BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE CARRIZO ENERGY SOLAR FARM BY CARRIZO ENERGY, LLC	DOCKET NO. 07-AFC-8

CARRIZO ENERGY, LLC'S OBJECTIONS TO CALIFORNIA UNIONS FOR RELIABLE ENERGY'S DATA REQUESTS 47, 53, 54, 55-64, 73, 74, 75 and 76

September 25, 2008

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September 25, 2008

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Attached are Carrizo Energy, LLC's ("Applicant") objections to California Unions for Reliable Energy's (CURE) Data Requests 47, 53, 54, 55-64, 73, 74, 75 and 76 regarding the Carrizo Energy Solar Farm (CESF) (07-AFC-8) Application for Certification (AFC). CURE served the data requests on the Applicant on September 5, 2008. Consistent with the requirements of Title 20, California Code of Regulations 1716, this objection is being filed within 20 days of receiving the data requests.

Applicant would like to first take this opportunity to make it abundantly clear what is occurring here and to make the following general objection to CURE's Data Requests.

CURE is comprised of unions representing workers in the construction industry and the California State Building & Construction Trades Council ("Council"). The Council's president, Robert Balgenorth, is also the president of CURE. The Council's legal counsel to negotiate labor agreements is the same legal counsel for CURE, Adams Broadwell Joseph & Cardozo. After Applicant filed its AFC, CURE and its legal counsel initiated efforts to seek labor agreements for the CESF project. CURE's true objective as an intervener in this matter is to obtain a project labor agreement. Applicant submits that based on the Commission's own experience and on publicly available information, CURE's activity is no more than a form of "greenmail" and is a misuse of the legitimate environmental process to achieve an unrelated objective – to obtain a project labor agreement with Applicant. Finalizing the project labor agreement as demanded by CURE is the only way Applicant will cause CURE to cease or limit its data requests and other activity in this proceeding.

However, Applicant does not have legal standing to enter the project labor agreement demanded by CURE for various reasons, including law set by the National Labor Relations Board in *Glens Falls Building and Construction Trades Council*, 350 NLRB No. 42 (July 31, 2007) (*Indeck II*). The *Indeck II* case concluded that several construction industry unions violated Section 8(e) of the National Labor Relations Act by coercing a project owner to sign a Project Labor Agreement. Section 8(e) prohibits employers and unions from entering into "hot cargo agreements" in which an employer agrees to cease doing business or using the products of another employer. Therefore, entering the labor agreements that CURE and the Council demand, in order to settle any issues and/or eliminate CURE's intervention activity in this proceeding, could subject Applicant to exposure under labor law, antitrust law, and other jurisprudence. Consequently, Applicant cannot satisfy CURE by answering data requests or otherwise addressing issues it raises before the Commission.

Although the environmental review requirements do not take into account the motives of participants, the Committee should take into account CURE's intentions and should cast a skeptical eye at their requests. CURE's tactics are well known and if allowed to proceed unchecked may well delay the Committee's processing of this AFC. The Committee should weigh their requests for information carefully against whether the Committee and ultimately the California Energy Commission's review of this AFC would benefit from the information CURE seeks. Applicant has reviewed CURE's requests and where such requests are relevant to the proceeding and where access to the information by Applicant is reasonable, Applicant will provide responses. Unfortunately, not all of these requests fit those categories.

As a result, Applicant objects to CURE's data requests 47, 53, 54, 55-64, 73, 74, 75 and 76 on the grounds that they are not submitted for the purposes set forth in the authorizing legislation for the Commission and are, instead, calculated to harass, burden, oppress, and delay Applicant's AFC. The Commission should not legitimize CURE's organizing activity to coerce Applicant into illegal activity through what is otherwise a well established procedure for certification of electrical generating capacity needed by the State.

The responses are grouped by individual discipline or topic area. Within each discipline area, the responses are presented in the same order as CURE presented them and are keyed to the Data Request numbers (47, 53, 54, 55-64, 73, 74, 75 and 76).

Biological Resources

***Data Request 47*:**

Please provide any correspondence or other documentation among the Applicant, Court, federal action agencies and state and federal wildlife agencies regarding section 7 consultation for the Project.

Objection

Data Request 47 asks for any correspondence pertaining to Section 7 consultation for the CESF project. Applicant objects to this request on the basis that it asks for information that is not relevant or necessary and to which CURE does not have a right. (20 Cal. Code of Regs. § 1716(b)). CURE only needs to be aware that Section 7 consultation has been initiated by the Army Corps of Engineers ("Corps") with the United States Fish and Wildlife Service (USFWS) for the entire CESF project. The analysis conducted by USFWS on the impacts of this CESF and the mitigation for such impacts is relevant to this proceeding. It is not necessary for Applicant to provide any other communications between these federal agencies and Applicant. This request is simply a fishing expedition for information that can be used by CURE to delay processing of this application.

A letter dated September 5, 2008 from Theresa Miller at URS Corp. (consultant for the Applicant) to Robert Smith of the Regulatory Division of the Corps requested that the Corps initiate consultation with the Sacramento Field Office of the USFWS. This represents all the relevant information reasonably available to Applicant. (20 Cal. Code of Regs. § 1716(b)).

Data Request 53

Please conduct a breeding survey for western spadefoot toad during the rainy season to determine potential impacts to breeding sites, and provide the results.

