

Memorandum

Date: March 1, 2013
Telephone: (916) 651-8853
File: 08-AFC-08A

To: Commissioner Karen Douglas, Presiding Member
Commissioner Andrew McAllister, Associate Member
Hearing Officer Raoul Renaud

From: California Energy Commission -
1516 Ninth Street
Sacramento, CA 95814-5512

Robert Worl
Robert Worl,
Project Manager

<p>California Energy Commission</p> <p>DOCKETED</p> <p>08-AFC-8A</p> <hr/> <p>TN # 69758</p> <p>MAR. 01 2013</p>
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**Subject: HYDROGEN ENERGY CALIFORNIA, AMENDED (08-AFC-08A)
STAFF STATUS REPORT #5**

Pursuant to the Revised Committee Schedule dated January 30, 2013, requesting all parties to file Status Reports by March 1, 2013, staff hereby files Status Report #5 for the Hydrogen Energy California, Amended AFC (HECA). Energy Commission staff and the U.S. Department of Energy (DOE) are jointly conducting the review of the proposed HECA project and intend to issue joint documents. Staff is evaluating the project subject to both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). This status report focuses on those items that impact the ability of staff to complete its work on the Preliminary Staff Assessment/Draft Environmental Impact Statement (PSA/DEIS).

It is critical for DOE's purposes that this Preliminary Staff Assessment and Draft Environmental Impact Statement be as complete and comprehensive as possible. Given the importance and complexity of this joint document, staff anticipates needing an additional six weeks beyond the current PSA due date to accommodate adequate review and any necessary revisions resulting from such review. Staff believes, and DOE concurs (see attached letter, tn: 69749, U.S. Department of Energy support letter dated March 1, 2013), that an April 30, 2013 publication date for the PSA/DEIS meets the needs for joint agency review. Staff and DOE request that the Committee adjust the scheduling order accordingly.

Staff details below the activities and progress made to date since the last status report. The attached proposed schedule is based on staff's understanding of current schedule demands on higher priority projects¹ as well as delivery dates and other necessary activities needed to insure that staff is able to prepare a complete PSA/DEIS for HECA.

¹ From November 2012, to the present, large amounts of staff and management resources have been focused on three projects that have been assigned high priorities that are subject to middle to late March product delivery dates. These projects include Quail Brush, preparation and participation in evidentiary

Procedural Activities and Coordination Efforts:

Outstanding Data Requests: Though there remain outstanding data requests from Sets 1, 2 and 3, and from staff workshops, indications are that this information will not affect the PSA/DEIS preparation. This information will, however, be necessary for the Final Staff Assessment/Final Environmental Impact Statement (FSA/FEIS).

Staff anticipates receiving responses to remaining data requests and workshop questions by mid-March 2013. Technical areas that are expecting data responses and associated information include alternatives, land use, waste management and water supply. Additionally, staff will consider the applicant's responses to data requests from the interveners participating in the HECA process.

Water Supply: Staff conducted an Issues Resolution Workshop on February 20, 2013, to discuss the proposed water use plan, water supply options, and potential impacts that could result from the proposed HECA operations. Energy Commission staff is waiting for additional information from the applicant and the Buena Vista Water Storage District (BWSD) resulting from workshop discussions. This information may have an impact on the water supply analysis and staff proposed mitigation for the PSA/DEIS.

Cultural Resources: Staff is reviewing a draft-plan for conducting a geoarchaeological investigation that will aid in crafting appropriate mitigation measures for cultural resources. It is important for staff to have a complete plan for this work prior to completing the PSA/DEIS. Staff continues coordination efforts with DOE and tribal participants relating to Section 106 tribal consultation requirements, needed for the FSA/DEIS.

Coordination with Federal State and Local Agencies:

Staff conducts monthly multi-agency coordination calls regarding HECA, with the next call scheduled for March 19, 2013. These calls provide information regarding schedule and an opportunity to seek input from participating agencies regarding progress on key elements.

Environmental Protection Agency: On October 26, 2012, the U. S. Environmental Protection Agency (EPA) published its final approval of the San Joaquin Valley Air Pollution Control District (SJVAPCD) Rule 2410: Prevention of Significant Deterioration (PSD). With this final action, (see Federal Register (77 FR 65305)) EPA approves the revision of the California State Implementation Plan (SIP) to incorporate SJVAPCD's Rule 2410. Inclusion of Rule 2410 in the SIP means the District has a federally-approved PSD permitting program. Therefore, PSD permitting authority is now fully transferred from EPA to the District and it becomes part of the local District's permitting program. Since Rule 2410 has been SIP-approved, PSD requirements will now be included in the determinations of

hearings for Hidden Hills, and tasks associated with a major amendment to the Palen Solar project, requiring staff time to review the amendment and develop data requests associated with the revised project.

compliance for projects within San Joaquin Valley. Once rules become SIP-approved, they are federally enforceable regulations. The final rule was effective on November 26, 2012. EPA staff continue to work with the SJVAPCD and Energy Commission staff regarding the greenhouse gas (GHG) analysis and issues surrounding CO₂ sequestration.

