

DOCKET

09-AFC-7

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April 12, 2010

California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **PALEN SOLAR I, LLC's ISSUES STATEMENT FOR APRIL 15
STATUS CONFERENCE
DOCKET NO. (09-AFC-7)**

Enclosed for filing with the California Energy Commission is the original copy of the **PALEN SOLAR I, LLC's ISSUES STATEMENT FOR APRIL 15 STATUS CONFERENCE**, for the Palen Solar Power Project (09-AFC-7).

Sincerely,



Marie Mills

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
Palen Solar Power Project

DOCKET NO. 09-AFC-7

**PALEN SOLAR I, LLC'S ISSUES
STATEMENT FOR APRIL 15
STATUS CONFERENCE**

As directed by the Committee Order dated April 5, 2010, Palen Solar I, LLC (PSI), a wholly owned subsidiary of Solar Millennium, LLC, hereby files its Issue Statement. In accordance with the Order, this Issue Statement includes a proposed schedule including dates for publication of the SSA/FEIS, Prehearing Conference, and Evidentiary Hearings and a brief discussion of what obstacles may exist that would hinder completion of this proceeding by September, 2010. To assist the Committee in understanding PSI's proposed schedule we have divided the issues into the following three categories:

- Issues that PSI believes can be resolved easily in the SA Workshop;
- Issues that PSI believes will likely need to be resolved in evidentiary hearings unless Committee provides early direction now
- Recently identified procedural obstacles.

The issues identified below are largely based on PSI's review of the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS) released on March 18, 2010. While the Order directs the parties to limit this Issue Statement to no more than two pages, PSI has found it impossible to fully apprise the Committee of the issues that may interfere with a timely decision within the page limit.

WORKSHOP ISSUES

PSI has proposed several minor changes to Staff-proposed conditions of certification which include definitional changes or changes to verification timelines. Some of PSI's proposed changes include changes to timing of mitigation. For example, PSI will request that Staff allow habitat compensation lands to be purchased and surrendered on a timeline that mirrors construction of the power plant units and linear facilities.

COMMITTEE DECISION ISSUES

Biological Resources

Staff has identified several issues that are “undetermined” for either compliance with laws, ordinances, regulations or standards (LORS) or impact analysis. As discussed below this could pose an obstacle to the project schedule. Staff has also determined that the project has significant groundwater impacts to shallow vegetation communities and to the Colorado River, which PSI disputes and believes Staff has no technical basis to sustain its position. While PSI is prepared to work closely with Staff at the upcoming workshop, it is fully prepared to outline these issues for the Committee at the Status Conference and to proceed to evidentiary hearing.

However, the most troubling conclusions reached by Staff is its opinion that the Proposed Project results in an unmitigatable impact to Mohave Fringe Toed Lizard (MFTL) sand dune habitat and an unmitigatable impact to desert tortoise connectivity. Based on these two conclusions, Staff then extrapolates that the Proposed Project should not be approved but that a “Reduced Acreage” with a reduced output should be pursued. Not only does PSI strongly disagree with Staff’s analysis and conclusion but was surprised as these issues were never brought up by Staff in any workshop even though Alternatives were discussed at great length. Being able to identify a new alternative that would preserve the 500 MW output that is different than the Proposed Project or the Reconfigured Alternative at this late stage is seriously problematic. PSI has spent considerable time and resources in designing, engineering and negotiating with an EPC Contractor and to redesign the project for a new unidentified alternative cannot be done in time to support a License in 2010. If PSI had known about these issues earlier in the process so that it could consider a new alternative, similar to the discussion about alternatives at the November and December workshops, it may have been able to respond in time to rebut the incomplete analysis by Staff prior to the SA/DEIS being published. Staff has scheduled a workshop on April 16 to discuss these issues. PSI requests the Committee provide specific direction at this Status Conference to Staff to remain open to PSI’s analysis and to discuss ways to mitigate the impacts of the Proposed Project. PSI provides the following brief list of bullet points to assist the Committee’s understanding of the issues and is prepared to describe in more detail at the Status Conference.

Desert Tortoise Connectivity

This issue is whether or not the tortoise which is migrating from the north of the project will be deterred from migrating southward to the area south of I-10. Staff concludes that the location of the project’s tortoise-proof fence will direct the tortoise around the site to a location whereby they will more likely attempt to cross I-10 at grade rather than under the existing culvert. Staff believes this is unmitigatable, where PSI believes that additional fencing to either prevent such crossing I-10 at grade or to direct the tortoise to the culvert would mitigate this potential impact.

