BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION FOR THE *CARRIZO ENERGY SOLAR FARM* BY CARRIZO ENERGY, LLC	**DOCKET NO. 07-AFC-8**

COMMITTEE ORDER DENYING PETITIONS OF INTERVENORS RUSKOVICH AND STROBRIDGE TO EXTEND THE DISCOVERY PERIOD

I. SUMMARY

On March 30, 2009, Interveners John Ruskovich and Michael Strobridge (Petitioners) each filed a petition requesting unlimited extension of the 180-day discovery period set forth in Commission regulations. This Order **DENIES** both petitions.

II. BACKGROUND

On December 19, 2007, the Commission found the Carrizo Energy Solar Farm (CESF) Application for Certification (AFC) contained adequate data to allow beginning Commission review of the CESF project. That action began the 180-day period within which parties could exchange data requests pursuant to California Code of Regulations, Title 20, section 1716(e).

Both Petitioners have taken an active role in the proceeding since the first public Committee hearing held on January 29, 2008. On January 27, 2009, more than one year after the review process began, John Ruskovich filed a Petition to Intervene in the case. On February 2, 2009, Michael Strobridge similarly filed a Petition to Intervene. The Committee granted both Petitions to Intervene in an Order dated February 13, 2009. That Order stated in part:

> *Petitioners may exercise the rights and shall fulfill the obligations of a party as set forth in section 1712 of the Commission's regulations. (Cal. Code Regs., tit. 20, § 1712.) The deadlines for conducting discovery and other matters shall not be extended by the granting of these Petitions. (emphasis added)*

Petitioner Strobridge subsequently served upon Carrizo Energy, LLC (Applicant) six different sets of data requests on February 6, March 4, 8, 16, 18, and 29, 2009. Intervenor Ruskovich filed data request sets on March 15 and 17, 2009. In each case, Applicant filed timely objections to the data requests, while also providing Intervenors Strobridge and Ruskovich with responses to many of the data requests.

On March 30, 2009, the two intervenors each filed a petition to reopen or extend discovery in the case (Petitions). The two Petitions were filed more than nine months after close of the 180-day discovery period defined in the Commission's regulations.

III. DISCUSSION

Commission regulations grant to all parties (Applicant, Staff, and Intervenors) the right to obtain information. [Cal. Code Regs., tit. 20, §§ 1712 subd. (b), 1716, subd. (b).] However:

> *All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown. [Cal. Code Regs., tit. 20 § 1716(e).]*

Both Petitioners participated extensively in this proceeding from the outset. However, they both elected to delay filing their Petitions to Intervene until approximately 13 months after the AFC was deemed "data adequate" by the Commission. Petitioners served their first Data Requests on Applicant at least eight months after the 180 days allowed by Section 1716(e). After Applicant filed timely objections, the Intervenors filed their Petitions seeking to reopen discovery. We find that the Intervenor's Petitions are untimely.

In addition, both Petitions fail to demonstrate good cause.

1. The Petition of Michael Strobridge asserts:

   (a) This is not a typical one-year siting process because the Carrizo Energy Solar Farm (CESF) Application for Certification (AFC) is a new type of project;

   (b) The CESF AFC has generated a tremendous amount of data and multiple reports;

   (c) California Code of Regulations, Title. 20, section 1723.5 gives any party or person the right to propose modifications in a project;

   (d) On March 29, 2009, Petitioner Strobridge sent a letter to Project Manager John Kessler stating concerns about potential noise at his family's residence near the proposed CESF site and proposing that

the Applicant move the power block; and

(5) Petitioner Strobridge does not believe he can properly represent his family or his community if his late-filed data requests are “silenced”.

2. The Petition of John Ruskovich asserts:

(a) Revised reports and changes in water use estimates justify further data requests;

(b) This project is the first of its kind and will set precedent;

(c) Several workshops concerning some draft sections of the Final Staff Assessment (FSA) are still planned;

(d) Data will constantly be created in all phases of this project up to and including decommissioning; and

(e) It is Petitioner’s right to submit data requests and he is being denied the right to do so.

As parties seeking to extend discovery in this case far beyond the normal time limits, Petitioners bear the burden of proof of establishing good cause for their Petitions. Mr. Strobridge’s assertion that the CESF is not typical and involves a large amount of data is not persuasive. Certainly large solar projects present numerous challenges involving extensive quantities of data, however, this fact has been clear to all participants from the outset of the case and is not changed by Petitioners’ decisions to delay formal intervention and the submittal of data requests. To be sure, California Code of Regulations, Title. 20, section 1723.5 gives any participant the opportunity to propose project modifications, however, the burden of proof is on the proponent of the modifications to demonstrate the reasonableness of the changes. Mr. Strobridge’s Petition does not demonstrate that further discovery is needed to support his proposals to change the project.

Mr. Ruskovich asserts he has a right to request data, “as long as there are any revision [sic] to the project.” He goes on to assert that the formal discovery process must be allowed to continue throughout the duration of the project. He is mistaken. As noted above, the Commission’s regulations provide 180-day window for discovery, after which parties must request additional time and provide a showing of good cause. The discovery process in a siting case at the Commission is specifically not open-ended. It must have a finite end as the process moves toward resolution. In pursuing a thorough gathering of evidence and a deliberative resolution of issues, the Committee must also strive to move the siting process forward in a timely way. If granted, Petitioners’ requests for additional and even open-ended discovery would likely prolong the schedule in this case.

In addition, there are reasons of state policy which compel us to expedite this process as much as possible. Carrizo Energy Solar Farm is a renewable energy project and is thus entitled to priority review pursuant to Governor Schwarzenegger's Executive Order S-14-08, which establishes a 33 percent Renewables Portfolio Standard by 2020. It also directs the Commission to work collaboratively with agencies to *expedite* renewable energy permitting. The Committee is therefore reluctant to accommodate any request by a party that would cause delay to the proceeding, particularly where we find no good cause for the request.

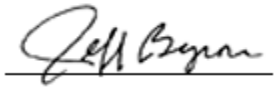
IV. CONCLUSION

Since the outset of this proceeding, Petitions have had the opportunity and have participated in numerous public information exchanges regarding this project. Our denial of their extremely late and untimely request to extend what has already been a very long and involved discovery period does not constitute a denial of Petitioners' due process rights. Furthermore, in our view, Petitioners have not provided good cause for reopening discovery. Finally, the clear public policy favoring the efficient review of renewable generation projects, such as the CESF, guides us to disfavor requests that are likely to further delay the siting schedule.

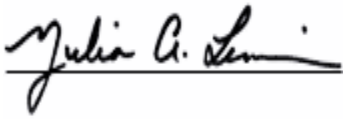
V. ORDER

The Petitions of Intervenors Ruskovich and Strobridge are **DENIED.**

Dated: May 11, 2009 at Sacramento, California.



JEFFREY D. BYRON
Commissioner and Presiding Member
Carrizo AFC Committee



JULIA LEVIN
Commissioner and Associate Member
Carrizo AFC Committee