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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 SUPPORT FOR STAFF'S MOTION TO TERMINATE

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Enough is enough. Sierra Club strongly supports the Commission Staff’s recommendation to terminate the seven-year-old HECA application for certification (AFC). As articulated in Staff’s brief, and in Sierra Club’s opposition to HECA’s request to reinstate, HECA is at least two years away from defining its new project description sufficiently to fulfill the Committee’s milestones and to provide meaningful data for the Staff and the public to analyze. Additionally, HECA has failed to diligently pursue this project for well over two years, and it has failed to achieve the diligence milestones the Committee set out before the project was suspended six months ago. HECA’s January 6 filing did not provide any response to the critical points made in Staff’s, Sierra Club’s or the County’s recent filings.

Because HECA has not provided the Commission with documentation of a CO2 sequestration site that is “both feasible and available for such use,” or respond to all outstanding data requests or to modified data requests reflecting any changes in the project, HECA’s January 6 filing does not meet the milestones set out in the Commission’s July Order and thus shows “evidence of a lack of diligence.”¹ Recognizing that 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

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

decisions for the last seven years, the Committee imposed certain milestones for the Applicant to achieve before January 6, 2016, and was firm with its intentions to “ensure that the duration of the HECA AFC proceeding is not indefinite.”²

Despite the Committee’s clear instructions and warning, HECA has steadfastly refused to respond to outstanding data requests. Staff pointed to outstanding data requests regarding cultural and biological resources that HECA should be able to provide, but HECA nonetheless refused to submit this critical information, claiming it is sparing Staff and the public effort until the new project design has not been established.

HECA has been hesitant about engaging CEC staff, the public and other agencies until the new project design is established. We recognize that CEC staff, other agencies and members of the public have expended significant time and effort reviewing information about the project, and we do not want to request additional effort until we are sure about the new project design.³

HECA’s statement evidences lack of diligence as well as lack of a legally -sufficient defined project design.⁴

Instead of providing the Committee with the long-overdue requested information, HECA makes thin promises on mitigation measures. While many mitigation measures would be required if this project were ever certified, vague promises have no relevance to whether HECA has demonstrated due diligence or whether it has a sufficiently detailed project to justify the reopening of the AFC proceeding.

Nor are relevant HECA’s attempts to persuade the Commission to reopen the AFC for “climate change reasons” because it is supposedly the only CCS proposal at the moment in the state of California. Even if this project could get off the ground, which the last seven years indicate it could not, HECA would be a big step backwards for the nation’s leading clean energy state because it would use coal in a terrifically inefficient manner and not provide any benefit to

² *Id.*

³ Declaration of Jim Cryole at 11, TN# 207201 (Jan. 6, 2016).

⁴ *See* Energy Commission Staff Reply Brief at 5 (citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.3d 185, TN# 207028) (Dec. 15, 2015).

California's energy consumers.⁵ A helpful demonstration project would aim to reduce greenhouse gas emissions from an existing source, not add more greenhouse gas emissions to the state's portfolio.

Finally, HECA's filing fails to address the Committee's outstanding questions regarding its planned commercial products, the County's concerns about zoning restrictions, and serious questions about the overall economic viability of the project.

The County's June 18, 2015 letter 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."⁶ HECA has ignored its promise to the Commission to meet with the County to resolve these issues,⁷ and ignored Kern County's December 14, 2015 letter emphasizing that zoning continues to be an issue regarding the planned commercial products as well as the new plans for a Class VI CO2 injection well on the project site.

While HECA's CEO had been boasting about a 40% lower PPA pricing due to "[h]igher market prices for some of our products in the transportation sector especially,"⁸ HECA has since changed its planned products back to agricultural fertilizer without explaining how this would impact the economic viability of the project.⁹ It is highly questionable how HECA can be so economically strong if it cannot move forward without DOE funding.¹⁰

⁵ 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. *See* PSA/DEIS 1-7, TN# 71444 (June 28, 2013).

⁶ June 18th Letter from Lorelei H. Oviatt, Kern County Comments, TN# 205090 (June 19, 2015) (emphasis added).

⁷ *See* HECA Monthly Progress Report for July 2015 ("July Progress Report") at 2-3, TN# 205588 (July 31, 2015).

⁸ *E.g.*, email from Jim Croyle to Fong Wan dated Apr. 6, 2015, TN # 204084 (Apr. 7, 2015).

⁹ HECA Monthly Progress Report for July 2015, TN# 205588 (July 31, 2015).

¹⁰ Declaration of Jim Croyle at p. 6.

RECOMMENDATION

HECA has failed to achieve the diligence milestones the Committee set out over the last six months, and 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.¹¹ HECA admits it does not have a defined project design. The Committee must terminate this proceeding.

Respectfully submitted,



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¹¹ See Sierra Club's Opposition to Applicant's Request to Reinitiate, TN# 207029 (Dec. 15, 2015).