

CALIFORNIA ENERGY COMMISSION

Hearing Advisor's Office – MS 9
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SACRAMENTO, CA 95814-5512
www.energy.ca.gov



June 4, 2007

Mr. Allen Etchepare
Emerald Farms
4599 McDermott Road
Maxwell, California 95955

DOCKET 06-AFC-9	
DATE	JUN 0 4 2007
RECD.	JUN 0 4 2007

*Re: Colusa Generating Station Application for Certification (06-AFC-9);
Response to Emerald Farms' Correspondence dated May 17, 2007, and
May 23, 2007.*

Dear Mr. Etchepare:

This is in response to Emerald Farms' letters dated May 17, 2007, and May 23, 2007, raising various issues regarding the Colusa Generating Station (CGS) Application for Certification (AFC) review process.

Before responding to specific issues, we must summarize the Energy Commission rules regarding public meetings and the noticing of meetings, as well as the role of an intervenor. Title 20, California Code of Regulations, Section 1718, which you cite, must be read together with Section 1710. Subsection 1710(a) exempts various activities from the general requirement to be noticed and conducted as public meetings:

[T]hese requirements do not apply to communications between parties, including staff, for the purpose of exchanging information or discussing procedural issues. Information includes facts, data, measurements, calculations and analyses related to the project. Discussions between the staff and any other party to modify the staff's position or recommendations regarding substantive issues shall be noticed. The staff may also meet with any governmental agency, not a party to the proceedings, for the purpose of discussing any matter related to the project without public notice.

As an intervenor, you "have all the rights and duties of a party under [the Commission's] regulations." See Title 20, Section 1207(c). Those rights include the ability to make data requests of other parties and to present evidence and cross-examine other parties' witnesses during the evidentiary hearings. Neither the Commission staff nor any other party or agency is required to invite you to meetings for which notice is not required. While they are required to provide relevant information you request, they do not have to analyze it or conduct research for you; that is your responsibility.

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Your first issue relates to Staff's May 16, 2007, data requests (117 through 125) to the Applicant regarding potential overloads on the Western Area Power Administration (WAPA) transmission system. You appear to believe that Staff must first give notice to the service list of WAPA's concerns and that Staff's discussion(s) with WAPA must be noticed and open to the public. That is not the case; however, as Staff to non-party government agency communications are exempt from the notice/public meeting requirement under Section 1710(a). WAPA was added to the proof of service list as an "Interested Agency," not as a party. As proof of service lists are revised, revised lists are sent out to the list and posted on the Commission's web site. Revisions to proof of service lists are not subject to the approval of the parties.

Although you assert that you are being "kept from the knowledge of the WAPA concern," we note that the preamble of the May 16 data request indicates that Staff is seeking the information to analyze the effects of reconductoring WAPA's Shasta-Flanagan-Keswick transmission line. Apparently that line would need upgrading if the CGS is approved. The Staff's analysis will be made public when its final assessment is published. If you desire further details, we suggest that you seek them from Commission or WAPA Staff.

You repeat a complaint you made on March 30 that "local APCD employees informed us that meetings had been held between CEC Staff, applicant, and local agencies discussing this project, but Emerald Farms wasn't notified of the meetings or been [sic] invited to them." Staff previously responded to this complaint in its April 6, 2007, Amended Status Report #1, indicating that they were not aware of any meetings for which notice was required. After reviewing that Staff response and considering discussions you had with Mr. Caswell, the Staff Project Manager, you indicated to me that your concerns were addressed.

You say that you did not receive documents due on March 23, 2007, under the scheduling order ("Local, State and Federal Agency draft determinations, including air district's Preliminary Determination of Compliance (PDOC)") "until weeks after they were complete." These documents often arrive late or not at all. Without more specific information about the date of the specific documents and the dates you received them, we cannot evaluate this claim. I do note, however, that the "draft" PDOC was not dated until April 18, 2007, and that it was received in the Docket unit on April 25.

Your May 23, 2007 letter claims that the PDOC was not sent to the Commission's service list and that you learned of the deadline for filing comments with the air district only after it had passed. The circulation and commenting on the PDOC is handled by the air district, not the Energy Commission. Your request to file late comments is best

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addressed to the air district, which I see you did in a May 24 letter to the district. I note that in a May 29, 2007 letter, the air district says that it did mail a courtesy copy of the PDOC to you at the same time that a copy was sent to Commission staff. In addition, shortly after the PDOC comment period expired, district staff told an unidentified caller to submit comments even though the deadline had passed. Whether or not you are able to submit comments to the district, you are welcome to make them in this proceeding, either now, or in response to the Preliminary and Final Staff Assessments after they are published.

As far as converting this case from a six-month case to a twelve-month case under Section 2028, it was accepted as a twelve-month AFC to begin with. See the preamble to the Committee's scheduling order.

It may well be that the Staff's analysis, focused on environmental impacts and compliance with applicable laws and regulations, will address many or all of your concerns. You will be able to determine whether Staff has done so when the preliminary and final assessments are published. In the meantime, you are free to communicate your concerns to Staff, the applicant and the other parties and to gather information to formulate your own analysis and eventual testimony.

Without specific facts showing a potential violation of Commission rules—supposition and suspicion is not enough—the Committee will take no further action on your complaints. We encourage you to discuss your substantive concerns about the CGS with Commission staff and air district personnel and request any documents or information that you believe you need from them or other parties and agencies. Michael Monasmith of the Public Adviser's Office is available to assist you in understanding the AFC process and the avenues for participation available to you. He may be reached at (916) 654-4489 or 1-800-822-6228 or e-mail: [pao@energy.state.ca.us].

Sincerely,



PAUL A. KRAMER, Jr.
Hearing Officer
Colusa AFC Committee

cc: Colusa AFC POS (06-AFC-9)
Michael Monasmith

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE
STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION
FOR THE COLUSA GENERATING
STATION PROJECT**

**Docket No. 06-AFC-9
PROOF OF SERVICE
(REVISED 5/16/2007)**

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

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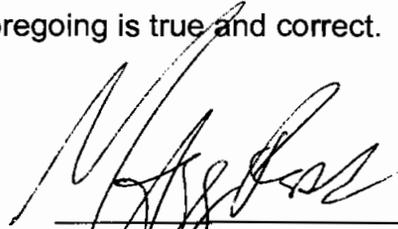
DECLARATION OF SERVICE

I, Maggie Read, declare that on June 4, 2007, I deposited copies of the attached Letter re: Colusa Generating Station Application for Certification (06-AFC-9); Response to Emerald Farms' Correspondence dated May 17, 2007, and May 23, 2007 in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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



MAGGIE READ
Hearing Advisors Office