

DOCKET	
08-AFC-10	
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November 13, 2009

California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

**Subject: LODI ENERGY CENTER POINTS AND AUTHORITIES IN SUPPORT
OF PROPOSED SCHEDULE FOR THE LEC
DOCKET NO. (08-AFC-10)**

Enclosed for filing with the California Energy Commission is the original copy of the **LODI ENERGY CENTER POINTS AND AUTHORITIES IN SUPPORT OF PROPOSED SCHEDULE FOR THE LEC** for the Lodi Energy Center (08-AFC-10).

Sincerely,



Marie Mills

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the Lodi
Energy Center

DOCKET NO. 08-AFC-10

**LODI ENERGY CENTER POINTS
AND AUTHORITIES IN SUPPORT OF
PROPOSED SECHEDULE FOR THE
LEC**

The Northern California Power Agency (NCPA) requests the California Energy Commission (Commission) AFC Siting Committee (Committee) issue a revised scheduling order for its Lodi Energy Center (LEC) Application For Certification (AFC) proceeding as discussed herein.

BACKGROUND

NCPA filed the LEC AFC on September 10, 2008 (14 months ago) and was found data adequate by the Commission on November 20, 2008 (12 months ago). There has been limited comment, few issues, and no intervention in the project. The LEC is completely funded by public funds. The costs associated with current stall in the project's license proceeding before the CEC are borne directly by the public that is served by the agencies involved in this project. Further, the LEC is consumer driven, not profit driven, and NCPA's burdens are inextricably related to the challenges associated with the State's budgetary woes, as the participants in the LEC includes 13 public entities and one Co-operative. While we understand that Staff has been burdened by furloughs and an ever increasing workload, NCPA requests the LEC be granted the same priority as renewable projects because it is a publicly funded power project.

In furtherance of NCPA's desire to work cooperatively and quickly to reach the public interest goals that the LEC will contribute locally and for the State, NCPA submits the following achievements and goals that have already been met and will be met by the issuance of the license for this project:

- The CAISO interconnect agreement has been executed by all parties.
- The Preliminary Determination of Compliance (PDOC) has been issued and the Final Determination of Compliance (FDOC) is likely to be issued by the time of the Status Conference on November 19, 2009.
- This project will utilize the “fast start technology”, being one of the first in the State to do so.
- The project’s Emission Reduction Credits have all been purchased.
- The project’s GHG output will be well within the State and Federal goals of achieving measurable reductions currently - as well as being an integral component of the long term GHG reduction goals of the State.
- The Engineering Contract is in place.
- The Power Island Equipment is under contract.
- It is NCPA’s intent to have this project on line to meet the summer peak of 2012. The current delay in completing the permitting process is seriously jeopardizing NCPA’s ability to complete the project in time to meet this critical milestone.
- The project will bring a peak workforce of approximately 300 craft workers and supervisory, support, and construction management personnel during the construction phase of the project.
- This project will allow the California Department of Water Resources to reduce its carbon footprint by replacing energy currently received from Reid Gardner Power Plant, which is a coal fired power plant, under a contract that expires in 2013

To support the project participants’ energy needs for the summer peak of 2012; NCPA has entered into a Power Island Purchase Option Agreement with Siemens Energy, Inc to provide the major equipment for the Lodi Energy Center. In April, 2010, NCPA will be required to remit the second payment of this agreement for the approximate amount of \$40,000,000 (Forty Million Dollars), or risk termination of the agreement. To facilitate project financing close by the first of April to support this payment the California Energy Commission’s Final Decision must be in place no later than March 2010. Any further delay in the permitting process could jeopardize NCPA’s ability to complete the project in time for the summer peak of 2012. For these reasons, the Committee should elevate the priority of the LEC to that given renewables.

NCPA understands that the Commission has recently been inundated with several renewable projects that will consume much of the Commission’s time in 2010. We have outlined an aggressive schedule that will allow the LEC licensing proceeding to be completed in an efficient and timely manner before the Commission is consumed by these renewable projects.

PROPOSED SCHEDULE

The attached table lays out NCPA's proposed schedule for the LEC project going forward. The primary objective of the schedule proposed by NCPA is the request that the Committee proceed to evidentiary hearing as soon as possible. In order to achieve that objective, the key feature of NCPA's proposed schedule provides that the Committee can proceed to evidentiary hearing whether or not Staff amends its Preliminary Staff Assessment (PSA) or issues a Final Staff Assessment (FSA). This approach is authorized by the Commission's Siting Regulations and does not restrict public participation nor violate any of the express or implied goals of the California Environmental Quality Act.

