

**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

DOCKET
08-AFC-2
DATE <u>MAR 11 2010</u>
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**BEACON SOLAR, LLC'S MOTION FOR PREHEARING ORDER REGARDING
COOLING WATER ALTERNATIVES**

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Dated: March 11, 2010

Beacon Solar, LLC (“Beacon”) hereby submits the following request for a pre-hearing order regarding the presentation of evidence and testimony regarding certain project alternatives at the evidentiary hearings on the Beacon Solar Energy Project (BSEP), which are set to commence on March 22, 2010. On Tuesday, March 9, 2010, the California Unions for Reliable Energy (CURE) submitted their rebuttal testimony including Exhibit 636, the Water Resources and Alternatives sections of the Final Staff Assessment (FSA) for the Beacon Solar Energy Project. In addition, we received an email from Ms. Tanya Gullessarian for CURE at 7:42 on Tuesday evening March 9, 2010 requesting that Beacon and California Energy Commission Staff (“Staff”) stipulate to the submission of Confidential Appendix C to the Alternatives section of the FSA. We assume CURE, the only intervener in this proceeding, intends to present Staff’s evaluation of the feasibility of other cooling alternatives at the evidentiary hearings—namely, photovoltaic (PV) and dry cooling technologies. Beacon is confused by why CURE would want to continue to present these issues when their witness Mr. David Marcus concludes in his testimony filed on November 12, 2009 at page 8 that “1. The CEC should either require Beacon to use an air cooled condenser, or 2. Require the use of non-potable water for power plant cooling, with the non-potable water supply to be in place prior to the start of on-site construction . . .”¹

As discussed with the Committee and all parties at the December 1, 2009 Status Conference, Beacon and Staff have signed a stipulation whereby Beacon agrees to incorporate into the project design one of the two tertiary-treated wastewater alternatives recommended by Staff in the FSA. CURE has declined to sign the stipulation. A fully-executed copy of this stipulation is attached to this motion as Exhibit A. Furthermore, the groundwater use limitations and amounts of water for power plant cooling are now included in Condition of Certification SOIL & WATER-1. Because Beacon has agreed

¹ Beacon has filed testimony to address Mr. Marcus’ request that BSEP be required to use recycled water for construction and expects to discuss this issue during the hearing.

not to use site groundwater for power plant cooling, CURE's introduction of testimony on the economic feasibility of dry cooling and PV including Staff's confidential appendix is no longer relevant and would only serve to extend the length of the hearings for no purpose. Accordingly, Beacon requests that the Committee issue a pre-hearing order affirming that the Committee will not hear testimony or evidence concerning cooling water alternatives at the evidentiary hearings for the BSEP.

I.
PROCEDURAL HISTORY RELATED TO BEACON'S TRANSITION TO USING RECYCLED WATER FOR POWER PLANT COOLING

The BSEP Application for Certification (AFC) was submitted on March 13, 2008. The application was deemed Data Adequate on May 6, 2008. Staff released their Preliminary Staff Assessment (PSA) on April 1, 2009, and the FSA on October 26, 2009.

A. Staff's Economic analysis of Photovoltaic and Dry Cooling Alternatives were Conducted to Address a Perceived Violation of Law and Policy

In the FSA, Staff concluded that the project as proposed would have significant adverse impacts that cannot be mitigated on visual resources. (FSA at 1-6.) Staff did not find a significant adverse impact from the project in the area of water resources. (FSA at 1-6 and 4.9-31.) Staff concluded that, given its use of potable groundwater for power plant cooling, the project as proposed was inconsistent with certain laws, ordinances, regulations, or standards (LORS), specifically, state water policy as stated in State Water Resources Control Board Resolution Number 75-58 ("Resolution 75-58") and the 2003 Integrated Energy Policy Report ("2003 IEPR"). (FSA at 1-6 and 4.9-58 to 59.) In the Soil and Water Resources, and Alternatives sections of the FSA Staff considered cooling water alternatives that could avoid the perceived LORS inconsistency from Beacon's proposed use of groundwater for power plant cooling. Consistent with Resolution 75-58 and the 2003 IEPR Staff evaluated the alternative cooling technologies and water sources to determine whether those alternative cooling technologies and water sources would be

environmentally undesirable or economically unsound.² Accordingly, the FSA studied and presented four purportedly feasible project alternatives that Staff believed would resolve Staff's perceived LORS inconsistency while meeting the project objectives: (1) employing dry cooling technology; (2) utilizing recycled water from the Rosamond Community Services District wastewater treatment plant; (3) utilizing recycled water from nearby California City; or (4) utilizing photovoltaic (PV) panels instead of solar thermal technology.³ Staff's analysis explained that any of these alternatives would alleviate the LORS conflict created by Beacon's proposed use of groundwater for power plant cooling.

