

STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION FOR THE
HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM

Docket No. 11-AFC-02

California Energy Commission

DOCKETED

11-AFC-2

TN # 67012

SEP 05 2012

**MOTION TO EXTEND PARTY RESPONSE TIME
TO APPLICANT'S "MOTION IN LIMINE"**

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I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

On August 31, 2012, Hidden Hills Solar I, LLC and Hidden Hills Solar II, LLC (the “Applicant”) filed a “Motion In Limine For A Committee Ruling To Ensure The Final Staff Assessment Conforms To Substantive Requirements Of The California Environmental Quality Act (“CEQA”), herein referred to as the “Motion”.

Applicant’s Motion makes several allegations regarding the substantive requirements of CEQA and factual and legal errors made in the Preliminary Staff Assessment and Supplemental Staff Assessment (collectively referred to as the “PSA”).

Applicant describes and compares the necessity of the Motion at this juncture in the application process as “[Motion in limine] permit more careful consideration of evidentiary issues than would take place in the heat of battle during trial. They minimize side-bar conferences and disruptions during trial, allowing for an uninterrupted flow of evidence. Finally, by resolving potential critical issues at the outset, they enhance the efficiency of trials and promote settlements”

By the Applicant’s own admission, matters regarding the Motion’s allegations of factual and legal errors committed by staff in the PSA represent some of the most hotly contested issues in the Application For Certification and thus, require more careful consideration. Whether there is any basis in fact to the Applicant’s allegations of factual and legal errors that must be corrected requires more careful consideration than the 15-day party response time currently allowed.

Pursuant to §§ 20 C.C.R. 1716.5 of the Commission’s Regulations, “responses to the petition by other parties shall be filed within 15 days of the filing of the petition unless otherwise specified by the presiding member.”

Additionally, as described in the powers of the chairman, a decision may be rendered

that, “For good cause shown, and upon proper notice, [the chairman may]...lengthen the time required for compliance with any provision of these regulations.” (See California Code of Regulations, §§ 20 CCR 1203(f).)

This “Motion To Extend Party Response Time To Applicant’s ‘Motion In Limine’” is an urgent prayer to the Commission to duly exercise their powers and authority to protect the public interest and provide relief in these proceedings by granting an extension of response time to the Applicant’s Motion that is equal to what would be afforded to the parties should the normal regulatory procedures of these proceedings have remained uninterrupted by the Applicant’s Motion.

II. STATEMENT OF FACTS

On August 14, 2012, CEC Hearing Officer Kenneth Celli, submitted a Hidden Hills SEGS Draft Proposed Schedule For Discussion At Status Conference.” (See Exhibit A).

Within this Draft Proposed Schedule, nine weeks are proposed to be allocated between the release of the Final Staff Assessment and the Evidentiary Hearings. According to CEC Hearing Officer Celli, the general outline for the steps illustrated in this Draft Proposed Schedule are both “standard” and “normal” for the regulatory review process. (*See* Status Conference Before the Energy Resources Conservation and Development Commission of the State of California In The Matter of the Hidden Hills SEGS, August 16, 2012, Transcript, pg. 46, line 12 & 13).

On August 16, 2012, a Status Conference was held by the Commission regarding the progress and status for the Application for Certification of the Hidden Hills SEGS. Discussions included a recently submitted letter to the Commission by Applicant dated August 15, 2012, regarding

“Request for Extension of Time for Publication of the Final Staff Assessment” until October 19, 2012, versus the previously scheduled publication date of the FSA on September 11, 2012.

The Applicant also stated its intention to file the Motion and various discussions and responses ensued between the Hearing Officer, Commission members, Applicant, Staff, the Public Advisor, intervenors and other interested parties. (See pages 17, and 48-57).

