

BEFORE THE CALIFORNIA ENERGY COMMISSION
STATE OF CALIFORNIA

In the Matter of:)
Application for Certification for the) **Docket No. 07-AFC-5**
Ivanpah Solar Electric)
Generating System)
_____)

**STAFF RESPONSE TO APPLICANT'S PROPOSED SCHEDULE
AND REQUEST FOR REVISED SCHEDULING ORDER**

INTRODUCTION

On October 1, 2008, the applicant for the Ivanpah Solar Electric Generating System Project (ISEGS) filed a proposed schedule and a request for a revised scheduling order, or (alternatively) for a scheduling conference. The California Energy Commission committee responsible for this project subsequently issued an order for such a conference on October 15, 2008, and requested that parties respond to the applicant's proposed schedule by October 10, 2008.

During the past two weeks, Energy Commission staff has conferred with the staff of the U.S. Bureau of Land Management (BLM) to determine the feasibility of applicant's proposed schedule. Such collaboration is necessary because the Preliminary Staff Assessment (PSA) for this project is a "joint" document that will also serve as the Draft Environmental Impact Statement (DEIS) for BLM's right-of-way permit, the federal land permit required for ISEGS. The DEIS satisfies federal National Environmental Policy Act (NEPA) requirements for BLM's issuance of right-of-way permits. After conferring with BLM, Commission staff subsequently met with the applicant to discuss the proposed schedule.

APPLICANT'S PROPOSED SCHEDULE IS IMPRACTICAL

Prior to the outset of the ISEGS proceeding, BLM staff and Commission staff entered into a Memorandum of Understanding (MOU) regarding the joint production of the PSA/DEIS document and the Final Staff Assessment/DEIS document.¹ The goal of the MOU is to provide simultaneous and consistent state and federal environmental review.

¹ The MOU is titled "Memorandum of Understanding between the U.S. Department of the Interior, Bureau of Land Management California Desert District and the California Energy Commission Staff Concerning Joint Environmental Review for Solar Thermal Power Plant Projects." The MOU was signed by the Commission's Executive Director on August 8, 2007.

Among other things, the MOU provides that the two agencies will share in the preparation and review of the environmental analyses for solar thermal projects, and indicates that the environmental documents will serve the dual purpose of satisfying both state California Environmental Quality Act (CEQA) and federal NEPA requirements. (MOU, p. 4.) According to the MOU attachment titled "BLM & CEC Combined Processing Plan," the PSA/DEIS is to be issued during the same approximate time frame as the circulation (for federal NEPA purposes) of the DEIS. In the federal NEPA process, BLM must submit the DEIS to a "Notice of Availability" (NOA) review process by the Department of Interior before the DEIS can be noticed in the Federal Register and publicly released. The NOA review period can take several weeks before the DEIS is publicly issued and BLM's 90-day comment period on the document can begin. During the NOA review period the PSA/DEIS will be virtually complete, but not yet publicly released. Thus, there can be little further schedule progress during this period.

Applicant's proposal is to try to avoid the delay caused by the NOA review period by having Commission staff publish the PSA first (apparently captioned solely as the PSA) and initiating Staff workshops on the document during the NOA review period. However, BLM staff believe that such a shortcut is inconsistent with the MOU and with the agencies' agreement to release the PSA/DEIS as a joint document that meets federal NEPA requirements, including NOA review and Federal Register publication before its release. BLM believes that participation in workshops on what is in essence the DEIS, but before the DEIS is officially reviewed and published for federal purposes, violates federal requirements. BLM and Commission staff believe that any departure from the joint document, including during the NOA review period, is contrary to the MOU, and BLM staff further believes that such departure would require BLM to produce its own separate DEIS.

If the applicant's proposal is accepted, and BLM proceeds to divorce itself from the Commission process and produce its own DEIS without the Commission's PSA, this breakdown of the joint document collaboration will add many months to the schedule for federal approval. Thus, in an effort to gain some weeks, applicant's proposed schedule risks significant project delay from the breakdown of the state/federal agency collaboration. For these reasons, Commission staff opposes applicant's proposed schedule.

Dated: October 10, 2008

Respectfully submitted,



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