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 ***QUAIL BRUSH GENERATION PROJECT***	**DOCKET NO. 11-AFC-03**

COMMITTEE ORDER ON INTERVENORS' MOTION FOR EXTENSION OF DISCOVERY PERIOD

Upon consideration of the Motion for an Extension of the Discovery Period filed by intervenors Brewster, Houser, Reyes, and Connor/Sunset Greens Home Owners Association (Intervenors), the Committee designated to conduct proceedings in this matter makes the following findings:

1. Section 1716 of the Commission's regulations[1] provides that parties in Application for Certification proceedings may request information from the applicant which is relevant to the proceedings or reasonably necessary to make any decision on the application. Section 1716(e) requires that all requests for information be submitted no later than 180 days from the date the Commission determines an application is complete. In this case, the Commission's determination was made on November 16, 2011, and the 180-day period will expire on May 14, 2012. Intervenors filed this motion on May 1, 2012.

2. Section 1716(e) gives the Committee discretion to allow requests for information to be submitted beyond the 180-day period "for good cause shown."

3. Intervenors request that the discovery period be extended to September 16, 2012. They give two grounds for the request. First, they point out that the Applicant has submitted an extension request with the City of San Diego. They do not explain how this impacts their ability to request information from the Applicant. Second, they point out that Applicant's responses to certain Staff data requests are due after the expiration of the 180-day period. Thus, Intervenors point out, they will not have an opportunity to review those responses and submit follow-up requests for information.

[1] All references to regulations are to Title 20 of the California Code of Regulations unless otherwise specified.

4. Intervenors' motion does not explain why they chose September 16, 2012 as their requested discovery cutoff date.

5. The Committee asked that Applicant and Staff provide their responses, if any, to Intervenors' request by May 8, 2012.

6. Applicant states in its response that it is making adjustments to the site layout to improve the visual characteristics of the proposed project and intends to file a Supplement No. 3 to the AFC for the Quail Brush Generation Project in June. Applicant suggests extending the period for submission of requests for information to 60 days from the filing of Supplement No. 3.

7. Applicant further suggests that we should limit the topics of data requests submitted during the extension period to the following:

   - The project changes and related analysis;
   - Responses provided to Data Request 2 and 3 (Emission Reduction Credits and related mitigation package);
   - Responses provided to Data Requests 29 and 30 (Quino checkerspot butterfly);
   - Response provided to Data Request 17 (cumulative modeling);
   - Responses provided to Data Request 24 and 25 (nitrogen deposition);
   - Response provided to Data Request 27 (USACE determination);
   - Response provided to Data request 38 (City applications);
   - Response provided to Data Request 40 (hydromodification plan); and
   - Response provided to Data Request 58 (local fire district impacts).

8. Staff suggests extending the discovery cutoff date to August 1, 2012. As to the issuing of limiting the topics as Applicant requests, Staff is opposed to it in concept, because Applicant's list of topics, above, was only provided on May 8 and may or may not be complete, and because the nature and extent of project changes to be set forth in Supplement No. 3 is unknown and may be so broad as to warrant requests for information about all aspects of the project.

9. Our regulations allow intervention to take place until very late in the AFC process—far past the 180 days allowed for submission of requests for information. However, as a general rule, those who choose to intervene after the 180-day period has expired do so at their peril; they might be precluded from submitting requests for information unless they can show good cause why they should be allowed to submit requests later.

10. In this case, Intervenors intervened during the 180-day period. Thus, each of them has had the ability to submit requests for information without seeking an extension. Indeed, Intervenor Houser, who is not one of the moving parties here, submitted data requests on May 6, 2012.

11. However, AFC Supplement No. 3 has not yet been filed. To the extent that topics within the AFC are interrelated, project changes made via the Supplement directly affecting one topic may indirectly affect other topics.

12. Furthermore, the outstanding data requests listed by Applicant and set forth in paragraph 7, above, cover several AFC topics, each of which could directly or indirectly affect or relate to other topics. Thus, we find it is not reasonably feasible to prescribe limits on the topics which may be the subject of requests for information during any extension period.

THEREFORE, pursuant to Commission regulations Section 1716.5, the Committee **ORDERS**:

1. Intervenors' request for an extension of the period for submission of requests for information to September 16, 2012 is **DENIED**.
2. All parties in this matter may submit requests for information in compliance with Sections 1716(b) and (d) until 60 days from the date Applicant files AFC Supplement No. 3.
3. This Order is made without prejudice to the parties' future ability to request further extensions of time pursuant to Section 1716(e).

Dated: May 14, 2012, at Sacramento, California.

Original Signed By:

KAREN DOUGLAS
Commissioner and Presiding Member
Quail Brush Generation Project AFC Committee

Original Signed By:

CARLA PETERMAN
Commissioner and Associate Member
Quail Brush Generation Project AFC Committee

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APPLICATION FOR CERTIFICATION
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DOCKET NO. 11-AFC-03

PROOF OF SERVICE
(Revised 5/14/2012)

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*indicates change

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DECLARATION OF SERVICE

I, Maggie Read, declare that on May 14, 2012, I served and filed a copy of the COMMITTEE ORDER ON INTERVENORS' MOTION FOR EXTENSION OF DISCOVERY PERIOD, dated May 14, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at:

http://www.energy.ca.gov/sitingcases/quailbrush/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:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-AFC-3
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
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michael.levy@energy.ca.gov

I declare under penalty of perjury under the laws of the State of California 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.

Original Signed By:
Maggie Read
Hearing Adviser's Office