

**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 JOHN RUSKOVICH'S
MARCH 15, 2009 DATA REQUESTS (SET 1)**

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April 6, 2009

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Carrizo Energy, LLC ("Carrizo") provides this objection, along with responses where feasible, to intervenor John Ruskovich's March 15, 2009 Data Requests regarding the Carrizo Energy Solar Farm ("Project") Application for Certification ("AFC") (07-AFC-8). Mr. Ruskovich served these data requests on Carrizo on March 15, 2009.

Consistent with the requirements of California Energy Commission ("Commission") regulations, this objection is being filed within 20 days of receiving the data requests. (*See* 20 C.C.R. § 1716[f].) The objections made below are based on the Warren-Alquist Act Siting Regulations and the California Environmental Quality Act ("CEQA"), both of which specify the type and quantity of information Carrizo must provide in response to informational requests of other parties, including Mr. Ruskovich. (*See* Cal. Pub. Res. Code § 21000 et seq. and § 25000 et seq.)

Carrizo recognizes that Mr. Ruskovich is not only an intervenor, but is also a local resident and member of the public. Mr. Ruskovich may not be as familiar with the Commission's project certification process as the other intervenors. However, as discussed below, the time for submitting data requests has long passed. Carrizo objects to all of Mr. Ruskovich's data requests as untimely. Nonetheless, without waiving its legal objections, Carrizo is providing responses to some of Mr. Ruskovich's March 15, 2009 Data Requests to the extent feasible at this point in the process for this project. However, Carrizo emphasizes that it may not be able to provide responses to any future untimely data requests due to the potential for delay and unnecessary hardship to the parties.

I. APPLICABLE LAW

The Commission's regulations govern the informational requirements for the discovery stage of the Commission's proceeding on the Project's AFC, which includes data requests.

These regulations provide:

Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application.
(20 C.C.R. § 1716[b].)

Therefore, the regulations limit information requests to information that is both reasonably available to the applicant, and that is relevant to the Project's AFC proceedings or reasonably necessary to make any decision on the Project's AFC.

A. Definition of "Reasonably Available"

Neither the Warren-Alquist Act nor the Commission's regulations includes a definition of "reasonably available." However, other statutes and case law provide some guidance on this issue in the context of written civil discovery requests (interrogatories). Generally, a response to interrogatories must be "as complete and straightforward as the information *reasonably available* to the responding party permits." (Cal. Code Civ. Proc. § 2030.220[a] [italics added].) A party may object to a discovery request if it is "burdensome and oppressive," or where it would create undue burden and expense, rendering the discovery request unjust.¹ (See Cal. Code Civ. Proc. § 2030.090[b].)

B. Definition of "Relevant to the Application Proceedings"

Neither the Warren-Alquist Act nor the Commission's regulations includes a definition of "relevant." However, statutes and case law pertaining to civil discovery provide guidance on this issue. To be valid, a discovery request must seek matter which is "relevant to the subject matter involved in the pending action or to the determination of any motion made in that action...." (Cal. Code Civ. Proc. § 2017.010.) Information is regarded as "relevant to the subject matter" if

¹ In determining whether the burden of answering a discovery request is unjust, a weighing process is used: It must appear that the amount of work required to answer the questions is so great, and the utility of the information sought so minimal, that it would defeat the ends of justice to require the answers. (See *Columbia Broadcasting System, Inc. v. Sup. Ct.*, 263 Cal. App. 2d 12, 19 [1968]; and *West Pico Furn. Co. v. Sup. Ct.*, 56 Cal. 2d. 407, 417-418 [1961].)

it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Stewart v. Colonial Western Agency, Inc.*, 87 Cal. App. 4th 1006, 1013 [2001].) “Relevance” may vary with size and complexity of the case and must be considered with regard to the burden and value of the information sought (among other factors). (*See Bridgestone/Firestone, Inc. v. Sup. Ct. [Rios]*, 7 Cal. App. 4th 1384, 1391.)

