

DOCKET

08-AFC-13

DATE JUL 29 2010

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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:

The Application for Certification for the
Calico Solar Project

Docket No. 08-AFC-13

**DEFENDERS OF WILDLIFE
PREHEARING CONFERENCE STATEMENT**

July 29, 2010

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Introduction

Defenders of Wildlife (“Defenders”) submits this statement pursuant to the July 13, 2010 Notice of Prehearing Conferences and Evidentiary Hearing (“Notice”). Defenders has strong concerns, as indicated in this statement, regarding the completeness of the Staff Assessment (“SA”) and Supplemental Staff Assessment (“SSA”) for this project and the environmental review in general. Additionally, this proceeding has maintained an ambitious timeline, often at the expense of a complete and comprehensive environmental analysis pursuant to the California Energy Commission’s (“CEC”) certified regulatory program under the California Environmental Quality Act (“CEQA”).

1. The topic areas that are complete and ready to proceed to evidentiary hearing

Defenders has not been afforded sufficient opportunity to fully analyze all of the topic areas in the SSA and cannot state affirmatively that any topic areas are ready to proceed to evidentiary hearing. Staff publicly released the SSA on July 16, 2010. The parties were asked to submit opening testimony and rebuttal testimony by July 23 and July 29, respectively. Defenders has labored diligently to comply with this ambitious schedule. However, Defenders maintains that the curtailed timeframe has constrained the hearing process, creating a hardship on the parties to submit the relevant evidence upon which a comprehensive evidentiary hearing should and must be based. Because the SSA review period has been remarkably and unprecedentedly short, Defenders reserves the right to call witnesses and submit exhibits for each topic area at any time during the hearing.

2. The topic areas that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefore

As stated above, Defenders reserves the right to address each topic area at the evidentiary hearing. Defenders considers the disputed topic areas listed below to also be incomplete in terms of the information and analysis contained in the SSA.

3. The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic

- Project Description:

The project description has changed substantially from the one proposed in the AFC and analyzed in the original Staff Assessment (“SA”). Staff has stated its intent in numerous Committee status conferences to use a “worst-case scenario” project description, which is essentially the project as proposed. CEQA requires that a project description be final before a draft EIR (functional equivalent of an SA) be released. This project must have an accurate and final project description before an evidentiary hearing can be conducted. Defenders maintains that any evidentiary hearing or proposed decision in the absence of a final project description is premature and inconsistent with the requirements of CEQA.

- Purpose and Need

The Purpose and Need statement for the project is far too narrow, particularly in its identification of an 850 MW facility as a basic project purpose. Identifying a specific megawatt capacity for the project decreases the flexibility in siting the project, and confounds the alternatives analysis, which, in compliance with CEQA, is based on meeting most (but not necessarily all) of the basic project objectives.

The SA and SSA also fail to address risks associated with global climate change in the Purpose and Need section, including both the need for climate change mitigation strategies (e.g., reducing greenhouse gas emissions) and the need for climate change adaptation strategies (e.g., conserving intact wild lands and the corridors that connect them). Renewable energy projects, including the proposed Calico Solar Project, are elements of a national climate change mitigation strategy to reduce greenhouse gas emissions. California recently released a draft Climate Change Adaptation Strategy that stressed the need to protect intact wild lands and associated wildlife corridors, including those occurring in the desert, as a priority adaptation strategy measure. The removal of over 6,000 acres of habitat for desert tortoise and multiple special status species frustrates the effort to create strategies for adaptation of these species to climate change.

- Biological Resources

- **Desert tortoise:** The SA and SSA discussion of desert tortoise impacts and the proposed mitigation measures are wholly inadequate and Defenders will provide detailed information

on the disputed factual issues going forward. As an initial matter, the SA and SSA fail to adequately address the following issues and the proposed mitigation is inadequate in the following ways:

