

MANDATORY STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for) Docket No.
the Palen Solar Power Project) 09-AFC-7
Palen Solar I, LLC)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, JULY 6, 2010
9:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Robert B. Weisenmiller, Presiding Member

Karen Douglas, Chairman and Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Eileen Allen, Advisor to Commissioner Weisenmiller

Galen Lemei, Advisor to Commissioner Douglas

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Alan Solomon, Project Manager

APPLICANT

Scott Galati, Attorney
Galati and Beck

Alice Harron
Solar Millennium, LLC

INTERVENORS

Jason W. Holder, Attorney
Adams Broadwell Joseph & Cardozo
representing California Unions for Reliable Energy (CURE)

Lisa Belenky (via teleconference)
Center for Biological Diversity

Kevin Emmerich (via teleconference)
Basin and Range Watch

I N D E X

	<u>Page</u>
Proceedings	1
Introductions	1
Opening Remarks	2
Applicant's Summary	3
Staff's Comments Regarding the Applicant's Filing	6
Schedule	7
Adjournment	16
Reporter's Certificate	17

1 Let's see. CARE, are you there? No one on behalf of CARE,
2 intervenor CARE?

3 All right, anyone on behalf of intervenor Center
4 for Biological Diversity?

5 MS. BELENKY: Yes, good morning. This is Lisa
6 Belenky on behalf of the Center for Biological Diversity.

7 HEARING OFFICER RENAUD: Good morning.

8 And Basin and Range Watch? Anyone on behalf of
9 intervenor Basin and Range Watch this morning?

10 MR. EMMERICH: Hello, this is Kevin Emmerich for
11 Basin and Range Watch.

12 HEARING OFFICER RENAUD: All right, thank you.

13 All right. We convened this status conference for
14 the purpose of trying to assess the state of readiness of
15 the parties and to come to a general agreement about a
16 revised schedule. The Committee revoked or retracted the
17 schedule a few weeks ago upon learning that there were going
18 to be some changes to the project that would require
19 additional time for analysis.

20 We did ask that the parties each submit a status
21 conference statement and we received those on time from
22 applicant, staff and CURE, and we thank you for those.

23 Each of you did also provide a suggested schedule.
24 Upon reviewing those I am pleased or relieved or something
25 to see that they are pretty much all in the same ballpark as

1 to how we will proceed.

2 So with that forward let me ask the applicant
3 first to just give us a little summary of where we stand and
4 where we're going. As you all know, This is a priority
5 desert solar project. We are trying to complete these
6 reviews this year, during the year 2010. Go ahead,
7 Mr. Galati.

8 MR. GALATI: Thank you. Rather than look back as
9 to why we're here I'll just briefly say it in one sentence,
10 is we reconfigured the project. And we reconfigured the
11 project in order to accommodate and to remove from
12 discussion a dispute about the sand transport. Whether or
13 not the sand transport issue was actually resulting in the
14 kinds of impacts that the Staff Assessment had identified.

15 We had several workshops on how to mitigate that
16 issue and ultimately in response to the agencies' requests
17 we have reconfigured the project to remove as much of the
18 footprint outside a zone within the sand transport corridor
19 that was considered to be important.

20 It wasn't without some cost to the project. Very
21 simply, a square works very well and steps and stair steps
22 do not. However, the project is still feasible with that
23 stair stepped configuration.

24 HEARING OFFICER RENAUD: Did it affect the output?
25 Let me just interrupt you.

1 MR. GALATI: It did not affect the output but it
2 is going to affect the economics.

3 HEARING OFFICER RENAUD: All right.

4 MR. GALATI: And what we did -- I just want the
5 Committee to be aware because there is some, there is some
6 misconception that that's an easy task to do. One of the
7 things we did is in March we started working on the
8 possibility of moving things around to take the issue off
9 the table. And it wasn't until the June time frame that we
10 were able to come up with something that would economically
11 work. We looked at many different observations.

12 Every time you change a loop you change how the
13 site is balanced. And so it isn't, it isn't just a matter
14 of how many mirrors do I need, it's a matter of making
15 everything work and flow properly. And that's not an easy
16 task. It was one of the reasons why you heard us complain
17 that if we had known earlier we could have got working on
18 this earlier, because it's not a simple task.

19 So anyway, we are here now. We think we have a
20 solution that we have presented in various forums, including
21 the REAT. And we have submitted -- unfortunately it wasn't
22 until Friday that we submitted a package to the staff with
23 the drawings and a recalculation of disturbance acreages and
24 a brief summary of all the environmental areas where we
25 think that might change or be affected.

1 I think we're pleased to report that we don't see
2 anything but positive environmental benefits from this. So
3 that was submitted on the 2nd and that's why we put in our
4 analysis. Staff and the agencies had seen the drawing
5 before. They had actually proposed one as well as an
6 alternative to carry forward.

