

**DOCKET**

**08-AFC-13C**

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**STATE OF CALIFORNIA**  
**ENERGY RESOURCES CONSERVATION**  
**AND DEVELOPMENT COMMISSION**

In the Matter of:

The Calico Solar Project  
Amendment

DOCKET NO. 08-AFC-13C

**BNSF RAILWAY COMPANY'S OBJECTIONS TO CALICO SOLAR,  
LLC'S RESPONSES TO DATA REQUEST NO. 1 FROM BNSF TO  
CALICO; PETITION TO COMPEL RESPONSES TO APPROVED DATA  
REQUESTS; AND PETITION FOR LEAVE TO PROPOUND DENIED  
DATA REQUESTS**

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**I. BACKGROUND**

BNSF Railway Company (“BNSF”) is committed to participating in the California Energy Commission’s (“Commission”) power plant licensing proceeding for the Calico Solar Project (the “Project”) in such a way as to ensure that the Project will not result in adverse impacts, including health impacts, to BNSF’s critical rail operations and employees. To that end, BNSF has, among other things, undertaken the review and evaluation of the hydrology deliverables provided by Calico Solar, LLC (“Calico” or “Applicant”) for the Project, an effort which BNSF seeks to carry out as efficiently as possible. In order to do so, significant additional information needs to be provided by the Applicant with respect to its proposed Project. As the Commission will recall, at the time of certification of the Project in October and December 2010, the Applicant had not completed the studies, reports and plans that would provide the necessary information to evaluate the impact of the Project on the BNSF Right-of-Way. During that time, BNSF

provided extensive comments and testimony, attended workshops, and proposed Soil & Water Conditions setting forth the information we believed critical to a proper, scientifically defensible solar project on this complex alluvial plain. In approving the Project, the Commission conditioned its approval on the performance of these Conditions. However, before the Applicant performed those Conditions, it sought to amend its Project description through its March 18, 2011 Petition to Amend. BNSF immediately raised to the Commission at the April 20, 2011 Informational Hearing and subsequent workshops and status conferences, its concern that the studies, reports and plans required under the Soil & Water Conditions be performed *before* approval of the proposed amendment. Although the Applicant protested, it is our understanding that the Commission supports obtaining these studies, reports and plans, along with any necessary supporting data, prior to approval of the amendment.

To assist the Commission in identifying the necessary elements of the hydrologic analysis, among other purposes, on May 27, 2011, BNSF sought Siting Committee (“Committee”) approval to propound BNSF’s First Set of Data Requests (“Data Requests”) to Calico. While many of the Data Requests were approved, many were denied. Although section 1716(g) of the California Energy Commission Siting Regulations (20 Cal. Code Regs. §1701 et seq., “Siting Regulations”) requires BNSF to file a petition to compel responses within 30 days of being informed that the information will not be provided, BNSF in good faith awaited the submittal of the first of Calico’s hydrology deliverables to evaluate what information sought by the Data Requests was included in those deliverables, before objecting to the Committee’s denial of those Data Requests. Similarly, BNSF currently awaits the Applicant’s Glare/Glint Study, so we can

better understand which of the Data Requests seek information which remains outstanding at that time. Now, having the benefit of the initial hydrologic reports, BNSF's consultants are in a position to identify which denied Data Requests need to be re-considered. In addition, even as to those Data Requests that the Committee approved, and BNSF served on August 10, 2011, Calico has either objected or not complied. Therefore, with the goal of identifying and obtaining all necessary information as early in the amendment process as possible, pursuant to Section 1716(g) of the Siting Regulations, BNSF hereby petitions the Committee to direct Calico to supplement its August 30, 2011 responses to supply the data sought through the Data Requests which the Committee authorized BNSF to serve. In addition, pursuant to Section 1716.5 of the Siting Regulations, BNSF hereby petitions the Presiding Member for an order permitting BNSF to serve those Data Requests which the Committee did not authorize BNSF to serve, and directing Calico to respond. Finally, BNSF reserves the right to petition the Committee and the Presiding Member for further information pursuant to the denied Data Requests when the Glare/Glint Study and additional hydrology studies become available.

In addition to the Data Requests regarding hydrology, BNSF also has particular concern regarding Calico's refusal to provide any responses whatsoever to BNSF's approved Data Requests regarding access. BNSF has requested that the Commission order Calico to evaluate alternative access routes that do not require any use or crossing of the BNSF Right-of-Way. In addition, the Committee has ordered Staff to conduct a robust analysis of alternatives that would include an alternative lying exclusively south of the BNSF Right-of-Way, thereby eliminating any need for access on or across BNSF's Right-of-Way. We have noted that the original Calico application provided such

alternatives, but they were eliminated from Calico's Project description at an unknown time, and with no explanation for the change, no evaluation of potential adverse impacts, and no proposed mitigation of the resulting impacts. We believe an adequate environmental assessment under CEQA and the Warren-Alquist Act requires an evaluation of alternatives such as these. In addition to addressing Soil & Water concerns, therefore, we also request in this petition that the Committee direct Calico to respond to those approved Data Requests relating to access, and that the Presiding Member issue an order permitting BNSF to serve that Data Request which the Committee did not authorize BNSF to serve and directing Calico to respond to the same.

To avoid repetitive objections, BNSF first provides general objections that are applicable to several responses, and then provides specific objections applicable to each response.

## **II. GENERAL OBJECTIONS:**

**A. Foundational Information for Studies and Designs.** Requests 1, 2, 7, 13, 30, 73, 74, 75, 76, 85, 86, 87, 88, 92, and 97-103 seek information necessary to evaluate Calico's "Deliverables" (the reports Calico is required to file in this proceeding). In responding to BNSF's data requests, Calico refused to provide the requested data or indicated it has no data beyond what Calico provided in connection with the Deliverables themselves. The recently provided Infiltration and Geomorphology reports are of particular concern to BNSF, and are seriously lacking in foundation, as discussed in BNSF's preliminary comments.<sup>1</sup> Among other things:

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<sup>1</sup> See BNSF Preliminary Comments on Calico Solar Project Infiltration Report (Sept. 21, 2011) and BNSF Preliminary Comments on Calico Solar Project

- Calico has not provided any basis for its drastically revised conclusions concerning local scouring and instability of the alluvial fan. *See* Geomorphology Report at Section 4, p. 4.7; BNSF’s Preliminary Comments on Geomorphology Report at 5-7. This is particularly troubling in light of the conclusions in the earlier reports. Specifically, Soil & Water 1 and 8 require both the Infiltration Report and the Geomorphology Report to be based upon and consistent with the report entitled Existing Condition Hydrologic Study for Solar One (Phase 1 and 2) Project Site prepared by Huitt-Zollars and dated April 3, 2009 (the “Huitt-Zollars Report”). The Huitt-Zollars Report concluded instability of the alluvial fan and local scouring would be major challenges requiring extensive runoff control measures. Moreover, Soil & Water Condition 15 requires that all studies, reports and plans submitted pursuant to the Soil & Water Conditions “shall be based on and utilize consistent data and assumptions.” Calico has not explained why the new Deliverables differ so markedly from the Huitt-Zollars Report, and in responding to BNSF’s data requests Calico claims it has no additional data to support the changed conclusions. The Commission must recognize the potentially catastrophic consequences of disregarding the well-supported conclusions in the Huitt-Zollars Report, and should compel Calico to provide data supporting its revised conclusions if such data exists.

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Geomorphic and Hydraulic Analysis and Geomorphic and Biologic Analysis and Report (Sept. 27, 2011).

- Calico has not provided any basis for its conclusion that conditions in the Project area would produce the very low sediment yields found in the Griffiths, et al. (2006) study. Geomorphology Report at Section 4, pp. 4.4-4.5. The basins in the Project area are two orders of magnitude larger than the basins in the Griffiths study, and Calico has made no effort to tie the present and future soil conditions in the project area to the conditions in the Griffiths study. In fact, there is every reason to believe that once constructions starts, it will destroy the critically important natural desert crust that exists over much of the Mojave desert.
- Calico has not provided any basis for its conclusion, contrary to the Commission's prior conclusion, that vegetation conditions in the Project area would be essentially unchanged when the Project is built. *See* BNSF's Preliminary Comments on Geomorphology Report at 10-11.
- Calico has not provided a scoping analysis, sampling plan, or any other reasonable basis for Calico's decision to take only eleven soil samples from a 4500 acre property to be used in the sediment transport analysis. *See* BNSF's Preliminary Comments on Geomorphology Report at 9-10. If Calico has this information it should be produced. If Calico does not have this information, then the scientific basis for the conclusions in Calico's sediment transport analysis is questionable at best.
- Calico has not provided any basis for Calico's choice of an inflated baseline runoff rate in the Infiltration Report. This appears to be simply a

transparent attempt to establish an unrealistically high baseline of existing conditions that would relieve Calico of the burden of mitigating and controlling Project impacts. See BNSF's Preliminary Comments on Infiltration Report at 2-4; BNSF's Preliminary Comments on Geomorphology Report at 3-4.

Calico must either provide foundational data, or Calico's Deliverables should be rejected. The Infiltration and Geomorphology Reports are required to satisfy Soil & Water Conditions 1, 3, 8, 13 and 15. Questions about whether Calico's new site design can meet the Commission's Conditions of Certification with regard to runoff and sediment transport are clearly within the scope of the Petition to Amend proceeding, since the Project design is completely different. Even if the Commission chooses to amend the Conditions of Certification to reflect design changes, Calico will clearly need to meet reasonable amended Conditions reflecting similar practical requirements.

**B. Renewal of Denied Requests.** The Commission declined to approve BNSF's Data Requests 3-5, 8-10, 24, 71, 72, 82, 89 and 90, seeking foundational information about Calico's Deliverables. Requests 3-5 and 24 sought requests for proposals, contracts, and scope of work for Calico's contractors and consultants. After reviewing the Infiltration and Geomorphology reports, it is absolutely crucial for BNSF and the Commission to understand whether Calico artificially limited the scope of work in order to procure the unsupportable conclusions outlined in General Objection A, *supra*. Requests 8-10, 71, 72, 82, 89 and 90 sought foundational data for other reports. Because the recent Deliverables rely on the earlier reports, BNSF cannot adequately evaluate the recent Deliverables without this basic foundational data.



