

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

**DOCKET**
09-AFC-7DATE MAY 18 2010 RECD. MAY 18 2010

May 18, 2010

Adams, Broadwell, Joseph, and Cardozo
Attention: Elizabeth Klebaner and Jason Holder
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Re: Solar Power Plant Projects: Blythe (docket #09-AFC-6); Palen (docket #09-AFC-7)

Dear Ms. Klebaner and Mr. Holder:

Thank you for your letter dated May 10, 2010, in which you expressed concerns with the May 7, 2010, staff continuation workshop for the Blythe Solar Power Project (BSPP) and Palen Solar Power Project (PSPP). We encourage you to contact us any time you have concerns regarding the conduct of a staff workshop and, preferably, express your concerns at the workshop itself so that they can be addressed immediately.

Let us assure you that no procedural corners have been cut in Energy Commission staff's handling of any of the solar projects, and certainly not with the two projects that we oversee: BSPP and PSPP. While the review of these applications for certification may be proceeding at a slightly faster pace than you may be used to, they are being conducted in strict conformance with Energy Commission regulations. As the Energy Commission's process takes great pains to ensure all interested persons are able to participate in our proceedings, we would like to take this opportunity to respond to the specific points mentioned in your letter.

Your first point claims that we violated Energy Commission regulations by failing to notice the location of the continued workshop. You acknowledge, however, that we did notice the continued workshop, that a phone-in number was provided, and that you were able to utilize this number to participate in the workshop, though in your estimation such participation was found lacking. It is important to note that there are no Energy Commission or other regulations that require that a physical address be identified on workshop notices. While it has been our custom to identify a physical location for workshops, the increased workload throughout the Energy Commission, not just in siting, has meant that it is often difficult to find meeting rooms. Conference call workshops have proven effective as an alternative, especially where the workshop is focused on only one or two issues, as was the workshop at issue. And indeed, both the staff project manager and staff counsel participated in the workshop via phone.

Not only were the workshop and the notice in keeping with legal requirements, there was ample notice that staff was continuing the workshop for the purpose of having some technical staff sitting in the same room with the applicant to review drainage

maps. The issue of storm water drainage was the subject of much discussion at the April 29, 2010 workshop, at which you were present, and at which discussion of this issue ended when the applicant publicly stated that they could better explain their position if everyone could look at the same maps in the same room. At that point it was decided to continue the workshop in order to enable this. You were also asked at this workshop whether you had an expert in this area and whether you wanted that expert included in future discussions where information would be exchanged. You stated that you would have to discuss the matter with your client, at which time both staff and the applicant requested that, when you identified an expert, you provide the parties with that person's contact information so that they could be personally included in all future discussions. You have yet to inform the parties of an expert.

Your second point claims that the conduct of the workshop itself denied you reasonable opportunity to participate. Your characterization of what was discussed, however, is not accurate. The discussion centered on the proposed project design (not newly revised) for diverting storm water, and not mitigation. While potential changes to staff's proposed mitigation measure were discussed briefly towards the end of the workshop, the discussion did not rely or depend on reference to the drainage plans. In answering your e-mail concerning what materials would be discussed, staff provided you with the best information it had at that time. And, in fact, when you indicated at the continued workshop that you had trouble following the discussion, you were pointed to a figure in the Staff Assessment/Draft Environmental Impact Statement that showed the particular berm that was the subject of discussion. And, as you acknowledge in your letter, once the parties realized you did not have the most recent materials, they were immediately provided to you. Once you received these materials, there were several points in the discussion where participants were asked if they had any questions or comments. You did not avail yourself of these opportunities to ask for clarification, despite time remaining in the workshop. For future telephonic workshops, staff will consider using WebEx to show images of materials being discussed.

Your third and final point claims that staff and applicant indicated their intention to conduct unnoticed discussions regarding substantive issues after the continued workshop in contravention of Title 20, California Code of Regulations, section 1710(a). You assert that statements made suggesting staff intends to have further discussions with the applicant regarding the proposed evaporation ponds are evidence of a violation of our regulations. Section 1710(a), however, is not a complete prohibition on discussions between staff and the applicant, as you acknowledge. The regulation clearly allows for the "exchange of information", including "facts, data, measurements, calculations, and analyses related to the project." While the exchange of this information may ultimately help staff form an opinion, as all relevant information concerning a project should, this does not automatically transform it into the prohibited class of discussions "to modify staff's position or recommendations regarding substantive issues." Your argument that, because we are nearing finalization of staff's analysis, all

Elizabeth Klebaner and Jason Holder

May 18, 2010

Page 3

discussions of the proposed project must be noticed, even those clearly in the realm of exchanging information, is not supported by law. While staff will continue in its efforts to ensure that any new information it receives about the project will be made available as soon as possible to everyone, in order to ensure that our environmental analysis is as thorough as possible, we must be able to avail ourselves of the opportunity to obtain information from the applicant in conformance with the regulations. The applicant has newly proposed to use evaporation ponds in both BSPP and PSPP, and it is imperative that staff understand the design of these ponds in order to ensure that they are properly analyzed. As we expressed several times at the workshops, any information we receive will be docketed as soon as possible as reports of conversation, and our offer of directly coordinating with any expert that you identify still stands.

The Energy Commission has an open and public-oriented process and this has not changed with review of the solar projects. Throughout the BSPP and PSPP proceedings, we have ensured that the public and intervenors are included and invited to participate in all project related activities. We hope we have addressed your concerns and look forward to coordinating with you in any future staff workshops.

Sincerely,

/s/ Alan Solomon
ALAN H. SOLOMON
Project Manager

/s/ Lisa DeCarlo
LISA DeCARLO
Staff Attorney



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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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, Janet Preis, declare that on May 18, 2010, I served and filed a copy of the attached letter from California Energy Commission staff to CURE, dated May 18, 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 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. 09-AFC-7
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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.

/s/ Janet Preis _____