C. Definition of “Reasonably Necessary to Make Any Decision on the Application”

CEQA provides guidance for determining what information is “reasonably necessary” to make a decision on the AFC. CEQA specifies that an Environmental Impact Report (EIR) be prepared with “a sufficient degree of analysis to provide decision-makers with information which enables them to make decisions which intelligently take account of environmental consequences.” (14 C.C.R. § 15151.) Specifically, the law requires that “an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.” (*Id.*) An EIR is required to evaluate environmental impacts only to the extent that it is reasonably feasible to do so. (*In Re Bay-Delta et. al.*, 43 Cal. 4th 1143, 1175 [3rd Dist. 2008].) The information in an environmental document prepared under a certified regulatory program should be guided by similar principles. Furthermore, CEQA “does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended,” and it does not require that all experts consulted on the matter agree as to the best methods by which to proceed. (14 C.C.R. § 15204[a] and § 15151.)

II. GENERAL OBJECTION

Carrizo objects to all of Mr. Ruskovich’s data requests because they are almost nine months late. Carrizo notes that the time to submit data requests has long passed and continued requests for additional information this late in the Project certification process will cause undue delay. The Commission’s regulations state: “All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown.” (20 C.C.R. § 1716[e].) The Commission determined the Project AFC to be complete on December 19, 2007. Therefore, the last day to submit data requests without a showing of good cause was June

16, 2008. Mr. Ruskovich has not made any showing of good cause for seeking this information at this point in the Project's proceedings. The February 13, 2009 Committee Order granting Mr. Ruskovich's Petition to Intervene states at page 2: "The deadlines for conducting discovery and other matters shall not be extended by the granting of these petitions." Thus, Carrizo is under no obligation to respond to any data requests from any party at this time.

Carrizo has responded in writing to public comments from a very early point in the Project's proceedings, and has continued to do so long after the deadline for information requests specified in section 1716(e) of the Commission's regulations. Unlike most Commission proceedings, Carrizo has transcribed workshops and provided written responses to questions asked by members of the public from those workshops. In the interest of maintaining a reasonable certification timeframe, Carrizo requests that the Commission adhere to its regulations regarding the submission of data requests from intervenors and other parties and refrain from requiring Carrizo to respond to these data requests. This will ensure that the proceedings will continue as scheduled.

In addition, Carrizo objects to several of Mr. Ruskovich's data requests because the information they seek is not reasonably available to Carrizo, not relevant to the notice or application proceedings, and/or not necessary to make any decision on Carrizo's AFC, as required by the Commission's regulations discussed above. (*See* 20 C.C.R. § 1716[b].) These specific objections are indicated below in the "Specific Objections and Responses" section.

III. SPECIFIC OBJECTIONS AND RESPONSES

In addition to the general objections described above, Carrizo provides the following specific objections, and responses where feasible, to Mr. Ruskovich's individual data requests. In providing these selected responses, Carrizo in no way waives any general or specific objections to these data requests, nor does Carrizo imply that it will respond to any additional data requests.

A. Objections to Data Request 1

Data Request 1 states: "It is requested that an actual Water Report be completed with 2008/2009 data, not continual use of data from 1956 and the Kemnitzer Ground Water Study

dated 1967.” Carrizo objects to this request on the following grounds.

1. Data Request 1 Asks for Information Not Reasonably Available to Carrizo.

Carrizo objects to conducting an additional “Water Report” because such a study is not “information reasonably available” to Carrizo. (See 20 C.C.R. § 1716[b].) Carrizo already conducted a study that reviewed water resources in the Carrizo basin. On February 27, 2009, Carrizo submitted to the Commission a revised version of its Hydrology and Hydrogeology Report for the Vicinity of the Proposed Carrizo Energy Solar Farm (the “Carrizo Hydrology Report”).² This report contains almost 400 pages of comprehensive analysis of the Project’s water use.

The additional study requested by Mr. Ruskovich is not information reasonably available to Carrizo, because such a study is extremely costly to conduct, and it would cause undue delay to the project at a point long after the time for discovery has ended. As explained in response to a similar request from Intervenor Michael Strobridge, a completely new water basin study would cost at least \$500,000, and would take several years. (See Carrizo’s Objections to Michael Strobridge’s March 8, 2009 Data Requests [Set 3], filed March 31, 2009, at 5.) Such a study would need to identify the wells in the basin, obtain access to those wells, measure water levels for a period of time, observe pumping rates (including getting information from electric bills if necessary), create a model of the entire basin and calibrate the model to the data collected during the study. (*Id.*) Producing such a study would therefore be extremely burdensome to Carrizo. (See Cal. Code Civ. Proc. § 2030.090[b].) Furthermore, such a study would be of minimal utility since it would largely duplicate analysis already done for the Project, and is not necessary to evaluate the Project’s impacts to groundwater resources. At this point in the process, the studies and analysis must come to an end.