California Public Utilities Commission: Staff has received responses to Data Request numbers A155 and A156, which summarized field meetings between the applicant, CPUC, and both Union Pacific Railroad and San Joaquin Railroad staff. Topics discussed included requirements for rail crossings associated with the HECA rail spur, and permit jurisdiction questions. Energy Commission staff is coordinating with the CPUC regarding the rail spur crossing and jurisdiction issues.

State Department of Water Resources and Regional Water Districts:

Staff continues coordination efforts with the Central Valley Regional Water Quality Control Board, Fresno Office (CVRWQCB) regarding water supply and water modeling efforts to date. Recent correspondence dated February 28, 2013 indicated the CVRWQCB staff is requesting additional water supply information and additional water modeling from the applicant.

Staff continues coordination efforts with the Department of Water Resources (DWR), Buena Vista Water Storage District and CVRWQCB regarding issues related to the proposed water supply.

California Air Resources Board: Staff continues to work with the ARB on the carbon sequestration analysis and the possible conditions of certification.

Biological Resource Agencies: DOE is preparing a Biological Assessment (BA) to be submitted to the U.S. Fish and Wildlife Service (USFWS), this filing is expected early March 2013. Once the BA is accepted as complete the USFWS has indicated it will work to prepare a Biological Opinion (BO) within the 135-day period associated with the Section 7 consultation process. USFWS has indicated that they would be issuing one BO for the entire HECA project including the power plant, linear facilities, and all impacts associated with the proposed enhanced oil recovery project on the Occidental Elk Hills oil field.

Staff continues to work with California Department of Fish and Wildlife (CDFW) to insure that protective measures that would typically be required in a state Incidental Take Permit are included in the biological resources Conditions of Certification per the Energy Commission's in-lieu permitting authority.

California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR): A draft drilling application and additional information was submitted to DOGGR by Occidental Petroleum-Elk Hills, Incorporated (OEHI) on October 5, 2012, covering the first phase – up to 25 wells – of the enhanced oil recovery (EOR) program which intends to utilize CO₂ from the HECA facility. DOGGR indicates that this information is viewed as preliminary, and does not constitute an application for a specific permit, and is principally useful in understanding OEHI's EOR

project plan. It is uncertain when DOGGR will have sufficient information to deem the submittal an official application and begin its formal review. Energy Commission staff continues to coordinate with DOGGR staff to ensure that any new information and progress made with regard to the OEHI permits will be reflected in staff's analysis.

Kern County: On February 26, 2013, Kern County Planning and Community Development Department (PCDD) presented their draft plan regarding HECA and the proposed county conditions of approval and mitigation measures for the proposed project to the County Board of Supervisors. The PCDD was directed to prepare a letter to the CEC per the Board's direction, identifying County-recommended mitigation measures for potential impacts that would normally be a part of the Kern County conditional use permit process, as well as additional questions from the Board of Supervisors. The final letter and Board requests, when received, will assist staff with insuring that Kern County concerns are addressed by the staffs analysis and staff-proposed requirements for HECA. The PCDD letter is expected to be filed the week of March 4, 2013.

The San Joaquin Valley Air Pollution Control District: The Preliminary Determination of Compliance (PDOC) was issued on February 7, 2013, and filed at the Energy Commission on February 11, 2013. The PDOC contains both a greenhouse gas analysis and the prevention of significant deterioration (PSD) analysis for the HECA project. There will be a 45 day comment period, closing on March 25, 2013. The District has noticed a hearing on the PDOC for April 2, 2013. (See the discussion of coordination with the U.S. EPA, above, for additional details). The SJVAPCD's PSD permit is not appealable to the Environmental Appeals Board, but becomes part of the District's and the Energy Commission's permitting program, implemented through the District's permitting regulations which require that the PSD analysis for a jurisdictional power plant be included in the District's Determination of Compliance.

