CALIFORNIA ENERGY COMMISSION
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SACRAMENTO, CA 95814-5512
www.energy.ca.gov

DATE: November 5, 2014

TO: Interested Parties

FROM: Camille Remy Obad, Compliance Project Manager

SUBJECT: **Avenal Energy Project (08-AFC-1C)**
Staff Analyses of Nine (9) Month Petition to Extend the Start of Construction

On October 22, 2014, Avenal Power Center L.L.C. (APC) filed a petition with the California Energy Commission (Energy Commission) requesting a nine (9) month construction deadline extension for the Avenal Energy Project (Avenal or project). The petition proposes to extend the deadline to commence construction from December 16, 2014 to September 16, 2015. The primary challenges delaying project progress include the initial acquisition and subsequent litigation pertaining to Avenal's federal Prevention of Significant Deterioration (PSD) permit application.

On December 16, 2009, the Energy Commission certified Avenal as a 600-megawatt (MW) natural gas-fired power plant. The U.S. Environmental Protection Agency (U.S. EPA) did not issue a final PSD permit until May 27, 2011. Several parties appealed the PSD issuance to the Ninth Circuit Court of Appeals (Ninth Circuit). On March 5, 2012, due to the uncertainties of the pending litigation, APC filed a Petition to Amend (PTA) the Energy Commission's Final Decision. The 2012 PTA proposed new and modified Air Quality (AQ) conditions of certification to allow Avenal to build/operate either as a major[1] or minor[2] stationary source of criteria air pollutant emissions (depending on the outcome of the Ninth Circuit decision). The Energy Commission approved APC's amendment on January 9, 2013.

In August 2014, the Ninth Circuit issued a decision revoking Avenal's PSD Permit, sending it back to U.S. EPA to revise. Based upon the timing and outcome of the Court's decision APC is requesting a nine (9) month extension "to rethink the options…[and have] the opportunity to fully evaluate those options prior to [license] expiration.

The deadline to commence construction, set by regulation, is otherwise five years from the effective date of the Energy Commission's final decision on the application for

[1] A stationary emission source that exceeds applicable review thresholds and requires a PSD permit from the U.S. EPA, or from the local air pollution control district once applicable local rules are incorporated into the State Implementation Plan.

[2] A stationary emission source that does not exceed applicable review thresholds and does not require a PSD permit from the U.S. EPA or the local air pollution control district.

certification. An applicant, before the deadline, may request and the Commission may order, an extension for good cause (Cal. Code Regs., tit.20, §1720.3). The purpose of the Energy Commission review process is to determine whether the project owner has shown good cause justifying the extension of the deadline to commence construction. Energy Commission staff (staff) also reviewed the petition and assessed the impacts of this proposal on environmental quality and on public health and safety. Based on this review of the existing environmental setting, the previous environmental analysis, and the project as currently proposed, staff concludes that there are no substantial changes to the project or to the circumstances under which the project is being undertaken, and no new information that was not previously known, justifying a supplemental or subsequent EIR-equivalent analysis at this time.

Nevertheless, staff has identified certain issues that will need to be addressed prior to the start of construction in the areas of Air Quality and Biological Resources, and depending upon when construction is actually expected to begin, conditions of certification may need to be updated or added to address future changed circumstances and any changes in applicable laws, ordinances, regulations or standards (LORS). Energy Commission staff intends to recommend approval of the petition at the **December 5, 2014** Business Meeting of the Energy Commission.

The Energy Commission's webpage for this facility, http://www.energy.ca.gov/sitingcases/avenal/, has a link to the petition and the Staff Analysis on the right side of the webpage in the box labeled "Compliance Proceeding." Click on the "Documents for this Proceeding (Docket Log)" option. After the Final Decision, the Energy Commission's Order regarding this petition will also be available from the same webpage.

