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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

BLYTHE SOLAR POWER PROJECT
AMENDMENT

Docket No. 09-AFC-06C

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

On October 30, 2013, the Blythe Solar Power Plant Amendment Committee (Committee) issued a Notice of Prehearing filing and Evidentiary Hearing. In the Notice, the Committee set the Prehearing filing deadline for November 12, 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.
- 2. Disputed subject areas.** Because this is an amendment to a project with an existing license, changes to the Conditions of Certification should relate to the proposed project changes or reflect *substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not known and could not have been known with the exercise of reasonable diligence prior to Commission certification.* (Title 20 section 1769(a)(3)(D))

The following Conditions of Certification contain changes from those in the Final Decision. Petitioner disagrees with the change and believes the condition in the Final Decision should be retained.

CUL-19: This condition is not mitigation but a statement of the relationship between BLM and the Energy Commission when it comes to regulating the project which is on federal land. While the condition is included in the Final Decision, Staff believes the condition is no longer necessary because Staff feels confident issues can be worked out with BLM eliminating the situation where the project owner is subject to conflicting requirements. In addition, the condition simply reiterates the existing legal relationship between federal and state agencies with shared jurisdiction over a project. (See 43 U.S.C. 1765 Term and Conditions of a Right of Way) Removing the condition does not change the relationship. Staff believes that the existing filed testimony adequately articulates Staff's position and Staff does not intend to present any further direct testimony on the issue.

PAL-9: Staff believes that the subsurface of the project site is of the appropriate geological formation to contain fossils. Under the original project extensive grading would be required and that grading would destroy fossils but would also allow for the recovery and study of fossils identified by monitors observing the grading and excavation work. The scientific information gained from the recovery and study would serve to mitigate for the lost fossils.

The current PV project has significantly reduced the amount of grading and instead will be vibrating in over 200,000 support posts. The insertion of the posts could potentially impact a fossil without the parallel recovery component found in mass grading. PAL-9

is designed to provide some level of fossil recovery and data extraction to mitigate for the fossils potentially damaged during post insertion.

The Petitioner contends that the number of fossils destroyed through the mass grading would far exceed the number impacted by vibrating in the posts and that the percentage of fossils actually observed during mass grading is low. Therefore, the amended PV project would have lower impacts on fossils than the licensed project even with existing recovery and study mitigation.

Both Staff and the Petitioner agree that the fossils expected on the site would likely be fragments and smaller bone structures as opposed to full museum type skeletons.

Staff is providing supplemental testimony and changes to PAL-9 which is contained in Staff Exhibit 2003. Staff believes that the existing filed testimony adequately articulates Staff's position and Staff does not intend to present any further direct testimony on the issue.

Worker Safety-8: Staff and the Petitioner dispute some Valley Fever air monitoring and reporting requirements. Supplemental Testimony has been filed on this topic. (See Staff Exhibit 2003) Based on discussions at the workshop, Staff is considering some language changes that may resolve pending issues with the Petitioner. Staff may present new conditions language to address concerns raised by Petitioner by the time of the hearing.

Worker Safety-10: Staff and the Petitioner dispute heat related illness reporting requirements. Staff wants to include heat related illness as a condition to be reported within 24 hours, the Petitioner only wants to report the more serious condition of Heat Stroke within 24 hours. Supplemental Testimony has been filed on this topic. (See Staff

Exhibit 2003) Based on discussions at the workshop, Staff is considering some language changes that may resolve pending issues with the Petitioner. Staff may present new conditions language to address concerns raised by Petitioner by the time of the hearing.

The Colorado River Indian Tribes take the position that a new Cultural Resources Staff Assessment should be done which includes more engagement with the Tribes because CRIT was not aware of the project. Staff disagrees that this is necessary or that the tribes lacked notice of the project or amendment. Both during the original solar thermal project and the amendment, outreach to the Native American community occurred, including with CRIT. The Staff Assessment details the engagement both Commission and BLM Staff had with the tribes. This is further evidenced by the fact that the Colorado River Indian Tribe signed off on the Programmatic Agreement for the Blythe Solar Thermal Project. (See Blythe Programmatic Agreement, Staff Exhibit 2003)

3. Identity of Staff Witnesses.

Staff witnesses are identified in the Staff Assessment along with professional qualifications. Staff does not intend to offer any further direct testimony beyond the filed Staff Assessment parts A and B, the supplemental testimony contained in Staff Exhibit 2003 and Staff's response to comments attached as Staff Exhibit 2002. Staff anticipates a more informal proceeding since this is an amendment of a licensed project which in total has been under review for the last four years. Witnesses will be made available if the Committee or other parties have questions for a specific witness.

4. **Cross-Examination of Witnesses.**

Staff anticipates a more informal proceeding with discussion and Q&A as necessary to ensure the Committee has enough information to draft the proposed decision. Staff may need to ask a few questions during any discussion but does not envision a formal cross-examination.

