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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

RESPONSE TO APPLICANT'S "NOTICE OF CONTINUING SUSPENSION"

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SUMMARY OF RESPONSE

The Notice of Continuing Suspension is untimely filed. Applicant has provided no good reason or justification for granting the request, has failed to disclose to the Commission, the Parties or the public any information as to the requirements and/or feasibility of re-initiating permitting activities for the proposed project at an environmentally sensitive siting location.

The Hidden Hills SEGS Application for Certification (AFC) is also now substantially incomplete as it fails to conform to local zoning codes, has no proposed transmission or fuel supply line and has no known pending application for either to insure deliverability. It also lacks a current, accurate project schedule. The Commission was not granted the authority to “excuse or waive” a substantially incomplete AFC.

Granting the suspension fails to serve the public interest as it continues to reserve a siting location that has been identified by CEC Staff as best suited for a photovoltaic generating system, thus potentially prohibiting interested photovoltaic developers from filing an environmentally preferred alternative AFC. It also shifts any additional expenses or costs associated with the continued processing of the HHSEGS “somewhere” in the future onto the public at large. Granting the extension would deny the public the collection of appropriate fees required for the submission and processing of a valid Application For Certification.

There are no legal grounds for granting the Applicant’s request for a continued suspension; conversely, there are ample legal grounds for denying and rejecting the request.

I. Applicant's Notice Is Untimely

Per Committee Order dated April 4, 2013, the application for the Hidden Hills SEGS was suspended through April 4, 2014, not April 11, 2014, when Applicant filed their untimely Notice of Continued Suspension.

Applicant filed a status report on April 1, 2014, which could have easily provided a timely notice to all parties of its intentions. Instead, the Committee's Order and established timeline for these proceedings were ignored. Yet again, we see the Applicant demonstrating continuing blatant disregard toward the Commission, these proceedings, interested parties and the public.

II. Application For Certification Is Substantially Incomplete

Since the initial filing of the Hidden Hills SEGS in August 2011, significant changes have occurred regarding the proposed project that render the application being considered for suspension substantially incomplete.

Applicant has also had an additional year to resolve multiple problems and conflicts pertaining to the project – and has failed to disclose or provide any information to the Commission, the Parties or the public regarding how the Applicant intends to remedy these problems, some of which include:

A. Application Fails To Conform To Local Zoning Codes

The application continues to fail to conform to local zoning codes through the Inyo County General Plan, which prohibit this type of project at the proposed siting location.

Applicant's Notice of Continued Suspension fails to address its lack of compliance nor offers any information or remedy as to how the project will comply should a continuing suspension be granted. Consequently, the application is substantially

incomplete and fails to conform to several of the requirements outline in Section 2022

(b)(1)(A),(B),(C),(D). (1)

B. Application Provides No Transmission Line Or Interconnect Information To Insure Deliverability

On October 1, 20013, Applicant filed a Status Report to the Commission stating:

“Applicant has withdrawn the project’s Interconnection Request (IR) from the California ISO. If permitting were to be reinitiated, the applicant would determine an alternate path to provide for transmission deliverability”.

Based on Applicant’s status report, the proposed project has no transmission route nor has any stated proposal for interconnection or conformance with Cal-ISO as originally proposed in the initial application. Applicant has provided no solution or alternative transmission route, no conformance and/or compliance information with an alternative interconnect provider and no discussion of feasibility, reliability, planning criteria or environmental impact assessment; thus the application is substantially incomplete and fails to meet the requirements of Section 2022 (3)(A,B). (2)

(1) Section 2022 (b)(1)(A),(B),(C),(D)

(1) Substantial evidence that the project as proposed in the application will comply with all standards, ordinances, and laws applicable at the time of certification, including: (A) a list of all such standards, ordinances, and laws; (B) information demonstrating that the project as proposed in the application will comply with all such standards, ordinances, and laws; (C) where a standard, ordinance, or law is expected to change between the time of filing an application and certification, information from the responsible jurisdiction documenting the impending change, the schedule for enactment of the change, and whether the proposed project will comply with the changed standard, ordinance, or law; and (D) a list of the requirements for permitting by each federal, state, regional, and local agency that has jurisdiction over the proposed project or that would have jurisdiction, but for the exclusive jurisdiction of the commission, and the information necessary to meet those requirements;

