

## Memorandum

Date: February 14, 2011  
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To: Chairman Robert B. Weisenmiller, Presiding Member  
Commissioner Karen Douglas, Associate Member

cc: Executive Director Melissa Jones

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Subject: **LESSONS LEARNED OII (10-SIT OII-1), STATUS REPORT 1**

At its December 1, 2010 Business Meeting, the California Energy Commission (Energy Commission) adopted an Order Instituting an Informational (OII) Proceeding on issues that are critical to the licensing of thermal power plant. Over the course of the next several months, this proceeding will examine the “lessons learned” in the review of both the American Recovery and Reinvestment Act (ARRA) solar projects, and the natural gas-fired power plants reviewed during 2009 and 2010.

In the OII Proceeding, the Siting Policy Committee (Committee) will assess the Energy Commission’s siting processes, and examine critical issues common among solar-thermal and/or conventional power plants. The Committee will use the information gathered during this proceeding to prepare a report which describes the topics examined, their significance in the licensing process, their priority of importance, and actions needed to avoid or address any problems identified. Based upon the outcome of the OII Proceeding, the Committee may recommend changes to its siting regulations through an Order Instituting Rulemaking (OIR) proceeding beginning in 2011.

Pursuant to verbal communications made during the December 1, 2010 Business Meeting, as well as communication made to the Committee during their December 14, 2010 OII “Lessons Learned” scoping Workshop, staff issues Status Report #1.

### Stakeholder Solicitation

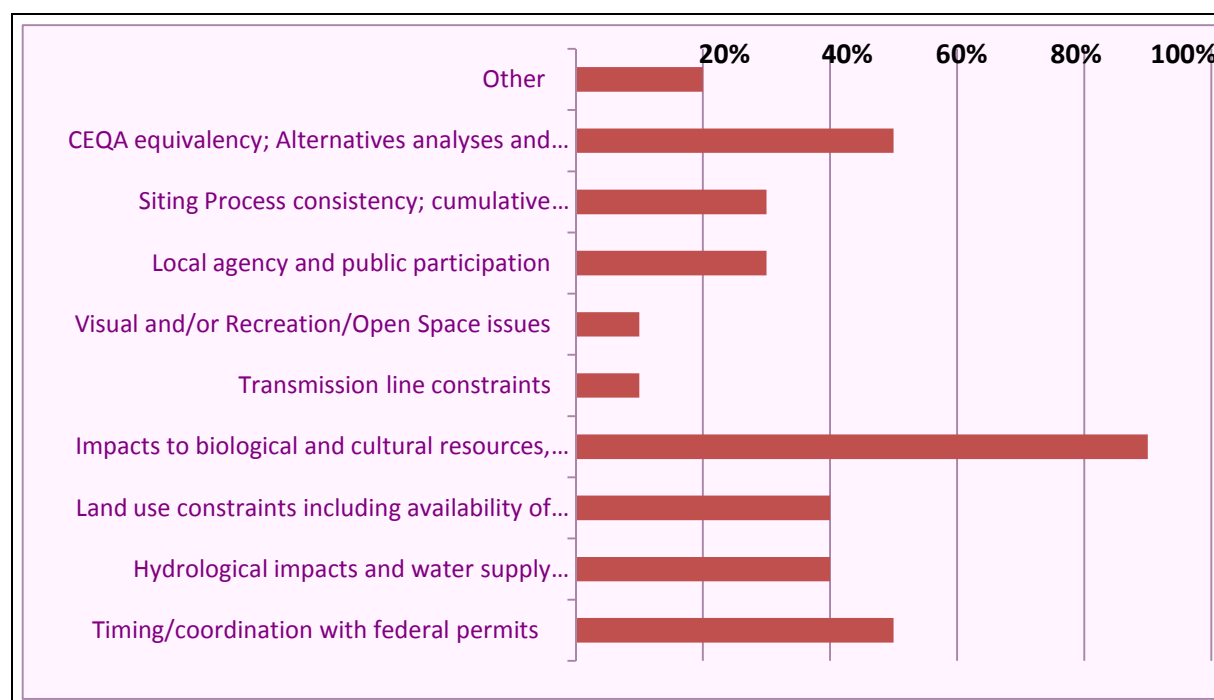
Following the Energy Commission’s initiation of the Lessons Learned OII, the Committee solicited comments from stakeholders on the licensing of power plants. Beginning on December 2, 2010, both electronic and written letters were distributed to a stakeholder list comprised of project proponents, project intervenors, environmental organizations, local government officials, advocacy organizations, elected officials and the general public. All stakeholders were asked to provide their “lessons learned” issue priorities by indicating up to five (5) siting policy or process issues that were listed in the following manner:

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**OII “Lessons Learned” Proceeding: Policy/Process Issues (check top 5 priorities)**

- \_\_\_ Timing/coordination with federal permits
- \_\_\_ Hydrological impacts and water supply reliability
- \_\_\_ Land use constraints including availability of large tracts of developable land
- \_\_\_ Impacts to biological and cultural resources, associated mitigation strategies
- \_\_\_ Transmission line constraints
- \_\_\_ Visual and/or Recreation/Open Space issues
- \_\_\_ Local agency and public participation
- \_\_\_ Siting Process consistency; cumulative analyses determinations/definitions
- \_\_\_ CEQA equivalency; Alternatives analyses and NEPA coordination
- \_\_\_ Other:

The above questionnaire was distributed to over one-thousand individuals and organizations who had been involved, or held a stake in the Commission’s siting program (for both renewable and fossil-fuel projects). Initial comments and stakeholder responses were provided to the Siting Committee during its December 14, 2010 OII scoping workshop held in Sacramento. These preliminary survey results were compiled and presented as in the following graph which depicted the approximate percentages that respondents had checked as one of their five OII Policy/Process Issue priorities:



This graph indicates that stakeholders view the listed issues with varying degrees of importance, with a particularly strong preference for focusing the “lessons learned” proceeding on issues and impacts associated with biological and cultural resources.

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The following summary of stakeholder comments is based on audio review of the WebEx recording made during the course of the December 14, 2010 scoping Workshop, as well as notes taken by staff who participated in the workshop.