**C. General Objections to Approved Requests.** The Commission reviewed BNSF's Data Requests, and only required Calico to respond to those Requests the Commission found relevant and within the scope of the proceeding. Calico objected to approved Requests 16, 17, 25, 26, 27, 28, 31, 77, 93, 104 and 117 solely on the basis that the Requests were not relevant and/or were not within the scope of the proceeding. In objecting to Request 16, Calico even went so far as to identify specific categories of responsive data that exist, such as procedural communications, but Calico refused to provide the responsive data. Notably, Calico did not claim that any data responsive to these Requests was subject to any type of privilege. BNSF objects to Calico's refusal to comply with the Commission's prior determination of relevance, and requests that the Commission compel Calico to comply.

**D. Privilege Objections to Approved Requests.** In addition to general statements about relevance and scope of the proceeding, Calico invoked attorney client privilege and work product protection for Requests 32-70. Strangely, these objections all relate to access issues. The Commission approved 38 Requests related to access, and Calico provided responsive data for zero. Calico argued that every communication concerning access was protected by privilege, even though Calico has not claimed privilege for its communications with the same agencies and individuals concerning other issues. Calico failed to explain how communications with a public agency could be privileged, and failed to provide any type of privilege log identifying the allegedly privileged communications.

The issue of access has become even more important to these proceedings since the CPUC's September 12, 2011 Proposed Decision and Order partially denying Calico's

requests for access across BNSF's tracks. In addition, in its September 7, 2011 Committee Order Affirming Oral Directives Given During the August 24, 2011 Mandatory Status Conference, the Committee acknowledged the significance of the access issue, and ordered Staff to conduct a robust analysis of alternatives to the Project, including alternatives that would eliminate the need for any use or crossing of the BNSF Right-of-Way. In light of these facts, through the present petition, BNSF requests the Committee to direct Calico to supply information sought by the Data Requests concerning access. To the extent Calico continues to invoke privilege or work product protection, BNSF requests that the Commission at least compel Calico to provide a privilege log so BNSF can determine whether to seek additional relief.

**E. Information Not Yet Provided.** Calico responded to Requests 88, 101 and 105-117 by stating that information will be provided in the future. BNSF objects to the extent necessary to preserve BNSF's right to object, comment and seek additional relief in the future if Calico's responses are inadequate, untimely, or are not provided at all.

### **III. OBJECTIONS TO RESPONSES TO APPROVED DATA REQUESTS**

**Request 1:** Provide all AutoCAD files serving as the basis of project design in digital format associated with the proposed layout of the PV PROJECT including the proposed locations of the SunCatcher and photovoltaic collectors, roads, transmission lines, electrical conduit, structures, grading plans, flood control infrastructure, etc. These documents should also be presented in Adobe PDF files on 24" x 36" sheets with a scale of 1 inch=60 feet.

**Calico's Objection to Request 1:** While Calico will provide the AutoCAD files requested on September 9, 2011, Calico objects to providing the AutoCAD files in Adobe PDF files. The information requested is not available in this format, and it would be unduly burdensome to present the information in this format. Calico also notes that providing this information in 1 inch=60 feet scale would result in print-outs of this information being hundreds of pages.

**BNSF's Response:** See General Objection A, *supra*. BNSF has not received AUTOCAD files of the locations of all roads, grading plans and flood control infrastructure, or of transmission lines or electrical conduits. Although Calico has provided the proposed locations of the SunCatchers and PV arrays, review of the same indicates that Calico entirely disregarded the topography of the site in establishing the proposed locations. Thus, it is questionable whether the proposed locations are the result of seriously evaluation as would be expected. BNSF has also received files of some roads and some site structures, but we are unable to verify if those provided are exhaustive. Finally, BNSF has not been provided pdfs for 24" x 36" sheets at 1" = 60' scale.

**Request 2:** Provide copies of all studies and designs that were utilized by APPLICANT in its March 2011 Petition to Amend.

**Calico's Objection to Request 2:** Everything relied upon in preparing the March 2011 Petition to Amend was docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend. Calico will not provide this information separately in its data request responses on September 9, 2011, since to do so would be cumulative and duplicative.

Moreover, BNSF's use of the term "designs" is vague and ambiguous. If BNSF uses "designs" to mean the layout and site plan, they were included in Section 2 of the Petition to Amend.

**BNSF's Response:** Based on Calico's representation that all studies and designs used in preparing the Petition to Amend have been produced and docketed, BNSF has no procedural objection to the response. BNSF notes that Calico has not produced data sufficient to support many unwarranted assumptions in Calico's Deliverables, particularly the Infiltration and Geomorphology reports, as discussed in BNSF's technical comments and in General Objection A, *supra*. Based on Calico's admission that it has not done any other studies or designs, it appears clear that Calico cannot meet the Conditions of Certification established by this Commission, nor can Calico meet any reasonable amended Conditions of Certification that are likely to emerge from this proceeding.

If Calico does have data to back up the conclusions in its Infiltration and Geomorphology reports, it should produce the data. BNSF reserves the right to follow up on Request 2 if it later appears that Calico's representation is inaccurate and all responsive data has not been produced.

**Request 7:** Provide copies of all studies, designs and reports provided by APPLICANT to its contractors and consultants for the CALICO SOLAR PROJECT and/or the PV PROJECT.

**Calico's Objection to Request 7:** Calico objects to this data request as irrelevant to the extent that it asks Calico to provide studies, designs and reports provided in connection with the CALICO SOLAR PROJECT. The CALICO

SOLAR PROJECT, which BNSF has defined as the project approved by the CEC, is not at issue in the current proceedings on the Petition to Amend. Moreover, Calico objects to this request as cumulative, duplicative, and unduly burdensome. Further, as discussed above, BNSF's overbroad definition of APPLICANT includes its consultants and people acting on its behalf. This overbroad definition frustrates any reasonable attempt to respond to this data request. Calico also objects to "contractors and consultants" as being overbroad and narrows its response to contractors and consultants employed by Calico.

If BNSF intended to request copies of all studies, designs, and reports provided by Calico Solar for the Petition to Amend, everything that Calico Solar provided to its contractors and consultants that these contractors and consultants relied upon in preparing the

March 2011 Petition to Amend was docketed in these proceedings on the Petition to Amend. Everything relied upon by Calico's contractors and consultants in preparing subsequent studies, designs and reports related to the March 2011 Petition to Amend has been or will be docketed in these proceedings on the Petition to Amend. Any other studies, designs or reports provided by APPLICANT to Calico's contractors and consultants are irrelevant and not reasonably necessary to make any decision on the notice or application.

**BNSF's Response:** *See* General Objection A, *supra*.

**Request 11:** Provide all wind erosion calculations using Chepil wind erosion equations and modified Chepil wind erosion equations.

**Calico's Objection to Request 11:** Calico performed Chapil Wind Erosion Equations using Wind Erosion Prediction System (WEPS) software. All related quantitative calculations that have been calculated and relied upon to date have been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend. Calico will not provide this information separately in its data request responses, since to do so would be cumulative and duplicative.

**BNSF's Response:** Based on Calico's representation that all wind erosion calculations have been produced and docketed, BNSF has no procedural objection to the response. BNSF reserves the right to follow up on Request 11 if it later appears that Calico's representation is inaccurate and all responsive data has not been produced.

**Request 13:** Provide digital elevation model (DEM) data and 1-foot resolution topographic contour data in digital format for the SITE for both existing and proposed conditions.

**Calico's Objection to Request 13:** Calico objects to this request as unduly burdensome. On September 9, 2011, Calico will provide topographic contour data for existing conditions with 2-foot contour intervals. Otherwise, the information requested in this data request is not readily available to Calico through reasonable means. Calico could create the DEM for the existing conditions, but it would take several days to do so. Creating the DEM for the proposed conditions would be much more difficult, and Calico believes the relevant information in the DEM for the proposed conditions will be available in

the AutoCAD files, which Calico will provide in response to Data Request #1. Calico does not have topographic contour data with 1-foot contour intervals for the existing conditions, but as stated above will provide the topographic contour data with 2-foot contour intervals.

**BNSF's Response:** *See* General Objection A, *supra*. Once again, this response calls into question the foundations of Calico's Geomorphology report. Calico asserts it cannot model the proposed condition until the plans are finished, and Calico further states it has no intention of ever modeling contour data for the proposed conditions, yet Calico has already provided the Commission with a report predicting that runoff and sediment transport from the finished project will be virtually identical to the runoff and sediment transport under existing conditions. Calico could not do the runoff and sediment transport analysis it claims to have done without contour data.

Topographic contour data for the proposed conditions cannot be completed until the Grading and Drainage Plan and final engineering plans are finished. Even then, the topographic contour data for the proposed conditions is not information that Calico would produce in its normal course of business.

**Request 14:** With respect to APPLICANT'S proposed schedule of DELIVERABLES, as set forth in APPLICANT'S letter, dated May 25, 2011, to Craig Hoffman, Project Manager, California Energy Commission, identify which DELIVERABLES that APPLICANT has allotted time to BNSF for review and time to the Commission for comment and approval before proceeding with the subsequent preparation or finalization of other DELIVERABLES.

**Calico's Objection to Request 14:** Calico has provided the schedule for its submission of DELIVERABLES related to the Soil & Water conditions, the glint/glare study and responses to Patrick Jackson Data Request Set 1 (Nos. 1-13). This schedule was most recently updated and docketed with the CEC on August 22, 2011. As set forth in the schedule, Calico has not identified, and has no obligation to identify, any DELIVERABLES as having a separate review period by BNSF. BNSF and any other party may provide comments to the CEC on any of the applicable deliverables, as provided in the Conditions of Certification for the CALICO SOLAR PROJECT.

**BNSF's Response:** Calico's responses to these Requests simply demonstrate Calico's hide-the-ball approach to this proceeding, with the result that BNSF must pursue formal discovery on every potential issue.

**Request 15:** With respect to the studies or reports identified in response to Data Request #14 above, identify how much time APPLICANT has allotted to BNSF to review and comment on each study or report and to the Commission and BNSF to subsequently review and comment on each study or report.

