GALATI | BLEK LLP

455 Capitol Mall Suite 350
Sacramento CA 95814
Tel· 916.441.6575
Fax· 916.441.6553

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Subject: RICE SOLAR ENERGY, LLC'S RESPONSES TO STAFF'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION
RICE SOLAR ENERGY PROJECT
DOCKET NO. (09-AFC-10)

Enclosed for filing with the California Energy Commission is the original of **RICE SOLAR ENERGY LLC'S RESPONSES TO STAFF'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION,** for the Rice Solar Energy Project (09-AFC-10).

Sincerely,

Marie Mills

Scott A. Galati
GALATIBLEK LLP
455 Capitol Mall
Suite 350
Sacramento, CA 95814
(916) 441-6575

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of: Application for Certification for the **RICE SOLAR ENERGY PROJECT**	**DOCKET NO: 09-AFC-10** **RICE SOLAR ENERGY, LLC'S RESPONSES TO STAFF'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION**

Rice Solar Energy, LLC (RSE) has developed responses to Staff's comments on the Presiding Member's Proposed Decision (PMPD). As discussed with Staff Counsel, rather than surprise Staff with these responses orally at the upcoming PMPD Conference Hearing, RSE is docketing the responses in order to give Staff advance notice and to assist the Committee.

Visual Resources

Page 1 - Staff's Comment*: "This conclusion, and the similar conclusion regarding cumulative visual impacts, fails to recognize the importance of wilderness designations and the equally important scenic values inherent in many remote areas, is inconsistent with most other Commission decisions on the visual impacts of large solar facilities, and creates an incentive for developers to target remote and pristine areas for renewable energy development. Staff urges the Committee to re-draft the Visual Resources section concluding that the project creates significant impacts in both a direct and cumulative context. If the Committee believes the project has overriding merit, it should propose such findings, consistent with CEQA and Commission regulations."*

Response:

(1) "…fails to recognize the importance of wilderness designations and the equally important scenic values inherent in many remote areas."

Response: Wilderness areas have been designated to protect remote and roadless areas from development and to preserve and protect their natural biological, scenic, and recreational value for the American public. They were not designated, however, to prevent all human development activities in all adjacent areas within the viewshed of a wilderness area. The Bureau of Land Management, in addition, has the means to manage federal lands in accordance with land and resource management plans that are developed based on established principles of long-term land use management involving multiple uses that are in the public interest and that include the development of renewable energy. The Rice Solar Energy Project, however, is not located on Federal land, but is located on private land.

It is also the case that there is a significant amount of Federally designated or planned wilderness in the Colorado and Mojave Deserts near the project area, so it would be difficult to say that wilderness is an unrepresented use in these areas or that scenic values in these remote areas are not sufficiently protected. Staff appears to take the position that any scenic or remote area should be protected from any kind of development. That would imply a finding that the highest and best use of all remote desert areas is to preserve it for people to see. Such a conclusion would be inconsistent with basic principles of land use planning and the actual practice of land use planning on federal and as well as private lands.

(2) "…creates an incentive for developers to target remote and pristine areas for renewable energy development."

Response: The charge that the PMPD could create an incentive to target pristine areas does not stand up to reason. Developers of renewable energy, like developers of other kinds of energy resources, will be looking to site projects where (1) the energy resource is good or available or efficient, (2) transmission is available to bring the power to market, (3) topography is compatible. All other things being equal, this will mean that solar energy projects will be sited in the best solar energy resources areas that are near to existing transmission infrastructure. Some of the areas that meet these qualifications are remote and some are not, although remote and pristine areas may not have as many transmission lines as other areas. In addition, solar energy developers in particular have been encouraged to site projects on private land that has previously been developed and that is what SolarReserve has done in siting the Rice Project, despite the fact that such lands are rare and difficult to obtain in the quantities needed for a solar energy project in eastern Riverside County. The County's policies are compatible with and support solar energy development in this location, as Staff should recognize. Remote and pristine areas are well protected in the California deserts by National Parks, National Monuments, and BLM Wilderness areas. Staff again implies that development of

any kind cannot be appropriate in or near 'remote' and 'pristine' areas and this is not true and is inconsistent with land use management and planning practice.

(3) "…is inconsistent with most other Commission decisions on the visual impacts of large solar facilities…"

Response: Previous Commission decisions regarding large solar projects presumably took the characteristics applicable to specific projects into account in making findings regarding the effects of these projects on visual resources. These factors would have included the viewing populations and their sensitivities, the visibility of the project from key observation points, the project's effect on protected or significant views from key observation points where significant numbers of sensitive viewers would see the project facilities. The fact that a project is large does not automatically mean that it will create an adverse visual impact in any given location or in any given location that is 'remote'.

