



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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***FOR THE CALICO SOLAR PROJECT
AMENDMENT***

Docket No. 08-AFC-13C

**COMMITTEE RULING
ON
SIERRA CLUB'S MOTION TO DISMISS CALICO SOLAR LLC'S
PETITION TO AMEND
AND ON RELATED ISSUES OF ENERGY COMMISSION CERTIFICATION
JURISDICTION, ENERGY COMMISSION AS CEQA LEAD AGENCY,
AND THE APPLICABLE ENVIRONMENTAL BASELINE CONDITIONS FOR
CONDUCTING THE CEQA ENVIRONMENTAL EVALUATION**

On June 8, 2011, the Committee assigned to the Calico Solar Project Amendment heard oral argument on Sierra Club's motion to dismiss Calico's Petition to Amend (Petition) and the additional related issues of: (1) the Energy Commission serving as California Environmental Quality Act (CEQA) lead agency to conduct an evaluation of the Petition's environmental impacts, and (2) the applicable environmental baseline conditions for conducting the environmental evaluation.

As more fully discussed below, we rule that Sierra Club's *Motion to Dismiss the Petition to Amend* is **DENIED**. In summary, the Committee disclaims Commission certification jurisdiction over the photovoltaic (PV) component of the Petition. However, the Energy Commission has exclusive certification jurisdiction over the Petition's thermal powerplant component and its related facilities as a matter of law because the Petition proposes construction of a thermal powerplant component with an electrical generating capacity of 50 megawatts (MW) or more. In turn, the Commission has an exclusive, non-delegable duty to serve as CEQA lead agency over the Petition's thermal powerplant component and its related facilities. While the Commission may claim lead agency status over the PV component, it is not the only agency that may do so. The Committee will explore with the California Department of Fish and Game (CDFG) whether CDFG will serve as lead agency or enter into an agreement with the Commission to resolve the lead agency designation.

As explained below, we also rule that the Petition proposes a modification to the approved Calico Solar Project and not a new project. Subject to the exceptions described herein including those relating to **Biological Resources, Soil and Water Resources, Traffic and Transportation, and Visual Resources**, environmental analysis of the Petition's impacts is appropriately limited to the incremental effects of the changes unless subsequent information presented to the Committee's compels revised baseline conditions.

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 1, 2010, the Energy Commission approved the Calico Solar Project under its exclusive certification authority.¹ The approved project would have a generating capacity of 663.5 MW all produced by 25-kilowatt solar dish Stirling solar thermal systems known as SunCatchers. The two-phased project development would occur as follows: Phase 1a would consist of a solar field comprised of SunCatchers producing up to 275 MW and much of the support facilities. Phase 1b and Phase 2 would contain the remaining SunCatchers.

On March 22, 2011, in accordance with Energy Commission regulation section 1769², Calico Solar LLC (Calico) filed a Petition to Amend (Petition) the Calico Solar Project. The Petition proposes significant changes to project phasing and technology, while retaining the existing foot print and continuing to generate 663.5 MW. If modified as proposed, the project would generate 100.5 MW using SunCatchers and 563 MW using single-axis tracker photovoltaic (PV) technology. Although construction under the Petition still involves two phases, Phase 1 technology would be exclusively comprised of PV modules producing up to 275 MW. Almost all of Phase 1 will be located south of the BNSF Railway line. The SunCatchers (producing 100.5 MW) would not be constructed until Phase 2. The remaining PV modules will also be constructed during Phase 2. Other significant differences between the approved project and the Petition include a new access road outside of the project footprint, new placement of PV panels and SunCatchers, and a new sequence and timing of site development.

¹ As established in 1974 by the Warren-Alquist Act, the construction of any thermal power plant in California with a generating capacity of at least 50 megawatts requires a license (or "certificate," in the language of the Act) from the Commission. (Pub. Resources Code, §§ 25110, 25120, 25500.) The Commission's license takes the place of all other state, regional, and local permits that would otherwise be required. (Pub. Resources Code § 25500.)

² This section provides in pertinent part: "After the final decision is effective ... the applicant shall file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements." (Cal. Code Regs., tit. 20, § 1769, subdivision (a)(1).)

The Petition also proposes that the PV and SunCatcher components share resources such as the main services complex, water line, various maintenance roads, and bridge over BNSF Railway line.

