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April 18, 2011

Via Email and U.S. Mail

Commissioner Karen Douglas
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California Energy Commission
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Kldougl@energy.state.ca.us

Chairman Robert B. Weisenmiller
Siting Committee Associate Member
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Re: Calico Solar Project Amendment (08-AFC-13C)

Dear Commissioner Douglas and Chairman Weisenmiller:

We are writing on behalf of California Unions for Reliable Energy ("CURE") regarding Calico Solar, LLC's petition to modify the Calico Solar Project ("Project Amendment"). In its April 14, 2011 Issues Identification Report, Staff determined that the proposed modification may require a modification to conditions of certification from the Commission's final decision on the previously approved project. Therefore, Staff stated that the petition would be processed as a formal amendment to the decision and must be approved by the full Commission.¹

CURE is currently reviewing the petition and provides the following preliminary recommendations for the Committee's consideration:

1. The Committee should confirm that it is reviewing the proposed Project Amendment as an application proceeding, rather than as a compliance proceeding.
2. The Committee should clarify the required findings for approving the Project Amendment.

¹ 20 Cal. Code Regs. §1769(a)(3).

3. The Committee should prepare an environmental review document, pursuant to its certified regulatory program², for the proposed Project Amendment.
4. The Committee should adopt a schedule that provides adequate time for parties to obtain information and for the public to engage in meaningful review.
5. The Committee should require parties to serve and post documents on the Commission website for the Project Amendment proceeding and direct Staff to post all documents related to compliance following the Commission's final decision on the previous project.

I. The Committee Should Confirm that it is Reviewing the Petition to Modify the Calico Solar Project as an Application Proceeding

In its April 14, 2011 Issues Identification Report, the Staff stated that “[t]he Calico Solar Project Amendment will be processed as an amendment to the Calico Solar Project Final Decision that was certified by the Energy Commission on December 1, 2010.” This is the proper conclusion. The Committee should confirm that the Commission is reviewing the proposed Project Amendment as an application, or amended application, proceeding, rather than as a compliance proceeding. Article 3 of the Commission's regulations applies to applications for certification.³ Specifically, Article 3 sets forth requirements for an *application proceeding* including, but not limited to, requirements for environmental review, review of compliance with LORS, evidentiary hearings, a presiding member's proposed decision, comment periods, post certification amendments and changes, and compliance verification.⁴ Project amendments fall within the ambit of the Commission's regulations for an application proceeding.⁵

In this case, the notices thus far refer to the proposed Project Amendment as docket number 08-AFC-13C. The “C” likely refers to compliance. However, this is not a compliance proceeding. Under the Commission's regulations, “compliance verification” in the context of proposed modifications involves potentially modifying

² 20 Cal. Code Regs. §§ 1700 *et seq.*

³ 20 Cal. Code Regs. §§ 1741-1770.

⁴ *Id.*

⁵ 20 Cal. Code Regs. § 1769.

verification provisions to enforce conditions of certification without requesting an amendment to the decision. Furthermore, a modified verification must not conflict with approved conditions of certification.⁶ In other words, staff may modify a verification of a condition, but not the condition itself.

Here, the Project Amendment proposes changing the project itself. Specifically, the Project Amendment proposes to change a majority of the project from thermal to photovoltaic - a change that involves substantially different construction methods and may involve new significant environmental impacts. The Project Amendment also proposes a new and different plan for phasing, and the location of each phase of the power plant development. Not surprisingly, the Project Amendment seeks to change conditions of certification accordingly. Therefore, the Project Amendment does not involve application of the Commission's compliance verification regulations.

Thus far, the Commission's notices appear to characterize this proceeding as a compliance proceeding. Instead, the Project Amendment should be characterized as an application proceeding, or an amended application proceeding, and the Commission's regulations governing an application must be applied.

II. The Committee Should Clarify the Required Findings for Approving the Project Amendment

The Commission's regulations set forth the findings that the Commission must make for the Project Amendment. According to Section 1769(a)(3), the Commission may approve modifications that require a formal amendment only if it can make all of the following findings:

- (A) the findings specified in section 1755 (c), and (d), if applicable;
- (B) that the project would remain in compliance with all applicable laws, ordinances, regulations, and standards ("LORS"), subject to the provisions of Public Resources Code section 25525;
- (C) that the change will be beneficial to the public, applicant, or intervenors; and

⁶ 20 Cal. Code Regs. § 1770(d).

- (D) that there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not known and could not have been known with the exercise of reasonable diligence prior to Commission certification.

