



**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:	)	Docket No. 01-AFC-21C
	)	
	)	
TESLA POWER PROJECT	)	STAFF'S BRIEF
	)	and Testimony Regarding
	)	Issues on Good Cause for the
	)	Requested Extension of the Deadline for
_____	)	Commencement of Construction

**INTRODUCTION**

On April 24, 2009, Pacific Gas and Electric (PG&E) submitted a petition under Title 20, California Code of Regulations, section 1720.3, for a five-year extension of the deadline to begin construction of the project from June 16, 2009, to June 16, 2014. The deadline, set by regulation, is otherwise five years from the effective date of the Energy Commission's decision, but an applicant, before the deadline, may request, and the Energy Commission may order, an extension for good cause.

In its petition, PG&E presented several factors in support of a finding of good cause. Such an extension would allow for development of the project if PG&E receives approval from the California Public Utilities Commission to move forward and, according to PG&E, would benefit the public if circumstances require quick development of the project. PG&E stated that it also wishes to preserve the value of the site for sale to a third-party for development of the project. PG&E further noted that the Energy Commission has spent extensive staff time and resources in the development of this license during the original licensing proceeding.

This matter was heard at a regularly scheduled Business Meeting on June 3, 2009, at which time staff and petitioner addressed the Energy Commission. The Energy Commission also received public comment. The Energy Commission decided to grant an extension for 90 days and to refer the matter of "good cause" to the Siting Committee for further deliberation. The Siting Committee, presided by Commissioner Byron, with Chairman Douglas as the associate member, thereafter on June 9, 2009, issued its "Notice of Evidentiary Hearing and Committee Order Re: Applicant's Petition for Extension of License." The Order posed several questions to the applicant, staff, and interested parties and set a hearing date of July 20, 2009.

As noted in the Order, PG&E has the burden of presenting substantial evidence to support a finding of good cause. At the business meeting staff has provided support for an extension,

and has little more information to provide. In response to the Order's request for additional information on specific topics, staff offers the following points and authorities and testimony.

## **CONSEQUENCES OF EXPIRATION**

The Committee has requested information regarding the consequences, if any, of a failure to begin construction within the period established by Title 20, California Code of Regulations, section 1720.3. That section provides as follows:

Unless a shorter deadline is established pursuant to Section 25534, the deadline for commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.

Under the plain language of section 1720.3, the deadline to commence construction is five years after the effective date of the decision. By operation of law, if construction has not commenced, the certificate for a given project therefore expires on a date certain five years from the date of certification unless the Energy Commission grants an extension for good cause. There is nothing in section 1720.3 that requires additional affirmative action by the Energy Commission such as revocation. To preserve certification of a project for which construction has not yet begun within the first five years of project approval, the project owner has the burden to show good cause for an extension. Failure to meet that burden results in the lapse of the project's certification. By force of regulation, section 1720.3 subjects every certification to a five-year term in the absence of any construction activity.

Revocation is otherwise authorized under Public Resources Code section 25534 for "any material false statement" in the application or proceeding, "any significant failure to comply with the terms or conditions of approval of the application," "a violation of this division or any regulation or order issued by the commission under this division," or failure to start construction within 12 months of all permits becoming final, provided the California Consumer Power and Conservation Financing Authority notifies the Energy Commission that it is willing and able to construct the project. (Pub. Resources Code § 25534, subd. (a)(1), (2), and (3).) None of those events have occurred to warrant the Energy Commission's holding a hearing to consider revoking PG&E's certification. Nor is one necessary other than to determine whether there is good cause under section 1720.3 of the regulations. Section 1720.3, after all, does not require construction to begin within five years of project approval nor does the Energy Commission's decision require it as a condition of certification. Instead, section 1720.3, in effect, leaves the choice with the applicant or project owner whether to meet the five-year deadline, make a timely showing of good cause to justify an extension, or allow certification to lapse after five years of project approval. In sum, the Energy Commission need not act affirmatively to revoke the certificate, but must decide, at PG&E's request before the deadline, whether there is good cause for an extension under Section 1720.3 to avoid certification expiring under the terms of that section.

