

DOCKET

08-AFC-12

DATE AUG 17 2009

RECD AUG 17 2009

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

Application for Certification for the
San Joaquin Solar 1 and 2 Hybrid Power Plant

San Joaquin Solar 1 and 2 LLC

)
)
)
)
)
)

Docket No. 08-AFC-12

OBJECTIONS TO DATA REQUESTS OF CALIFORNIA UNIONS FOR RELIABLE ENERGY, SET 3

Christopher T. Ellison
Greggory L. Wheatland
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
(916) 447-2166 (Phone)
(916) 447-3512 (Fax)

Attorneys for San Joaquin Solar 1 and 2
LLC

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:)	
)	
Application for Certification for the)	
San Joaquin Solar 1 and 2 Hybrid Power Plant)	Docket No. 08-AFC-12
)	
<u>San Joaquin Solar 1 and 2 LLC</u>)	

**OBJECTIONS TO DATA REQUESTS
OF
CALIFORNIA UNIONS FOR RELIABLE ENERGY,
SET 3**

On July 27, 2009, San Joaquin Solar 1 LLC and San Joaquin Solar 2 LLC, collectively referred to as San Joaquin Solar or “Applicant”, received California Unions for Reliable Energy (CURE) *Data Requests, Set 3*. Except as noted below, the Applicant will respond to these requests on or before August 26, 2009. There are, however, specific questions in Set 3 to which the Applicant objects.

Pursuant to Title 20, California Code of Regulations, Section 1716(f), Applicant hereby objects to CURE's Data Requests 46, 47, 57, 62, 63, 65 through 71, 77, 80, 85, 87, and 89.

Section 1716 of the Commission's regulations (Cal. Code Regs., tit. 20 § 1716) contains the basic framework for information exchanges between parties in licensing proceedings: “A party may request from an Applicant ... information which is reasonably available to the Applicant which is relevant to the application proceedings or reasonably necessary to make any decision on the ...application.” (Cal. Code of Regs., tit. 20 § 1716(b).) The Applicant may then answer or object to the request. If the Applicant objects, the requesting party may then forego

the request, seek alternative means of obtaining the desired information, or petition for an Order directing the Applicant to provide the information. In considering the reasonableness of a data request, the Commission evaluates whether the information sought appears to be reasonably available to the Applicant and whether the requested information is relevant and reasonably necessary for the Commission to reach a decision on the Application.

The Applicant objects to those data requests that request information that is not reasonably available to San Joaquin Solar. The Applicant also objects to those data requests that are not relevant to the proceeding and reasonably necessary to make any decision on the Application. Finally, the Applicant objects to those data requests that ask the Applicant to prepare or revise analyses based on specifications, assumptions or speculations provided by CURE. The Applicant believes that the analyses it has prepared are sufficient for its Application. CURE is free to disagree and it may, if it so desires, prepare its own calculations or estimates regarding any relevant issue. However, CURE should not confuse the discovery phase with the evidentiary phase of this proceeding. As noted in a recent ruling by the Committee in the Carlsbad Energy Center proceeding, "The provision of 'information' by the Applicant or any other party includes data and other objective information available to it. The answering party is not, however, required to perform research or analysis on behalf of the requesting party."¹ While the Committee also recognized that the line between discoverable data and undiscoverable analysis and research is dependent on the particulars of a request and cannot be drawn with precision, San Joaquin Solar submits that CURE's request for new or revised analyses have crossed far beyond the line of discoverable data. The Applicant's specific objections are set forth below.

¹ Committee Ruling On Intervenor Center For Biological Diversity's Petition To Compel Data Responses, Application For Certification For The Carlsbad Energy Center, Docket No, 07-Afc-6, December 26, 2008

SPECIFIC OBJECTIONS

Data Request 46

Please document the Project's ability to secure a 50/50 mix of agricultural wood wastes and municipal green wastes (primarily composed of clippings and collected wood materials from local municipalities).

Objection:

The Applicant objects to Data Request 46 because CURE's request to "document" the anticipated fuel mix asks for documents that are not reasonably available to the Applicant at this stage of the proceeding. The Applicant has stated that it anticipates a 50/50 wood waste and municipal green wastes. The actual mix cannot be "documented" until the Applicant enters into specific fuel supply contracts prior to and during operation of the facility.

Data Request 47

Please provide a discussion of alternative fuel blends and sources if the proposed 50/50 fuel mix cannot be reliably sourced.

Objection:

The Applicant objects to Data Request 47 because CURE requests a discussion based solely upon CURE's speculation that the anticipated 50/50 fuel mix (a specific mix has not been "proposed") cannot be reliably sourced.

