

STATE OF CALIFORNIA  
Energy Resources Conservation  
And Development Commission

**DOCKET**  
**08-AFC-13C**

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In the Matter of:

Calico Solar Project Amendment

Docket No. 08-AFC-13C

**APPLICANT'S RESPONSE TO MOTION TO COMPEL PRODUCTION OF  
INFORMATION**

June 30, 2011

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**STATE OF CALIFORNIA**  
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**I. INTRODUCTION AND FACTUAL BACKGROUND**

Calico Solar, LLC ("Calico") submits this response to Patrick C. Jackson's Motion to Compel Production of Information ("Motion") filed with this California Energy Commission ("Commission") on June 18, 2011. After the Commission Siting Committee ("Committee") found that Mr. Jackson had established good cause to propound 13 data requests upon Calico, Mr. Jackson propounded Data Request Set 1 (Nos. 1-13) on May 16, 2011.

On June 6, 2011, Calico Solar responded to Mr. Jackson's Data Requests 1 through 8 and 10 through 13. In its June 6 response letter and pursuant to 20 California Code of Regulations Section 1716(b), Calico explained that it would be unable to provide certain information requested within 30 days of the date of the Data Request and that it objected to certain information requested. On June 15, 2011, Calico Solar responded to Mr. Jackson's Data Request 9 and provided relevant data.

## **II. ARGUMENT**

### **A. Data Requests 1, 3, 4, and 5**

For each of Data Request 1 (regarding hydrology, hydraulic, and sediment transport / scour studies), Data Request 3 (regarding revised grading and drainage plans), Data Request 4 (regarding letters of authorization from adjacent property owners for modified drainage), and Data Request 5 (regarding a revised Drainage, Erosion and Sediment Control Plan (DESCP)), Mr. Jackson sought information from Calico regarding property outside of the boundaries of the Project site. Calico agrees that it is reasonable, relevant to these proceedings and required by the Conditions of Certification for the Project, for Calico to account for the potential effects of Project development on adjacent properties. Calico objected to each of these data requests, however, because Calico is not required under the Decision, and should not be required as part of the amendment process, to prepare separate studies or grading plans for adjacent properties or to receive permission from adjacent property owners for such work. Such information is not relevant to the Amendment proceedings.

Calico submitted to the Commission a Scope of Work provided by Tetra Tech, Inc. dated May 28, 2011, regarding Tetra Tech's preparation of an infiltration report, geomorphic and hydraulic analysis, geomorphic and biologic analysis, scour analysis, a pole foundation stability report, and all studies necessary for the DESCPC. The studies contemplated in the Scope of Work will be completed according to the schedule set forth in Exhibit 1 "Updated Schedule for Outstanding Deliverables" of Calico's Issue Statement in Response to the Status Conference, docketed June 23, 2011. At the Commission Workshop on June 28, 2011, Mr. Jackson agreed that so long as the studies, reports and grading plans are completed consistent with Tetra Tech's Scope of Work, the studies, reports and grading plans would satisfy his Data Requests 1, 3, 4, and 5. Accordingly, Calico understands that Mr. Jackson's concerns regarding Calico's

responses to Data Requests 1, 3, 4, and 5 have been fully addressed and that no further discussion is needed.

**B. Data Request 12(b) - Description of How and When the Adjacent Property Owners Will Be Provided Dust Masks and Trained to Use the Masks**

In responding to Data Request 12(b), Calico explained that it does not intend to provide dust masks to adjacent property owners or other members of the public because doing so is not required by the Conditions of Certification for the Approved Project. Calico also explained that Condition of Certification WORKER SAFETY-9 in the Commission's Decision requires that only site workers use dust masks whenever visible dust is present. Mr. Jackson responds that the objection is groundless because Calico has not completed any "analysis regarding the potential exposure risk to the public of contracting Valley Fever as a result of the proposed project activities." (Motion at 7.)

Analysis regarding Valley Fever risk has already been conducted, as described in the Supplemental Staff Analysis, pages C.15-13 through -18. As recommended by Commission Staff, and subsequently embodied by Conditions of Certification AQ-SC3 and WORKER SAFETY-9, "[t]o minimize potential exposure of workers and also the public of coccidioidomycosis during soil excavation and grading, extensive wetting of the soil prior to and during construction activities in should be employed and masks should be worn at certain times during these activities." (See Supplemental Staff Analysis at C.15-18.) Mr. Jackson has pointed to no Condition of Certification or provision of the Decision that would require Calico to take additional precautions to minimize exposure of workers and the public to coccidioidomycosis. Because Calico is not required to and does not intend to provide dust masks to the general public, there is no information that Calico has or can obtain to respond to Data Request 12(b).

Mr. Jackson also claims that the objection is “unfair and discriminatory” because Calico “acknowledges the ‘potential exposure of workers and also the public to coccidioidomycosis during soil excavation and grading’ but ‘does not intend’ to take steps to minimize the exposure risk to the public, visitors to the site and adjacent properties, or BNSF employees.” (Motion at 7.) Mr. Jackson mischaracterizes Calico’s response: Calico intends to take steps to minimize the exposure risk to workers, the public, visitors, and others that may be caused by fugitive dust, including potential exposure to coccidioidomycosis. As required by Conditions of Certification AQ-SC7 and BIO-8, Calico will, among other measures:

- provide a site Operations Dust Control Plan;
- apply non-toxic soil binders on portions of the site;
- water the disturbed areas of the active construction sites at least three times per day and more often if uncontrolled fugitive dust is noted;
- enclose, cover, water twice daily, establish a vegetative ground or otherwise create stabilized surfaces on all unpaved areas at each of the construction sites within 21 days after active construction operations have ceased; and
- implement additional fugitive dust mitigation measures to all active disturbed fugitive dust emission sources when wind speeds exceed 25 mph.

