

STATE OF CALIFORNIA

**State Energy Resources
Conservation and Development Commission**

In the Matter of:

Calico Solar Project
Complaint and Investigation

Docket Nos. 11-CAI-01
11-CAI-04

AMENDED PETITION TO INTERVENE

11-CAI-01

DOCKET

11-CAI-04

DATE SEP 11 2011

RECD. SEP 12 2011

September 11, 2011

Patrick C. Jackson
600 N. Darwood Avenue
San Dimas, California 91773
Telephone: (909) 599-9914
Facsimile: (909) 599-9914
E-Mail: ochsjack@earthlink.net

STATE OF CALIFORNIA

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In the Matter of:

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AMENDED PETITION TO INTERVENE

1. California Code of Regulations, Title 20, Section 1207(a) provides:

Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

2. Pursuant to Title 20, CCR, Section 1207(a), and as permitted pursuant to *Committee Order Regarding Patrick C. Jackson's Petition to Intervene and Request for Investigation*, I hereby submit this Amended Petition to Intervene in the Complaint and Investigation Proceeding for the Calico Solar Project (Project).

3. I have an **interest** in this proceeding as I was an Intervenor in the Project's Application for Certification, Docket No. 08-AFC-13.

4. I have an **interest** in this proceeding as I am currently an Intervenor in the Compliance Proceeding, Docket No. 08-AFC-13C.

5. I have an **interest** in this proceeding as I own property adjacent to the Calico Solar Project and the Project will have a direct impact on my property. I am concerned about my

property; my property rights; my health and safety; the health and safety of visitors to my property; and the rights, health and safety of the public accessing public lands surrounding the Project.

6. **In addition to the preceding interests**, I am an American citizen and a resident of the State of California. I pay state and federal income taxes and California property taxes. As a taxpayer, I have an **interest** in seeing my taxes are not wasted on a renewable energy project consisting entirely or in part on SunCatchers technology that was and is not commercially viable.

7. On October 28, 2010, the California Energy Commission issued a decision (Commission Decision) approving and licensing the Approved Project to be owned and operated by Calico Solar, LLC (Calico Solar).^{1 2} The Commission Decision was docketed on November 3, 2010.

8. On December 1, 2010, the California Energy Commission formally withdrew its Notice of Decision it docketed on November 3, 2010, and filed a revised Notice of Decision.

9. The Approved Project is to funded in part by an American Reinvestment and Recovery (ARRA) cash grant in lieu of tax credits for certain renewable energy projects.³

10. On December 24, 2010, K Road Sun LLC (K Road) purchased Calico Solar, LLC from Tessera Solar North America. Because the SunCatchers would not be commercially available in the near term, K Road determined that for the project to be viable, a portion of the technology would need to be replaced with a technology that was currently commercially available and able to attract financing.⁴ [Emphasis added]

¹ Petition to Amend, Calico Solar Project, Docket No. 08-AFC-13, March 18, 2011, p. 1-1.

² On or about August 31, 2011, Calico Solar, LLC, changed in its name to K Road Calico, LLC.

³ Commission Decision, Calico Solar Power Project, Docket No. 08-AFC-13, Order No. 10-1028-03, Alternatives p. 2.

⁴ Petition to Amend, p. 3-1

11. On or about July 12, 2011, BNSF Railway Company (BNSF) filed a *Verified Complaint to Revoke Certification* (Complaint)⁵ with the Energy Commission Siting/Dockets Unit.

12. On or about July 14, 2011, the Siting/Dockets Unit submitted the Complaint to the Energy Commission Compliance Program Manager assigned to the Calico Solar Project (Docket No. 08-AFC-13).

13. On or about July 20, 2011, BNSF filed the Complaint with the Energy Commission Chief Counsel.

14. The Complaint states and alleges in part:

Pursuant to Section 25534(a)(1), BNSF hereby requests that the California Energy Commission (the "Commission") revoke the certification previously issued in its Final Decision, effective December 1, 2010, on the ground that the Applicant's application and supplemental documentation contained material false statements regarding the commercial viability and availability of SunCatchers for the Calico Solar Project, . . . [Emphasis added]

(Complaint, p. 2)

15. The Complaint cites Section 25534(a)(1) of the Public Resources Code as the legal issue to revoke the certification and provides the evidence to support BNSF's allegation "the Applicant's application and supplemental documentation contained material false statements regarding the commercial viability and availability of SunCatchers for the Calico Solar Project."

