STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission

DOCKET	
08-AFC-1	
DATE	Aug 12 2009
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In the Matter of:
Application for Certification
For the Avenal Energy Project

Docket No. 08-AFC-1
August 12, 2009

ROB SIMPSON OPENING BRIEF

On July 7, 2009, the Committee assigned to this proceeding held an evidentiary hearing to receive evidence into the record regarding the Avenal Energy Application for Certification. The Committee directed parties to file opening briefs by August 12, 2009. I had in my prehearing statement identified that I would be unavailable during the first 2 weeks of August this was recognized at the hearing but ignored in the scheduling of this brief. This skeletal brief is filed in an attempt to comply at a time that I had previously identified that I would be unavailable. Every witness that I identified in my prehearing conference statement was rejected and only witnesses in favor of the project were allowed to testify. Virtually all testimony provided was rejected unless it favored the development. My request for remedial action was heard and rejected at a regular business meeting without even notifying me that it would be heard. I incorporate the all my previous filings and comments regarding this facility into this brief. The San Joaquin Air Pollution Control District Final Determination of Compliance Dated November 4, 2008. was not on the CEC website until June 9, 2009 and only after repeated complaints by me. This withholding of vital information for public scrutiny during the discovery phase of this proceeding precluded public participation with this the most important aspect of this proceeding.

THIS PROCESS IS UNDERMINED BY FAILED PUBLIC NOTICE.

The public has been misled by Energy Commission and Air District notices. None of which even bothered to incorporate the address of the facility let alone any reference to the effect on air quality. The commissions notices and public outreach drew public attention away form the Air District while the District quietly issued its Determination of Compliance.

Notice of Receipt of an Application for Certification for the Avenal Energy Project. Dated February 28, 2008.

"Public Participation

Over the coming months, the Energy Commission will conduct a number of public workshops and hearings to determine whether the proposed project should be approved for construction and operation and under what set of conditions. The workshops will provide the public as well as local, state and federal agencies the opportunity to participate in reviewing the proposed project." (emphasis added)

While any attention is still focused on the Commission the EPA is now processing the PSD permit without the Commission providing notice of it. The EPA has acknowledged this inequity and agreed to incorporate CEC mailing lists into its permitting process but to date the Commission has not appeared to reciprocate by posting notice of EPA actions.

The District did not comply with its own rules or Federal laws in noticing the project.

40 C.F.R PART 70 - STATE OPERATING PERMIT PROGRAMS

70.7 - Permit issuance, renewal, reopenings, and revisions.
(h) Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following: (1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public; (2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled); (3) The permitting authority shall provide such notice and opportunity for participation by affected States as is provided for by 70.8 of this part; (4) Timing. The permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

District RULE 2201

“5.4 Public Notification and Publication Requirements: The APCO shall provide public notification and publication for the following types of applications:
5.4.1 New Major Sources and Major Modifications.
5.4.2 Applications which include a new emissions unit with a Potential to Emit greater than 100 pounds during any one day for any one affected pollutant;
5.4.3 Modifications that increase the Stationary Source Potential to Emit (SSPE1) from a level below the emissions offset threshold level to a level exceeding the emissions offset threshold level for one or more pollutants;
5.4.4 New Stationary Sources with post-project Stationary Source Potential to Emit (SSPE2) exceeding the emissions offset threshold level for one or more pollutants;
5.4.5 Any permitting action resulting in a Stationary Source Project Increase in Permitted Emissions (SSIPE) exceeding 20,000 pounds per year for any one pollutant.”

<u>The record indicates no notice that identifies any of these Preliminary decisions</u>

5.5 Public Notification and Publication Actions: For the types of applications listed in Section 5.4, the APCO shall perform the following actions:
5.5.1 Within ten (10) calendar days following the preliminary decision the APCO shall publish in at least one newspaper of general circulation in the District a notice stating the preliminary decision, noting how pertinent information can be obtained, and inviting written public comment for a 30 day period following the date of publication.

