

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)
)
Amendment to the Application for Certification for)
the Ivanpah Solar Electric Generating System)
)
)
_____)

Docket No. 07-AFC-5

DOCKET	
07-AFC-5	
DATE	<u>OCT 01 2008</u>
RECD.	<u>OCT 01 2008</u>

**APPLICANT'S PROPOSED SCHEDULE
AND
REQUEST FOR REVISED SCHEDULING ORDER, OR,
IN THE ALTERNATIVE,
REQUEST FOR A SCHEDULING CONFERENCE**

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Introduction and Summary

The *Revised Committee Scheduling Order* for the Ivanpah Solar Electric Generating System project (“Ivanpah SEGS”) (07-AFC-5) dated September 26, 2008, directs the Parties to “inform the Committee, either in their periodic status reports or by an intermediate report, of any steps that can be taken to advance the schedule.” Applicant is greatly concerned that the proposed schedule is substantially delayed relative to the Commission’s prior indications. This would not only create tremendous difficulties for further progress on this precedential solar project, but would also send a chilling signal to large-scale solar developers and their investors whose efforts are needed to achieve California’s Renewables Portfolio Standard (“RPS”), AB 32 climate change requirements, and other renewable energy-related objectives.

The federal and state proceedings can be better coordinated to mutually support each other, and must provide for parallel processing that would make the best use of both time and resources for all concerned. Activities must be timed to forward both schedules, linking milestones only when it makes sense to do so and eliminating artificial bottlenecks that need not restrain advancement of either the state or federal proceedings.

As set forth below, Applicant seeks, in the alternative, either a revised Scheduling Order, consistent with the attached Applicant’s Proposed Schedule, or a Scheduling Conference pursuant to 20 CCR § 1208 as soon as possible.

Opportunities to Expedite the Schedule for the Ivanpah SEGS Project

Applicant wants to acknowledge the hard work of all parties in this proceeding to date. Applicant further acknowledges that this proceeding involves complex scheduling matters, coordinating the Commission’s Certified Regulatory Program and review under the California Environmental Quality Act (“CEQA”) with the Bureau of Land Management’s (“BLM”) responsibilities and review under the National Environmental Policy Act (“NEPA”).

It is important to note that there are three inter-related actions in this case: (1) the Commission’s Certification of the Ivanpah SEGS project; (2) the BLM’s Right of Way (“ROW”) grant for the Ivanpah SEGS project; and (3) the BLM’s land use plan amendment to the 1980 California Desert Conservation Area Plan, as amended, sometimes referred to generically as the Resource Management Plan amendment or “RMP amendment.”

Coordinating these three processes is admittedly a challenging task; however, both CEQA and NEPA favor a joint state-federal process, and, wisely, the Commission and the BLM have elected to review the Ivanpah SEGS in a joint process. The immediate task at hand is to provide a schedule that meets the legal requirements of the Commission and BLM’s processes while furthering the important public policy objectives reflected in this proceeding.

The State of California has made numerous public policy decisions memorializing the need and the desire to expedite the licensing and construction of renewable energy resources like the Ivanpah SEGS project. California’s RPS; AB 32, the California Global Warming Solutions Act of 2006; the Commission’s own work in the Integrated Energy Policy Report (the “IEPR”);

the Renewable Energy Transmission Initiative (“RETI”), and a host of other important initiatives undertaken by the State both reflect and signal an emphasis on siting and construction of new renewable resources. To meet these and other important policy objectives, and to send the right signal to large-scale solar developers and their investors that California welcomes and supports their investment, the Commission must commit to a schedule that demonstrates its ability to exercise its responsibilities in a fully appropriate, while timely and responsive, fashion.

The Applicant understands and supports the Commission’s consideration of the BLM as a partner and ally in these important public policy initiatives. We further understand and agree that it is important for the Commission and the BLM to proceed in parallel on the three actions described above.

