

**BEFORE THE NEVADA ENERGY COMMISSIONER  
NEVADA RENEWABLE ENERGY AND ENERGY EFFICIENCY AUTHORITY**

<b>In the Matter of the Application of:</b>	)	
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<b>FOTOWATIO NEVADA SOLAR, LLC.</b>	)	<b>Application Filing No. 10-04003SPV</b>
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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

A hearing was held before the Nevada Energy Commissioner of the Nevada Renewable Energy and Energy Efficiency Authority (Commissioner) on August 10, 2010 regarding Application Filing Number 10-04003SPV. Applicant Fotowatio Nevada Solar, LLC (Fotowatio) was represented by Scott Scherer of Holland & Hart LLP. The Commissioner was advised by Louis Ling. Based upon Fotowatio's presentation at the hearing, the Commissioner makes the following findings of fact, conclusions of law, and order in this matter.

**FINDINGS OF FACT**

1. At the hearing of the matter, Fotowatio presented the testimony of Michael Lichtenfeld, the Senior Project Manager for Fotowatio. The Commissioner admitted into evidence one exhibit which contained eight subparts: (A) Notice of Public Hearing; (B) Screenshot from the Commissioner's Website; (C) Fotowatio's Pre-application filed March 23, 2010 and response letter from the Nevada Energy Commissioner, dated March 26, 2010; (D) Fotowatio's Application (redacted) filed April 30, 2010; (E) Pre-filed testimony of Michael Lichtenfeld filed August 02, 2010; (F) Energy-Related Tax Incentive Fiscal Note by the Nevada Department of Administration, Budget Division, dated June 22, 2010; (G) Fiscal Impact Renewable Energy Partial Abatement of Sales and Use Taxes provided by the Nevada

Department of Taxation on June 17, 2010; and (H) Fiscal Impact Renewable Energy Partial Abatement of Property Taxes provided by the State of Nevada Department of Taxation on June 17, 2010. Based upon the testimony of the witnesses and the evidence presented, the Commissioner finds the following to be the facts in this matter.

2. On March 23, 2010, Fotowatio submitted its Pre-application in this matter.

3. On April 30, 2010, Fotowatio submitted Application Filing Number (AFN) 10-04003SPV (Application) to Nevada State Office of Energy to seek partial abatement of sales and use taxes and property taxes for the construction of a solar photovoltaic power generation facility in North Las Vegas, Clark County, Nevada that would be known as the RV Apex Solar Power facility. On May 20, 2010, the Commissioner received the application from the Nevada State Office of Energy. The Application described a solar photovoltaic power generation facility that was intended to generate 25 megawatts (MW) nameplate with a net of 20 MW of electricity that would be sold to NV Energy for a period of 25 years pursuant to a power purchase agreement. The facility also included a 69 kV generation tie line.

4. At the hearing and in his pre-filed testimony, Mr. Lichtenfeld testified that Fotowatio was properly licensed and qualified to do business in Nevada; that Fotowatio had obtained or would obtain and intended to maintain all of the required licenses and permits to operate the RV Apex Solar Power facility; that Fotowatio and its affiliates had extensive history constructing and operating similar facilities in Nevada and in other countries; that Fotowatio had received all necessary approvals for the RV Apex Solar Power facility; that the capital investment by Fotowatio in the RV Apex Solar Power facility would be approximately between \$73,000,000.00 and \$77,000,000.00; that the RV Apex Solar Power facility would have a nameplate rating of 25 MW and was anticipated to produce a net of 20 MW that will generate approximately 55,000

MWh of renewable energy each year which is enough to provide full power to 5,000 homes in Nevada annually; that Fotowatio had entered into a 25-year power purchase agreement with NV Energy by which NV Energy would purchase all the power produced by the RV Apex Solar Power facility; that commencement of the construction of the RV Apex Solar Power project had been delayed and was anticipated to commence by September 30, 2010; that Fotowatio was still targeting February 2011 to have the RV Apex Solar Power facility completed and operational; that in its second quarter of construction, the RV Apex Solar Power facility would have 75 full-time employees engaged in the construction, of which approximately two-thirds (50 employees) would be Nevada residents; that the average hourly wage for the 61 construction employees, excluding the managers and foremen, was \$34.22; that for the first three months of construction, approximately 40 full-time employees (approximately 27 employees would be Nevada residents) would be working on the project and that for the final three months of the project there would be 75 full-time employees working on the project; that when it was operational, the RV Apex Solar Power facility would employ three full-time employees for whom the average wage would be \$45.24; that all of the employees who would be working on the construction of the facility or in the subsequent operation of the facility would be provided health insurance that would meet the requirements set out in the Commissioner's regulation; that part of the project included the construction and installation of a 69 kV transmission line, of which 1,100 ft would cross into Bureau of Land Management (BLM) land by which the facility would be connected to the power distribution grid of NV Energy; that the transmission line will be owned and operated by NV Energy; that the generating facility itself owned by Fotowatio would be located on approximately 155 acres of private land; and that the Fotowatio met with the City of North Las Vegas to discuss the project and the City expressed its support for the project.

