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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: APPLICATION FOR CERTIFICATION FOR THE PALEN SOLAR POWER PROJECT	DOCKET NO. 09-AFC-7C

INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S SUPPLEMENTAL OPPPOSITION TO DECEMBER 22, 2015 PETITION FOR EXTENSION OF DEADLINE FOR COMMENCEMENT OF CONSTRUCTION AND REPLY TO PETITIONER'S RESPONSES TO COMMISSION QUESTIONS

February 3, 2016

Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: 415-632-5307
lbelenky@biologicaldiversity.org

Ileene Anderson
Public Lands Desert Director
Center for Biological Diversity
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org

INTRODUCTION

On January 5, 2016, the Center for Biological Diversity ("Center") timely filed an Opposition to the December 22, 2015 Petition for Extension of Deadline to Commence Construction ("Center Opposition", TN # 207189). That document is attached hereto and incorporated by reference herein. The Center's Opposition addressed many of the ten questions posed in the Commission Order dated January 11, 2016 ("Order", TN # 207270, at 2-3). The Center timely files this Supplemental Opposition and Reply to the Petitioner's Responses to the Commission order ("Pet. Resp.", TN # 208653).

The Center continues to urge the Commission to dismiss the Petition for Extension because the permit has already expired and the petition is untimely. If the Commission nonetheless chooses to consider the December 22, 2015 Petition, it should be denied because: 1) the company's stated intent to seek Commission review of a proposed amendment to redesign the project as a photovoltaic solar project is beyond the Commission's jurisdiction; and 2) the requested extension is not in the public interest.

The Petition to Transfer Ownership should be denied because the permit expired on the day the Petition was filed. If however, the Commission approves the Petition for Ownership Transfer filed on December 15, 2015, and finds that the Commission is required to adopt *some* extension of time of "up to 12 months", the Commission should extend the time by no more than the one week, retroactively to December 22, 2015, when the new owner had the opportunity to amend the petition consistent with the Commission's September 16, 2015 Order ("Order Granting Extension", TN # 206118) and failed to do so. In other words, if the Commission approves the Petition for Ownership Transfer it should require that the new owner meet the same deadlines in the earlier Order Granting Extension, deadlines which the new owner knew of but ignored.

Center Supplemental Opposition and Reply

1.) Did the existing Palen license expire on December 15 when no petition to amend was filed by December 22, 2015?

Yes. *See* Center Opposition at 1-2.

2.) If not, explain why a petition for extension of a construction deadline should be deemed to meet the requirement for a petition to amend.

Even if the license had not expired, the Petition for Extension fails to show that an extension is in the public interest. *See* Center Opposition at 4-10. Further, assuming for the sake of argument alone that Public Resources Code § 25534(j) applies in light of this transfer of ownership (which the Center does not concede), that section does not require the Commission provide an extension where the premise of the Petition is false; the Petitioner has failed to show that it has any intention of building the permitted project or that it intends to start construction within 12 months even if an extension were provided. Indeed, the petitioner has clearly stated it has no such intentions.

Further, Public Resources Code § 25534(j) does not require the Commission to adopt a particular length of extension, it states only that the Commission "allow the new certificate holder *up to* 12 months to start construction of the project *or to start to meet the applicable deadlines or milestones*." *Id.* (emphasis added). At the time the Petitioner sought to transfer ownership, the "applicable deadline" was clearly provided by the Commission in its earlier Order Granting Extension which provided that an amendment to include storage in the solar trough design be submitted by December 22, 2015. The petitioner knew of the deadline but did not meet that deadline and has stated it has no intention of doing so. Providing additional time for the petitioner to meet that applicable deadline would serve no purpose at this time.

3.) If the license has expired, what legal authority allows the Commission to revive the certificate and extend the construction commencement deadline?

The Commission has no legal authority to revive the certificate or extend the construction commencement deadline for a license which has expired.

9.) If the new project owner seeks to waive the jurisdictional exclusion of PV, does PRC 25502.3 require the project be required to proceed with a Notice of Intention?