STAFF SUGGESTED SCHEDULE BASED ON CURRENT INFORMATION:

	ACTIVITY	Calendar Day
Items 1-19	These items have been completed and are listed in the previous status reports 3 and 4, filed on 12/20/12 and 01/30/2013	
20	SJVAPCD issues Preliminary Determination of Compliance (expected based upon discussions between staff and the District)	02-07-13
21	Staff Workshop regarding water supply issues held in Sacramento.	02-20-13
22	All parties file Status Report #5	03-01-13
23	SJVAPCD conducts a hearing on the PDOC in Bakersfield	04-02-13
24	All parties file Status Report #6	04-02-13
25	Preliminary Staff Assessment/Draft Environmental Impact Statement (PSA/DEIS) filed	04-30-13
26	SJVAPCD issues Final Determination of Compliance (FDOC)	05-TBD-13
27	PSA/DEIS workshop to be held in Buttonwillow: Date is tentative	05-17-13
28	Comments on PSA/DEIS are due (45 days) from publication date	06-15-13
29	Final Staff Assessment/Final EIS to be filed	07-15-13
30	Prehearing Conference*	TBD
31	Evidentiary hearings*	TBD
32	Committee files Presiding Member's Proposed Decision*	TBD
33	Hearing on the PMPD*	TBD
34	Commission issues final Decision*	TBD
*Items 30 thru 34 will be scheduled by the Committee		



March 1, 2013

California Energy Commission
DOCKETED
08-AFC-8A
TN # 69749
MAR 01 2013

Karen Douglas,
Commissioner and Presiding Member

Andrew McAllister,
Commissioner and Associate Member

Raoul Renaud,
Hearing Officer

Hydrogen Energy California Project (No. 08-AFC-08A)

Dear Commissioners Douglas and McAllister and Hearing Officer Renaud:

Earlier this week the United States Department of Energy (DOE) was made aware that the staff of the California Energy Commission (CEC) needed more time to prepare the preliminary staff assessment and draft environmental impact statement (PSA-DEIS) for the Hydrogen Energy California (HECA) Project. DOE intends to provide approximately \$408 million in federal financial assistance to the project. The National Environmental Protection Act (NEPA) requires that DOE prepare an environmental impact statement (EIS) to inform its decision on whether to provide funding for the construction and operation of HECA's proposed project.

DOE and CEC staff concluded early in the amended application for certification proceeding (No. 08-AFC-08A) that combining the certification and NEPA processes would conserve both agencies' resources and facilitate the public's involvement in and understanding of the project and its potential impacts. The NEPA staff of Region 9 of the United States Environmental Protection Agency also supports the integration of these processes, as it reduces the burden on the public of participating as it allows for combined public meetings, hearings, and comment periods.

DOE understands the Commission's needs and requirements regarding its schedule for the certification process. DOE faces similar demands for progress in its NEPA process. Much of the federal financial assistance that the Department would provide to the HECA project was appropriated in the American Recovery and Reinvestment Act of 2009 (ARRA). These ARRA funds must be spent or returned to the Treasury by September 30, 2015, and DOE cannot make its decision on whether to fund the project's construction and operation until it completes the NEPA process.

DOE believes that an extension of the deadline for issuance of the PSA-DEIS to April 30, 2013, would allow DOE and CEC staff to produce a document that meets the requirements of both agencies and provides the public with sufficient information to understand the project's impacts

and to effectively participate in the NEPA and certification processes. Without this extension, DOE believes that it would not have sufficient time to review the PSA-DEIS to ensure that it met the requirements of the Department's NEPA regulations.

DOE is prepared to provide CEC staff with whatever assistance it can to produce a PSA-DEIS by April 30 that complies with both agencies' requirements, including, but not limited to, sending DOE employees to Sacramento in order to expedite the preparation and review of the PSA-DEIS. DOE appreciates the Commissioners' consideration of the Department's request for an extension.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Paul Detwiler", with a long horizontal flourish extending to the right.

R. Paul Detwiler
Chief Counsel



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**AMENDED APPLICATION FOR CERTIFICATION
FOR THE HYDROGEN ENERGY
CALIFORNIA PROJECT**

**Docket No. 08-AFC-08A
PROOF OF SERVICE
(Revised 2/11/13)**

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***After docketing, the Docket Unit
will provide a copy to the persons
listed below. Do not send copies of
documents to these persons
unless specifically directed to do
so.***

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Commissioner and Associate Member

Raoul Renaud
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Eileen Allen
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DECLARATION OF SERVICE

I, Diane L. Scott, declare that on March 1, 2013, I served and filed copies of the attached **HYDROGEN ENERGY CALIFORNIA, AMENDED (08-AFC-08A), STAFF STATUS REPORT #5**, dated March 1, 2013. This document is accompanied by the most recent Proof of Service, which I copied from the web page for this project at: http://www.energy.ca.gov/sitingcases/hydrogen_energy/.

The document has been sent to the other persons on the Service List above in the following manner:

(Check one)

For service to all other parties and filing with the Docket Unit at the Energy Commission:

 X I e-mailed the document to all e-mail addresses on the Service List above and personally delivered it or deposited it in the US mail with first class postage to those persons noted above as "hard copy required";
OR

 Instead of e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the Service List for whom a mailing address is given.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: March 1, 2013


Diane L. Scott, Project Assistant
Siting, Transmission and Environmental Protection Division