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

In the Matter of:	)	Docket No. 07-AFC-1C
	)	
VICTORVILLE 2	)	STAFF'S ANALYSIS
HYBRID POWER PROJECT	)	AND RECOMMENDATION
	)	Regarding the Requested Extension of
	)	the Deadline for
	)	Commencement of Construction
	)	(Title 20, Section 1720.3)

INTRODUCTION

On February 28, 2007, the City of Victorville filed an Application for Certification with the California Energy Commission (Energy Commission) to construct and operate the Victorville 2 power plant. As proposed, the project will be a 563 megawatt (MW) hybrid natural gas-fired combined cycle and solar thermal power plant. The Project would be located at the Southern California Logistics Airport on a 300 acre site, in Victorville, California. On July 16, 2008, by adoption of Order No. 08-0716-2, the Energy Commission issued its final decision (Decision) approving the Application for Certification (AFC) and granting the City of Victorville a certificate to construct and operate the Project.

On March 28, 2013, the City of Victorville timely filed a Petition to Extend the Deadline to Commence Construction pursuant to Title 20, California Code of Regulations, section 1720.3, requesting that the deadline be extended for a period of five years.

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 Petition filed by the City of Victorville requesting a five-year extension of the construction deadline, and has taken into consideration several factors in its analysis of whether good cause exists. These include whether the City of Victorville has been diligent in its attempts to begin construction of the facility, whether factors outside the City of Victorville'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.

1. Diligence

The AFC for this project was filed in February 2007, and the Energy Commission granted the license to construct and operate the facility in July 2008. The City had previously acquired a Services Agreement with Inland Energy, Inc., after which an initial kick-off meeting was held and numerous pre-construction documents were submitted for review and approval by Commission staff. Furthermore, the City has reported that it expended significant efforts to secure a power purchase agreement, and has continued

in its efforts to locate investors to complete the remaining development of the Project. The City has also paid the last four years of compliance fees. It therefore appears to staff that the City of Victorville has demonstrated an acceptable level of diligence to further develop the project according to the certification granted by the Commission.

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

The City of Victorville cites the collapse of certain credit markets and the deterioration of the national economy as the primary factors beyond their control that have led to the City's inability to begin construction within the five year timeframe as set forth in Title 20, California Code of Regulations, section 1720.3.

In balance, the City also notes in Sections V and VI of its Petition that the market conditions of the immediate future are improving. Staff strongly supports the continued development of renewable energy resources, and acknowledges the important role that facilities such as Victorville 2 play in furthering such development. The City would like to recover its significant investment in the Victorville 2 project, and also expresses optimism at the improving prospect of beginning construction, spurred primarily by certain developments with the City's financial future and the new requirements imposed in California's Renewable Portfolio Standard.

The neighboring City of Adelanto and Town of Apple Valley have issued resolutions in support of the extension request. The resolutions state that the construction of the project will maintain the potential for the region to realize the anticipated benefits associated with the project, which include the creation of new and well-paying jobs at the facility, enhancement of the ability to attract new businesses and associated jobs, and significant tax revenues for use in further economic development activities.

Staff is moderately concerned that the license for the project was granted five years ago, but views the deterioration of the national economy as entirely unforeseen or out of the control of the project owner. Additionally, the City remains committed to continue its efforts to develop the project in what they characterize would be a "build ready" state, and has undertaken certain activities to this end as outlined in their above entitled Petition.

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 Victorville 2 during the course of the AFC proceeding from the time that the AFC was filed in February 2007 through the granting of the license in July 2008. Staff has a strong interest in ensuring that those projects

that are licensed by the Energy Commission are constructed and operated according to the terms and conditions of certification.

The time and resources that would be required by the filing of a new AFC are not insubstantial, however, and ultimately the ability of the City of Victorville, or its successor, to build the Project under the terms and conditions of the Energy Commission's certification will be determined by market conditions that are not within the City's control. If the information provided by the City of Victorville is correct in this regard, then the project may very well be constructed under the current license if an extension is granted.

CONCLUSION

Appearing before the Energy Commission, the City of Victorville is requesting a five year extension of its deadline to construct the Victorville 2 Hybrid Power Project. Extending the start-of-construction deadline is consistent with the Energy Commission's general interest in the development of facilities it licenses. Therefore, staff supports the instant Petition to Extend the Deadline to Commence Construction.

Date: May 6, 2013

Respectfully Submitted,

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