

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR POWER
PROJECT

DOCKET NO. 09-AFC-7

**INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY
RESPONSE TO "PETITION FOR OWNERSHIP TRANSFER" AND
REQUEST TO CLARIFY PETITION**

June 28, 2012

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On June 25, 2012, Galati & Beck filed a “Petition for Ownership Transfer from Palen Solar I to NALEP Solar Project I, LLC.” The Center for Biological Diversity (“Center”) reviewed the request and provides the following response.

1. Request for Clarification of Petition:

The Petition states that it “seeks to transfer ownership of the Final Decision for the Palen Solar Power Project (PSPP), 09-AFC-7”. The Center seeks clarification of this language because no private entity “owns” the Final Decision of the Commission. The regulatory section referenced in the Petition specifically applies to ownership or control *of a facility*, not a Commission decision.

(b) Change in Ownership or Operational Control

(1) *A petition to transfer ownership or operational control of a facility shall contain the following information:*

(A) a discussion of any significant changes in the operational relationship between the owner and operator;

(B) a statement identifying the party responsible for compliance with the commission's conditions of certification; and

(C) a statement verified by the new owner or operator in the same manner as provided in Section 1707 that the new owner or operator understands the conditions of certification and agrees to comply with those conditions.

20 CCR 1769(b) (emphasis added). In this instance there is no “facility” that is owned or controlled by any of the corporate entities listed in the Petition. The original applicant, Palen Solar I LLC, never obtain a right-of-way grant from the U.S. Bureau of Land Management for the proposed project and indeed, the BLM did not even issue a final decision or record of decision (ROD) on that application for a right-of-way grant. The ROD, right-of-way grant, and a notice to proceed would all have been needed before any facility could be constructed or operated; no site control was ever obtained and no facility has been constructed. Therefore, it is

unclear what the regulatory basis would be for the Commission to evaluate the “petition for ownership transfer” in this instance.

The Petition also states that “Nalep Solar Project I, LLC intends to file a Petition for Amendment with the Commission to utilize the BSE’s solar thermal technology on the PSPP site.” Given Nalep’s stated intention to seek a “amended” approval for an entirely different project utilizing different technology, it appears that Nalep does not seek to “transfer ownership of” the PSPP project as it was approved by the Commission at all, but rather, seeks “ownership” of the Final Decision in order to construct and operate an entirely different project. The new or “amended” project that Nalep “intends” to seek approval for has not been proposed to or evaluated by the Commission at all, was not considered in the Final Decision, and certainly was not approved in any sense in the Final Decision for the PSPP project.

While the Declaration filed with the Petition makes it clear that Nalep Solar Project I, LLC, seeks the California Energy Commission’s approval of its “Petition for Ownership Transfer” in order to fulfill requirements of the Bankruptcy Court, it is unclear to the Center from the Petition, what the legal basis would be for the Commission to fulfill the request and whether the required evidence has been provided.

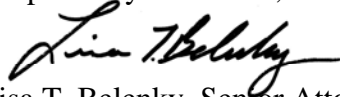
2. The Palen Project is Not Within the Ambit of Public Resources Code § 25500.1.

The Petition states that Nalep intends to seek an amendment to the approved project for a different project that would also use *solar thermal* technology and if so, it appears that the application for a new or amended project would properly be brought to the Commission. However, the Center notes that if the new project proponent later seeks to “amend” the earlier application/decision for the PSPP solar thermal trough project to change technologies to a photovoltaic (PV) project, then the Commission would not have jurisdiction over the new or

amended project. Public Resources Code § 25500.1 provided a limited exceptions that would allow the Commission to take jurisdiction over amendments of a limited number of solar thermal projects that it was anticipated would seek to change to PV projects. The language of Public Resources Code § 25500.1(a) expressly *excluded* projects such as the Palen project for which no Record of Decision had been issued before September 1, 2011.

Dated: June 28, 2012

Respectfully submitted,



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**APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR POWER
PLANT PROJECT**

Docket No. 09-AFC-7

**PROOF OF SERVICE
(Revised 8/27/10)**

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DECLARATION OF SERVICE

I, Lisa Belenky, declare that on June 28 2012, 2010, I served and filed copies of the attached Response, dated June 28, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[\[http://www.energy.ca.gov/sitingcases/solar_millennium_palen\]](http://www.energy.ca.gov/sitingcases/solar_millennium_palen)

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-7
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Lisa T. Belenky