2. Data Request 1 Asks for Information Not Reasonably Necessary to Make Any Decision on the Project’s Application.

Carrizo also objects to conducting an additional water study because such a study is not necessary to make any decision on the Project’s application. As discussed in the “Applicable

² The Carrizo Hydrology Report was originally docketed on June 26, 2008, and has been revised twice since then, on September 24, 2008 and February 27, 2009.

Law” section above, the law provides that “an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.” (14 C.C.R. § 15151.) CEQA “does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended,” and it does not require that all experts consulted on the matter agree as to the best methods by which to proceed. (14 C.C.R. § 15204[a] and § 15151.)

Contrary to Mr. Ruskovich’s assertions, the Carrizo Hydrology Report is not an example of “continual use of data from 1956 and the Kemnitzer Ground Water Study date 1967.” As a starting point for its analysis, the Carrizo Hydrology Report began with the 1967 report by W.J. Kemnitzer, titled *Groundwater in the Carrizo Plain* (the “Kemnitzer report”). The Kemnitzer report is the only available basin-wide study of groundwater in the Carrizo Plain. It is proper for a groundwater evaluation to rely on the available information regardless of when it was completed, as subsurface geology has not changed. (*See Carrizo Hydrology Report, cover letter, at 5.*) As for Mr. Ruskovich’s assertion regarding the “continual use of data from 1956,” Carrizo does not know what data Mr. Ruskovich is referring to.

In addition, URS Corporation (“URS”) (consultant for Carrizo) prepared a new basin-wide model for the Project to simulate steady-state flow and estimate the movement of groundwater in the basin and to evaluate the potential effects that the proposed groundwater withdrawals for the Project may have on surrounding wells and the aquifers. (*See Carrizo Hydrology Report § 3.6.*) URS created this model to overestimate the potential effects of the Project on groundwater levels. (*See Carrizo Hydrology Report § 3.6.*) This model was developed conservatively, assuming future dry periods in order to overestimate drawdown. (*Id.*) Furthermore, the model includes water use by another nearby proposed solar power project, the Topaz Solar Farm (“Topaz”) project. (Carrizo Hydrology Report § 3.6.2.3.) This model demonstrated that pumping for both of these projects will not have a significant effect on neighboring wells and groundwater levels in the basin. (Carrizo Hydrology Report § 3.6.3.3.) The model further showed that pumping of the wells will not have a significant effect on water quality in the area or in the basin. (*Id.*) Alternative models and levels of sensitivity will not reveal any significant impacts to groundwater supply or quality, because the water use rates for both the Project and the Topaz project are relatively low. (*Id.*) The analysis presented by the

Carrizo Hydrology Report is more than sufficient to support a finding that the Project will not create a significant direct or cumulative impact to local water supplies.

Additionally, Staff will conduct its own independent assessment on this matter as part of the certification process. While Carrizo's analysis of this issue is sufficient, it is only a part of the review process required for certification of the Project. Therefore, the requested "Water Report" is unnecessary for the Commission to make a decision on the Project's application.

3. Data Request 1 Asks for Information Not Relevant to the Project's AFC Proceedings.

As discussed above, the law for civil discovery requests requires that such requests seek information that might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Stewart*, 87 Cal. App. 4th at 1013.) In this case, the Carrizo Hydrology Report has already addressed Mr. Ruskovich's concerns expressed in Data Request 1. Therefore, the requested additional analysis is unnecessary, since it is unlikely to provide Mr. Ruskovich with any additional relevant information. Furthermore, the law provides that "relevancy" must be considered with regard to the burden and value of the information sought (among other factors). (*See Bridgestone/Firestone, Inc.*, 7 Cal. App. 4th at 1391.) Because the burden to Carrizo of producing an additional water study is extremely high in terms of costs and project delays, and the information it would produce is likely to be of little additional value, the information sought by Data Request 1 is not relevant to the Project's AFC proceedings.

4. The Burden of Proof On This Issue Has Shifted to Mr. Ruskovich, And He Has Not Met That Burden.

Carrizo also objects to this data request because Carrizo has already met its burden of proving that the Project will not have a significant adverse impact on local water supplies. Section 1748 of the Commission's regulations provides:

Except where otherwise provided by law, the applicant shall have the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility.
(20 C.C.R. § 1748[d].)

