

INTRODUCTION

Pursuant to the Committee's request made at the May 5, 2011 Committee Conference on the Presiding Member's Proposed Decision ("PMPD"), Mariposa Energy Project, LLC ("Applicant") submits the following supplemental comments on the PMPD.

DISCUSSION

I. Condition of Certification HAZ-7.

Condition of Certification HAZ-7, as set forth in the Staff Assessment reads, in part as follows:

4. a. A statement (refer to sample, **Attachment A**), signed by the project owner certifying that background investigations have been conducted on all project personnel. Background investigations shall be restricted to determine the accuracy of employee identity and employment history and shall be conducted in accordance with state and federal laws regarding security and privacy;
- 4.b. A statement(s) (refer to sample, **Attachment B**), signed by the contractor or authorized representative(s) for any permanent contractors or other technical contractors (as determined by the CPM after consultation with the project owner), that are present at any time on the site to repair, maintain, investigate, or conduct any other technical duties involving critical components (as determined by the CPM after consultation with the project owner) certifying that background investigations have been conducted on contractors who visit the project site;

Section 4.a. requires background investigations of "all project personnel," which we interpret to mean on-site project personnel. Section 4.b. requires signed statements signed by the contractors certifying that background investigations have been conducted on contractors who visit the project site. As set forth in the Staff Assessment, Section 4.a. contained a limitation on background investigations. However, this limitation was not contained in Section 4.b.

Therefore, to make sections 4.a and 4.b consistent, the Applicant proposed to Staff that the limitation also be included in Section 4.b. Staff agreed, and included this revision in the Supplemental Staff Assessment. When the PMPD did not include this revision, the Applicant suggested in its comments on the PMPD that this limitation be added to Section 4.b. This revision, by the way, would conform these sections to the condition language adopted in the Ivanpah Solar Electric Generating System Final Decision, where the limitation is set forth in HAZ-5, Verification, sections 6.a and 6.b.¹

During the Committee Conference on the PMPD, Hearing Officer Celli asked whether this limitation would prevent the Project Owner from conducting background checks on employees. The answer is that employers can review and consider criminal *convictions* only if it is relevant to the job. Employers in California can review job applicant arrest records ONLY if (i) the arrest(s) resulted in a conviction, or (ii) if the applicant is out of jail but pending trial. Felonies, misdemeanors and arrests are reportable for 7 years. [Cal. Labor Code §432.7]. The Applicant would consider criminal background checks relevant to the jobs of on-site plant personnel.

To make clear that background checks, including criminal background checks, can be conducted when relevant to the job, we propose that sections 4.a and 4.b read as follows:

4. a. A statement (refer to sample, **Attachment A**), signed by the project owner certifying that background investigations have been conducted on all project personnel. Background investigations ~~shall be restricted to determine the accuracy of employee identity and employment history and~~ shall be conducted in accordance with state and federal laws ~~regarding security and privacy;~~


¹ Ivanpah Solar Electric Generating System, 07-AFC-5, Final Decision, Hazardous Materials Management, p. 9.

b. A statement(s) (refer to sample, **Attachment B**), signed by the contractor or authorized representative(s) for any permanent contractors or other technical contractors (as determined by the CPM after consultation with the project owner), that are present at any time on the site to repair, maintain, investigate, or conduct any other technical duties involving critical components (as determined by the CPM after consultation with the project owner) certifying that background investigations have been conducted on contractors who visit the project site.

Background investigations shall be restricted to determine the accuracy of employee identity and employment history and shall be conducted in accordance with state and federal laws regarding security and privacy.

Dated: May 13, 2011

ELLISON, SCHNEIDER & HARRIS L.L.P.

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STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

Application for Certification for the)
Mariposa Energy Project) Docket No. 09-AFC-03
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PROOF OF SERVICE

I, Karen A. Mitchell, declare that on May 13, 2011, I served the attached
Applicant's Supplemental Comments on the Presiding Member's Proposed Decision via
electronic mail and U.S. Mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



Karen A. Mitchell

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09-AFC-3

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