B. Beacon Has Addressed Staff's Concerns About a Law and Policy Violation by Agreeing to Recycled Water for Power Plant Cooling

Following publication of the FSA, Beacon asked the Committee to vacate the hearing schedule in place at that time in order to allow more time for Beacon and Staff to discuss the feasibility of the cooling water supply alternatives presented in the FSA. Although Beacon believes it can legally use groundwater for site cooling purposes and disagreed with Staff's interpretation of Resolution 75-58 and the 2003 IEPR, Beacon nonetheless agreed to explore options for an alternative cooling water supply for the project. As presented in the December 1, 2009 status conference Beacon has agreed to proceed with BSEP using a recycled water supply from either California City or the Rosamond Community Services District. Beacon and Staff recently signed a stipulation, attached as Exhibit A, whereby Beacon has agreed to procure tertiary-treated wastewater for plant cooling purposes, and will limit the amount of groundwater it can use for non-cooling purposes. And, these restrictions are now included in Condition of Certification

² FSA at 4.9-57 to -63, 6-6 to -14 and 6-21 to -44 (In addition, the FSA Staff also evaluated the two recycled water options Beacon has adopted for BSEP).

³ Staff also concluded based upon the existing information and on the well sampling program that a viable source of degraded groundwater exists in the BSEP site vicinity that could be developed for project use (FSA at 4.9-61).

SOIL & WATER-1. As a result of these concessions, the stipulation provides that the other alternatives discussed in the FSA—PV and dry cooling technologies—need not be explored further.

Beacon and Staff attempted to involve CURE in their discussions and the final stipulation, but CURE ultimately declined to sign the stipulation. As indicated by CURE’s proposed Exhibits 636 and 637 Beacon can only infer that CURE intends to use valuable Committee and Staff time in hearings to debate the merits of PV or dry cooling for BSEP.

II. **INFORMATION ON PV AND DRY COOLING IS NOW IRRELEVANT**

Beacon requests a prehearing order from this Committee that would preclude CURE from using valuable Committee and Staff resources and presenting evidence concerning PV or dry cooling at the evidentiary hearings because such testimony is not necessary or legally required to make a decision on Beacon’s AFC and would cause unnecessary delay and expense.

A. Information regarding Dry Cooling and PV Alternatives is Not Needed for a Decision on the BSEP AFC

The California Energy Commission’s (“Commission”) regulations specify how the evidentiary hearings are to be used and the information that should be presented.

- The hearings shall be used to identify significant adverse impacts of the proposal on the environment . . .and shall assess the feasibility of measures to mitigate the adverse impacts.
- . . .
- The hearings shall consider whether the facilities can be constructed and operated in compliance with other standards, ordinances, regulations and laws and land use plans applicable to the proposed site and related facility.

Title 20, Cal. Code of Regs. § 1748 (a) & (c).

Any decision by the Commission must include the following information:

- The manner in which the facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.
- Findings regarding the conformity of the proposed site and related facility with LORS.
- Provisions for restoring the site if the Commission denies the AFC.
- Specific conditions to ensure compliance with toxic air contaminants control measures, and
- A discussion of public benefits from the project including economic, environmental and electricity reliability benefits.

(See Cal. Publ. Res. Code § 25523 (subsections b, c and f not included because they are not applicable.)

Neither the requirements for the hearings contained in the Commission’s regulations nor the required contents for a written decision include a discussion of alternatives that do not address a significant adverse environmental impact nor a conflict with LORS. Beacon’s decision to use recycled water at the facility has rendered a discussion of PV or dry cooling moot.