**Calico's Objection to Request 15:** As set forth in Data Request #15, pursuant to the August 22, 2011 schedule, Calico has not provided, and has no obligation to provide, a separate review period for BNSF. BNSF and any other party may provide comments to the CEC on any of the applicable deliverables, as provided in the Conditions of Certification for the CALICO SOLAR PROJECT.



**BNSF's Response:** Calico's responses to these Requests simply demonstrate Calico's hide-the-ball approach to this proceeding, with the result that BNSF must pursue formal discovery on every potential issue.

**Request 16:** Provide all COMMUNICATIONS between the APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section.

**Calico's Objection to Request 16:** Calico objects that BNSF has provided no reason for this data request as required by Section 1716(b), and objects to this data request as vague and ambiguous and unduly burdensome. Calico does not know what BNSF means by "topics covered by the Data Requests set forth in this section." As discussed above, BNSF's overbroad definition of APPLICANT includes its consultants and people acting on its behalf. This overbroad definition convolutes this data request. Similarly, BNSF's overbroad definition of COMMUNICATIONS renders this data request unduly burdensome.

Calico has had communications with the CEC staff that are reflected in documents that have been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend, documents referencing procedural communications, and documents referencing statements made at status conferences or workshops at which BNSF was present. Calico further objects on the grounds that this request seeks information that is either irrelevant or duplicative. All communications between Calico and the CEC staff have been either disclosed in the public docket or relate purely to procedural matters.

Calico has not had any communications with CEC Commissioners regarding the Petition to Amend outside of public hearings and meetings. The CEC Commissioners are required to disclose any ex parte communications that relate to substantive matters, and to Calico's knowledge, the CEC Commissioners have complied fully with all of their regulatory requirements.

Any undisclosed communications relating to procedural matters are irrelevant and not necessary for the CEC to make a decision on the Petition to Amend. Section 1716(b). To the extent this data request is asking for COMMUNICATIONS about "topics" covered by the data requests set forth in this section to which Calico has objected in this letter, Calico objects to this data request for the same reasons.

Calico further objects that BNSF's data request is attempting to thwart the procedures set forth in the Public Records Act for obtaining public records, including but not limited to the procedure that an agency's staff be consulted about the release of agency communications, and the requirement that a Public Records Act applicant pay for duplication costs. Gov't Code § 6253(b).

**BNSF's Response:** *See* General Objection C, *supra*.

**Request 17:** Please disclose all owner(s) of APPLICANT.

**Calico's Objection to Request 17:** BNSF's data requests regarding ownership of the APPLICANT are not relevant, and BNSF has provided no reason for them as required by Section 1716(b). As the Committee noted in its Order, BNSF's explanation in its May 27, 2011 cover letter for its requests regarding "Financial Viability" does not explain how any of the requests relate to

a CEQA analysis, LORS compliance, or findings under the Warren-Alquist Act. Furthermore, these data requests are calculated to be unduly burdensome.

It is unduly burdensome for Calico to provide the owners of its predecessors, its former owners, its former sister company, its agents, attorneys, representatives, consultants and other PERSONS acting on its behalf, as BNSF's definition of APPLICANT would require. Calico further objects to this data request as irrelevant to these proceedings on the Petition to Amend.

**BNSF's Response:** *See* General Objection C, *supra*.

**Request 25:** Provide all COMMUNICATIONS between the APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section.

**Calico's Objection to Request 25:** Calico objects to this data request on the grounds that BNSF has offered no reason for this data request, on the grounds that the sought information is not relevant, and on the grounds set forth in the response to Data Request #16.

**BNSF's Response:** *See* General Objection C, *supra*.

**Request 26:** Provide all contracts or other agreements relating to APPLICANT's purchase of SunCatchers.

**Calico's Objection to Request 26:** Calico objects to this data request as irrelevant to the current proceedings on the Petition to Amend. These documents are proprietary and/or confidential and therefore not reasonably available for production. In addition, the definition of APPLICANT is overbroad and unduly burdensome as applied to this request. BNSF's broad definition of APPLICANT includes Stirling Energy Systems, Inc. (SES). SES builds SunCatchers. Under

BNSF's overbroad definition of APPLICANT, Calico would have to provide all of SES's contracts and other agreements related to the SunCatchers. This information is not relevant to these proceedings on the Petition to Amend and not available to Calico.

**BNSF's Response:** *See* General Objection C, *supra*.

**Request 27:** Provide all documents from Tessera Solar, Stirling Energy Systems, Inc., or any other source of SunCatchers that confirm when SunCatchers will be commercially available in sufficient quantities (i.e., more than 4,000) to support APPLICANT's proposed use of SunCatchers in its Petition to Amend.

**Calico's Objection to Request 27:** Calico objects to this data request for the reasons set forth in #26.

**BNSF's Response:** *See* General Objection C, *supra*.

**Request 28:** Provide all contracts or other agreements relating to APPLICANT's purchase of photovoltaic panels.

**Calico's Objection to Request 28:** Calico objects to this data request as irrelevant to these proceedings on the Petition to Amend. These documents are proprietary and/or confidential and therefore not reasonably available for production. Additionally, BNSF's overbroad definition of APPLICANT would require Calico to provide the contracts and agreements of its former owner, its former sister company, its current owners and others, none of which are available to Calico for production.

**BNSF's Response:** *See* General Objection C, *supra*.

**Request 29:** Provide all contracts or other agreements relating to APPLICANT's purchase of tracks, rails, poles and other infrastructure designed to allow APPLICANT to array photovoltaic panels at variable heights from the ground surface.

**Calico's Objection to Request 29:** Calico's explanation as to how photovoltaic panels will be installed at variable heights from the ground surface were included in the Petition to Amend. There are no contracts or agreements specifically related to purchase of infrastructure designed to allow photovoltaic panels at variable heights. Work to allow photovoltaic panels to be installed at variable heights will be performed in the field during construction. For all other information, Calico objects to this data request for the reasons set forth in #28.

**BNSF's Response:** Based on Calico's representation that there are no infrastructure contracts or related documents, BNSF has no procedural objection to the response. BNSF reserves the right to follow up on Request 29 if it later appears that Calico's representation is inaccurate and all responsive data has not been produced.

**Request 30:** Provide all reports or documents which APPLICANT believes support its position that it can array photovoltaic panels at variable heights from the ground surface, and evaluate the impact on solar facility operations.

**Calico's Objection to Request 30:** Calico objects that this data request is vague. In the Petition to Amend, Calico proposes that "to account for minor ground surface differences, instead of grading, the steel posts would vary in height above the ground surface more than the 5 to 6 feet ... in order to create a level Tracker Block." (Petition to Amend, p. 2-4.) Calico has no written reports

or documents regarding the placement of posts of variable heights in order to create a level Tracker Block. However, based upon conversations with firms experienced in the installation of large scale solar PV arrays, such as Suntech and Array Technologies, Calico understands that “conforming to land contours, without needing to grade the site, allows [a solar project developer] to minimize environmental impact.” (<http://www.arraytechinc.com/duratrackhz-flexibility.php>)

**BNSF’s Response:** *See General Objections A, supra.* Calico claims it has no reports or documents on the pole structures that support the PV arrays. Calico cannot support its conclusion that the Project will have no material impact on infiltration, runoff and sediment transport if Calico has no data on the PV infrastructure. BNSF notes that the attached photograph, taken from the vendor website referenced in Calico’s objection to Request 30, graphically illustrates the construction phase of installing the framework for Calico’s proposed PV arrays.



The photograph shows that the impact of heavy equipment needed to install these poles every few feet across the entire site is far from minimal. This further supports BNSF's General Objection A, particularly as to the superficial treatment and lack of data supporting the conclusions on infiltration, runoff and sediment transport in Calico's recent Deliverables. If Calico has data to support its Deliverables, Calico should be compelled to produce the data. If Calico has no such data, Calico's Deliverables should be rejected.

**Request 31:** Provide all COMMUNICATIONS between the APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section.

**Calico's Objection to Request 31:** Calico objects to this data request on the grounds that BNSF has offered no reason for this data request, on the grounds that the sought information is not relevant, and on the grounds set forth in the response to Data Request #16.

**BNSF's Response:** *See* General Objection C, *supra*.

**Request 32:** Please disclose all public roads and public routes that APPLICANT considered to access the portion of the SITE north of the BNSF railway, including but not limited to those discussed in APPLICANT's Brief Regarding Access to Patrick Jackson's property, filed with the California Energy Commission, dated August 11, 2010.

**Calico's Objection to Request 32:** Calico objects to this data request as irrelevant to these proceedings on the Petition to Amend. The issue of access was addressed in the proceedings in which the original Project was approved. Calico has not proposed any new or alternative access routes across the BNSF tracks in the Petition to Amend.

Calico also objects that the term “access,” as used in this data request, is vague and ambiguous, and indeed is calculated to be misleading to the extent that BNSF suggests that any access is sufficient for the Project. Calico further objects that the terms “considered” and “public roads” are vague and ambiguous. To the extent that BNSF is inquiring about public crossings and BLM open routes that lead from those public crossings to the project site, BNSF is aware that the reason why Calico has not proposed to use public crossings for construction and operation of the Project is because this issue is the subject of Calico’s testimony before the CPUC.

**BNSF’s Response:** *See* General Objections C and D, *supra*.

**Request 33:** Please disclose all public roads and public routes that APPLICANT intends to use to access the portion of the SITE south of the BNSF railway.

**Calico’s Objection to Request 33:** Calico objects to this data request as irrelevant to these proceedings on the Petition to Amend. The issue of access was addressed in the proceedings in which the original Project was approved. Calico has not proposed any new or alternative access routes over public roads south of the BNSF railway in the Petition to Amend.

**BNSF’s Response:** *See* General Objections C and D, *supra*.

**Request 35:** Provide all documents referencing communications with the Federal Bureau of Land Management regarding access to the SITE.

