

DOCKET

08-AFC-1

DATE _____

RECD. June 29 2009

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:

The Application for Certification for the
AVENAL ENERGY PROJECT

Docket No. 08-AFC-1

REQUEST FOR REMEDIAL ACTION

PUBLIC PARTICIPATION IN THE SITING PROCESS: PRACTICE AND PROCEDURE GUIDE Remedial Action
Any person who is dissatisfied with the manner in which staff workshops/meetings are
being conducted, may ask the Presiding Member to take remedial action.

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**THE COMMISSION SHOULD REQUIRE STAFF TO FILE AN ERRATA TO THE AIR QUALITY
ANALYSIS IDENTIFYING A RESPONSE TO MY COMMENTS INDICATING WHETHER ALL
PUBLIC NOTICE REQUIREMENTS WERE MET.**

§ 21091.(d) (1) The lead agency shall consider comments it receives on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.

(2) (A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of each significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.

Staff has ignored my public comments and testimony regarding this issue and has to date filed no response. Staff is wasting the Commissions time processing an application that is not vetted in public scrutiny. The public notice process within the CEC has served to mislead the public and prevent informed public participation. The public deserves factual information to base its participation decision. The following analysis on the effects on Air Quality is an example of information that should have been in some public notice by this point in these proceedings.

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	351	353.9	50	708
	Annual	0.8	59.5	60.3	20	302
PM2.5	24 hour	2.9	75.0	77.9	35	223
	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
NO₂	1 hour	190.0	137.2	327.2	339	97
	Annual	0.5	22.6	23.1	57	41
SO₂	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**).

FSA 4.1-24

The CEC staff should acknowledge disclosure of this table in their public notices as a minimum threshold requirement under their CEQA obligations.

§ 21092. (b) (1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.

The air district also did not include this analysis in its public notice(s) as required by their own rules and State and Federal Statutes. The following excerpts from the Air District FDOC identify numerous public notice requirements (none of which were met). The CEC staff should not rely on the Air Districts Determinations without a demonstration of compliance with notice requirements.

1. Applicability

District Rule 2201, section 5.4, requires a public notification for the affected pollutants from the following types of projects:

- New Major Sources
- Major Modifications
- New emission units with a PE > 100 lb/day of any one pollutant (IPE Notifications)
- Any project which results in the offset thresholds being surpassed (Offset Threshold Notification), and/or
- Any permitting action with a SSIPE exceeding 20,000 lb/yr for any one pollutant. (SSIPE Notice)

a. New Major Source Notice Determination

New Major Sources are new facilities, which are also Major Sources.

As shown in Section VII.C.6 above, the SSPE2 is greater than the Major Source threshold for NO_x, CO, VOC, and PM₁₀. Therefore, public noticing is required for this project for new Major Source purposes because this facility is becoming a new Major Source.

b. Major Modification

As demonstrated in Section VII.C.7 above, this project does not constitute a Major Modification; therefore, public noticing for Major Modification purposes is not required.

c. PE Notification

Applications which include a new emissions unit with a Potential to Emit greater than 100 pounds during any one day for any pollutant will trigger public noticing requirements. The potential to emit for each unit is summarized in the table below.

f. SSIPE Notification

Public notification is required for any permitting action that results in a Stationary Source Increase in Permitted Emissions (SSIPE) of more than 20,000 lb/year of any affected pollutant. According to District policy, the SSIPE is calculated as the Post Project Stationary Source Potential to Emit (SSPE2) minus the Pre-Project Stationary Source Potential to Emit (SSPE1), i.e. $SSIPE = SSPE2 - SSPE1$. The values for SSPE2 and SSPE1 are calculated according to Rule 2201, Sections 4.9 and 4.10, respectively. The SSIPE is compared to the SSIPE Public Notice thresholds in the following table:

SSIPE Notification					
Pollutant	SSPE2 (lb/year)	SSPE1 (lb/year)	SSIPE (lb/year)	SSIPE Public Notice Threshold	Public Notice Required?
NO _x	288,618	0	288,618	20,000 lb/year	Yes
CO	1,205,418	0	1,205,418	20,000 lb/year	Yes
VOC	69,222	0	69,222	20,000 lb/year	Yes
PM ₁₀	161,550	0	161,550	20,000 lb/year	Yes
SO _x	33,521	0	33,521	20,000 lb/year	Yes

As demonstrated above, the SSIPE's for NO_x, CO, VOC, PM₁₀ and SO_x emissions were greater than 20,000 lb/year; therefore public noticing for SSIPE purposes is required.

