

CALIFORNIA ENERGY COMMISSION

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www.energy.ca.gov



May 7, 2009

Mr. Don Vawter
AES Highgrove
690 N. Studebaker Road
Long Beach, California 90803

DOCKET	
06-AFC-2	
DATE	<u>MAY 07 2009</u>
RECD.	<u>MAY 08 2009</u>

Dear Mr. Vawter:

Subject: Status of your Application for Certification and Schedule for Obtaining Needed Air Quality Offsets

The Application for Certification (AFC) for the AES Highgrove Project (06-AFC-2) was filed with the Energy Commission on May 25, 2006. The AFC states that AES Highgrove, LLC is proposing to use the South Coast Air Quality Management District's (SCAQMD) Priority Reserve Credit program to offset the proposed generation facility's criteria air pollutant emissions. However, the Priority Reserve program is no longer available to power plants. On April 1, 2009 the SCAQMD sent a letter to AES Highgrove, LLC denying its application for a Title V Permit to Construct.

Consequently, it is uncertain as to whether your project will soon have a clear path forward to obtain the necessary emission reduction credits to mitigate project impacts and to allow for eventual certification by the Commission. Since the project as proposed may not have sufficient offsets without use of the Priority Reserve, the staff believes AES Highgrove, LLC should provide information that indicates how the project can be licensed and why the Commission should continue to process the application. Upon receipt of your response staff will determine if further work on the project is warranted at this time, or due to the SCAQMD decision and letter, whether it would be appropriate to ask the project siting committee to suspend or terminate the project until such time as there is a clear path forward to certification.

Background

In August 2007, the SCAQMD amended its Priority Reserve Rules by establishing air quality and economic criteria that allowed these offsets to be purchased from the Priority Reserve program for new power plants licensed by the Energy Commission. The SCAQMD, under Rule 1309.1, limited these power plant credits, requiring developers to have a one-year power sales contracts and a license from the Energy Commission to construct their facility before the SCAQMD Board would release any credits for that facility. Plants being proposed by municipal utilities were allowed only enough credits to build projects that would serve their native load. Alternatively, they would also be considered for credits if they had a signed long term contract with Southern California Edison or San Diego Gas & Electric, or they could apply for a Board waiver of the contract requirement. The SCAQMD also limited the total amount of new

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electricity generating capacity that could access Priority Reserve credits to no more than 2,700 megawatts.

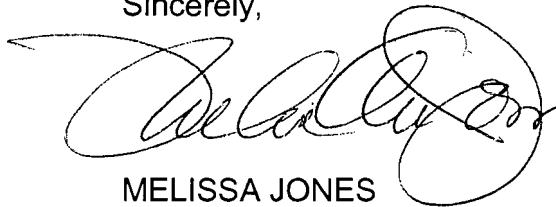
The SCAQMD Priority Reserve Rule was challenged in Superior Court and in July 2008, the court decision found the air district's environmental analysis for the rulemaking was inadequate under the California Environmental Quality Act (CEQA). The court's decision concluded that a legally sufficient environmental document would require significant new analysis. To date, there is no indication that the SCAQMD will commence another rulemaking to cure the deficiencies the court found in the environmental document. As a consequence, the SCAQMD is unable to issue any offsets for power plants in need of a permit at this time. The SCAQMD is now working to modify its regulations to allow permits for non-power plant facilities, but has no plans to develop new rules applicable to power plants.

Your Offset Strategy and Schedule

Before deciding whether to recommend suspension or termination of the application, the staff wishes to extend you the opportunity to demonstrate that you have an effective strategy and schedule for obtaining the needed offsets through valid programs. This strategy should also include a plan to secure the applicable Determination of Compliance (i.e., a Preliminary Determination) from the SCAQMD which identifies the sources and timing of offsets. Staff will review your response and your schedule and forward its recommendation to the Executive Director, and subsequently to the Committee overseeing the licensing proceeding for your project. Please respond by June 8, 2009.

If you have any questions regarding this letter, please feel free to call Eileen Allen, Siting & Compliance Office Manager at (916) 654-4082 or contact her by e-mail at eallen@energy.state.ca.us.

Sincerely,

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

MELISSA JONES
Executive Director

MJ/jcm

cc: Mohsen Nazemi, P.E., Deputy Executive Officer
South Coast Air Quality Management District