

DOCKET

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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 Power Project
Licensing Case

Docket No. 08-AFC-13

**PREPARED DIRECT TESTIMONY OF EDWARD P. PHILLIPS
BNSF RAILWAY COMPANY**

August 17, 2010

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PREPARED DIRECT TESTIMONY

OF

Edward P. Phillips

Manager Environmental Operations – California Division, BNSF

Q.1 Please state your name and occupation?

A.1 My name is Edward P. Phillips. I am the Manager of Environmental Operations for the California Division of BNSF Railway Company ("BNSF"). I am based in San Bernardino, California. My resume was attached to my earlier testimony.

Q.2 What is the purpose of your testimony in this proceeding?

A.2 I will testify regarding access issues raised in the SSA, Part II, Traffic and Transportation.

Q.3 Why does BNSF have concerns regarding the Calico Solar Project?

A.3 BNSF is one of two Class 1 railroads operating in California. BNSF's transcontinental mainline, traversed by as many as 80 trains per day, carries interstate commerce from the Ports of Los Angeles and Long Beach to U.S. Midwestern, Southwestern and Eastern markets. BNSF's mainline has operated through the section of the Mojave Desert, where Calico Solar has now proposed its Project, since the late 19th Century. The proposed Project, comprised of 34,000 solar dishes (SunCatchers), transmission line upgrades, detention basins, etc., would surround both sides of approximately 5 miles of BNSF's mainline tracks. Accordingly,

BNSF has significant concerns that the construction and operation of the Project do not adversely impact BNSF operations or otherwise impose unacceptable safety risks to BNSF personnel and operations. An adverse impact to rail traffic by Project construction or operations could have a devastating impact on interstate commerce and portions of this nation's economy. BNSF carries transcontinental shipments of, *inter alia* coal, grains and merchandise for everything from UPS to major retailers. BNSF trains currently run approximately every fifteen minutes in both directions and extend for over a mile in length. Because of the critical nature of the role of BNSF's mainline in interstate commerce, BNSF must maintain complete and unimpeded access to and use of its Right of Way ("RoW").

The consummation of the Project would require the granting of several licenses and permits from BNSF, which Applicant Calico Solar ("Calico Solar") has requested in a piecemeal fashion over the course of the past year. To date, only preliminary access agreements have been granted, including a permit to survey and a permit to use the RoW crossing at Hector Road. Before BNSF can grant such licenses and permits, BNSF must be assured that its significant safety and operational concerns are addressed.

Q.4 What are the access issues BNSF is concerned about in relation to the Calico Solar Project?

A.4 First, BNSF has been discussing various aspects of access with Calico Solar for some time. During all discussions, BNSF has made it clear that BNSF must maintain complete and unimpeded access to and use of its RoW and that any grant of access by BNSF to Calico Solar will be predicated first, on Calico Solar addressing BNSF's safety and operations concerns to BNSF's requirements and second, on Calico Solar obtaining all the appropriate and required permits and compliance with all applicable laws, ordinances, regulations and statutes. To date, significant concerns raised by BNSF have neither been studied nor addressed, e.g. the impact of glint/glare on railroad signals. Similarly, based upon information provided in the SSA Part II, Traffic and Transportation section, CEC Staff has proposed conditions, e.g. a paved roadway on BNSF's RoW, the impact of which has not been evaluated and it is unlikely that all required and appropriate permits in compliance with all applicable laws, ordinances, regulations and statutes can be achieved in the required time frames.

