**STATE OF CALIFORNIA**

**Energy Resources Conservation and Development Commission**

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| In the Matter of: | ) | |
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| Application for Certification for the | ) | |
| Hidden Hills Solar Electric Generating System | ) | Docket No. 11-AFC-2 |
| Project. | ) | |
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# APPLICANT'S NOTICE PURSUANT TO 20 C.C.R. § 1716(f) FOR CALIFORNIA ENERGY COMMISSION STAFF'S DATA REQUESTS SET 1D


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December 27, 2011

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**Energy Resources Conservation**
**and Development Commission**

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**APPLICANT'S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)**
**FOR CALIFORNIA ENERGY COMMISSION STAFF'S**
**DATA REQUESTS SET 1D**

On December 6, 2011, Hidden Hills Solar I, LLC and Hidden Hills Solar II, LLC (collectively, the "Applicant"), received the California Energy Commission ("CEC") Staff's Data Requests, Set 1D. Except as noted below, the Applicant will respond to these requests on or before January 6, 2012. There are, however, specific data requests to which the Applicant objects, and others that will require further time to prepare a response. Pursuant to Title 20, California Code of Regulations, Section 1716(f), Applicant hereby provides notice of its objections to Data Requests 105, 106, 108, and 125, its partial objections to Data Requests 101, 104, 109, 127, 129-131, and the need for additional time to respond to Data Request 104, 115, 116, 117, and 127.

## I. SPECIFIC OBJECTIONS

Section 1716 of the Commission's regulations provides:

> Any party may request from the applicant any information reasonably available to the applicant which is relevant to the . . . application proceedings or reasonably necessary to make any decision on the. . . application.[1]

[1] 20 C.C.R. § 1716(b).

Pursuant to Section 1716, a party may request from an applicant information that is *reasonably available* to it. Section 1716 does not require that an applicant "perform research or analysis on behalf of the requesting party."[2]

In evaluating whether a data request involves "discoverable information" or "undiscoverable analysis or research", the Commission considers four factors: (1) the relevance of the information; (2) whether the information is available to the applicant, or from some other source, or whether the information has been provided in some other form; (3) whether the request is for data, analysis, or research; and (4) the burden on the applicant to provide the data.[3]

The California Environmental Quality Act ("CEQA") does not require that either the Applicant, or the "lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required."[4] Moreover, 'CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors."[5]

Rather, CEQA requires an Environmental Impact Report ("EIR") to "be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes into account environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible."[6]

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[2] *See* Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).
[3] *See* Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).
[4] *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396 [133 Cal.Rptr.2d 718].
[5] 14 C.C.R. § 15204(a).
[6] 14 C.C.R § 15151.

With respect to Cultural Resources, the Applicant has already provided a more than adequate good faith analysis of these resources. The cultural analysis section of the AFC alone constitutes 41 single spaced pages, plus approximately 500 pages of appendices, prepared by a team of three cultural resource experts. These experts conducted thorough archival research; contacted a wide range of other interested agencies, Native American groups, and historical societies; and conducted a complete field investigation of the entire 3,277 acre project site and surrounding buffer zone. These efforts yielded only two potentially eligible cultural resource sites that have the potential to be affected by the HHSEGS project.

Given the thoroughness of the investigation to date, and the few potential cultural resource sites that have the potential to be adversely affected by the project, the Staff's additional requests for further "detailed", "complete", or exhaustive research and analyses is unduly burdensome and unnecessary. The research requested by Staff would entail millions of dollars of additional costs and months, if not years, of delay.

Applicant objects to those specific data requests where the information requested is not reasonably available to the Applicant. Certain data requests ask the Applicant to engage in extensive new research projects entailing significant burdens - time, resources, and cost – on the Applicant. The Applicant also objects to those data requests that are not relevant to the proceeding or reasonably necessary to make any decision on the AFC for the Hidden Hills Solar Electric Generating System ("HHSEGS") project. Without waiving any of these objections, Applicant reserves the right to provide and will endeavor to provide responses, in whole or in part, to some or all of these Data Requests.

## A. OBJECTIONS

### 1. Data Requests 105 and 106

Data Request 105 asks that Applicant:

> [D]evelop and submit, for staff review and approval, a research design for the investigation of the paleohydrology, aboriginal water management, paleoecology, and ethnobotany of the portion of the step fault zone that stretches from Mound Spring to Stump Spring. The research design should include collaboration among professionals in the disciplines of Quaternary geology or science, geoarcheology, economic or ethnobotany, and Great Basin or Southwest archaeology. The research design should, at a minimum, set out contexts, theory, and field methods appropriate to the investigation of the research themes above. . .