16. It is my **position** to intervene in this proceeding to introduce additional evidence at the appropriate time to support BNSF's allegation the "Applicant's application and supplemental documentation contained material false statements regarding the commercial viability and availability of SunCatchers for the Calico Solar Project."

⁵ BNSF filed a second complaint on or about August 25, 2011. The Committee has taken no action to date on the pleading. (*Committee Order Regarding Patrick C. Jackson's Petition to Intervene and Request for Investigation*, Docket Nos. 11-CAI-01 & 11-CAI-04, September 9, 2011)

17. At this time, I submit the following comments and facts as to some of the evidence I intend to introduce.

- a. On July 28, 2009, before the House Select Committee on Energy Independence and Global Warming, Sean Gallagher, Vice President of Marketing and Regulatory Affairs, Tessera Solar, testified in part:

*Tessera Solar, headquartered in Houston, Texas, was formed to be the exclusive developer and operator of the SunCatcher™ Power System developed by our sister company, Stirling Energy Systems, headquartered in Scottsdale, Arizona. In May 2008, the NTR, an Irish renewable energy development company, invested \$100 million into Stirling Energy Systems, and created Tessera Solar as the project development arm of the business.*⁶

The changes that have wracked the financial sector in the past year have created significant challenges for financing renewable power plants. Congress responded to these challenges by creating the Department of Energy's loan guarantee programs, and the Treasury grant in lieu of investment tax credits. These programs will be critical in the next two years for projects like ours – and others in the solar industry to obtain the financing necessary to construct projects. In order to take advantage of these incentives the Administration will need to take the following steps to allow companies like ours to move these projects forward, create jobs and generate carbon free electricity:

- Issue effective regulations for the Department of Energy section 1703 and 1705 loan guarantee programs that are consistent with commercial banking practices and successful loan guarantee programs like the Export-Import Bank of the United States and the Overseas Private Investment Corporation (OPIC), which have both been successful from a risk management perspective. Absent loan guarantees, our projects and others like them face an impossible task finding financing due to the battered credit*

⁶ Testimony of Sean Gallagher, Vice President of Marketing and Regulatory Affairs, Tessera Solar Before the House Select Committee on Energy Independence and Global Warming, July 28, 2009, p. 1.

markets, and the unwillingness of private lenders to take risks on new technologies.⁷ [Emphasis added]

- b. On November 12, 2010, between the dates the California Energy Commission Committee issued its first and final Notice of Decision, NTR plc, parent company of Stirling Energy Systems, Inc. and Tessera Solar North America, Inc., released its *Annual Report & Financial Statements 2010* which states in pertinent part:

*In response to the general economic environment and in particular the challenging funding climate, it is now anticipated that the commercial roll-out of the SunCatcher will take place over a longer timeframe than previously envisaged. As a consequence, an impairment charge has arisen on the Group's intellectual property and contract based assets of €84,561,000. The net impact, after tax and minority interests, is a charge of €33,292,000.*⁸

- c: The *Annual Report & Financial Statements 2010* also states in pertinent part:

*Since the year end, the Group has undertaken a number of actions in response to the global economic challenges including the decision by SES to re-pace the utility scale roll-out of the SunCatcher technology until the current uncertainties in the funding markets are resolved.*⁹

- d: The *Annual Report & Financial Statements 2010* also states in pertinent part:

The issue facing SES is the current state of capital markets, in particular the scale and risk tolerance of capital available in the private equity market. In my review of 2009 I noted, and I quote "notwithstanding the strength of the Group's balance sheet, the scale of the opportunity available to our businesses will mean that those businesses will require access to new sources of third party equity

⁷ *Id.*, p. 6.

