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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
COMMENTS ON PETITIONER'S ANSWERS TO QUESTIONS IN JANUARY 11, 2016
COMMISSION ORDER

REBECCA LOUDBEAR (Wisc. State Bar No. 1036107)
NANCY JASCULCA (State Bar No. 236350)
COLORADO RIVER INDIAN TRIBES
Office of the Attorney General
26600 Mohave Road
Parker, AZ 85344
Telephone: (928) 699-1271
Facsimile: (928) 669-1269
Rloudbear@critdoj.com
NJasculca@critdoj.com

WINTER KING (State Bar No. 237958)
SARA A. CLARK (State Bar No. 273600)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
King@smwlaw.com
Clark@smwlaw.com

On January 11, 2016, the California Energy Commission ordered Petitioner Palen SEGS I, LLC to answer ten questions related to its pending petitions for ownership transfer and extension of deadline for commencement of construction. The order provided that interested persons and members of the public could file replies or comments on Petitioner's filings by February 3, 2016. Intervenor Colorado River Indian Tribes (CRIT or the Tribes) submit these comments pursuant to the January 11 order and in response to Petitioner's January 22 filing.¹ As explained below and in CRIT's Response to the Second Petition for Extension of Deadline (TN #207196), which is incorporated by reference, the Commission should reject the petition to extend as untimely or, in the alternative, deny the petition to extend and find that the Palen Solar Power Project license has expired.

1. Did the existing Palen license expire on December 15 when no petition to amend was filed by December 22, 2015?

Petitioner asserts that the license did not expire on December 15, 2015 for two reasons. As explained below, neither of these reasons is sufficient: (1) by its plain language, Public Resources Code section 25534(j) does not apply to the current factual circumstances, and (2) the petition for extension was not timely filed and no good cause has been shown.

A. The extension permitted under Public Resources Code section 25534(j) does not apply.

Public Resources Code section 25534(j) provides:

This section does not prevent a certificate holder from selling its license to construct and operate a project prior to its revocation by the commission. In the event of a sale to an entity that is not an affiliate of the certificate holder, the commission shall adopt new deadlines or milestones for the project that would allow the new certificate holder up to 12 months ***to start construction of the project*** or to start to meet applicable deadlines or milestones.

(emphasis added). By its terms, section 25534(j) only applies to situations where a new owner intends to build the project that is already licensed. This reading is also supported by the 12-month deadline imposed by section 25534(j); as evidenced by Petitioner's proposed 18-month schedule, it would be impossible to process both a project amendment and begin construction within the 12-month period.

In this instance, Petitioner has made clear that it does not intend to build the licensed project. Instead, it intends to move forward with a new "amendment" to the license for an entirely new project that reflects the currently licensed project in site location only. Consequently, section 25534(j) does not apply to extend the December 15, 2015 construction deadline.

¹ To the extent individual questions are omitted, CRIT has no comment on or response to Petitioner's answer.

B. The petition for extension was not timely filed.

Petitioner also argues that the petition for extension was timely filed because it submitted the petition on December 22, 2015, “prior to the expiration of either deadline described in the September 9, 2015 order, at a time when the PSPP license was unquestionably in effect.” TN# 208653, at 4. Yet that is not what was required, either under the Commission’s September 9 order or section 1720.3.

First, the September 9 order specifically required the project owner to submit a *petition to amend* the project description no later than December 22, 2015. Petitioner did not comply with this condition, as they submitted only a petition for extension. The September 9 order explains what happens in this circumstance: “If the petition for amendment is not received by 5:00 p.m. on December 22, 2015, this order is *automatically rescinded* and the permit for the PSPP shall be deemed to have expired as of December 15, 2015.” TN# 206118 (emphasis added).

Second, even if a petition for extension was permitted under the September 9 order, Petitioner’s effort was still untimely. Section 1720.3 states: “prior to the deadline [for commencement of construction], the applicant may request, and the commission may order, an extension of the deadline for good cause.” By its terms, this regulation requires two things prior to the deadline: the petitioner’s request and the commission’s order. Petitioner complains that this reading would “cause needless confusion, unnecessary filings, and hasty decision-making.” TN# 208653, at 6. Yet these concerns are overblown. Under section 1211.5(a) of the Title 20 Commission Process and Procedure Siting Regulation,² the presiding member shall rule on motions, including those to extend the commencement of construction, within 21 days of its filing (unless a later deadline is then established). If no ruling is made within 30 days, motions are automatically denied. Consequently, petitioners can easily plan to both request and receive orders regarding commencement of construction deadlines in advance of their expiration. While the Commission is granted some discretion in these timeframes, the regulations also establish that the Commission can readily act within 21 days if necessary to meet a regulatory deadline.

