

I read a Notice titled;

NOTICE OF AVAILABILITY OF THE PRESIDING MEMBER'S PROPOSED DECISION
It stated

"The purpose of the Committee Conference is to consider oral and written comments on the PMPD from the parties, governmental agencies, and members of the public." I attended identified Committee conference by telephone and submitted "oral..comments" I was informed that my comments were untimely and my comments do not appear to have been considered.

The Notice further stated "Members of the public and governmental agency representatives are encouraged to submit their written comments by the close of the 30-day review period on December 10, 2009, either by mailing to the Commission Docket Unit (1516 Ninth Street, MS-4, Sacramento, CA 95814) or e-mail: docket@energy.state.ca.us. Identify all comments with "Docket No. 08-AFC-1." We will accept additional written comments from the parties, the public and governmental agencies until the close of the comment period on December 10, 2009." I am informed in the below email copies that at least several organizations followed these instructions and were precluded from commenting because they must also file hard copies. It can not be known how many others attempted to comment but declined based upon this change from the Notice instructions.

The Commission should understand that the United States Environmental Protection Agency Environmental Appeals Board decision regarding the Russell City Energy Center EAD 08-01 implicates the CEC Failure to provide public notice and the currently pending action between the Department of Justice and PG&E regarding the Gateway Generating Station also implicates the CEC failure to conform with public participation requirements of the Federal Clean Air Act when licensing facilities.

----- Original Message -----

Subject: RE: Avenal
From: "Rory Cox" <RCox@pacificenvironment.org>
Date: Thu, December 10, 2009 1:38 pm
To: "Docket Optical System" <docket@energy.state.ca.us>
Cc: <rob@redwoodrob.com>

DOCKET
08-AFC-1
DATE _____
RECD. <u>DEC 10 2009</u>

The order has your insignia and is signed by two of your commissioners. How can you say "not written by us and incorrect?" It's pretty clear it came from the CEC.

-Rory

From: Docket Optical System [<mailto:docket@energy.state.ca.us>]
Sent: Thursday, December 10, 2009 12:41 PM
To: Rory Cox

Subject: RE: Avenal

That order was not written by us and is incorrect. In our regulation manual it state to send in one hard copy with twelve additional copies or one hard copy with an electronic copy, which consist of e-mail or two CD's.

Dockets Staff
Siting / Dockets Unit
916-654-5076

>>> "Rory Cox" <RCox@pacificenvironment.org> 12/10/2009 12:15 PM >>>

According to page 2 of this order, you accept both email or hard copy. It's in the last paragraph.

http://www.energy.ca.gov/sitingcases/avenal/notices/2009-12-02+16_Notice_of_Availability+PMPD_Conference.pdf

-Rory

From: Docket Optical System [<mailto:docket@energy.state.ca.us>]
Sent: Thursday, December 10, 2009 12:02 PM
To: Rory Cox
Subject: RE:

Yes. It is a required per our regulations.

Dockets Staff
Siting / Dockets Unit
916-654-5076

>>> "Rory Cox" <RCox@pacificenvironment.org> 12/10/2009 11:42 AM >>>

Hello,

No – is one required?

-Rory

From: Docket Optical System [<mailto:docket@energy.state.ca.us>]
Sent: Thursday, December 10, 2009 11:25 AM

To: Rory Cox
Subject: Re:

Has a hard copy been mailed off to the docket unit?

Dockets Staff
Siting / Dockets Unit
916-654-5076

>>> "Rory Cox" <RCox@pacifenvironment.org> 12/10/2009 11:19 AM >>>

To Whom it May Concern,

Please accept these comments on behalf of Pacific Environment regarding the proposed Avenal power plant, docket number 08-ACF-1.

Thank you,

Rory Cox

We've Moved! Please update your records.....