**Calico’s Objection to Request 35:** Calico has no documents in its possession, which are not protected by attorney/client privilege or attorney work product, or otherwise available to BNSF from BLM, that reference



communications with the Federal Bureau of Land Management regarding access to the SITE in connection with the proceedings on the Petition to Amend.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 36:** Provide all documents referencing communications with the CEC regarding access to the SITE.

**Calico's Objection to Request 36:** Other than documents that have been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend, documents referencing procedural communications or coordination for site visits, and documents referencing statements made at status conferences or workshops at which BNSF was present, Calico has no documents in its possession, which are not protected by attorney/client privilege or attorney work product, that reference communications with the CEC regarding access to the SITE in connection with the proceedings on the Petition to Amend.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 37:** Provide all documents referencing communications with the California Public Utilities Commission regarding access to the SITE.

**Calico's Objection to Request 37:** Calico has no documents in its possession referencing communications with the CPUC, which are not protected by attorney/client privilege or attorney work product, regarding access to the SITE in connection with the proceedings on the Petition to Amend, other than those documents available in the pending CPUC proceeding (10-10-015), in

which BNSF is a party. To require Calico to produce those documents here would be duplicative and unduly burdensome.

**BNSF's Response:** See General Objections C and D, *supra*.

**Request 38:** Provide all documents referencing communications with CALTRANS regarding access to the SITE.

**Calico's Objection to Request 38:** Calico has no documents in its possession, which are not protected by attorney/client privilege or attorney work product, that reference communications with CALTRANS regarding access to the SITE in connection with the proceedings on the Petition to Amend.

**BNSF's Response:** See General Objections C and D, *supra*.

**Request 39:** Provide all documents referencing communications with Newberry Springs regarding access to the SITE.

**Calico's Objection to Request 39:** Calico has no documents in its possession, which are not protected by attorney/client privilege or attorney work product, that reference communications with the Newberry Springs Community Service District regarding access to the SITE in connection with the proceedings on the Petition to Amend.

**BNSF's Response:** See General Objections C and D, *supra*.

**Request 40:** Provide all documents referencing communications with Ludlow regarding access to the SITE.

**Calico's Objection to Request 40:** Calico has no documents in its possession, which are not protected by attorney/client privilege or attorney work

product, that reference communications with the City of Ludlow regarding access to the SITE in connection with the proceedings on the Petition to Amend.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 41:** Provide all documents referencing communications with the County of San Bernardino regarding access to the SITE.

**Calico's Objection to Request 41:** Calico has no documents, which are not protected by attorney/client privilege or attorney work product, in its possession that reference communications with the County of San Bernardino regarding access to the SITE in connection with the proceedings on the Petition to Amend.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 42:** Provide all documents referencing any request by APPLICANT to any private person or governmental agency to allow APPLICANT access to the SITE.

**Calico's Objection to Request 42:** Other than requests made to BNSF and documents provided to BNSF in connection with the pending CPUC proceeding (10-10-015), Calico has no documents in its possession referencing any request by Calico to any private person or governmental agency to allow Calico and its representatives to access the SITE in connection with the proceedings on the Petition to Amend.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 43:** Provide all documents with any private person or governmental agency reflecting Applicant's consideration of alternative routes of access to and from the SITE.

**Calico's Objection to Request 43:** Calico objects that this data request is vague. Other than documents already provided to BNSF, Calico has no documents in its possession reflecting Calico's consideration of alternative routes of access to and from the SITE in connection with the proceedings on the Petition to Amend that were sent to or received from any private person or governmental agency.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 44:** Please provide any and all DOCUMENTS and COMMUNICATIONS between APPLICANT and the CEC regarding the PEEVEY LETTER.

**Calico's Objection to Request 44:** Calico objects to this data request because it is irrelevant to these proceedings on the Petition to Amend. The PEEVEY LETTER was sent to the CPUC in connection with a pending CPUC proceeding, Calico Solar, LLC v. BNSF (10-10-015). As is set forth above, BNSF specifically requested discovery on the PEEVEY LETTER and was denied such discovery by the presiding Administrative Law Judge (CPUC Transcript May 19, 2011 at 428: 15-25, 429:7-11, 438:24-439:24).

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 45:** Please provide any and all DOCUMENTS and COMMUNICATIONS between APPLICANT and the CEC regarding CALICO'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks.

**Calico's Objection to Request 45:** Calico objects to this data request on the grounds that it is irrelevant to these proceedings on the Petition to Amend. As set forth in response to Data Request #44, BNSF is attempting to use the CEC's data request in lieu of discovery in the CPUC proceeding, within which such discovery request was denied.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 46:** Please provide any and all DOCUMENTS and COMMUNICATIONS between APPLICANT and Melissa Jones, Executive Director of the CEC, regarding the PEEVEY LETTER.

**Calico's Objection to Request 46:** Calico objects to this data request as duplicative of Data Request #44. When these data requests were filed, Melissa Jones was the Executive Director of the CEC, a position specifically included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #44.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 47:** Please provide any and all DOCUMENTS and COMMUNICATIONS between APPLICANT and Melissa Jones, Executive Director of the CEC, regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks.

**Calico's Objection to Request 47:** Calico objects to this data request as duplicative of Data Request #45. When these data requests were filed, Melissa Jones was the Executive Director of the CEC, a position specifically included in

BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #45.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 48:** Please provide any and all DOCUMENTS and COMMUNICATIONS between APPLICANT and any member of the CEC staff regarding the PEEVEY LETTER.

**Calico's Objection to Request 48:** Calico objects to this data request as duplicative of Data Request #44. "CEC staff" is specifically included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #44.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 49:** Please provide any and all DOCUMENTS and COMMUNICATIONS between APPLICANT and any member of the CEC staff regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks.

**Calico's Objection to Request 49:** Calico objects to this data request as duplicative of Data Request #45. "CEC staff" is specifically included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #45.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 50:** Please provide any and all DOCUMENTS and COMMUNICATIONS between APPLICANT and any member of the CEC Chief Counsel's Office regarding the PEEVEY LETTER.

**Calico's Objection to Request 50:** Calico objects to this data request as duplicative of Data Request #44. "CEC Chief Counsel's Office" consists of the attorneys for the CEC Commissioners, the Hearing Officers and the staff or attorneys for the Hearing Officers, which are included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #44.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 51:** Please provide any and all DOCUMENTS and COMMUNICATIONS between APPLICANT and any member of the CEC Chief Counsel's Office regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks.

**Calico's Objection to Request 51:** . Calico objects to this data request as duplicative of Data Request #45. "CEC Chief Counsel's Office" consists of the attorneys for the CEC Commissioners, the Hearing Officers and the staff or attorneys for the Hearing Officers, which are included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #45.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 52:** Please provide any and all DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT'S counsel at Bingham McCutchen LLC and the CEC regarding the PEEVEY LETTER.

**Calico's Objection to Request 52:** Calico objects to this data request as duplicative of Data Request #44. BNSF requests that Calico provide "any and all

DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT's counsel at Bingham McCutchen LLC [sic]." "Telephone calls" are included in BNSF's definition of "COMMUNICATIONS" so it is unclear what "telephone communications" would not have been included in Data Request #44. Bingham McCutchen LLP, as BNSF identifies, is APPLICANT's counsel and therefore included in BNSF's definition of "APPLICANT." This data request asks for the same information as Data Request #44. Additionally, Calico objects to this data request to the extent that it calls for the work product of Calico's attorney as protected by Section 2018.030 of the California Code of Civil Procedure. Calico also objects to this data request as unduly burdensome to the extent it asks Calico to produce information which is not in the possession of Calico or its representatives. Thus, Calico objects on the same grounds as in Data Request #44.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 53:** Please provide any and all DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT'S counsel at Bingham McCutchen LLC and the CEC regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks.

**Calico's Objection to Request 53:** Calico objects to this data request as duplicative of Data Request #45. As set forth in the objections to Data Request #52, BNSF's definition of "COMMUNICATIONS" and BNSF's definition of "APPLICANT" render this data request identical to Data Request #45.



Additionally, Calico objects to this data request to the extent that it calls for the work product of Calico's attorney as protected by Section 2018.030 of the California Code of Civil Procedure. Calico also objects to this data request as unduly burdensome to the extent it asks Calico to produce information which is not in the possession of Calico or its representatives. Thus, Calico objects on the same grounds as in Data Request #45.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 54:** Please provide any and all DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT'S counsel at Bingham McCutchen LLC and Melissa Jones, Executive Director of the CEC, regarding the PEEVEY LETTER.

**Calico's Objection to Request 54:** Calico objects to this data request as duplicative of Data Requests #44 and 46. As set forth in response to Data Requests #46 and 52, BNSF's definitions of "COMMUNICATIONS," "APPLICANT" and "CEC" render this data request identical to Data Requests #44 and 46. Additionally, Calico objects to this data request to the extent that it calls for the work product of Calico's attorney as protected by Section 2018.030 of the California Code of Civil Procedure. Calico also objects to this data request as unduly burdensome to the extent it asks Calico to produce information which is not in the possession of Calico or its representatives. Thus, Calico objects on the same grounds as in Data Requests #44, 46, and 52.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 55:** Please provide any and all DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT'S counsel at Bingham McCutchen LLC and Melissa Jones, Executive Director of the CEC, regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks.

**Calico's Objection to Request 55:** Calico objects to this data request as duplicative of Data Requests #45 and 47. As set forth in response to Data Requests #47 and 52, BNSF's definitions of "COMMUNICATIONS," "APPLICANT" and "CEC" render this data request identical to Data Requests #45 and 47. Additionally, Calico objects to this data request to the extent that it calls for the work product of Calico's attorney as protected by Section 2018.030 of the California Code of Civil Procedure. Calico also objects to this data request as unduly burdensome to the extent it asks Calico to produce information which is not in the possession of Calico or its representatives. Thus, Calico objects on the same grounds as in Data Requests #45, 47, and 52.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 56:** Please provide any and all DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT'S counsel at Bingham McCutchen LLC and any member of the CEC staff regarding the PEEVEY LETTER.

