

**DOCKET**

**11-AFC-4**

DATE MAR 09 2012

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STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of:

Docket No. 11-AFC-4

Application for Certification  
for the Rio Mesa Solar  
Electric Generating Facility

**ENERGY COMMISSION STAFF'S BRIEF IN RESPONSE TO TOPICS  
IDENTIFIED IN NOTICE OF MARCH 19, 2012 STATUS CONFERENCE**

On February 23, 2012, the Committee appointed to oversee the Rio Mesa Solar Electric Generating Facility (Rio Mesa) Application for Certification (AFC) issued a notice for a status conference and directed the parties to respond to several topics concerning the processing of the AFC. Staff's response is provided below.

**I. The AFC is Complete Pursuant to the Warren-Alquist Act and the Energy Commission's Implementing Regulations**

Public Resources Code section 25520 specifies the required content of applications for certification and authorizes the Energy Commission (Commission) to specify additional informational requirements by regulation. The Commission's additional requirements are specified in title 20, California Code of Regulations, section 1704<sup>1</sup> and Appendix B of Chapter 5 of the Energy Commission's regulations. Energy Commission staff (staff) reviewed the Rio Mesa AFC pursuant to these regulations and, after several rounds of review, on December 12, 2011, recommended the project be found complete. On December 14, 2011, the Energy Commission declared the application complete after hearing a presentation by staff recommending that the project be found complete pursuant to Energy Commission regulations, but also notifying the Commission that significantly more information would be required, which would result in extending the review timeline past the 12-month timeframe provided in Public Resources Code section 25540.6 . (Transcript of December 14, 2011 Business Meeting, pp. 27-29.)

<sup>1</sup> All regulatory references are to the Commission's regulations contained in California Code of Regulations, title 20, unless otherwise specified.

In its comments on staff's issues identification report, the Center for Biological Diversity argues that the Commission should not have found the AFC complete because only two days after such determination, staff, along with biological resources staff of several other agencies (U.S. Fish and Wildlife Service, U.S. Bureau of Land Management, California Department of Fish and Game, hereinafter referred to as the REAT [Renewable Energy Action Team] agencies), issued a document outlining additional data needs that would take at least one year for the applicant to provide. (Intervenor Center for Biological Diversity's Response to Staff's Issues Identification Report [CBD Response], pp. 2-3.) CBD argues that this is either the result of dishonesty on the part of staff or ineffective communication. (Id. at 2.) Neither is the case – the staff that worked on the biological resources completeness recommendation were the exact same staff working with the REAT agencies to issue the document outlining additional data needs and, as discussed above, staff made it clear prior to adoption of the completeness determination that significant additional information was still required to complete an analysis of project impacts.

What CBD fails to understand is that the Commission's determination of completeness is regulatorily proscribed – the Commission may only require the applicant to provide the information specified in the regulations and statute discussed above for the purposes of beginning the Commission's review process. Any information needs not satisfied by these provisions are handled through data requests during the discovery phase of the proceeding. This is how information needs have been handled by staff in this proceeding and this is how information needs have always been handled in power plant siting proceedings. There has never been a project found to be data adequate by the Commission that did not require additional information be provided before a decision on the application could be made. The constraint imposed by strictly adhering to the information requirements proscribed by regulation is most apparent when dealing with solar power plant applications because these information requirements were first established and subsequently revised during an era when applications mainly pertained to natural gas power plants of roughly 20 acres in size. Solar facilities such as Rio Mesa are orders of magnitude larger than this and the information requirements in areas such as Biological and Cultural Resources are likewise greater, as is the time generally needed to gather and process the data.

The Executive Director or a delegate is required to review all submitted information and “determine whether the notice or application for certification **contains the information required under section 1704 and is therefore complete.**” (1709(a) [emphasis added].) Section 1704(5)(c) requires that an AFC for a non-geothermal project contain all the information specified in Appendix B of Chapter 5. The regulations provide only 30 days for this initial review. (1709(b).) Other than some minor informational requirements

contained in Public Resources Code section 25520, no other information is required to be contained in an AFC for a non-geothermal project. Thus, if the application meets the requirements outlined in section 1704 the Executive Director has no other option but to determine that the application is complete even if staff believes additional information will be required to enable a sufficient review pursuant to the California Environmental Quality Act (CEQA) or applicable laws, ordinances, regulations, and standards (LORS). While CBD raises this issue only in relation to biological resources, the Committee has asked staff to address it in terms of cultural resources as well since we have also indicated substantial additional information may be required in that area.

