

**DOCKET**

**08-AFC-1**

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**STATE OF CALIFORNIA**

**CALIFORNIA ENERGY RESOURCES AND DEVELOPMENT COMMISSION**

In the Matter of: ) Docket No. 08-AFC-1  
)  
Application for Certification for the )  
Avenal Energy Project )  
\_\_\_\_\_ )

**AVENAL POWER CENTER, LLC'S OBJECTION TO CALIFORNIA ENERGY  
COMMISSION STAFF DATA REQUESTS [Set 1]**

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Dated: June 10, 2008

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No.: 08-AFC-1
	)	
Application for Certification for the	)	<b>AVENAL POWER CENTER, LLC's</b>
Avenal Energy Project	)	<b>OBJECTIONS TO CALIFORNIA</b>
_____	)	<b>ENERGY COMMISSION STAFF DATA</b>
	)	<b>REQUESTS [Set 1 Nos. 16, 53, and 66-68]</b>

Avenal Power Center, LLC ("Avenal") hereby notifies the Committee and California Energy Commission ("Commission") Staff of its objection to Commission Staff's Data Request Numbers 16, 53, 66, 67 and 68. This response is within the 20-day limit for objections consistent with Volume 20, California Code of Regulations Section 1716(f). Avenal is working diligently to respond to the remaining data requests.

**I. APPLICABLE LAW**

The objections outlined below are based on the Warren-Alquist Act<sup>1</sup> Siting Regulations and the California Environmental Quality Act ("CEQA"), both of which specify the type and quantity of information Avenal must provide in response to informational requests of other parties, including Energy Commission Staff.

California Code of Regulations Title 20, Section 1716 (b) states: "Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or

<sup>1</sup> Pub. Resources Code, § 25000 et seq.

application.”<sup>2</sup> This regulation governs the informational requirements for the discovery stage of the Commission’s proceeding on Avenal’s Application for Certification for the Avenal Energy project (“Application”).

The California Environmental Quality Act (CEQA)<sup>3</sup> provides guidance for determining what information is “reasonably necessary” to make a decision on the Application. CEQA specifies that an Environmental Impact Report (EIR) be prepared with “a sufficient degree of analysis to provide decision-makers with information which enables them to make decisions which intelligently take account of environmental consequences.”<sup>4</sup> Specifically, the law requires that “an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.”<sup>5</sup> The information in an environmental document prepared under a certified regulatory program should be guided by similar principles.<sup>6</sup> Furthermore, CEQA “does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended,”<sup>7</sup> and it does not require that all experts consulted on the matter agree as to the best methods by which to proceed.<sup>8</sup>

As such, Avenal objects to providing the requested information for the reasons set forth below:

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<sup>2</sup> Cal. Code Regs., tit. 20, § 1716 subd. (b).

<sup>3</sup> Pub. Resources Code, § 21000 et seq.

<sup>4</sup> Cal. Code Regs., tit. 14, § 15151.

<sup>5</sup> Cal. Code Regs., tit. 14, § 15151.

<sup>6</sup> Pub. Resources Code, § 21080.5, Cal. Code Regs., tit. 14, § 15250.

<sup>7</sup> Cal. Code Regs., tit. 14, § 15204 subd. (a).

<sup>8</sup> Cal. Code Regs., tit. 14, § 15151.

## **II. OBJECTIONS TO DATA REQUEST 16**

Request 16 asks for copies of all relevant sources detailing the modifications made to the Gates Substation during the Path 15 upgrade, to ostensibly verify the integrity of the substation and transmission line and for cultural resource purposes. As set forth below, the Request asks for information that is not available to Avenal, is not relevant to the current proceeding, and is not reasonably necessary to make a decision on the Project.

### **A. Request 16 Asks For Information That Is Not Reasonably Available To Avenal**

First, the information requested by Commission Staff must be “reasonably available” to Avenal. Staff has requested all relevant sources of information detailing the modifications made to the Gates Substation during the Path 15 upgrade. As Staff is aware, much of this information is not available to Avenal because it is proprietary to PG&E and cannot reasonably be obtained by Avenal. To the extent relevant and public information does exist, such as information previously filed with the CPUC bearing directly on the instant Project, Avenal will attach the available documents to its forthcoming Data Responses. However, at this time, it is not clear that any such relevant and public information exists.