Once this burden has been met, the Commission's regulations shift the burden of supporting any additional condition, modification, or other provision relating to the

design or operation of a project to the person who proposes it:

The proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision. The presiding member may direct the applicant and/or staff to examine and present further evidence on the need for and feasibility of such modification or condition. (20 C.C.R. § 1748[e].)

Carrizo has already presented sufficient substantial evidence to support a finding that the Project will not have a significant impact on water resources, including groundwater levels in the basin. (See, e.g., Carrizo Hydrology Report at § 3.6.3.2 and 3.6.3.3.) Once this has been done, the burden of proof shifts to the intervenor to demonstrate the need for further measures to address the Project's impact on water resources. Because Mr. Ruskovich has not provided sufficient information to meet this burden, no further information is required from Carrizo.

B. Objections to Data Request 2

The first part of Data Request 2 asks Carrizo to “justify why the water use in the beginning of the process of this project was stated [sic] that water usage was going to be a maximum of 21 acre feet per year of water and today, your information states 144 acre feet or 47,044,800 gallons will be used the first year alone.” Mr. Ruskovich then states the water use figures for the remaining two years of construction, claiming that the total amount used during the construction period would be more than he would use in 50 years.

The second part of Data Request 2 states: “We request that part of the mitigation of the water issue be the monitoring of depths of water of local wells to safeguard our water over this project [sic]....I require that the following wells be continuously monitored for water depth and water quality.” Mr. Ruskovich then lists the wells he wishes Carrizo to monitor.

1. Data Request 2 Is Not a Proper Data Request Because It Is Not a Request for Data.

The purpose of a data request is to give access to data which is reasonably available to the applicant. The Commission's regulations specify the scope of a proper request for

information. These regulations provide: “Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application.” (20 C.C.R. § 1716[b].) Data Request 2, however, does not ask for information. Instead, the first part asks Carrizo to “justify” a change in the water use data for the Project. This is not a request for data; instead, it is a vague request for Carrizo to support information it has already submitted.

The second part of Data Request 2 asks Carrizo to implement a mitigation plan suggested by Mr. Ruskovich. Again, this is not a proper data request because it does not ask for data. Instead, it asks Carrizo to implement a mitigation program suggested by Mr. Ruskovich. This is not a proper data request, and Carrizo is not required to conduct the mitigation requested by Mr. Ruskovich.

2. Data Request 2 Asks for Information Not Reasonably Available to Carrizo.

As discussed above, the Commission’s regulations allow any party to request from Carrizo any information *reasonably available to the applicant* which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. (20 C.C.R. § 1716[b] [italics added].)

Carrizo does not have access to several of the wells listed in Data Request 2. The monitoring requested by Data Request 2 is therefore not information which is “reasonably available to” Carrizo. Therefore, Carrizo need not conduct the monitoring requested by Data Request 2.

3. Response to Data Request 2.

Without waiving its objections, Carrizo provides the following response to Data Request 2. Per Section 1.2.1 of the original version of the Carrizo Hydrology Report, it was previously estimated that the total volume of water used during construction would be less than the total estimated volume of water that will be used during the operation of the facility each year (20.8 acre-feet per year [afy]). Based on a re-evaluation of the amount of grading and dust control required, Carrizo revised the construction water use estimates. These construction water use estimates were reevaluated in the revised Carrizo Hydrology Report for the three year

construction period. Table 1-1 of the Carrizo Hydrology Report includes the revised estimated construction water use for dust control, grading, and concrete hydration. (Carrizo Hydrology Report at 1-3.) A table providing calculation details is included in Appendix A. (Carrizo Hydrology Report, Appendix A.)

C. Objections to Data Request 3

Data Request 3 asks Carrizo to “justify the amount of water to be used, just in construction alone. Also justify the amount of water to be used when the plant is operational. Justify the amount of water to be used when the Governor of California has declared a drought emergency, and the County of San Luis Obispo is in record drought.”

1. Data Request 3 Is Not a Proper Data Request Because It Is Not a Request for Data.

As discussed above in Carrizo’s response to Data Request 2, the purpose of a data request is to give access to data which is reasonably available to the applicant. Data Request 3 fails to ask for data; rather, it asks for a discussion of whether the Project’s water use is proper. A request to “justify” existing information is not the same as a request for information. Therefore, Data Request 3 is not a proper data request.

