STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

DOCKET	
09-AFC-9	
DATE	SEP 16 2011
RECD.	SEP 16 2011

In the Matter of:

APPLICATION FOR CERTIFICATION FOR THE (SOLAR MILLENIUM) RIDGECREST SOLAR POWER PROJECT

DOCKET NO. 09-AFC-9

INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S SUPPLEMENTAL BRIEFING IN OPPOSITION TO RSPP'S MOTION FOR JURISDICTIONAL WAIVER SUBMITTED PURSUANT TO COMMISSION ORDER NO. 11-0824-8

September 16, 2011

Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
Phone: 415-436-9682 x 307
Cell: 415-385-5694
lbelenky@biologicaldiversity.org

Ileene Anderson
Public Lands Desert Director
Center for Biological Diversity
PMB 447, 8033 Sunset Boulevard
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of: APPLICATION FOR CERTIFICATION FOR THE (SOLAR MILLENIUM) RIDGECREST SOLAR POWER PROJECT	DOCKET NO. 09-AFC-9

INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S SUPPLEMENTAL OPPOSITION TO RSPP'S MOTION FOR JURISDICTIONAL WAIVER

I. Introduction

Pursuant to the Commission Order No. 11-0824-8, dated August 24, 2011, and the Appendix filed on August 26, 2011, the Center for Biological Diversity ("Center") provides this supplemental briefing regarding the motion for jurisdictional waiver for the Ridgecrest Solar Power Project ("RSPP") which is now pending before the full Commission including responses to the questions raised in the Appendix. Some of the answers to the questions posed have already been provided in prior briefing in opposition to the motion by Staff and the Center; where that is the case this supplemental briefing in opposition provides reference to the earlier briefing along with a summary and any needed additional clarification and argument. The Center also provides additional arguments in opposition to the motion in this briefing.

In addition, the Center objects to the full Commission hearing this waiver motion before the Committee has ruled on the other pending motions from RSPP seeking an extension of the suspension of the application at issue because the consideration of this motion may be entirely unnecessary. As the Center has previously argued in briefing and at the Commission hearing on August 24, 2011, the Committee should have first ruled on the RSPP request to extend the suspension of its application, denied that request, and dismissed the application. If the Committee had properly and timely addressed the request to extend the suspension there would be no need to for the full Commission to hear the jurisdictional waiver motion at this time. The application should be dismissed because the applicant has not timely pursued its application and the basis for the original suspension is no longer operative as RSPP has withdrawn support for the needed Mojave ground squirrel studies. Indeed, RSPP also asked that the application be withdrawn in January, 2011, but then later contradicted that request and asked instead that the application continue to be suspended for several more years until the DRECP is completed. Simply put, this is a jurisdictional question that is not raised in the context of a valid application or a "live" controversy and, therefore, it is imprudent for the Commission to consider RSPP's motion at this time.

After acknowledging it has no intent of pursuing the existing application for a solar thermal project which has been suspended for nearly 15 months, RSPP now seeks both an extended suspension of the application and a so-called jurisdictional waiver that is contrary to the plain language of the statute. RSPP's motion has no merit and should be denied.

II. Procedural History

On or about June 17, 2011, Solar Trust of America ("STA") (which describes itself as "formerly Solar Millennium, LLC") submitted a document entitled "Motion for Order Affirming Application of Jurisdictional Waiver" requesting that the Committee retain jurisdiction over this matter although the applicant states that the project will be redesigned as a photovoltaic project (PV) and will no longer be proposed to be a solar-thermal project. The Motion also again requested that the Committee issue a revised scheduling order maintaining the suspension of the Application for Certification Proceeding for 12 months to allow a redesign of the RSPP project which STA states now intends to utilize solar photovoltaic technology ("PV") and "the DRECP Process to further enlighten the viability of the sites in and around the City of Ridgecrest including the current site."

Staff submitted a reply brief opposing the motion on July 5, 2011 (hereinafter "Staff Reply"). The Center submitted briefing opposing the motion on July 6, 2011 (hereinafter "Center Opp.") opposing both the RSPP jurisdictional arguments and the continued suspension of the application. On July 6, 2011, RSPP submitted additional briefing raising new issues in support of its motion, and on July 25, 2011, the Committee held oral argument on the motion. A transcript of those proceedings was posted on July 29, 2011 (hereinafter "Tr. 7/25/11"). On July 28, 2011, the Committee requested that the Commission to hear the matter in its stead and withdraw the hearing and resolution of the motion from the committee to allow consideration by the full Commission. On August 23, Kern County Planning and Community Development Department filed an objection to the motion as well (hereinafter "Kern Co. Obj."). On August 24, 2011, the Commission heard the request of the Committee and issued order No. 11-08240-8 accepting that the full Commission would hear the jurisdictional waiver motion, allowing additional, non-duplicative briefing, and responses to specific questions posed by the Commission. At that meeting, the Commission clarified that it would not hear any argument on any other proceedings in this matter including the related motions to continue the suspension on the application that are still pending before the Committee. On August 26, 2011, the Commission issued an Appendix to the Order including 6 questions that it would like addressed in any briefing.

