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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: The Application for Certification for the Calico Solar Project Amendment	Docket No. 08-AFC-13C

MOTION TO STRIKE SIERRA CLUB'S MOTION TO DISMISS

May 4, 2011

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STATE OF CALIFORNIA

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On April 20, 2011, Sierra Club docketed a document captioned "Sierra Club Motion to Dismiss The Petition To Amend." Sierra Club was not a party, and only became a party subsequently, on May 2, 2011, when its petition to intervene was granted.[1] Only parties may file motions. 20 C.C.R. § 1702(i); § 1716.5. Sierra Club knew it was not a party but filed its motion anyway. It did so without articulating any urgent issue requiring the Commission to suspend its procedural regulations. There are none. Accordingly, the Applicant requests an order striking Sierra Club's improperly filed motion. The Commission's adjudicatory proceedings require the evaluation of sharply opposing views and cannot be a free for all.[2]

In addition to its improper motion, Sierra Club has filed a "Notice of Protest" simply stating a variety of complaints. The Notice of Protest does not seek any action by the Commission and it is not itself a motion. Instead, the Notice of Protest is an improper attempt to bolster an improperly filed motion. As such, it violates 20 C.C.R. § 1712(c) and should also be stricken. In addition to not being filed pursuant to any Commission rule, the Notice of Protest raises retrospective complaints that were already raised and rejected in litigation before the Supreme Court. With respect to Sierra Club's prospective complaints, Sierra Club asserts that it will be burdened by these proceedings. The claim is utterly

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[1] The right to intervene is not automatically granted simply because a petition is filed, and the filing of a petition to intervene does not in and of itself allow a non-party to file a motion. 20 C.C.R. § 1201(d) and (e); § 1207(c). Notwithstanding the fact that the Applicant finds Sierra Club's prior legal complaints to be unfounded, burdensome, and deeply ironic, the Applicant notes that it did not object to or otherwise oppose Sierra Club's petition to intervene and be heard.

[2] A failure by the Commission to enforce its basic procedural rules would lead to a great deal of unnecessary confusion regarding how long the other parties have to respond to improperly filed motions.

spurious. Sierra Club has itself opted to become a party in these proceedings knowing that the Commission considers the views of all the parties in adjudicating the issues before it, and knowing that party status comes with both "rights and duties." 20 C.C.R. § 1712(a); § 1712(c). Sierra Club had no obligation to intervene. Having intervened, Sierra Club may, if it chooses, decline to address every issue that arises in these proceedings but the Commission's jurisdiction. To the extent that Sierra Club is confident that its legal arguments are correct, it cannot object that it will suffer any prejudice in adopting this approach.

The briefing schedule that the Commission has adopted is appropriate to address both disputed issues of fact and disputed issues of law regarding the Commission's jurisdiction. As the Commission is well aware, the contested legal issues also merit careful attention, in part because they involve implications that go well beyond the issues regarding photovoltaic technology that Sierra Club has raised. The briefing schedule is appropriate, and Sierra Club's arguments will be considered. Sierra Club's means of contesting the briefing schedule is entirely inappropriate. Both the Motion to Dismiss and the Notice of Protest should be stricken.

Date: May 4, 2011

Respectfully submitted,

Ella Foley Gannon
Attorneys for Calico Solar, LLC
Applicant for the Calico Solar
(formerly known as SES Solar One) Project

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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FOR THE CALICO SOLAR PROJECT AMENDMENT

Docket No. 08-AFC-13C
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DECLARATION OF SERVICE

I, Margaret Pavao, declare that on May 4, 2011, I served by U.S. mail and filed copies of the attached Motion to Strike Sierra Club's Motion to Dismiss, dated, May 4, 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: **[www.energy.ca.gov/sitingcases/calicosolar/compliance/index.html]**.

The documents have 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:

_X_ sent electronically to all email addresses on the Proof of Service list;
___ by personal delivery;
_X_ 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:

_X_ 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. 08-AFC-13C
1516 Ninth Street, MS-4
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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

Margaret Pavao

Margaret Pavao
Bingham McCutchen