⁸ NTR - *Annual Report & Financial Statements 2010*, p. 79.

⁹ *Id.*, p. 108.

capital in order to ensure that they meet their full potential”.

Despite the significant advances made by SES in the commercialisation of the SunCatcher, the likely timing within which a third party strategic investor and project capital is secured has been affected by prevailing capital market uncertainties. Accordingly, while continuing to seek a strategic partner, SES expects that commercialisation of the SunCatcher will require a longer timeframe than previously envisaged. The business will be restructured to take account of this longer timeframe for SunCatcher commercialisation.¹⁰

- e. The *Annual Report & Financial Statements 2010* also states NTR’s loss or “Segmental earnings from continuing operations before interest, tax, depreciation, amortization, share based payments and impairment charges” for its Solar Segment were (€31,183,000) for the fiscal year ending March 31, 2009, and (€4,219,000) for the fiscal year ending March 31, 2010.¹¹ [Emphasis added]
- f. *NTR plc Reports Financial Results for Year Ended 31 March 2011, Dublin, August 2, 2011* states in part:
- i. *NTR has decided to fully write down its solar investment, significantly contributing to Group attributable losses of €280.2 million. This follows the decision earlier in the year to limit funding to its solar business, Stirling Energy Systems (SES), as it has not yet succeeded in attracting third-party investment.*¹² [Emphasis added]
- ii. NTR reports “Impairment and fair value charges of €195.7 million, of which €32.7 million is attributable to shareholders . . .

¹⁰ *Id.*, Chairman’s Statement, p. 6;

¹¹ *Id.*, p. 63.

¹² *NTR plc Reports Financial Results for Year Ended 31 March 2011, Dublin, August 2, 2011*, p 1.

[including] Solar write-downs [of] €42.4 million”.¹³

The preceding facts support BNSF’s allegation the “Applicant's application and supplemental documentation contained material false statements regarding the commercial viability and availability of SunCatchers for the Calico Solar Project.”

18. It is my **position** to participate fully in this proceeding as an intervenor to:
 - a. present evidence at the appropriate time,
 - b. offer testimony under oath,
 - c. file data requests and
 - d. cross-examine witnesses.

19. My **position** on the Approved Project is a matter of record as docketed in the Original Proceeding regarding the Application for Certification, Docket No. 08-AFC-13. I have expended and continue to expend substantial time and money to address significant health, safety, environmental and access issues arising from the Approved Project that was and is not commercially viable. My **position** has always been and continues to be to protect my **interests**.

I am in favor of renewable energy but I oppose renewable energy projects that:

- a. infringe upon the rights of others,
 - b. do not comply with all applicable laws, ordinances, regulations and standards,
 - c. are based upon material false statements and
 - d. pose a significant health and safety hazard to others.
20. I petition to intervene in these proceedings on the following **grounds**:
- a. The Approved Project was and is not commercially viable.
 - b. The Applicant’s application and supplemental documentation containing

¹³ *Id.*, p. 2.

material false statements regarding the commercial viability and availability of SunCatchers for the Calico Solar Project have cost me thousands of hours and thousands of dollars defending my interests against an Approved Project that was and is not commercially viable.

- c. It has been and continues to be unfair to put me and other parties whose interests are directly impacted by the Approved Project in the untenable position of having to continue to protect their interests when the commercial viability and availability of SunCatchers has not been demonstrated.
- d. I am conducting my own investigation and intend to introduce relevant noncumulative evidence at the appropriate time to support BNSF's allegation the Applicant's application and supplemental documentation contained material false statements regarding the commercial viability and availability of SunCatchers for the Calico Solar Project.
- e. I object to my tax dollars funding a project that was and is not commercially viable.
- f. It is unfair for American taxpayers to fund a project based on a technology which has already generated over €137.8 million in losses to the parent company of the Applicant.
- g. I should not be required to take actions to ensure my safety or the safety of my family and guests against the adverse effects of a renewable energy project which will be dependent upon a technology that was and is not commercially viable or available.

h. I intend to amend my Request for Investigation.

