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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the matter of:

QUAIL BRUSH GENERATION PROJECT

No. 11-AFC-03

APPLICANT'S OPPOSITION TO
MOTION BY HELPING HAND TOOLS
FOR CANCELANATION OF APPLICATION
OR NEW SCHEDULING ORDER

Pursuant to California Code of Regulations, title 20, sections 1716 and 1716.5, on behalf of Quail Brush Genco, LLC (the "Applicant"), we respectfully submit this Opposition to Intervenor Helping Hand Tools' filing entitled "Objection To Scheduling Order Dated October 2, 2012. Motion for Cancellation of Application or New Scheduling Order. Request for Point of Order Regarding Public and Air District Participation" ("the Motion").

Helping Hand Tool's Motion is unclear in multiple respects, includes references to incorrect or irrelevant facts, and lacks citation to any legal authority to support its arguments. Indeed, the Motion provides no basis whatsoever on which to "cancel the application", nor does it explain the meaning of the relief it requests. We respectfully request that the Committee deny the Motion in full.

I. ARGUMENT

A. The October 2, 2012 Scheduling Order Should Not Be Vacated At This Time

While it is true that the San Diego Air Pollution Control District (“SDAPCD”) did not submit the PDOC to the Commission as soon as originally anticipated, and consequently the October 2, 2012 Scheduling Order is no longer fully accurate, it need not be vacated in its entirety at this time. Once the SDAPCD submits the PDOC to the Commission, the Committee can determine whether further revisions to the schedule are necessary. Any such change at this point would be premature.

B. There Is No Basis for Commission To Deny the Application

Helping Hand Tools argues that the AFC has been before the Commission for over 400 days and “is still not complete.” Motion at 1. Helping Hand Tool’s meaning is unclear in this regard. The Committee found the AFC to be data adequate in November 2011; the application itself has thus been “complete” since at least that time. *See* 20 CCR § 2023. The fact that certain aspects of the AFC review proceeding and the Project’s air permitting have yet to occur in no way justifies denial or cancellation of the AFC. Helping Hand Tools has pointed to no authority to the contrary, which is not surprising because no such authority exists.

Moreover, Helping Hand Tools has offered no legal support for the novel suggestion that an AFC pending before the Commission for longer than one year is somehow invalidated. The Applicant has updated its AFC three times, in part to ensure that the most accurate and up-to-date information is available for the Commission and the Parties to this proceeding. *See* Supplement to the AFC (October 2011); Supplement 2 to the AFC (February 2012); and Supplement 3 to the AFC (August 2012). Accordingly, the “environmental baseline” against which the proposed Project will be evaluated has not grown stale and Helping Hand Tools does not, and cannot, point to any evidence to the contrary.

Helping Hand Tools also cites to inaccurate and irrelevant information to support its unprecedented argument that the Committee should deny the application without prejudice. Its statement that “[t]here is no power purchase agreement (PPA) and none likely forthcoming” is

simply wrong. San Diego Gas & Electric (“SDG&E”) signed a power purchase tolling agreement (“PPTA”) with the Applicant in April 2011. That PPTA is currently pending approval before the California Public Utilities Commission (“CPUC”) in proceeding Application(“A.”) 11-05-023. As is fully supported by the testimony and evidence in the A.11-05-023 proceeding, SDG&E has great need for the proposed Project in order to meet its local capacity resource requirements. Information regarding the need for the Project has been submitted into the record, and the AFC proceeding is not “incomplete” in this regard.

C. The Applicant Has Submitted Its Revised Air Quality Modeling Package

Helping Hands Tools notes that the current Scheduling Order contemplated the Applicant’s submission of “air quality modeling package, Emission Reduction Credits, mitigation information, an updated table of expected emissions, and proposed CEQA mitigation for non-attainment pollutants” on October 3, 2012. Due to the need for additional air modeling and analysis, the Applicant was not able to submit this information as soon as originally anticipated. As of the end of the discovery period on October 31, 2012, however, the Applicant has included all such information into the record. Helping Hands Tools argument that the Applicant has not “fully complied with this benchmark” is accordingly now moot.

D. Additional Discovery is Not Required on the Preliminary Determination of Compliance (“PDOC”)

Although Helping Hand Tools’ argument lacks clarity, the Motion appears to suggest that the delay in submission of the PDOC and the Intervenor’s inability to conduct discovery thereon somehow justifies denial of the AFC. This suggestion is wholly without merit. The Commission’s regulations do not mandate that discovery occur on a PDOC. Indeed, they contemplate that a PDOC will ordinarily be filed “within 240 days” from the date of acceptance of the application, while discovery will usually conclude within 180 days of the application being accepted. *See* 20 CCR §§ 1744.5, 2025. Accordingly, in the ordinary course, the PDOC is often submitted *after* the close of discovery, and there is no basis on which to vacate the Scheduling Order or to extend the discovery period in this proceeding merely because the PDOC

has not been submitted. Moreover, Helping Hand Tools and the other Intervenors should not need to request discovery of the Applicant based on the PDOC because a non-party agency, the SDAPCD, is preparing the document. If an intervenor wishes to conduct discovery based on the PDOC following its submission into the record, it should be allowed to do so only upon establishing for the Committee that good cause exists for such discovery.

If Helping Hand Tools or another Intervenor in this proceeding wishes to conduct further discovery on the forthcoming PDOC, it should be required to prove to the Committee that good cause exists for such discovery, following submittal of the information.

E. Helping Hand Tools’ “Point of Order” Is Not Relevant and Does Not Request Meaningful Relief

In the Motion’s concluding paragraphs, Helping Hand Tools explains its involvement with two other Commission AFC proceedings. Neither is relevant here, and neither situation provides a basis to “cancel this proceeding.” *See* Motion at 2. Accordingly, the final section of Helping Hand Tools’ Motion should be disregarded by the Committee.


In addition, to the extent that these paragraphs imply any impropriety associated with the SDAPCD Hearing Board’s actions, or the actions of the SDAPCD as to this proceeding, the statements are incorrect and/or misleading.

II. CONCLUSION

Helping Hand Tools unsupported Motion lacks both clarity and accuracy. It provides no cause - much less “good cause” - for any relief impliedly requested therein. Because Helping Hand Tools has provided no legal justification for its request to “cancel this proceeding”, the Committee should deny the Motion in full.

DATED: November 6, 2012

Bingham McCutchen LLP

By: 

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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***APPLICATION FOR CERTIFICATION FOR THE
QUAIL BRUSH GENERATION PROJECT***

**DOCKET NO. 11-AFC-03
PROOF OF SERVICE
(Revised 10/29/2012)**

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DECLARATION OF SERVICE

I, Margaret Pavao, declare that on November 6, 2012, I served and filed copies of the attached APPLICANT'S OPPOSITION TO MOTION BY HELPING HAND TOOLS FOR CANCELTION OF APPLICATION OR NEW SCHEDULING ORDER,, dated November 6, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: <http://www.energy.ca.gov/sitingcases/quailbrush/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 marked *"**hard copy required**" or where no e-mail address is provided.

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:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-AFC-03
1516 Ninth Street, MS-4
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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 under the laws of the State of California 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.



Margaret Pavao