**Greg Suba** (California Native Plant Society)

- Coordinate with DRECP Process. Mr. Suba noted that the next group of large renewable projects under consideration are primarily PV and wind, and CEC will therefore have a limited permitting role. However, he suggested that CEC continue in its coordination capacity via the ongoing DRECP process.
- Consider Alternatives other than Utility Scale Projects. Recommends that the Energy Commission understand the full suite of energy alternatives – go beyond the IEPR and produce outreach and education materials the public can understand. Renewable Energy Portfolio goals can/must be achieved with efforts in addition to utility scale projects.
- Comparison of CEC v. Local Review. Comm. Byron asked him to compare the local review process of PV and wind with CEC review. Suba responded that the CEC reviews were/are more robust and have lead to several positive, progressive conservation elements that have yet to materialize in CEQA review outside of CEC process. But all of the reviews of large scale renewable energy projects in the desert he has been involved with both the county and CEC. Possible that project impacts may significantly and irreversibly degrade the biodiversity of the site.

**Scott Galati** (representing himself)

- Work smarter, not harder. So much analysis occurred during 2010 that we didn't always communicate effectively about how to solve problems. Timing concerns coupled with the staff's tendency to ask every question possible given their one limited round of data requests, resulted in an enormous amount of information and analyses that were not necessarily needed or prudent under CEQA.
- Committee Should Narrow Scope of Issues Early. Mr. Galati suggested that the Committee narrow and predetermine the scope of the analysis earlier in the process. He equated this early emphasis to the legal practice of "motion for summary judgment" used in judicial proceedings. He asserted the need for early resolution of issues that are not fact-dependent, and that the Committee is the appropriate party to institute this. Galati also raised the "unclean hands and latches" legal notion and used the Colorado River water entitlement issue as an example where early Committee orders were given in the Genesis proceeding.

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- Analyses Too Long. Mr. Galati contends that there is no need for a 1,700 page Preliminary Staff Assessment (PSA) – it’s cumbersome and does not serve CEQA nor the Energy Commission’s purpose and intent articulated in Warren-Alquist. Instead, start with the conditions and ideas that have worked from past proceedings and develop decisions, determine differences and results, and conduct analyses and conditions accordingly. Too much reinventing of the wheel occurred, and a lack of fundamental facets regarding data request inquiries: “what will we do with this information – what is the end game?”
- Need Clarity from Intervenors as to Their Goals. Large solar projects licensed in 2010 involved a new group of intervenors who were not familiar with the process, and it was clear one could not always tell what they wanted (i.e. changes in proposed technology, use of a different site, no project should be licensed whatsoever, provide greater emphasis on mitigation, etc.). Mr. Galati recommended that intervenors be specific about what they want. For example, there were 21 workshops for the Genesis proceeding, but all-too-often, time was wasted discussing/arguing about general information vs. resolving specific issues.
- Staff Should Lose Once in Awhile. Mr. Galati suggested that the Commissioners should occasionally “side” with applicants rather than staff on disputed issues. Accordingly, he asserted, if staff thought they might actually lose once-in- awhile, there would be greater willingness on their part to resolve issues earlier vs. later. He felt that in negotiations, staff fundamentally felt that they could not lose, and applicants knew they must say “yes” or jeopardize the schedule and the project altogether. Dpty. Director O’Brien clarified that staff is very conscious of maintaining credibility, and does not believe that they will always prevail on issues. He hoped that Mr. Galati agrees that staff is always open to working out solutions to disagreements before hearings. He suggested that in written comments stakeholders be specific on the issues of concern – say more than just “don’t reinvent the wheel” -- be specific as to what staff should have done differently.
- Applicants Sacrificed Mitigation Costs for the Sake of the Timeline. In the course of the expedited ARRA review process, mitigation costs ended up very high. Galati had to recommend to his clients to repeatedly say “yes” to greater and greater mitigation requirements, or risk protracted discussions and the possibility that the schedule would slip. Accordingly, he was reluctant to bring disputed issues to the Committee -- even when he felt the evidence was strongly in favor of applicants -- because of schedule concerns. He hopes this is not the new norm.
- Unclean Hands/Latches. Comm. Weisenmiller asked how to move dispute resolution up to the beginning of the process. Mr. Galati explained the doctrine of unclean hands and latches (i.e. if a party does not bring an issue up early in the course of a proceeding’s discovery phase, one cannot later bring up different issues during the hearing phase later in the process). He argued that intervenors should not be allowed to bring up altogether new protest issues during hearings

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that they never initially raised or discussed during discovery. Comm. Byron asked if "unclean hands, latches" meant Commissioners would always have to discern who attended workshops, or what they previously said. Mr. Galati suggested that the Committee just be mindful of intervenors who raise new, substantive issues late in the proceeding -- particular during hearings -- and asked that they demonstrate how a new issue is inherent, relevant and related to discussions conducted during the primary course of issue development and investigation -- i.e. discovery (for example, bighorn sheep, groundwater-dependent plants, transmission issues and others were issues raised very late in several proceedings, even during some hearings, resulting in time delays and excessive and unnecessary staff work).

- Update Rules on Transmission. Mr. Galati discussed the need for the Commission to update rules related to transmission review and analyses that occur before Cal-ISO oversight. Staff currently proceeds without the analysis on downstream upgrades. With the cluster studies, applicants do not know what the projects costs will be, and all transmission upgrades ultimately receive CPUC review. The Committees should not have to wait for another agency to review and make a decision when CEC staff already do so for themselves -- it's too duplicative. The conditions already require compliance with future analysis on transmission.

**Kate Kelly** (California Council of Land Trusts)

- Use "No-Regrets" Siting Criteria. The Desert Working Group of the California Council of Land Trusts is a stakeholder in the DRECP process. Accordingly, they are a partner in providing mitigation guidance/decisions for all the solar projects. Because the desert is unique, and there is a lack of underlying science and baseline vegetation maps, Ms. Kelly articulated strong support for the "no regrets" siting approach inherent in the DRECP. She supported a prioritized approach for reviewing projects that meet the DRECP criteria for having minimal impacts. She noted that protecting wildlife corridors in the desert will be essential for the long-term health and sustainability of the desert.
- Meetings Should be Local. Ms. Kelly urged the Committee to have more meetings, workshops and hearing in desert communities, where the projects will be located.
- Put Project documents on the Web Sites Promptly. In comparing the CEC review process to those of counties, Ms. Kelly indicated that the CEC has a much better system of getting documents out and on the web pages for review. However, there exists differences between individual projects in terms of how much is put on its CEC web page, and when. Some projects were very slow in posting documents.
- Council of Land Trusts Can Help with Mitigation Lands. Ms. Kelly felt that some additional refinements were needed in order to meet the standard for perpetual protection in terms of compensatory mitigation lands. The California Council of

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Land Trusts would welcome the opportunity to help refine these measures. She reminded the Committee of how critically important is that mitigation acquisition works well and effectively. The Desert Working Group is meeting monthly to streamline and improve this process, and the CEC should continue its active role in this endeavor.