21. I am not a member of any group or organization already a party to this proceeding.

22. I intend to fully participate in all hearings and workshops relating to these matters.

23. I will represent myself in this proceeding but reserve the right to have legal counsel represent me at a later date.

24. My contact information is:

Name:	Patrick C. Jackson
Address:	600 N. Darwood Avenue San Dimas, California 91773
Telephone:	(909) 599-9914
E-Mail:	ochsjack@earthlink.net

25. I agree if a document is served upon me via e-mail, an additional paper copy by mail is not necessary.

26. All statements of fact contained in my original Petition to Intervene and *Patrick C. Jackson's Rebuttal Comments to Calico Solar, LLC's Objection to Mr. Patrick C. Jackson's (1) Petition to Intervene and (2) Request for Investigation* are incorporated in this Amended Petition to Intervene by reference.

27. This Amended Petition to Intervene contains my interests, position, the grounds for my intervention and the necessary facts to intervene pursuant to California Code of Regulations, Title 20, Section 1207(a).

28. The Committee has the authority to grant this Amended Petition to Intervene pursuant to California Code of Regulations, Title 20, Section 1207(c) and Public Resources Code, Section 25218(e).

29. The Declaration of Service and Proof of Service located on the web page for this

Proceeding are attached.

30. I, Patrick C. Jackson, declare under penalty of perjury under the laws of the State of California all statements made in this document are true, correct and complete to the best of my knowledge and belief and this document was executed on September 11, 2011, at San Dimas, California.

Original Signed By

Patrick C. Jackson

STATE OF CALIFORNIA

State Energy Resources
Conservation and Development Commission

In the Matter of:

Calico Solar Project
Complaint and Investigation

Docket Nos. 11-CAI-01
11-CAI-04

DECLARATION OF SERVICE

AMENDED PETITION TO INTERVENE

I, **Patrick C. Jackson**, declare that on **September 11, 2011**, I served and filed copies of the attached **Amended Petition to Intervene**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service located on the web page for this project at: <http://www.energy.ca.gov/sitingcases/calicosolar>

The document has been sent to Michael J. Levy, all 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.

FOR SERVICE TO THE APPLICANT AND ALL OTHER PARTIES:

XX sent electronically to all e-mail addresses on the Proof of Service and

XX by depositing in the United States mail at **San Dimas, California**, with first-class postage thereon fully prepaid and addressed as provided on the attached Proof of Service list to the mailing addresses shown on the Proof of Service list.

FOR FILING WITH THE ENERGY COMMISSION AND CHIEF COUNSEL:

XX sending the original signed document and one electronic copy, mailed and e-mailed respectively, to the addresses below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. **11-CAI-01**
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

CALIFORNIA ENERGY COMMISSION
Michael J. Levy, Chief Counsel
1516 Ninth Street, MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

September 11, 2011

Date

Original Signed By

Patrick C. Jackson



**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
COMPLAINT AND INVESTIGATION**

**Docket Nos. 11-CAI-01
11-CAI-04**

APPLICANT/RESPONDENT

Calico Solar, LLC
Daniel J. O'Shea
Managing Director
2600 10th Street, Suite 635
Berkeley, CA 94710
dano@kroadpower.com

APPLICANT'S CONSULTANT

URS Corporation
Angela Leiba
AFC Project Manager
4225 Executive Square, #1600
La Jolla, CA 92037
angela_leiba@URSCorp.com

APPLICANT'S COUNSEL

Allan J. Thompson
Attorney at Law
21 C Orinda Way , #314
Orinda, CA 94563
allanori@comcast.net

Bingham McCutchen, LLP
Ella Foley Gannon
Three Embarcadero Center
San Francisco, CA 94111
e-mail service preferred
ella.gannon@bingham.com

COMPLAINANT

BNSF Railway Company
Cynthia Lea Burch
Katten Muchin Rosenman, LLP
2029 Century Park East,
Suite 2700
Los Angeles, CA 90067-3012
cynthia.burch@kattenlaw.com

