

STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission

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In the Matter of:

Calico Solar Project Amendment

Docket No. 08-AFC-13C

**APPLICANT'S RESPONSE
TO
BNSF RAILWAY COMPANY'S OBJECTIONS TO CALICO SOLAR, LLC'S
RESPONSES TO DATA REQUEST NO. 1 FROM BNSF TO CALICO;
PETITION TO COMPEL RESPONSES TO APPROVED DATA REQUESTS;
AND
PETITION FOR LEAVE TO PROPOUND DENIED DATA REQUESTS**

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On September 29, 2011, BNSF Railway Company submitted to the California Energy Commission *BNSF Railway Company’s Objections to Calico Solar, LLC’s Responses to Data Requests No. 1 from BNSF to Calico; Petition to Compel Responses to Approved Data Requests; and Petition for Leave to Propound Denied Data Requests* (“Petition to Compel”). In its Petition to Compel, BNSF ignored the valid objections raised by K Road Calico Solar LLC in its August 30, 2011 objection letter (“Objection Letter”) as well as most of the information submitted in response to the data request by Calico on September 8, 2011 (“Response Letter”). Instead of responding to the timely, specific and properly filed objections and responses or the reasoned decision by the Committee to deny many of BNSF’s original data requests and to limit the scope of the allowed data requests, BNSF filed a 71 page Petition to Compel wherein it

continued its attempt to use the data request process improperly. The Petition to Compel requests information that, to the extent that the requests are capable of being meaningfully interpreted, is not relevant to these proceedings, is overly burdensome and appears to be targeted at gaining information that is related to other disputes between BNSF and Calico.¹ Further, BNSF attempts to use its Petition to Compel as an opportunity to critique reports submitted by Calico and to make irrelevant legal arguments. These are not proper subject matters for data requests and petitions filed pursuant to Section 1716.² Accordingly, BNSF's "Petition to Compel" should be denied in its entirety.

I. INTRODUCTION

BNSF's Petition to Compel is only the most recent filing in a long line of BNSF filings that flout the Commission's procedures, ignore timelines and rely on misstatements to support untenable arguments. On May 27, 2011, BNSF submitted its first set of data requests, including 117 separate requests, to the Committee for review and approval.³ On July 26, 2011, the Committee issued the *Committee Authorization and Denial of Specific Data Requests from BNSF Railway to Calico Solar, LLC* ("Order Authorizing BNSF Data Requests"), in which the Committee gave its approval for BNSF to propound certain specified data requests with, in many cases, a limited scope. It was not until August 10, 2011 that BNSF served its data requests. In

¹ As the Committee is aware, BNSF and Calico are involved in other proceedings that involve the Calico Project, including Energy Commission Complaint and Investigation Re: Calico Solar Project (Docket No. 11-CAI-01), Calico Solar, LLC v. BNSF Railway Company (PUC Case No. C10-10-015), BNSF Railway Company v. US Department of Interior (US Central District of California Civil Action No. 10-CV-10057 SVW (PJWx)).

² 20 Cal. Code Regs. § 1716. All reference to sections are references to Title 20 of the California Code of Regulations unless otherwise indicated.

³ The Committee established the procedures by which parties to this proceeding may propound data requests. Under these procedures, a party to this proceeding may propound data requests on the applicant "only after the Committee issues written findings of good cause." All approved data requests were to be filed no later than 5:00 p.m. on May 31, 2011. *Committee Scheduling, Briefing, and Procedures Order* dated May 2, 2011 ("Procedural Order"), p. 3.

the data request served on Calico, BNSF did not limit the scope of the approved data requests as provided in the Committee's Order.

Pursuant to Section 1716(f) and direction from the Committee, Calico responded to BNSF's data requests in its Objection Letter, referenced in BNSF's Petition to Compel, and in its Response Letter, which BNSF failed to reference in its Petition to Compel. Calico's responses were consistent with the Commission's regulations and the Committee's orders regarding data requests. BNSF's Petition to Compel, however, goes beyond the parameters set forth in the Commission's regulations and the Committee's orders, requesting that the Commission compel Calico to provide information that is not reasonably available, relevant to the proceeding or reasonably necessary to make a decision as required by Section 1716(b).

In its Petition to Compel, BNSF stated that "Calico has either objected or not complied" with any of the data requests propounded by BNSF on August 10, 2011. Petition to Compel, p. 4. This is simply not true. On September 8, 2011, Calico docketed three DVD discs of files responding to BNSF's data requests. Additionally, for a number of the data requests, in its Objection Letter, Calico explained that it had already provided the information requested. For the data requests for which Calico either objected or was unable to provide responses, pursuant to Section 1716(f), Calico provided clear, data request-specific objections or data request-specific explanations of why the information could not be provided and, as applicable, when the information would be provided. It is disingenuous of BNSF to imply that Calico has been non-responsive or has in some way not complied with the data request process. As is detailed below, it is BNSF who is non-responsive to Calico's specific objections and presented information.

Finally, in its Petition to Compel, BNSF asks that the Committee reconsider its decision to deny 27 of its original requests.⁴ As BNSF recognizes in its Petition to Compel, the time to file such a request for reconsideration has long since past. BNSF requests that the Committee forgive this timeliness defect based on a claim that it only became aware of the necessity of this information after it reviewed the information provided by Calico in reports submitted since the denial of the requests. This explanation defies credulity given the Committee's explanation as to why the requests were denied. The Committee should decline BNSF's untimely request to reconsider its decision with regard to these data requests.

II. RESPONSE TO BNSF'S GENERAL OBJECTIONS

A. General Objection A - Foundational Information for Studies and Designs.

In its General Objection A, BNSF claimed that Calico did not provide sufficient information in response to certain data requests and then used this claim as a basis to comment on the *Calico Solar Infiltration Report* ("Infiltration Report") and the *Calico Solar Project Geomorphic and Hydraulic Analysis and Geomorphic and Biologic Analysis Report* (the "Geomorphic Report") that Calico recently submitted. BNSF stated that "Calico refused to provide the requested data or indicated it has no data beyond what Calico provided in connection with the Deliverables themselves."⁵ Petition to Compel, p. 5. This is not true. Subsequent to its Objection Letter, Calico submitted three DVD discs containing files responding to BNSF's data requests⁶ on September 8, 2011, its Infiltration Report dated September 6, 2011 and its Geomorphic Report dated September 12, 2011. Calico believes that the summaries in these

⁴ The Committee denied 33 data requests, but BNSF did not renew its request to propound Data Requests #12, 81, 96, 112, 113 and 116. Therefore, BNSF should be deemed to have waived any objections it may have to the Committee's denial of these data requests.

⁵ BNSF's summary of Calico's response to the identified data requests failed to acknowledge or respond to Calico's numerous objections to many of these data requests. For all the reasons stated in its Objection Letter, Calico should not be required to provide any additional information in response to these data requests.

⁶ The information provided included, *inter alia*, responses to Data Requests 1, 13, 76, 86 and 98, for all of which BNSF falsely claimed in General Objection A that Calico refused to provide information.

reports provide adequate data to support their conclusions. However, to accommodate BNSF's request to review all the specific data files, Calico is docketing, concurrent with this submittal, a disc with the input-output and other analysis files upon which these studies relied. Whether or not BNSF believes that Calico satisfactorily responded to its data request, BNSF's comments on these reports are not appropriate in the data request process.⁷ Calico requests that the Commission reject BNSF's attempt to expand its data request to include comments on these reports and direct BNSF to raise its concerns in the proper forum.

B. General Objection B - Renewal of Denied Requests.

In its General Objection B, BNSF made its untimely request that Calico be compelled to respond to several of the data requests which the Committee previously denied. For Data Requests #3, 4, 5, 18-24 and 34, the Committee gave BNSF the opportunity to explain how the request applies to a CEQA analysis, assessment of compliance with applicable LORS, or findings required under the Warren-Alquist Act and its implementing regulations as they specifically relate to the Petition to Amend as distinguished from the approved Calico Solar Project. Order Authorizing BNSF Data Requests. BNSF failed to provide this requested explanation in its Petition to Compel, which BNSF submitted over two months after the Committee's order. For other data requests that the Committee denied for being facially not related to these proceedings or for requesting information Calico was already required to provide, BNSF complained that "it cannot adequately evaluate the recent Deliverables without this basic foundational data." Petition to Compel, p. 8. Yet, BNSF did nothing to explain how such information, which on its face seems to relate to the approved Calico Solar Project rather

⁷ Despite recognizing that the data request process is not the correct forum for resolving BNSF's concerns about the Infiltration Report and the Geomorphic Report, Calico is compelled to respond to the inaccuracies raised in BNSF's General Objection A. Without waiving any objections to BNSF's comments on the reports, Calico provides summary responses to BNSF's comments in Attachment A.

than to the Petition to Amend, is relevant to this proceeding. The Commission's data request process is not an avenue for fishing expeditions and overly burdensome document production requests. The Commission should deny BNSF's request because BNSF has failed to explain the relevancy or reasonable necessity of these denied data requests.

