

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

DOCKET	
09-AFC-8	
DATE	JUN 15 2010
RECD.	JUN 16 2010

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE GENESIS SOLAR ENERGY
PROJECT

DOCKET NO. 09-AFC-8

THE CENTER FOR BIOLOGICAL DIVERSITY
REQUEST FOR CONTINUANCE OF PRE-HEARING SCHEDULE

June 15, 2010

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The Center for Biological Diversity seeks relief from the extremely accelerated pre-hearing schedule for this matter and requests a continuance of the schedule in this matter including the deadline for all opening testimony, rebuttal testimony and the evidentiary hearings now scheduled to begin on July 12, 2010. This request is made in light of the new information which shows that the currently scheduled hearings will not be able to include all disputed issues and therefore there will need to be additional evidentiary hearings scheduled in this matter.

Under the current pre-hearing schedule Intervenors' Opening testimony and Applicant's Revised Opening testimony *on all issues* is due on June 18, 2010, and all parties' rebuttal testimony is due *on all issues* on June 25, 2010.

However, the Staff Assessment for this project remains incomplete and the current schedule appears to be unduly rushed. In support of the request for a continuance the Center provides the following new information:

- The Revised SA was filed after 3 pm on Friday June 11, 2010 and consists of over 1300 pages of text and figures;
- The Revised SA did not track the changes from the SA in the text¹ (although the Staff has in the past tracked changes in revised documents) and, furthermore, the Revised SA did not include either a detailed description of the changes or a summary of the changes between the SA and the Revised SA;
- The Revised SA contains significant changes from the SA without any explanation including, *for example*, changing the water use for the proposed project from 1,644 AFY (SA/DEIS at C.9-5), to 1,605 AFY (Revised SA at C.9-7);
- The Revised SA did not provide any biological resources information regarding the proposed second access route to the proposed project site;
- The Revised SA did not provide any updated information on cultural resources although Staff has stated that it intends to revise that section as well but no Cultural Resources section is included in the Revised SA (Revised SA at A-10, C.3-1) and the Revised SA stated that "The Cultural Resources Section will be included in the Supplemental Staff Assessment" but provided no date for the issuance of a Supplemental Staff Assessment; and
- The Revised SA states that additional augmentation will be provided to the section regarding Transmission Systems Engineering ("TSE"), by July 18,

¹ On June 14, 2010, at approximately 6 pm Staff Counsel provided documents tracking changes to the parties via email for two sections of the Revised SA– Biological Resources and Soil and Water.

2010, and that the Air Quality and Socioeconomics sections also require additional augmentation (Revised SA at A-10).

- The Revised SA states that staff has no information on the habitat types that would be permanently or temporarily impacted from the “gen-tie” line from the BETP line to the Colorado River substation, although staff infers it will impact sensitive dune habitat. Therefore, Staff stated that was unable to revise the summary of impacts, or specify mitigation for impacts to dunes or state waters regarding the gen-tie line (Revised SA at C.2-69), and it appears that the additional information that Staff intends to provide to augment the Revised SA on the TSE issues will also need to include additional information on impacts to biological resources from the gen-tie line. In addition, there is no information in the Revised SA or elsewhere regarding the biological resource impacts or other impacts from the proposed substation construction which is necessary for this project;²
- The Revised SA states that although helicopter surveys were done for golden eagle nesting sites in the spring of 2010, the results of those surveys are not available (Revised SA at C.2-42); and
- The Revised SA states that the 2010 survey data for rare plants is “preliminary” (Revised SA at C.2-27, C.2-29, C.2-32-33), and therefore may not present the final survey information for important sensitive plant species that maybe impacted by the proposed project.

