STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:

The Application for Certification for the LSP SOUTH BAY, LLC SOUTH BAY REPLACEMENT PROJECT

Docket No. 06-AFC-3

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LSP SOUTH BAY, LLC'S RESPONSE TO REQUESTS FOR EXTENSION OF TIME TO SUBMIT DATA REQUESTS BY CALIFORNIA UNIONS FOR RELIABLE ENERGY AND ENVIRONMENTAL HEALTH COALITION

March 2, 2007

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LSP South Bay, LLC ("LSP South Bay") urges the Commission to deny the requests of the California Unions for Reliable Energy ("CURE") and the Environmental Health Coalition ("EHC") to extend the amount of time to submit data requests in this proceeding from February 26, 2007 to March 26, 2007 (collectively, the "Requests").

Pursuant to Section 1716 of Title 20 of the California Code of Regulations, data requests must be submitted "no later than 180 days from the date the commission determines an application is complete." The Commission determined that LSP South Bay's application was complete on August 30, 2006. Accordingly, data requests are due on February 26, 2007.

I. The Requests Should Be Denied Because LSP South Bay Has Complied With All Commission Deadlines And Requests

LSP South Bay has met all of the Commission's deadlines and filing dates in all respects. Notwithstanding LSP South Bay's diligence, CURE nevertheless argues that the schedule for the proceeding has slipped "due to LS Power's untimely production of information covering several aspects of the project."[1] This statement is blatantly false. Although the schedule has been revised as circumstances warranted, LSP South Bay has consistently complied with filing dates and production deadlines.

EHC similarly filed its request for an extension of time because LSP South Bay "did not provide complete [data] responses until February 14, 2007."[2] EHC's characterization of the facts is misleading, at best. LSP South Bay diligently submitted data responses on November 29, 2006, in accordance with the schedule. However, after the filing of the AFC, the San Diego Air Pollution Control District ("District") asked LSP South Bay to remodel previously filed air quality analyses using newly available data. This request is nearly unprecedented in the history of the Commission. Nonetheless, LSP South Bay agreed to the District's requests. The results of the requested remodeling analyses are set forth in the February 14, 2007 filing. Thus, rather than failing to deliver information in a timely manner, LSP South Bay has provided the parties with updated analyses based on information that was only made available to LSP South Bay months after the filing of the AFC.

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[1] CURE Request For Extension of Time to Submit Data Requests p. 3.
[2] EHC Request for Extension of Time to Submit Data Requests p. 2.

Moreover, the availability of the updated data does not invalidate the initial modeling, the Commission's finding of data adequacy or the District's completeness determination for the air permit application, all of which are relevant to the issue of the closing of the discovery period under the Commission's regulations. Accordingly, LSP South Bay has in all respects acted in a responsive and timely manner.

Given LSP South Bay's timely responses and diligence in meeting deadlines, an extension of time to submit data requests is inappropriate and should be denied. The fact that LSP South Bay filed information in a timely matter ensures other parties of adequate response time for submitting data requests. As all filings and responses by LSP South Bay, including the February 14, 2007 filing, have been timely according to the schedule and consistent with Commission rulings and requests, the Requests to extend time for filing data requests should be denied.

II. If The Commission Grants The Requests, It Should Do So Only To The Extent That Data Requests Could Not Have Been Reasonably Filed By February 26, 2007

The Commission should deny the Requests by CURE and EHC. However, if the Commission does decide to grant the Requests, it should do so only to the extent that data requests could not reasonably have been filed before LSP South Bay's February 14, 2007 filing. Accordingly, if the time period for data requests is extended, it should only be extended for air quality subjects directly related to the revised analyses requested by the District.

Additionally, if the Commission does grant the Requests with respect to the revised air quality analyses, it should only grant a 14-day extension instead of the 28-day extension requested by CURE and EHC. With the limited exception of the revised air quality analyses, all of LSP South Bay's information and data responses have been timely and available to CURE and EHC for months. Extending the deadline for data requests is inappropriate to begin with, let alone for an extension of 28 days. Accordingly, if any extension is granted by the Commission, it should be limited to a 14-day extension and limited only to the area of air quality as revised by the remodeled data.

III. The Requests Should Be Denied Because CURE And EHC Did Not File Their Requests In A Timely Manner

Despite a data request deadline of February 26, 2007, CURE and EHC waited until February 15, 2007 and February 22, 2007, respectively, to file their Requests for extension of time. Section 1716.5 of Title 20 of the California Code of Regulations provides that a response to such a request must be filed within 15 days of the request. Furthermore, Section 1716.5 provides that the Commission must rule on the Requests within 30 days of their filing. Accordingly, because the Requests were filed so shortly before the data request deadline, LSP South Bay and the Commission cannot respond before the deadline of February 26, 2007.

Essentially, CURE and EHC are attempting to extend the deadline through unconventional means by seeking a Commission determination that cannot be issued before the deadline date has passed. By waiting until the last minute to file

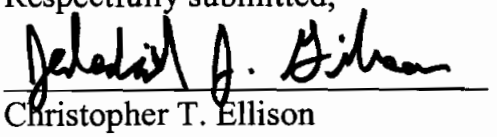
their Requests, CURE and EHC have prevented LSP South Bay from responding before the data request deadline. Even more importantly, the Requests are untimely because the Commission cannot make a ruling prior to the data request deadline. As the Requests do not allow sufficient time for a Commission determination, the Commission should deny the Requests as untimely.

IV. Conclusion

For the foregoing reasons, LSP South Bay respectfully requests that the Commission deny the Requests by CURE and EHC to extend the data request deadline until March 26, 2007. If, however, the Commission chooses to grant the Requests, it should do so only to the extent that data requests address the remodeled air quality analysis and only for an extension of 14 days.

Dated: March 2, 2007

Respectfully submitted,



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DECLARATION OF SERVICE

I, Deric J. Wittenborn, of Ellison, Schneider and Harris, LLP, located at 2015 H Street, Sacramento, CA 95814, declare that on March 2, 2007, I transmitted the foregoing document titled ***LSP South Bay, LLC's Response To Requests For Extension Of Time To Submit Data Requests By California Unions For Reliable Energy And Environmental Health Coalition*** via e-mail and consistent with the requirements of California Code of Regulations, title 20, Sections 1209, 1209.5, and 1210, or as indicated by first class postal mail, to each individual identified on the attached service list.

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

Deric J. Wittenborn

Poof of Service
Docket No. 06-AFC-3
March 2, 2007

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