

DOCKET

09-AFC-9

DATE July 06 2011

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STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE RIDGECREST SOLAR
POWER PROJECT

DOCKET NO. 09-AFC-9

**INTERVENOR WESTERN WATERSHEDS PROJECT'S RESPONSE TO
APPLICANT'S MOTION FOR ORDER AFFIRMING APPLICATION OF
JURISDICTIONAL WAIVER RIDGECREST SOLAR POWER PROJECT DOCKET
NO. 09-AFC-9**

July 6, 2011

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STATE OF CALIFORNIA

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**INTERVENOR WESTERN WATERSHEDS PROJECT'S RESPONSE TO
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JURISDICTIONAL WAIVER RIDGECREST SOLAR POWER PROJECT DOCKET
NO. (09-AFC-9)**

California Energy Commission
Siting, Transmission and Environmental Protection Division
1516 Ninth Street,
Sacramento, CA 95814

Dear Commission,

On June 17, 2011, Applicant STA LLC (formerly Solar Millennium LLC) filed a *MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER* in the Ridgecrest Solar Power Project matter. At the June 21, 2011 Mandatory Status Conference the commission set a deadline date for responses of July 6, 2011.

In its motion, the Applicant explains that it is now redesigning the project, changing the technology from solar thermal to photovoltaic ("PV"), and seeks a "waiver" from the Commission that would maintain CEC jurisdiction over the project despite it no longer being a solar thermal project.

Intervenor Western Watersheds Project opposes the motion because no site has been approved for the project, the revamped power plant project will have no thermal-solar component and being entirely PV is outside CEC jurisdiction, there are no other facilities proposed that fall under the Warren-Alquist Act, and the CEC could not appoint itself the lead agency for CEQA even if it did assert it had any continued jurisdiction over the project. We urge the Commission to issue a finding that it lacks jurisdiction over the modified project and to deny Applicant's motion.

(A) Photovoltaic projects are specifically excluded under the Warren-Alquist Act.

Although the Applicant is now proposing to eliminate thermal solar technology from its project it claims that Public Resource Code Section 25502.3 somehow gives it the right to request a waiver to the standard CEQA process that other photovoltaic power plant projects are following and have followed, and to effectively choose the lead agency for the environmental review of the project. Public Resource Code Section 25502.3 states:

§ 25502.3 Facility; proposed construction; waiver of exclusion; application of chapter

Except as provided in Section 25501.7, any person proposing to construct a facility excluded from the provisions of this chapter may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any and all of the provisions of this chapter shall apply to the construction of such facility.

However, the cited section from CHAPTER 6. POWER FACILITY AND SITE CERTIFICATION immediately follows § 25501 and § 25501.7 and the three sections are clearly grandfather clauses related to projects under development at the time of the Warren-Alquist Act. The opening section of Chapter 6 states (emphasis added):

§ 25500. Authority; necessity of certification

In accordance with the provisions of this division, the commission shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division.

The Warren-Alquist Act provides the following definitions relating to “facility” that specifically excludes PV projects as facilities under the Act:

§ 25107. Electric transmission line

"Electric transmission line" means any electric powerline carrying electric power from a thermal powerplant located within the state to a point of junction with any interconnected transmission system. "Electric transmission line" does not include any replacement on the existing site of existing electric powerlines with electric powerlines equivalent to such existing electric powerlines or the placement of new or additional conductors, insulators, or accessories related to such electric powerlines on supporting structures in existence on the effective date of this division or certified pursuant to this division.

§ 25110. Facility

"Facility" means any electric transmission line or thermal powerplant, or both electric transmission line and thermal powerplant, regulated according to the provisions of this division.

§ 25120. Thermal powerplant

"Thermal powerplant" means any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities for the purposes of this division.

"Thermal powerplant" does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.

In the case of the Ridgecrest solar project, no site has been certified that predates the Warren Alquist Act. The Applicant is no longer proposing construction of a thermal powerplant. Instead, it proposes to construct a solar photovoltaic power plant – a facility specifically excluded from the § 25110 definition of facility. Clearly then, the proposed project is outside the jurisdiction of the CEC as laid down in Chapter 6. § 25500.

(B) Extending CEC jurisdiction to a specific PV project would violate CEQA.

Extending CEC jurisdiction to a specific PV project at the Applicant's request would violate CEQA because the CEC would effectively be allowing the Applicant to choose the lead agency in the CEQA review. CEQA requires that such determinations be made by a public agency, not by an Applicant.

Absent a detailed project description, the appropriate lead agency for the PV project would appear to be either the California Department of Fish and Game ("CDFG") or the County of Kern since both agencies will likely have some discretionary jurisdiction. CEQA § 15051 specifies that the agency which will act first on the project in question shall be the Lead Agency. Because the proposed PV project would be located entirely on public lands managed by the BLM that is designated as a conservation area for the CESA-listed Mohave ground squirrel, CDFG appears to be the more appropriate lead agency since it would have to issue an Incidental Take Permit for the PV project. When multiple agencies have discretionary power they may by agreement designate an agency as the Lead Agency. CEQA § 15051.2(d). However, that decision will be made by the agencies not by the Applicant.

(C) The applicant is forum shopping.

During the initial review of the original solar thermal project, the Applicant proposed and then abandoned undertaking a detailed study of the effects of the project's design on Mohave

ground squirrel connectivity. In abandoning the study, Applicant raised among other issues its concern regarding CEC staff opposition to the project. However, it now seems that the Applicant believes it will fare better in the CEQA analysis with the CEC as lead agency as opposed to the County of Kern or CDFG.

Allowing the waiver would allow the Applicant to forum shop between the Commission, other state agencies, and local governments for a favorable CEQA determination. It would set a precedent that would invite other developers of PV projects to also forum shop. Again, CEQA's lead agency rules require that the involved public agencies, not the project proponent, determine which agency should serve as lead agency.

CONCLUSION

In summary, the Applicant has opted to modify its project such that it no longer falls under CEC jurisdiction. While the Applicant is free to modify its project as it wishes, the Applicant cannot decide the lead agency under CEQA. Accordingly, we urge the Commission to deny Applicant's Motion outright and instead to act to terminate this application.

Dated: July 6, 2011

Respectfully submitted,

A handwritten signature in black ink that reads "Michael J. Connor". The signature is written in a cursive style and is underlined with a single horizontal line.

Michael J. Connor, California Director
Western Watersheds Project

DECLARATION OF SERVICE

I, Michael Connor, declare that on 7/6/11, I served and filed copies of the WUP OPPOSITION TO APPLICANTS MOTION, dated 7/6/11. 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)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);
- OR**
- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-9
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
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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.

Michael D. Connor



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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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