Additionally, the 12 month construction deadline provisions of Public Resources Code Section 25534 are inapplicable. That section states in relevant part:

- (4) The owner of a project does not start construction of the project within 12 months after the date all permits necessary for the proposed project become final .... This paragraph applies only to projects with a project permit application deemed complete by the commission after January 1, 2003.

Here, the Application for Certification was deemed complete on January 9, 2002. Moreover, the deadline provisions of Section 25534 are tied to the ability of the California Consumer Power and Conservation Financing Authority being “willing and able to construct the project.” The California Consumer Power and Conservation Financing Authority, however, is no longer a functioning entity, rendering that portion of Section 25534 without legal effect.

### **GOOD CAUSE**

Title 20, California Code of Regulations section 1720.3, provides in relevant part that:

“Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.”

Good cause is not defined within the Public Resources Code or in the Energy Commission’s regulations, and appears to be a flexible concept subject to the individual facts of a given circumstance. Good cause is “largely relative in [its] connotation, depending upon the particular circumstances of each case” (*R.J. Cardinal Co. v. Ritchie* (1963) 218 Cal.App.2d 124, 144).

Black’s Law Dictionary defines “good cause” as follows:

Good cause. Term generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law. (*People v. Gillett*, Colo., 629 P.2d 613, 618) Legally sufficient ground or reason. Phrase “good cause” depends upon circumstances of individual case, and finding of its existence lies largely in discretion of officer or court to which decision is committed. (*Wilson v. Morris, Mo.*, 639 S.W.2d 402, 407) It is a relative and highly abstract term....(*Wray v. Folsom*, 166 F.Supp 390, 394, 395)

As California courts have noted, the nature and extent of the showing necessary to satisfy the good cause requirement for an extension must, of necessity, vary with the circumstances of each case (*Chalco-California Corp. v. Superior Court of Los Angeles County* (1963) 59 Cal 2d 883). Indeed, the term “good cause” is “not susceptible of precise definition [and] its definition varies with the context in which it is used. (*Zorreno v. Unemployment Ins. Appeals Board* (1975) 47 Cal.App.3d 434, 439)

Staff reviewed the original petition filed by PG&E requesting a five-year extension of the construction deadline, and does not take issue with the representations made therein. In its

petition, PG&E presents the following factors in support of a finding of “good cause” for the extension request:

- To preserve the value of the site for sale to a third-party for development
- To enable development by PG&E in the future if PG&E gains PUC approval to move forward with the project
- PG&E customers could benefit if circumstances require quick development of the project
- The project would assist in providing customer protection if additional projects are unable to deliver electricity pursuant to their contracts with PG&E
- The Energy Commission has spent extensive staff time and resources in the development of this license

As staff has stated on the record at the business meeting, staff believes that PG&E has provided factually and legally sufficient reasons to support a finding of good cause as required by the California Code of Regulations, Title 20, section 1720.3.

Extending the start-of-construction deadline is consistent with the Energy Commission’s general interest in the development of facilities it licenses. For this reason and for the reasons provided by PG&E, staff has stated its support of the request for extension of the deadline. Staff’s position remains unchanged.

Date: July 2, 2009

Respectfully submitted,

\_\_\_\_\_/s/  
KEVIN W. BELL  
Senior Staff Counsel

**CALIFORNIA ENERGY COMMISSION**

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**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:	)	Docket No. 01-AFC-21C
	)	
	)	
TESLA POWER PROJECT	)	DECLARATION
	)	of Jack W. Caswell
_____	)	

I, Jack Caswell, hereby declare as follows:

1. I am employed as the Compliance Program Manager for the California Energy Resources Conservation and Development Commission.
2. I prepared the attached testimony relating to the Siting Committee’s Notice of Evidentiary Hearing and Committee Order Re: Applicant’s Petition for Extension of License filed June 9, 2009.
3. I am personally familiar with the facts and conclusions related in the attached testimony, and if called as a witness could testify thereto.
4. It is my professional opinion that the attached testimony is true and correct with respect to the issues discussed.
5. A copy of my professional qualifications and experience is included with the attached testimony and is incorporated by reference in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed July 1, 2009, at Sacramento, California.