On April 20, 2011, the Energy Commission's Siting Committee conducted a public site visit and informational hearing for the Petition. During the hearing, the Committee stated that it would issue an order inviting the parties to submit briefs on three topics: (1) the Commission's licensing jurisdiction over the Petition, (2) the Commission serving as CEQA lead agency to conduct an evaluation of the Petition's environmental impacts, and (3) the applicable environmental baseline conditions for conducting the environmental evaluation.

Following the informational hearing, Sierra Club filed a Motion to Dismiss the Petition. Sierra Club alleges the Energy Commission lacks jurisdiction over any aspect of the Petition due to the significant changes in technology and uncertainty regarding the availability of SunCatchers³. Sierra Club further argues that without certification authority over any aspect of the Petition, the Commission cannot serve as lead agency.

On May 2, 2011, the Committee issued an order inviting the parties to brief the three above-described issues.⁴ The Committee asked:

- a. Does the Energy Commission have authority to consider approval of the proposal to reduce electricity generated from Sun Catcher solar thermal technology from 663.5 MW to 100.5 MW?
- b. Does the Commission have authority to consider approval of the proposal to install photovoltaic (PV) facilities generating 563 MW on the Calico Solar Project site? If so, explain whether this is because 1) the PV facilities are part of a thermal power plant; 2) the PV facilities are either a related or appurtenant facility; or 3) the PV facilities are located on a site the CEC has licensed. Are there other grounds for the Energy Commission authority to consider approval of the project amendments? If so, please specify what that authority is and how it applies to the proposal.

³ When the Energy Commission approved the Calico Solar Project, it understood that SunCatchers would be on-site by July 2011. Calico recently admitted uncertainty regarding the availability of SunCatchers to satisfy the design and timing of the Petition.

⁴ On May 3, 2011, the Sierra Club submitted a Notice of Protest arguing that the Energy Commission ignored its Motion to Dismiss and objecting that the Committee Scheduling, Briefing, and Procedures Order addressed issues including, but not limited to, the Commission's licensing authority over the Petition.

- c. May the Commission act as the lead agency to perform the required CEQA evaluation over both the solar thermal and photovoltaic components of the proposed project modifications? Are there any legal impediments to such an approach?
- d. In the Commission's consideration of the proposed amendment to its permit, what are the Energy Commission's responsibilities under CEQA with respect to the proposal to install PV facilities?
- e. Are there any other considerations relevant to the Energy Commission's jurisdiction with respect to the proposal?
- f. What is the appropriate baseline of environmental conditions on which to base the Energy Commission's CEQA analysis, and why?
- g. Are any of the conditions identified in CEQA Guidelines section 15162^[fn] present? If so, what are they, and which portions of the Energy Commission's December 2010 Calico Solar Project Decision would the Commission be required to re-evaluate?

Given the overlap between Sierra Club's Motion to Dismiss and the Committee's May 2 Invitation for Briefing, the Committee scheduled oral arguments on all of the issues raised. The Committee heard oral arguments and comments on June 8, 2011, from Sierra Club, Calico, Commission Staff, BNSF Railway Company, California Unions for Reliable Energy (CURE), and Defenders of Wildlife. These six parties also submitted pre-hearing briefs.

II. DISCUSSION

A. The Commission Has Exclusive Certification Jurisdiction Over the Thermal Powerplant Component of the Petition and the Related Facilities; but Disclaims Commission Certification Jurisdiction over the Petition's PV Component

Sierra Club (joined by BNSF and Defenders) essentially contends that the thermal powerplant component of the Petition (i.e., the SunCatchers) is so uncertain as to be illusory and therefore, the Petition fails to propose a thermal powerplant subject to Energy Commission jurisdiction. They further contend that the Commission has no certification jurisdiction over PV facilities and without a thermal powerplant component, the Commission lacks jurisdiction over any aspect of the Petition.

As a threshold matter, we take the proposed project as presented by Calico in the Petition. As presented, the modified project includes construction of a 100.5 MW thermal powerplant. The Legislature vested the Energy Commission with exclusive

power to certify all sites and related facilities in the state and that construction of a facility regulated by the Act requires Commission certification. (Pub. Resources Code⁵, § 25500.) A “site” subject to the Commission’s exclusive certification jurisdiction is any location on which a facility is constructed or proposed to be constructed. (§ 25119.) A “facility” is any electric transmission line or thermal powerplant (or both) regulated by the Warren-Alquist Act. (§ 25110.) In turn, a “thermal powerplant” is any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 MW or more, and any facilities appurtenant thereto. (§ 25120.)