The project owner cannot waive the jurisdictional exclusion of PV. *See* Center Opposition at 2-3. The Petitioner simply assumes such a waiver is available which is false. As further evidence that

there is no waiver available under 25502.3, the Legislature in 2011 provided a narrow exception to allow the Commission to consider amendments from solar thermal to PV for certain fast-track solar thermal projects that had been fully permitted by both the Commission and the BLM.[1] As relevant here, Public Resources Code § 25500.1 states:

> (a) The owner of a proposed solar thermal powerplants, for which an application for certification was filed with the commission after August 15, 2007, and certified by the commission and, of a project on federal land, for which a record of decision was issued by the Department of the Interior or the Bureau of Land Management before September 1, 2011, may petition the commission not later than June 30, 2012, to review an amendment to the facility's certificate to convert the facility, in whole or in part, from solar thermal technology to photovoltaic technology, *without the need to file an entirely new application for certification or notice of intent pursuant to Section 25502*, provided that the commission prepares supplemental environmental review documentation, provides for public notice and comment on the supplemental environmental review, and holds at least one public hearing on the proposal.
>
> . . .
>
> (c) For a facility specified in subdivision (a), this chapter shall continue to apply, *notwithstanding that the facility or part of the facility would otherwise be excluded pursuant to Section 25120*.
>
> . . .

(Emphasis added.) In subsection c, the Legislature provided a specific exception to the exclusion found in Section 25120[2] for photovoltaic projects, but Section 25500.1(c) would not have been needed, and would have been surplusage, if the company could simply waive the jurisdictional exclusion. An interpretation that renders some words in a statute surplusage is to be avoided, as the Supreme Court has noted on many occasions. For example, in *Dept. of Water & Power, City of Los Angeles v. Energy Resources Conservation and Development Commission* (1991) 2 Cal. App. 4th 206, 220-21, the Court explained:

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[1] The PSPP did not meet the requirements of this section because it has never had final approval or a Record of Decision from the Bureau of Land Management.

[2] Public Resources Code § 25120 (emphasis added).

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

> "[O]ur first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. *A construction making some words surplusage is to be avoided.* The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.] A statute should be construed whenever possible so as to preserve its constitutionality. [Citations.]" (*Dyna-Med, Inc. v. Fair Employment & Housing Com., supra*, [(1987)] 43 Cal.3d [1379] at pp. 1386-1387.)

Id. (emphasis added; holding that the Commission did not have jurisdiction over a repowering project where the increase in capacity was less than 50 megawatts).

Section 25500.1(a) is also highly relevant to whether a Notice of Intention is required because the Legislature expressly stated in that narrow circumstance, that an entirely new Notice of Intention would not be required for those few fast track projects. Again, reading the statute in context it clearly shows that the Legislature intended the Notice of Intention provision to apply in other circumstances such as here. Thus, even if the owner could seek to waive the jurisdictional exclusion under 25502.3 (which the Center does not concede), an entirely new Notice of Intent and application for certification would be needed.

CONCLUSION

In light of the above, and the previous documents submitted in this matter, the Center urges the Commission to:

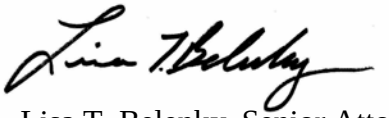
1) a) ***reject*** the Petition to Transfer Ownership because the permit was deemed to have expired the same day the Petition was filed; or b) in the alternative, ***approve the ownership transfer and provide one week retroactive extension*** to provide the new company the same time to comply with the applicable deadlines from the earlier Order Granting Extension that the previous owner had, and to find that, because the new company failed to do so, the permit has expired retroactively as of December 15, 2015.

2) a) ***reject and dismiss*** the Petition for Extension of Deadline to Commence

Construction because it is untimely; or b) in the alternative, ***deny*** the Petition for Extension of Deadline to Commence Construction because the company has no intention of constructing the permitted project and has not shown good cause for delay and has stated that it intends to seek review of a proposed PV project that is beyond the scope of the Commission's jurisdiction, therefore an extension is not in the public interest.

