



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
 COMMISSION OF THE STATE OF CALIFORNIA
 1516 NINTH STREET, SACRAMENTO, CA 95814
 1-800-822-6228 – WWW.ENERGY.CA.GOV

**FOR THE CALICO SOLAR PROJECT
 COMPLAINT AND INVESTIGATION**

Docket No. 11-CAI-01

Order No. 11-1130-3

DOCKET	
11-CAI-01	
DATE	DEC 06 2011
RECD.	DEC 06 2011

COMMISSION ADOPTION ORDER

By this **ORDER**, the Commission adopts as its own Decision the October 24, 2011 [Proposed] Decision Dismissing With Prejudice the Pending Complaint and Investigation Proceedings Against Calico Solar, LLC (Proposed Decision), which was issued by the Committee assigned to the above-captioned matter. The Proposed Decision addresses BNSF Railway Company's Verified Complaint to Revoke Certification of the Calico Solar Project and Patrick C. Jackson's related request for investigation.

The Commission hereby adopts the Proposed Decision as it was orally modified by the Commission during its November 30, 2011 business meeting. The Proposed Decision is based upon the pleadings, evidentiary record of these proceedings, and official notice of the Calico Solar Project Presiding Member's Proposed Decision and August 4, 2010, Calico Solar Project hearing transcript.

ORDER

Therefore, the Commission **ORDERS** the following:

1. The proceedings initiated by and conducted in connection with BNSF Railway Company's Verified Complaint to Revoke Certification and Patrick C. Jackson's related request for investigation are dismissed with prejudice.
2. The Commission Decision is adopted, issued, effective, and final on the date it is docketed.
3. We order that the docket file for this proceeding be closed on the effective date of the Decision, with the exception that the docket file shall remain open for 30 additional days solely to receive material related to a petition for reconsideration of the Decision.

4. Reconsideration of the Commission Decision is governed by Public Resources Code section 25530.
5. Judicial review of the Commission Decision is governed by Public Resources Code section 25901.

CERTIFICATION

The undersigned Secretary to the Commission does hereby certify that the foregoing is a full, true and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on November 30, 2011.

AYE: Weisenmiller, Boyd, Douglas, Peterman

NAY: None

ABSENT: None

ABSTAIN: None



HARRIET KALLEMEYN
Secretariat



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**CALICO SOLAR PROJECT
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DOCKET No. 11-CAI-01

**DECISION
DISMISSING WITH PREJUDICE THE PENDING
COMPLAINT AND INVESTIGATION PROCEEDINGS
AGAINST CALICO SOLAR, LLC**

Introduction

This matter involves BNSF Railway Company's Complaint and Intervenor Patrick C. Jackson's request for investigation, both of which allege that Calico Solar, LLC made false statements during the Calico Solar Project (CSP) application for certification (AFC) proceedings regarding the economic viability and availability of SunCatcher technology (solar dish systems). BNSF and Mr. Jackson specifically allege that throughout the AFC process Calico knew SunCatchers would not be available to meet initial and revised project descriptions but nonetheless represented that the project would have SunCatchers. BNSF points to October 2010 comments of Felicia Bellows, Vice President of Development for Tesseract Solar, as a key point in time when Calico knew and should have disclosed that SunCatchers would not be available as proposed.

BNSF claims that Calico's affirmative statements and alleged omissions warrant Commission revocation of CSP's certification. The Warren-Alquist Act allows the Energy Commission to revoke certification of any facility it previously licensed if it finds that there was any "material false statement" stated in the AFC, presented in the Commission's AFC proceedings, or included in supplemental applicant documentation. (Pub. Res. Code, § 25534, subd. (a)(1).)

As discussed below, after considering the parties' arguments and evidence, we conclude that Calico's affirmative statements and alleged omissions were not *material* within the meaning of Section 25534.¹ These determinations compel dismissal of the complaint and investigation proceedings, with prejudice.

¹ All statutory references are to the Public Resources Code unless otherwise specified.