Data Request 106 requires Applicant, once staff has approved the research design, to:

> [E]xecute the study and provide a technical report of the field and laboratory data, as well as analysis and interpretations of that data relative to the original research design.

Applicant objects to this data request for several reasons. First, this data request does not request information that is reasonably available to Applicant, but instead requests Applicant to perform specialized research and analysis that would be extremely costly and time consuming to perform. The "investigation" requested by Data Request 105 would entail a huge undertaking, requiring two to three resource experts a year or more to complete, at a cost of $500,000 to $2,000,000. In addition to being burdensome, the information requested is not reasonably necessary for the Commission to make a decision in this proceeding. The "step fault zone" that is the subject of these data requests is located far outside the project boundaries, and will not be disturbed by the project. Therefore, Applicant objects to both Data Requests 105 and 106.

### 2. Data Request 108

Data Request 108 asks that Applicant:

> [P]rovide further discussion analyzing the character and location of the subject resources relative to geomorphic and other relevant environmental parameters, such as surface and subsurface hydrology, vegetation associations that include significant economic plant species and support significant economic animal species, known sources of toolstone, and landforms with potential for the ascription of cultural value.

This data request requests further discussion of the matters specified in Data Request 105. Applicant objects to Data Request 108 for the same reasons identified above, namely that the requested discussion would require additional research that is costly and burdensome and that it requests information that is not reasonably available to the Applicant, and is not reasonably necessary for a Commission decision in this proceeding.

### 3. Data Request 125

Data Request 125 asks that Applicant:

> Present a complete history of the Old Spanish Trail. Describe, to the extent possible, how the trail was used in prehistoric times . . . Please describe any cultural significance the trail plays in the history of the Paiute or other Native American groups in the area. Additionally, the history of the trail in the AFC stops at year 1863. Please complete and provide a description of the history of the trail.

Applicant objects to this data request for several reasons. First, Applicant has already provided sufficient information on the Spanish Trail in the AFC, Supplement B, and in the confidential cultural resources technical report which discusses use of the Old Spanish Trail by Native American groups and others prior to 1863, in addition to use of the trail for local traffic through

the 1940s.[7] CEQA does not require the exhaustive and vastly detailed "complete history" requested by Staff, but rather sufficient information for the lead agency to make an informed decision.[8]

Second, a "complete history" of the Old Spanish Trail dating back to "prehistoric times" is not reasonably available to Applicant, and would require substantial new historical research, amounting to a dissertation on the history of a route that runs from Santa Fe, New Mexico, through Colorado, Utah, Arizona, Nevada, and into southern California.[9]

Third, a detailed history of the Old Spanish Trail is neither relevant nor reasonably necessary for the Commission to make a decision in this proceeding as maps from the National Park Service clearly show that route of the Old Spanish Trail is located outside of the HHSEGS project boundary.[10] Therefore, Applicant objects to Data Request 125.

### B. PARTIAL OBJECTIONS

#### 1. Data Request 101

Data Request 101 asks that Applicant:

> [P]rovide a map . . . of the basin fill and alluvial silty sands identified in Supplement B to be the two principal Late Quaternary sedimentary units on the project site as well as the landforms and landform features that compose the step fault zone immediately to the east of the eastern project site boundary.[11]

Applicant will respond to that portion of this data request requesting a map of the basin fill and alluvial silty sands for the HHSEGS project site, as this information is reasonably available to Applicant, and may have some relevance to this proceeding.

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[7] HHSEGS AFC, Section 5.3.3.5.6; See generally, HHSEGS AFC Supplement B.
[8] 14 C.C.R. §15151; also see Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376.
[9] HHSEGS AFC, p. 5.3-20.
[10] HHSEGS AFC Figure 5.3-2.
[11] Staff Data Requests Set 1D, p. 6.

However, Applicant objects to the portion of this data request that asks for a map of the "landforms and landform features…immediately to the east of the eastern project site boundary" for two reasons. First, this information is not reasonably available to Applicant. This would be a challenging mapping exercise requiring substantial and burdensome research and analysis by Applicant. Second, this information is not necessary for the Commission to reach a decision in this proceeding, and is therefore irrelevant. Staff states that it "needs to better understand the depositional regimes inherent to the interface between the floor of the bolson [which includes the project site] and those of the step fault zone [which lies outside of the project site]."[12] However, Applicant has already provided substantial information regarding the geomorphology of the project site,[13] which will be further supplemented by the map that Applicant will provide of the project site in response to Data Request 101. A map containing details of the geomorphology outside of the project site boundary is not necessary for the Commission to reach a decision in this proceeding. Therefore, Applicant objects to this portion of Data Request 101 because the information requested is not reasonably available to Applicant, and is not reasonably necessary for the Commission to make a decision in this proceeding.

