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STATE OF CALIFORNIA
California Energy 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'S REPLY IN SUPPORT OF MOTION TO FIND GOOD CAUSE AND TO COMPEL PRODUCTION OF INFORMATION

March 30, 2009

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I. INTRODUCTION

Beacon Solar, LLC ("Beacon" or "Applicant") continues to avoid the heart of the matter here. Namely, the Beacon Solar Energy Project ("Project") has serious, unresolved issues regarding the use of potable water for power plant cooling, the proposal to reroute a desert wash, the design of evaporation ponds, impacts to cultural resources, and quantification of impacts and mitigation for impacts to biological resources. It is these unresolved issues that triggered data requests by CURE and continue to require the exchange of data between Beacon and Energy Commission Staff ("Staff").

While a few of CURE's requests require some additional analyses or impacts, most merely require the provision of data used in meeting protocols or in making certain assumptions. In an effort to reach quicker resolution of CURE's requests, CURE focuses on those data requests that merely require the provision of data by withdrawing its motion with respect to data requests 2, 6, 10, 15, 16, 19, 20, 23 through 33, 41 through 50, 52, 57 through 68, 79, 83, 85 through 88, 100, 101, and 123 through 144, and asking that the Committee grant CURE's motion with respect to data requests 1, 3 through 5, 7 through 9, 11 through 14, 17, 18, 21, 22, 34 through 40, 51, 53 through 56, 69 through 78, 80 through 82, 84, 89 through 99, and 102 through 122. These data requests address serious unresolved issues related to the use of potable water for power plant cooling, the proposal to reroute a desert wash, the design of evaporation ponds, and quantification of impacts and mitigation for impacts to biological resources, among other issues.

These unresolved issues stem from Beacon's expectation that the public rely on unsupported assumptions and conclusions. To date, Beacon has not provided a complete description of the Project, and therefore issues continue to arise. Thus, it is particularly crucial in this case for the Applicant to provide additional, clarifying information in response to CURE's data requests. Without the information, the Commission cannot satisfy its obligations under the California Environmental Quality Act ("CEQA")[1] and the Warren-Alquist Act.[2]

II. CURE'S DATA REQUESTS ARE BASED ON GOOD CAUSE

In the context of this case, CURE has good cause for its data requests. CURE's data requests are timely in the context of this proceeding. CURE's data requests are relevant and reasonably necessary to the Commission's decision on the Application for Certification ("AFC"). CURE's data requests are narrowly tailored. Finally, the information requested has not yet been provided and is reasonably available to Beacon.

A. CURE's Data Requests Are Timely In The Context Of This Proceeding

CURE initially set forth good cause with the data requests submitted to Beacon on January 26, 2009. The relevancy of each request is also thoroughly laid out in CURE's requests.

Generally, CURE explained how, in the context of this case, the data requests are timely. CURE's letter submitted with the data requests explained that CURE

[1] Pub. Resources Code, § 21000 *et seq.*

[2] Pub. Resources Code, § 25500 *et seq.*

requested information to assess issues not addressed in Beacon's responses to Staff's data requests, and to follow-up on issues raised at the November 6, 2008 Data Response and Issue Resolution Workshop.

As a policy matter, CURE is proceeding exactly as an intervenor should. CURE has been evaluating the Project since submittal of the AFC. Staff and the agencies have done a good job investigating controversial aspects of the Project that raise not only important legal and policy issues, but real and significant environmental impacts. CURE has appropriately not repeated Staff's requests, but has continued to review the assumptions, evaluate the analysis, and review Beacon's responses to Staff's data requests. Following those responses, the issues have narrowed and some new issues have arisen, thus focusing the requests for information submitted by CURE.

Beacon argues that "as a policy matter" CURE does not have good cause since CURE did not submit data requests earlier in this proceeding. This argument is absurd. Beacon suggests that CURE should have submitted, at an earlier time, general data requests addressing similar issues as Staff only to preserve CURE's ability to show good cause for follow-up requests that may extend beyond 180 days. However, inherent in the discovery process is the fact that data requests are often initially broader requests for information that are later followed-up with more specific requests, as the issues narrow down based on the responses. Beacon's policy that CURE should have participated earlier in this case is not consistent with

the Energy Commission's policy discouraging the same data requests from multiple parties.