5. The Commissioner took notice that the statewide average hourly rate as determined by the Department of Employment, Training, and Rehabilitation (hereinafter “DETR”) for fiscal year 2011 was \$19.93. Thus 110% of the wage for fiscal year 2011 was \$21.92, and 150% of the wage for fiscal year 2011 was \$29.90.

6. The Fiscal Impact statement produced on June 17, 2010 by the Department of Taxation shows the following estimated figures regarding the property taxes related to the RV Apex Solar Power facility:

Total Estimated Capital Investment	\$73,000,000.00
Total Taxable Value of the Project in 2010	\$88,319,200.00
Total Property Taxes Abated Over Abatement Period (20 years)	\$10,552,193.00
Total Taxes to Local Government Over Abatement Period	\$4,748,487.00
Total Taxes to Renewable Energy Fund Over Abatement Period <sup>1</sup>	\$3,448,877.00

7. The Fiscal Impact statement produced on June 17, 2010 by the Department of Taxation shows the following estimated figures regarding the sales and uses taxes related to the RV Apex Solar Power facility:

Total Amount Abated (Year 1)	\$3,587,650.00
Total Amount Abated (Year 2)	\$0.00
Total Amount Abated (Years 3)	\$0.00
<b>TOTAL AMOUNT ABATED</b>	<b>\$3,587,650.00</b>

Total Impact on Local Government (Year 1)	\$2,283,050.00
Total Impact on Local Government (Year 2)	\$0.00
Total Impact on Local Government (Year 3)	\$0.00

<b>TOTAL IMPACT ON LOCAL GOVERNMENT</b>	<b>\$2,283,050.00</b>
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<b>Total Local School Support Tax Gain (Year 1)</b>	<b>\$1,695,980.00</b>
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<sup>1</sup> Pursuant to NRS 701A.385(1)(a), 45% of the abated property taxes collected prior to July 1, 2011 shall be paid into the State’s General Fund. After July 1, 2011, 45% of the abated property taxes collected shall be paid into the Renewable Energy Fund.

8. The Fiscal Note produced by the Budget Division shows that the State General Fund will be impacted by an abatement for a total of \$1,301,339.00 including the applicable collection allowance in sales and use taxes abated over the period of the abatement (2010 through 2013) and that the State's Debt fund will be impacted for a total \$533,192.00 in property taxes abated over the period of the abatement (20 years). In the first year of the abatement, the State's General Fund could receive as much as \$210,599, depending on when the property is acquired.

9. Synthesizing the figures in evidence in this matter, the total estimated benefit pursuant to NRS 701A.365(1)(f) to the state and local governments in Nevada is \$90,536,119.00 and the total estimated amount of sales and use taxes and property taxes abated in this matter is \$14,139,843.00. Thus, the benefits to the state and local governments in Nevada exceed the total amount of abated taxes. The estimated benefits and amounts abated over the applicable periods of abatement are calculated as follows:

Financial Benefits

Capital Investment in the Facility	\$73,000,000.00
Total Property Taxes That Will Be Received by State Governments After the Abatements	\$3,448,877.00
Total Property Taxes That Will Be Received by Local Governments After the Abatements	\$4,748,487.00
Sales and Use Taxes Collected After Abatement (Local School Support Tax)	\$1,695,980.00
Construction Payroll	\$1,996,599.00
First 12 weeks, \$468,763.00 to Nevada residents	
Second 12 weeks, \$868,090.00 to Nevada residents	
First 12 weeks, \$225,701.00 to non-Nevada residents	
Second 12 weeks, \$434,045.00 to non-Nevada residents	
Operational Payroll for 3 FTE (20 years @ \$282,308.80 per year)	\$5,646,176.00
<b>TOTAL BENEFITS OVER ABATEMENT PERIODS</b>	<b>\$90,536,119.00</b>

	<u>Amounts Abated</u>
Total Property Taxes Abated (20 Years)	\$10,552,193.00
Total Sales and Use Taxes Abated (3 Years)	\$3,587,650.00
<b>TOTAL TAXES ABATED</b>	<b>\$14,139,843.00</b>

10. That all of the evidence discussed in the preceding paragraphs was supported by the substantial, reliable, and probative evidence taken from the record as a whole produced at the hearing of this matter.