7 We are asking staff to do something a little
8 different than normal, which is to carry two alternatives
9 forward as a proposed project. One involves private land
10 that we do not have ownership of that would be preferred to
11 us if we were able to acquire that private land. But in the
12 event that that cannot happen we submitted a layout that,
13 again, does not make use of that private piece of land.
14 Which is also economically feasible for us. So those two
15 alternatives, for all intents and purposes we're asking the
16 staff to evaluate as the preferred project and consider that
17 the proposed project which was before them as an
18 alternative.

19 So I think that pretty much gets us to where we
20 submitted the information. We don't believe that there's a
21 lot of questions regarding that and that's why we proposed
22 that staff could publish its Revised Staff Assessment in the
23 July time frame.

24 HEARING OFFICER RENAUD: All right, thank you. I
25 did see that come in on Friday afternoon, took a look at it.

1 It's a substantial document, close to 200 pages I think.
2 Very impressive looking, lots of drawings and pictures.

3 Ms. DeCarlo, I take it the staff over the weekend
4 completed its analysis of that?

5 MS. DeCARLO: Yes, we're all done.

6 (Laughter)

7 HEARING OFFICER RENAUD: Good, good.

8 MS. DeCARLO: We did have staff take a look. Not
9 all staff has responded back to me but bio staff was very
10 diligent in spending time reviewing it.

11 There are some areas that they need additional
12 information. We anticipate filing a data request set on
13 Friday. And if the applicant could get back to us on the
14 19th we think we can still make the time frame that we
15 identified in our, in our proposed schedule. Which is,
16 publication on or perhaps a little bit before August 11.

17 HEARING OFFICER RENAUD: All right, thank you.

18 And CURE, would you like to add anything to the
19 discussion?

20 MR. HOLDER: We have not yet had a chance to
21 review the new, reconfigured alternatives. We have
22 submitted data requests and there's a petition to compel
23 that's pending on that. I imagine at some point we'll reach
24 that in these discussions.

25 HEARING OFFICER RENAUD: All right, thank you. We

1 certainly won't be reaching the merits of the dispute over
2 data requests today. The opposition brief came in on Friday
3 when it was due. We really haven't had a chance to review
4 the merits of that. But we will be doing that and you'll be
5 hearing shortly from the Committee about that, about the
6 discovery dispute.

7 Let me ask then if any of our telephone
8 participants, would you care to add anything to the opening
9 comments that were made by the other parties, any of you?
10 Mr. Emmerich, anything to add?

11 MR. EMMERICH: Not at this time other than we
12 would definitely like to be able to review the reconfigured
13 plan.

14 HEARING OFFICER RENAUD: All right, good.

15 Okay, Ms. Belenky, anything to add at this point?

16 MS. BELENKY: Not at this time. I guess when you
17 talk about the schedule we want to see what kind of time
18 there will be to review it.

19 HEARING OFFICER RENAUD: Okay, we'll get there.

20 MS. BELENKY: Thank you.

21 HEARING OFFICER RENAUD: Has anyone joined us from
22 CARE? No, all right.

23 Well, I think we might as well turn to discussion
24 of the schedules unless anyone has anything to add.

25 I have three schedules. We have applicant, staff

1 and CURE. Just looking at the end result of them,
2 applicant's schedule shows a Commission Decision on December
3 15th with the PMPD issued on November 8th.

4 Staff did not venture that far into the future but
5 does show evidentiary hearings in late September. And if
6 those were in fact the dates the November/December time
7 frame for a PMPD and Decision would be about right.

8 CURE shows the final decision end of November with
9 the PMPD issued late in October and the evidentiary hearings
10 late in September.

11 So one area of common ground I see is that
12 September seems to be the agreed upon month for evidentiary
13 hearings. That sounds reasonable to me assuming that we get
14 the staff analysis sometime in the reasonably near future.

15 As far as when that would be published, maybe I
16 should ask Ms. DeCarlo what, in fact, sounds, based upon the
17 receipt of the new information, can you give us a ballpark
18 estimate as to when we might see that?

19 MS. DeCARLO: Well we present in our schedule
20 August 11th and I think that's probably as good as we're
21 going to be able to do. Maybe a couple of days beforehand.

22 We have -- a lot of our staff are involved in the
23 Blythe hearings, which go until July 16th, so they'll be
24 tied up in that, and Genesis earlier that week. So I think
25 the earliest they can really devote a substantial amount of

1 time to processing this FSA would be mid-July.

2 HEARING OFFICER RENAUD: Will that be -- do you
3 have any idea yet as to how extensive that's going to be?
4 Will it cover every topic or are there just a few topics in
5 there?