C. General Objection C - General Objections to Approved Requests.

In its General Objection C, BNSF stated that “[t]he Commission reviewed BNSF's Data Requests, and only required Calico to respond to those Requests the Commission found relevant and within the scope of the proceeding.” Petition to Compel, p. 9. This is not true. The Committee allowed BNSF to propound those data requests for which the Committee found BNSF established “good cause.” See Procedural Order, p. 3. This determination did not inhibit Calico's right to object to any of the data requests that the Committee approved, including objections on relevancy grounds. Therefore, Calico renews its relevancy objections and asks the Commission to deny BNSF's Petition to Compel for failure to respond to Calico's objections.

BNSF also stated that “Calico objected to approved Requests 16, 17, 25, 26, 27, 28, 31, 77, 93, 104 and 117 solely on the basis that the Requests were not relevant and/or were not within the scope of the proceeding.” Petition to Compel, p. 9. Once again, this is not true. In addition to objecting to these data requests on relevancy grounds, Calico objected to these data requests as being vague, ambiguous, unduly burdensome, overbroad and duplicative. BNSF failed to address any of these objections.

BNSF incorrectly noted that “Calico did not claim that any data responsive to these Requests was subject to any type of privilege.” *Id.* In its Objection Letter (see page 3), Calico specifically stated that “[t]he definition of COMMUNICATION must also explicitly exclude documents that are covered by attorney/client, attorney work product or other privilege.” Data Requests #16, 25, 31, 77, 93, 104 and 117 all requested COMMUNICATIONS, to which Calico

objected in its general objections at the beginning of its Objection Letter. Based on BNSF's failure to respond to Calico's objections, the Commission should deny BNSF's Petition to Compel.

D. General Objection D - Privilege Objections to Approved Requests.

In its General Objection D, BNSF stated that "Calico invoked attorney client privilege and work product protection for Requests 32-70. Strangely, these objections all relate to access issues." Petition to Compel, p. 9. This is not true. As discussed above, Calico stated that the definition of COMMUNICATIONS had to be interpreted to exclude all privileged documents. This objection applies to all data requests that ask for COMMUNICATIONS and is not specifically tied to access issues.⁸ For Data Requests #35-41, Calico responded that it had "no documents in its possession, which are not protected by attorney/client privilege or attorney work product . . ." (see Objection Letter, pp. 11-12, wording from response to Data Request #35) because BNSF asked for "all documents referencing communications" and did not use its defined terms DOCUMENTS or COMMUNICATIONS. While Calico agrees that communications with a public agency would generally not be protected by any privilege, BNSF's overbroad data requests forced Calico to invoke privilege in responding to data requests for COMMUNICATIONS and "documents referencing communications." Attorney/client conferences, correspondence and legal memoranda to clients, attorney notes, timesheets, and internal discussions could all fall into BNSF's definition of COMMUNICATIONS and BNSF's interpretation of "documents referencing communications." The Commission's regulations do not require that Calico provide a privilege log. Pursuant to Section 1716(f), Calico has provided the reasons for its inability to respond to the specified data requests and the grounds for its objections. BNSF failed to respond to Calico and instead attempted to expand the Commission's

⁸ Calico addresses BNSF's allegations regarding access in its response to Data Requests 32-70 below.

data request procedures into a full-blown civil litigation discovery fight. Calico requests that the Commission require BNSF to remain within the confines of the Commission's regulations and deny BNSF's Petition to Compel.

E. General Objection E - Information Not Yet Provided.

In its General Objection E, BNSF stated that "Calico responded to Requests 88, 101 and 105-117 by stating that information will be provided in the future." Petition to Compel, p. 10. This is not entirely correct. While Calico responded that it would provide information related to the DESCOP, grading and drainage plans, and the glint/glare report in the future when that information becomes available, as stated in its Objection Letter, Calico does not anticipate providing further information in response to Data Requests #106, 108, 112, 113, 114, 116, 117. Calico provides specific explanations below, but notes here that Data Requests 112, 113 and 116 were denied by the Committee and therefore, these requests are not a proper subject of a petition to compel under Section 1716(g). *See* Order Authorizing BNSF Data Requests, p. 7.

III. RESPONSES TO INDIVIDUAL DATA REQUESTS APPROVED BY THE COMMITTEE

Without waiving its objections raised in its Objection Letter, Calico responds to BNSF's individual data requests.⁹ BNSF used defined terms in its individual data requests. In its Objection Letter, Calico objected to many of these definitions (including APPLICANT, CEC, COMMUNICATION, DELIVERABLE, DOCUMENT, and GLARE/GLINT STUDY) as being overbroad.¹⁰ The use of these overbroad definitions created ambiguity and redundancy in BNSF's data requests and rendered all data requests which include such terms objectionable. In

⁹ For ease of reading, Calico has summarized BNSF's data requests, Calico's objections/responses, and BNSF's responses. Any inconsistency between the original data request, objections and responses and these summaries are unintentional.

¹⁰ Further, as explained above, Calico stated that "the definition of COMMUNICATION must . . . explicitly exclude documents that are covered by attorney/client, attorney work product or other privilege." August 30 objection letter, p. 3.

its Petition to Compel, BNSF did not attempt to clarify the meaning of these terms or to explain why the cumbersome and overly broad definitions are reasonable or appropriate. For this reason and the reasons set forth below, Calico requests that the Commission overrule BNSF's objections and deny BNSF's Petition to Compel.

GENERAL REQUESTS

Calico provided general comments on this set of data requests (Data Requests #1-16). Calico generally objected to these data requests as irrelevant, cumulative, duplicative, and unduly burdensome. BNSF failed to respond to Calico's general comments or objections to these data requests. For these un rebutted reasons alone, BNSF's petition to compel addition information related to these date requests should be denied.

1. AutoCAD files serving as the basis of project design. In its Order Authorizing BNSF Data Requests, the Committee approved BNSF's request for the AutoCAD files only "insofar as the request seeks information readily available in the format requested by BNSF and to the extent the information is not already included in the Petition to Amend or otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets unit." BNSF objected on the basis that it did not receive the AutoCAD files in Adobe PDF format with 24" x 36" sheets at 1" = 60' scale. However, as Calico explained in its Objection Letter, the information requested is not readily available in this format and, thus, falls outside of the scope of the data request authorized by the Committee. BNSF also objected on the basis that it has not received AutoCAD files of the locations of all roads, grading plans and flood control infrastructure or of transmission lines or electrical conduits. On September 8, 2011, Calico provided all of the AutoCAD files in its possession and which "served as the basis of project design" as of the date they were produced. Much of the detail identified by BNSF was not included in the preliminary AutoCAD files used by Calico to study the project.¹¹ Calico anticipates that this detail will be added to the project design as the results of the various studies and reports are incorporated into the design. Calico expects this detail to be included in the AutoCAD files associated with the 30% design submittals, or subsequent design submittals. Calico has no further AutoCAD files that are readily available to submit at the present time and has, therefore, satisfied the data request as authorized by the Committee.

¹¹ Calico objects to BNSF's comment that the information contained in the AUTOCAD files calls into question whether Calico "seriously evaluated" the site when designing its project. Calico has expended millions of dollars on the development and permitting process, including engaging engineers and other professionals to assist it in the evaluation and layout of the site. The information included in the preliminary design is sufficient and BNSF has not pointed to any basis for claiming otherwise. Further, this type of comment is not the appropriate subject of a data request.

BNSF further objected to Calico's response to this data request because BNSF was "unable to verify if those [AutoCAD files] provided are exhaustive." Petition to Compel, p. 11. However, the Committee has pointed out that "CEQA does not require that every conceivable study, research project or test be carried out, or that the analyses be *exhaustive*. However, if an applicant agrees to conduct a study or is otherwise in possession of data or study results, it is appropriate to require their production." *Committee Order Responding to Patrick Jackson's Motion to Compel Production of Information* dated July 18, 2011 ("Order Denying Jackson's Motion to Compel"), p. 4 (emphasis added). Calico has produced the reports that it has completed. These reports clearly state the information relied upon to support their conclusions. Calico has also produced the underlying information. Nothing in CEQA or the Commission regulations requires Calico to do more.

Finally, BNSF references its General Objection A. However, it does not explain how this objection pertains to the responsive information provided by Calico. Therefore, the Commission should overrule BNSF's objections and deny its petition to compel further information related to this data request.

2. All studies and designs utilized by APPLICANT in the Petition to Amend. BNSF stated that it has "no procedural objection to the response," given Calico's statement that all studies relied upon in preparing the Petition to Amend have been docketed.¹² Indeed, BNSF has no right to demand any further information under this data request because the Committee limited the scope of the request to information "readily available in the format requested by BNSF and to the extent the studies and designs are not already included in the Petition to Amend, Calico's previously filed Data Responses, or otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets Unit."¹³ Given that Calico has fully responded to this data request, BNSF has no right to reserve the ability to "follow up on Request 2" at a later date. Because there is nothing to compel with relation to this data request, this request should be denied.