5.9 Enhanced Administrative Requirement
Application for a certificate of conformity with the procedural requirements of 40 CFR Part 70, shall be subject to the following enhanced administrative requirements in addition to any other applicable administrative requirements of Section 5.0:
5.9.1 New Sources and Significant Permit Modifications
5.9.1.1 Public Notification: The APCO shall provide a written notice of the proposed permit and, upon request, copies of the APCO analysis to interested parties. Interested parties shall include affected states, ARB and persons who have requested in writing to be notified. The notice shall also be given by publication in a newspaper of general circulation in the District and by any other means if necessary to assure adequate notice to the affected public. The public shall be given 30 days from the date of publication to submit written comments on the APCO's proposed action.
5.9.1.2 The notice shall provide the following information:
5.9.1.2.1 The identification of the source, the name and address of the permit holder, the activities and emissions change involved in the permit action;
5.9.1.2.2 The name and address of the APCO, the name and telephone number of District staff to contact for additional information;
5.9.1.2.3 The availability, upon request, of a statement that sets forth the legal and factual basis for the proposed permit conditions;
5.9.1.2.4 The location where the public may inspect the Complete Application, the APCO's analysis, the proposed permit, and all relevant supporting materials;

5.9.1.2.5 A statement that the public may submit written comments regarding the proposed decision within at least 30 days from the date of publication and a brief description of commenting procedures, and
5.9.1.2.6 A statement that members of the public may request the APCO or his designee to preside over a public hearing for the purpose of receiving oral public comment, if a hearing has not already been scheduled. The APCO shall provide notice of any public hearing scheduled to address the proposed

decision at least 30 days prior to such hearing;

6.1 The APCO will issue a written certificate of conformity with the procedural requirements of 40 CFR 70.7 and 70.8, and with the compliance requirements of 40 CFR 70.6(8)(c), if the following conditions are met:
6.1.1 The Authority to Construct is issued in conformance with the Enhanced Administrative Requirements of this rule;
6.1.2 The content of the Authority to Construct issued by the APCO complies with the requirements set forth in Section 9.0 of District Rule 2520 (Federally Mandated Operating Permits);
6.1.3 An application for a certificate of conformity with the requirements of 40 CFR Part 70 is submitted with the application for Authority to Construct.

The content of application for the certificate of conformity must comply with the requirements of Sections 7.1 of District Rule 2520 (Federally Mandated Operating Permits);
6.1.4 The Authority to Construct contains a statement of conformity with the requirements of Title V and 40 CFR Part 70;
6.1.5 EPA has not objected to the issuance of the Authority to Construct, or EPA's objections have been resolved to the satisfaction of EPA administrator; and
6.1.6 The Part 70 operating permit being issued will contain the federally enforceable requirements contained in the Authority to Construct.
6.2 The certificate of conformity with the procedural requirements of 40 CFR Part 70 is valid as long as the Authority to Construct with which it was issued is valid.

The notice shall provide the following information:
11.1.4.1.1 The identification of the source categories, the activities and emissions change involved in the permitting action;
11.1.4.1.2 The name and address of the District, the name and telephone number of District staff to contact for additional information;
11.1.4.1.3 The availability, upon request, of a statement that sets forth the legal and factual basis for the proposed permit conditions;
11.1.4.1.4 The location where the public may inspect the complete application, the District analysis, the proposed permit, and all relevant supporting materials;
11.1.4.1.5 A statement that the public may submit written comments regarding the proposed decision within at least 30 days from the date of publication and a brief description of commenting procedures, and

11.1.4.1.6 A statement that members of the public may request the APCO or his designee to preside over a public hearing for the purpose of receiving oral public comment, if a hearing has not already been scheduled. The APCO shall provide notice of any public hearing scheduled to address the proposed decision at least 30 days prior to such hearing.

Considerations of air quality effects must be before the decision is made, a process that has been precluded by the order of this proceeding.

IF APPROVED THE PROJECT WOULD VIOLATE STATE WATER POLICIES AND COMMISSION POLICY

SWRCB Resolutions
75-58 and 88-63
The principal policy of the SWRCB that addresses the specific siting of energy facilities is the Water Quality Control Policy on the Use and Disposal of Inland Waters Used for Power Plant Cooling (adopted by the Board on June 19, 1976, by Resolution 75-58). This policy states that use of fresh inland waters should only be used for power plant cooling if other sources or other methods of cooling would be environmentally undesirable or economically unsound. Resolution 75-58 defines brackish waters as “all waters with a salinity range of 1,000 to 30,000 mg/l” and fresh inland waters as those “which are suitable for use as a source of domestic, municipal, or agricultural water supply and which provide habitat for fish and wildlife”.Resolution 88-63 defines suitability of sources of drinking water. The total dissolved solids must exceed 3,000 mg/L for it to not be considered suitable, or potentially suitable, for municipal or domestic water supply
FSA 4.9-3

2003 Integrated
Energy Policy Report
In the 2003 IEPR, consistent with State Water Resources Control Board Policy 75-58 and the Warren-Alquist Act, the Energy Commission reiterated the State Water Policy, stating the Commission will approve the use of fresh water for cooling purposes by power plants only where alternative water supply sources and alternative cooling technologies are shown to be “environmentally undesirable” or “economically unsound.
FSA 4.9-3

The use of Fresh Water from the California Aqueduct is not consistent with these policies alternatives using waste water other generation sources have not been adequately explored. The commissions June 10, 2009 notice that claims” The plant would use a dry cooling and zero liquid discharge process to minimize water consumption. The use of this technology would allow AE to follow all applicable laws ordinances, regulations, and standard (LORS) and decrease water usage by over 97% from its original design” Is without basis, it is misleading and it is wrong.

