

DOCKET

09-AFC-9

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STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE (SOLAR MILLENIUM)
RIDGECREST SOLAR POWER
PROJECT

DOCKET NO. 09-AFC-9

**INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S
OPPOSITION TO RSPP'S MOTION FOR JURISDICTIONAL WAIVER AND
REQUEST TO CONTINUE SUSPENSION OF THE APPLICATION**

July 6, 2011

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I. Introduction

On or about June 17, 2011, Solar Trust of America ("STA") (which describes itself as "formerly Solar Millenium, LLC") submitted a document entitled "Motion for Order Affirming Application of Jurisdictional Waiver" requesting that the Committee retain jurisdiction over this matter although the applicant states that the project will be redesigned as a photovoltaic project (PV) and will no longer be proposed to be a solar-thermal project. The Motion also again requested that the Committee issue a revised scheduling order maintaining the suspension of the Application for Certification Proceeding for 12 months to allow a redesign of the RSPP project which STA states now intends to utilize solar photovoltaic technology ("PV") and "the DRECP Process to further enlighten the viability of the sites in and around the City of Ridgecrest including the current site." As detailed below, the Center opposes the request regarding the jurisdictional waiver and the request to continue the stay of the proceedings.

Also pending before the Committee is an earlier request dated March 24, 2011 from the applicant which overlaps with the new request. That earlier request asks the Committee to revise the scheduling order so as *not* to require the earlier-promised Mojave ground squirrel study be completed and instead requests that the Committee allow the stay of the application to remain in place for an additional 18 months to accommodate the applicant's desire "to wait for the outcome of the DRECP and to use this as the basis for determining how to proceed with the RSPP AFC Proceedings". The Center previously filed an opposition to that request and incorporates that opposition herein. The Center also asks that the Committee rule on both requests together as they are overlapping and related.

Lastly, the Center requests that the Committee dismiss the application for lack of jurisdiction based on the applicant's statements that it no longer intends to pursue a solar thermal project.

II. The Commission Has No Jurisdiction Over a Redesigned PV Project And Should Dismiss the Application

The applicant has stated that it no longer intends to pursue a solar thermal project. The plain language of the Warren-Alquist Act shows that a “redesigned” PV project would not be within the Commission’s jurisdiction. *See* Public Resources Code §§ 25110, 25120. In response to the applicant’s creative but misguided arguments attempting to show that the jurisdictional limitations of the Act may be “waived” the Center supports and incorporates herein by reference the arguments on that issue provided in Staff’s Reply Brief filed July 5, 2011, pages 2-7.

Because the applicant has now stated that they have no intention of going forward with the application for a solar thermal project currently filed before the Commission, the Center requests that the application be dismissed. Although to date, there has been no notice of a redesigned application being filed with the commission, the applicant has asserted that the redesign will be a PV project and not a solar thermal project and therefore outside of the Commission’s jurisdiction.

The applicant has also asserted that the redesign will reduce the project footprint, reduce impacts to sensitive resources, and that the applicant is considering other sites within the area. The Center appreciates that such changes as part of a redesign – particularly moving the project to an alternate site – could significantly reduce project impacts, however, none of these changes except for the change in technology to PV have been disclosed to the public to date. Because the applicant is proposing a PV project over which the Commission has no jurisdiction, the application should be terminated and dismissed.

III. There is No Need To Wait For the Outcome of the DRECP Process For the Committee to Take Action And Dismiss the Application

On May 4, 2011, the Center filed an opposition to the RSPP’s earlier request for an extension of the suspension of the application for an additional *18 months* based on the same argument again put forward in the June 17 motion that the suspension was needed to wait for the outcome of the Desert Renewable Energy Conservation plan (DRECP). The basis for that opposition remains and is summarized below.

The original suspension was approved in order to provide time for an applicant-funded study of Mojave ground squirrel to be undertaken. That study has now been abandoned by the applicant. Even without that study, based on data presented at CEC workshops and professional opinion of your staff and other experts, it is clear that the proposed project site has important conservation values for the rare and threatened species that the proposed project site has already been determined to support. The evidence already before the Commission shows that the application should be denied because of the high conservation value of these lands and the unacceptable impacts that would occur if the proposed project were constructed on this site.

While it is clear to the Center that the value of this site for wildlife and plants and the inappropriateness of the site for an industrial scale development will ultimately be formally recognized in the DRECP, there is no need for the Committee to wait an additional 12 or 18 months or wait for a final DRECP before acting to make a determination on this particular application (or as noted above to terminate the application now that it is being redesigned as a PV project).

Moreover, if the argument proffered by the applicant were accepted, then logically the Commission should stay the proceedings for all pending application within the DRECP planning area until it is completed. However, that is not the process contemplated by the NCCP Act which is structured so as to provide for an interim process (Fish & Game Code § 2810(b)(8)) that allows project review to go forward during the time the DRECP is being developed. The DRECP adopted an interim process for reviewing consistency of pending projects with the emerging conservation direction of the plan that stresses “early engagement with the applicable agencies while there is maximum flexibility in project siting” (Memorandum Re: Interim Process for the Desert Renewable Energy Conservation Plan, February 28, 2011, From Kevin Hunting, Chief Deputy Director, Department of Fish and Game to Renewable Energy Action Team Agencies (including the Commission)). The DRECP Planning agreement also reflects the emphasis on early engagement. *See* Planning Agreement at 8.9.1. The Planning agreement also notes that in reviewing interim projects: “The Wildlife Agencies intend to recommend mitigation measures or project alternatives that will help achieve the preliminary conservation objectives of the DRECP and that will not preclude important conservation planning options or connectivity between areas of high habitat values.” Planning Agreement at 8.9.2.

As applied to the RSPP, the existing information has already shown that the proposed site is inappropriate because it would both “preclude important conservation planning options” and “connectivity between areas of high habitat values”. *Id.* In sum, the applicant’s request to stay the proceedings based on completion of the DRECP process is: inconsistent with the statutory structure of the NCCP Act, the DRECP Planning Agreement, and the Interim Process; and would frustrate the early engagement process that is intended to ensure that identification of potential conflicts between proposed projects and the evolving conservation strategy in the DRECP and that alternatives and other potential solutions are developed at the earliest possible time in the process.

In light of the discussion above and earlier information and argument presented in this matter, the Center opposes the motion and asks that the Committee deny the requests to retain jurisdiction over a redesigned PV project and to continue the suspension of the application. The Center further requests that the Commission terminate this application due to lack of jurisdiction.

Dated: July 6, 2011

Respectfully submitted,

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**APPLICATION FOR CERTIFICATION
For the *RIDGECREST SOLAR POWER
PROJECT***

**Docket No. 09-AFC-9
PROOF OF SERVICE
(Revised 7/5/2011)**

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DECLARATION OF SERVICE

I, Lisa Belenky, declare that on July 6, 2011, I served and filed copies of the INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S OPPOSITION TO RSPD'S MOTION FOR JURISDICTIONAL WAIVER AND REQUEST TO CONTINUE SUSPENSION OF THE APPLICATION, dated July 6, 2011. 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: [http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest].

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)

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CALIFORNIA ENERGY COMMISSION

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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

/s/ Lisa T. Belenky