Procedural and Fact Summary

On October 3, 2011, the committee assigned to the complaint and investigation proceedings heard oral arguments from BNSF, Mr. Jackson, and K Road Calico Solar², LLC, on BNSF's Complaint and Mr. Jackson's request for investigation.³ BNSF and Mr. Jackson offered documentary evidence, all of which was admitted into the record.⁴ (10/3/11 Reporter's Transcript (RT) 19:2-3; 20:13-20:16; see also, attached Exhibit List.) No one presented witnesses at the hearing.

We take official notice of the Reporter's Transcript of the August 4, 2010 CSP evidentiary hearing and CSP Presiding Member's Proposed Decision. (Regulations, § 1213.)⁵

Calico Solar Project Application Submittals and Hearings

In December 2008, Stirling Energy Systems Solar Six, LLC and Stirling Energy Systems Solar Three, LLC filed an AFC with the Energy Commission to construct and operate the Solar One Project, described as a 850 megawatt (MW) capacity solar power plant to be constructed in San Bernardino County, California. (Exs. 1, p. 1-2; 10, p. 4.) The proposed project would use a proprietary solar dish Stirling system (SunCatchers) developed by Stirling Energy Systems (SES). (*Id.*)

Four years of two-phased project construction would begin in mid-to-late 2010. The 500 MW Phase I would consist of approximately 20,000 SunCatcher dishes on approximately 5,838 acres. The 350 MW Phase II would consist of approximately 14,000 SunCatcher dishes on approximately 2,392 acres. (Ex. 1, pp. 1-2 – 1-3.)

In January 2010, SES Solar Three, LLC merged into Solar Six, LLC and in turn, Solar Six, LLC became Calico Solar, LLC. Calico was a subsidiary of Tessera Solar. (Ex. 10 [Project Description], p. 1.) The project name also changed to "Calico Solar Project."

In February 2010, Calico submitted proposed construction milestones and a project site layout figure. The milestones identified time frames for SunCatcher assembly and related construction. (Exs. 18; 202.) In May 2010, Calico proposed a reduced project footprint to address environmental impacts. (Ex. 2, p. 1-1.) The modified project included about 34,000 SunCatchers. Construction would involve a three-year Phase I (from 2010 through 2012) and two-year Phase II (from 2013 through 2015), contingent

² Calico Solar, LLC recently changed its name to K Road Calico Solar, LLC.

³ BNSF's Complaint (Ex. 31) also alleged CSP's noncompliance with certification conditions. The assigned committee addressed those allegations in an order dated September 12, 2011. The order was not appealed.

⁴ The committee assigned to the complaint and investigation proceeding admitted exhibits 22, 23, 24, 25, 27, 28, 29, 206, 207, 208, 209, 211, 212, 213 over Calico's relevance objections. (10/3/11 RT 13:6-14:8; 15:11-12 [the Reporter's Transcript erroneously identifies Mr. Jackson objecting to his own exhibits]; 17:12-18:13; 19:20-20:8.)

⁵ All regulatory references are to California Code of Regulations, title 20, unless otherwise specified.

on Southern California Edison completing full transmission build-out necessary for Phase 2 by December 31, 2013. (*Id.*)

In August 2010, the committee assigned to the AFC (CSP Committee or Committee) held a multiple-day evidentiary hearing after which it invited project changes to further avoid environmental impacts. (Ex. 10 [Introduction], p.6.) Before the last hearing day in August, Calico proposed a construction Phase 1a to include installation of 60 SunCatcher pedestals. (Ex. 3.) In September 2010, Calico submitted two smaller-sized project scenarios for a 26,540 SunCatcher project on a footprint of 4,613 acres: Scenario 5.5 and Scenario 6. (Exs. 4; 10 [Project Description], p. 2.)

On September 20, 2010, the CSP Committee conducted another day of evidentiary hearings on the reduced acreage alternatives. (Ex. 32.)

PMPD and PMPD Conference

On September 25, 2010, the Committee issued a Presiding Member's Proposed Decision (PMPD) recommending approval of the CSP with the Scenario 5.5 reduced acreage alternative. Calico's comments on the PMPD affirmed the project's proposed use of SunCatchers. (Exs. 6; 9.)

