

STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

California Energy Commission
DOCKETED 11-AFC-2
TN # 68789 DEC. 06 2012

In the Matter of:

APPLICATION FOR CERTIFICATION FOR THE
HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM

Docket No. 11-AFC-02

**OBJECTION TO ORDER DENYING MOTION
TO TERMINATE APPLICATION FOR CERTIFICATION FOR THE HHHSEGS**

Cindy R. MacDonald/Intervenor
3605 Silver Sand Court
North Las Vegas, NV 89032
sacredintent@centurylink.net

On November 21, 2012, I filed the Motion To Terminate The Application For Certification For The Hidden Hills Solar Electric Generating System under the authority of § 20 C.C.R. 1720.2, which states:

§ 20 C.C.R. 1720.2. Termination of NOI, AFC, and SPPE Proceedings. (a) The committee or any party may, based upon the applicant's failure to pursue an application or notice with due diligence, file a motion to terminate the notice or application proceeding. Within 30 days of the filing of such a motion, the committee may hold a hearing and provide an opportunity for all parties to comment on the motion. Following the hearing, the committee shall issue an order granting or denying the motion. (b) A committee order terminating a proceeding must be approved by the full commission. [emphasis added].

Within this Motion, four separate and distinct subject matters were presented to the Committee to provide clear evidence of the Applicant's failure to exercise or pursue due diligence upon filing the Application For Certification and throughout the application proceedings.

On November 29, 2012, the Committee issued an Order denying the Motion based on the following reasons:

1. The procedural vehicle relied upon by the Motion to Terminate the HHSEGS rests on Public Resource Code § 25534, which only applies to post-certification of a facility.
2. The Motion was untimely as the AFC process is still in the pre-hearing stage.
3. The Committee must defer consideration of questions of fact until they can be tested openly and fairly in an evidentiary hearing.
4. The Final Staff Assessment of the proposed project will likely be published in mid-December and the evidentiary hearings will commence relatively soon thereafter.

Based on the reasons set forth in the Committee's denial of the Order to Terminate the Hidden Hills SEGS Application for Certification, I would like to publicly object to the Committee's Order for the following reasons.

1. The Committee's Order Ignores the Primary Regulatory Authority On Which The "Motion To Terminate" Rests

The Committee's Order cites the Motion To Terminate the Application for the Certification of the Hidden Hills Solar Electric Generating System rests upon Public Resource Code § 25534, which only applies to post-certification of a facility. This is incorrect.

The Motion rests on § 20 C.C.R. 1720.2, Termination of AFC, which has been filed as a result of the Applicant's consistent and demonstrable failure to exercise due diligence in the AFC proceedings. (See Motion to Terminate Application For Certification For the Hidden Hills Solar Electric Generating System, Intervenor MacDonald, p. 5, p. 27)

As previously stated, the Applicant has done this by not accurately or truthfully informing the Commission, Staff and interested parties of materially relevant facts, falsifying material facts, misrepresenting material facts, omitting key material facts, failing to disclose potential risks, possible public safety hazards, reliability and equipment issues associated with the proposed project's design that were self described by Applicant as "significant" and "substantial", has committed perjury in at least two verifiable instances through statements that were neither truthful or accurate to the best of Applicant's knowledge and has repeatedly demonstrated Applicant will not voluntarily disclose pertinent or critical information in the AFC or throughout these proceedings.

Additionally, the Committee's Order seems to indicate that violations of statutes regarding the submission of false and misleading statements in the AFC process is only of concern to the

Committee *post*-certification, that evidence of these same violations prior to its certification does not warrant an investigation or hearing on the matter to determine if continuation of the AFC proceedings can be justified.

Therefore, I object to the Committee's Order based on the fact it did not acknowledge or address the fundamental and primary reasons for filing the "Motion To Terminate", despite its regulatory duties to do so, as well as setting aside the prescribed procedures for upholding these duties as set forth in § 20 C.C.R. 1720.2.

Instead, the Committee has deferred its duties to examine and issue an Order based on the evidence provided in the Motion To Terminate to a future date, even though identical arguments will be presented again before the Committee – though at significantly greater expense to the public due to the Committee's decision to defer making a decision.

2. The "Motion To Terminate" Is Timely And In Compliance With § 20 C.C.R. 1720.2

The Committee's Order to deny the Motion To Terminate the HHSEGS AFC by citing it was filed "prematurely" has no basis in fact. The regulations governing the processing of an Application for Certification include the right of any party *at any time* throughout the AFC proceedings to file a Motion To Terminate an Application for Certification pursuant to the provisions outlined in § 20 C.C.R. 1720.2.

