State of California

Energy Resources Conservation and Development Commission

DOCKET
06-AFC-4
DATE AUG 12 2009
RECD AUG 12 2009

In the Matter of:	)	Docket No. 06-AFC-4
	)	
Application for Certification	)	**STAFF'S MOTION TO**
For the Southeast Regional Energy	)	**TERMINATE**
Center (Formerly City of Vernon)	)	

INTRODUCTION

Staff respectfully requests the Committee overseeing the proceeding on the Southeast Regional Energy Center Application for Certification (AFC) to terminate the proceeding under Title 20, California Code of Regulations, section 1720.2, on the grounds that the applicant (i.e., City of Vernon) has failed to pursue an application with due diligence and that the project, as proposed, cannot obtain legally required air emission offsets. Lack of these offsets resulted in the South Coast Air Quality Management District's (SCAQMD) denial of Vernon's application for a Title V Permit to construct the project.

II

THE APPLICANT HAS BEEN UNABLE TO OVERCOME THE SIGNIFICANT BARRIERS TOWARDS PROJECT COMPLETION

The Southeast Regional Energy Center (SREC) AFC was originally filed as the Vernon Power Plant on June 30, 2006, with the intent of acquiring priority reserve credits under SCAQMD's Rule 1309.1 for emission offsets for particulate matter and sulfur oxides. (Letter from Michael Carroll dated June 8, 2009, Exhibit 4.) At the time the AFC was filed, and up to the 2008 court ruling invalidating Rule 1309.1, it was believed that priority reserve credits were generally available to energy generating facilities under Rule 1309.1. This project faced an additional SCAQMD requirement of needing a long term contract to sell excess generation. (Applicant's Status Report 9, p. 2, Exhibit 12.) Rule 1309.1(d)(14), requires priority Reserve Credits to not be issued for generation beyond native load (i.e., the generation capacity needed for serving a municipal utility's local electricity customers) unless the applicant has entered into a long-term contract with either Southern California Edison, San Diego Gas and Electric or the State of California for this excess power. (See Applicant's Status Report 9, p. 2, Exhibit 12.) The project

generates an excess of 700 megawatts (MW) beyond the native load requirements. (Staff Status Report 4, p. 1, Exhibit 9.) The applicant has yet to enter into such a contract to sell this power and, therefore, would not be eligible for priority reserve credits. (Applicant's Status Report 9, p. 2, Exhibit 12; SCAQMD letter, Exhibit 1.) The applicant has not provided any evidence that such a contract is forthcoming.

With the invalidation of Rule 1309.1, there is little chance the applicant will be able to secure the necessary emission credits to support a 943MW facility because of the general shortage of various emission credits in the region. The project suffered a fatal blow on March 31, 2009, when the SCAQMD denied the City of Vernon's application for a Title V Permit to construct the Southeast Regional Energy Center on the basis that the project does not comply with emission offset requirements of its Rule 1303(b). (Letter from SCAQMD to Dpty. Director Terry O'Brien, Exhibit 2.)

Besides these hurdles, the applicant has yet to acquire site control since filing its application three years ago. The current site owner is involved in a lengthy approval process with the California Department of Toxic Substance Control (DTSC) over the cleanup of various surface, sub-surface soils and groundwater contaminated with hazardous waste material. Until there is an approved certified remediation plan, the property cannot be sold to the applicant, nor can any construction or operational activity occur. (Applicant's Status Report 9, p. 5, Exhibit 12.)

Another barrier precluding the advancement of this project is the uncertainty on the upgrades the local and regional transmission systems require before interconnection to the grid can occur. Staff submitted a number of data requests regarding the transmission interconnection. In response, the applicant explained it is still waiting on information from Los Angeles Department of Water and Power (LADWP) and the California Independent System Operator, (CAISO). (Staff Status Report 4, Exhibit 9; Applicant's Status Report 9, p. 6, Exhibit 12.). While the applicant did file information about two separate paths of interconnection to the Southern California Edison's Laguna Bell Substation, right of way and substation upgrades continue to provide significant issues, and LADWP (whose substation is of closest proximity to the proposed SREC), has indicated in numerous filings that it will not accommodate grid interconnection through its facilities. (Letter from LADWP dated August 30, 2006, Exhibit 13)

Taken together, these three issues, especially the lack of a definitive means to acquire emission reduction credits, represent barriers that foreclose and preclude the viability of the Southeast Regional Energy Center Power project. The project has been in the Commission's application review process for 38 months, and a Preliminary Staff Assessment (PSA) is no closer to completion today than it was when the first staff status report was filed in January of 2007. (Staff Status Report 1, Exhibit 6.) The same issues continued to persist in subsequent staff status reports, namely, air quality, transmission and hazardous waste. (See Staff Status Reports 1-6, Exhibits 6-11.) Even the applicant's status report, dated January 2008, confirms the problems

associated with obtaining air emission credits and the lack of site control, are matters of concern. Staff has long been concerned with the viability of this project and first requested a suspension with the submission of Staff Status Report 4 dated January 18, 2008 (p. 3 .Exhibit 9). At that time the applicant insisted progress was being made yet 18 months later the project is even less likely to be completed.

III

WITH THE DISTRICT'S RULE 1309.1 INVALIDATED, THE APPLICANT HAS NO CLEAR PATHWAY TO OBTAINING THE NECESSARY EMISSION REDUCTION CREDITS

South Coast Air Quality Management District's February 25, 2009 letter was clear in stating two important facts: 1) Even if Rule 1309.1 is reinstated on appeal, the City of Vernon's project does not comply with the provisions of Rule 1309.1(d)(12) and (14), procurement of a long term contract for excess generation; and 2) the City of Vernon has not been able to demonstrate the proposed project will comply with the emission offsets requirements of AQMD Rule 1303(b). (Letter from South Coast, pp. 1-2, Exhibit 1)

Without a means to obtain necessary emission credits and subsequent denial of the applicant's request for a Title V permit to construct, staff believes this project would not be able to proceed and should be terminated.

IV

THE APPLICANT WAS GIVEN AN OPPORTUNITY TO PROVIDE A STRATEGY AND SCHEDULE FOR RESOLVING AIR QUALITY ISSUES

On May 7, 2009, the Commission sent a letter to the City of Vernon requesting the applicant demonstrate an effective strategy and schedule for obtaining the needed offsets through valid programs and include a plan to secure a Determination of Compliance from the SCAQMD, which identifies the sources and timing of offsets. (Letter from Melissa Jones to Donal O'Callaghan, Exhibit 3)

The applicant's response letter, dated June 8, 2009, fails to put forth any real strategy for addressing the emission issues or any of the other problems facing the project. Rather than diligently taking steps to resolve the issues head on, the applicant relies on passage of a proposed Senate Bill (S.B. 696), discusses a working group Vernon is participating in, and mentions efforts by SCAQMD staff to clarify the rules governing the SOx RECLAIM program. (Letter from Michael Carroll to Melissa Jones, Exhibit 4) Staff is particularly concerned with SB 696

being offered as a strategy, since it does not appear to provide any relief for the Southeast Regional Energy Project. Staff's view of the relevance of SB 696 is discussed in more detail below.

The applicant's June 8, 2009 letter represents more of the same, more waiting for the actions of others, without addressing the fundamental problem that banked emission credits, upon which the project relies, are not available to meet offset requirements. The applicant has yet to offer concrete plans to obtain offsets, such as paying for new emission control equipment at existing polluting industrial facilities to generate offsets or the shutdown of existing facilities. Simply submitting a list of what others are doing does not resolve the impediments to the project. (Letter from SCAQMD, p. 2 Exhibit 1)

V

PASSAGE OF SENATE BILL 696 WOULD NOT HELP SOUTHEAST REGIONAL ENERGY PROJECT

The applicant's reliance on Senate Bill 696 is misplaced. SB 696 would reinstate Rule 1309.1 and authorize SCAQMD to make emission offsets available for various types of projects, including electric generation. (Letter from Michael Carroll to Melissa Jones, p. 1, Exhibit 4)

But the current version of SB 696 maintains the requirement that, to access the priority reserve credits, a *power plant must have entered into a binding contract to sell the power to a utility regulated by the Public Utilities Commission*. Therefore, SB 696 would place the project in the same situation it has been in for the last three years, which ultimately contributed to SCAQMD denying the issuance of a Title V permit. (Sen. Bill No. 696, (2008-2010 Reg. Sess) Amended June 17, 2009, p. 7, Exhibit 5)

VI

THE SOUTHEAST REGIONAL ENERGY PROJECT AS CURRENTLY PROPOSED IS NOT A VIABLE PROJECT AND IS UNLIKLEY TO BE VIABLE IN THE NEAR FUTURE

The applicant has failed to provide any evidence that it will be able to acquire ownership or control of the project site, that it will be able to obtain required emission credits or that it can interconnect with the transmission system at an appropriate location. There is no point in continuing the project with the same impenetrable road blocks that it faced when the application was filed 38 months ago. Staff does not believe the project has a tenable prospect of advancing in the foreseeable future. Moreover, at this point, any work that was done on the project is

outdated and should be redone. There is no advantage in maintaining the project in its current dormant state.

Staff has been informed by the applicant's consultant that a supplement will be filed with changes to the proposed facility. Modifying the proposed project, however, would not remedy the fundamental problems regarding the unavailability of emission credits through SCAQMD's inoperable rules. For all these reasons, the Committee should, therefore, terminate the proceeding under section 1720.2. (Cal. Code Regs., tit.20, § 1720.2.)

An alternative to termination would be suspension of the proceeding, although staff believes termination is warranted and preferable. A suspension would at least officially allow staff and all interested agencies to cease work on the AFC for a certain period of time pending some specified event.

In the event the Committee chooses suspension, staff recommends the suspension last for no more than six months, given the unlikely prospects for improvement in circumstances, and, at the end of that period, the applicant should be directed to file a status report describing the progress it has made to resolve the air permitting and any other issues that led to the suspension. In the absence of substantial progress, the case should be terminated at that point.

