

DOCKETED

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Project Title:	Sun Valley Energy Project-- Valle del Sol Energy, LLC.
TN #:	206230
Document Title:	Committee Order DENYING Applicant's Request for Additional Suspension and GRANTING Energy Commission Staff's Motion to Terminate
Description:	At the October 14, 2015 Business Meeting, the full Energy Commission will consider whether to approve the Order terminating this proceeding.
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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**APPLICATION FOR CERTIFICATION FOR THE
SUN VALLEY ENERGY PROJECT**

Docket No. 05-AFC-03

**COMMITTEE ORDER DENYING APPLICANT'S REQUEST FOR ADDITIONAL
SUSPENSION AND GRANTING ENERGY COMMISSION STAFF'S MOTION TO
TERMINATE PROCEEDING**

*The full Energy Commission will consider whether to approve the Order
terminating this proceeding at its Business Meeting on October 14, 2015.*

INTRODUCTION

On June 30, 2015, the Applicant, Valle del Sol Energy, LLC, filed a request that the suspension of its Application for Certification (AFC) for the Sun Valley Energy Project (SVEP) be extended for twelve months (TN 205199). On the same day, Energy Commission Staff filed its Motion to Terminate Proceeding for lack of due diligence (TN 205195). The Applicant filed a Response to Staff's Motion to Terminate Proceedings on July 15, 2015 (TN 205358).

On August 26, 2015, the Energy Commission Committee assigned to conduct proceedings in this matter convened a duly noticed hearing to take argument and evidence on the two motions. Based upon the record, evidence and argument presented at the hearing, the Committee **GRANTS** Staff's Motion to Terminate Proceedings, subject to approval by the full Energy Commission, and **DENIES** Applicant's Request for Additional Suspension.

BACKGROUND

On December 1, 2005, Sun Valley Power Generation, LLC, a wholly-owned subsidiary of NRG Energy, Inc., filed an AFC for the SVEP. The AFC was deemed data adequate on February 1, 2006. The SVEP, as proposed, would be a nominal 500 megawatt (MW) simple-cycle power plant consisting of five General Electric LMS100 natural-gas-fired turbine generators and associated equipment located in the city of Menifee, in Riverside County, California. The project is located in the South Coast Air Basin. (TN 205199).

On May 31, 2011, a Petition to Suspend Proceedings was granted for SVEP and the Applicant has continually requested that the AFC remain suspended without interruption since that date (TNs 60605, 65866, 71231, 202630). In its first Request

for Suspension filed on May 10, 2011, the Applicant acknowledged that the project had been in informal suspension since 2007 (TN 60605).

POSITIONS OF THE PARTIES

In its most recent Request for Additional Suspension, the Applicant requested an additional twelve month suspension to “identify contracting opportunities that would support development of the Sun Valley Project” (TN 205199). The Applicant offered that it would not oppose a motion to terminate SVEP at the end of the twelve month suspension period (TN 205358). The Applicant’s status reports have consistently cited the lack of available emissions reductions credits (ERCs) in the South Coast Air Basin as the primary reason for its failure to reactivate proceedings. The Applicant argues that extending the suspension for another twelve months will allow Sun Valley to quickly respond in the event that an expedited procurement opportunity arises (TN 205358).

Staff’s Motion to Terminate Proceedings contends that the environmental baseline has substantially changed in the nine years since the AFC was filed, and virtually all the information and data relied upon to conduct the environmental assessment is stale. Staff argues that applicable laws, ordinances, regulations and standards (LORS) must be reevaluated for consistency; such that, supplementing the original application would not be in the interest of staff, agencies and the public. Staff seeks to terminate the AFC to allow NRG to restart an application proceeding if and when all the project details are known and the Applicant is able to diligently pursue project certification. (TN 205195).

APPLICABLE LAW

Section 1720.2 of the California Code of Regulations, Title 20, states:

(a) The committee or any party may, based upon the applicant’s failure to pursue an application or notice with due diligence, file a motion to terminate the notice or 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.

(b) A committee order terminating a proceeding must be approved by the full commission.

(Cal. Code Regs., tit. 20, § 1720.2.)

