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March 8, 2017

Mike Monasmith, Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Subject: Mission Rock Energy Center (15-AFC-02) Data Request Response, Set 5 (169-173)

Dear Mike:

Mission Rock Energy Center, LLC (the Applicant) submits responses to California Energy Commission Staff Data Requests, Set 5 (169-175) for the Mission Rock Energy (15-AFC-02) Application for Certification.

Please contact me at 916-359-4805 if you have questions about this matter.

Sincerely,

Douglas M. Davy, Ph.D.
Project Manager

Attachment

cc: Mitch Weinberg, Calpine Corporation
Barbara McBride, Calpine Corporation
Jill Van Dalen, Calpine Corporation
Samantha Neumyer, Ellison Schneider, Harris, and Donlan, LLP

DATA REQUEST RESPONSE

Responses to California Energy Commission Staff
Amended Data Request Set 5 (169 to 173) and Notice

In support of the

Application for Certification

For the

Mission Rock Energy Center

15-AFC-02

Prepared for

Calpine Corporation

March 2017

CH2M Hill Engineers, Inc.
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833

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Section Page

Acronyms and Abbreviations

AFC	Application for Certification
Applicant	Mission Rock Energy Center, LLC
CEC	California Energy Commission
DR	Data Request
DRR	Data Request Response
LBV	least Bell's vireo
LLC	Limited Liability Corporation
MREC	Mission Rock Energy Center
NMFS	National Marine Fisheries Service
USFWS	United States Fish and Wildlife Service

Introduction

Attached are Mission Rock Energy Center, LLC's (Applicant's) responses to the California Energy Commission (CEC) Staff amended Data Requests (DRs) Set 5 (169 to 173) for the Mission Rock Energy Center (MREC) (15-AFC-02) Application for Certification (AFC). The CEC Staff served the Set 5 data requests on February 23, 2017, as part of the discovery process for the MREC project, and amended the set with an additional data request the same day. Given the accelerated time frames for these data requests, the Applicant provides notice for certain data requests, consistent with the requirements of Section 1716(f) of the Commission's regulations.

The responses are grouped by individual discipline or topic area. Within each discipline area, the responses are presented in the same order as presented by CEC Staff, and are keyed to the Data Request numbers (169, 170, etc.).

5.2 Biological Resources (169-172)

Least Bell's vireo

169. Please conduct protocol surveys for the least Bell's vireo in the Todd and Ellsworth barrancas within 500 feet of each transmission tower, and the entire riparian habitat adjacent to the proposed power plant location out to 1000 feet.

Response: Based on Applicant's surveys (described below), Applicant believes the only areas that are potentially conducive to being classified as least Bell's vireo (LBV) (*Vireo bellii pusillus*) habitat, and that have the potential to be impacted by project activities, are the Todd Barranca and the Ellsworth Barranca. Applicant's proposed natural gas and water supply lines, as well as the generator tie-line connecting Tower #3 to Tower #4, are anticipated to cross the Todd Barranca, and the natural gas line crosses Ellsworth Barranca. Generator tie-line Tower #16 is currently anticipated to be located on a stream terrace in a narrow riparian strip along Ellsworth Barranca more than a mile from the Santa Clara River floodplain. All other towers will be constructed in or on the margins of agricultural fields and orchards or in chaparral, which is not habitat for the LBV.

Applicant conducted surveys for the LBV within 500 feet of generator tie-line tower #3 in the spring and summer of 2016 in accordance with the U.S. Fish and Wildlife Service (USFWS) (2001) protocol for this species. As described in the MREC AFC, "Habitat and plant community assessments were conducted within a 1-mile radius of the MREC and within 1,000 feet of the proposed generator tie-line and proposed pipeline routes where access was permitted." In this [Biological Resources] section, these areas are referred to collectively as the "MREC survey area." (MREC, AFC, p. 5.2-6; TN # 207151-9.) The LBV surveys were done at the request of US Fish and Wildlife Service (USFWS) Staff (reference Docket #TN210997) and in response to Staff's Data Request No. 22. Surveys were conducted in a linear (northwest to southeast) 1,000 foot transect in the barranca, centered on the Tower #3 location and encompassing the entire width of Todd Barranca riparian vegetation. Riparian habitat in this is area is already fragmented and actively managed, with significant pruning and clearing through the understory vegetation.

