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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:) Docket No.
) 08-AFC-08A
<i>Amended Application for Certification</i>)
HYDROGEN ENERGY CALIFORNIA PROJECT)
)
_____)

COMMITTEE CONFERENCE
 AND CLOSED SESSION
 CALIFORNIA ENERGY COMMISSION
 1516 Ninth Street
 Sacramento, California

MONDAY, June 22, 2015
 3:00 P.M.

Reported by Peter Petty

APPEARANCES

COMMITTEE:

Karen Douglas, Presiding Commissioner

Andrew McAllister, Associate Commissioner

HEARING OFFICER:

Raul Renaud, California Energy Commission

ADVISORS:

Le-Quyen Nguyen, Advisor to Commissioner Douglas

Pat Saxton, Advisor to Commissioner McAllister

Eileen Allen, Commissioner's Technical Advisor for
Facility Siting

CEC STAFF:

John Heiser, Project Manager

Jared Babula, Staff Counsel

PETITIONER:

James Croyle, Hydrogen Energy California, LLC

INTERVENORS:

Tom Frantz, Association of Irrigated Residents (AIR)

Chris Romanini, HECA Neighbors

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PUBLIC COMMENT:

Trudy Douglas

Evan Gillespie

Ann Gallon

I N D E X

	<u>Page</u>
Call to Order	5
Introductions	5
Public Comments	8
Adjourn	26
Reporter's Certification	27
Transcriber's Certification	28

P R O C E E D I N G S

1
2 June 22, 2015

3:00 P.M.

3 HEARING OFFICER RENAUD: Good afternoon. This
4 is the Hydrogen Energy California Project at the
5 California Energy Commission in Sacramento. We're
6 conducting a committee conference and closed session
7 deliberation this afternoon.

8 This is Raul Renaud. I'm the hearing officer
9 for the matter. Here in the room next to me is the
10 presiding member of the committee, Karen Douglas. Also
11 present is counsel for staff, Jared Babula, and the
12 project manager for CEC, John Heiser. Also present are
13 Eileen Allen, the technical advisor for the
14 commissioners for siting, and Le-Quyen Nguyen, who is
15 one of Commissioner Douglas's advisors.

16 We posted the agenda on the WebEx screen, and
17 so I think we'll just follow the agenda. We've done
18 the call to order. Let's do introductions.

19 I've introduced people in the room. Are there
20 any people on the phone who would like to introduce
21 themselves? I believe we heard from Jim Croyle, who
22 is with the Applicant.

23 MS. ROMANINI: Yes, this is Chris Romanini
24 with HECA Neighbors, Buttonwillow.

25 HEARING OFFICER RENAUD: Good. Thank you for

1 calling in, and I know you're one of the interveners
2 in the case.

3 Anyone else on the phone wish to introduce
4 themselves?

5 MS. DOUGLAS: Yes, my name is Trudy Douglas,
6 a citizen of Bakersfield.

7 HEARING OFFICER RENAUD: Thank you, and thank
8 you for calling in.

9 Anyone else?

10 MS. DOUGLAS: Yes, I'd like you to know that
11 I cannot login. It says the meeting number is
12 incorrect so I'm having to use my telephone.

13 HEARING OFFICER RENAUD: Oh.

14 MS. DOUGLAS: So it does not -- and then when
15 it says to try this verification number, it doesn't
16 take it, so you're having some massive problems with
17 WebEx. It says the meeting password is not correct.

18 HEARING OFFICER RENAUD: Oh, the password.

19 MS. DOUGLAS: The meeting password, yes, the
20 1516 is not correct.

21 HEARING OFFICER RENAUD: DWD#1516? That
22 should be it.

23 MS. DOUGLAS: I'm having trouble with it.

24 HEARING OFFICER RENAUD: Well, you're not
25 missing anything by not seeing the screen anyway, so

1 we could just dispense with that.

