent) is an informational document. CEQA Guidelines, § 15121. CEQA requires the Applicant to show the precise location and boundaries of the proposed project on a detailed map, preferably topographic. CEQA Guidelines, § 15124. The Applicant has shifted the project boundaries as late as its March 10, 2010 filing. Additionally, the Applicant is required to describe the physical environmental conditions in the vicinity of the project. CEQA Guidelines, § 15125(a). Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project, such as native wildlife. CEQA Guidelines, § 15125(c). The Applicant is only now submitting a detailed project description and describing the baseline environmental conditions through the results of wildlife surveys.

Second, the Applicant's statement that the Site Reconfiguration Alternative is infeasible is arbitrary. CEQA requires a feasibility analysis for alternatives. As Defenders stated in its Site Reconfiguration Alternative submission, Commission staff should analyze and discuss this alternative. Several factors will be relevant to the staff's analysis in this regard. See CEQA Guidelines, § 15126.6(f)(1). The considerations do not include, however, the Applicant's unfounded and arbitrary statement that the alternative is infeasible.

Third, the Applicant's curious statement that it has "released the primary development rights" to the Solar 3 site is both misleading and irrelevant for purposes of a CEQA analysis. First, a private entity cannot claim "primary development rights" on BLM land. BLM may choose to issue a right-of-way grant to the Applicant, at which point the Applicant would enjoy a tenancy on the site. However, maintaining a place in the queue with a right-of-way application, as the Applicant did until recently, does not constitute a development right. The Applicant did inexplicably withdraw its right-of-way application for the Solar 3 site. However, it need only file a new application to be eligible for site control. It is very much within the Applicant's reach. The key question for purposes of CEQA is whether the proponent *can* reasonably acquire, control or otherwise have access to the alternative site. CEQA Guidelines, § 15126.6(f)(1). The Applicant has demonstrated as such by previously maintaining a right-of-way application for the Solar 3 site.

**The Draft Desert Tortoise Translocation Plan Does Not Comply with the Endangered Species Act or the National Environmental Policy Act.**

The Proposed Project is Partially Located on land purchased with Land and Water Conservation Fund ("LWCF") monies and subsequently donated to BLM. According to BLM's interim policy on the subject, lands acquired by BLM under donation agreements, acquired for mitigation/compensation purposes and with LWCF funds, are to be managed as avoidance/exclusion areas for land use authorizations that could result in surface disturbing activities.<sup>2</sup> Indeed, the proposed project would result in significant surface disturbing areas and therefore must exclude the portion of the project footprint currently residing on LWCF lands. Defenders' Site Reconfiguration Alternative would avoid these lands completely.

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<sup>2</sup> Interim Policy on Management of Donated Lands and Lands Acquired with Land and Water Conservation Funds (LWCF), BLM, May 27, 2009

**The Applicant has not Proven Stirling Engine Technology to be Reliable at a Utility Scale.**

Experts have expressed significant concerns with the feasibility of implementing Stirling Engine technology on a utility scale. Dr. Barry Butler testified as to the efficacy of operating this technology on a utility scale in the California Public Utilities Commission's proceeding for the Sunrise Powerlink Transmission Project:

My opinion is that dish/Stirling technology holds much promise. By 2020, the technology could be a significant player on a commercial scale in the concentrated solar power category. However, there is no possible way that dish/Stirling solar can move from high cost prototype models with substantive reliability concerns to large-scale production of high reliability low-cost commercial models by 2008 and full operation of a 12,000 dish, 300 MW array by the end of 2010.<sup>3</sup>

The reliability of renewable resources is within the CEC's regulatory purview and a major consideration in the site certification process. The Applicant will have the burden of proving that the dish/Stirling technology is reliable on a utility scale.

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<sup>3</sup> In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project, Phase I direct testimony of Dr. Barry Butler, filed August 4, 2006.

**DECLARATION OF SERVICE**

I, Joshua Basofin, declare that on March 23, 2010, I served and filed copies of the Attached Status Report No. 2, dated March 23, 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/calico]**. 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, in the following manner:

**(Check all that Apply)**

**FOR SERVICE TO ALL OTHER PARTIES:**

X sent electronically to all email addresses on the Proof of Service list;

X by personal delivery or by depositing in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

**AND**

X 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:

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

  
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**APPLICATION FOR CERTIFICATION**  
**For the CALICO SOLAR (Formerly SES Solar One)**

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

**PROOF OF SERVICE**  
**(Revised 2/8/10)**

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