

M e m o r a n d u mDATE April 28 2009RECD. April 30 2009

To: Karen Douglas, Chairman
 Jeffrey D. Byron, Commissioner, Presiding Member
 James D. Boyd, Vice Chair, Associate Member
 Paul Kramer, Hearing Officer

Date: April 28, 2009

Telephone: (916) 654-4489

From : **California Energy Commission** -- Loreen R. McMahon, Associate Public Adviser
 1516 Ninth Street
 Sacramento CA 95814-5512

Subject: **Public Participation in Joint NEPA/CEQA Documents (Ivanpah)**

This memo will provide the Committee with the Public Adviser's Office perspective regarding public participation in renewable energy siting cases that require coordination between the Energy Commission and the U.S. Bureau of Land Management (BLM).

It is the duty of the Public Adviser to advise the Energy Commission on ". . . measures to assure full public participation in the commission's proceedings." Accordingly, "the adviser shall render his or her independent advice on commission procedures that in the adviser's view will provide the optimum of public participation to benefit the commission in its work." (California Code of Regulations, Title 20, Section 2555(b))

Executive Order S-14-08, which focuses on renewable energy development and standards, underscored the Memorandum of Understanding (MOU) between the Energy Commission and the BLM establishing a coordinated permitting approach with our federal partners. Toward this goal of coordination, there are many facets to the collaboration between the Energy Commission and BLM, one of which is public participation. This was recognized as a stated purpose of the MOU, including shared preparation and analysis in a public process, avoiding duplication of effort, promoting intergovernmental coordination at all levels and, "*...[facilitating] public review by providing a joint document and a more efficient environmental review process.*" (Italics added, MOU between BLM and Energy Commission "Concerning Joint Environmental Review for Solar Thermal Power Plant Projects," August 2007)

Both the National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA) have provisions to join the processes and streamline when appropriate to benefit the public. Public Resources Code, Section 21003, states that agencies be efficient and expeditious "in order to conserve the available financial, governmental, physical, and social resources..." Further, CEQA Guidelines Section 15226 provides that, "[s]tate and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between

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[CEQA] and [NEPA]...to the fullest extent possible..." In NEPA practice, the focus is on reducing the burden on the public, including the amount of material that the public must read, as well as the number of events they must attend. Both federal and state statutes intend for a sincere commitment to an open, comprehensible, and consistent public participation process, with a focus on earnestly developing public input and trust.

On April 9, 2009, the Ivanpah Solar Electric Generating System (Ivanpah) applicant proposed a schedule that has notable implications with respect to public participation. The Public Adviser's Office reviewed the Ivanpah applicant's proposed schedule and is concerned that it may impede public participation by creating a circumstance of two separate comment periods. With a desire to prevent confusion, and to avoid unnecessary criticism of procedural issues in this proceeding and those that will follow, it would be easier for the public to participate if a single combined public comment period is established.

The current scheduling agreement between the Energy Commission and BLM is to pair the Final Staff Assessment (FSA)/Draft Environmental Impact Statement (DEIS). The applicant's proposed schedule raises concerns, chief of which for the Public Adviser's Office is the lack of an effort to conform the processes to both state and federal regulations. Such a schedule as proposed may cause the CEC and the BLM to look disingenuous in the eyes of the public, particularly when it would create two different schedules for comments on a single document. For these reasons, the Public Adviser's Office sees a benefit in the creation of one comment period of the same length to be set forth for public comments on Energy Commission/BLM joint documents, such as the FSA/DEIS.

It is the hope of the Public Adviser's Office that the procedural question of public comment in the Ivanpah proceedings could serve as a model for future renewable projects. Since this issue is applicable to all siting projects with joint BLM documents, the Public Adviser's Office is available to discuss this as an agenda item to the Siting Committee.

LOREEN R. McMAHON
Associate Public Adviser



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
FOR THE *IVANPAH SOLAR ELECTRIC
GENERATING SYSTEM*

DOCKET No. 07-AFC-5

PROOF OF SERVICE
(Revised 4/16/09)

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DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on April 30, 2009, I served and filed copies of the attached Public Participation in Joint NEPA/CEQA Documents (Ivanpah), dated April 28, 2009. 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/ivanpah]**. 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:

 X sent electronically to all email addresses on the Proof of Service list;

 X 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:

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

OR

 depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-5
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I declare under penalty of perjury that the foregoing is true and correct.

Original Signed By: _____
RoseMary Avalos