

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

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| <b>08-AFC-12</b> |                    |
| DATE             | <u>May 20 2009</u> |
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Application for Certification for the San Joaquin )  
Solar 1 and 2 Hybrid Power Plant Project ) Docket No. 08-AFC-12  
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**SAN JOAQUIN SOLAR'S OBJECTIONS TO CEC STAFF  
DATA REQUESTS 8-13, 24, 143, 144**

San Joaquin Solar 1 LLC and San Joaquin Solar 2 LLC, collectively referred to as San Joaquin Solar or "Applicant", hereby files the following *Objections to CEC Staff's Data Requests 8-13,24, 143 and 144*. The Data Requests were filed on April 30, 2009.

Section 1716 of the Commission's regulations (Cal. Code Regs., tit. 20 § 1716) contains the basic framework for information exchanges (i.e., Data Requests and Responses) for licensing proceedings: "A party may request from an Applicant ... information which is reasonably available to the Applicant which is relevant to the application proceedings or reasonably necessary to make any decision on the ...application." [§ 1716(b).] The Applicant may then answer or object to the request. If the Applicant objects, the requesting party may then forego the request, seek alternative means of obtaining the desired information, or petition for an Order directing the Applicant to provide the information. In considering the reasonableness of a data request, the Commission evaluates whether the information sought appears to be reasonably available, relevant and necessary for the Commission to reach a decision in the proceeding.

The Applicant objects to two groupings of Data Requests:

**Mobile source emissions.** Data Requests 8-13 and 24 pose questions regarding mobile source emissions associated with the transportation of biomass within the San Joaquin Valley.

These requests do not request information that is readily available, and the information is not necessary for the Commission to reach a decision in the proceeding, as discussed in detail below. Instead these requests ask the Applicant to undertake unprecedented and complex studies of the transportation patterns of trucks carrying biomass within the San Joaquin Valley and then to calculate the criteria pollutant and green house gas emissions that may be occurring from these vehicles, as well as emissions that may be currently attributable to the disposal or burning of biomass within the San Joaquin Valley.

**Phase 1 ESA of Transmission Routes.** Data Requests 143 and 144 do not ask the Applicant to provide data that is readily available. Instead, these requests ask the Applicant to prepare a detailed Phase 1 Environmental Site Assessment on approximately 25 different sites along the alternative 6-mile routes of the proposed 230 kV transmission line.

As set forth below, the Applicant objects to each of these data requests on the grounds that (1) the information is not reasonably available to the Applicant and (2) the information is not necessary for the Commission to reach a decision in this proceeding. In addition, the data requests to which we object would require new, complex and time consuming studies that would substantially delay this proceeding and prevent timely issuance of a final Commission decision.

#### **DATA REQUESTS 8-13, 24**

8. Please describe the options that exist today in the baseline, pre-project conditions, for disposing of or handling the biomass fuel in the vicinity of the proposed project.

9. Please describe whether any of the biomass fuel generated in the fuel supply area today is transported for disposal and/or disposed of through open burning. This response should include citations to relevant studies or references.

10. Please describe whether the proposed project would have the indirect effect of reducing fuel transport, disposal, and/or open burning activity that occurs in the baseline, pre-project setting. This response should include citations to relevant studies or references.

11. Please estimate what number of the project-related 28,360 truck trips for fuel delivery annually (AFC Appendix B-3) are already occurring in the baseline conditions and estimate the baseline, pre-project truck trip lengths for handling the fuel supply. This response should include citations to relevant studies or references.

12. Please estimate the criteria pollutant and greenhouse gas (GHG) emissions occurring in the baseline, pre-project conditions attributable to transport, disposal, and/or open burning of the proposed project fuel supply.

13. Please estimate the emissions that would be expected to occur due to transport, disposal, and/or open burning of the proposed project fuel supply after 2010, when limits in SJVAPCD Rule 4103 become effective.

24. Please provide a mitigation proposal for the proposed project's total direct operational criteria pollutant emissions [190.4 tons per year (tpy) of NO<sub>x</sub>, 50.9 tpy VOC, 49.7 tpy SO<sub>2</sub>, 389.7 tpy PM<sub>10</sub>, and 158.5 tpy PM<sub>2.5</sub> (AFC Table 5.2-12)].

