

Gene Varanini III
Tel. 916.442.1111
Fax 916.448.1709
varaninie@gtlaw.com

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VIA EMAIL

Paul Richins
California Energy Commission
Siting, Transmission, and Environmental Protection Division
1516 Ninth Street, MS-46
Sacramento, CA 95814
E-mail: prichins@energy.state.ca.us

Scott Flint
California Department of Fish and Game
Habitat Conservation Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
E-mail: sflint@dfg.ca.gov

Re: ***09-Renew-EO-01***

Gentlemen:

Please find attached the comments of the SunCal Companies regarding the Draft Best Management Practices and Guidance Manual: Desert Renewable Energy Projects.

Thank you for providing SunCal the opportunity to comment on this important and timely matter.

If you have any questions, need for clarification, or wish to engage in a more detailed discussion, please don't hesitate to contact me at your convenience.

Very Truly Yours,



EMILIO E. VARANINI, III

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*STRATEGIC ALLIANCE

cc: Commissioner Karen Douglas (with attachment)
Commissioner Julia Levin (with attachment)
Kevin Hunting (with attachment)
Terry O'Brien (with attachment)

Attachment

SAC 441,579,739

COMMENTS OF SUNCAL COMPANIES REGARDING DRAFT BEST MANAGEMENT PRACTICES AND GUIDANCE MANUAL: DESERT RENEWABLE ENERGY PROJECTS

09-RENEW-EO-01

Background

Energy Choice, Inc. and Greenburg Traurig are pleased to submit these comments on the Draft Staff Report entitled 'Best Management Practices and Guidance Manual: Desert Renewable Energy Projects,' dated October, 2009 (CEC 700-2009-016 SD). We are submitting these comments on behalf of the SunCal Companies.

SunCal, a large, California-based residential and commercial property developer, is currently planning to convert four prior residential developments into solar power plant sites. The proposed projects are:

- Barstow Solar Power Plant, located on a 7000-acre contiguous parcel owned by SunCal, immediately adjacent to the 15 freeway, about 7 miles southwest of Barstow. Nominal capacity on this site is 500 MW.
- Three projects, all on private land in the Coachella Valley: two north of the 10 Freeway (in Desert Hot Springs and Indio), and one south of the 10 in Thermal. All three sites are between 640 and 1200 developable acres. The cumulative nominal capacity of these three sites is 300-400 MW. All of the Coachella Valley sites are current or former agricultural operations.
- Jacumba Solar Power Plant, on a privately-owned, 1200+acre parcel east of Jacumba (in the southeast corner of San Diego County), and immediately adjacent to the US-Mexico border. Nominal capacity at Jacumba is 100-125 MW.

SunCal's current plans are to develop hybrid solar thermal (parabolic trough) and PV plants **for project auxiliary power** and supplemental generation at each site. Parabolic troughs would be used on the flattest portions of each site, and PVs would be developed on land with a slope greater than 1%, or in odd-shaped portions of the site that would otherwise go unused. Emerging regulatory and economic trends, however, could have a significant bearing on the ultimate technology choice made by SunCal at each of these sites. While we are not prepared to consider commercially-unproven technologies such as central receivers, sterling engine systems, and linear Fresnel lenses, we are completely open to any combination of parabolic troughs and PVs, including other functional configurations at any of these sites if conditions warrant.

General Comments

On a general level, we endorse the CEC and REAT staff's effort to provide guidance to renewable energy developers. Bringing clarity to the project planning, data acquisition, and pre-filing phases of large project development is both welcome and needed. The notion of "best management practices," however, bears the responsibility of being right in

all circumstances. And due to the complex nature of renewable power plant development, we believe “best management practices” implies an amalgam of the legitimate needs of regulatory agencies with significant commitments to meet and mandates to fulfill, with the equally legitimate needs and demands of private renewable project developers. Long before a project even appears on the government’s radar, private developers conduct complex and sophisticated siting, environmental, economic, and engineering analyses. In this regard, we find the Draft BPM simply does not address developers’ needs and concerns – it is much more focused on what developers can do to make the Government’s job more manageable, and far less concerned with what changes or concessions could occur in the government to support or expedite the developer’s job.

In light of recent Executive Orders aimed at expediting and better coordinating government’s role in the processing of renewable energy facilities, we are puzzled by the report’s response of advising a multi-year pre-filing process akin to the old NOI-AFC process. Based on our review, it appears that the first projects filed at the CEC in accordance with the policies and procedures in this report will be in the 2012 time frame, leaving the question unanswered of what can be done today to reasonably and fairly expedite fully compliant renewable energy development.

We feel that the draft report is misnamed as “best management practices”, and would be more appropriately referred to as a “developer’s guidance” manual, or a “policies and procedures” manual. We see the BMP document providing two fundamental process steps- Pre Application and Standard Environmental Resource Reviews. For the most part, our concerns focus on the former which we characterize as the “best management practices” in this comment. However, we applaud the CEC Staff and RETI for its work in pulling together the myriad processes which intersect with the AFC process and pointing out some means of better coordination

We believe there are many significant deviations from the “best management practices” articulated in the draft that are not only legitimate, but preferable. Yet, those practices would face an uphill struggle to overcome the misguided notion that if they don’t conform with the policies and preferences described as “best management practices, they must, by definition, be less than best practices.