**Calico's Objection to Request 56:** Calico objects to this data request as duplicative of Data Requests #44 and 48. As set forth in response to Data

Requests #48 and 52, BNSF's definitions of "COMMUNICATIONS," "APPLICANT" and "CEC" render this data request identical to Data Requests #44 and 48. Additionally, Calico objects to this data request to the extent that it calls for the work product of Calico's attorney as protected by Section 2018.030 of the California Code of Civil Procedure. Calico also objects to this data request as unduly burdensome to the extent it asks Calico to produce information which is not in the possession of Calico or its representatives. Thus, Calico objects on the same grounds as in Data Requests #44, 48, and 52.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 57:** Please provide any and all DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT'S counsel at Bingham McCutchen LLC and any member of the CEC staff regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks.

**Calico's Objection to Request 57:** Calico objects to this data request as duplicative of Data Requests #45 and 49. As set forth in response to Data Requests #49 and 52, BNSF's definitions of "COMMUNICATIONS," "APPLICANT" and "CEC" render this data request identical to Data Requests #45 and 49. Additionally, Calico objects to this data request to the extent that it calls for the work product of Calico's attorney as protected by Section 2018.030 of the California Code of Civil Procedure. Calico also objects to this data request as unduly burdensome to the extent it asks Calico to produce information which is

not in the possession of Calico or its representatives. Thus, Calico objects on the same grounds as in Data Requests #45, 49, and 52.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 58:** Please provide any and all DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT'S counsel at Bingham McCutchen LLC and any member of the CEC Chief Counsel's Office regarding the PEEVEY LETTER.

**Calico's Objection to Request 58:** Calico objects to this data request as duplicative of Data Requests #44 and 50. As set forth in response to Data Requests #50 and 52, BNSF's definitions of "COMMUNICATIONS," "APPLICANT" and "CEC" render this data request identical to Data Requests #44 and 50. Additionally, Calico objects to this data request to the extent that it calls for the work product of Calico's attorney as protected by Section 2018.030 of the California Code of Civil Procedure. Calico also objects to this data request as unduly burdensome to the extent it asks Calico to produce information which is not in the possession of Calico or its representatives. Thus, Calico objects on the same grounds as in Data Requests #44, 50, and 52.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 59:** Please provide any and all DOCUMENTS and COMMUNICATIONS regarding any and all telephone communications between APPLICANT'S counsel at Bingham McCutchen LLC and any member of the CEC Chief Counsel's Office regarding APPLICANT'S complaint C1010015 before the California

Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks.

**Calico's Objection to Request 59:** Calico objects to this data request as duplicative of Data Requests #45 and 51. As set forth in response to Data Requests #51 and 52, BNSF's definitions of "COMMUNICATIONS," "APPLICANT" and "CEC" render this data request identical to Data Requests #45 and 51. Additionally, Calico objects to this data request to the extent that it calls for the work product of Calico's attorney as protected by Section 2018.030 of the California Code of Civil Procedure. Calico also objects to this data request as unduly burdensome to the extent it asks Calico to produce information which is not in the possession of Calico or its representatives. Thus, Calico objects on the same grounds as in Data Requests #45, 51, and 52.

**BNSF's Response:** See General Objections C and D, *supra*.

**Request 60:** Please disclose the date, time and identity of all individuals who communicated on APPLICANT'S behalf with the CEC regarding the PEEVEY LETTER, and for each such communication, please disclose the manner and substance of each COMMUNICATION.

**Calico's Objection to Request 60:** Calico objects to this data request as irrelevant to these proceedings on the Petition to Amend. As explained in response to Data Request #44, the PEEVEY LETTER was sent to the CPUC in connection with a pending CPUC proceeding, Calico Solar, LLC v. BNSF (10-10-015). As is set forth in response to Data Request #44, BNSF specifically requested discovery on the PEEVEY LETTER and was denied such discovery by

the presiding Administrative Law Judge (CPUC Transcript May 19, 2011 at 428:15-25, 429:7-11, 438:24-439:24). BNSF is attempting to use the CEC's data request process as a substitute for discovery in the CPUC proceeding.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 61:** Please disclose the date, time and identity of all individuals who communicated on APPLICANT'S behalf with the CEC regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks, and for each such communication, please disclose the manner and substance of each COMMUNICATION.

**Calico's Objection to Request 61:** Calico objects to this data request as irrelevant to these proceedings on the Petition to Amend. As set forth in response to Data Requests #44 and 60, BNSF is attempting to use the CEC's data request process as a substitute for discovery in the CPUC proceeding during which such discovery request was denied.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 62:** Please disclose the date, time and identity of all individuals who communicated on APPLICANT'S behalf with Melissa Jones, Executive Director of the CEC regarding the PEEVEY LETTER, and for each such communication, please disclose the manner and substance of each COMMUNICATION.

**Calico's Objection to Request 62:** Calico objects to this data request as duplicative of Data Request #60. As set forth in the response to Data Request #46, when these data requests were filed, Melissa Jones was the Executive

Director of the CEC, a position specifically included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #60.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 63:** Please disclose the date, time and identity of all individuals who communicated on APPLICANT'S behalf with Melissa Jones, Executive Director of the CEC regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks, and for each such communication, please disclose the manner and substance of each COMMUNICATION.

**Calico's Objection to Request 63:** Calico objects to this data request as duplicative of Data Request #61. As set forth in the response to Data Request #46, when these data requests were filed, Melissa Jones was the Executive Director of the CEC, a position specifically included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #61.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 64:** Please disclose the date, time and identity of all individuals who communicated on APPLICANT'S behalf with any member of the CEC staff regarding the PEEVEY LETTER, and for each such communication, please disclose the manner and substance of each COMMUNICATION.

**Calico's Objection to Request 64:** Calico objects to this data request as duplicative of Data Request #60. As set forth in the response to Data Request #48, "CEC staff" is specifically included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #60.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 65:** Please disclose the date, time and identity of all individuals who communicated on APPLICANT'S behalf with any member of the CEC staff regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks, and for each such communication, please disclose the manner and substance of each COMMUNICATION.

**Calico's Objection to Request 65:** Calico objects to this data request as duplicative of Data Request #61. As set forth in the response to Data Request #48, "CEC staff" is specifically included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #61.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 66:** Please disclose the date, time and identity of all individuals who communicated on APPLICANT'S behalf with the CEC Chief Counsel's Office regarding the PEEVEY LETTER, and for each such communication, please disclose the manner and substance of each COMMUNICATION.

**Calico's Objection to Request 66:** Calico objects to this data request as duplicative of Data Request #60. As set forth in the response to Data Request #50, "CEC Chief Counsel's Office" consists of the attorneys for the CEC Commissioners, the Hearing Officers and the staff or attorneys for the Hearing Officers, which are included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #60.

**BNSF's Response:** *See* General Objections C and D, *supra*.



**Request 67:** Please disclose the date, time and identity of all individuals who communicated on APPLICANT'S behalf with the CEC Chief Counsel's Office regarding APPLICANT'S complaint C1010015 before the California Public Utilities Commission for temporary and permanent access across the BNSF railroad tracks, and for each such communication, please disclose the manner and substance of each COMMUNICATION.

**Calico's Objection to Request 67:** Calico objects to this data request as duplicative of Data Request #61. As set forth in the response to Data Request #50, "CEC Chief Counsel's Office" consists of the attorneys for the CEC Commissioners, the Hearing Officers and the staff or attorneys for the Hearing Officers, which are included in BNSF's definition of CEC. Thus, Calico objects on the same grounds as in Data Request #61.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 68:** Please provide any and all drafts of the PEEVEY LETTER that APPLICANT received, and for each draft, the date that APPLICANT received such draft.

**Calico's Objection to Request 68:** Calico objects to this data request on the grounds that it is irrelevant to these proceedings on the Petition to Amend. As set forth in responses to Data Requests #44-67, BNSF is attempting to use the CEC's data request procedure in lieu of discovery in the CPUC proceeding within which such discovery request was denied. Thus, Calico objects on the same grounds as in Data Requests #44-67.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 69:** Please provide any and all drafts of the PEEVEY LETTER that APPLICANT sent to the CEC, Melissa Jones, any member of the CEC staff or the CEC

Chief Counsel's Office, and for each draft, the date that APPLICANT sent such draft and the identity of the PERSON to whom the draft was sent.

**Calico's Objection to Request 69:** Calico objects to this data request on the grounds that it is irrelevant to these proceedings on the Petition to Amend. As set forth in response to Data Requests #44-68, BNSF is attempting to use the CEC's data request procedure in lieu of discovery in the CPUC proceeding within which such discovery request was denied. Thus, Calico objects on the same grounds as in Data Requests #44-68.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 70:** Provide all COMMUNICATIONS between the APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section.

**Calico's Objection to Request 70:** Calico objects to this data request on the grounds that BNSF has offered no reason for this data request, on the grounds that the sought information is not relevant, and on the grounds set forth in the response to Data Request #16.

**BNSF's Response:** *See* General Objections C and D, *supra*.

**Request 73:** Provide analyses demonstrating how pre- and post-construction site conditions will affect the Time of Concentration and hence the unit hydrograph shape and duration.

**Calico's Objection to Request 73:** This information will be included in the Infiltration Report that Calico anticipates it will submit to the CEC on September 2, 2011, per Applicant's Updated Schedule, which was docketed on

August 22, 2011. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection A, *supra*, and BNSF's Preliminary Comments.

**Request 74:** Provide hydrologic model input and output files predicting peak flows and hydrograph duration/volume for a 100yr-6 and 24 hour design storm.

**Calico's Objection to Request 74:** This information will be included in the Infiltration Report that Calico anticipates it will submit to the CEC on September 2, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection A, *supra*, and BNSF's Preliminary Comments.

**Request 75:** Provide sediment transport analysis, including all modeling input/output files.

**Calico's Objection to Request 75:** This information will be included in the Geomorphic and Hydraulic Analysis and Geomorphic and Biologic Analysis that Calico anticipates it will submit to the CEC on September 9, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. Therefore, Calico will not provide this information in its response to BNSF's First Set of Data Requests to Calico Solar on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection A, *supra*, and BNSF's Preliminary Comments.

**Request 76:** Please confirm that the sediment transport analysis used for the Drainage, Erosion and Sediment Control Plan will be based on the hydrologic modeling results provided in response to Data Request #74 above. If not, please provide the hydrologic modeling data used for the sediment transport analysis.