- Compliance Needs to be Transparent. In addition to promptly posting documents during project review, Ms. Kelly articulated the need to have more thorough posting of compliance documents. Absent greater posting, she felt that an “information void” is created for reviewing routine compliance documents like mitigation monitoring reports. Dpty. Director O’Brien noted that this issue had been recently raised by the public advisor, and he will talk to Compliance Office Manager Chris Marxen on its status. Mr. O’Brien said this was a valid point, and that he would report back to the Committee regarding the status of compliance postings, and supported transparency and public participation.

**Alice Harron (Solar Millennium)**

- Better Communication Needed. Ms. Harron urged that staff work to better identify and resolve issues early in the process through increased communication. There were extensive discussions during workshops, but not much progress was made on complicated issue resolution until just before/during hearings. Most troubling, however, was when significant, unmitigated impacts were raised by staff for the first time in the published SA (not during workshops), which created financing problems for applicants with lenders. Moreover, once an impact was embodied in the staff assessment as unmitigatable (with huge financial repercussions, with water use, for example), it required a great deal of unnecessary work to later resolve. Early identification of issues could have saved a great deal of time, work and resources on the part of all parties. This also applies to site identification, and the existence of certain resources and their associated impacts -- it creates great uncertainty on “where to go” and site a project. Also, there is a need a better definition of “potential” and “potential impacts” because it is a moving target that is subject to individual staff analysis and interpretation.
- Response on Better Communication. Dpty. Director O’Brien responded that early consultation is important. He was surprised by Ms. Harron’s comment as to where to go when determining potential sites for a project; the most important thing an applicant can do is come talk to the siting division before the project application takes shape and is ultimately filed.
- Data Requests too Lengthy/Detailed. Need to better understand the reasons for lengthy solar data requests (250 for Palen and the same number for Blythe) that time consuming for staff and the applicant. The applicants did not always understand the purpose and need for all the data requests despite knowing that schedule allowed just one round. She indicated that applicants were unsure about

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the focus and logic regarding question they were asked to answer. Also, it was not constructive for data requests to ask for compliance-related documents so early in the process before project impacts/issues were fully understood.

Ultimately, compliance documents were revised when conditions were better known, and Conditions of Certification were proposed, discussed and adopted.

- Big Picture Needed. Ms. Harron asked that the “big picture” be kept in mind; that is, renewable energy projects result in jobs and important tax revenues that have a multiplier effect on economically-depressed communities, like Blythe, California. She urged that the Commission improve the process to expedite approval in a sound and appropriate manner and gets people back to work.

**Kerrie Seikemann** (Intervenor, Carlsbad Energy Center Project)

- Intervenors Need More Assistance. Ms. Seikemann commended the work of public advisor Jennifer Jennings. Based on her experience as an intervenor, she suggested that the Warren Alquist should be updated to require, among other things, that applicants demonstrate financial capability before a permit is issued to avoid using the permit for financial gain. She asked for more guidance (intervenor guidebook) on procedures for writing briefs, how workshops and hearings are structured, and the role of intervenors in each. Given the fact that many intervenors lack funds, more guidance and resources should be provided to them.

**Mike Boyd** – (California’s For Renewable Energy -- CARE)

- CEC Process is a Waste of Time. In Mr. Boyd’s view, participation before the CEC is a huge waste of time. He feels CEC staff are not public servants; instead, he said they serve the interests of big corporations and not the people, and that they purposefully confuse the public with a false sense of accomplishment and participation. The process has resulted in a lack of meaningful and informed participation where the system/process benefits corporate projects and greed.
- Do Not Change Ex Parte Rule – Mr. Boyd does not see the staff as impartial, instead sees them as advocating for applicant interests. He felt staff have their own self interest, and if no firewall or “ex parte” rule existed between Commission staff and applicants, staff would not seem to be representing the public’s interest in any capacity. Mr. Boyd said there should be more compliance enforcement and punitive measures for applicants, including fines and penalties. Mr. Boyd also voiced displeasure with the bifurcated state/federal environmental review process.

**Bridget Nash Travis** (Historic Preservation Officer, Quechen Tribe)

- Better Outreach and Coordination with Tribes Needed. Ms. Nash Travis expressed the need to better inform Tribes from the proceeding’s outset, including early site visits and partnerships with the tribes. Tribes and their participation

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should be elevated to the level of a state or federal agency, rather than a member of the public. She urged that staff take into consideration alternative world views and perspectives in their analysis, and try to better understand how the potential/proposed projects would affect the cultural landscape in a cumulative way; understand spiritual pathway, including that which you cannot see or touch.

- Response to Tribal Outreach Comment. Chairman Douglas and Dpty. Director O'Brien commented that it was clear that CEC's traditional approach was not sufficient for tribal outreach, and the Commission will continue to work with BLM staff (who have experience working with tribes) on how to do a better job coordinating with tribes and tribal interests. Staff is committed to full participation from tribes, and meaningful input on how they perceive the impacted landscapes. Tribes can help us all achieve a better, more improved decision.