- Desert tortoise numbers on the site have been quantified incorrectly.
 - Discussion of desert tortoise movement is cursory and in part faulty. The conclusions about tortoise movement in both an east-west and north-south manner from the site are incorrect.
 - The desert tortoise translocation/relocation plan has yet to be developed and, considering the new guidelines that will soon be issued limiting the distance for relocation, it will be difficult to implement an adequate translocation/relocation program.
 - A full habitat assessment for desert tortoise habitat on the site and habitat at the proposed receiving population for translocation has not been conducted.
 - Very little, if any, effort has been made to assess the sex and age of the desert tortoise population on the site, which is important information in determining whether it is a viable and stable breeding population.
 - The relationship between the desert tortoise population on the site and other tortoise populations – for example, to the east – has not been adequately described or assessed.
- **Bighorn Sheep:** The SA and SSA fail to fully analyze impacts to bighorn or provide measures to minimize or mitigate impacts. Analysis of bighorn sheep movement in a southerly manner from the Cady Mountains and into the Newberry, Rodman and Ord mountains is wholly lacking, although this type of movement has been discussed extensively in the literature. In addition, the mitigation measures proposed for bighorn sheep, which consist primarily of monitoring programs and cessation of construction if bighorn move close to the site, are inadequate. Compensatory mitigation should be proposed for impacts to bighorn habitat and movement corridors.
 - **Special Status Wildlife:** The SA and SSA fail to fully analyze impacts to special status species, including gila monsters, burrowing owl, raptors, bats and other wildlife or to provide alternatives to avoid impacts, or provide measures to minimize or mitigate impacts.
 - **Rare Plants:** For rare plants and special status plant communities the SA and SSA provide inaccurate analysis of impacts, inadequate avoidance strategies and inadequate information about the proposed mitigation strategy. The applicant has not conducted comprehensive botany surveys that capture all existing occurrences of rare plants, including seed banks.

In addition, the SA and SSA fail to identify and analyze the loss of carbon sequestration that will occur under the proposed project. Desert vegetation types are able to sequester atmospheric carbon dioxide (greenhouse gas) 24 hours/day, unlike other vegetation

communities which are able to sequester CO₂ only during daylight hours. The Calico Solar Project and all desert utility-scale projects to follow will decrease the carbon sequestration benefits from desert vegetation. (Wohlfahrt et al. 2008) This impact should have been identified and analyzed in the SA and SSA.

- Water Resources:

The SA and SSA do not adequately address the potential for stormwater scouring of the solar thermal units nor the need to deliver large amounts of water for use on-site.

- Overall Adequacy of Mitigation Measures:

The SA and SSA do not adequately describe the potential for mitigation “nesting” to mitigate impacts to biological resources under CEQA and fully mitigate for take of species under the California Endangered Species Act (“CESA”).

- Cumulative Impacts Analysis:

The cumulative impacts analysis omits several key projects and fails to adequately analyze the scope of the cumulative impacts in this area. The SA and SSA also fail to include mitigation measures for not only the direct impacts of the project, but also the cumulatively significant impacts of the project.

- Reliability:

Stirling dish engine technology has not been proven to be reliable at a utility scale. The applicant has not shown the Mean Time Between Failure (“MTBF”) to be low enough to make an 850 MW facility economic or technically reliable to deliver renewable energy to the State of California.

4. The identity of each witness sponsored by each party

Defenders intends to sponsor the following expert witnesses:

- James M. Andre – biological resources
- Jeffrey B. Aardahl – biological resources

5. Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of such cross-examination, and the time desired for such cross-examination

Defenders reserves the right to cross-examine all witnesses called by Staff, Applicant and Intervenors for each of the topic areas in the SA and SSA. Defenders currently does not possess a list of Staff, Applicant and Intervenor witnesses or their written testimony and therefore can stipulate neither the topics nor the amount of time that may be necessary for cross-examination. With the current information available, Defenders anticipates cross-examining witnesses on at least the following topic areas, although additional topic areas will undoubtedly emerge for which cross-examination may be necessary.

- **Biological Resources:** CEC staff, CDFG staff, and Applicant witnesses regarding assessment of impacts to biological resources and appropriate avoidance, minimization, and mitigation strategies.
- **Water Resources:** CEC Staff and Applicant witnesses regarding the basis for Staff’s conclusions on the impacts to water resources and soils; the appropriate avoidance, minimization, and mitigation strategies; and the efficacy and enforceability of mitigation measures suggested.
- **Alternatives:** CEC Staff and Applicant witnesses regarding identification and selection of alternatives for review; the analysis of those alternatives; and the analysis of the feasibility of alternative sites.
- **Cumulative Impacts:** CEC Staff and Applicant witnesses regarding the adequacy of the cumulative impact analysis.
- **Reliability:** CEC Staff and Applicant witnesss regarding the reliability assessment.
- **Mitigation Methodology:** CEC Staff and CDFG Staff regarding the ability of “nesting” to meet full mitigation requirements.