When Beacon skirts an issue or otherwise fails to provide expected information in a data response or at a workshop, this is precisely the time when Staff or another party must rephrase or focus the request for information in order to obtain responsive information. This is exactly what CURE has done. To find otherwise would compel CURE to repeat Staff's requests for information earlier in a proceeding only in an effort to preserve its rights as an intervenor.

The Commission has established a 180-day discovery period that would normally allow a party a right to submit discovery a few weeks after the Preliminary Staff Assessment ("PSA") is released in a proceeding that is on schedule. Beacon argues that considering the Commission's intent would strip California Code of Regulations section 1716(e) of its meaning. However, the timeline for proceedings is evidence of the Energy Commission's intent to normally allow discovery – as a matter of right – through and after release of a PSA and is proper for consideration of good cause in the context of a particular case. Inherent in the Commission's timeline is that discovery after release of the PSA would not prejudice an applicant, the Staff, or another party.

In this proceeding, CURE submitted its data requests to Beacon over two months ago, long before the release of the PSA. Had Beacon answered CURE's data requests, the information would have been provided well before the release of the PSA. Beacon's argument that the data gathering phase of this proceeding is over

contradicts its admission that it is freely exchanging information with Staff. Beacon's argument that finding good cause would create a disincentive for an applicant to provide information to Staff after 180 days is disingenuous. Beacon's objections are a blatant attempt to delay providing information in order to make CURE's data requests appear closer in time to the release of the PSA. Beacon's tactics should not be allowed.

First, the discovery phase of the proceeding is admittedly not complete. Both Beacon and Staff recognize that information continues to be exchanged. Second, Beacon is not *voluntarily* continuing to provide information to Staff; Beacon is *compelled* to provide information requested by Staff. Under section 1704 of the Commission's regulations, Beacon has the burden to provide information supporting its application. Third, Beacon ignores the fact that Staff's data gathering is still ongoing because there are numerous unresolved issues. Staff and CURE requested additional information on issues that either remain unresolved or arose in light of new facts provided in responses to earlier data requests. Unresolved issues involve the use of potable water for power plant cooling, the proposal to reroute a desert wash, the design of evaporation ponds, impacts to cultural resources, and quantification of impacts and mitigation for impacts to biological resources, among others.

Finally, providing responses to CURE's requests would not be prejudicial. First, Staff admits that Beacon would only have to review the requests, develop a response, and provide it. Second, Beacon is not currently reviewing and preparing

comments on the PSA. Third, while Staff may want to take additional time to determine whether the responses contain information that change Staff's analysis, Staff is not required to do so. Instead, Staff could wait to respond to comments on the PSA, or address contradictory facts or other issues during hearings.

In sum, CURE's data requests are timely in the context of this proceeding. CURE's requests came at the time that had Beacon provided responses, the information would have been available long before release of the PSA.

B. CURE's Data Requests Are Relevant And Necessary To This Proceeding

Beacon claims that the information sought by CURE is not reasonably necessary to make a decision on the AFC because an environmental impact report ("EIR"), or EIR equivalent, need not contain *all* information that is available on an issue. However, CURE is not requesting that Beacon provide *all* information. Rather, CURE's data requests were designed to obtain data underlying the assumptions and conclusions in the AFC. Beacon also argues that the information sought by CURE is not reasonably necessary because the Commission should accept, without question, the statements and conclusions of Beacon's experts. This may be the case had Beacon provided the underlying data for such statements and conclusions. It did not. As a result, CURE requested that Beacon provide its underlying assumptions and data in order to adequately analyze the conclusions in the AFC. As shown below, the information is reasonably necessary for the Commission to satisfy its obligations under CEQA and the Warren-Alquist Act.

1. Responses to CURE's Data Requests Are Necessary For The Commission To Comply With CEQA

CEQA requires that an environmental impact report ("EIR"), or EIR equivalent, set forth "sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision."[3] Although an EIR's analysis need not be exhaustive, "courts have favored specificity and use of detail…"[4] Specifically,

> "[a] conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'"[5]

Therefore, at a minimum, CEQA requires that an EIR, or EIR equivalent, be an adequate informational document.

An EIR must not only identify impacts, but must also provide "information about how adverse the impacts will be."[6] The Commission may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. "An agency must use its best efforts to find out and disclose all that it reasonably can."[7]

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[3] *Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1356.

[4] *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411.

