

STATE OF CALIFORNIA
Energy Resources Conservation and
Development Commission

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In the Matter of:

Complaint and Investigation

CALICO SOLAR PROJECT
Calico Solar, LLC

Docket No. 11-CAI-01

ANSWER TO PATRICK JACKSON'S AMENDED REQUEST FOR INVESTIGATION

September 30, 2011

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STATE OF CALIFORNIA

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Pursuant to the Committee Order of September 26, 2011, K Road Calico Solar LLC¹ herein responds to the allegations in Patrick Jackson's September 14, 2011 "Amended Request for Investigation."

I. BACKGROUND

Following numerous filings which were rejected on various procedural grounds², the Committee, on September 15, 2011, granted Mr. Jackson the right to intervene in the Complaint proceedings initiated by BNSF and on September 26, 2011, the Committee accepted Mr. Jackson's Amended Request for Investigation and consolidated it with the pending Complaint proceeding. *See Committee Order Granting Petition to Intervene;*

¹ 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.

² As explained in the September 9, 2011 Committee Order, the Committee found that Mr. Jackson's original Petition to Intervene and subsequent Rebuttal Comments to Calico Solar, LLC's Objection "both individually and combined - fail to show the relevance of his wish to participate in the Complaint proceedings, and that Mr. Jackson's Request for Investigation "lacks the essential factual allegations or legal claims required by Section 1231, subdivision (b)." *Committee Order Regarding Patrick C. Jackson's Petition to Intervene and Request for Investigation* at 4.

Committee Order Regarding Patrick C. Jackson's Amended Request for Investigation. As is described below, we disagree with the Committee's initial determination that the Amended Request meets the requisite pleading requirements and ask that the Amended Request be dismissed on these grounds.

Substantively, Mr. Jackson's Amended Request fails no better. Mr. Jackson claims that Calico made material false statements to the Commission during the Project's certification proceedings, yet he fails to point to even one single statement made by Calico in these proceedings at all. Instead, he simply repeats allegations that "[t]he Applicant's application and supplemental documentation contained material statements asserting to the commercial viability and availability of the SunCatchers." *See* Amended Request at ¶¶ 5, 7, 9-12. When? Where? By whom? Mr. Jackson does not tell us.

The bulk of Mr. Jackson's Amended Request is dedicated to providing quotes from other proceedings and mostly by other parties. These quotes taken together tell the following story: NTR, the parent company of Sterling Energy Systems (SES), invested hundreds of millions of dollars over a period of years that extended into its 2011 fiscal year in developing the SunCatcher. NTR's business plan since at least 2009 was to bring in funding from third party investors in order to produce the SunCatcher on a large scale. Difficulty in securing financing would, and did, result in a delayed schedule for deploying SunCatchers.

Calico does not disagree with the story. In fact, the story supports Calico's sworn testimony, filings, and belief throughout the certification process that the SunCatcher would be available and commercially viable in the future. The story is consistent also with Calico's statement in its Petition to Amend regarding why the amendment was necessary.

Mr. Jackson does not, and can not, offer any explanation as to how evidence of significant investment by a company in an innovative technology demonstrates that non-specific statements about the belief that this technology will work are false. Therefore, the

Committee should cease to indulge Mr. Jackson's meritless claims and dismiss the Amended Request.

II. MR. JACKSON'S AMENDED REQUEST FOR INVESTIGATION

As explained more fully in Calico's Hearing Statement, filed on September 28, 2011, Mr. Jackson is asking the Commission to investigate what Calico knew, may have known, should have known, or could have guessed about the commercial viability and availability of a innovative technology under development. This request has no basis in the Warren-Alquist Act, the Commission's regulations, or any other source of law. If the Commission were to undertake such an investigation here, the Commission would establish a precedent which would have a chilling effect on power plant development. It would also require the Commission to repeatedly inquire into and examine the financial situation of every project which comes before it. Such a procedure would result in a tremendous waste of the Commission's, applicants' and intervenors' time and money – the Commission would learn that no power plant project has closed financing while siting proceedings are ongoing – and would serve no practical purpose other than discouraging development of power plants in California, especially those involving innovative technologies.

