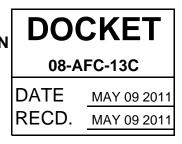


BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA 1516 NINTH STREET, SACRAMENTO, CA 95814 1-800-822-6228 – WWW.ENERGY.CA.GOV

# FOR THE CALICO SOLAR PROJECT AMENDMENT

DOCKET NO. 08-AFC-13C

## COMMITTEE ORDER REGARDING SIERRA CLUB'S MOTION TO DISMISS THE PETITION TO AMEND AND CALICO SOLAR LLC'S MOTION TO STRIKE SIERRA CLUB'S MOTION TO DISMISS



# Background

On March 22, 2011, Calico Solar, LLC filed a Petition to Amend the Calico Solar Project previously approved by the Energy Commission in December 2010.

On April 20, 2011, the Energy Commission's Siting Committee conducted an Informational Hearing relating the Petition to Amend. During the hearing, the Committee advised the then parties (Calico Solar, LLC and Energy Commission Staff), would-be intervenors (including the Sierra Club), and the public of the Committee's intent to issue an order requesting briefing on matters that include the Commission's licensing and CEQA lead agency jurisdiction over the Petition to Amend and its proposed modifications.

On April 20, 2011, within two hours after the close of the Informational Hearing, the Sierra Club filed a Motion to Dismiss the Petition to Amend (Motion to Dismiss) with the Energy Commission. The Petition essentially alleges that the Energy Commission has no licensing jurisdiction over any aspect of the modifications proposed by the Petition to Amend.

On May 2, 2011, the Siting Committee issued orders granting six petitions to intervene, including a petition filed on behalf of the Sierra Club, and thereby conferred party status on the Sierra Club and the other petitioners.

On May 2, 2011, the Siting Committee issued a Committee Scheduling, Briefing, and Procedures Order (Scheduling Order), which includes an invitation for the parties to brief the above-described jurisdictional issues by May 23, 2011.

On May 3, 2011, Sierra Club filed a Notice of Protest alleging, among other things, that the Commission has "ignored" its Motion to Dismiss by neither referencing it in the Scheduling Order nor deciding the matters discussed in the Petition to Dismiss.

On May 4, 2011, Calico Solar, LLC filed a Motion to Strike Sierra Club's Motion to Dismiss on the grounds that the Motion to Dismiss was prematurely filed.

# **Findings and Ruling**

- 1. Sierra Club filed the Motion to Dismiss before the Siting Committee granted it party status in this post-certification amendment proceeding, which is primarily governed by California Code of Regulations, title 20, section 1769.
- 2. Pursuant to California Code of Regulations, title 20, sections 1203 and 1716.5, the Siting Committee finds that upon Sierra Club becoming a party to proceeding on May 2, 2011, it had standing to file the Motion to Dismiss under California Code of Regulation, title 20, section 1716.5.<sup>1</sup> Accordingly, given the Siting Committee's stated interest in the jurisdictional issues raised by the Motion to Dismiss, it is reasonable and desirable to deem the Motion to Dismiss as having been filed by the Sierra Club on May 2, 2011.

Therefore, the Siting Committee hereby **DENIES** Calico Solar, LLC's Motion to Strike Sierra Club's Motion to Dismiss.

Further, pursuant to the Siting Committee's authority under California Code of Regulations, sections 1203, subdivisions (c), (d), and (f), the Siting Committee hereby **ORDERS** that oral argument on Sierra Club's Motion to Dismiss shall be heard on June 8, 2011, together with arguments on the jurisdictional and baseline issues as specified in the Committee Scheduling Order dated May 2, 2011. Should the parties elect to file briefs in response to Sierra Club's Motion to Dismiss, any such briefs shall be filed on or before 5:00 p.m. on June 3, 2011. The Siting Committee will notice the June 8, 2011 hearing under separate cover.

Dated: May 9, 2011, in Sacramento, California.

KAREN DOUGLAS Commissioner and Presiding Member Siting Committee

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ROBERT B. WEISENMILLER Chairman and Associate Member Siting Committee

<sup>&</sup>lt;sup>1</sup> Notwithstanding that Section 1716.5 expressly pertains to Notice of Intention and Application for Certification proceedings.



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# FOR THE CALICO SOLAR PROJECT AMENDMENT

### **APPLICANT**

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# Docket No. 08-AFC-13C PROOF OF SERVICE (Revised 5/9/2011)

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# **DECLARATION OF SERVICE**

I, Maggie Read, declare that on May 9, 2011, I served by U.S. mail and filed copies of the attached Committee Order Regarding Sierra Club's Motion To Dismiss the Petition to Amend and Calico Solar LLC'S Motion to Strike Sierra Club's Motion to Dismiss, dated, May 9, 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/compliance/index.html].

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;
- \_\_\_\_\_ by personal delivery;
- 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. <u>08-AFC-13C</u> 1516 Ninth Street, MS-4 Sacramento, CA 95814-5512 <u>docket@energy.state.ca.us</u>

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.

Original signed by:

Maggie Read Hearing Adviser's Office