Data Request 57

Please provide a detailed cost analysis for the proposed evaporation ponds and an alternative ZLD system. Please include in the cost analysis costs for disposal of the deposits in the evaporation ponds at the end of the facility life as well as potentially required mitigation for impacts on wildlife such as netting, anti-perching devices, or hazing activities to keep birds from accessing the evaporation ponds. Please document all assumptions.

Objection:

The Applicant objects to Data Request 57 because CURE requests "a detailed cost analysis" that is not reasonably available to the Applicant. Under the Commission's discovery rules, the answering party is not required to perform research or analysis on behalf of the requesting party.

The Applicant also objects to Data Request 57 because a "detailed cost analysis" of the evaporation ponds is not reasonably necessary to make a decision on the Application. If CURE believes that such an analysis is either relevant or necessary to make a decision on the Application, CURE may perform the analysis itself.

Data Request 62

Please revise all Project construction fugitive dust emissions estimates to reflect a realistic soil moisture content and watering or chemical dust suppression control efficiency for average and worst-case conditions. Please justify and document your choices. Please provide all assumptions and calculations used for the revised estimates as accessible (not password-protected) electronic copies of Excel spreadsheets.

Objection:

The Applicant objects to Data Requests 62, 63 and 65 through 70 because CURE requests "revised estimates" of construction and operational fugitive dust emissions that are not reasonably available to the Applicant. Under the Commission's discovery rules, the answering party is not required to perform research or analysis on behalf of the requesting party. The Applicant believes that the estimates of construction and operational fugitive dust emissions are

realistic and in compliance with the requirements of the SJVAPCD and the CEC. If CURE believes that estimates under different assumptions should be calculated, it may do so itself.

Data Request 63

Please revise Project construction fugitive dust emissions estimates to include fugitive dust emissions due to wind erosion of disturbed areas. Please provide all assumptions and calculations used for the revised estimates as accessible (not password-protected) electronic copies of Excel spreadsheets.

Objection:

Please see our objection to Data Request 62.

Data Request 65

Please revise Project operational emissions estimates to include fugitive dust emissions due to wind erosion of the solar fields. Please provide all assumptions and calculations used for the revised estimates as accessible (not password-protected) electronic copies of Excel spreadsheets.

Objection:

Please see our objection to Data Request 62.

Data Request 66

Please re-calculate all PM10 and PM2.5 fugitive dust emissions emission factors and document your assumptions.

Objection:

Please see our objection to Data Request 62.

Data Request 67

Please discuss and document the assumed annual average wind speed of 1 mile per hour in the biomass storage building. Please provide a worst-case wind speed that may be expected within the biomass storage building.

Objection:

The Applicant objects to Data Request 67 on the grounds that the Applicant has not proposed to construct a biomass storage building.

Data Request 68

Please calculate worst-case hourly fugitive dust emissions from biomass handling assuming use of 100 percent agricultural wood waste and the maximum wind speed expected within the biomass building.

Objection:

Please see our objection to Data Request 62.

Data Request 69

Please calculate average annual fugitive dust emissions for biomass handling assuming a typical annual average mix of biomass sources including municipal green waste and agricultural wood waste and annual average wind speed within the biomass storage building.

Objection:

Please see our objection to Data Request 62.

Data Request 70

For both calculations in response to Data Requests 68 and 69, please include a breakdown of the individual source activities, e.g., biomass unloading from the tractor trailers onto the conveyor, pre-sizing of biomass with “fuel aggregators,” conveyor drop onto a storage pile, biomass loadout from the storage pile with diesel-powered mobile equipment and drop onto conveyor to combustor.

Objection:

Please see our objection to Data Request 62.

Data Request 71

Please document the assumption of 1 percent moisture content in fly ash, lime, and limestone and provide a range of typical moisture content for these materials. Please calculate worst-case hourly and daily fugitive dust emissions and average annual fugitive dust emissions from fly ash, lime, and limestone handling.

Objection:

The Applicant will respond to Data Request 71 with a discussion of the basis for the assumption of 1 percent moisture content. The Applicant objects to that portion of Data Request 71 that asks

the Applicant to perform various calculations of fugitive dust emissions from fly ash, lime and limestone handling. Such calculations are not reasonably available to the Applicant. Under the Commission's discovery rules, the answering party is not required to perform research or analysis on behalf of the requesting party.

Data Request 77

Please revise the emission estimates for delivery trucks based on a realistic roundtrip distance assuming that less than 45 percent of the biomass can be sourced within a 75-mile radius. Please document your assumptions.