Date: August 12, 2009

Respectfully submitted,

/s/ Jared Babula

JARED BABULA
Senior Staff Counsel

JAPCD/m

South Coast
Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 · www.aqmd.gov

DOCKET
06-AFC-4
DATE FEB 25 2009
RECD. MAR 02 2009

Office of the Executive Officer
Barry R. Wallerstein, D.Env.
909.396.2100, fax 909.396.3340

February 25, 2009

RECEIVED BY
MAR 3 2009
CHIEF COUNSEL OFFICE

Mr. Donal O'Callaghan
Light and Power Department
4305 Santa Fe Avenue
Vernon, CA. 90058

Subject: Proposed Southeast Regional Energy Center Power Plant Project, 06-AFC-4, AQMD Applications Numbers 458388-458407, 458424, Facility ID 148553

Dear Mr. O'Callaghan:

This is in reference to the City of Vernon's Application for Certification (AFC) and Applications for Permit to Construct submitted on June 30, 2006, to the California Energy Commission (CEC) and the South Coast Air Quality Management District (AQMD), respectively, for construction of the Southeast Regional Energy Center (SREC) project consisting of a 943 net MegaWatts (MWs) power plant to be located at the southeast corner of Fruitland and Boyle Avenues in the City of Vernon.

As you know, while the AQMD has continued to evaluate and process your applications for Permits to Construct, AQMD had not previously made any preliminary or final compliance determinations for your project. However at this time, based on our review of your applications, AQMD has determined that the City of Vernon has not been able to demonstrate that the proposed SREC project will comply with the emissions offsets requirements of AQMD Rule 1303(b). At this point, as you know, AQMD Rule 1309.1 – Priority Reserve, as amended on August 3, 2007, has been invalidated by the court order issued by Judge Ann I. Jones in July and November 2008 in response to a lawsuit filed by a group of environmental organizations. In the absence of Amended Rule 1309.1, the City of Vernon is required to provide emission offsets in the form of Emission Reduction Credits (ERCs) in order to demonstrate compliance with the emissions offset requirements of AQMD Rule 1303(b).

PROOF OF SERVICE (REVISED 02/25/09) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 03/02/09
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Exhibit 1

As you may know, the AQMD has appealed Judge Jones' ruling. However, even if the AQMD successfully appealed Judge Jones' denial of Rule 1309.1 and the rule was being implemented as amended on August 3, 2007, the City of Vernon still must comply with the specific requirements of 1309.1(d)(12) and (14), in addition to the requirements of Rule 1309.1(b)(5)(A)(4), (c) and (d), and other requirements of AQMD Regulation XIII, prior to the AQMD being able to make a determination that the project complies with all applicable requirements of AQMD's NSR Rules. The AQMD has determined that the City of Vernon does not comply with the provisions of Rule 1309.1(d)(12) and (14), as amended on August 3, 2007, for the following reasons:

- The City of Vernon has not entered into a long-term contract with the SCE, SDG&E or the State of California and had not petitioned the AQMD Governing Board and obtained approval from the Governing Board to waive such requirements.
- Although the City of Vernon is a municipal-owned electric generating facility (EGF), the proposed 943 MWs SREC project exceeds the City's future projected native load.
- The Executive Officer can only authorize the release of Priority Reserve (PR) credits for the first 2,700 MW that is requested by EGFs, without further approval by the AQMD's Governing Board. Three of the pending EGF projects have already entered into long-term contracts with SCE, including the Walnut Creek (500 MWs), CPV Sentinel (850 MWs) and NRG El Segundo (573 MWs), for a total of 1,923 MWs. This does not even include the additional 300 MWs for the two municipal-owned EGFs, namely the City of Anaheim (200 MWs) and the City of Riverside (100 MWs), whose proposals do not exceed their municipalities' future projected native loads.
- As a result, the proposed three EGFs with long-term contracts have already reserved 1,923 MWs of the 2,700 MWs that the Executive Officer is authorized to release PR credits for, leaving only 777 MWs for the remaining pending projects, even if we exclude the City of Anaheim and City of Riverside proposed projects.

Since the City of Vernon has not provided ERCs to offset the emission increases from the proposed SREC project, and even if Rule 1309.1, as amended on August 3, 2007, was valid, the City's proposed 943 MWs SREC project alone exceeds the remaining available MWs to obtain PR credits for all pending EGFs without long-term contracts. Further, since the AQMD's Governing Board has not approved the release of PR credits in excess of 2,700 MWs, and the City of Vernon has not filed a petition with the AQMD's Governing Board and obtained Governing Board's approval to waive the long-term contract requirements, **the AQMD staff has determined that the City of Vernon's SREC project does not comply with the requirements of AQMD Rule 1303(b).**

Therefore, the City of Vernon is required to provide the necessary ERCs to offset all emission increases from the proposed SREC project by March 15, 2009. If the City of Vernon has not provided the required ERCs by this date, the AQMD will proceed with the denial of your applications for Permits to Construct and issue a

Determination of Non-compliance to CEC relative to the City of Vernon's AFC application for the proposed SREC project.

If you have any questions, please contact me or Mohsen Nazemi, Deputy Executive Officer of Engineering & Compliance at 909.396.2662.

Sincerely,

Barry R. Wallerstein, D.Env.
Executive Officer

BRW:MN:am

cc: AQMD Governing Board Members
Kurt Wiese, AQMD
Terry O'Brian, CEC
Mike Carroll, Latham & Watkins

South Coast
Air Quality Management District
AQMD
21865 E. Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 · http://www.aqmd.gov

March 31, 2009

Mr. Terry O'Brien
Deputy Director
California Energy Commission
1516 9th Street, MS 3000
Sacramento, CA 95814-5512

Subject: Proposed Southeast Regional Energy Center (SREC) Power Plant Project (06-AFC-4) to be located at 3200 Fruitland Avenue, Vernon, CA 90058 (Facility ID 148553)

Dear Mr. O'Brien:

Per California Energy Commission's (CEC's) request, I am providing you an update in reference to the City of Vernon's Application for Certification (AFC) submitted to the CEC for the proposed Southeast Regional Energy Center (SREC) project consisting of a 943 Mega Watts (MWs) to be located at 3200 Fruitland Avenue in the City of Vernon.

This letter is to inform you that the South Coast Air Quality Management District (AQMD) staff has carefully evaluated the proposed SREC project and determined that the project does not comply with the emissions offset requirements of AQMD Rule 1303(b). As a result, AQMD has denied the City of Vernon's applications for a Title V Permit to Construct for this project. Attached for your information, please find a copy of the AQMD's letter to the City of Vernon, dated March 31, 2009, denying the City of Vernon's applications for a Title V Permit to Construct for the proposed SREC project.

If you have any questions regarding this letter, please contact me at 909.396.2662.

Sincerely,

Mohsen Nazemi, P.E.
Deputy Executive Officer
Engineering & Compliance

MN:am
Enclosure

cc: Barry Wallerstein, AQMD
Kurt Wiese, AQMD
Donal O'Callaghan, City of Vernon
Michael Carroll, Latham & Watkins
Mike Monasmith, CEC

Exhibit 2

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

RECEIVED BY
2009 MAY 11 PM 3:04
CHIEF COUNSEL OFFICE

May 7, 2009

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

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

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

PROOF OF SERVICE (REVISED 4/24/09) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 5/8/09
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Exhibit 3

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

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037484-0006

June 8, 2009

RECEIVED BY
JUN 1 5 2009
CHIEF COUNSEL OFFICE

Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Southeast Region Energy Project (06-AFC-04)

Dear Ms. Jones:

On behalf of the City of Vernon (City), we hereby respond to your letter to Donal O'Callaghan of the City, dated May 7, 2009, wherein you requested additional information regarding how the City plans to address emission offset requirements for the Southeast Region Energy Project (SREP) in light of developments in the South Coast Air Quality Management District (SCAQMD) affecting the availability of emission offsets. You have indicated that you plan to use this information to evaluate whether or not it would be appropriate for staff to request that the project siting committee suspend further work on the application.

As you point out in your letter, it was the City's intention to rely on SCAQMD Rule 1309.1 - Priority Reserve as its source of emission offsets for particulate matter (PM) and sulfur oxides (SOx). As you point out, that option has been precluded for the time being as a result of a ruling in California Superior Court.[1] As a result, the City has been actively pursuing a number of alternative sources of offsets. As set forth below, there are a number of viable options for satisfying the emission offset requirement for the SREP, some of which may come to fruition in the very near term.

On February 27, 2009, California Senator Rodney Wright introduced Senate Bill No. 696 (SB 696).[2] SB 696 would authorize the SCAQMD to make emission offsets available from its internal emission offset accounts to various types of projects, including electric generating

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[1] NRDC et al. v. SCAQMD, Case Number B110792.

[2] SB696 is available at http://info.sen.ca.gov/cgi-bin/postquery?bill_number=sb_696&sess=CUR&house=B&site=sen (last visited 5/28/09).

Exhibit 4

facilities, under specified circumstances. It would further exempt the actions of the SCAQMD from review under the California Environmental Quality Act. SB 696 would provide an alternative legislative solution for the SREP. SB 696 is also an urgency bill which would take effect immediately upon being signed by the Governor.

The City is participating in the newly established SCAQMD working group that was formed to develop new mechanisms for creating PM offsets. The first mechanism that is being considered by this working group is the generation of offsets from the paving of unpaved roads, as has been done in other California air districts. We understand that proposed rule language has been developed, and that it will be made available by SCAQMD soon. The proposed rule is modeled on other rules which have been adopted in California and Arizona, and in the case of Arizona, approved by EPA into the state implementation plan. The CEC has previously approved projects which have offset their PM emissions through road paving.[3]

SCAQMD staff has also committed to clarifying or amending the rules governing its SOx RECLAIM program to allow all electric generating facilities to opt into that program and thereby satisfy their SOx emission offset obligation using SOx RECLAIM Trading Credits (RTCs). SOx RTCs are generally available on the open market. Under current rules, it is clear that electric generating facilities owned by the investor owned utilities can opt into the SOx RECLAIM program, but it is less clear that other projects can do so.

