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California Energy Commission
California Energy Commission Docket Unit
1516 Ninth Street, MS-4
Sacramento, CA 95814

DOCKET	
07-AFC-5	
DATE	<u>SEP 02 2010</u>
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Subject: Docket No. 07-AFC-5

Dear California Energy Commission:

I am writing to express my concern over the Presiding Member's Proposed Decision on the Ivanpah Solar Electric Generating Facility. The Proposed Decision has been issued prematurely and the CEC should wait before making its final decision.

I am a third-generation Californian who currently resides in South Dakota. It is disturbing to see the CEC rushing to make a decision on a project that will not only have significant environmental impacts, but will also override CEQA, California's landmark environmental protection law.

The transcript of the August 24, 2010 "Committee Conference before the California Energy Resources Conservation and Development Commission" makes clear that no one really knows what will happen when desert tortoises are moved out of the project site and that adequate, much less full, data about the tortoises is not yet available to decision makers. Reading a proceeding transcript with references to just-received FOIA documents that not all proceeding participants have had an opportunity to review does not create confidence in the government's ability to decide wisely and impartially.

The Proposed Decision's rationale for overriding CEQA is also thin. It is very serious to override CEQA and decisions to override, as they accumulate, will tend to weaken the law, so should only be made as a last resort. Many questions need to be answered before taking such a serious step:

1. What will California's Renewable Portfolio Standard (RPS) percentage be by the time the Ivanpah plant would begin producing power? Given current political realities, it may only be 20% by 2020. By some accounts, California's utilities are on track to reach that percentage long before then. If meeting the RPS is a reason for overriding CEQA, then the CEC needs to know what the RPS is going to be. The CEC doesn't really know now, as is reflected in the incomplete sentence about RPS in the Proposed Decision. The CEC will have a better idea later this fall, after the November elections.
2. What will California's greenhouse gas reduction targets be by the time the Ivanpah plant would begin producing power? If meeting the greenhouse gas reduction targets is a

reason for overriding CEQA, again, the CEC needs to know what those targets are going to be. With AB 32 in serious jeopardy, the CEC doesn't really know now, but will have a better idea after the November elections.

3. Some of the Proposed Decision's reasons for overriding CEQA, such as capital invested and jobs, would apply to any project that could be proposed, no matter what its environmental impacts would be. What is the CEC's threshold for deciding that a project's economics override CEQA? How much money? How many jobs? While there are justifications specified in the law that allow override of CEQA, if the CEC has no actual threshold criteria for those justifications, but instead decides differently for each project, then the CEC's decision to override CEQA is essentially arbitrary from the point of view of the public, if not necessarily that of a judge. Arbitrary decisions undermine public confidence that government will do the right thing, which is already very low.

If the CEC waits to issue its final decision until later this fall, two of the questions I raised above will be answered and the science about the tortoises could be better understood. I urge the CEC to delay its final decision until more information is available.

Sincerely yours,

Kelly Fuller