

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

bheeley@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4715

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

August 28, 2009

DOCKET
08-AFC-2

DATE 8/28/2009

RECD. 8/31/2009

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: Application for Certification, Beacon Solar Energy Project, 08-AFC-2

Dear Docket Clerk:

Enclosed are an original and one copy of California Unions for Reliable Energy Status Report No. 6 and Comments on Beacon Solar, LLC's Request for Hearing Schedule. Please process the document, and provide us with a conformed copy in the envelope provided. The document was previously provided via email.

Thank you for your assistance with this matter.

Sincerely,



Bonnie A. Heeley
Administrative Assistant

:bh
Enclosures

2162-045a

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

The Application for Certification for the
BEACON SOLAR ENERGY PROJECT

Docket No. 08-AFC-2

**CALIFORNIA UNIONS FOR RELIABLE ENERGY
STATUS REPORT NUMBER 6
AND
COMMENTS ON BEACON SOLAR, LLC'S REQUEST FOR HEARING
SCHEDULE**

August 28, 2009

Tanya A. Gulesserian
Rachael E. Koss
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
tgulesserian@adamsbroadwell.com

Attorneys for the CALIFORNIA
UNIONS FOR RELIABLE ENERGY

California Unions for Reliable Energy (“CURE”) submits this status report, pursuant to the Committee’s June 18, 2008 Scheduling Order. In addition, CURE provides comments on Beacon Solar LLC’s (“Beacon”) August 25, 2009 Request for Hearing Schedule.

CURE submitted comments on the Preliminary Staff Assessment (“PSA”) on April 30, 2009 and comments on Beacon’s Project Design Refinements on July 22, 2009. In both instances, CURE commented that a revised PSA must be prepared and circulated for public review, pursuant to the California Environmental Quality Act (“CEQA”).¹ Specifically, CURE commented that Energy Commission Staff’s (“Staff”) objective to include numerous new and additional analyses and mitigation measures in the Final Staff Assessment (“FSA”) violates CEQA. CEQA requires recirculation of an environmental impact report (“EIR”), or EIR equivalent, when significant new information is added to the EIR following the public review and response to comment process.² 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

¹ Comments of the California Unions for Reliable Energy on Preliminary Staff Assessment, April 30, 2009, pp. 10-12; California Unions for Reliable Energy Comments on Project Design Refinements, July 22, 2009, pp. 1-2.

² Pub. Resources Code, § 21092.1.

an effect.”³ The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it before the lead agency responds to comments on the document.⁴ Information missing from the PSA, which will be new in the FSA, is listed in Attachment A.

It appears that Staff still intends to include new information, analyses and mitigation measures in the FSA, rather than recirculate a revised PSA.⁵ Therefore, CURE is concerned that Beacon’s proposed hearing schedule will deprive CURE of the necessary time to fully and adequately review the FSA and provide testimony.

For example, Beacon proposes that testimony be due one week after publication of the FSA. However, because the FSA will include a large amount of significant new information that CURE must review for the first time – prior to drafting testimony – allotting only one week for both review of the FSA and preparing testimony is unreasonable.

CURE proposes that, if a revised PSA is not circulated for public review and comment, testimony be due four weeks after publication of the FSA. Four weeks between publication of the FSA and the submission of testimony is appropriate in order to provide CURE with an opportunity to

³ CEQA Guidelines § 15088.5.

⁴ *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (1981) 122 Cal.App.3d 813, 822.

⁵ See Comments of the California Unions for Reliable Energy on Preliminary Staff Assessment, April 30, 2009, pp. 13-22 (lists eight pages of statements from the PSA acknowledging that the PSA is incomplete and therefore additional information will be provided in the FSA) and Staff’s Status Report #10, p. 2 (Staff’s proposed schedule anticipates that the FSA will be filed on September 2, 2009).

review the new information that Staff intends to include in the FSA for the first time.

