

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

rkoss@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
JASON W. HOLDER
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

FELLOW
AARON G. EZROJ

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

May 13, 2010

DOCKET	
09-AFC-8	
DATE	<u>MAY 27 2010</u>
RECD.	<u>MAY 27 2010</u>

California Energy Commission
Attn Docket No. 09-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: Genesis Solar Energy Project; 09-AFC-8

Dear Docket Clerk:

Enclosed are an original and one copy of **Status Report Number 5 for California Unions for Reliable Energy**. Please docket the original, conform the copy and return the copy in the envelope provided.

Thank you for your assistance.

Sincerely,

/s/

Carol Horton

REK:cnh
Enclosures

2364-062d

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

The Application for Certification for the
GENESIS SOLAR ENERGY PROJECT

Docket No. 09-AFC-8

**CALIFORNIA UNIONS FOR RELIABLE ENERGY
STATUS REPORT NUMBER 5**

May 27, 2010

Rachael E. Koss
Tanya A. Gulesserian
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Facsimile
rkoss@adamsbroadwell.com
tgulesserian@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

Attorneys for the CALIFORNIA
UNIONS FOR RELIABLE ENERGY

California Unions for Reliable Energy (“CURE”) submits this fifth status report pursuant to the Committee’s December 22, 2009 Scheduling Order for the Genesis Solar Energy Project (“Project”).

Energy Commission Staff anticipates releasing its Revised Staff Assessment (“Revised SA”) for the Project on June 11, 2010. At the April 26, 2010 status conference and in its fourth status report, CURE explained that the Revised SA will contain significant new, critical information about the Project’s environmental setting, analyses of significant impacts, and required mitigation. The April 19-21, May 5, and May 10-11, 2010 staff assessment workshops revealed that the Revised SA will provide significant new information about the Project’s environmental setting, analyses of significant impacts, and required mitigation for the three core resource areas in the proceeding: biological resources, cultural resources, and soil and water resources. Staff’s May 27, 2010 Status Report 3 (DRAFT) also indicates the myriad of changes coming in the Revised SA for the core issues in the case.

For biological resources alone, the Revised SA will contain significant new information including, but not limited to, the following:

- Mitigation measures for significant impacts to birds;
- Mitigation measures for significant impacts to desert tortoise;
- Environmental setting, analysis of significant impacts, and mitigation measures for special status plants;
- Mitigation measures for significant impacts to American badger;
- Mitigation measures for significant impacts to kit fox;
- Mitigation measures for significant impacts to burrowing owl;

- Environmental setting, analysis of significant impacts, and mitigation measures for Mojave fringe-toed lizard;
- Environmental setting, analysis of significant impacts, and mitigation measures for Couch’s spadefoot toad; and
- Analysis of significant impacts and mitigation measures for groundwater dependent vegetation.

Additionally, on May 19, 2010, the Project Applicant filed a document entitled “Reasonably Foreseeable Development Scenario: Southern California Edison Colorado River Substation.” The document states that,

because the proposed expansion of the [Colorado River Substation] is a reasonably foreseeable development scenario, a description of the expansion and any associated environmental impacts will be addressed in the NEPA and CEQA-equivalent documents being prepared by the BLM and the CEC for the Genesis project.¹

The proposed expansion of the Colorado River Substation was not evaluated in the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS). Thus, CURE can only assume that the analysis to which the “Reasonably Foreseeable Development Scenario: Southern California Edison Colorado River Substation” document refers, will occur in the Revised SA. This is yet another piece of significant new information that CURE, other intervenors, and the public will have to review after release of the Revised SA and prior to testimony.

The Project applicant also submitted “Minor Changes to the Genesis Solar Energy Project Description” on May 21, 2010. The document states that “[a]dditional information is expected in the next few weeks regarding the surveys that were done...At that time, analysis will be conducted of the information that is

¹ Reasonably Foreseeable Development Scenario: Southern California Edison Colorado River Substation, May 19, 2010, p. 1.

available.” The Commission is required to evaluate the Project changes pursuant to CEQA, the Warren-Alquist Act, and Energy Commission regulations. Likewise, CURE, other intervenors, and the public must have the opportunity to assess the Project changes. Until all parties and the public have had the chance to evaluate the Project changes, the Project cannot proceed to testimony or hearings.

At the April 26, 2010 status conference and in its fourth status report, CURE expressed that, because significant new information will be made available more than a week *after* CURE’s opening testimony is due, it is unreasonable to expect CURE to expend valuable resources on testimony when the majority of the testimony, if not all of it, would be useless upon release of significant new information in the Revised SA.

CURE also stated that the Commission’s direction to prepare testimony on the Revised SA only *four working days* after its release is unreasonable. Four days is a patently inadequate amount of time for any party to adequately evaluate new data and the validity of conclusions drawn from it in the Revised SA, prepare testimony (including any necessary exhibits) regarding impacts and mitigation measures, and produce a final document for filing.

Finally, CURE explained that the schedule prohibits meaningful review of the Project and prohibits full participation by the public, as required by the Warren-Alquist Act, CEQA, and Energy Commission regulations.

At the April 26, 2010 status conference and in its fourth status report, CURE proposed reasonable changes to the schedule that would provide all parties and the public adequate time to intelligently weigh the environmental effects of the Project. CURE's concerns about the schedule were not heeded. Once again, CURE strongly urges the Commission to consider the schedule for this case, as set forth below.

