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VIA ELECTRONIC FILING

Ms. Mary Dyas, Compliance Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

The Honorable Janea Scott, Presiding Member
The Honorable Karen Douglas, Associate Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Sonoran Energy Project (02-AFC-1C)
Objections to Certain Data Responses Contained In CEC Staff's Data Requests Set One (#1-58)

Dear Commissioners and Ms. Dyas:

On October 12, 2015, CEC Staff issued Data Requests, Set One (#1-58) ("Data Requests") (TN# 206331) related to the Sonoran Energy Project Petition to Amend ("PTA") (TN# 205652) and identified November 12, 2015 as the date by which responses to such Data Requests are due.[1] The Project Owner has worked diligently since the issuance of the Data Requests to obtain the responsive data Staff seeks in the requests.

[1] The Committee Scheduling Order issued on October 27, 2015 (TN# 206439) notes that responses to Staff's first set of Data Requests are due by November 6, 2015. Upon receipt of the Scheduling Order, counsel for Project Owner contacted the Hearing Officer and alerted him to the inconsistencies between the Order and the deadline set forth in Staff's October 12 Data Requests (TN# 206331). Via voicemail on October 28, 2015, the Hearing Officer confirmed that the deadline for submitting responses is in fact November 12, 2015. Notwithstanding the objections set forth herein, Project Owner will respond to the best of its ability to all Data Requests in Set One, with the exception of S&W-34, on or before November 12, 2015.

OBJECTIONS

Project Owner herein objects to the following Data Requests: AQ-21, AQ-22, and S&W-34 through S&W-45. Such objections are set forth separately below.

Background to AQ-21 and AQ-22: Project Owner objects to information contained in the "Background: Dry Cooling" paragraph that precedes Data Requests AQ-21 and AQ-22 on the following grounds:

The scope of the PTA does not include any changes to the water use or source of water as compared to the existing license. Pursuant to section 1769 of Title 20 of the California Code of Regulations, the scope of Staff's analysis of the PTA is limited to an evaluation of the impacts of the proposed modifications on the environment and on compliance with Laws, Ordinances, Regulations, and Standards ("LORS"). Since the PTA does not propose changes to the water use or source of water from what was analyzed during the AFC proceeding and subsequent approved amendment, there is no proposed modification that may have impacts on the environment or on the facility's ability to comply with LORS that requires additional analysis by Staff. (20 Cal. Code Regs. §1769(a)(1).)

Further, Staff's evaluation of a PTA must be consistent with the requirements of CEQA Guidelines section 15162, which governs the requirements for subsequent environmental review under CEQA after a project has been approved.[2] Section 15162 limits additional environmental review to "substantial changes" that will result in greater environmental impacts, and provides for reliance on the prior environmental review for areas that will not have substantial changes. With respect to water supply and water use, there is no "substantial change" that will result in new significant environmental impacts or a substantial increase in the severity of previously identified significant effects. (CEQA Guidelines, § 15162.) Staff's requests are overreaching, and are contrary to section 1769(a)(1) of the CEC Siting Regulations and CEQA Guidelines Section 15162.

Additionally, there are no applicable LORS requiring the information Staff seeks in the Data Requests nor is there any new evidence supporting such requests.

[2] *See generally* Committee Scheduling Order (TN# 206439) at pp. 2-3; *see also* Committee Order Following the Preliminary Site Assessment, Carlsbad Energy Center Project, 07-AFC-06C, at pp. 1-2 (January 15, 2015).

