

Memorandum

Date: August 29, 2008
Telephone: (916) 654-4679

To: Commissioner Jeffrey D. Byron, Presiding Member
Commissioner Arthur H. Rosenfeld, Associate Member

From: California Energy Commission – Michelle Woods *MW*
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512

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| DOCKET | |
| 08-AFC-1 | |
| DATE | AUG 29 2008 |
| RECD. | AUG 29 2008 |

Subject: Avenal Energy Project (08-AFC-1) STATUS REPORT 2

Following is Status Report #2 for the proposed Avenal Energy project.

Current Issues and Activities for Resolution

Staff encountered the following issues during the discovery and analysis phases of the Application for Certification (AFC) for the proposed Avenal Energy project:

- California ISO has initiated a new review process which would defer the completion of the project's system impact and facility study until August of 2009¹. To avoid delaying the project's Adoption Hearing beyond the Energy Commission's standard twelve month siting schedule, the applicant has opted to hire a consultant to complete a third party system impact study. Staff participated in a conference call with the applicant on July 20, 2008 to discuss the scope of the study, provided the applicant with an example of a study previously prepared by California ISO, and is continuing to monitor the status of the study. The applicant expects to submit the study to staff in early September.
- Staff filed a second set of data requests on August 22, 2008 for the following technical areas. Note, the water resources section of the data request refers to two attachments: 1) agreements entered into between Mike and Tanya Kochergen of Kochergen Properties and Westlands Water District and 2) a letter, dated May 29, 2008, that Westlands sent to the Energy Commission. These attachments were not docketed with the data request, but are either posted on the Energy Commission's website or are available by submitting a request to the Energy Commission docket staff. For more information, please refer to the following link: www.energy.ca.gov/sitingcases/avenal.
 - Data Requests #76 and 77 (Air Quality): Requests the applicant to 1) describe the possibility that mitigation offsets might be discounted and 2) to demonstrate that proposed mitigation offsets are representative of real

¹ Instead of reviewing proposed power generating facilities according to the order in which applicants file interconnection requests, the California ISO is now using a cluster process in which requests received during a particular time period are reviewed as a group. Avenal Energy is part of Group #2 (Transition Cluster).

and surplus reductions (San Joaquin County Air Pollution Control District Rule 2201, Section 7).

- Data Requests #78-88 (Cultural Resources): Recommends participation of a geoarchaeologist for the planned geotechnical study to reduce archaeological monitoring requirements and requests more information about the potential impacts of: 1) the historically significant Tesla-Midway 230-kV transmission line, the potential impacts of pull sites and access roads, 2) natural gas line routes, 3) proposed rock features on the east corner of the plant site, and 4) proposed storm sewer system.
- Data Request #89 (Waste Management): Requests the applicant to provide a Phase I Environmental Site Assessment for the natural gas pipeline corridors and electric transmission line interconnection route.
- Data Requests #90 - 94 (Water Resources): Requests the applicant to confirm 1) the validity of an agreement for a back-up water supply entered into with Mike and Tanya Kochergen of Kochergen Properties, 2) the need for an updated water agreement that is consistent with the operational capacity of the project, and 3) additional actions that are necessary to ensure the reliability of the back-up water supply, and 4) documentation approving the use of non-potable water for the project's sanitation needs.

Note: staff received documentation indicating that Kochergen Properties, Inc. entered into agreements which transferred full operational control of agricultural wells identified in the AFC as a back-up water supply to Westlands Water District. As a result of Westlands' opposition to increased demands on the groundwater basin, the ownership and availability of the project's back-up water supply is uncertain.

Agency Comments

- The United States Environmental Protection Agency (USEPA) submitted comments, dated July 10, 2008, to Mr. Peter Cross of the United States Fish and Wildlife Service (USFWS) requesting the initiation of a formal consultation under Section 7 of the federal Endangered Species Act. The primary purpose of the consultation is to ensure that the construction and operation of Avenal Energy would not jeopardize the continued existence of the San Joaquin kit fox or result in the adverse modification of kit fox critical habitat. In addition, the USEPA also requested the USFWS to prepare a Biological Opinion concurring that Avenal Energy is not likely to adversely affect other federally endangered plant and wildlife species including San Joaquin woollythreads, California jewel flower, blunt-nose leopard lizard, and tipton kangaroo rat. Staff will continue to monitor the USEPA consultation and expects to confer with the USFWS in early September.
- The San Joaquin Valley Air Pollution Control District submitted a preliminary determination of compliance (PDOC) to the Energy Commission on July 11,

2008. In its comments on the PDOC, dated August 12, 2008, staff identified several areas of concern including: 1) discounting emission reduction credit offsets in compliance with Rule 2201, Section 7, 2) the impact of one-to-one interpollutant trading for oxides of sulfur (Sox) reductions, 3) setting performance standards for ammonia slip, and 4) potential exemptions from the New Source Performance Standard (NSPS).

- On August 27, 2008 staff conferred with the Reef-Sunset School District and the Kings Area Rural Transit District about bus service along the Avenal Cutoff Road. The school district and transit district confirmed that Avenal Cutoff Road is on a bus route that serves the city of Avenal, three and six times a day respectively. Staff will include an analysis in the PSA of the potential impact of construction traffic on the bus routes.

Schedule

Due to the high volume of projects currently under review by the Energy Commission, additional time is needed to complete some of the technical sections required for the Preliminary Staff Assessment (PSA). As a result, staff believes it is necessary to adjust the publication of the PSA and the PSA workshop. This change would allow the applicant's responses to staff's data requests filed on August 22, 2008 to be incorporated into the PSA.

The following table summarizes staff's adjustments to the committee schedule:

Avenal Energy Siting Committee Schedule

| Date | Event |
|-------------------|--|
| April 16, 2008 | AFC data adequate |
| May 23, 2008 | Data Request #1 |
| June 20, 2008 | Applicant files response to Data Request #1 |
| July 1, 2008 | Data Response and Issue Resolution Workshop |
| July 3, 2008 | Status Report #1 |
| August 14, 2008 | Local, State, and Federal Agency draft determination, including air district's Preliminary Determination of Compliance (PDOC) filed. |
| August 30, 2008 | Status Report #2 |
| October 7 2008 | Preliminary Staff Analysis (PSA) |
| October 13, 2008 | Local, State, and Federal Agency final determinations filed. |
| October 21 , 2008 | PSA Workshop |
| October 30, 2008 | Status Report #3 |
| November 12, 2008 | Final Staff Assessment (FSA) |
| TBD | Pre-hearing conference |
| TBD | Evidentiary hearings |
| TBD | Presiding Member's Proposed Decision issued for 30-day comment period. |

Commissioner Jeffry D. Byron, Presiding Member
Commissioner Arthur H. Rosenfeld, Associate Member
August 29, 2008
Page 4

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| TBD | Presiding Member's Proposed Decision committee conference. |
| TBD | Commission Adoption Hearing |

Shaded items have already occurred.

Proof of Service List
Dockets



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
For the AVENAL ENERGY PROJECT

Docket No. 08-AFC-1
PROOF OF SERVICE
(revised 7/31//2008)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
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DECLARATION OF SERVICE

I, Mineka Foggie, declare that on August 29, 2008, I deposited copies of the attached Avenal Energy(08-AFC-1)- Status Report 2 in the United States mail at Sacramento 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.

Original Signature in Dockets