

STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission

California Energy Commission

DOCKETED

11-AFC-04

TN # 68958

DEC 21 2012

In the Matter of:

Docket No. 11-AFC-04

Application for Certification
for the Rio Mesa Solar
Electric Generating Facility

**Energy Commission Staff's Request for Extension of the Final Staff Assessment
Filing Deadline and Motion to Compel Production of Incidental Take Permit
Application**

**I. Staff's Request for Extension of Time for Publication of the Final Staff
Assessment**

Introduction

Title 20, California Code of Regulations, section 1709.7(c) allows the Presiding Member to modify a previously established schedule at any time upon motion of a party. On April 13, 2012, after conducting a status conference wherein the applicant made several assertions about how quickly they would be able to provide information critical to an analysis of the potential impacts from the proposed project, the Committee issued a Scheduling Order directing staff, among other things, to file its Final Staff Assessment (FSA) in January 2013. On September 28, 2012, staff published Part A of the Preliminary Staff Assessment (PSA), followed by Part B on October 15, 2012. Staff held PSA workshops on October 29, 2012 (Sacramento), November 14, 2012 (Palm Desert), and November 28, 2012 (Blythe). In addition, staff, the applicant, and the public participated in a joint workshop on December 5, 2012 in Sacramento in conjunction with the Hidden Hills project to discuss avian risk associated with radiant solar flux. Despite staff's concerted attempts to obtain all information critical to an objective analysis of the proposed project, several items remain outstanding, thereby preventing staff from completing the FSA according to schedule. As discussed in more detail below, in sum, staff anticipates receipt of the last of this information no sooner than May 1, 2013, which would enable staff to produce an FSA in June 3, 2013.

Additionally, staff received a large number of comments on the PSA; over 1,000 comments comprising over 1,000 pages. The applicant alone contributed over 600 pages

consisting of 750 comments. Ensuring that these comments are sufficiently addressed in the FSA will take additional time not originally envisioned in the previous scheduling order. Of particular importance, the County of Riverside, California Department of Fish and Game, and US Fish and Wildlife Service's comments have been delayed as well.¹ Staff has been reviewing all the comments received to date and while not all will require a response, some will require additional analyses, workshops, or consultations with agencies and possibly the applicant prior to publication of the FSA. For these reasons, and those discussed in more detail below, staff requests the Committee adjust the Committee Scheduling Order to provide for an FSA to be published in June.

Outstanding Information

Cultural Resources

Outstanding Cultural Resources information presents the biggest implications regarding schedule. As staff noted at the outset of this project, the sheer number of potential resources on the project site requiring further evaluation, 266, more than has been involved in any other project previously before the Commission, presents a large undertaking to analyze, requiring a significant amount of time. Though the applicant originally assured the Committee that it could provide the information required for the evaluation in a much shorter timeframe than that estimated by staff, such has not been the case. Several significant pieces remain outstanding and the field work needed to evaluate the individual resources has not yet commenced.

Geoarchaeological Study. Staff originally anticipated receiving the technical report presenting the results of the Geoarchaeological Study by the end of this month, but has just learned that the applicant will not be able to provide it until January 14, 2013. Once received, staff will require two to four weeks to review the report and suggest revisions if necessary. Once a complete and satisfactory report is provided, staff will need one month to incorporate the information into the FSA. This study will provide the data necessary to refine the sample of surface archaeological sites that will require evaluation phase field and laboratory work; adequately assess the potential impacts of the proposed project's construction and operation on subsurface archaeological resources in the proposed project area; and refine the extent of construction monitoring that would be necessary, should the project be approved. Based on the assumptions above and assuming no revisions are necessary to the report, staff would anticipate that this portion of the FSA could be incorporated by mid-February.

¹ On December 19, 2012, staff received substantial comments from the US Fish and Wildlife Service (dated December 19, 2012, docketed December 20, 2012) and the County of Riverside (dated December 18, 2012, docketed December 19, 2012).