Relevant transcript excerpts of these discussions regarding the Motion and adequate and fair response time to address the Motion include:

Public Advisor Jennings: *“I think you need to have the schedule reflect that you will have non-companies participate in this process and give them additional time.”*

Hearing Officer Celli: *“I think two weeks should be plenty of time for all of the parties to be able to respond to the, to the motion.”*

Public Advisor Jennings: *“I have to disagree with that. I mean, staff lives these issues, Alternatives Analysis, looking at many projects, so they have a deeper background than you can expect other parties to have so I do think that the other parties deserve more time.”*

Associate Member Peterman: *“... I am sensitive to the issue of making sure everyone does have enough time. I do appreciate the comment about the different level of preparation and expertise, particularly for the Alternatives section. I will be considering in my thinking on the scheduling.”*

Hearing Officer Celli: *“Right. Our regulations are clear that when you come in*

you take the case as you find it. If you're a new intervenor you don't get new discovery, you don't get to -- we don't get to turn back the clock and afford you some sort of additional time or additional privileges that the other parties don't have. And so, Ms. Jennings, as new people are going to intervene we encourage you to encourage them to intervene sooner not later.” [Emphasis added].

Public Advisor Jennings: *“I understand that. I wasn't asking for something specific to the new intervenors, I was asking for a fair process for all the intervenors” [Emphasis added.]*

III. ARGUMENTS

A. Motion Seeks To Subvert CEQA And The Commission’s Duties to Serve The Public Interest

Applicant’s Motion seeks to strike at the environmental review process that is defined as the “heart of CEQA” (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.) Also, (*See* California Code of Regulations, §§ 14 C.C.R. 15003(a).)

The Motion seeks to restrict information and public disclosure of the proposed projects environmental impacts as well as limit staff recommendations intended to reduce or avoid adverse impacts that may not just be *necessary* for informed decision making, but *critical* regarding the environmental impacts of the proposed project and potential alternatives or mitigation measures required to offset adverse or unmitigatable impacts resulting from the Applicant’s alleged “proprietary technology”.

Through the invocation of the Motion to require the public and interested parties to present evidence, prepare testimony and submit adequate briefs in the matters of some of the most heated, complex, critical and contested issues environmental issues and alternatives to the proposed

project within 15 days or less, the Applicant seeks to sway the decision making process in significant favor of the Applicant's objectives at the expense of balancing those objectives with the Commission's duty to serve the public interest through appropriate disclosure, adequate analysis and potential mitigation of the proposed projects environmental impacts to the maximum extent feasible..

Not only has the environmental review process been determined to be the "heart of CEQA" in its requirement to evaluate a proposed projects impacts, its function is also recognized as a critical component "to demonstrate to the public that it is being protected" (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795) and to, "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action" (*People ex rel. Department of Public Works v. Bosio*, 47 Cal. App. 3d 495.) Also, (See California Code of Regulations, §§ 14 C.C.R. 15003(b); §§ 14 C.C.R. 15003(d).)

Instead of serving the public interest, the Applicant seeks to use the Motion to subvert the Commission's standardized regulatory review process while simultaneously attempting to unfairly burden the public, interested parties and cooperating agencies with inadequate response times that would not normally be imposed should the application's proceedings have remained uninterrupted by the Motion.

According to the California Energy Commission's Value Statement, the Commission's "highest responsibility is to the people of California", and that, "[The Commission] will strive to conduct business in a manner that results in maximum public benefit...."

The Applicant's Motion and its associated automatic response time of 15 days or less is inappropriate given the complex parameters and unique site-specific issues connected to

the proposed project. It also fails to satisfy the Commission's duty to adequately represent the public interest by the Motion's inherent restraints, which prohibit careful consideration of what has been described as "hotly contested and unresolved issues".

Finally, the Motion fails to "demonstrate to the public that [the environment] is being protected" or assure "an apprehensive citizenry" that the Commission will, in fact, analyze and appropriately consider the ecological implications of its actions through the Motion's restrictions for adequate party response and circumvention of normal regulatory procedures.

B. Motion Contradicts The Intention of "Motion In Limine"

The Applicant's Motion will reduce the general steps and procedures outlined in the Hearing Officer's Draft Proposed Schedule, including the step of Staff's Statement of Unresolved Issues, from nine weeks (63 days) to a mere 15 days or less. The Motion's request to restrict the normal regulatory process and reduce it by at least four weeks can hardly be considered in alignment with the Applicant's own stated intentions through invoking a "Motion In Limine", which is to "permit careful consideration" of issues identified as significant and include potentially critical impacts of the proposed project in relation to CEQA and other regulatory requirements.