In October 2010, the Committee conducted a conference on the PMPD. (Exs. 7; 8.) During the October 26, 2010 portion of the conference, Intervenor CURE (by its attorney Loulena Miles) and Hearing Adviser Kramer asked for and received clarification regarding Phase I placement of SunCatcher pedestals and dishes, as follows:

MS. MILES: Well, I do have a comment regarding the -- I don't believe that there's anything restricting the applicant from putting SunCatcher dishes on the pedestals. And my understanding from all the filings earlier were that the project was going to come online as construction was completed. And so as the first -- and I believe it's stated in documentation, that as the first 60 units were completed, then it would come online.

And so I don't believe there's any -- can you point to somewhere in the record that would restrict the project from having SunCatcher dishes?

MS. FOLEY GANNON: Well, the SunCatchers cannot come online until the main service complex is constructed, and that does not happen until Phase 1B.

MS. MILES: Okay. That answers my question, I believe.

HEARING OFFICER KRAMER: But might they be placed there, just to be ready?

MS. FOLEY GANNON: They could be, but we can --

MS. BELLOWS: From a financial -- from a financial, capital perspective, it makes no sense to put them up until the transmission is ready. So the earliest transmission's going to be ready is 7/31/2011, so you're not going to see SunCatchers until, you know, 7/29.

MS. FOLEY GANNON: And we wouldn't object to having a restriction that says Phase 1A will not include the placement of any SunCatchers on poles installed, I mean, we don't have any problem with that.

(Ex. 8, pp. 89:22 – 90:24.)

Commission Certification Decision

On October 28, 2010, the Commission issued a final decision (Commission Decision) certifying the CSP with the Scenario 5.5 reduced acreage alternative. (Ex. 10.)

Calico Solar Project Amendment

In March 2011, Calico Solar, LLC filed with the Commission a Petition to Amend (Petition) the CSP to a 563 MW project to include SunCatchers and photovoltaic technology. (Exs. 11, p. 1-1; 14; 15.) The Petition states that on or about December 24, 2010, K Road Sun, LLC (K Road) purchased Calico Solar, LLC from Tessera. (Ex. 11, p. 3-1.) The Petition explains the necessity of the project amendment: "Because the SunCatchers would not be commercially available in the near term, K Road determined that for the project to be viable, a portion of the technology would need to be replaced with a technology that was currently commercially available and able to attract financing. K Road also determined that the Approved Project phases needed to be modified in order to allow additional time to obtain access over the railroad." (Ex. 11, p. 3-1.)

Contemporaneous and Post-Certification Activities Related to the Calico Solar Project

In July 2009, Sean Gallagher, Vice President of Marketing and Regulatory Affairs for Tessera Solar testified before the House Select Committee on Energy Independence and Global Warming. (Exs. 19; 203.) His testimony included a discussion of the importance of the Department of Energy loan guarantee programs and Treasury grant in lieu of investment tax credits to financing Tessera's pending renewables projects. (*Id.*, pp. 6 – 7.)

Around the end of 2010 or early 2011, NTR plc, a controlling stakeholder in SES, issued reports describing financial conditions that delayed the timeline for SunCatcher commercial availability. (Exs. 20-21; 204-205.)

By a letter dated December 23, 2010, Southern California Edison informed the California Public Utilities Commission (CPUC) that two renewable purchase and sale agreements between SCE and Calico were terminated. (Ex. 33.)

In February 2011, Tessera sold its Commission-certified Imperial Valley Project, which also involved SunCatchers, and various public documents reflected the new owner's plan to modify the project to use photovoltaic technology. (Exs. 22 – 25; 206-209.) Media reports also discussed financial issues related to and development status of other Tessera projects. (Exs. 26- 30; 210-214.)

In May 2011, in a proceeding before the CPUC, Daniel O'Shea, in his capacity as Vice President of Calico Solar, LLC,⁶ testified that in September or October 2010 (while affiliated with K Road) he knew or believed the sale of the CSP was related to the commercial availability of SunCatchers and SunCatchers would not be available on Tessera's proposed schedule. (Ex. 12, pp. 65:12-20 – 66:7, 69:9 - 70:2.)