It should be noted that the proper process for challenging a Commission decision on the completeness of an application is through section 1720, which requires a petition for reconsideration, directed to the full Commission, within 30 days of the Commission decision or order. As CBD itself asserts, it had notice of the events that triggered its belief that the Commission declared the application complete in error within 2 days of the decision, more than enough time to meet the 30-day deadline; CBD offers no explanation for its failure to comply with section 1720.

#### **A. Biological Resources**

The information requirement contained in Appendix B(g)(13)(D)(i) is the guiding requirement for the survey data at issue; it requires an AFC to contain “[c]urrent biological resources surveys conducted using appropriate field survey protocols during the appropriate season(s). State and federal agencies with jurisdiction shall be consulted for field survey protocol guidance prior to surveys if a protocol exists.”

On November 8, 2011, the Executive Director noted that the application was deficient pursuant to this requirement because even though surveys had been provided, some areas had not been surveyed due to lack of access. (Rio Mesa Electric Generating Station, Staff’s Data Adequacy Recommendation, November 8, 2011, p. 17.) The Executive Director requested that these areas be surveyed and for those surveys for which the timing was not right, a plan be provided detailing when and how such surveys would be conducted. (Id.) The Executive Director received this information on November 18, 2011 and determined that it met the Appendix B(g)(13)(D)(i) requirements for survey data.

For industrial scale solar projects in the desert, completion of “point count” surveys, per BLM’s recommendations, generally are considered by staff the appropriate field survey protocols to meet data adequacy for baseline bird data, as required in Appendix B(g)(13)(D)(i). This protocol requires a series of field surveys to be repeated on weekly intervals, for 4-week periods, once during spring and once during winter. This

information was provided prior to the Commission's completeness determination. Thus, consistent with past practice and a plain reading of the regulatory requirement, staff considered the applicant to have satisfied this provision. It is important to note that the Appendix B requirements do not contain a catch-all provision that allows for staff to require additional information not listed if such information is necessary to complete review of an application in a 12-month timeframe. Staff is limited to what is specified in the regulations, and if the applicant provides information that meets a plain reading of the regulatory requirement, staff's practice has been to deem it to have satisfied that requirement even if additional information will be necessary to complete staff's analysis.

CBD's main concern does not appear to be quibbling with the nuances of "data adequacy" as much as that by declaring the application complete they believe the Commission will be pressured to forgo obtaining the necessary information in favor of meeting the 12-month timeframe the applicant keeps referring to; thereby potentially approving the project without sufficient data to make an informed decision regarding the project's potential for significant adverse impacts or its compliance with LORS. (CBD Response, p. 3.) Staff wholeheartedly agrees with CBD that no decision should be made until there is sufficient information on which to base an informed decision. Staff believes that such information will be available in the timeframe outlined in staff's proposed schedule, and that strict adherence to the 12-month timeframe in Public Resources Code section 25540.6, which carries with it no penalty and which the Commission has passed on numerous previous occasions for a variety of reasons, is unwarranted here.

The REAT agencies have requested a full year of data collection to evaluate occurrence and seasonality of migratory and wintering birds in the project vicinity. The requested additional data would necessitate the following activities: field surveys by qualified biologists throughout the year, to observe numbers and diversity of migrating birds during spring and fall, wintering birds, and breeding birds during spring; collecting nocturnal migratory bird abundance data using radar; and thorough breeding season surveys in appropriate habitat to determine whether state-listed endangered Gila woodpecker or elf owl nest on the project site and, if so, how many nesting territories the site supports for each species.

Obtaining additional information on migratory and breeding birds that may use the site is critical to an understanding of this project's potential impacts for several reasons: the large scale of the project and the "power tower" technology present a potential hazard of collision or other injury (e.g., burning) to birds; the site is within the Colorado River migration corridor, where very large numbers of birds migrate annually; and the site is within the vicinity of a series of wildlife refuges - large numbers of waterfowl and shorebirds winter in the region and travel among these refuges and other habitat areas

throughout the winter season. Due to the combination of the proposed project technology and location, staff needs further information on bird use of the site to evaluate potential significance of bird injuries and mortality that may be caused by striking the facilities or being burned, singed, or blinded by the concentrated solar energy. These additional data as requested by staff and the other REAT agencies are comparable to bird field data to be compiled for another renewable energy project judged to pose a high risk to golden eagles and migratory birds, the Chokecherry and Sierra Madre Wind Energy Project in Wyoming.<sup>2</sup> That project's applicant (Power Company of Wyoming LLC) has coordinated with the U.S. Fish and Wildlife Service (Service), BLM, and the Wyoming Game and Fish Department, and will conduct one full year of bird surveys in the area, including radar data on raptors and flocks of migrating birds; day-long avian surveys at a series of 15 selected locations; breeding and resident bird surveys; and raptor nest surveys and monitoring. Staff has not reviewed the survey methods for the Wyoming project, however, the data as requested for the Rio Mesa Solar Electric Generating Facility is not unprecedented and is consistent with the data that BLM and the Service are recommending be collected by the Wyoming applicant.