Project Owner also objects to the assumptions in the "Background: Dry Cooling" discussion. Specifically, the statement that "[p]ower plant projects using the same turbine technology (i.e., GE 7HA) in similar climates have been proposed to use air cooled technology, such as Exelon's Wolf Hollow and Colorado Bend generating stations in Texas." There is no support for the statement that these projects are in "similar climates" to the climate in Blythe. In fact, this comparison is flawed. CEC Staff has not assessed the differences in average (SEP is 6 to 10 percent higher) or peak (SEP is 10 to 12 percent higher) temperatures and relative humidity (the SEP site has between one-third to one-half the relative humidity) between the two locations in Texas and Blythe; such a comparison would be necessary before attempting to assert the viability of air cooled technology used in Granbury and Wharton County, Texas to a project located in Blythe, California. Consequently, the underlying assumptions in Data Requests AQ-21 and AQ-22 are unsupported. As demonstrated herein, the viability of air cooled technology in Granbury and Wharton County, Texas is not relevant to the viability of such technology in Blythe, California and, therefore, the background assumptions in Data Requests AQ-21 and AQ-22 are unsubstantiated.

The "Background: Dry Cooling" discussion also references Project Owner's discussion in the PTA of the CEC's 2005 conclusions regarding dry cooling. This section of the PTA discusses the reduction in electrical output from use of dry cooling, the cost of dry cooling, the size of a dry cooling system, and the resulting thermal plume impacts. The PTA states that the 2005 conclusions are still applicable: "dry cooling will decrease operational efficiency, increase capital/operational costs; and will worsen noise, visual, and thermal plume impacts when compared to the proposed wet cooling tower." (TN# 205652, p. 3-158.) Contrary to Staff's suggestion, the California drought does not change any of these conclusions. Moreover, as discussed more fully below, the water supply for the project was the subject of a petition to amend approved by the CEC in 2012 - only three years ago and during this current drought cycle. There is no evidence that the drought conditions are a "substantial change" that will result in new significant environmental impacts or a substantial increase in the severity of previously identified significant effects. (CEQA Guidelines, § 15162.)

Notwithstanding the above objections, Project Owner will be providing a response to Data Requests AQ-21 and AQ-22 by November 12, 2015.

S&W-34 through S&W-45: Project Owner objects generally to the scope of the Soil & Water Resources Data Requests contained in Set One. As noted in Project Owner's Response to Staff's Issues Identification report filed on September 24, 2015 (TN# 206187), the project is licensed to

use up to 2,800 acre-feet per year ("AFY") of water from the Palo Verde Mesa groundwater basin. The PTA does not propose to change the quantity or source of water used for the project. Pursuant to section 1769 of Title 20 of the California Code of Regulations, the scope of Staff's analysis of the PTA is limited to an evaluation of the impacts of the proposed modifications on the environment and the proposed modifications compliance with LORS. Thus, there is no modification proposed that may have impacts on the environment or on the facility's ability to comply with LORS. (20 Cal. Code Regs. § 1769(a)(1).) This project received Commission approval of an amendment in April 2012, which included a change in the project's maximum water use. Because the PTA does not propose to change the project's licensed water use, there is no proposed modification that may have impacts on the environment or on the facility's ability to comply with LORS that requires additional analysis by Staff. (20 Cal. Code Regs. §1769(a)(1).)

Similarly, there have been no changes to water supply LORS since the amendment in 2012 that warrant additional analysis of this issue.

Further, Staff's evaluation of a PTA must be consistent with the requirements of CEQA Guidelines section 15162, which governs the requirements for subsequent environmental review under CEQA after a project has been approved.[3] Section 15162 limits additional environmental review to "substantial changes" that will result in greater environmental impacts, and provides for reliance on the prior environmental review for areas that will not have substantial changes Staff's requests are overreaching, and are contrary to section 1769(a)(1) of the CEC Siting Regulations and CEQA Guidelines Section 15162. The only "new" information cited by Staff related to water use is the current California drought. As noted, the drought is not "new" since the 2012 amendment to the license. Moreover, there is no evidence that the drought conditions will result in new significant environmental impacts or a substantial increase in the severity of previously identified significant effects. (CEQA Guidelines, § 15162.)

In addition to these general objections to the Soil & Water data requests contained in Set One, Project Owner has the following data request-specific objections noted below.