7. Studies, designs and reports provided by APPLICANT to contractors and consultants for the CALICO SOLAR PROJECT and/or the PV PROJECT. In restating this broad request, BNSF continued to ignore the Committee's order which authorized this data request only "insofar as the request seeks studies, designs and reports [that] are not already included in the Petition to Amend, Calico's previously filed Data Responses, or otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets Unit." BNSF has not identified any information that would be responsive to this request as Calico explained in its Objection Letter that "[e]verything relied upon by Calico's contractors and consultants in preparing subsequent studies, designs and reports related to the March 2011 Petition to Amend has been or will be docketed in these proceedings on the Petition to Amend." Therefore, there is nothing to compel.

Moreover, Calico objected to this data request as irrelevant, cumulative, duplicative, and

¹² BNSF failed to explain the meaning of the vague term "design" in this data request. Therefore, we assume that BNSF does not object to Calico's interpretation of term as referencing to the project layout and site plan.

¹³ E-mail from Hearing Officer Vaccaro dated August 5, 2011, revising the Committee's explanation for Data Request #2 to delete "not."

unduly burdensome. In response to these objections, BNSF simply referred to its General Objection A without further explanation. Because General Objection A does not explain why this data request would lead to relevant, necessary information, which is not unduly burdensome to produce, this request should be denied.

11. Wind erosion calculations using Chepil wind erosion equations and modified Chepil wind erosion equations. BNSF stated that it has “no procedural objection to the response,” given Calico’s statement that all wind erosion calculations have been docketed. Indeed, BNSF has no right to demand any further information under this data request because the Committee limited the scope of the request to “reasonably available, existing wind erosion calculations relating specifically to the Petition to Amend that are not already included in the Petition to Amend, Calico’s previously filed Data Responses, or otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets Unit.” As Calico explained, it has only performed Chepil Wind Erosion Equations using Wind Erosion Prediction System (WEPS) software and this information has been docketed. This response satisfies Calico’s obligation under this data request. Given that Calico has fully responded to this data request, BNSF has no right to reserve the ability to “follow up on Request 11” at a later date. Because there is nothing to compel with relation to this data request, this request should be denied.

13. Digital elevation model (DEM) data and 1-foot resolution topographic contour data for this SITE for both existing and proposed conditions. The Committee approved BNSF’s request for the contour data “if such data is readily available to Calico.” Calico provided topographic contour data for existing conditions with 2-foot contour intervals on September 8, 2011, but objected to providing the other information requested in this data request as not readily available to Calico, unduly burdensome and/or premature. BNSF referred to its General Objection A and stated that Calico could not do the runoff and sediment transport analysis without contour data for the proposed conditions. This is incorrect. As is explained in Section 3.3 of the Geomorphic Report, the overall design concept minimizes grading/re-contouring of the site topography. As a result, over the vast majority of the site, the topography under the built conditions will be the same as the existing topography. As described in the Infiltration Report, specific project features that will change the existing topography include the main access road and the main service complex and these features were taken into account in the model. *See* Infiltration Report at §§ 3.31 and 3.32. BNSF’s comments on the foundation of Calico’s Geomorphic Report are irrelevant to the data request and it is improper for BNSF to raise them in this context. Calico disagrees with these comments and retains its right to object to them in the proper venue. Because there is nothing to compel with relation to this data request, this request should be denied.

14. Identify those DELIVERABLES that APPLICANT has allotted time to BNSF for review and time to the Commission for comment and approval before proceeding with the subsequent preparation or finalization of other DELIVERABLES. Calico responded by referencing the previously docketed deliverables schedule. BNSF’s ad hominem response is meaningless and fails to explain what information BNSF is seeking. Therefore, BNSF’s petition to compel information in relation to this data request should be denied.

15. Identify how much time APPLICANT has allotted to BNSF to review and comment on each study or report and to the Commission and BNSF to subsequently review and comment on each study or report. Similar to Data Request #14, Calico responded by referencing the previously docketed deliverables schedule. BNSF repeated its meaningless ad hominem response and failed to explain what information BNSF is seeking. Therefore, BNSF's petition to compel information in relation to this data request should be denied.
16. All COMMUNICATIONS between APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section. Calico objected to this data request as vague, ambiguous, unduly burdensome, overbroad, irrelevant, duplicative and unnecessary. BNSF's sole response was a reference to its General Objection C. As discussed above, Calico does not agree that the Committee, by allowing BNSF to proffer this data request, made a specific finding that it is relevant, but rather, simply found that BNSF had established good cause to make the request. Further, General Objection C states that Calico objected to these data requests *solely* on the basis of relevance and/or scope. BNSF failed to respond to Calico's other objections and refused to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF's *response* is non-responsive and fails to explain what information BNSF is seeking.

Despite its overall objections to this data request, Calico explained that any substantive communications with the CEC staff are reflected in documents that have been docketed or were statements made in the presence of BNSF; procedural communications are not relevant to these proceedings, and therefore, not a proper subject matter of a data request. While BNSF chastised Calico for identifying "specific categories of responsive data," BNSF failed to explain how procedural communications would be relevant to the proceedings or reasonably necessary to make a decision as required by Section 1716(b). As BNSF has not made any showing that there is any relevant information related to this data request, the Commission should deny BNSF's petition to compel further information related to this data request.

APPLICANT'S NEW OWNERSHIP AND FINANCIAL CAPACITY TO CONSTRUCT, OPERATE, MAINTAIN AND DECOMMISSION THE PV PROJECT

Calico provided general comments on this set of data requests (Data Requests #17-25). Calico generally objected to these data requests as irrelevant and unduly burdensome. BNSF failed to respond specifically to Calico's general comments or objections to these data requests and merely referenced its General Objection C. For the unrefuted reasons included in Calico's objection letter, BNSF's Petition to Compel additional information related to these requests should be denied.

17. All owner(s) of APPLICANT. In its Objection Letter, Calico stated that "Calico Solar, LLC is a wholly owned subsidiary of K Road Sun LLC, which is a wholly owned

subsidiary of K Road Power Holdings LLC.” Calico also objected to this data request as being overbroad, unduly burdensome and irrelevant. In its September 29, 2011, BNSF quoted only Calico’s objections and failed to indicate that Calico had in fact provided an answer to this data request. BNSF’s sole response was a reference to its General Objection C regarding relevance and scope. As discussed above, Calico does not agree that the Committee, by allowing BNSF to proffer this data request, made a specific finding that it is relevant, but rather, simply found that BNSF had established good cause to make the request. BNSF did not explain what other ownership information it is seeking, let alone the relevance of this data request or rationale under Section 1716(b). BNSF’s *response* is non-responsive. Because there is nothing to compel with relation to this data request, this request should be denied.

25. All COMMUNICATIONS between APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section. Calico objected to this data request as vague, ambiguous, unduly burdensome, overbroad, irrelevant, duplicative and unnecessary. BNSF’s sole response was a reference to its General Objection C regarding relevance and scope. As discussed above, Calico does not agree that the Committee, by allowing BNSF to proffer this data request, made a specific finding that it is relevant, but rather, simply found that BNSF had established good cause to make the request. BNSF failed to explain the relevancy or necessity for this information, respond to Calico’s other objections or to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF’s *response* is non-responsive and fails to explain what information BNSF is seeking. As explained in response to Data Request #16 above, because BNSF has not made any showing that there is any relevant information related to this data request, the Commission should deny BNSF’s petition to compel further information related to this data request.

FEASIBILITY AND/OR AVAILABILITY OF PROPOSED SOLAR TECHNOLOGY

Calico provided general comments on this set of data requests (Data Requests #26-31). Calico generally objected to these data requests as irrelevant, duplicative, unduly burdensome and in some cases asking for confidential or proprietary information that Calico is unable to provide. Calico also objected to BNSF’s data requests regarding “FEASIBILITY AND/OR AVAILABILITY OF PROPOSED SOLAR TECHNOLOGY” as explicitly improper attempts to obtain information related to another proceeding (Docket No. 11-CAI-01). BNSF failed to respond to Calico’s general comments or objections to these data requests.

26. All contracts or other agreements relating to APPLICANT’s purchase of SunCatchers. Calico objected to this data request as it sought proprietary or confidential information, as well as being irrelevant, overbroad, unduly burdensome and not reasonably available for production. BNSF’s sole response was a reference to its General Objection C which claims

that the Committee has determined that all approved data requests are relevant and within the scope of this proceeding. As described above, Calico disagrees with this interpretation of the Committee's order authorizing this data request and reiterates its earlier objections based on relevancy. BNSF failed to respond to Calico's other objections and refused to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF's *response* is non-responsive and fails to explain what information BNSF is seeking. BNSF's petition to compel this information should therefore be denied.