Release of Revised SA	June 11, 2010
Testimony on Revised SA	June 25, 2010
Prehearing Conference Statements	June 29, 2010
Prehearing Conference	July 1, 2010
Evidentiary Hearings	July 12 and 13, 2010

CURE's proposed schedule would allow all parties an additional two weeks to review the Revised SA and prepare testimony. Most importantly, **CURE's proposed schedule requires no change to the prehearing conference or evidentiary hearing dates.** Moreover, the proposed schedule still provides more than two weeks between testimony and evidentiary hearings. Thus, the Commission and all parties will have the necessary time to prepare for hearings.

As it stands, CURE will not file testimony in the area of biological resources until it has the opportunity to review the Revised SA. CURE requires more than four working days to review and assess the significant information described above and to prepare testimony.

Finally, as the Commission is aware, CURE petitioned to inspect confidential cultural resources documents for the Project pursuant to a nondisclosure

Declaration of Service

I, Carol Horton, declare that on May 27, 2010, I served and filed copies of the attached **STATUS REPORT NUMBER 5 FOR THE CALIFORNIA UNIONS FOR RELIABLE ENERGY**, dated May 27, 2010. 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 Sacramento, California on May 27, 2010.

/s/

 Carol Horton

CALIFORNIA ENERGY COMMISSION Attn: Docket No. 09-AFC-8 1516 Ninth Street MS 4 Sacramento, CA 95814-5512 docket@energy.state.ca.us	Ryan O'Keefe, Vice President Genesis Solar LLC 700 Universe Boulevard Juno Beach, Florida 33408 Ryan.okeefe@nexteraenergy.com EMAIL ONLY	Scott Busa/Project Director Meg Russell/Project Mgr Duane McCloud/Lead Engr NextEra Energy 700 Universe Boulevard Juno Beach, FL 33408 Scott.busa@nexteraenergy.com Meg.Russell@nexteraenergy.com Daune.mccloud@nexteraenergy.com Matt Handel/Vice Pres. Matt.Handel@nexteraenergy.com VIA EMAIL ONLY Kenny Stein, Environmental Srvs Mgr Kenneth.Stein@nexteraenergy.com VIA EMAIL ONLY
Mike Pappalardo Permitting Manager 3368 Videra Drive Eugene, OR 97405 Mike.pappalardo@nexteraenergy.com	James Kimura, Project Engineer Worley Parsons 2330 East Bidwell St., #150 Folsom, CA 95630 James.Kimura@WorleyParsons.com	Tricia Bernhardt/Project Manager Tetra Tech, EC 143 Union Blvd, Suite 1010 Lakewood, CO 80228 Tricia.bernhardt@tteci.com
Kerry Hattevik, Director West Region Regulatory Affairs 829 Arlington Boulevard El Cerrito, CA 94530 Kerry.hattevik@nexteraenergy.com	Scott Galati Galati & Blek, LLP 455 Capitol Mall, Suite 350 Sacramento, CA 95814 sgalati@gb-llp.com	California ISO e-recipient@caiso.com VIA EMAIL ONLY

<p>Allison Shaffer/Project Mgr. Bureau of Land Management Palm Springs South Coast Field Office 1201 Bird Center Drive Palm Springs, CA 92262 Allison Shaffer@blm.gov</p>	<p>James D. Boyd Commissioner/Presiding Member California Energy Commission 1516 Ninth Street Sacramento, CA 95814 jboyd@energy.state.ca.us</p>	<p>Robert Weisenmiller Commissioner/Associate Member California Energy Commission 1516 Ninth Street Sacramento, CA 95814 rweisenm@energy.state.ca.us</p>
<p>Kenneth Celli, Hearing Officer California Energy Commission 1516 Ninth Street Sacramento, CA 95814 kcelli@energy.state.ca.us</p>	<p>Mike Monasmith Siting Project Manager California Energy Commission 1516 Ninth Street Sacramento, CA 95814 mmonasmi@energy.state.ca.us</p>	<p>Caryn Holmes, Staff Counsel California Energy Commission 1516 Ninth Street Sacramento, CA 95814 cholmes@energy.state.ca.us</p>
<p>Robin Mayer, Staff Counsel California Energy Commission 1516 Ninth Street Sacramento, CA 95814 rmayer@energy.state.ca.us</p>	<p>Jennifer Jennings Public Adviser's Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 publicadviser@energy.state.ca.us</p>	<p>Tanya A. Gulesserian Marc D. Joseph Rachael E. Koss Adams Broadwell Joseph & Cardozo 601 Gateway Boulevard, Suite 1000 South San Francisco, CA 94080 tgulesserian@adamsbroadwell.com rkoss@adamsbroadwell.com</p>
<p>Michael E. Boyd, President Californians for Renewable Energy, Inc. (CARE) 5439 Soquel Drive Soquel, CA 95073-2659 michaelboyd@sbcglobal.net</p>	<p>Alfredo Figueroa 424 North Carlton Blythe, CA 92225 lacunadeaztlan@aol.com</p>	<p>Tom Budlong 3216 Mandeville Cyn Rd. Los Angeles, CA 90049-1016 tombudlong@roadrunner.com</p>