In June 2011, Calico submitted a pleading in the Petition proceedings asserting “[w]e expect SunCatchers to be commercially available 24 months after securing investor financing.” (Ex. 13.)

Discussion

BNSF and Mr. Jackson contend Calico made material false statements during the AFC proceedings by submitting (1) revised project descriptions and related testimony up through October 2010 proposing a project with SunCatchers, (2) submitting Felicia Bellows' October 25, 2010 comments that “you're not going to see SunCatchers until, you know, 7/29” 2011, and (3) failing to disclose that SunCatchers would not be available on-site as proposed.⁷ According to BNSF and Mr. Jackson, these statements were false when made, as shown by the subsequent disclosures and actions of Tessera and third parties described above in the “Procedural and Fact Summary” under the headings “Calico Solar Project Amendment” and “Contemporaneous and Post-Certification Activities Related to the Calico Solar Project.”

As discussed below, we need not decide whether Calico made false statements because disposition of this matter turns on the meaning of “material” within Section 25534 and whether Calico's statements and alleged omissions were material to CSP certification.

⁶ Paragraph 18 of BNSF's Complaint alleges this testimony is Daniel O'Shea's; however, the excerpts provided in BNSF's Exhibit 12 do not identify Mr. O' Shea as the speaker. Because Calico did not deny that Mr. O'Shea is the speaker (see, e.g., Calico Answer, ¶ 8), we treat this testimony as Daniel O'Shea's.

⁷ BNSF does not allege that the initial project applicant, SES Solar Six, LLC and SES Solar Three, LLC, made material false representations. BNSF's allegations focus exclusively on statements and omissions of Calico Solar, LLC during the AFC process. Accordingly, we do not consider the initial AFC or related representations by SES Solar Six, LLC and SES Solar Three, LLC.

Section 25534

Section 25534 allows the Commission to revoke its certification of any facility if it finds there was “[a]ny material false statement set forth in the application, presented in the proceedings of the commission, or included in supplemental documentation provided by the applicant.” (§ 25534, subd. (a)(1).) However, neither the Warren Alquist Act nor its implementing regulations define the phrase “material false statement” or any of the words in the phrase.

BNSF suggests that case law regarding fraud could provide guidance since the concept of “material misrepresentation” is well defined and understood in that context. K Road Calico Solar, LLC (K Road Calico) similarly suggests that we construe the individual meanings of “material,” “materiality,” “false,” and “statement” by referencing various statutes, court decisions, and Black’s Law Dictionary. Specifically regarding the meaning of “materiality,” K Road Calico points to insurance coverage disputes, False Claims Act cases, perjury, false advertising claims, California Unfair Competition cases, liability under the California Political Reform Act, and common law misrepresentation claims. (Calico Hearing Statement, pp. 10 – 12.)

Although both recommendations have surface appeal, they ultimately fail because the referenced authorities apply to causes of action or matters where terms such as “material misrepresentation” and “materiality” are either specifically defined or have context-specific meaning. We therefore choose instead to follow an established principle of statutory construction: where, as here, a statute’s operative words are not defined but the words can reasonably be given their ordinary and generally accepted meaning, it is appropriate to do so. (See, e.g., *Absher v. AutoZone, Inc.* (2008) 164 Cal.App.4th 332, 339-340.) We look to Webster’s Third New World International Dictionary (Webster’s) as a guide to the meaning of each word in “material false statement,” but as indicated above, our focus is on materiality.⁸

Webster’s does not define “material false statement” and instead separately defines each word. The definition of “material” is extensive and broad; however, the meanings most applicable here are: “being of real importance or great consequence,” “requiring