Additionally, data provided in the AFC indicate that one state-listed endangered species, Gila woodpecker, occurs on the project site. In addition, descriptions of habitat and staff's brief visit to the site in November 2011 indicate that there is suitable habitat on the site for the elf owl, another state-listed endangered bird. The site is within the geographic range of both species. Staff will need sufficient baseline data on both species to evaluate potential for take per the California Endangered Species Act (CESA) and, if necessary, develop conditions of certification to fully mitigate the project's impacts to either species.

On February 27, 2012, the applicant filed objections to several of the biological resources data requests issued by staff in conjunction with the REAT agencies. Because these objections are intimately connected to the issues the Committee asked to be briefed, staff expects that the status of the objections and the underlying data requests will be addressed at the March 19, 2012 Status Conference and the outcome reflected in the Committee's resultant scheduling order. If this turns out not to be the case, staff may file a motion to compel to bring the matter more directly before the Committee.

## **B. Cultural Resources**

As discussed above, while the information requirements specified in Appendix B provide a baseline level of data, they do not approach the amount of information and detail needed to properly analyze a project the size of Rio Mesa, especially considering the number of potentially eligible cultural resource sites identified. Nor is the allotted 30 days

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<sup>2</sup> <http://www.powercompanyofwyoming.com/deis/docs/pcw-radar.pdf>.

allowed for the determination of data adequacy a sufficient amount of time to review the information provided in detail. For Rio Mesa, the cultural resources technical report alone was over 1600 pages, not including the appendices, which contained several hundred pages of individual site records and identified over 450 potentially eligible resources, more than any other project ever analyzed by staff.

Thus, staff reviews the application to ensure the basic components identified in Appendix B (g)(2) have been met; staff does not have the ability to confirm that all the submittals are in fact accurate and do not contain omissions. These clarifications are left to be addressed during the discovery phase. Even with four persons assigned to this project, staff is still reviewing the applicant's original submittal. At this time, it appears the technical report provided does not contain sufficient documentation to allow staff to confirm the applicant's recommendations of significance or reach an independent conclusion regarding the proposed project's potential to result in a significant adverse effect to historical resources. In addition to the data adequacy requirements, the applicant also submitted an initial geoarchaeological assessment of the site as part of its AFC to assist staff to better understand the context of the site. However, a more comprehensive second phase of geoarchaeological field investigation is still needed to adequately contextualize the project area. Staff has issued data requests asking the applicant to provide this necessary information and undertake this additional fieldwork. (Rio Mesa Solar Electric Generating Facility (11-AFC-4) Data Requests, Set 1b (Nos. 85- 154) and Amended Data Request Set 1a (No. 44), issued February 27, 2012.)

The second phase of the geoarchaeological field investigation and evaluation phase fieldwork requested for this project are designed to facilitate compliance with the federal (National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) Section 106) and state (California Environmental Quality Act or CEQA) environmental review requirements for historical resources potentially impacted by the proposed project, as well as the project's consistency with local, state, and federal laws, ordinances, regulations, and standards (LORS). CEQA and NEPA, in addition to Section 106, must all be satisfied as this project is under joint consideration by the Energy Commission and the BLM.

The process for evaluation of the project site's cultural resources inventory is similar for both the BLM and the Energy Commission. Each requires a 100% initial survey with preliminary evaluations of all identified sites. This initial survey data was provided to the Energy Commission in the AFC, with preliminary recommendations of significance, but did not include the data necessary for staff to formally evaluate the recommendations or determine the historical significance of the identified cultural resources. Although this information is not explicitly required under Appendix B(g)(2), it is a prerequisite for staff's determination of significance, impact analysis, and development of appropriate

mitigation. This information is requested as part of Data Requests, Set 1B, issued February 27, 2012.