2. Public Notice Requirements

Section 5.5 details the actions taken by the District when public noticing is triggered according to the application types above. Since public noticing requirements are triggered for this project (i.e. New Major Source, PE's > 100 lbs/day, offset thresholds being exceeded, and SSIPEs greater than 20,000 lbs/year), the District shall public notice this project according to the requirements of Section 5.5.

E. Daily Emission Limits:

Daily emissions limitations (DELs) and other enforceable conditions are required by Section 3.15 to restrict a unit's maximum daily emissions, to a level at or below the emissions associated with the maximum design capacity. Per Sections 3.15.1 and 3.15.2, the DEL must be contained in the latest ATC and contained in or enforced by the latest PTO and enforceable, in a practicable manner, on a daily basis.

e. Offset Threshold

Public notification is required if the Pre-Project Stationary Source Potential to Emit (SSPE1) is increased from a level below the offset threshold to a level exceeding the emissions offset threshold, for any pollutant.

The following table compares the SSPE1 with the SSPE2 in order to determine if any offset thresholds have been surpassed with this project.

Offset Threshold				
Pollutant	SSPE1 (lb/year)	SSPE2 (lb/year)	Offset Threshold	Public Notice Required?
NO _x	0	288,618	20,000 lb/year	Yes
CO	0	1,205,418	200,000 lb/year	Yes
VOC	0	69,222	20,000 lb/year	Yes
PM ₁₀	0	161,550	29,200 lb/year	Yes
SO _x	0	33,521	54,750 lb/year	No

As detailed above, offset thresholds were surpassed for NO_x, CO, VOC, and PM₁₀ emissions with this project; therefore public noticing is required for offset purposes.

After discussions with the project manager I submitted the following comments regarding the workshop which have been ignored, preventing my participation in the workshop. The workshop was apparently not recorded despite the indication in the notice that "The workshop will provide an opportunity for agencies, the public and other interested parties to present questions and comments on the FSA." If "comments" were received but not recorded the public is misled and precluded from participation. It is also derelict of staff to not include notice of the concurrent EPA action in this proceeding.

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

Subject: RE: Avenal energy project Docket No. 08-AFC-1

From: rob@redwoodrob.com

Date: Mon, June 22, 2009 12:04 pm

To:

Cc: "Bradley Angel" <bradley@greenaction.org>, VACATIONPOMBO@aol.com,

"ANDREW III" <andy_psi@sbcglobal.net>, JDouglas@energy.state.ca.us,

"ingrid" <ibrostrom@gmail.com>, jhonnette@aol.com

Mr. Douglas,

I would like to provide the following as objection and requests for information regarding the:

June 10, 2009

**NOTICE OF AVAILABILITY
FINAL STAFF ASSESSMENT FOR THE PROPOSED AVENAL ENERGY
PROJECT**

(08-AFC-1)

NOTICE OF PUBLIC WORKSHOP

Tuesday, June 23, 2009

2:00pm-7:00pm

first I echo the comments of Bradley Angel of Greenaction. It appears that the actual press release associated with this notice was considerably later than the June 10 date identified above. What is the Commission policy on public notice lead time?

This notice was published after the opportunity for intervention. I have found no notice identifying the opportunity for intervention. What is the Commission policy on publishing notice of the opportunity for intervention?

There will be an initial meeting from 2:00-5:30 p.m. followed by a summary meeting of the same contents from 5:30-7:00p.m. to facilitate public participation after work hours.

**Reef-Sunset Unified School District
205 N. Park Avenue, Avenal, CA 93204.**

(Wheelchair Accessible)

(Map Attached)

While the map of the meeting location is provided no map or address of the project has been noticed. Surely the plant will have an address. It appears that the adjacent wastewater treatment plant has an address. What is the Commission policy on providing an address for facilities in public notices?