Dated: August 28, 2009

Respectfully submitted,



Rachael E. Koss

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

tgulesserian@adamsbroadwell.com

Attorneys for the CALIFORNIA
UNIONS FOR RELIABLE ENERGY

**Attachment A:
PSA Statements Identifying Outstanding Information, Analyses, and
Mitigation Measures to be Included in FSA**

- “Staff and California Department of Fish and Game have determined the proposed design of the rerouted wash is currently deficient. Applicant is reevaluating the design and will provide a revised design prior to the FSA being finalized.”⁶
- “Staff has identified any outstanding issues in the respective technical sections of the PSA. To resolve these issues, staff requires either additional data, further discussion and analysis, or is awaiting conditions from a permitting agency prescribing mitigation or participating in a joint environmental review with staff.”⁷
- “. . . staff will work to resolve the outstanding issues and update our preliminary conclusions for the FSA.”⁸
- “The BSEP will require telecommunication services although it is not clear at this time what the scope of offsite improvements will be related to providing telecommunications infrastructure.”⁹
- “Staff’s review of the applicant’s emission estimate indicates that there is a potential that the fugitive dust emissions have been underestimated due to a low silt content estimate used to determine the unpaved road dust and dozing/scraping/grading emission factors... One aspect of the quantification of the construction emissions that were inadvertently not analyzed were the emissions associated with the delivery of the considerable amounts of material...to the site. An accurate accounting of those emissions within Kern County needs to be considered and will be presented in the Final Staff Assessment.”¹⁰
- “. . . staff will work with the applicant to more fully define the construction greenhouse gas emission for the final staff assessment.”¹¹
- “Staff . . . recommends the applicant re-evaluate the channel design and create a channel stabilization plan that includes bioengineering solutions. Staff’s proposed Condition of Certification further requires

⁶ PSA, p. 1-6.

⁷ *Id.* at 1-7.

⁸ *Id.*

⁹ *Id.* at 3-5.

¹⁰ *Id.* at 4.1-13.

¹¹ *Id.* at 4.1-70.

that a final mitigation plan be prepared in consultation with the CDFG, Energy Commission staff, and appropriate experts (revegetation specialist, engineer, geomorphologist, hydrologist) that would provide adequate detail for implementation, maintenance, and monitoring.”¹²

- “The issue is not yet resolved, and staff has requested that the applicant develop a comprehensive draft Evaporation Pond Design, Monitoring, and Management Plan. Once the document is reviewed and approved by CDFG, USFWS and staff, the plan will be incorporated into staff’s proposed Condition of Certification”¹³
- “Staff concurs with the applicant’s goal of replacing the biological functions and values of the impacted desert wash with the re-routed drainage, but this issue is not yet resolved.”¹⁴
- “The complete scope of these impacts is, however, incompletely known at present. A critical source of information on the physical contexts of the archaeological resources in the project area, a geoarchaeology study . . . is currently underway.”¹⁵
- “Still, this evidence does not provide staff a sufficient basis for the substantive analysis and mitigation of the impacts that the construction of the proposed project may have on cultural resources because staff lacks information on the extent to which buried cultural resources are present on the proposed BSEP plant site.”¹⁶
- “The applicant is presently in the process of gathering that information and foresees being able to provide preliminary responses prior to the publication of the Final Staff Assessment. This additional information is critical to preparing a substantive factual analysis of the proposed project’s potential to impact cultural resources, and to informing the development of conditions of certification that may more genuinely reduce such impacts to less than significant.”¹⁷
- “The physical contexts for the two subsurface flakes are unclear, because the broader stratigraphy of the project site is also presently unclear The results of the geoarchaeology study . . . may provide

¹² *Id.* at 4.2-28.

¹³ *Id.* at 4.2-45.

¹⁴ *Id.* at 4.2-46.

¹⁵ *Id.* at 4.3-1.

¹⁶ *Id.* at 4.3-32.

¹⁷ *Id.* at 4.3-33.

more informative physical contexts for the flakes and facilitate the association of the artifacts with other buried archaeological deposits nearby.”¹⁸

- “The physical contexts for the material culture of the subsurface component are unclear, because the broader stratigraphy of the project site is also presently unclear The results of the geoarchaeology study . . . may provide more informative physical contexts for the materials and facilitate their association with other buried archaeological deposits nearby.”¹⁹
- “Absent a better understanding of the landscape context for the archaeological site and absent any examination of the sedimentary deposits beneath the surface artifact assemblage, staff believes a determination of the historical significance of the site would be premature.”²⁰
- “The physical context for the surface artifact assemblage at Site 18 is unclear, because the broader geomorphic context of the project site is also presently unclear. The results of the geoarchaeology study . . . may provide more informative physical context for the assemblage and facilitate the association of the artifacts with other archaeological deposits nearby.”²¹
- “Staff anticipates that further consultation with the applicant and the preliminary results of the geoarchaeology study will enable the development of a CRHR-eligibility recommendation for the site prior to the publication of the FSA.”²²
- “Staff anticipates that the applicant will reconsider the historical significance of Site 59 prior to the publication of the FSA and include a discussion of whether the recorded trail segments may contribute to the historical significance of a broader trail system.”²³
- “Staff therefore awaits the results of the geoarchaeology study before recommending whether Site 6 is eligible for listing in the CRHR.”²⁴

¹⁸ *Id.* at 4.3-41.