Rory Cox
Pacific Environment
Ph: 415.399.8850 x302

251 Kearny Street
Second Floor
San Francisco, CA 94108
Fax: 415.399.8860

www.PacificEnvironment.org
www.RaceForCleanEnergy.org

Protecting the Living Environment of the Pacific Rim

October 15, 2009
VIA ELECTRONIC MAIL

Ms. Shirley Rivera (AIR-3)
U.S. Environmental Protection Agency, Region 9

75 Hawthorne Street

San Francisco, CA 94105-3901

Re: Proposed Prevention of Significant Deterioration Permit for the Avenal Energy Project

(PSD Permit No. SJ 08-01)

Dear Ms. Rivera:

Thank you for this opportunity to comment on the proposed PSD permit.

My initial concerns pertain to the failed system for public participation in the development of Fossil fuel fired electrical generating facilities in the State of California. No notice from the Environmental Protection Agency (EPA) California Energy Commission (CEC) or the San Joaquin Valley Air pollution Control District (APCD) has disclosed the one vital bit of information required to alert the public of the projects effects on air quality.

AIR QUALITY Table 14
Avenal Energy, Routine Operation Maximum Impacts ($\mu\text{g}/\text{m}^3$)

Pollutant	Averaging Time	Modeled Impact	Background	Total Impact	Limiting Standard	Percent of Standard
PM10	24 hour	2.9	254	256.9	50	514
	Annual	0.8	46.3	47.1	20	236
PM2.5	24 hour	2.9	92.5	95.4	35	273
	Annual	0.8	18.4	19.2	12	160
CO	1 hour	2,175	4,222	6,397	23,000	28
	8 hour	337	2,900	3,237	10,000	32
NO ₂	1 hour	190.0	137.2	327.2	339	97
	Annual	0.5	22.6	23.1	57	41
SO ₂	1 hour	9.7	47.2	56.9	655	9
	24 hour	1.5	7.9	9.4	105	9
	Annual	0.1	2.6	2.7	80	3

Source: AFC Table 6.2-31.
Note: One-hour NO₂ impact assumes the combined emission rates of the two combustion turbine exhausts during staggered startups would not exceed 240 lb/hr of NO_x (as in Condition of Certification AQ-SC11).

CEC Preliminary Staff Assessment Staff page 4.1-22

<http://www.energy.ca.gov/2009publications/CEC-700-2009-001/CEC-700-2009-001-PSA.PDF>
and attached

I applaud the EPA recognition that this project "is the subject of of wide-spread public interest" and the attempts at outreach in the affected community by convening public hearings, but without a fact sheet or accurate emission data it is entirely too much information for the public to sift through to obtain the relevant information. Without making this information available in the Notice or a Fact sheet for the plan the EPA has not provided a basis for informed decision making on the part of the public. If the EPA had provided this information or published a Fact Sheet they may very likely have elicited additional public

participation.

40CFR 124.8 Fact sheet.

(3) For a PSD permit, the degree of

increment consumption expected to result from operation of the facility or activity.

Instead the Notice for this plan contains useless information that serves to confuse and alienate the public;

The title of the Notice; "**AVENAL ENERGY PROJECT**" and the first paragraph;

"The Region 9 Office of the United States Environmental Protection Agency (EPA) requests public comment on a Proposed Prevention of Significant Deterioration (PSD) Permit. The proposed permit would grant conditional approval, in accordance with the Prevention of Significant Deterioration (PSD) regulations (40 CFR 52.21), to the Avenal Power Center, LLC to construct and operate a 600 MW (net) electric generating facility. Avenal Power Center, LLC is located at 500 Dallas Street, Level 31, Houston, TX 77002. "

together could make the public believe that the project will be in Texas and stop reading. The Public should not be expected to understand the Abbreviation (MW) without definition.