A. The Amended Request Points to No Statement Made by Calico that Could Serve as the Basis for an Investigation

Mr. Jackson does not refer to any statement made by Calico during the Project's certification proceedings. Therefore, Mr. Jackson has not included the facts upon which his request for investigation is based as required under the Commission's regulations. *See* 20 CCR § 1231(a).³ Mr. Jackson's reliance on statements quoted by BNSF further

³ All subsequent citations are to Title 20 of the California Code of Regulations, unless otherwise noted.

demonstrate why this Amended Request is in appropriate.⁴ As an intervenor in this proceeding, Mr. Jackson has the right to offer evidence in support of any allegation raised by BNSF. The only net result of allowing Mr. Jackson to file the Amended Request for Investigation is that the Committee had to issue separate orders, and Calico had to prepare separate answers, addressing *two* meritless pleadings instead of one.

B. The Allegations Contained in the Amended Request Are Not Proper Subjects for an Investigation

Mr. Jackson is seeking an investigation in a situation where the Committee's regulations clearly do not contemplate such a proceeding. The Commission's Regulations distinguish between complaints and investigations. Complaints involve allegations that a party has violated a statute, order, decision or regulation. 20 CCR § 1230(a). An investigation, by contrast, involves a request that the Commission determine the *applicability* of a statute, order, decision or regulation. *Id.* Here, Mr. Jackson claims that Calico is not in compliance with Section 25534(a)(1) of the Public Resources Code. *See* Amended Request at ¶¶ 6, 7, 10, 11. He does not ask whether this provision or any other provision applies to Calico. Therefore, the Amended Request is inappropriate and should be dismissed with prejudice.

C. The Amended Request Should Be Dismissed with Prejudice Because Mr. Jackson Has Not Followed Appropriate Procedures Set forth in the Commission's Regulations

Even if the Committee were to determine that the Amended Request should be treated as a complaint under Section 1230, the Committee should deny the Amended

⁴ For the reasons stated in Calico's Answer to BNSF dated September 1, 2011 and its Hearing Statement, BNSF has also failed to point to any statement made by Calico to the Commission affirming the existence of adequate financing for or the immediate availability of SunCatchers.

Request with prejudice. Regardless of whether the Amended Request is considered a complaint or a request for investigation, it must meet all regulatory requirements, including the provision of “a statement of the facts upon which the complaint or request for investigation is based” and “a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based.” § 1231(b). Like BNSF, Mr. Jackson fails to provide a statement of facts upon which the Amended Request is based. For these procedural reasons, the Committee should dismiss the Amended Request with prejudice.

III. CALICO’S SPECIFIC RESPONSES TO MR. JACKSON’S ALLEGATIONS

Without waiving any objections, Calico provides its specific responses to each paragraph of the Amended Request as follows below:

1. Paragraph 1 contains no material allegation and therefore requires no answer under the Commission’s regulations. Calico notes that pursuant to the dated September 15, 2011 *Committee Ruling Conditionally Dismissing BNSF Railway Company’s Verified Complaint to Revoke Certification, Filed On August 25, 2011*, BNSF’s Second Complaint was deemed dismissed as of September 23, 2011.

2. Paragraph 2 contains no material allegation and therefore requires no answer under the Commission’s regulations.

3. Paragraph 3 contains no material allegation and therefore requires no answer under the Commission’s regulations.

4. Paragraph 4 contains no material allegation and therefore requires no answer under the Commission’s regulations; however Calico questions the procedural propriety of incorporating previous filings in this proceeding and does not waive its objections. To the

extent that the Commission allows Mr. Jackson to incorporate BNSF's Complaint, Calico incorporates by reference its Answer to Verified Complaint to Revoke Certification, dated September 1, 2011.

5. Answering Paragraph 5, Mr. Jackson quotes BSNF's Complaint, which speaks for itself and is the best evidence of its contents. Calico denies that its application and supplemental documentation contained material false statements.

