

DOCKET**08-AFC-13**DATE SEP 22 2010RECD. SEP 22 2010

From: Paul Kramer
To: Christopher Meyer; Steven A. Lamb
CC: allanori@comcast.net; angela_leiba@URSCorp.com; Anthony Eggert; atomi...
Date: 9/22/2010 9:09 PM
Subject: Re: Calico Solar

Calico parties:

Updating the "mark your calendars" alert I gave you near the end of Monday/Tuesday's hearing, the tentative date for a Committee hearing to take and discuss comments on the PMPD has shifted from Monday, October 18, to Friday, October 22. The full Commission hearing on the PMPD may be as soon as the following week. We hope to identify that date with the release of the PMPD.

Paul Kramer
Hearing Officer

>>> "Lamb, Steven A." <steven.lamb@kattenlaw.com> 9/22/2010 8:57 PM >>>

Mr. Meyer:

BNSF is in the process of comprehensively reviewing the Updated Soil & Water Conditions of Certification that you circulated earlier today. We will provide further comments in relation to the upcoming September 18th hearing post-receipt of the PMPD. We note, however, a significant deviation in Soil&Water-12 from what was discussed and expressly agreed to by Applicant at both the August 25, 2010 hearing and the hearing that ended early Tuesday morning. We appreciate the Staff's effort to comprehensively include Conditions of Certification that include stipulations during the hearing. As you know, the hearing was exceptionally long. Accordingly, it is not surprising that all of the agreements set forth in the hearing were not captured in the latest version circulated earlier today. For example, the current version of Soil&Water-12 fails to include the significant representation by Applicant that it agreed not only to fund a hydrology study commissioned by BNSF, but to pay for any necessary mitigation measures as a result of the study. Accordingly, BNSF requests that SOIL&WATER-12 be replaced with the following:

BNSF will commission a hydrology study at Calico Solar's expense to determine the erosion and sedimentation impact, if any, on rail safety and BNSF operations of its planned emplacement of SunCatchers, detention basins and runoff control measures. The hydrology study will identify and determine appropriate mitigation measures that render any identified impacts to a level that is less than significant. The study shall be reviewed and commented on by BNSF and reviewed and approved by the CPM, and mitigation shall be paid for by Calico Solar.

We also note the following changes should be made for consistency:

SOIL&WATER-7 should be amended as follows:

The first sentence:

"The project owner shall submit a Groundwater Level Monitoring and Reporting Plan to BNSF for review and comment and to San Bernardino County and to the CPM for review and approval in accordance with the County of San Bernardino Code Title 3, Division 3, Chapter 6, Article 5 (Desert Groundwater Management Ordinance)."

Last paragraph:

"In addition, the project owner shall install 5 surveyed monument markers between the Railroad ROW and the water supply well, with one marker adjacent to the supply well. If the measured static groundwater level drops 5' 6 inches or more, the project owner shall: (1) notify the CPM and BNSF of the drop and (2) prepare a Subsidence Mitigation Plan that will be reviewed and commented on by BNSF, and approved by the CPM."

SOIL&WATER-8 should be amended as follows:

"1. At a minimum, the design report shall ensure the project meets the following performance standards:

...

f. At a minimum, all storm water, hydraulic and drainage reports used for project development shall comply with the requirements of 1) the San Bernardino County Drainage Manual (SBCDM) and 2007 Development Code (amended, March 25, 2010), and 2) the Federal Emergency Management Agency Guidelines for Determining Flood Hazards on Alluvial Fans and Guidelines and Specifications for Flood Hazard Mapping Partners ."

The changes to SOIL&WATER-7 are requested for consistent reference to the agreed upon right of BNSF to review related reports and the fact that a material change in groundwater level in the desert environment can be as little as six inches (the five foot reference was simply a placemark). The changes in SOIL&WATER-8 are requested to reflect that the storm water, hydraulic, and drainage reports must also comply with FEMA requirements, as was specifically discussed and agreed to at the most recent hearing.

Thank you in advance for your attention to this matter. We will provide further comments prior to the September 18th hearing.

Kindly docket this email into the Record and incorporate the requested changes.

lamb

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