**Greg Wheatland** (speaking for himself)

- Documents Too Long, Detailed. Mr. Wheatland contended that the CEC process has become increasingly difficult over the past 30 years in terms of details and complexity. In comparing past staff assessments (SA's) and decisions for Sun Desert, Gilroy Cogen, Crockett and Metcalf to current (2010) staff analyses, he found current SA's are longer, thicker, more complex, more detailed, and that they are more expensive and time-consuming to produce. He asked if the current level of detail is necessary and needed. Chairman Douglas reminded the group that a Commission decision is only appealable to the state Supreme Court, and an important justification for detailed and thorough staff analyses, and reason for differences with other agency CEQA analyses. We therefore have a rigorous standard of power plant review and licensing. Staff acknowledged that there is a tendency to "creep" in terms of analysis, and agree it should examine the tendency to increase analysis from year to year and from project to project. Comm. Weisenmiller noted that decisions must be sound and withstand challenge, but must also be understandable to the public and involve all interested parties and stakeholders; a process that takes times, and must have integrity and transparency.
- Need Objective Third Party Assessment. Mr. Wheatland suggested the need for an assessment of the time and cost associated with the CEC environmental review process compared to local counties and other states. He felt this review could be handled in a number of ways, including a third-party. He hoped such a review would include key procedural processes; for example, the unique CEC "ex parte" rule. The overriding consideration should be, "does this process result in better decisions" and is there a need for an anonymous survey for project proponents to get frank results? Comm. Byron did not accept the anonymous comment proposal as necessary, as he weighs the source of any given comment based on various aspects, including "looking the accuser in the eye". Also look at conflict and overlap with other regulatory agencies, and duplication and overlap



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with them (transmission, air, water). Also address thresholds of significance and how CEC's thresholds compare to other agencies that license power plants and other large industrial facilities.

- Conditions of Certification Too Detailed. Conditions of certification have become too prescriptive and detailed. Perhaps that is not necessary in the decision, and would make staff compliance work easier because any change in existing conditions requires an enormous amount of staff work.
- Response to COC Detail Question: Comm. Byron asked staff if the increased number of pages and length of conditions was due to complex issues, or were the issues just new to staff. Dpty. Director O'Brien replied that there has been a steep learning curve for staff on the solar projects, and the experience gained will improve in future performance. May not be asking for some of the information that was asked for in the past. He agrees with Wheatland – there has been some “analysis creep” and that staff can and will review this situation. Not sure how controversial Sun Desert was, but the world is different today than 30 years ago, and the public in general is much less accepting of large power plant projects. Not surprising that analyses have grown, moreover, there is a great deal more expertise analyzing projects than there was in the early 1980s. This expertise leads to more analysis. Staff needs to take a step back and ask if certain analyses are unnecessary. But with lots of intervenors, there is a desire to be more conservative to preempt litigation. Staff will work to streamline its process, and perhaps have more detailed discussions on where we may have gone overboard in the past. Staff counsel Babula noted that staff is often trying to strike a balance with intervenors who want even more detailed COCs; staff wants to make sure the condition is enforceable, but retain some flexibility.

**Jeff Harris** (speaking for himself)

- Yes for On-Line Compliance Reports. He likes the idea of posting compliance reports on line via the CEC project websites.
- Liked System-wide Approach on Greenhouse Gas Emissions. He thought that the approach on greenhouse gas emission was good – issued a warning that staff be aware that others will challenge it. He feels staff have had the right approach.
- Don't Forget Natural Gas. Need more work on the natural gas side of things; cannot run a system with only renewables because of the intermittency problems.
- Need Industry Perspective on IEPR and DRECP. He warned that while there is value in the IEPR and DRECP processes, his clients cannot afford to fully participate in those proceedings, and the results will be absent a full industry perspective (difficulty convincing applicants to pay attorneys to participate). Concerned about aspects of the IEPR and DRECP becoming permanent rules.

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- Want More Commissioner Participation. Applicants would like to see more of the Commissioners and regular input from the committee (e.g., regular monthly conference calls/meetings). No disrespect intended, but Commissioners need to hear from the applicants as much as from staff and agencies, ideally through monthly conference calls or committee conferences following initial Informational Hearing and Site Visits.
- Revise Staff “Ex Parte” Rule Communication between staff and applicant is important and it seems staff can talk to the intervenors but not the applicant. Comm. Weisenmiller asked if there are there other models out there that are better to be emulated. Harris thought the CPUC ex parte rule was better – as the Energy Commission “ex parte” rule for staff is unprecedented; he is unaware of no other agency in the world with an “ex parte” rule for staff that is so restrictive. The strict nature of staff communication is particularly burdensome – it creates a strong, confusing misimpression that staff is the decision-maker, when they aren't.
- Shorter Documents Needed. Agreed with Mr. Wheatland's points about shorter documents. The Sun Desert water section was only five pages in length (and that projects reviewed/permitted groundwater pumping).
- Standardize Conditions of Certification. Have a standard set of conditions of certification so everyone knows what to expect, and put more of the implementation language into the verification rather than the condition which provides more flexibility, and places fewer burdens on the compliance staff.
- Data Adequacy Revisions. Comm. Byron asked if it would it help if there was a major revision of the Data Adequacy (DA) regulations? Harris thought the DA regulations were currently too prescriptive, and thinks more things should be removed from data adequacy and put into the discovery phase. Comm. Byron said that this is not necessarily a “fair game” with applicants, intervenors and staff because staff is the public advocate. He said that Commissioners defer to staff because they consistently look out for the public's interest. Harris said that the public advisor's office is understaffed and under-resourced. Comm. Byron said motivation of the public and intervenors is often difficult to discern. If they are contributing to the process they are welcome at the table. Comm. Byron said that in his meetings with intervenors there have been really interesting and useful findings. Litmus test for him is whether intervenors are contributing or not.

**Angela Leibella** (on behalf of the Calico and Imperial solar projects)

- Ex Parte Rule for Staff-Applicant Communication Doesn't Make Sense. Be aware that this is an adjudicatory proceeding, can look at how courts proceed to help us on process. Make sure that issues critical to decisions are central, and that peripheral issues do not take lots of time. The ex parte rule for staff-applicant does

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not make sense. You can get questions answered much easier if one just picks up the phone. She does not understand the justification for the staff “ex parte” rule.

