

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 Request for Extension of the Preliminary Staff Assessment Filing Deadline and Motion to Compel Production of BrightSource Energy, Inc.'s Power Purchase Agreements Involving Rio Mesa Solar Electric Generating Facility****Staff's Request for Extension of Time for Publication of the Preliminary Staff Assessment**

On April 13, 2012, the Committee issued a Scheduling Order directing staff, among other things, to file its Preliminary Staff Assessment (PSA) in August 2012. On May 24, 2012, the applicant formally informed staff and other parties orally in a workshop presentation that it would be revising the proposed project to remove the northern third of the project, Rio Mesa III, from the proposal and to relocate the permanent common facilities. Subsequently on May 30, 2012, the applicant submitted formal written notification of their intent to pursue Alternative 3 as the new "Preferred Alternative" and furthermore indicated that they expected to submit the full package of information in early July.

Once notified of the project change, staff began planning how to incorporate the anticipated revised project information while still meeting the Committee's schedule of filing a PSA in August of 2012. Staff coordinated with the applicant on how and when the information should be submitted to help maintain schedule. Staff also reviewed internal document preparation processes to look for ways to streamline preparation, review, and final formatting and filing, all in an effort to maintain schedule.

On June 4, 2012, staff filed with the Committee a request to extend discovery. In that request, staff noted that the applicant would be revising the proposed project and that the applicant had indicated that they would be providing the revised information in early

July. Based on the information staff had at the time, staff believed that, although it would be difficult and would necessitate the use of extremely streamlined review, a PSA could be published in August if the full revised submittal was received in early July. Therefore, the staff's request focused only on extending discovery. However, staff also informed the Committee that because staff had not seen the full extent of the proposed changes, staff would reserve the right to make a later request for additional time to publish the PSA.

On June 15, 2012, the applicant informed staff that it would be providing a detailed description of the project changes to staff in accordance with the schedule attached at the end of this document, with five (5) sections submitted on June 21, 2012, seven (7) sections on July 10, 2012, and the remaining sections provided with the formal submittal by July 23, 2012 in electronic format, and July 25, 2012 in hard copy format. At the Mandatory Status Conference, applicant informed staff that two additional sections, Air Quality and Public Health, would also be provided on July 10, 2012.

Because these submittal dates were several weeks later than originally proposed by the applicant, at the Mandatory Status Conference, staff stated that we would likely file a request for an extension of time once we received the applicant's revised information and had a better understanding of how long it would take to incorporate the changes in the various technical sections. Unfortunately, were we to wait until we had a better understanding of the proposed changes before requesting additional time, it would not provide sufficient time for staff to change course were the Committee to deny our request. Therefore, in the interest of preserving the ability to comply to the extent feasible with the Committee Order, no matter which way it may rule on this matter, staff brings this request without the benefit of complete information on how the proposed changes affect each individual section.

Even with such imperfect information, however, it is clear to staff that additional time will be necessary to publish a PSA that accurately reflects all aspects of the revised project, its potential impacts, and excludes information from the previous project proposal that is no longer relevant. While it may sound like a simple matter to say that the project has been reduced by a third, the devil is truly in the details. The common facilities have been relocated, necessitating a completely revised air quality analysis, the access road has been changed, and a complete understanding of what resources will be avoided with the elimination of Rio Mesa III will not be obtained until the specifics are provided in writing. Additionally, it will not be known what other seemingly minor changes to the project are being made until a complete description is provided. Although the proposed project change may seemingly appear insignificant, it is telling that it will take the applicant over two months to prepare revised project information for submittal; staff

does not believe it is unrealistic to request a similar amount of time to revise its own analysis. In order for the PSA to function as intended, serving as an initial description of the project and any potential impacts, and ultimately allowing for a winnowing down of issues, it is important that above all it accurately reflect the project being proposed. It is for this reason that staff requests that the Scheduling Order be revised to allow for a PSA by September, 28 2012. Staff would note that the Quail Brush project recently received a 60-day extension on publication of the PSA based on a less significant project change.

Publishing in August would not be a simple matter of the PSA being incomplete in certain technical areas; the less time there is for staff to evaluate the project changes and confirm that their analyses reflect those changes, the more likely it will be that the PSA will contain outright errors of fact. From a purely logistical standpoint, staff's ability to complete the writing, review, formatting, publication, and final delivery of a PSA that, due to the complexity of the proposed project, will likely be on the order of over 1,000 pages in length, while also maintaining a level of quality control, will be virtually impossible with submittal of revised project information the last week of July. This is the case even if all review occurred simultaneously.

Finally, it should be kept in mind that the Rio Mesa project is not the only project staff is working on. Huntington Beach will undergo data adequacy review in July and quite possibly into August. The Hidden Hills Final Staff Assessment is also due in August and the Quail Brush PSA is due in September. Additionally, staff is anticipating that based on the most recent State budget discussions, required furlough days could further impact staff's ability to produce a PSA in an expedited manner.

