

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:

Beacon Solar, LLC's )  
Application for Certification of the )  
Beacon Solar Energy Project )  
\_\_\_\_\_ )

Docket No. 8-AFC-02

<b>DOCKET</b>	
<b>08-AFC-2</b>	
DATE	<u>FEB 13 2009</u>
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**BEACON SOLAR, LLC'S OBJECTIONS TO CALIFORNIA UNIONS FOR  
RELIABLE ENERGY'S DATA REQUESTS**

February 13, 2009

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**I. INTRODUCTION**

Attached are Beacon Solar, LLC's ("Beacon") objections to California Unions for Reliable Energy's (CURE) Data Requests 1-144 regarding the Beacon Solar Energy Project (BSEP) (08-AFC-2) Application for Certification (AFC). CURE served and docketed the Data Requests on January 26, 2009. Consistent with the requirements of Title 20, California Code of Regulations, Section 1716(f),<sup>1</sup> this objection is being filed within 20 days of receipt of the Data Requests.

Beacon would like to first take this opportunity to make it abundantly clear what is occurring here and to make the following general objection to CURE's Data Requests. Although the environmental review requirements do not consider the motives of participants, the Committee should take into account CURE's intentions and should cast a very skeptical eye at its requests. CURE's tactics are well known and if allowed to proceed unchecked may well delay the Committee's processing of this AFC. The Committee should weigh the burden and impropriety of CURE's requests for information carefully against whether the Committee and, ultimately, the California Energy Commission's ("Commission") review of this AFC would benefit from the information CURE purports to seek.

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<sup>1</sup> Hereinafter, all textual citations will be to Title 20 of the California Code of Regulations, unless otherwise noted.

## II. OBJECTIONS

### A. CURE's Data Requests Are Unjustifiably Late, Place an Undue Burden on Beacon and Staff, and Should Not be Allowed

As an initial but crucial matter, CURE's Data Requests come too late and are time-barred. Pursuant to the regulations governing review of the AFC and siting procedures, all requests for information must be submitted no later than 180 days from the date the AFC was deemed complete, unless good cause is shown. 20 C.C.R. § 1716(e). The AFC for the BSEP was declared complete on May 7, 2008. Accordingly, all data requests should have been filed and served no later than November 3, 2008, in order to comply with the 180-day deadline. CURE's Data Requests were filed and served January 26, 2009, 265 days after the AFC was deemed complete and 85 days past the deadline.

In its requests, CURE makes no attempt to explain or provide good cause for the delay, nor could it. CURE was granted intervenor status in this proceeding on May 22, 2008, and had ample opportunity to submit data requests during the regular discovery period, but did not. Instead, CURE waited until now, likely a matter of weeks before the Preliminary Staff Assessment (PSA) on the BSEP is issued, to serve 144 specific, detailed, and time-consuming Data Requests, many of which are irrelevant or unnecessary to completion of the environmental review, as discussed further below.

Notably, on November 12, 2008 at approximately 5:10 pm, a representative from CURE called the Project Manager, Eric Solorio, to inquire if the 180-day discovery period had lapsed and, if so, whether it had been formally extended.<sup>2</sup> Accordingly, CURE was undeniably aware that the discovery period had closed by this point and yet it waited another 10 weeks before filing these Data Requests. CURE does not acknowledge any of this in its filing and, as mentioned above, does not even bother to set forth any good cause for its delay; evidently, it regards the provisions of Section 1716(e) as a mere suggestion. Were parties permitted to disregard the 180-day discovery deadline at their leisure, and file requests for information at any

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<sup>2</sup> A true and correct copy of the Report of Conversation, as docketed on November 17, 2008, is attached hereto as Exhibit A.

time up until the final hearings (and with no showing of good cause), the siting process would be fraught with uncertainty and could potentially drag on indefinitely. If this were indeed the Commission's intention, there would be no need to draft and enact a regulation such as Section 1716(e) in the first place.