Additionally, there is no regulation that requires the Committee to limit evidence, responses, comments, or testimony associated with a Motion To Terminate an Application For Certification to exclusively an Evidentiary Hearing. To the contrary, the only regulation set forth that outlines the recommended procedures the Committee should follow once a Motion to Terminate has been filed is the Committee may initiate public hearings and provide an opportunity for all parties to

comment based solely and exclusively for the purpose of ascertaining facts surrounding an Applicant's failure to exercise due diligence at any time throughout the AFC proceedings.

Therefore, I object to the Committee's Order denying the Motion To Terminate the HHSEGS AFC based on the reason that filing the Motion was premature as it was both timely and in compliance with the regulatory stipulations outlined in § 20 C.C.R. 1720.2.

3. Committee's Reasons For Deferment Has No Basis in Regulatory Statute or Fact

One of the reasons cited by the Committee and used to support the Order to deny the Motion to Terminate the HHSEGS AFC is through the statement, "The Committee must defer consideration of questions of fact until they can be tested openly and fairly in an evidentiary hearing."

As previously stated, the only regulation set forth that outlines the recommended procedures the Committee should follow once a Motion to Terminate has been filed is the Committee may initiate public hearings and provide an opportunity for all parties to comment based solely and exclusively for the purpose of ascertaining facts surrounding an Applicant's failure to exercise due diligence at any time throughout the AFC proceedings.

The Committee's stated requirements that they "must defer" consideration of these issues to the Evidentiary Hearing has no basis in either statute or fact. Clearly, the Committee is duly authorized to conduct a Hearing regarding the Motion To Terminate the HHSEGS, which is well within the scope of their authority and has been appropriately provided for in regulations governing the Commission for power plant siting purposes. In fact, the inclusion of § 20 C.C.R. 1720.2 within the regulatory framework governing power plant siting procedures would indicate it was the legislative intent to provide for a preferred method and forum for weighing and deciding issues such as presented in the Motion To Terminate the HHSEGS AFC.

Instead, the Committee's Order to deny the Motion sets aside these regulatory procedures, failed to provide any opportunity for party responses to the Motion, provided no meaningful reason as to why a public hearing to the specific issues raised in the Motion To Terminate the HHSEGS AFC were not considered, cites no regulatory requirement to justify the deferment of these issues to the Evidentiary Hearings, provides no reasons as to why the Committee believes it is appropriate for Applicant to testify under oath at the Evidentiary Hearings when questions of perjury and failure to exercise due diligence remain unresolved or how the deferment of deciding on these identical issues at some point in the future serves the public interest in any manner.

Additionally, the Committee's response of deferring their consideration of questions of fact "until they can be tested openly and fairly in an evidentiary hearing" has caused some measure of alarm as it seems to indicate the Committee is stating that filing Motions, Responses To Motions, or any other sort of authorized public Hearing during the AFC process does not contain an equal standard or that the Committee is only capable of testing questions of facts in an open and fair manner exclusively at an Evidentiary Hearing.

Therefore, I object to the Committee's Order denying the Motion To Terminate the HHSEGS AFC based on the reasons set forth above as it obviously well within the Committee's scope and authority to immediately address the issues raised therein through a public hearing and party responses dedicated solely for purposes of weighing evidence regarding whether Applicant has indeed, exercised due diligence in the AFC proceedings thus far.

4. Deferment Does Not Serve The Public Interest

The Committee's Order denying the Motion To Terminate the HHSEGS also cites the likely publication of the Final Staff Assessment in mid-December and the commencement of the

Evidentiary Hearings relatively soon after.

When the Final Staff Assessment (FSA) is published, it will have no bearing on the Applicant's failure to apply due diligence through appropriate disclosure upon filing the AFC or during these proceedings. The FSA is not a document designed to address the legal questions and issues raised regarding the Applicant's failure to exercise due diligence as cited in the Motion To Terminate the HHSEGS AFC. Therefore, its publication will be of no assistance in determining the facts surrounding the Applicant's non-disclosures, misrepresentations, omissions and falsifications during the AFC process.

To the contrary, the FSA will rely heavily upon what has been disclosed by the Applicant regarding the proposed project thus far. To publish the FSA while knowing there are significant and substantial issues that affect a wide variety of technical areas the FSA is suppose to examine regarding the proposed project that were never disclosed by Applicant over the course of these proceedings, issues that may make Staff's conclusions and recommendations irrelevant, is merely an exercise of procedural motions for purposes of administrative convenience that fails to accomplish the intent and purpose of the FSA or the AFC proceedings.

Therefore, I object to the Committee's Order denying the Motion To Terminate the HHSEGS AFC based on the reasons set forth above and with respect to how the Order serves the public interest by deferring the issues raised in the Motion To Terminate the HHSEGS AFC until after the FSA publication.

5. Deferment Fails To Support Informed Decision Making

The Committee's Order denying the Motion to Terminate the HHSEGS AFC rests heavily upon the proximity of the publication of the FSA and the upcoming Evidentiary Hearings

commencing “relatively soon thereafter”. Logic suggests it is the Committee’s reasoning that the proximity of these two events will allow for “my day in court” and justifies deferment.