As summarized above, the City is working diligently on its own and with the SCAQMD on a number of alternative sources of emission offsets for the SREP. We have every reason to believe that one or more of these options will come to fruition and will allow the City to secure the offsets necessary to complete development of the SREP. We also note that as far as the City is aware, the staff is not actively working on this pending application. Therefore, the existence of the open application is not resulting in a diversion of scarce resources from other matters. Under the circumstances, the application for the SREP should remain active.

Thank you for your attention to this matter. Please let me know if you have any further questions.

Very truly yours,

Michael J. Carroll
Of LATHAM & WATKINS LLP

Cc: Mohsen Nazemi, SCAQMD
Donal O'Callaghan, City of Vernon
Krishna Nand, City of Vernon

---

[3] High Desert Power Project (97-AFC-01) and Victorville 2 Hybrid Power Plant (07-AFC-01).

AMENDED IN SENATE JUNE 17, 2009

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL No. 696

Introduced by Senator Wright

February 27, 2009

An act to add Sections 40440.12 and 40440.13 to the Health and Safety Code, relating to air quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Wright. Air quality: CEQA exemptions: emission reduction credits.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national

Exhibit 5

ambient air quality standard is required to establish, by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. Pursuant to this requirement the South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

This bill would exempt from the requirements of CEQA, except as specified, the adoption and implementation of specified district rules relating to emission credits. Because a lead agency would be required to determine whether the use of the credits qualifies for an exemption, this bill would impose a state-mandated local program.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:
3 (1) Because of the superior court decision in Natural Resources
4 Defense Council v. South Coast Air Quality Management District
5 (Super. Ct. Los Angeles County, 2007, No. BS 110792) holding
6 the South Coast Air Quality Management District (district) violated
7 the requirements of the California Environmental Quality Act
8 (CEQA) (Division 13 (commencing with Section 21000) of the
9 Public Resources Code) in the promulgation of certain district

rules, the district is unable to issue over a thousand pending permits that rely on the district's internal offset bank to offset emissions.

(2) The superior court decision also required the district to set aside several thousand permits that were previously issued in reliance on the district's internal offset bank. These permits have been subject to analysis performed pursuant to CEQA that the lead agency has deemed appropriate.

(3) Between 2003 and 2005, the federal Environmental Protection Agency conducted an extensive review of the criteria for, and the types of documentation used to support, the deposit of credits in the district's offset bank. As a result of that review, the district made a significant adjustment. ~~They~~ *The district* reduced the total credits by an average of 60 percent over all pollutants and by over 90 percent for PM10 credits. As a result of this review, the Environmental Protection Agency issued a letter to the district on April 11, 2006, confirming that the district tracking system addressed the underlying historical issues, including the use of pre-1990 credits and further recommended a rule codifying the revised tracking system. The district in 2006 adopted Rule 1315 to meet this recommendation. Rule 1315 is now in part the subject of the litigation described paragraph (1).

(4) If prompt legislative action is not taken to correct this situation, projects will be stopped from going forward or frozen in place, representing significant losses to the economy, as well as numerous well-paying jobs. The impact of approved projects not going forward will dramatically impede any economic recovery in southern California and contribute to another state deficit as a result of lower tax revenues.

(5) Affected projects include equipment replacement to reduce air emissions, plus projects for essential public services such as hospitals, schools, landfills, sewage treatment plants, renewable energy projects, and small sources, including small businesses that are unable to locate or afford credits on the open market. With time, many other similar projects will have to be placed on hold, or have their application withdrawn.

(6) The superior court decision also prohibits the district from issuing air credits from its Priority Reserve to thermal powerplants ~~that are needed to meet the current and future projected electricity needs of the region and to prevent blackouts during peak demand periods.~~ *that the Public Utilities Commission found were needed.*

The commission's finding was made after extensive public hearings in the commission's long-term electric procurement plan proceedings held pursuant to Section 454.5 of the Public Utilities Code. The commission concluded that these thermal powerplants were needed after concluding that efforts at all cost-effective, reliable, and feasible demand response and demand reduction resources were exhausted and that additional supplies of electricity from eligible renewable energy resources were insufficient to meet the current and future projected electricity needs of the region to prevent blackouts during peak demand periods, to maintain a stable supply of electricity if imported supplies of electricity are interrupted, and to integrate and backstop new, intermittent electricity generated by eligible renewable energy resources that will be added to the grid.

(7) Without corrective legislation, the district cannot improve air quality by allowing the existing older and higher emitting and less efficient powerplants to be replaced with new cleaner and more efficient powerplants. Fifty percent of available total power in the region is generated from powerplants that are 40 years or older.

(8) Failure to correct this problem will mean the district cannot help meet the mandates set forth in the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) if it cannot issue permits to provide necessary peaking *and load-following* power to support increased reliance on ~~renewable energy~~ *intermittent electricity generated by eligible renewable energy resources* as will be required by state efforts to reduce *emissions of* greenhouse gases.

(b) It is therefore necessary that legislation be enacted to allow the district to resume issuing permits and to abrogate the superior court decision in Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792).

SEC. 2. Section 40440.12 is added to the Health and Safety Code, to read:

40440.12. (a) South coast district Rule 1309.1, as amended on September 8, 2006, and replaced August 3, 2007, and Rule 1315, as adopted September 8, 2006, and readopted August 3, 2007, relating to, among other things, the creation of internal accounts for essential public services, small sources, exempt sources, and

eligible powerplants, are hereby continued in full force and effect without interruption since September 8, 2006, and August 3, 2007.

(b) The adoption and implementation of Rules 1309.1, 1315, 1304, and any amendments to these rules required by the United States Environmental Protection Agency for approval, are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), except as provided in subdivision (d).

(c) The exemption provided in subdivision (b) applies to all actions taken pursuant to the rules listed in subdivision (b) occurring on and after September 8, 2006, and to the use of credits pursuant to the May 3, 2002, version of Rule 1309.1, except as provided in subdivision (d).

(d) (1) There are hereby established two accounts of offset credits in the south coast district's internal bank: the operating account and the set-aside account.

(2) The starting balances of the operating account are hereby established in the following amounts:

(A) Volatile organic compounds: 10.98 tons/day.

(B) Nitrogen oxides: 14.27 tons/day.

(C) Sulfur oxides: 2.32 tons/day.

(D) Carbon monoxide: 12.72 tons/day.

(E) PM10: 10.63 tons/day.

(3) The credits in the operating account may be used for implementation of Rules 1304 and 1309.1. The use of credits in the operating account are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) except that the issuance of any permit using these credits is not ~~exempt from the act~~ *included within this exemption*. Future rules authorizing the creation of additional offset credits for deposit into the operating account are not exempt from the California Environmental Quality Act under this section. The south coast district shall account for emission credits used pursuant to this section to ensure that the credits issued do not exceed the allocations described in this subdivision.

(4) The starting balances of the set-aside account are hereby established in the following amounts:

(A) Volatile organic compounds: 55.56 tons/day.

(B) Nitrogen oxides: 11.24 tons/day.

(C) Sulfur oxides: 0 tons/day.

(D) Carbon monoxide: 0 tons/day.

(E) PM10: 0.55 tons/day.

(5) The use of the credits in the set-aside account is not exempt from the California Environmental Quality Act pursuant to this section.

(e) The exemptions from the California Environmental Quality Act provided in this section shall not apply unless all of the following are satisfied:

(1) A south coast district rule requires the use of the best available control technology, as defined in Section 40405, and air quality modeling to ensure the source will not cause a violation, or make significantly worse an existing violation, of any ambient air quality standards as defined in district Rule 1303, unless exempted from modeling pursuant to district Rule 1304, as amended June 14, 1996, for each new, relocated, or modified source with an emissions increase of one pound per day or greater of any air contaminant.

(2) A south coast district rule prohibits the construction of any new, relocated, or modified permitted unit if the emissions of any toxic air contaminant, as listed by the district board, exceed a cumulative increase in maximum individual cancer risk at any receptor location of greater than one in one million if the permitted unit is constructed without best available control technology for toxic air contaminants, or greater than 10 in one million if the permitted unit is constructed with best available control technology for toxic air contaminants or exceeds a chronic or acute noncancer health effect hazard index of 1.0.

(3) The south coast district accounts for the use of offset credits pursuant to this subdivision as part of the district's state implementation plan submissions and demonstrates that the use of the offset credits will not interfere with attainment or maintenance of ambient air quality standards.

(4) South coast district Rules 1304, 1309.1, and 1315, as specified in this subdivision, have been submitted to the United States Environmental Protection Agency, and have not been disapproved by that agency.

(f) No fee shall be charged for the use of credits by essential public services, as defined in south coast district Rule 1302.

~~(f)~~

(g) A powerplant may be eligible to receive offset credits under this section if it meets both of the following conditions:

(1) The powerplant has filed its application for certification before the State Energy Resources Conservation and Development Commission and its certificate is approved pending release of internal offset credits by the south coast district.

(2) The powerplant will provide electric power to customers in California, and either the powerplant owner has entered into a binding contract for purchase of the power by an electrical corporation subject to regulation by the Public Utilities Commission, and the contracts have been approved by the Public Utilities Commission consistent with its authority, including, but not limited to, Section 380 of the Public Utilities Code, or the plant is a powerplant owned by a local publicly owned electrical utility, or owned by a municipality, that is designed and constructed not to exceed the municipality or utility's native demand load projections.

~~(g)~~

(h) (1) A powerplant accessing emission credits pursuant to this section shall pay a mitigation fee for the Priority Reserve offset credits obtained that shall be the amount set forth in south coast district Rule 1309.1, as amended August 3, 2007.

