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California Energy Commission

**DOCKETED**  
**09-AFC-7C**

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

**Subject: PALEN SOLAR HOLDINGS, LLC'S STATUS REPORT 1**  
**PALEN SOLAR ELECTRIC GENERATING SYSTEM**  
**DOCKET NO. (09-AFC-7C)**

Enclosed for filing with the California Energy Commission is the electronic version of **PALEN SOLAR HOLDINGS, LLC'S STATUS REPORT 1**, for the Palen Solar Electric Generating System (09-AFC-7C).

Sincerely,

Marie Fleming

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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

**DOCKET NO. 09-AFC-7C**

Petition For Amendment for the PALEN  
SOLAR ELECTRIC GENERATING  
SYSTEM

**PALEN SOLAR HOLDING, LLC's  
STATUS REPORT 1**

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In accordance with the Committee Scheduling Order dated March 6, 2013, Palen Solar Holdings, LLC (PSH) has prepared this Status Report 1 to inform the Committee and to provide recommendations to the Committee concerning the processing of the Petition For Amendment for the Palen Solar Electric Generating System (PSEGS).

First, PSH thanks the Committee for adopting a scheduling order to enable a Decision in October 2013 so that PSEGS can begin desert tortoise clearance surveys during the Fall 2013 desert tortoise survey window. As discussed at the Site Visit and Informational Hearing, the Fall 2013 desert tortoise survey window is critical for PSEGS to begin construction in time to meet a June 2016 commercial operation date (necessary to qualify for the federal Investment Tax Credit).

At the time of filing of the Petition For Amendment, PSH was owned by BrightSource Energy and Caithness Energy. BrightSource Energy acquired all of Caithness Energy's interest in PSH in January 2013. In March 2013 Abengoa Solar and Brightsource Energy became partners in PSH. Therefore, PSH is now jointly-owned by BrightSource Energy and Abengoa Solar.

The following summarizes the status of the Commission process, the status of the federal permitting process, and upcoming permitting events. PSH's recommended issue resolution strategy is also discussed.

**COMMISSION PROCESS**

**Data Requests and Responses**

Staff issued Data Request Set 1 on March 1, 2013 and PSH docketed its Data Responses on March 25, 2013, one week before the April 1 due date. PSH docketed Supplemental information for Data Request 5, analysis of potential indirect biological effects, on March 29, 2013. Additionally, since the time of the Site Visit and Informational Hearing, PSH has docketed Air Quality Supplement 2 on March 21, 2013 and a Preliminary Stormwater Pollution Prevention Plan/Drainage Erosion and Sediment Control Plan (SWPPP/DESCP) on March 26, 2013. Further, PSH will file the Application for a Determination of Compliance with the South Coast Air Quality Management District on March 29, 2013.

### **Issue Resolution Workshops**

Commission Staff was unable to schedule a workshop in March as anticipated due to several of the Staff team-members participation in the Hidden Hills Solar Electric System (HHSEGS) evidentiary hearings. However, Staff did invite PSH to participate in a HHSEGS workshop to discuss PSH's proposed avian conditions. PSH described the basis and reasoning behind its conditions and received some feedback from Staff, although Staff admitted that they had not yet had time to fully digest the conditions since they were preparing for the HHSEGS evidentiary hearings.

A date for the first workshop has still not been set, although PSH is aware that Staff may be targeting April 16 or 17, 2013. Staff has committed to delivering Data Request Set 2 as soon as possible so that the upcoming workshop can be productive by discussing our Data Response Set 1 as well as the new questions in Data Request Set 2. PSH is anxious to resolve issues in the upcoming workshop, including receiving meaningful feedback on the conditions proposed for modification and the new Avian conditions in PSH's Petition For Amendment and Supplement No. 1.

### **Additional Information Needs**

Staff's Data Request Set 1 requests additional biological surveys of the two PSEGS components that are outside the footprint of the Approved Project, although within previously survey areas. These two components include the 1,125 foot westerly shift of the last portion of the project gen tie line and the new natural gas pipeline. These surveys will be conducted in April with results provided in time for Staff to incorporate the results in its Preliminary Staff Assessment to be published in May.