⁸ Calico references Black’s Law Dictionary (Black’s) to support its proposed definition of “statement.” Black’s is a reputable and reliable guide that defines “false statement,” “material,” and “statement.” However, because Black’s definitions often reference context-specific decisional and statutory law, using it as a guide in this instance would not allow us to give each word of “material false statement” its ordinary and generally accepted meaning. (See, e.g., Black’s Law Dictionary, Fifth Edition (1979) p. 542 [defining “false statement” in pertinent part as follows “ ... They mean an incorrect statement made or acquiesced in with knowledge of incorrectness or with reckless indifference to actual facts and with no reasonable ground to believe it correct. *International Shoe Co. v. Lewine*, C.C.A. Miss., 68 F.2d 517, 518. Statement knowingly false, or made recklessly without honest belief in its truth, and with purpose to mislead or deceive. *Third Nat. Bank v. Schatten*, C.C.A. Tenn., 81 F.2d 538, 540; *In re Venturella*, D.C. Conn., 25 F. Supp. 332. They mean more than erroneous or untrue and import intention to deceive. *Schapiro v. Tweede Footwear Corporation*, C.C.A.Pa., 131 F.2d 876, 878. ...”].)

serious consideration by reason of having a certain or probable bearing on the proper determination of a law case or on the effect of an instrument or on some similar matter.” (Webster’s (1971) p. 1392.)

The definition of “false” is also extensive. Pertinent meanings include: “not corresponding to truth or reality: not true,” “intentionally untrue,” “speaking falsehood: not truthful,” “made or tampered with to deceive,” “tending to mislead,” “being other than what is purported or apparent: assumed or designed to deceive,” “not genuine or real,” “not based on facts or correct premises: not well founded.” (Webster’s (1971), p. 819.)

Webster’s defines “statement” in pertinent part as “the act of process of stating or reciting or presenting orally or on paper,” “something stated as a: a report or narrative (as of facts, events, or opinions),” “a single declaration or remark,” “formal declaration required by law or made in the course of some official proceeding (as a statement of a witness ...).” (Webster’s (1971), p. 2229.) These definitions of “statement” provide no guidance on whether an omission is a “statement” but we need not decide this particular issue here because the discussion below explains that Calico’s statements and alleged omissions were not “material” to CSP certification.

Based on the foregoing definitions, a “material false statement” under Section 2553, in the context of revocation proceedings, is a knowingly or intentionally untrue oral or written presentation or declaration of facts, events, or opinions⁹ made with purpose to mislead or deceive, which has importance or certain or probable bearing on a Commission determination to certify a proposed site or facility.

Thus, as applied to the Warren-Alquist Act’s certification process generally and the CSP process in particular, we ask whether Calico made material statements (regardless of whether true or false) during the AFC proceedings by submitting (1) revised project descriptions and related testimony up through October 2010 proposing a project with SunCatchers and (2) submitting Felicia Bellows’ October 26, 2010 comments that “you’re not going to see SunCatchers until, you know, 7/29” 2011.

Based on the above discussion, Calico’s statements and alleged omissions would be material if they had importance or certain or probable bearing on the Commission’s

⁹ We are not persuaded by Calico’s contention that matters of opinion cannot form the basis of a Section 25534 claim. Calico cites court opinions from misrepresentation cases to support its claim that opinions and business predictions are generally nonactionable (i.e., cannot support a claim or cause of action) in misrepresentation cases. Notwithstanding that statutory and common law misrepresentation claims do not apply to Section 25534, we note that opinions and business predictions are actionable in misrepresentation cases when a person either (1) states an opinion as fact or (2) possesses or holds himself out as possessing superior knowledge or special information regarding the subject of the representation and the other party is so situated that he may reasonably rely upon such supposed superior knowledge or special information. (See, e.g., *Neu-Visions Sports, Inc. v. Soren/McAdam/Bartells* (2000) 86 Cal.App.4th 303, 308.) These common sense exceptions to the general rule about opinions and business predictions show that under certain circumstances, such representations could be “statements” or “false statements” under Section 25534.

determination to certify the CSP. As discussed below, Calico's statements had no such importance or bearing on CSP certification.

Application of Section 25534 to the AFC Certification Process and CSP Decisions

The Commission may certify a site or facility after complying with procedural and substantive requirements of the Warren-Alquist Act and its implementing regulations and also, with applicable provisions of the California Environmental Quality Act.