(2) The south coast district shall, to the extent technically and economically feasible, use the mitigation fees to mitigate emissions of the relevant pollutants or its precursors in the area impacted by emissions from the powerplant, with a minimum of one-third to be used for installation of renewable or alternative sources of energy. Up to 10 percent may be used by the district for administration of the mitigation program.

~~(h)~~

(i) Any credits used pursuant to this section shall not be transferable except to a new owner of the same source, and shall revert back to the south coast district's internal accounts upon the source, or portion of a source, ceasing operation.

~~(i)~~

(j) Except as expressly provided in subdivisions (b) and (d), nothing in this section shall affect the applicability of the California Environmental Quality Act to the licensing and permitting of any powerplant project, or to the permitting of any project by the south coast district.

~~(j)~~

(k) The decisions of the court in Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792) are hereby abrogated.

SEC. 3. Section 40440.13 is added to the Health and Safety Code, to read:

40440.13. (a) (1) Any amendment of the operating account to increase the amount of emission credits above the amounts established in paragraph (2) of subdivision (d) of Section 40440.12 or a change in the eligibility for those credits shall be made in accordance with the requirements of this section and any applicable requirements of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(2) The south coast district shall post its internal credit accounts, including debits, credits, and balances on its Internet Web site.

(b) A powerplant shall be eligible to receive offset credits from amounts added to the operating account beyond the starting balances established in paragraph (2) of subdivision (d) of Section 40440.12 only if the powerplant meets both of the following conditions:

(1) The powerplant will provide electric power to customers in southern California, and the capacity addition is authorized by the Public Utilities Commission in its long-term power procurement decision in accordance with Section 454.5 of the Public Utilities Code, after concluding that efforts at all cost-effective, reliable, and feasible demand response and demand reduction resources were exhausted and additional supplies of renewable power were insufficient to meet the current and future projected electricity needs of the region.

(2) The powerplant owner has entered into a binding contract for purchase of the power by an electrical corporation subject to regulation by the Public Utilities Commission, and the contracts have been approved by the Public Utilities Commission consistent with its authority, including, but not limited to, Section 380 of the Public Utilities Code, or is a powerplant owned by a local publicly owned electrical utility that is designed and constructed not to exceed that utility's native demand load projections within the local publicly owned electrical utility's service area. Powerplants that meet this paragraph are deemed needed to meet electric power

demand, system reliability, and integration of renewable power into the grid.

(c) Any credits used pursuant to this section shall not be transferable except to a new owner of the same source, and shall revert back to the south coast district upon the source, or portion of a source, ceasing operation.

(d) The south coast district shall establish a fee paid by the powerplant for the use of offset credits from the Priority Reserve issued pursuant to this section.

(e) Nothing in this section affects the responsibilities of the State Energy Resources Conservation and Development Commission with respect to environmental analysis of a proposed powerplant.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances concerning the South Coast Air Quality Management District.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to the court decision in Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792), the South Coast Air Quality Management District is unable to issue over a thousand pending permits that are either exempt from offset requirements or qualified to use offset credits from the district's Priority Reserve and is required to set aside thousands of permits already issued; therefore it is necessary for this measure to take effect immediately to allow the district to issue permits in an expeditious manner and

1 to validate previously issued permits called into question by the
2 superior court's decision.

O

State Of California

The Resources Agency of California

Memorandum

Date: January 18, 2007
Telephone: (916) 653-1245

DOCKET
06-AFC-4
DATE JAN 18 2007
RECD. JAN 18 2007

To: Jackalyne Pfannenstiel, Presiding Member
Jeffrey Byron, Associate Member

From: California Energy Commission – James W. Reede, Jr., Ed.D
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512

Subject: **VERNON POWER PLANT PROJECT (06-AFC-4) STATUS REPORT #1**

Pursuant to the Committee Scheduling order, the following is staff's first status report on the proposed Vernon Power Plant project (VPP).

Staff filed its Issue Identification Report and identified various unresolved issues and the need for additional information in a number of areas. Staff also filed Data Requests on October 6, 2006, and received responses on November 9, December 28, and January 5. Staff now believes that nearly all of the issues identified in the October 6, 2006 staff filings, with the exception of air quality, public health, transmission system engineering, visible plumes, and waste management have been addressed.

The applicant's Round 1 data responses and additional information needed were discussed at the Data Response workshop held on November 30, 2006 in Maywood. Subsequently, the applicant filed partial data responses. Staff has still not received all requested data committed to by the applicant and subsequently will not meet the Committee's Preliminary Staff Assessment publication date of January 2007. Staff will be issuing a second round of data requests based on the responses received to date. After review of all responses, staff may seek additional information for a complete analysis.

Staff has requested information from the applicant regarding when certain outstanding items will become available and has not received a definitive response. These items are listed below:

1. PM2.5 emissions mitigation strategy;
2. Local air impacts mitigation strategy for criteria pollutants and air toxics;
3. Air quality cumulative impact assessment;
4. South Coast Air Quality Management District (SCAQMD) Preliminary Determination of Compliance (PDOC);
5. Additional health characterization studies of Maywood and/or Huntington Park residents;
6. Decision on transmission line route; and

Proof of Service List (Revised on 10-04-06) filed with Original Document. Mailed from Sacramento on 01-18-07).

Exhibit 6

7. Decision on shift of cooling tower to the south end of site to preclude potential ground-hugging plumes on Fruitland Avenue.

8. Environmental Site Assessment (ESA) Phase II;

Schedule
The applicant was to have provided all Data Responses on November 9, 2006, two months prior to the filing of this Status Report. Since the progress on the PSA has slipped by approximately two months due to lack of timely receipt of information, the schedule for filing of the PSA is estimated to be late March. This is predicated on the applicant filing complete data responses by late February, and receipt of preliminary determinations from all local, state, and federal agencies, including the PDOC from SCAQMD

State Of California

The Resources Agency of California

Memorandum

Date: February 21, 2007
Telephone: (916) 653-1245

To: Jackalyne Pfannenstiel, Presiding Member
Jeffrey Byron, Associate Member

From: California Energy Commission – James W. Reede, Jr., Ed.D
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512

Subject: **VERNON POWER PLANT PROJECT (06-AFC-4) STATUS REPORT #2**

Pursuant to the Committee Scheduling order, the following is staff's second status report on the proposed Vernon Power Plant project (VPP).

Staff filed Round #2 Data Requests on February 2, 2007. Staff had filed its Issue Identification Report and identified various unresolved issues and the need for additional information in a number of areas on October 6, 2006. The applicant has not yet filed all of the Data Responses to the Round #1 Data Requests which staff filed on October 6, 2006. Consequently, staff has not received all requested data committed to by the applicant and subsequently will not meet the Committee's Preliminary Staff Assessment publication date of March 2007.

Intervenor Communities for a Better Environment filed eighty-seven data requests on February 16, 2007. The applicant's responses are of interest to staff. After review of all responses, staff may seek additional information for a complete analysis.

Issue Update

Staff is continuing to analyze the potential traffic safety issues resulting from intermittent ground-hugging plumes that were discussed during the November 30, 2006, workshop. Staff has concerns regarding an additional plume issue. The owner of a food production facility adjacent to the proposed VPP wrote to the Commission on November 27, 2006, expressing concerns about potential significant impacts of the cooling tower plume related to health, safety, and contamination of the food production process. The applicant has not addressed the potential impacts of the cooling tower plumes on traffic or the food processing plant, and in the applicant's Status Report #2, rejected staff's mitigation suggestions of moving the cooling tower to the south end of the project site and/or installing plume abatement technology. This issue will be discussed in detail in the PSA with the appropriate recommendations.

Status of Discovery

Staff now believes that most of the issues identified in the October 6, 2006 staff filings, with the exception of air quality, public health, transmission system engineering, and cooling tower plumes have been addressed. Staff has requested information from the applicant regarding when certain outstanding items will become available and has not received a definitive response. These items are listed below:

1. PM2.5 emissions mitigation strategy; DR AQ-3
2. Local air impacts mitigation strategy for criteria pollutants and air toxics; DR AQ-4

Exhibit 7

3. Air quality cumulative impact assessment; DR AQ-10
4. Additional health characterization studies of Maywood and/or Huntington Park residents; November 30, 2006, Workshop Request and DR PH-49.
5. Issuance date of South Coast Air Quality Management District (SCAQMD) Preliminary Determination of Compliance (PDOC);

Schedule

The applicant was to have provided all Round #1 Data Responses on November 9, 2006. Responses are still outstanding. The Round #2 Data Responses are due March 5, 2007. The CBE-issued Data Responses are not due until March 19, 2007. Since the progress on the PSA has slipped by approximately three and a half months due to lack of timely receipt of information, the schedule for filing of the PSA is estimated to be late April or early May. This is predicated on the applicant filing complete data responses by late March, and receipt of preliminary determinations from all local, state, and federal agencies, including the PDOC from the SCAQMD.

State Of California

Memorandum

DOCKET
06-AFC-4
DATE APR 27 2007
RECD. APR 27 2007

The Resources Agency of California

Date: April 27, 2007
Telephone: (916) 653-1245

To: Jackalyne Pfannenstiel, Presiding Member
James D. Boyd, Associate Member

From: California Energy Commission – James W. Reede, Jr., Ed.D
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512

Subject: **VERNON POWER PLANT PROJECT (06-AFC-4) STATUS REPORT #3**

Pursuant to the Committee Scheduling order, the following is staff's third status report on the proposed Vernon Power Plant project (VPP).

Staff filed Round #3 Data Requests on April 24, 2007, in the areas of transmission systems engineering and waste management. Staff conducted a workshop on April 18, 2007, to discuss responses to the Round #2 Data Requests and to also work toward resolution of outstanding issues previously identified in the October 6, 2006, Issues Identification Report.

Intervenor Communities for a Better Environment participated in the workshop to address the applicant's responses to its 87 data requests in the technical areas of air quality, alternatives, hazardous materials management, public health, socioeconomics, traffic and transportation, and water. The applicant's responses were of interest to staff. After further review of all responses, staff may seek additional information for a complete analysis.

