



California Energy Commission

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**Overview of HECA Permitting Activity
at the San Joaquin Valley Air Pollution Control District**

Some interveners in the California Energy Commission (CEC) proceedings related to the Hydrogen Energy California Power Plant Project (HECA) have raised questions about the timing of certain actions taken by the staff and Governing Board of the San Joaquin Valley Air Pollution Control District (SJVAPCD). The purpose of this letter is to explain the actions that have been taken to date, how those actions fit into the overall review process for HECA, and why the timing of these actions by the SJVAPCD has been appropriate.

To date, the staff and Governing Board of the SJVAPCD have taken three formal actions in connection with HECA:

- Staff Issuance of a Preliminary Determination of Compliance, dated February 7, 2013.
- Board Approval of a Mitigation Agreement between the HECA Applicant and the SJVAPCD on April 18, 2013.
- Board Approval of a Voluntary Emission Reduction Agreement between the HECA Applicant and the SJVAPCD on April 18, 2013.

Preliminary Determination of Compliance

What is the Preliminary Determination of Compliance?

HECA is subject to the licensing authority of the CEC, and a license issued by the CEC is in lieu of any permit that would otherwise be issued by any state, local or regional agency. Therefore, the SJVAPCD does not issue a permit for projects such as HECA. Instead, the SJVAPCD provides to the CEC a Preliminary Determination of Compliance (PDOC) and a Final Determination of Compliance (FDOC). The PDOC sets forth the SJVAPCD's analysis and determination as to whether or not the project as proposed will comply with all applicable air quality requirements. The PDOC also includes comments on the project from the SJVAPCD and proposed Conditions of Certification.

Is the PDOC subject to public review and comment?

A PDOC is typically made available for public review and comment for a period of 30 days. In the case of HECA, the initial comment period began on February 13, 2013. Based on requests for more time from the public, the comment period has been extended to May 30, 2013 for a total comment period of 106 days. The SJVAPCD also held a public hearing on the PDOC in Bakersfield on April 2, 2013 and will hold a Spanish language public hearing in Buttonwillow on May 15, 2013.

How does the California Energy Commission use the PDOC?

Based on the PDOC, and its own independent analysis, the staff of the CEC prepares its own assessment of the project's compliance with applicable air quality requirements. That assessment is contained in the Air Quality section of the CEC staff's Preliminary Staff Assessment (PSA), which also includes proposed conditions based, in part, on the recommendations of the SJVAPCD. The PSA, including the Air Quality section, is also made available for a minimum 30-day public comment period.

What is the Final Determination of Compliance?

Based on comments received on the PDOC and any additional required analysis, the SJVAPCD issues the FDOC. The FDOC contains the final word from the SJVAPCD as to whether or not the project as proposed will comply with applicable air quality requirements. The CEC staff relies on the FDOC and other relevant information, including comments received on the PSA, to prepare the Air Quality section of the Final Staff Assessment which goes to the Commissioners of the CEC to assist in their evaluation of whether or not to issue a license for the project.

Mitigation Agreement

What is the Mitigation Agreement?

The Mitigation Agreement is a binding obligation on the part of the HECA Applicant to pay fees into the SJVAPCD Emission Reduction Incentive Program (ERIP). The SJVAPCD will invest these fees in emission reduction projects to achieve new emission reductions in Kern County. The SJVAPCD determined that these additional reductions were necessary to ensure that the HECA project fully mitigated its emissions as required by the California Environmental Quality Act (CEQA), and is in conformity with the SJVAPCD's plan for attaining ambient air quality standards.

What is the "conformity" requirement?

Federal law requires that any project which is approved or funded by the federal government demonstrate that it is in conformity with, or consistent with, the state's or local air district's federal approved plan for attaining the federal ambient air quality standards. Since HECA receives federal funding from the United States Department of Energy (DOE), it is subject to the conformity requirement. The conformity evaluation and determination is made by the federal agency (DOE in this case) in consultation with the local air district (SJVAPCD) in this case). The purpose of the conformity requirement is to ensure that a new project, such as HECA, will not interfere with the region's plan to attain the ambient air quality standards.

How does the Mitigation Agreement relate to the PDOC?

The PDOC determined that additional mitigation was necessary in order for HECA to fully mitigate its emissions as required under CEQA and to conform to the SJVAPCD's plan for attaining ambient air quality standards. The Mitigation Agreement ensures that this additional mitigation will be provided by the HECA Applicant.

Voluntary Emission Reduction Agreement

What is the Voluntary Emission Reduction Agreement?