6. Answering Paragraph 6, Mr. Jackson is characterizing BNSF's allegation which Calico denies to the extent that any response is required. Mr. Jackson also quotes Section 25534 of the Warren-Alquist Act, which speaks for itself and is the best evidence of its contents.

7. Answering Paragraph 7, Mr. Jackson characterizes and quotes from the Scheduling Order, which speaks for itself and is the best evidence of its contents.

8. Answering Paragraph 8, Mr. Jackson quotes Section 1231 of Title 20 of the California Code of Regulations, which speaks for itself and is the best evidence of its contents.

9. Answering Paragraphs 9 and 10, Calico denies all allegations to the extent that any response is required. Further, Mr. Jackson has not provided a basis for requesting an investigation pursuant to Section 1230(a).

10. Answering Paragraph 11, to the extent this paragraph includes a material allegation and to the extent any response is required, Calico denies all allegations.

a. Answering subparagraph (a), because Mr. Jackson does not identify any particular statements from the record, Calico denies all allegations to the extent this paragraph includes a material allegation and to the extent any response is

required. Mr. Jackson also quotes testimony given on July 28, 2009, which speaks for itself and is the best evidence of its contents.

b. Answering subparagraph (b), because Mr. Jackson does not identify any particular statements from the record, Calico denies all allegations to the extent this paragraph includes a material allegation and to the extent any response is required. To the extent that Mr. Jackson quotes the NTR plc 2010 Annual Report, the report speaks for itself and is the best evidence of its contents.

c. Answering subparagraphs (c) through (e), to the extent these paragraphs include any material allegations and to the extent any response is required, Calico denies all material allegations. To the extent that Mr. Jackson quotes the NTR plc 2010 Annual Report, which speaks for itself and is the best evidence of its contents.

d. Answering subparagraph (f), because Mr. Jackson does not identify any particular statements from the record, Calico denies all allegations to the extent this paragraph includes a material allegation and to the extent any response is required. To the extent that Mr. Jackson quotes the NTR plc 2011 financial report, the report speaks for itself and is the best evidence of its contents.

11. Answering Paragraph 12, Calico denies that the “preceding facts” include any information from the Applicant’s application or supplemental documentation, and therefore, the “preceding facts” are not “clear evidence” as proffered by Mr. Jackson. Calico lacks sufficient knowledge to confirm the amount of losses attributable to SunCatcher technology.

12. Answering Paragraph 13, to the extent this paragraph includes a material allegation and to the extent any response is required Calico denies all allegations.

a. Answering subparagraph (a), to the extent this paragraph includes a material allegation and to the extent any response is required Calico denies all allegations. Calico further notes that Mr. Jackson’s “evidence” in subparagraph (a) mischaracterizes the facts. “The Applicant” did not sell the Calico Solar Project. Tessera Solar North America, Inc. sold Calico Solar, LCC (the Applicant) and the proffered quote from the Petition to Amend was the rationale for the amendment of the Calico Solar Project, not the sale of Calico Solar, LLC.

b. Answering subparagraph (b), to the extent this paragraph includes a material allegation and to the extent any response is required Calico denies all allegations. Calico further notes that Mr. Jackson’s “evidence” in subparagraph (b) mischaracterizes the facts. “The Applicant” did not sell the Imperial Valley Solar Project.

c. Answering subparagraph (c), to the extent this paragraph includes a material allegation and to the extent any response is required Calico lacks sufficient knowledge to confirm statements related to the Imperial Valley Solar Project and on that basis denies the allegations in subparagraph (c).

d. Answering subparagraph (d), to the extent this paragraph includes a material allegation and to the extent any response is required Calico denies all allegations. Calico further notes that Mr. Jackson’s “evidence” in subparagraph (d) mischaracterizes the facts. “The Applicant” did not cancel a proposed 200-megawatt concentrating solar plant in Sun Luis Valley, Colorado.

e. Answering subparagraph (e), to the extent this paragraph includes a material allegation and to the extent any response is required, Calico denies all allegations. Calico further notes that Mr. Jackson's "evidence" in subparagraph (e) mischaracterizes the facts. "The Applicant" did not cancel a proposed 250-megawatt landfill solar power project in Phoenix, Arizona.