Second, as noted above, while there have been discussions between BNSF and Calico Solar related to Calico Solar having access to the BNSF RoW, only limited access has been granted to date. Significantly, the current access proposal set forth in SSA Part II at C.11-6 through C.11-18 and TRANS-1 is inconsistent with those discussions and, moreover, is inconsistent with Calico Solar's most recent proposal for access roads on the Project site as depicted in Figure No. 1-1, Phase 1a Project Features

Calico Solar, dated August 12, 2010 ("Figure No. 1-1"). BNSF Railway concluded and advised Calico Solar that the proposed construction activity would obstruct the use of its RoW for critical railroad operations and that they would not grant such a license. Since that time, BNSF and Calico Solar have been engaged in a discussion to determine the feasibility of the proposal reflected in Calico Solar's design dated August 12, 2010 ("Figure No. 1-1"). That design proposes a 2-3 month very limited use of the existing Maintenance of Way ("MoW") graded, dirt road on the northern side of BNSF's RoW, east of Hector Road, to permit Calico Solar to commence surveying, relocating tortoises and placing exclusionary fences. Concurrent with this use, Calico Solar would construct the permanent roadway along its property south of the RoW and BNSF would construct a temporary at-grade crossing to connect to the permanent road. The temporary at-grade crossing would be utilized until approximately October 1, 2011, when Calico Solar's proposed bridge-grade crossing over the BNSF RoW would be completed. The feasibility and terms of this approach are still being discussed between the parties. Once the bridge was built, Calico Solar would no longer utilize either of the at-grade crossings.

Third, building a permanent, two-lane asphalt road with culverts and gutters along either the north side of the RoW east of Hector Road or the south side of the RoW west of Hector Road, for a distance in excess of several miles, was never discussed. The proposed paved roads would

cross several ephemeral streams, and permit the use of the road by over one to two hundred vehicles per day during the construction period. BNSF Railway believes that this proposed use may constitute a project under California's Environmental Quality Act (CEQA), and at a minimum, would require consultation with the U.S. Army Corps of Engineers to determine the jurisdictional nature of the ephemeral streams and potential Clean Water Act Section 404 Dredge and Fill permitting authority, similar consultation with the California Department of Fish and Game for potential state jurisdiction and Fish and Game Code Section 1602 Streambed Alteration Agreement authority, and either the California State Water Resources Control Board or Regional Water Quality Control Board for potential Clean Water Act Section 401 Certification. BNSF Railway also believes that the proposed road project would, due to its size, require a Construction General Permit to adequately cover the construction activities during the build-out of the road as required by California's Porter-Cologne Water Act. BNSF Railway believes that, as the land owner, such a permit would, by its regulatory requirement, encumber BNSF as a responsible party to this permit activity. BNSF has neither fully evaluated nor consented to these requirements. BNSF has discussed the possibility of using a class 2 base on the proposed road on the southern side of the RoW, west of Hector Road.

Fourth, as noted above, we never discussed a paved road within the RoW. We were always talking about minimal impacts to the RoW. Asphalt

roads change the runoff coefficient of the land surface during rain events, change the natural drainage patterns of cross-directional run-on, and may impact BNSF Railway's track infrastructure significantly due to both the road runoff itself and the proposed drainage systems' focused flow patterns. BNSF Railway believes that this proposed road project warrants a hydrology study to determine the potential impacts to the railroad infrastructure. BNSF Railway believes that the proposed road project may also impact desert tortoise habitat and mobility in the immediate area. BNSF Railway believes that at a minimum, consultation with U.S. Fish and Wildlife and U.S. Bureau of Land Management is warranted on this potential impact.

These are the primary issues we were able to identify within the short time period of time that was provided to us.

Q.5 Does this complete your direct testimony?

A.5 Yes, it does.

I swear under penalty of perjury that this testimony is true and correct to the best of my knowledge and belief.

Dated: August 17, 2010

Edward P. Phillips



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APPLICATION FOR CERTIFICATION

For the CALICO SOLAR (Formerly SES Solar One)

Docket No. 08-AFC-13

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(Revised 8/9/10)

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DECLARATION OF SERVICE

I, Harriet Vletas, declare that on August 17, 2010, I served and filed copies of the attached Prepared Direct Testimony of Edward P. Phillips, BNSF Railway Company dated August 17, 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:
[www.energy.ca.gov/sitingcases/solarone].

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."

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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-13
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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.


HARRIET VLETAS

*indicates change