

STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission

DOCKET 07-AFC-1	
DATE	APR 21 2008
RECD.	APR 21 2008

In the Matter of:) Docket No. 07-AFC-1
)
Application for Certification for the)
Victorville 2 Hybrid Power Project) April 21, 2008
_____)

Staff's Opening Brief

On April 3, 2008, the Committee assigned to the Victorville 2 Hybrid Power Project (Project) directed parties to file briefs on two issues ten days after the transcript for the April 3 hearing was placed on the Energy Commission's website. (RT, 4/3/08, p. 86, lines 5-11.) The transcript was placed on the Energy Commission's website on April 11, 2008, creating a filing deadline of April 21, 2008. This is staff's Opening Brief addressing the two issues identified by the Committee.

I. The Evidence Supports a Finding that the Project is Likely to Comply with Federal Law.

Intervener California Unions for Reliable Energy (CURE) claims that the Mojave Desert Air Quality Management District (MDAQMD) rule under which the Project is obtaining PM10 offsets does not comply with federal law. CURE states that, until the United States Environmental Protection Agency approves a PM10 non-attainment or maintenance plan as well as this rule, the Commission cannot lawfully approve the Project's proposed offset plan. (CURE Prehearing

Conference Statement, p. 4.) CURE argues that such approval would violate Public Resources Code, section 25523(d)(2) which reads:

The commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies, prior to the licensing of the project by the commission, that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant within the time required by the district's rules or unless the applicable air pollution control district or air quality management district certifies that the applicant requires emissions offsets to be obtained prior to the commencement of operation consistent with Section 42314.3 of the Health and Safety Code and prior to commencement of the operation of the proposed facility. The commission shall require as a condition of certification that the applicant obtain any required emission offsets within the time required by the applicable district rules, consistent with any applicable federal and state laws and regulations, and prior to the commencement of the operation of the proposed facility.

However, CURE's arguments ignore the fact that the MDAQMD has issued a Final Determination of Compliance (FDOC) for the Project. In the FDOC, the MDAQMD finds that the Project applicant has identified sources of PM10 emission reduction credits (ERCs) *in excess* of required ERCs (Exh. 202, p. 14) and that there is a reasonable likelihood that there are sufficient unpaved roads to satisfy the PM10 offset requirements for this project. (*Id.* at p. 46-47.) In addition, as the MDAQMD pointed out, under its own rules, the Project cannot begin construction until the ERCs are provided (*Id.* at p. 46); this requirement is more stringent than the requirement in federal law that ERCs be provided prior to operation. (*See* subd. (a)(1)(A) of 42 U.S.C.A. § 7503.)

Finally, staff notes that under the Approved Air Resources Board-California Energy Commission Joint Policy Statement of Compliance with Air Quality Laws

by New Power Plants, it is the MDAQMD's responsibility to determine compliance with federal law. Specifically, that document states that the "Commission AFC decision shall include findings and conclusions on conformity with air quality requirements *based on the Determination of Compliance.*" (Joint Policy Statement, p. 7, emphasis added.) The FDOC for the Project contains a conclusion that the project will conform to federal air quality law, and staff agrees with that conclusion.

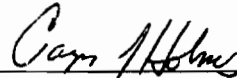
II. The Evidence Supports Staff's Modification to Proposed Condition of Certification AQ-SC 6 to Refine the Construction Time Limitations.

The applicant proposes to limit construction activities to the hours between one hour after sunrise and thirty minutes before sunset. In the Final Staff Assessment, staff recommended that the construction stop time should instead be one hour before sunset, and included this restriction in its proposed Condition of Certification **AQ-SC 6**. Staff's objective was avoidance of a new violation of the ambient 1-hour NO₂ standard due to construction emissions. Staff based its recommendation on modeling provided by the applicant. (Exh. 52, p. AQ-2.) The applicant objected to this restriction, and staff reassessed the modeling and found that the original concern -- the potential for creating a new violation of the ambient NO₂ standard -- was limited to the period of July 15th to August 30th. Therefore, staff now recommends that the project be allowed to halt construction thirty minutes before sunset for days outside of the period from July 15th to August 30th. However, for the period of time between July 15th and August 30th -- when the modeling shows a potential for such a violation -- staff continues to believe that halting construction one hour prior to sunset is appropriate. On April 15, 2008, staff filed a new proposed Condition of

Certification AQ-SC 6 to reflect this change. On April 16, 2008, the applicant filed its response to the staff proposal, stating that the revised condition is acceptable.

Date: April 21, 2008

Respectfully submitted,



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

APPLICATION FOR CERTIFICATION
FOR THE VICTORVILLE 2
HYBRID POWER PROJECT

Docket No. 07-AFC-1
PROOF OF SERVICE
(Revised 9/6/07)

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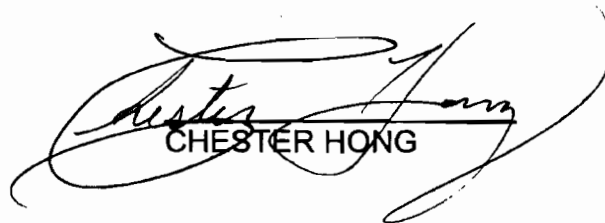
DECLARATION OF SERVICE

I, **Chester Hong**, declare that on **April 21, 2008**, I deposited copies of the attached **Victorville 2 Hybrid Power Project (07-AFC-1) – Staff's Opening Brief** 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.


CHESTER HONG