Dated: February 3, 2016

Respectfully submitted,



Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: 415-632-5307
lbelenky@biologicaldiversity.org

Ileene Anderson
Public Lands Desert Director
Center for Biological Diversity
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org

Attachment:
TN # 207189, Center's Opposition

DOCKETED

Docket Number:	09-AFC-07C
Project Title:	Palen Solar Power Project - Compliance
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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: APPLICATION FOR CERTIFICATION FOR THE PALEN SOLAR POWER PROJECT	DOCKET NO. 09-AFC-7C

INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY'S OPPPOSITION TO DECEMBER 22, 2015 PETITION FOR EXTENSION OF DEADLINE FOR COMMENCEMENT OF CONSTRUCTION

January 5, 2016

Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: 415-632-5307
lbelenky@biologicaldiversity.org

Ileene Anderson
Public Lands Desert Director
Center for Biological Diversity
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org

INTRODUCTION

The Center for Biological Diversity ("Center") timely files this Opposition and incorporates by reference herein all of the Center's earlier briefing, exhibits and other submissions in the proceedings on 09-AFC-7 and 09-AFC-7C. The Commission should dismiss the Petition for Extension of Deadline to Commence Construction filed on December 22, 2015 because the permit has already expired and the petition is untimely. If the Commission nonetheless chooses to consider the December 22, 2015 Petition, it should be denied because: 1) the company's stated intent to seek Commission review of a proposed amendment to redesign the project as a photovoltaic solar project is beyond the Commission's jurisdiction; and 2) the requested extension is not in the public interest.

I. The Petition is Untimely: The Permit Expired on December 15, 2015 Under the Terms of the Commission's September 9, 2015 Order and Cannot Be Extended

On September 9, 2015, the Commission issued an order extending the term of the permit for one year on the condition that the company was required to submit a new proposal adding storage to the solar trough project, otherwise the order would be rescinded and permit would be deemed expired as of December 15, 2015.

> the Energy Commission approves the extension of the deadline for commencement of construction from December 15, 2015 to December 16, 2016. If a petition for amendment is filed, it shall be received in Dockets no later than 5:00 p.m. on December 22, 2015. The proposed project descriptions shall include solar trough generating technology similar to that previously approved for the PSPP and include energy storage capabilities.
>
> If the petition for amendment is not received by 5:00 p.m. on December 22, 2015, this order is automatically rescinded and the permit for the PSPP shall be deemed to have expired as of December 15, 2015.

(Order Granting Extension of Time to Construct, TN #: 206118 at 1.)

Because no petition for amendment was filed by December 22, 2015, the permit expired as of December 15, 2015 under the terms of the Commission's Order. Therefore, the petition to extend time filed on December 22, 2015 related to an expired permit, was untimely, and cannot properly be considered by the Commission.

Because the company has now stated that they have no intention of going forward with the permitted solar thermal project and will not file an amended design for the solar trough with storage as

required in the Commission's Order of September 9, 2015, the permit has expired and the Center requests that the Petition be dismissed as untimely.

II. Even If the Petition Were Timely (Which it is Not), A Proposal to Change Project to Photovoltaic is Not Within the Commission's Jurisdiction

After failing to comply with the Commission's Order of September 9, 2015, the company now seeks another extension of time to redesign the project in the future as a PV project, not a solar thermal project, thereby removing the proposed project from the Commission's jurisdiction. Rather than pursue approval for the anticipated future proposal for a PV project in the appropriate forum, with Riverside County, the company urges the Commission to allow it to voluntarily submit to Commission jurisdiction. However, the company cannot "voluntarily" submit to Commission jurisdiction for a photovoltaic solar project and the Commission cannot reach beyond its statutorily defined jurisdiction to usurp or preempt local County jurisdiction for land use permits and approvals.