[5] *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842, quoting *Silva v. Lynn* (1973) 482 F.2d 1282, 1285.

[6] *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.

[7] CEQA Guidelines, § 15144; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 (agency must produce a credible analysis and substantial evidence before determining impacts to be insignificant).

Moreover, as the Committee is aware, CEQA requires implementation of all feasible mitigation measures. CEQA requires that an EIR, or EIR equivalent, "include a detailed statement setting forth…[m]itigation measures proposed to minimize significant effects on the environment."[8] The CEQA Guidelines echo this requirement, stating that an EIR "shall identify mitigation measures for each significant environmental effect identified in the EIR."[9] "[T]he CEQA process demands that mitigation measures timely be set forth, the environmental information be complete and relevant, and that environmental decisions be made in an accountable arena."[10]

These requirements ensure that members of the public and interested agencies will have an opportunity to review and comment on significant impacts and proposed mitigation and identify any shortcomings. This public and agency review has been called "the strongest assurance of the adequacy of the EIR."[11]

CEQA recognizes that drafting an EIR requires research and information gathering. For example, in *Mountain Lion Coalition v. Fish & Game Commission* (1989) 214 Cal.App.3d 1043, the trial court ordered the defendant Fish & Game Commission to conduct research for an EIR on hunting of mountain lions. The court required the agency to "include data generated from meaningful research," to support its analysis with "references to specific scientific and empirical evidence," to

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[8] Pub. Resources Code, § 21100(b).

[9] 14 Cal. Code Regs., § 15126.4(a)(1)(A).

[10] *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 885.

[11] *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 308.

analyze the "potential of repeated hunting to cause genetic isolation, genetic depression, and damage to the social structure of individual populations and the statewide population," and to "develop more specific information on the impacts resulting from the loss of even a few individual lions on those lions' social groups."[12] The EIR, which failed to provide this information, was held to be inadequate.

An analysis of the Project's impacts cannot be based on conclusory assumptions, opinion, and factual assertions that lack any foundation or evidentiary basis. CEQA requires that conclusions about impacts be supported by substantial evidence in the record.[13] Therefore, an analysis must present some explanation to supply the logical step between its conclusions and the facts in the record.[14] Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.[15] Substantial evidence is not synonymous with "any" evidence. "The evidence considered must be reasonable, credible, and of solid value… ."[16]

This requirement also applies to expert opinions. Expert opinion does not constitute substantial evidence when it is "based on speculation and conjecture, and accordingly…not supported by substantial evidence in light of the whole record."[17]

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[12] *Id.* at 1047-1048.

[13] Pub. Resources Code, § 21081.5; CEQA Guidelines, § 15091(b).

[14] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; See also CEQA Guidelines, §15091.

[15] Pub. Resources Code, § 21082.2(c).

[16] *Newman v. State Personnel Board* (1992) 10 Cal.App.4th 41, 47.

[17] *Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Commission* (1976) 55 Cal.App.3rd 525, 532.

It does not include "argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous…" Additionally, "opinion testimony of expert witnesses does not constitute substantial evidence when it is based upon conclusions or assumptions not supported by evidence in the record."[18]

CURE requested information supporting Beacon's experts' opinions in order to evaluate Beacon's conclusions. Without the information, the PSA may repeat unsupported and inaccurate statements – and the public would be unable to comment on the validity of its conclusions. The issue is not whether an analysis ***can*** be based on estimates and assumptions, but whether those estimates and assumption are speculative, pure conjecture, lack any factual basis, or are contrary to the evidence in the record. Without the information regarding the underlying basis for conclusions, the actual scope of a particular impact may be unrecognized or underestimated and a mitigation measure may not adequately mitigate a significant impact.

Allowing discovery to obtain supporting information either by right or based on good cause is good policy, is consistent with existing policy, and is consistent with CEQA's underlying principles. Without disclosure of the underlying evidentiary support and the critical analytical details, the public would be denied an opportunity to meaningfully consider and comment on an inevitably released PSA. If significant comments are made about the bases for conclusions, Staff would obtain the information in order to ensure that the FSA is based upon scientific

[18] *Hongsathavij v. Queen of Angels/Hollywood Presbyterian Med. Ctr.* (1998) 62 Cal.App.4th 1123, 1137.

analysis and concrete substantial evidence. A PSA may even need to be recirculated to allow the public a meaningful opportunity for comment.