### **Applicant's Objections**

The Applicant objects to Data Requests 8-13 on the grounds that the information is not readily available and thus the requests are burdensome. These requests ask the Applicant to perform estimates and to cite relevant studies or references to support these estimates. However, the Applicant is unaware of any existing studies or references that address the questions posed by Staff. The Applicant has no control or authority over the diverse network of hundreds or thousands of individually owned vehicles that may transport biomass within the San Joaquin Valley. To perform the informed estimates requested by Staff in the absence of any existing studies or references, would require the Applicant to design and conduct costly and time consuming studies of transportation patterns within the San Joaquin Valley. Moreover, as noted in the AFC, there are currently no established thresholds under CEQA for GHG emissions from

mobile sources.<sup>1</sup> Clearly, such studies far exceed the scope of information that is readily available.

The Applicant also objects to Data Requests 8-13 and 24 on the grounds that the information is not necessary for the Commission to reach a decision in the proceeding and are thus irrelevant. The Staff's preface to these data requests incorrectly states that "the San Joaquin Solar 1 & 2 project would cause substantial emissions from offsite mobile sources, mainly for delivering biomass to the site." There is no evidence whatsoever that the Project will cause emissions from offsite mobile sources that would not otherwise occur. In fact, after June 1, 2010, when SJVAPCD Rule 4103 becomes effective, orchard removal matter that cannot be burned or disposed of on-site must be transported somewhere, if not the San Joaquin Solar 1 and 2 project, then to some other point of delivery. Clearly, it is Rule 4103, not the San Joaquin Solar Project, that will *cause* a potential increase in mobile source emissions due to the transport of waste that can no longer be burned. Under CEQA, a project is not required to mitigate impacts that it does not cause.

Moreover, even if it were possible to ascertain the changing transportation patterns within the San Joaquin Valley and the resulting emissions, such a study is not likely to provide meaningful results necessary to the resolution of issues in this proceeding. Data Requests 8-13 and 24 are unprecedented and far exceed the Commission's regulatory and CEQA authority. We are not aware of any project licensed by the Commission that has been required to mitigate mobile source emissions, particularly off-site mobile source emissions, associated with the operation of the facility. If the mitigation of independently-owned mobile source emissions was

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<sup>1</sup> In October 2008 the California Air Resources Board published a Preliminary Draft Staff Proposal Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act. The report recommended a quantitative threshold of 7,000 metric tons of CO<sub>2</sub> equivalent per year (MTCO<sub>2</sub>e/year) for operational emissions, but expressly excluded the calculation of transportation from this calculation, because the questions regarding transportation emissions required considerable additional study.

not necessary in the licensing of previous power plants, it is not necessary in this case. While the California Air Resources Board may in the future choose to adopt new standards or rules regarding GHG emissions or other mobile source emissions in this sector, it would be unfair and discriminatory for the Commission to impose new standards and requirements on only renewable projects.

#### **DATA REQUESTS 143 and 144**

143. Please provide a Phase I ESA for the 6-mile 230 kV transmission line interconnection route that has been prepared in accordance with ASTM Standard E 1527-05 guidelines.

144. Where the alignment traverses properties where there has been agricultural land use, the Phase I ESA shall identify the type of crops grown over as long a period as records indicate, the historical use and identity of pesticides (including organic and inorganic pesticides as well as herbicides), and a statement of the likelihood of finding levels of pesticides along the pipeline/transmission route that might present a risk to pipeline workers and/or the public.

#### **Applicant's Objections**

Data Requests 143 and 144 do not request information that is readily available and are thus burdensome. Instead, Data Request 143 asks the Applicant to perform a new study that is highly detailed, costly and time consuming. Data Request 143 asks the Applicant to perform a Phase 1 Environmental Site Assessment along the 6 mile route of the proposed 230 kV transmission line. This will cross approximately 25 parcels of land. Moreover, Data Request 143 asks that the ESA be performed in accordance with ASTM Standard Practice for Environmental Site Assessments: Phase I Site Assessment Process E 1527-05. Data Request 144 specifies additional analysis to be included in the Phase 1 ESA.