Objection:

The Applicant objects to Data Request 77 on the grounds the "revised" emission estimates requested by CURE are not reasonably available to the Applicant. Under the Commission's discovery rules, the answering party is not required to perform research or analysis on behalf of the requesting party. In addition, the Applicant objects to the premise of CURE's request that the assumption that less than 45 percent of the biomass can be sourced within a 75-mile radius is "realistic". If CURE believes that emission estimates should be performed based on different assumptions it is free to undertake such estimates itself

Data Request 80

Please revise the air quality analysis for combustion and fugitive dust emissions to account for a realistic carpooling factor, roundtrip distance, and visitor vehicles.

Objection:

The Applicant objects to Data Request 80 because the request asks the Applicant to revise its analysis based on unspecified assumptions. Moreover, under the Commission's discovery rules, the answering party is not required to perform research or analysis on behalf of the requesting party.

Data Request 85

Please discuss and quantify the potential side product formation from the SCR and SNCR systems such as isocyanic acid, nitrous oxide, ammonia, hydrogen cyanide, etc. under unfavorable conditions.

Objection:

The Applicant will respond to Data Request 85 by providing a discussion of potential side product formation from the SCR and SNCR systems. However, the Applicant objects to that portion of Data Request 85 that requests the Applicant to "quantify" potential side product formation because (1) unfavorable conditions are not anticipated, and (2) such information is not reasonably available to the Applicant.

Data Request 87

Please revise the ambient air quality modeling for Project operations to include emissions from mobile sources.

Objection:

The Applicant objects to Data Request 87 because this request asks the Applicant to perform modeling that is not reasonably available to the Applicant and because the requested modeling is not reasonably necessary for the Commission to make a decision on this Application. The Applicant has performed ambient air quality modeling as required by the SJVAPCD rules. Neither the rules of the SJVAPCD nor the Commission require the modeling to include emissions from mobile sources. Therefore, the requested modeling is not necessary for the Commission to reach a decision on the Application. Moreover, under the Commission's discovery rules, the answering party is not required to perform research or analysis on behalf of the requesting party.

Data Request 89

In the event that the Applicant and the SJVAPCD cannot gain approval from the U.S. EPA with regard to interpollutant offset schemes, please identify other opportunities available to the Applicant to offset emissions of PM10.

Objection:

The Applicant objects to Data Request 89 because the request for "other opportunities" to offset PM10 emissions is not reasonably necessary for the Commission to make a decision on the Application. There has been no indication that the SJVAPCD cannot gain approval from the U.S. EPA for interpollutant offsets. Any suggestion to the contrary is mere speculation.

Dated: August 17, 2009

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By _____

Christopher T. Ellison
Greggory L. Wheatland
2600 Capitol Avenue, Suite 400
Sacramento, California 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512

Attorneys for San Joaquin Solar 1 and 2 LLC

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the)	
San Joaquin Solar 1 and 2 Hybrid Power Plant)	Docket No. 08-AFC-12
)	
<u>San Joaquin Solar 1 and 2 LLC</u>)	

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on August 17, 2009, I served the attached
OBJECTIONS TO DATA REQUESTS OF CALIFORNIA UNIONS FOR RELIABLE ENERGY,
SET 3 via electronic and U.S. 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

SERVICE LIST
08-AFC-12

APPLICANT

Kent Larson
Project Manager
12555 High Bluff Drive
San Diego, CA 92130
kent.larsen@spinnakerenergy.net

Doug Wert, Chief Operating Officer
Martifer Renewables Solar Thermal
12555 High Bluff Drive, Suite 100
San Diego, CA 92130
Doug.wert@spinnakerenergy.net

APPLICANT'S CONSULTANTS

Anne Runnalls
URS
1615 Murray Canyon Road
Suite 1000
San Diego, CA 92108
anne_runnalls@urscorp.com

COUNSEL FOR APPLICANT

Christopher T. Ellison
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
cte@eslawfirm.com

Robert Joyce, Corporate Counsel
Joyce Law Group
7848 Ivanhoe Avenue
La Jolla, Ca 92037
Robert_joyce@joycelawgroup.net

INTERESTED AGENCIES

California ISO
E-mail Preferred
e-recipient@caiso.com

INTERVENORS

California Unions for Reliable Energy
(CURE)
Elizabeth Klebaner
Tanya A. Gulesserian
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, # 1000
South San Francisco, CA 94080
E-mail Preferred
eklebaner@adamsbroadwell.com
tgulesserian@adamsbroadwell.com

ENERGY COMMISSION

Julia Levin
jlevin@energy.state.ca.us

James D. Boyd
jboyd@energy.state.ca.us

Raoul Renaud
rrenaud@energy.state.ca.us

Joseph Douglas
jdouglas@energy.state.ca.us

Lisa DeCarlo
ldecarlo@energy.state.ca.us

Robin Mayer
rmayer@energy.state.ca.us

Elena Miller
publicadviser@energy.state.ca.us