



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT
GENESIS SOLAR, LLC

DOCKET No. 09-AFC-8

ORDER GRANTING GENESIS SOLAR, LLC MOTION FOR SCOPING ORDER, HEARING AND ORDER SCHEDULING TIME FOR FILING BRIEFS AND NOTICE

I. Background

On December 24, 2009, Applicant Genesis Solar, LLC brought a motion for Scoping Order, Hearing and Order Scheduling Time for Filing of Briefs. The motion requests the Committee to set a Briefing Schedule, set a Hearing and adopt a Scoping Order after a hearing that addresses the following legal issues:

1. An articulation, with specificity, of the Commission's Policy on use of water for power plant cooling purposes;
2. An articulation, with specificity, of the legal affect of the US Bureau of Reclamation's Accounting Surface Methodology on groundwater pumping in the Chuckwalla Valley Groundwater Basin;
3. A definition of the legal standard for including future projects in the cumulative impact analysis under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA); and
4. An articulation as to whether the Commission has a policy of conserving water for use by projects that are not yet identified.

The motion requests that the Committee schedule the hearing during the last week of January and order the parties to provide legal briefs and position papers on or before January 18, 2010 (allowing for rebuttal to be provided at hearing).

The motion requests an accelerated briefing schedule alleging that good cause exists because the Genesis Solar Energy Project (GSEP) has an expedited schedule as a project seeking American Recovery and Reinvestment Act of 2009 (ARRA) funding and because Commission Staff has identified that resolution of these legal questions will delay processing of the GSEP thereby jeopardizing ARRA funding.

On December 26, 2009, the Committee sent a request via electronic mail asking all the parties to inform the Hearing Officer whether they intended to oppose Applicant's

motion. The Committee further informed the parties that any opposition briefs were to be filed by close of business on December 31, 2009. Only Staff and Intervenor CURE filed opposition briefs.

Staff did not oppose the Applicant's motion and "supports all efforts to resolve critical issues as soon as possible in this proceeding." However, Staff warns that "projects whose development plans create complicated issues involving sensitive resources are likely to be delayed."

CURE asserts that Applicant's requests are "premature." CURE argues that the Committee "should not pre-determine any legal affects until it is clear what the underlying facts are. Instead, the Committee should direct Commission Staff to proceed with gathering facts in order to ultimately provide a recommendation regarding impacts to water resources and compliance with LORS."

The Committee agrees with Staff that it is best to resolve critical issues as early in the proceedings as is practicable. The Committee is mindful of CURE's concern regarding premature legal discussions that are thinly veiled discussions of fact. Needless to say, the Committee cannot and will not resolve questions of fact until evidentiary hearings are convened. Nevertheless, the Committee can fashion an Order requiring the parties to satisfy the Applicant's need for articulation of law and policies at a sufficiently general level that would avoid application of law or policy to the facts of this case. In so doing, there would be no interruption of Energy Commission technical staff's gathering of facts for their impacts analysis because only legal staff need be involved in briefing these high level legal issues. We admonish the parties to narrowly articulate their positions on matters of law and policy to avoid descending into matters of fact.

GOOD CAUSE APPEARING, The Committee **GRANTS** the Applicant's Motion and **Orders** the parties to file briefs responding to the following four questions:

1. What is the Commission's Policy on use of water for power plant cooling purposes?
2. What is the legal affect of the US Bureau of Reclamation's Accounting Surface Methodology on groundwater pumping in the Chuckwalla Valley Groundwater Basin?
3. What is the legal standard for including future projects in the cumulative impact analysis under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA)?
4. Does the Commission have a policy of conserving water for use by projects that are not yet identified?

The Committee finds good cause to accelerate the briefing schedule. The Committee **Orders** the parties to file and serve points and authorities on all parties and the Hearing Office **on or before 3:00 p.m. on Tuesday, January 19, 2010.** Parties may file rebuttal briefs by **Friday, January 22, 2010 and/or present rebuttal argument at the hearing.**

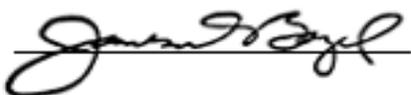
The Hearing is scheduled as follows:

***TUESDAY, JANUARY 26, 2010
Beginning at 1:30 p.m.***

**California Energy Commission
1516 Ninth Street
Hearing Room B
Sacramento, California 95814**

So Ordered.

Dated: January 7, 2010 at Sacramento, California.

A handwritten signature in black ink, appearing to read "James D. Boyd", written over a horizontal line.

JAMES D. BOYD
Vice Chair and Associate Member
Genesis Solar AFC Committee