The second paragraph states;

"The proposed facility, called the Avenal Energy Project, would be located in Kings County, California, and consists of two GE 7FA combustion turbine generators, two heat recovery steam generators, one steam turbine generator, and associated equipment. The proposed location for the Avenal Energy Project constitutes the majority of the northeast quarter of Section 19, Township 21 South, Range 18 East, Mt. Diablo Base and Meridian. The Kings County Assessor's Parcel Number (APN) for this location is 36-170-035. The proposed location is currently in agricultural production, is zoned industrial by the City of Avenal and is owned by the applicant. The City of Avenal has informed the EPA that the unofficial address for this location's APN is 33119 Avenal Cutoff Road, Avenal, California 93204."

The metes and bounds site description, as was used in lieu of the actual address in all notices from the CEC, APCD and the EPA except for these last Notices from the EPA that includes a site address only after the Applicants address and the antiquated site description, does not serve to inform. The Site address should be prominent in the notice as should the effect on air quality. The site address was added after my repeated complaints to each agency regarding the lack of an Address in their notices.

The next paragraph identifies some pollutants but ignores their quantities;

"The proposed PSD permit would require the use of Best Available Control Technology to limit emissions of carbon monoxide (CO), oxides of nitrogen (NO_x), particulate matter (PM), and particulate matter less than 10 micrometers in diameter (PM₁₀), to the greatest extent feasible. The emissions of other air pollutants from the proposed project would be regulated and limited by the San Joaquin Valley Air Pollution Control District (District)..."

The CEC Preliminary Staff Assessment (PSA)(attached) which I include in my comments Discloses the Total Maximum Annual Emissions in tons per year NO_x 144.3 VOC 34.61 PM10/ PM2.5 80.78 CO 602.7 SO_x 16.76. This information could surely affect public interest

and informed participation. I contend that the Notice statement "Air pollution emissions from Avenal Energy Project would not cause or contribute to violations of any of the National Ambient Air Quality Standards (NAAQS)." is false.

I have had difficulty getting on the EPA public Notice Lists. Please disclose how the the EPA has satisfied;

"As to general outreach efforts, 40 C.F.R. § 124.10 directs the EPA to proactively assemble a "mailing list" of persons to whom PSD notices should be sent. See 40 C.F.R. § 124.10(c)(1)(ix). The mailing list must be developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals."

Remand EAD 08-01 page 12

It does not appear that organizations like Californians for Renewable Energy (CARE) have been provided notice of these proceedings, although it appears that they have been "participants in past permit proceedings in that area".

The Statement Of Basis (SOB) which is identified only as "Ambient Air Quality Impact Report" on the document page of the EPA website states;

The Avenal Power Center, LLC also has submitted applications for state and local construction approvals, respectively referred to as an Application for Certification (AFC) submitted to the California Energy Commission (CEC)¹ and an application for a Determination of Compliance (DOC) submitted to the San Joaquin Valley APCD.²

9

Is the DOC a construction approval or will the facility require an Authority To Construct (ATC)? If it does require an ATC will it be issued by the CEC or the APCD. Is the DOC or ATC appealable and if so in what venue? IS it "State or Local". What authority does the EPA have over the DOC/ATC

The SOB states;

"The term 'best available control technology' means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under the Clean Air Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel

combustion techniques for control of each such pollutant."

The plant appears to be designed to provide baseload power in an environment without demand for additional baseload power. We have a number of similar facilities built, under construction and planned in California. We are seeing operating facilities like Sutter and Metcalf that have modified their permits to function more like load following peaker type plant despite the slow start design flaw that results in higher emissions and lower efficiency during start up than a facility designed for peak use. The permit should have a condition that requires fast start technology. To license the facility with the intent to change its operating profile after its built would be considered a "sham permit" Because this plant does not have a power purchase agreement to identify where the power might be used how did the EPA consider the energy line loss associated the hundreds of miles that the energy would likely have to travel to a load center? Did the EPA consider construction and commissioning period impacts, Greenhouse gases, the energy used to pump the water through the California Aqueduct to the facility, The impacts of the water use on soils and vegetation and biological resources?