The Committee Has Significant Flexibility in Setting Schedule

While the permitting processes of the Commission and the BLM should proceed together, the Applicant respectfully submits that they need not proceed in lock-step. As discussed below, there are significant opportunities to streamline the overall permitting timeline and to reduce resource demands on both the governmental entities, as well as on the Applicant, by allowing the joint state and federal processes to proceed in parallel, rather than sequentially. Significantly, the overall schedule must not hang on artificial bottlenecks; no review period, for example, should stall progress on other items unless absolutely necessary and required by law.

The Applicant’s focus, and we respectfully suggest, the Committee’s immediate focus should be on the timely publication of the draft environmental document, the Preliminary Staff Assessment (“PSA”) for the CEC and the Draft Environmental Impact Statement (“DEIS”) for the BLM. Why the heavy emphasis on publication of the draft environmental document? Because, as discussed below, all of the significant CEC and BLM deadlines going forward will spring from the publication of the PSA by the CEC and the Notice of Availability (“NOA”) of the DEIS by the BLM. *If we are to have any hope of timely completion of this joint state and federal process, the most critical and time-sensitive issue facing the Committee and the Parties is the publication of the draft environmental document.*

After publication of the draft environmental document, there are, remarkably, only two significant “hard” deadlines set by statute or regulation between the issuance of the *draft and final* environmental document: (1) for the ROW grant, there is a 45-day comment period on the draft environmental document per 40 CFR 1506.10(c); and (2) for the RMP Amendment, there is a 90-day comment period on the draft document per 43 CFR 1610.2(e). By default, then, the 90-day comment period on the RMP Amendment becomes the determinative scheduling item in the discharge of the BLM’s responsibilities under NEPA. Because these are the only two significant hard deadlines between the issuance of the draft and final environmental document, the Committee thus has significant flexibility in setting a schedule that both fulfils the requirements of and respects the CEQA and NEPA obligations of the Commission and the BLM.

With this considerable flexibility in mind, we next turn to the Committee’s invitation to the parties in this proceeding. Specifically, the *Revised Committee Scheduling Order* directs the parties to suggest means of expediting the overall schedule. In simplest terms, rather than

treating comment periods, internal processing times and the like as “dead times” without any activities, the Applicant asks the Committee to view these periods as opportunities to shift resources to other work that can and should proceed, i.e., to multi-task.

The BLM’s internal NOA review process is often cited as a major obstacle to expediting the Commission’s schedule, but the NOA processes need not be viewed as such. There are important opportunities within the NOA timeline to conduct the Commission’s other important regular business, particularly during potentially protracted, BLM-only comment or review periods. For example, the *Revised Committee Scheduling Order* states that the “Preliminary Staff Assessment/Draft Environmental Impact Statement (PSA/DEIS) [will be] completed” on November 14, 2008, yet the Commission would not hold PSA workshops until “February - April, 2009”. The most logical reason for the delay from November 14, 2008, through April 2009 is the assumption that the BLM NOA process will not result in a published NOA for the DEIS until January 20, 2009.

Even assuming, without accepting as inevitable, that the BLM NOA for the DEIS may be significantly delayed and not issued until January 20, 2009, why should there be no PSA workshops on the PSA that will be completed on November 14, 2008? These PSA workshops are part of the Commission’s regular business in processing powerplant applications. They are not, however, in any way part of the BLM’s regular proceedings for ROW proceedings or RMP amendments and, therefore, can proceed independently of the BLM process.

Like the Commission’s PSA workshops, there are numerous CEC-only activities such as the prehearing conference, evidentiary hearings, the issuance of the Presiding Member’s Proposed Decision (“PMPD”), the PMPD comment period, the PMPD workshop, and the Revised PMPD (if any). These CEC-only activities are again not, in any way, a part of the BLM’s responsibilities under NEPA for either a ROW grant or RMP amendment. These and other CEC-only processes and procedures can and should be advanced during the times required for BLM to follow its own, parallel proceedings.