Impacts to Downwind Sand Dune and MFTL Habitat

Staff has concluded that the Project fence and structures will block sand transport thereby causing hundreds of acres downwind of the project to become “deflated” thereby negatively impacting the MFTL habitat downwind of the project. While PSI

believes that Staff misunderstands the results of its sand transport consultant's preliminary report as well as the sand system itself, it will work diligently at the upcoming workshop to resolve the issue with Staff. In summary,

- Staff overestimates the amount of sand that is moving within the zone that the project fence line intrudes;
- Staff fails to take into account that that the sand will hit the project fence line at an oblique angle and therefore will only temporarily delay sand migration rather than completely block it.
- Staff fails to take into account the relative age of the sand dunes and therefore the relative stability for MFTL habitat
- Staff also finds that grading of the sand dune habitat within the project fence line can be mitigated by purchasing suitable mitigation lands but inexplicably concludes that indirect impacts due to the speculative amount of "deflation" cannot be mitigated in the same manner.

Mitigation Ratios

PSI believes that mitigation such as species enhancement measures should be allowed in place of acquisition of habitat lands as the only means to mitigate project impacts and has proposed several for Staff consideration. PSI will discuss at the upcoming workshops but anticipates that the Committee may ultimately need to decide after evidentiary hearings.

Land Use

Staff has concluded that using a 40-acre parcel of private land within the PSPP is inconsistent with the Riverside County General Plan. PSI disagrees and believes that this isolated parcel is completely surrounded by BLM land and that development of a solar facility in such a situation is consistent with the vision and policies of the General Plan. PSI will work with Staff at the upcoming workshop to resolve this issue.

Visual Resources

Staff has concluded that the PSPP will result in a significant unmitigable impact to visual resources in the same manner as it has found in every solar project before the CEC. PSI disagrees.

Soil and Groundwater

Staff has essentially adopted a significance threshold of 1 molecule of groundwater pumped is a significant impact that must be mitigated. Staff has ignored PSI's modeling and even though the PSPP is 40 miles from the Colorado River and two basins away, staff has treated the extraction of groundwater like it was diversion of Colorado Surface Water. This treatment ignores Commission Decisions in the Blythe Energy Project and Blythe Energy Project II as well as the recent guidance from the Committee in the Genesis Solar Energy Project.

PSI requests that the Committee reiterate to Staff that California groundwater is not Colorado River Water and extraction of water from the Chuckwalla Valley Basin is not the same as pumping Colorado River water directly.

PROCEDURAL OBSTACLES

PSI recently was told that BLM and CEC are severing the joint processes and this is largely due to BLM and CEC disagreements about the contents of the SA/DEIS. PSI would like to learn more from the CEC and BLM and how this will affect the overall schedule but is concerned of duplicative efforts and inconsistent conclusions.

PSI is also disappointed in Staff's failure to conclude that the project's impacts are mitigatable or that it needs additional information to prepare its SAA/FEIS. Staff should have simply adopted worst case scenario analyses and proposed mitigation. For example, Staff concludes that it cannot proceed until the US Army Corps of Engineers (USACE) determines whether a Section 404 permit is required. Since Staff has performed a complete impact analysis concerning the washes, the determination of whether or not the project needs a Section 404 permit is a simple LORS matter which can be solved by a condition requiring the PSPP to either obtain the permit or a determination from the USACE that no permit is required.

The issue regarding the Golden Eagle can be handled in the same manner.

PSI has conducted additional surveys to support a change in transmission line route and alternatives identified after the AFC was filed. If our State goal and policy is to truly reduce GHG's and promote the development of renewable energy, Staff should have and could have easily assumed presence of protected species for these unsurveyed areas and adopted mitigation accordingly and then used the recent surveys to refine the analysis and mitigation.

SCHEDULE

PSI's original proposed schedule was dependent upon the joint CEC/BLM process. If that process is bifurcated, PSI requests the ability to proceed to evidentiary hearing as soon as possible. PSI requests Staff finalize a Staff Assessment Addendum by May 15 and proceed to evidentiary hearing in late May or early June. In that way the Committee can resolve disputes as soon as possible. BLM, if it is preparing its own documents, can then review the Committee's findings and ensure the FEIS and its ROW Grant are consistent.

CONCLUSION

PSI looks forward to a productive Status Conference on April 15, 2010 and requests the Committee provide direction to Staff so that upcoming workshops on April 16, 28 and 29 can be productive.

Dated: April 12, 2010

// Original Signed //

Scott A Galati
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**APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR POWER
PLANT PROJECT**

Docket No. 09-AFC-7

**PROOF OF SERVICE
(Revised 4/5/10)**

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DECLARATION OF SERVICE

I, Marie Mills, declare that on April 12, 2010, I served and filed copies of the attached **PALEN SOLAR I, LLC's ISSUES STATEMENT FOR APRIL 15 STATUS CONFERENCE** dated April 12, 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:

[\[http://www.energy.ca.gov/sitingcases/solar_millennium_palen\]](http://www.energy.ca.gov/sitingcases/solar_millennium_palen)

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

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CALIFORNIA ENERGY COMMISSION

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

// Original Signed //

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