Phase II Archaeological Investigation Plan. Staff provided its most recent feedback on the Archaeological Research Design and Testing Plan (also called Phase II archaeological investigation) on October 19, 2012. Staff has not received the revised Research Design and Testing Plan; however, the applicant has indicated that it will be filed by the end of this month. Once received, staff will require at least two weeks to review and suggest revisions if necessary. Once approved, which would likely occur no earlier than mid-January, the applicant will be able to implement the plan. Evaluation phase work is necessary to determine the historical significance of a subset of the identified archaeological resources. This information is required for staff's determination of significance, impact analysis, and development of appropriate mitigation.

Phase II Archaeological Investigation. The Phase II Archaeological Investigation cannot commence until after the Archaeological Research Design and Testing Plan has been approved, as referenced above. The applicant stated in the November 28, 2012 workshop that they can finish the field work in 3-4 weeks; however, in staff's experience, and considering the number of cultural resources required to be further evaluated, two or more months would be more likely. Notwithstanding staff's concern with the applicant's ability to complete field work in the 3-4 weeks, assuming approval of the plan in mid-January, the earliest the field work would be complete is mid February 2013. The applicant also stated, in the November 28, 2012 workshop, that they can finish writing the technical report presenting the results of the evaluation phase field and laboratory work in 30 days after the completion of field work; however, in staff's opinion, two or more months would be required to write the technical report. Notwithstanding staff's concern with the applicant's ability to complete the technical report in 30 days, assuming they could, the earliest the technical report might be submitted to the Energy Commission is mid-March 2013. Once received, staff will need time to review and suggest revisions if necessary. Once an adequate report is received, staff will require at least 45 days to incorporate the information into the FSA section. Given this schedule the earliest staff could complete the FSA section related to archaeological resources would be early-May 2013. These results will also help determine the potential eligibility of archaeological resources as contributors to ethnographic landscapes. Once an approved report is received, staff would require two to four weeks to review and combine with the ethnographic report in the FSA.

Historic Archaeological Resources. Staff needs additional information concerning the potential presence of sub-surface features or artifact deposits on the project site. Staff attempted to obtain this information through data requests, but the applicant objected. Therefore, staff will perform this evaluation, but will require additional time to analyze the sites and features to fully evaluate the historic event (the June-July 1943 maneuvers by the 77th Infantry Division) to determine the historical significance of the various sites. This portion of the FSA section could be completed by the end of January, 2013.

Ethnography. Additional time to publish the FSA will allow staff to conduct interviews with the tribes needed for staff's ethnographic analysis. Originally staff intended to conduct interviews after the PSA and draft ethnography report were published. The tribes, however, were concerned that there was insufficient time to do so with an FSA required in January and so declined. Additional time to complete the FSA may make the tribes more willing to participate in interviews, which is important in light of the recent Governor's Executive Order encouraging communication and consultation with California Indian Tribes. (Governor's Exec. Order No. B-10-11 (September 19, 2011).) Staff could finalize the ethnography analysis without interviews, but doing so would result in a document with deficiencies, which may or may not be addressed by the tribes at the evidentiary hearings.

To sum up, assuming the applicant is prompt in providing the outstanding information identified above, staff will be able to produce the Cultural Resources FSA section in early May for internal review. Assuming all other technical areas also receive the outstanding information on time, final publication would likely be 30 days later, or early June.