In sum, the Energy Commission has certification jurisdiction over the thermal powerplant component of the Petition and any facilities appurtenant thereto by operation of law. Even when, as here, a project will utilize uncertain technology or is of uncertain commercial viability, the Commission’s jurisdiction is unaffected as it can only be abrogated by a legislative act.⁶

In addition to asserting that the Energy Commission lacks certification jurisdiction over the project because availability of SunCatchers, Sierra Club et al. also contends that the Energy Commission lacks certification jurisdiction over PV technology. We need not address the general issue of Commission jurisdiction over PV technology, because as explained below, the Commission has no such jurisdiction in this Petition proceeding. The PV component is not: (1) a “related facility,” (2) appurtenant to the thermal powerplant, or (3) otherwise sufficiently integrated with the thermal powerplant’s generation of electricity to be deemed part of the thermal powerplant itself.

Under the Commission’s implementing regulations, “related facilities” include a thermal powerplant, electric transmission line, or any equipment, structure, or accessory *dedicated to and essential to* the operation of the thermal powerplant or electrical transmission line. (Cal. Code Regs., tit. 20, § 1702, subd. (n).) Examples of related facilities include transmission and fuel lines up to the first point of interconnection, water intake and discharge structures and equipment, access roads, storage sites, switchyards, and waste disposal sites. (*Id.*)

As described by the Petition and orally confirmed by Calico in the Petition proceedings, the PV component is neither dedicated to nor essential to the operation of the

⁵ Hereafter, all statutory references are to the Public Resources Code unless otherwise noted.

⁶ We note, however, that a project’s viability can influence the manner in which the Energy Commission exercises its jurisdiction. Accordingly, SunCatcher availability may well be essential to the Committee’s evaluation and Commission’s ultimate determination of matters that include but are not limited to facility reliability.

SunCatcher (thermal powerplant) component. Indeed, the Petition proposes two stand-alone electrical generating plants with no discernable relationship other than occupying the same footprint of the original project and sharing common resources.⁷ Calico underscored this point. In a discussion with the Committee during the informational hearing:

COMMISSIONER DOUGLAS: I have a quick question. How do you see the PV technology and the SunCatchers working together? Are there -- are there areas where there's integration or are they, you know, modular and it's almost indifferent as to whether it's PV versus SunCatcher actually plugged in there?

MR. O'SHEA: I think -- well, and I'm not an electrical expert. But from what I understand, the -- electrically they'll be integrated at the substation because SunCatchers produce power by use of an engine, and that produces alternating current. So there will be a separate collection system for the SunCatchers, and that will go into the substation and be combined at that point with the power that comes from the PV panels which produce direct current. And that needs to be, again, modified into alternating current with some invertors on the site. And so they -- they really -- there is some independence in the electrical operation of them.

(4/20/11 RT 22:10-23:2.) During the June 8 hearing, Calico further stated: "the PV doesn't need SunCatchers to produce energy and SunCatchers don't need PV to produce energy." (6/8/11 RT 33:19-21.)

The Petition also makes it clear that the PV component is not a facility appurtenant to the thermal powerplant component. In deciding this issue, we accept Sierra Club's unopposed invitation to look to Black's Law Dictionary for guidance given that neither the Warren-Alquist Act nor the Energy Commission's implementing regulations define the phrase "facilities appurtenant thereto." Black's defines "appurtenant" as "[b]elonging to; accessory or incident to' adjunct; appended, or annexed to" (Black's Law Dictionary, 9th ed. 2009) and explains that "[a] thing is 'appurtenant' to something else when it stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter." (Black's Law Dictionary, 5th ed. 1979.) As applied to the Warren-Alquist Act, this definition suggests that an appurtenant facility must be both subordinate to and somehow integrated with the dominant thermal powerplant. The PV component of the Petition does not satisfy this definition. The PV component is the

⁷ The SunCatchers and the PV technology will operate from a single control room, use the same transmission interconnection system, access the common water system and road network, and depend on the same construction and operation personnel.

predominant technology on-site. And, as discussed above, the PV and thermal powerplant components lack integration and will operate entirely separate from one another.

Finally, the PV component is in no way integrated with the thermal powerplant's generation of electricity. (Compare to the *Palmdale Hybrid Power Plant Project*, CEC Docket No. 08-AFC-9 [proposing natural gas-fired combined-cycle generating equipment integrated with solar thermal generating equipment] and *Victorville 2 Hybrid Power Project*, CEC Docket No. 07-AFC-1 [proposing a hybrid of natural gas-fired combined cycle generating equipment integrated with solar thermal generating equipment].)

