

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND  
DEVELOPMENT COMISSION

In the Matter of the ) Docket No. 01-AFC-21C  
)  
Tesla Power Plant Extension ) Robert Sarvey's Rebuttal Brief  
) on good cause

CONSEQUENCES OF EXPIRATION OF THE CONSTRUCTION DEADLINE

The applicant in his brief has implied that the Energy Commission must take affirmative action to revoke the Commission License after the 5 year construction deadline has passed. A clear reading of Section 1720.3 demonstrates otherwise.

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.

There is nothing in the language of section 1720.3 that would imply or prescribe any other treatment.

The applicant has opined that the provisions of Section 25534 apply to the construction deadline. The relevant portions of Section 25534 provide that if the owner of a project that does not start construction of the project within 12 months after the date all permits necessary for the project become final and all administrative and judicial appeals have been resolved provided the California Consumer Power and Conservation Financing Authority notifies the commission that it is willing and able to construct the project pursuant to subdivision the license may be revoked. The California Consumer Power and Conservation Financing Authority, no longer exists therefore Section 25534 is irrelevant.

**GOOD CAUSE**

2. In determining whether "good cause" exists for an extension under Section 1720.3, what factors may the Energy Commission consider in any given case? What factors should it consider? What factors must it consider?

The applicant's brief implies that all the applicant has to do is show a good faith effort to construct the project and circumstances beyond their control prevented it. The applicant also sites as good cause that the construction deadline will be missed even though PG&E made a good faith effort to meet it. I believe that the Committee has identified the proper issues to consider in the hearing order. I would only add two more factors that should be considered:

- 1) Intent of the applicant to construct the projects as licensed.
- 2) Due diligence by the applicant and previous owner to keep the license and all material government approvals current.

1) Intent of the applicant to construct the projects as licensed.

PG&E began negotiations on this project in June 2008. PG&E was well aware that the project had a construction deadline of June 2009 when they purchased the project. PG&E showed no intention of building the project as permitted. They instead elected to file for a CPCN for only 560 MW of the 1169 MW project. It is doubtful that PG&E will ever build an 1169 MW power plant with the current state of procurement a fact that was noted by PG&E's attorney. (RT June 3, 2009 business meeting Page 19) Currently the CPUC has identified a need for 800 to 1200 MW of rapid response power plants to support renewable projects. Tesla at 1169 MW is a poor portfolio fit as it represents almost all of the authorized procurement and as licensed has a six hour cold start up time.

2) Due diligence by the applicant and previous owner to keep the license and all material government approvals current.

Even if PG&E had received approval to build this project from the CPUC they have made no effort to prepare for construction. PG&E has made no effort to update the needed material government approvals necessary to commence

construction. The project lacks an authority to construct and a PSD permit. PG&E has not negotiated a water agreement with the City of Tracy nor have they renegotiated their AQMA with the SJVUAPCD. PG&E has not filed and amendment to the CEC. PG&E has not demonstrated that they have made a good faith effort to prepare this project for construction.

FPL made no attempts to keep the project permits current. FPL filed for an amendment in November of 2006 and failed to answer staffs data requests issued in February of 2007 over 2 years ago. FPL asked the BAAQMD to update the ATC and PSD permit and never followed up on the request.