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STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:

***PETITION FOR AMENDMENT FOR THE
PALMDALE ENERGY PROJECT***

Docket No. 08-AFC-09C

February 22, 2017

**ENERGY COMMISSION STAFF'S RESPONSE TO PALMDALE
ENERGY, LLC'S OPENING TESTIMONY**

On September 12, 2016, Energy Commission staff published the Final Staff Assessment for the Palmdale Energy Project (PEP). On November 28, 2016, Palmdale Energy LLC (applicant) submitted updated data concerning the air-cooled condenser and the thermal plume modeling. On December 29, 2016, staff published supplemental testimony in the traffic and transportation technical area updating our analysis based on this new data. On February 17, 2017, the Committee issued a scheduling order directing parties to file opening testimony by February 22, 2017. The Final Staff Assessment and the Traffic and Transportation Supplemental Testimony will serve as staff's opening testimony. As discussed further below, due to information recently brought to staff's attention, staff may need to augment this opening testimony in the area of Biological Resources.

On January 6, 2017, the applicant submitted its opening testimony requesting an update to the project description and changes to conditions of certification in four technical areas. This document contains staff's response to those requested changes.

Project Description

Staff agrees that Figure 2-1 from the Revised Petition for Amendment should be included in the Final Decision in place of Figure 2, as well as the updated site plans provided with the opening testimony, and the description of the Natural Gas Compression Equipment provided. These accurately reflect the proposed project as analyzed by staff.

Air Quality

The applicant requested changes to 3 conditions of certification in air quality – AQ-SC6, AQT-4, and AQAB-6.

AQ-SC6

The applicant has requested that AQ-SC6 be deleted because they believe it is redundant with the reporting requirements imposed under AQT-17.

Staff notes some of the information required under AQT-17 would be required under AQ-SC6; however AQ-SC6 also requires additional information. AQT-17 requirements are specific to the combustion turbine power block. There are other air quality conditions of certification concerning other equipment with reporting requirements that reference AQ-SC6. AQ-SC6 requires the submittal of information demonstrating compliance with all of the air quality conditions of certification and also requires a statement that the facility meets all of the requirements or notation of any incidences of noncompliance; this goes far beyond what is required in AQT-17. Therefore AQ-SC6 is not redundant and needs to be included in the air quality conditions of certification.

Staff would also like to take this opportunity to clarify that the fourth quarter reports of each year should include all annual reporting requirements identified in the other conditions of certification. In order to clarify the reporting requirements, staff is proposing to modify the language in proposed Condition of Certification AQ-SC6. The proposed changes to AQ-SC6, shown in ~~strikeout~~ underline, are as follows:

AQ-SC6 The project owner shall submit to the CPM Quarterly Operation Reports, following the end of each calendar quarter that include operational and emissions information as necessary to demonstrate compliance with the Conditions of Certification herein. The Quarterly Operation Report ~~will~~ shall specifically state that the facility meets all applicable Conditions of Certification or note or highlight all incidences of noncompliance. Annual operation reports shall be submitted as part of the fourth Quarterly Report.

Verification: The project owner shall submit the Quarterly Operation Reports to the CPM and District, if requested by the District, no later than 30 days following the end of each calendar quarter.

In addition, staff is proposing to update the description of the combustion turbine generator power block included before AQT-1 in the Air Quality Conditions of Certification to match the description included in the AVAQMD Revised Final Determination of Compliance. All other equipment descriptions were updated in the Final Staff Assessment. The proposed changes, shown in ~~strikeout~~ underline, are as follows:

[2 individual ~~1736.4~~ 2,467 MMBtu/hr F Class Gas Combustion Turbine Generators, Application Numbers: ~~00010013~~ AV2000000504 and ~~00010014~~ AV2000000505]

AQT-4

The applicant requested that AQT-4 be modified to use the district's permit limit of 1 ppmvd for VOC instead of the stated 1.0 ppmvd.

Staff agrees the VOC requirement in Condition of Certification AQT-4 subsection d.i. should be 1 ppmvd instead of 1.0 ppmvd and agrees with the applicant's proposed change to AQT-4 subsection d.i.