2 MS. DOUGLAS: Very good. Okay.

3 HEARING OFFICER RENAUD: All right, does
4 anyone else wish to introduce themselves? No, okay.

5 COMMISSIONER DOUGLAS: You might point out
6 other people on the WebEx site (inaudible).

7 HEARING OFFICER RENAUD: That's a good point.
8 Sure, okay.

9 Okay. So we also now have joined us
10 Commissioner McAllister, who is the associate member
11 of the committee, and his advisor, Pat Saxton.

12 Do we have any of the other interveners on
13 the line? I'll just call the roll.

14 Sierra Club?

15 Association of Irrigated Residents?

16 NRDC?

17 MR. FRANTZ: Yes.

18 HEARING OFFICER RENAUD: Okay.

19 MR. FRANTZ: Tom Frantz here.

20 HEARING OFFICER RENAUD: Oh, hi Tom. Thank
21 you for calling in. Okay. NRDC.

22 Environmental Defense Fund?

23 CURE?

24 Kern County Farm Bureau?

25 All right. Are there any government agencies

1 present on the line? Representatives of government
2 agencies, local, state, or federal?

3 Okay. Representatives of any Native American
4 tribes on the line?

5 All right. Well, I think we've completed the
6 introductions, then.

7 The next item on the agenda will be public
8 comment. We will allow anybody who wishes to to make a
9 brief public comment and address the committee. After
10 that the committee will convene into closed session to
11 deliberate concerning the pending motion to terminate
12 the AFC and the pending request to suspend the project
13 for six months.

14 At the end of the closed session, I will
15 return and adjourn the meeting. I can tell you that
16 the committee will not have a decision to disclose to
17 you today. It will be issued in writing hopefully
18 within the next two weeks.

19 All right, let's move now to public comment.
20 Does anyone wish to make a public comment? If you do,
21 speak up please.

22 MS. ROMANINI: I do. My name's Chris
23 Romanini.

24 HEARING OFFICER RENAUD: Go ahead, please.

25 MS. ROMANINI: Okay. I'm a member of HECA

1 Neighbors, and I'm from the community whose lives have
2 been on hold for years because of this, of HECA.

3 I'm hearing a lot of noise. Typing maybe.

4 Our question is, are they moving forward in
5 good faith to resolve the issues with HECA?

6 Number one, they have closed (interference)
7 their intentions are not to move forward. They have
8 moved out and they moved on.

9 HEARING OFFICER RENAUD: Can you hold on for
10 one moment, we're going to try to mute the noise,
11 okay? Hold on for one second.

12 MS. ROMANINI: Thank you.

13 FEMALE: I think I'm going to mute everybody
14 and try and unmute her.

15 HEARING OFFICER RENAUD: Yeah.

16 All right, go ahead, Ms. Romanini, please.

17 MS. ROMANINI: -- chemical product line for
18 transportation.

19 No. This is deceptive work. HECA has known
20 for years that a chemical factory is not allowed in ag
21 zoning. HECA is being dishonest to mislead the CEC
22 commissioners on the scope of what is allowed.
23 Obviously, to mislead the commissioners is not good
24 faith, and I question their integrity.

25 Number three. Last October 8th locals knew

1 that neither Occidental nor California Resources was
2 going to buy HECA's CO2. We met with the CEO of
3 California Resources, that's Todd Stevens, and he told
4 us locals that, no, they weren't buying it.

5 HECA should have known well before Mr.
6 Stevens told us. HECA should have moved forward with a
7 new plan then, not wait nearly a year before looking
8 for a new buyer.

9 If there's no one to buy their CO2, they have
10 now invented another new plan. Their plan is to use
11 the power they produce to stuff all their CO2 directly
12 under their own prime farmland, right next to farmer's
13 land. Is this within ag zoning? Is this allowed to
14 inject waste underground for 25 years? And can the
15 CO2 move?

16 How long will it take to investigate what
17 damage could happen to us in the neighborhood with
18 their CO2? Is it in good faith to the rest of us
19 neighbors to expose our land, our crops, and our
20 workers to this CO2 risk?

21 How long must our community be on hold as
22 HECA continues to reinvent itself because their
23 project is not viable as it was originally described?
24 How many years will it take to rezone this land. As
25 the planning director wrote last week and it was

1 docketed, it needs to be rezoned. How long will it
2 take for a county general plan amendment or a new
3 specific plan?