Once the information requested to support the applicant's recommendations of historical significance is received, staff will be able to "sort" the identified sites by landform context and potential for historical significance. Data from the second phase of the geoarchaeological field investigation will facilitate determination of the subset of overall archaeological resource inventory that will require evaluation phase fieldwork. The resulting subset of sites where historical significance cannot be determined will then be investigated during the evaluation phase fieldwork to establish site significance and the integrity of context for the various artifacts. Based on these results, staff will develop mitigation measures to reduce any significant impacts to those historical resources to the extent feasible. The acquisition of this second phase geoarchaeological data and the analysis of that data must be completed prior to completion of the Preliminary Staff Assessment/Draft Environmental Impact Statement (PSA/DEIS) to disclose to the public how the project will impact historical resources (as defined by CEQA) and the mitigation proposed to reduce these impacts. This satisfies the requirements of CEQA, NEPA, and, for the most part, Section 106. While NEPA allows this work to be deferred until after the Record of Decision (ROD) is approved, CEQA does not. Recent court decisions have been particularly adamant about the need to evaluate all resources and determine significance prior to approving a project.

Coordination of site investigations during the environmental assessment process and post-decision project compliance is generally accomplished through the Energy Commission's participation in the execution of a Programmatic Agreement (PA) or Memorandum of Agreement (MOA) by the BLM.

The total timeframe staff predicts will be required for the applicant to conduct the requested field investigations and prepare the resulting data, and for staff to evaluate and incorporate the data into the project analysis is between 14-32 months.

- Second phase of geoarchaeological field investigation: Approximately 90 to 120 days would be required to plan, conduct, and report this fieldwork.
- Evaluation phase fieldwork on a presently unknown subset of the 450+ archaeological resources in the project area of analysis: Approximately 30 to 60 days to plan the fieldwork, 5 to 11 months to conduct it, and 5 to 11 months to analyze and report the results, for a total of 11 to 24 months for the final product.
- Staff review and analysis of evaluation phase final report, development of resource-specific mitigation, and incorporation into PSA/DEIS: Approximately 90

to 120 days. Clarification of the data received may also be required, resulting in the need for additional time.

This timeframe is based on information contained in the AFC and Cultural Resources Technical Report. The second phase of the geoarchaeological field investigation and portions of the evaluation phase fieldwork planning could occur concurrently. Depending on the number of field crew provided by the applicant, and supplemental information collected regarding the resources once fieldwork begins, the time allotted for work in the field and lab analysis could be reduced. However, the extent of this reduction can only be determined once personnel are in the field. Timing may also be affected should BLM need any additional information to complete the Section 106 consultation process<sup>3</sup>.

## **II. One Year of Additional Bird and Bat Surveys Will Be Adequate to Publish the Preliminary Staff Assessment/Draft Environmental Impact Statement.**

Staff believes that one full year of bird and bat data, as requested, will provide adequate information to support the Energy Commission's CEQA and California Endangered Species Act (CESA) reviews. A full year of data will provide estimates of the numbers and species diversity of birds migrating through the area during spring and fall, as well as bird use in the area during winter. Additional data beyond one full year would be useful, but would not be necessary, to adequately describe conditions at the project site for CEQA analysis.

As discussed above, two state-listed endangered bird species, Gila woodpecker and elf owl, may nest on the site during the spring-summer breeding season. Staff's request for breeding season surveys for both species, to be conducted during 2012, will provide an adequate basis for evaluating take of either species in terms of CESA and for recommending conditions of certification to fully mitigate any take.

The U. S. Fish and Wildlife Service (Service) is responsible for implementing the federal Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act. The Service generally recommends multiple years of migratory bird data and golden eagle data to support a project risk assessment for these resources. The Service has indicated that, for the Rio Mesa project, adequate baseline data are especially important because of the project's potential to significantly affect many migratory bird species, due to its technology and location, as noted above, and because migration routes and seasonality may vary from year to year.

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<sup>3</sup> 16 U.S.C. §106.

While it is convenient to have all federal permits and authorizations in place prior to a final Commission decision, timing does not always allow for such synchronicity. In the event the Service is unable to finalize its review of the proposed project pursuant to federal provisions, staff anticipates recommending a condition of certification that would require the applicant to prepare a Bird and Bat Protection Plan pursuant to the Service's guidelines, and consult with the Service to ensure compliance with both federal acts.

### **III. Effect of the Current Riverside County Board of Supervisors Policy B-29 Litigation on Staff's Analysis.**

On November 8, 2011, the Riverside County Board of Supervisors adopted several measures, including Board of Supervisors Policy No. B-29, General Plan Amendment 1080, Board Resolution 2011-273, and Ordinance 348.4705 to facilitate the development of large scale solar facilities on 10 acres or larger within unincorporated areas of Riverside County. On February 3, 2012, the Independent Energy Producers Association and Large Scale Solar Association filed suit in California superior court challenging Board Policy No. B-29, which requires a franchise, real property interest agreement, or development agreement between the County and the solar power plant owner and a payment based on the net acreage of the project. In adopting the above measures, the County affirmatively stated in its decisional documents that should any one of the above measures be determined to be invalid or unenforceable, the rest would be deemed invalid as well. (Board Policy No. B-29, p. 6.)

