

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



May 7, 2009

Mr. Donal O'Callaghan
Director of Light & Power
City of Vernon
4305 South Santa Fe Avenue
Vernon, California 90058

DOCKET	
06-AFC-4	
DATE	MAY 07 2009
RECD.	MAY 08 2009

Dear Mr. O'Callaghan:

Subject: Status of your Application for Certification and Schedule for Obtaining Needed Air Quality Offsets

The Application for Certification (AFC) for the Southeast Regional Energy Project (06-AFC-4) was filed with the Energy Commission on June 30, 2006. The AFC states that the City of Vernon is proposing to use the South Coast Air Quality Management District's (SCAQMD) Priority Reserve Credit program to offset the proposed generation facility's criteria air pollutant emissions. However, the Priority Reserve program is no longer available to power plants. On March 31, 2009 the SCAQMD sent a letter to the City denying its application for a Title V Permit to Construct.

Consequently, it is uncertain as to whether your project will soon have a clear path forward to obtain the necessary emission reduction credits to mitigate project impacts and to allow for eventual certification by the Commission. Since the project as proposed may not have sufficient offsets without use of the Priority Reserve, the staff believes the City of Vernon should provide information that indicates how the project can be licensed and why the Commission should continue to process the application. Upon receipt of your response staff will determine if further work on the project is warranted at this time, or due to the SCAQMD decision and letter, whether it would be appropriate to ask the project siting committee to suspend or terminate the project until such time as there is a clear path forward to certification.

Background

In August 2007, the SCAQMD amended its Priority Reserve Rules by establishing air quality and economic criteria that allowed these offsets to be purchased from the Priority Reserve program for new power plants licensed by the Energy Commission. The SCAQMD, under Rule 1309.1, limited these power plant credits, requiring developers to have a one-year power sales contracts and a license from the Energy Commission to construct their facility before the SCAQMD Board would release any credits for that facility. Plants being proposed by municipal utilities were allowed only enough credits to build projects that would serve their native load. Alternatively, they would also be considered for credits if they had a signed long term contract with Southern California Edison or San Diego Gas & Electric, or they could apply for a Board

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waiver of the contract requirement. The SCAQMD also limited the total amount of new electricity generating capacity that could access Priority Reserve credits to no more than 2,700 megawatts.

The SCAQMD Priority Reserve Rule was challenged in Superior Court and in July 2008, the court decision found the air district's environmental analysis for the rulemaking was inadequate under the California Environmental Quality Act (CEQA). The court's decision concluded that a legally sufficient environmental document would require significant new analysis. To date, there is no indication that the SCAQMD will commence another rulemaking to cure the deficiencies the court found in the environmental document. As a consequence, the SCAQMD is unable to issue any offsets for power plants in need of a permit at this time. The SCAQMD is now working to modify its regulations to allow permits for non-power plant facilities, but has no plans to develop new rules applicable to power plants.

Your Offset Strategy and Schedule

Before deciding whether to recommend suspension or termination of the application, the staff wishes to extend you the opportunity to demonstrate that you have an effective strategy and schedule for obtaining the needed offsets through valid programs. This strategy should also include a plan to secure the applicable Determination of Compliance (i.e., a Preliminary Determination) from the SCAQMD which identifies the sources and timing of offsets. Staff will review your response and your schedule and forward its recommendation to the Executive Director, and subsequently to the Committee overseeing the licensing proceeding for your project. Please respond by June 8, 2009.

If you have any questions regarding this letter, please feel free to call Eileen Allen, Siting & Compliance Office Manager at (916) 654-4082 or contact her by e-mail at eallen@energy.state.ca.us.

Sincerely,



MELISSA JONES
Executive Director

MJ/jcm

cc: Mohsen Nazemi, P.E., Deputy Executive Officer
South Coast Air Quality Management District



**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 SOUTH EAST REGIONAL ENERGY
CENTER (FORMERLY CITY OF VERNON)**

DOCKET NO. 06-AFC-4

**PROOF OF SERVICE LIST
(REVISED 4/24/09)**

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DECLARATION OF SERVICE

I, April Albright, declare that on May 8, 2009, I served and filed copies of the attached Status of Your Application for Certification and Schedule for Obtaining Needed Air Quality Offsets. 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/cityofvernon]**. 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:

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

- 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 the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- 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. _____

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

Original signed by _____
April Albright