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STATE OF CALIFORNIA
Energy Resources
Conservation and Development Commission

In the matter of:

Amendment for the **PALEN SOLAR
ELECTRIC GENERATING SYSTEM**

DOCKET NO. 09-ACF-7C

INTERVENOR COLORADO RIVER INDIAN TRIBES
RESPONSE TO PETITION TO EXTEND COMMENCEMENT OF CONSTRUCTION

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On August 4, 2015, Abengoa SP Holdings LLC filed a petition to extend the existing deadline to begin construction on the Palen Solar Power Project. Intervenor the Colorado River Indian Tribes (CRIT or the Tribes) responds to the Petition pursuant to Section 1716.5 of the California Energy Commission's Rules of Practice and Procedure. Allowing Abengoa to rely on the existing docket—which currently contains myriad documents related to different project iterations—for its new project would thwart the public participation goals of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq. The Tribes are particularly concerned that the ongoing use of the existing docket would allow the California Energy Commission to continue its reliance on incomplete and misleading analysis regarding the new project's likely impacts on cultural resources. For these reasons, the Tribes urge the Commission to deny the Petition.

Under Section 1720.3, the Commission can grant an extension of the deadline to commence construction of a project upon a showing of “good cause.” The Commission has not adopted a definition of good cause. The California Supreme Court, however, has stated that the nature and extent of the showing necessary to satisfy the good cause requirement for an extension must, of necessity, vary with the circumstances of each case. *Chalco-California Corp. v. Superior Court of Los Angeles County* (1963) 59 Cal.2d 883; *see also R. J. Cardinal Co. v. Ritchie*, 218 Cal.App.2d 124, 144 (1963) (“good cause” is “largely relative in [its] connotation, depending upon the particular circumstances of each case”). Consequently, it is largely within the discretion of the Commission to broadly consider the impacts of extending the deadline for construction and allowing Abengoa to continue to rely on the existing certification and docket for its entirely new project.

Abengoa bases its claim of “good cause” on four factors: the perceived diligence of project owners, the bankruptcy of the prior owner's parent company, the potential “efficient use” of the existing record, and the alleged “public benefit” of bringing the Project online. Regardless of Abengoa's perceived diligence (which has aimed at seeking certification for a new project, *not* on construction of the certified project) or the hypothetical benefits of a future project (which would be realized regardless of the Commission's decision on this Petition), the fact remains that the public is now faced with reviewing yet another iteration of the Palen project. The existing docket now contains hundreds of declarations and exhibits and days of testimony from experts and the public. The data in the docket relates to the impacts of a solar parabolic trough project and two-tower project; based on statements from Abengoa, it now appears the company will ask the Commission to consider a single-tower project with a storage component. While some prior analyses may remain relevant and up-to-date for this new project, many aspects of the Commission review will need to be updated and refined.

Allowing Abengoa to continue to rely on this massive and confused docket for its new project will thwart the public participation in violation of CEQA. The fundamental purpose of CEQA is to “inform the public and responsible officials of the environmental consequences of their decision before they are made.” *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th at 182, 195. A “paramount consideration” for the Commission must be “right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision.” *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 804. Consequently, the

Tribes request that the Commission deny Abengoa's Petition and allow its new project to be considered from a fresh slate. To be sure, Abengoa and the Parties should be permitted to re-submit testimony and exhibits to the extent they continue to be relevant to this new project. But the public should not be forced to wade through thousands of documents relating to multiple different projects to understand the potential impacts and benefits associated with the new project. *See Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 442 (2007) (Data "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. Information scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.") (internal citations and quotations omitted).

The Tribes are also concerned that allowing Abengoa to seek an amendment to the existing certification, rather than submitting a new application, will perpetuate the inadequacies the Tribes identified in the prior proceeding related to cultural resources. In particular, the Tribes continue to have concerns about the proposed compensatory mitigation, the Commission's efforts to consult with impacted Tribes, and the landscape-level cultural resource impacts associated with the proposed Project. CRIT also has concerns that Abengoa's reliance on existing cultural resource analysis will obfuscate the ever-increasing impacts of past, present, and future renewable energy projects on this important cultural resource landscape. For example, in just the past two years, projects such as the Modified Blythe Solar Power Project and the Blythe Mesa Solar Power Project have been approved, and projects like the Desert Quartzite Solar Project have begun environmental review. For these reasons as well, the Tribes urge the Commission to deny Abengoa's Petition and instead encourage the developer to submit a new Application for Certification.

DATED: August 19, 2015

COLORADO RIVER INDIAN TRIBES

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