

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
And Development Commission**

In the Matter of:

Application for Certification  
of Los Esteros Critical Energy  
Facility II, Phase 2

Docket No. 03-AFC-2

**STAFF'S RESPONSE TO  
REQUEST FOR HEARING**

On July 22, 2005, CARE filed a Request for Hearing asking for another opportunity to cross examine the Bay Area Air Quality Management District (BAAQMD) on BACT for the project and on its responses to comments on the final determination of compliance (FDOC). Staff believes that another evidentiary hearing on the matters requested by CARE is not necessary.

CARE was represented at the evidentiary hearing on June 30, 2005, when BAAQMD filed its FDOC. No party, including CARE, objected to the receipt of the FDOC into the record. (6/30/05 Record Transcript (RT), p. 145:14-18) All parties, including CARE, had an opportunity to question BAAQMD about the FDOC. CARE questioned BAAQMD at length concerning CO and BACT during the evidentiary hearing. (6/30/05 RT, pages 121 through 130)

With respect to BACT, offsets, and the other issues, the conclusions in the FDOC were essentially the same as these published in the preliminary determination of compliance (PDOC) on March 14, 2005. (*6/30/05 RT, p. 81:24,25; p.82:3-6*) The PDOC was available for public review and comment for 30 days prior to the June 30, 2005 hearing. In addition, the final staff assessment, filed May 26, 2005, contained information on the BACT levels BAAQMD was expected to impose. Thus, all parties, including CARE, had ample notice of the BACT levels expected for the project well in advance of the June 30, 2005 evidentiary hearing. CARE presents no compelling reason to hold another hearing to ask questions about BACT, a matter on which parties should have been prepared to ask questions at the June 30, 2005 hearing.

In addition, the hearing officer gave CARE and all other parties approximately two weeks after the hearing to file comments on the FDOC. (*6/30/05 RT, p. 144:22-25; p.145:2-5*) CARE accepted that opportunity without objection. CARE is, thus, free to offer comments on BACT and any other matter in the FDOC. In fact, CARE appears to have done so in the filing of its Opening Brief.

Finally, BAAQMD's responses to comments are not testimony and need not be the subject of an additional hearing. Even if the Presiding Member's Proposed Decision were to rely on BAAQMD's comments in any way, parties, including CARE, would have the opportunity to file comments.

For all these reasons, staff respectfully urges the Committee to deny CARE's request for another evidentiary hearing on a matter already heard.

Date: August 2, 2005

Respectfully submitted,

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