The Center opposes the jurisdictional waiver motion on the grounds stated in our earlier opposition brief, grounds raised by other parties and interested parties[1], and the additional grounds provided below.

III. Statutory Interpretation

RSPP's arguments ask the Commission to ignore the plain language of the Warren Alquist Act and basic principles of statutory construction to find a alleged "flaw" in the language of Act that would allow the Commission to infer a greatly expanded reach of the Commission's jurisdiction, controlled by private parties at their request, that is clearly contrary the text of the statute itself. As discussed below, a fair reading of the statute taking into account the California law regarding statutory interpretation shows that RSPP's motion must be denied.

One of the most basic principles of statutory interpretation is that the plain meaning of a statute controls. As the California Supreme Court recently put it:

> When interpreting statutes, we begin with the plain, commonsense meaning of the language used by the Legislature. (*E.g., Ste. Marie v. Riverside County Regional Park & Open-Space Dist*. (2009) 46 Cal.4th 282, 288 [].) If the language is unambiguous, the plain meaning controls. (*Ibid*.)"

(*Voices of the Wetlands v. SWRCB* (2011) 52 Cal. 4th 499, 519 (rejecting expansion of limited judicial review provided in the Warren-Alquist Act to CWA permits issued by regional water boards); *see also Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1152 ["the words the Legislature chose are the best indicators of its intent"; citation omitted].) Here, the plain language of the statute is clear and controlling and unambiguously excludes photovoltaic solar power plants from the thermal power plant projects subject to the Commission's jurisdiction. (Pub. Res. Code § 25120 ["'Thermal powerplant' *does not include any* wind, hydroelectric, or *solar photovoltaic electrical generating facility*." Emphasis added.]; Pub. Res. Code § 25110 [defining "facility" to include only "thermal" power plants]; CBD Opp. at 3, Staff Reply at 2, SC ltr. at 2; *see* 61 Ops. Cal. Atty. Gen. (1978) at 21-22 [discussing the limits of the Commission's jurisdiction and concluding that it cannot be enlarged to include matters outside of the legislatively circumscribed sphere].)

Further, where a statute expressly provides for preemptive jurisdiction by a state agency or commission in an area that has traditionally been subject to local land use

[1] On or about August 11, 2011, the Sierra Club (which is not a party to this proceeding but is a party in other Commission proceedings regarding solar power plants) provided a letter to the Commissioners regarding this motion (hereinafter "SC ltr."). The Center agrees with many of the arguments made in that letter, however, because that letter has not been docketed to date, out of an abundance of caution, the Center believes it is necessary to explicitly re-state some of those arguments in this brief as well.

control, the express preemption must be clear. Project siting is clearly an area that has traditionally been subject to local government control. (*See* Kern Co. Obj. at 1; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149; *DeVita v. County of Napa* (1995) 9 Cal. 4th 763, 782)

The plain language of the Warren-Alquist Act provides that Commission jurisdiction *expressly* supplants and preempts local land use authority for permitting *thermal power plants only*. There is no indication in the Act that the legislature intended the preemptive effect to go beyond that express preemption. As the Supreme Court has explained,

> [W]hen local government regulates in an area over which it traditionally has exercised control, *such as the location of particular land uses*, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute. (*See IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 93 [].) The presumption against preemption accords with our more general understanding that "it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either *by express declaration or by necessary implication*." (*County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 644 []; *accord, People v. Davenport* (1985) 41 Cal.3d 247, 266 []; *Theodor v. Superior Court* (1972) 8 Cal.3d 77, 92 [].)

(*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149-50 [emphasis added].) The presumption against preemption for siting of PV projects applies here were no express declaration of intent to preempt local jurisdiction over PV projects is found nor any "necessary implication". Indeed, quite the contrary, the Act makes it clear that the Legislature did not intend the Commission to preempt local authorities in approving and siting PV projects. RSPP's theory that an "implication" of a preemptive jurisdiction vested with the Commission can be found in the Act and the further assertion that such allege preemptive jurisdiction could be triggered solely at the request of an applicant, is extremely convoluted and completely *unnecessary* to a fair reading of the Act. Moreover, RSPP's theory would not just be limited to PV projects but would open the door to expansive Commission jurisdiction over *any project* that sought a waiver. Such a result would grossly overreach the express preemption provided in the Act and be contrary to law.

