

**Memorandum**

Date: July 27, 2010  
 Telephone: (916) 654-4894

**To:** Commissioner Jeffrey D. Byron, Presiding Member  
 Commissioner Anthony Eggert, Associate Member  
 Hearing Officer Raoul Renaud

**From:** California Energy Commission – Terry O’Brien, Deputy Director  
 1516 Ninth Street  
 Sacramento, CA 95814-5512

<b>DOCKET</b> <b>08-AFC-5</b>
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DATE	<u>07/27/10</u>
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RECD.	<u>07/27/10</u>
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**Subject: STAFF’S COMMENTS REGARDING A POSSIBLE ENERGY COMMISSION FINDING OF OVERRIDING CONSIDERATIONS - IMPERIAL VALLEY SOLAR PROJECT (08-AFC-5)**

The Energy Commission staff believes that the direct project impacts to biological resource, and soil and water resources, and visual resources, and the cumulative impacts associated with biological resources, land use, soil and water resources, and visual resources for the Imperial Valley Solar (IVS) Project will be significant. There is no feasible mitigation that would reduce the impacts to a level that is less than significant given the scale of the project, and other projects that were cumulatively considered. In addition, staff has concluded that the project will not be able to comply with Imperial County several laws, ordinances, regulations and standards, also referred to as “LORS.” Finally, staff recognizes that due to a lack of information regarding the long-term performance of this new technology, it is uncertain whether the applicant’s claims regarding reliability will be met.

Notwithstanding the unmitigable impacts, consideration needs to be given to the fact that the project is a solar power plant that will help California meet its renewable portfolio standard (RPS) of 33 percent in 2020 and AB 32 greenhouse gas emission reduction goals. As such, it will provide critical environmental benefits by helping the state reduce its greenhouse gas emissions, and these positive attributes must be weighed against the project’s adverse impacts. It is because of these benefits and the concerns regarding the adverse impacts that global warming will have upon the state and our environment, including desert ecosystems, that staff believes it would be appropriate for the Commission to approve the project based on a finding of overriding considerations, consistent with CEQA Guideline Section 15093, if the Commission adopts staff’s proposed mitigation measures/conditions of certification.

For the same reasons as state above, staff believes the Commission could address the LORS inconsistency by finding that the project is needed for the public convenience and necessity, and that there are not more prudent and feasible means for achieving such, pursuant to Public Resources Code section 25525 (the so-called “LORS override”).

PROOF OF SERVICE (REVISED 5/10/10) FILED WITH  
 ORIGINAL MAILED FROM SACRAMENTO ON 7/27/10

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Staff's position on the IVS Project should not be read as a blanket endorsement of all solar projects, nor as an indication that we will consistently conclude that it is appropriate for the Commission to adopt overriding considerations for unmitigable significant environmental impacts or findings of public convenience and necessity for any LORS non-compliance. Our determinations will be made on a case-by-case basis. As with all electricity infrastructure projects, site selection is a critical factor in determining impacts and staff's position on whether a Commission override is appropriate or warranted.

The fact that the IVS Project's site is adjacent to, and in the vicinity of, existing and planned development, (e.g., Plaster City, Interstate 8, and existing electricity infrastructure, including major transmission lines and other proposed renewable energy projects), is a significant factor in reaching the conclusion that an override is appropriate in this case.

As indicated in its November 19, 2008 Renewable Energy Transmission Initiative comments on the proposed competitive renewable energy zones, staff believes renewable energy development should occur in areas proximate to "existing transmission infrastructure and load centers" and recognizes that it is important to "protect the unique visual resources of the desert and to preserve the special qualities of remoteness and isolation that are inherent in the appeal of desert landscapes."

One final observation is that, in the future, after several of the new solar power plants have been constructed and have been operational for an appropriate period of time, staff and others will have more information about their collective impacts to evaluate and compare the characteristics of the various solar thermal technologies. Based upon this information, staff will be better informed to determine whether some technologies are preferable from an environmental perspective and will factor that evaluation into our alternatives analysis. Important issues to analyze will include water use, land use (amount of land needed per megawatt of generating capacity), visual impacts, and ground disturbance.

In support of staff's position for consideration by the Committee, staff requests that notice is taken of the following documents:

- 1) Climate Action Team Report to Governor Schwarzenegger and the Legislature. CalEPA, March 2006.
- 2) AB 32 Scoping Plan. CARB, December 2008.
- 3) Integration of Renewable Resources. CAISO, Nov. 2007.
- 4) 2007 Integrated Energy Policy Report. CEC, Nov. 2007.
- 5) 2009 Integrated Energy Policy Report. CEC. Nov. 2009.
- 6) Draft Final Opinion on Greenhouse Gas Regulatory Strategies: Joint Agency Proposed Final Opinion. CPUC/CEC 2008.
- 7) Framework for Evaluating Greenhouse Gas Implications of Natural Gas-Fired Power Plants in California. CEC (MRW and Associates). May 2009.

## DECLARATION OF TERRY O'BRIEN

I, Terry O'Brien declare as follows:

1. I am presently Deputy Director of the Siting, Transmission and Environmental Protection Division at the California Energy Commission.
2. I am personally familiar with the IMPERIAL VALLEY SOLAR PROJECT currently under review by the Energy Commission staff. I have reviewed relevant sections of the Supplemental Staff Assessment and have discussed the case with technical staff, siting management and legal staff. In addition to the IMPERIAL VALLEY SOLAR PROJECT, I reviewed the filings and staff's analysis regarding all the solar power projects currently filed with the Energy Commission.
3. I prepared the attached testimony regarding Biological Resources, Land Use, Soil & Water Resources, and Visual Resources and the appropriateness of recommending a finding of overriding considerations. The testimony is based on my independent analysis and review of the relevant documents submitted in the case.
4. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness, could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

At: Sacramento, California



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

**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  
PROOF OF SERVICE**  
(Revised 5/10/10)

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DECLARATION OF SERVICE

I, Maria Santourdjian, declare that on July 27, 2010, I served and filed copies of the attached, Staff's Comments Regarding A Possible Energy Commission Finding of Overriding Considerations. The original documents, filed with the Docket Unit, are 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>

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](mailto: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.

Originally Signed by  
Maria Santourdjian