

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

eklebaner@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
JASON W. HOLDER  
MARC D. JOSEPH  
ELIZABETH KLEBANER  
RACHAEL E. KOSS  
LOULENA A. MILES  
ROBYN C. PURCHIA

FELLOW  
AARON G. EZROJ

OF COUNSEL  
THOMAS R. ADAMS  
ANN BROADWELL  
GLORIA D. SMITH

May 10, 2010

<b>DOCKET</b>	
<b>09-AFC-7</b>	
DATE	MAY 10 2010
RECD.	MAY 10 2010

California Energy Commission  
Attn: Docket No. 09AFC7  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

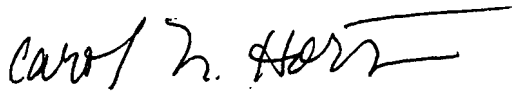
Re: 09-AFC-7 Palen Solar Power Project

Dear Docket Clerk:

Enclosed are an original and one copy of CALIFORNIA UNIONS FOR RELIABLE ENERGY'S LETTER RE MAY 7 WORKSHOP. Please process the document and provided us with a conformed copy in the envelope enclosed:

Thank you.

Sincerely,



Carol N. Horton  
Administrative Assistant

:cnh  
Enclosures

2357-024d

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ANN BROADWELL  
GLORIA D. SMITH

May 10, 2010

Lisa DeCarlo  
Staff Counsel  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Alan Solomon  
Siting Project Manager  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**Re: Solar Millennium Blythe Solar Power Project (09-AFC-06) and  
Solar Millennium Palen Solar Power Project (09-AFC-07)**

Dear Ms. DeCarlo and Mr. Solomon:

On behalf of California Unions for Reliable Energy (CURE), an intervenor in the proceedings concerning the two projects referenced above, we are writing to express our concerns that time pressures have compromised and may continue to compromise the California Energy Commission's sound policies ensuring public involvement in the environmental review and permitting processes.

We understand that the Commission Staff is under enormous time pressure because of the ambitious but arguably unrealistic deadlines that have been imposed. In these circumstances, there may be a tendency to cut procedural corners. However, cutting those corners violates the Commission's rules and degrades the Commission's substantive analyses.

We saw the effect of that pressure during the May 7, 2010 continued Staff Assessment workshop, held jointly for the two projects. That workshop failed to comply with the Commission's regulations, and there were indications that future violations of those regulations may occur. We hope that these violations were an aberration. We are writing this letter to bring our concerns to your attention so that you can ensure they do not become the new norm.

2398-031d

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Alan Solomon  
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As you know, the Commission's regulations require that public workshops be conducted in a manner that encourages "maximum public participation."<sup>1</sup> All public workshops must be adequately noticed and all persons must be provided a reasonable opportunity to participate in the discussion.<sup>2</sup> The Commission's regulations also specifically prohibit nonpublic discussions between the Applicant and the Commission Staff when such discussions concern changes to Staff's recommendations with regard to any substantive issue.<sup>3</sup> These requirements were violated in several ways with regard to the May 7 workshop.

First, the formal notice of the workshop failed to state the location of the workshop – instead, only a call-in phone number was provided. On the day of the workshop we dialed in, only to learn that Staff and the Applicant's consultants were sitting in the same room while all other workshop participants were forced to participate remotely. Apparently, only the Applicant was notified of the workshop's location. This manner of conducting a public workshop cannot be squared with the Commission's regulations which clearly contemplate that all persons be afforded equal access to public workshops.<sup>4</sup>

Second, the conduct of the workshop also denied intervenors a reasonable opportunity to participate in the discussion. The workshop discussion centered on the Applicant's newly revised plans for mitigating the Projects' potentially significant impacts on off-site flooding and erosion. The Commission Staff and Applicant's consultants engaged in a detailed technical discussion regarding these revised plans, using the draft revised plans as reference materials. Without access to the revised plans, those participating by phone were at a clear disadvantage, in that they were unable to follow the conversation in the workshop room. In advance of the workshop, counsel for CURE sent an email to Mr. Solomon specifically requesting that discussion materials be provided to intervenors; CURE's counsel was informed that the draft Drainage Plans submitted by the Applicant in January 2010 would be discussed and that no new materials would be used for discussion. As the workshop progressed, however, it became clear that this was not the case. By the time that Staff emailed the newly distributed materials to intervenors, about