Further bolstering the plain intent of Section 1716(e) that the discovery period be well-defined and finite, other siting regulations provide that the presiding member of the Committee "may set reasonable time limits on the use of, and compliance with, information requests in order to avoid interference with any party's preparation for hearings or imposing other undue burdens on a party." 20 C.C.R. § 1716(j). Presumably, from the language of this regulation, such limitations may be set and enforced *regardless* of whether there is good cause for the information requests. Here, the extreme belatedness and number of CURE's Data Requests, served as they were on the eve of the PSA and three months after staff had finished their formal data requests, threatens to derail the entire review process for the BSEP by placing an onerous burden on both Beacon and staff as they attempt to prepare for the upcoming hearings on the AFC. For this reason alone, all of CURE's 144 requests for further information should be summarily denied by the Committee.

**B. Much of the Information CURE Requests Has Already Been Provided, is Publicly Available, or is Equally Available or Unavailable to All Parties**

The purpose of data requests is to provide access to relevant and necessary information that is reasonably available to the applicant and cannot otherwise be readily obtained. *See* 20 C.C.R. § 1716(d). Much of the information that CURE purports to seek has already been provided, either in the AFC, responses to staff's written or workshop data requests, or supplemental documents voluntarily filed by Beacon, and thus is already accessible to CURE. Specifically, Data Requests 3-7, 10-18, 20-25, 27-33, 40, 43-47, 49-51, 53-55, 57, 59-61, 64, 83, 84, 88, 91-93, 97, 98, 100, 101, 105, 109-118, 122, 123, 125, 129, 133-136, 138-140, and 143, were already answered at various times during this proceeding, by and through the variety of filings that have been submitted. Accordingly, these Data Requests should be denied on the basis that the information they seek was previously provided to CURE.

CURE also seeks to require Beacon to provide information that it could readily obtain on its own. *See* 20 C.C.R. § 1716(d). Data requests should be viewed as particularly improper and burdensome when they ask the applicant to compile and report information that is equally

available to all parties or the general public. Here, with its Data Requests 15, 16, 52, 58, 72, and 138, CURE is requesting information that is as equally available to CURE as it is to Beacon. Moreover, in some instances, CURE asks for information that is not reasonably available to any party. Specifically, Data Requests 8, 72, 126, 127, 141, and 142 are premised on the availability of third-party data that has not been provided to Beacon, and that is likely considered proprietary and confidential by those third parties. Consequently, the information sought by these Data Requests is not “reasonably available” to Beacon. *See* 20 C.C.R. § 1716(d). Without waiving any other objection set forth herein, Beacon objects to these Data Requests on the basis that they seek information that is publicly available, in the public domain, or otherwise equally available (or unavailable) to all parties.

**C. CURE Seeks Information That is Irrelevant or Unnecessary to The Environmental Review Process**

Per Section 1716(b), requests for information should be limited to information “which is relevant to the notice or application proceedings or reasonably necessary to make a decision on the notice or application.” In civil proceedings, discovery requests are considered irrelevant when they seek information that is totally alien to the subject matter of the proceeding, or information so remote that it would be of little or no practical benefit. CURE seeks such irrelevant information in Data Requests 11-14, 21-23, 52, 69-78, 96, 102, 140-142, and 144, and these Data Requests should be denied on the basis of relevancy alone.

CURE also requests a host of information that is simply not reasonably necessary to a decision on the AFC for the BSEP. Specifically, CURE seeks unnecessary information in Data Requests 8, 11-14, 19, 21-23, 26, 32, 34-39, 41, 42, 47, 48, 52, 56-59, 65-74, 79-82, 87, 91, 97, 98, 100, 101, 103, 104, 106-108, 118-123, 126-128, 131, 132, 134, 137, 141, and 142. The California Environmental Quality Act (CEQA) (Cal. Pub. Res. Code §§ 21000 *et seq.*) does not require an agency to have every potential piece of available data. CEQA only requires enough data to provide a reasonable evaluation of a project and its impacts. Accordingly, each of these Data Requests should be denied because they seek information that is beyond the scope of what is reasonably necessary for the Committee to fully assess the environmental impacts of the BSEP. *See* 20 C.C.R. § 1716(b).