The Decision to override State Water laws is not within the jurisdiction of the Commission.

THE ALTERNATIVE ANALYSIS IS INADEQUATE.

Commission staff seemed ignorant of:

2005 legislation

"AB 515 Richman Water Project: solar photovoltaic panels and systems Chapter 368
This bill permits the Department of Water Resources (DWR) to establish a program allowing private entities to lease space above or adjacent to the State Water Project (SWP) for the purpose of installing solar photovoltaic panels and generating electricity from those panels. This bill also requires that a proposal submitted to DWR for evaluation must include an engineering study of the proposed solar photovoltaic panels and related systems, with the costs of the study and DWR's evaluation to be paid by the person or entity making the request. Finally, this bill allows DWR, upon approval of the proposal, to negotiate any level of compensation necessary to cover its costs."

Development of Solar panels over the Aqueduct would be a highly superior alternative, the opportunity for which has been placed into law. This would eliminate Greenhouse gas emissions and water use even saving water by reducung evaporation form the aqueduct. Evaporation is a major source of loss from the aqueduct.

California is facing the most severe water crisis in its history. Much of the Kings County "prime farmland" is in cotton, not food crops. See: http://www.ccgga.org/cotton_information/calif_cotton.html. This cotton farming is sustained by low-cost water from the California Aqueduct. It is unreasonable to assume that 1,000s of acres of Kings County land currently in cotton will be indefinitely sustained by low-cost water from the from the California Aqueduct?

If the land is taken out-of-production in the short- or mid-term due to a lack of available water supplies putting the land to use as a PV solar power plant benefit both the farmer, who moves from farming cotton to farming the sun, and California's critically short water supplies by eliminating a major user of the water. This win-win PV scenario have been evaluated in the alternatives section.

1. The CEC's June 2009 2010-2020 electricity forecast does not project PG&E service territory reaching the 2009 projection upon which the FSA was based until 2017 or 2018 (See Figure ES-1, p. 3, CEC 2010-2020 forecast). According to the May 2009 CEC forecast for summer 2009, California has a large power reserve margin for 2009: (http://www.energy.ca.gov/releases/2009_releases/2009-05-13_summer_demand.html).
2. The FSA notes that approximately 4 acres of building rooftop are necessary for each megawatt (MW) of PV output (FSA, p. 6-20). The FSA then states that to obtain 600 MW of PV output would require 2,400 MW of prime farmland. The combined populations of Fresno, Kings, Tulare, and Kern Counties is ~2,300,000 (July 2008 U.S. Census). This population should equate to approximately 1,200 MW of commercial building PV potential and 2,100 MW of residential PV potential interpolating from a 2005 PV potential study done (in part) by SDG&E for San Diego County. San Diego County has a population that is three-quarters the combined population of Fresno, Kings, Tulare, and Kern Counties at 3,000,000 (July 2008 U.S. Census). The 2010 PV potential estimate for San Diego County is 1,600 MW commercial rooftop and 2,800 MW residential rooftop. See PV estimate at: http://www.renewablesg.org/docs/Web/Ch2_Solar_PV_Electric.pdf

The FSA assumes that PV would be ground-mounted on prime farmland when there is more than adequate available commercial and/or residential rooftop space to meet the 600 MW target in Fresno, Bakersfield, Visalia, and Tulare within 75 miles of the proposed project site.

The CEC's denial of the Chula Vista Energy Upgrade Project on June 17, 2009 identified that the analysis of the PV alternative was deficient for assuming that PV would require 4 acres per MW of land, when existing building rooftops could provide the necessary capacity with no land requirement? The staff assumption that 4 acres of land would be required per MW of PV is deficient for the same reason in this case.

There is no justification for approving this plant in an era of oversupply of power resources and flat demand for the foreseeable future?

THE PUBLIC HEALTH ANALYSIS IS INADEQUATE

There is no public health analysis in staffs report. There is no disclosure of toxic air contaminates. Staff did not identify sensitive receptors potentially present in the nearby homes or fields. No consideration was given to the obvious environmental Justice community working and living adjacent to the faciltiy.

Rob Simpson