The certification process begins when a project applicant files an AFC that contains required information and, in some instances, additional Commission-requested information. (§25519, subd. (a); Regulations, Chapter 5, Article 1, Appendix B, p. 413 at (h)(3)(B)(ii).) An application must contain all of the following information and anything else the Commission specifies:

- A detailed description of the design, construction, and operation of the proposed facility.
- Safety and reliability information, including planned provisions for emergency operations and shutdowns.
- Available site information, including maps and descriptions of present and proposed development and, as appropriate, geological, aesthetic, ecological, seismic, water supply, and population and load center data.
- Justification for the site.
- A description of the facility, the cost of the facility, the proposed fuel and source of fuel, fuel cost, plant service life and capacity factor, and generating cost per kilowatt hour. (§ 25520.)

Regarding project reliability, Appendix B of the Commission Regulations requires an AFC to discuss the demonstrated or anticipated feasibility of the technologies, systems, components, and measures proposed to be employed in the facilities. (Regulations, Chapter 5, Article 1, Appendix B, p. 413 at (h)(3)(B)(ii).)

A committee assigned to oversee the AFC proceedings must conduct an evidentiary hearing on the AFC to identify environmental impacts; consider whether the project can be constructed and operated safely and reliably and in compliance with applicable health and safety standards; assess the need for and feasibility of modifications in the design, construction, or operation of the plant or any condition necessary to assure safe and reliable operation of the facility; and, consider whether the plant can be constructed and operated in compliance with other applicable standards, ordinances, regulations and laws and land use plans. (Regulations, §1748.)

At the conclusion of the hearings, the committee must prepare a presiding member's proposed decision (PMPD) based on evidence presented in the hearing. (Regulations, §§ 1749; 1751, subd. (a).) The PMPD must contain the committee's recommendation on whether the AFC should be approved and, for projects like CSP, contain findings, conclusions, or discussion on each of the following matters:

- The extent to which the proposed facilities are in compliance with public health and safety standards, applicable air and water quality standards, and any other applicable local, regional, state, and federal standards, ordinances, regulations, or laws.
- Necessary modifications mitigation measures, conditions, or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, and operated to: protect environmental quality, assure safe and reliable operation of the facility, and comply with all applicable standards, ordinances, regulations, or laws.
- Whether existing governmental land use restrictions are of a type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facilities that will ensure public health and safety.
- Whether there should be a condition of certification requiring the applicant to acquire, by grant or contract, the right to prohibit development of privately owned lands in areas surrounding the facilities to control population densities and to protect public health and safety.
- Provisions for restoring the site as necessary to protect the environment, if the Commission denies approval of the application.
- The extent to which the applicant has complied with the recommended minimum standards of efficiency for operation of the facility.
- The committee's responses to significant environmental points raised during the application proceeding. (Regulations, §§ 1752; 1752.3; 1752.5.)

The PMPD must also disclose reasons supporting the decision and grounds for each finding and conclusion. (Regulations, § 1751, subd. (b).) Once a committee determines the PMPD requires no further revision, it presents the PMPD to the full Commission for consideration. (§ 1754.) A final Commission decision must be in writing and, for a project like CSP, contain the following statutorily-required elements:

- Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.
- Findings regarding the conformity of the proposed site and related facilities with certain Commission-adopted standards in Sections 25216.3 and 25402,¹⁰ with public

¹⁰ Section 25216.3 requires the Commission to establish standards, except for air and water quality, to be met in designing or operating facilities to safeguard public health and safety. The applicable portion of

safety standards and the applicable air and water quality standards, and with other applicable local, regional, state, and federal standards, ordinances, or laws.

- Provisions for restoring the site as necessary to protect the environment if the Commission denies approval of the application.
- A discussion of any public benefits from the project including economic benefits, environmental benefits, and electricity reliability benefits.

(§ 25523; Regulations, § 1755, subd. (a).)

