

# Memorandum

Date: October 30, 2008

Telephone: (916) 654-4679

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

From: California Energy Commission – Christopher Meyer  
1516 Ninth Street Project Manager  
Sacramento, CA 95814-5512

<b>DOCKET</b>	
<b>08-AFC-1</b>	
DATE	Oct 30 2008
RECD.	Oct 30 2008

Subject: Avenal Energy Project **(08-AFC-1) STATUS REPORT 3**

Pursuant to the Committee Scheduling Order dated May 27, 2008, the following is staff's Status Report 3 for the proposed Avenal Energy project (Avenal Energy).

## Current Issues and Activities for Resolution

- 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 2009. 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. The applicant submitted the study to staff on September 19, 2008. Staff is working to complete the Transmission System Engineering section of the Preliminary Staff Assessment (PSA) with the information provided in the system impact study.
- Staff filed a second set of data requests on August 22, 2008 for the following technical areas.
  - 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 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,

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.

Staff received responses to the second set of data requests on September 24, 2008 and is working to incorporate the new information into the PSA.

- The applicant and the U.S. Fish and Wildlife Service (USFWS) have disagreed on the setback from the San Luis Canal from the beginning of the project. The applicant designed the project based on the March 21, 2002 USFWS letter on the previous Avenal Cogeneration Power Project application that stated that the 300-foot setback was from the San Luis Canal and may include any easements already owned by the Bureau of Reclamation. The USFWS has stated that this is a new project and the situation has changed. The USFWS now requires that the 300-foot buffer must be from the property line of the project and cannot include any easements already owned by the Bureau of Reclamation. Staff continues to work with the USFWS, U.S. Environmental Protection Agency (US EPA), and the applicant to resolve this issue. The following are the recent correspondence on the buffer issue:
  - On September 8, 2008, the USFWS issued a letter to the US EPA on Avenal Energy Center, LLC's request for formal consultation under Section 7 of the Environmental Protection Act. The letter included several questions that the USFWS needed addressed prior to proceeding and also stated that if the questions were not addressed within 60 days of the letter, the project would be considered inactive. A letter from the US EPA with the answers to those questions would be required for reinitiation of the consultation process.
  - On October 1, 2008, the applicant filed a response to the September 8, 2008 USFWS letter to the US EPA providing answers to the questions posed by the USFWS.
  - On October 7, 2008, the applicant filed a letter report on the San Luis Canal Setback for the Avenal Energy project. The letter report contained a review of the setback requirement by a biological consultant and a copy of the March 21, 2002 USFWS letter on the previous Avenal Cogeneration Power Project application.
  - On October 22, 2008, the US EPA filed a response to the September 8, 2008 USFWS letter referencing the applicant's October 1, 2008 letter as well as other documents from the Energy Commission proceeding.
- On October 1, 2008, the intervenor California Unions for Reliable Energy (CURE) submitted 59 data requests to the applicant on Avenal Energy. On October 16, 2008, the applicant filed an objection to all or part of 35 of the 59 data requests filed by CURE. The applicant is working on the responses to the remaining data requests.

Staff is working to address all the issues raised in the data responses and correspondence listed above in the PSA. The technical areas of Efficiency, Facility Design, Geology and Paleontology, Power Plant Reliability, Socioeconomics, Transmission Line Safety and Nuisance, and Worker Safety/Fire Protection have been completed and are being formatted for publishing. The technical areas of Air Quality, Cultural Resources, Hazardous Materials Management, Land Use, Noise, Public

Health, Traffic and Transportation, and Visual Resources have been completed by technical staff and are under management review.

**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 staff to incorporate the applicant’s September 24, 2008 responses to staff’s data requests into the PSA. In addition, staff received the System Impact Study on September 19, 2008 and is currently completing the Transmission Systems Engineering analysis.

The following table summarizes staff’s proposed 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 30, 2008	Status Report #3
November 20, 2008	Preliminary Staff Assessment (PSA)
November 27, 2008	Local, State, and Federal Agency final determinations filed.
December 4 , 2008 (est.)	PSA Workshop
January 10, 2008	Final Staff Assessment (FSA)
TBD	Pre-hearing conference
TBD	Evidentiary hearings
TBD	Presiding Member’s Proposed Decision issued for 30-day comment period.
TBD	Presiding Member’s Proposed Decision committee conference.
TBD	Commission Adoption Hearing

*Shaded items have already occurred.*

Proof of Service List  
Docket (08-AFC-1)



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
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**APPLICATION FOR CERTIFICATION**  
*For the AVENAL ENERGY PROJECT*

Docket No. 08-AFC-1  
**PROOF OF SERVICE**  
(revised 10/27//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:

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Attn: Docket No. 07-AFC-9  
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## **DECLARATION OF SERVICE**

I, Mineka Foggie, declare that on October 30, 2008, I deposited copies of the attached (08-AFC-1) Status Report 3 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  
**Mineka Foggie**

Attachments