4 And then what about the Williamson Act
5 cancellation issue? It was based on fertilizer and
6 power, not on a potential industrial use.

7 So is HECA now, oh, oh, oh, if they backpedal
8 and say, okay, we'll only make fertilizer. How can you
9 trust them? How can you police and monitor that they
10 don't sneak around and repackage their chemicals for
11 transportation stuff, because that's what they have
12 always wanted to produce.

13 But you, the CEC, you have the power to do
14 the right thing. HECA is not moving forward in good
15 faith. The locals have endured this prolonged agony
16 for years. Terminate this ill-conceived project now.

17 I really can't see how six months can add
18 anything. There's no way they're going to get a single
19 one of these county requirements done for the rezoning
20 and all it does for the rest of us is frustrate our
21 business plans. And so many of us are affected by
22 these people trying to invent a project that they
23 think somebody might buy.

24 Please do the right thing and cancel it
25 today. Thank you.

1 HEARING OFFICER RENAUD: All right, thank
2 you.

3 MR. BABULA: Can she repeat? She came in
4 with number three. Can she repeat what number one was?

5 COMMISSIONER DOUGLAS: And two.

6 HEARING OFFICER RENAUD: All right. Ms.
7 Romanini, are you still there?

8 MS. ROMANINI: Yes, I am.

9 HEARING OFFICER RENAUD: All right. We did
10 have a little break in the audio. You had three items
11 that you listed. Could you just give us one and two
12 briefly again?

13 MS. ROMANINI: That they closed their local
14 office. We can no longer go there and ask questions,
15 but this shows us that their intentions are not to
16 move forward because they've already moved out.

17 HEARING OFFICER RENAUD: All right.

18 MS. ROMANINI: Okay. Number two, they -- are
19 they moving forward by reintroducing a chemical
20 product line for transportation?

21 No, this is what they wanted to do all along.
22 The County of Kern has repeatedly said you can't do
23 that in ag zoning. So this is deceptive work.

24 HEARING OFFICER RENAUD: All right.

25 MS. ROMANINI: HECA has known for years that

1 a chemical factory is not allowed in ag zoning.

2 HEARING OFFICER RENAUD: Okay, we got it from
3 there on, so thank you very much.

4 MS. ROMANINI: How about the oxy part that
5 Todd Stevens told us on October 8th that they were not
6 buying the CO2 and neither was Oxy nor California
7 Resources.

8 HEARING OFFICER RENAUD: Yes, we got
9 everything from then on.

10 MS. ROMANINI: Okay.

11 HEARING OFFICER RENAUD: So we're good. Thank
12 you so much.

13 All right. We have a request from Evan
14 Gillespie.

15 MR. GILLESPIE: Yes.

16 HEARING OFFICER RENAUD: Go ahead, please.

17 MR. GILLESPIE: Great, thanks so much. Hi
18 again, this is Evan Gillespie. I am a deputy director
19 with the Sierra Club's Beyond Cool Campaign and I just
20 want to take a second up top to thank the Commission,
21 particularly the staff for all their work to probe
22 what are a huge number of concerns that we as
23 interveners and the public have brought forward about
24 the HECA project, so again thanks for your continued
25 diligence here.

1 I'll start my comments by just saying, you
2 know, when Sierra Club and Association of Irrigated
3 Residents and HECA Neighbors filed this motion to
4 terminate we did so providing ample evidence that the
5 developer failed to move the project forward in good
6 faith, and I won't repeat those arguments here but we
7 do continue to stand behind all the point that we
8 made.

9 The project is out of step with the public's
10 position for a clean energy future. There is just --
11 we cannot fathom a premise under which a project that
12 strips land for coal, that rails it across three
13 states, spewing coal dust and diesel pollution onto
14 neighboring communities that dumps 500 tons of
15 dangerous air pollution into one of the dirtiest air
16 basins in the country.

17 I could go on and on. The draining of
18 precious water resources. The fact that it'll create
19 far more waste than the County can reasonably consume.