ISSUES UPDATE

COOLING TOWER PLUMES

Staff is continuing to analyze the potential traffic safety issues resulting from intermittent ground-hugging plumes that were previously identified. During the April 18th workshop, staff provided and discussed the preliminary plume analysis results that quantified the number of hours and predicted plume dispersal patterns. The applicant, in its Status Report #2, had previously rejected staff's mitigation suggestions of moving the cooling tower to the south end of the project site and/or installing plume abatement technology. After the staff presentation, the applicant acknowledged the potential plume-related significant impacts to traffic, and agreed to analyze potential mitigation measures and alternatives to resolve this issue.

Staff still has concerns regarding an additional plume issue. The owner of a food production facility adjacent to the proposed VPP wrote to the Energy Commission on November 27, 2006, and spoke during the April 18th workshop, expressing concerns about potential significant impacts of the cooling tower plume and vapor drift related to health, safety, and contamination of the food production process. The applicant has not addressed the potential impacts of the cooling tower plumes on the food processing plant in question nor on the eight other food processing facilities which are nearby (less than 1000 feet). Should the applicant accept staff's mitigation suggestions

PROOF OF SERVICE (REVISED 3/12/07) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 4/27/07

Exhibit 8

of moving the cooling tower to the south end of the project site and/or installing plume abatement technology, the issue of plume impacts may be resolved. This issue will be discussed in detail in the PSA with the appropriate recommendations.

AIR QUALITY

The South Coast Air Quality Management District (District) issued its proposed amendments to Rule 1309.1 – Priority Reserve on April 12, 2007. These rules, if enacted at the District's Board meeting on July 13, 2007, would limit the size of power plants eligible for Priority Reserve emission reduction credits (ERCs) in certain areas to an output no greater than 635 MW. The areas in question are the District's Zone 3 and Environmental Justice Areas (EJA) which are generally communities with a substantial low income and / or minority group population. The VPP falls into an EJA, encompassing the communities of Huntington Park, Maywood, Commerce, and Southgate. If the rule is approved by the District, the applicant would not have access to any Priority Reserve credits for air quality impacts mitigation at its proposed rating of 943 MW (gross generation capacity). The applicant was asked their intent at the April 18th workshop, and they replied that they did not intend to reduce the size of the project at this time and expressed their desire to have the District's proposed rule revised to accommodate the size of the proposed facility.

During the April 18th workshop, the District indicated that they would not be issuing the Preliminary Determination of Compliance until after the District Board's decision on the amendments to the Priority Reserve Rule 1309.1.

PUBLIC HEALTH

Energy Commission staff is continuing to analyze public health studies to fully characterize potential impacts to the communities surrounding the City of Vernon. The California Air Resources Board (CARB) staff is now reviewing the project's Health Risk Assessment after their comment letter revealed that CARB staff had inadvertently used the Health Risk Assessment data associated with the previously proposed and withdrawn Vernon 630 MW project.

WASTE MANAGEMENT

On March 27, 2007, the Department of Toxic Substances Control (DTSC) filed a comment letter with the Energy Commission upon completion of its review of the Phase II Environmental Site Assessment that had been submitted by the applicant as a response to a data request. A number of contamination issues were raised along with concerns regarding appropriate remediation of the site.

Staff from the DTSC Permitting and Corrective Action Branch participated in the April 18th workshop. DTSC staff indicated that the City of Vernon's Environmental and Public Health Department does not possess the required and appropriate Certified Unified Participating Agency (CUPA) status required for public entities involved in toxic waste remediation activities. The City acknowledged their lack of appropriate CUPA certification. Certification is required for the City to be eligible to review their own corrective action projects or approve Remedial Action Plans for soil

or groundwater contamination as required by DTSC and / or the Regional Water Quality Control Board (RWQCB).

DTSC staff informed Energy Commission staff on April 25, 2007, that DTSC may initiate enforcement action within the next 30 days if the applicant does not respond promptly to the March 27th comment letter and acknowledge DTSC's jurisdiction and oversight for the balance of remediation activities. The applicant will need to provide a schedule and workplan for contaminated soil and groundwater remediation activities with oversight by DTSC and the RWQCB.

Energy Commission staff has issued data requests to gather the information requested by DTSC. The applicant has asserted that the Energy Commission does not have jurisdiction regarding site remediation. However, it acknowledged during the April 18th workshop that given the degree of characterized site contamination, the remediation activities may continue for a number of years after the City takes possession of the property and should the project be approved, come under Energy Commission jurisdiction.

STATUS OF DISCOVERY

Some of the issues identified in previous staff filings, with the exception of air quality, public health, transmission system engineering, waste management, and cooling tower plumes have been addressed. Staff has issued data requests for additional information from the applicant regarding outstanding issue items in the waste management and transmission system engineering areas and expects to receive them in late May.

SCHEDULE

The progress on the PSA has currently slipped by approximately five months due to lack of timely receipt of information. Given the estimated issuance in late July of the PDOC by the South Coast Air Quality Management District, the schedule for filing of the PSA is estimated to be late August, an overall eight month slippage. This is predicated upon the applicant filing complete data responses by late May, and receipt of preliminary determinations from all local, state, and federal agencies, including the Preliminary Determination of Compliance from the District.

State Of California

The Resources Agency of California

Memorandum

Date January 18,2008
Telephone: (916) 653-1245

DOCKET
06-AFC-4
DATE JAN 18 2008
RECD. JAN 18 2008

To: Jackalyne Pfannenstiel, Presiding Member
James D. Boyd, Associate Member

From: California Energy Commission – James W. Reede, Jr., Ed.D
1516 Ninth Street
Sacramento. CA 95814-5512
Project Manager

Subject: **VERNON POWER PLANT PROJECT (06-AFC-4) STATUS REPORT #4**

Pursuant to the Committee Scheduling order, the following is staff's fourth status report on the proposed Vernon Power Plant project (VPP).

Staff has reviewed the Applicant's October 2, 2007, AFC Supplement "C." Staff had requested that the Committee hold a Status Conference in November 2007. The applicant requested that it be cancelled and no subsequent information has been received from the applicant. The applicant issued Status Report #8 on October 10, 2007, that identified a number of outstanding discovery requests, all of which still remain unresolved.

ISSUES UPDATE

AIR QUALITY

The South Coast Air Quality Management District (District) adopted its proposed amendments to Rule 1309.1 – Priority Reserve on August 3, 2007. These rules limit the eligibility of municipal power plants to use Priority Reserve emission reduction credits (ERCs) in certain areas of the District to an output no greater than native load requirements. The areas in question are the District's Zone 3 and Environmental Justice Areas (EJA). EJA areas are generally communities with low incomes and/or minority group populations. The VPP is located in an EJA encompassing the communities of Huntington Park, Maywood, Commerce, and Southgate. The applicant would not have access to Priority Reserve Credits for air quality impacts mitigation at its proposed rating of 943 MW (gross generation capacity) because it exceeds its peak native load requirements of 203 MW established during summer 2007. Additionally, the applicant does not have a power purchase agreement with either Southern California Edison or San Diego Gas & Electric which would allow it to access Priority Reserve Credits. The applicant has been asked over the past nine months how they are going to be able to access Priority Reserve Credits since the project does not appear to meet the District's criteria, and they have replied that they do not intend to reduce the size of the project.

The District has not indicated to staff when they will be issue the Preliminary Determination of Compliance based on the amendments to the Priority Reserve Rule 1309.1.

Proof of Service List (Revised on 1-8-08) filed with Original Document. Mailed from Sacramento on 1-18-08

Exhibit 9

COOLING TOWER PLUMES

Staff reviewed the applicant's Supplement "C," which reconfigured the site plan to move the cooling tower to the south end of the project site to mitigate the potential traffic safety issues resulting from intermittent ground-hugging plumes that were previously identified.

Staff still has concerns regarding the additional plume-related issue. The owner of a food production facility adjacent to the proposed VPP wrote to the Energy Commission on November 27, 2006, spoke during the April 18th workshop, and intervened in the proceeding after expressing concerns about potential significant impacts of the cooling tower plume and vapor drift related to health, safety, and contamination of the food production process. The applicant has not fully addressed the potential impacts of the cooling tower plumes to the food processing plant in question nor on the eight other food processing facilities which are nearby. The applicant accepted staff's mitigation suggestions of moving the cooling tower to the south end of the project site which may resolve most of the plume-related impacts. This issue will be discussed in detail in the PSA with the appropriate recommendations.

PUBLIC HEALTH

Energy Commission staff is continuing to analyze public health studies to fully characterize potential impacts to the communities surrounding the City of Vernon. The California Air Resources Board (CARB) staff completed its review of the project's Health Risk Assessment on July 11, 2007, as characterized in the AFC.

WASTE MANAGEMENT

On March 27,2007, the Department of Toxic Substances Control (DTSC) filed a comment letter with the Energy Commission upon completion of its review of the Phase II Environmental Site Assessment that had been submitted by the applicant as a response to a data request. A number of contamination issues were raised along with concerns regarding appropriate remediation of the site.

Staff from the DTSC Permitting and Corrective Action Branch participated in a workshop held on April 18, 2007. DTSC staff indicated that the City of Vernon's Environmental and Public Health Department does not possess the required and appropriate Certified Unified Participating Agency (CUPA) status required for public entities involved in toxic waste remediation activities. The City acknowledged their lack of appropriate CUPA certification. Certification is required for the City to be eligible to review their own corrective action projects or approve Remedial Action Plans for soil or groundwater contamination as required by DTSC and/or the Regional Water Quality Control Board (RWQCB).

DTSC staff informed Energy Commission staff that DTSC may still initiate enforcement action if the applicant does not respond to the outstanding March 27th comment letter and acknowledge DTSC's jurisdiction and oversight for the balance of remediation activities. The applicant will need to provide a schedule and workplan for contaminated soil and groundwater remediation activities with oversight by DTSC and the RWQCB. The applicant has not met with DTSC nor responded to DTSC over the past nine months.