### **CONCLUSIONS OF LAW**

1. The Commissioner has the jurisdiction and authority to adjudicate this matter because the Application is within the scope of NRS 701A.300 through 701A.390 and the Commissioner is required by law to hold the hearing in this matter pursuant to NRS 701A.360(5).

2. The substantial, reliable, and probative evidence in the record of this matter shows that Fotowatio's Application for the construction and operation of the RV Apex Solar Power facility and the construction of a 60 kV transmission generation tie line satisfies the following statutory requisites:

(a) NRS 701A.320(1)(a) – The primary source of energy to operate the RV Apex Solar Power facility will be the facility itself, thus meeting the statutory standard.

(b) NRS 701A.320(1)(b) – The RV Apex Solar Power facility will generate 25 MW nameplate and 20 MW net, thus exceeding the statutory standard.

(c) NRS 701A.320(2) – The RV Apex Solar Power facility is not located on residential property, thus meeting the statutory standard.

(d) NRS 701A.360(1) – The RV Apex Solar Power facility will generate electricity from renewable energy resources, thus making it eligible to apply for the partial abatements pursuant to the statutory standard.

(e) NRS 701A.360(2) – The RV Apex Solar Power facility is not owned, operated, leased, or controlled by a government agency, thus meeting the statutory standard.

(f) NRS 701A.365(1)(a)(1) – The RV Apex Solar Power facility is anticipated to be operational for at least 25 years, thus exceeding the statutory standard.

(g) NRS 701A.365(1)(b) – The RV Apex Solar Power facility will have all the necessary state and local permits and licenses to operate, thus meeting the statutory standard.

(h) NRS 701A.365(1)(c) - No funding for the RV Apex Solar Power facility is or will be provided by any governmental entity in this State for the acquisition, design or construction of the facility or for the acquisition of any land therefore, except any private activity bonds as defined in 26 U.S.C. §141, thus meeting the statutory standard.

(i) NRS 701A.365(1)(d)(1) – The construction of the RV Apex Solar Power facility will employ 75 full-time employees during the second quarter of construction, thus meeting the statutory standard.

(j) NRS 701A.365(1)(d)(2) – The capital investment in the RV Apex Solar Power facility is estimated to be between \$73,000,000.00 and \$77,000,000.00, thus exceeding the statutory standard.

(k) NRS 701A.365(1)(d)(3) – The average hourly wage paid to the operational employees of the RV Apex Solar Power facility will be approximately \$45.24, which is more than 110% of the average hourly wage set by DETR of \$21.92 for FY 2011, thus exceeding the statutory standard.

(l) NRS 701A.365(1)(d)(4) – The average hourly wage paid to the construction employees on the RV Apex Solar Power facility will be approximately \$34.22, which is more than 150% of the average hourly wage set by DETR of \$29.90 for FY 2011, thus exceeding the statutory standard.

(m) NRS 701A.365(1)(d)(4)(I) and (II) – The health insurance provided to the construction employees on the RV Apex Solar Power facility allows for the coverage of the dependents of the employees and will meet or exceed the standards established by the Commissioner, thus meeting the statutory standard.

(n) NRS 701A.365(1)(f) – The benefits that will result to this State from the employment by the facility of the residents of this State and from capital investments by the RV Apex Solar Power facility in this State exceeds the loss of tax revenue that will result from the abatement, thus meeting the statutory standard.

(o) NRS 701A.370(1)(a)(3) – The abatement granted by this Order will not apply during any period in which the RV Apex Solar Power facility is receiving another abatement or exemption from property taxes imposed pursuant to chapter 361 of NRS, other than any partial abatement provided pursuant to NRS 361.4722, thus meeting the statutory standard.

(p) NRS 701A.370(1)(b)(1)(III) – The abatement granted by this Order will not apply during any period in which the RV Apex Solar Power facility is receiving another abatement or exemption from local sales and use taxes, thus meeting the requirement of the statute.



## **ORDER**

Based upon the foregoing, the Commissioner orders that Fotowatio's Application Filing No. **10-04003SPV** related to the construction and operation of the RV Apex Solar Power facility is hereby **GRANTED**. Fotowatio and the Commissioner may execute an Abatement Agreement as soon as practicable that will satisfy the requisites of NRS 701A.300 through NRS 701A.390. Fotowatio's sales and use tax abatement will commence on the effective date of the Abatement Agreement and will terminate three years from the effective date of the Abatement Agreement. Fotowatio's property tax abatement will commence on the date immediately following the effective date of the Abatement Agreement and will terminate 20 years from the effective date of the Abatement Agreement.

**SIGNED this 03 day of September, 2010.**

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Dr. HATICE GECOL, Nevada Energy Commissioner  
Renewal Energy and Energy Efficiency Authority