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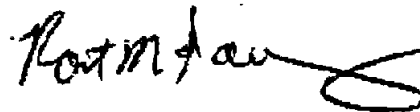
State of California
State Energy Resources and Conservation Division

In the matter of:) 01-AFC-4C
)
East Altamont energy Center) Comments of Robert Sarvey
) on Extension Request

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Date



Robert Sarvey

Comments on the Requested Three-Year Extension of the Start of Construction Deadline for the East Altamont Energy Center 01-AFC-04C

Introduction

On July 9th the Energy Commission Staff posted their analysis of the EAEC petition for an extension of time to construct on the Commission website. The analysis dated June 23 called for members of the public to comment on staff's analysis and the petition by July 19 due to inadvertent late posting of staff's analysis on the commission website. For the reasons outlined below I request that the commission summarily deny the petition. This project no longer complies with all LORS and no longer complies with the CEQA requirements necessary for the commission to approve an extension. Section 1720.3 sets the time for a project to begin construction at five years. **The section also allows an extension for good cause.** Section 1720.3 does not provide a procedure for commission review of extensions. To determine the standard of review for extensions we must look to past extension requests before the Commission. Only five extension requests have been submitted since the commission adopted Section 1720.3 three of them coincidentally were filed by Calpine Corporation. Generally applicants begin construction immediately after their license is granted. Only four extension requests have been brought before the Energy Commission. Below is a brief review of each previous request.

SEPCO

The Commission adopted Section 1720.3 in 1993. It received its first extension request in 1999 from SEPCO (92-AFC-2C). The extension request was controversial and opposed by many citizens groups in Rio Linda and also opposed by CEC Staff. Without any precedent being set in previous cases for extension requests the commission convened a "committee procedural conference" to discuss how to proceed with the extension request. Commissioner Lauire stated, "This is a matter of first impression for the commission. And I want to make sure that any precedent set is a rational one." (Transcript of hearing on SEPCO Petition to Extend Deadline to commence construction SECO compliance proceeding 92-AFC-2C, January 24,2000).

In the SEPCO proceeding CEC staff argued that Section 1720.3 petitions must be considered procedurally in the same manner as amendment petitions under Section 1769(a). The Commission adopted staff's argument which required extension requests to be procedurally handled like amendment requests with required notices and comment periods. According to staff in the SEPCO proceeding the showing of good cause under Section 1720.3 would require the applicant to satisfy the requirements of Section 1769 (a)(A)-(G). The committee convened an evidentiary hearing to determine if the applicant could demonstrate good cause for the extension. In the May 26, 1999 order the Commission held that the granting of an extension to start construction of the power plant is a

discretionary decision that is subject to CEQA. This established a two step process for extensions where first the Commission must establish if there is good cause to grant the extension and then CEQA review must be done to determine if the extension requests effect on the environment.

Russell City

The Russell City extension was approved on August 29, 2007. Unlike the SEPCO extension there was no public opposition to the extension request and CEC staff supported granting the extension. The project was in the midst of a major amendment and CEQA review was ongoing. Without much comment the request was granted at a CEC Business Meeting. The order to approve the extension stated that the applicant needed to complete three steps before it could begin construction:

- 1) Energy Commission's approval of the proposed amendment to relocate the project,
- 2) Public Utility Commission approval of PG&E's application to construct a transmission line for the project and
- 3) Project financing. No other person offered comments."

This was considered good cause for granting the extension. There was no need for the Commission to conduct a CEQA review because that was part of the ongoing amendment. The order approving the extension stated:

"There being no objection and good cause having been shown by petitioner, the California Energy Commission hereby grants the petition to extend the start of construction of the Russell City Energy Center from September 10, 2007, to September 10,2008."

Russell City is now in the process of requesting another extension but no ruling has been handed down at this time. There is substantial public opposition to the extension.

Salton Sea Geothermal

The Salton Sea project filed for a construction extension on November 12, 2007. There was no public opposition and the CEC staff recommended approval of the petition. The order defines good cause as the owner's inability to commence construction due to economic circumstances beyond its control. The order to approve the extension stated:

" There being no objection and good cause having been shown by petitioner, the California Energy Commission hereby grants the petition to extend the start of construction of the Salton Sea Geothermal Unit #6 from December 18, 2008 to December 18, 2011."