¹⁹ *Id.* at 4.3-46.

²⁰ *Id.* at 4.3-47, 4.3-48, 4.3-54, 4.3-55.

²¹ *Id.* at 4.3-47, 4.3-48, 4.3-49.

²² *Id.* at 4.3-49, 4.3-51, 4.3-52.

²³ *Id.* at 4.3-49.

²⁴ *Id.* at 4.3-55.

- “The construction of the proposed project may pose other significant impacts on historical resources on the project site. It is not presently well understood the extent to which known surface archaeological sites may have significant subsurface components.”²⁵
- “At present, absence of the results of the geoarchaeology study precludes the ability of staff to make recommendations to the Energy Commission on the eligibility of a number of archaeological sites and archaeological site components in the project area . . . for listing in the CRHR.”²⁶
- “There appear to be two archaeological sites . . . that would potentially be subject to construction impacts from the proposed project, but the status of the sites as being eligible for listing on the CRHR or as being chosen by the applicant for avoidance remains unresolved at this time.”²⁷
- “No significant direct impacts to historical resources along the alignment for the proposed natural gas pipeline are presently confirmed. . . . There appears to be one archaeological site . . . that would potentially be subject to construction impacts from the proposed project, but the status of the site as being eligible for listing on the CRHR or as being chosen by the applicant for avoidance remains unresolved at this time.”²⁸
- “At present, absence of the results of the geoarchaeology study precludes the ability of staff to make recommendations to the Energy Commission on the eligibility of a number of archaeological sites and archaeological site components in the project area . . . for listing in the CRHR”²⁹
- “Staff anticipates that further consultation with the applicant on such issues as the character of the artifact assemblages on some of the sites and . . . the historical significance of others will resolve the outstanding concerns and facilitate the final disposition of these cultural resources.”³⁰

²⁵ *Id.* at 4.3-62.

²⁶ *Id.* at 4.3-66.

²⁷ *Id.* at 4.3-62-63.

²⁸ *Id.* at 4.3-63.

²⁹ *Id.* at 4.3-66.

³⁰ *Id.* at 4.3-66.

- “Staff is unaware of any formal public commitments to avoid these cultural resources and does not know whether the applicant would propose to avoid the resources through the re-design of portions of the proposed project or through the implementation of avoidance measures.”³¹
- “Staff anticipates modifying the proposed conditions of certification prior to the publication of the FSA in response to the results of the geoarchaeology study and further consultation with the applicant.”³²
- “As noted by the applicant . . . there have been no specific studies within KCAPCD to assess the health status of residents or measure the area’s toxic pollutant levels.”³³
- “. . . staff will work with the applicant to conduct a complete health risk assessment using the Hotspots Analysis and Reporting Program (HARP) tool for inclusion in the Final Staff Assessment.”³⁴
- “Staff recommends that the following engineering studies be provided for review so staff can complete an analysis of potential environmental impacts from the proposed reconfiguration of Pine Tree Creek . . .”³⁵
- “However, staff’s review of the same data indicated substantial uncertainty in spatial and temporal TDS concentration trends.”³⁶
- “There is uncertainty in the water budget components, and assumptions employed in previous budget assessments have provided variable results.”³⁷
- “Staff requests that BSEP provide an adequate routing assessment of the ditch to assess its capacity and flow path and assure the adjacent property owners are not impacted by BSEP diverting storm water away from the BSEP property. Staff is also requesting that BSEP include a maintenance discussion for this ditch as needed to route peak flood flows from the site and avoid future potential flood related impacts.”³⁸

³¹ *Id.* at 4.3-66.

³² *Id.* at 4.3-67.

³³ *Id.* at 4.7-9-10.

³⁴ *Id.* at 4.7-15.

³⁵ *Id.* at 4.9-2, 4.9-51.

³⁶ *Id.* at 4.9-17.

³⁷ *Id.* at 4.9-21.

³⁸ *Id.* at 4.9-37.