6 MS. DeCARLO: The RSA for Palen?

7 HEARING OFFICER RENAUD: Yes.

8 MS. DeCARLO: Every topic.

9 HEARING OFFICER RENAUD: All right.

10 MS. DeCARLO: I mean, in terms of staff time, a
11 lot of the topics have been written and I would imagine a
12 lot won't change substantially. But definitely Cultural and
13 Biological Resources are the big ones that we're going to
14 see a lot of effort needed to review these in a quick amount
15 of time.

16 HEARING OFFICER RENAUD: Okay, good. Well those
17 are kind of the key dates in this process is getting the
18 Staff Assessment. Once that's out that really triggers the
19 road to evidentiary hearings, Proposed Decision and the
20 Final Decision. So I think based on that information the
21 Committee would be able to prepare and issue a revised
22 Committee schedule. We thank you for all the information
23 you did provide.

24 CURE's schedule does include the hearing on the
25 petition to compel. You don't have a date in there but

1 noting that it might need, there might need to be a hearing.

2 Hearings on those are optional at the discretion of the
3 Committee. Sometimes the briefing is adequate and the
4 Committee proceeds without having an oral hearing. We'll
5 address that separately in the very near future.

6 I don't know, does any member of the Committee
7 want to bring up anything?

8 PRESIDING MEMBER WEISENMILLER: I just wanted to
9 check if the staff got the system impact study?

10 MS. DeCARLO: Not that I'm aware of. I know we
11 were expecting it last week or perhaps this week. The staff
12 has been in constant contact with the CAISO and there was a
13 little bit of delay. I heard that CAISO had finished it but
14 it needed to consult with the, with the utility before
15 getting back to us and releasing it publicly. So we
16 anticipate it shortly but I don't, I don't know if we've
17 received it yet. Maybe Mr. Galati has more information.

18 MR. GALATI: I don't believe that we have received
19 it yet. And again I would like to take a step back to an
20 overall issue that I have been talking about for a year. I
21 don't believe that you need it. And I still consider that
22 you -- I would really like you to consider that. Because
23 again, what happens if it needs to be revised? What happens
24 if there is something wrong with it? And often that is the
25 case, it is an iterative process.

1 And especially, this will be the first Phase 2
2 study coming out of the cluster. And so who is in, who is
3 out, who will really be in, who will really be out. I just
4 implore the Commission to consider, I think, an absolute
5 legal way for you to proceed without it. If it comes in,
6 great, we'll mark it exhibit number such-and-such and move
7 it into the record. There is a way to overcome this problem
8 and would like you to consider that once again.

9 The difference in the schedules really boil down
10 to staff's availability and staff's time. We chose to
11 crunch staff, staff and CURE chose to crunch you in the
12 PMPD. Either way we get to the same game and that's the
13 decision you need to make.

14 Obviously it would certainly help your process in
15 meeting the Presiding Member's Proposed Decision time line
16 if there are no disputes. But, you know, we have several
17 intervenors here. Biology is always an issue. And while we
18 have made I think significant progress to removing from
19 discussion maybe Mojave fringe-toed lizard impacts, there
20 are other projects we're working on where those are not
21 substantial issues with that particular species but there
22 are substantial issues with other species. So I'm nervous
23 about a four week PMPD.

24 HEARING OFFICER RENAUD: On the other hand, moving
25 the schedule later into the year, as these proposed

1 schedules show, does take this PMPD out of the clump of them
2 that is pretty much due in August. So in that sense it
3 makes it a little bit less of a crunch.

4 Cultural has tended to be problematic in these
5 cases just because of the size of the sites and preparation
6 of the analysis is a large task. Ms. DeCarlo, do you have
7 any insight for us on how cultural is looking on this one?

8 MS. DeCARLO: No, not much. I do know we're still
9 having difficulty accessing information because we have to
10 actually go on site to the -- I believe it's the SHPO's
11 office. And they were just in a process of moving so there
12 was a little bit of inaccessibility there. I believe that's
13 been concluded and staff now can go over there to review the
14 information. But there is still the concern on the part of
15 staff of actually not being able to take the information and
16 have it on hand. So that's a potential problem. But I
17 didn't hear from staff that they would not be able to meet
18 an August 11 publication date for cultural.

19 And I would hope with the resolution or kind of
20 the conclusion of Genesis and Blythe that they have kind of
21 figured out an approach to conditions of certification that
22 might make Palen a little bit more smooth to write.

23 HEARING OFFICER RENAUD: All right, thank you.

24 MS. DeCARLO: If I could just respond to the issue
25 about needing the Phase 2. Of course staff disagrees. We

1 believes it's critical to make our determination with regard
2 -- to reach our conclusions with regard to LORS compliance
3 and potential CEQA impacts from downstream facilities.

