

DOCKETED

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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for the

PALEN SOLAR ELECTRIC GENERATING
SYSTEM

Docket No. 09-AFC-07C

**ENERGY COMMISSION STAFF REVISED PREHEARING CONFERENCE
STATEMENT AND
STATEMENT OF UNRESOLVED ISSUES**

The sole revision to Staff's Prehearing Conference Statement is the addition of a Staff Witness. Please see section 5. Identity of Staff Witnesses.

On October 7, 2013, the Palen Solar Electric Generating System (PSEGS) Amendment Committee (Committee) issued a Notice of Prehearing Conference and Evidentiary Hearing and Hearing Orders. In the Notice, the Committee set the Prehearing Conference for October 24, 2013, and ordered each party to file a Prehearing Conference Statement. This document responds to the Committee's Order.

1. Incomplete subject areas. Staff believes that all subject areas are complete except Air Quality and Greenhouse Gas Emissions. Staff received a Preliminary Determination of Compliance from South Coast Air Quality Management District on October 18, 2013. Staff will prepare the Final Staff Assessment, Part C, for Air Quality

(which includes a section on Greenhouse Gas Emissions) as soon as possible, and is making every effort to file by the November 1, 2013 due date.

2. Undisputed subject areas. Staff believes that the following subject areas are complete, undisputed, can be adjudicated on the basis of pre-filed testimony, and do not require further testimony at Evidentiary Hearings:

- Facility Design
- Efficiency
- Reliability
- Transmission System Engineering
- Transmission Line Safety and Nuisance
- Public Health
- Hazardous Materials Management
- Waste Management
- Soil and Water Resources
- Land Use
- Socioeconomics
- Noise and Vibration

These subject areas involve no dispute between staff and Palen Solar Holdings (PSH). Intervenor testimony suggests no dispute that should require hearings. There is a potential that some of these areas would receive public comment. Staff will defer to the Committee on whether they want staff to respond to public comment, and if so, staff would like to know if the Committee would prefer staff be present at the hearings or if responses can be provided by telephone, avoiding the need for staff to travel to hearings.

3. Subject areas with relatively minor issues. Staff contends that the subject areas in this section can be handled briefly, and if deemed appropriate, the project owner and staff may be able to come to an agreement on proposed Conditions of

Certification at the Prehearing Conference. If Evidentiary Hearings are determined to be necessary, the time requirements would be very minimal, perhaps 30 minutes for each subject area.

- Traffic and Transportation - On October 21, 2013, Staff provided rebuttal testimony that included proposed language changes that may address PSH's concerns identified in their Opening Testimony. If PSH is not in complete agreement with these changes, Staff anticipates a very limited amount of discussion will be necessary to resolve the issues related to this subject area.
- Compliance - On October 21, 2013, Staff provided rebuttal testimony that included proposed language changes that may address PSH's concerns identified in their Opening Testimony. If PSH is not in complete agreement with these proposed changes, Staff anticipates a very limited amount of discussion will be necessary to resolve the issues related to this subject area.

4. Subject areas that require adjudication. The low number of disputed issues reflects the willingness of Staff and PSH, together with Intervenors and Interested Parties, to work together to utilize the numerous workshops held for this Amendment, and to successfully resolve most issues and significantly narrow the issues that remain in dispute.

Staff believes that the following subject areas are in dispute and require adjudication, and provides an estimate of total time needed for a thorough discussion of each subject area – by all parties, assuming an informal hearing procedure.

- Alternatives – 1 hour
- Visual Resources – 30 minutes (if any)
- Geology and Paleontology – 30 minutes
- Worker Safety and Fire Protection – 2 hours
- Biological Resources – 3 hours

- Cultural Resources – 3 hours

Alternatives

Staff is prepared to discuss the Center for Biological Diversity's (CBD) proposed alternative and testimony regarding Distributed Generation, PSH's Opening Testimony, and any other issues related to Staff's FSA or Rebuttal Testimony.

Visual Resources

There is very little in actual contention within this subject area. Staff provided Rebuttal Testimony to the federal LORS compliance issues raised by Colorado River Indian Tribe's (CRIT) opening testimony. As this is primarily a legal issue it should be resolved by legal briefing, although the Committee may wish to hear from the parties on the nature of the dispute.

Geology and Paleontology

Staff has identified that the PSEGS project will use a different construction methodology than would have been used for the Palen Solar Power Project (PSPP). Instead of using traditional methods of excavation which would uncover paleontological resources and allow the disturbance to be mitigated by collecting and curating the paleontological discoveries, the heliostat pylons will be vibrated into the ground without any excavation. Staff believes that given the high paleontological sensitivity of the project site, this construction method has the potential to crush paleontological resources. Staff's proposed mitigation is not intended to require a redesign of the project, but is intended to recover and curate a reasonable sample of paleontological resources that exist on site for the benefit of scientific knowledge. PSH disagrees both with the paleontological sensitivity of the site, and also objects to Staff's proposed conditions of certification.