- “To assess potential impacts caused by the proposed drainage features, staff requests that the applicant revise the Conceptual Drainage Study”³⁹
- “Staff recommends that the applicant develop a channel stabilization plan for the design flow based on the establishment of a homogeneous and stable channel slope which would reduce velocities and thus erosion potential.”⁴⁰
- “Staff requests a geomorphic study be conducted by a fluvial geomorphologist with expertise in arid system channel design.”⁴¹
- “Staff has concluded that BSEP did not provide detailed assessment of the existing Pine Tree Creek flood hazards. Without knowledge of the existing condition flood hazard, staff was unable to assess the potential impacts caused by the proposed project. Staff requests that the BSEP conduct a detailed engineering analysis to determine the existing Pine Tree Creek flood hazards upstream, onsite, and downstream of the property. Staff recommends that existing conditions analyses tie into Jawbone Creek immediately downstream of BSEP.”⁴²
- “Staff did not have access to an investigation by a soil engineer who can validate the channel’s strength.”⁴³
- “Staff concludes that the applicant has not sufficiently addressed the downstream mapping restrictions and recommends that BSEP identify the most appropriate outfall to Jawbone Creek that would minimize impacts to adjacent property owners.”⁴⁴
- “Staff further requests that the applicant provide a hydraulic analysis The hydraulic analysis is requested so that staff can adequately review the existing flood hazards at the site, the potential flood impacts as a result of the proposed project, and the adequacy of the mitigation to meet the Kern County Floodplain Management Ordinance.”⁴⁵

³⁹ *Id.*

⁴⁰ *Id.* at 4.9-38.

⁴¹ *Id.*

⁴² *Id.* at 4.9-40.

⁴³ *Id.* at 4.9-41.

⁴⁴ *Id.* at 4.9-42.

⁴⁵ *Id.*

- “The key findings and outstanding issues identified by our assessment are summarized”⁴⁶
- “The proposed channel, as designed, does not adequately address the adverse hydraulic conditions that would result from the design discharge or, for that matter, the bankfull discharge. Staff requests that the applicant revise the diversion channel design. . .”⁴⁷
- “Staff also requests that the applicant consult with a soils engineer and provide a Soils Engineering Report for Staff’s review.”⁴⁸
- “. . . staff believes the applicant has not adequately demonstrated the use of ZLD is an ‘environmental undesirable’ or ‘economically unsound’ wastewater treatment and disposal alternative. While staff believes the applicant should further evaluate alternative water supplies and/or cooling technologies staff recognizes depending on the water source or cooling alternative chosen there could be a significant effect on the volume of wastewater that would be generated. . . . Therefore, staff believes the applicant should further evaluate wastewater disposal as a part of the analysis for alternatives to the use of freshwater.”⁴⁹
- “Staff could not determine the historic offsite drainage patterns from this offsite watershed area.”⁵⁰
- “Staff could not validate the mitigation plan for the revised drainageway.”⁵¹
- “BSEP did not provide sufficient information for staff to assess the potential for significant debris laden flows and their impacts.”⁵²
- “Staff is requesting that the project owner assess the potential for sediment debris flows and adjust the peak design flow. The request would help staff identify the potential significance of sediment and its potential to affect the mitigation and carrying capacity of the diversion channel.”⁵³

⁴⁶ *Id.* at 4.9-43.

⁴⁷ *Id.*

⁴⁸ *Id.* at 4.9-44.

⁴⁹ *Id.* at 4.9-49.

⁵⁰ *Id.* at 4.9-84.

⁵¹ *Id.*

⁵² *Id.* at 4.9-90.

⁵³ *Id.*

- “Staff is requesting an Engineering Soils Report to provide a sufficient understanding of the soil characteristics in the channel so that the appropriate hydraulic criteria can be developed for the channel. Staff also recommends that BSEP provide mitigation measures such as bank protection or grade control when the design criteria are exceeded.”⁵⁴
- “Staff is requesting a Geomorphic Study and Engineering Soils Report to be provided for review of the diversion channel design.”⁵⁵
- “Staff recommends that the BSEP evaluate the need for grade control or instream structures that dissipate hydraulic forces and reduce the effective longitudinal slope of the channel.”⁵⁶
- “Staff recommends that the applicant provide additional detailed analysis for staff’s review.”⁵⁷
- “Further investigation of the power block is necessary to verify subsurface fissuring which could affect foundations stability is not present in that area.”⁵⁸
- “Therefore, at this time, staff cannot conclude that the sources proposed by the applicant represent a reliable supply of water for the project.”⁵⁹
- “For the purpose of this Preliminary Staff Assessment, staff is working under the assumption that the alternative areas identified by applicant contain sites that are available for acquisition, and that staff will later identify specific potential project locations, within said areas.”⁶⁰
- “Because the BSEP proposed site contains designated waters of the state that bisect the project site, and the proposed BSEP would also have impacts to special-status species, the Antelope area should be considered further to determine whether impacts to special-status species and impacts to waters of the state can be reduced or avoided.”⁶¹

⁵⁴ *Id.* at 4.9-93-94.