In light of the fact that the Staff Assessment remains incomplete in many areas including but not limited to the issues noted above, it is clear that the current schedule requiring opening testimony on all subject areas by June 18, 2010, will not result in an

² Although there is no explanation in the Revised SA, the CEC appears to be planning to include the environmental review regarding the substation only in the Blythe project review. The Revised SA for the Blythe Project CEC-700-2010-004 REV1, DOCKET NUMBER 09-AFC-6 dated June 4, 2010, includes the following statement:

Transmission System Engineering – The California Public Utilities Commission staff have asked the Energy Commission to include a permitting-level analysis of the proposed Colorado River substation expansion that is under their permitting authority. Consultants are currently preparing this report and it will be included as part of the Supplemental Staff Assessment.

pp. 12-13 (Executive Summary); *see also* pp. A-14 (“Transmission System Engineering – The California Public Utilities Commission staff have asked the energy commission staff to include a permitting-level analysis of the proposed Colorado River substation that is under their permitting authority. Consultants are currently preparing this report, and it will be included as part of the Supplemental Staff Assessment.”).

earlier decision on the proposed project by the Committee. The Committee cannot complete the evidentiary hearings on this matter before the Staff Assessment is complete and the parties are provided an opportunity to review the completed Staff Assessment and provide testimony regarding any disputed factual issues. As such, the accelerated schedule is unnecessary and unduly burdensome to the parties.

Therefore, the Center requests the prehearing schedule be continued in this matter until the Staff assessment is complete. Because many of the disputed issues in the environmental review are connected, the Center believes that it would be most efficient if all evidentiary hearings were continued until the Staff Assessment is complete and the parties are able to provide testimony on all issues at the same time.

However, in the interests of compromise and in order to accommodate the perceived need for an expedited hearing schedule, the Center suggests that the Committee limit the evidentiary hearings to issues for which the Staff has completed its assessment in the Revised Staff Assessment. The areas that remain incomplete in the Staff's Revised SA *include, but are not limited to*, TSE, biological resources, cultural resources, and air quality.

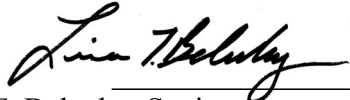
For the issues that are complete, the Center suggests the following schedule for multiple hearing dates as follows:

Staff files [partial] Revised SA	Friday, June 11, 2010
All parties file Prehearing Conference Statements For partial Evidentiary Hearings starting July 12	Friday, June 25, 2010
Intervenors file Opening Testimony, Applicant files Revised Opening on Issues Staff completed in the [partial] Revised SA	Friday, June 25, 2010
Prehearing Conference	Thursday, July 1, 2010
All parties file rebuttal testimony on Issues Staff completed in the [partial] Revised SA	Friday, July 2, 2010
Evidentiary Hearing Begin on Issues include in [partial] Revised SA	Monday, July 12, 2010
Staff files Cultural Resources section of Revised SA	To Be Determined
Intervenors file Opening Testimony, Applicant files Revised Opening on	

Cultural Resources section of Revised SA	To Be Determined
All parties file rebuttal testimony on Cultural Resources section of Revised SA	To Be Determined
Staff files Supplemental or Revised SA regarding TSE, Air Quality, Socioeconomics, Biological Resources (including second access route)	To Be Determined
Intervenors file Opening Testimony, Applicant files Revised Opening on Supplemental or Revised SA regarding TSE, Air Quality, Socioeconomics, Biological Resources	To Be Determined
All parties file rebuttal testimony on Supplemental or Revised SA regarding TSE, Air Quality, Socioeconomics, Biological Resources	To Be Determined
Evidentiary Hearing on Cultural Resources, TSE, Air Quality, Socioeconomics, and any changes to SA regarding Biological Resources	To Be Determined
Issuance of Presiding Member's Proposed Decision (PMPD);	To Be Determined
Committee Conference on PMPD;	To Be Determined
End of 30-day comment period for PMPD;	To Be Determined
PMPD Errata (if necessary);	To Be Determined
Energy Commission Hearing--Final Decision	To Be Determined

Respectfully submitted,

Date: June 15, 2010


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**APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT**

Docket No. 09-AFC-8

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(Revised 5/20/10)**

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DECLARATION OF SERVICE

I, Lisa T. Belandy declare that on July 15, 2010, I mailed hard copies of the attached Request for continuance, dated July 15, 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/genesis_solar].

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)

FOR SERVICE TO ALL OTHER PARTIES:

- 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."

AND

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-8
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.

Lisa T. Belandy
Please note the POS has not been updated to include the Center for Biological Diversity