



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION  
FOR THE *TESLA POWER PROJECT* BY *PG&E*

DOCKET No. 01-AFC-21C

CERTIFIED 6/14/04

**NOTICE OF EVIDENTIARY HEARING AND COMMITTEE ORDER  
RE: APPLICANT'S PETITION FOR EXTENSION OF LICENSE**

**PLEASE TAKE NOTICE** that the Siting Committee designated by the Energy Commission to conduct proceedings on the Petition for Extension of License for the Tesla Power Project has scheduled an Evidentiary Hearing as follows:

**MONDAY, JULY 20, 2009  
9 a.m. - Noon**

**California Energy Commission  
1516 9<sup>th</sup> Street  
First Floor, Hearing Room A  
Sacramento, CA 95814  
(Map Attached)**

<b>DOCKET</b>	
<b>00-AFC-21C</b>	
DATE	<u>JUN 09 2009</u>
RECD.	<u>JUN 09 2009</u>

*For information about attending this hearing remotely via the internet or telephone, please see the Remote Attendance section at the end of this Notice.*

**BACKGROUND**

The Tesla Power Project ("Tesla" or "Project") is a 1,120 megawatt gas-fired power plant proposed to be built in a rural area of eastern Alameda County, close to the western border of San Joaquin County. On June 16, 2004, the California Energy Commission ("Energy Commission or CEC") granted a construction and operation license to the Project.

The CEC's regulations state that "the deadline for the commencement of construction shall be five years after the effective date of the decision [that granted the license]. Prior to the deadline, the Applicant may request, and the Energy Commission may order, an extension of the deadline for good cause." (Cal. Code Regs., tit. 20, § 1720.3 ["Section 1720.3"].) For Tesla, that deadline is **June 16, 2009**.

On April 24, 2009, Pacific Gas & Electric Company (“PG&E”), the current owner of the Project license, filed a petition seeking both a five-year extension of the deadline and a change in ownership of the Project. On June 3, 2009, the CEC granted the petition for a change in ownership, and it also granted a 90-day extension of the construction deadline (from June 16, 2009 to September 15, 2009) for the purpose of conducting additional proceedings on whether “good cause” exists for the extension. The Energy Commission delegated the authority to conduct these proceedings to the CEC’s Siting Committee (Commissioner Byron, Presiding Member, and Chairman Douglas, Associate Member).

This Notice describes the issues that the Siting Committee will consider, establishes a Siting Committee hearing date of July 20, 2009, a Commission hearing date of September 9, 2009, and other aspects of the schedule; directs PG&E and the CEC Staff (“Staff”) to participate in the Siting Committee hearing; and invites the Intervenors on the Tesla Proof of Service List, interested governmental agencies, and members of the public to participate.

### **ISSUES on GOOD CAUSE**

1. What are the consequences (e.g., expiration of the certificate), if any, of a failure to begin construction within the period established by Section 1720.3 (and any extensions granted thereunder)?
  - a) If expiration of the certificate is a potential consequence, does it occur automatically upon failure to meet the deadline, or must the Commission act affirmatively to revoke the certificate?
  - b) Do the construction-deadline provisions of Public Resources Code section 25534 have any effect here? Are those provisions applicable to any project that has been certified by the Commission? Can they be applicable to any future project?
2. In determining whether “good cause” exists for an extension under Section 1720.3, what factors may the CEC consider in any given case? What factors should it consider? What factors must it consider?
3. Is there good cause for an extension of the construction deadline for Tesla?
  - a) What are the benefits, if any, of an extension to the Project Owner? To the ratepayers the Project would serve? To the general public?
  - b) What are the harms, if any, of an extension to the ratepayers the Project would serve? To the general public?

- c) What are the reasons for the requested extension? Is the failure to meet the construction deadline due to factors beyond the Project Owner's control?
- d) What efforts were made by the previous and current Project Owner to meet pre-construction requirements contained in the Conditions of Certification?
- e) Will the Project Owner have the financial ability to build the Project if an extension is granted?
- f) What plans does the Project Owner have to market the Project to other power plant developers?
- g) What aspects of the Tesla Decision are still applicable? If the Project goes forward (using a reasonable estimate of when that would occur), what aspects would require revision or updating with additional evidence or argument, because
  - (1) the Project no longer corresponds with the project description in the Decision;
  - (2) applicable laws, ordinances, regulations, or standards ("LORS") have changed;
  - (3) environmental conditions in the site area have changed;
  - (4) the record upon which the Decision is based is stale; or
  - (5) other reasons?

