

**DOCKET**

**08-AFC-2**

DATE AUG 19 2010

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR  
THE BEACON SOLAR ENERGY PROJECT**

DOCKET NO. 08-AFC-2

**BEACON SOLAR, LLC'S SUPPLEMENTAL COMMENTS ON THE PRESIDING  
MEMBER'S PROPOSED DECISION REGARDING CONDITION OF  
CERTIFICATION HAZ-2**

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Dated: August 19, 2010

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MEMBER'S PROPOSED DECISION REGARDING CONDITION OF  
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**This document was provided to all of the parties to this proceeding and discussed during the Committee Conference on Thursday, August 17, 2010 ("Committee Conference"). Beacon Solar, LLC is filing this document simply to complete the administrative record. The parties discussed and agreed to further changes to Condition of Certification HAZ-2 during the Committee Conference. The changes discussed during the Committee Conference will be filed today, August 17, 2010, by Commission Staff. Applicant requests that the Committee include and the California Energy Commission adopt the version of Condition of Certification HAZ-2 filed by Commission Staff in the Final Commission Decision on the Beacon Solar Energy Project.**

In Staff's comments on the Presiding Members Proposed Decision (PMPD), docketed on August 18, 2010, the Applicant agrees with most of the changes Staff has suggested. However, we disagree with an item related to Hazardous Materials Management as discussed below.

**Hazardous Materials Management (page 11 of Staff's PMPD comments)**

On page 178 of the PMPD, Staff indicates that the Cal-OSHA Process Safety Management (PSM) standard will apply to the Beacon Solar Energy Project (BSEP) and that the Kern County Environmental Health Services Department (KCEHSD) is the relevant agency for PSM compliance for BSEP. Beacon disagrees that PSM is applicable to the BSEP and that the KCEHSD, as the Administering Agency (AA) in Kern County, has discretion over the regulation of flammable substances under the Cal-OSHA PSM standard.

The Cal-OSHA PSM regulations do not allow for discretion in determining which chemicals or substances are regulated under the standard, and the regulations do not allow discretion when defining the properties of a flammable substance. The PSM regulations clearly list the specific chemicals, threshold quantities, concentrations, and any other qualifying properties of listed chemicals, and clearly define what properties a material must have to be a flammable substance under the standard. Nowhere in the regulation does the discretion of the AA factor into rule applicability.

Beacon also believes that KCEHSD has been incorrectly identified as the AA for the Cal-OSHA PSM program. In California, the PSM program is regulated by Cal-OSHA and/or federal OSHA. The KCEHSD has regulatory jurisdiction over the California Accidental Release Prevention (Cal-ARP) Program, which requires the implementation of Risk Management Plans (RMP), and is similar but not identical to the PSM requirements. Under the Cal-ARP/RMP Program, KCEHSD would have some discretion in determining “Program Levels” for a RMP; however, they do not have discretion in determining which chemicals or substances are regulated under the PSM standard or defining the properties of a flammable substance.

However, in the interest of moving the Project forward in light of the difference of opinion on the applicability of PSM to BSEP, Beacon is willing to allow for a determination on the applicability of PSM by the appropriate agency. Therefore, we propose that the Staff’s proposed changes to the PMPD on page 178 and Condition of Certification HAZ-2 on pages 185-186 be revised as follows:

**PMPD, p 178:** .... The record indicates that the placement of additional isolation valves in the HTF pipe loops throughout the solar array will add significantly to the safety and operational integrity of the entire system by allowing a loop to be closed if a leak develops in a ball joint, flex-hose, or pipe, instead of closing off the entire HTF system and shutting down the plant. Condition of Certification HAZ-7 requires the installation of a sufficient number of isolation valves that can be activated either manually or remotely. **(Ex. 500, p 4.4-8.)** Additionally, the Cal-OSHA Process Safety Management (PSM) standard ~~will~~ may apply and thus staff proposes a requirement be included in proposed Condition of Certification HAZ-2.

**PMPD, pp.185-186: HAZ-2:** The project owner shall concurrently provide a Business Plan ~~and a Process Safety Management Plan (PSMP)~~ to the Kern County Environmental Health Services Department (KCEHSD) and the CPM for review. After receiving comments from the KCEHSD and the CPM, the project owner shall reflect all recommendations in the final document. Copies of the final Business Plan ~~and Process Safety Management Plan~~ shall then be provided to the KCEHSD for information and to the CPM for approval. In addition, the project owner shall consult with the appropriate agency (Cal-OSHA or KCEHSD) to determine if a Process Safety Management (PSM) Plan is required, and if required, the PSM Plan shall be concurrently provided to the appropriate agency and the CPM for review. After receiving comments, the project owner shall reflect all recommendations in the final PSM Plan, and the final PSM Plan shall be provided to the CPM for approval.

**Verification:** At least 60 days prior to receiving any hazardous material on the site for commissioning or operations, the project owner shall provide a copy of a final Business Plan and Process Safety Management Plan to the CPM for approval. The project owner shall also provide either a copy of a letter from the appropriate agency concurring with the non-applicability of the PSM regulation or if applicable, a final Process Safety Management Plan to the CPM for approval.

Respectfully Submitted,

DOWNEY BRAND, LLP

By: \_\_\_\_\_/s/\_\_\_\_\_

Jane E. Luckhardt

Attorneys for Beacon Solar Energy Project

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR THE BEACON  
SOLAR ENERGY PROJECT**

DOCKET NO. 08-AFC-2

**PROOF OF SERVICE**  
(Revised 2/8/10)

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**Declaration of Service**

I, Lois Navarrot, declare that on August 19, 2010, I served and filed copies of the attached **BEACON SOLAR, LLC'S SUPPLEMENTAL COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION REGARDING CONDITION OF CERTIFICATION HAZ-2**. 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/beacon](http://www.energy.ca.gov/sitingcases/beacon). 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**

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery or by depositing in the United States mail at Sacramento, California 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**

**For Filing with the Energy Commission**

- sending an original paper copy and one electronic copy, mailed and e-mailed respectively, to the address below **(preferred method)**;

**OR**

- \_\_\_\_\_ depositing in the mail an original and 12 paper copies as follow:

California Energy Commission  
Attn: Docket No. 08-AFC-2  
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.

\_\_\_\_\_/s/\_\_\_\_\_  
Lois Navarrot