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STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Pecho Energy Storage Center

Docket No.: 21-AFC-01

**Staff's Response to Applicant's
Motion to Suspend the Application
for Certification Proceeding; Staff's
Motion to Terminate**

I. INTRODUCTION

The California Energy Commission (CEC) staff responds to Applicant's Motion to Suspend the Application filed August 30, 2023, and requests the Committee order the application terminated pursuant California Code of Regulations, title 20, section 1720.2.

On November 23, 2021, applicant filed its Application for Certification (AFC) to construct and operate the Pecho Energy Storage Center (Pecho) in San Luis Obispo County, on the California central coast. The project is described as an advanced compressed air energy storage and generating facility. On January 27, 2022, the CEC timely determined the AFC application was deficient in the information identified in the executive director's recommendation. The application remains incomplete and to date, applicant has not filed any data responsive to the CEC's determination. Instead, on August 30, 2023, almost two years after filing the AFC, applicant submitted a motion to suspend the AFC proceeding through December 31, 2024. Applicant states that good cause exists to grant its motion to suspend.

Staff objects to this request for lack of good cause. In its motion applicant presented no argument or support for a finding that the current project is a viable project in the coastal zone. Applicant states they are "addressing feedback from multiple stakeholders" and considering alternative sites located outside of the California Coastal Zone. Thus, it appears the applicant is pursuing a new project and no longer seeking to address the deficiencies of the currently filed project. There has been no evident activity on the part of the applicant for a year and eight months, and by applicant's motion, it is seeking an additional year and four months. Granting the motion would create, in effect, a three-year pause on the existing proceeding to allow the applicant to develop a new project. Therefore, the applicant has not pursued the Pecho project in a reasonable and diligent manner and any future project filed in 2025 or later, will be unrelated to the existing proceeding. The local community is entitled to a realistic appraisal of this stalled project. Termination of proceedings would provide that notice and is appropriate at this time.

Applicant's motion concedes that a full AFC would need to be re-filed to restart Staff's review and bring the current application into an active status. Refiling after termination would involve the same process. Termination has the added public benefit of concluding a project that has no chance of viability as configured, located, and described in the AFC.

II. PROCEDURAL BACKGROUND

On November 23, 2021, the applicant filed an AFC for its thermal storage and generating facility located in San Luis Obispo County.

At the January 26, 2022, business meeting, the CEC found that the AFC was not complete and needed additional information in various technical areas as required by Public Resources Code section 25522.

On February 23, 2022, the California Coastal Commission (CCC) sent the applicant a Notice of Violation for placing and operating drilling equipment on the project site without a permit. The Notice of Violation required all drilling activity cease. (TN 241958.)

On April 11, 2022, CEC and CCC staff submitted a joint letter to the applicant explaining the requirements under the Coastal Act and Warren-Alquist Act for projects proposed in the coastal zone. The letter explained the need for the CCC to make certain findings before the CEC could potentially approve the project and recommended the applicant schedule a meeting with staff of both agencies to discuss the process. (TN 242624.)

To date, 22 months since the project was filed, the applicant has not restarted its geotechnical work. Additionally, the AFC is still incomplete and no supplemental information has been provided to address the identified deficiencies. Finally, staff has been informed by the CCC that they last met with the applicant about the project in June 2022, and nothing further has transpired.

On August 30, 2023, Applicant requested a suspension until December 2024 "to allow the Applicant to explore options to develop a modified energy storage resource that serves the Central Coast while addressing feedback from multiple stakeholders, including consideration of alternative sites located outside of the California Coastal Zone."

III. DISCUSSION

Under the CEC's certified regulatory program, applicants are required to file detailed and complete project information (Cal. Code Regs., tit. 20, § 1704, Appendix B) for the CEC to make a determination that the AFC is complete. (Cal. Code Regs., tit. 20, section 1709.) This starts the 12-month proceeding and initiates the public process of project assessment and ultimately a CEC decision to certify the project, or not. (Pub. Resources Code, § 25540.6.)

In this case the project has yet to achieve the first step of filing a complete AFC. The CEC's regulations provide a remedy to address siting cases that fail to advance.

California Code of Regulations, title 20, section 1720.2 states in part that “any party may, based upon the applicant's failure to pursue an application... with due diligence, file a motion to terminate the... application proceeding. Within 30 days of the filing of such a motion, the committee may hold a hearing and provide an opportunity for all parties to comment on the motion. Following the hearing, the committee shall issue an order granting or denying the motion.”

The applicant last docketed information with the CEC on March 15, 2022. (TN 242332.) The applicant has made no known progress in advancing the project. With the applicant requesting a suspension until 2025 and possibly additional requests after that, the current proceeding is no longer relevant, nor being pursued. Instead, a new project is being developed. Thus, the applicant has failed to pursue the existing application with due diligence and a termination of the AFC proceeding is warranted.

Although the committee may issue an order suspending the proceeding, it is not appropriate in the situation here where all aspects of the project are likely to change, including its location and configuration.

Under California Code of Regulations, title 20, section 1203, the presiding member of a committee has the authority to:

Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, ordering the consolidation or severance of any part, or all, of any proceeding or hearing, admitting or excluding evidence, designating the subject matter, scope, time of presentation, and order of appearance of persons making oral comments or testimony, accepting stipulations of law or fact, and continuing the hearings.

While CEC committees have previously used suspension as a tool to manage proceedings, the facts here present a different situation with the existing filed project no longer being pursued. In the Hydrogen Energy Center proceeding (Docket 08-AFC-08A) the committee in exercising its authority to suspend the proceedings stated:

Requests for Suspension have been brought on numerous occasions in other AFC proceedings. The usual basis for such requests, including the one before us, is that the applicant has run into an obstacle that it needs time to resolve, and the suspension provides an opportunity both for the applicant to address the obstacle and for the Commission to turn its efforts and resources to other matters. (Committee Order Denying Motion to Terminate and Granting Request for Suspension, Dated July 3, 2015, TN 205238-1.)

Applicant has not demonstrated that it merely needs additional time to resolve an obstacle, as the applicant in Hydrogen Energy Center did. Instead, applicant states it will be relocating the facility and making unlimited and unspecified changes to “optimize” the project, leaving few detailed facts upon which the committee could conclude that there are merely a few obstacles to address with extra time. Without such specific facts, there is no good cause to support an order of suspension. Moreover, the pattern of not

submitting any information, and not committing to submit additional information in the near future about the current project, and implying a new project may be filed sometime in 2025, establishes applicant's failure to diligently pursue the application, rendering termination appropriate pursuant to California Code of Regulations, title 20, section 1720.2.

IV. CONCLUSION AND ORDER

Given the inactivity with the project and applicant's lack of engagement with the CEC and Coastal Commission, and the lack of any indication as to what a relocated and "optimized" project will look like, staff seeks an order from the committee terminating the Pecho Energy Storage Center proceeding. The AFC has yet to be deemed complete, and no additional information has been submitted since January 27, 2022, when the CEC determined that the AFC was incomplete. Communities affected by the San Luis Obispo proposed location and the scope of the proposed excavation, deserve resolution that this project is not viable in this location, and termination of the application would provide this certainty.

For the foregoing reasons, Staff requests the committee conclude the applicant has not demonstrated good cause that it is entitled to a suspension of its project as it is not simply addressing resolvable hurdles. Instead, the evidence establishes this project is not viable in this location and configuration, and the record of proceeding should reflect these facts by terminating the application for failure to pursue even minimal activity to support this application.

Dated: September 13, 2023

/s/

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