These matters do *not* include the merits of any substantive issue that would have to be considered in a later proceeding. Rather, the Committee's inquiry here will focus on, for example, (i) whether an applicable emissions limit has changed and the consequences of needing to determine, in a later proceeding, compliance with the new limit, but *not* whether the Project is likely to comply; or (ii) that the Project lacks a water supply and the consequence of needing to assess, in a later proceeding, potential supplies, but *not* the merits of potential supplies or the Applicant's likelihood of obtaining a supply.

- h) Would a major amendment modifying the original license meet CEQA requirements to provide the public "with detailed information" about the Project's environmental impacts if the revised Project is presented in a piecemeal manner? (See Pub. Resources Code, § 21061.)

- i) How much money, calendar time, and person-years of effort would need to be expended (by the CEC, the Project Owner, or others) to do the revision and updating described under 3.g.?
- j) Would the revisions and updating described in 3.g. require the filing of a petition to amend the Tesla Decision or a new AFC?

If yes, and to the extent not already provided in the answers to 3.g., how much money, calendar time, and person-years of effort would need to be expended (by the CEC, the Project Owner, and others) for the Project Owner to file, and the CEC to process, a petition to amend or a new AFC?

- k) What permits must still be obtained (or renewed) for the Project? How much money, calendar time, and person-years of effort will need to be expended (by the Project Owner or others) to obtain those permits?

## **FILING SCHEDULE**

All parties shall use the Tesla Proof of Service List attached hereto and comply with sections 1209 through 1211 of the CEC's regulations on filing and serving documents. (Cal. Code Regs., tit. 20, §§ 1209-1211.)

No later than 3 p.m. on **Monday, June 29, 2009**, PG&E and the Staff shall file and serve (electronically where possible) on all parties on the Tesla Proof of Service List, legal argument on Issues 1 and 2 above, and testimony on Issues 3.a. through 3.k. above, (and on any other issues the party lists in 2.). (Cal. Code Regs., tit. 20, § 1224.) In addition, any other formal party on the Tesla Proof of Service List may, in the same time and manner, file and serve argument and testimony on any issue listed above.

No later than 3 p.m. on **Monday, July 13, 2009**, any party may, in the same manner, file and serve rebuttal argument and testimony.

Governmental agencies and members of the public are also welcome to submit written comments according to the schedule described above.

## **EVIDENTIARY HEARING PROCEDURES**

The purpose of the evidentiary hearing is to establish the factual record necessary for a decision on PG&E's request for an extension. All testimony shall include the qualifications of the witnesses and, at the beginning, a summary of less than 500 words. At the hearing, we will allow witnesses to read summaries of their direct and rebuttal testimony. There shall be no additional direct testimony other than that strictly necessary to allow the testimony to be entered into evidence. Any party may cross-examine the witnesses of other parties. Multiple witnesses may appear as a panel. Testimony shall be submitted by sworn declarations filed under penalty of perjury and may be offered into evidence by stipulation of the parties. Written testimony and other

supporting documentary evidence shall be identified with exhibit numbers and served on the Tesla service list. PG&E's exhibits shall be numbered 1 through 99. Staff's exhibits shall be 100 through 199. Intervenor Robert Sarvey's exhibits shall be 200 through 299. Other parties' exhibits shall be assigned numbers as necessary at the hearing.

The rules of evidence pertaining to the evidentiary hearing are governed by Sections 1212-1213 of the Commission's regulations. (Cal. Code Regs., tit. 20, §§ 1212, 1213; see also *id.*, § 1702, subd. (h).)

PG&E has the burden of presenting substantial evidence to support the findings and conclusions required for a finding of "good cause" in this case. (Cal. Code Regs., tit. 20, § 1748, subd. (e).)

### **COMMISSION HEARING**

The Committee will issue a Proposed Decision for consideration of the matter by the full Commission as follows:

**WEDNESDAY, SEPTEMBER 9, 2009**  
**Beginning at 10 a.m.**

**California Energy Commission**  
**1516 9<sup>th</sup> Street**  
**First Floor, Hearing Room A**  
**Sacramento, California**

The Commission will receive no new evidence and will only hear argument (with supporting rationales) supporting or opposing the Committee's Proposed Decision, based on the record of the Committee hearing.

### **PUBLIC PARTICIPATION**

Members of the public may participate at the evidentiary hearing by providing oral or written comments on the license extension. We will provide time for public comment during the hearing. For information on how to participate, contact the Energy Commission's Public Adviser, Elena Miller, at 1-916-654-4489 or 1-800-822-6228, or email at: [[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)]

### **ADDITIONAL INFORMATION**

Questions of a legal or procedural nature should be directed to Gary Fay, the Hearing Officer, at 1-916-654-3893 or e-mail: [[gfay@energy.state.ca.us](mailto:gfay@energy.state.ca.us)]

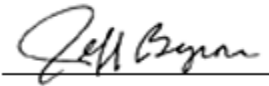
Media inquiries should be directed to the Office of Media and Public Communications at 1-916-654-4989 or e-mail: [[mediaoffice@energy.state.ca.us](mailto:mediaoffice@energy.state.ca.us)].

