

STATE OF CALIFORNIA
Energy Resources Conservation and
Development Commission

DOCKET

11-CAI-01

DATE SEP 30 2011

RECD. SEP 30 2011

In the Matter of:

Complaint and Investigation

CALICO SOLAR PROJECT
Calico Solar, LLC

Docket No. 11-CAI-01

**K ROAD CALICO SOLAR LLC'S RESPONSE TO STAFF ASSESSMENT OF BNSF'S
VERIFIED COMPLAINT AND OF CALICO'S ANSWER**

September 30, 2011

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STATE OF CALIFORNIA

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Pursuant to Hearing Officer Vaccaro's direction,¹ K Road Calico Solar LLC² ("Calico") respectfully submits this Response to the September 28, 2011 Staff Assessment of BNSF's Verified Complaint and of Calico's Answer ("Staff Assessment").

I. INTRODUCTION

After thoroughly reviewing BNSF's Complaint and Calico's response, Staff was unable to identify any material false statement. Based on this assessment together with the reasons presented by Calico in its Answer dated September 1, 2001, and its Hearing Statement dated September 28, 2011, the Commission should dismiss BNSF's complaint.³

¹ See e-mail correspondence from Ms. Koutney Vaccaro to the parties entitled "Calico Complaint and Investigation" dated September 22, 2011 at approximately 2:12pm (Pacific).

² As provided in a notice to all parties filed on August 31, 2011, Calico recently changed its name from Calico Solar, LLC to K Road Calico Solar LLC.

³ Because Patrick Jackson's Amended Request for an Investigation relies wholly on the statements identified by BNSF, the Committee should also dismiss Mr. Jackson's Amended Request.

II. STAFF’S ASSESSMENT OF THE COMPLAINT

Staff correctly recognizes that matters of opinion regarding future events are not representations of fact. Staff determined “that the information provided by complainant merely demonstrates the belief by the respondent that the SunCatchers would be available at some time in the future and that availability was dependent on investor financing.” Staff Assessment at 4. Calico agrees. Because such belief, expectation, or business plan can, as a matter of law, only be an opinion, BNSF has not identified any material false statement.

Calico also agrees with Staff’s unremarkable assessment that “if the Committee finds that there is insufficient information to support the assertion that the respondent’s application and supplemental documentation contained material false statements regarding the commercial viability and availability of SunCatchers for the Calico Solar Project, staff recommends that the Committee dismiss the complaint.” Staff Assessment at 6. In fact, Calico believes that based on the record the Committee must find that there is insufficient information to support BNSF’s assertion and must dismiss the Complaint.

III. STAFF’S ASSESSMENT OF CALICO’S ANSWER

Staff determined that Calico’s Answer “demonstrate[s] ample support for the position that the statements made during the course of the underlying licensing proceeding are not ‘material false statements’ as alleged by the complainant.” *See* Staff Assessment at 6. This assessment is based in part on Staff’s finding that “the Commission decision was not predicated on the *immediate* availability or *immediate* commercial viability of SunCatcher technology.” Staff Assessment at 7 (emphasis in original). Calico agrees.

Staff suggests that there may be two areas of inquiry that may be relevant in these proceedings: (1) if there is any evidence that Calico definitively knew during the siting proceeding that SunCatchers would not be available; and (2) if there is any evidence that Calico definitively knew during the sting proceedings that SunCatchers would not be commercially viable. *See* Staff Assessment at 7. Calico disagrees that further inquiry is

appropriate here given that there is not any evidence to support either of these conclusions and ample evidence exists to the contrary. Staff's view on these issues is that: (1) the existence of the Maricopa Power Plant alone is strong evidence to support Calico's belief that SunCatchers would be available; and (2) that further information regarding the post-certification performance of the Maricopa Power Plant is necessary to evaluate Calico's belief as to commercial viability. Calico agrees with Staff's first point, but disagrees with the second. Post-certification performance data is in no way relevant to what Calico knew or thought during the certification proceedings.

IV. CONCLUSION

Calico did not make any false statements to the Commission during the Project's siting proceedings. BNSF has not offered any evidence of any such statement. Staff also found no such statement. Therefore, BNSF's Complaint must be dismissed with prejudice.

Date: September 30, 2011

Respectfully submitted,



Ella Foley Gannon
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formerly known as Calico Solar, LLC



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**FOR THE CALICO SOLAR PROJECT
COMPLAINT AND INVESTIGATION**

**Docket Nos. 11-CAI-01
(Revised 9/15/11)**

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DECLARATION OF SERVICE

I, Margaret Pavao, declare that on September 30, 2011, I served and filed copies of the attached K Road Calico Solar LLC's Response to Staff Assessment of BNSF's Verified Complaint and of Calico's Answer, dated September 30, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulations, 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 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 email addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or 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:

- 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

Attn: Docket No. 11-CAI-01
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
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:

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I declare under penalty of perjury under the laws of the State of California that 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.


