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March 17, 2010

DOCKET

08-AFC-13

DATE MAR 17 2010

RECD. MAR 18 2010

California Energy Commission
Attn: Docket No. 08-AFC-13
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: 08-AFC-13 Calico Solar Project Letter

Dear Docket Clerk:

Enclosed are an original and one copy of California Unions for Reliable Energy's letter regarding Desert Tortoise Relocation Plan for the Calico Solar Project. Please process the document and provide us with a conformed copy in the envelope enclosed.

Thank you.

Sincerely,

/s/

Loulena A. Miles

:bh
Enclosures

2309-055a

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March 17, 2010

Via Email and U.S. Mail

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Siting, Transmission and Environmental Protection Division
California Energy Commission
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Sacramento, CA 95814
cmeyer@energy.state.ca.us

Jim Stobaugh
Project Manager
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Nevada State Office
P.O. Box 12000
1340 Financial Blvd
Reno, NV 89520-0006
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Re: Calico Solar Project; Docket 08-AFC-13—Desert Tortoise Relocation Plan

Dear Mr. Meyer and Mr. Stobaugh:

We are writing on behalf of California Unions for Reliable Energy (“CURE”) regarding the Calico Solar LLC’s (“Applicant”) Draft Desert Tortoise Relocation and Translocation Plan which indicates that clearance of federally threatened desert tortoises will occur in April and May 2010.¹

Clearance surveys on the Project site will be initiated in April 2010 and blood work will occur in May 2010. Site characterization of the relocation and translocation receiver sites would occur at this time,

¹ Draft Desert Tortoise Relocation and Translocation Plan, December 23, 2009, p. 2-10.
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concurrently with the April clearance surveys.² A disease assessment, including blood work, will also be conducted in the relocation receiver sites. These tasks will be conducted concurrently with the clearance surveys and blood work conducted on the Project site in April and May 2010.³

NEPA provides that “[u]ntil an agency issues a record of decision...no action concerning the [project] proposal shall be taken which would: (1) [h]ave an adverse environmental impact; or (2) [l]imit the choice of reasonable alternatives.”⁴ Similarly, a fundamental principle of CEQA is that the environmental review must be completed, and findings required by the statute and guidelines must be made, *before* a part of the project begins.⁵

The requirements of NEPA and CEQA are not merely academic. According to desert biologist Jim Cornett, taking a blood sample from a desert tortoise requires, at the very least, the tortoise be picked up and handled, a needle be inserted into its tissue, and blood drawn. For a wild, free-roaming animal this is a stressful experience with potential lethal ramifications.⁶

The desert tortoise reaches the limits of its ecological tolerances in the desert environments of California.⁷ Maintaining a stable body water balance is the most critical physiological issue faced by a desert tortoise over the course of a year.⁸ The storing of water in its bladder protects the tortoise from water shortages that might

² *Id.* at p. 2-8.

³ Draft Desert Tortoise Relocation and Translocation Plan, December 23, 2009, p. 2-10.

⁴ 40 CFR § 1506.1(a); *Conner v. Burford* (9th Cir. 1988) 848 F.2d 1441, 1449 (the government prematurely committed resources in violation of NEPA when it sold gas and oil leases on national forest land without “reserve[ing] ... the absolute right to prevent all surface-disturbing activities.”); *Metcalf v. Daley* (9th Cir. 2000) 214 F.3d 1135, 1144 (the government irretrievably committed resources when it agreed to assist an Indian tribe in resuming whaling without conditioning the agreement “upon a NEPA determination that the ... whaling proposal would not significantly affect the environment.”)

⁵ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79 (environmental review may not be reduced to *post hoc* rationalization in support of action already taken); *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47Cal.3d 376, 394 (“[a] fundamental purpose of [CEQA review] is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved”).

⁶ Personal Communication with Jim Cornett, March 16, 2010.

⁷ Morafka and Berry, 2002; Ernst and Lovich, 2009.

⁸ Nagy, 1986.

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compromise its ability to survive. However, when a tortoise feels threatened, it typically expels the contents of its bladder to dissuade an enemy from disturbing it further.⁹ Even less invasive procedures than blood removal threaten tortoises sufficiently for them to expel the contents of their bladders.¹⁰ This can result in premature mortality due to dehydration, particularly during times of drought, which is the usual condition in the California deserts.¹¹

Allowing disease assessment, including blood work, on desert tortoises constitutes pre-approval action which would have an adverse environmental impact. Accordingly, the Energy Commission and the Bureau of Land Management must prohibit desert tortoise clearance and disease assessment until a Record of Decision has been issued for the Project.

Sincerely,

/s/

Loulena A. Miles

LAM:bh

cc: Ashleigh Blackford (via email only) (ashleigh_blackford@fws.gov)
Becky Jones (dfgpalm@roadrunner.com)

⁹ Cornett, 2002.

¹⁰ Ernst and Lovich, 2009.

¹¹ Averill-Murray, 2002.

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DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on March 17, 2010, I served and filed copies of the attached California Unions for Reliable Energy letter regarding Desert Tortoise Relocation Plan dated March 17, 2010. 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/calicosolar/CalicoSolar_POS.pdf. 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 electronically to all email addresses on the Proof of Service list; and by depositing in the U.S. mail at South San Francisco, CA, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred."

AND

By sending an original paper copy and one electronic copy, mailed and emailed respectively to:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-13
1516 Ninth Street, MS 4
Sacramento, CA 95814-5512
docket@energy.state.us.ca

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA, on March 17, 2010.

_____/s/_____
Bonnie Heeley

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08AFC13
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