Instead, the Motion seeks to accomplish the opposite, which is to artificially create a process that results in the circumvention of the Commission's normal and standardized regulatory process with a process that requires frantic attempts by the parties to resolve critical factual and legal issues deemed by both Staff and Applicant as central to analyzing, and potentially mitigating, the proposed projects impacts to the environment.

C. Motion Response Time Affords Applicant And Staff Privileges Not Available To The Public Or Other Parties

I have been deeply involved, studied and committed to the Application of Certification process for the Hidden Hills SEGS since November 20, 2011. On that date, I spent three hours just downloading the Application for Certification files and all posted documents. At that time, the total pages of documents available for public review numbered 4,099. Since then, the Applicant alone has added thousands of additional pages to review and this excludes the “nearly 1,400 pages of the PSA” or any of the Staff’s or Commissions additional documentation such as transcripts, records of conversation, etc. Additionally, there are about 900 public comments regarding the PSA, additional letters from interested agencies, reports from intervenors, etc., and I have reviewed every single one of these documents at least once during this process. As already stated, I have used this intense study of the project by preparing a variety of submissions to the Commission and other affected agencies, submissions that exceed over 500 pages.

Yet even at this level of in depth involvement and review, despite being reasonably well versed regarding multiple aspects of the proposed project and already having a general outline of my response to the Motion that will include what I perceive to be flaws in both factual and legal errors included by Applicant in the Motion, even with my ability to reasonably assemble large amounts of information in a relatively short period of time, even with all of these “advantages” that I have over the “average” member of the public, I cannot possibly adequately, factually or legally respond to all the allegations the Motion has made in the time frame currently allotted.

Therefore, it stands to reason that if all of my involvement is still not enough to allow me to adequately respond in the time frame the Motion allots but both Applicant and Staff believe

they *are* capable of responding within 15 days, then obviously Public Advisor Jennings concerns have proven to have legitimate merit; .that the response time to this Motion affords both Staff and Applicant an unfair advantage over the public and parties who don't "live" these issues.

Contrary to Officer Celli's assertion that two weeks was more than sufficient for party responses to a Motion that potentially has far reaching consequences for all future CEQA equivalent regulatory processes, Public Advisor Jennings adequately represented the public interest by arguing and presenting reasons why the response time to the Motion should be extended. If the Presiding Member fails to grant additional response time to the Motion, it will, in affect, afford both Applicant and Staff the very "additional" privileges Hearing Officer Celli accused Public Advisor Jennings of requesting for the public while simultaneously denying the public and other interested parties a fair process.

D. Procedural Extensions: Fair And Equal Treatment and Protecting The Public Trust

When the Applicant filed their August 15, 2012, letter regarding a "Request for Extension of Time for Publication of the Final Staff Assessment", they clearly demonstrated that the Application for Certification regulatory procedures, timing and schedules can be delayed for any length of time the Applicant believes is necessary to favor their exclusive interests.

Statements made in the Motion offering the pretense of serving the public interest, such as "Correcting these legal errors at this juncture will save the Commission and all stakeholders from incurring significant, unnecessary expense and delay in litigating issues that are not relevant to any decision the Commission must make on the Application for Certification....and ensure the

FSA is compliant with CEQA's substantive requirements." also reflect the Applicant's continued self-serving and exclusionary interests as, "stakeholders" such as myself, other intervenors, interested agencies and other parties will not be incurring "significant, unnecessary expense and delay" in any greater amount than if the issues presented in the Motion were heard through normal regulatory procedures as outlined in Exhibit A.

The only stakeholder who will be forced to "incur significant expense" is the Applicant as they attempt to "muddy the waters" regarding the proposed projects impacts and restrict the Commission and staff from adequately evaluating recommendations, feasible mitigation measures and alternatives that present a threat to the Applicant's self-serving goals.

If the Applicant believes that the taxpayer should be "spared" the significant expense of having staff disclose and attempt to provide recommendations and mitigation measures to offset the project's impacts, then Applicant needs to be reminded that staff is required to adhere to processes and analysis that attempt to balance the Applicant's inherent self-interest with that of protecting the public interest. In other words, it serves the public to "pay" these expenses and protecting the public interest and the environment is neither "unnecessary" or "irrelevant".