\_\_\_\_\_  
/s/  
Jack W. Caswell

# **JACK W. CASWELL**

California Energy Commission Program Manager

## **EXPERIENCE SUMMARY**

Thirty-nine years of experience in project and staff management with the; California Energy Commission, State Water Resources Control Board, Electrical Construction, Steel Manufacturing Industry, and US Army.

## **PROFESSIONAL EXPERIENCE**

### **PROGRAM MANGER - 2008 to present**

California Energy Commission: Compliance Program Manager for all power plant enforcement issues related to conditions of certification issued under the licensing authority of the Energy Commission. Additional management responsibilities for the Commission's amendment process for licenses issued by the Energy Commission. Supervise Compliance Project Managers conducting review and enforcement of all conditions of certification issued in the licensing process for; electrical generating power plants 50 megawatts or greater, and all associated transmission lines, substations, natural gas lines, water delivery systems, and all other facilities related to the development of electrical energy generating resources. Manage and ensure compliance with and enforce of the Commission's license for all operational power plants for the life of the projects.

### **PROJECT MANAGER - 2000 to 2008**

California Energy Commission: Project Manager for the following Energy Commission licensing and amendment processes: Western Midway (99-AFC-09), Hanford Energy Park (00-SPPE-1); Warnerville SRG (00-AFC-11), Huntington Beach GRS (01-AFC-13), Valero Cogeneration Project (01-AFC-05), Russell City Energy Center (01-AFC-7), Tesla Power Project (01-AFC-21), Kings River Conservation District Peaking Plant (03-SPPE-2), Niland Gas Turbine Plant (06-SPPE-1), Morro Bay Power Plant Project (00-AFC-12), Blythe Energy Project Transmission Line Modification (99-AFC-8C), Walnut Creek Energy Park Delta Energy (05-AFC-2), Colusa Generating Station ((06-AFC-9C), Ivanpah Solar Electric Generating System (7-AFC-5), Delta Energy Center (98-AFC-3C) and Los Medanos Energy Centers, (98-AFC-1C) air quality amendments.

### **FACILITIES BUSINESS MANAGEMENT OFFICER - 1993 to 2000**

State Water Resources Control Board (SWRCB): Project Manager/Associate Business Management Analysts; Senior Project Manager, and technical lead for real estate, and construction, including construction budget analysis, project cost benefit analysis, project scope development. Lead staff person responsibility for the Facilities Analysis Section for Regional Water Quality Control Boards (RWQCB). Provide project recommendations to SWRCB Director and RWQCB Executive Officers. Project Manager for the SWRCB facilities development state wide.

### **LEAD ELECTRICIAN - 1990 to 1993**

Department of General Services: Project Manager and technical electrical lead for the installation of electrical transmission lines and equipment; provide cost estimates, develop drawings, operation of small power generating plants, manage complex electrical projects, supervise contractors on state projects and develop electrical maintenance procedures.

#### ELECTRICAL CONSTRUCTION PROJECT SUPERVISOR - 1981 to 1990

Electrical Contractors: Construction Supervision for commercial electrical construction projects; responsible for industrial manufacturing plants, water and sewer treatment plants, to include large residential projects. Responsible for the development of cost estimates, capitol outlay tracking, supervision of project staff, development of schedules, advised on technical engineering changes, and construction material ordering.

#### QUALITY CONTROL INSPECTOR - 1973 to 1981

Steel Manufacturing: Conducted quality control inspections, and implement quality assurance procedures in the steel manufacturing industry. Elected as a grievance representative in 1974, responsible for representing Sacramento local United Steelworkers of America membership in grievance proceedings with a local steel product manufacturing company.

#### US ARMY/RA - 1970 to 1972

Infantry Sergeant, Fort Ord California, and Fort Lewis Washington, Military Police, Pan Mun Jom Korea.

#### **Education**

- Sierra College
- State Training Center, Analyst Course Studies and Supervisory Development Program
- Electrical Construction Technical School



## ISSUES ON GOOD CAUSE

3. Is there good cause for an extension of the construction deadline for Tesla?

**Answer:** Staff's position is that the reasons provided by the Project Owner in the original request provide grounds to find good cause for an extension. Past decisions by the Energy Commission have allowed for extensions to "Start of Construction" amendment requests for reasons similar to those provided by PG&E. Moreover, I understand the Energy Commission to have an interest in the construction and operation of the facilities it certifies. With that in mind, staff considers PG&E's reasons to be reasonable grounds to extend the construction deadline for the Tesla project.