It is unclear how long the litigation at issue is likely to take and staff does not presume to know how the court may ultimately decide in the matter. Therefore, until the litigation is resolved, staff will analyze the project's compliance with LORS and potential impacts under two possible scenarios, one with and one without the measures listed above.

### **IV. How the Recent Adverse Impacts to Kit Foxes in the Project Vicinity Will Affect the Scope and Timeline of Commission Review of the AFC.**

The wildlife agencies are monitoring an outbreak of canine distemper virus along the Interstate-10 corridor in eastern Riverside County. There was a distemper outbreak in island kit fox populations on the Channel Islands in the 1990s. However, this is the first known outbreak of distemper among desert kit foxes;. The outbreak was discovered after dead desert kit foxes were found during compliance monitoring for the Genesis solar project. Necropsies of these animals revealed that they had been infected with canine distemper virus. The CDFG has initiated a research project to capture kit foxes and collect blood samples to evaluate the geographic extent of the disease. In addition, captured animals are being vaccinated against distemper and radio collars have been

fitted to some animals to track their movements. Desert kit foxes have been captured for disease testing at the Palen, Genesis, and Desert Sunlight solar project sites, and at SCE's Red Bluff Substation site. Staff understands that distemper virus has been identified or implicated at all four sites. These projects span a distance of about 25 miles north and south of the Interstate-10 corridor. The origin of the distemper outbreak is unknown, but there is no known reason to attribute it to the solar energy projects.

Desert kit foxes are found in open desert habitats throughout the California deserts. Typical practice for solar projects has been to exclude desert kit foxes from the project areas during pre-construction clearing of project sites by "passive relocation" methods (i.e., by closing burrows, forcing the foxes to locate new burrows off-site). This practice has the potential to worsen the outbreak, by either raising stress levels causing increased susceptibility to infection, or causing increased movement of diseased animals, thereby increasing the spread of disease into new areas.

To date, there has been no effort to capture desert kit foxes at the Rio Mesa site or test them for distemper. The AFC reported a large number of kit fox burrow complexes (193) on the site. (AFC p. 5.2-60.) It is possible that distemper exists within the population now, or that it will spread to the site prior to the initiation of project construction.

Staff anticipates working with CDFG and other resource agencies to develop specific desert kit fox management and handling recommendations to (1) determine whether canine distemper exists among kit foxes on the site and, (2) prevent project implementation from causing further spread of the disease, through increased stress to the animals or the dispersal of diseased animals off-site. Staff believes that the canine distemper outbreak among desert kit foxes will likely necessitate management efforts beyond those incorporated for prior projects in the area. Specific management guidelines have not yet been identified, but will likely include modifications to the present "passive relocation" strategy, perhaps including capturing, disease-testing, or vaccinating animals prior to relocation; or more specific relocation planning such as actively moving animals to selected relocation sites (though active relocation could only be permitted under a project-specific MOU from CDFG). Staff expects to specify these measures in one or more conditions of certification to be recommended in the project's Staff Assessment. Staff believes that compliance with the measures would necessitate preparation and implementation of a Desert Kit Fox Management Plan, which would likely be comparable in scope to other resource protection plans commonly recommended in staff's conditions of certification. Staff believes this issue can be resolved in the timeframe provided in staff's proposed schedule.

## **V. Any Additional Related Matters.**

A portion of the project is proposed on federal land managed by the Bureau of Land Management (BLM) and a portion is proposed over both public and private lands not managed by the BLM. The Energy Commission and the BLM will be preparing a joint environmental document in compliance with the California Environmental Quality Act and the National Environmental Policy Act (Staff Assessment (SA)/Environmental Impact Statement (EIS)). However, it is important to note that, at this time, the BLM has indicated that a Plan of Development (POD) has not been accepted. Acceptance of the POD is similar to the "completeness" determination of the Energy Commission. Acceptance of the POD is an indication that the project submittal is acceptable enough to begin the formal environmental review process for the BLM, which is kicked off with the filing of a Notice of Intent (NOI) to prepare an EIS.