None of the required information for an AFC, PMPD, or final Commission decision relates to a project's economic viability, economic viability of a proposed technology, or the commercial viability (from a financial perspective) of a proposed technology *apart from* evaluating project reliability and efficiency. (§ 25523, Regulations §§ 1749, 1752, 1752.3, 1752.5, 1752.7, 1755; compare to Regulations, § 1723.5 [requiring an applicant in a notice of intention proceeding to produce evidence on the "reasonableness of the likely financial impacts of constructing and operating the facilities"].) Thus, Calico's repeated statements that SunCatchers would be available for the project on the proposed schedules and on-site about July 2011 and any related silences regarding on-site availability of SunCatchers, could not influence the required findings. Moreover, neither BNSF nor Mr. Jackson point to any provision, finding of fact, or conclusion of law in the Calico Solar Project PMPD or Commission Decision showing that the CSP Committee or Commission certified the project based on a determination that the CSP or SunCatchers would be economically viable or that the SunCatcher project would proceed on Calico's proposed timeline (or at all) if certified.

Finally, with the exception of the project reliability and efficiency discussions in the PMPD and Commission Decision, neither the evidence presented nor the record of the CSP proceedings establish that the CSP Committee or Commission made any determinations, findings of fact, or conclusions of law based on Calico's representations regarding the anticipated availability of SunCatchers. In this regard, the Committee and Commission considered whether the project – using SunCatcher technology on a utility scale – could operate as designed, would impact the reliability of the transmission system, and would have reliable operating performance. (Ex. 10; PMPD.) However, in so doing, they did not require, receive, or rely on assurances by Calico or anyone else that the project or SunCatchers would be economically viable, with components available by a specific date, or that the CSP would proceed if certification issued. (See also 8/4/10 RT 148:3-211:10.)

Thus, even if the above-referenced statements and alleged omissions by Calico were false – a matter that we need not and do not decide – the statements were not "material" within the meaning of Section 25534. These determinations compel dismissal of the complaint and investigations proceedings identified by Commission docket number 11-CAI-01, with prejudice.

Section 25402, which is subdivision (d), requires the Commission to recommend technically and economically feasible minimum efficiency standards for the operation of any new facility.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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Docket Number: 11-CAI-01

Date: October 3, 2011

Project Name: CALICO SOLAR PROJECT COMPLAINT AND INVESTIGATION

EXHIBIT LIST

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
BNSF RAILWAY COMPANY'S EXHIBITS					
1	62392	Excerpts from SES Solar One Application for Certification	X	X	
2	62392	Excerpts from Applicant's Supplement to the Calico Solar (formerly Solar One) Application for Certification	X	X	
3	62392	Applicant's Phase 1A Information dated August 11, 2010	X	X	
4	62392	Applicant's Submittal of Updated Reduced Project Boundary Scenarios 5.5 and 6 Information	X	X	
5	62392	Applicant's Testimony with Applicant's Exhibits for Scenarios 5.5 and 6 - Testimony of Felicia Bellows	X	X	
6	62392	Applicant's Submittal of Comments on PMPD	X	X	
7	62392	Transcript of October 22 Committee Conference on Presiding Member's Proposed Decision	X	X	
8	62392	Transcript of October 26 Continuation of Committee Conference on Presiding Member's Proposed Decision	X	X	
9	62392	Applicant's Submittal of Additional Comments on PMPD	X	X	
10	62392	Calico Solar Project Commission Decision	X	X	

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
11	62392	Calico Solar Project Petition to Amend	X	X	
12	62392	Excerpts from Transcript of California Public Utility Commission hearing dated May 17, 2011	X	X	
13	62392	Calico Solar, LLC Reply Brief on Jurisdiction dated June 3, 2011	X	X	
14	62392	Applicant Information Hearing Presentation made at April 20, 2011 Site Visit and Informational Hearing	X	X	
15	62392	Transcript of April 20, 2011 Informational Hearing	X	X	
16	62392	Calico Solar Power Project Licensing Case Documents Page	X	X	
17	62392	Calico Solar Power Project Compliance Proceeding Documents Page	X	X	
18	62392	Applicant's February 12, 2010 Construction Milestone Schedule and Project Layout Figure	X	X	
19	62392	Testimony of Sean Gallagher Before the House Select Committee on Energy Independence and Global Warming, July 28, 2009	X	X	
20	62392	Excerpts from NTR – Annual Report & Financial Statements 2010	X	X	
21	62392	NTR plc Reports Financial Results for Year Ending 31 March 2011	X	X	
22	62392	PVTECH, “AES Solar buys Tessera Solar’s Imperial Valley Project with Intent to turn CSP into PV”	X	X	
23	62392	AES Solar’s June 30, 2011 Request to Revoke Permit to Construct IVS Project Because of Change to PV from Solar Thermal	X	X	
24	62392	Order Terminating Commission Decision and License for the Imperial Valley Solar Project	X	X	
25	62392	Notice of Decision by the California Energy Commission to Terminate License for Imperial Valley Solar	X	X	

