

DOCKET

08-AFC-8

DATE MAR 25 2010

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STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:

Application for Certification
For Hydrogen Energy California

Docket No. 08-AFC-8

March 25, 2010

Energy Commission Staff's Issues Statement

On March 16, 2010, the Committee assigned to this proceeding issued a Notice of Mandatory Status Conference and requested that parties file an Issues Statement prior to the status conference addressing two points: 1) whether, and to what extent, compliance with the critical dates specified in the current Scheduling Order might be in question; and (2) recommend reasonable solutions to ensuring compliance. Staff herein addresses these two points.

I. A Change to the Proposed Project and Uncertainty Regarding the Appropriate Approach to Analyzing and Permitting the Applicant's Carbon Sequestration Proposal Has Resulted in a Slip in the Project Schedule.

The most recent scheduling order adopted by the committee was adopted shortly after the HECA application was deemed complete and established January 21, 2010 as the target date for a Preliminary Staff Assessment (PSA) for this project. The project has not proceeded according to schedule for various reasons, including the submittal of an AFC amendment shortly after the scheduling order was issued, applicant's request for additional time (30, 60, and 90 days) to respond to data requests, and the lack of information provided regarding the carbon sequestration proposal. Most significant to project schedule, however, has been the attempt by the parties and outside agencies such as the Division of Oil, Gas, and Geothermal Resources (DOGGR) to determine how to analyze and ultimately permit a proposal by a project applicant to permanently sequester carbon emissions through a third party not under Energy Commission jurisdiction (Occidental Petroleum (Oxy)). The applicant originally proposed having DOGGR undertake the analysis of the carbon sequestration proposal and attach any necessary monitoring and mitigation measures to Oxy's Class II Underground Injection Control (UIC) permit for Enhance Oil Recovery (EOR). Attempts by staff to obtain further information and details about the carbon sequestration proposal were objected to by the applicant, who informed staff that all necessary information would be made available through the DOGGR permit process, and that DOGGR should take the lead on analyzing the proposal. As a result, on November 19, 2009, Energy Commission staff met with DOGGR staff to pursue the applicant's proposed approach only to be informed that

DOGGR did not believe it had the authority to permit a proposal that involved both enhanced oil recovery (EOR) and permanent carbon sequestration. In response, applicant and Oxy have proposed an alternative approach that would have DOGGR permitting EOR and folding in any conditions the Energy Commission determined were necessary to ensure that the EOR permit led to permanent sequestration of HECA's carbon emissions. At this time it is not certain whether DOGGR could affix requirements involving permanent carbon sequestration to a Class II permit for EOR. Staff looks forward to continued cooperation with the applicant, DOGGR, and other interested agencies and parties in attempting to resolve these outstanding legal and technical uncertainties.

II. Staff Recommends a Change in the Project Schedule and Requests that Applicant Ensure That Outstanding Information Is Provided in a Timely Manner.

Staff proposes the following revisions to the scheduling order: PSA to be published in August, 2010 and an FSA to be published in November, 2010. Staff believes that August is a reasonable timeframe for PSA publication given the competing analytical and scheduling needs of the solar projects and the additional time necessary to analyze Oxy's forthcoming carbon sequestration proposal. Additionally, the San Joaquin Valley Air Pollution Control District (SJVAPCD) has informed us that a Preliminary Determination of Compliance (PDOC), which is necessary to complete the Air Quality section of the PSA, will not be released until mid-June at the earliest. In the meantime, staff is coordinating a data response workshop with the applicant to take place in early April to discuss the information provided by the applicant and identify any other information staff might need to analyze the proposed project. The schedule revisions proposed will assure that a Final Energy Commission Decision is made well before HECA's stated deadline of October 2011.

As noted above, in order for staff to meet this schedule a few outstanding items are needed. The applicant needs to provide a final offset package to the SJVAPCD so that the air district can issue a PDOC for incorporation into staff's air quality analysis. Staff has been informed that the applicant is in the process of finalizing this package. Staff also needs detailed information concerning the carbon sequestration proposal promised by Oxy, which it had committed to providing starting in mid-February. Staff has been informed that this information will be provided starting the second week in April, with additional information to follow. It should be noted that even with this information, unless legislative and regulatory changes are made to satisfy DOGGR that it can impose conditions requiring and ensuring permanent sequestration of carbon initially injected for EOR, staff may not be able to conclude that a long-term monitoring and mitigation program can be enforced against Oxy or potential future users of the oilfield to ensure that HECA's carbon emissions are permanently sequestered. In such an event, staff may be left with analyzing what percentage of carbon is permanently sequestered using standard EOR measures (and not subject to future release if pumping is resumed at the chosen oilfield) and then assuming the rest is ultimately released into the atmosphere. Staff looks forward to Oxy's proposal to resolve this and other technical and legal issues

surrounding the permanent sequestration of carbon and is committed to working cooperatively to try to resolve these complex questions.

DATED: March 25, 2010

Respectfully submitted,

/S/

LISA M. DECARLO
Senior Staff Counsel
California Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814
Ph: (916) 654-5195
ldecarlo@energy.state.ca.us



**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 *HYDROGEN ENERGY*
*CALIFORNIA PROJECT***

Docket No. 08-AFC-8

**PROOF OF SERVICE LIST
(Rev. 2/8/10)**

APPLICANT

Gregory D. Skannal
Tiffany Rau
Rick Harrison
Hydrogen Energy International LLC
One World Trade Center, Suite 1600
Long Beach, CA 90831
gregory.skannal@hydrogenenergy.com
tiffany.rau@hydrogenenergy.com
rick.harrison@hydrogenenergy.com

Asteghik Khajetoorians,
Senior BP Legal Attorney
BP America, Inc.
6 Centerpointe Drive, LPR 6-550
La Palma, CA 90623
Asteghik.Khajetoorians@bp.com

APPLICANT'S CONSULTANT

Dale Shileikis, Vice President
Energy Services Manager
Major Environmental Programs
URS Corporation
221 Main Street, Suite 600
San Francisco, CA 94105-1917
dale_shileikis@urscorp.com

COUNSEL FOR APPLICANT

Michael J. Carroll
Latham & Watkins, LLP
650 Town Center Drive, 20th Fl.
Costa Mesa, CA 92626-1925
michael.carroll@lw.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

INTERVENORS

Tom Frantz
Association of Irrigated Residents
30100 Orange Street
Shafter, CA 93263
tfrantz@bak.rr.com

ENERGY COMMISSION

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

JEFFREY D. BYRON
Commissioner and Associate
Member
jbyron@energy.state.ca.us

Raoul Renaud
Hearing Officer
rrenaud@energy.state.ca.us

Kristy Chew
Adviser to Commissioner Boyd
kchew@energy.state.ca.us

Rod Jones
Project Manager
rjones@energy.state.ca.us

Lisa De Carlo
Staff Counsel
ldecarlo@energy.state.ca.us

Jennifer Jennings
Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Janet Preis, declare that on March 25, 2010, I served and filed copies of the Energy Commission Staff's Issue Statement. 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/hydrogen_energy].

The documents have 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;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date 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. 08-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

/s/ Janet Preis _____