**2. Data Request 104**

Data Request 104 asks that Applicant provide:

> [A] discussion of the field methods and resultant field data on the natural distributions of potential toolstones among the lag deposits of the basin fill and the alluvial silty sands that supports the AFC's interpretations of the causal relationships between particular toolstone sources and archaeological site locations. In addition, please provide a map . . . of those natural toolstone distributions.

[12] Staff Data Requests Set 1D, p. 6.
[13] HHSEGS AFC Supplement B, p. 66.

Applicant will provide a discussion of the field methods and resultant field data, and has in fact, has previously provided portions of this data to Staff.[14]

However, Applicant objects to Staff's request for a map of the natural toolstone distributions. Such a map is not reasonably available to Applicant. While Applicant's consultants make every effort to correlate information regarding toolstone found on-site and potential sources, this type of mapping is not typically done, and is not necessary to evaluate the cultural resources found on the project site. Furthermore, mapping of the distribution of all *potential* natural toolstone sources onsite would require additional and burdensome research, time and costs to compile. Moreover, even if such a map were created by Applicant in response to Staff's request, this map would not provide any detail necessary to the evaluation of the cultural resources on the project site, and is not reasonably necessary for the Commission to make a decision in this proceeding. Therefore, Applicant objects to the portion of Data Request 104 that requests a map of toolstone sources in the site vicinity because the information requested is not reasonably available to Applicant, and is not reasonably necessary for the Commission to make a decision in this proceeding.

**3. Data Request 109**

Data Request 109 asks that Applicant provide:

> Complete and detailed descriptions of the archaeological sites and features in the AFC Supplement B, *Records Search Results* subsection. For archaeological features, please provide at minimum, the dimensions, orientations, material composition, inferred construction methods, and typical associations of the subject features. For archaeological sites, please provide the dimensions, geomorphic contexts, artifact assemblage compositions, material patterning, and inferred origins and taphonomy of the subject sites.

[14] HHSEGS AFC, Section 5.3.3.6.2; *also see* HHSEGS AFC Appendix 5.3B *and* HHSEGS AFC Supplement B.

To the extent that Applicant is in possession of additional information regarding the "archaeological sites and features" described in the *Records Search Results* subsection of AFC Supplement B, Applicant will provide such information in its data response.

However, Applicant objects to this data request to the extent that it requests information that is not reasonably available to Applicant. Furthermore, as the archaeological sites and features identified in the *Records Search Results* are outside the project area of disturbance, and there is no evidence that the project will impact these resources, Applicant objects to this data request as requesting information that is not reasonably necessary for the Commission to make a decision in this proceeding.

**4. Data Request 127**

Data Request 127 asks that Applicant:

> [P]repare and provide, for staff's review and approval, research designs and work plans for field investigations that are to support the evaluations of the historical significance of archaeological sites CA-INY-2492, S-2, S-4, S-6, S-10, S-11, S-23, and S-AF-1. Staff envisions the designs and work plans as one integrated document.

Applicant agrees that it has the burden to provide additional information regarding sites S-2 and S-10, because those sites have been identified as potentially eligible for listing in either the CRHR and/or NRHP, and has no objection to preparing and executing a research design and work plan for field investigations of those sites. Applicant does not agree, however, that additional research and analysis of CA-INY-2492, S-4, S-6, S-11, S-23, and S-AF-1, is necessary for a Commission decision in this proceeding given these sites are recommended as not eligible for listing in either the CRHR or NRHP. Therefore, Applicant objects to Data Request 127 to the extent that it requests additionally research and analysis of cultural resources that are

ineligible for listing in the CRHR and NRHP, on the grounds that the request is burdensome, and not reasonably necessary for a Commission decision in this proceeding.

**5. Data Requests 129-131**

Data Requests 129-131 asks that Applicant provide "detailed" discussions of the "ethnography of the Southern Paiute and Panamint groups in relation to the project area of analysis", "how the Southern Paiute and Panamint groups utilized the project area of analysis", and "the religious or spiritual significance of the project of analysis and Pahrump Valley to the various peoples using it."[15] The information sought in these data requests is already provided in AFC Supplement B, which not only fully discusses the ethnography of the Southern Paiute and Panamint groups in the project area, but also in the larger context of the Pahrump Valley area.[16] Supplement B also describes how these two groups likely used the areas within the Pahrump Valley, and the significance of areas within Pahrump Valley to the Southern Paiute group. Provision of additional information beyond that already provided by Applicant in the AFC and Supplement B would require substantial additional research and analysis, and the resulting information would not be reasonably necessary for the Commission to make a decision in this proceeding. Therefore, Applicant will provide any additional information that it already possesses regarding the subject matter of these data requests. To the extent that these data requests ask for further information, Applicant objects on the basis that these data requests are burdensome, and not reasonably necessary for the Commission to make a decision in this proceeding.