- Need Standing Requirement for Intervenors. Intervenors are given party status, so there should be a standing requirement they demonstrate that there is some level of interest in order for them to participate at that level. If they have no standing, then there is a public process in which they should/could participate. If a group has a specific interest, then that is the only issue they should be commenting on.
- Control Time at Hearings. Commissioners need to control how time is spent at hearings, and have parties specify their issues of concern, and the Committee needs to provide more direction as to what issues they want to hear about as far as live discussions. Parties should be required to spend more time in the pre-hearing process as to what the focus will be before hearings commence.
- Conditions of Certification too Detailed. Conditions of Certification are too detailed and prescriptive – which echoes comments made earlier. For Calico Solar, there were 166 conditions, but 547 tasks. Need to encourage and focus on substance.
- Early Resolution and Identification of Significant Issues. Ms. Leibella indicated a need for early resolution and summary judgment proceedings in order to focus on issues and data requests. A focus on identifying what is important would be helpful. Comm. Weisenmiller responded that issues come up late in several proceedings, which created confusion in regard to focus, time allocation and the substantive nature of issues. Applicant thought that Imperial was a site without biological resource issues, which is why it was selected, and they spent more pre-filing time on biological resources than anything else. If intervenors have a particular interest, then one issue becomes much more significant because of their interest. The same occurred with Calico Solar and cultural resources – spent too many hours at hearing and in data requests on these particular issues.

#### **Joshua Basofin (Defenders of Wildlife)**

- Better Vetting Needed Before Applicants Invest in a Site. Most important issue for Defenders is better vetting and site selection criteria. By the time most applicants came to understand what the complete nature of their site’s cultural and biological resources, they had already filed an AFC and ROW application and invested significant time and resources towards a particular site’s development. That process needs to change - it is a backwards approach that needs resolution. Having read several AFCs, Basofin felt that all too often there was not enough information on biological resources, and applicants ended up going into the process blind. Need more initial surveys before officially filing development plans as a means of discerning “bad” sites. In many of the proceedings, he indicated that the number of desert tortoise found will be much higher than predicted. Likewise, more rare plant communities will be discovered. Need to do a better job.

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- Wildlife Movement Corridor Analysis Inadequate. Within the bio resources analysis, one shortcoming is the analysis of wildlife movement corridors, and how those corridors have and will be impacted by these projects, both singularly and cumulatively. The large size of these projects greatly affects movement corridors, and the general level of analysis in the staff assessments is lacking (not all equal, dependent upon staff analyst and/or contractors). Sometimes the analysis recognizes the issue but does not adequately analyze it, or mitigate. Since many of these projects are near freeways and railways, need to look at underpasses and all existing structures that could impact this under-appreciated component of the health and viability of several threatened and endangered desert species. With thousands of acres of desert appropriated for the sites movement is critical. Look at Desert Wildlife Management Areas (DWMAs), how species are moving.
- Alternatives Analysis. They have seen an improvement in Staff Assessments in terms of how alternatives are analyzed. Moving in the right direction on off-site analyses. Need to put the burden of proof on applicants on infeasibility of alternatives to prove their claims. Looking at pricing and cost benefit analysis, applicants need to consider cost of permanently purchasing land rather than temporarily paying rent.
- Joint compliance with BLM – The joint process has been a challenge to participate in and follow. Exists a need to be in closer coordination with BLM, especially with late-stage project changes from the initially-proposed and filed project AFC (for example, BLM did not make the 50% reduction in a project size the CEC did).
- Standing for Intervenorors – He noted that assessment of standing is already in the process. Required to submit an application and commission already has discretion to grant intervenor status, or not. Intervenorors coming in late to the proceeding does create inefficiencies, however, and extends the number of hours of the hearing, and degrades the process and quality of intervenor-sponsored issue discussions due to time constraints. Praise for the staff and the Committees and hearing officers (Paul Kramer particularly – has been agile at balancing interests and conserving time).
- Site Projects on Disturbed Lands. To avoid lengthy condition of certification, site projects on disturbed lands. Surveys should be conducted before AFC, ROW is filed. Eliminating sites from consideration because too many resources on site, good to know that early on.

**BobTherkelsen** (speaking for himself)

- Look At Existing Independent Reports on Siting Process. In response to Wheatland's suggestion about getting an objective third-party analysis of the process – he thought that was a good idea, and noted that a number of such

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independent reports have already been produced and that some of these issues have been discussed and debated. Look at those studies first.

- Public Notice/Ex Parte Rules. Public notice requirements – public notice requirement allows any of the parties having concerns to participate. Staff applies ex parte rule more strongly to applicant. Staff should have the opportunity to talk with the applicant and all parties. Also recommends reviewing the ex parte rule.
- Solar Project Data Adequacy Regulations. We may need solar data adequacy regulations similar to what we have for geothermal. Concern on wanting to put more into it – he started as a biologist and kept adding to it, and then put things as discovery into data adequacy. Need reasonableness test for DA and discovery.
- Intervenor Comments on Intervention. Raise its bar for standing on intervention? CEC may also consider that if intervenors are involved in a proceeding their participation should be limited to their stated area of interest.
- Re-Evaluate Agreements with BLM and Other Agencies. MOUs with other state agencies – use the next year to look at those agreements and revisit them with the agencies. Many agencies don't know that these rules exist, especially with a new Administration. Agreements with BLM need to be re-examined. A joint process could work – historical success working together with WAPA; and a joint CEC-BLM process can work and could be a model for others without compromising NEPA or CEQA. Another agency poised for joint arrangement is US Army Corps of Engineers – we need to work with them. And CPUC – the need and opportunity for a joint, coordinated CEC/CPUC review process on transmission is tremendous.
- Training Needed for Staff. There are lots of new staff members, and some of the institutional memory is gone. Siting procedures manual – golden opportunity to reissue those and make them available to commission staff and consultants.
- Guidance on Alternatives and Impact Analysis. Need guidance for applicants and staff on what is expected on alternatives and cumulative impact analysis for consistency.
- More Involvement from Commissioners. He supports recommendations to have Commissioners to be more involved throughout, and have early hearings to define the scope. The Committee involvement is very valuable to resolve issues or narrow the focus of issues.

**Kristen Bufford** – (Large Scale Solar Association)

- BMP Manual needs to Come After Lessons Learned. The Best Management Practices Manual for Desert Renewable Projects (Manual) needs to be coordinated with the OII process. To move ahead with Manual before completing

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the Lessons Learned OII proceeding is a mistake. She urged applying the lessons learned to the manual in a collaborative, cooperative manner.