Thus, the Energy Commission's certification jurisdiction is limited to the thermal powerplant component and its related facilities, which include but are not limited to the control room, transmission interconnection system, water system and portions of the access road network.

B. The Commission Must Serve as CEQA Lead Agency Over the Thermal Powerplant and Its Related Facilities and May Serve as Lead Agency Over the PV Component Under a Non-Exclusive Claim to Lead Agency Status

The Energy Commission must serve as CEQA lead agency in its licensing proceedings. (§ 25519, subd. (c).) Under this statutory mandate, the Commission has a non-delegable duty to serve as the lead agency to evaluate the environmental impacts of the Petition's thermal powerplant component and its related facilities. Because the Commission must also analyze potentially significant impacts from all aspects of the proposed project, and not only those components within its certification jurisdiction, it must evaluate the environmental impacts associated with the project's PV component. This is because a project includes "the whole of the action" that may result in either a direct or reasonably foreseeable indirect physical change to the environment. (§ 21065, CEQA Guidelines [Cal. Code Regs., tit. 14], § 15378.) Evaluating the whole of the project ensures that impermissible "piecemealing" and "segmenting" of a project does not occur. (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 274 [affirming that the Legislature intended CEQA "to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language"], citing *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247, 259.)

In accord with these principles, the CEQA Guidelines clarify that the term "project" refers to "the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean

each separate governmental approval.” (CEQA Guidelines, § 15378, subd. (c).) “This important elaboration is meant to “ensure that a project proponent does not file separate environmental reports for the same project to different agencies thereby preventing ‘consideration of the cumulative impact of the environment ... [Citations.]’ It also serves as a reminder that there may be more than one agency issuing approvals for a particular project and clarifies that the project is not to be confused with each separate governmental approval.” (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271.)

Under CEQA, the lead agency charged with responsibility to conduct this expansive evaluation, is typically the public agency with principal responsibility for carrying out or approving a project. (§ 21067, CEQA Guidelines, § 15367.) More particularly, if a project will be carried out by a private person, the lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guidelines, § 15051, subd. (b).) But here, no single agency has primary licensing responsibility for the entire project proposed by the Petition. No local agencies appear to have licensing or land use authority over this project located on federal land. Nor does a single state agency have complete or substantial authority over the PV component. Rather, other state agencies, including CDFG and the state and regional water boards, have permitting authority over various aspects of the PV component. (CEQA Guidelines, § 15051, subd. (b)(1).) CDFG in particular has broad statewide powers that could support its role as lead agency. (CEQA Guidelines, § 15051, subd. (b).)

Here, either the Energy Commission or CDFG could serve as lead agency over the PV component. Both agencies have statewide perspective and jurisdiction, as well as expertise and knowledge in conducting CEQA evaluations for projects of this nature. In addition, due to their respective, extensive participation in the Calico Solar Project certification process, both agencies are familiar with the project site and have a keen understanding of the approved project’s environmental impacts. Where, as here, two agencies might be equally qualified to serve as lead agency, either may serve as lead agency whether by being the first to act or by mutual agreement whereby one agency is so designated. (CEQA Guidelines, §15051, subds. (c), (d).) While the Commission Staff has initiated environmental review of the Petition, it is uncertain which agency will act first.

Because it appears that both the Energy Commission and CDFG are qualified to serve as lead agency, the Committee will consult with CDFG to resolve the lead agency designation by possible mutual agreement. (CEQA Guidelines, § 15051, subd. (c).)

C. Subject to Certain Exceptions, the Modification of a Previously Approved Project Evaluated Under CEQA Must be Limited to the Incremental Effects of the Proposed Changes

Sierra Club's motion did not address the issue of the appropriate environmental baseline conditions for the Commission's CEQA analysis of the Petition. Rather, the Committee invited the parties to brief this issue. As more fully discussed below, we find that that the Petition proposes a modification to the approved Calico Solar Project and not a new project. Accordingly, except as explained below, the environmental evaluation of the Petition is appropriately limited to the incremental effects of the changes.

CEQA requires an EIR to include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced." (CEQA Guidelines, § 15125.) This environmental setting normally constitutes the baseline physical conditions by which a lead agency determines whether an impact is significant.