**Calico's Objection to Request 76:** None.

**BNSF's Response:** See General Objection A, *supra*. Calico has not provided the input and output files.

**Request 77:** Provide all COMMUNICATIONS between the APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section.

**Calico's Objection to Request 77:** Calico objects to this data request on the grounds that BNSF has offered no reason for this data request, on the grounds that the sought information is not relevant, and on the grounds set forth in the response to Data Request #16.

**BNSF's Response:** See General Objection C, *supra*.

**Request 85:** Provide flood routing calculations for design storms through existing and proposed drainage channel systems to include model input/output files, including flood routing of design storms through BNSF right-of-way and structures.

**Calico's Objection to Request 85:** This information will be included in the Infiltration Report that Calico anticipates it will submit to the CEC on September 2, 2011, per Applicant's Updated Schedule, which was docketed on

August 22, 2011. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection A, *supra*, and BNSF's Preliminary Comments.

**Request 86:** Please confirm that the base hydrographs for the geomorphic and hydraulic analysis will be derived from modeling in support of the Drainage, Erosion and Sediment Control Plan to be performed pursuant to Soil&Water 1. If not, please provide all base hydrographs used for the geomorphic and hydraulic analysis and the report under which they will be prepared.

**Calico's Objection to Request 86:** None.

**BNSF's Response:** See General Objection A, *supra*. Calico has not provided the base hydrographs.

**Request 87:** All existing biological surveys of the SITE.

**Calico's Objection to Request 87:** All biological surveys that have been completed and relied upon to date have been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend. Calico will not provide this information separately in its data request responses, since to do so would be cumulative and duplicative.

**BNSF's Response:** Based on Calico's representation that there are no additional biological surveys, BNSF has no procedural objection to the response. BNSF reserves the right to follow up on Request 87 if it later appears that Calico's representation is inaccurate and all responsive data has not been produced.

**Request 88:** Provide the Drainage, Erosion and Sediment Control Plan data used to determine whether detention basins are needed.

**Calico's Objection to Request 88:** Information related to the DESCP for the approved project is irrelevant to these proceedings on the Petition to Amend. Calico anticipates submitting the DESCP in these proceedings on the Petition to Amend on September 30, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. Calico will not provide this information separately in its data request responses, since to do so would be cumulative and duplicative.

**BNSF's Response:** *See* General Objections A and E, *supra*.

**Request 91:** Provide all boring information, including the number of borings and the locations of the borings.

**Calico's Objection to Request 91:** BNSF's data request is vague as to what information it is requesting. To the extent BNSF is requesting boring information collected this year in connection with producing an Updated Geotechnical Report in these proceedings on the Petition to Amend as contemplated in the materials docketed on May 26, 2011, this information was included in the Updated Geotechnical Report that Calico submitted to the CEC on August 23, 2011. Calico will not provide this information separately in its data request responses, since to do so would be cumulative and duplicative. To the extent that BNSF is requesting other information, Calico requests clarification on this data request.

**BNSF's Response:** *See* BNSF's Preliminary Comments.

**Request 92:** Provide all analysis of subsurface soil, rock and water conditions.

**Calico's Objection to Request 92:** All of Calico's analyses of subsurface soil, rock and water conditions have been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend, including the Updated Geotechnical Report that Calico submitted to the CEC on August 23, 2011. Calico will not provide this information separately in its data request responses, since to do so would be cumulative and duplicative.

**BNSF's Response:** *See* BNSF's Preliminary Comments.

**Request 93:** Provide all COMMUNICATIONS between the APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section.

**Calico's Objection to Request 93:** Calico objects to this data request on the grounds that BNSF has offered no reason for this data request, on the grounds that the sought information is not relevant, and on the grounds set forth in the response to Data Request #16.

**BNSF's Response:** *See* General Objection C, *supra*.

**Request 97:** Provide soil survey and land cover maps.

**Calico's Objection to Request 97:** This information has been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend. Calico will not provide this information separately in its data request responses, since to do so would be cumulative and duplicative.

**BNSF's Response:** *See* General Objection A, *supra*, and BNSF's Preliminary Comments. Based on Calico's representation that there are no additional soil survey and land cover maps, BNSF has no procedural objection to

the response. BNSF reserves the right to follow up on Request 97 if it later appears that Calico's representation is inaccurate and all responsive data has not been produced.

**Request 98:** Provide conceptual site plan with specific level of detail needed to prepare the Infiltration Report.

**Calico's Objection to Request 98:** None.

**BNSF's Response:** See General Objections A, B and E, *supra*. The site plan itself is facially implausible, given the rough terrain underlying the straight rows of PV arrays shown on the plan. See BNSF's Preliminary Comments on Geomorphology Report at 11. Calico admitted in response to Request 30 that it has done no studies to determine how the frameworks for the arrays will be constructed. Moreover, the level of detail in the site plan is insufficient to allow any meaningful modeling of the proposed condition with respect to infiltration, runoff and sediment transport. See Objection to Calico's Response to Request 13, *supra*. If Calico has more detailed data on which its modeling was based, Calico should be compelled to produce it. If Calico has no such data, Calico's Deliverables should be rejected.

**Request 99:** Provide rainfall temporal histograms for 6-hour and 24 hour – 100 year design storms.

**Calico's Objection to Request 99:** This information will be included in the Infiltration Report that Calico anticipates it will submit to the CEC on September 2, 2011, per Applicant's Updated Schedule, which was docketed on



August 22, 2011. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection A, *supra*, and BNSF's Preliminary Comments.

**Request 100:** Provide mapping of the spatial distribution and estimates of the area of directly-connected (roadways and buildings) and indirectly-connected (PV panels) impervious surfaces.

**Calico's Objection to Request 100:** Calico objects to this request as unduly burdensome. Calico does not have this information compiled in the form requested. However, all the information required to create the requested maps and estimates have been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend.

**BNSF's Response:** See General Objection A, *supra*, and BNSF's Preliminary Comments.

**Request 101:** Provide pre-grading topographic maps and a detailed site grading plan.

**Calico's Objection to Request 101:** Calico will not be able to provide this information on September 9, 2011. This information will be included in the Grading and Drainage Plan that Calico anticipates it will submit to the CEC on September 30, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011 and in the 30% Construction Plan Set to be submitted to the CEC as required under SOIL&WATER-8.

**BNSF's Response:** See General Objections A and E, *supra*.

**Request 102:** Provide watershed and sub-watershed drainage area map(s) showing watershed boundaries within the project and to points of ingress/egress on BNSF right-of-way and sub-watershed boundaries in the project area.

**Calico's Objection to Request 102:** This information has been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend. This information will also be included in the Infiltration Report that Calico anticipates it will submit to the CEC on September 2, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection A, *supra*, and BNSF's Preliminary Comments.

**Request 103:** Provide infiltration/runoff calculations for each land use/soil type based on pre-existing/construction/post-construction conditions (aggregated on a watershed/sub-watershed basis) including sensitivity analysis of aggregate runoff from each design storm.

**Calico's Objection to Request 103:** This information will be included in the Infiltration Report that Calico anticipates it will submit to the CEC on September 2, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection A, *supra*, and BNSF's Technical Comments.

**Request 104:** Provide all COMMUNICATIONS between the APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section.

**Calico's Objection to Request 104:** Calico objects to this data request on the grounds that BNSF has offered no reason for this data request, on the grounds that the sought information is not relevant, and on the grounds set forth in the response to Data Request #16.

**BNSF's Response:** *See* General Objection C, *supra*.

**Requests 105-117:** Data Requests relating to Traffic and Transportation and Visual Resources/Glare and Glint. BNSF has attended two site meetings with our experts in the field of human perception and glare/glint to assist the development of a scope of work for evaluation of potential adverse glare/glint impacts, including health impacts, to BNSF's critical rail operations and employees. We understand that Calico's consultant Power Engineering has the capability to understand our requested analysis. However, we cannot verify if the analysis is being conducted in accordance with our recommendations until it has been submitted. Thus, as noted previously, BNSF reserves the right to petition the Committee and the Presiding Member when the Applicant's Glare/Glint study becomes available, for further information pursuant to the below Data Requests should additional information be necessary to meaningfully review and comment on the Glare/Glint Study.

**Request 105: Scope of Work:** Provide a description of all work to be performed in relation to the GLARE/GLINT STUDY. This data should include a detailed methodology as well as a description of the final work product.

**Calico's Objection to Request 105:** The scope of work for the glint/glare study that Calico commissioned POWER Engineers to conduct was discussed at the June 28, 2011 CEC workshop. The glint/glare study shall be performed consistent with this scope of work. The methodology will be included in the glint/glare study that Calico anticipates it will submit to the CEC on November 1, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. This submission date is contingent on BNSF providing the information requested in the letter dated July 22, 2011 from POWER to BNSF and docketed in these proceedings. Therefore, Calico will not provide additional information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection E, *supra*.

**Request 106:** **Timeline:** Provide a detailed timeline for when the GLARE/GLINT STUDY will begin and end, as well as timing for progress milestones, which should include: completion of background research/literature search, completion of modeling topography, completion of modeling BNSF right-of-way, completion of modeling placement of solar technology, beginning of model implementation, delivery of results, and delivery of reports.

**Calico's Objection to Request 106:** The tasks, work plan and time estimates for the glint/glare study were included in POWER's scope of work, which was discussed at the June 28, 2011 CEC workshop. Calico anticipates it will submit the glint/glare study to the CEC on November 1, 2011. Calico will

not provide this information separately, since to do so would be cumulative and duplicative.

**BNSF's Response:** *See* General Objection E, *supra*.

**Request 107: Bibliography.** Provide a bibliography of initial background research/literature search, which will be supplemented on an ongoing basis and copies of research as requested by BNSF.

**Calico's Objection to Request 107:** The bibliography will be included in the glint/glare study that Calico anticipates it will submit to the CEC on November 1, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. This submission date is contingent on BNSF providing the information requested in the letter dated July 22, 2011 from POWER to BNSF and docketed in these proceedings. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** *See* General Objection E, *supra*.