For the Project Amendment, the notices and issue identification report repeatedly state that the review includes an evaluation of consistency of the proposed changes with the Commission's decision on the previous project and whether the project, as modified, will remain in compliance with LORS, citing generally section 1769 of the regulations. While the Commission may want to consider the Project Amendment's consistency with the Commission's previous decision, the Commission's regulations actually require more. A determination of compliance with LORS is one of the required findings under section 1769(a)(3), but the notices and report do not explain any of the other findings that must be made. The Committee should clarify for the public the findings that must be made in this proceeding.

III. The Committee Should Prepare an Environmental Review Document, Pursuant to Its Certified Regulatory Program

The Committee should prepare an environmental review document, pursuant to its certified regulatory program, as set forth in its site certification regulations, for the proposed Project Amendment.

CEQA requires the Commission to conduct subsequent environmental review when substantial changes are proposed in the project, or occur with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous environmental review document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.⁷ CEQA also requires subsequent environmental review when new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous environmental impact review was certified as complete, shows any of the following:

⁷ 14 Cal. Code Regs. §15162(a)(1)-(2); see also Pub. Res. Code § 21166.

- (A) The project will have one or more significant effects not discussed in the previous environmental review;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous environmental review;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous environmental review would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.⁸

Based on our initial review of the petition for the Project Amendment, the Project Amendment requires subsequent environmental review. The Project Amendment proposes changes to the Project which will require major revisions of the previous environmental review document due to the involvement of new and potentially more severe significant environmental effects. Also, new information of substantial importance, which was not known and could not have been previously known, shows the project may have significant effects not previously discussed, significant effects previously examined may be substantially more severe, mitigation measures and alternatives previously found not to be feasible may in fact be feasible, and mitigation measures and alternatives which are considerably different from those analyzed in the previous environmental review may substantially reduce one or more significant effects on the environment.

Significantly, the Commission's previous environmental review *explicitly rejected* the use of photovoltaic technology as an alternative because the installation of photovoltaic panels would result in more significant impacts on soil and water resources related to grading, stormwater management, emissions and erosion.⁹

⁸ 14 Cal. Code Regs. §15162(a)(3).

⁹ Supplemental Staff Assessment, July 2010, pp. B.2-2, B.2-65.

Commissioner Karen Douglas
Chairman Robert B. Weisenmiller
April 18, 2011
Page 6

Therefore, in order to now approve the use of photovoltaic technology, the Commission must conduct the subsequent environmental review mandated by CEQA.

Furthermore, the petition shows that the Project Amendment may result in new significant impacts to air quality from increased construction emissions compared to the previous project. The information provided in the petition shows that certain on-site construction emissions increase substantially. Yet, the petition does not provide sufficient information to explain the dramatic decrease in other on-site and off-site construction emissions. Thus, further information is needed to evaluate the applicant's claim that the Project Amendment results in an overall net decrease in emissions.

The Project Amendment may also result in new significant impacts to biological resources. For example, new information regarding changes to the desert tortoise translocation plan and biological opinion shows the project may have significant effects not previously discussed, mitigation measures and alternatives previously found not to be feasible may in fact be feasible, and mitigation measures and alternatives which are considerably different from those previously analyzed may substantially reduce one or more significant impacts on desert tortoise. In addition, the new phasing location requires new surveys for desert tortoise and plants to enable the Commission to conduct an analysis of impacts in these areas. The Project Amendment may also result in new significant impacts to the Mojave fringe-toed lizard from interference with a movement and sand transport corridor.

Other new significant impacts from the Project Amendment may include impacts to hydrology, soil and drainage caused by the installation of photovoltaic structures and off-road travel through the project site. Further information may be needed from the applicant in order to analyze and review the applicant's assumptions and conclusions regarding these resource areas.

Staff apparently has also concluded that additional information is needed, and on Friday April 15, 2011, Staff issued its first set of data requests to the Applicant.

CURE is continuing to review the petition and is considering data requests. Thus, the above examples are not exhaustive of the potential issues in this

proceeding. However, based on our initial review, subsequent environmental review is required.

IV. The Committee Should Adopt a Schedule That Provides Adequate Time for Parties to Obtain Information and for the Public to Engage in Meaningful Review of the Project Amendment

Any application for any site and related facility within the jurisdiction of the Commission must comply with the requirements set forth in the Commission's site certification regulations. CURE proposes the following schedule for processing the petition for a Project Amendment:

Staff Proposed Activity	Staff Proposed Date	CURE Proposed Activity	CURE Proposed Date
Applicant files Petition to Amend Calico Solar Project	3/22/11	Applicant files Petition to Amend Calico Solar Project	3/22/11
Staff files Notice of Receipt	3/25/11	Staff files Notice of Receipt	3/25/11
Staff files Issue Identification Report	4/14/11	Staff files Issue Identification Report	4/14/11
Staff files data requests	4/15/11	Staff files data requests	4/15/11
		Parties file responses to Issue Identification Report	4/18/11
Informational hearing and site visit	4/20/11	Informational hearing and site visit	4/20/11
Applicant provides responses to Staff data requests	5/9/11	Applicant provides responses to Staff data requests	5/9/11
		Parties file data requests	5/16/11

