

**DOCKETED**

**11-AFC-04**

TN # 66346

JUL 16 2012

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

In the Matter of: )  
)  
Application for Certification for the )  
Rio Mesa Solar Electric Generating Facility )  
\_\_\_\_\_ )

Docket No. 11-AFC-04

**APPLICANT’S RESPONSE TO 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**

Christopher T. Ellison  
Brian S. Biering  
Ellison, Schneider & Harris, L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816  
(916) 447-2166 (Phone)  
(916) 447-3512 (Fax)

July 16, 2012

Attorneys for Applicant

**STATE OF CALIFORNIA**  
**Energy Resources Conservation**  
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On June 29, 2012, Rio Mesa Solar I, LLC and Rio Mesa Solar II, LLC (collectively, the “Applicant”), received the *California Energy Commission (“CEC”) Staff’s Request for Extension of the Preliminary Staff Assessment (“PSA”) Filing Deadline and Motion to Compel BrightSource Energy’s Power Purchase Agreements (“PPAs”) Involving the Rio Mesa Solar Electric Generating Facility* (hereinafter “Request” or “Motion”). As discussed below, Applicant opposes Staff’s Request, but would support a compromise filing deadline of September 14, 2012. With respect to Staff’s Motion, Applicant will provide its PPAs for Rio Mesa 1 and Rio Mesa 2 (“the Project”) under confidential cover. Applicant will submit full versions of the PPAs with only highly sensitive price-related information redacted. Finally, Applicant provides further clarification regarding its PPAs in response to Staff’s Motion and to assure the Committee and all parties to this proceeding that Applicant has in no way mischaracterized its obligations under its PPAs.

**1. Extension of the PSA Filing Deadline to September 14, 2012 Is A Reasonable Compromise that Should Not Jeopardize the Committee's Ability to Publish A PMPD by May 2013.**

The Committee's April 13, 2012 Committee Scheduling Order requires Staff to produce a PSA by "August 2012." On May 24, 2012, the Applicant notified the Committee and parties to this proceeding of Applicant's plan to remove the northern third of the Project (Rio Mesa 3), while leaving Rio Mesa 1 and 2 substantially unchanged. Staff originally indicated that since the remaining portions of the project are substantially unchanged, Staff did not anticipate the need to request a change to the Committee's Scheduling Order.

Staff now requests a one to two month delay in the PSA publication deadline (i.e., from "August 2012" to September 28, 2012). The primary rationale for Staff's Request is that Staff believes that Applicant has not provided Staff with sufficient time to evaluate the changes relating to the removal of RMS 3. Staff's Request states that if Staff had received a detailed description of the project changes and revised submittal by early July, then Staff could have met an August PSA publication deadline.<sup>1</sup> At the June 15, 2012 Mandatory Status Conference, Applicant notified the Committee and Parties that it would provide its submittal throughout late June and early-mid July. To date, Applicant has achieved its stated schedule, and in some cases, Applicant has been able to provide updated information to Staff earlier than projected. While most of Applicant's updated information has already been submitted to Staff, there is some information, including biological resources, cumulative impacts, and alternatives, which will be provided by July 20, 2012.

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<sup>1</sup> See Staff Request and Motion to Compel at P. 2, available at: [http://www.energy.ca.gov/sitingcases/riomesa/documents/2012-06-29\\_Staff\\_Request\\_for\\_Extension\\_and\\_Motion\\_to\\_Compel\\_TN-66041.pdf](http://www.energy.ca.gov/sitingcases/riomesa/documents/2012-06-29_Staff_Request_for_Extension_and_Motion_to_Compel_TN-66041.pdf)

Because Applicant will provide *all* of the updated information on schedule, other than biological resources, alternatives and cumulative impacts, which will be one to two weeks beyond its initial projection, Applicant believes that a slip in the PSA publication of no more than two weeks (i.e., August 2012 to September 14, 2012) is a reasonable compromise. There are two primary reasons. First, Applicant's proposed changes are relatively minor. Nearly every environmental impact will be reduced by a third, and these impacts should have already been analyzed since the revised project description is the same as "Alternative 3" set forth in the AFC. With the exception of certain linear facilities, the remaining portions of the Project are the same as what was proposed in the AFC. Thus, Staff's existing analysis for the Project should be applicable to the revised Project, and the time needed for additional analysis should be minimal. Second, Applicant has already provided a substantial portion of the changed information by "early" July, and based on Staff's assertions in its Request for extension, Staff should still be able to meet an August PSA publication deadline for most of the topic areas. However, Applicant believes that extending the PSA Publication date to September 14, 2012 is a reasonable compromise.