**Request 108: Copy of the plans that are being modeled:** Provide a copy of all plans that are being modeled, including all topographical maps (as the terrain will be at time of GLARE/GLINT STUDY completion) in electronic format (e.g., DEM), plan drawings for the GLARE/GLINT STUDY , detailed maps indicating where the solar technology will be placed, rail maps indicating the trajectory of the BNSF right-of-way as well as placement of signals and any other documents that are to be consulted in the development of the virtual project site layout.

**Calico's Objection to Request 108:** Other than the information to be provided in connection with Data Requests #1 and 13, which will be provided on September 9, 2011, and information to be provided by BNSF in response to the letter request dated July 22, 2011 from POWER to BNSF, this information has been docketed in the proceedings in which the original Project was approved or in these proceedings on the Petition to Amend. Calico will not provide this information separately in its data request responses, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection E, *supra*.

**Request 109:** Provide the date(s) when the designs being modeled were finalized and any updates.

**Calico's Objection to Request 109:** BNSF's data request is vague as to what information it is requesting. All relevant information on the model will be included in the glint/glare study that Calico anticipates it will submit to the CEC on November 1, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. As noted above, this submission date is contingent on BNSF providing the information requested in the letter dated July 22, 2011 from POWER to BNSF and docketed in these proceedings. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection E, *supra*.

**Request 110:** List of technological specifications being used for the model.  
Provide the following technological specifications being used for the model:

a. Train data: details of the speed of the trains, the frequency of the trains passing through the SITE, geometry of the trains, locations for virtual cameras in the model, settings for the virtual camera (including focal length)

b. Train signal data: describe, in detail, the precise locations for each signal in and near the SITE, the functions of each signal, the brightness/luminance of each signal, the color of each signal

c. Solar technology: describe, in detail, the types of technology being used, number of units of each type of technology, detailed design specifications for each technology being modeled, precise locations where the technology will be placed, reflectance properties of each technology, sun-tracking algorithms, stowage procedures, and mathematical equations used to simulate each of the above properties

**Calico's Objection to Request 110:** Relevant technical specifications for the model will be included in the glint/glare study that Calico anticipates it will submit to the CEC on November 1, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. As noted above, this submission date is contingent on BNSF providing the information requested in the letter dated July 22, 2011 from POWER to BNSF and docketed in these proceedings. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** See General Objection E, *supra*.

**Request 111:** Provide all sources for the technical specifications, assumptions, measurements and equations described in Data Request #110 including, but not limited to, product brochures, maps, technical or scientific references, photographs, direct measurements, notes or information from other existing solar sites, notes or information from other experts and exemplar products.

**Calico's Objection to Request 111:** Sources for relevant technical specifications for the model will be included in the glint/glare study that Calico anticipates it will submit to the CEC on November 1, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. As noted above, this submission date is contingent on BNSF providing the information requested in the letter dated July 22, 2011 from POWER to BNSF and docketed in these proceedings. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative.

**BNSF's Response:** *See* General Objection E, *supra*.

**Request 112:** Provide a detailed description of the plan for implementing the model. This description must include the following:

- a. The total number of simulations to be conducted;
- b. The times of day and days of the year that are to be simulated;
- c. The location(s) of the virtual camera(s) within the simulation;
- d. Define all issues being assessed including, but not limited to, flash blindness, adverse effects on the retina, the effects on an observer



of multiple solar collectors, distraction, discomfort and visual obstructions;

e. Criteria that will be used to determine whether there are any adverse effects on human health, perception or comfort due to the presence of the solar technology;

f. Detailed description of methodology used to determine the number of simulations and times of day/year simulations are run, taking into account all variables, including the following:

- i. Variability in sun position;
- ii. Variability in positioning of solar technology;
- iii. Variability in viewer position.

g. A statistical or otherwise scientifically valid explanation of how the output of the GLARE/GLINT STUDY provides sufficient data to generalize to every day and time of year at every location along the BSNF right-of-way.

**Calico's Objection to Request 112:** None.

**BNSF's Response:** See General Objection E, *supra*.

**Request 113:** Provide weekly status reports during the GLARE/GLINT STUDY, including:

- a. Status updates on the state of the model
- b. Initial findings
- c. Problems that are causing delays in the GLARE/GLINT STUDY timeline

- d. Plan for progress over the next week
- e. Description of any changes to the model
- f. Any deviations, new information, or new data sources that have arisen subsequent to the initial responses to Data Requests #105-111 above
- g. Updated bibliography referenced in Data Request #107 above, and copies of any background research/literature as requested by BNSF.

**Calico's Objection to Request 113:** None.

**BNSF's Response:** *See* General Objection E, *supra*.

**Request 114:** Provide electronic copies of the model, once it is built.

- a. File types to include will be those from 3D Studio Max, Maya or similar modeling programs;
- b. Include all animations and textures that have been incorporated into the model;
- c. All render settings;
- d. Provide all rendered animation/movie files;
- e. Any other hardware or software requirements that were necessary to generate and render the model, including, but not limited to, installed and uninstalled software, computer performance specifications, configuration files, script files, and necessary hardware-component removal or addition.

**Calico's Objection to Request 114:** Calico objects to responding to this data request on the grounds that it would require production of proprietary information belonging to POWER, its consultant.

**BNSF's Response:** *See* General Objection E, *supra*.

**Request 115:** Provide all quantitative data leading to conclusions, including:

- a. Spreadsheets, computer code, handwritten calculations detailing inputs to a geometric analysis
- b. Output of geometric analysis, which must include locations and times sampled, observed glare/glint intensities, and any conclusions based on the data.

**Calico's Objection to Request 115:** Calico objects to this data request as vague and ambiguous and unduly burdensome. To the extent BNSF is requesting quantitative data leading to conclusions in the glint/glare study, this information will be included in the glint/glare study that Calico anticipates it will submit to the CEC on November 1, 2011, per Applicant's Updated Schedule, which was docketed on August 22, 2011. This submission date is contingent on BNSF July 22, 2011 from POWER to BNSF and docketed in these proceedings. Therefore, Calico will not provide this information separately on September 9, 2011, since to do so would be cumulative and duplicative. To the extent that BNSF is requesting other information, Calico requests clarification of this data request.

**BNSF's Response:** *See* General Objection E, *supra*.

**Request 117:** Provide all COMMUNICATIONS between the APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section.

**Calico's Objection to Request 117:** Calico objects to this data request on the grounds that BNSF has offered no reason for this data request, on the grounds that the sought information is not relevant, and on the grounds set forth in the response to Data Request #16.

**BNSF's Response:** See General Objection E, *supra*.

**IV. Explanation of Necessity of Denied Data Requests**

The Committee did not authorize BNSF to serve the following Data Requests. In some cases, BNSF was invited to explain the need for the requested information, while in other cases no explanation was requested. As noted previously, BNSF in good faith awaited the Applicant's submittal of the hydrology deliverables to better understand which of these Data Requests sought information which remained outstanding at that time. BNSF hereby reiterates to the Committee its request to serve the following Data Requests, based on the explanations provided below, and petitions the Presiding Member to issue an order permitting BNSF to serve them and directing Calico to respond.

**Request No. 3:** Provide all DOCUMENTS reflecting any formal or informal requests for proposal to perform any of the DELIVERABLES required in connection with the CALICO SOLAR PROJECT or PV PROJECT and all responses thereto by any consultants or contractors interviewed by APPLICANT.

**BNSF's Explanation:** See General Objection B, *supra*. The requests for proposal for performance of the Soil & Water deliverables are necessary to understand the nature of any hydrologic analyses that were performed in

connection with the Project, and the nature of any analyses that may not have been performed.

**Request 4:** Provide copies of all contracts with any consultants retained by APPLICANT to perform any of the DELIVERABLES.

**BNSF's Explanation:** See General Objection B, *supra*. The contracts for performance of the Soil & Water deliverables are necessary to understand the nature of any analyses that were performed in connection with the Project, and the nature of any analyses that may not have been performed.

**Request 5:** Provide all DOCUMENTS reflecting any formal or informal scope of work issued by APPLICANT in connection with the CALICO SOLAR PROJECT or the PV PROJECT.

**BNSF's Explanation:** See General Objection B, *supra*. The scopes of work for the Soil & Water deliverables are necessary to understand the nature of any analyses that were performed in connection with the Project, and the nature of any analyses that may not have been performed.

**Request 6:** Provide all DELIVERABLES under Soil&Water 1-15, Civ-1, the proposed Petition to Amend, and the GLARE/GLINT STUDY consistent with the requirements of Soil&Water-14. All deliverables submitted by APPLICANT and all engineering plans, reports, documents, maps and surveys relied upon, shall be made available to BNSF and the CPM in electronic format. All surveys and plans shall be provided in AutoCAD and all reports shall be provided in editable format to the commenting parties. Provide any and all source files or input and output files in digital format for the computer models used to perform the analyses required in all deliverables

submitted by the APPLICANT pursuant to the Conditions of Certification and the GLARE/GLINT STUDY.

**BNSF's Explanation:** Although some of the referenced studies, reports and plans have been provided, the underlying data and input/output files have not been provided electronically as required by the Soil & Water Conditions. In the absence of this information, in the requested format, BNSF's consultants are unable to fully comprehend the analysis set forth in the Soil & Water deliverables.

**Request 8:** Provide the Initial Drainage Report prepared for APPLICANT for the CALICO SOLAR PROJECT by Stantec Consulting, dated October 7, 2008, including:

- a. All HEC-RAS files in digital format discussed in the Stantec October 7, 2008 Initial Drainage Report.
- b. All FlowMaster files in digital format discussed in the Stantec October 7, 2008 Initial Drainage Report.
- c. All pier scour calculations in digital format discussed in the Stantec October 7, 2008 Initial Drainage Report, including associated volumes of sediment associated with these computations.
- d. All AES hydrologic analysis files in digital format discussed in the Stantec October 7, 2008 Initial Drainage Report.

**BNSF's Explanation:** See General Objection B, *supra*. The Soil & Water deliverables are required to be based upon the referenced Stantec Report, among other reports. Although BNSF has been provided the report itself, input and output files for the Stantec Report have not been provided, and are necessary to fully evaluate and comment on the Soil & Water deliverables.

