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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

DOCKET NO. 09-AFC-7C

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

**PALEN SOLAR HOLDINGS, LLC's
OPPOSITION TO INTERVENOR CENTER
FOR BIOLOGICAL DIVERSITY'S
MOTION FOR CONTINUAUNCE OF THE
EVIDENTIARY HEARING AND
MODIFICATION OF THE SCHEDULING
ORDER**

Palen Solar Holdings, LLC (PSH) files this Opposition to Intervenor Center For Biological Diversity's (CBD) Motion for Continuance of the Evidentiary Hearing and Modification of the Scheduling Order, served on May 27, 2014.¹ The Committee granted PSH's Motion to Reopen the Evidentiary Hearing and issued its Order and Revised Schedule on May 21, 2014 (Order) after considering all opposition.² CBD offers two grounds in support of its Motion. The first is that one of CBD's expert witnesses, Ileene Anderson, is unavailable on July 8 and 9, 2014 due to a planned vacation. The second is CBD alleges that the Committee has not given sufficient time for CBD to prepare and participate in the evidentiary hearings. CBD has also requested that the decision on its Motion for Continuance be expedited. PSH agrees to expedite the decision and for the following reasons requests the Motion for Continuance be **DENIED** and that the schedule remains as outlined in the Order.

The Order listed the following topics that will be the subject of evidentiary hearings:

- a. Avian impacts
- b. Flying invertebrate species (insects)
- c. Curtailment provision
- d. Avian deterrent strategies

¹ CBD served its Motion by email on the evening of May 27, 2014 with a note from Lisa Belenkey that she was having trouble docketing it using the Commission's efile system.

² CBD filed two documents in opposition to PSH's Motion (TN 201972 and 201977), presented oral argument in support of the PMPD at the January 7, 2014 PMPD Conference, and was permitted to make additional oral argument in the form of public comment at the Committee Conference on January 7, 2014.

- e. Visual Resources (glint and glare)
- f. Alternatives (PPA milestone status and economic feasibility)
- g. Overriding considerations
- h. Natural gas consumption
- i. Cultural Resources mitigation (Condition of Certification **CUL-1**)

As shown below none of the topic areas should come as a surprise to CBD. In fact, PSH has filed the majority of its evidence concerning the topic areas on February 10, 2014, five months prior to the dates set for evidentiary hearing. To support the Committee's denial of CBD's Motion, each topic area is addressed below.

Avian Impacts, Curtailment and Deterrent Strategies

PSH compiled a comparison table of avian mortality pursuant to the direction provided by the Committee at the PMPD Conference. The comparison table was docketed on February 10, 2014 and updated on February 28, 2014 and March 21, 2014. The table will be updated and submitted with our Opening Testimony and will include data that is publicly available to that date. This information was the subject of the Staff Workshop on April 16, 2014. CBD participated in the Staff Workshop and argued that the data contained in the table was insufficient to support opening the record. The data is, and has been, publicly available on a monthly basis since 2012. CBD has already reviewed the data since it has taken the position that the table is insufficient to support reopening the evidentiary record.³

In addition to the comparison table, on February 10, 2014, PSH filed proposed modifications to Condition of Certification **BIO-16b** addressing the Committee's direction relating to performance standards. CBD did not engage in any discussion concerning PSH's proposed modifications even though it was provided with the opportunity at the April 16, 2014 Staff Workshop.

PSH also filed a description of potential deterrent measures that could be implemented at the PSEGS on March 7, 2014, nearly two and half months ago. The Committee has requested a description of which measures are proposed. PSH has taken the position that the specific measures should be determined by the Compliance Project Manager (CPM) in consultation with the Technical Advisory Committee (TAC) as outlined in Condition of Certification **BIO-16b**. The deterrent measures were described in its Opening Testimony and PSH's witness was available at the previous evidentiary hearing, but CBD did not ask any questions relating to the measures. PSH will bring the same witness as part of its expert panel to further expand on the report and why it is preferable to allow the specific measure to be implemented to be determined by the CPM and TAC. The only question regarding the deterrent method report at the April 16, 2014 Staff Workshop came from CBD, requesting an environmental impact evaluation of the potential methods. The methods largely use sound or light to deter birds and a qualitative estimate of the impacts from using these techniques will be provided in our Opening Testimony. CBD has known about these types of deterrent methods that could be employed at the PSEGS since the first evidentiary hearings in 2013.

