

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

DOCKET	
08-AFC-12	
DATE	OCT 12 2009
RECD	OCT 12 2009

Application for Certification for the San Joaquin)
Solar 1 and 2 Hybrid Power Plant Project) Docket No. 08-AFC-12
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APPLICANT'S STATUS REPORT NO. 5

In accordance with the Committee Scheduling Order dated May 7, 2009, San Joaquin Solar 1 LLC and San Joaquin Solar 2 LLC, collectively referred to as San Joaquin Solar or "Applicant", submits its fifth status report in this proceeding.

The Applicant regrets to report the untimely deaths of Doug Wert, Chief Operating Officer of Martifer Renewables Solar Thermal LLC and Kent Larsen, Project Manager for Spinnaker Energy, Inc. Mr. Wert passed away from natural causes on August 29, 2009. Mr. Larsen passed away from natural causes at the end of September. The deaths were unrelated.

San Joaquin Solar remains firmly committed to the timely completion of this proceeding and to construction of the proposed project. San Joaquin Solar believes that the proceeding is progressing satisfactorily. We look forward to publication of the Preliminary Staff Assessment pursuant to the Staff date (Staff Status Report No. 5) on or before November 19, 2009.

Going forward in this proceeding, the Applicant will be represented by:

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Status of the Proceeding

Staff filed its 5th Status Report on October 5, 2009. Shortly afterward, the San Joaquin Valley Air Pollution Control District ("District") completed the Preliminary Determination of Compliance ("PDOC"). The District submitted the PDOC to the Commission on October 8, 2009.

The Staff's Status Report mentions concerns of the California Department of Fish and Game and U.S. Fish and Wildlife Service. The Applicant has informed the Staff, the California Department of Fish and Game, and U.S. Fish and Wildlife Service of the potential inclusion of this project in a local Habitat Conservation Plan. Initial response from these agencies has been positive and the Applicant will coordinate with them on the detailed plan. Completion of the plan is not necessary prior to issuance of the Preliminary Staff Assessment.

The Staff's Status Report also mentions concerns regarding the preparation of draft Waste Discharge Requirements ("WDRs") for the project's proposed evaporation pond. The Applicant will continue to work with Staff and Central Valley Regional Water Quality Board to address these concerns. Completion of draft WDRs is also unnecessary prior to issuance of the Preliminary Staff Assessment.

Finally, the Applicant has completed additional soil testing that was requested by Staff and the California Department of Toxic Substances Control ("DTSC"). A report summarizing the findings will be docketed and served by October 16, 2009. The Applicant will continue to work with Staff and DTSC on this issue.

Status Report by AIR

On September 30th, 2009, the Applicant received the Association of Irrigated Resident's ("AIR's") delayed Status Report. The Status Report contained a series of "comments and

questions...in the form of a data request.”¹ There are many problems with the questions posed by AIR. First, these questions have been submitted past the 180 day deadline established by the Commission’s rules of practice and procedure. Second, the submission of questions in a Status Report is an attempt to reopen discovery without a showing of good cause. Third, a Status Report is not a permissible means of requesting information from an applicant. For these reasons, the Applicant does not intend to respond to these questions.

This Application was found data adequate at the Energy Commission business meeting held on March 11, 2009. In accordance with Section 1716 of the California Code of Regulations, all requests for information by parties, including AIR, had to be submitted by September 7, 2009. However, AIR’s s Status Report was filed on September 30, 2009, twenty three days after the deadline. Despite having been granted intervention prior to the September 7 deadline and despite having received notice from the Committee of the September 7 deadline,² AIR still failed to submit its questions in a timely manner. AIR has participated in other Commission proceedings and has been previously informed on the 180 day deadline in these proceedings as well.³ Regardless of whether or not questions filed with a Status Report constitute a data request requiring a response by an applicant, AIR’s Status Report was filed after the deadline to submit requests for information, and is untimely under Commission rules.

AIR’s submission of questions in its Status Report is an attempt to circumvent the discovery procedures established by Commission rules. Pursuant to Section 1712 of the

¹ Association of Irrigated Residents, *Status Report*, p. 1 (filed on Sept. 30, 2009).

² In its August 27, 2009 order granting AIR’s Petition to Intervene, the Committee notified AIR that the deadline to submit requests for information in the proceeding was September 7, 2009. AIR also acknowledges in its Status Report that it is submitting questions after the period for requesting information has ended.

³ Order Granting Petition to Intervene to Association of Irrigated Residents; Application for Certification for the Hydrogen Energy California Project; 08-AFC-8, September 8, 2009

California Code of Regulations, an intervenor is not permitted to “reopen matters or reopen discovery dealt with in the proceeding prior to the time when such a person became a party, without a showing of good cause.”⁴ As stated above, the period for discovery closed on September 7, 2009. AIR’s Status Report fails to make a showing of good cause for reopening discovery after the September 7 deadline.


Even if AIR’s “questions” had been filed before September 7, 2009, most of the questions would not have been proper data requests. Section 1716 of the California Code of Regulations requires that parties requesting information from an applicant state the reasons for the request. However, AIR’s Status Report does not state the reasons supporting its questions. Moreover, many of the questions are already addressed in the Application and in the Applicant's responses to data requests from the Staff and CURE.

For these reasons, Applicant believes that the questions contained within AIR’s status report are not data requests as authorized by Commission rules, and plans no further response.

October 12, 2009

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

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⁴ 20 C.C.R. 1712.

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Application for Certification for the SAN JOAQUIN)
SOLAR UNITS 1 AND 2 LICENSING PROJECT) Docket No. 08-AFC-12
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PROOF OF SERVICE

I, Karen A. Mitchell, declare that on October 12, 2009, I served the attached
APPLICANT'S STATUS REPORT NO. 5 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

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