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DOCKET
09-AFC-10
DATE <u>DEC 01 2010</u>
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December 1, 2010

California Energy Commission
Dockets Unit
1516 Ninth Street
Sacramento, CA 95814-5512

**Subject: RICE SOLAR ENERGY, LLC'S NOTICE OF MOTION AND MOTION TO STRIKE STAFF'S NEW EVIDENCE; REQUEST FOR ORDER SHORTENING TIME
RICE SOLAR ENERGY PROJECT
DOCKET NO. (09-AFC-10)**

Enclosed for filing with the California Energy Commission is the original of **RICE SOLAR ENERGY LLC'S NOTICE OF MOTION AND MOTION TO STRIKE STAFF'S NEW EVIDENCE; REQUEST FOR ORDER SHORTENING TIME**, for the Rice Solar Energy Project (09-AFC-10).

Sincerely,

A handwritten signature in blue ink, appearing to read "Marie Mills".

Marie Mills

Scott A. Galati
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Sacramento, CA 95814
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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
RICE SOLAR ENERGY PROJECT

DOCKET NO: 09-AFC-10

**RICE SOLAR ENERGY, LLC'S
NOTICE OF MOTION AND MOTION
TO STRIKE STAFF'S NEW
EVIDENCE; REQUEST FOR ORDER
SHORTENING TIME**

Rice Solar Energy, LLC (RSE), a wholly owned subsidiary of SolarReserve, has received Staff's Comments on the Presiding Member's Proposed Decision (PMPD) for the Rice Solar Energy Project (RSEP), docketed on November 30, 2010. RSE hereby files this notice of motion and motion to strike portions of those comments on the following grounds:

1. The comments contain new evidence not in the record that could have been filed in written form prior to the evidentiary hearings;
2. The evidentiary record is closed and there has been no motion to re-open; and
3. Hearing of new evidence without the ability to present rebuttal testimony and cross-examine witnesses at this late stage is highly prejudicial to RSE.

Since the PMPD Conference Hearing is December 3, 2010, and RSE did not receive advance notice that the Staff would include new evidence in its comments and there has been no motion to reopen the evidentiary record, RSE also asks the Committee to adopt an Order Shortening Time that would waive the noticing and response requirements for Motions required by 1716.5 of the Commission Regulations. The

Order Shortening Time would effectively allow Staff to 5 pm on December 2, 2010 to file a written response to this Motion and hear this Motion at the December 3, 2010 PMPD Conference Hearing. The Presiding Member of the Committee has authority to adopt an Order Shortening Time and waive the noticing and response requirements for good cause shown pursuant to Section 1203 of the Commission Regulations. Counsel for Applicant telephoned Counsel for Staff, Dick Ratliff, on December 1, 2010 and informed him of the nature and extent of this Motion to Strike to minimize prejudice to Staff for shortening time. Good cause is shown because RSE did not have any notice that Staff would file additional evidence in its Comments on the PMPD until November 30, 2010 when it was served a copy.

Section 1745 (b) of the Commission's Regulations provides:

The Commission shall not consider new or additional evidence at the hearings under this section (***referring to Hearing on the Presiding Member's Proposed Decision***) unless due process requires or unless the Commission adopts a motion to reopen the evidentiary record.
(***clarification added in bold italics***)

Staff has not filed a motion to reopen the evidentiary record. Such motions are not generally granted unless the proponent demonstrates that such evidence is relevant and could not have been presented at the time of evidentiary hearing. Staff had ample opportunity to present this evidence in the Staff Assessment and in Rebuttal Testimony.

Therefore, RSE requests the Committee Strike the following portions of Staff's Comments on the PMPD.

1. Item 2, Page 3 relating to Mr. Alan Lindsey's observations
2. Last Two Sentences of Item 3, Page 3 relating to BLM Handbook not in evidence
3. Sixth Sentence of Item 4, Page 3 relating to assertion that there are large numbers of Californian's who seek out less travelled roads
4. Last sentence beginning on Page 5 and ending on Page 6, concerning hearsay statements of BLM management.
5. Third through seventh sentences of the First Full Paragraph on Page 6, relating to number of visitors of Joshua Tree using SR 62
6. Last two sentences of the First Paragraph on Page 7, relating to observations of projects in Seville, Spain.
7. Visual Resources Figures 1 and 2 and accompanying narrative description by Mr. Alan Lindsey in its entirety.

RSE will be prejudiced if the Committee considers any of this new evidence because it will not have had an opportunity to present contrary evidence, research the validity of the evidence, consider the references cited in the entire context of the documents relied upon, nor cross-examine the basis and assumptions used to support Staff's opinion testimony. The Staff had plenty of opportunity to present this evidence in its Staff Assessment and Rebuttal Testimony but failed to do so.

RSE respectfully requests the Committee strike those portions of Staff Comments identified above and consider only Staff's arguments concerning the evidence in the record. RSE believes that the evidence in the record supports a finding that the RSEP will not result in a significant visual impact and will present rebuttal argument to Staff's comments at the PMPD Conference Hearing, relying only on the evidence in the record.

Dated: December 1, 2010

Respectfully Submitted,

Original Signed
Scott A. Galati
Counsel to Rice Solar Energy, LLC



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 *RICE SOLAR ENERGY POWER
PLANT PROJECT***

Docket No. 09-AFC-10

PROOF OF SERVICE
(Revised 8/5/2010)

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DECLARATION OF SERVICE

I, Marie Mills, declare that on December 1, 2010, I served and filed copies of the attached **RICE SOLAR ENERGY LLC'S NOTICE OF MOTION AND MOTION TO STRIKE STAFF'S NEW EVIDENCE; REQUEST FOR ORDER SHORTENING TIME, dated December 1, 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/ricesolar>].

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. **09-AFC-10**

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.



Marie Mills