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STATE OF CALIFORNIA
Energy Resources
Conservation and Development Commission

In the matter of:

Amendment for the **PALEN SOLAR
ELECTRIC GENERATING SYSTEM**

DOCKET NO. 09-ACF-7C

**COMMENTS OF INTERVENOR COLORADO RIVER INDIAN TRIBES
REGARDING THE SCHEDULE EXTENSION AND SUPPLEMENTAL RECORD**

REBECCA LOUDBEAR (Wisc. State Bar No. 1036107)
COLORADO RIVER INDIAN TRIBES
Office of the Attorney General
26600 Mohave Road
Parker, AZ 85344
Telephone: (928) 699-1271
Facsimile: (928) 669-1269
Rloubear@critdoj.com

WINTER KING (State Bar No. 237958)
SARA A. CLARK (State Bar No. 273600)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
King@smwlaw.com
Clark@smwlaw.com

On January 7, 2014, the California Energy Commission Committee will consider Petitioner's request to delay the amendment proceedings and supplement the record on the benefits of the project and avian issues. CRIT offers the following comments in advance of the Committee Meeting.

First, the Committee offered extensive opportunities for the Petitioner to develop the record on the benefits of the Project. The Petitioner already submitted lengthy evidentiary testimony and legal briefing and had the opportunity to present evidence during three days of evidentiary hearings. In particular, Petitioner's request provided no explanation why the additional evidence of the Project's asserted benefits could not have been presented earlier in the proceedings. CRIT—as well as the CEC, other Intervenors, and the public—must expend significant resources to participate in these proceedings; CRIT therefore respectfully requests that the Committee refuse to consider evidence that could have already been presented by Petitioner. To the extent Petitioner's request is granted, however, CRIT requests that all parties be permitted to present rebuttal evidence.

CRIT also requests that the Committee require a pre-hearing conference after the submission of any additional data to assess the adequacy of the evidence and the necessity of any additional evidentiary hearings.

Second, even if Petitioner is able to present new evidence on avian impacts, that evidence alone would be insufficient to change the Presiding Members Proposed Decision's ("PMPD") ultimate determination to deny the amendment. The PMPD specifically found that "[w]hen we compare the PSEGS entire suite of benefits against its suite of impacts, we find that the impacts outweigh the benefits." PMPD at 8-2. Among these impacts are significant harms to cultural resources, CRIT members, and other area tribes:

- "We agree with Staff, Californians for Renewable Energy, and CRIT that the presence of the PSEGS facility's two heliostat fields and particularly the two approximately 750 foot-tall solar power towers would introduce stark visual intrusions on the [Pacific to Rio Grande Trails Cultural Landscape] that would profoundly and irreparably degrade the ability of the landscape to convey its historical significance The great weight of the evidence convinces us that subsequent to the construction of the facility, one would no longer be able to experience the sense of the landscape as it was during its period of significance." PMPD at 6.3-51.
- "We further agree with Staff and CRIT that the significant effect of the PSEGS project on the Chuckwalla Valley portion of the PRGTL is not mitigable We are [] unaware of any mitigation measures that would reduce the loss of an entire landscape or a significant portion of one to a less than significant level." PMPD at 6.3-52.
- "We find that the PSEGS project's direct and cumulative impacts to cultural resources are borne disproportionately by Native Americans." PMPD at 6.3-57.

CRIT therefore contends that no delay is necessary: the weight of the cultural resource impacts created by the proposed amendment is sufficient to support the finding that no override findings can be made.

Similarly, the PMPD determines that “the same benefits that would be realized by the PSEGS project would also be realized from the two superior alternatives in a much more environmentally protective manner.” PMPD at 2-45. Under CEQA, a lead agency cannot approve a project where a feasible alternative obtains the same project objectives with fewer environmental impacts. Pub. Res. Code § 21081. While the PMPD does not reach the question of feasibility with respect to these two alternatives, both the evidentiary record and the PMPD demonstrate the lack of substantial evidence to support a finding of infeasibility. PMPD at 2-21 and 2-32. Consequently, the petition for amendment must be denied on this basis, regardless of the ultimate evidence developed on avian impacts.¹

Third, while Hearing Advisor Celli has already granted the request for a delay in the schedule (TN# 201466) and vacated all proceeding deadlines, the Committee must decide on an appropriate length of delay. To the extent the Committee seeks additional information on avian impacts, CRIT supports the Center for Biological Diversity’s request that the Petitioner be required to collect additional data for one year of operations at the ISEGS project. As avian impacts are likely to fluctuate with migration patterns, a full year of data collection is necessary to adequately understand likely impacts and potential mitigation.

DATED: January 6, 2014

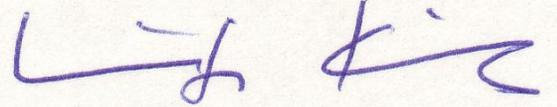
COLORADO RIVER INDIAN TRIBES

By: /s/ Rebecca Loudbear
REBECCA LOUDBEAR

Attorneys for the Colorado River Indian Tribes

DATED: January 6, 2014

SHUTE, MIHALY & WEINBERGER LLP

By: 
WINTER KING
SARA A. CLARK

Attorneys for the Colorado River Indian Tribes

¹ Petitioner has not asked the Commission to re-open the evidentiary record on either the cultural resource impacts of the Project or the feasibility of Project alternatives; nor should the Commission allow Petitioner to submit additional evidence on these issues. As noted above, Petitioner had ample opportunity to submit evidence on these issues during the course of the proceedings, and it would be time-consuming, expensive, and unfair for the other parties to this proceeding to allow Petitioner a second bite at the apple now.

