

DOCKET

09-AFC-7

DATE MAY 25 2010

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May 25, 2010

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

Subject: **PALEN SOLAR I, LLC'S OBJECTIONS AND NOTICE OF INABILITY TO
RESPOND TO CURE'S DATA REQUESTS
DOCKET NO. (09-AFC-7)**

Enclosed for filing with the California Energy Commission is the original of **PALEN
SOLAR I, LLC'S OBJECTIONS AND NOTICE OF INABILITY TO RESPOND TO
CURE'S DATA REQUESTS**, for the Palen Solar Power Project (09-AFC-7).

Sincerely,



Marie Mills

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the PALEN
SOLAR POWER PROJECT

DOCKET NO. 09-AFC-7

**PALEN SOLAR I, LLC'S OBJECTIONS
AND NOTICE OF INABILITY TO
RESPOND TO CURE'S DATA REQUESTS**

Palen Solar I, LLC (PSI) hereby files the following Objections and Notice of Inability to Respond to California Unions for Reliable Energy's (CURE) May 14, 2010 Data Requests.

OBJECTIONS

Unduly Burdensome

First, PSI objects to CURE's May 14, 2010 Data Requests on the grounds that they impose an undue burden on PSI during the time in which PSI and its consultants are actively preparing for evidentiary hearings, working with the wildlife agencies to finalize various compliance plans, and working diligently to finalize engineering to meet the objectives of qualifying for stimulus funding under the American Recovery and Reinvestment Act (ARRA). The Commission's Regulations provide that the Presiding Member of the siting committee "may set reasonable time limits on the use of, or compliance with, information requests in order to avoid interference with any party's

preparation for hearings or imposing other undue burdens on a party.”¹ CURE’s eleventh hour filing of its Data Requests (requiring PSI to answer 195 questions) imposes an undue burden on PSI because:

- PSI is currently pooling its resources to prepare and file its testimony due on June 23, 2010, review the Revised Staff Assessment (RSA) due to be published on June 18, 2010, and further prepare for evidentiary hearings in which some subject areas may require adjudication;
- PSI is also working to provide information to the federal permitting agencies pursuant to the work performed at the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS) Workshops.

Irrelevant

Second, PSI also objects to the Data Requests on the grounds that the information is not relevant nor is it reasonably necessary to make a decision on the application. Staff and the agencies have requested additional information from PSI since the AFC was deemed data adequate on November 18, 2010 which has already been supplied and served on CURE that responds to many of the Data Requests. Staff had sufficient detailed information to write the SA/DEIS and any additional information it needed to develop a Revised Staff Assessment has been provided to all parties. CURE has had numerous opportunities to comment on this process in a timely manner. It chose to remain silent. PSI contends that CURE does not need ANY of the information requested in its Data Requests to meaningfully participate in the proceedings at this time.

Untimely And Intended To Cause Delay

On December 23, 2009 the Committee granted CURE’s Petition To Intervene. In that order the Committee specifically stated,

The Committee will not permit unnecessary, irrelevant or unreasonably burdensome data requests and may, on the motion of a party or on its

¹ Title 20 CCR § 1716 (i).

own motion, exercise its authority pursuant to sections 1203 and 1204 (Cal. Code Regs., tit. 20, §§ 1203, 1204) to enforce the provisions of section 1716, setting forth procedures for obtaining information (Cal. Code Regs., tit. 20, § 1716), in order to eliminate undue delay in the completion of these proceedings.

PSI believes that CURE deliberately waited until the 11th hour to file data requests for the sole purpose of causing delay. As in other proceedings PSI expects CURE to engage in further activities, such as requesting moving of the evidentiary hearings, to accommodate these last minute “data gathering” strategies. PSI strongly urges the Committee to see through these tactics and grant PSI’s objections on its own motion rather than waiting for CURE to file a Motion To Compel in an attempt to further delay the proceedings. If CURE truly required information to meaningfully participate in these proceedings, it would have made such requests earlier in the proceedings as the scope of review was unfolding and as numerous workshops (all attended by CURE) discussed the range of issues CURE now “raises.” Then, both Staff and PSI would have had the time and resources to accommodate answering even duplicative or extraneous requests without objection. PSI reminds the Committee that PSI has not objected to a single Data Request in this proceeding until now.

CURE provides the following reasons for its Data Requests at this time.

CURE requests this information (1) to assess issues not addressed in the Applicant’s responses to California Energy Commission staff’s data requests, the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS), Applicant’s initial comments regarding the SA/DEIS (and attachments thereto) and (2) to follow-up on issues raised at the workshops.

