

**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
(AFC filed February 21, 2008)

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DATE	June 10 2009
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**AVENAL POWER CENTER, LLC'S
RESPONSE TO PETITIONS TO INTERVENE BY SIERRA CLUB (TEHIPITE
CHAPTER) AND CENTER ON RACE, POVERTY & THE ENVIRONMENT**

June 10, 2009

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I. INTRODUCTION

On June 5, 2009, the Tehipite Chapter of the Sierra Club (“Sierra Club”) and the Center on Race, Poverty and the Environment (“CRPE”) filed petitions to intervene in the Avenal Energy Project (“Project”) proceedings before the California Energy Commission (the “Commission”). Avenal Power Center, LLC (“Avenal”) is not opposed to allowing these groups to join the Project proceedings as intervenors. Nonetheless, Avenal notes this proceeding has already been substantially delayed given the Commission found Avenal’s Application for Certification data adequate on April 16, 2008. Parties joining the proceeding at this stage should not be permitted to reopen discovery or extend the permitting schedule. Avenal also notes the issues raised by CRPE were raised in comments on the Preliminary Staff Assessment (PSA) and have been addressed by both Avenal and Commission Staff.

II. STATUS OF THE RECORD

Given the late date of these petitions to intervene, Avenal requests the Committee clarify, consistent with Title 20 California Code of Regulations Section 1712, that these parties will not be permitted to reopen matters or reopen discovery dealt with in the proceeding prior to the time when they became a party to the proceeding. The application for the Project in its current form has been before the Commission since April 16, 2008. Pursuant to section 1716(e) of Title 20 of the California Code of Regulations, the deadline for an intervenor to file data requests expired on October 13, 2008, 180 days from the date the Commission deemed the Project’s application

complete. The Commission Staff has issued the Final Staff Assessment (FSA). If the Commission decides to grant these parties' petitions for intervention, Avenal respectfully requests the Commission clarify the discovery period has ended.

III. ISSUES RAISED BY CRPE

In its petition to intervene, CRPE lists several areas of concern in the Project's environmental analysis. Many of these issues were raised in the PSA workshop and therefore, have been addressed, at least to the level they were expressed in that workshop, by Avenal and by Commission Staff.

A. Avenal and Commission Staff Analyzed Impacts to Public Health.

CRPE states "[t]he proposed Avenal Energy Project would significantly increase daily exposure of various toxins including SO_x and PM_{2.5} for residents of Kettleman City, Avenal and Huron." Avenal heard these comments at the PSA workshop and included in its Final Comments to Avenal Energy Preliminary Staff Assessment (Avenal's Exhibit 21[a]) emissions impacts information for Kettleman City and Huron. This information had not been previously pulled out of the air quality models and placed into a table because the air quality impacts for these areas are below the maximum impacts shown and evaluated in Avenal's analysis. The data confirm the Project will not result in unhealthy air quality levels at these specific locations under any operating or weather conditions. (See Ex. 21[a].) As an attachment to these comments and in further response to comments, Avenal also provided a table of cumulative impact considerations for the Kettleman Hills Facility. (See Ex. 21[p].) Likewise, Commission Staff addressed these comments by CRPE at multiple points in the FSA. (See FSA at 4.7-1, 4.7-12, 4.7-13, 4.4-19, and 6-13.)

CRPE also states "[t]he Project has the potential to cause negative health impacts that disproportionately impact low-income communities and communities of color." As discussed above, the Project will not result in any significant adverse health impacts in the specific locations of concern or at any location; if there are no significant adverse health impacts, there can be no disproportionate impacts to low-income communities or to communities of color. Further and consistent with Commission requirements, Commission Staff has analyzed potential environmental justice impacts from the project in the FSA. (FSA at 1-4.)

B. Avenal, Commission Staff and the San Joaquin Valley Air Pollution Control District Analyzed the Project's Proposed Offsets.

CRPE does not like Avenal's plan to use offsets from outside the local area as they do not believe offsets mitigate the Project's local air quality impacts, recognize the impacts caused by localized emissions, or address the Project's cumulative impacts in light of the other emissions sources in the vicinity. Emission offsets are not, and never have been, intended to address local air quality impacts. The project's local air quality impacts are demonstrably not significant, and the project's regional, cumulative impacts are amply mitigated, including through the use of District- and CEC staff-approved emission offsets. Commission Staff responded to this comment in the FSA and concluded that the Project's emission offsets will mitigate air quality impacts below the level of significance. (FSA at 4.1-37 and 4.1-38.) In addition, the San Joaquin Valley Air Pollution Control District through the Final Determination of Compliance also evaluated and accepted the offsets as mitigation for the Project's air quality impacts.

C. Avenal and Commission Staff Analyzed the Project's Consistency with California's Renewable Energy and Greenhouse Gas Goals.

CRPE states "California's energy demands do not warrant the construction of new natural gas power plants, and such construction would undermine California's renewable energy goals." The Project's role in furthering California's renewable energy goals by supporting intermittent resources and reducing system greenhouse gas emissions has been analyzed by Avenal and Commission Staff. (See FSA at 4.1-79 through 4.1-89.) Commission Staff concluded the Project will further California's greenhouse gas reduction goals by causing a cumulative overall reduction in greenhouse gas emissions. (FSA at 4.1-88.) Furthermore, the Project will provide necessary support and system reliability necessary for integrating other renewable energy projects. (*Id.*)

D. Avenal and Commission Staff Addressed a Reasonable Range of Project Alternatives.

Lastly, CRPE states Commission Staff "failed to assess a reasonable range of project alternatives." Commission Staff addressed this specific comment in the FSA. (See FSA at 6-13 and 6-22 through 6-24.) Based upon comments at the PSA workshop Commission Staff

evaluated an alternative site located out of the San Joaquin Valley in an effort to address those concerns. (*Id.*)

IV. CONCLUSION

CRPE's concerns have been evaluated by Avenal and Commission Staff, and the environmental analysis conducted for the Project addresses the concerns they have included in their petition to intervene.

Respectfully,

/s/

Jane E. Luckhardt
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PROOF OF SERVICE
(Revised 5/27/09)

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Declaration of Service

I, Lois Navarrot, declare that on June 10, 2009, I served and filed copies of the attached **Avenal Power Center, LLC's Response to Petitions to Intervene by Sierra Club (Tehipite Chapter) and Center on Race, Poverty & The Environment**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/avenal. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service List) and to the Commission's Docket Unit, in the following manner:

(check all that apply)

For Service to All Other Parties

 X sent electronically to all email addresses on the Proof of Service list;

 X by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service List above to those addresses **NOT** marked "email preferred."

AND

For Filing with the Energy Commission

 X sending an original paper copy and one disk copy by hand delivery to the address below;

OR

 depositing in the mail an original and 12 paper copies as follow:

California Energy Commission
Attn: Docket No. 08-AFC-1
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

/s/
Lois Navarrot