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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

**RESPONSE OF INTERVENOR COLORADO RIVER INDIAN TRIBES
TO PETITIONERS' MOTION TO REOPEN EVIDENTIARY RECORD**

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On March 21, 2014, Palen Solar Holdings, LLC filed a Motion to Reopen Evidentiary Record and Scheduling Order (TN# 201900). Intervenor Colorado River Indian Tribes (CRIT or the Tribes) files this response to PSH's Motion, in compliance with Hearing Advisor Celli's March 24 memo (TN# 201907). CRIT requests that the Commission deny the Motion for the following reasons:

1. In issuing the Presiding Member's Proposed Decision (PMPD), Commissioner Karen Douglas raised specific concerns regarding the mitigation proposed in CUL-1 and its connection to the cultural resource harms established by CRIT and other Tribes during evidentiary hearings. CRIT requested government-to-government consultation on this issue (TN# 201807), but has been informed that such consultation is unavailable given the Tribes' status as an intervenor in these proceedings (TN# 201871). Consequently, CRIT intends to participate in the public workshop to discuss CUL-1, but this event will not be held until April 8, 2014, after the deadline for comments on PSH's Motion to Reopen. At this time, CRIT cannot state whether this workshop will be productive or sufficient. Consequently, CRIT does not yet know whether the parties are ready to move to evidentiary hearings on this issue.

2. CEC Staff, the Center for Biological Diversity, and Basin and Range Watch have all raised significant concerns that the data necessary to determine the impacts of the Project on avian species is not yet available, and will not be available for some time. *E.g.*, TN# 201757 (Commission Staff Status Report 5); Email from Ileene Anderson (March 25, 2014) re: Palen Workshop 9-April 15?; Email from Kevin Emmerich (March 26, 2014) re: Palen Workshop 9-April 15?. While CRIT offers no technical expertise on the sufficiency of avian data, CRIT has significant cultural concerns related to avian mortality and the impacts from this and other solar projects on avian species. As a result, CRIT urges the Commission to take these concerns seriously and to delay reopening of the evidentiary record until sufficient evidence can be gathered.

3. Since the release of the PMPD, operation of the Ivanpah project has revealed significant new information relevant to the Commission's decision. In particular, plant operation has resulted in glare strong enough to interfere with pilot operation. Docket No. 07-AFC-05C (TN# 201847). Plant operation has also required significantly more natural gas than BrightSource planned or sought permits for, resulting in an additional Petition to Amend its certification. This change further calls into question the "green" or sustainable characteristics of the Project. Docket No. 07-AFC-05C (TN# 201928). Both of these pieces of information are highly relevant to the Commission's decision with respect to the Palen Project, as it will use similar technology. Consequently, should the Commission decide to re-open the evidentiary record, it should also take evidence with respect to these two issues, as well as any additional new significant issues that should arise with respect to the operation of the Ivanpah project.

4. PSH's Proposed Schedule is unrealistic, particularly given that the Commission may not decide on the pendant Motion until April 22, 2014 (TN# 201907). In the event the Commission grants the Motion, the CEC Staff must prepare a revised staff assessment incorporating all new information into the environmental review for the Project. In particular, PSH has recently argued that construction of the approved solar trough project is infeasible. TN# 201713. If the Commission accepts this argument, it must also revise the baseline environmental

setting used in the existing staff assessment, which assumes that the approved solar trough project is the baseline condition. Such an assumption is plainly misleading when the project applicant itself has concluded that such a project would be infeasible. Instead, the staff assessment must use the *existing* environmental conditions, without any utility-scale solar project, as the baseline for environmental review. See *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 322.

In addition, Parties should be given at least one to two months to prepare opening testimony following publication of a revised staff assessment and one month to prepare rebuttal testimony. Finally, as PSH's additional testimony on both Alternatives and Overriding Considerations implicate legal concerns, CRIT request that the Commission provide sufficient time for briefing prior to the release of the PMPD.

5. Finally, CRIT continues to support the PMPD's determination that "[w]hen we compare the PSEGS' entire suite of benefits against its suite of impacts, we find that the impacts outweigh the benefits." TN# 201434, at 8-2. CRIT has reviewed the evidence that PSH has submitted into the record at this point; it does not appear that any *new* information has been raised that should alter the PMPD's fundamental conclusion. Rather, BrightSource appears to simply rehash arguments already presented to the Commission or data that had been available to the Parties at the time of the evidentiary hearing. As a result, CRIT urges the Commission to deny PSH's Request to Reopen the Evidentiary Record and bring the PMPD to a full vote. Additional evidentiary hearings will be unnecessarily costly for the parties, the Commission, and its staff.

DATED: April 7, 2014

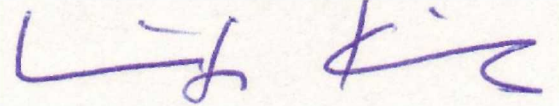
COLORADO RIVER INDIAN TRIBES

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