After an EIR is certified for a project, the general rule is that the environmental evaluation of a modification of a previously approved project must be limited to the incremental effects of the proposed changes. (§ 21166; CEQA Guidelines, § 15162.) The underlying rationale is that in-depth review has already occurred and the time for challenging the sufficiency of the original EIR has expired; accordingly, the question for the lead agency is whether circumstances have changed enough to justify repeating a substantial portion of the process. (*Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1475-1480.) Thus, under CEQA a subsequent EIR (or equivalent document) for a project modification is only warranted when:

- (1) Substantial changes are proposed in the project which will require major revision of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (2) Substantial changes occur with respect to circumstances under which the project is undertaken which will require major revisions of the previous EIR due the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR.
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(CEQA Guidelines, § 15162, subds. (a), (c).) The Energy Commission meets its CEQA obligations through the Commission's certified regulatory program that conforms to the principles and applicable requirements of the California Environmental Quality Act. (§§ 25519, subd. (c); 21166; CEQA Guidelines, § 15251, subd. (j).) Under a certified regulatory program, a lead agency can use a plan or other written documentation instead, which serves as the functional equivalent of an environmental impact report (EIR). (§ 21080.5, subd. (a).)

Under its certified regulatory program, the Energy Commission prepared an EIR-equivalent document to evaluate the environmental impacts of the approved Calico Solar Project. Calico filed the Petition under Commission Regulation 1769 as a post-certification modification to the design and operation of the Calico Solar Project. After conducting a preliminary evaluation of the Petition soon after it was filed, Commission Staff recommended that the Commission process that Petition an amendment. The Committee has treated, and intends to continue treating, the Petition as an amendment. This action by the Committee is entitled to great weight. (See, e.g., *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467; *Temecula Band of Luiseno Mission Indians v. Rancho California Water District* (1996) 43 Cal.App.4th 425.) The California Supreme Court does not suggest otherwise in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310 (*Communities*).

In *Communities*, the narrow issue was whether a project proponent's permit to operate and pollute at a particular level establishes the environmental baseline for a proposed project, even though the facility has actually been operated substantially less than its proposed capacity. In that case, an oil refinery planned to make substantial alterations to an existing facility, including substantially increasing operations of a number of boilers

used for cogeneration.⁸ The Applicant submitted the project as a new project and the lead agency treated the project as a new project, yet the lead agency attempted to apply the safe harbor set forth in CEQA section 21166 and consider only the incremental changes between the maximum permitted capacity of the boilers and the proposed changes of the new project. The court found the lead agency to be in error.

In explaining why the project there was not properly characterized by the briefings as merely the modification of a previously analyzed project, the court said: “the Diesel Project proposed adding a new refining process to the facility, requiring the installation of new equipment as well as the modification and significantly increased operation of other equipment. *Conoco Phillips applied for a new permit for the Diesel Project, and the District treated it as a new project. . . .*” (*Communities*, 48 Cal.4th at p. 326, emphasis added.)

In considering what significance to give the existing permits that allowed the boilers to operate to a specified maximum capacity (even though they were not operating at that capacity), the court determined that the preexisting boiler permits did not by themselves establish the appropriate baseline for South Coast to consider whether there would be significant impacts. (*Communities*, 48 Cal.4th at pp. 325-327.) In the court’s view the appropriate baseline was not the maximum capacity levels set in prior boiler permits because the maximum permitted levels were not reflective of real conditions on the ground. By comparing the proposed project to what could happen, rather than what was actually happening, the District set the baseline not according to “established levels of particular use,” but by merely hypothetical conditions allowable under the permits. (*Id.*)

Unlike in *Communities*, the Petition is not for a new project, nor do we treat the Petition as such. Neither is there a new, intervening use of the site creating conditions or impacts that might be affected or exacerbated by the Petition. There is no current use of the site. Accordingly, our environmental evaluation of the Petition must be limited to the incremental effects of the changes to the approved Calico Solar Project unless any of the factors set forth in Section 21166 (and CEQA Guideline 15162) apply.

⁸ The decision describes the project as follows: “Conoco Phillips developed plans for an Ultra Low Sulfur Diesel Fuel Project, which involved replacing or modifying hydrotreater reactors, a cooling tower, storage tanks, and compressor; installing new pipelines and pumps; and substantially increasing operations of the existing cogeneration plant and four boilers, which provide steam for refinery operations. The cogeneration plant and boilers were subject to prior permits that state a maximum rate of heat production for each piece of equipment.” (*Communities*, 48 Cal.4th at p. 317.)