This notice has been mailed to the Energy Commission's list of interested parties and property owners adjacent to the facility site. It has also been e-mailed to the facility listserv. The listserv is an automated Energy Commission e-mail system by which information about this facility is e-mailed to parties who have subscribed. To subscribe, go to the Commission's webpage for this facility, cited above, scroll down the right side of the project webpage to the box labeled "Subscribe," and provide the requested contact information.

Any person may comment on the Staff Analysis. Those who wish to comment on the analysis are asked to submit their comments by **December 4, 2014**. To use the Energy Commission's electronic commenting feature, go to the Energy Commission's webpage for this facility, cited above, click on the "Submit e-Comment" link, and follow the instructions in the on-line form. Be sure to include the facility name in your comments. Once submitted, the Energy Commission Dockets Unit reviews and approves your comments, and you will receive an e-mail with a link to them.

Written comments may also be mailed or hand-delivered to:

California Energy Commission
Dockets Unit, MS-4

Docket No. 08-AFC-1C
1516 Ninth Street
Sacramento, CA 95814-5512

All comments and materials filed with and approved by the Dockets Unit will be added to the facility Docket Log and become publically accessible on the Energy Commission's webpage for the facility.

If you have questions about this notice, please contact Camille Remy Obad, Compliance Project Manager, at (916) 654-3940, or by fax to (916) 654-3882, or via e-mail to camille.remy-obad@energy.ca.gov.

For information on participating in the Energy Commission's review of the petition, please call the Public Adviser at (800) 822-6228 (toll-free in California) or send your e-mail to publicadviser@energy.ca.gov. News media inquiries should be directed to the Energy Commission Media Office at (916) 654-4989, or by e-mail to mediaoffice@energy.ca.gov.

Mail List 7280
Avenal listserv

AVENAL ENERGY PROJECT
(08-AFC-1C)
Request to Extend Commencement of Construction Deadline
Staff Analysis
Camille Remy Obad

INTRODUCTION

On October 22, 2014, Avenal Power Center L.L.C. (APC) filed a petition with the California Energy Commission (Energy Commission) requesting a nine (9) month construction deadline extension for the Avenal Energy Project (Avenal or Project). The petition proposes to extend the deadline to commence construction from December 16, 2014 to September 16, 2015. The primary challenges delaying project progress include the initial acquisition and subsequent litigation pertaining to Avenal's federal Prevention of Significant Deterioration (PSD) permit application.

Energy Commission staff (staff) reviewed the petition and assessed the impacts of this proposal on environmental quality and on public health and safety. Staff has completed its review of all materials received. The Staff Analysis below is staff's assessment of the project owner's proposal to extend the deadline to commence construction from December 16, 2014, to September 16, 2015.

PROJECT LOCATION AND BACKGROUND

On February 21, 2008, APC filed with the Energy Commission an Application for Certification for Avenal seeking approval to construct and operate a 600 megawatt (MW) natural gas-fired power plant in the City of Avenal in Kings County. APC also submitted a PSD permit application to U.S. Environmental Protection Agency (U.S. EPA) seeking approval for the Project. The Energy Commission approved the project in a Final Decision (Decision) dated December 16, 2009, and the U.S. EPA issued a final PSD permit on May 27, 2011. Several parties petitioned the U.S. EPA Environmental Appeals Board (EAB) for review of the PSD permit. The EAB upheld the permit, but subsequently the parties appealed EPA's issuance of the PSD Permit to the Ninth Circuit Court of Appeals (Ninth Circuit).

On March 5, 2012, due to the uncertainties in the outcome or duration of the appeal process, APC filed a Petition to Amend the Energy Commission's Final Decision. The 2012 PTA proposed new and modified Air Quality (AQ) conditions of certification to allow Avenal to build/operate either as a major[3] or minor[4] stationary source of criteria air

[3] A stationary emission source that exceeds applicable review thresholds and requires a PSD permit from the U.S. EPA, or from the local air pollution control district once applicable local rules are incorporated into the State Implementation Plan.