6. A list of identifying exhibits and declarations that each party intends to offer into evidence

Exhibit	Brief Description	Offered	Admitted	CEC Use Only
600	Rebuttal Testimony of James M. Andre 7/29/2010			
601	Rebuttal Testimony of Jeff Aardahl			

	7/29/2010			
602	Revision of Disease Testing Requirements Based on Translocation Distance, Desert Tortoise Recovery Office 7/2010			
603	Spencer, W.D., P. Beier, K. Penrod, K. Winters, C. Paulman, H. Rustigian-Romsos, J. Strittholt, M. Parisi, and A. Pettler. 2010. California Essential Habitat Connectivity Project: A Strategy for Conserving a Connected California. Prepared for California Department of Transportation, California Department of Fish and Game, and Federal Highways Administration.			
604	Habitat Use and Food Preferences of the Desert Tortoise, <i>Gopherus agassizii</i> , in the Western Mojave Desert and Impacts of Off-Road Vehicles. Proceedings of the New York Turtle and Tortoise Society: Conservation, Restoration, and Management of Tortoises and turtles - An International Conference, pp. 42-45.			
605	Applicant's Responses to Defenders of Wildlife Data Requests Set 1. 12/4/2009			
606	Zitzer, S., King, J., and Etyemezian, V., 2008. <i>Unveiling the mysterious ecology of a rare relict Mojave Desert forb (Penstemon albomarginatus): Will ecological knowledge put a damper on exponential growth in Southern Nevada?</i> Report for 93 rd Ecological Society of American Annual Meeting.			
607	Scogin, R. 1989. Studies of <i>Penstemon albomarginatus</i> in California. Report for Rancho Santa Ana Botanic Garden, Claremont, California.			
608	CPUC Phase I direct testimony of Dr. Barry Butler, CPUC Application 06-08-010 6/1/2007			
609	T. Mancini, P. Heller, B. Butler, B. Osborn, W. Schiel, V. Goldberg, R. Buck, R. Diver, C. Andraka, J. Moreno, <i>Dish-Stirling Systems: An Overview of Development and Status</i> , Journal of Solar Energy Engineering, Vol. 125, pp. 135-151, May 2003.			
610	Schwartz, O.A., V.C. Bleich, and S.A. Holl. 1986. Genetics and the conservation of mountain sheep <i>Ovis canadensis nelsoni</i> . Biol. Conserv. 37:179-190 .			

611	Epps, C. W., P. J. Palsbøll, J. D. Wehausen, G. K. Roderick, R. R. Ramey, D. R. McCullough, 2005. Highways block gene flow and cause a rapid decline in genetic diversity of desert bighorn sheep. Ecology Letters, (2005) 8: 1029–1038.			
612	Fish and Wildlife Service. 1994. Desert tortoise (Mojave population) Recovery Plan. U.S. Fish and Wildlife Service, Portland, Oregon. 73 pages plus appendices			

7. Proposals for briefing deadlines, vacation schedules, and other scheduling matters

Defenders respectfully requests that the Committee allow the parties three full weeks between the end of evidentiary hearings and the deadline for submission of opening briefs. The date for submission of opening briefs pursuant to that schedule would be August 27, 2010. Defenders also requests that the Committee amend the schedule to allow for reply briefs, which would allow the parties to respond to opening briefs and which are crucial to the hearing process.

8. For all other topics, the parties shall review the Proposed Conditions of Certification listed in the Final Staff Assessment (FSA) for enforceability, comprehension, and consistency with the evidence, and submit any proposed modifications.

Defenders has not had sufficient time to review all of the proposed Conditions of Certification and reserves the right to address these items through briefs, testimony and exhibits.

9. Comments on the Committee’s intention to use informal hearing procedures.

Defenders concurs with the Commission’s proposal to use informal hearing procedures. Such procedures will expedite the hearings and are an efficient way to use the Committee’s limited time and resources. However, Defenders wishes to cross-examine expert witnesses in a manner that allows the pursuit of a single line of questioning. Therefore, Defenders requests that if the Committee does decide to use informal hearing procedures that the parties have an opportunity to follow a line of questioning of an individual witness to its logical conclusion.

10. Comments on the location of the August 18, 2010 Evidentiary Hearing.

Defenders has no comments on the August 18, 2010 Evidentiary Hearing at this time.

DECLARATION OF SERVICE

I, Joshua Basofin, declare that on July 29, 2010, I served and filed copies of the Attached:

1. Defenders of Wildlife's Prehearing Conference Statement
2. Rebuttal testimony of James M. Andre
3. Declaration of James M. Andre
4. Rebuttal testimony of Jeffrey B. Aardahl
5. Declaration of Jeffrey B. Aardahl
6. Application for Subpoena of a CDFG Representative
7. Declaration for Application for Subpoena

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:

[www.energy.ca.gov/sitingcases/calicosolar]. 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)

FOR SERVICE TO ALL OTHER PARTIES:

X sent electronically to all email addresses on the Proof of Service list;

X by personal delivery or by depositing in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

X 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

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





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APPLICATION FOR CERTIFICATION

For the CALICO SOLAR (Formerly SES Solar One)

Docket No. 08-AFC-13

PROOF OF SERVICE
(Revised 7/12/10)

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