As the name suggests, the Voluntary Emission Reduction Agreement (VERA) is a voluntary commitment on the part of the HECA Applicant to provide additional funding to the SJVAPCD to achieve additional emission reductions above and beyond applicable air quality requirements. This is accomplished by paying fees into the SJVAPCD's Emission Reduction Incentive Program (ERIP) which the SJVAPCD then invests in emission reduction projects in Kern County.

What is the purpose of the VERA?

The genesis of the VERA was a concern on the part of the SJVAPCD that at steady state operations HECA emits nitrogen oxides (NOx) at a slightly higher rate than a conventional natural gas fired power plant. HECA includes environmental benefits that are not achieved by a conventional natural gas fired power plant, including carbon capture and sequestration. Because of the unique nature of the equipment necessary to accomplish these benefits, it is not possible to achieve equivalent NOx emissions. While acknowledging the environmental benefits of a project such as HECA, the SJVAPCD nevertheless expressed concern about the slightly higher NOx emission rate and requested that HECA take steps to address the difference in emission rates even though it is not required to do so. HECA agreed, and that commitment is contained in the VERA.

How does the VERA relate to the PDOC?

Unlike the Mitigation Agreement, the VERA is not required for the project to demonstrate compliance with any applicable air quality requirements. Thus, the SJVAPCD could determine that the project meets all applicable requirements with or without the VERA. Therefore, the VERA and the PDOC are essentially independent of each other.

Timing of SJVAPCD Actions

Why was it necessary for the SJVAPCD Governing Board to approve the Mitigation Agreement and VERA when it did?

By approving the Mitigation Agreement and VERA on April 18, 2013 the SJVAPCD ensured that they would be incorporated into the CEC staff's Preliminary Staff Assessment (PSA) which was at the time scheduled to be released on April 30, 2013 (that date has since slipped to May 15, 2013). The PSA will now include both the PDOC calling for a Mitigation Agreement, and a fully executed and approved Mitigation Agreement and well as the VERA. The Mitigation Agreement and VERA will be included as an appendix to the Air Quality section of the PSA that is made available for public review and comment by the CEC.

In addition, the federal regulations on conformity require that the federal agency make available its draft conformity determination for public review and comment. Since the DOE and

CEC are coordinating the federal and state review of the project, and issuing joint documents, this federal requirement will be satisfied, in part, by including the draft conformity determination as an appendix to the PSA.

Does the timing of these approvals limit the ability of the public to comment?

To the contrary, the reason the SJVAPCD acted when it did was to facilitate public comment. As discussed above, the PDOC will already be subject to public comment for a period that is more than three times longer than the required period. In addition, the Mitigation Agreement and VERA will now be incorporated into the CEC staff's Preliminary Staff Assessment (PSA) which will itself be subject to a minimum 30-day comment period. Finally, the Mitigation Agreement has been incorporated into the draft conformity determination prepared by the U.S. Department of Energy, which is subject to its own public review and comment requirements.

What additional steps has HECA taken to facilitate public awareness and input on the project?

In addition to the actions taken by agencies to notify the public of the project and solicit their input, the HECA Applicant has taken many additional steps. The HECA Applicant has operated an Information Center in Buttonwillow since shortly after announcing the project, which is staffed by English and Spanish speaking staff. The HECA Applicant maintains a bi-lingual website on the project at <http://hydrogenenergycalifornia.com/>. HECA also issues periodic newsletters about the project and recent activities. The most recent newsletter, in English and Spanish, was sent to every resident of Buttonwillow and Tupman plus a list of interested stakeholders. The newsletter is the third update provided to all area residents over the past year and it includes a notice of the upcoming SJVAPCD hearing on May 15, 2013.

For more information please visit our website at www.heca.com



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

In the Matter of:)	Docket No. 08-AFC-08A
)	
REVISED APPLICATION FOR)	PROOF OF SERVICE
CERTIFICATION FOR THE HYDROGEN)	
ENERGY CALIFORNIA POWER PLANT)	(March 4, 2013)
PROJECT (“HECA”))	
_____)	

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HYDROGEN ENERGY CALIFORNIA PROJECT
CEC Docket No. 08-AFC-08A

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CEC Docket No. 08-AFC-08A

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on May 7, 2013, I served and filed copies of the attached:

**OVERVIEW OF HECA PERMITTING ACTIVITY AT THE SAN JOAQUIN VALLEY
AIR POLLUTION CONTROL DISTRICT**

to all parties identified on the Proof of Service List above in the following manner:

California Energy Commission Docket Unit

Transmission via electronic mail to:

CALIFORNIA ENERGY COMMISSION

Attn: DOCKET NO. 08-AFC-08A

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For Service to All Other Parties

Transmission via electronic mail to all email addresses on the Proof of Service list.

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. Executed on May 7, 2013, at Costa Mesa, California.

/s/ Paul Kihm

Paul Kihm