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DOCKET	
01-AFC-21C	
DATE	July 13 2009
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July 13, 2009

California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: PG&E'S OPPOSITION TO IEP'S PETITION TO INTERVENE TESLA POWER PROJECT DOCKET NO. (01-AFC-21C)

Enclosed for filing with the California Energy Commission is the original copy of **PG&E'S OPPOSITION TO IEP'S PETITION TO INTERVENE,** for the Tesla Power Project (01-AFC-21C).

Sincerely,

Marie Mills

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:	**DOCKET NO. 01-AFC-21C**
TESLA POWER PROJECT	**PG&E'S OPPOSITION TO IEP'S PETITION TO INTERVENE**

INTRODUCTION

PG&E hereby files its opposition to the Independent Energy Producers (IEP) Petition to Intervene in the Tesla Request For Extension evidentiary hearing. While PG&E believes IEP has an interest in the legal issues presented by the Committee Order, it does not have an interest in participating in the evidentiary portion of the hearing set by the Committee. For the reasons outlined below, PG&E requests that IEP be granted limited intervention status to brief the legal issues only and not be granted intervention status to present evidence and cross-examine witnesses at the evidentiary hearing set for July 20, 2009.

ARGUMENT

IEP'S STATED INTEREST IS IN THE LEGAL STANDARD ADOPTED BY THE COMMITTEE FOR FUTURE REQUESTS FOR EXTENSION AND NOT IN WHETHER PG&E CAN PROVIDE SPECIFIC EVIDENCE TO SATISFY THE STANDARD ADOPTED

As correctly cited in IEP's Petition to Intervene, Section 1207 (c) allows the Presiding Member to grant leave to intervene to the extent he deems reasonable and relevant. While Section 1207 (b) does require such a Petition to be filed within 30 days of the

hearing, which deadline IEP's Petition did not meet, PG&E is not objecting to IEP's filing on these procedural grounds. Section 1207 (c) authorizes the Presiding Member to limit an intervener's participation. PG&E asserts that IEP's participation should be limited in a way that will allow it to participate fully in the Tesla Request For Extension hearing to the extent it has a reasonable non-economic interest.

IEP states in its Petition to Intervene that ".....this Application potentially affects the IEP members' direct economic interests. IEP has a strong interest in ensuring that the Commission's consideration of this Application is based on the same terms and conditions as other merchant facilities that are similarly situated." PG&E does agree that IEP, as an association of companies that seek certification before the Commission, has an interest to ensure that any standard adopted for requests for extension be fair, and applied uniformly to all Applicants on the same terms and conditions as facilities that are similarly situated regardless of whether the Applicant is an investor-owned utility, a publicly owned utility, or a merchant generator.

IEP can participate fully and represent its position by being allowed to submit legal briefs to the Committee to assist in answering the first two legal questions identified in the Order. Those questions are whether the certification automatically expires after the construction deadline and what should be the standard for determining "good cause" exists for granting an extension to that deadline. IEP does not need to cross-examine witnesses nor present witnesses on any of the factual issues identified by the Committee in its Question 3 contained in the Order to argue its position on the legal questions. None of the issues identified in Question 3 by the Committee address what the legal standard for good cause should be, but rather address what PG&E did to develop the project or what it plans for the project in the future.

IEP'S PETITION TO INTERVENE IS NOT SUPPORTED BY ANY INTEREST BEYOND THE ADOPTION OF A FAIR AND UNIFORM "GOOD CAUSE" STANDARD.

In its Petition to Intervene, IEP clearly fails to state its position on the matters identified in Question 3 of the Committee Order as is required by Section 1207 (a). On this basis, the presiding member should deny IEP's participation in the taking of evidence on

Question 3 matters and limit IEP's intervention and participation to the argument on the legal standard for determining "good cause" only.

ANY INTEREST IEP MAY HAVE BEYOND THE ADOPTION OF A FAIR AND UNIFORM "GOOD CAUSE" STANDARD IS WITHIN THE SOLE JURSIDICITON OF THE CPUC

While IEP has been clear in its filings and full participation in the prior proceedings at the CPUC regarding PG&E's ability to develop the project, the Hearing before this Commission is limited to whether the construction deadline should be extended. This hearing does not address the issues of whether or not PG&E should own or develop the project as those questions are properly in the sole jurisdiction of the CPUC. IEP has made no showing in its Petition to Intervene that it needs to present evidence, or cross-examine witnesses in order to provide legal argument to the Committee that a fair and uniform standard should be applied to all applicants in order to protect its members from a potentially adverse standard adopted by the Committee. Any other interest in participating beyond the legal briefing is related solely to PG&E as an owner, which is solely within the CPUC jurisdiction and not before this Committee.

CONCLUSION

Therefore, PG&E welcomes IEP's limited participation in the proceedings to help develop a consistent, fair and uniform "good cause" standard for extension of a construction deadline. We respectfully request the Committee grant limited intervention status to IEP on the legal questions only. We also agree to extend the deadline for IEP to file a brief on the legal questions to July 16, 2009.

Respectfully Submitted,

Dated: July 13, 2009

Scott A. Galati
Counsel to Pacific Gas and Electric Company

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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APPLICATION FOR CERTIFICATION FOR THE *Tesla Power Project*

DOCKET No. 01-AFC-21C

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DECLARATION OF SERVICE

I, Marie Mills, declare that on July 13, 2009, I served and filed copies of the attached **PG&E'S OPPOSITION TO IEP'S PETITION TO INTERVENE** dated **July 13, 2009.** The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[www.energy.ca.gov/sitingcases/tesla]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

__X__ sent electronically to all email addresses on the Proof of Service list;

__X__ by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on theProof of Service list above to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

__X__ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR

_____ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. **01-AFC-21C**
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I declare under penalty of perjury that the foregoing is true and correct.

Marie Mills