Additionally, as part of the preconstruction baseline surveys as outlined in PSH's Proposed Condition of Certification BIO-C and recent guidance from the resource agencies, avian and bat surveys have begun. The purpose of these surveys is to provide a baseline to inform the monitoring and adaptive management components of the Bird and Bat Conservation Strategy (BBCS) which is a central tool in PSH's proposed mitigation package for potential collision and solar flux impacts.

In addition to the avian surveys described above, PSH has conducted winter surveys and will be conducting spring surveys from Golden Eagles on April 6, 7 and 8, 2013.

We understand from Staff that it will be requesting additional cultural survey information in its Data Request Set 2 to address the potential indirect effects of the PSEGS towers.

Additionally, we understand that the Staff and BLM have met with tribal representatives on March 22 2013 to discuss potential culturally sensitive areas from where the project components may be seen. Based on this feedback, PSH is preparing a map of proposed locations for additional visual simulations to augment the nine visual simulations previously docketed. PSH is seeking approval from BLM of the locations and, once approval is received, field and simulation work will be performed and submitted in April 2013 for Staff's use in it developing its Preliminary Staff Assessment.

Lastly, Staff indicated in its Issue Identification Report in February that it would be requesting a glint and glare study but PSH has not yet received guidance on the scope and objectives of such a study.

## **BLM PERMITTING PROCESS**

### **NEPA Process**

The BLM hosted a kick-off meeting on March 26, 2013 with the cooperating federal agencies and PSH. Commission Staff attended by telephone. BLM will be preparing a Supplemental EIS (SEIS) to evaluate the technology change. While BLM has not adopted an official schedule, the BLM has stated that an October 2013 Record of Decision (ROD) is possible and urged the agencies and PSH to work cooperatively to achieve this objective. To that end, bi-weekly calls have been arranged to facilitate clear and effective communication and ensure that the federal agencies have what they need to provide timely input to BLM's NEPA analysis. PSH is confident that it can provide the necessary information to support an October 2013 ROD.

At this time the cooperating agencies are BLM, United States Fish and Wildlife Service (USFWS) and the National Park Service (NPS).

### **Biological Opinion**

As the Commission is aware, the USFWS issued a Biological Opinion (BO) for take authorization for the desert tortoise in 2011 (one desert tortoise) for the Approved Project. USFWS and PSH agree that the purpose of the BO will be to address the desert tortoise – and not to address general avian and Golden Eagle impacts. USFWS has agreed to amend the BO and that the scope of such amendment will address the new components not already covered by the existing BO (gen-tie line extension and new natural gas pipeline) in the same manner as was done for the Genesis Solar Energy Project (amendment to modify gas pipeline and gen-tie line to connect to new location of Colorado River Substation) and the Blythe Solar Power Project (amendment to re-route gen-tie line to connect to new location of Colorado River Substation). Based on the USFWS timing of the Genesis and Blythe amendments, PSH is confident that the amended BO can be obtained in a time sufficient to support BLM's issuance of an October 2013 ROD.

Even though the areas for the gen-tie line and new natural gas pipeline were previously surveyed (see PSH's Data Response 1), USFWS has requested additional desert tortoise surveys for the new components to update the previous surveys. PSH will be conducting these surveys as part of its April 2013 surveying effort. A Biological Assessment

addressing the new components will include the results of the desert tortoise surveys and will be submitted to BLM in April.

### **National Historic Preservation Act Section 106 Consultation**

The Approved Project executed a Programmatic Agreement (PA) in 2011. BLM will be amending the PA as part of its continued Section 106 compliance obligations. BLM archaeologists requested geoarchaeological information from PSH in 2012. A geoarchaeological investigation was performed and the report was delivered to BLM and docketed with the Commission as part of Supplement No. 1. BLM has recently requested additional field sampling to validate the prior surveys. While the prior surveys were sufficient to allow 4.5 million cubic yards of grading for the Approved Project (current grading estimates for the Modified Project are 200,000 cubic yards) in the spirit of cooperation, PSH has agreed to perform the additional field sampling and will be submitting a workplan to BLM for approval of the additional survey work. BLM has also requested surveys outside the original Area of Potential Effect (APE) be performed to evaluate indirect effects of the towers which by their height and potential visibility have increased the APE. PSH will be conducting these surveys in April. PSH is confident that its cooperation in performing the additional surveys on the site will not delay BLM's issuance of a ROD in October 2013. PSH believes that this work will be sufficient to satisfy the cultural resources needs identified by Staff in its Issue Identification Report although PSH has not received specific data requests relating to Cultural Resources at this time.