**2. Applicant's Discussion of its PPAs in the Application For Certification, Data Responses and Scheduling Briefs Are Fully Supported by the Terms of the PPAs.**

Staff's Motion to Compel the BrightSource PPAs relating to the Project is based on Staff's need to perform its alternatives analysis and confirm "apparently contradictory statements concerning the PPA provisions."<sup>2</sup> While Applicant continues to have concerns about the need to provide highly confidential information, Applicant will provide the PPAs relating to Rio Mesa 1 and 2 under confidential cover so that Staff can refer to them in conducting its alternatives analysis. In addition, Applicant seeks to assure Staff, the Committee and all parties to this

proceeding that Applicant has in no way misrepresented its obligations under the PPAs assigned to the Project. Applicant makes the following clarifications to its previous discussion of the PPAs, which should provide Staff with the information it needs to complete its Alternatives analysis.

BrightSource Energy has several PPAs with California's largest investor owned utilities ("IOUs"). Some of these PPAs have been assigned to various projects that BrightSource is pursuing, while others have not. Each BrightSource PPA must ultimately be assigned to a single generator (e.g. Rio Mesa 1 has been assigned its own PPA, and Rio Mesa 2 has been assigned its own PPA). BrightSource had internally allocated, but not formally assigned, a third PPA to Rio Mesa 3, prior to removing Rio Mesa 3 from the project description. The PPAs have differing requirements that BrightSource must fulfill, including the Commercial Operation Dates ("COD"). For example, the PPA assigned to Rio Mesa 2 has a later COD than the PPA assigned to Rio Mesa 1.

Staff's concern about "apparently contradictory" statements about the PPAs seems to stem from a misunderstanding about the fact that BrightSource has multiple PPAs for this Project. Staff's motion states that:

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 750 MW as required by the PPAs." Yet in initial discussions with the applicant regarding the proposed change, the applicant assured staff that no revision to its PPA would be necessary.

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<sup>2</sup> *Id.* at p. 4.

While the latter statement is taken out of context, both statements are consistent with BrightSource's obligations under its PPAs. Alternative 3 will not satisfy BrightSource's requirements to provide 750 MW under the three PPAs because the PPA that would have been assigned to RMS 3 can no longer be fulfilled through construction of just RMS 1 and 2. Moreover, Applicant will not be required to amend either of the two remaining PPAs because RMS 1 and 2 can still be constructed consistent with the requirements of the PPAs assigned to RMS 1 and 2.

Staff's motion also points to an "apparent contradiction" in quoting Applicant's response to Data Request 170, where Staff asked Applicant to "provide a discussion of pertinent contractual agreements in the applicant's PPA with SCE that would prohibit the consideration or justify the dismissal of alternatives identified in the Application for Certification (AFC)." Staff's motion quotes the following portion of Applicant's response to Data Request 170:

[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.

Again, the "apparent contradiction" results from taking Applicant's response to Data Request 170 out of context. The remaining portion of this response explains how switching technology type would result in BrightSource's default under its PPAs, which is unrelated to the points in Staff's motion about switching from a three to a two project design. These statements by BrightSource are correct; deviation from quantity of energy, type of facility or the period of delivery under any single PPA would constitute a default. In other words, the response to Data Request 170 is not related to changing the project description from a 750MW design to a 500MW design. Since BrightSource has

two PPAs for this two unit Project, this change would not result in default and the quoted sentence from Applicant's Data Response 170 is not applicable to the removal of RMS 3.

Finally, it is important to note that revising the Project Description to remove RMS 3 was a strategic decision to ensure that BrightSource was in the best position possible to fulfill its obligations under the PPAs assigned to RMS 1 and 2, despite the significant implications of suspending development of RMS 3 presents for BrightSource. Given the potential delays in permitting RMS 3, pursuing a 750MW project design would have jeopardized BrightSource's ability to satisfy the COD requirements in the RMS 1 PPA.

Applicant hopes that in addition to providing the RMS 1 and RMS 2 PPAs to Staff under confidential cover, that this discussion will provide the clarity Staff needs to complete its alternatives analysis.