[4] A stationary emission source that does not exceed applicable review thresholds and does not require a PSD permit from the U.S. EPA or the local air pollution control district.

pollutant emissions (depending on the outcome of the Ninth Circuit decision). APC also proposed a five year construction deadline extension. However, since the current deadline to commence construction did not expire until December 16, 2014, staff recommended, and APC agreed, to defer the extension request until additional information to support the request was gathered and evaluated. Staff determined that if needed, a proposed change would be the subject of a separate Staff Analysis and may be considered at a future Business Meeting. The Energy Commission approved APC's petition on January 9, 2013.

In August 2014, the Ninth Circuit issued a decision revoking Avenal's PSD Permit, sending it back to U.S. EPA to revise.

DESCRIPTION OF THE PETITION

The petition proposes to extend the deadline to commence construction from December 16, 2014, to September 16, 2015.

NECESSITY FOR THE PETITION

Based upon the timing and the outcome of the Ninth Circuit's decision APC is requesting a nine (9) month extension "to rethink the options…[and have] the opportunity to fully evaluate those options prior to [license] expiration… how the Project move[s] forward will determine whether the [staff] analysis remains relevant and valid. Avenal requests an additional 9 months to evaluate options and create the necessary filings." (Avenal PTA, 2014)

ENVIRONMENTAL JUSTICE

Environmental justice communities are commonly identified as those where residents are predominantly minorities or low-income; where residents have been excluded from the environmental policy setting or decision-making process; where they are subject to a disproportionate impact from one or more environmental hazards; and where residents experience disparate implementation of environmental regulations, requirements, practices, and activities in their communities. Environmental justice efforts attempt to address the inequities of environmental protection in these communities.

An environmental justice analysis is composed of three parts:

1. identification of areas potentially affected by various emissions or impacts from a proposed project;

2. a determination of whether there is a significant population of minority persons or persons below the poverty level living in an area potentially affected by the proposed project; and

3. a determination of whether there may be a significant adverse impact on a population of minority persons or persons below the poverty level caused by the proposed project alone, or in combination with other existing and/or planned projects in the area.

CALIFORNIA RESOURCES AGENCY

California law defines environmental justice as “the fair treatment of people of all races, cultures and income with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies” (Gov. Code §65040.12; Pub. Resources Code, §72000). All departments, boards, commissions, conservancies and special programs of the Resources Agency must consider environmental justice in their decision-making process if their actions have an impact on the environment, environmental laws, or policies. Such actions that require environmental justice consideration may include:

- adopting regulations;
- enforcing environmental laws or regulations;
- making discretionary decisions or taking actions that affect the environment;
- providing funding for activities affecting the environment; and
- interacting with the public on environmental issues.

DEMOGRAPHIC SCREENING ANALYSIS

As part of its analysis for the Petition to Amend the Avenal Energy Project Decision, Energy Commission staff used demographic screening to determine whether a low-income and/or minority population exists within the potentially affected area of the Avenal Energy Project site[5]. The demographic screening is based on information contained in two documents: Environmental Justice: Guidance Under the National Environmental Policy Act (CEQ, December, 1997) and Guidance for Incorporating Environmental Justice Concerns in EPA’s Compliance Analyses (U.S. EPA, April, 1998), which provides staff with information on outreach and public involvement. The Council on Environmental Quality (CEQ) document defines minority individuals as members of the following groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

Based on the 2010 Census data presented in **Table 1**, the total population within the six-mile radius of the project site was 278 persons with a minority population of 255 persons, or 91.72 percent of the total population. As the minority population is greater than fifty percent, this population constitutes an environmental justice population as defined by Environmental Justice: Guidance Under the National Environmental Policy Act, and would trigger further scrutiny for purposes of an environmental justice analysis. Staff’s demographic screening also identifies the presence of below-poverty-level populations within a six-mile buffer of the proposed project site. The CEQ and U.S. Environmental

[5] Demographic screening data is presented in the end of this section.

