



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

**FOR THE CALICO SOLAR PROJECT
 AMENDMENT**

DOCKET No. 08-AFC-13C

**COMMITTEE ORDER REGARDING SIERRA CLUB’S MOTION
 TO DISMISS THE PETITION TO AMEND
 AND
 CALICO SOLAR LLC’S MOTION TO STRIKE
 SIERRA CLUB’S MOTION TO DISMISS**

DOCKET	
08-AFC-13C	
DATE	<u>MAY 09 2011</u>
RECD.	<u>MAY 09 2011</u>

Background

On March 22, 2011, Calico Solar, LLC filed a Petition to Amend the Calico Solar Project previously approved by the Energy Commission in December 2010.

On April 20, 2011, the Energy Commission’s Siting Committee conducted an Informational Hearing relating the Petition to Amend. During the hearing, the Committee advised the then parties (Calico Solar, LLC and Energy Commission Staff), would-be intervenors (including the Sierra Club), and the public of the Committee’s intent to issue an order requesting briefing on matters that include the Commission’s licensing and CEQA lead agency jurisdiction over the Petition to Amend and its proposed modifications.

On April 20, 2011, within two hours after the close of the Informational Hearing, the Sierra Club filed a Motion to Dismiss the Petition to Amend (Motion to Dismiss) with the Energy Commission. The Petition essentially alleges that the Energy Commission has no licensing jurisdiction over any aspect of the modifications proposed by the Petition to Amend.

On May 2, 2011, the Siting Committee issued orders granting six petitions to intervene, including a petition filed on behalf of the Sierra Club, and thereby conferred party status on the Sierra Club and the other petitioners.

On May 2, 2011, the Siting Committee issued a Committee Scheduling, Briefing, and Procedures Order (Scheduling Order), which includes an invitation for the parties to brief the above-described jurisdictional issues by May 23, 2011.

On May 3, 2011, Sierra Club filed a Notice of Protest alleging, among other things, that the Commission has “ignored” its Motion to Dismiss by neither referencing it in the Scheduling Order nor deciding the matters discussed in the Petition to Dismiss.

On May 4, 2011, Calico Solar, LLC filed a Motion to Strike Sierra Club’s Motion to Dismiss on the grounds that the Motion to Dismiss was prematurely filed.

Findings and Ruling

1. Sierra Club filed the Motion to Dismiss before the Siting Committee granted it party status in this post-certification amendment proceeding, which is primarily governed by California Code of Regulations, title 20, section 1769.
2. Pursuant to California Code of Regulations, title 20, sections 1203 and 1716.5, the Siting Committee finds that upon Sierra Club becoming a party to proceeding on May 2, 2011, it had standing to file the Motion to Dismiss under California Code of Regulation, title 20, section 1716.5.¹ Accordingly, given the Siting Committee’s stated interest in the jurisdictional issues raised by the Motion to Dismiss, it is reasonable and desirable to deem the Motion to Dismiss as having been filed by the Sierra Club on May 2, 2011.


Therefore, the Siting Committee hereby **DENIES** Calico Solar, LLC’s Motion to Strike Sierra Club’s Motion to Dismiss.

Further, pursuant to the Siting Committee’s authority under California Code of Regulations, sections 1203, subdivisions (c), (d), and (f), the Siting Committee hereby **ORDERS** that oral argument on Sierra Club’s Motion to Dismiss shall be heard on June 8, 2011, together with arguments on the jurisdictional and baseline issues as specified in the Committee Scheduling Order dated May 2, 2011. Should the parties elect to file briefs in response to Sierra Club’s Motion to Dismiss, any such briefs shall be filed on or before 5:00 p.m. on June 3, 2011. The Siting Committee will notice the June 8, 2011 hearing under separate cover.

Dated: May 9, 2011, in Sacramento, California.



KAREN DOUGLAS
Commissioner and Presiding Member
Siting Committee



ROBERT B. WEISENMILLER
Chairman and Associate Member
Siting Committee

¹ Notwithstanding that Section 1716.5 expressly pertains to Notice of Intention and Application for Certification proceedings.