[15] Staff Data Request Set 1D, p. 15.
[16] Supplement B, pp. 31- 34.

## II. NEED FOR ADDITIONAL TIME TO RESPOND

In agreeing to provide a response to these requests, with a slight extension in the time for our response, it is our expectation that our responses will not delay the issuance of the Preliminary Staff Assessment ("PSA"), especially since Data Request Set 1E has not been released yet.

Should Staff believe that our request for an extension of time on any of these items would be cause for delay in issuing the PSA, we wish to be advised immediately - so that we may revisit the timetable for providing the information or the necessity of providing the information in the first instance.

### A. Data Request 104

As discussed above in Section I, Data Request 104 asks that Applicant provide a "discussion of the field methods and resultant field data on the natural distributions of potential toolstones among the lag deposits of the basin fill and the alluvial silty sand" and to provide a map of the natural toolstone distributions.[17] Such an analysis is not typically done, and Applicant does not agree that further detailed information is necessary for the Commission to make a decision in this proceeding. Notwithstanding this disagreement, Applicant will respond to the discussion portion of the data request to the extent possible using data already available, but will need additional time, given that this data request requires a detailed response. Applicant will submit a response to this data request on January 20, 2012.

### B. Data Requests 115 and 116

Data Requests 115 and 116 relate to the DPR 523 forms and corresponding Sketch Maps submitted for the archaeological sites found on the project site. These data requests ask that Applicant determine whether these forms contain any errors, to correct those errors, and resubmit

corrected forms and Sketch Maps to Staff.[18] In order to ensure that each form is carefully reviewed and corrected if necessary, Applicant requires additional time to respond to this request, and will submit a response to these Data Requests on January 20, 2012.

**C. Data Request 117**

Data Request 117 asks that Applicant "expand, with reference to field observations from the recent pedestrian survey, the geomorphic contexts for each archaeological site in the project area of analysis."[19] Applicant has already provided information regarding the geomorphic context of the archaeological sites within the project area, and does not agree that further detailed information is necessary for the Commission to make a decision in this proceeding. Notwithstanding this disagreement, Applicant will respond to this data request, but will need additional time, given that this data request requires a detailed response. Applicant will submit a response to this data request on January 20, 2012.

**D. Data Request 127**

As discussed above in Section I, Data Request 127 asks that Applicant prepare and provide, for Staff review and approval, research designs and work plans for field investigations of several archaeological sites identified on the HHSEGS project site. Applicant agrees to this request relative to sites S-2 and S-10, as these sites have been determined to be potentially eligible for inclusion in the California Register of Historical Resources ("CRHR") or the National Register of Historic Places ("NRHP") pending further evaluation of the potential historical significance of these sites.[20] However, as discussed in detail in Section I(A) above, Applicant disagrees that further field investigations should be conducted for archaeological sites

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[17] Staff Data Requests Set 1D, p. 6.
[18] Staff Data Requests Set 1D, pp. 10-11.
[19] Staff Data Requests Set 1D, p. 11.

CA-INY-2492, S-4, S-6, S-11, S-23, and S-AF-1, given that those sites have been determined as not eligible for listing in either the CRHR or NRHP, and that there is no value in further investigation of sites deemed non-eligible for listing. Consultants for Applicant are in the process of preparing the necessary research designs and work plans for the field investigations, and anticipate that the requested integrated document will be available for Staff review by February 6, 2012.

Dated: December 27, 2011

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

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[20] Supplement B, Table B2-1- http://www.energy.ca.gov/sitingcases/hiddenhills/documents/applicant/2011-09-23_Supplement_B_TN-62322.pdf

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**PROOF OF SERVICE**

I, Deric J. Wittenborn, declare that on December 27, 2011, I served the attached ***APPLICANT'S NOTICE PURSUANT TO 20 C.C.R. § 1716(f) FOR CALIFORNIA ENERGY COMMISSION STAFF'S DATA REQUESTS SET 1D*****,** 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.

Deric J. Wittenborn

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**11-AFC-2**

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