The mitigation measures that were adopted by the Commission to minimize dust risk are neither “unfair” nor “discriminatory”. Site workers will have the greatest exposure to fugitive dust and are the only ones for whom a dust mask is necessary, as recognized by the Commission in Condition of Certification WORKER SAFETY-9. Members of the public, who will not be within the Project boundaries, will not require dust masks to ensure their health or safety from fugitive dust produced by the Project construction.

Mr. Jackson argues that Data Request 12(b) is necessary for the Commission to comply with Section 25532 of the Public Resources Code which requires it to “establish a monitoring system to assure that any facility certified . . . is constructed and is operating in compliance with air and water quality, public health and safety, and other applicable regulations, guidelines, and conditions . . . .” (Motion at 7-8.) The Commission is in compliance with Section 25532, by virtue of the extensive Conditions of Certification, which it established for the Project and will impose on the Modified Project. These Condition of Certification are designed to and will protect air and water quality as well as public health and safety.

**C. Data Request 11 - Detailed Analysis of the Impact Soil Disturbance Will Have Dispersing *Coccidioides***

In responding to Data Request 11, Calico noted that it believed it would be able to conduct a more complete analysis of the impact soil disturbance at the Project site may have on dispersing *Coccidioides* if Mr. Jackson provided more information about his diagnosis. Mr. Jackson argues that this request “is effectively a data request not permitted pursuant to the Siting Committee’s Order.” (Motion at 8.) As stated in its June 6 letter, Calico suggested that information about Mr. Jackson’s Valley Fever diagnosis would be helpful, but it did not require Mr. Jackson to provide the information. Thus, Calico’s suggestion regarding this information does not amount to a data request and does not require Mr. Jackson to submit anything.

Calico had hoped that the information, which Mr. Jackson could voluntarily supply, would help establish when and where Mr. Jackson may have contracted Valley Fever. This information in turn may help Calico identify the types of activities that were occurring when Mr. Jackson believes he contracted Valley Fever. Because no employees of Calico or other site workers have reported having Valley Fever symptoms caused by the Project, understanding where and when Mr. Jackson may have contracted the disease may help Calico and the

Commission better understand the potential risk of dispersing *Coccidioides* during soil disturbance activities. Calico, however, agrees that Mr. Jackson is under no obligation to provide this information.

**D. Data Request 9 - Wind Data from the Project's Meteorological Station**

In responding to Data Request 9, Calico provided Mr. Jackson with a disc containing the surface meteorological data for the calendar year 2005 from the Barstow Airport National Weather Service Station, the closest long-term meteorological station to the Project site. Mr. Jackson argues that this “response is effectively an objection as it does not provide data from the Project’s meteorological station.” (Motion at 9-10.)

Throughout the permitting process, Calico has relied upon data from the Barstow Station, with the concurrence of the Commission and the Bay Area Air Quality Management District (BAAQMD). As such, the analysis in the Decision and in the Petition to Amend, as well as the Conditions of Certification for both the Approved Project and the Modified Project inherently reflect this data.

The meteorological station near the Project site has never been calibrated and therefore Calico cannot testify to its accuracy. Calico has never relied upon, or purported to rely upon, any data produced from this station in connection with the Commission’s approval process. Calico agrees to provide Mr. Jackson with the data from the station near the Project site, if the Commission directs Calico to provide information that is unsubstantiated and may be inaccurate.

**III. CONCLUSION**

Mr. Jackson has agreed that the studies, reports and grading plans to be completed by Tetra Tech, Inc. pursuant to the May 28, 2011 Scope of Work and the schedule set forth in Exhibit 1 of Calico’s Issue Statement in Response to the Status Conference will satisfy Data Requests 1, 3, 4, and 5. With regard to Data Request 9, Calico respectfully requests the

Commission to determine whether it is appropriate to provide Mr. Jackson data from the meteorological station with the understanding that is unsubstantiated and may be inaccurate. Calico agrees that Mr. Jackson is under no obligation to provide any information discussed in Calico's previous response to Data Request 11. Finally, with regard to Data Request 12b, Calico respectfully requests that the Commission deny Mr. Jackson's Motion to Compel as Calico does not possess any relevant information on this issue.

Date: June 30, 2011

Respectfully submitted,



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Ella Foley Gannon  
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Applicant for the Calico Solar  
(formerly known as SES Solar One) Project





BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**FOR THE CALICO SOLAR PROJECT  
AMENDMENT**

**Docket No. 08-AFC-13C  
PROOF OF SERVICE**  
(Revised 6/7/2011)

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**DECLARATION OF SERVICE**

I, Marsha Curtis, declare that on June 30, 2011, I served by U.S. mail and filed copies of the attached

Applicant's Response to Motion to Compel Production of Information

dated June 30, 2011. 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/calicosolar/compliance/index.html](http://www.energy.ca.gov/sitingcases/calicosolar/compliance/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:

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**FOR SERVICE TO ALL OTHER PARTIES:**

sent electronically to all email addresses on the Proof of Service list;

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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.

  
\_\_\_\_\_