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

**FOR THE CALICO SOLAR PROJECT
AMENDMENT**

**Docket No. 08-AFC-13C
PROOF OF SERVICE
(Revised 5/9/2011)**

APPLICANT

Calico Solar, LLC
Daniel J. O'Shea
Managing Director
2600 10th Street, Suite 635
Berkeley, CA 94710
dano@kroadpower.com

CONSULTANT

URS Corporation
Angela Leiba
AFC Project Manager
4225 Executive Square, #1600
La Jolla, CA 92037
angela_leiba@URSCorp.com

APPLICANT'S COUNSEL

Allan J. Thompson
Attorney at Law
21 C Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

Bingham McCutchen, LLP
Ella Foley Gannon, Partner
Three Embarcadero Center
San Francisco, CA 94111
e-mail service preferred
ella.gannon@bingham.com

INTERVENORS

Society for the Conservation of
Bighorn Sheep
Bob Burke & Gary Thomas
P.O. Box 1407
Yermo, CA 92398
e-mail service preferred
cameracoordinator@sheepsociety.com

Basin and Range Watch
Laura Cunningham &
Kevin Emmerich
P.O. Box 70
Beatty, NV 89003
e-mail service preferred
atomicloadbranch@netzero.net

California Unions for Reliable
Energy (CURE)
c/o: Tanya A. Gulesserian,
Marc D. Joseph
Adams Broadwell Joseph
& Cardozo
601 Gateway Boulevard,
Ste. 1000
South San Francisco, CA 94080
e-mail service preferred
tgulesserian@adamsbroadwell.com

Patrick C. Jackson
600 Darwood Avenue
San Dimas, CA 91773
e-mail service preferred
ochsjack@earthlink.net

Sierra Club
c/o Gloria D. Smith,
Travis Ritchie
85 Second Street, Second floor
San Francisco, CA 94105
e-mail service preferred
gloria.smith@sierraclub.org
travis.ritchie@sierraclub.org

Newberry Community
Service District
c/o Wayne W. Weierbach
P.O. Box 206
Newberry Springs, CA 92365
e-mail service preferred
newberryCSD@gmail.com

*Defenders of Wildlife
Kim Delfino, California Program Director
1303 J Street, Suite 270
Sacramento, California 95814
e-mail service preferred
kdelfino@defenders.org

*Defenders of Wildlife
Jeff Aardahl, California Representative
46600 Old State Highway, Unit 13
Gualala, California 95445
e-mail service preferred
jaardahl@defenders.org

**INTERESTED
AGENCIES/ENTITIES/PERSONS**

California ISO
e-recipient@caiso.com

BLM – Nevada State Office
Jim Stobaugh
P.O. Box 12000
Reno, NV 89520
jim_stobaugh@blm.gov

Bureau of Land Management
Rich Rotte, Project Manager
Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
richard_rotte@blm.gov

**INTERESTED
AGENCIES/ENTITIES/PERSONS
CONT.**

California Department of
Fish & Game
Becky Jones
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

County of San Bernardino
Ruth E. Stringer,
County Counsel
Bart W. Brizzee,
Deputy County Counsel
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415
bbrizzee@cc.sbcounty.gov

BNSF Railroad
Cynthia Lea Burch
Steven A. Lamb
Anne Alexander
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
Cynthia.burch@kattenlaw.com
Steven.lamb@kattenlaw.com
Anne.alexander@kattenlaw.com

ENERGY COMMISSION

KAREN DOUGLAS
Commissioner and Presiding Member
kldougl@energy.state.ca.us

Galen Lemei
Adviser to Commissioner Douglas
glemei@energy.state.ca.us

ROBERT B. WEISENMILLER
Chairman and Associate Member
rweisenm@energy.state.ca.us

Eileen Allen
Adviser to Chairman Weisenmiller
eallen@energy.state.ca.us

Kourtney Vaccaro
Hearing Officer
kvaccaro@energy.state.ca.us

Kerry Willis
Staff Counsel
e-mail service preferred
kwillis@energy.state.ca.us

Stephen Adams
Co-Staff Counsel
e-mail service preferred
Sadams@energy.state.ca.us

Craig Hoffman
Project Manager
e-mail service preferred
choffman@energy.state.ca.us

Jennifer Jennings
Public Adviser
e-mail service preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Maggie Read, declare that on May 9, 2011, I served by U.S. mail and filed copies of the attached Committee Order Regarding Sierra Club's Motion To Dismiss the Petition to Amend and Calico Solar LLC'S Motion to Strike Sierra Club's Motion to Dismiss, dated, May 9, 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].

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-13C
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
Hearing Adviser's Office