Public Resources Code Section 25502.3 has never been interpreted by the *Commission* in any proposed or final order to allow the Commission to take jurisdiction over non-thermal power plants, including PV solar projects. The citations provided by the company in the Petition (Pet. at fn. 4) to documents filed in 09-AFC-9 Ridgecrest Solar Power Project (now terminated) are misleading; the document cited by the company was the *Hearing Adviser's recommendation,* it was not proposed by any Commissioner and was not adopted by the Commission. In addition, the company fails to point out that Commission Staff as well as other parties including, as most relevant here, Riverside County, filed briefs in opposition to the Hearing Adviser's proposal. (09-AFC-9 TN# 61288, 7/5/2011, CEC Staff's Reply Brief; 09-AFC-9 TN# 63512, 2/2/2012, State Association of Counties and the County of Riverside Opposition to Hearing Advisor (Proposed) Commission Decision.) Those opposition briefs are incorporated by reference as though fully set forth herein. As Staff succinctly stated:

> Given the clear definitions of "facility", "thermal power plant", specific language in the Act which states "Thermal powerplant" does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility, (Sections 25110, 25120) and the historical context of sections 25501, 25501.5, and 25502.3, the Applicant's contention that the Warren-Alquist Act allows one to voluntarily elect to file a PV project with the Energy Commission was not the Legislature's intent and is incorrect.

(09-AFC-9 TN# 61288, 7/5/2011, CEC Staff's Reply Brief 6-7.)

As summarized by the State Association of Counties and the County of Riverside in opposing the 2011 proposed decision, permitting of a PV solar project would be beyond the Commission's jurisdiction:

> - Legislative preemption of local jurisdiction requires a clear expression that the Legislature has completely occupied a particular field. Here, section 25502.3 contains no expression that the Commission has any authority over PV facilities, let alone exclusive authority over PV facilities. The Hearing Adviser's proposed decision would inappropriately usurp the constitutionally conferred police power of counties over PV facilities.
> - The Commission's jurisdiction is definite and specified. The Commission's jurisdiction cannot randomly be conferred at the option of private, commercial applicants. The Hearing Adviser's proposed decision, however, inappropriately permits an applicant to confer jurisdiction on the Commission at the applicant's election.
> - Legislative history consistently limits the Commission's authority to thermal facilities with a generating capacity of 50 or more megawatts. The Hearing Adviser's proposed decision contradicts the Warren-Alquist Act's legislative history.
> - As a statutory entity created by the Legislature, the Commission may only act within the authority that the Legislature has granted it. The Hearing Adviser's proposed decision would exceed that authority.

(09-AFC-9 TN# 63512, 2/2/2012, State Association of Counties and the County of Riverside Opposition at 2, *see also id.* at 5-17.) Further, the Petition asks the Commission to issue an impermissible advisory opinion as there is at present no proposed amendment for a PV project at the Palen site before the Commission and thus the issue is unripe for decision. Issuance of an advisory opinion is beyond the Commission's powers. (*See* 09-AFC-9 TN# 63512, 2/2/2012, State Association of Counties and the County of Riverside Opposition at 2-4.)

III. Legal Standard for Extension of Construction Deadline

Permits issued by the Commission expire by their own terms after 5 years if construction has not begun. The regulations state:

> Unless a shorter deadline is established pursuant to Section 25534, the deadline for commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.

20 C.C.R §1720.3. "Good cause" is not defined in the regulations. Factors for the Commission to consider in determining whether good cause exists are:

> (1) whether the project owner was diligent in seeking to begin construction, and in seeking the extension; (2) whether factors beyond the project owner's control prevented success; and (3) a comparison of (a) the amount of time and resources that would have to be spent by the project owner, the Commission, and interested persons in processing any amendments to the license if the extension is granted; with (b) the amount of time and resources that would have to be spent in processing a new AFC, if the extension is denied.

(00-AFC-7C, TN# 205962, 9/1/2015, Energy Commission Staff's Statement Regarding the Petition for Extension of the Construction Deadline; *see also* 07-AFC-1C TN# 70630, 5/6/2013, Staff's Analysis and Recommendation (Victorville 2 Hybrid).)

