

# 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

lmiles@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

November 24, 2009

<b>DOCKET</b>	
<b>08-AFC-5</b>	
DATE	<u>NOV 24 2009</u>
RECD.	<u>NOV 24 2009</u>

Sent by email and U.S. Mail

Caryn J. Holmes  
Staff Counsel IV  
California Energy Commission  
1516 9th St.  
Sacramento, CA  
cholmes@energy.state.ca.us

Re: CEQA Requirements for CEC Review of Stirling Solar Two Water Supply

Dear Ms. Holmes:

The Seeley Waste Water Treatment Facility ("SWWTF") must be upgraded to enable it to supply water to the Stirling Energy Systems ("SES") Solar Two Project. The SWWTF will supply all of the water for the Solar Two Project. SES will finance the upgrade.

SES is also proposing to construct a 12-mile water pipeline along Evan Hewes Highway stretching from the treatment facility to the Project site.

SES acknowledges that both of these upgrades will require environmental review, but explains that the analysis will be provided in "separate environmental documentation."<sup>1</sup> Because the sewer treatment upgrades are necessary elements of the Solar Two Project, any environmental impacts from these upgrades must be reviewed and mitigated by the Energy Commission as the CEQA lead agency in the Energy Commission's CEQA-equivalent proceeding.

CEQA defines a project as "the whole of an action" which has the potential to result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.<sup>2</sup> The "Project" refers to the activity

<sup>1</sup> See letter from Matt Moore, URS Project Engineer to Mr. David Dale, Seeley County Water District on September 23, 2009. This was docketed at the CEC by Angela Leiba on September 23, 2009.

<sup>2</sup> CEQA Guidelines § 15378.

November 24, 2009

Page 2

being approved and which may be subject to several discretionary approvals by governmental agencies. This ensures that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.<sup>3</sup>

California courts have long held that CEQA requires a lead agency to analyze related infrastructure upgrades that are necessary for project operation. In *San Joaquin Raptor*, the court overturned an Environmental Impact Report for a housing development because the EIR's Project description failed to include an offsite sewer expansion that was necessary to serve the Project. The Court held that even though a separate EIR was prepared for the sewage expansion, the housing development's Project Description was inadequate, and that rendered the analysis in the EIR inadequate.<sup>4</sup> Similarly, SWWTF's required upgrades must be included in the CEC's analysis of the Solar Two Project, because the Project cannot operate without the upgrades. The Solar Two Project description must include both the solar power plant and the wastewater treatment facility necessary to serve it.

At this time SES has not provided the necessary information for the Energy Commission to identify and mitigate any significant impacts arising from the SWWTF's expansion. The expansion is likely to result in a number of significant environmental impacts such as air pollutant emissions, biological impacts to water birds at the Project site and burrowing owls along the waterline, water quality impacts, and importantly, growth inducing impacts. The Project applicant acknowledged that any of the water contracted for but not used by the Stirling Solar Two Project "may be utilized by SES for future SES projects in the area." Thus, it is foreseeable that the upgrade to SWWTF will result in additional SES development in the area.

The Energy Commission, as lead agency, must evaluate the environmental impacts of the sewage treatment plant upgrade and the water pipeline as part of the Stirling Solar Two project. If the Energy Commission fails to study and

---

<sup>3</sup> *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

<sup>4</sup> *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713.

November 24, 2009

Page 3

mitigate the impacts from this upgrade, the Commission would violate the requirements of the California Environmental Quality Act.

Sincerely,

*/s/*

Loulena A. Miles

LAM:bh

cc: CEC Docket No. 08-AFC-5  
CEC Service List No. 08-AFC-5

November 24, 2009

Page 4

DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on November 24, 2009, I served and filed copies of the attached **CURE letter to Staff Counsel Caryn J. Holmes re CEQA Requirements for CEC Review of Stirling Solar Two Water Supply (dated November 24, 2009)**. 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/solartwo](http://www.energy.ca.gov/sitingcases/solartwo). The document has been sent (1) electronically, and (2) via US Mail by depositing in the US mail at South San Francisco, California, with first-class postage thereon fully prepaid and addressed as provided on the attached Proof of Service list to those addresses NOT marked "email preferred." It was sent for filing to the Energy Commission by sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address shown on the attached Proof of Service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA, this 24th day of November, 2009.

