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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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In the Matter of the
PALEN SOLAR POWER PROJECT

Docket No. 09-AFC-07C

**ENERGY COMMISSION ORDER DENYING THE PETITION FOR
EXTENSION OF DEADLINE FOR COMMENCEMENT OF
CONSTRUCTION**

INTRODUCTION and BACKGROUND

On August 24, 2009, Palen Solar I, LLC (PSI) filed an AFC with the Commission to construct and operate a nominal 500 megawatt (MW) concentrating solar thermal electric power generating facility using solar parabolic trough technology. The Commission issued a Final Decision approving two alternative configurations for the Palen Solar Power Project (PSPP) on December 15, 2010 (Order No. 10-1215-19, the “Final Decision,” 09-AFC-07, TN 59350).

On December 17, 2012, the project owner filed a major amendment to change the technology to solar power towers. After a complete analysis of the project and two Presiding Member’s Proposed Decisions (PMPD), the amendment was withdrawn on September 29, 2014 (TN 203124).

On September 16, 2015, the Energy Commission adopted an Order granting the project owner’s Petition to Extend the Time to Construct the Palen Solar Power Plant from December 15, 2015 to December 15, 2016, provided that a project amendment to include solar trough generating technology and energy storage capabilities was filed by December 22, 2015. The Order specified, “If the petition for amendment is not received by 5:00 p.m. on December 22, 2015, this Order is automatically rescinded and the permit for the PSPP shall be deemed to have expired as of December 15, 2015” (TN 206118).

On December 15, 2015, the project owner filed a Petition to Transfer Ownership to Maverick Solar, LLC (TN 207034). The Petition included a request for a 12-month extension of the start of construction date to December 15, 2016 pursuant to Public Resources Code (PRC) § 25534(j).

On December 22, 2015, the project owner filed a Petition for Extension of Deadline for Commencement of Construction to June 15, 2017, with a recommended condition that the new owner (Maverick) file a petition to amend the PSPP by June 15, 2016. This Petition cites Title 20 of the California Code of Regulations §1720.3 as well as PRC § 25534(j) in support of the request to extend the construction deadline (TN 207099).

On January 11, 2016, we issued the Notice of Energy Commission Hearing on Petition for Ownership Transfer from Palen Segs I, LLC, to Maverick Solar, LLC and Petitions for Extension of Deadline for Commencement of Construction for the Palen Solar Power Project, Possible Assignment of Committee and Further Orders. The Notice contained ten questions that were designed to provide the Commission a better understanding of the nature and effect of the Petitioner's request. The Hearing was conducted before the Energy Commission on February 10, 2016, during which the Petitioner, Commission Staff, and other interested persons provided comments in addition to those the filed prior to the hearing.

DISCUSSION

Applicability of Pub. Res. Code § 25534(j)

Petitioner argues that its extension request based upon Pub. Res. Code § 25534(j) mandates that the Energy Commission extend the construction deadline for up to twelve months because the project certification was sold to an entity unaffiliated with the project seller prior to the revocation of the certificate. The Petitioner's reliance on Pub. Res. Code § 25534(j) is mistaken. The section must be read to harmonize with the whole of Pub. Res. Code § 25534 which describes the Energy Commission's authority to revoke a project's certification as an enforcement measure for specific violations enumerated in the statute. Pub. Res. Code § 25534(j) was added in 2002 in response to California's rolling blackouts at a time when electricity demand exceeded supply. The legislation expanded the powers of the Energy Commission to enforce Pub. Res. Code § 25534(a)(4) which enabled the Commission to revoke a certificate if a project failed to start construction within 12 months of its certification when all its permits, administrative appeals, and judicial appeals had been completed. The legislative history makes clear that the purpose of Pub. Res. Code § 25534(a)(4) was to enable the California Consumer Power and Conservation

Financing Authority (CCPCFA) to acquire and construct a project whose certificate was revoked by the Energy Commission to expedite construction of the electric generating facility. (See Legis. Counsel's Dig., Sen. Bill No. 1269, 2 Stats. 2002 (2001-2002 Reg. Sess.) p. 2663.)

The phrase, "prior to its revocation by the commission," in Pub. Res. Code § 25534(j) clearly shows that the initiation of revocation proceedings under Pub. Res. Code § 25534(a)(4) and § 25534(g) is a condition precedent that triggers the application of § 25534(j). Section 25534(j) applies only to the sales of a certification pending revocation within the scheme of Pub. Res. Code § 25534 and is silent on the expiration of certifications that miss the five-year construction deadline under Title 20 Cal. Code of Regs. § 1720.3. Title 20 Cal. Code of Regs. §1720.3 does not reference Pub. Res. Code § 25534 as authority or in legislative history.

The PSPP certification expiration has nothing to do with Pub. Res. Code § 25534(j) because there has never been CCPCFA or Energy Commission action to pursue revocation and the project does not have all permits necessary for the project to become final. We find that Pub. Res. Code § 25534(j) does not apply to the expiration of a power plant's certification for failure to commence construction within five years under Title 20 Cal. Code of Regs. § 1720.3.

Extension of the Five Year Construction Deadline

Title 20 Cal. Code Regs. § 1720.3 grants the Commission the discretion to extend the construction deadline for good cause. We had already granted this project a one year extension based upon the Petitioner's representations and our understanding that an amendment for trough technology with energy storage capabilities would be filed by December 22, 2015.

We have considered all of the Petitioner's filings, comments and responses to questions included in the January 11, 2016 Notice of Hearing as well as the comments of Staff and other interested persons. We need not address the question of good cause for an extension raised in the pleadings and comments because this is a purely procedural matter that precludes deciding the merits of the Petitioner's requests.

The September 16, 2015 Order granting that extension was deliberately designed to be self-executing. The one-year extension was dependent upon the Petitioner filing a petition to amend the PSPP to include storage with the solar trough technology. When the Petitioner failed to do so, the certificate expired by the terms of the Order. Nothing in the record compels us to revisit the Order. Therefore, the Petition for an Extension to Commence Construction is **DENIED** because the PSPP certificate has expired. However, at the request of the Petitioner, the Petition for Transfer of Ownership for the PSPP from Palen SEGS I to Maverick Solar LLC is **GRANTED**.

ORDER

Therefore, the Commission **Orders** the following:

1. Consistent with September 16, 2015 Order Granting Extension of Time to Construct and Cal. Code Regs., tit. 20, § 1720.3, by virtue of no amendment petition being filed by December 22, 2015, the certification for the Palen Solar Power Project expired on December 15, 2015.
2. Reconsideration of this Order is governed by Public Resources Code, section 25530.
3. Judicial review of this Order is governed by Public Resources Code § 25531.
4. We order that the Compliance docket file for these proceedings be closed effective February 16, 2016, with the exception that the docket file shall remain open for 30 additional days solely to receive material related to a petition for reconsideration of the Order.

IT IS THEREFORE ORDERED that the Petition to Extend the Time to Construct the Palen Solar Power Plant is **DENIED**. The certification for the PSPP expired on December 15, 2015. The Petition for Change of Ownership is **GRANTED**.

CERTIFICATION

The undersigned Secretary to the Commission does hereby certify that the foregoing is a full, true and correct copy of an Energy Commission Order duly and regularly adopted at a meeting of the California Energy Commission held on February 10, 2016.

AYE: Weisenmiller, Douglas, McAllister, Hochschild, Scott

NAY: None

ABSENT: None

ABSTAIN: None

TIFFANI WINTER
Secretariat