

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR
THE BEACON SOLAR ENERGY PROJECT**

DOCKET NO. 08-AFC-2

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DATE July 23 2009

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BEACON SOLAR, LLC'S STATUS REPORT #5

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Dated: July 23, 2009

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Beacon Solar, LLC ("Beacon") provides the following status report to the Committee regarding the Beacon Solar Energy Project (BSEP). Beacon largely concurs in Staff's Status Report #9, filed July 8, 2009, except as discussed herein, and is motivated to see the schedule proposed by Staff adhered to.

As noted by Staff, a public workshop was held in California City on July 1, 2009. Prior to the workshop, at Staff's request Beacon provided a substantial amount of additional information on a variety of topics discussed in the Preliminary Staff Assessment (PSA). This is the recent 700-page submittal to which Staff refers in their status report. The vast majority of the information in this submittal was provided at Staff's behest, and the remainder of the submittal concerned two minor project design refinements proposed by Beacon. The discussion at the July 1 public workshop resulted in a number of requests for additional or follow-up information, which Beacon recently provided.

At the public workshop, Staff and representatives from Beacon discussed their mutual aim of seeing the Final Staff Assessment (FSA) published by mid-August when it became clear the original date of July 30 could not be met. Staff has since indicated the FSA will be released on August 27th. Given the amount of time and effort that has been spent by both Staff and the Applicant since publication of the PSA to define and address any outstanding issues (including two noticed public workshops), Beacon believes it is critically important that the August 27 date be met, so that the project can move forward to the next stage in the process and so that both the Applicant and the public can be assured of some degree of finality in terms of the scope of Staff's review.

In a related vein, Staff makes mention of ongoing work related to proposals from nearby municipalities to provide tertiary-treated water to the project, and studies directed at identifying a

degraded groundwater source in the area. Beacon wishes to take this opportunity to make the Committee aware of its concerns relating to the scope and feasibility of these particular alternatives that are being proposed and investigated by Staff. While Beacon recognizes that the project as proposed does not use recycled or non-potable water, and that Staff's motivation in forwarding these alternatives is to find a recycled or non-potable water source, at this point serious doubts remain as to the actual feasibility of these alternatives that may not be able to be resolved in a reasonable period of time to be considered a viable alternative water source.

The first alternative that is being forwarded by Staff is the acquisition of reclaimed water from either the Rosamond Wastewater Treatment Plant, owned and operated by the Rosamond Community Services District ("Rosamond"), or from the treatment plant operated by California City, in exchange for potable groundwater from beneath the project site. Beacon and Staff have had several discussions with representatives of these local entities, and while Beacon is amenable to continuing to explore this option, there is no guarantee that the purchase and transfer of reclaimed water in this manner is feasible. Even if it were, it will be difficult to obtain the permits, purchase the right-of-way and complete the resource evaluations in time to be considered a viable alternative water supply in the final decision on the BSEP. The reclaimed water supply line from Rosamond would be approximately 40 miles long. In addition, the water supply options include the exchange of reclaimed water for fresh groundwater from two separate groundwater basins, one of which is currently being adjudicated, and would likely require two or more separate pipelines covering a distance of more than 40 miles.

The second alternative that has been proposed by Staff is that Beacon acquire low-quality groundwater from off-site wells in the nearby area to use in lieu of the potable groundwater that is available below the site. Staff has suggested taking groundwater from a location near Koehn Lake, which Staff theorizes is the most likely area to have low-quality groundwater available in sufficient quantities to supply the project's needs. However, this hypothesis has yet to be tested; as noted in Staff's Status Report #9, Staff is currently still attempting to arrange for a number of privately-owned wells in that area to be sampled, in order to determine the quality and reliability of the degraded water (if any) in the area. (Beacon has agreed to provide a sampling team and fund the effort proposed by Staff in order to expedite the work, but the sampling is yet to be done.) In order for the water to be viable for use in the BSEP, it would need to be of poorer quality than the on-site groundwater, but not so poor-quality that it would be dangerous to run

through the plant's treatment and cooling systems. Models run by Beacon's consultants using old data from wells in the area shows that the water may contain elements that, upon processing, would create extremely high concentrations of fluoride, qualifying the water as hazardous and making it unfit for discharge. Even if the well sampling showed the necessary quality and quantity of groundwater in the area, it is uncertain whether that quality and quantity would be reliably available for the life of the project and it is also uncertain whether Beacon would be able to obtain the water, as this would require Beacon to either purchase land in the area, purchase water rights, or enter into an agreement with a third-party landowner. Finally, one or more pipelines would need to be constructed, right-of-way, easements or purchases of land would need to be acquired and resource impacts would need to be assessed.

Each of these alternatives would be a significant undertaking in its own right, and Beacon has become concerned that further or prolonged investigation of their questionable feasibility has the potential to subsume the entire BSEP approval process. CEQA does not require consideration of alternatives whose effect cannot be reasonably ascertained and whose implementation is remote and speculative (14 CCR § 15126.6(f)(3)), nor does the statute demand what is not realistically possible, given the limitation of time, energy and funds. *Foundation for San Francisco's Architectural Heritage v. City & County of San Francisco* (1980) 106 Cal.App.3d 893, 910. While Beacon appreciates Staff's desire to identify water supply alternatives, the two alternative water sources described above essentially depend on uncertain resources. By contrast, the groundwater available onsite is a known, certain resource and Beacon has provided the data to support a determination that the potential impacts to groundwater would not be "significant" under CEQA. Given all this, it is difficult to justify continued and prolonged exploration of the above alternatives, if it comes at the expense of the permitting schedule for the entire project. Thus, while Staff is certainly justified in presenting and discussing what is known about these alternatives in the FSA, publication of the FSA should not be delayed as a result (whether directly or indirectly) of their consideration by Staff.

Beacon wishes to acknowledge the diligence and thoroughness of Staff's efforts to date, and looks forward to reviewing the finished FSA. Beacon notes there have been delays in the process such that the project is well behind the expected 12-month schedule. Therefore, Beacon asks that the remainder of the licensing process be completed as expeditiously as possible. Toward that end, Beacon also submits the enclosed schedule, forecasting the process through final determination, for the Committee's consideration.

Respectfully,

s/
Jane E. Luckhardt
Sophia Rowlands
DOWNEY BRAND, LLP
Attorneys for Applicant

PROPOSED SCHEDULE FOR THE BEACON SOLAR ENERGY PROJECT

Date	Event
8/27/09	Final Staff Assessment filed
8/27/09	Parties file written testimony
9/7/09	Parties file rebuttal testimony
9/9/09	Prehearing Conference Statements due
9/14/09	Prehearing Conference
9/21/09	Evidentiary Hearings (week of 9/21/09)
11/1/09	Presiding Member's Proposed Decision filed
11/15/09	PMPD Hearing
12/1/09	Comments on PMPD Due
12/15/09	Addendum/Revised PMPD
12/30/09	Final Decision at Regular Business Meeting

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PROOF OF SERVICE
(Revised 4/28/09)

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Declaration of Service

I, Linda Topacio, declare that on July 23, 2009, I served and filed copies of the **Beacon Solar, LLC's Status Report No. 5**. 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, 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, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service List above.

For Filing with the Energy Commission

 X sending an original paper copy mailed, to the address below;

OR

 depositing in the mail an original and 12 paper copies as follow:

California Energy Commission
Attn: Docket No. 08-AFC-2
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.

/s/
Linda Topacio