Energy Commission staff issued data requests on April 24, 2007, to gather the information requested by DTSC. The applicant has asserted that the Energy Commission does not have jurisdiction regarding site remediation. However, it acknowledged during the April 18th workshop that given the degree of characterized site contamination, the remediation activities may continue for a number of years after the City takes possession of the property and should the project be approved, remediation activities will be subject to Energy Commission jurisdiction.

INTERVENORS

Since staff's last Status Report there have been additional intervenors approved that have raised concerns regarding the project. These are the City of Los Angeles, County of Los Angeles, Natural Resources Defense Council, Mothers of East LA, Boyle Heights Homeowners Association, Rite-Way Meats, and two individuals.

STATUS OF DISCOVERY

Some of the issues identified in previous staff filings have not yet been addressed. These areas include: air quality, environmental justice, public health, transmission system engineering, waste management, and cooling tower plumes. Staff issued data requests for additional information regarding outstanding issues in waste management and transmission system engineering areas in late April 2007 to which the applicant has not responded.

The applicant has not yet indicated to Commission staff the preferred alignment route for the transmission line which when identified will cause additional analysis and perhaps new data requests.

SCHEDULE

The progress on the PSA has currently slipped by approximately one year due to lack of timely receipt of information. Many of the previously completed sections written during the spring of 2007 may need to be revised and updated. Given the undetermined date of issuance of the PDOC by the South Coast Air Quality Management District, the schedule for filing of the PSA cannot be estimated. Staff's ability to file a PSA is also predicated upon the applicant filing complete data responses, and receipt of preliminary determinations from all local, state, and federal agencies, including the Preliminary Determination of Compliance from the District.

Given the lack of progress this project has made toward certification in the last nine months, and the uncertainty concerning its ability to access the District's Priority Reserve Credits, staff requests that the project be suspended until the applicant has demonstrated that it can successfully resolve all significant permitting issues, most notably the ability to obtain sufficient emissions reduction offsets. If within six months substantial progress towards resolving the outstanding issues is not demonstrated, then staff recommends that the Committee hold a hearing to consider termination of the application.

ASSIGNED STAFF CHANGES

Mike Monasmith has been assigned Project Manager for the remainder of the proceeding. He replaces James W. Reede, Jr., Ed.D, who is now assigned to the Engineering Office.

State Of California

The Resources Agency of California

Memorandum

Date: February 21, 2008
Telephone: (916) 654-4894

DOCKET
06-AFC-4
DATE FEB 21 2008
RECD. FEB 21 2008

To: Jackalyne Pfannenstiel, Presiding Member
James D. Boyd, Associate Member

From: California Energy Commission – Mike Monasmith
1516 Ninth Street
Sacramento, CA 95814-5512
Project Manager

Subject: **VERNON POWER PLANT PROJECT (06-AFC-4) STATUS REPORT #5**

The following is staff's fifth status report on the proposed Vernon Power Plant (VPP) project. Staff has reviewed the applicant's January 21, 2008 response to its January 18, 2008 Status Report #4 and believes Air Quality is still an issue affecting its progress towards publishing a Preliminary Staff Assessment (PSA).

AIR QUALITY

The South Coast Air Quality Management District (District) adopted its proposed amendments to Rule 1309.1 – Priority Reserve on August 3, 2007. Staff believes there is general agreement regarding these rules limiting the eligibility of power plant owners to use Priority Reserve emission reduction credits (ERCs) in certain areas of the District to an output no greater than native load requirements. Given that the VPP project is located within the District's Zone 3, Environmental Justice Area designation, staff believes the applicant would not have access to Priority Reserve credits for air quality impacts mitigation at its proposed capacity of 943 MW. This capacity would exceed the District's peak native load requirement by 203 MW which was established during the summer of 2007. Moreover, given the applicant's lack of a power purchase agreement, whereby access to Priority Reserve credits would be allowed, from staff's perspective the project does not appear to be moving forward. The District has not provided staff with an expected publication date for a Preliminary Determination of Compliance, which would address the issue of the project's conformance with the Priority Reserve rule.

PROJECT STATUS

Staff believes numerous technical areas (i.e., air quality, public health, environmental justice, cooling tower plumes, transmission system engineering and waste management) have unresolved issues and information gaps which would result in an incomplete PSA. With respect to outstanding information, staff has not received all responses to data requests filed on February 5, 2007 and April 24, 2007 regarding waste management and transmission system engineering. The alignment of transmission line routes is still unclear; staff needs a response from applicant's inquiry to the Los Angeles Department of Water & Power regarding potential transmission system impacts. With the date of issuance of the PDOC by the District still undetermined, a date for filing the PSA cannot be identified at this time. However, in accordance with the Committee's order staff will continue to work cooperatively with the applicant, all local, state and federal agencies and the Committee to resolve outstanding issues in as timely a manner as feasible.

PROOF OF SERVICE (REVISED 1/22/08) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 2/21/08
MS

Exhibit 10

State Of California | The Resources Agency of California

Memorandum

Date: May 2, 2008
Telephone: (916) 654-4894

DOCKET
06-AFC-4
DATE MAY 02 2008
RECD. MAY 02 2008

To: Chairman Jackalyne Pfannenstiel, Presiding Member
Vice-Chairman James D. Boyd, Associate Member
Gary Fay, Chief Hearing Officer

From: California Energy Commission – Mike Monasmith
1516 Ninth Street
Sacramento, CA 95814-5512
Project Manager

Subject: **SOUTHEAST REGION ENERGY CENTER (06-AFC-4) STATUS REPORT #6**

The following is staff's sixth status report on the proposed Southeast Region Energy Center (SREC), project, previously named the Vernon Power Plant project. Staff has reviewed the applicant's February 22, 2008 response to its Status Report #5 and noted their opinion on the applicability of Rule 1309.1 to this proposed project. However, air quality nonetheless remains a significant issue affecting this proceeding and progress towards publishing a Preliminary Staff Assessment (PSA).

AIR QUALITY

SREC air quality questions persist with respect to South Coast Air Quality Management District's (SCAQMD) 1309.1 rule regarding the use of Priority Reserve Credits (PRCs). Staff does not believe the applicant has demonstrated how the SREC meets 1) native load requirements, and 2) long-term contract stipulations that are both specified parameters of Rule 1309.1. Staff is uncertain about the prospects for the applicant receiving a waiver from the SCAQMD Governing Board, which is the only means by which Rule 1309.1 requirements can be waived. Another factor complicating SREC's ability to access PRCs under Rule 1309.1 is its Zone 3 Environmental Justice Area designation. Staff continues to believe that this SCAQMD designation may limit and/or preclude the applicant's access to PRCs for air quality impacts mitigation at its proposed capacity of 943 MW. Because SCAQMD has not provided staff with an expected publication date for a Preliminary Determination of Compliance (PDOC), which would address the issue of the project's conformance with Rule 1309.1, staff is uncertain when it can complete the air quality section of the PSA.

TRANSMISSION SYSTEM ENGINEERING

The applicant's informal Data Response, Set 1D, dated March 27, 2008 contained two Interconnection Facilities Re-Study Reports. Both studies (Attachments TSE-1C2 and TSE-1D) were performed by the California Independent System Operator (CAISO) and Southern California Edison (SCE) and granted final interconnection approval to the project and its capacity system increase. However, the studies' conclusions were conditioned on the expansion and reconfiguration of SCE's Laguna Bell 220kV Substation. Energy Commission staff is analyzing the potential impacts of the Laguna Bell substation expansion under CEQA as an indirect effect of the proposed project. The expansion of Laguna Bell may also require additional data requests in order for staff to fully assess its potential impact(s) on land use, visual resources and other related technical areas of review.

PROOF OF SERVICE (REVISED 1/22/08) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 5/2/08 AE

Exhibit 11

WASTE MANAGEMENT

Staff continues to work with the California Department of Toxic Substances Control (DTSC) on an appropriate and feasible soil remediation clean-up work plan for this proposed power plant site. To date, complete and thorough information sought through data requests has not been forthcoming, precluding completion of this section of the PSA.

PROJECT STATUS

As stated in prior status reports, staff still believes numerous technical areas including air quality, public health and environmental justice have unresolved issues and information gaps which would result in an incomplete PSA. The applicant's March 27, 2008 informal Data Response, Set 1D, notwithstanding, staff has still not received complete responses to all data requests filed on February 5, 2007 and April 24, 2007 regarding transmission system engineering and waste management. Moreover, staff believes the applicant's April 16, 2008 Data Response Set 1A to intervener Natural Resources Defense Council (NRDC) Data Request Set 1A did not adequately answer critical air quality project questions and concerns by environmental and community-based organizations in and around the City of Vernon.

Accordingly, with the date of issuance of the PDOC by the District still undetermined and numerous project questions still outstanding, a date for filing the PSA continues to be difficult to identify. However, as always and in accordance with the Committee's direction, staff will continue to work cooperatively with the applicant and all local, state and federal agencies to resolve outstanding issues in as timely a manner as feasible.

LATHAM&WATKINS LLP

DOCKET
06-AFC-4
DATE JAN 22 2008
RECD. JAN 22 2008

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Costa Mesa, California 92626-1925
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File No. 037484-0006

January 22, 2008

VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-4
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

Re: Vernon Power Plant Project: Docket No. 06-AFC-4

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Status Report #9.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the CEC's current electronic proof of service list.

Very truly yours,

Paul E. Kihm
Senior Paralegal

Enclosure

cc: CEC 06-AFC-4 Proof of Service List (w/ encl.)
Michael J. Carroll, Esq. (w/ encl.)