Staff Proposed Activity	Staff Proposed Date	CURE Proposed Activity	CURE Proposed Date
		Applicant provides responses to parties' data requests	6/3/11
Data response and issue resolution workshop	5/23/11	Data response and issue resolution workshop	6/13/11
Staff assessment ("SA")	6/24/11	SA	6/24/11
SA workshop	7/12/11	SA workshop	7/12/11
SA 30-day comment period ends	7/25/11	SA 30-day comment period ends	7/25/11
		Parties file opening testimony	8/10/11
		Parties file rebuttal testimony	8/24/11
Evidentiary hearing	8/1/11	Evidentiary hearing	9/7/11
Revised staff assessment ("RSA")/ Responses to comments on SA	8/17/11	RSA/ Responses to comments on SA	9/21/11
		RSA 30-day comment period (if required)	10/21/11
		Supplemental opening and rebuttal testimony and evidentiary hearing (if required)	20, 30 and 45 days after RSA
		Parties file post-hearing opening and	21 and 30 days after all evidentiary

Staff Proposed Activity	Staff Proposed Date	CURE Proposed Activity	CURE Proposed Date
		reply briefs	hearings are complete
Committee recommendation to Commission	8/23/11	Presiding member's proposed decision	
		Commission hearing on PMPD	20 days after PMPD
		Comments on PMPD due	30 days after PMPD
Commission Business Meeting	9/7/11	Commission Decision	

V. The Committee Should Require Service and Posting of Documents For the Project Amendment Proceeding and Posting of Documents Related to Compliance with the Commission's Final Decision on the Previous Project

The Commission usually maintains and updates its web pages for each siting case promptly. Perhaps because it has not experienced many occasions where a project has a substantial amendment as in this case, the Commission's website is far out of date. The Committee should require posting of all documents related to the previously approved project on the Commission's website. Currently, the docket lists no documents related to the applicant's compliance with existing conditions of certification. Yet, the petition for a Project Amendment specifically refers to and relies on such documents.¹⁰ The Committee should direct Staff to post all compliance documents on the Commission's website in order to efficiently disclose information to the public.¹¹

¹⁰ See, e.g., Petition to Amend Calico Solar Project, March 18, 2011, pp. 4.3-1, 4.5-1.

¹¹ If compliance documents are not posted on the Commission's website and docketed, the public and parties would be required to submit repeated Public Records Act requests to Commission Staff. CURE believes this would result in an inefficient use of Staff time and the parties' limited resources.

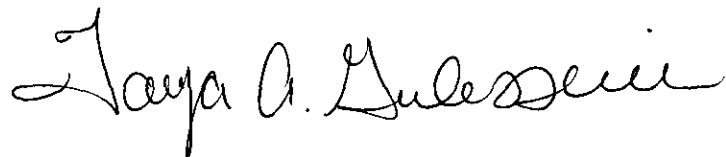
Commissioner Karen Douglas
Chairman Robert B. Weisenmiller
April 18, 2011
Page 10

In addition, CURE recommends that the Committee require service and posting of all documents related to the proposed Project Amendment in this proceeding, pursuant to Section 1210 of the Commission's regulations.

VII. Conclusion

CURE appreciates in advance the Committee's consideration of these comments and recommendations. CURE will continue to review the proposed Project Amendment and plans to attend the informational hearing and site visit.

Respectfully submitted,



Tanya A. Gulesserian

TAG:vs

cc: Docket (08-AFC-13C)
Proof of Service List (08-AFC-13C)

Calico Solar – 08-AFC-13
DECLARATION OF SERVICE

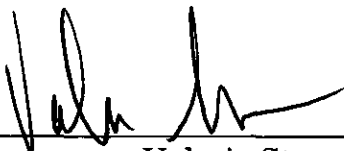
I, Valerie Stevenson, declare that on April 18, 2011, I served and filed copies of the attached LETTER RE: CALICO SOLAR PROJECT AMENDMENT, dated April 18, 2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at www.energy.ca.gov/sitingcases/calicosolar/CalicoSolar_POS.pdf. 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 electronically to all email addresses on the Proof of Service list; and by depositing in the U.S. mail at Sacramento, CA, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred."

AND

By sending an original paper copy and one electronic copy, mailed and emailed respectively to:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-13
1516 Ninth Street, MS 4
Sacramento, CA 95814-5512
docket@energy.state.us.ca.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA, on April 18, 2011.



Valerie Stevenson



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For the CALICO SOLAR AMENDMENT

**Docket No. 08-AFC-13C
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