The applicant has submitted a POD and is working closely with the BLM in an effort to achieve acceptance of the POD. As noted in staff's Issues Identification Report, a perfected POD is anticipated in March 2012 and a filing of the NOI is anticipated in April 2012. Recent discussions with BLM staff have suggested that timing still allows for the POD to be perfected in this timeframe, assuming the most recent information submitted by the applicant is determined to be acceptable. The BLM has indicated that they continue to review this new information and that their review has not yet concluded. Therefore, it is conceivable that the POD may still not be perfected within the above noted time line. As with the Commission's completeness requirements for applications for certification, perfecting the POD is the responsibility of the applicant. Staff will continue to keep the Committee apprised of any developments pertaining to this issue.

Another potential timing issue involves the development of the Least Environmentally Damaging Practicable Alternative (LEDPA) under NEPA. The proposed Rio Mesa project has identified over 1,000 acres as potential jurisdictional waters on the proposed site. Under the Clean Water Act, Section 404 permitting process, the Army Corps of Engineers and U.S. Environmental Protection Agency (EPA) require a rigorous Alternatives Analysis to evaluate impacts from each alternative on aquatic resources in order to determine the LEDPA. As Rio Mesa is a joint NEPA/CEQA document, this will require coordination with BLM in consultation with Army Corps and EPA. As part of this process, the Alternatives that are evaluated require a determination from the Army Corps of Engineers that the proposed project is in fact the LEDPA. This process can take up to a year or longer in some cases.



**EXHIBIT 1**  
**RIO MESA SOLAR ELECTRIC GENERATING FACILITY (11-AFC-4)**  
**STAFF'S UPDATED PROPOSED SCHEDULE**

	ACTIVITY	Staff's Updated Proposed Schedule
1	AFC Filed	10-14-11
2	AFC Data Adequacy Determination a Commission Business Meeting	12-14-11
3	Workshop on Biological Resources – Bird Bat Survey Protocol	1-6-12
4	Staff Files Issue ID Report	1-25-12
<b>5</b>	<b><u>Informational Hearing and Site Visit</u></b>	<b><u>2-1-12</u></b>
<b>6</b>	<b><u>Data Request Set 1A (Nos. 1 – 84) Filed</u></b>	<b><u>2-7-12</u></b>
<b>7</b>	<b><u>Data Request and Issue Resolution Workshop</u></b>	<b><u>2-13-12</u></b>
<b>8</b>	<b><u>Data Request Set 1B (Nos. 85 – 154) Filed</u></b>	<b><u>2-27-12</u></b>
<b>9</b>	<b><u>Data Request and Issue Resolution Workshop</u></b>	<b><u>3-1-12</u></b>
<b>10</b>	<b><u>Data Request and Issue Resolution Workshop</u></b>	<b><u>3-13-12</u></b>
<b>11</b>	<b><u>Committee Status Conference Hearing</u></b>	<b><u>3-19-12</u></b>
<del>5-12</del>	Perfected POD (BLM)	March 2012
<del>6</del> <b>13</b>	NOI (30-day Scoping period (BLM)	April 2012
7	Staff Files First Round of Data Requests	February 3, 2012
<del>8</del> <b>14</b>	Staff Files Subsequent Rounds of Data Requests and Applicant Submits Data Responses. Series of Energy Commission Workshops to Discuss/Address Data and Issues	March – December 2012
9	Applicant Conducts and Submits Requested Bird/Bat Survey Information (Information to be Submitted throughout the year)	February 2012— February 2013
<b><u>Biological Resources Related to Bird/Bat Surveys*</u></b>		
<b>15</b>	<b><u>First Round of Survey Results (Workshop to follow)</u></b>	<b><u>5/1/12</u></b>
<b>16</b>	<b><u>Second Round of Survey Results Anticipated (Workshop to follow)</u></b>	<b><u>8/1/12</u></b>
<b>17</b>	<b><u>Third Round of Survey Results Anticipated (Workshop to follow)</u></b>	<b><u>11/1/12</u></b>
<b>18</b>	<b><u>Fourth Round of Survey Results Anticipated (Workshop to follow)</u></b>	<b><u>3/1/13</u></b>
<del>10</del> <b>19</b>	REAT Agencies Review and Evaluate Survey Information	February 2012 – March 1, 2013
<b>20</b>	<b><u>Biological Assessment Submitted to USFWS (starts 135-day consultation clock – BO by September 1, 2013)</u></b>	<b><u>April 15, 2013</u></b>
<del>11</del> <b>21</b>	Energy Commission and BLM Incorporate Information into Environmental Document (Not Completed Until Biological Assessment Completed)	1 <sup>st</sup> and 2 <sup>nd</sup> Quarter of 2013
<b><u>Cultural Resources</u></b>		
<del>12</del>	Applicant Conducts and Submit Additional Cultural Resource Evaluations. Energy Commission and BLM Conduct Native American Consultations.	February— December 2012
-	<b><u>First Phase of Geoarchaeological Field Investigation</u></b>	<b><u>Completed**</u></b>
<b>22</b>	<b><u>Second Phase of Geoarchaeological Field Investigation – Estimate of 90- 120 Days to Plan, Conduct, and report fieldwork .</u></b>	<b><u>Start 4/1/12</u></b> <b><u>Complete</u></b> <b><u>7/1 or 8/1/12</u></b>
<b>23</b>	<b><u>Evaluation Phase Fieldwork on Presently Unknown Subset of 450+ Archaeological Resources.</u></b>  <b><u>Estimate of 1-2 Months to Plan Evaluation Fieldwork</u></b> <b><u>Estimate of 5 to 11 Months to Conduct Fieldwork.</u></b> <b><u>Estimate of 5 to 11 Months to Write Report</u></b> <b><u>Total Estimate of to Complete Evaluation Fieldwork 11-24 Months</u></b>	<b><u>Start</u></b> <b><u>5/1/12***</u></b>  <b><u>Complete</u></b> <b><u>4/1/13 to 5/1/14</u></b>
<b>24</b>	<b><u>Staff Review and Analysis of Evaluation Phase Final Report,</u></b>	<b><u>Start 4/1/13</u></b>