Background to S&W-34: Project Owner objects to information contained in the "Background" section that precedes Data Request S&W-34 on the following grounds:

[3] *See generally* Committee Order Following the Preliminary Site Assessment, Carlsbad Energy Center Project, 07-AFC-06C, at pp. 1-2 (January 15, 2015).

The background to data request S&W-34 refers to a water budget prepared in 2013 for the Blythe Mesa Solar Project, licensed by the BLM in 2015. This representation of groundwater availability is an incomplete picture of groundwater conditions in the Palo Verde Mesa Basin. In particular, the water budget presented for the Blythe Mesa Solar Project suggests pumping at the currently operating Blythe Energy project results in a deficit of over 2,100 acre-feet per year. A decline in the potentiometric surface over time would be evident if the amount of water in storage was being reduced, yet the water level data from the Blythe Energy project site demonstrates static water level trends that are steady or even rising from 2003 through 2014. A rise in the static water level in unconfined aquifers indicates recharge rates exceed extraction rates and more groundwater is in storage than in the past.

S&W-34: The Irish Energy Project is currently in development and Project Owner does not have information about expected water use rate and source for the Irish Energy Project. It would be speculative to provide such information at this time. (*See* Pub. Resources Code, § 21082.2, CEQA Guidelines, § 15145 (CEQA does not require speculation).)

Background to S&W-35: Project Owner objects to Staff's assertion that "[m]ost canal seepage in the area is returned to the Palo Verde Valley groundwater basin and then the Colorado River" on the grounds that the assertion is not supported by evidence. Canal lining has been raised as a potential offset for groundwater use at the Blythe II project. A first intuition is to consider a newly lined canal as a reduction in recharge to the groundwater system. Site-specifically, that can be true. However, when the entirety of the Palo Verde Mesa and Palo Verde Valley basins is considered, canal lining represents a reduction in the quantity of water diverted at the Colorado River. Reductions in diversion rates result in more water in-stream, and an increase in the Colorado River water level. Accordingly, canal lining enhances local water resources and supplies - surface water and groundwater. Several public agencies have recognized this value, which is evident by the various canal lining projects being undertaken in the region in response to decades-long disputes that resulted in complex settlement agreements, and related legislation that became law. (*See e.g.*, Water Code section 12562.) For example, San Diego County Water Authority estimates the lined canals save 93,700 acre feet of water annually. (http://www.sdcwa.org/sites/default/files/canallining_fs.pdf.)

Background to S&W-39 through S&W-41: Project Owner objects to information contained in the "Background" section that precedes Data Requests S&W-39 through S&W-41 on the following grounds:

Staff cites changes in chloride concentrations to support an assertion that groundwater quality is potentially being degraded in the vicinity of the project. The background to data requests S&W-39 through S&W-41 suggest chloride concentrations have changed from 200 mg/L when the Blythe I project was licensed to a current concentration of 280 mg/L.

Data related to groundwater quality at the site are available from the Regional Water Quality Control Board, Colorado River Basin Region. None of these data show degradation of water quality in monitoring wells. Statistical analyses of the data collected from the monitoring wells at the adjacent Blythe Energy Project site, including for chloride and TDS, indicate no statistically significant change in concentrations has occurred over the past 14 years. In fact, the BEP II AFC supports Project Owner's position that no significant changes in concentrations have occurred over the past 14 years, noting chloride levels in PW-1 and PW-2 ranged from 260 to 320 mg/L in 2001 (with a mean of 280).

Background to S&W-42 and S&W-43: The objections to AQ-21 and AQ-22 noted on pages 2 and 3, *supra*, are incorporated herein.

Notwithstanding the above objections, Project Owner will respond to the best of its ability to all Data Requests in Set One, with the exception of S&W-34, on or before November 12, 2015.

Very truly yours,

Melissa A. Foster

MAF:jmw