However, while this justification may appear superficially reasonable, it fails to accurately reflect the months of ongoing efforts to engage Applicant, Staff and other regulatory agencies to address what I believe are outstanding issues associated with the proposed facility, its design, operations, output, reliability, efficiency, performance, etc., and some of these outstanding issues are a direct result of what Applicant disclosed to investors that have not been equally disclosed in the AFC process thus far.

On March 9, 2012, I submitted extensive preliminary comments during the Discovery period regarding the proposed project, which included many questions and/or recommendations related to these same topics. (*See* C.R.MacDonald, Preliminary Comments, Technical Analysis & Recommendations, Sections: Air Quality, Hazardous Waste, Heliostats, Operations and Land Use/Development/Zoning).

Included within those comments was a direct reference to Bright Source’s Amendment No. 2 filed on June 9, 2011 with the Security Exchange Commission that specifically incorporated and sought to address the largely unproven mirror cleaning equipment that was also incorporated in the November 21, 2012 filing of the Motion To Terminate the HHSEGS AFC. (*See* C.R. MacDonald, Preliminary Comments, Technical Analysis & Recommendations, Heliostats, #10. Mirror Degradation: Impacts To Performance, p. 83).

However, upon publication of the Preliminary Staff Assessment (PSA), CEC Staff cited that no comments were received regarding these topics. Therefore, the majority of the issues raised prior to its publication were not addressed at this time.

On July 19, 2012, I submitted additional comments regarding the PSA, which included a significant amount of discussion and/or questions regarding topics associated with facility operations. (*See Supplemental Comments and Analysis, MacDonald PSA Comments, Sections: Air Quality, Facility Design, Hazardous Materials, Heliostats, Noise & Vibration, Operations, Soils & Surface Waters, Visual Resources, and Waste Management.*)

On July 23, 2012, I submitted “Supplemental Comments and Analysis, Set II, Mirror Washing Machines: Feasibility and Emissions Analysis” that dealt exclusively with questions and issues associated with the MWM’s impact to the facility design, operations, accuracy and performance.

On August 10, 2012, I submitted a letter to the Environmental Protection Agency asking for a review of the Great Basin Unified Air Pollution Control Districts Final Determination of Compliance for the proposed HHSEGS. This letter raised many issues and questions regarding the feasibility of the Mirror Washing Machines, facility design, output, performance, reliability, efficiency, renewable qualifications of the proposed power plant, data adequacy and emissions calculations related to facility operations as a whole. (*See 2012-08-13 Letter From Cindy MacDonald to EPA.*)

On August 24, 2012, CEC Project Manager Mike Monasmith and I engaged in a group email exchange regarding an upcoming August 28, 2012 joint workshop for Hidden Hills and Rio Mesa SEGS. The discussions included the possibility of addressing other topics at this workshop as well as potentially considering issues to be addressed at a tentative workshop in September. Here, I raised additional issues I wanted to see addressed in upcoming workshops for issues resolution, which included the topic of Operations as I hoped this would be general enough to allow for all the related technical areas incorporated in my previous comment submissions.

However, no further workshops were ever scheduled until the recently noticed December 5th, 2012, workshop, which continued to explore issues solely related to impacts of solar flux on biological resources. Therefore, no opportunity has been made available to potentially address, gather evidence or resolve these issues prior to the Evidentiary Hearings.

At the November 15, 2012, CEC Status Conference, I informed the Committee that a wide range of issues associated with the operations of the proposed project had yet to be addressed, that of the fourteen scheduled workshops over the course of the HHSEGS AFC proceedings, not one of them formally scheduled topics to address technical issues associated with facility operations or included the attendance of Applicant and Staff experts on these subject matters.

Now, nine months since my first comment submission, the Committee's Order cites the proximity of impending procedural timelines, including the publication of the FSA, as reason to continue to defer addressing some of the critical issues that have already been repeatedly deferred time and time again.

Therefore, I object to the Committee's Order denying the Motion To Terminate the HHSEGS AFC based on the reasoning that the proximity of the publication of the FSA and the upcoming Evidentiary Hearings commencing "relatively soon thereafter" is adequately substantive to support deferring such critical issues yet again as it refused to recognize or acknowledge the impacts on informed decision making the Applicant's failure to exercise due diligence has had, and will have, on the FSA, the Evidentiary Hearings, interested parties and the public at large.