	<b><u>Development of Resource-Specific Mitigation, and Incorporation into a PSA. Estimate of 90 to 120 Days.</u></b>	<b><u>Complete 7/1 to 8/1/13</u></b>  <b><u>Start 5/1/14</u></b> <b><u>Complete 8/1 to 9/1/14</u></b>
13	<del>Energy Commission and BLM Conduct Review and Evaluation of New Cultural Information.</del>	1 <sup>st</sup> and 2 <sup>nd</sup> Quarter of 2013
14 <b><u>25</u></b>	PSA/DEIS	2 <sup>nd</sup> Quarter 2013 <b><u>8/1/13</u></b> to <b><u>9/1/14</u></b>
15 <b><u>26</u></b>	PSA/DEIS Workshop	3 <sup>rd</sup> Quarter 2013 <b><u>10/1/13</u></b> to <b><u>11/1/14</u></b>
16 <b><u>27</u></b>	90- Day Comment Period Ends (Based on BLM/NEPA Requirement)	3 <sup>rd</sup> Quarter 2013 <b><u>11/1/13</u></b> to <b><u>12/1/14</u></b>
17 <b><u>28</u></b>	FSA/FEIS NOA Published (approx. 45-days)	4 <sup>th</sup> Quarter 2013 <b><u>12/15/13</u></b> to <b><u>1/15/15</u></b>
18 <b><u>29</u></b>	30- Day Protest period (BLM)	4 <sup>th</sup> Quarter 2013 <b><u>1/15/14</u></b> to <b><u>2/15/15</u></b>
19 <b><u>30</u></b>	FSA Workshop (if necessary)	4 <sup>th</sup> Quarter 2013 <b><u>2/15/14</u></b> to <b><u>3/15/15</u></b>
20 <b><u>31</u></b>	Prehearing Conferences	TBD
21 <b><u>32</u></b>	Evidentiary Hearings	TBD
22 <b><u>33</u></b>	PMPD Filed	TBD
23 <b><u>34</u></b>	Hearing on PMPD	TBD
24 <b><u>35</u></b>	Final Decision Issued	TBD
25 <b><u>36</u></b>	BLM ROD/ROW grant issued	TBD

\* **Dates for quarterly survey results are intended to show that information can be submitted over time and will be reviewed over time. The actual number and timing of submittals may vary.**

\*\* **Additional information needed to clarify portions of Phase 1 included in the planning portion of Phase 2.**

\*\*\* **Additional information requested in Data Requests 1B (113-116) to evaluate the recommendations or determine the historical significance of the identified cultural resources must be received before the Evaluation Phase Fieldwork plan can be completed. Data responses are due on March 28, 2012, but given the extent of the resources that need to be addressed, it is anticipated that additional time will be requested by the applicant to complete these tasks.**

POD = Plan of Development

NOI = Notice of Intent

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USFWS = United States Fish and Wildlife Service

PSA = Preliminary Staff Assessment

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DEIS = Draft Environmental Impact Statement