AQAB-6

The applicant states that AQAB-6 appears to be missing subsection b from the district's version.

Staff agrees subsection b was inadvertently left out of the condition and concurs with the applicant's proposal that AQAB-6 should be updated as follows:

AQAB-6 The project owner shall maintain an operations log for this equipment on-site and current for a minimum of five (5) years, and said log shall be provided to District personnel on request. The operations log shall include the following information at a minimum:

- a. Total operation time (hours per month, by month);
- b. Daily Fuel use (to be used for calculating annual (12 month rolling sum) capacity factor;
- bc. Maximum hourly, maximum daily, total quarterly, and total calendar year emissions of NO_x, CO, PM_{10/2.5}, VOC and SO_x (including calculation protocol); and,
- ed. Any permanent changes made to the equipment that would affect air pollutant emissions, and indicate when changes were made.

[Fuel Sulfur Monitoring- 40 CFR 60.42(b)(k)(2); 40 CFR 60.49b(r)(1)]

Verification: During site inspection, the project owner shall make all records and reports available to the District, ARB, EPA and CPM.

Biological Resources

In its Opening Testimony (TN 215189), the applicant states that the construction laydown area should be restored to a lower standard than other areas of temporary disturbance because the applicant has agreed to purchase habitat compensation lands to mitigate for the permanent loss of 20 acres of Joshua tree woodland habitat that currently occupies the laydown area. The applicant proposes to modify Condition of Certification BIO-10 to allow for the option of leaving the laydown area graveled after construction is complete

Staff agrees to the change to BIO-10 explicitly allowing for revegetation with native grasses and subshrubs (this allowance is already referenced in item #3 of the condition) but does not support allowing the site to be left in a graveled condition. The applicant made a similar proposal in comments on the Preliminary Staff Assessment, proposing that BIO-10 be modified to allow the laydown area to be left "in the condition specified by the City of Palmdale" at an unspecified date. In the Final Staff Assessment staff explained why this was not appropriate under CEQA and the same reasoning holds here for this latest proposal. It is true that due to the sensitivity of Joshua trees and the low probability of being able to relocate and reestablish this habitat, disturbance of the construction laydown area became a permanent impact with respect to the Swainson's hawk and Mohave ground squirrel. However, use of the construction laydown area with respect to the project is temporary. Therefore, the construction laydown area should not be treated any differently than other temporarily impacted areas; that is, it should be revegetated

with a mix of native grasses and subshrubs, which is a lessor standard than the Joshua tree woodland that occupies the laydown area. Furthermore, vegetating this area does more than just protect these 20 acres of land from soil erosion; it has inherent restorative biological benefits and an aesthetic benefit that is complementary to the project and to the vegetative landscape that predominates the area. Staff does not concur that graveling the laydown area should be an option as long-term this would require continuous maintenance, which the applicant does not account for. In addition, the Lahontan Regional Water Quality Control Board specifically requested that the 20-acre laydown/parking area be re-vegetated in order to prevent soil erosion and reduce potential water and air quality impacts (TN 211353). Therefore, staff recommends that BIO-10 be modified to explicitly allow for revegetation with native grasses and subshrubs, but not for permanent gravelling, as follows:

BIO-10 The project owner shall provide restoration for impacts to native vegetation communities and develop and implement a Restoration Plan for all areas subject to temporary project disturbance, **except for the temporary construction laydown area which shall be revegetated with native grasses and subshrubs or graveled to minimize soil erosion.** Upon completion of construction, all temporarily disturbed areas shall be revegetated, excluding the road and roadbed. The following measures shall be implemented for the revegetation effort areas not subject to the facility Landscape Plan. These measures will include:

At this time, staff is informing the Committee about an issue that staff was only recently made aware of on February 10, 2017, that may necessitate changes to the analysis and Biological Resources conditions of certification. The US Fish and Wildlife Service (USFWS) has informed staff that they have asked the US Environmental Protection Agency (EPA) to officially consult on the Southwestern willow flycatcher with respect to PEP.