Dated: July 16, 2012

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  \_\_\_\_\_

Christopher T. Ellison  
Brian S. Biering  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
Telephone: (916) 447-2166  
Facsimile: (916) 447-3512

Attorneys for Applicant

STATE OF CALIFORNIA

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**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on July 16, 2012, I served the attached *APPLICANT'S RESPONSE TO 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* via electronic and U.S. mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Karen A. Mitchell



**SERVICE LIST**  
**11-AFC-04**

**APPLICANTS' AGENTS**

BrightSource Energy, Inc.  
Todd Stewart, Senior Director  
Project Development  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612  
[tstewart@brightsourceenergy.com](mailto:tstewart@brightsourceenergy.com)

BrightSource Energy, Inc.  
Michelle Farley  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612  
[mfarley@brightsource.com](mailto:mfarley@brightsource.com)

BrightSource Energy, Inc.  
Brad DeJean  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612  
*e-mail service preferred*  
[bdejean@brightsourceenergy.com](mailto:bdejean@brightsourceenergy.com)

**APPLICANTS' CONSULTANTS**

Grenier and Associates, Inc.  
Andrea Grenier  
1420 E. Roseville Parkway,  
Suite 140-377  
Roseville, CA 95661  
*e-mail service preferred*  
[andrea@agrenier.com](mailto:andrea@agrenier.com)

URS Corporation  
Angela Leiba  
4225 Executive Square, Suite 1600  
La Jolla, CA 92037  
[Angela\\_leiba@urscorp.com](mailto:Angela_leiba@urscorp.com)

**COUNSEL FOR APPLICANTS**

Ellison, Schneider, & Harris  
Christopher T. Ellison  
Brian S. Biering  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816-5905  
[cte@eslawfirm.com](mailto:cte@eslawfirm.com)  
[bsb@eslawfirm.com](mailto:bsb@eslawfirm.com)

**INTERESTED AGENCIES**

Mojave Desert Air Quality Management District  
Chris Anderson, Air Quality Engineer  
14306 Park Avenue  
Victorville, CA 92392-2310  
[canderson@mdaqmd.ca.gov](mailto:canderson@mdaqmd.ca.gov)

California ISO  
*e-mail service preferred*  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

Bureau of Land Management  
Cedric Perry  
Lynnette Elser  
22835 Calle San Juan De Los Lagos  
Moreno Valley, CA 92553  
[cperry@blm.gov](mailto:cperry@blm.gov)  
[lelser@blm.gov](mailto:lelser@blm.gov)

Office of Riverside County Counsel  
County of Riverside  
Katherine Lind  
Tiffany North  
3960 Orange Street, Suite 500  
Riverside, CA 92501  
*e-mail service preferred*  
[klind@co.riverside.ca.us](mailto:klind@co.riverside.ca.us)  
[tnorth@co.riverside.ca.us](mailto:tnorth@co.riverside.ca.us)

**INTERVENORS**

Center for Biological Diversity  
Lisa T. Belenky, Senior Attorney  
351 California Street, Suite 600  
San Francisco, CA 94104  
*e-mail service preferred*  
[lbelenky@biologicaldiversity.org](mailto:lbelenky@biologicaldiversity.org)

Center for Biological Diversity  
Ileene Anderson  
Public Lands Desert Director  
PMB 447, 8033 Sunset Boulevard  
Los Angeles, CA 90046  
*e-mail service preferred*  
[ianderson@biologicaldiversity.org](mailto:ianderson@biologicaldiversity.org)

**ENERGY COMMISSION – DECISIONMAKERS**

Carla Peterman  
Commissioner and Presiding Member  
[carla.peterman@energy.ca.gov](mailto:carla.peterman@energy.ca.gov)

Karen Douglas  
Commissioner and Associate Member  
*e-mail service preferred*  
[karen.douglas@energy.ca.gov](mailto:karen.douglas@energy.ca.gov)

Kenneth Celli  
Hearing Adviser  
*e-mail service preferred*  
[ken.celli@energy.ca.gov](mailto:ken.celli@energy.ca.gov)

Galen Lemei  
Advisor to Commissioner Douglas  
*e-mail service preferred*  
[galen.lemei@energy.ca.gov](mailto:galen.lemei@energy.ca.gov)

Jennifer Nelson  
Advisor to Commissioner Douglas  
*e-mail service preferred*  
[jennifer.nelson@energy.ca.gov](mailto:jennifer.nelson@energy.ca.gov)

Jim Bartridge  
Advisor to Commissioner Peterman  
[jim.bartridge@energy.ca.gov](mailto:jim.bartridge@energy.ca.gov)

**ENERGY COMMISSION STAFF**

Pierre Martinez  
Project Manager  
[pierre.martinez@energy.ca.gov](mailto:pierre.martinez@energy.ca.gov)

Lisa DeCarlo  
Staff Counsel  
[lisa.decarlo@energy.ca.gov](mailto:lisa.decarlo@energy.ca.gov)

Eileen Allen  
Commissioners' Technical  
Advisor for Facility Siting  
*e-mail service preferred*  
[eileen.allen@energy.ca.gov](mailto:eileen.allen@energy.ca.gov)

**ENERGY COMMISSION – PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser's Office  
*e-mail service preferred*  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)