At this early stage in the proceedings we have insufficient information to identify each of the technical areas to which the factors do or may well apply. We continue to examine this issue as the proceedings progress. However, based on information from sources including the Petition, and oral argument, comments, and filings in the Petition proceedings, there is sufficient information to compel a determination that at least one, and perhaps more, of the factors apply to the technical areas of **Biological Resources, Soil and Water Resources, Traffic and Transportation, Visual Resources, and Public Health**. For each of these technical areas, there is new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous environmental document was certified as complete. This information shows that the modified project is likely to or will have one or more significant effects not discussed in that document. In particular, there is information that: (1) the Petition proposes a new access road outside of the project footprint, (2) there are differences between the original placement of SunCatchers and the proposed new placement of PV panels and SunCatchers, (3) there are differences between the profiles of the PV modules and the SunCatchers, and (4) there is a new sequence and timing of site development.

Regarding **Biological Resources**, the impacts to on-site federally endangered species (including the desert tortoise and Bighorn Sheep) as well as other special status plant and wildlife species from the changes in grading and drainage and the introduction of shade from the PV array were not and could not have been previously evaluated. Furthermore, recent developments at the Energy Commission certified Ivanpah Solar Electric Generating System Project resulted in the identification of substantially more endangered desert tortoise on-site than predicted. Because the Final Decision for the Calico Solar Project indicates that the Calico site provides similar, if not better, habitat for the desert tortoise than the Ivanpah site, it is essential that Calico assess anew (1) whether and to what extent the modified project's impacts on desert tortoise (which may involve new significant environmental impacts or a substantial increase in the severity of previously identified significant impacts) are adequately addressed by the mitigation for the approved project and (2) the feasibility of additional mitigation.

Grading and drainage were critical issues for the approved Calico Solar Project and they continue to be critical in this amendment process. Although we are awaiting Calico's completion of the proposed drainage and grading plans to satisfy both conditions of certification for the approved project and data requests relating to the Petition, the new information relating to proposed grading for the PV modules, placement of the modules (both method and location), and the proposed method of accessing the PV modules indicates that these changes will involve new significant environmental effects or a substantial increase in the severity of previously identified significant impacts to **Soil and Water Resources**.

Similarly, the new access road that is proposed outside of the project footprint, the differences between the original placement of SunCatchers, the proposed new placement of PV panels and SunCatchers, and differences between the profiles of the PV modules and the SunCatchers, compel a new environmental assessment of **Traffic and Transportation** and **Visual Resources** impacts, including but not limited to glint and glare. None of the potential impacts associated with these changes was or could have been assessed in the initial environmental document but each of these changes is likely to result in significant impacts that were not previously assessed.

Finally, as the Committee receives additional information regarding the full scope and nature of the Petition's environmental impacts and baseline conditions, the Committee will require an updated alternatives analysis. (§ 21080.5, subd. (d)(3) [requiring an EIR to include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impacts], Cal. Code Regs., tit. 20, §1203, subd. (a).)

III. DISPOSITION

For the foregoing reasons, Sierra Club's Motion to Dismiss the Petition to Amend is **DENIED**.

Furthermore, the Committee disclaims Energy Commission certification jurisdiction over the Petition's PV component. But, by operation of law, has exclusive certification jurisdiction over the Petition's thermal powerplant component and its related facilities and exclusive, non-delegable lead agency status over these project elements. While the Commission may claim lead agency status over the PV component, it is not the only agency that may do so. The Committee will confer with CDFG to resolve the lead agency designation.

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Finally, regarding the baseline conditions, the Petition proposes a modification to the approved Calico Solar Project and not a new project. Subject to the exceptions described above, including those relating to **Biological Resources, Soil and Water Resources, Traffic and Transportation, and Visual Resources**, environmental analysis of the Petition's impacts is appropriately limited to the incremental effects of the changes unless subsequent information presented to the Committee's compels revised baseline conditions.

Dated: July 1, 2011, in Sacramento California

A handwritten signature in black ink, appearing to read 'K. Douglas', written over a horizontal line.

KAREN DOUGLAS
Commissioner and Presiding Member
Siting Committee

A handwritten signature in black ink, appearing to read 'Robert B. Weisenmiller', written over a horizontal line.

ROBERT B. WEISENMILLER
Chairman and Associate Member
Siting Committee