⁵⁵ *Id.* at 4.9-94.

⁵⁶ *Id.* at 4.9-105.

⁵⁷ *Id.* at 4.9-107.

⁵⁸ *Id.* at 5.2-9.

⁵⁹ *Id.* at 5.4-5.

⁶⁰ *Id.* at 6-6.

⁶¹ *Id.*

- “Because this area does not appear to be designated habitat for special-status species and potentially has non-potable water resources, staff will identify specific sites in the Manix area and determine whether impacts to those resource areas can be reduced or avoided. Staff’s conclusions will be included in the Final Staff Assessment.”⁶²
- “Because this area has potential project sites that are not designated habitat for special-status species and potentially has non-potable water resources, staff will identify specific sites in the South Edwards area and determine whether impacts to those resource areas can be reduced or avoided. Staff’s conclusions will be included in the Final Staff Assessment.”⁶³
- “After evaluating the alternative project siting areas proposed by applicant, staff concludes there may be a reasonable alternative site. Staff will conduct further analysis to make that determination and incorporate the conclusion into the Final Staff Assessment (FSA).”⁶⁴

⁶² *Id.*

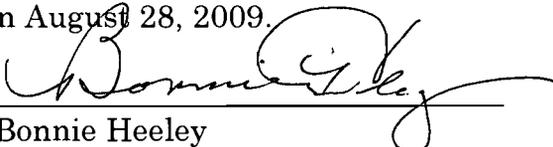
⁶³ *Id.* at 6-7.

⁶⁴ *Id.* at 6-14.

PROOF OF SERVICE

I, Bonnie Heeley, declare that on August 28, 2009 I served and filed copies of the attached **California Unions for Reliable Energy Status Report Number 6 and Comments on Beacon Solar, LLC's Request for Hearing Schedule**. 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/beacon. 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." I also sent a copy via email and an original and one copy via U.S. mail to the California Energy Commission Docket Office.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at South San Francisco, CA on August 28, 2009.



Bonnie Heeley

CALIFORNIA ENERGY COMMISSION
ATTN DOCKET NO. 08AFC2
1516 NINTH STREET MS4
SACRAMENTO, CA 95814-5512
docket@energy.state.ca.us

TANYA A. GULESSERIAN
tgulesserian@adamsbroadwell.com
(email only)

SSARA HEAD, VICE PRESIDENT
AECOM ENVIRONMENT
1220 AVENIDA ACASO
CAMARILLO, CA 93012
Sara.head@aecom.com

BILL PIETRUCHA, PROJECT MGR
JARED FOSTER, P.E., MECH. ENG.
WORLEY PARSONS
2330 E. BIDWELL ST SUITE 150
FOLSOM, CA 95630
Bill.Pietrucha@worleyparsons.com
Jared.Foster@worleyparsons.com

JANE LUCKHARDT
DOWNEY BRAND ATTORNEYS LLP
621 CAPITOL MALL 18TH FLR
SACRAMENTO, CA 95814
jluckhardt@downeybrand.com

KAREN DOUGLAS
CALIFORNIA ENERGY
COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
KLDouglia@energy.state.ca.us

JEFFREY D. BYRON
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
Jbyron@energy.state.ca.us

KENNETH CELLI
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
kcelli@energy.state.ca.us

ERIC K. SOLORIO
CALIFORNIA ENERGY
COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
esolorio@energy.state.ca.us

JARED BABULA
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
jbabula@energy.state.ca.us

PUBLIC ADVISER'S OFFICE
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
publicadviser@energy.state.ca.us

S. BUSA, K.STEIN, M.RUSSELL,
D.MCCLLOUD, G.NARVAEZ
NEXTERA ENERGY RESOURCES I
700 UNIVERSE BLVD
JUNO BEACH, FL 33408
Scott.Busa@Nexteraenergy.com
Kenneth.Stein@Nexteraenergy.com
Meq.Russell@Nexteraenergy.com
Duane.McCloud@Nexteraenergy.com
Guillermo.Narvaez
@Nexteraenergy.com

California ISO
e-recipient@caiso.com
(email only)

DIANE FELLMAN
DIRECTOR WEST REGION
NEXTERA ENERGY RESOURCES
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102
Diane.fellman@nexteraenergy.com