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
26	62392	Greentech Media, "Are Stirling Energy, Tessera Solar in Trouble?"	X	X	
27	62392	Renewable Communities Alliance, "Tessera Solar Pulls Out of West Texas/DG Cheaper"	X	X	
28	62392	Phoenix Business Journal, "Tessera Solar, Phoenix End Bid for Landfill Power Plant"	X	X	
29	62392	Clean Energy Authority, Solar Energy News, "Tessera Pulls the Plug on Hugh Colorado Solar Plant"	X	X	
30	62392	Gunther Portfolio, " Top 10 Solar 1603 Treasury Grant Awards	X	X	
31	62392	BNSF Verified Complaint to Revoke Certification	X	X	
32	62392	Transcript of September 20, 2010 Evidentiary Hearing	X	X	
33	62392	Notice to California Public Utilities Commission of SCE's cancellation of Calico Solar Power Purchase and Sale Agreements	X	X	
INTERVENOR PATRICK C. JACKSON'S EXHIBITS					
200	62360	Calico Solar Power Project Licensing Case Documents Page	X	X	
201	62360	Calico Solar Power Project Compliance Proceeding Documents Page	X	X	
202	62360	Applicant's February 12, 2010 Construction Milestone Schedule and Project Layout Figure	X	X	
203	62360	Testimony of Sean Gallagher Before the House Select Committee on Energy Independence and Global Warming, July 28, 2009	X	X	
204	62360	NTR – Annual Report & Financial Statements 2010 (Pertinent Pages)	X	X	
205	62360	NTR plc Reports Financial Results for Year Ending 31 March 2011	X	X	
206	62360	PVTECH, "AES Solar buys Tessera Solar's Imperial Valley Project with Intent to turn CSP into PV"	X	X	
207	62360	AES Solar's June 30, 2011 Request to Revoke Permit to Construct IVS Project Because of Change to PV from Solar Thermal.	X	X	

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
208	62360	Order Terminating Commission Decision and License for the Imperial Valley Solar Project	X	X	
209	62360	Notice of Decision by the California Energy Commission to Terminate License for Imperial Valley Solar	X	X	
210	62360	Greentech Media, "Are Stirling Energy, Tessera Solar in Trouble?"	X	X	
211	62360	Renewable Communities Alliance, "Tessera Solar Pulls Out of West Texas/DG Cheaper"	X	X	
212	62360	Phoenix Business Journal, "Tessera Solar, Phoenix End Bid for Landfill Power Plant"	X	X	
213	62360	Solar Energy News, "Tessera Pulls the Plug on Hugh Colorado Solar Plant"	X	X	
214	62360	Gunther Portfolio, " Top 10 Solar 1603 Treasury Grant Awards"	X	X	



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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**FOR THE CALICO SOLAR PROJECT
COMPLAINT AND INVESTIGATION**

**Docket Nos. 11-CAI-01
(Revised 10/28/11)**

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DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on December 6, 2011, I served and filed copies of the attached COMMISSION ADOPTION ORDER and COMMISSION DECISION, dated December 6, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[<http://www.energy.ca.gov/sitingcases/calicosolar/investigate/index.html>].

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

(Check all that Apply)

For service to all other parties:

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

X Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "e-mail preferred."

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For filing with the Docket Unit at the Energy Commission:

X 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**

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CALIFORNIA ENERGY COMMISSION – DOCKET UNIT

Attn: Docket No. 11-CAI-01

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

docket@energy.state.ca.us

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

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

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed By: _____

RoseMary Avalos

Hearing Adviser's Office