### **B. Request 16 Asks For Information That Is Not Relevant To The Application And/Or Is Duplicative Of Information Provided By The AFC**

Second, Data Request No. 16 is irrelevant to the Project at issue. As outlined above, Section 1716 of California Code of Regulations, Title 20, only allows a party to request information that is relevant or reasonably necessary to make a decision on the application. Unfortunately, the information requested under Data Request 16 is neither. The Path 15 upgrade was reviewed, approved, constructed and commissioned under a separate process, independent from the current Application for Certification and is therefore irrelevant to the current application.

Regarding impacts to cultural resources, Avenal's consultants have analyzed all potential impacts of the Project to cultural resources and, after exhaustive research and savings, have found no indication that the Gates Substation constitutes a "cultural resource" or that the Project will significantly impact it. Furthermore, any upgrades done by PG&E to the substation (assuming *arguendo*, that there were significant upgrades or changes) would have resulted in beneficial effects to the integrity of the substation and/or transmission line.

Finally, the proposed Project is not expected to materially alter or modify the substation. Sections 2.4 and 6.18 of the AFC discuss transmission line design and operation as well as the connection issues and impacts of the Project to the existing system, including the Gates Substation. These sections provide sufficient information to analyze the instant Project as it bears on the substation. As such, further accumulation of data would not aid Commission Staff in its decision on the Project. Avenal does not believe pursuing proprietary or duplicative data is necessary or relevant, nor would it serve the intended purpose of the Request. Nevertheless, Avenal understands Commission Staff's ongoing interest in interconnection issues, and will therefore provide additional System Impact Studies and Facility Studies to the Commission as they are completed.

### **III. OBJECTIONS TO DATA REQUEST 53**

Similar to Request 16, Data Request 53 requires the production of information not available to Avenal, not relevant to the Project, and not reasonably necessary to make a decision on the Application. Request 53 asks for:

...information on all sources of water that the farmer/landowner uses to irrigate his property (surface and groundwater) and the volumes for each required to supply current irrigation demand. Include in this information any rights the landowner may have to the State Water Project that is served from the San Luis Canal or nearby facilities.

**A. Request 53 Asks For Information That Is Not Reasonably Available To Avenal**

The existing wells are used for agricultural water for Kochergen Farms, the owner and operator of the agricultural operations on the Site and the lands contiguous with it and Avenal is unaware of any authority requiring Kochergen Farms or other agricultural operation to keep or maintain any records of groundwater use. Under existing conditions, these wells are pumped as needed to irrigate orchards and row crops that occur on the Site and surrounding lands. Information regarding the volumes, sources and attendant water rights owned or used by Kochergen Farms to irrigate the property, if such records exist, is confidential, proprietary information that has not been disclosed to Avenal. As such, the information requested is not readily available to Avenal and therefore cannot be produced to Commission Staff.

**B. Request 53 Asks For Information That Is Neither Relevant To The Project Nor Necessary To Make A Decision The Application**

In addition to the confidential nature and general unavailability of the information, Avenal notes that it would not be required to disclose such information even if it were available as it is irrelevant to the Project and not necessary to make a decision on the Application. As noted by page 6.5-13 of the AFC, the Project will not use water directly supplied by the San Luis Canal and will not use water supplied by the Kochergen Farms that would otherwise be used for agricultural use. Rather, the Project will be exclusively supplied with water from the City of Avenal's water treatment plant located adjacent to the site. The Project's backup water supply will be groundwater from three existing water wells (Nos. 18-1, 18-4, and 24-5).

As noted on page 6.5-5 of the AFC and Appendix 6.5-2, there will be no impact on pumping or groundwater conditions in the basin. The proposed Project will permanently remove 25 acres of land from irrigation. The removal of land from active irrigation, coupled with the installation of drip irrigation systems and microsprinklers on the almond orchards shown in

Figure 6.4-3A of the AFC, and as noted in Footnote 1 in Table 6.5-4 of the AFC, will save more water each year than the Project will use even in a worst-case scenario, and will actually result in a net reduction in ground water pumping from the specified wells. Additionally, any groundwater used by the Project will be further offset by a reduction in agricultural use under a bilateral, confidential contract, as described further in Section 6.5.2 and on page 6.5-7 of the AFC. Because the AFC has determined that there is no environmental impact, no further information or disclosures are required.

In sum, the Project will neither disrupt the Kochergen Farms' water supply, nor preclude it from using the water for agricultural use. Request 53 would require significant additional effort and would result in the production of information that is neither relevant to this Project nor necessary to make a decision on the Application.