OC\933169.1

Exhibit 12

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No. 06-AFC-4
	)	
Application for Certification,	)	APPLICANT'S STATUS REPORT #9
for the VERNON POWER PLANT	)	
by The City of Vernon	)	
	)	
	)	

Applicant hereby submits its Status Report #9 regarding the Vernon Power Plant (the "VPP"). Applicant has reviewed staff's Status Report #4, and hereby also responds to the issues identified by the staff. Staff's Status Report #4 contains a number of significant misunderstandings and inaccuracies on the part of the staff, and as a result, contains an inappropriately negative assessment of the status of the VPP. The following corrects these misunderstandings and inaccuracies, and makes it clear that there is no legitimate basis for a suspension of CEC proceedings, as requested by staff.

Air Quality

The staff has misinterpreted South Coast Air Quality Management District ("SCAQMD") Rule 1309.1 – Priority Reserve, and staff's conclusion that the VPP would have to be reduced in size to qualify for offsets from the Priority Reserve is completely inaccurate.

Rule 1309.1, as amended on August 3, 2007, imposes certain requirements on projects seeking to obtain emission offsets from the Priority Reserve. The requirements vary depending on the location of the project, with more stringent requirements applicable to projects in areas with elevated levels of ambient particulate emissions, and in Environmental Justice Areas ("EJA"). The VPP is located in an EJA, as defined by Rule 1309.1. Attachment A to this Status Report is a September 17, 2007 letter from Applicant to the SCAQMD regarding the VPP's compliance with Rule 1309.1 eligibility requirements. The letter and its attachments identify the requirements applicable to projects located in an EJA, and demonstrate that the VPP meets all of the applicable requirements. This letter was previously provided to CEC staff (CEC Log No. 42592).

Staff's Status Report #4 states that Rule 1309.1 "limit[s] the eligibility of municipal power plants to use Priority Reserve emission reductions credits (ERCs) in certain areas of the District to an output no greater than native load requirements." The staff goes on to conclude that the "applicant would not have access to Priority Reserve Credits for air quality impacts mitigation at its proposed rating of 943 MW (gross generation capacity) because it exceeds its peak native load requirements of 203 MW established during summer 2007." Both of these statements are incorrect.

The provision to which staff is referring is paragraph (d)(14) of Rule 1309.1, which provides as follows:

> (14) The Executive Officer shall not authorize the release of any Priority Reserve credits for an In-District EGF [electric generating facility], unless the EGF seeking Priority Reserve credits has obtained certification from CEC and entered into a long-term contract with the Southern California Edison Company, or the San Diego Gas and Electric Company, or the State of California to provide electricity in Southern California; and complied with all other applicable provisions of this rule. However, a municipal-owned EGF need not enter into a long-term contract, provided such EGF is designed and constructed to not exceed its native demand load based upon future year projections to 2016 or earlier. A municipal-owned EGF obtaining Priority Reserve credits to exclusively serve its native load may not sell electricity to the state grid unless it is directed to do so under a direct order from Cal-ISO or under a state of emergency declared by the State of California or its agencies including the Cal-ISO. Any EGF may petition the Governing Board at a public hearing to waive the requirement to enter into a long-term contract in order to access the Priority Reserve. The Governing Board shall grant such a waiver if it finds that there is a need for additional power that is not being fulfilled by presently available long-term contracts. Any such petition shall not delay any other EGF's access to Priority Reserve credits.

Paragraph (d)(14), which, contrary to staff's understanding, applies to all projects regardless of location, does not impose a size restriction on municipal-owned projects as a condition to obtaining credits from the Priority Reserve. Rather, it provides relief from the requirement to obtain a long-term contract, which otherwise applies to all projects, for those municipal-owned projects that are restricted in size to that necessary to serve native load. Thus, the Applicant is free to propose a project with a capacity greater than its native load, and still obtain credits from the Priority Reserve. Applicant will simply have to obtain a long-term contract, just as any private project would, unless it seeks and obtains a waiver from the Governing Board.

The CEC staff correctly points out that the Applicant does not currently have a long-term contract for the sale of its power, as required by Rule 1309.1. With the exception of the CPV Sentinel Energy Project, none of the projects proposed in the SCAQMD and currently under review by the CEC have such contracts in place. This includes, for example, the Walnut Creek Energy Park, for which a Final Staff Assessment and Presiding Member's Proposed Decision recommending approval of the project were issued on April 12, 2007 and August 15, 2007, respectively. Clearly, the CEC has not required that a project intending to seek credits from the Priority Reserve have a long-term power sales agreement in place as a pre-requisite to continued CEC review, or even approval, of the project. Nor would it make any sense to do so since the paragraph of the rule that requires a long-term contract also requires a CEC certification. Both

objectives must be pursued in parallel. Finally, it is always possible that a CEC certified project could obtain a waiver from the requirement to obtain a long-term contract.

Thus, as long as the Applicant obtains a long-term contract, or obtains a waiver from this requirement, there is nothing in Rule 1309.1 that limits the size of the project (assuming the project meets all other applicable requirements, which the VPP does). Furthermore, the absence of a long-term contract at this stage of project review is not a basis for the CEC to discontinue its review or approval of the project. Since staff indicated in its Status Report #4 that the ability of the Applicant to demonstrate the ability to obtain sufficient credits was its most notable concern underlying its request to suspend the CEC proceedings, the discussion above should largely render that request moot.

The CEC staff has also correctly indicated that the SCAQMD has not provided a firm date by which it intends to issue a Preliminary Determination of Compliance ("PDOC") for the VPP. Once again, the VPP is hardly unique in this respect. From the date of amendment of Rule 1309.1 on August 3, 2007, up until January 11, 2008, the SCAQMD had not issued a single PDOC, Final Determination of Compliance ("FDOC"), or supplement thereto, for <u>any</u> projects currently under review by the CEC. On January 11, 2008, the SCAQMD issued a supplement to the previously issued FDOC for the Walnut Creek Energy Park. Other projects, for which post-amendment determinations of compliance have not been issued, and for which, as far as Applicant is aware, no firm date for issuance has been identified, include the Sun Valley Energy Project, the CPV Sentinel Project, the San Gabriel Generating Station and the AES Highgrove Project. Some of these projects submitted applications to the CEC and the SCAQMD much earlier than did the VPP.

Thus, while Applicant is also distressed about the timing associated with necessary determinations from the SCAQMD, and encourages the CEC to do what it can to expedite the processing of such determinations, the VPP is not unique in this regard, and the absence of certainty as to the issuance of a PDOC does not provide any basis for suspending the CEC proceedings. To the contrary, suspension of the CEC proceedings is likely to result in still further delay of the issuance of a PDOC by SCAQMD since that action is part of the very CEC process that would be suspended. It should also be noted that boilerplate conditions related to implementation of Rule 1309.1 have now been developed in the context of the Walnut Creek Energy Park. This development will hopefully speed the issuance of subsequent determinations, which will incorporate the same proposed conditions.

<u>Cooling Tower Plumes</u>

Staff's Status Report #4 identifies two potential issues related to cooling tower plumes: i) the potential for ground-hugging plumes to interfere with traffic in the immediate vicinity of the VPP; and ii) potential health impacts associated with the use of reclaimed water in the cooling system of the VPP.

With respect to the first issue, although Applicant believed that the analysis suggesting that ground-hugging plumes might pose a significant impact was highly equivocal, Applicant nevertheless reconfigured the entire project to address staff's concern. While it is not exactly

clear from staff's Status Report #4 that this issue has now been resolved to the satisfaction of the staff, it appears that this may be the case. Given the speculative nature of the potential impacts in the first place, and the level of effort that has gone into addressing staff's concerns, if staff remains unsatisfied with respect to this issue, it is likely a matter for adjudication.

With respect to the second issue, there is no basis whatsoever for staff's suggestion that the use of Title 22 reclaimed water in the cooling system for the VPP poses a potential threat to public health and safety. The suggestion is quite remarkable in light of the CEC's aggressive policy to encourage the use of reclaimed water for power plant cooling, and the significant number of projects recently approved by the CEC proposing to use reclaimed water. None of these projects identified a significant public health risk associated with the use of reclaimed water in cooling towers. The suggestion is made even more remarkable by the fact that the CEC's own expert in the area of public health, Dr. Obed Odoemelam stated in a public workshop on April 18, 2007 that he does not expect the use of reclaimed water in the cooling towers to pose a public health threat. Yet, inexplicably, the issue continues to be raised.

As staff is aware, the use of recycled water for cooling is governed by 22 Cal. Code Regs. § 60306, which requires that "[r]ecycled water used for industrial or commercial cooling or air conditioning that involves the use of a cooling tower, evaporative condenser, spraying or any mechanism that creates a mist shall be a disinfected tertiary recycled water." Various scientific studies have been conducted to test the health implications of use of tertiary treated water. The studies have shown that disinfected tertiary treated recycled water is virtually free from all pathogens, including viruses. Tertiary treatment has been found to reduce contaminants such as particles, bacteria, viruses, parasites, inorganics, organics, and radionuclides. A summary of these studies, which was previously provided to CEC staff (CEC Log No. 43298) is attached to this Status Report as Attachment B. Because the proposed power plant will use disinfected tertiary recycled water, and because this use will comply with the requirements of Title 22, no adverse health effects from the use of this recycled water would result.

Recognition of the beneficial and safe uses of recycled water has led the United States Environmental Protection Agency, the California State Water Resources Control Board, the California Department of Health Services, the California Conference of Directors of Environmental Health, the United States Bureau of Reclamation, and the Water Reuse Association of California to adopt a joint statement in support of the use of recycled water. See Statement of Support for Water Recycling, available at http://www.datainstincts.com/images/pdf/ healthsafety.pdf. The statement notes that "California's extensive experience with water reclamation provides reasonable assurance that the potential health risks associated with water reclamation in California are minimal, provided all regulations ... are adhered to" and that "California law and regulations are fully protective of human health." Id.

Notwithstanding the long-standing and well-supported proposition that use of Title 22 reclaimed water in power plant cooling towers does not pose adverse public health impacts – a proposition underlying approval of such use in many CEC decisions – Applicant conducted a specific analysis of the potential for adverse impacts on the adjacent Rite-Way Meats Facility. That

analysis, which indicated no anticipated significant impacts as a result of the VPP's use of reclaimed water, was shared with CEC staff (CEC Log No. 43298).