Protection Agency guidance documents identify a fifty percent threshold to determine whether minority populations are considered environmental justice populations, but does not provide a discrete threshold for below-poverty-level populations. Using census data summarized in **Table 2** below, staff compares the below-poverty-level populations in the six-mile radius to other appropriate reference geographies. Approximately 39.10 percent or 4,855 people within the six-mile radius live below the federal Census County Division poverty level, which is comparable to the below-poverty-level population in the Huron, but is a large increase (approximately 20 percent) over Kings County poverty level and almost 30 percent above California's poverty level. When staff from the thirteen affected technical areas[6] have identified that the proposed construction deadline extension would have an effect in their technical area, the staff then considered the potential for disproportionate impacts on the environmental justice population.

PROJECT DEMOGRAPHIC SCREENING DATA

Table 1
Minority Populations within the Project Area Plus Kings and Fresno Counties

	Six-Mile Radius of Project Site	Avenal	Kettleman City	Huron CCD*	Kings County	Fresno County	California
Total	278	15,505	1,439	7,991	152,982	930,450	37,253,956
Not Hispanic or Latino: White alone	23	2,387	42	157	53,879	304,522	14,956,253
Minority	255	13,118	1,397	7,834	99,103	625,928	22,297,703
Percent Minority	**91.72**	**84.60**	**97.08**	**98.04**	**64.78**	**67.27**	**59.85**

Notes: Bold text- minority population is greater than 50 percent, * CCD- Census County Division.
Source: US Census Bureau 2010

Table 2
Poverty Data within the Project Area Plus Kings and Fresno Counties

Area	Total			Income in the past 12 months below poverty level			Percent below poverty level		
	Estimate*	MOE	CV (%)	Estimate	MOE	CV (%)	Estimate	MOE	CV (%)
City Used to Determine Poverty Status-Avenal	12,431	±357	1.74	4,855	±887	11.05	39.10	±7.2	11.13
Comparison Geographies**									
Huron Census	8,284	±396	2.89	3,692	±678	11.10	44.6	±7.9	10.71

[6] The thirteen technical staff/areas are Air Quality, Hazardous Materials Management, Land Use, Noise and Vibration, Public Health, Socioeconomics, Soil and Water Resources, Water Supply, Traffic and Transportation, Transmission Line Safety and Nuisance, Visual Resources, Cultural Resources, and Waste Management.

Area	Total			Income in the past 12 months below poverty level			Percent below poverty level		
	Estimate*	MOE	CV (%)	Estimate	MOE	CV (%)	Estimate	MOE	CV (%)
County Division									
Kings County[1]	134,003	±804	0.36	27,679	±2,042	4.46	20.7	±1.5	4.38
Fresno County	913,669	±815	0.05	226,967	±5,782	1.54	24.8	±0.6	1.46
California	36,575,460	±3,416	0.01	5,590,100	±38,396	0.42	15.30	±0.1	0.40

Note: * Population for whom poverty status is determined. ** Data for Kettleman City is not reported as the coefficient of variation (CV) is well above15, and thus indicates the data is unreliable and may not accurately reflect local characteristic. [1] The Avenal Energy Project is located in Kings County and in close proximity to Fresno County. **Source:** US Census Bureau 2012.

STAFF'S ASSESSMENT OF THE PETITION

The deadline to commence construction, set by regulation, is otherwise five years from the effective date of the Energy Commission's final decision on the application for certification. The project owner, before the deadline, may request, and the Commission may order, an extension for good cause (Cal. Code Regs., tit.20, §1720.3). The purpose of the Energy Commission review process is to determine whether the project owner has shown good cause justifying the extension of the deadline to commence construction.

The technical area sections contained in this Staff Analysis include staff's recommendations. Staff's conclusions in each technical area are summarized in **Table 3**, below.