20 The project is just simply not in the best
21 interest of the state and it's hard to honestly
22 proclaim in any circumstance that it could ever be
23 clean.

24 Now, setting aside all of those unresolved
25 concerns, the issue at hand that we are here to talk

1 about today is whether or not this project and whether
2 or not the developer in particular deserves more time
3 to resolve all these concerns.

4 So has the developer made efforts in good
5 faith to resolve the concerns? In our motion we argued
6 no and we continue to maintain that today. It wasn't
7 actually until we more or less forced the question
8 that the developer actually took steps to respond to
9 inquiries from staff or from the public about the
10 status of the project. They waited until the day
11 before the last stakeholder meeting to file their
12 request.

13 In the May meeting Mr. Quail argued that
14 under the ever shifting scope, size, and purpose of
15 the project that it was changing yet again to account
16 for this new revenue stream. Their whole set of
17 cascading changes around the project that came as a
18 result of this change, including the potential PPA
19 with PG&E and other changes to the project that come
20 with this.

21 Since then, more information has come to
22 light that creates even more serious concerns about
23 the integrity of the project. I'm sure the Commission
24 has seen the June 19th letter from Kern County and
25 we'd certainly let them speak for themselves on this

1 point, but it is worth emphasizing that the County
2 does make clear that inaccurate information was
3 provided to the Commission. Not only was it
4 inaccurate, but there does seem to be clear evidence
5 that the developer misrepresented the project, making
6 statements integral to the justification of the new
7 scope of the project that are in direct conflict with
8 what the County told them in previous meetings.

9 And I'm sorry if I sound frustrated here, but
10 the club and other interveners and the public have
11 invested a lot of time and resources since that
12 meeting pursuing some of the arguments that were made
13 and to hear that that could have been avoided with
14 what we think is more truthful representation of the
15 facts is quite frustrating.

16 So given the fact that we no longer trust the
17 developer, that we think we've been misled here, on
18 top of all of the other unresolved issues. The fact
19 that we seem to be back to square one that the
20 developer has to get a change in zoning, it just seems
21 impossible for this project to move forward and we
22 would continue to urge the Commission to terminate the
23 proceedings.

24 I appreciate your time.

25 HEARING OFFICER RENAUD: Thank you for your

1 comment.

2 Anyone else on the phone wish to address the
3 committee?

4 MS. DOUGLAS: Yes, this is Trudy Douglas.

5 HEARING OFFICER RENAUD: Yes, go ahead.

6 MS. DOUGLAS: I would just like to speak to
7 the character of the corporation.

8 The first thing they did when they came into
9 our county was to start spending their government
10 money trying to buy favors. And the American Lung
11 Association are the only ones that saw through this
12 and actually returned the money that was given them.

13 The corporation did not deal in good faith
14 with you or with us. They have done nothing to say,
15 you know, what they're going to do with the waste. All
16 they say is there's a use for it.

17 I mean, they've had, what, three, four years
18 to come up with something to do with it, but they have
19 no suggestions. The same way they want things their
20 way and no other way.

21 You have requested air cooling and they have
22 refused to look at that. They have no consideration
23 for our water deprivation that is now and probably
24 into the future. They have no regard for health
25 issues. They classify the risks having to do with the

1 anhydrous ammonia. They don't look at even what the
2 building of it will do to in putting Valley Fever
3 spores into the air.

4 I mean, there's nothing that this corporation
5 is offering us in the way of help or protection. And
6 the CO2 (interference) to start out pumping it in, but
7 then they'll decide it takes too much energy and
8 there's no profit in it for them, and so they'll stop
9 and who's going to keep an eye on that sort of thing?

10 This corporation is not reliable. It is not a
11 good fit for California. It cannot be trusted and has
12 done nothing to give us any encouragement that they
13 are looking out for us. This is all about having a
14 company that consumes coal and produces chemicals.

15 Please, please, please, please say no to this
16 company. It is two-faced. It is not reliable and they
17 have not done any of the work that they need to do to
18 make it fit our county. Thank you.