The SOB states;

As part of our evaluation, we reviewed the emission estimates information provided in the PSD application, other Region IX PSD permit actions, and the San Joaquin Valley APCD engineering evaluation¹⁵

The SOB should not rely on the APCD evaluation as it were not vetted in public scrutiny. To the extent the EPA relies on the APCD findings they should also respond to my complaint regarding the lack of opportunity for public participation in the APCD proceeding. (Attached)

"Additionally, the applicant used the EPA "Screening Procedure for the Impacts of Air Pollution Sources on Plants, Soils and Animals" (1980)"

This document appears outdated. The present EPA Region 9 Permitting action for the Russell City Energy Center has more contemporaneous information. The Soils analysis appears inadequate.

9.3. Growth

We do not expect this project to result in any significant growth. The less-than-significant potential growth inducing impacts on population, housing, schools, utilities, and emergency and other services are discussed in the CEC's AFC, Section 6.10 – Socioeconomics, pages 6.10-19 through 6.10-32.

The growth analysis fails to demonstrate how an additional 600 Megawatts (MW) fails to cause significant growth Which is an area in dispute at the concurrent CEC proceeding. The applicant has chosen to submit parts of its CEC application as this application it would be derelict to ignore the CEC deliberations on this subject. I request that the EPA take Administrative Notice of the CEC proceedings. Just the siting alone constitutes a land use change from farming to industrial. Its development is expected to be result in further industrial development at around the site the following excerpts from the CEC Evidentiary Hearing Dated July 7, 2009 (attached) demonstrate that this project is specifically planned to cause growth.

Power plants satisfy demand for

18 electricity that is created through other ways.

19 From population growth, from new manufacturing

20 facilities.

Gary Rubenstein with Sierra Research.

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It is and has been, probably for the

16 last ten years, a key piece. We knew that we
17 needed an anchor tenant out at our industrial park
18 to get it going. Eight years ago it seemed as
19 though we were well on our way to making that come
20 true.

21 Because of the interest of a power plant
22 it became part of a larger plan when we submitted
23 an application to the EDA for a grant to help us
24 with infrastructure which will support our
25 industrial park.

As part of that grant plan application

2 it noted the power plant as our anchor tenant.

3 So, it does play a key piece in our economic
4 development plan.

But more than that, the city, just

6 piggybacking on what the Mayor said, it is a key

7 piece for us. And we have been supportive. We

8 know that it will provide good-paying jobs.

9 We know that there will be spinoff

10 industries for something, as such.

Melissa Whitten,5 City Manager of Avenal 8

Industrial

7 development will be critical to Avenal's future,
8 as we see agriculture starting to wane out here on
9 the west side.

10 They have their industrial park. This
11 will be a project that will be the first
12 industrial project within their industrial park.

13 It will basically put it on the map.

14 We feel very strongly that the

15 industrial park will be great for warehouse and

16 distribution, and hopefully some manufacturing

17 because of its location midway between the Bay

18 Area and southern California.

Jay Salyer from the Economic Development Group10

this project was deemed by the

10 city as necessary for the development of that as
11 an industrial park. So whereas it is agricultural
12 now, the intent in the future was to develop this
13 area.

CEC staff witness CHRISTOPHER MEYER 428

The types of industrial uses that may follow a Power plant siting is often other power plants or heavy polluters. The cumulative effects of the planned industrial area should be considered at this time and the EPA should recognize the growth planned as a result of this siting. It also appears that the additional electricity on the grid could cause growth in distant areas and interfere with the development of cleaner energy resources.

The time period for a decision on the application seem to have expired . I expect that the clean air act has time periods for permit considerations to ensure that facilities are utilizing current data, rules and BACT. Indeed if this facility had been permitted when the application was received the permit would have expired by now. The EPA should only act favorably on contemporaneous applications.

I Incorporate the comments filed by Earthjustice on Behalf of The Sierra Club into my comments. I also incorporate the attached CEC Staff Assessment, Complaint and rebuttal testimony in a series of emails.

Thank you

Rob Simpson
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510-909-1800
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