27. All documents that confirm when SunCatchers will be commercially available. Calico objected to this data request for the reasons set forth in #26. BNSF's sole response was a reference to its General Objection C regarding relevance and scope. As noted, Calico disagrees with this interpretation of the Committee's order authorizing this data request and reiterates its earlier objections based on relevancy. BNSF failed to respond to Calico's other objections and refused to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF's *response* is non-responsive and fails to explain what information BNSF is seeking. BNSF's petition to compel this information should therefore be denied.¹⁴
28. All contracts or other agreements relating to APPLICANT's purchase of photovoltaic panels. Calico objected to this data request as it sought proprietary or confidential information, as well as being irrelevant, overbroad, unduly burdensome and not reasonably available for production. BNSF's sole response was a reference to its General Objection C regarding relevance and scope. As noted, Calico disagrees with this interpretation of the Committee's order authorizing this data request and reiterates its earlier objections based on relevancy. BNSF failed to respond to Calico's other objections and refused to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF's *response* is non-responsive and fails to explain what information BNSF is seeking. BNSF's petition to compel this information therefore should be denied.
29. All contracts or other documents relating to APPLICANT's purchase of tracks, rails, poles, and other infrastructure designed to allow APPLICANT to array photovoltaic panels at variable heights from the ground surface. Calico responded that it has no contracts or agreements specifically related to purchase of infrastructure designed to allow photovoltaic panels at variable heights and objected to the remainder of this data request for the reasons set forth in #28. BNSF stated that it has no procedural objection to the response. Given that Calico has fully satisfied this data request, BNSF cannot retain the right to "follow up on Request 29" at a later date. Because there is nothing to compel with relation to this data request, this request should be denied.
30. All reports or documents which APPLICANT believes support the position that it can array photovoltaic panels at variable heights from the ground surface, and evaluate the impact on solar facility operations. Calico objected to this data request as vague, but responded that Calico has no written reports or documents regarding the placement of posts of variable heights in order to create a level Tracker Block. In an attempt to answer BNSF's implied

¹⁴ As Calico informed the Committee on September 28, 2011, it recently learned that Sterling Energy Systems the maker of the SunCatcher filed for bankruptcy. Calico is in the process of evaluating what this means to the project and will apprise the Committee of the results of this evaluation as it moves forward.

question regarding how Calico intends to install posts supporting PV panels at variable heights from the ground surface, Calico referenced information it received from Suntech and Array Technologies. BNSF referred to its General Objection A and then summarized Calico's response to be "Calico claims it has no reports or documents on the pole structures that support the PV arrays." Petition to Compel, p. 22. This statement is not an accurate summary of Calico's response, nor is it grounded in the subject of this data request. Calico has information on the posts that will support PV panels, but has not commissioned a separate report regarding the installation of these posts at variable heights. BNSF failed to explain how the variable height of these posts would affect Calico's study of infiltration, runoff and sediment transport. Additionally, BNSF included a photograph from Array's website. BNSF falsely stated that this photograph "graphically illustrates the construction phase of installing the framework for Calico's proposed PV arrays." The photograph illustrates one way of installing PV arrays on a site that has been graded. The photograph is not related to the Calico site or the installation method proposed by Calico for the varying terrain of the Calico site. Because BNSF has not responded to Calico's objections, its petition to compel information related to this request should be denied.

31. All COMMUNICATIONS between APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section. Calico objected to this data request as vague, ambiguous, unduly burdensome, overbroad, irrelevant, duplicative and unnecessary. BNSF's sole response was a reference to its General Objection C regarding relevance and scope. As noted, Calico disagrees with this interpretation of the Committee's order authorizing this data request and reiterates its earlier objections based on relevancy. BNSF failed to respond to Calico's other objections and refused to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF's *response* is non-responsive and fails to explain what information BNSF is seeking. As explained in response to Data Request #16 above, because BNSF has not made any showing that there is any relevant information related to this data request, the Commission should deny BNSF's petition to compel further information related to this data request.

ACCESS TO THE SITE

Calico provided general comments on this set of data requests (Data Requests #32-70). Calico generally objected to these data requests as irrelevant, duplicative, and unduly burdensome. Calico further objected that BNSF's purported reason for propounding data requests on the issue of "access" was calculated to be misleading. Calico also objected that BNSF's data requests seeking information related to the PEEVEY LETTER were not only irrelevant to these proceedings, but they were also an attempt by BNSF to use this forum inappropriately to sidestep the California Public Utility Commission's (CPUC) denial of BNSF's inflammatory discovery requests related to that letter (*see* CPUC Transcript May 19, 2011 at

428: 15-25, 429:7-11, 438:24-439:24). BNSF failed to respond to Calico's general comments or objections to these data requests.

In its Petition to Compel, BNSF claimed that the "issue of access has become even more important to these proceedings" (Petition to Compel, p. 9) due to the Committees direction to staff to evaluate an alternative that is located entirely south of the railroad and the CPUC draft decision allowing Calico access over the railroad. BNSF, however, does not and cannot explain how its data requests are relevant to either of these events.¹⁵

32. All public roads that APPLICANT considered for access to the portion of the SITE north of the BNSF railway. Calico objected to this data request as irrelevant, vague, ambiguous and misleading. Calico also noted that it has not proposed any new or alternative access routes across the BNSF tracks in the Petition to Amend. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. As noted, Calico disagrees with this interpretation of the Committee's order authorizing this data request and reiterates its earlier objections based on relevancy. With regard to General Objection D, Calico did not object to this data request on privilege grounds and therefore, it does not understand how this General Objection applies. BNSF did not explain the relevancy of this particular data request to this proceeding and failed to respond to Calico's other objections. Therefore, BNSF's petition to compel information related to this request should be denied.
33. All public roads that APPLICANT intends to use to access the portion of the SITE south of the BNSF railway. Calico responded that it has not proposed any new or alternative access routes over public roads south of the BNSF railway in the Petition to Amend. Calico also objected to this data request as irrelevant. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. As noted, Calico disagrees with this interpretation of the Committee's order authorizing this data request and reiterates its earlier objections based on relevancy. With regard to General Objection D, Calico did not object to this data request on privilege grounds and therefore, it does not understand how this General Objection applies. BNSF failed to acknowledge Calico's response and does not indicate what further information BNSF is seeking in response to this data request. Therefore, BNSF's petition to compel information related to this request should be denied.
35. All documents referencing communications with the Federal Bureau of Land Management regarding access. The Committee limited its approval of the data request to communications "regarding the Petition to Amend that have not already been provided in the Petition to Amend or [are] not otherwise equally available to BNSF from the Energy

¹⁵ It is particularly axiomatic that BNSF averred that the study of an alternative which does not require a railroad crossing necessitates data requests related to alternative access routes to the site.

Commission website or Siting/Dockets Unit or from the Federal Bureau of Land Management.” Calico responded that it has no responsive documents in its possession, which are not protected by attorney/client privilege or attorney work product, or otherwise available to BNSF from BLM. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF’s general objections do not change Calico’s response, which fully satisfied the requirements of Section 1716(f) and the Committee’s Order Authorizing BNSF Data Requests. Therefore, BNSF’s petition to compel information related to this data request should be denied.

36. All documents referencing communications with the CEC regarding access to the SITE. The Committee limited its approval of the data request to communications “regarding the Petition to Amend that have not already been provided in the Petition to Amend and [are] not otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets Unit or from the Energy Commission.” Calico responded that other than documents that have been docketed, those that reference procedural communications or statements made in the presence of BNSF, Calico has no responsive documents in its possession, which are not protected by attorney/client privilege or attorney work product, that reference communications with the CEC. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF’s general objections do not change Calico’s response, which fully satisfied the requirements of Section 1716(f). BNSF did not explain how procedural communications are relevant to these proceedings or reasonably necessary to make any decision. BNSF has access to all other responsive documents, which are not protected by privilege. Therefore, BNSF’s petition to compel information related to this data request should be denied.
37. All documents referencing communications with the California Public Utilities Commission regarding access to the SITE. The Committee limited its approval of the data request to communications “regarding the Petition to Amend that have not already been provided in the Petition to Amend and [are] not otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets Unit or from the California Public Utilities Commission.” Calico responded that it has no responsive documents in its possession, which are not protected by attorney/client privilege or attorney work product, other than those documents available in the pending CPUC proceeding (10-10-015). Calico objected that producing those documents would be duplicative and unduly burdensome. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF did not respond to Calico’s objections. BNSF’s general objections do not change Calico’s response, which fully satisfied the requirements of Section 1716(f). BNSF has access to all responsive documents, which are not protected by privilege. Therefore, BNSF’s petition to compel information related to this data request should be denied.
38. All documents referencing communications with CALTRANS regarding access to the SITE. Calico responded that it has no responsive documents in its possession, which are not protected by attorney/client privilege or attorney work product, that reference communications with CALTRANS. BNSF responded with a reference to its General

Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF's general objections do not change Calico's response, which fully satisfied the requirements of Section 1716(f). Therefore, BNSF's petition to compel information related to this data request should be denied.