The Supreme Court in *Big Creek Lumber Co.* further explained that where a statutory scheme provides for express preemption in an area of traditional local regulation, that express limited preemption "weighs against" any inferred or implied preemption.

> The Legislature's "preemptive action in specific and expressly limited areas weighs against an inference that preemption by implication was

> intended elsewhere." (*IT Corp. v. Solano County Bd. of Supervisors, supra,* 1 Cal.4th at p. 95; *see also Cippolone v. Liggett Group* (1992) 505 U.S. 504, 517 [] ["Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted"].) In addition, and specifically pertinent here, "[p]reemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485 [].)

38 Cal 4th at 1157. Local regulation of the location of particular land uses, including siting of PV projects, is the norm in California and PV projects were expressly excluded from the Commission's jurisdiction. Thus, there is a "presumption against preemption" and "preemption by implication of legislative intent *may not be found*." *Id.* at 1149, 1157 (emphasis added).

In contrast to these well-settled principles, RSPP asks the Commission to expand its preemptive jurisdiction by implication alone, using an argument that is both convoluted and contrary to the plain language of the statute.

Moreover, because the Act discusses PV projects and expressly and clearly *excludes* PV projects from the Commission's jurisdiction, the Commission cannot now read in an extremely broad exception into the Act as RSPP beseeches the Commission to do here. Even if some ambiguity exists, which the Center does not believe is the case, cogent and convincing evidence would be needed to overcome the presumption against preemption. As the Supreme Court aptly put it in a similar situation: "The intent to create such an illogical and confusing scheme cannot be attributed to the Legislature." (*Interinsurance Exchange v. Ohio Cas. Ins. Co.* (1962) 58 Cal.2d 142, 152; *see also Disabled & Blind Action Committee of Cal. v. Jenkins* (1974) 44 Cal. App. 3d 74, 83 ["We cannot assume that the Legislature which covered a specific subject so thoroughly intended additionally to cover it by unwritten words and in an 'oblique, confusing and ambiguous fashion.'" quoting *Interinsurance Exchange v. Ohio Cas. Ins. Co*. (1962) 58 Cal.2d 142, 152].) Indeed, RSPP's argument depends so heavily on an "oblique, confusing, and ambiguous" reading of the statute that it is impossible to see how it could have been *intended* by any legislator reading and voting upon the plain language of the Act. Here, RSPP asks the Commission to ignore the plain language of the Act and instead infer that the Act actually does not mean what it says; in effect, RSPP asks the Commission to interpret the Act in a way that would *undermine* the clear intent of the legislature.

Further, the recent legislative amendment to the Act, adding Section 25500.1 which would allow the Commission to consider amendments to previously certified projects that intend to change from solar thermal technologies to PV, shows that the Legislature understood that the Commission did not have such authority previously and could not consider these changes absent statutory amendment. Sen. Bill No. 226 (2010-2011 Reg. Sess.) § 8. This new legislation extends the Commission's jurisdictional

reach in very limited circumstances and demonstrates the Legislatures intend to *change* pre-existing law. A long line of Supreme Court cases state the important principle that: "The very fact that the prior act is amended demonstrates the intent to change the pre-existing law, and the presumption must be that it was intended to change the statute in all the particulars touching which we find a material change in the language of the act." *Hoyme v. Board of Education* (1980) 107 Cal. App. 3d 449, 454 [quoting *Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 232; emphasis omitted]; *Loew's Inc. v. Byram* (1938) 11 Cal.2d 746, 750 [collecting cases]; *People v. Weitzel* (1927) 201 Cal. 116, 118 [same].)

The most recent amendment to the Act, adding Section 25500.1, provides a limited exception to the rule excluding PV projects from the Commission's jurisdiction. The limited exception was provided in order to allow thermal solar power projects that were already certified by the Commission between August 15, 2007 and the present, but which now seek to change technologies to PV, to petition for the Commission to review of an amendment to the certification before June 30, 2012. This limited exception crafted by the Legislature, shows that the Legislature did not intend that the un-amended Act cover PV projects in general. If the contrary were true, as RSPP argues, and the Legislature intended that project applicants could simply "waive in" to Commission jurisdiction, then there would have been no need to amend the Act to allow previously approved projects changing to PV technology to petition the Commission and the amendment would have been entirely unnecessary—an absurd result. In fact, the recent amendment to the Act *changes prior law* and *for the first time* allows the Commission to take jurisdiction over some PV projects in very narrow, limited circumstances. This too shows that the theory RSPP has presented is meritless and the motion should be denied.