Biological Resources

Bird and Bat Survey Data. The Renewable Energy Action Team (REAT) agencies, consisting of the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), U.S. Bureau of Land Management (BLM), and Energy Commission staff, requested that the applicant provide a full year of bird and bat surveys for the Rio Mesa SEGF to better determine the scope and scale of bird abundance and habitat use at the site, beginning in early 2012. This information is essential to characterize risk to birds during project operation, and to provide information needed for the applicant's Bird and Bat Conservation Strategy and Eagle Conservation Plan, according to staff's proposed Condition of Certification **BIO-12**. The applicant stated that "quarterly results of the migratory bird surveys will be submitted to the CEC, BLM, USFWS, and CDFG within two weeks of their completion" (Data Responses Set 1A, March 8, 2012). Staff anticipates receiving the information in three submittals, to include (1) spring 2012 data, (2) fall 2012 data, and (3) winter 2012-13 data. The applicant docketed its spring 2012 migratory bird survey report (covering the months February through May 2012) on September 26, 2012, just prior to publication of the PSA and almost 4 months after the close of the survey period. That report is under review by staff and will be incorporated in the FSA. Staff anticipates that the full year of field work will be completed in the first quarter of 2013 and the applicant is expected to provide the full data set (i.e., two additional submittals) promptly following completion of field work for inclusion in the FSA. Staff will need to coordinate with the other REAT agencies regarding the results of the study to better evaluate the risk to birds. The applicant indicated at the workshop on November 14, 2012 that the fall survey will be complete on November 30, 2012 and that

a report will take approximately one month to complete and submit to staff, possibly longer because of the holidays. No date for submittal was indicated; staff hopes to receive the report by early January, but is not optimistic given the length of time it has taken to receive previous reports. Staff has received no estimate of the expected submittal date of the winter 2012-13 bird survey report. That survey period is expected to close at the end of January and it could be as late as April or May before staff receives the report unless the applicant significantly decreases its turnaround time.

Late-season botany surveys. The applicant's Biological Resources Technical Report (URS, Oct 3, 2011) noted that late summer or fall botanical surveys should be completed in a future year. The summer of 2012 was a strong monsoonal season, providing adequate rainfall throughout the area to allow for germination and growth of late-season special-status plants. The applicant has indicated that it was monitoring late-season growth and flowering, and would conduct botanical surveys during late summer or fall 2012. Staff will incorporate that survey data into its analysis of the project's impacts to special-status plants and, if necessary, revise proposed Condition of Certification **BIO-10**. The applicant indicated at the workshop on November 14, 2012 that late-season botany survey results would be submitted "within the next week"; however, this information has not been received by staff as of December 21, 2012.

Project acreage. Clarification of the total acreages of permanent and temporary, direct and indirect impacts by vegetation type (including all project features identified in **Project Description Table 3-1** in the **Project Description** section of PSA – Part A) is needed. Staff's estimates of the project's direct impacts to native vegetation and wildlife habitat are based on data presented in the Biological Resources section of Applicant's Environmental Enhancement proposal (BS 2012v), which apparently does not include several project components noted in **Project Description Table 3-1**. In order to finalize the analysis of impacts to biological resources and several recommended conditions of certification, staff will need a full accounting by vegetation type of all project disturbance to native vegetation and wildlife habitat, including all permanent or temporary disturbance on the gen-tie alignment, temporary logistics area, proposed 33-kV service line, and Colorado River Substation gen-tie area. Staff requested the revised acreages in the PSA (page 4.2-141) and at the PSA workshop on November 14, 2012. The applicant provided revised acreages by vegetation type in its comments on the PSA, but the specific acreage for each project component has not been provided. Staff is still awaiting disturbance acreages associated with all project components listed in **Project Description Table 3-1**, including permanent or temporary disturbance on the temporary logistics area, proposed 33-kV service line, and Colorado River Substation gen-tie area.