DECLARATION OF SERVICE

I, Sean Mulligan, declare that on January 6, 2014, I served and filed copies of the Comments Of Intervenor Colorado River Indian Tribes Regarding The Schedule Extension and Supplemental Record, dated January 6, 2014. The most recent Proof of Service List, which I copied from the web page for this project at: <http://www.energy.ca.gov>, is attached to this Declaration.

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1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: January 6, 2014

/s/ Sean Mulligan



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Applicant

Amanda McCoy

Palen Solar Holdings, LLC
1999 Harrison Street, Suite 2150
Oakland, CA 94612
amccoy@brightsourceenergy.com

Charlie Turlinski

Palen Solar Holdings, LLC
1999 Harrison Street, Suite 2150
Oakland, CA 94612
cturlinski@brightsourceenergy.com

Clay Jensen

Palen Solar Holdings, LLC
1999 Harrison Street, Suite 2150
Oakland, CA 94612
cjensen@brightsourceenergy.com

Applicant Representative

Marie Fleming

Galati/Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
mfleming@gb-lp.com

Scott Galati

Galati/Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-lp.com

Applicant Consultant

Andrea Grenier

Centerline
1420 E. Roseville Parkway, Suite 140-377
Roseville, CA 95661
andrea@agrenier.com

Intervenor

Alfredo Acosta Figueroa

Californians for Renewable Energy
424 North Carlton Avenue
Blythe, CA 92225
lacunadeaztlan@aol.com

Christina M. Caro, Counsel for Hildeberto

Sanchez, Eddie Simmons, and LiUNA
Lozeau|Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
christina@lozeaudrury.com

Elizabeth Klebaner, Counsel for California

Unions for Reliable Energy (CURE)
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
eklebaner@adamsbroadwell.com

Ileene Anderson, Public Lands Desert Director

Center for Biological Diversity
PMB 447, 8033 Sunset Boulevard
Los Angeles, CA 90046
ianderson@biologicaldiversity.org

Kevin Emmerich

Basin and Range Watch
P.O. Box 153
Baker, CA 92309
atomicoadranch@netzero.net

Laura Cunningham

Basin and Range Watch
P.O. Box 153
Baker, CA 92309
bluerockiguana@hughes.net

Rebecca Loudbear, Office of the Attorney

General
Colorado River Indian Tribes
26600 Mohave Road
Parker, AZ 85344
rloudbear@critdoj.com

Richard T. Drury, Counsel for Hildeberto

Sanchez, Eddie Simmons, and LIUNA
Lozeau|Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
richard@lozeaudrury.com

Tanya A. Gulesserian, Counsel for California

Unions for Reliable Energy (CURE)
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com

Intervenor Representative

Lisa T. Belenky, Attorney

Center for Biological Diversity
351 California Street, Suite 200
San Francisco, CA 94104
lbelenky@biologicaldiversity.org

Sara A. Clark, Counsel for Colorado River

Indian Tribes
Shute, Mihaly & Weinberger, LLP
396 Hayes Street
San Francisco, CA 94102
clark@smwlaw.com

Winter King, Counsel for Colorado River Indian

Tribes
Shute, Mihaly & Weinberger, LLP
396 Hayes Street
San Francisco, CA 94102
king@smwlaw.com

Commission Staff

Christine Stora, Project Manager

California Energy Commission
Siting, Transmission & Environmental Protection

eFiling archive

California Energy Commission

Jennifer Martin-Gallardo, Staff Counsel

California Energy Commission
Office of the Chief Counsel, 1516 Ninth Street,

Division, 1516 Ninth Street, MS-2000
Sacramento, CA 95814
christine.stora@energy.ca.gov

Sacramento, CA
efilingPOSarchive@energy.ca.gov

MS-14
Sacramento, CA 95814
jennifer.martin-gallardo@energy.ca.gov

Committee

DAVID HOCHSCHILD, Associate Member,
Commissioner
California Energy Commission
Sacramento, CA

Eileen Allen, Commissioners' Technical Adviser
for Facility Siting
California Energy Commission
Sacramento, CA

Eli Harland, Adviser to Commissioner Douglas
California Energy Commission
Sacramento, CA

Gabriel Taylor, Adviser to Commissioner
Hochschild
California Energy Commission
Sacramento, CA

Jennifer Nelson, Adviser to Commissioner
Douglas
California Energy Commission
Sacramento, CA

KAREN DOUGLAS, Presiding Member,
Commissioner
California Energy Commission
Sacramento, CA

Ken Celli, Hearing Adviser
California Energy Commission
Sacramento, CA

Public Adviser

Alana Mathews, Public Adviser
California Energy Commission
Public Advisers Office, 1516 Ninth Street, MS-12
Sacramento, CA 95814
publicadviser@energy.ca.gov

Public Agency

California ISO
Folsom, CA
e-recipient@caiso.com

Mohsen Nazemi, Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
mnazemi1@aqmd.gov

Tiffany North, Supervising Deputy County
Counsel
Riverside County
3960 Orange Street, Suite 500
Riverside, CA 92501
tnorth@co.riverside.ca.us

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