

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

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09-AFC-8	
DATE	<u>DEC 31 2009</u>
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In the Matter of:

The Application for Certification for the
Genesis Solar Energy Project

Docket No. 09-AFC-8

**CALIFORNIA UNIONS FOR RELIABLE ENERGY OPPOSITION TO
GENESIS SOLAR, LLC MOTION FOR SCOPING ORDER, HEARING
AND ORDER SCHEDULING TIME FOR FILING OF BRIEFS**

December 31, 2009

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I. INTRODUCTION

Pursuant to section 1716.5 of Title 20 of the California Code of Regulations, California Unions for Reliable Energy (“CURE”) files this opposition to Genesis Solar, LLC’s (“Genesis”) motion for a three-week briefing schedule, hearing and scoping order that addresses three “legal questions” posed by Genesis in the motion.¹ Genesis’ motion should be denied because its request for more specific articulation of Commission policies is improper and overbroad; its request that the Committee apply facts and law regarding groundwater pumping is premature; and its request that the Committee define legal standards under the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act (“NEPA”) is unnecessary. For these reasons, Genesis’ motion should be denied.

II. DISCUSSION

CURE urges the Committee not to take any action at this point which precludes funding under the American Reinvestment and Recovery Act (“ARRA”). However, Genesis’ motion for a three-week briefing schedule, hearing and scoping order on three “legal questions” should be denied at this time. Instead, the Committee should direct the Staff to continue to expeditiously gather necessary facts and perform its analysis in accordance with the schedule adopted by the Committee.

¹ Mot. at 1.

First, Genesis seeks an order that articulates “with specificity the Commission’s Policy on use of water for power plant cooling purposes.”² However, it would be inappropriate for the *Committee* to articulate (with any further specificity than already published) broad legal policies of the *California Energy Commission*. The appropriate proceeding to further define Commission policies would be the Integrated Energy Policy Report (“IEPR”) proceeding.³ In fact, the policy question presented by Genesis would likely be briefed by a wide variety of stakeholders and federal, state and local agencies and require an entire IEPR proceeding to resolve. Therefore, Genesis’ request to brief the issue with limited parties in a particular proceeding within the next three weeks and to obtain a scoping order further refining the Commission’s policy is improper and overbroad.

Instead, it would be appropriate for the Committee to determine how the Commission’s policies apply in this particular case. That determination is highly fact dependent and is one of the main functions of the data request, staff assessment and evidentiary hearing process. Therefore, the Committee should direct Staff to proceed with gathering facts required to determine how the Commission’s policies apply in this proceeding.

² *Id.*

³ The Commission approved the most recent IEPR on December 16, 2009.

Genesis next requests that the Committee “[a]rticulate with specificity the legal affect of the US Bureau of Reclamation’s Accounting Surface Methodology on groundwater pumping in the Chuckwalla Valley Groundwater Basin.”⁴ However, Genesis’ request is premature. Again, at this stage in the proceeding, the parties are collecting data to evaluate the existing baseline, the project’s impacts and compliance with LORS. The Committee should not pre-determine any legal affects until it is clear what the underlying facts are. Instead, the Committee should direct Staff to proceed with gathering facts in order to ultimately provide a recommendation regarding impacts to water resources and compliance with LORS.

Finally, Genesis seeks an order that “defines the legal standard for including future projects in the cumulative impact analysis under [CEQA] and [NEPA]” and for an order that articulates whether the Commission has a policy of conserving water for use by projects that are not yet identified. Again, it would be inappropriate for the Committee to articulate with any further specificity broad legal policies of the California Energy Commission, or to adopt any particular policy for this case before the relevant facts have been gathered. Moreover, all the parties are represented by legal counsel and have the sophistication to determine legal standards for including future projects in the cumulative impact analysis under CEQA and NEPA.

⁴ Mot. at 1.

III. CONCLUSION

For the foregoing reasons, Genesis' motion should be denied.

Dated: December 31, 2009

Respectfully submitted,

/s/
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Declaration of Service

I Bonnie Heeley declare that on December 31, 2009, I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY OPPOSITION TO GENESIS SOLAR, LLC MOTION FOR SCOPING ORDER, HEARING AND ORDER SCHEDULING TIME FOR FILING OF BRIEFS** dated December 31, 2009. The original document, filed with the Docket Office, 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/genesis_solar.

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission’s Docket Office via email and U.S. mail.

I declare under penalty of perjury that the foregoing is true and correct.
 Executed at South San Francisco, CA on December 31, 2009.

_____/s/_____
 Bonnie Heeley

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