Incidental Take Permit (ITP) application to CDFG. The Energy Commission’s responsibilities and authority pursuant to the Warren-Alquist Act include California Endangered Species Act (CESA) authorization under the California Fish and Game Code. Energy Commission staff will be reluctant to make any recommendation to the Commissioners on this issue until after conferring with CDFG to ensure consistency with CDFG’s Incidental Take Permit (ITP) program regarding the state-listed desert tortoises. CDFG will review the project upon receipt of the applicant’s ITP application. An ITP application has not been submitted to date. Therefore, staff has requested that the applicant (1) provide to CDFG an ITP Application for desert tortoise, including an impact assessment, proposed mitigation, and supporting documents, (2) provide to CDFG the appropriate filing fee(s) for the ITP, and (3) docket copies of both documents with the Energy Commission. These requests were made in staff’s Data Request Set 1A (February 7, 2012) and repeated in each public workshop. The applicant stated that it would submit the ITP Application “within 30 days” (Data Responses Set 1A, March 8, 2012). Since then, the applicant has indicated on repeated occasions that the ITP application is in preparation (most recently, in an email to staff on December 17, 2012). As of December 21, 2012, neither staff nor CDFG have received the applicant’s ITP application. Therefore, CDFG cannot commence coordination with staff regarding CESA compliance at this time. CDFG has previously indicated that it generally takes 180 days to process an ITP application. It is hoped that CDFG can provide input earlier than that for this process, but until the applicant files the application it will be unclear how quickly review can be accomplished and may require more time than staff has suggested for cultural resources information to be provided, evaluated, and incorporated into the FSA.

Staff also has requested the applicant’s draft Desert Tortoise Translocation Plan and draft Biological Assessment, to support staff’s assessment of the project’s impacts to the state-listed desert tortoise, according to CESA (see staff’s Data Request Set 1A, dated February 7, 2012). The applicant stated that it would submit both documents to the Bureau of Land Management “within 30 days” and “will work with the BLM to finalize both documents and will submit copies to the CEC and CDFG” (Data Responses Set 1A, March 8, 2012). To date, staff has received no further update from the applicant on the status of either document.

Jurisdictional Delineation. In addition to CESA (above), the Energy Commission’s responsibilities and authority pursuant to the Warren-Alquist Act include Lake and Streambed Alteration Agreement (LSAA) authorization under the California Fish and Game Code. As above, staff will be reluctant to make any recommendation to the Commissioners regarding the LSAA authorization until after conferring with CDFG to ensure consistency with CDFG’s LSAA program. Staff requested the applicant’s LSAA Notification, with concurrent submittal to CDFG, in its Data Request Set 1A (February 7,

2012). The applicant responded that it would “prepare and submit an Application ... within 30 days if approval of the delineation of state waters is obtained from CDFG and determination of impacts is agreed” (Data Responses Set 1A, March 8, 2012). The data response indicates a misunderstanding on the applicant’s part that CDFG policy may be to approve the conclusions of LSAA notifications prior to their submittal. After a nearly 9 month delay, the LSAA Notification has been submitted, though additional GIS data are still needed.

The LSAA Notification was received by staff and docketed, and submitted to CDFG, on November 30, 2012. The notification includes a revised jurisdictional delineation report indicating a 40% reduction in impacts to jurisdictional waters compared with the previously submitted information for the 500 MW project. This reduction is not due to project changes in the revised AFC. The applicant has retained a new consultant for the jurisdictional delineation, and the new consultant has revised the previous delineation which has substantially reduced the reported acreage of jurisdictional lands. Staff has requested GIS data of the original and revised delineations, and needs adequate time to evaluate the revised delineation in coordination with CDFG. This review will necessitate a site visit. Staff estimates this process will take a minimum of two work weeks. Staff and CDFG will need to review this new delineation cooperatively, and compare it to the prior one, to provide the Committee and the public with a valid conclusion regarding the extent of state jurisdictional waters to be impacted by the project and to accurately address the question raised in the PSA regarding feasibility of off-site compensation to mitigate for loss of jurisdictional lands.

It should also be noted that the Army Corps of Engineers (ACOE) has not yet evaluated the new delineation either and it is unclear what the timeframe is for that agency to do so. The appropriate process for obtaining ACOE approval of a change of this nature is to request an amendment to the previously filed Preliminary Jurisdictional Delineation (PJD); yet the applicant has instead sought approval of the new jurisdictional delineation without any reference to the PJD. It is staff’s understanding that ACOE intends to send the applicant a letter explaining the proper procedure. It is staff’s hope that once this is resolved, ACOE will begin their review, yet it is unlikely that there will be any indication of the ultimate determination by the time the FSA is published. The change in delineation, and whether or not it is ultimately accepted, will likely also impact the Least Environmentally Damaging Practicable Alternative (LEDPA) analysis. As mentioned previously, the LEDPA analysis could potentially result in an alternative that is not the project currently being proposed, which would require the applicant to modify the project currently before the Commission, or seek an amendment to the Commission decision if the project has already been approved when the LEDPA becomes final.