39. All documents referencing communications with Newberry Springs regarding access to the SITE. Calico responded that it has no responsive documents in its possession, which are not protected by attorney/client privilege or attorney work product, that reference communications with the Newberry Springs Community Service District. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF's general objections do not change Calico's response, which fully satisfied the requirements of Section 1716(f). Therefore, BNSF's petition to compel information related to this data request should be denied.
40. All documents referencing communications with Ludlow regarding access to the SITE. Calico responded that it has no responsive documents in its possession, which are not protected by attorney/client privilege or attorney work product, that reference communications with the City of Ludlow. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF's general objections do not change Calico's response, which fully satisfied the requirements of Section 1716(f). Therefore, BNSF's petition to compel information related to this data request should be denied.
41. All documents referencing communications with the County of San Bernardino regarding access to the SITE. Calico responded that it has no responsive documents, which are not protected by attorney/client privilege or attorney work product, in its possession that reference communications with the County of San Bernardino. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF's general objections do not change Calico's response, which fully satisfied the requirements of Section 1716(f). Therefore, BNSF's petition to compel information related to this data request should be denied.
42. Any request by APPLICANT to any private person or governmental agency to allow APPLICANT access to the SITE. The Committee limited its approval of the data request to communications "regarding the Petition to Amend that have not already been provided in the Petition to Amend and [are] not otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets Unit." Calico responded that it has no responsive documents, other than requests made to BNSF and documents provided to BNSF in connection with the pending CPUC proceeding (10-10-015). BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF's general objections do not change Calico's response, which fully satisfied the requirements of Section 1716(f). Therefore, BNSF's petition to compel information related to this data request should be denied.
43. All documents with any private person or governmental agency reflecting APPLICANT's consideration of alternative routes of access to and from the SITE. The Committee limited

its approval of the data request to communications involving “Calico (or its agents) . . . regarding the Petition to Amend that have not already been provided in the Petition to Amend and [are] not otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets Unit.” Calico objected to this data request as vague and responded that it has no responsive documents, other than documents already provided to BNSF. Therefore, BNSF has access to all other responsive documents. BNSF did not respond to Calico’s objection for vagueness. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. BNSF’s general objections do not change Calico’s response, which fully satisfied the requirements of Section 1716(f). Therefore, BNSF’s petition to compel information related to this data request should be denied.

44-69. DOCUMENTS and COMMUNICATIONS regarding the PEEVEY LETTER. As previously explained, using BNSF’s defined terms, Data Requests #44-69 are nearly identical data requests seeking information about the PEEVEY LETTER. Calico objected to these data requests as irrelevant. BNSF responded with a reference to its General Objection C regarding relevance and scope and a reference to its General Objection D regarding privilege. As noted, Calico disagrees with this interpretation of the Committee’s order authorizing this data request and reiterates its earlier objections based on relevancy. With regard to General Objection D, Calico continues to assert privilege as described in its Objection Letter. Because BNSF has failed to explain how the PEEVEY LETTER is relevant to these proceedings or reasonably necessary to make a decision, BNSF’s petition to compel information related to these data requests should be denied.

70. All COMMUNICATIONS between APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section. Calico objected to this data request as vague, ambiguous, unduly burdensome, overbroad, irrelevant, duplicative and unnecessary. BNSF’s sole response was a reference to its General Objection C regarding relevance and scope. As noted, Calico disagrees with this interpretation of the Committee’s order authorizing this data request and reiterates its earlier objections based on relevancy. Further, BNSF failed to respond to Calico’s other objections and refuses to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF’s *response* is non-responsive and fails to explain what information BNSF is seeking. As explained in response to Data Request #16 above, because BNSF has not made any showing that there is any relevant information related to this data request, the Commission should deny BNSF’s petition to compel further information related to this data request.

DRAINAGE, EROSION, AND SEDIMENT CONTROL PLAN

Calico provided general comments on this set of data requests (Data Requests #73-77). Calico objected that BNSF has failed to provide the reasons for these data requests as required pursuant to Section 1716(b). Calico noted that it has provided its scope of work for certain hydrological analyses that Calico commissioned Tetra Tech to conduct. This scope of work was

discussed at the June 28, 2011 CEC workshop, in which BNSF participated. BNSF failed to respond to Calico's general comments or objections to these data requests.

73. Analyses demonstrating how pre- and post-construction site conditions will affect the Time of Concentration. The Committee limited the scope of this data request to "any such readily available, existing data responsive to the request[]." Calico responded that this information would be included in the Infiltration Report, which was submitted on September 6, 2011. Plots of the existing and project conditions hydrographs at each of the BNSF Railroad crossings were provided in Appendix B of Calico's Infiltration Report. These plots show the changes in time of concentration and hydrograph shape from existing to proposed conditions. Calico has no further information to provide in response to this data request and has more than adequately responded to the data request as limited by the Committee. BNSF responded with references to its General Objection A and its Preliminary Comments. BNSF did not specify which Preliminary Comments in particular were applicable to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Because Calico has fully responded to this data request, BNSF's petition to compel additional information should be denied.
74. Hydrologic model input and output files predicting peak flows. The Committee limited the scope of this data request to "any such readily available, existing data responsive to the request[]." Calico responded that this information would be included in the Infiltration Report, which it submitted on September 6, 2011. Summaries of the predictions from the hydrological model were provided in the Infiltration Report. In response to BNSF's request for additional information, the actual input and output files are being provided concurrently with this response. BNSF responded with references to its General Objection A and its Preliminary Comments. BNSF did not specify which Preliminary Comments in particular were applicable to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Because Calico has fully responded to this data request, BNSF's petition to compel additional information should be denied.
75. Sediment transport analysis. The Committee limited the scope of the data request to "any such readily available, existing data responsive to the request[]." Calico responded that this information would be included in the Geomorphic and Hydraulic Analysis and Geomorphic and Biologic Analysis Report, which was submitted on September 12, 2011. The sediment transport analysis was performed using the FLO-2D model, and the data presented in the Geomorphic Report was compiled using EXCEL spreadsheets. The spreadsheets and the detailed FLO-2D model results are being provided concurrently. BNSF responded with references to its General Objection A and its Preliminary Comments. BNSF did not specify which Preliminary Comments in particular were applicable to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Because Calico has fully responded to this data request, BNSF's petition to compel additional information should be denied.

76. Confirm that the sediment transport analysis used for the DESCP will be based on the hydrological modeling results. In approving this data request, the Committee limited Calico to producing readily available information only if “Calico answer[ed] the first part of the question in the negative.” Calico did not answer this question in the negative when it confirmed “Yes, the sediment transport analysis for the DESCP will be based on the hydrologic model input and output files predicting peak flows that are included in the Infiltration Report” in its Response Letter. BNSF objected, referencing its General Objection A and noting that Calico has not yet provided the input and output files. As stated above, the input and output files are being provided concurrently; however, pursuant to the Committee’s limitation on this data request, Calico has no further information to provide in response to this data request. Because there is nothing to compel with relation to this data request, this request should be denied.
77. All COMMUNICATIONS between APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section. Calico objected to this data request as vague, ambiguous, unduly burdensome, overbroad, irrelevant, duplicative and unnecessary. BNSF’s sole response was a reference to its General Objection C regarding relevance and scope. As noted, Calico disagrees with this interpretation of the Committee’s order authorizing this data request and reiterates its earlier objections based on relevancy. BNSF failed to respond to Calico’s other objections and refused to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF’s *response* is non-responsive and fails to explain what information BNSF is seeking. As explained in response to Data Request #16 above, because BNSF has not made any showing that there is any relevant information related to this data request, the Commission should deny BNSF’s petition to compel further information related to this data request.

GEOMORPHIC AND HYDRAULIC ANALYSIS; GEOMORPHIC AND BIOLOGIC ANALYSIS; GEOTECHNICAL REPORT DETENTION BASIN DESIGN

Calico provided general comments on this set of data requests (Data Requests #85-93). Calico objected that BNSF has failed to provide the reasons for these data requests as required pursuant to Section 1716(b). Calico noted that it has provided its scope of work for certain hydrological analyses that Calico commissioned Tetra Tech to conduct. This scope of work was discussed at the June 28, 2011 CEC workshop, in which BNSF participated. BNSF failed to respond to Calico’s general comments or objections to these data requests.

85. Flood routing calculations for design storms. The Committee limited the scope of the data request to “any such readily available, existing data responsive to the request” Calico responded that this information would be included in the Infiltration Report, which was submitted on September 6, 2011. Flood routing for off-site basins was performed using the AES model, and these flows were combined with runoff generated from on-site precipitation and routed across the site using the FLO-2D model. Results from these

models were summarized in the Infiltration Report and the input and output files are being provided concurrently with this response. BNSF responded with references to its General Objection A and its Preliminary Comments. BNSF did not specify which Preliminary Comments in particular were applicable to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Because Calico has fully responded to this data request, BNSF's petition to compel additional information should be denied.