One example of this is the sites SunCal is developing. The BPM bluntly states that best practices dictate a project should be sited on land or sites identified by REAT (next month). REAT according to one of its CEC coordinator is relying heavily on the results of the RETI studies and latest modification. RETI, unfortunately, is fundamentally flawed in that it uses arbitrary screening criteria to eliminate many viable areas and sites from further consideration. One fundamental example of this screening flaw is an absolute preference for solar projects in the “Deep Desert’ to the detriment of projects in the “Near Desert”.

SunCal’s sites are on private land, are previously-disturbed (with the exception of Barstow), and are close to the load center. We believe these attributes are highly desirable – we avoid the use of public land that could be used instead for resource protection or other public uses, we avoid the development of pristine desert, and our proximity to the load centers reduces the need for new transmission and reduces

transmission losses. Yet, these *desirable* qualities are, in fact, *screening out criteria* employed in the RETI reports. The net result is that SunCal's sites, and undoubtedly countless others like them, were screened from further consideration. According to RETI, our sites are infeasible, and simply don't exist. While this result is puzzling on its face to say the least, it poses significant risks if future transmission planning efforts bypass many economically and environmentally preferable sites, and are misdirected to other less desirable areas and sites.

We urge the removal of any mention that all future sites should conform with a state-generated list of sites or siting areas, and strongly discourage this practice altogether. The above example illustrates how fallible any such list would be if it relied exclusively on the work conducted during RETI, and utilized RETI results as a form of exclusionary state over-zoning. In our view, the time and effort that would be required to mitigate the shortcomings in RETI would seriously hamper the state's hope for meeting its RPS goals. As well, the Energy Commission and other regulatory agencies involved in approving the deployment of solar power plants may well face the legal challenge of developing underground siting regulations or a violation of CEQA to the extent RETI results are applied in AFC proceedings whether in pre-filing or administrative litigation. Alternatively, if a list of sites is necessary, we urge a flexible, rather than prescriptive approach, and recommend incorporation of the following:

- Deeming private land as a preferable alternative to the use of public lands for power plant development;
- Deeming the use of previously-disturbed sites as preferable to the development of pristine sites;
- Employing a "layer of the onion" approach to site ranking, giving sites closer to load centers a preference over more remote sites; and
- Endorsing cost effective use of degraded cooling water for solar power plants.

Specific Comments

1. *A new California water policy?* The report rightly, explicitly rejects imposing a requirement for dry versus wet cooling. We believe recommendations to impose this policy are partially borne from the efforts of the renewable solar developers participating in the RETI stakeholders group. These developers all have proposed projects on Deep-Desert sites, at which it would be difficult, if not impossible to find adequate degraded or perhaps any water supplies for cooling purposes. A dry cooling mandate or preference would effectively drag the rest of the market to the level of these few participants, wiping out the competitive disadvantage inherent in their proposed sites. We believe such proposal by any party is not only outside the scope of staff's authority to impose or even suggest such a requirement; we believe it is simply bad and narrow-minded policy.

Renewable development is an environmental and economic imperative for California. It is admittedly cost-challenged, and frankly, few projects can bear many unnecessary "hits" to the bottom line. Dry cooling is one such hit. Developers choosing sites at which dry cooling is the only feasible option should

bear the economic consequences of their decision. If the hit, however, is applied to the entire industry, as this policy would accomplish, the cost of dry cooling would no longer be a differentiator among developers, but a industry-wide cost of doing business. This makes the cost of dry cooling the ratepayers' problem.

We agree that the use of potable surface or groundwater should be strongly discouraged. But we also believe that those developers diligent enough to have sited their projects in the Near Desert where supplies of non-potable water can be found should be rewarded. All of SunCal's projects have access to sources of non-potable water. As long as cooling options such as these are available in California, we believe it would pose an unnecessary burden on ratepayers to ignore them.

Lastly, if the state were to insist on imposing a dry cooling mandate (ultimately through legislation, we assume), then the costs imposed by this policy must be manifested in the Market Price Referent adopted by the CPUC. It would be unnecessarily punitive to impose a dry cooling mandate on renewable facilities, but to assume the displaced utility plant used as the basis for the MPR, and thus the price paid for renewable power, would somehow enjoy the economics of wet cooling.