For these reasons and others, the Commission should deny the motion.

IV. Specific Responses to the Questions Posed by the Commission

1. What is the legislative purpose of Section 25502.3?

This issue was addressed by Staff in their Reply brief explaining the historical context of the act, grandfathering principles, and the application of this provision for projects already proposed or planned to be constructed within 3 years at the time the Act was adopted. *See* Staff Reply at 3-4; Tr. 7/25/11 at 31.

2. What is the legislative purpose of Section 25501.7?

This issue was addressed by Staff in their Reply brief explaining that it was an alternative provision to 25502.3 (discussed above) providing an alternative procedure. *See* Staff Reply at 3-5; Tr. 7/25/11 at 31-32.

3. What does the term "facility" in Section 25502.3 refer to? Are there any electrical generating facilities of any size or technology that would not be included in this definition?

This issue was addressed by Staff in their Reply brief explaining that the term "facility" as used in 25502.3 applied to thermal power plant projects that were proposed or planned to be constructed within 3 years at the time the Act was adopted and that at that time there were many such projects. *See* Staff Reply at 3-4.

4. What facilities referred to in Section 25502.3 would not be eligible for an exemption under Section 25501.7?

This question implies that such a distinction is necessary which not clearly the case. Staff has stated that the two provisions provide alternate procedures. *See* Staff Reply at 3-4.

5. If you conclude that sections 25501.7 and 25502.3 are both intended to apply only to the facilities identified in section 25501, why were two statutes adopted instead of a single statute?

This issue was addressed by Staff in their Reply brief explaining that the two provisions provided alternative procedures. *See* Staff Reply at 3-5; Tr. 7/25/11 at 31-32, 34.

6. Discuss the significance of the legislative history of relevant provisions and amendments to the Warren-Alquist Act, including but not necessarily limited to Sections 25120, 25501.7, 25502, 25502.3, 25540, and 25542, and whether the language and timing of those provisions and amendments supports the applicant's assertion that Section 25502.3 permits it to opt-in to the Energy Commission's exclusive certification jurisdiction by filing a notice of intention to file an application for certification of a solar photovoltaic electrical generating facility.

This issue was addressed by Staff in their Reply and at hearing. *See, e.g.,* Staff Reply *passim*, Tr. 7/25/11 at 33.

While legislative history may be helpful where a statute is ambiguous, here the statute is clear. As discussed above in Section III, the Act is clear on its face in excluding PV projects from the thermal power plant facilities that are within the Commission's jurisdiction. Moreover, because the provision of Commission jurisdiction under the Act *expressly* preempts traditional local authority over land use and project siting decisions for a specifically identified set of projects and there is a presumption against any implied preemption that would further broaden the Commission's jurisdiction. Nothing in the available legislative history provides support for any implied preemption or can overcome the presumption against implied preemption of local authority in this area. Simply put, nothing in the plain language of the Act or the legislative history supports RSPP's motion or allows a virtually limitless "opt-in" to the Commission's jurisdiction

for PV projects, other non-thermal power projects such as hydroelectric or wind, or any other projects.

Lastly, the recently enacted amendments to the Act which provide very limited exceptions allowing the Commission to retain jurisdiction over projects that are already certified and change from solar thermal to PV show that the Legislature clearly understands that absent those amendments the Commission has no jurisdiction over PV facilities.

V. Conclusion

In light of the above and other arguments opposing the motion presented in this matter, the Center opposes the motion and asks that the Commission deny RSPPs requests to allow it to "waive in" to the Commission's jurisdiction for a redesigned PV project associated with this application. The Center further requests that the Commission terminate this application due to lack of jurisdiction.