Based on information obtained from monitoring transmission lines and energy projects in the desert since the Palmdale Hybrid Power Project was approved, it is the USFWS's position that over the 30-year life of PEP at least some Southwestern willow flycatchers are likely to collide with the PEP's gen-tie line resulting in death. Because the PEP has the potential to adversely affect the Southwestern willow flycatcher, USFWS has advised the EPA to formally consult with USFWS. Staff understands that EPA has notified the applicant.

The Southwestern willow flycatcher, listed as federally and state endangered, is included in Biological Resources Table 3 on page 7.1-7 of the Final Commission Decision. The willow flycatcher is a state endangered species. The subspecies is almost impossible to tell apart from the willow flycatcher and both have been regularly sighted in the Palmdale project area. Based on this new information, staff is considering whether the willow flycatcher should also be added to the list of special-status species with the potential to occur in the project area. Staff, in consultation with USFWS and California Department of Fish and Wildlife, is working on developing a recommendation to the Committee for how to proceed on this issue and hopes to provide that soon.

Soil and Water Resources

The project owner has shown that the conditional will-serve letter, dated October 23, 2007, has been paid for, and asserts that it is still valid for the same source and same volume of potable water supply (3.6 acre-feet per year), as allowed by the Final Decision for the original project.

However, staff concluded (pg.4.9-9 of the FSA) that the project owner should be required to obtain an updated will-serve letter showing they have paid the fees necessary to obtain the potable water supply for the project operation and a copy of a new water supply agreement from Los Angeles County Department of Public Works.¹ The county stated that the 2007 will-serve letter is no longer considered valid and that a new procedure is in place for new water users. Staff considered this along with the following regarding the October 2007 conditional will-serve letter:

- (1) it is only valid for one calendar year from the date the District Engineer signed the letter;
- (2) was not signed by the District Engineer;
- (3) was issued to the City of Palmdale, not Palmdale Energy LLC; and
- (4) is over 9 years old.

The new procedure for new water users in Antelope Valley Groundwater Basin (AVGB) is due to the water basin becoming adjudicated in December 2015, resulting in no water availability for PEP or any currently unserved projects. Los Angeles County Department of Public Works now requires developers to sign a new water supply agreement before issuing a will-serve letter. This new water supply agreement is implemented pursuant to a New Water Supply Entitlement Acquisition program. The new program is based on an agreement between the county and Antelope Valley East Kern water agency (regional water wholesaler and State Water Project contractor) to provide any new supplies to the region.

Staff rigorously pursued the evaluation and determination of an adequate water supply because of the Energy Commission's recent guidance to staff to ensure compliance with California Water Code §§ 10910-10915. Sections 10910-10915 require completion of a Water Supply Assessment intended to inform CEQA decision-makers about proposed project water supplies and their sustainability and reliability. Staff understands the volume of water needed for project operation is small and it is likely Los Angeles County Department of Public Works could obtain the necessary supply; however, staff wants to be clear that there is currently no commitment of water supply, regardless of quantity, to the project.

Staff provides the following revised condition of certification SOIL&WATER-4 which incorporates the project owner's proposed changes to demonstrate an adequate supply 90 days prior to construction.

Staff has also corrected typographical errors and added clarifying language specifying which agency will supply water and what uses it is approved for. The proposed changes by the project

¹ California Energy Commission/Christopher Dennis (TN 213085). Record of Conversation between CEC/Christopher Dennis and Kirk Allen, Los Angeles County Department of Public Works Re: Potable Water Supply Assessment, dated July 6, 2016. Submitted to CEC/Docket Unit on August 4, 2016.

owner are in single underline and single strikethrough and those by staff are in double underline and double strikethrough.

WATER SUPPLY – OPERATION WATER

SOIL&WATER-4: Recycled water from Los Angeles County Sanitation District shall be used for all allowable project construction needs. The project's use of water for project operations shall be potable water from the Los Angeles County Department of Public Works (LACDPW) for drinking and sanitation and tertiary-treated recycled water from the city of Palmdale for industrial use. Use of recycled water shall comply with CCR Title 22 and Title 17. The project owner shall provide the CPM a copy of an agreement demonstrating the city of Palmdale is committed to delivery of recycled water.