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<sup>1</sup> See Rules of Practice and Procedure, Power Plant Site Certification and Designation of Transmission Corridor Zones ("Rules"), Cal. Code Regs., tit. 14, § 1710(c).

<sup>2</sup> Rules, §§1718(b), 1718(d).

<sup>3</sup> Rules, § 1710(a).

<sup>4</sup> See Rules, §1710(c).

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half way through the workshop, much of the substantive discussion had already taken place. As a result, CURE as well as other intervenors and the public were, quite literally, denied a seat at the discussion table. This manner of conducting public workshops unreasonably denies intervenors the opportunity to participate in workshop discussions.

Third, the discussion between Commission Staff and Applicant's consultants during the May 7 workshop also raises serious concerns regarding the Applicant's future compliance with Section 1710(a) of the Commission regulations. The Applicant is prohibited from participating in nonpublic discussions with Staff to modify Staff's recommendations regarding substantive matters.<sup>5</sup> Several times during the May 7 workshop, we overheard suggestions that the Applicant and Staff would continue to discuss the design of newly proposed evaporation ponds for the Projects "off line." Although Commission regulations allow for the exchange of information outside of the public forum, Section 1710(a) explicitly prohibits nonpublic discussions to modify the Staff's recommendations with regard to substantive issues. Because the Applicant has not yet served *any* information regarding the location of the evaporation ponds, and has submitted only a rough outline of the design of these ponds, we are concerned that these discussions may result in modifications to Staff's position with regard to substantive issues, including the Projects' potentially significant impacts to biological resources and water quality. At this late stage in the proceedings, the Applicant's revisions to the Project design must be made available concurrently to all parties and all discussions with Staff about those revisions must take place at a properly noticed workshop where intervenors and the public can attend and participate.

In conclusion, we understand the potential tendency to cut procedural corners in an effort to resolve new issues, especially given the unreasonable time pressure now exerted on Staff. As we noted above, we understand the conduct of the May 7 workshop to be an aberration to otherwise open and public processes. We hope that with this reminder, Staff will maintain its usual practice of faithfully complying with Commission's regulations.

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<sup>5</sup> Rules, § 1710(a).  
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Alan Solomon  
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Thank you in advance for considering and responding to our concerns. Please let us know if you have any questions regarding the issues we have raised in this letter.

Sincerely,

/s/ /s/  
Elizabeth Klebaner Jason Holder

EK/JWH:cnh

cc: Docket (09-AFC-06, 09-AFC-07)  
Commissioner Douglas  
Commissioner Weisenmiller  
Public Adviser

**DECLARATION OF SERVICE**  
**Blythe Solar Power Plant Project**

**Docket No. 09-AFC-6**

I, Carol N. Horton, declare that on May 10, 2010, I served and filed copies of the attached CURE Letter re May 7 Workshop for the Solar Millennium Blythe Solar Power Project (09-AFC-6) dated May 10, 2010. The original document, filed with the Docket Office, 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\\_blythe/index.html](http://www.energy.ca.gov/sitingcases/solar_millennium_blythe/index.html).

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 Office via email and U.S. mail as addressed below:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 09-AFC-9  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

I declare under penalty of perjury that the foregoing is true and correct.  
Executed at Sacramento, California on May 10, 2010.

