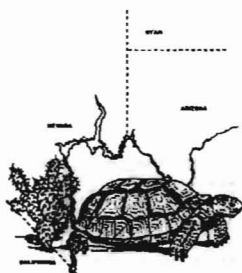


DOCKET

09-AFC-9

DATE July 06 2011

RECD. July 06 2011



DESERT TORTOISE COUNCIL

P.O. Box 1568
Ridgecrest, California 93556
www.deserttortoise.org

July 6, 2011

California Energy Commission
Attn: Docket No. 09-AFC-9
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Subject: Desert Tortoise Council Opposition To Solar Trust of America's Motion Requesting Jurisdictional Waiver And Revised Scheduling Orders For The Ridgecrest Solar Power Project (09-AFC-9)

Enclosed for filing with the California Energy Commission is the original of "Intervenor Desert Tortoise Council's Statement Of Opposition To Solar Trust Of America's Motion Requesting Jurisdictional Waiver And Revised Scheduling Orders."

Sincerely,

Sidney Silliman
Desert Tortoise Council

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

APPLICATION FOR CERTIFICATION FOR
THE RIDGECREST SOLAR POWER PROJECT

DOCKET NUMBER 09-AFC-9

**INTERVENOR DESERT TORTOISE COUNCIL STATEMENT OF OPPOSITION TO
SOLAR TRUST OF AMERICA'S MOTION REQUESTING JURISDICTIONAL
WAIVER AND REVISED SCHEDULING ORDERS**

July 6, 2011

Desert Tortoise Council
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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

APPLICATION FOR CERTIFICATION FOR
THE RIDGECREST SOLAR POWER PROJECT

DOCKET NUMBER 09-AFC-9

**INTERVENOR DESERT TORTOISE COUNCIL'S STATEMENT OF OPPOSITION TO
SOLAR TRUST OF AMERICA'S MOTION REQUESTING JURISDICTIONAL
WAIVER AND REVISED SCHEDULING ORDERS**

Ridgecrest Solar Power Project Committee
California Energy Commission

Dear Committee:

Desert Tortoise Council hereby files its response to Solar Trust of America's (STA) June 17, 2011 motion requesting an order from the California Energy Commission affirming a jurisdictional waiver and a revised scheduling order that suspends the proceedings for the Ridgecrest Solar Power Project (RSPP) for up to 12 months. Desert Tortoise Council urges the Committee to reject both requests. The motion is founded on a hypothetical scenario rather than an actual plan to develop a specific site for a particular facility for energy generation. Granting STA's request for a jurisdictional waiver would allow a private corporation to select the jurisdiction of the Commission--a public entity--and to make that election through a process that is largely outside the public's purview.

Desert Tortoise Council is opposed to STA's request for a jurisdictional waiver and a revised schedule because the motion requests that the Commission act in response to a hypothetical scenario. STA does not have a project plan at this point in time; it is merely "exploring redesign" of the Ridgecrest project. As stated in its motion, STA is simply "considering" other sites in the Ridgecrest area. In the absence of an application for certification from STA for what might be a different technology and what might be a different site, the CEC is advised to reach a determination on the merits of RSPP as proposed in Solar Millennium's Application for Certification (09-AFC-9). In its letter of January 21, 2011 withdrawing its application for the Ridgecrest Solar I, LLC project, Solar Millennium stated that it would not be economical to pursue the project. It cited the CEC Staff's position on RSPP, the August 4, 2010 Status Report, and the Desert Renewable Energy Conservation Plan's identification of the project area as a site to protect from development. Given this, it is advisable to terminate RSPP and then evaluate any application for certification that STA might submit for a future project.

Desert Tortoise Council is opposed to STA's request for a jurisdictional waiver and a revised schedule because granting the request would, in effect, allow a private corporation to select the jurisdiction of the Commission, a public entity, and to do so through a process that is largely outside the public's purview. The STA motion proposes that Public Resources Code Section 25502.3 allows an applicant to voluntarily file with a Commission an application for a "facility" that would otherwise be excluded from the Commission's siting jurisdiction. The tortured logic of the STA motion ignores the clear intent of the Warren-Alquist Act to establish the California Energy Commission's jurisdiction as over the certification of thermal power plants with a generating capacity of 50 MW or more. Public Resources Code Section 25110 defines "facility" as "...any electric transmission line or thermal powerplant, or both electric transmission line and thermal powerplant, regulated according to the provisions of this division." A thermal power plant, as defined by Section 25120 of the Public Resources Code, "means any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto." Section 25120 further stipulates that a thermal power plant "does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility."

Desert Tortoise Council questions STA's interpretation of Public Resources Code Section 25502.3 as that understanding would, in effect, allow the large, private (often multinational) corporations that file applications with the CEC to determine the jurisdiction of the Commission. If such corporations were to determine the CEC's jurisdiction, a further result would be private corporation election of the public agency responsible for California Environmental Quality Review of projects within the CEC's jurisdiction. A decision to change the intent and meaning of the Warren-Alquist Act with regard to the Commission's jurisdiction ought to be reached by the State legislature rather than by the CEC. The legislature is a representative institution open to scrutiny by the public whereas the Commission is an appointed body and its proceedings are typically beyond the purview of most of the public.

In sum, the public interest is best served by a decision to reject the requested actions in the STA motion of June 17, and a decision to reach a determination on the merits of RSPP. The Committee, CEC Staff, and the parties to the RSPP proceedings have devoted considerable time and resources to a good faith evaluation of Solar Millennium's Application for Certification for the Ridgecrest project. CEC Staff and the parties committed additional time and resources to a careful and complete evaluation of the Applicant's proposed Mohave ground squirrel study. Yet Solar Millennium responded in 2011 with a series of letters and motions that delayed and effectively avoided a determination of the project's merits. It is time to come to closure on RSPP. STA should withdraw the Application or the Commission should terminate the project.

Dated: July 6, 2011



Sidney Silliman
Board of Directors
Desert Tortoise Council



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 *RIDGECREST SOLAR POWER
PROJECT***

**Docket No. 09-AFC-9
PROOF OF SERVICE
(Revised 7/5/2011)**

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DECLARATION OF SERVICE

*DTC Opposition STA
motion Re Jurisdiction*

I, G. S. Silliman declare that on 7/6/11, I served and filed copies of the Waiver, dated 7/6/2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest\]](http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest).

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (**preferred method**);
- OR**
- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-9
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

G. S. Silliman