

DOCKETED	
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*Comment Received From: Alicia Minyen
Submitted On: 12/6/2024
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Deny Corby Energy BESS Permit Application - Legal Analysis needed

Please see my attached letter to view several concerns, including the possibility that the Applicant has broken ground on its project prior to the County and CEC approval of the BESS project.

Additional submitted attachment is included below.

December 4, 2024 and December 6, 2024:

Renee Longman, Project Manager
California Energy Commission
RE: Docket# 24-OPT-05 - Corby Energy Storage, LLC (“Applicant”)

Dear Ms. Renee Longman:

Submitted on December 6, 2024:

The concerns expressed below were submitted to the CEC on December 4, 2024; however, CEC rejected my comments due to documentary evidence containing personal identifiable information (“PII”) such as names and addresses. CEC has asked me to redact PII; however, by doing so, I will be redacting evidence. I’ve left a voicemail and ask that you contact me to discuss further. In the meantime, the CEC is in possession of documentary evidence supporting the concerns below. I’m asking that you upload my public comments as soon as possible and then attached the supporting documents once we have agreed to what should be redacted.

Please note that all the documents that you rejected are public documents such as documents recorded with the Solano County Recorder or with the Solano County Planning Department, which are available to the public at any time without redactions. My concern is that CEC policies can impede the ability for effective public to comment and for the public to be fully informed. In this connection, I’m deeply concerned about CEC allowing the Applicant to potentially hide material information that the public under the guise of conditionality laws that may not be applicable.

Do you consult with CEC internal legal counsel, outside legal counsel, or the California Attorney General to verify whether an Applicant can redact information from the public for confidentiality, trade secrets or other exemptions available under the California Public Records Act? I would appreciate a response to this question and my voicemail as soon as possible.

In the meantime, please consider my comments below.

Submitted on December 4, 2024:

The Corby Energy Storage LLC’s application for a BESS permit for their project site located in Vacaville, Solano County, should be denied for the following reasons.

- 1) **Concern that Construction Has Started Without a Permit.** It appears that the Applicant has already broken ground and began construction of the Corby Project BESS around July 2023, a date prior to taking ownership of the land on September 28, 2023 and prior to filing an application for a permit with Solano County and the CEC.

According to documents obtained by the Solano County Planning Department (“Planning Department,”) a boring application and permit were obtained July 6, 2023, for NextEra Energy Resources located at 700 Universe Blvd., Juno Beach, Florida (“NextEra”) and for the former farm owners of the subject site. This permit application indicates Geotechnical boring, i.e., 10 borings, with “Hydrated Bentonite Chips” with a depth of 7X20’ and 3X40’ would take place. Based on this boring application, the work appears to be performed by RRC Power and Energy and Moore Twining Associates. (See the attached boring application and permit dated July 6, 2023. See also the Deed that evidences the Applicant not taking ownership of the subject site until September 28, 2023.)

Also, the Planning Department issued a well construction permit dated July 6, 2023, that was obtained for NextEra and work appears to have been performed by Moore Twining Associates and RRC Power and Energy. (See the attached well application and permit dated July 6, 2023.

Notably, it appears that boring, a well, and Hydrated Bentonite Chips is utilized specifically for Battery Energy Storage System projects, which according to my research, is needed to act as a barrier, preventing any leakage of electrolyte fluid from the battery system into the soil.

- 2) **Transmission Line Work/Easement.** Another piece of evidence that suggests construction of the Corby Project BESS has broken ground is explained in a recorded “Transmission Easement,“ between the former farm owner of the project site and Corby Energy Storage recorded April 23, 2024, also a date prior to the application for the project permit from the County or CEC.

The Recitals in the recorded Transmission Easement state, “Grantor hereby grants, conveys and transfers to Grantee an exclusive easement on, over, under and across the Property for the installation, construction, operation, maintenance, repair, replacement, relocation, improvement, enlargement...poles, towers and other structures, guys, wires, cables, conduits, communication lines....”

Additionally, the Recitals in the Transmission Easement grants, conveys as a means to grade. Notably, there is also an indemnification clause whereby the Applicant indemnifies the former farm owner from any action arising of the Transmission Easement. Such an indemnification increases the risk that the former farm owner may have agreed to the easement despite the lack of a project permit given he would be indemnified. (See the attached copy of the Transmission Easement.).

The aforementioned warrants further investigation.

- 3) **Applicant May Not Be Eligible to Pursue Permit With CEC.** I request that the CEC consult with its legal counsel regarding the legitimacy of this permit application to the extent the Applicant directly or indirectly began construction of the BESS project prior to the Applicant obtaining ownership of the subject site and prior to obtaining a permit for such project from the County or CEC.

- 4) **Incentive to Start Construction Prematurely.** The CEC should recognize the incentive for the Applicant to begin construction with or without a permit given the Applicant and/or its affiliates have entered into an agreement with the San Francisco Public Utility Commission (“SFPUC”).

A copy of this agreement was obtained through a Public Records Act request where SFPUC redacted the specifications of the project, among other things. Putting aside SFPUC’s and the Applicant’s lack of transparency about the project to the public, the agreement with the SFPUC specifies “**unappealable**” permits be obtained August 1, 2024, a construction start date of December, 1, 2024, and a Commercial Operation date of June 1, 2025.

Please share the CEC’s outcome of your analysis on the issues above, including sharing your legal opinion with the public as to whether the CEC can issue a permit to the extent construction was started prior to the Applicant taking ownership of the subject site and/or prior to obtaining a project permit from the County or CEC. Please also note that I have additional comments to submit, and because of file size limitations, I will be providing multiple comments. This is my second comment.

Thank you,

Alicia Minyen, Concerned Resident of Vacaville