Avenal's PTA states, "Avenal is taking this opportunity to revisit the [p]roject's configuration" and "this request…does not change the scope of the [p]roject…" (Avenal PTA, 2014). Energy Commission technical staff reviewed the petition for potential environmental effects and consistency with applicable LORS. Based on this review of the existing environmental setting, the previous environmental analysis, and the project as currently proposed, staff concludes that there are no substantial changes to the project or to the circumstances under which the project is being undertaken, and no new information that was not previously known, justifying a supplemental or subsequent EIR-equivalent analysis. Therefore, staff has determined that the technical or environmental areas of Cultural Resources, Geological Resources, Land Use, Noise & Vibration, Paleontological, Socioeconomics, Soil & Water Resources, Traffic & Transportation, Transmission System Engineering, Visual Resources, and Waste Management are not affected by the proposed extension, and no revisions or new conditions of certification are needed to ensure the project remains in compliance with all applicable LORS for these areas.

Staff also determined that there would be no significant environmental impacts to the technical or environmental areas of Air Quality, Biological Resources, Facility Design, Hazardous Materials Management, Public Health, Transmission Line Safety &

Nuisance, and Worker Safety & Fire Protection based on the proposed extension of the construction start deadline, as long as the project description does not change. Air Quality and Biological Resource staff noted regulatory changes that will need to be addressed prior to start of construction to ensure potential environmental impacts remain less than significant. The Air Quality Staff Analysis is attached as Appendix A. Staff recommends a condition of certification requiring the project owner to submit this updated information prior to license expiration or start of construction.

Biological Resources staff note that if new species are listed as special-status by a state or federal agency or additional information on the range and distribution of currently listed species becomes available prior to initiation of construction activities, the project owner shall conduct the required studies and surveys according to the most current guidelines and the new data would need to be reflected in new or modified conditions of certification. In addition, prior to commencement of construction additional analysis would be required to address changed circumstances since the publication of the Final Commission Decision in 2009 including, but not limited to, the following:

1. Since publication of the Final Commission Decision in 2009, California Department of Fish and Wildlife (CDFW) has revised its Staff Report on Burrowing Owl Mitigation (CDFW 2012), originally published in 1995, to include revised survey guidelines and mitigation methods, including artificial burrows placement, installation and maintenance of artificial burrows, in addition to discouraging temporary or permanent exclusion and closure of burrows as an avoidance and minimization measure especially during the breeding season. The results of more recent surveys and the new mitigation and compensation standards would need to be reflected in modified or new condition of certification, including **Condition of Certification BIO-12 (Burrowing Owl Impact Avoidance and Minimization Measures)**.
2. The EPA initiated consultation in 2008 with the U.S. Fish and Wildlife Service (USFWS) to ensure its action on the Prevention of Significant Deterioration (PSD) Permit for Avenal Energy Project complied with section 7 of the Endangered Species Act. The USFWS completed its biological opinion concluding the formal consultation process in August 2010. The Biological Opinion was issued in response to the PSD permit issued by EPA that has since been vacated. A new PSD permit would constitute a new Federal action and therefore would require a new biological opinion. This would require the EPA to reinitiate consultation with the USFWS at such a time a new PSD permit application is submitted by the project owner for the project. The results of this consultation would need to be reflected in modified or new condition of certification, including **Condition of Certification BIO-7 (Impact Avoidance Mitigation Measures), BIO-8 (Mitigation Management to Avoid Harassment or Harm), BIO-9 (Habitat Compensation), and BIO-11 (Pre-construction Surveys).**

If the project owner intends to modify the project, then the project owner will be required to provide a detailed description of all changes being proposed. The detailed description must include a review of the existing environmental setting and all applicable

LORS; a discussion of any changes that have occurred since project certification; an evaluation of how the changes comply with LORS; and whether any of the changes would result in a significant, adverse environmental impact. Based upon this description the project owner may be required to submit a petition to amend their license per 20 Cal. Code Regs §1769.