19 HEARING OFFICER RENAUD: Thank you. Let me
20 ask now if there are any other parties to the case who
21 wish to address the committee, and this would mean
22 applicant, staff, or any of the interveners, if you
23 would wish to please go ahead.

24 MR. FRANTZ: Yes, Tom Frantz.

25 HEARING OFFICER RENAUD: Yes, you're with the

1 Association of Irrigated Residents. Go ahead.

2 MR. FRANTZ: Okay. The current EPA
3 application process should be terminated, and here's
4 why.

5 It's been over a year. Last April 24th being
6 that the HECA staff closed their public information
7 office in Buttonwillow and cut their phone lines. Both
8 the press and the public could get very little
9 information out of HECA after that time. News stories
10 followed with no comment from HECA.

11 It seems that around the same time the
12 Department of Energy cut off funding to the project.
13 Obviously, no further progress on the project has
14 taken place between then and now on the many
15 unresolved issues raised in the PSA more than two
16 years ago.

17 By last October 2014, California Resources
18 Corporation told the public there were negotiations
19 going on with HECA about the CO2 and they were not
20 interested in the CO2 and they were not answering
21 their phones from people who wanted to talk about it.

22 In other words, the public was being told
23 that California Resources was not going to take the
24 CO2, but ironically, HECA seems not to have known this
25 and claims that they continued negotiations for

1 several months after this time.

2 HECA also claims without evidence that maybe
3 the delay in negotiations was because California
4 Resources wanted the better deal. But obviously
5 California Resources was no longer interested going
6 way back to last October.

7 Last April, 14 months ago, is when HECA
8 should have asked for a six-month suspension of the
9 project. They didn't. They just floundered around, not
10 knowing what they wanted to do.

11 Today, HECA is proposing, after more than a
12 year of their own secret consultations, that in six
13 months from now they will be ready to present a new
14 proposal concerning the products they will manufacture
15 and the ultimate destination of the CO2.

16 They have implied the CO2 will go directly
17 underground beneath the prime farmland of Kern County
18 and next to the Kern Water base at their own expense.

19 The problem with the new proposal and in most
20 of the issues identified in the PSA is that there is a
21 whole rash of new issues now to deal with besides all
22 the old ones.

23 Obviously, the number one issue is that none
24 of HECA's proposals about changing the project are
25 realistic given current zoning in Kern County.

1 So the question must be asked, why have
2 almost none of the issues raised in the PSA been
3 addressed comprehensively by HECA over the past two
4 years? Issues such as water use in a worsening
5 drought; disappearance of prime farmland without
6 mitigation; environmental issues in Wasco and
7 surrounding the HECA site; traffic issues raised by
8 the city and chapter and schedule district; waste
9 issues raised by the County of Kern, the greenhouse
10 gas calculation issues raised by the public and the
11 CEC. None of this has been resolved and no progress
12 has been made for more than a year on these issues.

13 It should be noted as well that the air
14 quality in Kern County for fine particulates has
15 gotten worse the past two winters, worse than at any
16 time previously measured before. So we need to return
17 to the air quality issues, as well, and look at a new
18 baseline.

19 We strongly urge the Commission to terminate
20 the current proceedings. Ample evidence exists that
21 proper progress has not taken place and the new
22 proposals are incompatible with the current
23 application. Thank you.

24 HEARING OFFICER RENAUD: All right, thank
25 you.

1 Are there any other parties who wish to
2 address the committee, and then we'll see if there are
3 any other members of the public. Any other parties?

4 MR. CROYLE: Jim Croyle speaking.

5 HEARING OFFICER RENAUD: All right.

6 MR. CROYLE: I will say simply so that we
7 don't drag this out very long that I stand behind
8 everything that I have said and my company has said
9 and everything we've submitted to this body, including
10 the last statements that I made.

11 And we continue to be very much interested in
12 getting this project that's very beneficial to the
13 global environment done. We are doing everything in
14 our power to move that along.

15 I want to clarify something just briefly.

16 The DOE did not cut off our funding. The
17 grant is still in place. What they have not done, we
18 asked them to move some Phase 2 money into Phase 1 to
19 complete this phase of the project. They have
20 indicated to me that they're not willing to do that
21 unless the CO2 issue is resolved.