East Altamont

The Commission is now faced with the decision to approve an extension request for the East Altamont Energy Center. Unlike the Salton Sea Project and the Russell City extension there is public opposition to this amendment. The SJVAPCD has filed comments and the San Joaquin County Board of Supervisors will be presenting a resolution opposing the extension on July 27 at their regularly scheduled meeting. Members of the public have objected to the extension request.

The applicant in his extension request lists as good cause for the extension, the lack of project financing and a contract in the CPUC procurement proceeding. Lack of project financing alone is not good cause for an extension as required by Section 1720.3. If lack of financing alone can support a finding of good cause, then nothing would prevent applicants from receiving an endless series of extensions of the deadline to commence construction. Applicants without financing could seek Commission certification with no intention of ever constructing a power plant. Calpine has been in bankruptcy due to their ambitious overexpansion into the power market which has triggered their bankruptcy. These are not financial circumstances out of their control. Their financial mismanagement necessitates the need for this extension request. Finding number one in the commission adoption order states "The East Altamont Energy Center is a merchant power plant whose capital costs will not be borne by the State's electricity ratepayers." Now we have a situation here where the applicant is asking for an extension so through the CPUC procurement process so the ratepayers can bear the capital costs of the power plant.

The applicant in this case has not practiced due diligence in pursuing this license. The applicant has allowed the air permit for the EAEC to expire despite the district notifying the applicant that the permit was set to expire. This is evidence that good cause does not exist to extend this construction permit. The staff analysis of this extension request states on page 2:

The District's Authority to Construct permit for the facility has expired. Prior to August 2007, the District sent the project owner a notice for the fees and renewal of the permit, which were to expire in August 2007. The project owner has not submitted the fees nor requested a renewal of the permit, thus the District's construction permit for the facility is no longer valid¹. If the project owner requested the permit renewal and surrendered the fees, the District staff could not say whether the District would opt to renew the construction permits for the facility or require the project owner to reapply for a new permit, which could take as long as eight months to process.

The project no longer meets all Laws Ordinances Regulations and Standards (LORS) as outlined in Staffs analysis. The project no longer meets BACT requirements for NOx emissions. The project's start up and shut down emissions are subject to new limits. The State of California has implemented a new NO2

standard which the project's modeling indicates the project will violate. The project's ammonia slip limit no longer meets BACT. The original license required the surrender of 441.99 TPY of SOx emission reduction credits (banking certificates #662 and 741) to mitigate the project's PM10 emission impacts. The project owner has placed a "lien" on these emission reduction credits for another project. Because the other project has been approved, the SOx emission reduction credits that are earmarked for this project may no longer be available.

The project no longer meets the requirements of CEQA that all significant impacts be mitigated. The SJVUAPCD has notified the Commission that the applicant's AQMA will no longer mitigate the CEQA impacts from the project on the San Joaquin Valley. The project's air quality analysis indicates that the project will violate the State's new NO2 standard.

CEC staff concurs with all of the above flaws in the current project but recommends approval of the extension at an August business meeting. While I agree with most of staff's analysis I disagree with their conclusion that the extension be granted and these issues resolved when the project starts construction or the applicant sells the license. Without an air quality permit also known as the determination of compliance the Commission cannot approve the project extension. Section 1752.3 provides that the PMPD shall include findings and conclusions on the conformity with all applicable laws, including required conditions based upon the determination of compliance submitted by the local air pollution control district. Since the project no longer has a valid air permit extension of the project's license without an FDOC is inappropriate.

Conclusion

This extension request should be denied. The applicant has failed to keep their air permit current. The project owner has failed to keep the emission reduction credits assigned to this project intact. The project no longer complies with all LORS as explained above. The project no longer complies with CEQA as the project's adverse impacts in the SJVUAPCD are no longer mitigated and the project's NO2 impacts violate the state NO2 standard.

Calpine's insolvency created a situation where they couldn't get any financing. Poor business decisions by the applicant should not be considered good cause for an extension. We raised Calpine's impending bankruptcy as an issue in the original proceeding and we were told by the Commission that our concerns were not relevant to the license. The Commission should summarily dismiss the extension application. Should the Commission decide not to dismiss the extension request a hearing should be held to determine if good cause has been established and if the project meets all LORS and CEQA requirements.