Table 3
Summary of Impacts for Each Technical Area

TECHNICAL AREAS REVIEWED	**STAFF RESPONSE**			Revised Conditions of Certification Recommended
	Technical Area Not Affected	No Significant Environmental Impact*		
Air Quality		X		No
Biological Resources		X		No
Cultural Resources	X			No
Facility Design		X		No
Geological Resources	X			No
Hazardous Materials Mgmt.		X		No
Land Use	X			No
Noise & Vibration	X			No
Paleontological Resources	X			No
Public Health		X		No
Socioeconomics	X			No
Soil & Water Resources	X			No
Traffic & Transportation	X			No
Transmission Line Safety & Nuisance		X		No
Transmission System Engineering	X			No
Visual Resources	X			No
Waste Management	X			No
Worker Safety & Fire Protection		X		No

*There is no possibility that the proposed modifications may have a significant effect on the environment, and the modifications will not result in a change in or deletion of a condition adopted by the Commission in the Final Decision, or make changes that would cause project noncompliance with any applicable laws, ordinances, regulations, or standards (20 Cal. Code Regs., § 1769 (a)(2)).

STAFF RECOMMENDATIONS AND CONCLUSIONS

Staff concludes that the following required findings, mandated by Title 20, California Code of Regulations, sections 1769 (a)(3) and 1720.3, can be made, and staff recommends approval of the petition by the Energy Commission:

- The proposed extension would not change the findings in the Energy Commission's Decision pursuant to Title 20, California Code of Regulations, section 1755;
- There would be no new or additional unmitigated, significant environmental impacts associated with the proposed extension;
- The facility would remain in compliance with all applicable laws, ordinances, regulations, and standards;
- The extension proposed in the petition would allow the project owner additional time to reevaluate the facility's configuration, operational profile and permit requirements;
- The proposed extension would be beneficial to the public, because it allows time to reevaluate the project to determine the best suited configuration, operational profile and regulatory path necessary to ensure regulatory compliance, and facilitate the timely completion of the project, and
- The proposed extension is justified, and good cause has been shown, because information that was not available to the parties prior to Energy Commission certification is now available, in that the project owner has recently resolved their litigation and must reevaluate the project's configuration, operational profile and regulatory requirements.

CONDITION OF CERTIFICATION

Staff reviewed the project, the setting and the impacts analyzed in the previous analysis, as described above. In order to assure that when the project proceeds to construction, the project matches the project setting and analysis, staff proposes the following condition of certification.

EXTENSION-1 The project owner shall provide to the CPM the following:

1. Confirmation that the project description has not changed or, if the project owner intends to modify the project, a description of all changes being proposed, including an evaluation of how the changes comply with LORS and whether any of the changes would result in a significant, adverse environmental impact (this requirement does not take the place of any petition to amend required under Title 20, California Code of Regulations, section 1769 if changes to the project are being proposed);

2. A review of the existing environmental setting, including all applicable LORS, and a discussion of any changes that have occurred since project certification;

3. The results of recent Burrowing Owl surveys using revised survey guidelines and changes to conditions of certification based on CDFW's Staff Report on Burrowing Owl Mitigation (CDFW 2012), including proposed changes to Conditions of Certification **BIO-12** (Burrowing Owl Impact Avoidance and Minimization Measures). These changes shall reflect the revised guidelines including artificial burrows placement, installation and maintenance of artificial burrows, in addition to discouraging temporary or permanent exclusion and closure of burrows as an avoidance and minimization measure especially during the breeding season.

