

## DOCKETED

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**STATE OF CALIFORNIA**

**Energy Resources Conservation and Development Commission**

In the Matter of:

Docket No. 08-AFC-8A

The Application for Certification for the  
Hydrogen Energy California Project

**SIERRA CLUB'S OPPOSITION TO  
APPLICANT'S REQUEST TO REINITIATE**

Andrea Issod  
Sierra Club  
85 Second St, Second Floor  
San Francisco, CA 94105  
(415) 977-5544

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HECA's request to reinstate the suspended seven-year-old application for certification (AFC) fails to provide the Committee with vital project details on CO2 sequestration, county plan compliance, and other issues including environmental justice, water, traffic and transportation, and waste. For over two years, the Applicant has failed to provide the Commission with the basic information needed to obtain a license. Now the Applicant has requested to restart the proceeding for at least two more years even though it has not shown any progress for the last six months, has not responded to the Committee's specific information requests, and has not followed through on its own pledges to the Commission. The Applicant's failures demonstrates a continued lack of due diligence. The Commission should terminate the proceeding and put an end to this ill-conceived proposal to ship coal by open-top railcar over 650 miles<sup>1</sup> into the nation's leading clean energy state, draw significant amounts of usable agricultural water away from an over-tapped aquifer during a severe drought, and gasify coal in the most polluted air basin in the country, while providing zero benefit to California's energy consumers.<sup>2</sup>

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<sup>1</sup> See generally PSA/DEIS 1-7, TN# 71444 (June 28, 2013) (rail route from New Mexico to Wasco, California). Approximate distance from New Mexico is 700 miles.

<sup>2</sup> This behemoth fertilizer/chemical product project would be extremely inefficient as a power plant. HECA would provide only 53 MW of added power to the grid during its maximum electricity production, and it would pull 62 MW from the grid during maximum fertilizer production. *Id.*

## **I. HECA Has Failed to Provide Documentation of a Feasible Site for CO2 Sequestration**

To reopen the suspended AFC, HECA must provide the Committee with documentation of a CO2 sequestration site that is “both feasible and available for such use,” and respond to all outstanding data requests or to modified data requests reflecting any changes in the project.<sup>3</sup> The Committee found it necessary to impose these conditions because HECA has disregarded the staff’s requests for crucial project information for the last two years. In the same vein, HECA has now failed to satisfy the Committee’s Order, and has not made any progress over the last six months on securing a feasible CO2 sequestration site, or otherwise.

According to HECA’s monthly progress reports and request to reinstate, HECA has very little information about whether the Project site would be feasible for sequestration of HECA’s CO2. According to its request to reinstate, “there are *potentially* several stacked target sand formations that *may be usable* for storage at the Project site.”<sup>4</sup> Though WESTCARB studied a site 30 km away from the Project site that “indicates that the rock formations [] *are potentially good targets for CO2 storage*,”<sup>5</sup> HECA explains that “the porosity, permeability and thickness of these units vary significantly across the Southern San Joaquin Basin.”<sup>6</sup> It will take six months to adapt the WESTCARB geomodeling to assess the storage potential at the Project site, and another year and a half to drill a characterization well and perform a pilot injection to determine if it could be a suitable site for sequestration,<sup>7</sup> and at least six months more to obtain a Class VI injection well permit. Such further delay cannot be justified.

Despite the pledges it made to the Commission, the Applicant has made no progress over the last six months on its carbon sequestration plan. HECA’s request to reinstate omits any additional details on sequestration beyond what it provided in the July progress report. The two documents contain substantially the same information and the same plans for moving forward. In July,

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<sup>3</sup> Committee Order Denying Motion to Terminate Application for Certification and Granting Request for Suspension (“Committee Order Denying Motion to Terminate Application”) at 3-4, TN# 205238-1 (July 3, 2015).

<sup>4</sup> Report to Committee and Request to Reinitiate AFC Proceedings (“Report and Request to Reinitiate AFC”) at 2, TN# 206792 (Nov. 30, 2015) (emphasis added).

<sup>5</sup> *Id.* at 4 (emphasis added).

<sup>6</sup> *Id.* at 6.

<sup>7</sup> HECA Monthly Progress Report for July 2015 (“July Progress Report”) at 2-3, TN# 205588 (July 31, 2015).

HECA reported that in the August-December 2015 period, it planned to “[m]anipulate the Kimberlina geomodel to obtain volumetric estimates of the storage potential of the four target sand formations...”<sup>8</sup> Despite that assurance, almost six months later on November 30, HECA again repeated that its next steps are still to “[m]anipulate the Kimberlina geomodel to obtain volumetric estimates of the storage potential of the four target sand formations...”<sup>9</sup> As detailed further below, this is just one example of many false promises and inaccuracies HECA has provided to the Commission over the course of this unworkable proposal.