(2) Section 2022, (3) substantial evidence that the project will not cause a significant adverse impact on the electrical system, including all of the following: (A) an Interconnection Study identifying the electrical system impacts and a discussion of the mitigation measures considered and those proposed to maintain conformance with NERC, WSCC, Cal-ISO or other applicable reliability or planning criteria based on load flow, post transient, transient, and fault current studies performed by or for the transmission owner in accordance with all applicable Cal-ISO or other interconnection authority's tariffs, operating agreements, and scheduling protocols and (B) a full description of the facilities, if any, that are required for interconnection, including all such facilities beyond the point where the outlet line joins with the interconnected system and a full description of the environmental setting, environmental impacts, and any recommended mitigation measures proposed by the applicant for any required facilities beyond the point where the outlet line joins with the interconnected system;

C. Application Provides No Fuel Supply Line Route Information

Since the original application for the Hidden Hills SEGS intended to run a natural gas pipeline parallel with the proposed transmission route, logic suggests an alternative fuel supply route may also be required. If so, required information and an environmental impact assessment regarding a newly proposed fuel route is now substantially incomplete and fails to meet application requirements as stated in Appendix B, Information Requirements For An Application. (3)

D. Application No Longer Provides An Accurate Project Schedule

The entire timeline originally proposed for completion of the project is no longer valid. As a result, the current application is substantially incomplete and fails to conform to the application requirements stated in Appendix B, Information Requirements For An Application. (4)

III. Applicant Fails To Provide “Good Reason” To Support Granting Continued Suspension

Upon submission of the Applicant’s Notice of Continued Suspension of Application For Certification, Applicant merely states;

*“[it] has determined there is a continued need to suspend the Application...” and,
“..the Applicant plans to continue to evaluate and collect information on the Project.”*

(3) Appendix B, Information Requirements For An Application (a)(1)(A)(E): (1) Project Overview, (A) A general description of the proposed site and related facilities, including the location of the site or transmission routes, the type, size and capacity of the generating or transmission facilities, fuel characteristics, fuel supply routes and facilities, water supply routes and facilities, pollution control systems, and other general characteristics and, (E) In an appendix to the application, a list of current assessor's parcel numbers and owners' names and addresses for all parcels within 500 feet of the proposed transmission line and other linear facilities, and within 1000 feet of the proposed powerplant and related facilities.

(4) Appendix B, Information Requirements For An Application (a) (2) Project Schedule: Proposed dates of initiation and completion of construction, initial start-up, and full-scale operation of the proposed facilities.

The Applicant fails completely to provide any information, reasons or disclosure to the Commission, the Parties or the public as to what the purpose is or why the Applicant needs an additional one-year suspension. Applicant also fails to disclose what granting the suspension would accomplish, what evaluations and information the Applicant has already performed and/or collected since its initial suspension that are relevant to these proceedings and/or could assist in determining future feasibility of the project, what relevant evaluations and information the Applicant believes is necessary to continue to gather prior to re-initiating permitting activities or how it serves the public interest.

It must also be glaringly apparent to both Applicant and the Committee that, as it now stands, the Hidden Hills Application For Certification is substantially incomplete. Yet Applicant has offered no substantial information or additional submissions throughout the last year, including in its Notice of Continuing Suspension. Instead, Applicant merely offers vague, abstract and self-serving conditions to justify the request for a continued suspension while simultaneously asking the Committee to both ignore and waive application requirements that are completely contrary to the laws the Commission was appointed to uphold. [See Section 2023 (a)(b)(c)(d)] (5)

(5) Section 2023. Data Adequacy Review and Acceptance: (a) Upon the receipt of an application filed pursuant to this Article, the executive director or a delegatee shall review all documentation to determine whether the application contains all the information required by section 2022 and is, therefore, complete. Except as provided by this section the review of the application for completeness shall be in accordance with section 1709. (b) No later than 45 days after receipt of an application, the commission shall act upon the executive director's recommendation as to whether the application contains the information required by section 2022 and is, therefore, complete. If the commission determines that the application is complete, the application shall be accepted as of that date and the proceeding for reaching a final decision within six months shall begin. (c) If the commission determines that the application contains all of the information required by Appendix B to this Chapter, but not all of the additional information required by section 2022, the application shall be deemed accepted for purposes of reaching a final decision within 12 months. The applicant, however, may request an immediate suspension at the time of acceptance for a 12-month decision to allow for the submittal of additional information to meet the requirements of section 2022(b)(1) through (5). If the applicant makes such a request, the commission shall specify in writing what information is needed to complete the application for a six-month decision. (d) If the commission determines that the application is incomplete with respect to Appendix B to this Chapter, the application shall not be accepted. The commission shall indicate in writing those parts of the application that fail to meet the information requirements and the manner in which they can be made complete.