86. Confirm that base hydrographs for the geomorphic and hydraulic analysis will be derived from the modeling in support of the DESC. In approving this data request, the Committee limited Calico to producing readily available information only if "Calico answer[ed] the first part of the question in the negative." Calico did not answer this question in the negative in its Response Letter. BNSF has objected, referencing its General Objection A and BNSF's Preliminary Comments. Pursuant to the Committee's limitation on this data request, Calico has no further information to provide in response to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Because there is nothing to compel with relation to this data request, this request should be denied.
87. Existing biological surveys. Calico stated that all biological surveys that have been completed and relied upon to date have been docketed. BNSF stated that it has no procedural objection to the response. Indeed, BNSF has no right to demand any further information under this data request because the Committee limited the scope of the request to "such available surveys responsive to the request, that are not already included in the Petition to Amend, Calico's previously filed Data Responses, or otherwise equally available to BNSF from the Energy Commission website or Siting/Dockets Unit." Because Calico has fully responded to this data request, BNSF does not have the right to "follow up on Request 87" at a later time. Because there is nothing to compel with relation to this data request, this request should be denied.
88. DESC data used to determine whether detention basis are needed. Calico objected that this data request was vague¹⁶ and irrelevant as to the DESC for the approved project. Calico also stated that it would not provide this information separately from the DESC that it anticipated submitting in these proceedings on the Petition to Amend. BNSF referred to its General Objections A and E and failed to respond to Calico's objections. The Committee limited this data request to "any such readily available, existing data responsive to the request." Calico has no further information to provide in response to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Because there is nothing to compel with relation to this data request, this request should be denied.
91. All boring information. The Committee limited this data request to "any such readily available, existing data responsive to the request." Calico objected to this data request as

¹⁶ In its Petition to Compel, BNSF, persisting in its pattern of misstatements and half-truths, incorrectly quoted Calico's Objection to Request 88 and failed to include Calico's objection that "BNSF's data request is vague as to what information it is requesting." Petition to Compel, p. 46.

vague and noted that Calico had submitted its Updated Geotechnical Report on August 23, 2011. To the extent that BNSF is requesting other information, Calico requested clarification on this data request. BNSF did not provide any clarification to this data request and simply responded “*See* BNSF’s Preliminary Comments.” BNSF did not identify which Preliminary Comment in particular would explain what information BNSF is seeking. Calico has no further information to provide in response to this data request. BNSF’s response is not a sufficient basis for the Commission to rely on to compel further response from Calico, and therefore, the Commission should deny BNSF’s petition to compel Calico to provide additional information related to this data request.

92. Analysis of subsurface soil, rock and water conditions. The Committee limited this data request to “any such readily available, existing data responsive to the request.” Calico objected to this data request as vague¹⁷ and noted that all of Calico’s analyses of subsurface soil, rock and water conditions have been docketed. BNSF did not provide any clarification to this data request and simply responded “*See* BNSF’s Preliminary Comments.” BNSF did not identify which Preliminary Comment in particular would explain what information BNSF is seeking. Calico has no further information to provide in response to this data request. BNSF’s response is not a sufficient basis for the Commission to rely on to compel further response from Calico, and therefore, the Commission should deny BNSF’s petition to compel further information related to this data request.
93. All COMMUNICATIONS between APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section. Calico objected to this data request as vague, ambiguous, unduly burdensome, overbroad, irrelevant, duplicative and unnecessary. BNSF’s sole response was a reference to its General Objection C regarding relevance and scope. As noted, Calico disagrees with this interpretation of the Committee’s order authorizing this data request and reiterates its earlier objections based on relevancy. BNSF failed to respond to Calico’s other objections and refuses to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF’s *response* is non-responsive and fails to explain what information BNSF is seeking. As explained in response to Data Request #16 above, because BNSF has not made any showing that there is any relevant information related to this data request, the Commission should deny BNSF’s petition to compel further information related to this data request.

INFILTRATION REPORT

Calico provided general comments on this set of data requests (Data Requests #97-104). Calico objected that BNSF failed to provide the reasons for these data requests as required pursuant to Section 1716(b). Calico noted that it has provided its scope of work for certain hydrological analyses that Calico commissioned Tetra Tech to conduct. This scope of work was

¹⁷ In its Petition to Compel, BNSF yet again incorrectly quoted Calico, in this case Calico’s Objection to Request 92, and failed to include Calico’s objection that “BNSF’s data request is vague as to what information it is requesting.” Petition to Compel, p. 47.

discussed at the June 28, 2011 CEC workshop, in which BNSF participated. BNSF failed to respond to Calico's general comments or objections to these data requests.

97. Soil survey and land cover maps. Calico stated that this information has already been docketed. BNSF responded that it has no procedural objection to the response. Indeed, BNSF has no right to demand any further information under this data request because the Committee limited the scope of the request to "any such readily available existing data responsive to the request." Given that Calico has fully responded to this data request, BNSF does not have the right to "follow up on Request 97" at a later time. Because there is nothing to compel with relation to this data request, this request should be denied.
99. Rainfall temporal histograms for 6-hour and 24-hour – 100-year design storms. The Committee limited the scope of the data request to "any such readily available, existing data responsive to the request." Calico responded that this information would be included in the Infiltration Report, which was submitted on September 6, 2011. The typical rainfall temporal histogram used in the modeling for the 2- and 100-year storms is provided in Figure 2.4 of the docketed Infiltration Report. Temporal distributions for other design storms and other locations where the total precipitation depths vary slightly from that shown in Figure 2.4 can be found in the model input files on the concurrently docketed disc. BNSF responded with references to its General Objection A and its Preliminary Comments. BNSF did not specify which Preliminary Comments in particular were applicable to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Because Calico has fully responded to this data request, BNSF's petition to compel additional information should be denied.
100. Mapping of the spatial distribution and estimates of directly-connected and indirectly-connected impervious surfaces. The Committee limited the scope of the data request to "any such readily available, existing data responsive to the request." Calico objected to this request as unduly burdensome, noting that while it does not have this information compiled in the form requested, all the information required to create the requested maps and estimates have been docketed. BNSF referred to its General Objection A and its Preliminary Comments. Calico has no further information to provide in response to this data request. BNSF did not identify which Preliminary Comment in particular would explain what information BNSF is seeking. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. BNSF's response is not a sufficient basis for the Commission to rely on to compel further response from Calico. Thus, the Commission should deny BNSF's petition to compel further information related to this data request.
101. Pre-grading topographic maps and a detailed site grading plan. The Committee limited the scope of the data request to "any such readily available, existing maps responsive to the request." Calico stated that it would not provide this information separately from the DESC that it anticipated submitting in these proceedings. Calico has no further information to provide in response to this data request at this time. BNSF referred to its General Objections A and E. As discussed above, BNSF's comments on any reports

provided by Calico should not be addressed in the data request process. BNSF's response is not a sufficient basis for the Commission to rely on to compel further response from Calico. Thus, the Commission should deny BNSF's petition to compel further information related to this data request.

102. Watershed and sub-watershed drainage area map(s). The Committee limited the scope of the data request to "any such readily available, existing maps responsive to the request." Calico responded that this information had been previously docketed and that it would also be included in the Infiltration Report, which was submitted on September 6, 2011. Watershed and sub-watershed drainage area maps are provided in Figure 1.1, 2.1, 2.2, 2.5, 2.6, 2.7, 2.9, 2.10 and 3.1 of the Infiltration Report. Electronic versions of these boundaries are included on the concurrently docketed disc. BNSF responded with references to its General Objection A and its Preliminary Comments. BNSF did not specify which Preliminary Comments in particular were applicable to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Thus, the Commission should deny BNSF's petition to compel Calico to provide further information related to this data request.
103. Infiltration/runoff calculations. The Committee limited the scope of the data request to "any such readily available, existing data responsive to the request." Calico responded that this information would be included in the Infiltration Report, which was submitted on September 6, 2011. Infiltration/runoff calculations were performed using the AES model (off-site basins) and FLO-2D model (on-site). The input parameters, basis for those parameters, and results are summarized in the Infiltration Report. The model input and output files are provided on the concurrently docketed disc. BNSF responded with references to its General Objection A and its Technical Comments. BNSF did not define "Technical Comments" nor specify which comments in particular were applicable to this data request. As discussed above, BNSF's comments on any reports provided by Calico should not be addressed in the data request process. Because Calico has fully responded to this data request, as approved by the Committee, BNSF's petition to compel additional information should be denied.
104. All COMMUNICATIONS between APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section. Calico objected to this data request as vague, ambiguous, unduly burdensome, overbroad, irrelevant, duplicative and unnecessary. BNSF's sole response was a reference to its General Objection C regarding relevance and scope. As noted, Calico disagrees with this interpretation of the Committee's order authorizing this data request and reiterates its earlier objections based on relevancy. BNSF failed to respond to Calico's other objections and refused to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF's *response* is non-responsive and fails to explain what information BNSF is seeking. As explained in response to Data Request #16 above, because BNSF has not made any showing that there is any relevant information related to this data request, the Commission should deny BNSF's petition to compel further information related to this data request.

TRAFFIC AND TRANSPORTATION AND VISUAL RESOURCES

Calico provided general comments on this set of data requests (Data Requests #105-117). Calico objected that BNSF failed to provide the reasons for these data requests as required pursuant to Section 1716(b). Calico noted that it has provided its scope of work for the glint/glare study that Calico commissioned POWER Engineers to conduct. This scope of work was discussed at the June 28, 2011 CEC workshop, in which BNSF participated. BNSF failed to respond to Calico's general comments or objections to these data requests.

