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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

The Application for Certification for the
Hydrogen Energy California Project

Docket No. 08-AFC-8A

**INTERVENORS' JOINT RESPONSE OBJECTING
TO APPLICANT'S REQUEST FOR A SIX-MONTH SUSPENSION**

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The original application for Hydrogen Energy California (“HECA”), a coal-burning fertilizer and power plant demonstration project, was filed with the California Energy Commission in July 2008. In the seven years since then, the applicant has spent hundreds of millions of dollars of federal taxpayer funds and thousands of hours of the Commission’s and state permitting agency’s staff time. The applicant has been resoundingly unsuccessful, however, at developing a workable project proposal that could comply with California laws, ordinances, regulations and standards (“LORS”) or be economically viable. During these seven years, the members of the farming community that live around the HECA site have had to put their lives on hold and delay important investment and family decisions while the proposal hangs over their heads.

Because HECA stopped pursuing its application with due diligence over 18 months ago, Sierra Club, HECA Neighbors, and Association of Irrigated Residents (together “Intervenors”) recently asked this Commission to terminate the proceeding. Most importantly, Intervenors pointed out that HECA has failed to secure a site to sequester its carbon emissions, which is supposedly its most “important climate change mitigation raison d’etre.”¹

A day before the Commission’s hearing on Intervenors’ motion to terminate, applicant asked for six-month suspension of the proceeding because, unsurprisingly, it now admits that “a completed CO2 off-take agreement does not appear to be imminent.”²

As detailed further below, because the community suffers harm each day the uncertainty over whether the project will be certified continues, Intervenors object to HECA’s request for a six-month suspension of the proceeding, and ask the Commission to terminate the proceeding immediately. The Commission should reject applicant’s attempt to buy more time to revive a dead project that has already had seven years to actualize. Moreover, it is a fundamentally unfair public process that forces a community to spend almost a decade expending large amounts of their finite time, energy and resources to review volumes of technical information, appear at public hearings, and voice their concerns about this project.

¹ Email from Jim Croyle to Fong Wan dated Apr. 6, 2015. TN # 204084.

² Request for Suspension, TN# 204500 (May 5, 2015).

In the alternative, should the Commission chose to grant applicant's suspension request, Intervenor urge the Commission to adopt conditions that will ensure finality and peace of mind for the surrounding community at some near-term date-certain.

I. Continued Uncertainty Over The HECA Proposal Will Cause Further Harm To The Community Surrounding HECA

Community members around the HECA site have been harmed for the past seven years as a result of the uncertainty over whether the Commission will certify the HECA proposal. The experiences recounted below are just a few examples of how local families will continue to suffer tangible harm until the Commission reaches a final decision on the application. The community deserves finality one way or the other on this long-languishing proposal so they can make important decisions about their families' and farms' futures that have sat in limbo since this project was first proposed.

Edward Kosariff has lived in Buttonwillow for 26 years on a farm, producing table grapes, cherries, almonds and pistachios. Because the price of some of his forage crops has dropped significantly in the last few years, under normal circumstances, he would transition to crops that are more economically viable. But with the uncertainty related to the outcome of the HECA project, Mr. Kosariff has "been stuck" and unable to make significant long term financial investment decisions for over six years.³

Mr. Kosariff's two grown sons "have worked tremendously hard over the years to help [him] develop this farm," which "has always been about creating a family farm and legacy for [his] children." But now he has many concerns over his sons' future livelihoods and ability to farm because of the uncertainty over how the HECA project would impact the value of the land and farm, and whether food processors might become unwilling to process his commodities due to pollution concerns.⁴

³ Declaration of Edward Kosariff, attached as Exhibit A.

⁴ *Id.*

Laree Snow owns and operates a pistachio farm and owns a rental home in Buttonwillow. Both are within three miles of the proposed HECA project. She explains that “[l]iving with the constant uncertainty surrounding the HECA project for more than 6 years has been exhausting.” She worries that an operational HECA plant would be devastating to the farm and her livelihood. Additionally, although her tenant has expressed interest in buying her rental property, they are unwilling to do so while the HECA project’s status remains uncertain.⁵

Beau Antongiovanni raises the important concern that public participation in the Commission’s certification process may start to wane because so many resources and so much time and effort have already been expended opposing this project over the past seven years. The resource-constrained local community expected to spend a few years of their time and resources attending public hearings and asking questions about the project. However “the longer this application is extended the more our resources are depleted and when we no longer have the time or money to sit at the table during the process we fear the scales of justice will swing toward those with the deepest pockets.”⁶