Objection

Applicant responds that no suitable habitat for the western spadefoot toad exists on site, therefore a breeding survey is not necessary. The "seasonal pools" referred to by CURE in its background to Data Request 53 is merely a seasonal creek created by flood water flow and does not provide ponded water that would support a population of western spadefoot toads. Western spadefoot toads require as referenced by CURE a "seasonal pool". In this case the seasonal creek does not have the characteristics that would create ponds of water as required to support the western spadefoot toads. Therefore, this request asks Applicant to essentially prove a negative, that no western spadefoot toads occupy the area. The Applicant has conducted two

years of surveys of the project site and the laydown area. During these extensive surveys that included multiple visits to the site as well as visits during and shortly after heavy rain events Applicant found no suitable habitat for this species and has observed no sign of the western spadefoot toad. Thus, without habitat or a reasonable probability of the occurrence of these species this request is simply a delay tactic and will not provide any information of relevance to the proceeding. Applicant therefore objects to this data request as irrelevant. (20 Cal. Code of Regs. § 1716(b)).

Data Request 54

Please conduct a survey for western spadefoot toad in areas upland of the creek to determine potential impacts to upland burrowing habitat, and provide the results.

Objection

For the same reasons stated above, it is not necessary for Applicant to conduct a survey because no western spadefoot toad critical habitat exists on site. In addition, Applicant does not believe that any areas upland of the ephemeral creek support western spadefoot toad populations. Applicant therefore objects to this data request as irrelevant. (20 Cal. Code of Regs. § 1716(b)).

Data Requests 55-64

Please explain how the Applicant has addressed the Project's impacts to:

55. The short-nosed kangaroo rat.
56. The bald eagle.
57. The ferruginous hawk.
58. The golden eagle.
59. The loggerhead shrike.
60. The mountain plover.
61. The San Joaquin whipsnake.
62. The Kern primrose sphinx moth.
63. The coast (California) horned lizard.
64. The Oregon vesper sparrow.

Objection

Applicant responds that based on surveys conducted in 2007 and 2008, none of the above-listed species have been observed or documented on the CESF project site. The surveys

conducted by Applicant in both 2007 and 2008 included multiple visits to the site as required by each survey protocol. Applicant objects to these data requests because they seek irrelevant and unnecessary information because it is not appropriate to address impacts to species not documented on site. (20 Cal. Code of Regs. § 1716(b)). Furthermore, Applicants are not required to prove a negative. The Applicant is not required to survey and provide an impacts analysis for any conceivable species. The Applicant is only required to provide an analysis of the impacts to species that actually use the site and to existing recovery plans or critical habitat designations within which a particular site may fall. In the case of all of the species listed in data requests 55-64, none have been observed on site and none have existing recovery plants or critical habitat located on the project site.

Water Quality and Resources

Data Request 73

Please identify all floating springs within the watershed and provide a map of their locations.

Objection

Applicant responds that it has no knowledge of any "floating spring" on the CESF project site or within the watershed. Applicant believes that, from a hydrological aspect, "floating spring" is not a term of art. Thus, Applicant finds this request vague and unclear. Therefore, Applicant objects to this data request on the grounds that this information is not relevant and not reasonably available to Applicant. (20 Cal. Code of Regs. § 1716(b)).

Data Request 74

Please provide an analysis of the potential impacts on floating springs from drawing groundwater for the proposed Project.

Objection

Applicant responds that it has no knowledge of any "floating spring" on the CESF project site or in the project watershed. Applicant believes that, from a hydrological aspect, "floating spring" is not a term of art. For the same reasons stated above, Applicant objects to this data request on the grounds that this information is not relevant and not reasonably available to Applicant. (20 Cal. Code of Regs. § 1716(b)).

Data Request 75

Please provide a list of all wells located within three miles of the Project vicinity.

Objection

Applicant objects to this data request on the grounds that it asks for information that is not reasonably available to Applicant. (20 Cal. Code of Regs. § 1716(b)). Information regarding the location of wells is confidential and not publicly available, therefore Applicant cannot obtain that information. All the information that is available to Applicant regarding wells will be provided in an updated hydrology report. This updated hydrology report contains all of the information Applicant has been able to gather through observations and discussions with landowners in the vicinity of the project site. Because well information is confidential, no further information is reasonably available to the Applicant.

Data Request 76

Please revise the groundwater supply analysis to include all wells located within three miles of the Project vicinity. Please account for all proposed subdivisions of property and other projects located or proposed to be located within three miles of the Project vicinity.

Objection

For the same reasons stated above, Applicant objects to this data request on the grounds that it asks for information that is not reasonably available to Applicant. (20 Cal. Code of Regs. § 1716(b)). Information regarding the location of wells is confidential and not publicly available, therefore Applicant cannot obtain that information. All the information that is available to Applicant regarding wells will be provided in updated hydrology reports.

DATED: September 25, 2008 DOWNEY BRAND LLP

By: Jane E. Luckhardt

Jane E. Luckhardt

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INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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Attn: Docket No. 07-AFC-8
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DECLARATION OF SERVICE

I, Cassandra J. Baines, declare that on September 25, 2008, I deposited copies of the attached Carrizo Energy, LLC's Objections to California Unions for Reliable Energy's Data Requests 47, 53, 54, 55-64, 73, 74, 75 and 76 (September 25, 2008) in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5 and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

Cassandra J. Baines

Cassandra J. Baines