

CALIFORNIA ENERGY COMMISSION

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June 17, 2009

Ivanpah AFC Siting Committee
Commissioner Jeffrey Byron, Presiding Member
Commissioner James Boyd, Associate Member

**Re: Response to June 8, 2009, letter from Brightsource regarding
Scheduling Order for Ivanpah Solar Project AFC (07-AFC-5)**

Commissioners:

Brightsource's June 8, 2009, letter exhorts the Committee to order the Energy Commission staff (Staff) to rush the publication of its environmental assessment before that assessment is complete, based on the general need of the state to develop renewable energy and the specific need of Brightsource to qualify for economic stimulus money. With overheated rhetorical flourish it claims that "the proceeding is at a dead stand still" and implies that Staff is "holding the FSA/DEIS hostage." These claims are wrong. As the Siting Committee knows from the discussions at the May 18, 2009, scheduling conference, the scheduling issues for the Ivanpah project are much more complex than the Brightsource missive would indicate.

Perhaps the most important thing missing from the Brightsource letter is that the environmental analysis for this project is a joint federal and state document that must satisfy both the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). This is because Brightsource needs both a state permit from the Energy Commission and a federal right of way permit from the Bureau of Land Management (BLM). Staff is working cooperatively with BLM to satisfy the analytic needs of both the federal and state statutes. This requires the environmental document to serve the purpose of a Draft Environmental Impact Statement (DEIS) for BLM as well as the requirements of CEQA for which the Energy Commission is responsible. For legal sufficiency the DEIS must have a fixed project description, a complete analysis of impacts and mitigation, and a federal permit consistent with a federal schedule. The Energy Commission staff (in fact, the Energy Commission itself) cannot, and would not, force the publication of a federal DEIS document before BLM believes that document to be complete and legally sufficient. The DEIS is BLM's NEPA document, and it will be obligated to defend its legal sufficiency under federal law. Even now, significant issues that must be analyzed in that document remain incomplete in several ways for a number of reasons.

Much of the delay in this case, and the problems for the environmental analysis, results from the Ivanpah site itself. The site is on a substantial slope below a large mountain range that is subject to severe rainfall events. Thus, the site will be subject to serious drainage and erosion problems that Brightsource has had difficulties developing a sufficient plan for. In addition, the site is habitat for a state and federally listed endangered species—the desert tortoise—that may be greatly affected by large solar developments in the desert. Mitigation for such requires a federal Biological Opinion, which is still in process at the U.S. Fish and Wildlife Service, a draft of which Brightsource recently submitted. Finally, Brightsource’s frequent description of the site as “degraded” is misleading, inasmuch as the site is richly endowed with a number of rare plant species not commonly found in the desert or elsewhere. These site selection issues have forced Brightsource to develop elaborate drainage proposals, species relocation proposals, and habitat mitigation proposals; these proposals must in turn be evaluated by BLM and Staff in the joint environmental document. Significant changes to site drainage schemes have complicated the environmental analysis for biological impacts. These evaluations are reaching maturity, but are not yet concluded, and have delayed publication of the DEIS.

Staff shares Brightsource’s desire to see renewable generation, and wants to accommodate Brightsource’s desire to qualify for federal stimulus money. These are important goals that Staff is working to meet. Staff continues to work with sister agencies, including the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and other agencies to find closure on outstanding issues. Brightsource has recently filed a relocation plan for desert tortoise that live on the site, and BLM, U.S. Fish and Wildlife Service, and the Department of Fish and Game are commenting and reacting to it. Likewise, BLM is currently evaluating the latest site drainage proposal. Staff and its sister agencies are developing a proposal to mitigate impacts to rare plants, and have shared this concept with Brightsource. In other words, far from being “at a dead standstill,” there is much activity directed to finishing the DEIS/FSA and making it complete. Rhetorical suggestions of Staff malfeasance are no more than a distraction from that continuing effort.

Yours truly,

/s/ Richard C. Ratliff

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