If you have a disability and need assistance to participate, please contact Lourdes Quiroz at 1-916-654-5146 or e-mail: [[lquiroz@energy.state.ca.us](mailto:lquiroz@energy.state.ca.us)]

Documents concerning the Applicant's request can be viewed on the Energy Commission's website at: [[www.energy.ca.gov/sitingcases/tesla](http://www.energy.ca.gov/sitingcases/tesla)]

IT IS SO ORDERED,

Dated June 9, 2009, at Sacramento, California.

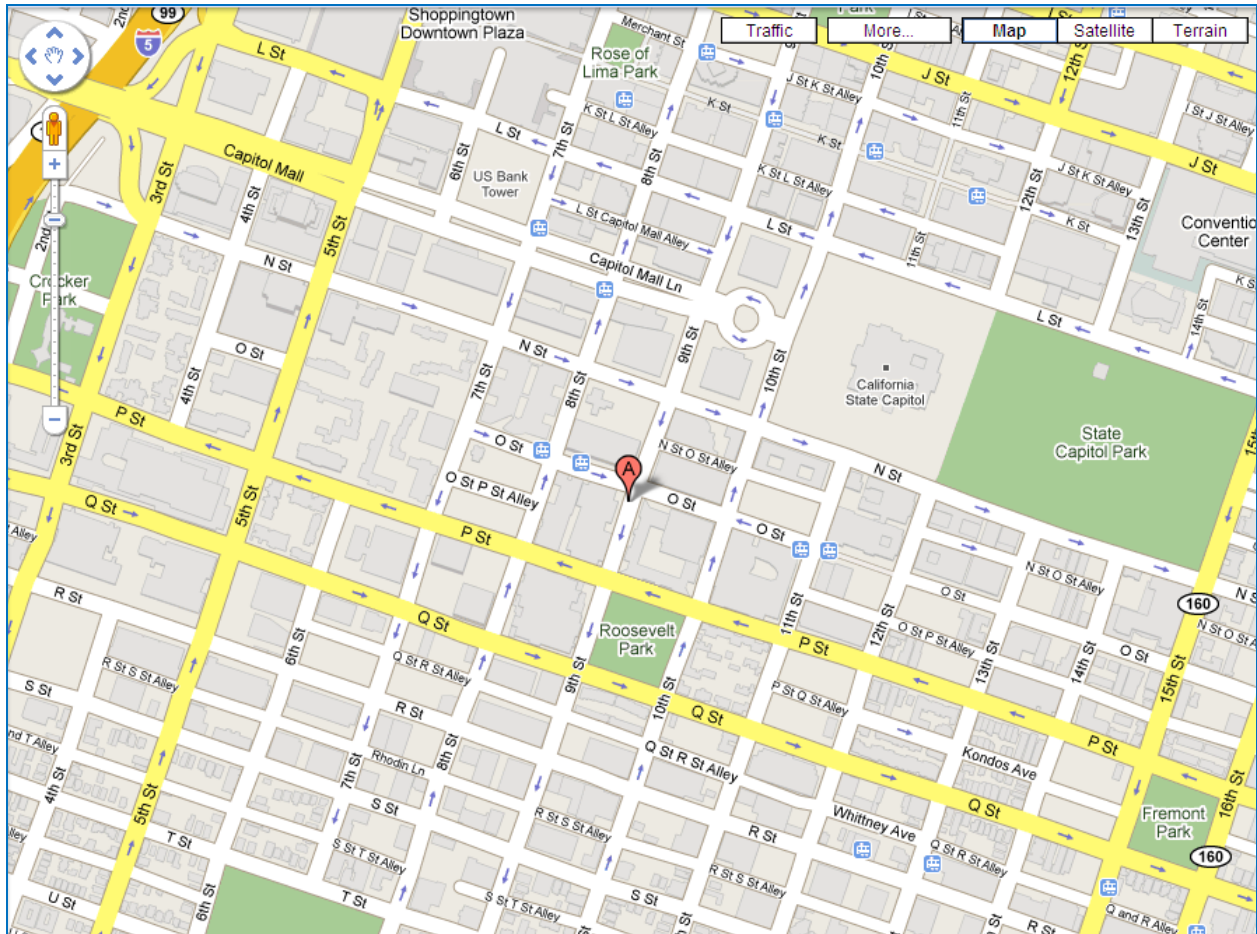


JEFFREY D. BYRON  
Commissioner and Presiding Member  
Siting Committee



KAREN DOUGLAS  
Chairman and Associate Member  
Siting Committee

## MAP TO CALIFORNIA ENERGY COMMISSION



### ***Tesla Power Project by PG&E***

**EVIDENTIARY HEARING  
MONDAY, JULY 20, 2009  
9 A.M. – Noon**

**HEARING ON PROPOSED DECISION  
WEDNESDAY, SEPTEMBER 9, 2009  
Beginning at 10 a.m.**

**California Energy Commission  
1516 9<sup>th</sup> Street  
First Floor, Hearing Room A  
Sacramento, CA 95814**

Mailed to Lists: POS, 7136

## REMOTE ATTENDANCE

Presentations and audio from Energy Commission meetings are broadcast via the WebEx Internet meeting service. Details on how to participate via WebEx is given below. We recommend visiting the WebEx website in advance to make sure your computer is properly configured for the WebEx broadcast. Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.

### 1. COMPUTER LOG ON WITH A DIRECT PHONE NUMBER:

\* Please go to <https://energy.webex.com> and enter the *unique* meeting number:

**922 206 210**

\* When prompted, enter your information and the following meeting password:

**tesla@9am**

\* After you log in, a prompt will appear on-screen for you to provide your phone number. In the Number box, type your area code and phone number then click OK. You will receive a call back on your phone for the audio of the meeting.

### 2. COMPUTER LOG ON FOR CALLERS WITH AN EXTENSION PHONE NUMBER, ETC:

\* Please go to <https://energy.webex.com> and enter the *unique* meeting number:

**922 206 210**

\* When prompted, enter your information and the following meeting password:

**tesla@9am**

\* After you log in, a prompt will ask for your phone number. Click "**CANCEL.**"

\* Instead call 1-866-469-3239. When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the top left area of your screen after you login.

### 3. TELEPHONE ONLY (OR COMPUTER WITH NO SOUND CAPABILITY):

\* Call **1-866-469-3239** and when prompted enter the meeting number:

**922 206 210**

### 4. TECHNICAL SUPPORT:

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239.





