

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

DOCKET**08-AFC-5**DATE APR 15 2010RECD. APR 15 2010

April 15, 2010

Loulena Miles
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080-7037

**RE: Petition for Inspection and Copying of Records
Imperial Valley Solar Project
Docket No. 08-AFC-5**

Dear Ms. Miles:

On March 10, 2010, on behalf of California Unions for Reliable Energy ("CURE"), you filed a petition for inspection and copying of certain confidential records filed in the Imperial Valley Solar Project, Docket Number 08-AFC-5. CURE, a party to the California Energy Commission ("Commission") proceeding in the matter, initially requested inspection and copying of the following documents:

1. Cultural Resources Technical Report, dated 1/8/2010 from A. Leiba to C. Meyer, Docket: 54859.
2. Class III Cultural Resources Technical Report, dated 12/24/2009, from A. Leiba to C. Meyer. Docket: 54707.
3. Cultural Resources Report, Appendix D, dated 6/12/2009, from A. Leiba to C. Meyer. Docket: 52055
4. Cultural Resources Site Location and Cultural Content Groundtruth task: Levels 1 and 2 Evaluations and Recommendations, dated 6/4/2009, from M. Zentner to C. Meyer. Docket 51882.

The Commission has designated the above documents as confidential pursuant to Commission regulations (California Code of Regulations, title 20, section 2505(a)(3)(A)), upon applications for confidentiality submitted on behalf of Imperial Valley Solar, LLC (formerly SES Solar Two). The Commission determined that the records were confidential under the California Public Records Act (Gov. Code, § 6254(k)), and the Archaeological Resources Protection Act (16 U.S.C. § 470hh). Non-disclosure of archaeological and cultural resources is expressly in the public interest, and the Commission designated the records confidential for an indefinite period.

The Bureau of Land Management ("BLM"), a participant in the licensing proceedings for Imperial Valley Solar Project, expressed concerns that items 1, 2, and 3, were not final reports and had not been approved by the BLM as final, complete, and accurate reports and as such should not be released. Deborah Dyer, Commission counsel, contacted you to discuss BLM's concerns, and you agreed to withdraw your request for inspection and copying of items 2 and 3. Item 1 is the most recent version of the cultural resources technical report, and supersedes the versions requested in items 2 and 3.

CURE's petition is based on the grounds that CURE is an Intervenor in the Commission proceeding, and that the requested information is necessary for CURE to fully exercise its rights as a party to the proceeding. Furthermore, the petition stated that CURE is a formal consulting party in the National Historic Preservation Act Section 106 consultation process for the Project, and would be participating in developing a programmatic agreement for protection of the cultural resources on the Project site. The petition also stated that CURE was willing to enter into a nondisclosure agreement with Imperial Valley Solar, that CURE had retained a cultural resources preservation expert, Ms. Claudia Nissley, to assist in the review of the materials, and that Ms. Nissley was willing to sign a nondisclosure agreement. The Commission has received the nondisclosure agreements signed by you on behalf of CURE, and by Ms. Nissley. Imperial Valley Solar, LLC, also signed the nondisclosure agreement.

Any person may file a petition for inspection or copying of a confidential record. Title 20, California Code of Regulations, section 2506. The decision of the Commission on a petition for inspection or copying of confidential records is delegated to the Chief Counsel. Pursuant to the regulation, the entity that submitted the information under an Application for Confidentiality may provide additional information as to why the record should not be released. In this case, Counsel for Imperial Valley Solar Project, Mr. Allan Thompson, stated that Imperial Valley Solar was not opposed to the release of the documents under the terms of the nondisclosure agreement.

Section 25214 of the Public Resources Code states that all meetings and hearings of the Commission shall be open to the public, and opportunity to be heard with respect to the subject of the hearings shall be afforded to any person. Upon request, an interested party may be granted reasonable opportunity to examine any witness testifying at the hearing. Section 1207 of the California Code of Regulations allows intervention in all commission proceedings. Any person whose petition is granted has the all the rights and duties of a party.

CURE is an intervenor in the proceeding, and thus has all the rights and duties of a party. CURE has met the requirements of section 2506 of the California Code of Regulations. Furthermore, CURE has demonstrated, by signing a nondisclosure agreement and retaining a qualified expert in the field, that releasing the information to CURE will not endanger the cultural resources that Imperial Valley Solar sought to protect by requesting that the information be designated confidential.

Given these factors, the Commission will allow CURE to inspect items 1 and 4 listed above. However, it should be noted that as to item 1, Cultural Resources Technical Report, Dated 1/8/2010, Docket: 54859, the Commission has been informed by BLM that the document is only in draft form and has not received final approval from the BLM.

Ms. Loulena Miles

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Any party may request that the full Commission reconsider this decision, in which case the Commission shall conduct a hearing. Any such request must be filed within fourteen days of the issuance of this decision. Title 20, California Code of Regulations, section 2506, 2508. The records will not be released to CURE until the fourteen day appeal period has run.

If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

/S/

MICHAEL LEVY
Chief Counsel

cc: Melissa Jones, Energy Commission Executive Director
Terry O'Brien, Deputy Director
Raoul Renaud, Hearing Officer
Caryn Holmes, Energy Commission Project Counsel
Deborah Dyer, Energy Commission Senior Staff Counsel
Christopher Meyer, Energy Commission Project Manager
Energy Commission Docket Unit
Allan Thompson, Counsel for Imperial Valley Solar Project
Carrie Simmons, BLM Archaeologist
Erica Niebauer, Office of the Regional Solicitor, Pacific Southwest Region



**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
IMPERIAL VALLEY SOLAR PROJECT**
(formerly known as SES Solar Two Project)
IMPERIAL VALLEY SOLAR, LLC

**Docket No. 08-AFC-5
PROOF OF SERVICE
(Revised 4/12/10)**

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DECLARATION OF SERVICE

I, Chester Hong, declare that on April 15, 2010, I served and filed copies of the attached, **Petition for Inspection and Copying of Records**. The original documents, filed with the Docket Unit, are 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/solartwo/index.html>]

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:

- ☒ sent electronically to all email addresses on the Proof of Service list;
- ☐ by personal delivery;
- ☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date 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 emailed respectively, to the address below (***preferred method***);

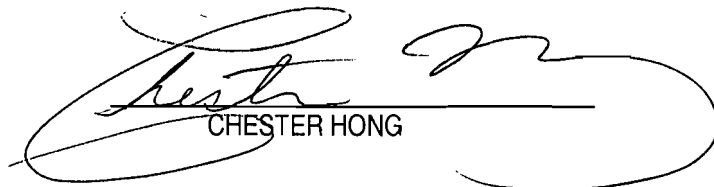
OR

- ☐ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-5
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, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.


CHESTER HONG

*indicates change