While not controlling it is persuasive to examine the Committee’s recent ruling on a Motion to Compel filed by CURE in the San Joaquin Solar I & II Proceedings, the Committee reasoned:

Section 1716 of our Regulations (Cal. Code Regs., tit. 20 § 1716) contains the basic framework for information exchanges (i.e., Data Requests and

Responses) for licensing proceedings. The procedure is straightforward. A party may request from an applicant "... information reasonably available to the applicant which is relevant to the ... application proceedings or reasonably necessary to make any decision on the ... application." [§ 1716, subd. (b).] An applicant may then answer or object to the request. If an applicant objects, the requesting party may then forego the request, seek alternative means of obtaining the desired information, or petition for an Order directing an applicant to provide the information. The regulations do not, however, require that the information provided satisfy all expectations of the requesting party. In considering the Petitions, ***we have disregarded the rhetorical elements of the pertinent filings, instead focusing on evaluating whether the information sought appears to be reasonably available, relevant, or necessary. (emphasis added)***

When considering whether any of these justifications are valid and whether the information is reasonably available, relevant or necessary, we request the Committee to consider the following:

- PSI filed Data Responses to CEC Data Requests on January 20, 2010
- PSI filed Supplemental Responses on January 22, 2010
- PSI filed Responses to Queries Raised at Data Response Workshops and Supplements to Prior Data Responses on February 4, 2010
- PSI filed Responses to CEC Staff email queries and Workshop Queries on February 8 through 12, 2010
- PSI filed a Draft Biological Assessment on March 8, 2010
- PSI filed additional Responses to Workshop Queries on March 11 and 12, 2010
- Staff filed SA/DEIS on March 18, 2010
- PSI filed its Comments on the SA/DEIS on May 4 and 12, 2010

First, CURE had plenty of opportunity to file Data Requests seeking clarification on PSI's Responses to CEC Data Requests and Workshop Queries. In fact, CURE attended Data Response Workshops which were held for the purpose of discussing and providing the exact clarification that CURE alleges it now seeks. When evaluating whether information is reasonably available to PSI, the Committee should also inquire whether the information is reasonably available to CURE or could have been obtained at a time that did not interfere with PSI's ability to prepare for evidentiary hearings.

Second, CURE claims it is necessary to request information **from PSI** to address issues not addressed by the SA/DEIS. PSI believes these questions should be directed to Staff through comments on the SA/DEIS. CURE is free to comment on the SA/DEIS, file testimony and provide cross-examination of Staff at evidentiary hearing to develop or undermine the underlying assumptions and data used to support Staff positions. In fact, CURE attended and participated in the SA/DEIS Workshops where it had ample opportunity to question Staff and PSI experts.

Notwithstanding these objections and without a waiver thereof, PSI could nevertheless provide responses to the following Requests without causing undue burden and will do so as a showing of good faith:

2, 8², 9², 10², 14², 15², 17, 19², 24², 25, 27, 28, 29, 31, 32, 33, 34², 37, 38, 39, 40, 41, 42, 48, 49, 50, 55², 56, 58, 67², 68², 70, 73, 74², 75, 77², 88², 81, 82, 83, 84, 87, 88, 89, 90, 91², 92, 93², 94, 99², 103, 104, 111, 112, 113, 114, 115, 116, 117, 125, 126, 133², 139, 140, 141, 144, 145, 147, 151, 158, 159, 161, 162, 164, 165, 167, 168, 169, 170, 171, 178, 179, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, and 195

All other Data Requests are objected to on the grounds outlined above. We urge the Committee on its own motion to issue an Order granting these objections thereby avoiding a lengthy Motion to Compel proceeding.

Respectfully Submitted,

Dated: May 25, 2010

/original signed/

Scott A. Galati
Counsel to Palen Solar I, LLC

² The answers to these data requests will be either answered completely or partially in the Biological Resources Technical Report revisions to be filed by May 28, 2010.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR POWER
PLANT PROJECT**

Docket No. 09-AFC-7

**PROOF OF SERVICE
(Revised 4/19/10)**

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DECLARATION OF SERVICE

I, Marie Mills, declare that on May 25, 2010, I served and filed copies of the attached **PALEN SOLAR I, LLC'S OBJECTIONS AND NOTICE OF INABILITY TO RESPOND TO CURE'S DATA REQUESTS**, dated **May 25, 2010**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[\[http://www.energy.ca.gov/sitingcases/solar_millennium_palen\]](http://www.energy.ca.gov/sitingcases/solar_millennium_palen)

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

(Check all that Apply)

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

by personal delivery;

by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

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FOR FILING WITH THE ENERGY COMMISSION:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-7

1516 Ninth Street, MS-4

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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



Marie Mills