- Commission Should Integrate Manual with OII. In its review of renewable permitting lessons learned, the Commission should hold a series of workshops to fully consider the permitting experiences of renewable developers over the previous year, and determine how these permitting experiences can inform the guidance in the Manual -- taking into account the views and needs of both the stakeholders and the permitting agencies. Integrating the lessons learned and the development of guidance for future projects is critical to developing a final Manual that is a workable resource that promotes responsible development of the renewable energy projects necessary to meet California's ambitious RPS and GHG goals.

**Lisa Belenky** (Center for Biological Diversity)

- Objects to Attacks on CBD. She objected to the "ad hominem" attacks by some attorneys on intervenors in general, and CBD in particular-- felt it was not helpful.
- Commission Should Understand Projects From Ecosystem Perspective. Main lessons learned -- Commissioners did not understand the scope of the projects and the area and ecosystems involved. These projects were a new thing for the Commission. Suggest that the Commission hold more site visits open to the public and actually walk the site and understand them over the course of several days.
- Public Access to Compliance Documents. Need to have compliance documents posted on the web and readily accessible by the public. A lot of the detailed information, especially for bio resources, has been deferred to compliance so it needs to be transparent.
- Process Difficult for Intervenors. Implication of the applicant's comments is that if an intervenor or member of the public didn't show up for workshops then an individual should not be able to raise the issue at a later hearing. Most workshops are in Sacramento, and phone participation was not easy. Staff has tried to be helpful in navigating this confusing process. Even as an experienced litigator, she found the process very difficult to understand especially with large documents issued just days before hearings. Lots of intervenors do not have large staff and cannot hire the experts needed to review the documents.
- CBD Was Right About Ivanpah. Issues they raised on Ivanpah are only now being shown to be correct -- did not have the benefit of the doubt from staff and Commissioners. As much as applicants feel there is too much information, there was not a more rigorous examination of the quality of the information and data. Commission was uneven in their approach to different solar proceedings - for

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example, in some proceedings experts were engaged on desert tortoises, while on other projects, they were not.

- Public Participation Important. Because of the commission's review process and limited ability to have judicial review, it is very important that all the issues raised be fully aired in the public (even though the applicants feel otherwise). She understands that the applicants believe they are helping the world, and the importance of renewable energy, but because of the fast review pace of the projects have created a lot of division in the public especially those trying to save the desert. If there had been better work at the front end it could have been avoided. CBD does not believe that alternatives were properly approached.

#### **Tanya Gullessarian (CURE)**

- CURE Did Not Raise Issues Late in Process. CURE (California Unions for Reliable Energy) participated in the review of solar and natural gas projects from the inception of their proceedings, with the objective of obtaining data necessary to evaluate the projects. CURE's data requests were sometimes unproductive because of the responses received, which sometimes necessitated motions to compel. Found that data they asked for early in the process proved to be relatively important. Recommend more information upfront and earlier in the process.
- Substance before Schedule. Two reasons that there were late documents was because there was an artificially accelerated schedule, which forced staff to produce a Staff Assessment before all the information was available. Schedule should not be elevated over substance.

#### **Dan Burnett (Kern Crest Audubon Society)**

- His Perspective as an Intervenor. Public intervenors' role is not as easy as it may appear. The CEC process is exemplary, and more agencies need to be as careful and thorough. Believes staff and applicant looked at intervenors as a necessary evil. Rules limiting contact between applicant and staff are good. He felt shuttled aside at workshops and hearing, and treated like a second class citizen. Particular hardship was the short notice periods for intervenors; a two-week notice for a mandatory status conference places a burden in terms of proper preparation when there are limited resources. It takes time to properly digest issues and prepare thoughtful and organized presentations. Intervenor simply need more time.
- Good Site Selection is Critical. Site selection is backwards – applicants are pointed to a piece of land, start investing money and initial engineering and regard the environmental issues as hurdles. The applicants have already invested considerable time in a site that may not be good. Audubon is in favor of the projects, but the sites that come up are poor and it is hard to back off late in the process. Site vetting is critical.

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**Bart Brizzee** (San Bernardino Deputy County Counsel)

- San Bernardino County Concerns. San Bernardino County Supervisor Mitzelfelt -- who represents the western portion of the county that includes the Ivanpah and Calico sites -- would have liked to participate in the workshop, but had a conflict. Mr. Brizzee indicated that worker safety/fire protection and its mitigation were the County's primary concerns. They have had fruitful discussions on three large solar projects considered for construction and operation within their county: Ivanpah, Abengoa and Calico.
- Habitat Mitigation Takes Economic Toll on Counties. These large solar projects consume massive swaths of land, both in their direct operation as well as their indirect mitigation implementation, so areas of the county are being consumed that will no longer be economically productive -- off of county tax rolls forever. Need to see if there is another way these objectives can be met. Look at the Silver State project also in the Ivanpah Valley across the state border in Nevada -- appears that substantially less mitigation required for its approval. Would hope for more consistency.

The following summaries constitute a broad representation of written stakeholder comments received following the distribution of the stakeholder solicitation letter. All of the written comment letters (and stakeholder survey results) can be reviewed at the Commission OII "Lessons Learned" webpage: [http://www.energy.ca.gov/siting\\_lessons/](http://www.energy.ca.gov/siting_lessons/).

**Jody Fraser** (Biologist, US Fish & Wildlife Service, Carlsbad Office)

Provide Review Time to "Prove" Technologies Work. Relative to siting, projects should be located such that biological and other resource impacts are minimized from the start, i.e., sited on previously disturbed lands near the load centers. A landscape-level analysis (such as the DRECP) should have preceded any permitting -- but now that several projects have been approved, we should take a step back, allow these projects to "prove" the technologies work and, in the interim, the agencies should work together to find more appropriate sites for future projects, rather than allowing proponents to drive the process.

**Ellison, Schneider & Harris** (Project Proponent Attorneys)

Commission Should Have An Independent, Third Party Review. This third party review should determine whether there are aspects of the siting process that can be made more efficient. Review of the Commission's process should consider and evaluate how local agencies process non-thermal power plants and thermal



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power plants under 50MW; how other state agencies license similar projects; compare the above processes, and any others selected for comparison to the Commission's licensing process

Commission Should Consider Multiple Aspects in Review of Siting Program in terms of the following: (1) cost to the applicant, stakeholders, and the agency; (2) timing of the licensing process; (3) post-licensing challenges including the time required to resolve the challenge and the frequency of the challenge being successful; (4) the percentage of licensed projects that are successfully financed and constructed; (5) perceived value and satisfaction with the process through an anonymous survey of applications, other agencies and stakeholders that have participated in the process; and (6) the cost and environmental impacts of the projects that are successfully licensed. This comparison should include objective information regarding the key procedural and other differences between the processes that may account for any differences in the above; whether there is duplication with other state agencies and entities such as the CPUC, Air Districts, Regional Water Boards, and the CAISO; and how thresholds of significance for power plants compare to those used in environmental review of other large industrial projects.