The Applicant also argues that ramming through analysis, arguments and responses concerning significant legal thresholds that may be potentially applicable to these and future proceedings will save everyone "time" as well as ensuring the FSA will be a more "complete document."

Of course, this assumption is based on the Applicant's expectation that the Commission will grant the Motion in full and apparently, the Applicant believes the Commission's decision will weigh in their favor. And if it doesn't? The Applicant was willing to take the risk to extend these

proceedings by over five weeks. This clearly indicates that “what” is analyzed about the proposed projects impacts and “how” it is disclosed in the public record is more important to the Applicant than meeting their project deadlines, contrary to all their former assertions.

If the Applicant is not only willing to endure, but actively sought extensions in these regulatory proceedings by predicting this Motion will ultimately weigh in their favor, then surely the Applicant can also endure, and the Commission can afford, to provide the public with fair and equal treatment in the decision making process.

Therefore, the Commission should consider granting an extension of required response times to the Motion that is, at minimum, equal to the same time frame granted to the Applicant for delaying the publication of the FSA (five weeks). However, given the scope and magnitude of what the Applicant is demanding be addressed, the response extension to the Motion for other parties would preferably present the same or a similar amount of time as “normally” scheduled for evidentiary hearings (nine weeks).

IV. PRAYER FOR RELIEF

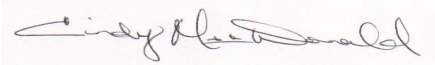
As a member of the public, a local stakeholder in the proposed project’s vicinity and an extremely active intervenor in these proceedings, I submit this “prayer for relief” to extend the party response time to the Motion under the authority and as afforded the Commission and the Presiding Member pursuant to §§ 20 C.C.R. 1716.5 and §§ 20 C.C.R. 1203(f).

The extension of party response to the Motion is hereby requested to be at least a minimum of five weeks but would preferably be nine weeks.

Granting this extension will ensure that the public interest is served as equally as the Applicant's interest have been served and will allow for more complete and carefully considered responses. Additionally, carefully considered responses will ensure the Commission is adequately informed prior to issuing a decision, a decision that has the potential to have far reaching consequences, including setting precedent for future applications and proceedings.

Dated: September 5, 2012

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Cindy R. Mac Donald", is written on a light pink rectangular background.

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EXHIBIT A
Draft Proposed Schedule for HHSEGS

<u>EVENT</u>	<u>DATE</u>	<u>INTERVAL IN WEEKS</u>
Final Staff Assessment (FSA)	9/11/12	0
Staff FSA Workshop	Before 10/1/12	3
Applicant Files Testimony	10/2/12	3 from FSA
Intervenors File Testimony	10/9/12	4 from FSA
Last Day to File Petition to Intervene	10/16/12	5 from FSA
All Parties File Rebuttal Testimony	10/23/12	7 from FSA
All Parties File Prehearing Conference Statements	10/30/12	7 from FSA
Staff files Statement of Unresolved Issues 1718.5(c)	10/30/12	7 from FSA
Prehearing Conference	11/7/12	8 from FSA
Evidentiary Hearings	11/14/12 – 11/16/12	9 from FSA
All Parties File Opening Briefs	11/29/12	10 from FSA
All Parties File Reply Briefs	12/7/12	11 from FSA
Presiding Members Proposed Decision (PMPD) published	1/4/13	6 from EH
Committee Conference on PMPD	1/31/13	4 from PMPD
Close of public comment period on PMPD	2/4/13	5 from PMPD
Final Adoption Hearing by the California Energy Commission	TBD	



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**APPLICATION FOR CERTIFICATION FOR THE
HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM**

Docket No. 11-AFC-02

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(Revised 8/27/12)

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DECLARATION OF SERVICE

I, Cindy R. MacDonald, declare that on September 5, 2012, I served and filed copies of the attached Motion To Extend Party Response Time To Applicant's "Motion In Limine", dated September 5, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/hiddenhills/index.html.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. 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 "e-mail preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- by sending an electronic copy to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

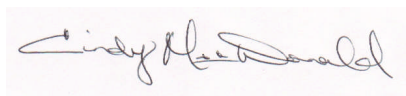
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OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

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I declare under penalty of perjury that the foregoing is true and correct.



Cindy R. MacDonald