4. An update on any progress made on reinitiation of consultation between EPA and USFWS if a new PSD permit is issued necessitating a new biological opinion, If consultation has concluded, please provide proposed modifications to the following conditions of certification, or propose new conditions of certification, incorporating the results of this consultation: Condition of Certification **BIO-7** (Impact Avoidance Mitigation Measures), **BIO-8** (Mitigation Management to Avoid Harassment or Harm), **BIO-9** (Habitat Compensation), and **BIO-11** (Pre-construction Surveys)**.**

5. Copies of any new ATC permit applications (for each turbine, auxiliary boiler, internal combustion engine, etc.) submitted to the SJVAPCD and any new ATC permits received for any new approved equipment. Also please provide a discussion of compliance review SJVAPCD undertook with respect to a more restrictive NOx concentration emission limit for auxiliary boilers than what was previously analyzed in the previous FDOCs, including a discussion of whether the SJVAPCD determined modifications to facility equipment, or conditions of certification, are needed to ensure compliance with LORS requirements.

Verification: The project owner shall submit the above to the CPM for review and approval no later than 90 days prior to license expiration or start of construction, whichever comes first.

REFERENCES

Avenal 2014 – Avenal Power Center L.L.C., Petition for Post Certification Amendment to Extend the Construction Deadline, October 22, 2014. <http://docketpublic.energy.ca.gov/PublicDocuments/08-AFC-01C/TN203234_20141022T093442_Avenal_Power_Center_LLC's_Petition_for_Post_Certification_Amend.PDF>.

CEQ 1997 – Council on Environmental Quality. *Environmental Justice: Guidance Under the National Environmental Policy Act. December 10,* 1997, <http://www.epa.gov/compliance/ej/resources/policy/ej_guidance_nepa_ceq1297.pdf>.

US Census Bureau 2010 – United States Census Bureau. P2: Hispanic or Latino, and Not Hispanic or Latino by Race, Universe: Total population, 2010 Census Redistricting Data (Public Law 94-171) Summary File. <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

US Census Bureau 2012 – US Census S1701 Poverty Status in the Past 12 Months 2008-2012 American Community Survey 5-Year Estimates, <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

US EPA 1998 – United States Environmental Protection Agency, *Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses*. April 1998. <http://www.epa.gov/compliance/ej/resources/policy/ej_guidance_nepa_epa0498.pdf>.

APPENDIX A
AVENAL ENERGY PROJECT (08-AFC-1C)
Request to Extend Commencement of Construction Deadline
Air Quality Analysis

AVENAL ENERGY PROJECT (08-AFC-1C)
Request to Extend Commencement of Construction Deadline
Air Quality Analysis
Joseph Hughes

INTRODUCTION

The Energy Commission approved the Avenal Energy Project (Avenal or project) in a Final Decision dated December 16, 2009 (CEC 2009). The deadline to commence construction is December 16, 2014, which is five years from the effective date of the decision. Avenal Power Center, LLC (APC) is requesting to extend the deadline to commence construction by nine months.

The approved project would be a nominal 600-megawatt natural gas fired power plant configured with two General Electric Model 7241FA gas turbines, two heat recovery steam generators, an auxiliary boiler, and support equipment. The facility would occupy 34 acres of a quarter-section in a predominately agricultural area approximately six miles from the urban center of the city of Avenal.

On January 9, 2013, the Energy Commission approved an order (CEC 2013) that amended the Final Decision (CEC 2009) to allow APC the option to build and operate Avenal as either a major or minor Prevention of Significant Deterioration (PSD) stationary source[7].

LAWS, ORDINANCES, REGULATIONS, AND STANDARDS (LORS)

Avenal Energy Project, under the proposed license extension, would be subject to all the same laws, ordinances, regulations, and standards (LORS) described in the Final Decision (CEC 2009), and subsequent order approving modifications to air quality conditions of certification (CEC 2013), and the San Joaquin Valley Air Pollution Control District's (SJVAPCD) Final Determination of Compliance (FDOC).