TO: MEMBERS OF THE PUBLIC

This notice is to inform you of the availability of the Final Staff Assessment (FSA) for the Avenal Energy (AE) Application for Certification (08-AFC-1). The FSA was published on June 5, 2009. The FSA contains the California Energy Commission staff's final engineering, public health, and environmental evaluation of the proposed AE. This notice is also to inform you that the Energy Commission staff will hold a workshop to discuss the FSA and further encourage public participation, as it relates to the proposed AE and the Energy Commission's permitting process. The workshop will provide an opportunity for agencies, the public and other interested parties to present questions

Can the public expect answers to Questions or is the Discovery opportunity over?

and comments on the FSA. All interested agencies and members of the public are invited to participate. The workshop will be held on Tuesday, June 23, 2009 starting at 2:00 p.m. at Reef-Sunset Unified School District, 205 N. Park Avenue,

Avenal, CA 93204. An additional evening session will begin at 5:30 p.m. The California Energy Commission encourages public participation in the review of the AE Application for Certification. Written comments on the FSA should be provided to Joseph Douglas, Siting Project Manager, no later than 5:00 p.m., June 19, 2009

Is this the end if the public comment or discovery opportunity or why are comments due by June 19?

at the address on this letterhead or by email to JDouglas@energy.state.ca.us. Technical or project schedule questions should be directed to Mr. Joseph Douglas at (916) 653-4677 or by email. You may also present your comments at the public workshop on the FSA that will be conducted in Avenal on June 23, 2009.

Summary of the Proposed Avenal Energy Project (AE)

On February 21, 2008 Avenal Power LLC, submitted an Application for Certification (AFC) to construct and operate Avenal Energy, in the city of Avenal just south of the Fresno County line. The proposed site is located in a predominantly agricultural region of the southwestern San Joaquin Valley in western Kings County, just south of the Fresno County line, and two miles east of Interstate 5.

It appears that the location is either 3 miles east or 2 miles northeast of Interstate 5.

What is the Commissions policy on providing accurate information in public notices?

The proposed AE project would be built on approximately 34 acres of a 148-acre industrial zoned parcel. The proposed project would be a nominal 600-megawatt (MW) combined cycle facility and consist of two natural gas-fired General Electric 7FA gas turbines with heat recovery steam generators and one General Electric steam turbine. Natural gas would be provided via a 2.5-mile, 20-inch underground pipeline interconnection to PG&E's natural gas pipeline transmission system at the Kettleman natural gas compressor station.

The plant would use a dry cooling and a zero liquid discharge process to minimize water consumption. The use of this technology would allow AE to follow all applicable laws, ordinances, regulations, and standards (LORS) and decrease water use by over 97% from its original design of evaporative cooling.

Which original design is this referring to? It appears that the AFC indicates the same design. Would it be more accurate to inform the public of an actual water usage amount as opposed to a decrease percentage with no basis? Zero Liquid Discharge and 97% reduction could mislead the public to believe that there would be minimal water usage. Would indicating 104 Acre feet per year as the FSA states or the conversion 33,888,504 gallons per year be more accurate?

While I disagree with the accuracy of all of the following statements their presentation as uncontested statements of fact misleads the public as to the need and opportunity to affect the process. Particularly the contested APCD determinations and failure to inform the public about the present EPA action which must be satisfied prior to the Air Districts determinations becoming operable.

Summary of the California Energy Commission Staff's Conclusions

Energy Commission staff concludes that with the applicant's proposed mitigation measures and the staff's proposed conditions of certification, the AE would not cause a significant adverse environmental or public health impact and would conform with all applicable LORS. The Energy Commission staff's findings are summarized as follows:

Notice of Availability

June 10, 2009

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The proposed project site is in a predominately agricultural region, currently being farmed in irrigated row crops, but the project site has been rezoned for industrial uses. With the implementation of the staff's recommended conditions of certification all biological, soil, water, and agricultural impacts will be fully mitigated for both the project site, for the construction laydown areas, and for the associated linear facilities including the water, gas line, and electrical transmission routes.