The Applicant’s Proposed Scheduling

Applicant suspects that the protracted delay assumed in the *Revised Committee Scheduling Order* is due, in part, to the Commission’s desire to “respect” the BLM process and its federal counterparts. However, there is no disrespect at all to BLM if the CEC proceeds to PSA workshops in late November or early December of 2008, since the Staff’s work will be completed by November 14, 2008. BLM staff will no doubt be directly involved in the PSA workshops, but as a matter of both law and practice, the CEC’s PSA workshops do not fulfill any NEPA requirements and need not follow the federal NOA publication.

Beyond the initial step of scheduling PSA workshops for December of this year, the Applicant has proposed the attached schedule for the remainder of this proceeding. There are three columns in the Applicant’s Proposed Schedule. The first column lists significant scheduling events. The second column includes the major milestones in the Commission’s regular siting process. *This is the column upon which the Committee should focus because these activities are part of the Commission’s regular business in processing powerplant Applications.*

The third column provides major milestones in the BLM processes, for reference only (as these are creatures of federal law). They are included because the Commission must consider, but at the end of the day does not control, these federal milestones.

As set forth in the attached Applicant's Proposed Schedule, the Commission and BLM's joint efforts will result in a joint draft environmental document and a joint final environmental document, while allowing each agency to conduct its activities according to its regular course of proceeding. Further, the joint efforts conducted in parallel, but not in lock-step, will also create the administrative record both agencies will need to act promptly and appropriately upon the Ivanpah SEGS entitlement requests.

Prayer for Relief

The Applicant respectfully requests that the Committee issue a revised Scheduling Order consistent with the Applicant's Proposed Schedule attached hereto. In the alternative, absent such an Order, the Applicant respectfully requests a Scheduling Conference pursuant to 20 CCR § 1208 as soon as possible.

October 1, 2008

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  _____

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Attachment: Applicant's Proposed Schedule

**Applicant's Proposed Schedule
Ivanpah SEGS Concentrating Solar Project
To Allow Construction To Begin in June 2009**

EVENT	CEC ACTIONS	BLM ACTIONS
Staff Identifies Remaining Information Requests	Record of Conversation Pending	
Biological Assessment Submitted for Consultation		Expected on or about 10-14-08
Preliminary Staff Assessment ("PSA") issued	11-1-08	
BLM Notice of Availability ("NOA") of the Draft Environmental Impact Statement ("DEIS") published in Federal Register; Starts 90-day Comment period		Either concurrent with release of PSA (11-1-08) or as soon as possible thereafter; CEC processes can proceed while BLM NOA process proceeds in parallel
PSA Workshops	12-1-08	
Final Staff Assessment ("FSA") issued	2-2-09	
BLM NOA of the FEIS published in Federal Register		2-2-09 or 90-days after publication of NOA on the DEIS, whichever is later; taking into consideration time required to respond to comments
Governor's Consistency Review Period Begins ¹		2-2-09 or 90-days after publication of NOA on the DEIS, whichever is later
Prehearing Conference	2-16-09	
Biological Opinion Issued		2-27-09: 135 days after Initiation
Evidentiary Hearings	3-2-09	
Governor's Consistency Review Period Concluded		4-6-09 or date that is 60 days after NOA of FEIS; however, Governor may act in less than 60 days
PMPD issued	5-6-09	
Hearing on PMPD	5-13-09	
CEC Decision	First Business Meeting in June 2009	
BLM ROD issued		5-6-09 (30 days after NOA of FEIS, or Governor's Consistency Review, whichever is later)
BLM issuance of ROW grant and RMP Amendment as "Full Force and Effect"		Concurrent with the ROD
Construction Allowed to Begin At Risk	June 2009	

¹ The BLM process provides a 60-day review period to the Governor of the state in which the RMP (amendment) is being proposed to ensure consistency with state and local plans, policies, and programs. (43 CFR 1610.3-2.)

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Application for Certification for the IVANPAH)
SOLAR ELECTRIC GENERATING SYSTEM) Docket No. 07-AFC-5
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PROOF OF SERVICE

I, Karen A. Mitchell, declare that on October 1, 2008, I served the attached *Applicant's Proposed Schedule And Request For Revised Scheduling Order, Or, In The Alternative, Request For A Scheduling Conference* via electronic mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



Karen A. Mitchell

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