2. Response to Data Request 3.

Without waiving its objections, Carrizo provides the following response to Data Request 3. Carrizo appreciates the importance of the issues brought up by this data request. The Project’s impact upon local water resources will be minimal. As described in the Carrizo Hydrology Report, pumping from wells to serve the Project will not have a significant effect on neighboring wells and groundwater levels in the basin. (Carrizo Hydrology Report § 3.6.3.3.) Carrizo has already implemented extensive on-site mitigation. Conventional power generating facilities use large quantities of water for cooling; even solar facilities often use water for cooling. (Carrizo Hydrology Report § 1.3.3.) However, the Project is designed to use an air cooling system, which consumes about 40 times less water than a water-cooled facility. (*Id.*) An air-cooled solar facility such as the Project will use less water per megawatt produced than many other types of power generating facilities. (*Id.*) For purposes of comparison, the anticipated infiltration rate for the Project site after the Project has been built (230 afy) is over ten times greater than the

estimated operational groundwater use for the CESF (20.8 afy), and 1.5 times the projected water use during Year 1 of construction. (Carrizo Hydrology Report at ES-3.) Furthermore, the Project will use a tiny fraction of the amount of water used per square foot for irrigated agriculture. (See Carrizo Hydrology Report, Table 1-4 at page 1-7.) Because the pumping of the wells will not cause a significant change in groundwater levels, the wells will not draw water from great distances (for example, poor quality water from the Soda Lake area 10 miles away). (Carrizo Hydrology Report § 3.6.3.3.) Therefore, pumping of the wells will not have a significant effect on water quality in the area or basin. (*Id.*)

Previous agricultural activities on the property pumped the existing well and other wells at considerably higher pumping rates compared to that proposed for the Project. (Carrizo Hydrology Report § 4.) There has been no indication that previous water use on the property affected nearby wells. (*Id.*) Therefore, the proposed pumping that is considerably less than the historical pumping rate will not significantly affect water levels, well flow rates, or water quality on adjacent properties. (*Id.*)

D. Objections to Data Request 4

Data Request 4 asks Carrizo to “provide data on the 11 big Ag Wells that you state in your water report that are on the Carrisa Plains.” Data Request 4 also asks for other information relating to these wells.

Data Request 4 Asks for Information Not Reasonably Available to Carrizo.

As discussed above, the Commission’s regulations allow any party to request from an applicant any information *reasonably available to the applicant* which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. (20 C.C.R. § 1716[b] [*italics added*].)

The well information available to Carrizo has already been provided. Well locations (township, range, and section) and well yields are included in Kemnitzer (1967), which is provided in Appendix B of the Carrizo Hydrology Report. Several requests were made to the public to obtain such information, and all of the information that was received was included in Carrizo’s analysis. (See Carrizo’s Response to CEC Data Requests 79-100 at response to Data

Request 93; Carrizo Hydrology Report § 3.3.) Additional ownership information, pumping rates for these wells, and the date that each well was last used or how many months they run was not available to Carrizo, and was therefore not included.

E. Objections to Data Request 5

Data Request 5 refers to the Bechtel Report, which Mr. Ruskovich summarizes as saying “they have four Wells drilled on a 300 acre Project Site.” Data Request 5 asks for specific information about these wells. Carrizo believes Mr. Ruskovich is referring to the four wells on the ARCO Solar site.

Data Request 5 asks for information not reasonably available to Carrizo.

As discussed above, the Commission’s regulations allow any party to request from an applicant any information *reasonably available to the applicant* which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. (20 C.C.R. § 1716[b] [italics added].)

All available, non-confidential information for the ARCO solar site, including all available well information, is included in the Carrizo Hydrology Report. As indicated in the Carrizo Hydrology Report and the Bechtel Report provided in Appendix E, a total of four exploratory boreholes were drilled at the ARCO Solar site, and only one boring was completed as a well. (Carrizo Hydrology Report § 3.4.4.) It is not known how long ARCO Solar used its production well, but it is assumed that it was used as long as the facility operated, from sometime in the mid 1980s to the late 1990s, when the site was decommissioned. (*Id.*) Carrizo is not aware of any long-term pumping problems or issues with neighboring wells as a result of pumping. (*Id.*) Water quality information for the ARCO solar well is not available. As indicated in the Bechtel Report, the well was located in Section 27, approximately 157 feet north and 120 feet east of the southwest corner of the section. When the site was decommissioned, the well was most likely abandoned or destroyed, since Mr. Ruskovich has commented that there is no well at that location. (*See Carrizo Hydrology Report, cover letter, at 6.*)

F. Response to Data Request 6

Data Response 6 provides that “the Hydrology Report states that the applicant is planning on buying additional water and hauling it in two water trucks in a 30 minute time frame roundtrip.” Mr. Ruskovich asks: “Since this is on the Carrisa Plains, who are you going to buy this water from? And where are the Wells located at that this water will be pumped from?”