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?

**Answer:** Staff does not have enough information on this issue based on the information provided by the Project Owner in the current amendment petition.

b) What are the harms, if any, of an extension to the ratepayers the Project would serve? To the general public?

**Answer:** Staff does not have enough information on this issue based on the information provided by the Project Owner in the current amendment petition.

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?

**Answer:** Staff's only knowledge on this issue is based on the Project Owner's amendment petition requests. Recent change of ownership in December 2008 may be the reason for the requested extension.

d) What efforts were made by the previous and current Project Owner to meet pre-construction requirements contained in the Conditions of Certification?

**Answer:** None that Staff is aware of.

e) Will the Project Owner have the financial ability to build the Project if an extension is granted?

**Answer:** Staff has no knowledge on the financial limitations or abilities of the Project Owner.

f) What plans does the Project Owner have to market the Project to other power plant developers?

**Answer:** Staff has no knowledge of the Project Owner's plans on this issue.

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;

**Answer:** Staff anticipates large changes to this project based only on informal discussion with the new Project Owner, but has no written information or filing on the future plans for this project. Based on discussion only, the project description would likely change.

(2) applicable laws, ordinances, regulations, or standards (“LORS”) have changed;

**Answer:** Staff has no detailed information on the project’s future design plans at this time, which it would need to determine the applicability of and LORS that have changed since certification.

(3) environmental conditions in the site area have changed;

**Answer:** Staff has no new factual information regarding the environmental conditions in the site area at this time.

(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.

**Answer:** Staff would require more information from the Project Owner on its proposed design plans for this project in order to respond to this question

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.)

**Answer:** Staff analyzes a major amendment through a detailed, multi-disciplinary Staff Assessment that identifies potential significant impacts (direct, indirect, and cumulative) associated with the proposed amendment and assesses feasible mitigation and alternatives depending on the impacts identified. The Staff Assessment is subject to public review and at least one hearing. Staff reviews the entirety of the proposed major amendment, including all foreseeable project changes and potential impacts and, therefore, does not piecemeal the “project” as proposed. Staff understands the major amendment itself to be the “project” under CEQA and,

by its comprehensive and multidisciplinary assessment, staff provides the public with detailed information about the amendment.

- i) How much money, calendar time, and person-years of effort would need to be expended (by the Energy Commission, the Project Owner, or others) to do the revision and updating described under 3.g.?

**Answer:** Staff would require an amendment petition in order to fully understand any project plans and to fully respond to this question with a meaningful estimate. With respect to the factors of money, calendar time, and person years of effort, staff cannot respond because PG&E's project characteristics are unknown.

- 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?

**Answer:** Unless PG&E fails to get an extension under section 1720.3, it would need to file a petition to amend the project to make the changes described in previous discussions with the Project Owner.

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 Energy Commission, the Project Owner, and others) for the Project Owner to file, and the Energy Commission to process, a petition to amend or a new AFC?

**Answer:** See answer to 3. i) above. Depending on the level of review required by the amendment petition request, an AFC level review may be required. More information is needed by Staff to accurately answer this question.

- 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?

**Answer:** Staff needs to have at least a conceptual idea of the project PG&E would build in order to provide a meaningful response on permits, if any, must still be obtained or renewed. Additionally, staff would require pre-filing meetings with the Project Owner to include other agencies input to assess the impacts to staff's time and the costs associated with staff efforts. The level of review would have both time and cost impacts which are unknown without more information from the Project Owner.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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APPLICATION FOR CERTIFICATION  
FOR THE *Tesla Power Project*

DOCKET No. 01-AFC-21C

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DECLARATION OF SERVICE

I, Janet Preis declare that on July 2 2009, I served and filed copies of the attached **STAFF'S Request for Leave to File its Brief and Testimony**. 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: [\[www.energy.ca.gov/sitingcases/tesla\]](http://www.energy.ca.gov/sitingcases/tesla).

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;

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**OR**

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

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Attn: Docket No. 01-AFC-21C

1516 Ninth Street, MS-4

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

\_\_\_\_\_  
/s/