105. Description of all work for GLARE/GLINT STUDY. The Committee limited the scope of the data request to "any such existing scope of work." Calico has previously produced POWER Engineers' scope of work, which was the subject of the June 28, 2011 workshop. Calico stated that it would provide a description of all work in its glint/glare study that it anticipates submitting in these proceedings. BNSF referred to its General Objection E. Calico has no further information to provide in response to this data request as limited by the Committee. Thus, the Commission should deny BNSF's petition to compel Calico to provide additional information.
106. Detailed timeline for GLARE/GLINT STUDY. The Committee limited the scope of the data request to "any such existing timeline." Calico stated that the tasks, work plan and time estimates for the glint/glare study were included in POWER's scope of work, which was discussed at the June 28, 2011 CEC workshop and that it anticipated submitting the glint/glare study to the CEC on November 1, 2011. BNSF referred to its General Objection E. It is unclear what additional information BNSF expects to receive. Calico has no further information to provide in response to this data request as limited by the Committee. Thus, the Commission should deny BNSF's petition to compel Calico to provide additional information.
107. Bibliography for GLARE/GLINT STUDY. Calico stated that it would not provide this information separately from that the glint/glare study that it anticipated submitting in these proceedings. BNSF referred to its General Objection E. Calico believes that the Commission does not need to take action on this data request at this time.
108. Plans that are being modeled for GLARE/GLINT STUDY. The Committee limited Calico's response to "any such existing documents" that are "not already available." Calico referenced the information, which was provided on September 9, 2011 in connection with Data Requests #1 and 13, as well as other information previously docketed in the proceedings. BNSF referred to its General Objection E. It is unclear what additional information BNSF expects to receive. Calico has no further information to provide in response to this data request as limited by the Committee. Thus, the Commission should deny BNSF's petition to compel Calico to provide additional information.

109. Date(s) when the designs being modeled were finalized for GLARE/GLINT STUDY. Calico objected to this data request as vague and stated that it would not provide this information separately from that the glint/glare study that it anticipated submitting in these proceedings. BNSF referred to its General Objection E. BNSF has failed to respond to Calico's objection and refuses to provide clarity. As such, BNSF's *response* is non-responsive and fails to explain what information BNSF is seeking. Therefore, BNSF's petition to compel additional information should be denied.
110. Technical specifications for the model. Calico stated that it would not provide this information separately from that the glint/glare study that it anticipated submitting in these proceedings. BNSF referred to its General Objection E. Calico believes that the Commission does not need to take action on this data request at this time.
111. Sources for technical specifications described in Data Request #110. Calico stated that it would not provide this information separately from that the glint/glare study that it anticipated submitting in these proceedings. BNSF referred to its General Objection E. Calico believes that the Commission does not need to take action on this data request at this time.
112. A detailed description of the plan for implementing the model. In its July 26, 2011 Order, the Committee denied this data request. Therefore, Calico did not provide an objection or a response. Inexplicably, BNSF referred to its General Objection E. Calico requests that the Commission re-confirm the denial of this data request.
113. Weekly status reports during the GLARE/GLINT STUDY. In its July 26, 2011 Order, the Committee denied this data request. Therefore, Calico did not provide an objection or a response. Inexplicably, BNSF referred to its General Objection E. Calico requests that the Commission re-confirm the denial of this data request.
114. Electronic copies of the model for GLARE/GLINT STUDY. The Committee limited Calico's response to this data request "to the extent Calico is readily capable of doing so." Calico objected to this data request on the grounds that it would require production of proprietary information belonging to POWER, its consultant. BNSF referred to its General Objection E, which does not address the proprietary nature of the information. Calico is not in a position to provide this information and has no further information to provide in response to this data request as limited by the Committee. Thus, the Commission should deny BNSF's petition to compel Calico to provide additional information.
115. Quantitative data leading to conclusions. Calico objected to this data request as vague, ambiguous and unduly burdensome. Calico noted that it anticipated submitting the glint/glare study. To the extent that BNSF is requesting other information, Calico requested clarification of this data request. BNSF referred to its General Objection E. BNSF failed to respond to Calico's objections and refused to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF's *response* is non-responsive and fails to explain what information BNSF is seeking. Therefore, BNSF's petition to compel information related to this data request should be denied.

117. All COMMUNICATIONS between APPLICANT and the CEC regarding the topics covered by the Data Requests set forth in this section. Calico objected to this data request as vague, ambiguous, unduly burdensome, overbroad, irrelevant, duplicative and unnecessary. BNSF's sole response was a reference to its General Objection E. Contrary to General Objection E, Calico did not state that it would provide this information in the future, but instead objected on the same grounds as in its response to Data Request #16. BNSF failed to respond to Calico's other objections and refuses to provide clarity to this vague, ambiguous and overbroad data request. As such, BNSF's response is non-responsive and fails to explain what information BNSF is seeking. As explained in response to Data Request #16 above, because BNSF has not made any showing that there is any relevant information related to this data request, the Commission should deny BNSF's petition to compel further information related to this data request

IV. RESPONSES TO DATA REQUESTS DENIED BY THE COMMITTEE

In its Order Authorizing BNSF Data Requests, the Committee denied 33 of BNSF's data requests, but gave BNSF the opportunity to explain to the Committee how 11 of these data requests relate to the Petition to Amend, CEQA or the Commission's governing documents. The Committee extended this opportunity on July 26, 2011. BNSF, however, waited over two months to respond to the Committee's open offer, at which time it failed to respond to the Committee's invitation to provide an explanation for these specific data requests and attempted to re-introduce data requests that were flatly denied by the Committee.

BNSF's Petition to Compel is untimely under Section 1716(g). It is also contrary to the Committee's order that "[a]ll approved data requests shall be served by no later than 5:00 p.m. on May 31, 2011." Procedural Order, p. 3. BNSF indicated that it did not respond to the Committee's denial of certain other data requests because BNSF "in good faith awaited the submittal of the first of Calico's hydrology deliverables to evaluate what information sought by the Data Requests was included in those deliverables" *See* Petition to Compel, p. 3. This does not make any sense. None of the Committee's explanations includes an expectation that the requested information would be included in any deliverables yet to be submitted by Calico. Instead of rationally and reasonably providing the explanation requested by the Committee,

BNSF made the inflammatory and unsupported claim that responses to denied data requests are “absolutely crucial for BNSF and the Commission to understand whether Calico artificially limited the scope of work in order to procure the unsupportable conclusions outlined in General Objection A.” Petition to Compel, p. 8. BNSF also failed to provide sufficient rationale to explain why the Committee should reverse its rulings on the denied data requests for which the Committee did not invite BNSF to provide an explanation. BNSF did not narrow or attempt to clarify any of the denied data requests, even for ones that requested information about the original project.

Based upon the protocol set forth by the Committee, Calico will wait for the Committee to decide whether BNSF may propound additional data requests on Calico. While Calico believes that the Committee will find no reason to grant BNSF’s request, if the Committee allows BNSF to serve additional data requests, Calico will object and respond to such data requests in the time frame and manner required by Section 1716(f).

V. CONCLUSION

BNSF has failed to respond to Calico’s objections, has failed to provide necessary explanations to promulgate further data requests and generally has failed to provide sufficient explanation to propound data requests under Section 1716(b). Therefore, Calico respectfully requests that the Commission deny BNSF’s Petition to Compel in its entirety.

Date: October 14, 2011

Respectfully submitted,



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

Attachment A

While Calico does not believe that it is appropriate to address BNSF's comments on the Infiltration Report and the Geomorphic Report in the data request process, Calico has prepared this summary response to BNSF's comments so that the Committee is not misled by what the unsupported claims included in these comments. *See* Petition to Compel, pp. 6-7. Without waiving any objections Calico could and will raise when these reports are discussed in a proper venue, Calico provides the following brief responses to BNSF's comments:

1. Excerpt from BNSF's comment: Calico has not provided any basis for its drastically revised conclusions concerning local scouring and instability of the alluvial fan. *See* Geomorphology Report at Section 4, p. 4.7; BNSF's Preliminary Comments on Geomorphology Report at 5-7...

Calico's Response: The Infiltration Report and the Geomorphic Report provide the basis for the conclusions contained therein. The Commission's Condition of Certification Soil & Water 1 and Soil & Water-8 do not, as BNSF states, require the Infiltration Report and the Geomorphic Report "to be based upon and consistent" with the Huitt-Zollars Report. Soil & Water 1 states that the Drainage Erosion and Sediment Control Plan (DESCP) is to be based, in part, on the Infiltration Report prepared in response to Soil & Water 13, as well as the previous reports by Stantec Consulting and Huitt-Zollars for the Solar 1 Project. Similarly, Soil & Water-8 specifies that a geomorphic and hydraulic analysis and a geomorphic and biologic analysis reports are to be prepared and describes the issues to be addressed in these analyses. Neither Soil & Water 1 or 8 require the DESCPC or any of the related work for this project to be *consistent with* the Huitt-Zollars Report.