2. *Creating a new Pre-AFC review: the BA, and Determination of Compliance?*

The manual appears to move many of the substantive reviews that would normally occur during an AFC review, to the pre-filing phase. For example, the report recommends moving the review of biological resources, air quality, and local land use conformance to the pre-filing phase. It requires a Draft Biological Assessment, complete with mitigation plans, be approved by the CDF&G and the USF&WS prior to filing an AFC. It requires the AFC contain a Preliminary Determination of Compliance from the relevant APCD or AQMD. And it requires any needed local zoning changes or General Plan amendments be approved prior to AFC filing. The "one-stop-shop" or "common forum" quality of the AFC intended by the original framers of the Warren-Alquist Act appears to have been rejected in the draft BMPs. We recommend the draft identify the level of information desirable for AFC processing, but not attempt as a matter of "best practices" to move the substantive reviews conducted by other agencies outside of the AFC process. The timing on some of these "approvals" may raise questions about CEQA compliance as well. We recognize the value of early consultation, but believe de facto AFC process requirements may well stretch the AFC process beyond the old NOI-AFC time line as more time begets ever decreasing interest in getting to what would now be long lead time issues.

3. *Moving the CAISO's Phase 1 Study (and their related deposits) to the pre-filing period.* The report imposes a requirement that the CAISO's Phase 1 Study (see the CAISO's LGIP Tariff) be completed prior to AFC filing. We sympathize with the need to identify related transmission upgrades and interconnection facilities in order to conduct a meaningful CEQA review of the proposed project and all

related facilities, but we strongly disagree the CAISO's Phase 1 Study is the appropriate means for acquiring this information. Under the LGIP tariff, a developer is required to file a reasonable initial fee of \$250,000 but must then be prepared to file an additional deposit equal to 15% of their pro rata share of system upgrades, and 20% of utility-owned interconnection facilities up to \$7.5 million. For many projects, these deposits, usually in the form of cash, are at most 50% refundable in the event of regulatory disapproval, PPA failure, or even malfeasance by others. Making the Phase 1 Study essentially a pre-filing requirement, the draft inadvertently creates a significant additional de facto filing fee for the AFC. We believe a developer should retain the discretion to manage its own risk, and should thus be free to sequence the AFC and the ISO Interconnect Application as it sees fit. We recommend the use of 3rd party studies which are required as openers at both the CAISO and the TO per CPUC endorsed requirement as an alternative to the CAISO Phase 1 Study for the purposes of the AFC.

4. **Requiring PPAs.** We are puzzled over which substantive reviews that occur during the AFC process would be served by the submission of a PPA, or the completion of the PPA process. PPAs, like the CAISO process, also impose deposit requirements (albeit lower initially), and thus exacerbate the issue of creating yet another add on de facto filing fee or requirement for the AFC. PPAs are highly fluid – they are commonly renegotiated, and are thus unreliable sources of cost or performance data until they reach the execution and performance stage. They are not indicators of project success – projects with PPAs fail frequently, such as the project proposed by Ausra and Solel. And lastly, they are not barometers for commercial viability, since California utilities have signed several PPAs with projects employing technologies that have yet to operate successfully (e.g. economically) on a commercial scale. When to negotiate a PPA, and when to submit it for approval by the CPUC, is, and should remain, the sole domain of the developer and the utility. We urge the removal of any reference to the PPA as a relevant part of the AFC process.
5. **Technology viability & commercial operating history.** A significant risk facing the state is the processing of an AFC for a technology or project that ultimately proves to be commercially unviable. Yet, examining the totality of regulatory reviews a project faces – the AFC, the CAISO's Interconnect Application, the PPA process with the utility and the CPUC – there is no point at which, under current practice, the simple question of demonstrated commercial viability is analyzed and applied. We believe that before the state vests millions of dollars in regulatory reviews and contract payments, a technology should meet fundamental viability requirements (as inherently required by the Warren Alquist Act), such as a demonstration project of 5-10 MW or more, which has met appropriate performance and economic thresholds. It is not unreasonable, in our view, to ensure a project will be commercially viable before we consume the environmental and economic resources needed to bring the project on-line. Similarly, we feel it is unreasonable for any developer to ask the state to approve

the consumptive use of scarce land and other resources, and for utilities and their ratepayers to bear the costs of contract payments and the further costs of accelerated RPS compliance efforts caused by project failure, until the technology has met rudimentary commercial viability tests.

We recognize recent efforts by utilities to more rigorously apply viability tests to proposals they receive from developers, but we also recognize that their review of project viability remains largely subjective. For example, an unproven technology could be viewed as viable if it is being proposed by a highly qualified, and well-financed team. In other words, a developer can raise significant cash, buy a highly qualified team, and effectively mask the fact that their technology has not yet demonstrated viability on a commercial scale, or in a commercial setting. Under the gun of RPS compliance, we recognize the incentive for utilities to be as inclusive as possible in executing PPAs, and the possibility that a commercially unproven technology could acquire a PPA.

California's regulatory agencies should be wary of renewable developers who, under the lure of a large and potentially-lucrative renewable energy market, hope to "pass go" by bypassing the demonstration phase for their technology, and move prematurely to a commercial footing.

Technology feasibility is a generally-forgotten requirement of the AFC process. We encourage the Commission to reacquaint itself with this requirement.

We would like to thank the staff for the opportunity to comment and are available to answer any questions concerning these comments.