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September 6, 2012

VIA EMAIL AND REGULAR MAIL

Craig Hoffman
Compliance Project Manager
California Energy Commission, Docket Unit
1516 Ninth Street, MS-2000
Sacramento, CA 95814

Re: Calico Solar Project 08-AFC-13C
BNSF Comments on Railroad Crossing Issues

Dear Mr. Hoffman:

The purpose of this letter is to clarify the position of BNSF Railway Company ("BNSF") with regard to Calico Project access across BNSF's main line right of way.

First, BNSF will of course provide permissive access over the Hector Station Crossing (DOT # 919188X) on reasonable terms and conditions to Energy Commission personnel for project-related purposes upon request. By authorizing permissive access, BNSF is not granting any rights in railroad property to Calico, the Energy Commission or anyone else. In order to ensure that access requests in connection with the Calico Project are handled consistently, please contact one of the following:

Al Arpad
Fennemore Craig
602-916-5490
aarpad@fclaw.com

Dustin Almaguer
BNSF
817-352-2312
dustin.almaguer@bnsf.com

If Energy Commission personnel can give us ten days' notice we should be able to make any necessary arrangements. The crossing is gated and locked on both sides, so at a minimum BNSF will need to arrange for the gates to be unlocked and then locked again.

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Please also provide notice if Energy Commission personnel intend to use the parallel roads located within the BNSF right of way. BNSF will need to evaluate the requested use of its right of way property. Personnel using the parallel roads on the right of way will be required to attend a safety briefing and sign liability waivers.

With regard to the temporary at-grade crossing granted to Calico by the Public Utility Commission ("PUC"), BNSF sent a form of crossing agreement based on the PUC decision to Calico in February. BNSF has not received any response from Calico, and was not aware of the changes in Calico's plan until the amendment request was filed in late June. Calico's limited rights under the PUC decision are not necessarily consistent with Calico's expressed needs for the amended Calico Project. The PUC decision recognized BNSF's concerns about the Hector Station crossing, and specifically declined to authorize use of the at-grade crossing for heavy construction vehicles or for any long-term purpose. BNSF intends to work constructively with Calico to resolve these issues, but all the same concerns about long-term use or heavy vehicle use of the Hector Station crossing still exist.

With regard to the waterline crossing, Calico has not applied to BNSF for a utility crossing and has not provided information to BNSF concerning the waterline or the proposed construction process. If BNSF receives such a request, BNSF will evaluate it on the merits. Energy Commission staff have correctly pointed out that the PUC did not grant Calico a waterline crossing, and the PUC's jurisdiction to do so if requested has not been established.

With regard to the permanent bridge crossing, the PUC's amended decision withdrew authorization based on the need for environmental review. A grade-separated crossing is the preferred solution for traffic safety, but environmental, design and construction related issues remain to be resolved.

Please do not hesitate to contact Al Arpad or me if you have any questions.

Very truly yours,

FENNEMORE CRAIG, P.C.


Matt Lensch