Facility Closure, Revegetation, and Reclamation Plan and Financial Security. In order to fully evaluate whether the applicant's facility closure measures will reduce the environmental impacts of site closure (i.e., dust, erosion, and weed infestation and spread) below a level of significance, staff will need to review a draft Facility Closure, Revegetation, and Reclamation Plan and an estimate of the cost to implement the Plan prior to completing its analysis for the FSA. Therefore, staff has requested (in the PSA and during the November 14, 2012 workshop) that the applicant prepare and submit a draft plan, including its estimate of the necessary financial security to implement the plan. As of December 21, 2012, this information has not been received.

US Fish and Wildlife Service PSA comments. The US Fish and Wildlife Service (USFWS), a trustee agency, submitted 54 pages of comments on the PSA on December 19, 2012 (docketed December 20, 2012). While staff is still in the process of reviewing these comments, staff believes that responses to be provided in the FSA should be thorough.

California Department of Fish and Game PSA comments. The California Department of Fish and Game (CDFG), also a trustee agency, has indicated that it intends to submit comments on the PSA. Staff understands that the comments have been prepared and are in internal review as of December 21, 2012. Staff anticipates that the comments will be substantial, and believes that its responses to the comments, to be included in the FSA, should be thorough.

Soil and Water Resources

RWQCB Input. The Regional Water Quality Control Board (RWQCB) recently informed staff that all the necessary application materials and the application fee needed to proceed with the analysis of the Waste Discharge Requirements (WDR) permit have been submitted by the applicant and the RWQCB would be able to provide us with their analysis by the end of January. Staff would need less than a week to incorporate this information into the FSA.

Paleontological Resources

Paleontological Resources Report. Field work to delineate the major paleosol (fossil soil) running beneath the project site was anticipated to be concluded by the week after Thanksgiving, with Part A of the field report (involving the Palo Verde Mesa paleosol) to be submitted 30 days later. In comments on the PSA, the applicant indicated they were endeavoring to submit this report by December 3, 2012, but staff has recently learned they will not be able to provide it until January 7, 2013. The applicant indicated that it would likely take 120 days to process and submit Part B, which involves the evaluation of two other geologic units on the project site. These last two geologic units require more

time for results because of the dating process, putting receipt of Part B in the mid-February to mid-March timeframe. Staff would at minimum need 30 days to review and incorporate each of these reports into the FSA, leaving mid-April for the anticipated completion of this section, assuming the applicant adheres to their proposed schedule.

Transmission System Engineering

Transmission Line Upgrades Analysis. The applicant submitted the Phase II interconnection study on December 11, 2012; however, the necessary technical appendices were not submitted until December 17, 2012. Staff is currently reviewing to determine the extent to which the study identifies additional upgrades needed to the transmission system to accommodate the proposed project. Depending on the extent of the upgrades, additional environmental analyses may be necessary. Staff anticipates completing its review of the Phase II study by the end of December; however, typically the additional environmental analyses, if necessary, requires applicant submittal of additional environmental information related to identified downstream impacts, which may take several months plus additional time for staff review and analysis. However, until staff completes its review of the Phase II study, staff cannot estimate any additional time requirements.

