

DOCKETED

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February 24, 2022

Mr. Scott Castro
Senior Attorney
NextEra Energy Resources, LLC
One California Street, Suite 1600
San Francisco, California 94111

**GENESIS SOLAR ENERGY PROJECT (GSEP) (09-AFC-08C):
CEC NOTIFICATION NOTICE OF VIOLATION**

Dear Mr. Castro:

This letter serves as a notice of violation that the Genesis Solar Energy Project (GSEP) is out of compliance with California Energy Commission (CEC) conditions of certification contained in the GSEP Final Commission Decision, dated September 2010 (Final Decision) for the activity associated with construction of a heavy equipment carport during the May-September 2017 period. CEC staff (staff) has found NextEra Energy Resources (NEER) to be in violation of Compliance-2, Compliance-13, Cultural Resources-7, and Cultural Resources-8. Finally, NEER engaged with an outside firm for code compliance independently from the required CEC process.

AUTHORITY

Under Public Resources Code section 25532, the CEC shall assure that any facility certified under this division is operating in compliance with conditions adopted or established by the CEC or specified in the written decision on the application. In addition, California Code of Regulations, title 20, section 1770 states that the CEC "shall provide adequate monitoring of all conditions and measures set forth in the final decision required to mitigate potential impacts and to assure that the facility is operated in compliance with all applicable laws." Finally, California Code of Regulations, title 20, section 1769 states in part "After the final decision is effective... the project owner shall petition the commission for approval of any change it proposes to the project design, operation, or performance requirements."

BACKGROUND

On September 16, 2020, NEER submitted a post-certification petition under Title 20, section 1769, to staff requesting to build a carport structure at the GSEP. After the filing fee was submitted in December 2020, staff began its review of the petition and during the review process discovered that the heavy equipment carport was partially (approximately half) built in 2017. The 2020 petition made no mention of the existing half-completed structure; NEER submitted technically inaccurate design plans for the entire structure, dated from 2016 and early 2017. During the unauthorized construction of the carport, NEER has been unable to verify compliance with relevant monitoring and worker training conditions of certification or the use of a CEC Delegate Chief Building Official (DCBO) for code compliance.

A summary of the violations identified by staff is provided below.

SUMMARY OF VIOLATIONS

Documented violations at the GSEP are identified below, based on the results of the investigation of the incident:

1. Compliance-13, failure to submit and receive approval of a post-certification petition prior to construction.
2. Compliance-2 and Cultural Resources-7, failure to produce and/or retain worker environmental training records.
3. Cultural Resources-8, failure to retain qualified cultural resources specialists or Native American monitors during ground disturbance activities.
4. CEC DCBO protocol, engaged with a CBO for code compliance independently from the CEC's requirements for delegation of such responsibilities.

CIVIL PENALTIES

The GSEP is subject to the requirements found in the Final Decision as well as applicable statutes, regulations, and standards.

The Warren-Alquist Act provides that the CEC may administratively impose a civil penalty for “Any significant failure to comply with the terms or conditions of approval...as specified by the commission in its written decision.” (Pub. Resources Code, § 25534 (a)(2)). Section 25534(b) provides in relevant part that “[a]ny civil penalty shall be imposed in accordance with section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars (\$50,000).” At your earliest convenience, please contact me at (916) 654-5100 or at Shawn.Pittard@energy.ca.gov to discuss this letter and to schedule an initial meeting.

Sincerely,

Shawn Pittard

Shawn Pittard
Deputy Director
Siting, Transmission and Environmental
Protection Division

CC: Christopher Allen, General Manager, NEER, LLC
Maria Lopez, Environmental Health and Safety, NEER, LLC
Elizabeth Huber, Compliance Monitoring and Enforcement Office Manager