**Request 9:** Provide the Drainage Erosion and Sediment Control Plan prepared for APPLICANT for the CALICO SOLAR PROJECT by Huitt Zollars, dated August 25, 2009, including all computer model input/output files in digital format used to develop the runoff calculations presented in the Huitt-Zollars August 25, 2009 Draft Drainage Erosion & Sediment Control Plan.

**BNSF's Explanation:** See General Objection B, *supra*. The Soil & Water deliverables are required to be based upon the referenced Huitt-Zollars DESCP, among other documents. Neither the Huitt-Zollars DESCP itself, nor the related input and output files, have been provided, all of which are necessary to fully evaluate and comment on the Soil & Water deliverables.

**Request 10:** Provide the Existing Conditions Hydrologic and Hydraulics Study prepared for APPLICANT for the CALICO SOLAR PROJECT by Huitt Zollars dated April 23, 2009 ("the April 2009 Huitt Zollars Study"), and with respect to the April 2009 Huitt Zollars Study:

- e. All input and output files in digital format used by Huitt-Zollars for their hydrologic analysis of the Site (e.g., AES input files, watershed delineations in AutoCAD format, etc.);
- f. High-resolution copies of all historical aerial photographs used by Huitt-Zollars and/or West Consultants in their analyses (e.g., USDA aerial photos obtained by West Consultants and referenced in their April 2009 Geomorphic Analysis report) discussed in the April 2009 Huitt Zollars Study;

- g. All sediment yield computations performed by West Consultants and appended to the April 2009 Huitt Zollars Study;
- h. All scour calculations for the piers/foundations including the volume of sediment scour for the SunCatchers discussed in the April 2009 Huitt Zollars Study;
- i. FEMA FAN input and output files in digital format from the hydraulic analyses discussed in the April 2009 Huitt Zollars Study;
- j. HEC-RAS input and output files in digital format from the hydraulic analyses discussed in the April 2009 Huitt Zollars Study;
- k. Any debris basin or detention basin design considerations and computer files in digital format prepared by Huitt-Zollars and discussed in the list of conclusions, alternatives, and recommendations presented in the April 2009 Huitt Zollars Study;
- l. All AutoCAD files in digital format associated with the Huitt-Zollars mapping of inundated areas under various storms over the project site presented in the April 2009 Huitt Zollars Study.

**BNSF's Explanation:** *See* General Objection B, *supra*. The Soil & Water deliverables are required to be based upon the referenced Huitt-Zollars Study, among other studies. Although BNSF has been provided the Huitt-Zollars Study itself, input and output files for the Huitt-Zollars Study have not been provided, and are necessary to fully evaluate and comment on the Soil & Water deliverables.

**Requests 18-23:** A global explanations for these requests, relating to Applicant's new ownership and financial capacity to construct, operate, maintain



and decommission the PV Project, are provided below the restatement of those Requests.

**Request 18:** Provide all contracts for the sale and purchase of APPLICANT, including any provisions for the assumption of APPLICANT's liabilities.

**Request 19:** Provide an organizational chart showing the ownership of APPLICANT, the ownership of APPLICANT's owner(s), and the ownership of the owner of APPLICANT'S owner, including the member(s) of each of those entities.

**Request 20:** Provide all financial statements and reports of APPLICANT, APPLICANT's owner and the owner of APPLICANT's owner, sufficient to demonstrate APPLICANT'S financial viability and ability to construct, operate, maintain and decommission the PV PROJECT, throughout the life of the PV PROJECT.

**Request 21:** Provide all financial statements and reports of APPLICANT sufficient to demonstrate APPLICANT'S financial viability and ability to secure a bond sufficient to pay for decommissioning of the PV PROJECT, if necessary.

**Request 22:** Provide Attachment B to Form 299 that APPLICANT provided to the Federal Bureau of Land Management regarding APPLICANT's financial condition.

**Request 23:** If APPLICANT intends to rely on a guaranty or financial resources of anyone other than the immediate owner of APPLICANT, please

disclose the identity of any intended guarantor or source of financial support and the amount of their guaranty or financial resources.

**BNSF's Explanation for Requests 18-23:** Requests 18-23 asked for the Calico purchase and sale documents and other information dealing with Calico's financial viability and responsibility. The Commission denied these Requests as irrelevant to the amendment docket. Considerable additional information has come to light since then, including the recent news that Stirling Energy Systems has declared bankruptcy. At this point there are substantial reasons to believe that the thermal portion of the Calico project is not technically or financially viable. This is plainly relevant to the amendment docket because the Commission's continued jurisdiction over the Project is seriously in doubt.

**Request 24:** Provide copies of all contracts, DOCUMENTS and COMMUNICATIONS with any consultants retained by APPLICANT to perform any of the DELIVERABLES.

**BNSF's Explanation:** See General Objection B, *supra*. The requested contracts, documents and communications are necessary to understand the nature of any analyses that were performed in connection with the Project, and the nature of any analyses that may not have been performed.

**Request 34:** Please provide all documents and information relating to APPLICANT'S prior blading and grading of roads to drill its monitoring well, including but not limited to the identity of the contractor, when the work was commenced, when the work was completed, what was the cost, and which roads or routes were bladed and graded.

**BNSF's Explanation:** The requested information is relevant to the evaluation of alternative access to the Project site which would eliminate the need for access on or over the BNSF Right-of-Way. The Committee has ordered Staff to evaluate such access alternatives, and in its original Application for Certification, Calico included a proposal for such access, which was eliminated from the Project description at an unknown time. No explanation was provided for the change, nor were potential environmental impacts evaluated, nor mitigation proposed.

**Request 71:** Identify existing reports, data analyses, models, studies which will demonstrate the pre-existing and post-construction storm water flows as required by Soil&Water 1.

**BNSF's Explanation:** See General Objection B, *supra*. The requested reports, data analyses, models and studies are important inputs to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore are necessary to fully review and comment on those deliverables.

**BNSF's Explanation:** Information remains critical to our evaluation...

**Request 72:** Provide the infiltration/runoff calculations from the Infiltration Report in Data Request #103 below.

**BNSF's Explanation:** The requested infiltration/runoff calculations are important inputs to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore are necessary to fully review and comment on those deliverables.

**Request 78:** Provide the geotechnical report required by Soil&Water-8.

**BNSF's Explanation:** The requested report is an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore is necessary to fully review and comment on those deliverables.

**Request 79:** Provide the hydrologic and sediment transport analyses/modeling used for the scour analysis and pole foundation stability report.

**BNSF's Explanation:** The requested hydrologic and sediment transport analyses/modeling is an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore is necessary to fully review and comment on those deliverables. As discussed in BNSF's comments on the Applicant's Geomorphic Analysis, the PV Project includes the placement of 1.9 million poles to support the PV modules over 4,500 acres of desert geomorphology. The analysis of the scour that will occur at each of these 1.9 million locations is necessary to fully understand the sediment impacts from the overall Project. Moreover, the entire site will be disturbed during the grading, drilling and other activities that will take place during construction, resulting in destruction of the desert crust. These impacts will result in significant increase in sediment load, which impacts must be analyzed.

**Request 80:** Provide the scour calculation/analyses required by Soil&Water-3.

**BNSF's Explanation:** The requested scour calculation/analyses are an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore are necessary to fully review and comment on those deliverables.

**Request 82:** Identify existing reports, data analyses, models, studies which will demonstrate the pre-existing and post-construction storm water flows as required by Soil&Water 8(1)(a)-(p).

**BNSF's Explanation:** *See* General Objection B, *supra*. To the extent any such reports exist, they are an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore are necessary to fully review and comment on those deliverables.

**Request 83:** Please identify all reports, data analyses, models, studies and calculations ("Reports") that demonstrate APPLICANT'S compliance with the requirements of Soil&Water 8(1)(a)-(p).

**BNSF's Explanation:** To the extent any such reports exist, they are an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore are necessary to fully review and comment on those deliverables.

**Request 84:** Provide all Reports identified in response to Data Request #83.

**BNSF's Explanation:** To the extent any such reports exist, they are an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore are necessary to fully review and comment on those deliverables.

**Request 89:** Provide the geotechnical report, including site specific investigations of individual detention basin sites, used to determine whether detention basins are needed.

**BNSF's Explanation:** *See* General Objection B, *supra*.

**Request 90:** Provide the hydrologic modeling and flood routing analysis used to determine whether detention basins are needed.

**BNSF's Explanation:** *See* General Objection B, *supra*. The requested hydrologic modeling and flood routing analysis are an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore are necessary to fully review and comment on those deliverables.

**Request 94:** Please confirm that the hydrologic study required by Soil&Water 12 will draw, among other studies, on hydrologic analyses and modeling performed in the Drainage, Erosion and Sediment Control Plan (S&W-1) and Geomorphic and Hydraulic Analysis (S&W-8).

**BNSF's Explanation:** The requested information is an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore is necessary to fully review and comment on those deliverables.

**Request 95:** Please confirm that the hydrologic modeling performed in the Drainage, Erosion and Sediment Control Plan (S&W-1) and Geomorphic and Hydraulic Analysis (S&W-8) will include flood routing of design storms across the BNSF right-of-way and prediction of flow rates/velocities through individual bridge crossings based on pre- and post-construction conditions.

**BNSF's Explanation:** The requested information is an important input to the analysis that is required to be the subject of the Soil & Water deliverables, and therefore is necessary to fully review and comment on those deliverables.

**Conclusion**

Based on the foregoing, BNSF hereby requests that the Committee order Calico to supply all information herein requested. In the absence of this information, BNSF is unable to fully comprehend Calico's proposed Project, to fully evaluate the studies, reports and plans which Calico is required to submit pursuant to the Conditions of Certification, and to meaningfully comment on the potential adverse impacts to the BNSF Right-of-Way which may result from construction and operation of the Project.

Dated: September 29, 2011

/s/

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**FOR THE CALICO SOLAR PROJECT  
AMENDMENT**

**Docket No. 08-AFC-13C  
PROOF OF SERVICE  
(Revised 8/1/2011)**

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