

DOCKET

08-AFC-2

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DATE: September 11, 2009
To: California Energy Commission
Docket Office - #08-AFC-02
FROM: Lois Navarrot
SUBJECT: Beacon Solar Energy Project
ENCLOSED PLEASE FIND: Beacon Solar, LLC's Status Report No. 6

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**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

BEACON SOLAR, LLC'S STATUS REPORT #6

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Dated: September 11, 2009

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Beacon Solar, LLC ("Beacon") provides the following status report to the Committee regarding the Beacon Solar Energy Project (BSEP).

As the Committee is aware, the Final Staff Assessment (FSA) is expected to be issued in the next several weeks, and Beacon has requested the Committee provide a schedule for the proceeding through evidentiary hearings. Beacon reiterates its request for a schedule here. Beacon notes the California Energy Commission ("Commission") deemed this Application for Certification data adequate on May 5, 2008. Therefore, it is important to keep this proceeding moving through the siting process. Beacon looks forward to a scheduling or hearing order from the Committee.

Beacon would also like to take this opportunity to address the comments made by California Unions For Reliable Energy (CURE) in its recent Status Report regarding the need for recirculation of a revised Preliminary Staff Assessment (PSA). What CURE fails to directly acknowledge is that the Commission's power plant siting process is a certified regulatory program under CEQA. *See* Pub. Res. Code § 21080.5; 14 Cal. Code Regs. (CCR) §§ 15250-15253. Such programs are exempt from CEQA's requirements for preparation of traditional environmental review documents such as Environmental Impact Reports (EIRs) and negative declarations. Rather, environmental review documents are prepared under the lead agencies' own regulations and those documents are used instead of the documents required by CEQA. Pub. Res. Code § 21080.5(a). All that is required is that the documents prepared pursuant to the certified regulatory program include a description of the proposed activity along with alternatives and mitigation measures, and be available for a reasonable time for review and comment by other public agencies and the general public. *Id.* at § 21080.5(d). Those requirements have clearly been satisfied here and will continue to be satisfied as the process continues.

The PSA is but one of several environmental review documents that is issued during the Commission's siting process, and the PSA is not CURE's only chance to evaluate and submit comments on the project. Indeed, because Staff is technically an independent party in the proceeding, the documents it issues reflect Staff's analysis but do not necessarily reflect the position that will be taken by a siting committee or the Commission after evidentiary hearings.

The environmental review process actually begins with the Commission's determination that the Application for Certification (AFC) is complete. A complete AFC must contain a significant amount of environmental information pursuant to the Commission's regulations and is made available for review by the public and other agencies.¹ Once the AFC is deemed complete, the parties are permitted to engage in discovery during a data collection phase. Staff then drafts and issues the PSA, which is made available for public review and comment, followed by the FSA. Once the FSA is released, concerned members of the public may comment and all parties in the proceeding are permitted to submit written testimony to the Committee. Noticed hearings are then held, sometimes taking several days, during which evidence is taken pursuant to the Commission's published rules of practice and procedure and public comment is accepted. Upon conclusion of the hearings, the Committee will draft and issue the Presiding Member's Proposed Decision (PMPD). This document must be made available for public review and comment for a minimum of 30 days. The Committee will hold a hearing on the PMPD, usually during the comment period on the PMPD. If the Committee elects to issue a revised PMPD, it must also be circulated for public comment, albeit for a shorter period of time. The final determination on the project is made by the Commission at a noticed Business Meeting, after final written and oral comments are taken.

Given this prolonged process which provides for extensive involvement by both intervenors such as CURE and the general public, it is absurd for CURE to claim that it will be deprived of the opportunity to fully and adequately review the "new" data concerning the project if the PSA is not recirculated.² The inclusion of additional information and project clarifications

¹ The following information is taken from the Commission's siting regulations at Title 20, California Code of Regulations, Chapter 5, as well as the *Siting Process Guidebook* (2006), published by the Commission.

² CURE also asserts that it will be deprived of the opportunity to provide meaningful comment on the PSA unless it is afforded at least four weeks to prepare its written testimony after publication of the FSA. This too, is absurd. CURE has been a party to this proceeding since the beginning of the discovery process, and at this point is as equally well-positioned to prepare testimony as the Applicant. Moreover, there is no requirement that the parties or the public be permitted to review and comment on the FSA; the FSA is Staff's written testimony for the formal

in the FSA simply does not “deprive[] the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect” (14 CCR § 15088.5) in the context of the Commission’s extensive and comprehensive siting process.

Respectfully,

/s/

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hearings. *Siting Process Guidebook* at 47. In any event, as noted above, the parties’ initial written testimony that is submitted following the FSA is only one of many chances CURE will have to voice its concerns. Requiring initial testimony to be submitted less than a month after publication of the FSA, provides sufficient time for CURE to develop its testimony in this proceeding.

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PROOF OF SERVICE
(Revised 4/28/09)

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Declaration of Service

I, Lois Navarrot, declare that on September 11, 2009, I served and filed copies of the **Beacon Solar, LLC's Status Report #6**. 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. 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)

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California Energy Commission
Attn: Docket No. 08-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

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

/s/
Lois Navarrot