As explained below, consideration of each of these factors shows that good cause does not exist for extending the construction deadline here. Therefore, the Commission should ***deny*** the Petition.

IV. Even if the Petition Were Timely (Which it is Not) and the Commission had Jurisdiction to Consider an Amended Application for a PV Project (Which it Does Not), the Company Has Not Met Its Burden to Show Good Cause Exists To Grant an Extension

While the factors that should be considered for any extension of the deadline for construction, listed above, are briefly addressed by the company in the Petition, the company has failed to meet its burden to show "good cause" for the requested extension. First, the company and former owners showed no diligence in pursuing construction—indeed they have consistently stated that they have no intention of constructing the permitted project. Second, outside factors have not been the source of delay; rather, the company and former owners/applicants themselves have repeatedly taken steps that have delayed the process, from failing to obtain needed BLM approvals to withdrawing prior amendment proposals to failing to file an amendment for a trough with storage by December 22, 2015. Third, an amendment for a PV project must be submitted to the County not the Commission. Even if the Commission did have jurisdiction to consider that amendment, which it does not, such an amendment would take more time and resources to process than a new application given the prior piecemeal and confused environmental review. Therefore, for all these reasons the Commission should ***deny*** the petition.

A. Neither the Company Nor any of the Former Owners of the Permit Have Been Diligent in Pursuing Construction or Needed BLM Approvals.

Neither the petitioner, who claims to be the current holder/owner of the expired permit

(Abengoa), nor the prior owners of the permit have been diligent in seeking to construct the permitted project. The request to transfer this expired permit to yet another entity, Maverick Solar LLC does not change these facts.

The initial applicant, Solar Millennium, informed BLM it was considering converting the project to PV in September 2011, shortly after the Commission decision was issued. After that company entered bankruptcy, the permit was eventually transferred to a joint venture of Brightsource and Abengoa after a payment of $10M as part of the bankruptcy proceedings. At that time, the owners also stated they had no intention of building the solar trough project but would seek an amendment for two solar power towers. After proceeding with the amendment process up through a Revised PMPD, the partnership (including Abengoa, the current "owner" of the expired permit), voluntarily withdrew the application for an amendment. At no time did any of the former owners or the current owner/petitioner diligently take the steps needed to pursue construction of the permitted solar trough project nor did they have any intent to do so.

The company's claims that it and prior owners have been diligent in pursuing construction are unsupported. For example, the Petition refers to "the solar tower amendment process that ended on September 29, 2014." (Petition at 2.) However, the company completely fails to acknowledge that **the then-applicant itself voluntarily withdrew the petition for amendment** (TN # 203116) – cutting short that process—and terminating the proceeding (TN # 203124 [Order Terminating Proceeding]). The delay in construction of the permitted solar trough project has always been company's and prior owners' choice.

The company and prior owners never completed the BLM process to obtain a right-of-way grant for the use of public lands where the project is sited although the right-of-way grant and a notice to proceed are necessary before the project can be constructed. Indeed, the original applicant, Solar Millennium, informed the BLM as early as September 1, 2011, that they were considering changing from solar trough to PV technology which delayed the issuance of a BLM ROW grant for the project permitted by the Commission. Solar Millennium later became insolvent and filed for bankruptcy in April, 2012.

Further, testimony at a Commission hearing on the earlier proposed amendment stated that the then-applicant for the amendment had access to solar trough technology with storage. (TN # 202871,

Transcript of July 30, 2014 hearing at 122 ["Abengoa, a partner in the Palen Solar Holdings Partnership is the owner of Solana and, therefore, there is access to that technology."].) At that time, the then-applicant (which was a joint venture including Abengoa) also stated that the currently permitted project for solar trough was "infeasible." (*Id*. at 121 ["it's always been our position that the solar trough, as originally licensed, was not a feasible alternative for us"]). The current and former owners have made it quite clear for the past four years that they did not intend to build the solar trough project as permitted. Now the company claims that by September, 2015 "the Project Owner had developed a feasible plan for updating the Project's original parabolic trough design and augmenting the Project with storage capabilities" (Petition at 2), but provides no reasonable explanation for the failure to file it with the Commission at that time or afterwards. Its only excuse is that *the company made its own decision* to commence pre-insolvency proceedings over two months later in November, 2015.