Allowing discovery enables the parties to resolve issues either before the PSA is released or through the PSA and FSA process. Either way, it enables the parties the opportunity to resolve issues before testimony and hearings. Thus, allowing discovery at this time is administratively efficient and better serves the public interest.

CURE's data requests are consistent with these legal principles. As set forth in the attached list of data requests (Exh. 1), the information requested by CURE relates to the Project's direct, indirect, and cumulative environmental impacts that must be evaluated under CEQA. Thus, providing the information requested by CURE is important so that the Commission has all of the information it needs to make an informed decision and provide an adequate environmental document.

2. Responses To CURE's Data Requests are Necessary for The Commission To Comply With the Warren-Alquist Act

The Warren-Alquist Act requires that the Commission expressly determine the Project's conformity with other laws, ordinances, regulations, and standards ("LORS").[19] Thus, any information necessary to determine whether a proposed facility will or will not conform to applicable LORS is not only "relevant to the proceeding," but manifestly necessary to the Commission's decision on the AFC.

[19] Pub. Resources Code, §§ 25523(d)(1), 25525.

For example, in this case, the Project must comply with California's Waste Water Reuse Law[20] which precludes the use of potable domestic water for nonpotable uses if recycled water is available to the user. In particular, section 13552.6 of the Water Code finds that the use of potable domestic water in cooling towers "is a waste or an unreasonable use of water" if recycled water is available.

The Water Code defines "recycled water" as "water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource."[21] Recycled water is "available" if it meets four criteria: (1) the source of recycled water is of adequate quality for the proposed use and is available for the proposed use; (2) the recycled water can be furnished at a reasonable cost and the cost of supplying treated recycled water is comparable to, or less than, the cost of supplying potable domestic water; (3) the use will not be detrimental to public health; and (4) the use will not adversely affect downstream water rights, water quality, or plant life, fish and wildlife.[22]

In past power plant siting proceedings, the Commission has enforced the Water Code by looking for sources of wastewater that have already been recycled to a level suitable for cooling tower use, and also for sources of wastewater that could be treated or further treated at a reasonable cost for cooling tower use. The Commission took the latter approach in both the Delta Energy Center and Los

[20] Water Code, § 13550 et seq.

[21] Water Code, § 13050(n).

[22] Water Code, § 13550(a).

Medanos Energy Facility cases, where the Commission required the use of tertiary treated recycled water from the Delta Diablo Sanitation District even though the treatment facility had not yet been built or permitted, and therefore the tertiary treated water was not currently available.

Moreover, the Commission has an established policy regarding the use of fresh water for power plant cooling. The Energy Commission's 2003 Integrated Energy Policy Report states that the Commission will approve the use of fresh water for power plant cooling "only where alternative water supply sources and alternative cooling technologies are shown to be 'environmentally undesirable' or 'economically unsound.'"[23] The Commission defines "economically undesirable" as "having a significant adverse environmental impact," and "economically unsound" as "economically or otherwise infeasible."[24] Thus, the Commission must have the information required to assess compliance with the Water Code and its Policy to meet its obligations under the Warren-Alquist Act.

In this case, Beacon proposes to use potable water for power plant cooling. Therefore, the Commission may not, consistent with LORS, approve the Project unless and until it makes an affirmative finding that suitable recycled water is unavailable and alternative water sources and cooling technologies are "environmentally undesirable" or "economically unsound." This finding must be based on an analysis of the cost and water use associated with the use of alternative

[23] 2003 Integrated Energy Policy Report, California Energy Commission, December 2003, Docket No. 02-IEP-1, Pub. No. 100-03-019.

[24] *Id*.

cooling. The finding must be based on substantial evidence in the record of the proceeding. It may not be based on speculation or unsupported assertions.[25]

Beacon has not provided complete evidentiary support for its assertions that non-potable water is unavailable. Such evidentiary omissions are obviously unacceptable in any siting proceeding, but they are particularly improper in this case in light of the fact that other energy facilities, including the Ivanpah Solar Electric Generating System (07-AFC-5), propose to use dry cooling. Presumably, the Ivanpah project would remain economically viable and competitive. Like Beacon, Ivanpah is located in the desert and faces conditions at least as hot as those in California City. Thus, the feasibility of another solar project providing dry cooling creates a strong inference that it is cost effective and efficient for Beacon to employ dry cooling as well.