Given the foregoing, staff's continued expression of concern regarding public health impacts associated with cooling tower plumes is perplexing. Rather than suspending the proceedings, as suggested by staff, the best way to resolve any outstanding concerns is for the staff to issue its Preliminary Staff Assessment setting forth the basis for any continuing concerns. Given the precedent for use of reclaimed water for power plant cooling, and the analyses that have been completed specifically for the VPP, any remaining disagreements between the Applicant and staff with respect to this issue will likely require adjudication.

Finally, it should be noted that as set forth in an April 26, 2007 letter from the General Manager of the Central Basin Municipal Water District (Attachment C to this Status Report; CEC Log No. 40207), the VPP and its use of reclaimed water, is a "critical component" of the District's Southeast Water Reliability Project, which will conserve 6.5 billion gallons of drinking water annually. According to the District, "reaching the pipeline's full capacity is contingent on the construction of the Vernon Power Plant." Thus, the VPP water supply plan is not only protective of public health and safety, it contributes to the conservation of potable water – a key policy objective of the CEC.

Waste Management

Applicant acknowledges that the issue of project site remediation is complicated by the fact that Applicant does not currently own the site, and that the remediation is being undertaken by other parties. The involvement of these other parties, and Applicant's lack of control over them, has resulted in a process that is slower than the Applicant or CEC staff desire. However, while there are also some underlying jurisdictional issues, Applicant has done its best to facilitate the flow of information between the property owner and its consultants and the CEC and DTSC staffs. For example, on May 14, 2007, Applicant arranged for the consultants to the property owner to participate in a CEC workshop to explain ongoing site investigation, remedial action plan development, and to answer questions from CEC and DTSC staffs.

Staff's Status Report #4 is incorrect in its assertion that Applicant has "not met with DTSC nor responded to DTSC over the past nine months." The Applicant, Applicant's counsel, the current property owner, and the property owner's consultants have all been communicating with DTSC on a regular basis since the April 18, 2007 workshop at which DTSC indicated its desire to be involved in oversight of the site remediation. While not an exhaustive list, the following is a summary of the most recent communications:

- September 5, 2007 communication between Dan Downing (Applicant) and Christine Bucklin (DTSC) regarding joint City/DTSC review of site remediation.
- September 11, 2007 communication between Dan Downing and Yolanda Garza (DTSC) regarding coordinating review of remediation plan between the City and DTSC.
- October 10, 2007 communication between Dan Downing and Christine Bucklin.
- October 11, 2007 communication between Dan Downing and Christine Bucklin regarding oversight of the remediation work.

- November 1, 2007, teleconference with Gene Lucero (Latham & Watkins, LLP), Dan Downing and Lewis Pozzebon (Applicant), and DTSC representatives.
- November 5, 2007 communication between Dan Downing and Sara Amir (DTSC) regarding coordination of review of remediation plan.
- November 6, 2007 communication between Dan Downing and Sara Amir regarding coordination of review of remediation plan
- November 7, 2007, meeting at DTSC's offices with Gene Lucero, Dan Downing, Lewis Pozzebon, Geomatrix (property owner's consultant) and Pechiney (property owner).

Applicant has also been in frequent communication with the current property owner and its consultants regarding the development of the remedial action plan for the site, including providing comments on the draft plan. Based on a communication between Applicant and the consultants for the current property owner on January 17, 2008, Applicant understands that the consultant will be submitting the Feasibility Study/Remedial Action Plan for the site to the DTSC in approximately two weeks. It would also be made available to the CEC at that time.

Outstanding Discovery Requests

Applicant acknowledges that it has not yet provided responses to Waste Management Data Requests 60, 62b, 64, 65, and 67 and to Transmission System Engineering Data Requests 70 and 73. Applicant must receive a copy of the Feasibility Study/Remedial Action Plan from the property owner's consultant before it is able to respond to the outstanding Waste Management requests. As stated above, it is anticipated that this document will be available within the next two weeks, which would allow Applicant to respond to the outstanding data requests in this area. With respect to transmission system engineering, Applicant must receive responses to letters sent to the Los Angeles Department of Water and Power and the California Independent System Operator, respectively, to be able to provide responses to Data Requests 70 and 73. Applicant continues to follow up with these entities to ascertain the information needed to properly respond to outstanding data requests.

Community Outreach and Interveners

Applicant acknowledges that the VPP is currently opposed by certain community organizations, and that local governmental entities, including the City of Los Angeles and the County of Los Angeles have intervened to ensure that the VPP does not adversely impact the environment or public health. Applicant remains committed to engaging with these entities, to the extent they are willing, in an effort to address their concerns regarding the VPP.

Applicant and the Natural Resources Defense Council ("NRDC") have jointly retained the consulting firm of Gladstein, Neandros and Associates ("GNA") to develop a proposed community benefits/mitigation proposal for the VPP. While GNA is being paid by the Applicant, it has been retained on behalf of both the Applicant and NRDC, which direct GNA jointly. GNA has developed a proposed scope of work, and the parties will meet on January 31, 2008 to discuss it. Whether this effort results in a set of proposals that fully address the concerns that have been raised remains to be seen, but it is a concrete example of Applicant's willingness to engage with the community regarding their concerns. It should also be noted that the VPP has

received hundreds of expressions of support from the community in the form of verbal testimony and written communications which have been docketed with the CEC.

Schedule

Staff's request that the AFC proceedings by suspended is unwarranted. First, it is not a pre-requisite to the continuation of proceedings before the CEC that an applicant demonstrate to the satisfaction of the staff that it can "successfully resolve all significant permitting issues." If that were the case, there would never be a contested evidentiary hearing. If the staff continues to have unresolved issues with the proposed project, its obligation is to set forth those issues in its Preliminary Staff Assessment, and Final Staff Assessment, if necessary. Furthermore, based on the information in this Status Report, and information previously provided to staff, Applicant has addressed virtually all of the "significant permitting issues" identified by staff in its Status Report #4, including its most notable concern – the availability of emission offsets. In fact, there appear to be very few unresolved issues associated with the project, relative to the number of outstanding issues that typically exist at the PSA stage of the CEC proceedings.

While there are pending data requests related to waste management and transmission system engineering, more than sufficient information has been provided on these topics to allow staff to complete PSA sections. With the exception of air quality, staff should also be prepared to issue a PSA for all other subjects. As stated above, any remaining issues related to cooling tower plumes are unlikely to be resolved through further discussion with the staff. Applicant concedes that until the SCAQMD issues a PDOC, staff cannot complete the air quality section of the PSA. Therefore, Applicant requests that the Committee direct the staff to issue a bifurcated PSA on all issues except air quality, and to direct that the air quality section of the PSA be issued within 30 days of SCAQMD's issuance of a PDOC.

DATED: January 21, 2008

Respectfully submitted,

Mike Carroll

Michael J. Carroll
of LATHAM & WATKINS LLP
Counsel to Applicant

Department of Water and Power the City of Los Angeles

ANTONIO R. VILLARAIGOSA
Mayor

Commission
MARY D NICHOLS, President
H. DAVID NAHAI, Vice President
NICK PATSAOURAS
EDITH RAMIREZ
FORESCEE HOGAN-ROWLES
BARBARA E. MOSCHOS, Secretary

RONALD F. DEATON, *General Manager*

August 30, 2006

James W. Reede, Jr.
Project Manager
California Energy Commission
1516 9th Street, MS-15
Sacramento, CA 95814

Dear Mr. Reede:

Subject: Docket No. 06-AFC-4

The Los Angeles Department of Water and Power (LADWP) is submitting comments on the Request for Agency Participation in the Review of the Vernon Power Plant Project, Application for Certification (06-AFC-4) by the California Energy Commission. In general, LADWP is concerned about the thoroughness of the applicant's proposal and wants to be assured that the proposed project will not negatively affect the LADWP power distribution system.

Questions

- Is the City of Vernon planning to encroach onto the LADWP Right of Ways (ROW) for either of the proposed routes?
- The application states that the new line would combine and replace two existing 66-kV lines. Is there an existing Edison ROW adjacent to the LADWP ROWs? If so, what is the route?
- Which side of the LADWP towers does the City of Vernon plan on using?

Concerns

- If LADWP has to relocate lines to accommodate the proposed transmission lines, it would be difficult to achieve as it would require multiple outages and moving/raising of at least four lines on multiple circuit towers.
- LADWP will not allow an easement parallel to LADWP lines on a LADWP corridor.
- The City of Vernon needs to understand that LADWP's rights are paramount for crossings of all future work.
- LADWP may not be able to support the engineering or construction schedule of the proposed project in the event that tower raisings/relocations are needed.
- Crossing of the existing gas lines is a problem in terms of the cathodic protection and explosion hazard potential.

Exhibit 13

- The proposed project will have to under cross at two points in a vertical to horizontal configuration. A vertical configuration may not be possible but a horizontal configuration may be possible.
- There is no mention of General Order Number 95 for code; LADWP believes following a more stringent public utility code is more appropriate than the NESC.

Please add LADWP to the correspondence list concerning the proposed Vernon Power Plant. Letters may be addressed to:

Mr. Chuck Holloway
Supervisor of Environmental Assessment
Los Angeles Department of Water and Power
111 N. Hope Street, Room 1044
Los Angeles, CA 90012

If you should have any questions, please contact Ms. Amy Schulenberg of my staff at (213) 367-0610. Thank you for your consideration of these matters.

Sincerely,

Charles C. Holloway

Charles C. Holloway
Supervisor of Environmental Assessment

AS:lr
c: Mr. James Gokey
Ms. Amy Schulenberg

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

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, ____Lynn Tien-Tran____, declare that on ___August 12, 2009, I served and filed copies of the attached **Staff's Motion to Terminate and Exhibits 1 through 13** dated August 12, 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/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:

__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 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:

__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. _____
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.

/s/ Lynn Tien-Tran__