The Commission's earlier Order was quite explicit in requiring any further amendment to be filed by December 22, 2015, or that the permit would expire, the Petition provides nothing to show any diligence in meeting that deadline but rather claims that more time is needed for an amendment for a PV project. Clearly, the proposed new "owner" Maverick, just as all former applicants/owners, has no intent to build any solar trough project or other thermal project within the Commission's jurisdiction.

Because both the company and the proposed new owner/applicant have no intention of constructing the earlier-permitted solar trough project and former owners likewise had no intention of constructing the project since the permit was issued, the Commission cannot find that the company was diligent in pursuing construction. Moreover, because current owner and prior owners have themselves called the permitted project infeasible, the Commission cannot find that it is in the public interest to extend the permit term. The Commission should therefore also ***reject*** the petition to extend the permit term based on the company's lack of diligence in pursuing construction and because an extension of time for construction of an infeasible project is not in the public interest.

B. There are No "Outside Factors" that Delayed Construction; Company Has No Intention of Building the Permitted Project

There are no outside factors delaying construction, since the permit was issued, none of the applicants/owners ever intended to build the permitted project as explained above. Because the initial

owner did not diligently pursue obtaining all needed permits from BLM in 2011, the time spent in the bankruptcy proceedings in 2012 is not relevant to the analysis. In addition, in 2014, the then-owner/applicant itself withdrew the amendment request before a decision was made in order to consider changing technology once again (to potentially include storage). (*See* Pet. at 4.) The time that the applicant/owner and former owners spent on the amendment process was not a factor outside their control. Indeed, the timing of the amendment petition and withdrawal were completely within the applicant's control. Most recently the company was given until December 22, 2015 to file an amendment with storage capacity in order to extend the permit term, and it failed to do so. The insolvency proceedings which commenced in late November, 2015 do not provide an excuse "outside of" the applicant's/owner's control for failing to meet the December 22, 2015 deadline, because the company itself commenced insolvency proceedings.

Because no outside factors caused the owners to delay construction, the Commission should ***reject*** the petition to extend the permit.

C. Because the County, Not the Commission, Must Prepare and Approve Any CEQA Review in an EIR For a New PV Project, Extending the Permit Term Will Not Save Time and Resources.

Extending the permit term will not save time or resources. The earlier environmental assessments and evaluations by the Commission under its CEQA equivalent process for the solar trough project are more than 5 years old and cannot be used by the County which must prepare an EIR. Moreover, significant new information and changed circumstances will require entirely new assessments in many areas including impacts to: habitat connectivity for desert tortoise and other species; Mojave fringe-toed lizard and sand habitats; water resources; and cultural resources. The additional environmental review conducted by the Commission for the proposal to permit two power towers did not fully address much of the new information or changed circumstances and that information was likewise missing from the Revised PMPD which was never adopted; and in any case the proposal to change technologies again to PV will need to be fully evaluated by the County in an EIR. Any proposal for a new PV project on this site will also require additional environmental assessment of impacts to: avian species; water resources; and cultural resources never examined for the original permit for the solar trough project or the earlier amendment proceeding.

Most importantly, the Commission's earlier staff assessments and evaluations and the Revised PMPD for the prior amendment process provide an extremely piecemeal assessment, making it nearly impossible for the public or intervenors to review and understand what was actually analyzed when. For example, the practice the staff undertook in the prior amendment process of only providing analysis that compared the new proposal to the permitted project (which the company already had no intention of constructing), significantly truncated the review by utilizing an illusory baseline in violation of CEQA. (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal. 4th 310, 322 ["An approach using hypothetical allowable conditions as the baseline results in "illusory" comparisons that "can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts," a result at direct odds with CEQA's intent."]; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357-58 [where baseline was inaccurate "comparisons utilized in the EIRs can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts which would result."].)

