

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION****DOCKET****02-AFC-2C**DATE Nov. 14 2011RECD. Nov. 14 2011

In the Matter of:)	Docket No. 02-AFC-2C
)	
BLACK ROCK 1, 2, AND 3)	STAFF'S ANALYSIS
GEOTHERMAL POWER PLANT)	AND RECOMMENDATION
)	Regarding the Requested Extension of
)	the Deadline for
CE Obsidian Energy, LLC)	Commencement of Construction
_____)	(Title 20, Section 1720.3)

INTRODUCTION

The proposed Black Rock 1, 2, and 3 Geothermal Power Plant (Black Rock), owned by CE Obsidian Energy, LLC, (CE Obsidian) is a 159-megawatt geothermal power plant near Calipatria, California, and is located approximately 1000 feet from the Salton Sea in Imperial County. Black Rock was certified by the California Energy Commission on December 17, 2003. A previous Petition to Extend Deadline for Commencement of Construction Commission for 3 years, from December 18, 2008 to December 18, 2011, was approved by the Energy Commission on December 19, 2007. An amendment was approved by the Energy Commission on February 2, 2011, significantly revising project, and changing the name from the Salton Sea Unit 6 Geothermal project to become the Black Rock 1, 2, and 3 Geothermal project.

On August 3, 2011, the project owner filed the instant Petition to Extend the Deadline to Commence Construction for Black Rock from December 18, 2011 to December 18, 2014. For the reasons set forth below, staff supports this petition.

ANALYSIS

Title 20, California Code of Regulations, section 1720.3 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 Commission grants an extension for good cause.

Good cause is not defined within the Public Resources Code or in the 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).

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)

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.

Staff reviewed the original petition filed by CE Obsidian requesting a three year extension of the construction deadline, extending that date to December 18, 2014. In each of the technical areas that are involved in the Energy Commission's license, staff has identified no concerns regarding such an extension.

Staff has taken into consideration several factors in its analysis of whether good cause exists. These include whether the CE Obsidian has been diligent in its attempts to begin construction of the facility, whether factors outside CE Obsidian's control have prevented the construction of the project, and a comparison of the amount of time and resources that would have to be spent in processing any required amendments to the project if extension is granted as opposed to the amount of time and resources that would be spent in processing a new AFC if the extension were denied. Staff has also considered the nature of the project in making its determination.

1. Diligence

The AFC for this project was filed in July 2002, and the Commission granted the license to construct and operate the facility in December 2003. On March 12, 2009, CE Obsidian filed a Petition to Amend the project, significantly changing the size and scope of the facility, which was approved by the Energy Commission in February 2011.

Staff notes that since the granting of the Petition to Amend, CE Obsidian has signed a generator interconnection agreement with the IID and has made a down payment for transmission system improvement costs of approximately \$1.7 million. Additionally, CE Obsidian is pursuing a Power Purchase Agreement (PPA) that is projected to take until March 2012 to complete. After the PPA contract is submitted to the California Public Utilities Commission (CPUC) for approval, staff understands that it could take six months (or more) to complete. Lastly, CE Obsidian expects to close on project financing after the CPUC approves the power purchase agreement—possibly November, 2012.

2. Factors outside the project owner's control that have prevented the start of construction

Staff notes that the precious metals needed for the steam producing pipes is in short supply and will take more time to acquire and manufacture than ordinary steam piping. This is a factor beyond the control of the project owner that has delayed construction of the project. There are other factors that may or may not have been outside the control of the project owner that in turn have delayed the start of construction. These factors include the delay of resolution of electrical transmission with the Imperial Irrigation District (IID), the delay in obtaining a Power Purchase Agreement (PPA), and the time that it took for the Staff and the Commission to conduct a thorough and exhaustive review of the major amendment approved by the Commission earlier this year that substantially changed the project.

3. A comparison of the amount of time and resources that would have to be spent in processing any required amendments to the project if extension is granted as opposed to the amount of time and resources that would be spent in processing a new AFC if the extension were denied.

Significant staff resources have gone into this project. Staff conducted a thorough and exhaustive environmental review of Black Rock during the course of the AFC proceeding from the time that the AFC was filed through the granting of the license in December 2003. Further, staff and the Energy Commission recently processed a major Amendment, conducting almost an AFC level of review of the potential effects of the proposed changes, approving a project that is not only fully mitigated but that represents fewer impacts than the original project. Staff has a strong interest in ensuring that those projects that are licensed by the commission are constructed and operated according to the terms and conditions of certification. A similar amount of time would have to be spent reviewing a new AFC, time that staff feels would be unnecessary based on the Energy Commission's recent environmental review.

4. The nature of the project

Black Rock is a geothermal project that, if constructed, will help California reach its goal of 33% renewal power by 2020. Staff recognizes that geothermal electrical generation is

a superior source of energy because it is available 24 hours a day, 7 days a week. Again, staff has a strong interest in ensuring that those projects that are licensed by the commission are constructed and operated according to the terms and conditions of certification, a position that is especially true with respect to renewable generation.

CONCLUSION

Appearing before the Commission, CE Obsidian is requesting a three year extension of its deadline to construct the Black Rock 1, 2, and 3 Geothermal Power Plant. Extending the start-of-construction deadline is consistent with the Energy Commission's general interest in the development of facilities it licenses. Given the above, staff supports this request, and recommends approval of the Petition to Extend the Deadline to Commence Construction to December 18, 2014.

Date: November 14, 2011

Respectfully Submitted,

Original signed by
Kevin W. Bell
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