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**APPLICATION FOR CERTIFICATION  
FOR THE *Tesla Power Project***

**DOCKET No. 01-AFC-21C**

**PROOF OF SERVICE**

**APPLICANT'S COUNSEL**

Scott Galati  
Galati-Blek LLP  
455 Capitol Mall, Ste. 350  
Sacramento, CA 95814  
[sgalati@gb-llp.com](mailto:sgalati@gb-llp.com)

**INTERESTED AGENCIES**

Central Valley Regional Water  
Quality Control Board  
Attn: Micheal Kummer  
3443 Routier Road, Suite A  
Sacramento, CA 95827-3098  
[kummerm@rb5s.swrcb.ca.gov](mailto:kummerm@rb5s.swrcb.ca.gov)

Bay Area Air Quality  
Management District  
Attn: Dennis Jang  
939 Ellis Street  
San Francisco, CA 94109  
[djang@baaqmd.gov](mailto:djang@baaqmd.gov)

Alameda County Community  
Development Agency, Planning  
Department  
Attn: Bruce H. Jensen, Planner  
399 Elmhurst Street, Room 136  
Hayward, CA 94544  
[Bruce.Jensen@acgov.org](mailto:Bruce.Jensen@acgov.org)

City of Tracy  
City Manager:  
Leon Churchill, Jr.  
City of Tracy, City Attorney:  
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**INTERVENORS**

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Energy (CARE)  
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San Joaquin Valley Air Pollution  
Control District  
Attn: Dave Warner  
Director of Permit Services  
1990 E. Gettysburg Ave.  
Fresno, CA 93726-0244  
[Seyed.Sadredin@valleyair.org](mailto:Seyed.Sadredin@valleyair.org)  
[Rupi.gill@valleyair.org](mailto:Rupi.gill@valleyair.org)

**ENERGY COMMISSION**

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Elena Miller  
Public Adviser  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

**DECLARATION OF SERVICE**

I, RoseMary Avalos, declare that on June 9, 2009, I served and filed copies of the attached Notice of Evidentiary Hearing and Committee Order re: Applicant's Petition Extension of License, dated June 9, 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

**[[www.energy.ca.gov/sitingcases/avenal](http://www.energy.ca.gov/sitingcases/avenal)]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

**(Check all that Apply)**

**FOR SERVICE TO ALL OTHER PARTIES:**

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

**AND**

**FOR FILING WITH THE ENERGY COMMISSION:**

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (**preferred method**);

**OR**

depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 01-AFC-21C

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

I declare under penalty of perjury that the foregoing is true and correct.

  
RoseMary Avalos