The Ex-parte Rules Prohibiting Communications Between Staff and Other Parties Should Be Eliminated. The rule restricting communications between Commission Staff and other parties, where the communication concerns modifying the Staff's recommendations, significantly hampers the siting process by placing unnecessary procedural requirements on communications between Staff and the parties, including applicants. This rule is unnecessary because Staff is not a decisionmaker, and as such, should not be subject to the same ex-parte rules as Commissioners and Commissioner staff (advisors).

The Commission's Siting Process Would Benefit From Increased and Early Siting Committee Involvement. Increased participation by the siting committee, especially early in the siting process, would greatly improve the Commission's processing of applications. The Commission should consider instituting a mandatory, monthly status conference or teleconference in every siting case. Currently, only Staff has the ability to attend siting committee meetings and update the Commissioners on the status of siting proceedings. Instituting a mandatory status conference would ensure equal access to the Commissioners by all parties to a proceeding.

The Commission Should Reevaluate Both Its Data Adequacy Requirements and the Level of Detailed Analysis in Certain Disciplines. The Commission should revisit its Data Adequacy requirements and question whether the level of detailed analysis sought by Staff is required by law. Duplication of analyses completed by other governmental agencies or requests for information beyond those required by any other governmental entities are equally troublesome. In particular, we urge the

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Commission to examine the lengthy Conditions of Certification for the following disciplines (presented in alphabetical order):

- *Air Quality* [wherein Staff's "AQ-SC" Conditions are added to the local air district's FDOC];
- *Biological Resources* [wherein Staff's recommendations are added onto the recommendations of CDFG and other resource agencies];
- *Cultural Resources* [wherein Staff's Conditions are unprecedented in both scope and detail to any other State or local agency approvals];
- *Transmission System Engineering* [wherein Staff re-run and re-analyze the studies performed by the CAISO and other Balancing Authorities];
- *Soil & Water Resources* [wherein Staff adds to the analyses performed by the Regional Water Boards, local water purveyors and flood control agencies];
- *Visual Resources* [wherein Staff's Conditions are unprecedented in any other State or local agency approvals].

Compliance Documents Should Be Made Available Online. At the December 14, 2010 OII Workshop, numerous parties recommended that compliance documents should be made available online. We agree with this recommendation, and believe that making these documents available to the public will provide the public with a better understanding of how compliance measures are satisfied, the requirements for constructing a project, and how environmental safeguards are implemented and enforced.

**Daniel Burnett** (Kern Crest Audubon Society)

General Comment: This organization, which first became active with the CEC due to the Solar Millennium Ridgecrest Project (09-AFC-9), considers the role of the CEC to be first and foremost that of representing the public interest and that this focus should be overriding and never change. They note that several applicants in the recent workshop expressed the desire that the commission staff be made more accessible to the applicant. It is their opinion that the exemplary reputation of the CEC staff for independence and impartiality is due at least in part to the insulation of that staff from undue industry influence, unlike some regulatory agencies whose staff are seen by the public as "in the pockets of" the industries they are supposed to regulate.

Impacts to Biological and Cultural Resources, Associated Mitigation Strategies.

These issues are now explored in detail only after the primary site has been selected. Consideration should be given to splitting the siting process so these issues can be raised during review of alternative sites leading to the selection of the primary site(s).

Visual and/or Recreation/Open Space issues. How can the visual impact of thousands of acres of industrial activity in the open desert be fully mitigated? How can the impact of these large projects upon adjacent public land use be determined? These questions should not be left to the developer to answer. CEC and public agencies should develop strategies and guidelines for these issues.

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Local Agency and Public Participation. Applicants should meet with local agencies and public interest groups at earlier stage. Interested parties should be required to go on record concerning their recommendations regarding each alternative site. Adequate time must be provided to the public, interested groups, and local agencies to prepare for and schedule attendance at workshops and conference meetings. Workshops and hearings should be held in the vicinity of the site in question to facilitate public awareness and participation. The current CEC telecommunications situation is inadequate and needs to be improved for greater public involvement.

Siting Process Consistency - Cumulative Analyses Determinations/Definitions. A site-specific review of cumulative environmental impacts and mitigation is a flawed approach. The CEC and other public Agencies should establish a means of monitoring impacts and mitigations over the broad base of projects within a geographic area. These agencies, not the applicant, should prepare this part of the environmental reviews.

CEQA Equivalency; Alternatives Analyses and NEPA Coordination. These are important areas but we are unclear as to what the issues are. We believe that the vetting of alternative sites before selection of the “best” site is not carefully done now. The alternative analyses now performed are cursory because at the time the Draft Environmental Impact Statement is prepared the applicant is not interested in alternatives. In order for the alternatives analyses to be significant they should be done earlier in the process. A go-or-no-go decision should be made based upon a review of the alternatives analysis before the applicant selects a site and an approach and expends large sums of money developing plans for the project.

**Gregory Devereaux** (Chief Executive Officer, San Bernardino County)

General Comment/Purpose. The purpose of the County’s nineteen (19) page letter is three-fold: (1) to educate the Committee on the County’s overall position on renewable energy projects; (2) to consider relevant issues in the three large projects located in the County (Ivanpah, Calico and Abengoa) that were approved by the Commission within the past few months, and (3) to offer suggestions for the processing of future renewable energy projects within the County

County Position Statement. In April of last year, the County Board adopted a position statement on renewable energy projects that are being proposed for construction in the desert portions of the County. This policy was refined by Board action in July, 2010. In this policy statement, the County identifies four critical issues it faces from the proliferation in the desert of renewable energy projects: (1) Endangered species mitigation which frequently requires the acquisition of acreage in multiples of the project area; (2) Infrastructure impacts, such as those to emergency services; (3) Impacts to ongoing operations and maintenance of infrastructure; and (4) Impacts to historical and recognized land uses.