Carrizo responds that all of the untreated raw water for the Project will be drawn from the existing well on the Project site. (Carrizo Hydrology Report § 1.1.) Trucking of water to the Project site would only occur in the event of an operational issue with the well pump. (Carrizo Hydrology Report § 1.2.2.) Water will not be pumped from the onsite well for use offsite. The only water that Carrizo plans to bring in from offsite is potable water for consumption. (See Appendix A.)

G. Objections to Data Request 7

Data Request 7 asks Carrizo to provide specific information regarding the California Valley Restaurant and Hotel, owned by a Mr. Tab, including the weekly operations schedule, the number of rooms and average nightly occupancy, the square footage of the irrigated lawn area, and information regarding the irrigation of trees planted at the property.

1. Data Request 7 Asks for Information that is Not Relevant to the AFC Proceedings.

Carrizo does not have specific information regarding restaurant operation, hotel accommodations and average night occupancy, lawn acreage requiring irrigation, and duration for tree irrigation. Carrizo objects to this data request because it seeks information which is not relevant to the AFC proceedings. As discussed above, the law of civil discovery requires a discovery request to seek matter which is “relevant to the subject matter involved in the pending action or to the determination of any motion made in that action...” (Cal. Code Civ. Proc. § 2017.010.) “Relevance” may vary with size and complexity of the case and must be considered with regard to the burden and value of the information sought (among other factors). (See *Bridgestone/Firestone, Inc.*, 7 Cal. App. 4th at 1391.)

In this case, the value of the information sought is very low because it is only indirectly

related to a relevant issue in this proceeding. The ultimate concern of Mr. Ruskovich is a potential change in water supply, as stated in Data Request 7. The Project's analysis has already sufficiently evaluated the potential for impacts to groundwater resources in the Project vicinity. The modeling used to evaluate these impacts included water use by Mr. Tab, which was conservatively estimated. The range of pumpage from the basin considered in the model conservatively accounts for variations in pumping, and the upper range of pumpage was included as a "worst case" scenario to maximize impacts. Variations on this estimate are not anticipated to affect model results. Thus, the other information sought by Data Request 7 is not relevant to the AFC proceedings. Furthermore, since the Project's impacts to groundwater resources have already been sufficiently analyzed, the information sought by Data Request 7 is not necessary to support any decision on the AFC. Carrizo therefore objects to providing the information sought by Data Request 7.

H. Objections to Data Request 8

Data Request 8 asks Carrizo to "provide justification to the size of the 380 acre Lay Down Site. Sun Powers Project [sic] is going to use a six acre lay down site within their boundaries. Please explain why you cannot use 6 to 10 acres within your boundaries. Please look at the attachments and justify."

1. Data Request 8 Is Not a Proper Data Request Because It Is Not a Request for Data.

As discussed above in Carrizo's response to Data Requests 2 and 3, the purpose of a data request is to give access to data which is reasonably available to the applicant. (*See* 20 C.C.R. § 1716[b].) Data Request 8 fails to ask for data; rather, it asks for a discussion of whether the Project's use of land for its laydown area is proper. A request to "provide justification" for information already produced is not the same as a request to produce information. Because it is not a request for information, Data Request 8 is not a proper data request.

2. Response to Data Request 8.

Without waiving its objections to Data Request 8, Carrizo provides the following response. Mr. Ruskovich mischaracterizes the discrepancy in size of the laydown areas between the Project and the Sun Power California Valley Solar Ranch project (the "CVSR Project"). The

information currently available for the CVSR Project indicates that the laydown areas for that project will cover 27 acres, and the staging areas will cover 54 acres. (See CVSR Project, Civil Sheet C2.0.³) For these two uses alone, the CVSR Project will require 81 acres, not the six acres claimed by Mr. Ruskovich.