The piecemeal review for the earlier, now abandoned, power tower design did not meet the most basic CEQA requirement to inform the public and decision makers which applies to the Commission's review just as it does to an Environmental Impact Report ("EIR"). As the Supreme Court succinctly put it:

> The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. "[I]nformation 'scattered here and there in EIR appendices,' or a report 'buried in an appendix,' is not a substitute for 'a good faith reasoned analysis.'"

(*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 (quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239, quoting *Santa Clarita Organization for Planning and the Environment vs. County of Los Angeles* (2003) 106 Cal.App.4th 715,722–723.); *see also Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 717-718 [holding that an unclear and misleading EIR was insufficient as an informational document].) Even if the Commission had jurisdiction over a PV project, which it does not, it cannot continue to piecemeal the environmental review process in another major amendment of

this outdated project proposal. To do so would run the risk of even greater confusion and again failing to adequately inform the public and decision makers.

If the company or the County believe that some of the earlier environmental information or analysis in the Revised PMPD and other documents remains relevant and accurate, that information can certainly be incorporated into an EIR for a new PV proposal. Clearly, the County must implement a new CEQA process for a new PV proposal at this location. Beginning a new process will ultimately save time and resources for the County and members of the public by providing a coherent analysis of any new proposal based on current information and a proper baseline as required by CEQA. It will also alleviate confusion that has been created by piecemeal analysis of multiple now-abandoned project designs and thereby enhance public participation.

Because extending the permit and processing the extensive proposed project changes in an amendment rather than as a new application will not save time or resources and would undermine public participation, if the Commission considers this petition at all, the Commission should ***deny*** the petition to extend the permit term on this basis as well.

V. An Extension Is Not in the Public Interest

Extending the expired permit term for a project that the owner has no intention of building is not in the public interest. Allowing a permit for an infeasible and unwanted project to be extended simply to give a company a "head start" on permitting an entirely different project as an amendment rather than as a new proposal, would undermine the power plant siting process in the Warren-Alquist Act and the Commission regulations and undermine public confidence in the Commission process. Most importantly, as explained above, the company's stated interest in redesigning the project as a PV project is outside of the Commission's jurisdiction and extending the permit would have no utility. Such a result is not in the public interest. Moreover, the Center's experience reviewing and working with the existing record shows that the piecemeal environmental review undertaken for the prior amendment proposal confused rather than enlightened the public on the key issues and failed to meet the most basic requirements of CEQA -- to provide information to the public and decision makers regarding the significant impacts of a proposed project -- a result that does not serve the public interest. Any new proposal for a project at this site should be reviewed as a new proposal, either by the Commission if it is a thermal project, or by the County if it is a PV project.

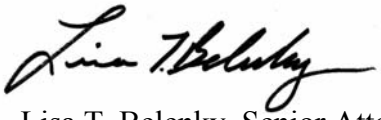
Because the permit has expired, the company has clearly stated it has no intention of constructing the solar trough project permitted by the Commission, and the company intends to seek approval for an entirely different project—a PV project that is not properly within the Commission's jurisdiction, the petition should be rejected. Any new proposal should be processed as a new application and not given a "head start" by extending the construction deadline on the already-expired solar trough project permit term.

CONCLUSION

In light of the above, and the previous documents submitted in this matter, the Center urges the Commission to: 1) ***reject and dismiss*** the Petition for Extension of Deadline to Commence Construction because it is untimely; or in the alternative, 2) ***deny*** the Petition for Extension of Deadline to Commence Construction because the company has no intention of constructing the permitted project and has not shown good cause for delay and has stated that it intends to seek review of a proposed PV project that is beyond the scope of the Commission's jurisdiction, therefore an extension is not in the public interest.

Dated: January 5, 2016

Respectfully submitted,



Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: 415-632-5307
lbelenky@biologicaldiversity.org

Ileene Anderson
Public Lands Desert Director
Center for Biological Diversity
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org