Dated: September 16, 2011

Respectfully submitted,

/s/ Lisa T. Belenky
Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
Direct: 415-632-5307
Fax: 415-436-9683
lbelenky@biologicaldiversity.org

Ileene Anderson
Public Lands Desert Director
Center for Biological Diversity
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org

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 8/15/2011)

APPLICANT

STA Development, LLC
Billy Owens
Senior Director,
Project Development
1111 Broadway, 5th Floor
Oakland, CA 94607
billy.owens@solartrustofamerica.com

STA Development, LLC
Alice Harron
Vice President,
Project Development
1111 Broadway, 5th Floor
Oakland, CA 94607
alice.harron@solartrustofamerica.com

CONSULTANT

AECOM
Elizabeth Copley, Project Manager
2101 Webster Street, Suite 1900
Oakland, CA 94612
elizabeth.copley@aecom.com

APPLICANT'S COUNSEL

Galati/Blek, LLP
Scott Galati
Marie Mills
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-llp.com
mmills@gb-llp.com

Paul, Hastings, Janofsky & Walker, LLP
Peter Weiner, Matthew Sanders
55 2nd Street, Suite 2400-3441
San Francisco, CA 94105
peterweiner@paulhastings.com
matthewsanders@paulhastings.com

STA Development, LLC
Jim Migliore, Associate
Environmental Management
1111 Broadway, 5th Floor
Oakland, CA 94607
E-mail preferred
jim.migliore@solartrustofamerica.com

INTERVENORS

Desert Tortoise Council
Sidney Silliman
1225 Adriana Way
Upland, CA 91784
gssilliman@csupomona.edu

California Unions for Reliable Energy (CURE)
Tanya A. Gulesserian
Elizabeth Klebaner
Marc D. Joseph
Adams, Broadwell, Joseph & Cardozo
601 Gateway Boulevard,
Suite 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com
eklebaner@adamsbroadwell.com

Basin and Range Watch
Laura Cunningham
Kevin Emmerich
P.O. Box 70
Beatty, NV 89003
bluerockiguana@hughes.net

Western Watersheds Project
Michael J. Connor, Ph.D.,
California Director
P.O. Box 2364
Reseda, CA 91337-2364
mjconnor@westernwatersheds.org

Kerncrest Audubon Society
Terri Middlemiss, Dan Burnett
P.O. Box 984
Ridgecrest, CA 93556
catbird4@earthlink.net
imdanburnett@verizon.net

Center for Biological Diversity
Ileene Anderson
Public Lands Desert Director
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
E-mail preferred
ianderson@biologicaldiversity.org

Center for Biological Diversity
Lisa Belenky
Senior Attorney
351 California Street, Suite 600
San Francisco, CA 94104-2404
E-mail preferred
lbelenky@biologicaldiversity.org

INTERESTED AGENCIES/ ENTITIES/PERSONS

California ISO
E-mail Preferred
e-recipient@caiso.com

U.S. Department of the Interior,
Bureau of Land Management
Janet Eubanks, Project Manager,
California Desert District
22835 Calle San Juan de los Lagos
Moreno Valley, California 92553
janet_Eubanks@ca.blm.gov

INTERESTED AGENCIES/ENTITIES PERSONS (Cont.)

Naval Air Warfare Center Weapons Division
Michael Owens, Energy Coordinator
1 Administration Circle
China Lake, CA 93555-6100
E-mail preferred
michael.t.owens@navy.mil

Naval Air Warfare Center Weapons Division
Michael Owens, Energy Coordinator
575 "I" Avenue, Suite 1
Point Mugu, CA 93042-5049
E-mail preferred
michael.t.owens@navy.mil

Naval Air Weapons Station, China Lake
CAPT Jeffrey Dodson, Commanding Officer
1 Administration Circle, Stop 1003
China Lake, CA 93555-6100
E-mail preferred
jeffrey.dodson@navy.mil

Naval Air Weapons Station, China Lake
Tim Fox
Community Plans & Liaison Officer
429 E Bowen Rd, Stop 4003
China Lake, CA 93555-6100
E-mail preferred
timothy.h.fox@navy.mil

ENERGY COMMISSION DECISION MAKERS

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

Kourtney Vaccaro
Hearing Officer
kvaccaro@energy.state.ca.us

Tim Olson
Adviser to Commissioner Boyd
tolson@energy.state.ca.us

ENERGY COMMISSION STAFF

Jared Babula
Staff Counsel
jbabula@energy.state.ca.us

Eric Solorio
Project Manager
esolorio@energy.state.ca.us

ENERGY COMMISSION – PUBLIC ADVISER

Jennifer Jennings
Public Adviser
E-mail preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Lisa Belenky, declare that on, Sept. 16, 2011, I served and filed copies of the attached Supplemental Opposition, dated Sept. 16, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest/index.html**

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

(*Check all that Apply*)

For service to all other parties:

✓ Served electronically to all e-mail addresses on the Proof of Service list;

✓ Served by delivering on this date, either personally, or for mailing with the U.S. 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 "e-mail preferred."

AND

For filing with the Docket Unit at the Energy Commission:

✓ by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); ***OR***

____ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

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

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

____ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California 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.

L Belenky