Without the information requested in CURE's data requests, the Commission cannot reasonably find that dry cooling for the Project is "economically unsound," in compliance with the Commission's policy, as required by the Warren-Alquist Act. The Commission also cannot determine whether recycled water is available, as required by the Water Code. For these reasons, the Commission should order Beacon to disclose the information.

[25] 20 Cal. Code Regs., § 1748 ("the applicant shall have the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility").

C. The Information Requested By CURE Has Not Been Provided And Is Reasonably Available to Beacon

Beacon is adamant that it has provided "much of the information" requested by CURE. Beacon's response indirectly admits that *some of the information* has not been provided. More importantly, however, is that the information Beacon has provided is internally inconsistent, and CURE's data requests seek clarification.

For example, in the background to CURE's data request 4, CURE specifically stated that the AFC's emission estimates for the emergency firewater pump engine are based on EPA Tier-3 certified engines, which have lower emissions and are used in Beacon's Best Available Control Technology ("BACT") analysis. CURE stated that Beacon's claim that it will use Tier-3 engines is inconsistent with the text of the AFC, which specifies the use of a 300-hp John Deere Model 6081HF; Appendix E variously specifies the use of a 300-hp John Deere Model 6081 HF and a 300-hp John Deere Model 6125H. CURE stated that according to the manufacturer specifications, neither of these engine models is EPA Tier 3-certified.

CURE requested that Beacon (1) confirm that the Project would employ an EPA Tier 3-certified emergency firewater pump engine (CURE data request 3) and (2) specify the engine brand, model, and horsepower rating for the Project's emergency firewater pump engine (CURE data request 4). Beacon's opposition states that "had CURE bothered to look," CURE would have seen the engine brand, model, and horsepower rating of the emergency firewater pump engine discussed in Appendix E. While providing a cite to the information would normally be helpful,

CURE specifically cited to Appendix E in drafting the data requests. Thus, it is Beacon who should have bothered to read the data request and provide a response.

There are other examples clearly showing that Beacon has not provided the information requested. CURE data requests 5 and 7 seek information regarding the Project's compliance with California's Waste Water Reuse Law and the Commission's policy on the use of fresh water for power plant cooling, as well as information supporting Beacon's conclusion that alternative sources of water are cost prohibitive. Beacon opposed, arguing that information responsive to CURE's data requests 5 through 7 regarding its proposal to use fresh water for power plant cooling can be found in the AFC. To the contrary, it cannot. Beacon directs CURE to sections 4.5.3 and 5.17 of the AFC, as well as Appendices J and K for information supporting Beacon's proposal to use potable water for power plant cooling. However, these sections do not provide information in response to CURE data request 5, namely the water quality requirements for the Project's proposed uses of water. This information, which only the Applicant retains, is required to determine whether recycled water is available under Water Code Section 13550(a)(1). Nor do the sections cited by Beacon explain how or why alternative sources of water are cost prohibitive as requested in CURE's data request 7. Although Appendix K provides some information relative to alternative sources of water, the AFC does not provide an analysis supporting its conclusion that alternative sources of water are cost prohibitive, as required by the Water Code and the Commission's Policy. CURE's data requests stem from Staff data request 58, which asked Beacon to

"provide an explanation why available non potable water was not considered as an alternative water source for power plant cooling needs." These are only a few examples of Beacon's continued failure to provide necessary information for the proceeding.

Finally, Beacon claims that CURE seeks information that is not reasonably available to Beacon. Specifically, Beacon states that information is not available to support its conclusion that alternative sources of water for power plant cooling are not feasible. If that is the case, then Beacon is free to explain that the information is not available to support its statement in a response to CURE's data request. However, Beacon cannot expect the public to accept its assumptions and conclusions without any evidentiary support or without stating that the support does not exist if the claim is made. CURE simply asks that Beacon provide a foundation for its conclusion. If support does not exist, Beacon must state so, or alter its conclusion.

D. CURE's Data Requests Are Clear and Narrowly Tailored

Beacon argues that CURE's requests are not clear or narrowly tailored by citing to CURE data request 9. In data request 9, CURE requested information regarding Beacon's claim that using alternative water sources for power plant cooling was not viable. Specifically, CURE requested that Beacon provide a list and discussion of the "potential environmental issues" referred to on page 4-16 of the AFC.