The Applicant objects to Data Requests 143 and 144 on the grounds that the information is not readily available. The requested information is not readily available and the request is

burdensome because to meet the request the Applicant would have to perform a costly and time consuming study of approximately 25 sites.

The Staff's preface to Requests 143 and 144 state the proposed transmission line has not been evaluated pursuant to Siting Regulations Appendix B (g)(12)(A). However, this section of the data adequacy guidelines clearly requires a Phase 1 ESA of the "power plant *site*". (Emphasis added.) This regulation does not require a Phase 1 ESA of the transmission line route. The Applicant has performed a Phase 1 ESA of the power plant site and this assessment is included in Appendix M-1 of the AFC. The proposed project was approved by the Commission as data adequate on March 11, 2009. Therefore, there is a conclusive presumption that the Application fully complies with all Appendix B requirements, including Section B(g)(12)(A), and that a Phase 1 ESA of the transmission line route is not required by Commission regulations.

The Applicant also objects to Data Request 143 on the grounds that the requested Phase 1 ESA is not necessary to a resolution of the issues in this proceeding and is thus irrelevant. Staff's request of a Phase 1 ESA of a transmission route reflects a serious misunderstanding of the nature and purpose of an ESA. On its face, Standard E-1527-05 is not applicable to the evaluation of a transmission line route. The USEPA Rule on All Appropriate Inquiry (AAI) was developed to establish landowner liability protections to property owners under CERCLA as innocent landowners, bona fide prospective purchasers, and/or contiguous property owners. Standard E 1527-05 was established to reflect industry requirements brought about by the AAI. The goal of the ASTM Standard is to identify Recognized Environmental Conditions (RECs). By definition under ASTM designation E 1527-05, the term "recognized environmental condition" is defined as

“...the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past

release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water or surface water of the property.... The term is not intended to include *de minimis* conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.”<sup>2</sup>

In other words, a Phase 1 ESA is not designed to provide reasonable baseline information for the purpose of environmental analysis under CEQA. Instead, a Phase 1 ESA requires a far more detailed level of scrutiny of a commercial site because the ESA is intended “to define good commercial and customary practice for conducting an environmental site assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601) and petroleum products.” As such, this practice is intended to permit a user to satisfy one of the requirements to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations on CERCLA liability (hereinafter, the “landowner liability protections,” or “LLPs”): that is, the practice that constitutes “all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice” as defined at 42 U.S.C. 9601(35)(B).”<sup>3</sup>

A Phase 1 ESA would require the following actions for each of the 25 parcels crossed by the transmission line route: interview of each property owner, interview of neighboring property owners, review of government records, review of historical sources, title search and visual inspection. Because of the large number of sites implicated by Data Request 143, the Applicant estimates that it would take several months to complete a Phase 1 ESA in accordance with

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<sup>2</sup> ASTM E 1527-05, Sec. 1.1.1; <http://www.astm.org/Standards/E1527.htm>

<sup>3</sup> ASTM E 1527-05, Sec. 1.1.; <http://www.astm.org/Standards/E1527.htm>

Standard E-1527-05. These tasks are both burdensome and irrelevant to any decision the Commission must make in this proceeding.

While it is reasonable to require a Phase 1 ESA of the power plant site itself (because the power plant represents a major construction activity and involves the long term industrial use of the site), it would be extraordinarily burdensome to require a Phase 1 ESA of each of the parcels along a 6 mile long transmission route, where the power line may simply pass over the parcel or where there may be minor ground disturbance from the placement of a transmission tower. Land use in the general transmission line alignments is agricultural and rangeland. Along this alignment there are no CERCLA sites, commercial sites or sites that present a threat to human health or the environment and would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

As we note above, Commission regulations do not require a Phase 1 ESA of a transmission line route. The rules of the California Public Utilities Commission, which govern the construction of transmission lines by regulated utilities, do not require a Phase 1 ESA of transmission lines for regulatory or CEQA purposes. Furthermore, we are not aware of any project that has been licensed by the California Energy Commission that has been required to perform a Phase 1 ESA of a lengthy transmission line route through primarily agricultural areas.<sup>4</sup>

