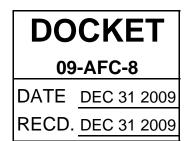
STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION



In the Matter of:

Docket No. 09-AFC-8

Application for Certification for) the Genesis Solar Energy Project)

Response of Commission Staff to Genesis Solar, LLC Motion for Scoping Order, Hearing and Order Scheduling Time for Filing of Briefs

On December 24, 2009, the applicant for the Genesis Solar Energy Project filed a Motion for Scoping Order, Hearing and Order Scheduling Time for Filing of Briefs. In that Motion, the applicant requested that the Committee establish a briefing schedule, notice a hearing, and adopt a scoping order that addresses the following questions:

- 1. Articulate with specificity the Commission's Policy on use of water for power plant cooling purposes;
- 2. Articulate with specificity the legal effect of the U.S. Bureau of Reclamation's Accounting Surface methodology on groundwater pumping in the Chuckwalla Valley Groundwater Basin; and
- 3. Cumulative Impacts
 - a. Define the legal standard for including future projects in the cumulative impact analysis under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).
 - b. Articulate whether the Commission has a policy of conserving water for use by projects that are not yet identified.

In an e-mail dated December 26, 2009, the Hearing Officer assigned to the Genesis Project directed parties to inform him whether they intend to file any opposition. According to the e-mail, any opposition must be filed by close of business on December 31, 2009. This is staff's response to the applicant's filing.

Staff supports all efforts to resolve critical issues as soon as possible in this proceeding. In fact, in an effort to shorten the time needed for review of this project, staff has already advised the applicant that use of groundwater for cooling significantly hampers the Commission's ability to complete its review of this project by next fall. Staff pointed out that the applicant's cooling proposal will require the Committee to address a number of complex legal and factual issues, including 1) state and regional policies discouraging the use of fresh water for cooling, including the Colorado River Regional Water Quality Control Board Basin Plan, State Water Resources Control Board Policies 75-58 and 88-63, and the Commission's own water policy articulated in the 2003 Integrated Energy Policy Report; 2) concerns expressed by the Bureau of Reclamation (BOR) to staff about the potential effect of this and other projects on the Colorado River (which could lead to BOR taking action in the future to prohibit groundwater use); 3) identification of reasonably foreseeable future projects in this area, 4) the role the State of California's interest in targeting this area for future solar development will play in the cumulative impacts analysis; and 5) indications that this project in conjunction with other reasonably foreseeable projects may lead to overdraft of the groundwater system and may create significant impacts on seeps, springs, and the plants and animals that depend on them.

Although the applicant's motion appears to assume that concerns about its proposal to use groundwater for cooling can be resolved by merely applying articulated laws and policies to the project, a Committee ruling on this issue would require evidentiary hearings on a number of complex factual issues. Significantly, the applicant's filing provides no indication as to why the factors identified above will not require extensive analysis, evidentiary hearings, briefing, and hence schedule delays. Given the challenges presented by the applicant's proposal to use groundwater, staff respectfully requests that the Committee issue an Order that provides for a longer schedule if the applicant is determined to continue advocating the use of groundwater for cooling. This resolution is consistent with the Committee's power to "regulate the conduct of the proceedings and hearings, including . . . disposing of procedural requests. . ."(Cal. Code Regs., tit. 20, § 1203, subd. (b).)

Finally, staff notes that its response to the applicant's Motion is influenced by the fact that completion of state and federal agency review of the projects seeking federal subsidies is extremely challenging. Because groundwater use issues are of concern to other state and federal agencies with decisionmaking roles, any schedule for briefing and hearing should accommodate the scheduling needs of those agencies. These agencies include BLM, the Colorado River Board of California, the U.S. Bureau of Reclamation, the State Water Resources Control Board, the Colorado River Regional Water Quality Control Board, the United States Fish and Wildlife Service, and the California Department of Fish and Game.

Staff has made these projects its highest priority and is working diligently with the applicant and other agencies to facilitate and coordinate their review. However, resolving complicated questions of fact and law will hinder our efforts and is likely to make it impossible to complete review by the federal funding deadline. Significantly, every other project seeking a decision by next fall has chosen to avoid the challenges associated with using groundwater for cooling. Staff strongly supports the effort to develop renewable energy projects on a schedule that allows for significant federal

support. However, projects whose development plans create complicated issues involving sensitive resources are likely be delayed in such a way that this outcome is not possible.

Date: December 31, 2009

Respectfully submitted,

/s/ Caryn J. Holmes CARYN J. HOLMES Staff Counsel IV California Energy Commission 1516 9th St. Sacramento, CA 95814 Ph: (916) 654-4178 Fax: (916) 654-3843 E-mail: <u>cholmes@energy.state.ca.us</u>



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA 1516 NINTH STREET, SACRAMENTO, CA 95814 1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE GENESIS SOLAR ENERGY PROJECT

Docket No. 09-AFC-8

PROOF OF SERVICE (Revised 12/22/09)

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DECLARATION OF SERVICE

I, <u>Lynn Tien-Tran</u>, declare that on <u>December 31</u>, 2009, I served and filed copies of the attached <u>Response of</u> <u>Commission Staff to Genesis Solar, LLC Motion for Scoping Order, Hearing and Order Scheduling Time for</u> <u>Filing of Briefs</u>, dated <u>December 31</u>, 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: [http://ww.energy.ca.gov/sitingcases/genesis_solar].

The documents have 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" will be completed Monday, January 4, 2010.

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. <u>09-AFC-8</u> 1516 Ninth Street, MS-4 Sacramento, CA 95814-5512 <u>docket@energy.state.ca.us</u>

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

/s/ Lynn Tien-Tran