As a pre-requisite to construction, the project owner shall provide the CPM a copy of the valid~~New Water Supply Entitlement Acquisition~~ potable water supply agreement between the project owner and District 40 demonstrating the necessary fees ~~have been~~ are paid and ~~Will Serve~~ letter for the potable water supply ~~demonstrating the~~ and District 40 is committed to delivery of potable water by the start of project construction date.

Verification: No later than ~~thirtyninety~~ (90) days prior to construction, the project owner shall provide a copy of the valid water supply ~~executed New Water Supply Entitlement Acquisition~~ agreement ~~and Will Serve~~ letter for potable water supply from District 40.

No later than ~~thirtyninety~~ (90) days prior to construction, the project owner shall provide a copy of the executed agreement with city of Palmdale for the recycled water supply.

No later than sixty (60) days prior to operation, the project owner shall submit the Engineering Report and Cross Connection inspection report for the recycled water supply to the Lahontan RWQCB, California Department of Public Health (DPH), and CBO. The project owner shall submit to the CPM two (2) copies of the Engineering Report and Cross Connection inspection report and include all comments from the Lahontan RWQCB and California DPH prior to accepting delivery of recycled water.

No later than thirty (30) days after project construction, the project owner shall submit a report showing how much recycled water was used for construction, the type of recycled water, and what activities it was used for.

Traffic and Transportation

In the Final Staff Assessment, staff proposed a condition of certification (TRANS-2) that requires the project owner to obtain Determinations of No Hazard to Navigable Airspace from the Federal Aviation Administration (FAA) for several project structures. The applicant asserts that subsection (e)(1) of Part 77.9 of the Code of Federal Regulations may exempt some of the project's structures from having to obtain a no hazard determination and accordingly asks that

TRANS-2 be modified to accommodate receipt of the FAA's determination that a structure is exempt pursuant to Part 77.9(e)(1) in lieu of the no hazard determination.

Because there are no existing structures or natural terrain on or near the project site that would shield the proposed structures, staff does not believe that an exemption in accordance with Part 77.9(e)(1) would apply to the project. Nevertheless, the applicant is correct that in the unlikely event that the FAA determined that such an exemption applied, and refused to grant a no hazard determination, an amendment to TRANS-2 would be required in order for the project to proceed. The changes to TRANS-2 requested by the applicant retain the requirement that a no hazard determination be submitted for each of the listed structures unless the project owner can provide a determination by the FAA that it has found the structure to be exempt from the requirement.

While staff reiterates that we believe an exemption under these circumstances to be unlikely, leaving the determination to the FAA, as the applicant's proposed changes to the condition of certification would do, would not change staff's conclusion that with this and the other Traffic and Transportation conditions of certification the PEP would comply with applicable laws, ordinances, regulations and standards and would not result in an unmitigable significant, adverse impact in the technical area of Traffic and Transportation. Therefore, staff does not object to the proposed change. Staff does, however, recommend a minor correction to the proposed change to correct a typographical error, as shown below.

TRANS-2 The project owner shall obtain Determinations of No Hazard to Navigable Airspace from the Federal Aviation Administration (FAA) for U.S. Air Force Plant 42 regarding the project's transmission towers, HRSG structure, HRSG stack, combustion turbine enclosures, combustion turbine air inlet filters, combustion turbine oil skid and coolers, steam turbine generator step-up transformer, air cooled condenser, steam turbine generator enclosure, low pressure steam turbine, steam turbine building, and construction crane that would penetrate the Plant 42's airspace, **unless the FAA determines that any of these structures are exempt from the requirements for obtaining a Determination of No Hazard to Navigable Airspace pursuant to Title 14, CFR, Part 77, Section 77.9 (e) (1).**

Verification: At least 90 days prior to the construction, the project owner shall provide the CPM copies of the FAA Determinations of No Hazard to Navigable Airspace regarding the project structures identified above **or FAA's Determination that a structure is exempt for from the requirements for obtaining a Determination of No Hazard to Navigable Airspace** and the project owner must comply with specific recommendations contained in the FAA determinations.

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Conclusion

Staff respectfully submits this response to the applicant's opening testimony for the Committee's consideration.

DATED: February 22, 2017

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Decarlo', written in a cursive style.

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