### **Federal Aviation Administration No Hazard Analysis**

PSH filed Form 7460-1 No Hazard Analysis with the Federal Aviation Administration (FAA) on March 13, 2013. PSH expects no objection based on the opinion of its aviation expert and the letter received from the Department of Defense approving the site for 750 foot towers (contained in Appendix 6 of the Petition For Amendment).

## **OTHER AGENCIES**

### **Riverside County**

As the Commission is aware from PSH's presentation at the Site Visit and Informational Hearing, PSH has been attempting to engage Riverside County in productive discussions regarding potential impacts to the County facilities and services. Riverside County and PSH will be meeting on April 1, 2013. PSH hopes to reach an agreement with Riverside County addressing potential impacts, especially those related to the provision of fire services. The purpose of such an agreement would be to avoid the lengthy and unproductive need for evidentiary adjudication that took place in the Rice Solar Energy Project and other projects under the CEC's jurisdiction.

### **USFWS**

As a result of the BLM kick-off meeting on March 26, 2013, BLM will be leading a meeting between USFWS and PSH in the next week or so to further discuss the avian issues

including the role of an Eagle Conservation Plan and the mitigation proposed by PSH. As the Commission is aware from the testimony in the HHSEGS proceeding, there is an unfinanceable conflict between state and federal law on the protection of Golden Eagles. USFWS and PSH had very productive discussions about the conflict at the BLM kick-off meeting and PSH believes there is a path for resolution.

### **PSH ISSUE RESOLUTION STRATEGY**

PSH remains committed to do its part to resolve issues in a timely manner in order to support the issuance of a Commission Decision in time to support desert tortoise clearance activities in Fall 2013. To that end, PSH has included all proposed modifications to the Commission Conditions of Certification (including new conditions for potential avian impacts) in its Petition and Supplements. PSH encourages Staff and other parties to evaluate the potential effects of the Modified Project with that mitigation in place; evaluating the PSEGS as if there were no mitigation proposed is an unnecessary and unproductive approach.

PSH anxiously anticipates a workshop where it can discuss each and every one of its proposals to reach agreement on proposed modifications to the conditions. PSH has agreed to supplement information for Staff on a timely basis and urges Staff to notice a workshop soon and be prepared to discuss conditions to resolve issues. PSH firmly believes that such a productive workshop will help Staff publish its Preliminary Staff Analysis on May 22, 2013 and will ultimately narrow the scope of Committee-required adjudication. PSH's objective would be to reduce the time required for evidentiary hearings to enable a Decision by October 2013 or earlier.

At this time PSH believes that it can meet all obligations outlined in the Committee Scheduling Order.

Dated: March 29, 2013

Respectfully Submitted,



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Scott A. Galati  
Counsel to Palen Solar Holdings, LLC



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**AMENDMENT**

**FOR THE PALEN SOLAR ELECTRIC  
GENERATING SYSTEM**

**Docket No. 09-AFC-7C  
PROOF OF SERVICE  
(Revised 3/26/13)**

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**DECLARATION OF SERVICE**

I, Marie Fleming, declare that on March 29, 2013, I served and filed copies of the attached, **PALEN SOLAR HOLDINGS, LLC'S STATUS REPORT 1** dated March 29, 2013. This document is accompanied by the most recent Proof of Service, which I copied from the web page for this project at:  
<http://www.energy.ca.gov/sitingcases/palen/compliance/>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service) and to the Commission's Docket Unit, as appropriate, in the following manner:


**(Check one)**

**For service to all other parties and filing with the Docket Unit at the Energy Commission:**

- I e-mailed the document to all e-mail addresses on the Service List above and personally delivered it or deposited it in the US mail with first class postage to those parties noted above as "hard copy required"; **OR**
- Instead of e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the Service List for whom a mailing address is given.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: March 29, 2013

  
\_\_\_\_\_  
Marie Fleming