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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:) Docket No. 09-AFC-7C
)
APPLICATION FOR CERTIFICATION)
FOR THE PALEN SOLAR POWER)
PROJECT)
_____)

Energy Commission Staff's Statement
Regarding the Petition for Extension of the Construction Deadline
(Title 20, California Code of Regulations section 1720.3)

INTRODUCTION

Palen SEGS I, LLC ("Project Owner") filed a request to extend the construction deadline for the Palen Solar Power Project "PSPP"). The Commission Decision for the PSPP was adopted on December 15, 2010, with a deadline for commencement of construction of December 15, 2015. The Project Owner is requesting an extension of the deadline to December 15, 2016.

On August 27, 2015, the Project Owner submitted a letter clarifying that:

"...the Project Owner has determined that a solar trough project, similar to that approved in the original application for certification, will be pursued for this site, and the design will include energy storage. Accordingly, by this letter the Project Owner stipulates that the request for extension of the deadline for commencement of construction is solely for the purpose of submitting an amendment to update the approved solar trough technology and augment the approved solar trough design with storage."

Based on this clarification, Energy Commission Staff ("Staff") does not object to the extension of the construction deadline but sets forth several concerns.

STAFF COMMENTS

The Project Owner, Staff, and the parties who commented, particularly the Center for Biological Diversity ("CBD"), agree on the factors that should be considered here.

Section 1720.3 provides that the Commission may grant an extension of the deadline to commence construction of a facility upon a showing of good cause. The Commission has held that the determination of good cause to grant an extension of the construction deadline requires consideration of three factors: (1) whether the project owner was diligent in seeking to begin construction, and in seeking the extension; (2) whether factors beyond the project owner's

control prevented success; and (3) a comparison of (a) the amount of time and resources that would have to be spent by the project owner, the Commission, and interested persons in processing any amendments to the license if the extension is granted; with (b) the amount of time and resources that would have to be spent in processing a new AFC, if the extension is denied.¹

1. Diligence

The PSPP was approved by the Commission on December 15, 2010. On April 2, 2012, Solar Millennium AG, the parent company of the original project owner, filed a petition for relief in federal bankruptcy court. The PSPP was acquired on June 21, 2012 by Brightsource Energy, Inc. (“BSE”). Shortly thereafter, a wholly owned, indirect subsidiary of BSE petitioned for Commission approval of a change in ownership of PSPP. The Commission approved the transfer of ownership on July 11, 2012. After the transfer of ownership of the PSPP to Palen SEGS I, LLC was approved by the Commission, Brightsource Energy, Inc. and Caithness Energy, LLC formed a joint venture. Brightsource Energy acquired all of Caithness Energy’s interest in January 2013. In March 2013, Brightsource Energy and Abengoa Solar became partners in Palen Solar Holdings, LLC. In July 2015 Staff was notified that Abengoa Solar is now the owner of Palen Solar Holdings, LLC.

On December 17, 2012, the new project owner submitted a proposed amendment to the PSPP that would have changed the use of solar parabolic trough technology to a solar power tower technology.

The Commission reviewed the amendment petition and released the Presiding Member’s Proposed Decision (“PMPD”) in December 2013. Further evidentiary hearings were held in July 2014, and a Revised PMPD was issued on September 15, 2014. On September 26, 2014, the project owner withdrew the request for amendment of the original license.

The August 27, 2015 letter makes clear that the Project Owner now intends to construct a project similar to the approved project, i.e. solar trough. Speaking generally, the issues that project proponents face in order to propose, construct and operate power generation facilities are not entirely unknown to staff but rarely is staff aware of the reasons for projects being delayed or not constructed. In this case, there have been many changes in ownership but it is hard to say that the Project Owner has been diligent about constructing the approved project. The history of this case speaks for itself.

Typically, there would be no opposition to allowing an extension of time in order to receive an amendment to the approved project. In this case, because there has been an amendment proceeding that required much substantive change in the environmental and engineering review

¹ Title 20, California Code of Regulations, section 1720.3 provides as follows:

Unless a shorter deadline is established pursuant to Section 25534, the deadline for commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.

by staff, the public and intervenor comments regarding confusion about the project description and subsequent Commission activities have merit.²

In order to have a “clean” administrative record, perhaps a new Application for Certification (AFC) should be filed. Staff acknowledges that processing a new AFC creates burdens on the Project Owner and may subject this project to a second review on matters that were administratively concluded by the first AFC.³

The statements from the project owner in the Petition demonstrate that there has not been diligence by the project owner to build the certified project.

2. Factors outside the project owner’s control that have prevented the start of construction

Although it is true that the original project owners went bankrupt, which may have prevented the start of construction right after the certification of the project, the current project owner made a decision to ask for a major amendment of the approved license. If the current project owner wanted to construct the original project, it could have started in 2012.

Staff does not view this situation as being entirely unforeseen or out of the control of the project owner. On the other hand, staff believes that a solar trough project similar to the approved project but with energy storage may have merit and should be analyzed.

3. A comparison of the amount of time and resources that would have to be spent in processing any required amendments to the project if extension is granted as opposed to the amount of time and resources that would be spent in processing a new AFC if the extension were denied.

Significant staff, intervenor and public stakeholder resources have gone into the review of this project. Staff conducted a thorough and exhaustive environmental review of the PSPP during the course of the AFC proceeding from August 2009 through the granting of the license in December 2010.

The time and resources that would be required by the filing of a new AFC are not insubstantial, but the process of evaluating the proposed changes on the same site would be simpler and easier for all participants to understand and monitor with a new administrative record unencumbered by past activities, actions and documents.⁴

Staff is also concerned, in the absence of knowing precisely what the proposed amendments will be, that the time to review and process the amendment may take up the year that is being

² Although staff disagrees that the California Environmental Quality Act (CEQA) was violated in the most recent amendment review as CBD asserts, staff acknowledges that it was a complex process.

³ A 500 MW filing fee for a new AFC would cost \$548,025 with no additional fees. New legislation which requires the Energy Commission to recover all of its actual costs in processing an amendment allows for the maximum recovery of \$822,078 (see amended Public Resources Code section 25806 which is effective June 24, 2015).

⁴ This project has a different procedural history than other projects in which major amendments have been proposed without staff suggesting that an AFC was a more appropriate filing.

requested. If that happens, the Project Owner will be in the position of asking for yet another extension of time. The filing of a new AFC will remove that issue.

CONCLUSION

In its August 27, 2015 letter, the Project Owner proposes two conditions to go with approval of the request to extend the construction deadline: 1) the amendment petition be filed by December 22, 2015; and 2) the amendment include solar trough technology similar to the approved project with storage capabilities. Staff believes those are appropriate conditions.

Although staff has concerns, staff does not oppose the petition to extend the deadline to commence construction from December 15, 2015 to December 15, 2016.

Date: August 31, 2015

Respectfully Submitted,

[original signed by] _____
Jeffery M. Ogata
Assistant Chief Counsel