Mark Lambooy farms the closest neighboring property to the proposed HECA plant. According to Mr. Lambooy, the uncertainty over the HECA proposal “has taken seven stressful years out of our lives.” He and his wife and three children “had plans to move on the farm and build a house and enjoy living on our property, farming our crops, until we heard of the hydrogen plant proposal.” They immediately put their plans on hold because “it would be a nightmare to live near such a facility,” and are currently renting a house while waiting to learn what becomes of the HECA project. Because continuing a farming operation near HECA also causes great concern, Mr. Lambooy “cannot, in good faith, encourage [his] grown children who are now 24, 21, and 18, to carry on our permanent plants, which we hoped, like every other pistachio farmer, would last for generations.”⁷

Christine Romanani’s family has been farming in Buttonwillow for over 100 years, growing pistachios, cotton, alfalfa, and wheat. The Romananis had hoped their six grandchildren would

⁵ Declaration of Laree Snow, attached as Exhibit B.

⁶ Declaration of Beau Antongiovanni, attached as Exhibit C.

⁷ Declaration of Mark Lambooy, attached as Exhibit D.

continue in the family business, but with the prospect of HECA as their neighbor, the Romananis do not feel that they can advise the next generations to stay. It is time for some of her teenage grandchildren to make college decisions, but, because the HECA proposal continues to loom with no certain endpoint, Mrs. Romanani is uncertain whether to advise them to study agriculture or to take another path. And the ongoing uncertainty about whether the HECA project will obtain certification has made it “extremely difficult for [her] family to make long term plans on what crops to grow on our land; specifically, on how to finish open fields. [Their] concerns are related to the cost of investing in permanent plantings that would be severely impacted by the pollution and water resource strain if the HECA plant was built and operational.”⁸

II. If The Commission Suspends The Proceeding, It Should Impose Conditions To Ensure A Certain Future End Point For The Community

Suspending the proceeding does nothing to ease the local community’s harm while this project continues to threaten its members’ livelihoods and cause them to put their lives on hold. If the Commission decides to grant the applicant’s request for a six-month suspension, the Commission should adopt conditions that will both provide an incentive for the developer to finally act decisively on this project, and also provide the community with some relief knowing a resolution is on the horizon.

Intervenors formally request the following conditions:

1. The applicant can re-activate the proceeding after the six-month suspension if it provides the Commission with a detailed and robust plan for sequestration of its CO2 emissions.
2. If the proceeding is reactivated, within 30 days the applicant must submit responses to staff’s critical and unresolved factual questions and information requests on water and CO2, including the CO2 contract, as well as all other necessary project amendments, refinements, and supplemental environmental analyses. The applicant will not be granted any further extensions to provide this outstanding information.
3. Within 60 days of re-activating the application, applicant must sponsor a public meeting for all intervenors and the public, in the Buttonwillow area, to explain every change in

⁸ Declaration of Christine Romanani, attached as Exhibit E.

the proposal and provide expert staffing sufficient to answer any and all questions raised during the meeting.

- 4a. If the applicant has not met the above conditions, the proceeding will automatically terminate. The applicant will not be granted any further extensions under any circumstances.
- 4b. In the alternative to 4a, the applicant can choose to proceed to evidentiary hearing on the application. The Committee will set a schedule that ensures a final decision within 6 months of re-activation.
5. During the six-month suspension, the applicant must provide detailed monthly status reports accompanied by signed declarations demonstrating that it is pursuing the project with due diligence.

CONCLUSION

Members of the local community surrounding the HECA site have put important life decisions about their farms and families on hold for the past seven years while waiting for the Commission to issue a final decision on the HECA project. Over that time, they have seen innumerable changes to the project including new owners, fuel types, and now, the demise of the integral carbon sequestration plan in the adjacent Elk Hills oil field. They have spent countless hours of their precious time and resources educating themselves about the HECA proposal, writing comments, and attending public hearings. Intervenors oppose the applicant's request for a six-month suspension because applicant has already had more than sufficient time to realize this project, and any additional time it enjoys is at the expense of the local community. The Commission should terminate the proceeding. In the alternative, should the Commission grant the suspension, Intervenors request that the Commission condition the suspension as described above in order to provide the community with a date-certain from which it can resume making important life and property decisions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrea Issod". The signature is fluid and cursive, with the first name "Andrea" and the last name "Issod" clearly distinguishable.

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