Page 2 - Staff's Comment*: "… the project will comprise a dominating visual change to a landscape that has been described as a largely pristine, intact, and scenic desert landscape. It is hard to imagine an impact more significantly adverse than that caused by the RSEP."*

Response: The Applicant disputes the Staff's conclusion that the change caused by RSEP is 'dominating'. Although the RSEP's heliostat field will cover a large area and the central tower is a tall structure, it is also the case that the angle of view that would be taken by actual viewers, who would be travelers on State Route 62, would be such that only the outer row of heliostats would be likely to be seen along the highway. In addition, the tower would be approximately one mile from and down slope of the highway (by approximately 130 feet). Given the broad expanse of Rice Valley, the RSEP cannot be said to 'dominate' this scene. The RSEP does cause a change to this scene and it does introduce a contrasting element. This in itself, however, does not mean that the project's effects would be significant and adverse.

Page 3 - Staff's Comment*: "…* 3. *The PMPD assumes that a remote area with fewer viewers is less sensitive to a similar impact in an area with more viewers, leading to an illogical conclusion that no project can have a significant aesthetic impact in remote areas.*

Response: Staff misinterprets the PMPD as concluding that no project can have a significant adverse impact in a remote area. Staff misunderstands or misapplies one of the most fundamental principles of visual resources analysis, which is fundamentally about protected viewsheds that are of value to everyone (visual 'resources') and the sensitivity of viewers and their activities. Any remote or pristine view should not to be considered automatically protected from all human development within its viewshed entirely because it is remote and pristine. The human use (or potential use) of the area, the potential viewers and their sensitivity must be taken into consideration and the PMPD does so.

Page 4 - Staff's Comment*: "… The PMPD does not reference what kind of mitigation would effectively avoid cumulative significance from these five foreseeable, very large and visually obtrusive projects in this relatively undeveloped area which could include up to five additional concentrated solar power technology projects situated within 5 miles of RSEP in the Ward Valley north of SR62."*

Response: Please note that large solar projects may be effectively screened at the fenceline and that from many viewpoints will not necessarily be particularly visible, depending on the relative elevation of the viewer and the project site. It is not feasible to screen large projects from view from all potential viewpoints, any more than it is feasible to screen agricultural fields which cover expanses of acreage, from all potential viewpoints. The analysis of visual impacts, however, has to do with the effects on sensitive viewers from particular viewpoints where there are significant numbers of viewers, not hypothetical viewpoints in remote areas where viewers might occasionally be found. Please also note that none of the projects that the Staff considers as reasonably foreseeable in Ward Valley have actually applied for a development permit.

Page 4 - Staff's Comment*: "… For a distance of roughly four miles as viewed from SR62, the project will largely obliterate southward panoramic views of the Rice Valley and its background mountain ranges. (Transcript, p 85:25 – p 86:9.) The receiver tower would potentially be visible as a source of nuisance glare for roughly 50 miles along SR 62, and to a distance of several miles beyond SR 95 to the east. (Exh. 200, Vis 6.12-7.) The solar tower would remain visible at great distances. Furthermore, the solar receiver will represent an extremely bright source of illumination that will be highly prominent and intrusive to a distance of many miles."*

Response: The idea that the project would "largely obliterate southward panoramic views of Rice Valley and its background mountain ranges" from SR 62 has little relationship to the facts as demonstrated in any of the simulated project views from Key Observation Points. Certainly, the project can be seen; however, from vehicles traveling on SR 62, it is not a dominant element within the view. This is partly because the heliostat field is downslope from the highway so that only the outer fence and outer row of heliostats can be seen and also because the solar receiver tower is approximately a mile from the highway.

Although the tower would be visible for a good distance along SR 62, it would be barely visible for much of that distance. The tower is 115 feet in diameter at its base, and about 85 feet in diameter above 300 feet. An object of this scale will have limited visibility at distance, contrary to Staff's conclusion that it would be "highly prominent and intrusive." In addition, in many places, viewing angles would permit travelers on the highway to seen only the top of the tower.

Staff also again misuses the term 'glare' to refer to the solar collector. There will be no reflected light (glare). Perhaps because of this, Staff equates the glow with 'nuisance'. The visibility of the receiver glow will not necessarily be seen as a nuisance and Staff has presented no credible evidence that it would do so.

Page 4 - Staff's Comment*: "Staff agrees that the likely number of viewers in the various locations represented by this KOP would be low. However, if the number of viewers is taken as the sole or overriding measure of viewer concern and sensitivity, the corollary conclusion would be that no impact to wilderness areas is possible under any circumstance, because viewer numbers in wilderness areas are almost always low."*

Response: Staff presumably refers to a KOP and visual simulation produced in the Staff Assessment from a point in the Turtle Mountains. Applicant has pointed out that this cannot be considered a true KOP according to standard professional practice because Staff produced the simulation using a Google Earth aerial view that simulates a point in the Turtle Mountains that (1) Staff has not visited and (2) that Staff has not demonstrated is even accessible to humans on foot. Analysis of the accessibility of the Turtle Mountain Wilderness shows that it would be extremely difficult to travel to places from which the RSEP could be seen that are also within the wilderness area. Most use of this wilderness takes place from entry points on its north and eastern boundaries. For these reasons, the RSEP does not cause a significant adverse impact to the use of this wilderness area, although it could be seen from some vantage points within the Turtle Mountain wilderness. The intent of the wilderness areas, once again, is to protect roadless areas from development within their boundaries, not to prevent any kind of development from occurring within their viewsheds. Such a policy would prevent any growth or economic development in desert communities such as Vidal, Parker, and Big River among other, for example.