INTERESTED

AGENCIES/ENTITIES/PERSONS

Society for the Conservation of
Bighorn Sheep
Bob Burke
Gary Thomas
1980 East Main Street, #50
Barstow, CA 92311
e-mail service preferred
cameracoordinator@sheepsociety.com

Basin and Range Watch
Laura Cunningham
Kevin Emmerich
P.O. Box 70
Beatty, NV 89003
e-mail service preferred
atomictoadranch@netzero.net

California Unions for Reliable
Energy (CURE)
c/o Tanya A. Gulesserian
Marc D. Joseph
Adams Broadwell Joseph
& Cardozo
601 Gateway Boulevard,
Suite 1000
South San Francisco, CA 94080
e-mail service preferred
tgulesserian@adamsbroadwell.com

Patrick C. Jackson
600 Darwood Avenue
San Dimas, CA 91773
e-mail service preferred
ochsjack@earthlink.net

Sierra Club
Gloria D. Smith
Travis Ritchie
85 Second Street, Second floor
San Francisco, CA 94105
e-mail service preferred
gloria.smith@sierraclub.org
travis.ritchie@sierraclub.org

Newberry Community
Service District
c/o Wayne W. Weierbach
P.O. Box 206
Newberry Springs, CA 92365
e-mail service preferred
newberryCSD@gmail.com

Defenders of Wildlife
Kim Delfino
1303 J Street, Suite 270
Sacramento, California 95814
e-mail service preferred
kdelfino@defenders.org

Defenders of Wildlife
Jeff Aardahl
46600 Old State Highway,
Unit 13
Gualala, California 95445
e-mail service preferred
jaardahl@defenders.org

INTERESTED
AGENCIES/ENTITIES/PERSONS
(cont.)

County of San Bernardino
Jean-Rene Basle, County Counsel
Bart W. Brizzee, Principal Assistant
County Counsel
385 N. Arrowhead Avenue, 4th Fl.
San Bernardino, CA 92415-0140
bbrizzee@cc.sbcounty.gov

California ISO
e-recipient@caiso.com

BLM – Nevada State Office
Jim Stobaugh
P.O. Box 12000
Reno, NV 89520
jim_stobaugh@blm.gov

Bureau of Land Management
Joan Patrovsky, Specialist/
Project Manager
CDD-Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
jpatrovs@blm.gov

California Department of
Fish & Game
Becky Jones
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

California Energy Commission
Kerry Willis
Senior Staff Counsel
*Staff Attorney for Calico
Amendment proceeding (08-
AFC-13C)*
e-mail service preferred
kwillis@energy.state.ca.us

California Energy Commission
Stephen Adams
Senior Staff Counsel
*Staff Attorney for Calico
Amendment proceeding (08-
AFC-13C)*
e-mail service preferred
sadams@energy.state.ca.us

California Energy Commission
Craig Hoffman
*Project Manager for Calico
Amendment proceeding (08-
AFC-13C)*
e-mail service preferred
choffman@energy.state.ca.us

California Energy Commission
Caryn Holmes
Staff Counsel IV
e-mail service preferred
cholmes@energy.state.ca.us

ENERGY COMMISSION
SITING COMMITTEE,
COMMITTEE ADVISERS,
HEARING OFFICER

KAREN DOUGLAS
Commissioner and Presiding Member
kldougla@energy.state.ca.us

ROBERT B. WEISENMILLER
Chair and Associate Member
rweisenm@energy.state.ca.us

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

Galen Lemei, Adviser to
Commissioner Douglas
glemei@energy.state.ca.us

Eileen Allen, Adviser to
Chair Weisenmiller
eallen@energy.state.ca.us

ENERGY COMMISSION STAFF

Christine Stora
Project Manager
e-mail service preferred
cstora@energy.state.ca.us

Kevin W. Bell
Senior Staff Counsel
e-mail service preferred
kwbell@energy.state.ca.us

ENERGY COMMISSION CHIEF
COUNSEL

Michael J. Levy
Chief Counsel
e-mail service preferred
mlevy@energy.state.ca.us

PUBLIC ADVISER

Jennifer Jennings
Public Adviser
e-mail service preferred
publicadviser@energy.state.us