³ See CBD Opposition to Motion to Reopen the Evidentiary Record (TN 201972). CBD took a similar position at the April 16, 2014 Staff Workshop.

Flying Invertebrate Species (Insects)

The Committee has added this topic area based in large part on reports of insect mortality at the Ivanpah Solar Electric Generating System (ISEGS) project. The addition is supported by CBD's request that the issue be analyzed in its Opposition to the PSH's Motion to Reopen the Evidentiary Record.⁴ Therefore, CBD should not be surprised by the Committee's inclusion of the topic in the evidentiary hearing and therefore has had ample time (since the filing of its Opposition) to prepare to present evidence on insects.

Visual Resources (Glint and Glare)

This issue relates to pilot complaints in the vicinity of ISEGS. The complaints are being investigated pursuant to a condition that is similar to PSEGS. This issue was raised by Intervenors as a reason to revisit the condition. All of the complaint documentation is available under the ISEGS docket with the latest report being docketed on March 25, 2014. All parties have had ample time to review the ISEGS documents.

Alternatives (PPA Milestone Status and Economic Feasibility)

PSH filed its Supplemental Testimony outlining the infeasibility of the project alternatives on February 10, 2014. CBD has known that PSH contends the alternatives are infeasible since last year's evidentiary hearings and briefing. CBD has had the additional information for 4 months prior to Opening Testimony being filed. This is ample time to prepare for this issue.

Overriding Considerations

PSH filed its Supplemental Testimony outlining the benefits of the PSEGS, including the ability for the PSEGS to incorporate Thermal Energy Storage (TES) in the future, on February 10, 2014. CBD has had this additional information for 4 months prior to Opening Testimony being filed. This is ample time to prepare for this issue.

Natural Gas Consumption

The Committee requested testimony address whether a subsequent amendment will be necessary for PSEGS for additional natural gas use, similar to being requested by ISEGS. This issue was raised by CBD in its Opposition to PSH's Motion to Reopen the Evidentiary Record⁵ and should not be the basis for additional delay.

Schedule

PSH originally requested a schedule that would have allowed the Commission to issue a Final Decision in July. Due to extensions of time for response to the Motion, the Committee could not have feasibly granted PSH's original or revised schedule. PSH filed

⁴ Ibid.

⁵ Ibid.

a revised schedule with a Final Decision in August. The Order did not adopt either PSH's revised schedule or the schedule provided by any Intervenor. However, the schedule that was adopted allows the PSEGS to reach a Final Decision that could conceivably allow it to conduct desert tortoise clearance activities in the Fall of 2014. Such activities are potentially critical to meeting the performance requirements of the PPAs.

As discussed above, CBD has had ample time to gather evidence to rebut PSH's earlier filings. The new issues are largely a result of issues raised by CBD in its own opposition to PSH's Motion. The Committee worked to accommodate those issues while compromising on the schedule.

The unavailability of Ms. Anderson during evidentiary hearings is unfortunate but should not prevent CBD from using a different witness or making Ms. Anderson available by telephone. The unavailability of one witness should not cause the PSEGS to miss the desert tortoise clearance window, especially when the project has already been severely delayed.

Conclusion

PSH respectfully requests that the Committee grant that portion of CBD's motion for expedited review, and **DENY** the Motion For Continuance and affirm the schedule outlined in the Order.

Dated: May 28, 2014

Respectfully Submitted,



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