

DOCKET**09-AFC-7**DATE SEP 22 2010RECD. SEP 22 2010

From: Raoul Renaud
To: Alan Solomon; 'Alfredo Figueroa'; 'Alice Harron'; 'Arrie Bachrach'; ...
Date: 9/22/2010 9:32 AM
Subject: Palen solar 09-AFC-7: Request Re: Revised Scheduling Order

To All Parties, Palen Solar:

The Committee has considered the request of Center for Biological Diversity as set forth below. In order to accommodate CBD's Staff Retreat during the week of October 11, 2010, the Committee will revise the schedule as follows:

October 13 and 14, 2010: Evidentiary Hearings on all topics EXCEPT Air Quality, Alternatives, Biological Resources, and Soil/Water Resources.

October 27, 2010: Evidentiary Hearing on Air Quality, Alternatives, Biological Resources, and Soil/Water Resources.

ALL OTHER DATES, INCLUDING THOSE FOR SUBMISSION OF TESTIMONY AND EXHIBITS, WILL REMAIN UNCHANGED FROM THE SCHEDULE ISSUED SEPTEMBER 16, 2010.

This email is provided as a courtesy to give the parties advance notice of the Committee decision. A formal Revised Notice of Evidentiary Hearing and a Revised Committee Schedule will be issued shortly.

On Behalf of the Committee,

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>>> Lisa Belenky <lbelenky@biologicaldiversity.org> 9/20/2010 11:07 AM >>>

All,

The Committee issued the revised schedule on Thursday, September 16, 2010.

The Center was dismayed to find that the hearings are scheduled during a time when both of the Center staff working on this matter have a conflict-our all-staff retreat. It appears that the hearing advisor and the Committee misunderstood the Center's motion to continue the hearing dates. As the motion stated: "Unfortunately, Intervenor Center for Biological Diversity has an unavoidable conflict on October 12, 2010, due to a previously scheduled all-staff retreat beginning that date." And the Center requested that the hearings be continued for 2 weeks.

There was no indication during the Conference on September 9th, that the Committee was considering evidentiary hearings on all issues for October 13 or 14 or that the Committee did not understand that the Center staff would

not be available for hearings the remainder of that week. Had there been any confusion on this issue by the Committee, the Center would have liked an opportunity to clarify that the conflict extended from October 12th through the 15th.

Indeed, it appeared to the Center that the Committee and the other parties correctly understood that the conflict began on October 12 and lasted the remainder of the week. For example, none of the other parties suggested hearings later that same week and neither the hearing advisor nor the Committee suggested dates later that week during the Conference on September 9, 2010. The Staff and the Applicant both suggested schedules that would have accommodated the Center's conflict for the remainder of that week. The Staff proposed the dates of October 11 and 12 for bifurcated hearings with those dates being used for issues on which Center would not be sponsoring testimony. See Staff's Issues Statement filed September 3, 2010 at 1, 2. On that basis, the Center, in our Issues Statement filed September 8, 2010, clarified that we did not oppose the bifurcated schedule so long as air quality issues and testimony deadlines were consolidated in the second set of hearing dates.

As the schedule now stands, the Center staff will not be able to participate in the evidentiary hearings in person and, at most, may be able to participate by phone for a very limited time.

Although the Center understands it is unlikely that the schedule will be revised again, the Center nonetheless asks the Committee reconsider the motion to continue the hearings for two weeks. This continuance would allow the Center to participate fully in the hearings and provide a reasonable time for all parties to prepare for hearings.

The Center intends to participate in the workshop on September 27, and to submit testimony.

If the Committee declines to revise the schedule again, the Center asks that the Committee agree to schedule specific times for the witnesses sponsored by the Center to appear by phone to present testimony and be cross examined.

Thank you for your consideration of this request.

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