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The Process May Not Adequately/Fairly Assess Cumulative Impacts for Biological Mitigation. The County is cognizant of the dual approval process for the Projects sited on federal land, but to the extent possible, the Commission should coordinate with the BLM in seeking more creative and less impactful mitigation strategies. It appears that there is an inequitable treatment of habitat mitigation depending on where the project is located. Achieving equity in how these projects are required to mitigate for their habitat impacts would certainly be beneficial to project applicants developing in California, and the more liberal use of an in lieu fee program instead of a wholesale requirement that multiple acres of habitat be acquired would benefit the long term economic interests of the County and its residents. The County strongly urges the Commission to step up its work with the resource agencies to develop a comprehensive in lieu fee program that will mitigate the biological impacts without the onerous and unrealistic requirement of every renewable energy project acquiring mitigation land (from a steadily decreasing supply) in multiples of the project acreage.

Uniform Application of Staff's Emergency Impact Analysis. Given the potential impacts from the Ivanpah, Abengoa and Calico solar projects to San Bernardino County fire and safety response teams, there is some concern that the Commission's staff analysis, based upon the County's data (and analysis provided by the San Bernardino County Fire Department) was not applied uniformly. In light of the manner in which Riverside County projects' (Rice, Blythe, Genesis and Palen) committees adopted Staff's recommendations that were very similar to those being advocated for San Bernardino County (without the need for independent corroboration that was required for Calico and Abengoa), equitable treatment of local governments similarly situated would seem to be a desirable objective of the Commission.

Mitigation and Other Impacts. Frequently, the desert is viewed as an area to be avoided, and the absence of activity at any given time is considered evidence that the desert is little used. However, these desert lands provide unique recreational and economic opportunities. In addition to general outdoor recreation uses, the desert areas have historically provided unique opportunities for off-highway vehicles, filming, and mining. These are all major, sustainable economic activities that will be lost as more and more of the desert is taken up with renewable energy projects. The County suggests that the Commission require reasonable mitigation, such as replacement or development of alternative recreational and wilderness opportunities. The Commission has a daunting task of striking a balance between meeting the State's renewable energy goals and imposing mitigation for the unavoidable impacts large solar projects create. The projected long operational lives of these Projects demand even greater scrutiny, and the County is empathetic to the pressures created by the executive and legislative branches of state government, as well as the urgency imposed by federal funding of limited availability. Thus, although the County supports in a general sense the creation of renewable energy, that support is conditioned on the imposition of appropriate mitigation to the specific County impacts articulated.

**Joshua Basofin** (Defenders of Wildlife)

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The Siting Committee Should Require Applicants to Conduct Initial Surveys Before an AFC is Deemed Complete. It is necessary to understand the resources on a site *before* project proponents file an Application for Certification (“AFC”) and, if the site is on BLM land, a Right of Way (“ROW”) Application. Often contractors are not conduct transect surveys until after applications have been filed with the agencies, Power Purchase Agreements (“PPA”) have been negotiated, and capital investments have been secured.

The Siting Committee Should Require Applicants to Assess Movement Corridors on Proposed Project Sites. Obstruction of movement corridors is a significant environmental impact. Movement corridors exist throughout the Mojave Desert for species such as desert tortoise, desert bighorn sheep, Mojave fringe-toed lizard, Mojave ground squirrel and many others. Obstructing such corridors prevents individuals from expanding their home ranges, finding food, and mating. Such obstructions may also reduce genetic flow. For listed species such as desert tortoises, movement corridors may be essential to continued survival.

The Siting Committee Should Require Multiple Alternative Sites on Private Degraded Land and Place the Burden on Applicants to Determine Feasibility. Considering the overriding policy impetus toward siting renewable facilities on private degraded land, the permitting agencies have an obligation to fully consider a reasonable range of private land alternatives. RETI’s prioritization of private lands for renewables siting affirms the need for CEC to analyze a reasonable number of private lands alternatives. In addition, CEC staff should not narrowly define basic project objectives so as to preclude many off-site alternatives.

In-Lieu Fee Mitigation Programs Are Problematic. In-lieu mitigation plans, which are often incorporated in CEC staff assessments, fail to satisfy the requirements of CEQA. Formulation of mitigation measures may not be deferred until some future time. CEC staff in siting cases have not adequately ensured that in-lieu mitigation fee programs will (1) be evaluated under CEQA when specific mitigation measures are identified and (2) will manifest into actual on-the-ground improvement to habitat for desert tortoise and other impacted species. The staff assessments for the various cases do not contain adequate information to satisfy the public’s interest in ensuring that the required fees translate into recovery benefits to wildlife.

The Siting Committee Should Ensure Project Changes are Communicated to Federal Agencies. In many siting cases applicants or the committee make changes to the project design in the final moments. The committees should work closely with federal partners so that such changes are communicated in a timely manner. If such communication does not occur, federal agencies may focus on outdated versions of projects in Environmental Impact Statements. In the Calico case, for example, the staff and applicant put forward a version of the project late in the proceeding that was significantly scaled down. However, the Final EIS did not reflect the scaled down

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version and thereby created some confusion. Working closely with federal partners on projects proposed for federal land is essential to the siting process.

Parties Wishing to Intervene Should Petition Early in the Proceedings. Wherever possible, the Siting Committee should encourage parties to intervene as soon as possible in cases. Siting cases involve a great number of issues and large amounts of data. Siting cases are elongated when parties intervene towards the end of a proceeding. Indeed, often those interveners that came in at the beginning have difficulty submitting testimony, cross-examining witnesses, and generally having their issues heard by the committees. For the sake of efficiency, parties should intervene early and in no case before the pre-hearing conference.

The Siting Committee Should Strongly Consider Electronic Filing to Reduce Paper Waste. The need to provide paper service to all parties through the U.S. Mail creates an undue burden on parties, particularly non-profit groups with limited staff and resources. Moreover, the CEC should eradicate paper waste to set a good example. The amount of paper generated in siting proceedings can be quite significant. Therefore, the Siting Committee should transition to an all electronic filing system as soon as possible.

## **Conclusion**

Staff anticipates completing its review of the submitted comments shortly and releasing a proposed schedule of events, including workshops, which will define the remaining OII process.