## **II. HECA Has Failed to Demonstrate Compliance with Kern County’s General Plan and Zoning Ordinance**

The Committee’s Order also requires HECA to submit information regarding all proposed commercial products and explain whether or not such products are in compliance with Kern County’s General Plan and zoning ordinance. This request originated from HECA’s repeated references to chemical products for the transportation sector that supposedly would benefit HECA’s economics.<sup>10</sup> Kern County’s June 18, 2015 letter to the Commission stated “the representation of the applicant at the June 16, 2015, Committee Status Conference [regarding transportation products] presented inaccurate information and further added new information that was contrary to all meetings and representations to both the County Staff and Board of Supervisors on the nature of the project.”<sup>11</sup> In July, HECA reported that it would meet with the county to seek guidance on whether its product plans would comply with county ordinances.<sup>12</sup> HECA did not report back on the substance of that meeting, or whether a meeting even occurred, and Kern County’s December 14<sup>th</sup> filing confirmed that no meeting has occurred.<sup>13</sup> Instead, HECA vaguely apologizes for confusion and claims that “it will limit the manufacture of products to those for agricultural use only.”<sup>14</sup> Thus, again, HECA has failed to provide

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<sup>8</sup> July Progress Report at 7.

<sup>9</sup> Report and Request to Reinitiate AFC at 6.

<sup>10</sup> *E.g.*, email from Jim Croyle to Fong Wan dated Apr. 6, 2015 (“April 6th email from Jim Croyle to Fong Wan”), TN # 204084 (Apr. 7, 2015); *see* Letter from Lorelei H. Oviatt, Director, Kern County Planning & Community Development Dep’t (“June 18th Letter from Lorelei H. Oviatt”), TN# 205090 (June 19, 2015) (stating Kern County concerns that HECA’s testimony that it would produce diesel exhaust fluid).

<sup>11</sup> June 18th Letter from Lorelei H. Oviatt (emphasis added).

<sup>12</sup> July Progress Report at 8.

<sup>13</sup> Letter from Lorelei H. Oviatt, Director, Kern County Planning & Community Development Dep’t, TN# 207006 (Dec. 14, 2015).

<sup>14</sup> Report and Request to Reinitiate AFC at 7-8.

information requested by the Committee, and again, it did not follow-through on a pledge it made to the Commission. Additionally, HECA has not explained how production of agricultural fertilizer would benefit project finances and viability, given that HECA's CEO had been touting a 40% lower PPA pricing due to "higher market prices for some of our products in the transportation sector especially."<sup>15</sup>

### **III. Applicant Has Not Diligently Pursued the HECA Project**

As detailed in Intervenors' Joint Response Objecting to Applicant's Request for a Six-Month Suspension, since this project was proposed seven years ago, 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. The Committee has recognized these understandable concerns and acknowledged that the environmental analysis of a new CO2 site would "likely add significant amounts of time to the already unusually long review process in this case."<sup>16</sup> For these reasons, the Committee imposed certain milestones for the Applicant to achieve before January 6, 2016, and was clear that "[f]ailure to achieve those milestones may be deemed evidence of a lack of diligence,"<sup>17</sup> and that it intended to "ensure that the duration of the HECA AFC proceeding is not indefinite."<sup>18</sup>

Disregarding the Committee's directions, Applicant has provided the very same sequestration information that it provided in July, and has made no attempt to modify the outstanding data requests to the new sequestration site. The Applicant's failure to satisfy the Committee's requests demonstrates a lack of due diligence, as does its failure to report any progress over the last six months.

Nor has HECA provided a sufficient response to the Committee's request for information regarding its planned commercial products, or any information about how the change-back from transportation products to agricultural products will affect the project's economics.

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<sup>15</sup> See April 6th email from Jim Croyle to Fong Wan.

<sup>16</sup> Committee Order Denying Motion to Terminate Application at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

It appears that all HECA achieved during the six month suspension was to meet with DOE officials to request reallocation of the funding that HECA lost due to its failure to meet its deadlines. In fact, HECA indicated in its November report that it needed the Committee to reinstate the certification process in order to receive more funding from DOE.<sup>19</sup> In order to keep this project alive, HECA is trying to involve its state and federal regulators in an unending circle of inaction.

Finally, HECA has continued to ignore outstanding data requests on environmental justice, water, traffic and transportation, and waste, among other issues.

#### **IV. RECOMMENDATION**

HECA has failed to diligently pursue this project for well over two years now, and it has failed to achieve the diligence milestones over the last six months. HECA has proven to be unable to follow-through on its pledges to the Commission time and time again to provide critical information to license this project. The Committee must terminate this proceeding.

Respectfully submitted,



Andrea Issod, Senior Attorney  
Sierra Club  
85 Second St, Second Floor  
San Francisco, CA 94105  
(415) 977-5544  
andrea.issod@sierraclub.org

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<sup>19</sup> See Report and Request to Reinitiate the AFC.