As previously indicated in the AFC, the laydown area for the Project will be used for staging, equipment and material storage, assembly, construction offices and buildings, and a temporary fueling station. (AFC § 3.4.13.1.12.) Therefore, the Project's 380 acre laydown figure includes all of these uses. An access road will extend along the western and southern sides of the construction laydown area to provide access to the various areas within the construction laydown area. This access road will also act as a turn-around onto SR-58 for large construction vehicles during construction and operation of the CESF. The 380-acre laydown area, including the access road, is necessary for the Project.

I. Response to Data Request 9

Data Request 9 asks Carrizo to "provide us with the legal documentation stating you can legally change the Routing Trucking Traffic [sic]." Mr. Ruskovich appears to believe that a California Legal truck must be significantly less than 65 feet overall in length. Mr. Ruskovich also seems to be concerned with whether the Project's larger trucks can properly travel along SR-58 between US-101 and CA-33, if such route is designated as a Legal Advisory Route. Mr. Ruskovich also asks why the Project no longer plans to use Bitterwater Road for deliveries and bus trips.

Carrizo responds that the definition of California Legal truck indeed includes trucks that are up to 65 feet in length overall. (See Caltrans Truck Network Map Legend – Truck Lengths & Routes.⁴) Furthermore, these trucks can properly use SR-58, even if their King Pin to Rear Axle ("KPRA") length exceeds 30 feet. Simply because a road is designated a Legal Advisory Route with a KPRA length of 30 feet, does not mean that trucks with a longer KPRA length cannot travel that route. The legend to the Caltrans Truck Network Map provides the following

³ Available at [http://www.slocounty.ca.gov/Assets/PL/SunPower+-+High+Plains+Solar+Ranch/Initial+Application+Submittal/21+Civil+Sheets+\(1\).pdf](http://www.slocounty.ca.gov/Assets/PL/SunPower+-+High+Plains+Solar+Ranch/Initial+Application+Submittal/21+Civil+Sheets+(1).pdf).

⁴ Available at <http://www.dot.ca.gov/hq/traffops/trucks/truckmap/truck-legend.pdf>.

information regarding Legal Advisory Routes:

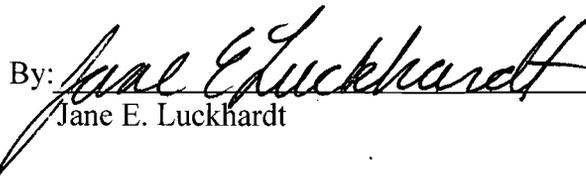
CA LEGAL ADVISORY ROUTES - CA Legal trucks only; however, *travel not advised* if KPRA length is over posted value. KPRA advisories range from 30 to 38 feet.

(Caltrans Truck Map Legend - Truck Lengths & Routes.) The 30 foot KPRA length “advisory” on SR-58 between US-101 to CA-33 therefore does not mean that California Legal trucks with KPRA lengths potentially exceeding 30 feet are prohibited from traveling the aforementioned segment. Indeed, the legend also provides that “[California] Legal trucks have access to the entire state highway system except where prohibited (some red routes).”

As stated in Carrizo’s Post-Preliminary Staff Assessment Draft Traffic Mitigation Plan (“Traffic Mitigation Plan”), Carrizo modified its heavy haul construction delivery plan to use the eastbound SR-58 route as the preferred route in response to the Preliminary Staff Assessment and public comments made during Commission workshops. (See Traffic Mitigation Plan § 1.2.2.) This modification also addressed concerns from San Luis Obispo County regarding use of Bitterwater Road as a construction delivery route.

DATED: April 6, 2009

DOWNEY BRAND LLP

By: 
Jane E. Luckhardt

Declaration of Service

I, Shawn Prentiss, declare that on April 6, 2009, I served and filed copies of the attached **Carrizo Energy, LLC's Objections To John Ruskovich's March 15, 2009 Data Requests (Set 1)**. 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/carrizo/index.html. The document has 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

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service List above to those addresses **NOT** marked "email preferred."

AND

For Filing with the Energy Commission

sending an original paper copy and one electronic copy, mailed and e-mailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies as follow:

California Energy Commission
Attn: Docket No. 07-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

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



Shawn Prentiss



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 *CARRIZO ENERGY*
SOLAR FARM PROJECT

Docket No. 07-AFC-8

PROOF OF SERVICE

(Revised 2/18/2009)

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