Results of the surveys indicated that there were no nesting birds along Todd Barranca within 500 feet of the generator tie-line crossing through the Todd Barranca. While LBV were detected in this area, based on observation of the movements, the birds were not resident to the barranca. The surveyed area contains marginal to low-quality habitat which is unlikely to be used for nesting by LBV.

Applicant has committed to preconstruction surveys, which will provide information when it is most useful—immediately before construction activities begin. Surveys in 2017 would only confirm possible presence, which is not in dispute based on the protocol surveys already conducted. The proposed 2017 protocol surveys would be duplicative and would not provide any prognostication as to whether or not LBV might be present and/or nesting in the vicinity of the river in post-2017 years, when construction would occur. To make the point, the requirement for preconstruction surveys would not be *waived* if MREC conducted protocol surveys in 2017. This is because, unlike preconstruction surveys, 2017 surveys would only re-affirm possible presence, which, again, is not in dispute. Additional 2017 protocol surveys are duplicative, burdensome, unnecessary, and would only serve to delay the issuance of a Preliminary Staff Assessment without adding any significant new information.

Based on the results of the existing biological surveys and analysis that has been conducted to date for the MREC, which provide a sufficient understanding of the habitat quality and presence of LBV in the barrancas, the information required to proceed is available to Staff and the public for review and comment. Furthermore, additional surveys are not necessary for any decision the Commission must

make in this proceeding as required by Section 1716(f) of the Commission's Regulations since, based on the results of Applicant's preconstruction surveys, the Applicant will avoid potential adverse impacts to the LBV.

Project activities will neither significantly impact the LBV nor significantly impact or remove nesting habitat for the LBV.

First, the MREC project site itself has no suitable habitat. The focus is exclusively on MREC's linear facilities. The Applicant can plan linear construction activities over any of the several seasons during the multi-year construction period without affecting construction of the power plant and related facilities on-site.

Second, Applicant will conduct preconstruction surveys for LBV within 500 feet of the project site and natural gas and water pipeline routes, which can be conducted concurrent with other preconstruction surveys, in order to avoid potential adverse impacts. These preconstruction surveys need to be completed as close to construction start as reasonably possible to ensure Applicant has the most up-to-date information about then current conditions. If nest locations are found during these preconstruction surveys, Applicant can avoid any disturbance by using distance setbacks as monitored by a qualified biologist if nests are present near possibly noisy construction activities.

Third, Applicant will avoid any impacts from the construction and operation of the natural gas lines and water supply lines, which will cross potential LBV habitat in the Todd and Ellsworth Barrancas, by constructing these linears underground using industry-standard horizontal directional drilling (HDD) techniques. This will allow for construction without disturbing barranca vegetation or removing habitat, thereby avoiding any impacts on the LBV or its habitat. Since these lines will be buried underground, there should not be any operational impacts.

Fourth, with respect to the construction, ownership, and operation of the electrical generator tie-line, the areas potentially impacted will be tree rows along the project site boundary and located in Todd and Ellsworth Barrancas. While these will need to be trimmed to allow safe passage and maintenance of the generator tie-line, in order avoid and to limit impacts to the maximum extent possible, Applicant will undertake pre-construction surveys and, in addition, Applicant will limit trimming to the minimum amount required. Applicant will not undertake any trimming, construction or maintenance activities during nesting season. Because the LBV is migratory and flies south for the winter, any potential adverse impacts to LBV can be avoided by constructing the affected generator tie-line towers during the fall and winter seasons when LBV are not present.

Finally, the only other location where the Project may potentially cause impacts to the LBV is at generator tie-line tower #16. Tower #16 is currently anticipated to be located on a stream terrace in a narrow riparian strip along the Ellsworth Barranca where LBV are not likely to nest because of the distance (1.25 miles) from habitat along the Santa Clara River floodway where LBV have been sighted. This work can be done without significant loss of habitat in any case, and Applicant will undertake this work outside of the nesting season with little or no significant loss of nesting habitat.