Motion to Compel Production of BrightSource Energy Inc.'s Power Purchase Agreement(s) Involving Rio Mesa Solar Electric Generating Facility

It appears that one of the primary reasons for possibly denying staff's request for more time is the applicant's stated need for a Commission decision in first quarter 2013 based on its signed Power Purchase Agreement(s) (PPA). Although we have repeatedly requested to see the PPA(s) related to Rio Mesa¹, so far the applicant has only provided a few excerpts. (cite) While staff has made these requests in order to perform its alternatives analysis, staff believes review of the documents is also warranted to confirm statements made by the applicant regarding the urgency of the schedule. While staff does not doubt the veracity of applicant's stated assertions, recent apparently

¹ It appears from statements made in the application for certification that there may be more than one PPA related to Rio Mesa.

contradictory statements concerning the PPA provisions reflect a need for an independent review of some of these provisions.

The AFC states clearly on almost every page of its 10 page Alternative 3 analysis that Alternative 3 (now the proposed project) will “not provide 750MW as required by the PPAs.” (see Application for Certification, pp. 6-42, 6-43,6-45,6-49,6-51.) Yet in initial discussions with the applicant regarding the proposed change, the applicant assured staff that no revision to its PPA would be necessary. In Data Response #170, the applicant states that “[a]ny material deviation from the quantity of energy, the type of facility used to generate the energy or the period of delivery would constitute a default and potentially subject BSE to substantial financial penalties.” (Applicant’s Response to Data Requests, Set 2A (#155-#172), June 19, 2012.) These conflicting statements are troubling to staff as is our inability to confirm the true nature of the applicant’s obligations under the PPA.

While staff appreciates the applicant’s provision of a few paragraphs of the PPA in response to staff’s data requests, the evidence of apparent contradictory positions taken by the applicant with regard to the PPA point to a larger need for staff’s objective review of the requirements contained therein. As requested in Data Request #171, but ostensibly objected to by the applicant, staff would be amenable to reviewing the PPA under confidential cover or with the confidential material redacted. If the Committee finds this to be too onerous to ask of the applicant, then perhaps an in camera review of the material would suffice, with the document viewed by, but remaining outside the control of, staff and the Committee. Alternatively, while not satisfying staff’s needs for its alternatives analysis, an attestation, under penalty of perjury, by the applicant verifying previous statements made regarding any requirements for the project schedule and whether or not the recent project change requires revision to any PPA entered into by the applicant would be helpful in gaining an accurate understanding of scheduling needs. Pursuant to title 20, California Code of Regulations, section 1716(g), staff requests the Committee direct the applicant to provide the PPA in one of the forms above.

Staff’s Previously Filed Request for Extension of Discovery

As discussed at the Mandatory Status Conference, staff filed a request on June 11, 2012 asking the Committee to extend discovery 60 days beyond the date on which applicant files a complete description of the proposed project change, including all supporting material, currently promised by July 25, 2012. Staff believes this request is reasonable in light of the scope of the proposed change, and without it staff would have no opportunity to seek any clarification of the changes or pose questions to the applicant seeking more detailed information concerning the proposal. Regardless of

how the Committee rules on the schedule for the PSA, the information resulting from follow-up questions will be invaluable to the Final Staff Assessment; therefore, any concerns about maintaining the current schedule should not have any bearing on this decision.

DATED: June 29, 2012

Respectfully submitted,

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Attachment

Proposed Schedule for RMS Environmental Enhancement Filing¹

Groupings	Sections	Early Electronic Submittal to CEC
Group 1	5.4 Geologic Hazards 5.5 Hazardous Materials 5.11 Soils 5.14 Waste Management 5.16 Worker Safety	Th 6/21 Th 6/21 Th 6/21 Th 6/21 Th 6/21
Group 2	5.3 Cultural Resources 5.6 Land Use 5.7 Noise 5.8 Paleontological Resources 2.0 Project Description 3.0 Transmission System Engineering 4.0 Natural Gas Supply	Tues 7/10 Tues 7/10 Tues 7/10 Tues 7/10 Tues 7/10 Tues 7/10 Tues 7/10
Group 3	5.2 Biological Resources 5.10 Socioeconomics 5.12 Traffic-Transportation 5.13 Visual Resources 5.15 Water Resources	No early submittal. Submitted as part of complete filing. See below.
Group 4	5.17 Cumulative Impacts 6.0 Alternatives 1.0 Executive Summary	No early submittal. Submitted as part of complete filing. See below.
Electronic submittal of entire filing		Mon 7/23
Hard copy submittal of entire filing		Tues 7/24
Hard copies arrive at CEC		Wed 7/25

¹ Contained in an e-mail from Todd Stewart, BrightSource Energy, Inc., to Pierre Martinez, California Energy Commission, June 15, 2012.



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

**DOCKET NO. 11-AFC-04
PROOF OF SERVICE
(Revised 6/4/12)**

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DECLARATION OF SERVICE

I, Lynn Tien-Tran, declare that on June 29, 2012, I served and filed a copy of the attached **Energy Commission Staff's Request for Extension of the Preliminary Staff Assessment Filing Deadline and Motion to Compel Production of BrightSource Energy, Inc.'s Power Purchase Agreements Involving Rio Mesa Solar Electric Generating Facility**, dated June 29, 2012. 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.ca.gov

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 _____
Lynn Tien-Tran