4 So we would definitely encourage at least
5 obtaining that at some point in the record. We don't
6 believe we need to hold up the RSA for that. If it's
7 delayed we're more than happy to provide an addendum or
8 supplemental testimony to incorporate that into the record
9 when we have had a chance to review it. But we think it is
10 important to receive into the record.

11 And in terms of schedule. If you notice I have
12 prehearing conference in the beginning of September and
13 evidentiary hearings at the end. I have a vacation
14 scheduled September 7th for about two weeks. I would like
15 to retain that vacation but it's nothing I've committed
16 financially to so there probably is some flexibility there
17 if the Committee really --

18 HEARING OFFICER RENAUD: You've been training for
19 that for some time, I think, if I'm not mistaken. All
20 right.

21 MS. DeCARLO: I would like to get away.

22 HEARING OFFICER RENAUD: We'll certainly keep that
23 in mind in preparing the revised Committee schedule.

24 I think we're done, actually, thanks to the fact
25 the submitted schedules were all pretty much in agreement

1 made the job easier for us.

2 Let me ask, though, again. Parties on the phone,
3 anything to add at this point before we head in the
4 direction of adjourning? Ms. Belenky, Mr. Emmerich?

5 MS. BELENKY: Nothing at this time.

6 HEARING OFFICER RENAUD: All right, good, thank
7 you. I hope you are now on the Proof of Service and the
8 email list and are receiving documents and you do know how
9 to access them on the Commission website. Because you are a
10 new intervenor, correct?

11 MS. BELENKY: Yes, thank you.

12 HEARING OFFICER RENAUD: All right, good.

13 Anything further from applicant before we close?

14 MR. GALATI: Just one thing for you to consider is
15 right now we have, and one of the reasons why our schedule
16 did not have one week after the RSA for testimony. What I'm
17 finding on the other projects is we file our testimony and
18 then we have a workshop. And it would be probably better
19 for the record if we had that workshop before the testimony
20 and then the testimony might be able to capture the
21 agreements. For example, we made progress in the Genesis
22 workshop after testimony. I already see myself having to
23 revise the testimony.

24 So if there were two weeks between the time the
25 Staff Assessment came out and then the first round of

1 testimony, then a week for rebuttal testimony, I think it
2 would allow us to go to workshop ahead of time. And then
3 maybe the applicant and intervenors could capture in our
4 opening testimony the agreements that we have reached at
5 workshop and make it easier for staff on the supplement.

6 HEARING OFFICER RENAUD: One thing then -- I see
7 this in other cases. So one thing we ought to think about
8 is trying to schedule that workshop even before the RSA is
9 published. Obviously to get some notice, to be able to give
10 some notice. You can always change the date, but at least
11 that way you've noticed a date and could hold that, you
12 know, within a few days after publication of the RSA.

13 Yes, CURE.

14 MR. HOLDER: I would have some concern about
15 having a workshop prior to the release of the RSA because
16 there might be less for us to talk about.

17 HEARING OFFICER RENAUD: Right.

18 MR. HOLDER: And we may not be exposed, be
19 knowledgeable of the issues that may arise with the RSA or
20 the, you know, pending analysis.

21 HEARING OFFICER RENAUD: I think we're actually
22 talking about one after release of the RSA but before the
23 filing of testimony is due. I think it's a very good idea.

24 The only procedural thing we need to make sure of is to
25 schedule and notice that workshop in advance so that it can

1 be held within a relatively short time after publication.

2 MR. HOLDER: Thank you. Our proposed schedule was
3 based upon our vague estimation of what was left to be done
4 by staff in the Revised Staff Assessment and by the
5 applicant in gathering a lot of data. So our dates were
6 guesses somewhat. And once we saw staff's status report we
7 kind of based some of our dates upon staff's proposed dates.

8 And we're fairly flexible as far as the schedule
9 that we have proposed. The one thing that we'd really like
10 to see is a 30 day public review period before our testimony
11 is due so we have a chance to review the RSA before having
12 to -- with some time available to prepare testimony.

13 HEARING OFFICER RENAUD: All right, okay. I see
14 that and we'll take that into consideration in preparing the
15 revised schedule.

16 MR. HOLDER: Thank you.

17 HEARING OFFICER RENAUD: Obviously we aren't going
18 to be able to please everybody about everything but we'll
19 try to come to the most feasible compromise that will get us
20 where we need to go.

21 MR. HOLDER: Thank you.

22 HEARING OFFICER RENAUD: Anything further from
23 anybody? All right then, we'll be adjourned, thank you.

24 (Whereupon, at 9:36 a.m. the
25 Status Conference was adjourned.)

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that I thereafter transcribed it into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of July, 2010.

JOHN COTA