

LATHAM & WATKINS LLP

July 1, 2008

VIA FEDEX

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-1

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File No. 039610-0001

DOCKET
07-AFC-1

DATE JUL 01 2008

RECD. JUL 01 2008


Re: Victorville 2 Hybrid Power Project: Docket No. 07-AFC-1

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Proposed Modifications to Proposed Condition of Certification AQ-SC9.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the CEC's current electronic proof of service list.

Very truly yours,


Paul E. Kihm
Senior Paralegal

Enclosure

cc: CEC 07-AFC-1 Proof of Service List (w/encl. via e-mail)
Michael J. Carroll, Esq. (w/encl.)

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STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:) Docket No. 07-AFC-1
)
Application for Certification,) PROPOSED MODIFICATIONS TO PROPOSED
for the VICTORVILLE 2 HYBRID POWER) CONDITION OF CERTIFICATION AQ-SC9
PROJECT)
by The City of Victorville)
_____)

The purpose of this submittal is to offer an additional alternative to proposed Condition of Certification AQ-SC9, which addresses the requirement to provide PM10 emission offsets through the paving of unpaved roads, and the timing associated therewith. This condition was the subject of discussion at the Committee Conference and Evidentiary Hearing on June 17, 2008, and is the only proposed condition upon which Applicant and CEC staff have been unable to reach consensus.

The proposed condition, with changes agreed upon at the June 17 Committee Conference and Evidentiary Hearing, reads as follows:

AQ-SC9 *The project owner shall pave, with asphalt concrete that meets the current county road standards, unpaved local roads to provide emission reductions of 132.7 tons per year of PM10, prior to start construction of the project. Calculations of PM10 emission reduction credits shall be performed in accordance with Sections 13.2.1 and 13.2.2 of the U.S. EPA's AP-42 "Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources," Fifth Edition.*

Verification: *At least 60 days prior to start of construction, the project owner shall submit to the CPM and the District, for approval, a list and pictures of candidate roads to be paved, their actual daily average traffic county including classifications of vehicles (ADT), and daily vehicle miles travel (DVMT), their actual road dust silt content, and calculations showing the appropriate amount of emissions reductions due to paving of each road segment. All paving of roads shall be complete at least 15 days prior to start of construction of the project.*

In its comments on the Presiding Member's Proposed Decision ("PMPD"), and during the June 17 Committee Conference and Evidentiary Hearing, Applicant proposed to modify the proposed condition to read as follows:

AQ-SC9 *The project owner shall pave, with asphalt concrete that meets the current county road standards, unpaved local roads to provide emission reductions of 132.7 tons per year of PM10, prior to start construction of the project. Calculations of PM10 emission reduction credits shall be performed in accordance with Sections 13.2.1 and 13.2.2 of the U.S. EPA's AP-42 "Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources," Fifth Edition.*

Verification: *At least 60 days prior to start of construction, the project owner shall submit to the CPM and the District, for approval, a list and pictures of candidate roads to be paved, their actual daily average traffic county including classifications of vehicles (ADT), and daily vehicle miles travel (DVMT), their actual road dust silt content, and calculations showing the appropriate amount of emissions reductions due to paving of each road segment. **Paving of roads sufficient to generate at least 18.1 tons per year of PM10 emission reduction credits** ~~All paving of roads shall be complete at least 15 days prior to start of construction of the project. All paving of roads shall be complete no later than six (6) months following start of construction of the project.~~*

CEC staff objected to Applicant's proposed modification, as did CURE, which offered the following proposal (CURE did not propose Verification language):

AQ-SC9 *The project owner shall comply with MDAQMD's SIP-approved Rule 1302, by obtaining offsets pursuant to SIP-approved Rules prior to the commencement of construction of the facility.*

In an effort to reach a compromise solution on the proposed condition, Applicant hereby proposes the following:

AQ-SC9 *The project owner shall pave, with asphalt concrete that meets the current county road standards, unpaved local roads to provide emission reductions of 132.7 tons per year of PM10, prior to start construction of the project. Calculations of PM10 emission reduction credits shall be performed in accordance with Sections 13.2.1 and 13.2.2 of the U.S. EPA's AP-42 "Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources," Fifth Edition.*

Verification: *At least 60 days prior to start of construction, the project owner shall submit to the CPM and the District, for approval, a list and pictures of candidate roads to be paved, their actual daily average traffic county including classifications of vehicles (ADT), and daily vehicle miles travel (DVMT), their actual road dust silt content, and calculations showing the appropriate amount of emissions reductions due to paving of each road segment. **Paving of roads sufficient to generate at least 18.1 tons per year of PM10 emission reduction credits** ~~All paving of roads shall be complete at least 15 days prior to start of construction of the project.~~*

All paving of roads shall be complete no later than Beginning Actual Construction as required by Mojave Desert Air Quality Management District Rules 1301 and 1302.

The above proposal accomplishes all of the following:

1. It ensures that sufficient road paving will be completed prior to the “Commencement of Construction” to offset the 18.1 tons per year of PM10 emissions associated with construction activities, thereby fully mitigating this impact; and
2. It ensures compliance with the Mojave Desert Air Quality Management District rules, which require that the road paving be complete prior to “Beginning Actual Construction,” and ties the deadline for completing road paving to those rules, as suggested by CURE; and
3. It ensure that all emission reduction credits will be in place well in advance of the commencement of emissions from operation of the project; and
4. As a result of certain distinctions between the definitions of “Commencement of Construction” and “Beginning Actual Construction,” it provides the Applicant with a limited amount of additional time to complete the road paving (although considerably less time than previously requested).

Applicant urges the Committee to incorporate Applicant’s most recent proposal into the Final Decision.

DATED: July 1, 2008

Respectfully submitted,



Michael J. Carroll
of LATHAM & WATKINS LLP

**STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:) Docket No. 07-AFC-1
)
Application for Certification,) **ELECTRONIC PROOF OF SERVICE**
for the VICTORVILLE 2) **LIST**
HYBRID POWER PROJECT)
by the City of Victorville) **(revised May 30, 2008)**
)
_____)

Transmission via electronic mail and by depositing one original signed document with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION

Attn: DOCKET NO. 07-AFC-1
1516 Ninth Street, MS-4
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Transmission via electronic mail addressed to the following:

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VICTORVILLE II HYBRID POWER PROJECT
CEC Docket No. 07-AFC-1

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INTERESTED AGENCIES

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VICTORVILLE II HYBRID POWER PROJECT
CEC Docket No. 07-AFC-1

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Transmission via U.S. Mail addressed to the following:

INTERESTED AGENCIES

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151 Blue Ravine Road
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DECLARATION OF SERVICE

I, Paul Kihm, declare that on July 1, 2008, I deposited a copy of the attached:

**PROPOSED MODIFICATIONS TO PROPOSED CONDITION OF CERTIFICATION
AQ-SC9**

with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the California Energy Commission. I further declare that 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. Executed on July 1, 2008, at Costa Mesa, California.



Paul Kihm