5. **List of Exhibits.**

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

Staff Exhibit 2000 Staff Assessment part A

Staff Exhibit 2001 Staff Assessment part B

Staff Exhibit 2002 Response to Comments on the Staff Assessments parts A and B

Staff Exhibit 2003 Staff's supplemental testimony modifying Conditions of Certification

Staff Exhibit 2004 The Final Decision from the original Solar Thermal Project

(Committee may take Judicial Notice of the Final Decision)

6. **Overrides.**

Subject areas for which the Petitioner will seek to introduce evidence supporting either a Commission override due to public convenience and necessity pursuant to Public Resources Code section 25525 and/or a specific finding that overriding economic, legal, social, technical or other benefits outweigh the significant effects on the environment pursuant to Public Resources Code section 21081(b);

The Final Decision acknowledged that the original project would result in significant cumulative impacts in the areas of Cultural Resources, Visual Resources and Land Use that could not be mitigated to less than significant levels. The Final Decision concurred with staff's recommendation that substantial evidence existed that project benefits outweigh the significant impacts and that it is appropriate to approve the BSPP despite

its remaining significant impacts. The modified BSPP would not result in greater cumulative impacts to Cultural Resources, Visual Resources or Land Use from those identified in the originally licensed project and continues to provide similar benefits as identified in the final decision. Therefore, the override findings made in the original decision would also be applicable to the modified BSPP.

7. Scheduling Considerations.

Proposals for briefing deadlines, impact of scheduling conflicts, or other scheduling matters; and

Since this is an amendment of a licensed project Staff does not anticipate briefing will be necessary. In addition legal issues are typically the primary subject of a brief and staff is unaware of any legal issues that require analysis and discussion.

8. For all subject areas, a description of any proposed modifications to the proposed conditions of certification listed in the Staff Assessment (SA).

The conditions listed below have been modified from the conditions found in the Staff Assessment. See Staff Exhibit 2003 for supplemental testimony supporting Condition Changes.

AQ-SC5: The language in the Staff Assessment should be replaced with the language in the Final Decision.

AQ-SC6: AQ-SC6 should no longer reference the word “mirror” and should be replaced with the word “panel.”

AQ #s 61-64: These conditions are not applicable to the amended project and should be removed.

BIO Conditions: Staff accepts the Petitioner's proposed changes to Conditions of Certification **BIO-7, BIO-14, BIO-18, BIO-19, BIO-20, BIO-22,** and **BIO-28**. During the public workshop on November 12, 2013 upon further clarification from the Petitioner, staff agreed to their proposed changes to Conditions of Certification **BIO-6, BIO-12 #1a** and **c,** and **BIO-17 #1** and **#4b**. Also during the public workshop, the Petitioner and staff discussed additional changes. For discussion and proposed language changes see the Testimony of Carol Watson and Andrea Martine attached as Staff Exhibit 2003.

COM-4: Staff has added additional language to try and address concerns the Petitioner brought up regarding the ability to install tortoise fencing during the site assessment and pre-construction phase and whether that would trigger other requirements.

NOISE-6: Staff agrees the condition should be as written in the Final Decision.

PAL-9: After reviewing the Petitioner's comments staff proposed changes to this condition as discussed in Staff Exhibit 2003.

S&W-2: An older obsolete condition was erroneously included in the Staff Assessment. The S&W-2 found in the Final Decision is the correct condition.

S&W-4: This condition referenced S&W-18 which is no longer applicable to the project. Therefore the sentence containing the reference to S&W-18 needs to be removed.

S&W-16: An older obsolete condition was erroneously included in the Staff Assessment. The S&W-16 found in the Final Decision is the correct condition.

S&W-17: This condition was deleted in the Final Decision and was erroneously included in the Staff Assessment. The Condition should be deleted.

S&W-19: Staff concurs with the Petitioner and recommends substituting the term “withstand” with “are designed to accommodate.” Staff recommends the rest of the Condition remain as written in the Staff Assessment but has added language to provide for flexibility in the event new models become available. Staff also replaced the term “mirror” with “panel” to reflect project changes.

TLSN-1: Staff agrees the condition should be as written in the Final Decision.

TRANS-2: Staff concurs with the Petitioner and recommends this condition be replaced with the one in the Final Decision.

TRANS-13: Staff agrees with the language changes suggested by the Petitioner.

TSE-5: Staff concurs with the Petitioner’s comments that this condition should be returned to the language in the Final Decision.

WASTE-1: Staff concurs that this condition should be returned to the language in the Final Decision.

WASTE-9: Staff concurs that this condition should be returned to the language in the Final Decision.

WASTE-10: Staff concurs that this condition should be returned to the language in the Final Decision.

WORKER SAFETY-7: This condition has been modified from the condition listed in the Staff Assessment because the requirement of an inflation adjustor was erroneously left

out. During the November 12, 2013 workshop, Staff and the Petitioner, with concurrence from Riverside County agreed to the use of a 2% escalator

Date: November 13, 2013

Respectfully Submitted,

s/ Jared Babula
Jared Babula - Staff Attorney



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NOTE: The format of the samples provided below is equally applicable to all parties.

STAFF'S EXHIBIT LIST

Exhibit	Docket Transaction Number	Title of Document (from Docket Log)	Subject Areas
2000	200629	Staff Assessment Part A	
2001	200840	Staff Assessment Part B	
2002	201190	Response to Comments on the Staff Assessments Parts A and B	
2003	201189	Staff's Supplemental Testimony Modifying Conditions of Certification	
2004	58591*	The Final Decision From the Original Solar Thermal Project * See TN 58591 at Docket No. 09-AFC-06 (Docketed 09/23/2010)	