C. The circumstances leading to a prior finding of good cause are no longer present.

Petitioner argues that the Commission already recognized that good cause existed to grant the section 1720.3 extension via its September 9, 2015 order, and that “old arguments” should not be revisited. TN# 208653, at 7. The September 9, 2015 order does not explain the Commission’s reasoning. However, review of the petition that the Commission acted on in its September 9, 2015 order indicates that the circumstances that led to the prior finding of good cause are no longer present.

For example, in the prior extension, Petitioner argued that it acted diligently because it sought an extension “well in advance of the expiration of the construction deadline.” TN# 205632, at 4. But here Petitioner filed its petition for extension *after* the expiration of the

² The rules in place prior to January 1, 2016 also provided general guidance on the timing for the Commission’s consideration of a motion. *See* 20 C.C.R. § 1716.5.

construction deadline (December 15, 2015) and on the last possible day to submit its petition to amend (December 22, 2015).

Moreover, in addressing the other “good cause” factors (circumstances beyond the Petitioner’s control, the efficient use of the record, and the public interest), Petitioner previously averred that it was building a solar thermal project with storage. Petitioner argued that this effort would address the issues and policy concerns raised in the Revised PMPD, and therefore addressed circumstances beyond its control, would rely on the previous record, and was in the public interest as articulated by the Commission. But Petitioner now seeks to build an entirely new photovoltaic project, which has not been previously evaluated either by the public, CEC Staff, or the Commission.

Consequently, the Commission must “revisit” the issue of whether good cause exists with respect to the section 1720.3 extension. As previously explained in CRIT’s earlier filing (TN# 207196), it does not.

2. If not, explain why a petition for extension of a construction deadline should be deemed to meet the requirement for a petition to amend.

Petitioner admits, as it must, that it failed to comply with the September 9, 2015 order, in that it failed to file a petition to amend the project description by December 22, 2015. Petitioner also admits that it never intends to meet the Commission’s requirement that it update the solar trough design to incorporate energy storage. Petitioner offers no explanation for how failure to comply with Commission order can be excused after the fact.

Instead, it asks the Commission for leeway—even though it did not comply with a Commission order, it wants the freedom to yet again attempt to make this Project work. CRIT urges the Commission to put an end to this never-ending litany of excuses and to recognize that the public interest would be better served by treating this request as what it is: an attempt to build an entirely new project, with a new owner, new technology, and new environmental and cultural resource concerns.

3. If the license has expired, what legal authority allows the Commission to revive the certificate and extend the construction commencement deadline?

In answering this question, Petitioner again relies on section 1720.3 and section 25534(j), claiming that nothing in those sections prevents the Commission from applying them retroactively to revive the certificate. But as described above, section 1720.3 specifically requires the Commission to grant the extension *prior* to the expiration of the construction commencement deadline. That did not happen here because Petitioner waited until the last possible day to file its request. Moreover, section 25534(j) does not apply where a petitioner does not seek to build the existing project.

8. Explain the relevance of PRC § 25534(j) to the license for this project, including whether it applies to projects not subject to PRC § 25534(a)(4).

As explained above, section 25534(j) does not apply to circumstances where the new project owner seeks to build a different project.

9. If the new project owners seeks to waive the jurisdictional exclusion of PV, does PRC 25502.3 require the project to be required to proceed with a Notice of Intention?

Recent amendments to the Warren-Alquist Act make clear that a new application for certification or notice of intention is required. Under Public Resources Code section 25500.1, the legislature indicated that certain photovoltaic proposals were exempt from this requirement. Pub. Res. Code § 25500.1(a) (permitting the Commission to consider an amendment to a solar thermal project to allow conversion to PV “without the need to file an entirely new application for certification or notice of intent pursuant to Section 25502” only if the application for certification was filed before August 15, 2007, and a federal Record of Decision was issued before September 1, 2011, and if the amendment was received before June 30, 2012). Petitioner has not met the deadlines contained in section 25500.1, and therefore must file “an entirely new application for certification or notice of intent pursuant to Section 25502.”

Conclusion

CRIT urges the Commission to reject the petition for extension as untimely or, in the alternative, deny the petition and find that the 2010 order approving the Project has expired.

DATED: February 3, 2016

COLORADO RIVER INDIAN TRIBES

By: /s/ Rebecca Loudbear

REBECCA LOUDBEAR

NANCY JASCULCA

Attorneys for Intervenor Colorado River Indian Tribes

DATED: February 3, 2016

SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Winter King

WINTER KING

SARA A. CLARK

Attorneys for Intervenor Colorado River Indian Tribes