The analytical procedures used by Calico's consultant, Tetra Tech, to develop the rainfall-runoff hydrographs for the off-site basins that contribute flow and sediment to the Calico site are identical to those used by Huitt-Zollars. Some of the model input parameters are,

however, different for a variety of reasons, including refinement of some of the drainage basin boundaries, updates to the NOAA precipitation-frequency estimates that have been published since the Huitt-Zollars analysis, and refinement of the methods used to estimate the appropriate runoff curve numbers. The values used by Tetra Tech, and the basis for selecting those values, are described in the Infiltration Report. In every case where the Tetra Tech and Huitt-Zollars parameters differ, the values used by Tetra Tech were developed based on the best available information and decades of experience in evaluating rainfall-runoff conditions in desert environments.¹

Tetra Tech used the two-dimensional (2-D) FLO-2D computer model to combine, and route across the project site, surface runoff generated from the off-site basins and runoff from on-site rainfall, and to quantify the associated hydraulic and sediment transport conditions. Huitt-Zollars used a combination of methods, including AES rainfall-runoff modeling to estimate the amount of flow at specific points within the site and one-dimensional (1-D) HEC-RAS hydraulic modeling with assumptions about the size and shape of the individual channels to quantify the associated hydraulic conditions. The Huitt-Zollars report does not quantify the movement of sediment within the project site. In Tetra Tech's opinion, the FLO-2D model is a more appropriate tool for this analysis because it does not require assumptions about the channel size (the actual topography is used), and it dynamically predicts both the direction and magnitude of the flows at every grid cell and every time-step in the modeled hydrograph. As a result, the FLO-2D output provides a much better representation of how the flow will spread within and move across the site. The methods used by Tetra Tech and Huitt-Zollars to evaluate the

¹ It is also important to note that the site evaluated in the Huitt-Zollars report encompassed 10,500 acres and extended up the Cady Mountain, where as the Project site encompasses only 4,613 acres set back significantly from the Cady Mountain. Based on this difference alone, it is unsurprising that the results included in the two reports would differ.

hydraulic behavior of the BNSF Railroad crossings are very similar, and in fact, where the crossings have not been replaced, Tetra Tech used data from the Huitt-Zollars report to develop the individual HEC-RAS models used for the analysis.

Calico and Tetra Tech agree that the “Huitt-Zollars Report concluded instability of the alluvial fan and local scouring would be major challenges requiring extensive runoff control measures.” See *Petition to Compel*, p. 6. This conclusion appears to have been based primarily on the assertion that there is high flood risk due to “debris flow that can occur with extreme alluvial fan flood events” (Huitt-Zollars Report, p. 8), and “intercepting potential debris flow prior to its arrival on the project site is likely the surest way of reducing the risk of damage to SunCatcher units by the devastating power inherent with debris flow” (Huitt-Zollars Report, p. 9). While debris flows can be, and often are, significant risk factors on alluvial fans in the appropriate setting, there is little, if any, risk of debris flows on the fans leading to and crossing the Calico site. Debris flows require abundant fines (i.e., silt/clay sized material) on steep slopes,² neither condition for which is present at the Project site, where the alluvium that makes up the fans is nearly all granular material in the sand and coarser size ranges and the slopes approaching and crossing the project site are in the range of 5 percent or less.

2. BNSF’s comment: Calico has not provided any basis for its conclusion that conditions in the Project area would produce the very low sediment yields found in the Griffiths, et al. (2006) study. Geomorphology Report at Section 4, pp. 4.4-4.5. The basins in the Project area are two orders of magnitude larger than the basins in the Griffiths study, and Calico has made no effort to tie the present and future soil conditions in the project area to the conditions in the Griffiths study. In fact, there is every reason to believe that once constructions starts, it will destroy the critically important natural desert crust that exists over much of the Mojave Desert.

² Ritter, D.F., R.C. Kochel and J.R. Miller, 2002. Process Geomorphology, 4th Edition. McGraw Hill, New York.

Calico's Response: The basis for the sediment yields in the Project area is described in detail in the Geomorphic and Hydraulic Analysis and Geomorphic and Biologic Analysis Report. As described in the report, this analysis was performed using standard analytical procedures with relationships that are appropriate for the physical conditions at the site, including the specific hydraulic conditions and sediment characteristics in the watershed and washes at the site. The comparison to Griffiths et al (2006) simply demonstrates that the estimates developed using these independent, analytical methods are very consistent with the magnitude and trends from other data collected in the Mojave Desert, and they are significantly lower than published sediment yields in other arid and semi-arid regions. The sediment yield estimates used by Huitt-Zollars were developed using generalized relationships between sediment yield and drainage basin area based on reservoir sedimentation data in the *semi-arid* U.S., and these relationships represent conditions that are very different from the arid watershed contributing to the Calico Site.

Based on direct field observations at the Calico site, the *desert crust* referred to in this comment is either not present or very minimal, and would be unlikely to have a significant impact on erosion processes on the site.

3. BNSF's comment: Calico has not provided any basis for its conclusion, contrary to the Commission's prior conclusion, that vegetation conditions in the Project area would be essentially unchanged when the Project is built. *See* BNSF's Preliminary Comments on Geomorphology Report at 10-11.

Calico's Response: Calico, through the Infiltration Report and the Geomorphic Report, did not conclude that vegetation conditions in the Project area would be essentially unchanged when the Project is built. In fact, the Infiltration Report includes the following discussion of the changes that are likely to occur:

3.3.3.1. Worst-case Effects of PV Panels and SunCatchers™ Dishes on On-site Vegetation

The construction and installation at the Project site will include activities such as clearing and grubbing, excavation, and installation of the PV arrays, SunCatchers™ and associated support structures. The PV panels and SunCatchers™ will shade the ground, which may limit the amount of vegetation that grows directly beneath the structures. Additionally, main and secondary access roads will be constructed where vegetation will be removed to allow vehicular access. Vegetation will likely recover and re-establish in areas that require infrequent access for maintenance purposes. Soil compaction may temporarily inhibit vegetation growth, but species such as creosote bush and both native and non-native grasses that currently dominate the site are hardy species that grow in adverse soil conditions. It is likely that this creosote bush community will re-colonize the site and grow in all locations except directly under the structures or on permanent access roads. This vegetation is typically sparse in a desert climate and the additional water provided by occasional washing is not likely to cause denser stands of vegetation to grow than would normally occur on the site.

As is standard practice in hydrologic and hydraulic modeling, and as discussed in the reports, the potential effects of the changes associated with roads and other infrastructure were incorporated into the Project Conditions FLO-2D model by incorporating impervious areas and adjusting roughness coefficients, as appropriate. The effects of these changes on sediment transport rates and erosion potential is reflected in the hydraulic calculations. Sediment transport capacities in the washes were estimated assuming that no vegetation is present for both existing and project conditions. The active washes contain little or no vegetation at the present time; thus, this assumption is very reasonable.

4. BNSF's comment: Calico has not provided a scoping analysis, sampling plan, or any other reasonable basis for Calico's decision to take only eleven soil samples from a 4500 acre property to be used in the sediment transport analysis... If Calico has this information it should be produced. If Calico does not have this information, then the scientific basis for the conclusions in Calico's sediment transport analysis is questionable at best.

Calico's Response: The purpose of the bed material samples is to characterize the size-gradation of the sediment in the washes that cross the site for purposes of estimating sediment transport capacities. As is clearly evident from both field inspection and the sample data, the

gradation of the material along the upstream boundary of the site is relatively consistent, and the overall size of the sediment tends to fine in the downstream direction. The eleven samples collected by Tetra Tech (8 samples) and URS (3 samples) provide an adequate representation of the sediment for the purposes for which the data were used.

5. BNSF's comment: Calico has not provided any basis for Calico's choice of an inflated baseline runoff rate in the Infiltration Report. This appears to be simply a transparent attempt to establish an unrealistically high baseline of existing conditions that would relieve Calico of the burden of mitigating and controlling Project impacts.

Calico's Response: The basis for the baseline runoff rates is clearly described in the Infiltration Report, and these rates are generally consistent with the rates that were developed for the Stantec and Huitt-Zollars reports. As clearly spelled out in the report, the runoff rates were estimated in accordance with procedures in the San Bernardino County Hydrology Manual and other available information. As illustrated in Figure 2.13 of the Infiltration Report, the peak discharges predicted by the model for the 25-, 50- and 100-year storms are very consistent with the USGS Regional Regression equations that were developed from actual stream gage data. As also noted in the report, strict application of the San Bernardino County procedures to the 2-, 5- and 10-year storms appears to significantly over-predict both the peak discharge and hydrograph volumes. As a result, Tetra Tech adjusted the modeled flows downward for these more frequent storms to more closely match the regional regression equations.



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**FOR THE CALICO SOLAR PROJECT
AMENDMENT**

**Docket No. 08-AFC-13C
PROOF OF SERVICE
(Revised 10/3/2011)**

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DECLARATION OF SERVICE

I, Marsha Curtis, declare that on October 14, 2011, I served and filed copies of the attached **APPLICANT'S RESPONSE TO BSNF RAILWAY COMPANY'S OBJECTIONS TO CALICO SOLAR, LLC'S RESPONSES TO DATA REQUEST NO. 1 FROM BNSF TO CALICO; PETITION TO COMPEL RESPONSES TO APPROVED DATA REQUESTS; AND PETITION FOR LEAVE TO PROPOUND DENIED DATA REQUESTS**, dated October 14, 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: [www.energy.ca.gov/sitingcases/calicosolar/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;
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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. 08-AFC-13C
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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.


Marsha Curtis