22 So there's been a lot of mischaracterizations
23 at least and we stand by what we have submitted to you
24 over the several months we've been doing this.

25 HEARING OFFICER RENAUD: Thank you, sir.

1 Okay. One last call. Any other parties wish
2 to address the committee before we turn back to
3 members of the public? Parties.

4 All right. Members of the public, anyone
5 else wish to make a public comment before we convene
6 to closed session?

7 MS. GALLON: This is Ann Gallon in Kern
8 County. Can you hear me?

9 HEARING OFFICER RENAUD: Yes, thank you.

10 MS. GALLON: Thank you very much. My name is
11 Ann Gallon. I live on the west side of Bakersfield in
12 Kern County where my late husband and I moved to enjoy
13 retirement, but this project to me represents an
14 enormous negative impact on this community.

15 I know a lot of work has been done by the
16 applicant. The demonstration of carbon capture and
17 sequestration into a space next to LPL's oil field,
18 but that work wasn't their money, it was funded by
19 over \$100 million of our tax dollars. My tax dollars.
20 That paid for office space, their legal help, an
21 expensive spokesperson lady, and big ticket items like
22 buying air credits and buying water.

23 And now this applicant wants more time
24 (inaudible) agreement for the greenhouse gas fell
25 through and they apparently never had a plan B.

1 That's the motion to terminate because they
2 are working on that but there are other negative
3 impacts that I feel that the applicant is not
4 addressing.

5 The waste as mentioned by Ms. Douglas. The
6 tremendous amount of waste would put Kern County into
7 noncompliance with California guidelines.

8 There have been calls by our County for air
9 dry cooling of the gasification towers. Rather, we are
10 not hearing anything from the applicant about that.
11 That water would be much better used for agriculture.

12 Mr. Frantz touched on the environmental
13 justice. I call it environmental injustice of putting
14 this facility near a farm labor camp, the coal
15 transfer facility, where families live.

16 Then I haven't heard anybody mention the
17 environmental damage to the Tulle Elk Preserve that is
18 immediately next-door to this project site, and their
19 letter said there's no way to mitigate the damage to
20 that.

21 And I have a personal concern about the
22 potential for disastrous leak or worse in that storage
23 of up to four million gallons of the anhydrous ammonia
24 onsite. And in our hot Kern County summers, this is
25 not a good scenario, and I live within 20 miles of

1 what could be a leak or a blast zone.

2 So I call on the Commission to terminate this
3 application rather than holding our community hostage
4 and California hostage to an ever-changing game plan.

5 Thank you very much.

6 HEARING OFFICER RENAUD: Thank you for your
7 comment.

8 Are there any other members of the public who
9 would like to make a comment at this time?

10 All right, then hearing none, I think we'll
11 proceed to the next item on the agenda, which is the
12 closed session. The committee members will convene in
13 closed session in deliberate concerning the two
14 pending matters.

15 At the end of that deliberation, I will
16 return to adjourn the meeting formally and the
17 committee will issue its decision in writing hopefully
18 within two weeks.

19 Thank you again for your participation and
20 you'll be receiving something in the near future to
21 resolve these two pending matters. Thank you.

22 (Adjourned to closed session at 3:28 p.m.)

23 (Resumed open session at 3:46 p.m.)

24 HEARING OFFICER RENAUD: This is Raul Renaud,
25 the hearing officer for the Hydrogen Energy California

1 Project, reporting back from closed session. The
2 committee has concluded its deliberations. There is no
3 action to report at this time but the committee will
4 issue its decision in writing in the next two weeks.

5 Thank you for your participation. This
6 concludes and adjourns the committee conference.

7 (Adjourned at 3:47 p.m.)

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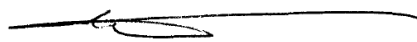
25

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of June, 2015.



PETER PETTY
CER**D-493
Notary Public

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of June, 2015.



Terri Harper
Certified Transcriber
AAERT No. CET**D-709