B. The California Environmental Quality Act Does Not Require a Discussion of PV and Dry Cooling as Alternatives to Using Recycled Water for Power Plant Cooling

The California Environmental Quality Act (CEQA), Cal. Publ. Res. Code §§ 21000 et. seq., provides that “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project” 14 Cal. Code Regs. § 15126.6(b). Alternatives should “feasibly accomplish most of the basic objectives of the project and [] avoid or substantially lessen one or more of the significant effects.” *Id.* at § 15126.6(c). “Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.” *Id.* In short, it is clear that

alternatives need only be discussed in detail if they are feasible and would reduce or avoid a significant impact of the proposed BSEP.

Because the Commission's siting process is a CEQA-equivalent proceeding (*Id.* at § 15251(j)), a formal EIR is not required. *Id.* at § 15250. Substitute documents are allowed so long as they include (1) a project description, and (2) alternatives or mitigation measures to avoid or reduce any potentially significant environmental effects, or (3) a statement that the project would not have any potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed. *Id.* at § 15252(a). Here, the original AFC and both the PSA and FSA evaluated the potential impacts of the BSEP in detail, and discussed various alternatives and mitigation measures to reduce or avoid those impacts, in similar format to a draft EIR. One of the alternatives Staff analyzed was the use of recycled water for power plant cooling in lieu of potable groundwater. (FSA at 4.9-62 to -63.) This alternative was not necessary to reduce or avoid a significant impact to groundwater, but instead was proposed to resolve the perceived conflict with state water policy against using fresh inland waters for power plant cooling. (FSA at 4.9-57 to -58.) Beacon subsequently agreed to revise the project proposal to include the use of recycled water for cooling purposes, thereby adopting and incorporating one of the alternatives. (*See* Attachment 1.) Consequently, further alternatives need only be discussed at this point if they are both feasible and could reduce or avoid a significant effect of BSEP. Neither of the alternatives CURE desires to discuss meets those standards.

In addition, dry cooling and PV do not need to be explored further as alternatives. Because the Commission cannot permit a PV facility it is not generally considered a feasible alternative under CEQA.⁴ Also, throughout this process Beacon has maintained

⁴The use of PV panels instead of solar thermal technology is not a reasonable alternative because it is not feasible, as that term is defined in both CEQA and the siting regulations. Feasible means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." *Id.* at § 15364; 20 Cal. Code Regs. § 1702(f). PV is not feasible within this meaning because the Commission lacks the authority to permit a PV project, its

that dry cooling is not feasible for a number of economic and technological reasons. However, regardless of whether the Committee agrees with the feasibility aspects, dry cooling as well as PV do not need to be considered further because it would not reduce or avoid any significant impacts of BSEP. The FSA concluded that even as originally proposed, BSEP would not have a significant impact on water resources, and neither dry cooling or PV would not alter or reduce BSEP's impacts on any other resource area.⁵ Overall, impacts to visual resources would not be significantly affected by the use of a large air cooled condenser instead of a cooling tower, as the project footprint would remain unchanged. Because neither dry cooling nor PV would reduce or avoid a significant environmental impact of BSEP, under CEQA they need not be discussed further. 14 Cal. Code Regs. § 15126.6(c).

The presentation of evidence on PV and dry cooling as alternatives to Beacon's proposed use of recycled water for cooling is irrelevant to this proceeding. If CURE is allowed to present evidence regarding these two alternatives at the evidentiary hearings, Beacon and Staff will be required to respond in kind, which would in at least Beacon's case take a tremendous amount of preparation, and hearing time and related expense. Given the current pressures on Staff and the Commission as a whole to expedite projects, such a diversion could potentially impact the progress of other projects as well. Because there is no legal reason compelling further consideration of these alternatives, the Committee is well within its discretion to issue an order that would limit the scope and maximize the efficiency of the evidentiary hearings by focusing on those issues that are truly necessary to make a decision on the BSEP AFC.

jurisdiction being limited to solar thermal technologies. Alternatives outside the permitting jurisdiction of the lead agency are generally considered infeasible because they cannot be "realistically considered and successfully accomplished." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 575.

⁵ In fact, at the public workshop held by Staff on January 11, 2010, it was discussed that dry cooling would actually utilize more groundwater than what Beacon has committed to in the recycled water stipulation with Staff.