Socioeconomics

Updated Construction Craft Resources Survey. Staff is waiting for the applicant's completion of an updated construction craft resources survey. Staff relied in part on the applicant's Construction Craft Resources Survey (July 2011) when analyzing socioeconomics cumulative impacts for the Rio Mesa SEGF. The Survey noted "that the data contained in this survey represents a snapshot in time...we recommend that this survey be updated in mid-to late 2012." Staff agreed with this recommendation and submitted Data Request 172 which asked the applicant to provide an updated construction craft resources survey. The applicant responded in a June 8, 2012 submittal that the applicant will require until January 31, 2013 to update the labor survey. The updated survey would be helpful in identifying potential construction projects in California, Arizona, and Nevada that could overlap with Rio Mesa's construction and compete with the craft workers needed to build Rio Mesa and other projects. In addition, the original survey contained a housing availability section that contained useful information about lodging options in the Blythe area. At staff's recent PSA workshop, a Riverside County representative asked staff to update the housing analysis in the FSA. Once received, staff would need no more than two weeks to incorporate the updated information into the FSA.

Additional Considerations

BLM's Draft Environmental Impact Statement. BLM's Draft Environmental Impact Statement for the proposed project is currently undergoing internal review and is expected to be published in mid-January. The applicant has indicated that as part of this analysis, BLM may consider modifying the applicant's use of the Bradshaw Trail as an access road. It is unlikely that BLM would require an entirely different access point, but changes to how the applicant has proposed to use the road may affect staff's analysis; the DEIS should shed more light on the extent to which the original project proposal has changed with regard to this access point. Because of the size and complexity of the project as it relates to permitting at the state and federal level and in light of the close timing of the DEIS and the Commission's consideration of the very same project, it would be prudent for staff and the decision makers to have an understanding of BLM's analysis and to ensure that there are no serious inconsistencies in the review by the two agencies. BLM has indicated that staff may have access to an internal draft of their DEIS. Once we receive access to the document, staff will require a minimum of two weeks to review the DEIS and identify any discrepancies between the CEQA and NEPA analyses and mitigation that need to be addressed in the FSA.

County of Riverside's Comments on the PSA. The County of Riverside submitted 66 pages of comments, including attachments, on December 19, 2012. The county raises concerns about the project and the current analysis in several areas including concern over implementation and amount of an applicable Development Impact Fee; interpretation of land use regulations with respect to zoning and tower height, including raising the possible need for a zoning change; compliance with the General Plan; need for a development agreement; and concern the proposed technology may impact new county public safety communication equipment, to name a few. It will take staff some time to consider and address these concerns in the FSA, and the county's assertion that a zoning change may be necessary could have additional schedule implications.

Conclusion

For the reasons discussed above, staff requests that the Committee Scheduling Order be changed to signify an FSA no earlier than June, 2013. In addition, staff recommends that the applicant and staff be required to submit monthly status reports beginning on February 1, 2013 to keep the Committee and other parties apprised as progress is made in delivering the outstanding information and obtaining necessary agency input. The reports should include an update on the anticipated timing for all outstanding information identified herein, updates regarding the timing of any outstanding agency input, and any other matters of a substantive nature or that could affect schedule.

II. Motion to Compel Production of Incidental Take Permit Application

On November 20, 2012, staff sent the applicant a letter requesting the submittal of outstanding applications for biological resources permits no later than December 3, 2012, and stating that failure to so provide would require staff to take this matter to the Committee with a motion to compel. On November 30, 2012, we received the requested Lake and Streambed Alteration Agreement notification. As discussed above, as of December 21, 2012, neither we nor CDFG have received the requested Incidental Take Permit application.

Under the Warren-Alquist Act, the Energy Commission administers the California Endangered Species Act (CESA) for projects under its jurisdiction. (Pub. Resources Code, §25500.) For most other types of projects, this program is administered by the California Department of Fish and Game (CDFG). Energy Commission staff and CDFG staff work closely to ensure that the Energy Commission's administration of this program is consistent with applicable laws, ordinances, regulations, and standards (LORS) and with CDFG policy and precedent. Staff relies on its coordination with CDFG in its review of project impacts to protected resources, preparing its recommended conditions of certification, and concluding whether the project would conform to applicable LORS. In order to review the project's conformance with CESA, staff and CDFG need complete information from the applicant equivalent to the CDFG's application requirements in its review of other projects. To date, the applicant has not submitted the application despite repeated requests that they do so. Therefore, pursuant to title 20, California Code of Regulations, section 1716(g), staff requests the Committee to compel the applicant to provide a complete ITP application to CDFG and Energy Commission staff no later than two weeks after the Committee Order.