/s/

\_\_\_\_\_  
Carol N. Horton

CALIFORNIA ENERGY COMMISSION Attn: Docket No. 09AFC6 1516 Ninth Street, MS4 Sacramento, CA 95814-5512 <a href="mailto:docket@energy.state.ca.us">docket@energy.state.ca.us</a>	Alice Harron Senior Director-Project Dvlpmnt 1625 Shattuck Ave., #270 Berkeley, CA 94709-1161 <a href="mailto:harron@solarmillennium.com">harron@solarmillennium.com</a>	Elizabeth Ingram, Associate Dvlpr Solar Millennium, LLC 1625 Shattuck Avenue Berkeley, CA 94709 <a href="mailto:ingram@solarmillennium.com">ingram@solarmillennium.com</a>
Carl Lindner AECOM Project Manager 1220 Avenida Acaso Camarillo, CA 93012 <a href="mailto:Carl.lindner@aecom.com">Carl.lindner@aecom.com</a>	Scott Galati, Esq. Galati/Blek, LLP 455 Capitol Mall, #350 Sacramento, CA 95814 <a href="mailto:sgalati@gb-llp.com">sgalati@gb-llp.com</a>	Peter Weiner/Matthew Sanders Paul Hastings Janofsky & Walker LLP 55 2 <sup>nd</sup> Street, #2400-3441 San Francisco, CA 94105 <a href="mailto:peterweiner@paulhastings.com">peterweiner@paulhastings.com</a> <a href="mailto:matthewsanders@paulhastings.com">matthewsanders@paulhastings.com</a>

<p>California ISO  <a href="mailto:e-recipient@caiso.com">e-recipient@caiso.com</a>  VIA EMAIL ONLY</p>	<p>Holly L. Roberts, Project Mngr  Bureau of Land Management  Palm Springs-So. Coast Field Off.  1201 Bird Center Drive  Palm Springs, CA 92262  <a href="mailto:CAPSSolarBlythe@blm.gov">CAPSSolarBlythe@blm.gov</a></p>	<p>California Unions for Reliable Energy  E. Klebaner / T.Gulesserain /  MDJoseph  Adams Broadwell Joseph &amp; Cardozo  601 Gateway Blvd., #1000  South San Francisco, CA 94080  <a href="mailto:tgulesserian@adamsbroadwell.com">tgulesserian@adamsbroadwell.com</a>  <a href="mailto:eklebaner@adamsbroadwell.com">eklebaner@adamsbroadwell.com</a></p>
<p>Karen Douglas  Chairman/Presiding Member  California Energy Commission  1516 Ninth Street  Sacramento, CA 95814  <a href="mailto:kldougl@energy.state.ca.us">kldougl@energy.state.ca.us</a></p>	<p>Robert Weisenmiller  Commissioner-Assoc. Member  California Energy Commission  1516 Ninth Street  Sacramento, CA 95814  <a href="mailto:rweisenm@energy.state.ca.us">rweisenm@energy.state.ca.us</a></p>	<p>Raoul Renaud  Hearing Officer  California Energy Commission  1516 Ninth Street  Sacramento, CA 95814  <a href="mailto:rrenaud@energy.state.ca.us">rrenaud@energy.state.ca.us</a></p>
<p>Alan Solomon  Siting Project Manager  California Energy Commission  1516 Ninth Street  Sacramento, CA 95814  <a href="mailto:asolomon@energy.state.ca.us">asolomon@energy.state.ca.us</a></p>	<p>Lisa DeCarlo, Staff Counsel  California Energy Commission  1516 Ninth Street  Sacramento, CA 95814  <a href="mailto:ldecarlo@energy.state.ca.us">ldecarlo@energy.state.ca.us</a></p>	<p>Jennifer Jennings  Public Adviser's Office  California Energy Commission  1516 Ninth Street  Sacramento, CA 95814  <a href="mailto:publicadviser@energy.state.ca.us">publicadviser@energy.state.ca.us</a></p>
<p>Ram Ambatipudi  Chevron Energy Solutions  150 E. Colorado Blvd., Ste. 360  Pasadena, CA 91105  <a href="mailto:rambatipudi@chevron.com">rambatipudi@chevron.com</a></p>		