STAFF'S MOTION TO TERMINATE PROCEEDING

Staff presented evidence at the August 26, 2015 hearing that the SVEP AFC is stale and the Applicant provided no evidence or argument to contradict Staff on this point.

We understand that the SVEP relied on the South Coast Air Quality Management District's (SCAQMD) priority reserve credits when the AFC was initially filed and we accept the Applicant's conclusion that the priority reserve credits are no longer available to the project. We are aware that ERCs are difficult to obtain. Yet, according to the Energy Commission's project status website¹, at least one project (CVP Sentinel Energy Project 07-AFC-03) has been able to acquire sufficient ERCs to obtain certification and construct an 850 MW power plant within the SCAQMD region while SVEP has remained in suspension.

An AFC is a complex undertaking with a myriad of moving parts. An applicant is not omnipotent and there are no guarantees that a project will surmount all obstacles to certification. However, in order to survive a motion to terminate for lack of due diligence, an applicant must demonstrate, at the very least, that it has engaged in productive action that could reasonably lead in the direction of the completion of the AFC process and a decision by the Energy Commission within a reasonable timeframe. In this case, we have received no evidence of such productive action from the Applicant.

Applicant argues that the SVEP would be "well positioned" as a peaker unit to respond to a need for quick generation in Southern California (8/26/15 RT² 17:25 – 18:12). Staff pointed out that SVEP does not have a contract with Southern California Edison (8/26/15 RT 23:24 – 24:10). Applicant offered no evidence beyond speculation that a change in its circumstances was in any way imminent (8/26/15 RT 35:59 – 8).

Applicant has made tacit and direct admissions that it has not pursued the project with due diligence during the pendency of its suspensions (8/26/15 RT 34:8 – 36:15). The Applicant misreads the Order Extending Suspension of Proceedings as including the Applicant in the cessation of work on the application (8/26/15 RT 35:9 – 13). In fact, the Order relieves only Staff and responsible agencies from working on the AFC, and requires Applicant to provide quarterly status reports to "inform the Committee of Applicant's progress in developing the project" (TN 202630).

Staff has demonstrated that the Applicant has maintained itself in a suspended state for so long that it has significantly diminished the informational value of the underlying application (8/26/15 RT 22:6 – 25). The Applicant admits that any time savings that might be gained from allowing the SVEP to remain suspended instead of starting the AFC process anew is speculative (8/26/15 RT 26:23 – 28:9). Staff has shown that, in light of the new surveys and studies that would need to be

¹ http://www.energy.ca.gov/sitingcases/all_projects.html

² Reporter's Transcript, TN 206131. Citations are to page and line number—pg:ln.

resubmitted to reactivate the SVEP, the project would essentially require a new AFC. (8/26/15 RT 42:24 – 43:11). In particular, the SVEP was located in an unincorporated area of Riverside County when it was filed, but today is situated in the new city of Menifee which presents different land use concerns that will have to be completely re-analyzed (8/26/15 RT 23:19 – 23). Staff also pointed out that while there may be no data adequacy regulations to restart a suspended AFC, the SCAQMD would require the Applicant to bring its application up to date before the district would start processing it again. (8/26/15 RT 22:16 – 25). The record shows that SVEP has outlived any real time savings that might have been realized from resuming the process from suspension compared to filing a new AFC. We find that there would be no prejudice to the Applicant if it were required to submit a new AFC rather than supplement the outdated AFC now before us.

Based on lack of due diligence during eight years of suspension, we find that the SVEP AFC should be terminated without prejudice to the Applicant filing a new AFC for this project when and if the circumstances are more favorable to the successful completion of the application.

Our decision to grant Staff's Motion to Terminate the Proceeding renders moot the Applicant's Request for Additional Suspension.

IT IS THEREFORE ORDERED that the Motion to Terminate Proceedings is **GRANTED** subject to approval by the full Energy Commission and the request to extend the Suspension in the above-captioned matter is **DENIED**.

Dated: September 29, 2015, at Sacramento, California.

Original signed by
KAREN DOUGLAS
Commissioner and Presiding Member
Sun Valley Energy Project AFC Committee

Original signed by
JANEA A. SCOTT
Commissioner and Associate Member
Sun Valley Energy Project AFC Committee