FEIS = Final Environmental Impact Statement

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ROW = Right of Way

**Note: BO is desired but not necessary to have FSA/FEIS.**

**EXHIBIT 2**  
**RIO MESA SOLAR ELECTRIC GENERATING FACILITY (11-AFC-4)**  
**STAFF'S UPDATED PROPOSED SCHEDULE**

	ACTIVITY	Staff's Updated Proposed Schedule
1	AFC Filed	10-14-11
2	AFC Data Adequacy Determination a Commission Business Meeting	12-14-11
3	Workshop on Biological Resources – Bird Bat Survey Protocol	1-6-12
4	Staff Files Issue ID Report	1-25-12
5	Informational Hearing and Site Visit	2-1-12
6	Data Request Set 1A (Nos. 1 – 84) Filed	2-7-12
7	Data Request and Issue Resolution Workshop	2-13-12
8	Data Request Set 1B (Nos. 85 – 154) Filed	2-27-12
9	Data Request and Issue Resolution Workshop	3-1-12
10	Data Request and Issue Resolution Workshop	3-13-12
11	Committee Status Conference Hearing	3-19-12
12	Perfected POD (BLM)	March 2012
13	NOI (30-day Scoping period (BLM)	April 2012
14	Staff Files Subsequent Rounds of Data Requests and Applicant Submits Data Responses. Series of Energy Commission Workshops to Discuss/Address Data and Issues	March – December 2012
<b>Biological Resources Related to Bird/Bat Surveys*</b>		
15	First Round of Survey Results (Workshop to follow)	5/1/12
16	Second Round of Survey Results Anticipated (Workshop to follow)	8/1/12
17	Third Round of Survey Results Anticipated (Workshop to follow)	11/1/12
18	Fourth Round of Survey Results Anticipated (Workshop to follow)	3/1/13
19	REAT Agencies Review and Evaluate Survey Information	February 2012 – March 1, 2013
20	Biological Assessment Submitted to USFWS (starts 135-day consultation clock – BO by September 1, 2013)	April 15, 2013
21	Energy Commission and BLM Incorporate Information into Environmental Document (Not Completed Until Biological Assessment Completed)	1 <sup>st</sup> and 2 <sup>nd</sup> Quarter of 2013
<b>Cultural Resources</b>		
-	First Phase of Geoarchaeological Field Investigation	Completed**
22	Second Phase of Geoarchaeological Field Investigation – Estimate of 90-120 Days to Plan, Conduct, and report fieldwork .	Start 4/1/12 Complete 7/1 or 8/1/12
23	Evaluation Phase Fieldwork on Presently Unknown Subset of 450+ Archaeological Resources.  Estimate of 1-2 Months to Plan Evaluation Fieldwork Estimate of 5 to 11 Months to Conduct Fieldwork. Estimate of 5 to 11 Months to Write Report Total Estimate of to Complete Evaluation Fieldwork 11-24 Months	Start 5/1/12***  Complete 4/1/13 to 5/1/14
24	Staff Review and Analysis of Evaluation Phase Final Report, Development of Resource-Specific Mitigation, and Incorporation into a PSA. Estimate of 90 to 120 Days.	Start 4/1/13 Complete 7/1 to 8/1/13  Start 5/1/14

		Complete 8/1 to 9/1/14
25	PSA/DEIS	8/1/13 to 9/1/14
26	PSA/DEIS Workshop	10/1/13 to 11/1/14
27	90- Day Comment Period Ends (Based on BLM/NEPA Requirement)	11/1/13 to 12/1/14
28	FSA/FEIS NOA Published (approx. 45-days)	12/15/13 to 1/15/15
29	30- Day Protest period (BLM)	1/15/14 to 2/15/15
30	FSA Workshop (if necessary)	2/15/14 to 3/15/15
31	Prehearing Conferences	TBD
32	Evidentiary Hearings	TBD
33	PMPD Filed	TBD
34	Hearing on PMPD	TBD
35	Final Decision Issued	TBD
36	BLM ROD/ROW grant issued	TBD

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**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**

**APPLICATION FOR CERTIFICATION  
FOR THE *RIO MESA SOLAR*  
*ELECTRIC GENERATING FACILITY***

DOCKET NO. 11-AFC-04  
PROOF OF SERVICE  
(Revised 2/27/12)

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DECLARATION OF SERVICE

I, Teraja Golston, declare that on March 9, 2012, I served and filed copies of the attached, dated Energy Commission Staff's Brief in Response to Topics Identified in Notice of March 19, 2012 Status Conference. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: [<http://www.energy.ca.gov/sitingcases/riomesa/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;
- 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."

**AND**

For filing with the Docket Unit at the Energy Commission:

- by sending electronic copies to the e-mail 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. 11-AFC-4  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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

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

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

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.

/s/ Teraja Goslton \_\_\_\_\_  
Teraja Golston