In short, the Staff has both the commitment to preconstruction surveys and the information it needs to perform the analyses for the Preliminary Staff Assessment. Further delay serves no useful purpose. For all of the foregoing reasons, pursuant to Section 1716(f) of the Commission's Regulations, the Applicant objects to conducting the additional protocol surveys request by Data Request No. 169, particularly because of the substantial information already provided and the protocol surveys that the Applicant has already conducted.[1]

[1] 20 CCR 1716(f) provides for objections within 20 days of receiving a data request; however, given the accelerated time frames In this last round of Discovery, the Applicant provides both its responses and this objections here.

References:

U.S. Fish and Wildlife Service. 2001. *Least Bell's Vireo Survey Guidelines*. Ecological Services. Carlsbad, California.

Nesting territories

170. Please provide a map of the nesting territories for all areas listed in Data Request No. 169 above.

Response: Please see the response and notice of objection to Data Request #169, which are incorporated herein by this reference.

USFWS and NMFS

171. Please provide evidence of consultation with USFWS and NMFS.

Response: Communications with various wildlife agencies have already been docketed by the Staff. While formal consultation with the USFWS will likely not be required because the project will not remove LBV nesting habitat and indirect impacts to nesting LBV can be avoided by construction timing, preconstruction surveys, and construction monitoring, the Applicant has engaged in discussions with USFWS subsequent to the issuance of Data Request Set 5 relating to the LBV. The Applicant will provide any substantial future written communications with USFWS to Staff.

Similarly, regarding the National Marine Fisheries Service (NMFS), the communication from Mr. Jay Ogawa of that agency dated July 11, 2016 states (Docket #TN212670):

> …it appears construction of the process water supply line and natural gas pipeline would require crossing Ellsworth Barranca and Todd Barranca Creeks. As a result, potential impacts to endangered steelhead and aquatic habitat from construction of the supply lines include *temporary levels of increased turbidity and temp/perm impacts to riparian habitat* (emphasis added).

Vegetation will be removed to permit the passage of the generator tie-line through the narrow band of vegetation bordering Todd Barranca, but standard erosion control methods and best management practices will be in place there to prevent sedimentation from entering the barranca and increasing turbidity to a significant degree in the stream. Any temperature impacts of removing the small amount of vegetation needed for passage of the generator tie-line would have an insignificant effect, if any, on water temperatures in the barranca, which is a deeply inset stream channel shrouded by dense vegetation along its banks.

As is stated in the AFC, water and natural gas lines will cross the Todd Barranca using horizontal directional drilling (HDD), not cut-and-cover construction techniques. HDD avoids potential impacts, as described in Applicant's response to Data Request #169. There would be minimal risk of increased sediment or damaged riparian habitat from construction of the natural gas and water supply pipelines using the HDD method. The Applicant will ensure that NMFS is provided the updated project information, and will provide any substantial future communications with NMFS regarding potential effects on steelhead to Staff.

Mitigation measures

172. Please provide mitigation to prevent "take" of the state and federally-listed endangered least Bell's vireo and federally-listed endangered southern steelhead trout.

Response: The Applicant does not agree that either "take" of or significant adverse impacts to the LBV or southern steelhead trout will occur. However, the Applicant has proposed several measures that will

enable avoidance and minimization of any potential impacts to the LBV in the response to Data Request 169. For the southern steelhead trout, additional measures are not needed, as described in the response to Data Request 171, because of HDD construction method that will be used to construct the water and natural gas lines will avoid potential impacts and because standard erosion control techniques and best management practices will be used to prevent sedimentation of Todd Barranca during vegetation trimming.

5.15 Soil and Water Resources (173)

Potable Water

173. Please provide information about an alternate or back-up source of potable water for project operation and provide all information demonstrating there is an adequate and reliable supply available and the applicant has the necessary approvals to use the supply.

Response: In the event that the current retail water provider for this service territory refuses to continue water service to the project site, the Applicant is prepared to transport potable water to the site by truck. The Applicant uses this method to provide potable water to several other power generation facilities in California and elsewhere. The project will require only a small quantity of potable water for drinking, safety showers, and sanitary purposes. This water can be purchased in suitable quantities from a variety of suppliers without the need for any additional regulatory approvals.