f. Answering subparagraph (f), to the extent this paragraph includes a material allegation and to the extent any response is required, Calico denies all allegations to the extent that any response is required. Calico further notes that Mr. Jackson's "evidence" in subparagraph (f) mischaracterizes the facts. "The Applicant" did not cancel a proposed 27-megawatt solar power project in Marfa, Texas.

g. Answering subparagraph (f), to the extent this paragraph includes a material allegation and to the extent any response is required, Calico denies all allegations. Calico further notes that Mr. Jackson's "evidence" in subparagraph (f) mischaracterizes the facts. "The Applicant" does not own or operate the Maricopa Power Plant in Phoenix, Arizona.

13. Answering Paragraph 14, Calico denies all allegations.

14. Paragraph 15 contains no material allegation and therefore requires no answer.

15. Answering Paragraph 16, to the extent this paragraph includes a material allegation and to the extent any response is required, Calico denies that a statement of facts is included in the Amended Request and Calico lacks sufficient knowledge to confirm Mr. Jackson's intent, and on that basis denies any allegations in Paragraph 16.

16. Paragraph 17 contains no material allegation and therefore requires no answer under the Commission's regulations. However, Calico does not waive any objections to Mr. Jackson's future filing of a complaint.

17. Paragraph 18 contains no material allegation and therefore requires no answer under the Commission's regulations.

18. Paragraph 19 contains no material allegation and therefore requires no answer under the Commission's regulations, but Calico confirms that the Applicant's address and recent name change are correctly stated.

19. Paragraph 20 contains no material allegation and therefore requires no answer under the Commission's regulations; however Calico questions the procedural propriety of incorporating Mr. Jackson's previous filings that were dismissed in this proceeding and does not waive its objections.

20. Answering Paragraph 21, Calico notes that under the Commission's regulations an investigation proceeding is only appropriate where the Commission is asked to determine the applicability of any statute, order, decision, or regulation adopted, administered, or enforced by the commission, and therefore is not appropriate in the current proceeding. To the extent that Mr. Jackson cites to various provisions of the Public Resources Code and Title 20 of the California Code of Regulations, the laws speak for themselves and are the best evidence of their contents.

21. Paragraph 22 contains no material allegation and therefore requires no answer under the Commission's regulations.

22. Paragraph 23 contains no material allegation and therefore requires no answer under the Commission's regulations.

IV. REQUEST FOR DISMISSAL

Mr. Jackson's Amended Request for Investigation contains matters not appropriate for investigation. Like BNSF, by failing to identify a single material false statement made by Calico to the Commission, Mr. Jackson has failed to state a claim. Without such a statement to refute, all factual allegations contained in the Amended Request are meritless. Calico respectfully requests dismissal of the Amended Request with prejudice.

Date: September 30, 2011

Respectfully submitted,



Ella Foley Gannon
Attorneys for K Road Calico Solar LLC,
formerly known as Calico Solar, LLC

VERIFICATION

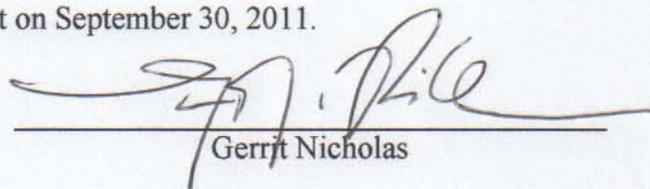
I, Gerrit Nicholas, declare:

I am an officer of K Road Calico Solar LLC, a Delaware limited liability company, formerly known as Calico Solar, LLC, which is the Defendant in the above-entitled action. I have been authorized to make this verification on its behalf.

I have read the foregoing ANSWER TO PATRICK JACKSON'S AMENDED REQUEST FOR INVESTIGATION and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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

Executed at Stonington, Connecticut on September 30, 2011.



Gerrit Nicholas



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 Solar LLC's Answer to Patrick Jackson's Amended Request for Investigation, 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
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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
Michael J. Levy, Chief Counsel
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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.