Beacon opposes CURE's request claiming it is unclear and not narrowly tailored because "the term 'potential environmental issues' does not appear on page

4-16 of the AFC, nor anywhere in the AFC…." Beacon belabors its argument by discussing how Table 4-8 on page 4-17 of the AFC refers to the "potential *for* environmental issues" and how Beacon "was forced to comb the AFC searching for the referenced phrase."

Beacon's argument fails completely. First, Table 4-8 ***is on page 4-16*** of the AFC. Second, Table 4-8 does in fact list "potential environmental issues" as a reason for dismissing Ridgecrest Wastewater Treatment Plant as an alternative source of nonpotable water, as well as the "potential for environmental issues" as a reason for dismissing the Rosamond Wastewater Treatment Plant as an alternative source of nonpotable water.[26] Beacon is either manufacturing arguments in an attempt to avoid providing the requested information, or misreading its own AFC. Beacon's opposition reflects its haste, pervasive lack of attention to detail, and continual failure to provide responsive information. CURE's data requests remain clear, yet unanswered.

Beacon also argues that "[s]ome of CURE's requests are based on incorrect information premises or inaccurate reiterations of the information already provided by Beacon." Specifically, Beacon points to CURE's data requests 75 through 78 which request information related to the raven management plan. Essentially, Beacon argues that because it will pay in-lieu fees toward a regional *quantitative* monitoring plan, CURE's data requests are no longer applicable.

[26] *See* AFC, p. 4-16, attached as Exhibit 2.

A quick review of the latest raven management plan submitted by Beacon on March 10, 2009 shows that CURE's requests remain applicable. Beacon will still be performing semi-quantitative and qualitative monitoring,[27] including the identification of potential increases in raven activity[28] through ***five-minute samplings***[29] at biweekly surveys for raven activity at ***pre-designated locations*** throughout the Project site.[30] In addition, the Raven Management Plan states that "[i]f the results of the monitoring efforts suggest that there is a ***substantial and sustained*** (e.g., consecutive years) increase in raven activity…then Beacon may need to implement additional measures to further control ravens at the Project site."[31] Thus, CURE's data request 76, which asks Beacon to quantify the thresholds for a "substantial and sustained" increase in raven activity, is still applicable.

Again, Beacon is either manufacturing arguments in an attempt to avoid providing the requested information, or is misreading its own AFC and reports. Either way, Beacon's opposition that CURE's data requests are not clear and narrowly tailored is not supported by the evidence.

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[27] March 10, 2009 Raven Management Plan, p. 6.

[28] *See* March 10, 2009 Raven Management Plan, p. 7. Thus, CURE's data request 75 which, asks Beacon to discuss the baseline data that will be used to assess the expansion of the raven population, is still applicable.

[29] *See* March 10, 2009 Raven Management Plan, p. 7. Thus, CURE's data request 78, which asks Beacon to discuss the adequacy of five-minute surveys, is still applicable.

[30] *See* March 10, 2009 Raven Management Plan, p. 7. Thus, CURE's data request 77, which requests the estimated number of pre-designated observation locations, is still applicable.

[31] March 10, 2009 Raven Management Plan, p. 9.

III. CONCLUSION

CURE requests that the Committee find good cause for its data requests. CURE's requests are timely in the context of this proceeding. Responses at this time would be consistent with the Commission's policy for allowing discovery through release of the PSA and would better enable the parties to resolve issues either before the PSA is released or during the PSA and FSA process before testimony and hearings. CURE's requests for information are relevant under CEQA and the Warren-Alquist Act and are clear and narrowly tailored. Most importantly, CURE's data requests seek information related to Beacon's assumptions and conclusions regarding serious, unresolved issues.

Had Beacon provided the relevant and reasonably necessary information to make a decision on the AFC, all issues would be resolved and the PSA would have been released. This is not the case. Thus, CURE requests that the Committee order Beacon to provide the information sought by CURE's data requests.

Dated: March 30, 2009

Respectfully submitted,

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PROOF OF SERVICE

I, Bonnie Heeley, declare that on March 30, 2009 I served and filed copies of the attached CALIFORNIA UNIONS FOR RELIABLE ENERGY'S REPLY IN SUPPORT OF MOTION TO FIND GOOD CAUSE AND TO COMPEL PRODUCITON OF INFORMATION. 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 March 30, 2009.

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