Worker Safety and Fire Protection

Staff has proposed Condition of Certification **Worker Safety-7** to address the PSEGS project impacts to the Riverside County Fire Department. Staff has used information provided by both Riverside County and PSH to make this determination. PSH objects to

the level of mitigation that Staff proposes. Staff anticipates that representatives of the County of Riverside will be present at hearings to discuss this issue.

Biological Resources

Post-FSA Revisions to multiple Conditions of Certification. On October 21, 2013, Staff's Rebuttal Testimony proposed multiple minor revisions to Conditions of Certification that Staff believes can be resolved briefly either at the Prehearing Conference or at Evidentiary Hearings.

Post-FSA Revisions to BIO 16a and 16b. Staff and PSH have worked diligently to come to an agreement on appropriate mitigation for potential impacts to avian species. The one factor complicating these efforts has been the fundamental lack of real-world data on how this technology, specifically solar-flux, may impact avian species. Without the benefit of this real-world data, Staff and PSH came to agreement by way of Conditions of Certification BIO-16a and BIO-16b proposed in Staff's FSA, Part A.

Since the FSA, Part A, was published, the Energy Commission has received some real-world data from the activities at Ivanpah Solar Electric Generation System, which is planned to be fully operational at the beginning of next year. Although the data is limited, the experience has provided Staff with information that will benefit the PSEGS project and has proposed changes to Conditions of Certification BIO-16a and BIO-16b. Staff acknowledges that PSH received these revisions on October 21, 2013, and will want to discuss their position on these proposed changes. Also, Staff believes these proposed changes will address concerns raised by the Center for Biological Diversity, and anticipates CBD will also want to discuss these proposed changes.

Indirect Impacts to Mojave fringe-toed lizard (MFTL) – Sand Transport. Staff and PSH are not in agreement as to the appropriate number of acres that should be required as mitigation for indirect impacts to Mojave fringe-toed lizards. Staff believes the 25% threshold for the reduction in sand-transport used for the PSPP should be maintained for the PSEGS project, whereas PSH believes that a 50% threshold or higher level is

more appropriate. Staff and PSH experts disagree as to which threshold will result in actual degradation to MFTL habitat.

Cultural Resources

Staff's FSA, Part B, concludes that the project will have significant and unmitigable impacts on a cultural landscape, the Chuckwalla Valley portion of the Pacific to Rio Grande Trail Landscape (PRGTL). Intervenor Colorado River Indian Tribes has filed testimony with similar conclusions. The project owner contends that staff did not utilize proper viewshed coverage projections in demonstrating a visual impact to the Chuckwalla Valley portion of the PRGTL. And also contends that the project does not result in significant interference with the viewshed to warrant rendering the loss of integrity to the Chuckwalla Valley portion of the Pacific to Rio Grande Trails Landscape. These issues will require adjudication.

5. Identity of Staff Witnesses. The Staff witnesses are identified in the FSA and in rebuttal testimony, along with their qualifications and declarations. (See the very last page of the FSA, Parts A and B for a succinct list.) Staff will not know which witnesses may be required to testify telephonically until it knows the order in which topics will taken at the hearings. **Staff has requested that Lorey Cachora, consultant to staff in the development of the Cultural Resources section of the FSA, participate as to his concurrence with Staff's testimony. Mr. Cachora is a Tribal member of the Quechan Indian Tribe and serves as a consultant to the Quechan Cultural Committee, appointed by the Quechan Tribal Council.**

6. Cross-Examination of witnesses. Staff anticipates the use of informal hearing procedures. If, however, a formal hearing procedure is assumed, Staff reserves the right for cross-examination of witnesses in all areas requiring adjudication. These include those areas identified above as well as any others identified by the Presiding Member as requiring hearing testimony. Staff may waive cross-examination in some areas or for some witnesses. Staff does not anticipate that cross-examination will exceed 30

minutes for any subject area, and will likely be considerably less. The scope of cross-examination will generally be focused on disputed issues identified above.

7. List of Exhibits.

See attached **Staff's Exhibit List**.

8. Overrides. Staff believes the Energy Commission would need to make CEQA override findings for the areas of Biological Resources (avian impacts), Cultural Resources and Visual Resources if it decided to approve the project. In all other technical areas, Staff believes the significant environmental impacts can be mitigated to levels that are less than significant with the mitigation Staff has proposed.

9. Scheduling Considerations. Staff proposes that the hearing have the following order for hearing topics: Monday, October 28: (1) Alternatives; (2) Visual Resources (if required); (3) Geology and Paleontology; (4) Cultural Resources. Tuesday, October 29: (1) Worker Safety Fire Protection; (2) Biological Resources.

If it is determined that Visual Resources will need to be addressed at Evidentiary Hearings, and if time is also needed for Traffic and Transportation, Staff requests that these subject areas be presented as a single panel. The subject areas and their experts have significant overlap, and a single panel would be most efficient.

Date: October 23, 2013

Respectfully Submitted,

Jennifer Martin-Gallardo - Staff Attorney