By the Commission's regulations, the Applicant's request for a continued suspension should be denied based on Section 2832 (a)(6) , as the Hidden Hills SEGS application is substantially incomplete, the notice was not filed in a timely manner and no further information had been supplied by the Applicant prior to the April 4, 2014, suspension deadline to insure and/or maintain currency of the Hidden Hills SEGS Application for Certification.

Additionally, the Applicant asks the Commission to excuse the Applicant from substantial compliance without any justification and waive the application requirements necessary to consider the HHSEGS a valid pending application, all of which the Commission was not granted the authority to waive or excuse.(7)

IV. Granting Further Suspension Fails To Serve The Public Interest

Granting an additional suspension of the Hidden Hills SEGS AFC only serves the Applicant's interest but does not serve the public's interest or the renewable energy goals and/requirements of the State of California.

A. The FSA Identified The Environmentally Preferred Alternative For The Siting Location As A Photovoltaic Generating System

Regarding the proposed siting location of the HHSEGS, The Final Staff Assessment (FSA) determined the environmentally preferred alternative was a photovoltaic generating system due to sensitive environmental issues located within the area – not the

(6) Section 2832. Grounds for Rejection of an Application. (a) An application may be rejected for any of the following reasons: (1) it is incomplete or is received after the deadline established for receipt of the application; Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

(7) Section 2832 (b); The Commission may waive any immaterial defect or deviation contained in an application. The Commission's waiver shall in no way modify the application requirements or excuse the applicant from substantial compliance. Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

Applicant's "power tower" technology as proposed in the AFC.

To grant an additional one-year suspension would potentially prohibit interested and viable applicant's of an alternative photovoltaic system to submit an AFC for the siting location. Granting the suspension would continue to delay potential progress on a more viable and environmentally preferred project capable of achieving California's renewable energy goals in a more timely manner.

It serves the public interest to both move forward with renewable energy goals and to do so in such a manner as to cause the least amount of environmental degradation as possible. Granting a continued suspension accomplishes neither of these goals and therefore, fails to serve the public interest in any manner.

B. Granting A Further Suspension Increases The Public's Financial Burden And Denies Opportunity To Raise Additional Revenue By Re-Submitting A Valid AFC

As California continues to grapple with fiscal and financial shortfalls to support public programs and infrastructure needs, the Commission should recognize its duties and responsibilities to support sound fiscal policies that will not impose further financial burdens on the public at large.

As so much of the HHSEGS AFC is now substantially incomplete, it can no longer be considered a valid application. The Applicant has also given no indication whatsoever of what will be required to resume permitting activities, the length of time that may be necessary to fulfill those requirements or what the requirements will be once permitting activities resume. This means the Commission and the public have no idea what the costs and expenses related to the continued processing of the HHSEGS AFC will be, now or at some future date.

The Commission has a legal obligation to charge appropriate fees for an Application For Certification. After three years of expenses related to the processing of the HHSEGS AFC, the Commission must insure any future expenses associated with continued processing is not shifted to, and borne by the public at large. Should the Applicant choose to attempt to resume permitting activities sometime in the future, it favors the public interest to require Applicant to resubmit a valid and substantially complete AFC at that time – along with the appropriate fees required to process a valid application.

Therefore, it greatly favors the public interest to deny the Applicant’s request for a Continuing Suspension because a denial will require the Applicant to file a substantially complete application when they are capable of doing so as well as collecting the appropriate fees required for processing a valid AFC.

V. Grounds For Rejection and Denial of Continued Suspension of Application

There are no legal grounds for granting the Applicant’s request for a continued suspension; conversely, there are ample legal grounds for denying the request including the fact that the Commission may not waive or excuse a substantially incomplete AFC.

Additionally, the Applicant has provided no reason(s), much less “good reason”, to justify granting a continuing suspension nor was the request for a continuing extension filed in a timely manner.

Finally, it does not favor the public interest to grant the Applicant’s requests in any manner.

For the reasons cited throughout this response, I strongly urge the Committee to

reject and deny the Applicant's request for a "Continued Suspension" and instead, file a Motion To Terminate The Hidden Hills SEGS Application For Certification.

April 24, 2014

Respectfully,

Originally signed by Cindy R. MacDonald

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