III.
BEACON REQUESTS THE COMMITTEE EXCLUDE FURTHER
EXAMINATION OF PV AND DRY COOLING AS POWER PLANT COOLING
ALTERNATIVES

For the reasons set forth above, Beacon respectfully requests an order from the Committee excluding testimony regarding PV or dry cooling technologies as project alternatives from the evidentiary hearings for BSEP.

Respectfully submitted,

/s/
Jane E. Luckhardt

ATTACHMENT 1

STIPULATION REGARDING COOLING WATER AND ALTERNATIVES

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DOCKET NO. 08-AFC-2

STIPULATION REGARDING COOLING WATER AND ALTERNATIVES

This Stipulation Regarding Cooling Water Alternatives ("Stipulation") is entered into by and among Beacon Solar, LLC (Beacon) and the California Energy Commission Staff ("Staff") (collectively the "Parties"). In consideration of the decision by Beacon to change the cooling water source for the Project, the Parties agree to the following:

STIPULATION

1. Staff concluded in the Final Staff Assessment that Beacon's use of groundwater for cooling water violates California Energy Commission ("Commission") policy as adopted in the Commission's 2003 Integrated Energy Policy Report and State Water Resources Control Board Policy Number 75-58. Staff acknowledges that Beacon disagrees with these conclusions and that Beacon believes it has the legal right to use onsite groundwater for all power plant water needs, including cooling water.
2. Staff presented the following five alternatives to avoid the alleged violation of Commission policy noted above: obtaining recycled water from Rosamond Community Services District ("Rosamond"), obtaining recycled water from California City, developing a source of degraded ground water from around Koehn Lake, using a dry cooling system, and employing photovoltaic technology.
3. Staff acknowledges that Beacon disputes Staff's economic analysis and findings regarding the economic viability of utilizing dry cooling or photovoltaic technology.
4. For multiple reasons, Beacon has agreed to use recycled water for power plant cooling only and to implement a version of either Staff's Rosamond or California City recycled water options to supply power plant cooling water.
5. The Parties are not pursuing degraded water from Koehn Lake at this time because insufficient information is available to fully analyze the potential environmental impacts from using degraded water around Koehn Lake. Nothing in this stipulation prevents Beacon from investigating a Koehn Lake water alternative at some point in the future.
6. Under the water use limitations contained in Staff's recommended Conditions of Certification Beacon can use ground water for construction, for emergency, for mirror washing, for balance of plant needs, for potable demand, for backup supply for power

plant cooling pursuant to a phase in of recycled water under the California City option.
(See Condition of Certification Soil & Water-1, dated February 9, 2010.)

7. The Parties agree that because Beacon has decided to use one of the recycled water options presented by Staff in the Final Staff Assessment for power plant cooling, evaluations of dry cooling and photovoltaic technology do not need to be presented at the evidentiary hearings in this proceeding. Additionally, because dry cooling and photovoltaic technology will not be presented at the evidentiary hearing, Beacon's designated confidential financial information referenced in the Final Staff Assessment will not be submitted into evidence or provided to the Committee¹.
8. Although this stipulation does not bind the Committee, the Parties agree to recommend to the Committee that the Presiding Member's Proposed Decision (PMPD) focus solely on the two recycled water options. The PMPD's discussion of dry cooling and photovoltaic technology should be limited to a reference that those alternatives were evaluated by Staff as part of the California Energy Commission's California Environmental Quality Act functional equivalent process and that Beacon disputes Staff's findings.

IN WITNESS WHEREOF, Beacon and Staff have executed this Stipulation as of

March 3, 2010.

Beacon Solar, LLC



BY: _____

California Energy Commission Staff

BY: _____

¹ The Committee for this siting proceeding (Docket No.08-AFC-2) consists of Chair Douglas as Presiding Member and Commissioner Byron as the Associate Member.

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PROOF OF SERVICE
(Revised 2/8/10)

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Declaration of Service

I, Lois Navarrot, declare that on March 11, 2010, I served and filed copies of the attached **Beacon Solar, LLC’s Motion for Prehearing Order Regarding Cooling Water Alternatives**. 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)

For Service to All Other Parties

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

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

OR

_____ depositing in the mail an original and 12 paper copies as follow:

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