#### **IV. OBJECTIONS TO DATA REQUESTS 66, 67, AND 68**

Data Requests 66, 67, and 68 are based on an erroneous factual assumption, are not relevant to the Project as proposed, ask for unnecessary additional analysis and are not reasonably necessary to make a decision on the application. Specifically, the Requests ask for:

...an environmental assessment of the area proposed for demolition. The assessment shall be conducted in conformance with ASTM Method E 1527-05.

...a description of the demolition activities associated with removal of these structures.

...identify the wastes anticipated to be generated during structure removal operations and discuss the method(s) proposed for disposal of those wastes.

##### **A. Data Requests 66, 67, and 68 Are Based On An Erroneous Factual Assumption**

The Requests stem from the erroneous factual assumption that the existing structures associated with a farm office and an equipment storage area will be “removed” and that the

buildings are targeted for “demolition.” As stated by the AFC: “One farm storage area with a farm office is located on the route of the proposed transmission line (Figures 6.9-2A and 6.9-2B). This area includes *some fixed and modular structures that will be displaced by transmission line construction.*” (AFC Section 6.9.1.2.) The “farm office” is, in reality, a double-wide trailer comprised of two rectilinear shed roof volumes featuring T1-11 exterior siding, composition roofing, and vinyl slider windows. (Avenal Energy Project Reconnaissance Level Architectural Survey Report p. 9 (March, 2008) [provided as Attachment C.3 to the Supplement to the AFC].) This trailer will be moved, if necessary, based on the as-built transmission line; or, to use the language of the AFC, the trailer, which, by its very nature is mobile, will be “displaced.” Nowhere does the AFC mention demolition activities or complete destruction of the structures.

**B. Data Requests 66, 67, and 68 Are Not Relevant To The Project As Proposed And the Information Is Not Required By CEQA**

CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended.<sup>9</sup> As no demolition of the farm office will take place, the Data Requests are not relevant to the Project as proposed and it is extremely unlikely that any lead paint, asbestos, or petroleum products will be released. With no demolition, there will also not be any need to discuss “methods for disposal” of any “resulting waste.”

Additionally, the farm office site and each of the infrastructure tie-ins are located entirely in areas that have been extensively disturbed by agriculture and infrastructure development. The location of the office site has been used as such for at least 20 years and the surrounding land has been actively farmed for over 50 years. (AFC Table 1.5-1; Section 6.9.1.1.) Section 6.9.1 of the Application discusses prior uses of the site and surrounding areas based on a database search,

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<sup>9</sup> (14 Cal. Code Regs. §15204(a).)



anecdotal sources and a physical inspection. The investigations already completed by Avenal and common knowledge of potential contamination on agricultural land already provide a complete picture of the potential contaminants that could be encountered during Project construction.

Finally, the safety practices, training, hazard control programs and hazardous materials training outlined in detail in Section 6.17 of the Application adequately address contaminants expected to be encountered during construction and provide a method to protect the public and provide for worker safety. Thus, the formal completion of a Phase I analysis for the Project site would not provide additional information that is reasonably necessary to reach a decision on the application. Performing a Phase I, given the information already in the Application, would simply result in the accumulation of duplicative data and an unnecessary Project expense to be borne by Avenal ratepayers. Accordingly, the lack of any demolition activities renders Requests 66, 67 and 68 unnecessary.

**V. ALL OF THE DISPUTED REQUESTS ASK FOR INFORMATION THAT IS UNNECESSARY**

For the reasons stated above, Avenal objects to the Disputed Requests on the basis that the information requested is not necessary to make a decision on the Application. As always, Avenal is willing to discuss these issues with Commission Staff.

Respectfully,



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G. Braiden Chadwick  
Downey, Brand LLP  
Attorney for Avenal Power Center, LLC

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

APPLICATION FOR CERTIFICATION  
*FOR THE AVENAL ENERGY PROJECT*

DOCKET NO. 08-AFC-1

**PROOF OF SERVICE**  
**(Revised 06/04/08)**

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  
Attn: Docket No. 08-AFC-1  
1516 Ninth Street, MS-14  
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[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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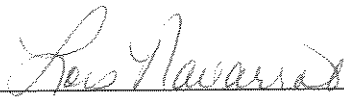
**DECLARATION OF SERVICE**

I, Lois Navarrot, declare that on June 10, 2008, I deposited copies of the attached **AVENAL POWER CENTER, LLC's OBJECTIONS TO CALIFORNIA ENERGY COMMISSION STAFF DATA REQUESTS [Set 1 Nos. 16, 53, and 66-68]** in the United States mail at Sacramento, California 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 the 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.

  
 \_\_\_\_\_  
 Lois Navarrot