It is also inappropriate to perform a Phase 1 ESA of the transmission route because the ESA is intended for evaluations of major commercial sites and is not intended for the evaluation of multiple sites where there are at most, *de minimis* conditions that generally do not present a

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<sup>4</sup> The CEC Staff recently requested a Phase 1 ESA for a 1,600 foot transmission interconnection for the Willow Pass Project, where the interconnection spanned the project site and the PG&E site: existing, heavily industrialized parcels.

threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

**Conclusion**

The Applicant looks forward to working with the Staff, other parties and the Commission to provide the information that is necessary to license this facility. At the same time, the Commission must be vigilant to ensure that no party imposes informational requirements that exceed the scope of the Commission's regulatory authority or that imposes upon renewable energy projects any burden that is not shared equally by all Applicants that have projects licensed by the Commission.

May 20, 2009

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  \_\_\_\_\_

Christopher T. Ellison  
Greggory L. Wheatland  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
Telephone: (916) 447-2166  
Facsimile: (916) 447-3512

Attorneys for San Joaquin Solar 1 and 2

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

In the Matter of: )  
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**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on May 20, 2009 I served copies of the attached *San Joaquin Solar's Objections to CEC Staff Data Requests 8-13, 24, 143 and 144* by email and U.S. Mail to each party on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.

  
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Karen A. Mitchell



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – [WWW.ENERGY.CA.GOV](http://WWW.ENERGY.CA.GOV)

APPLICATION FOR CERTIFICATION  
FOR THE **SAN JOAQUIN SOLAR UNITS 1 AND 2**  
**LICENSING PROJECT**

Docket No. 08-AFC-12

PROOF OF SERVICE

(Revised 5/14/2009)

APPLICANT

Kent Larson  
Project Manager  
12555 High Bluff Drive  
San Diego, CA 92130  
[kent.larsen@spinnakerenergy.net](mailto:kent.larsen@spinnakerenergy.net)

Doug Wert, Chief Operating Officer  
Martifer Renewables Solar Thermal  
12555 High Bluff Drive, Suite 100  
San Diego, CA 92130  
[Doug.wert@spinnakerenergy.net](mailto:Doug.wert@spinnakerenergy.net)

APPLICANT'S CONSULTANTS

Anne Runnalls  
URS  
1615 Murray Canyon Road  
Suite 1000  
San Diego, CA 92108  
[anne\\_runnalls@urscorp.com](mailto:anne_runnalls@urscorp.com)

COUNSEL FOR APPLICANT

Christopher T. Ellison  
Ellison, Schneider & Harris L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816-5905  
[cte@eslawfirm.com](mailto:cte@eslawfirm.com)

Robert Joyce, Corporate Counsel  
Joyce Law Group  
7848 Ivanhoe Avenue  
La Jolla, Ca 92037  
[Robert.joyce@joycelawgroup.net](mailto:Robert.joyce@joycelawgroup.net)

INTERESTED AGENCIES

California ISO  
E-mail Preferred  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

INTERVENORS

\*California Unions for Reliable Energy  
(CURE)  
Tanya A. Gulesserian  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, # 1000  
South San Francisco, CA 94080  
E-mail Preferred  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)

ENERGY COMMISSION

JULIA LEVIN  
Commissioner and  
Presiding Member  
[jlevin@energy.state.ca.us](mailto:jlevin@energy.state.ca.us)

JAMES D. BOYD  
Vice Chairman and  
Associate Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

Raoul Renaud  
Hearing Officer  
[rrenaud@energy.state.ca.us](mailto:rrenaud@energy.state.ca.us)

Joseph Douglas  
Project Manager  
[jdouglas@energy.state.ca.us](mailto:jdouglas@energy.state.ca.us)

Lisa DeCarlo  
Staff Counsel  
[ldecarlo@energy.state.ca.us](mailto:ldecarlo@energy.state.ca.us)

Robin Mayer  
Staff Counsel  
[rmayer@energy.state.ca.us](mailto:rmayer@energy.state.ca.us)

Elena Miller  
Public Adviser  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)