Page 7 - Staff's Comment*: "In effect, the viewshed of the solar receiver exerts a de facto redefinition of the boundaries of the wilderness by compromising its basic wilderness quality over a substantial area."*

Response: The comment is telling, in that Staff appears to be redrawing the boundaries of the wilderness area by fiat. If the RSEP project area qualified as a wilderness area, however, it would have been included within the boundaries of one. It was not so included, perhaps partly because the RSEP project area has already seen some infrastructure development that includes the Colorado River Aqueduct, Arizona and California Railroad and their relatively massive stormwater control berms, SR 62 itself, the abandoned town of Rice, and site of Rice Army Airfield. The project site cannot be considered pristine.

Page 7 - Staff's Comment*: "Again, it is difficult to imagine that a viewshed affected by a highly intrusive light source with brightness similar to the sun would continue to meet these purposes."*

Response: Staff resorts to hyperbole in saying that the solar receiver tower would have a 'brightness similar to the sun.' The brightness of the solar receiver at the northern project boundary (approximately 1600 meters from the tower) would be 200 lux, or 1/600 of a 'sun' or approximately the brightness of a 120 W light bulb at 1 meter distance, although the glowing surface would be much smaller than that of a light bulb

at this distance. SR 62 is approximately 1700 meters (1.05 miles) from tower at the nearest point.

Worker Safety / Fire Protection

Page 2, Staff's Addition (d) to WORKER SAFETY-9

RSE does not disagree with Staff's concept of ensuring that there is technical rescue capability provided to protect workers during construction activities that pose specific risks, such as high-angle or trench collapse rescue. However, RSE disagrees with including Staff's selected language into Condition of Certification **WORKER SAFETY-9**. RSE believes that the appropriate condition to modify is **WORKER SAFETY-1** which requires the preparation and approval of a Project Construction Safety and Health Program. The condition already requires a Construction Emergency Action Plan and therefore RSE proposes the following additional bullet to be added to ensure the Program includes the technical rescue capability embodied in Staff's comment.

- ***The construction safety plan shall identify construction activities that require the type of situations that create the potential for rescue incidents that are addressed by California Department of Safety and Health (Cal/OSHA) Standards Part 1910, Occupational Safety and Health Administration Safety and Health Regulations. The contractor shall provide a rescue team and equipment with NFPA 1670 level of training (Standard on Operations and Training for Technical Search and Rescue Incidents) that will be available on-site for the extent of the specific construction activity time that the potential for rescue incidents exist as identified in the construction safety plan.***

Dated: December 2, 2010

Respectfully Submitted,

Original Signed
Scott A. Galati
Counsel to Rice Solar Energy, LLC

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE *RICE SOLAR ENERGY POWER PLANT PROJECT*

Docket No. 09-AFC-10

PROOF OF SERVICE
(Revised 8/5/2010)

APPLICANT
Jeffrey Benoit
Project Manager
Solar Reserve
2425 Olympic Boulevard, Ste. 500 East
Santa Monica, CA 90404
Jeffrey.Benoit@solarreserve.com

APPLICANT'S CONSULTANTS
Andrea Grenier
Grenier and Associates
1420 East Roseville Parkway, Ste. 140-377
Roseville, CA 95661
andrea@agrenier.com

Douglas Davy
CH2MHILL
2485 Natomas Park Drive, Ste. 600
Sacramento, CA 95833
ddavy@ch2m.com

COUNSEL FOR APPLICANT
***Scott Galati**
Marie Mills
Galati & Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-llp.com
mmills@gb-llp.com

INTERESTED AGENCIES
California ISO
E-mail Preferred
e-recipient@caiso.com

Liana Reilly
Western Area Power Administration
PO Box 281213
Lakewood CO 80228-8213
reilly@wapa.gov

Allison Shaffer
Bureau of Land Management
Palm Springs/South Coast Field Office
1201 Bird Center Drive
Palm Springs, Ca 92262
allison_shaffer@blm.gov

INTERVENORS

ENERGY COMMISSION
ROBERT WEISENMILLER
Commissioner and Presiding Member
rweisenm@energy.state.ca.us

KAREN DOUGLAS
Chairman and Associate Member
kldougla@energy.state.ca.us

Kourtney Vaccaro
Hearing Officer
kvaccaro@energy.state.ca.us

John Kessler
Siting Project Manager
jkessler@energy.state.ca.us

Deborah Dyer
Staff Counsel
ddyer@energy.state.ca.us

***Jennifer Jennings**
Public Adviser's Office
E-mail preferred

publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Marie Mills, declare that on December 2, 2010, I served and filed copies of the attached RICE SOLAR ENERGY LLC'S RESPONSES TO STAFF'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION, dated December 2, 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: [http://www.energy.ca.gov/sitingcases/ricesolar].

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:

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

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__X__ 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."

AND

FOR FILING WITH THE ENERGY COMMISSION:

__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
Attn: Docket No. 09-AFC-10
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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.

Marie Mills