**D. CURE's Data Requests Are Improper And Amount to an Abuse of The Discovery Process**

Many of CURE's Data Requests are simply inappropriate, either because they are not requests for data, or because they demonstrate an improper motive. A request that the applicant accept a particular Condition of Certification on a project, as CURE does in Data Requests 2, 85, and 86, is not a request for data. Moreover, the Conditions for Certification requested by CURE have neither been requested nor deemed necessary by the staff or the Committee. As discussed above, the purpose of data requests during the discovery process is to give all parties access to information that is reasonably available to the applicant. However, the formulation and necessity of particular mitigation measures and Conditions of Certification are within the sole discretion and determination of staff or the Committee. Instead of seeking data, in several of its Data Requests CURE effectively seeks to have Beacon speculatively commit to a Condition of Certification that has not been determined by staff or the Committee to be either necessary or effective; this is not an appropriate inquiry for a data request.

Several of CURE's Data Requests are clearly based on an improper motive and should be denied on that basis. In addition to requesting information that is simply unnecessary, Data Requests 11-14, 19, 21-23, 26, 32, 107, and 108 demonstrate that CURE intends to challenge two years of survey data for this project. Each of these requests appears specifically calculated to elicit information that CURE would utilize to further disrupt the siting process, such as by requesting another round of biological surveys. This is an abuse of the discovery process and should not be allowed. Beacon maintains that all surveys were conducted per the applicable protocol and by qualified specialists; all survey reports have been made available to CURE in connection with this proceeding. If CURE wishes to challenge the particular methods by which these surveys were conducted, or the credentials of Beacon's professional consultants, it should do so at the hearings, and not under the guise of Data Requests that attempt to place an improper burden of production on Beacon.

**E. CURE's Data Requests Are Vague, Ambiguous, or Overbroad, or Are so Uncertain and Confusing as to Preclude a Response**

Certain of CURE's Data Requests are phrased in a manner that would preclude any meaningful response by Beacon, even had they been timely. In particular, Data Requests 9, 41, 42, 52, 72, 87, and 141 are each either so vague, ambiguous, or overbroad that responding to

them would be impossible or would place an extreme and undue burden on Beacon. In addition, Data Requests 32, 75-78, 96, and 102 either misstate or misconstrue information that has previously been provided in connection with this proceeding,<sup>3</sup> or misunderstand the law or regulations involved. Accordingly, those Data Requests are uncertain and confusing to an extent that necessarily precludes any meaningful response by Beacon.

### III. CONCLUSION

For all of the reasons stated above, Beacon objects to CURE's Data Requests. These Requests are untimely and are clearly being posed only to force Beacon to incur unnecessary and unreasonable costs, or to provide information that can be used against Beacon by CURE during hearings for the sole purpose of delaying or obstructing the proceedings. Beacon requests the Committee support its initial objection and refuse to allow CURE to pose data requests at this late stage in the proceedings.

Respectfully submitted,

/s/

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February 13, 2009

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<sup>3</sup> For example, Data Requests 75-78 appear to be based on an outdated version of the Raven Management Plan.

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR  
THE BEACON SOLAR ENERGY PROJECT**

DOCKET NO. 08-AFC-2

**PROOF OF SERVICE**  
(Revised 2/9/09)

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**Declaration of Service**

I, Lois Navarrot, declare that on February 13, 2009, I served and filed copies of the attached **Beacon Solar, LLC's Objections to California Union For Reliable Energy's Data Requests**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/sitingcases/beacon](http://www.energy.ca.gov/sitingcases/beacon). The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service List) and to the Commission's Docket Unit, in the following manner:

**(check all that apply)**

**For Service to All Other Parties**

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service List above to those addresses **NOT** marked "email preferred."

**AND**

**For Filing with the Energy Commission**

- sending an original paper copy and one electronic copy, mailed and e-mailed respectively, to the address below (**preferred method**);

**OR**

- depositing in the mail an original and 12 paper copies as follow:

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

\_\_\_\_\_  
/s/  
Lois Navarrot