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The San Joaquin Valley Air Pollution Control District has determined that the project complies with the appropriate rules and requirements of the District and would not contribute to the degradation of the air quality.

Staff evaluated the global climate change and greenhouse gas (GHG) emissions from the project. AE would be an efficient, new, dispatchable natural gas-fired combined cycle power plant that would provide a net reduction in GHG emissions across the electricity system while generating electricity for California consumers. Its addition to the system would displace less efficient plants and facilitate the integration of renewable resources.

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With the AE project's proposed use of dry cooling and zero liquid discharge technology, staff concludes that the project is in conformance with all LORS related to water resources and will not result in a significant adverse impact.

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With the proposed conditions of certification included in the various technical areas, the project's construction and operation impacts in all areas can be mitigated to a level less than significant, and the project would comply with all federal, state, and local laws, ordinances, regulations, and standards.

The PSA will be available for review at the following local libraries:

Why does this indicate the PSA? Will the FSA also be available at the following locations? Will you be providing notice of FSA availability?

Kings County Library Kings County Library Kings County Library
Avenal Branch Kettleman City Branch Main Branch
501 East King Street 104 Becky Pease Street 401 North Douty Avenue
Avenal, CA 93204 Kettleman City, CA 93239 Hanford, CA 93230

Did the Commission satisfy the following requirement within the time period identified?

§ 1709.7. Informational Hearing, Site Visit, and Schedule.

(a) Within 45 days after the acceptance of a notice or application for certification or the filing of an application for small powerplant exemption, the committee shall hold one or more informational presentations and site visits in the county or counties in which the proposed sites and related facilities are proposed to be located. The place of the presentations shall be as close as practicable to the proposed sites. Notice of the first informational presentation shall be mailed to all owners of land adjacent to the proposed sites.

Thank you,

Rob Simpson
intervener

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

Subject: Avenal energy project Docket No. 08-AFC-1

From: rob@redwoodrob.com

Date: Fri, June 19, 2009 3:25 pm

To: JDouglas@energy.state.ca.us, "ingrid " <ibrostrom@gmail.com>, jhonnette@aol.com

Cc: "Bradley Angel" <bradley@greenaction.org> ,

VACATIONPOMBO@aol.com,

"ANDREW III" <andy_psi@sbcglobal.net>

To: Mr Douglas CEC project manager for the Avenal energy project
Docket No. 08-AFC-1

Hi Mr. Douglas,

Please ensure that :

All workshops, hearings and any actions regarding this proceeding are recorded. Failure to record public comments at workshops has been the source of the Federal permit remand, see Russel City (actually in the City of Hayward).

All of the above are available for telephone participation. If I had to travel to each meeting it would affect my and other members of the public's ability to participate and cause travel related pollution associated with siting that may require a new category of impact analysis.

Post all interveners documents on the searchable documents page
Post all CEC staff status reports on the Searchable Documents page
Post all testimony on the Searchable Documents page.
Post all other associated agency notices and determinations on the searchable documents page like the present pending EPA PSD permit notice and Statement of basis.

Please also provide staff response to the issues raised in my public comment docket # 51902 posted 04 / 29 / 2009.

Thanks,

Rob Simpson

CONCLUSION

Because staff did not address my original comments regarding the inadequacy of the Air District notice procedures it became necessary for me to intervene, largely to address Air quality issues that may have been adjudicated with the Air District if staff had ensured compliance with LORS. Therefore the applicants contention in its motion to strike my testimony should be rejected. " the majority of these comments were made to the local air district, not to the Commission. Mr. Simpson's attempt to submit these comments as testimony in the proceedings for an unrelated project, before a different regulatory agency, is inappropriate." or they would undermine my First Amendment "right to petition the government for a redress of grievances"

I have personal knowledge of the facts stated in this and previous declarations and if called as a witness, I could and would testify thereto. I hereby affirm under the penalty of Perjury in the State of California that the forgoing is true and correct, Executed June 29, 2009 at Hayward CA. .

Respectfully Submitted By,

Rob Simpson

Intervener

27126 Grandview Avenue Hayward CA. 94542

Rob@redwoodrob.com 510-909-1800