

DOCKETED

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Project Title:	Palen Solar Power Project - Compliance
TN #:	202384
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Description:	Motions to Continue Hearing Date, Schedule, etc.
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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR POWER
PROJECT

DOCKET NO. 09-AFC-7C

**CENTER FOR BIOLOGICAL DIVERSITY
MOTION TO CONTINUE HEARING DATE; MOTION TO CONTINUE
SCHEDULE DEADLINES IN REVISED COMMITTEE SCHEDULE
DATED MAY 21, 2014; AND MOTION FOR EXPEDITED CONSIDERATION
OF THESE MOTIONS**

May 27, 2014

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Pursuant to 20 Cal. Code. Regs. § 1716.5, Intervenor Center for Biological Diversity timely moves the Committee to continue the hearing now set for July 8 and July 9, 2014, to continue other deadlines in the Revised Committee Schedule dated May 21, 2014 in this matter, and to expedite consideration of these motions.

MOTION TO CONTINUE HEARING DATE

The Center seeks a continuance of the hearing scheduled for July 8 and July 9, 2014, because the Center's Public Lands Desert Director, Ileene Anderson, has a previously scheduled vacation out of the country that week. Ms. Anderson is an expert witness for the Center as well as the one of the two Center representatives as an Intervenor in this matter. Holding the hearings when Ms. Anderson is unavailable would significantly undermine the Center's ability to participate in the hearings.

Therefore, the Center hereby moves that the hearings be continued *at minimum*, at least one week until after Ms. Anderson's return from vacation on July 14, 2014.

MOTION TO CONTINUE DEADLINES IN THE REVISED COMMITTEE SCHEDULE DATED MAY 21, 2014

The Committee issued an Order and a Revised Committee Schedule dated Wednesday, May 21, 2014 (and docketed at 4:30 pm May 21, 2014), however, that Order and Revised Committee Schedule was not provided to the Parties via the service list until the morning of Thursday, May 22, 2014, more than two weeks after the Committee took the motion to reopen the hearings under advisement on May 7, 2014. The Revised Committee Schedule sets the deadline for opening testimony only 12 working days after the Schedule was provided to the Parties and provides only one week for rebuttal testimony to be filed. This schedule is unnecessarily rushed and truncated and ignores the request by the Center for a reasonable schedule. Indeed, the May 21, Order and Revised Committee Schedule does not acknowledge or respond to the requests made by the Center regarding scheduling in any way. (*See* TN # 201972– Center for Biological

Diversity Opposition to Motion to Reopen Evidentiary Record and Scheduling Order (“Center Opposition”).)

First, the Center noted regarding the schedule and proper procedures that a Revised Staff Assessment should be provided on all new information before testimony is required from other Parties. (*See* Center Opposition at 7.) This issue was not addressed at all in the Committee Order and it appears that no RSA will be issued.

Second, the Center specifically requested sufficient time be allocated for each step of the schedule and that hearings be held in the local region near the project site.

The Center requests that if the Committee decides to reopen the evidentiary record at this time (which we oppose, as discussed above): 1) opening testimony be due no sooner than 90 days after the decision is made (if Staff does not agree to issue an RSA) *e.g.*, July 22, 2014, or at least a month after the RSA is issued; 2) the time for rebuttal be at least 30 days; 3) the time between rebuttal testimony being filed and any evidentiary hearings be at least 30 days; and 4) that evidentiary hearings be scheduled at a time convenient to all parties and be held in Riverside County.

(Center Opposition at 8-9.)

Third, the Center also explained that:

[T]he Center cannot prudently secure experts until the Committee rules on the motion, determines whether or not the record is to be reopened at this time, and adopts a new schedule. Moreover, because spring is a very busy time for avian experts who spend time in the field, it will be extremely difficult for the Center to submit expert testimony without *at least* 60-days lead time after the decision by the Committee and issuance of a schedule.

(Center Opposition at 8.)

The Committee’s Order and Revised Committee Schedule does not explain why it ignored the issues raised by the Center regarding scheduling or whether and how it intends to fulfill the commitment made at the January 7, 2014 PMPD Conference by Hearing Officer Celli when he assured the Center and other Intervenors that:

what the Committee has already made clear to me, is that the Intervenors will be given ample time, plenty of time to get experts, respond, and be

able to fairly and adequately respond to whatever the Petitioner puts forth.
So that is the intention of the Committee.

(TN #: 201546, 1/7/14 Tr. at 53 (emphasis added).)

On receiving the Order and Revised Committee Schedule on May 22, 2014, the Center immediately contacted independent experts needed for several of the 9 topic areas listed in the Order. Several experts have not yet responded, other experts are unavailable to provide testimony due to this being the active field season and/or given the very short notice before opening testimony now scheduled to be due on June 9, 2014 and rebuttal now scheduled to be due June 16, 2014. Although the Center is continuing to attempt to secure expert testimony in the time allotted by the Revised Committee Schedule, the very short timeline is making it extremely difficult for the Center to be able to secure experts for testimony and hearing on the topics listed in the Order. As a result, the Revised Committee Schedule may significantly undermine the Center's ability to fully and fairly participate as a Party in this matter and does not provide for due process.

Therefore, the Center hereby moves for the deadlines in the Revised Committee Schedule to be continued as follows, *at minimum*:

Activity	Date
All Parties File Opening Testimony	6/23/14 (30 days after the Order Reopening the Hearings was Served on the Parties)
All Parties File Rebuttal Testimony	7/23/14 (30 days after opening testimony filed)
Pre-Hearing Conference	8/6/14 (14 days after rebuttal testimony filed)
Evidentiary Hearings <u>in Riverside County</u>	Week of 8/25/2014 or later (at least 30 days after rebuttal testimony filed)
All Parties File Opening Briefs	3 weeks after the transcripts are published
All Parties File Reply Briefs	5 weeks after the transcripts are published
Revised PMPD	TBD

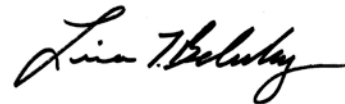
Revised PMPD comment period	TBD
PMPD Conference with Committee	TBD
Commission Business Meeting	TBD

MOTION FOR EXPEDITED CONSIDERATION OF THESE MOTIONS

The Center hereby moves for expedited consideration of these motions by the Committee within 3 days, by May 30, 2014, due to the extremely short deadlines in the current schedule.

Respectfully submitted,

Date: May 27, 2014



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