An ITP Application is necessary for staff and CDFG's review and verification of the applicant's current estimate of take for state-listed threatened or endangered species including desert tortoise and perhaps one or more migratory bird species for staff and CDFG's review and verification. Formal submittal is necessary to initiate CDFG coordination.

Timing is critical with regard to the ITP. CDFG has indicated that their normal permitting process requires 180 days to review an ITP Application and issue a permit. (November 14, 2012 Rio Mesa PSA Workshop.) Understanding that CDFG would not be issuing a permit in this case, their review and input is still necessary. Staff has made every effort to receive the ITP Application in a timely manner. A partial list of CDFG and Energy Commission staff's communications with the applicant regarding the ITP Application follows:

February 7, 2012: Staff's Data Requests 63 (Data Request Set 1A) "Please prepare and submit an Incidental Take Permit application to the Energy Commission staff, and provide copies concurrently to the CDFG for review. Species addressed in the application shall include, but are not limited to, desert tortoise, Gila woodpecker, and elf owl."

March 8, 2012: Applicant's response to Data Requests Set 1A: Applicant will prepare an Incidental Take Permit Application for desert tortoise and the Gila woodpecker within 30 days. The Applicant will docket the permit applications with the CEC and concurrently provide copies to the CDFG for review.

March – August, 2012: During several public workshops, staff reiterated its request that the applicant submit the completed ITP Application to CDFG to facilitate coordination among Energy Commission and CDFG staff in review project impacts and mitigation to state-listed threatened or endangered species, per CESA.

October 4, 2012: Email from Pierre Martinez (CEC Project Manager) to Todd Stewart (BSE Project Manager) and Andrea Greiner (applicant's consultant) reviewing staff's coordination with CDFG management and reiterating the request for the LSAA Notification and CESA ITP application.

October 4, 2012: Reply from Todd Stewart to Pierre Martinez that "With regard to the ITP our goal is to submit that next week."

October 15, 2012: Staff's PSA, "The Energy Commission's responsibilities and authority pursuant to the Warren-Alquist Act include LSAA and CESA authorization under the California Fish and Game Code. Energy Commission staff will be reluctant to make any recommendation to the Commissioners on either issue until after conferring with CDFG to ensure consistency with CDFG's LSAA and ITP programs. CDFG will review the project upon receipt of the applicant's documentation with both programs. Therefore, staff has requested (CEC 2012h) that the applicant (1) provide to CDFG a complete LSAA Notification with up-to-date state waters delineation, project impacts, proposed mitigation, and any other supporting documents, (2) provide to CDFG an ITP Application for desert tortoise, including an impact assessment, proposed mitigation, and supporting documents, (3) provide to CDFG the appropriate filing fee(s) for both documents, and (4) docket copies of both documents with the Energy Commission."

November 14, 2012: During the PSA Workshop, the applicant indicated that the ITP Application would be forthcoming within a few weeks.

For the reasons discussed above, staff requests that the Committee compel the applicant to immediately submit the Incidental Take Permit application for the Rio Mesa Solar Electric Generating Facility to CDFG and docket a copy in this proceeding.

DATED: December 21, 2012

Respectfully submitted,

s/ Lisa M. DeCarlo

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

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

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DECLARATION OF SERVICE

I, Janice Titgen, declare that on December 21, 2012, I served and filed a copy of the attached document **Energy Commission Staff's Request for Extension of the Final Staff Assessment Filing Deadline and Motion to Compel Production of Incidental Take Permit Application**, dated December 21, 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 marked **"hard copy required"** or where no e-mail address is provided.

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-04
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:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
michael.levy@energy.ca.gov

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/ Janice Titgen