\_\_\_\_\_/s/\_\_\_\_\_  
Bonnie Heeley

KIM WHITNEY, ASSOC.PRJ.MGR.  
SES SOLAR TWO LLC  
4800 NO. SCOTTSDALE RD. #5500  
SCOTTSDALE, AZ 85251  
Kim.whitney@tesseractosolar.com

RICHARD KNOX, PROJECT MGR.  
SES SOLAR TWO, LLC  
4800 NO. SCOTTSDALE RD. #5500  
SCOTTSDALE, AZ 85251  
Richard.knox@tesseractosolar.com

ANGELA LEIBA,  
SR. PROJECT MGR  
URS CORPORATION  
1615 MURRAY CANYON RD.,  
#1000  
SAN DIEGO, CA 92108  
Angela\_Leiba@urscorp.com

ALLAN J. THOMPSON, ESQ.  
21 C ORINDA WAY #314  
ORINDA, CA 94563  
allanori@comcast.net

DANIEL STEWARD, PROJECT LEAD  
BLM – EL CENTRO OFFICE  
1661 S. 4<sup>TH</sup> STREET  
EL CENTRO, CA 92243  
Daniel\_steward@ca.blm.gov

JIM STOBAUGH, PROJECT MGR  
& NATIONAL PROJECT MGR  
BUREAU OF LAND MANAGE-  
MENT, BLM NEVADA STATE  
OFFICE  
PO BOX 12000  
RENO, NV 89520-0006  
Jim\_stobaugh@blm.gov

November 24, 2009

Page 5

JEFFREY D. BYRON  
COMMISSIONER/PRESIDING MEMBER  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET  
SACRAMENTO, CA 95814  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

JULIA LEVIN  
COMMISSISONER/ASSOCIATE MEMBER  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET  
SACRAMENTO, CA 95814  
[jlevin@energy.state.ca.us](mailto:jlevin@energy.state.ca.us)

RAUL RENAUD,  
HEARING OFFICER  
CALIFORNIA ENERGY  
COMMISSION  
1516 NINTH STREET  
SACRAMENTO, CA 95814  
[rrenaud@energy.state.ca.us](mailto:rrenaud@energy.state.ca.us)

CARYN HOLMES, STAFF COUNSEL  
CHRISTINE HAMMOND, CO-STAFF COUNSEL  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET  
SACRAMENTO, CA 95814  
[cholmes@energy.state.ca.us](mailto:cholmes@energy.state.ca.us)  
[chammond@energy.state.ca.us](mailto:chammond@energy.state.ca.us)

CHRISTOPHER MEYER, PROJECT MGR  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET  
SACRAMENTO, CA 95814  
[cmeyer@energy.state.ca.us](mailto:cmeyer@energy.state.ca.us)

PUBLIC ADVISER  
CALIFORNIA ENERGY  
COMMISSION  
1516 NINTH STREET  
SACRAMENTO, CA 95814  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

Loulena Miles  
[lmiles@adamsbroadwell.com](mailto:lmiles@adamsbroadwell.com)  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
ADAMS BROADWELL JOSEPH & CARDOZO  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
(EMAIL ONLY)

CALIFORNIA ENERGY COMMISSION  
ATTN DOCKET NO 08-AFC-5  
1516 NINTH STREET  
SACRAMENTO, CA 95814  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

CALIFORNIA ISO  
[E-RECIPIENT@CAISO.COM](mailto:E-RECIPIENT@CAISO.COM)  
(EMAIL ONLY)