



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

DOCKET

08-AFC-5

DATE APR 08 2010

RECD. APR 08 2010

**APPLICATION FOR CERTIFICATION FOR THE
IMPERIAL VALLEY SOLAR PROJECT
(formerly known as SES Solar Two Project)
IMPERIAL VALLEY SOLAR, LLC**

DOCKET No. 08-AFC-5

COMMITTEE ORDER DENYING PETITION TO SUBMIT DATA REQUESTS

Upon consideration of the Petition to Submit Data Requests filed by Petitioner, Tom Budlong, the Committee designated to conduct proceedings in this matter makes the following findings:

1. On March 3, 2010, a Petition to Intervene in the above-captioned proceeding was filed by:

Tom Budlong
3216 Mandeville Canyon Road
Los Angeles, California 90049-1016
(310) 476-1731
TomBudlong@RoadRunner.com

2. On March 24, 2010, the Committee issued its Order granting Petitioner's Petition to Intervene.
3. The March 24, 2010 Order stated that the deadline to file Data Requests in this matter, 180 days from the date the AFC was found data adequate, was April 6, 2009, pursuant to section 1716(e) of the Commission's regulations. [Cal. Code Regs., tit. 20, § 1716(e).]
4. On March 31, 2010, Petitioner filed the instant Petition to Submit Data Requests.
5. On April 5, 2010, Applicant, Imperial Valley Solar, LLC, filed its response to the Budlong data requests, objecting to them on the grounds of untimeliness and asserting that preparation of responses would take valuable time away from Applicant's management.

DISCUSSION

California Code of Regulations, title 20, § 1716 describes the process by which the parties in Energy Commission siting cases may obtain information from one another. Subpart (e) of that section sets forth a deadline of 180 days from the date the AFC was found data adequate for the submission of data requests. In this case, that deadline was April 6, 2009.

Section 1716 does provide for relief from this deadline under appropriate circumstances. Subpart (e) provides that the Committee may allow requests to be made after the 180 day deadline has passed “for good cause shown.”

We have reviewed the Petition in this matter and find that applicant has not provided satisfactory reasons for his submission of data requests nearly one year after the deadline. The data requests concerning the topics Petitioner is interested in could just as well have been submitted a year or more ago. There is nothing inherent in the nature of these data requests that would have made it difficult or impossible to do so.

Petitioner suggests that, pursuant to subpart (i), the 180-day deadline does not apply so long as a Hearing Order has not been issued by the Committee. To put it differently, the actual deadline is the date of the Hearing Order rather than 180 days. This reading of Commission regulations is problematic for at least two reasons. First, it renders meaningless the inclusion of subpart (e) 180-day deadline. Under standard rules of statutory interpretation, the Commission must interpret and harmonize its regulations so as to give them full effect. Second, Petitioner’s interpretation would make the data request deadline entirely subject to the discretion of the Committee; parties would have no way to determine from the outset of any particular case when the deadline might be. This would result in an infringement upon the parties’ due process rights and not a reasonable interpretation of the Commission’s regulations.

The Energy Commission welcomes and values intervenor participation in its energy facility siting process. However, it is only fair that all parties, intervenors included, be required to abide by the rules. Petitioner has not provided the Committee with any information upon which it could base a finding of good cause for his submission of data requests after the 180-day deadline. Accordingly, the Petition is **DENIED**.

Dated: April 8, 2010 at Sacramento, California.

Original signed by:
JEFFREY D. BYRON
Commissioner and Presiding Member
Imperial Valley Solar AFC Committee

Original signed by:
ANTHONY EGGERT
Commissioner and Associate Member
Imperial Valley Solar AFC Committee



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(formerly known as SES Solar Two Project)
IMPERIAL VALLEY SOLAR, LLC

**Docket No. 08-AFC-5
PROOF OF SERVICE
(Revised 3/24/10)**

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DECLARATION OF SERVICE

I, Maggie Read, declare that on April 8, 2010, I served and filed copies of the attached, *Committee Order Denying Petition to Submit Data Requests, dated April 8, 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: [\[http://www.energy.ca.gov/sitingcases/solartwo/index.html\]](http://www.energy.ca.gov/sitingcases/solartwo/index.html)

The documents have 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:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- 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:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-5
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, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original signed by:
Maggie Read