The San Joaquin Valley Air Pollution Control District (SJVAPCD) issued a Final Determination of Compliance (FDOC) on October 30, 2008 (SJVAPCD 2008) and issued an Alternative FDOC on December 17, 2010 (SJVAPCD 2010) that retains the original FDOC but also incorporates a requested change to allow operation as a minor PSD stationary source. Staff understands that the facility owner intends to decide which FDOC to use prior to the start of construction.

After issuance of each FDOC, the SJVAPCD issued Authority to Construct (ATC) permits for the approved equipment. The ATC permits remained valid for two years from date of issuance, during which time commencement of construction needed to be initiated. Although APC did not initiate construction on the project within two year time

[7] A Major Source, subject to PSD, is one that emits more that 100 tons per year of an attainment pollutant. A Minor Source, not subject to PSD, is one that emits 100 tons or less per year of an attainment pollutant.

frame and all ATC permits expired, the Decision and the FDOC remain in place. Therefore, before APC can begin construction of the project, they would need to submit new ATC permit applications (for each turbine, auxiliary boiler, internal combustion engine, etc.) and receive new ATC permits for the approved equipment, whether or not the nine-month time extension is granted by the Energy Commission. Staff believes the project would be able to comply with LORS.

During review of the ATC permit applications, the SJVAPCD would determine if Avenal continues to comply with all applicable LORS requirements. This may include a compliance review with respect to a more restrictive NOx concentration emission limit for auxiliary boilers than what was previously analyzed in the previous FDOCs. District Rule 4320 currently requires boilers that are proposed to be larger than 20 MMBtu/hr to emit no more than 5 ppmv @ 3 percent O_2 by volume. Condition of certification **AQ-81** currently limits the boiler only to 9 ppmv @ 3 percent O_2. If the SJVAPCD determines modifications to facility equipment, or conditions of certification, are needed to ensure compliance with LORS requirements, then APC would need to request a project amendment to make the necessary changes.

Other than Rule 4320 requirements, there have been no revisions to any LORS beyond what was analyzed and approved in the Final Decision, and subsequent order approving modifications to air quality conditions of certification, and the SJVAPCD FDOCs that would affect Avenal's ability to comply with such LORS.

SETTING

The project site is located within the San Joaquin Valley, under the jurisdiction of the SJVAPCD. The attainment statuses for pollutants in the San Joaquin Valley remain the same as when the project was analyzed in the Final Decision (CEC 2009).

Since publication of the Final Decision, and subsequent order approving modifications to air quality conditions of certification (CEC 2013), additional criteria pollutant ambient concentrations data (2012-2013) have become available. Staff reviewed the most recent data and determined that the environmental setting has not substantially changed.

ASSESSMENT OF IMPACTS

The applicant is requesting to extend the deadline to commence construction by nine months. The previously approved project equipment, technologies, operating profile, and emission limits would remain the same. Staff analyzed the most recent background concentrations data and determined that the project would not cause violations of any AAQS beyond what was previously analyzed and approved.

CONCLUSIONS AND RECOMMENDATIONS

Staff recommends approval of the petition to extend the commencement of construction deadline by nine months. Staff reviewed the existing environmental setting, and the

previous air quality environmental analysis for the proposed project and has concluded that there are no substantial changes to the project nor to the circumstances under which the project is being undertaken, and no new information that was not previously known, justifying a supplemental or subsequent EIR-equivalent analysis.

REFERENCES

ARB 2014 - California Air Resources Board, Air Quality Data Statistics. http://www.arb.ca.gov/adam/welcome.html, accessed October 2014.

CEC 2009 - California Energy Commission, Final Commission Decision on the Application for Certification for the Avenal Energy Project (08-AFC-1), December 2009.

CEC 2013 - California Energy Commission, Order Approving a Petition to Modify Five, and Add One, Air Quality Conditions of Certification. Order No. 13-0109-7, February 6, 2013.

EPA 2014 - United States Environmental Protection Agency, Monitor Values Report. http://www.epa.gov/airdata/ad_rep_mon.html, accessed October 2014.

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