



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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December 9, 2014

Via Email (publicadviser@energy.ca.gov)

California Energy Commission
1516 Ninth Street
Sacramento, California 95814

Re: **Item 3, Energy Commission Tribal Consultation Policy**

Dear Commissioners,

The Colorado River Indian Tribes has been actively involved in California Energy Commission siting proceedings and the development of the Tribal Consultation Policy for the last 14 months. We were the first federally recognized Indian tribe to intervene in a siting proceeding and were critical participants in the Commission's consideration of both the Palen Solar Electric Generating System and the Modified Blythe Solar Power Project. Just last week, our Tribal Council invited Commissioner Karen Douglas, her Advisor Christine Stora, and CEC Staff members Roger Johnson and Thomas Gates to participate in government-to-government consultation at the Colorado River Indian Reservation. The Colorado River Indian Tribes appreciates the efforts of the Commission, particularly Commissioner Karen Douglas, to improve the Commission's relationship with Indian Tribes.

While the Colorado River Indian Tribes support the Tribal Consultation Policy in concept, the Tribes are concerned that the proposed Policy does not contain the tools necessary to ensure adequate and sincere consultation in moving forward. In particular, the Policy fails to address or even acknowledge the significant barriers that prevent adequate consultation during siting proceedings. Under the Commission's existing statutory scheme, tribes can never engage in government-to-government consultation regarding a specific project given the bar on ex parte communication. And if a tribe exercises its right to intervene, and thereby present testimonial evidence directly to Commissioners, CEC regulations prevent the tribe from engaging in confidential discussions with CEC Staff. While the Colorado River Indian Tribes recognize that the Tribal Consultation Policy alone cannot remedy these structural concerns, the benefits of the Policy remain unclear if such barriers persist.

Further, the Tribes are concerned about the Policy's lack of an enforcement mechanism. As Commissioner Douglas explained last week, the effectiveness of the Policy relies on an agency culture that recognizes and supports government-to-government consultation. While the

Colorado River Indian Tribes appreciate the Commission's recent efforts with respect to consultation, we also know too well that consultation obligations can easily be swept aside when inconvenient, difficult, or costly. The Policy could be much improved by including more explicit requirements for when and how consultation must occur, by providing internal review procedures in the event a tribe raises concerns about how consultation has occurred, and by imposing an external enforcement mechanism to ensure agency compliance.

Thank you for the opportunity to provide comments on the Tribal Consultation Policy. We look forward to continuing to engage with the Commission on issues important to the Colorado River Indian Tribes, the State of California, and the members and citizens of both governments.

Sincerely,

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

Chairman Dennis Patch
Colorado River Indian Tribes

Cc: Tribal Council
Rebecca A. Loudbear, CRIT Attorney General
Wilene Fisher-Holt, CRIT Museum/Cultural Resources Director
Daphne Hill-Poolaw, Mohave Elders Chairperson
David Harper, Mohave Elders Spokesperson