

# DOCKET

11-CAI-01

DATE Aug 05 2011

RECD. Aug 08 2011



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](http://WWW.ENERGY.CA.GOV)

**COMPLAINT & INVESTIGATION**  
**CALICO SOLAR PROJECT**  
**CALICO SOLAR, LLC**

**DOCKET No. 11-CAI-01**

## COMMITTEE ORDER

**DIRECTING SERVICE OF BNSF RAILWAY COMPANY'S  
VERIFIED COMPLAINT ON CALICO SOLAR, LLC,**

**REQUIRING ENERGY COMMISSION STAFF TO PREPARE A WRITTEN ASSESSMENT  
OF THE COMPLAINT, AND**

**AFFIRMING STAFF'S DUTY TO CONDUCT AN INVESTIGATION**

On or about June 12, 2011, BNSF Railway Company (BNSF) filed a Verified Complaint to Revoke Certification ("Complaint") with the Energy Commission Siting/Dockets Unit. On or about June 14, 2011, the Siting/Dockets Unit submitted the Complaint to the Energy Commission Compliance Program Manager assigned to the Calico Solar Project (08-AFC-13). On or about June 20, 2011, BNSF filed the Complaint with the Energy Commission Chief Counsel.

The Complaint's primary allegations are: (1) Calico Solar, LLC's "application and supplemental documentation contained material false statements regarding commercial viability and availability of SunCatchers for the Calico Solar Project" and (2) "there has been a 'significant failure' by Applicant to comply with the terms or conditions of approval of the application as specified by the Commission in its December 1, 2010 written decision." (Complaint, ¶ 2.) These allegations trigger compliance with Commission Regulations section 1232 and following, which are summarized below as appropriate.<sup>1</sup>

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<sup>1</sup> All regulatory references are to Title 20 of the California Code of Regulations unless otherwise noted.

## **Service of the Complaint**

The Siting Committee hereby **directs** the assigned Hearing Officer to serve the Complaint on Calico on or before August 19, 2011, by certified mail, return receipt requested, as specified by Section 1232, subdivision (a)(2). As stated in the *Service of Complaint and Scheduling Order* dated June 14, 2011, this Complaint proceeding will be governed by Sections 1231 through 1236.5 together with the informal hearing procedures in Article 10 of the Administrative Procedure Act (Government Code §§ 11445.10 through 11445.60.) The Hearing Officer shall serve Calico with a copy of these governing procedures.

## **Filing and Service of the Answer**

Calico must file an answer to the Complaint with the Commission Siting/Dockets Unit and serve it on BNSF and the Siting Committee within 21 days after the Hearing Officer serves Calico with the Complaint. (§ 1233, subd. (a).) Calico's answer must include the following information:

1. An admission or denial of each material allegation.
2. An explanation of any defenses raised by the respondent.
3. A declaration under penalty of perjury attesting to the truth and accuracy of any factual allegations. The declaration must be dated, signed, and attested to by an officer of Calico. (§ 1233, subd. (b), see also §1231, subd. (b)(8).)

## **Preparation, Filing, and Service of a Written Assessment by Energy Commission Staff**

The Siting Committee hereby **directs** Energy Commission staff to (1) prepare a written assessment of the Complaint and Calico's answer, (2) file the assessment with the Commission Siting/Dockets Unit and, (3) serve the assessment by first class mail on BNSF, Calico, and the Siting Committee. (§ 1233.5.) Section 1233.5 generally requires staff to file and serve the assessment within seven days after receiving the answer. However, under the authority of Section 1203, subdivision (f), we find that there is good cause to allow staff up to 15 days after it receives Calico's answer to file and serve the written assessment, in that the additional time will allow staff to carefully evaluate the Complaint and answer and articulate well-considered conclusions. (§§ 1203 subd. (f), 1233.5.)

**Energy Commission Staff's Investigation of Allegations of Noncompliance with the Conditions of Certification**

Staff must complete an investigation of the allegations that Calico has significantly failed to comply with the terms and conditions of certification and must file a report of the investigation with the Siting/Dockets Unit and serve the report on BNSF, Calico, and the Siting Committee no later than August 12, 2011. (§ 1237, subs. (a), (b), see also *Service of Complaint and Scheduling Order* dated June 14, 2011.)

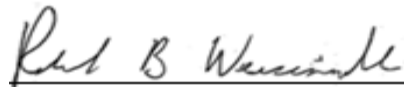
Any person may submit written comments on the Complaint or staff report within 14 days after the the report issues. (§ 1237, subd. (d).)

It is so **ORDERED**.

Dated: August 5, 2011 at Sacramento, California.



KAREN DOUGLAS  
Commissioner and Presiding Member  
Siting Committee



ROBERT B. WEISENMILLER  
Chair and Associate Member  
Siting Committee



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COMMISSION OF THE STATE OF CALIFORNIA  
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**FOR THE CALICO SOLAR PROJECT  
COMPLAINT AND INVESTIGATION**

**Docket No. 11-CAI-01**

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DECLARATION OF SERVICE

I, Maggie Read, declare that on, August 8, 2011, I served and filed copies of the attached Committee Order Directing Service of BNSF Railway Company's Verified Complaint on Calico Solar, LLC, Requiring Energy Commission Staff to Prepare a Written Assessment of the Complaint, and Affirming Staff's Duty to Conduct an Investigation, dated August 5, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, 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/calicosolar/investigate/index.html>].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

*(Check all that Apply)*

For service to all other parties:

Served electronically to all e-mail addresses on the Proof of Service list;

Served by delivering on this date, either personally, or for mailing with the U.S. 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 "e-mail preferred."

**AND**

For filing with the Docket Unit at the Energy Commission:

by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); **OR**

by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT  
Attn: Docket No. 11-CAI-01  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, §§ 1720**

Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
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I declare under penalty of perjury under the laws of the State of California 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