Dated: December 6, 2012

Sincerely,



Cindy R. MacDonald/Intervenor
3605 Silver Sand Court
North Las Vegas, NV 89032



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
HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM**

Docket No. 11-AFC-02

PROOF OF SERVICE
(Revised 9/20/12)

APPLICANT

BrightSource Energy
Stephen Wiley
1999 Harrison Street, Suite 2150
Oakland, CA 94612-3500
swiley@brightsourceenergy.com

BrightSource Energy
Bradley Brownlow
Michelle L. Farley
1999 Harrison Street, Suite 2150
Oakland, CA 94612-3500
bbrownlow@brightsourceenergy.com
mfarley@brightsourceenergy.com

BrightSource Energy
Clay Jensen
Gary Kazio
410 South Rampart Blvd., Suite 390
Las Vegas, NV 89145
cjensen@brightsourceenergy.com
gakazio@brightsourceenergy.com

APPLICANTS' CONSULTANTS

Strachan Consulting, LLC
Susan Strachan
P.O. Box 1049
Davis, CA 95617
susan@strachanconsult.com

CH2MHill
John Carrier
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833-2987
jcarrier@ch2m.com

COUNSEL FOR APPLICANT

Ellison, Schneider and Harris, LLP
Chris Ellison
Jeff Harris
Samantha Pottenger
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
cte@eslawfirm.com
jdh@eslawfirm.com
sqp@eslawfirm.com

INTERVENORS

Jon William Zellhoefer
P.O. Box 34
Tecopa, CA 92389
jon@zellhoefer.info

Center for Biological Diversity
Lisa T. Belenky, Sr. Attorney
351 California Street, Suite 600
San Francisco, CA 94104
lbelenky@biologicaldiversity.org

Center for Biological Diversity
Ileene Anderson, Public Lands
Desert Director
PMB 447
8033 Sunset Boulevard
Los Angeles, CA 90046
ianderson@biologicaldiversity.org

Old Spanish Trail Association
Jack Prichett
857 Nowita Place
Venice, CA 90291
jackprichett@ca.rr.com

INTERVENORS (con't.)

Cindy R. MacDonald
3605 Silver Sand Court
N. Las Vegas, NV 89032
sacredintent@centurylink.net

Richard Arnold
P.O. Box 3411
Pahrump, NV 89041
rwarnold@hotmail.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

Great Basin Unified APCD
Duane Ono
Deputy Air Pollution Control Officer
157 Short Street
Bishop, CA 93514
dono@gbuapcd.org

County of Inyo
Dana Crom
Deputy County Counsel
P.O. Box M
Independence, CA 93526
dcrom@invocounty.us

Nye County
Lorinda A. Wichman, Chairman
Board of County Supervisors
P.O. Box 153
Tonopah, NV 89049
lawichman@gmail.com

INTERESTED AGENCIES (con't.)

Nye County Water District
L. Darrel Lacy
Interim General Manager
2101 E. Calvada Boulevard
Suite 100
Pahrump, NV 89048
llacy@co.nye.nv.us

National Park Service
Michael L. Elliott
Cultural Resources Specialist
National Trails Intermountain
Region
P.O. Box 728
Santa Fe, NM 87504-0728
Michael_Elliott@nps.gov

*Southern Inyo
Fire Protection District
Larry Levy, Fire Chief
P.O. Box 51
Tecopa, CA 92389
sifpd@yahoo.com

**ENERGY COMMISSION –
DECISIONMAKERS**

KAREN DOUGLAS
Commissioner and Presiding Member
karen.douglas@energy.ca.gov

CARLA PETERMAN
Commissioner and Associate Member
carla.peterman@energy.ca.gov

Ken Celli
Hearing Adviser
ken.celli@energy.ca.gov

Eileen Allen
Commissioners' Technical
Advisor for Facility Siting
eileen.allen@energy.ca.gov

Galen Lemei
Advisor to Presiding Member
galen.lemei@energy.ca.gov

Jennifer Nelson
Advisor to Presiding Member
jennifer.nelson@energy.ca.gov

Jim Bartridge
Advisor to Associate Member
jim.bartridge@energy.ca.gov

**ENERGY COMMISSION –
STAFF**

Mike Monasmith
Senior Project Manager
mike.monasmith@energy.ca.gov

Richard Ratliff
Staff Counsel IV
dick.ratliff@energy.ca.gov

Kerry Willis
Staff Counsel
kerry.willis@energy.ca.gov

**ENERGY COMMISSION –
PUBLIC ADVISER**

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

DECLARATION OF SERVICE

I, Cindy R. MacDonald, declare that on December 6, 2012, I served and filed copies of the attached Objection To Order Denying Motion To Terminate Application For Certification for the HHSEGS, dated December 6, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/hiddenhills/index.html.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- X Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. 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 "e-mail preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- X by sending an electronic copy to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

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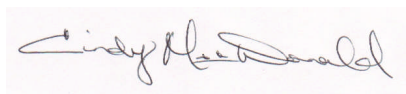
Attn: Docket No. 11-AFC-02
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
michael.levy@energy.ca.gov

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



Cindy R. MacDonald