ARGUMENT

1. THE COMMITTEE NEED NOT REQUIRE THE PREPARATION OF BOTH A PRELIMINARY AND FINAL STAFF ASSESSMENT TO RENDER A DECISION ON AN APPLICATION FOR CERTIFICATION.

The California Energy Commission (CEC) Regulations¹ Section 1751 requires the committee to base its decision exclusively upon the hearing record, including the evidentiary record. The evidentiary record is made up evidence presented by the parties. Section 1742 requires that the applicant and staff shall submit information on environmental effects and mitigation, and then present the results of their assessments at hearings held pursuant to Section 1748. The parameters of those assessments are set forth in Sections 1742.5 through 1744.

Section 1742.5(b) expressly states: "The staff shall present the results of its environmental assessments in a report (or exhibit) to be offered as evidence at hearings held under Section 1748". The key word here is that a single report, not plural, is due from staff for consideration at hearing. The plural usage of assessments in this section can only reasonably be related to the concomitant provisions of Sections 1743 and 1744 which require the assessments of "Safety and Reliability" and "Compliance with Applicable Laws", respectively.

Section 1747 specifically indicates that the Staff Assessment, which is published at least 14 days prior to hearing, be a compilation of the reports (assessments) that address the subject areas of Sections 1742.5 through 1744. Nowhere else in the CEC regulations is there a requirement that Staff prepare a Preliminary and a subsequent Final Staff Assessment prior to the hearing. Additionally, there is no preclusion in the CEC regulatory scheme from treating the Preliminary Staff Assessment as the final report and exhibit at hearing.

¹ 20 California Code of Regulations (CCR) Section 1001 *et seq.*

2. NCPA'S PROPOSED SCHEDULE DOES NOT VIOLATE THE INTENT OR OBJECTIVES OF CEQA AND DOES NOT RESTRICT PUBLIC PARTICIPATION

As the Committee is aware, the Commission Siting Regulations have been approved by the Secretary of Resources to be exempt from CEQA because processing a License using these regulations has been deemed to the "functional equivalent" of CEQA. This has the legal effect that as long as the CEC complies with its own siting regulations then no separate CEQA compliance is necessary. It should be noted that it is not "the process" that was certified, but rather the siting regulations that were certified. So while the Staff has historically produced both a Preliminary and a Final Staff Assessment, that "process" is not relevant to a determination of "functional equivalence".

Nothing in NCPA's proposed schedule would limit public participation for the remainder of the siting process. NCPA's proposed schedule allows public circulation of the PSA, a PSA public workshop, filing of testimony, a PreHearing Conference and full evidentiary hearings, public circulation of the Presiding Member's Proposed Decision (PMPD), a PMPD Conference, and final consideration at the Business Meeting. The only modification is that if Staff cannot complete or revise the PSA to meet the schedule, NCPA requests the Committee allow the project to proceed to evidentiary hearing based on the PSA. Any modifications to the PSA that NCPA (or staff) deems necessary will be presented in its testimony for the Committee to consider.

CONCLUSION

For the reasons outlined above, NCPA requests the Committee adopt NCPA schedule and require Staff to schedule a PSA workshop on or before December 4, 2009. Adoption of this schedule will not violate Commission Regulations and will still provide ample opportunity for public involvement, while simultaneously relieving Staff of preparation of a full FSA at a time when Staff resources are limited. This schedule will also allow the Commission to come to a decision on the LEC proceeding prior to the increased workload that Staff will encounter in 2010.

Respectfully submitted,

Dated: November 13, 2009



Scott A. Galati
Counsel for NCPA

**NCPA's
Proposed Committee Schedule for the
LODI ENERGY CENTER
08-AFC-10**

Preliminary Staff Assessment filed / Notice - Workshop	11/19/09
Final Determination of Compliance Issued	11/19/09
Preliminary Staff Assessment Workshop	On or before 12/4/09
Errata to PSA/FSA	12/14/09
Prehearing Conference and Evidentiary Hearing	12/28/09



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION
FOR THE *Lodi Energy Center***

DOCKET No. 08-AFC-10

**PROOF OF SERVICE
(Revised 2/17/09)**

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DECLARATION OF SERVICE

I, Robert A. Gladden, declare that on November 13, 2009, I served and filed copies of the attached **LODI ENERGY CENTER POINTS AND AUTHORITIES IN SUPPORT OF PROPOSED SCHEDULE FOR THE LEC** dated **November 13, 2009**. 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/lodi/index.html].

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:

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

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:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

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

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-10
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.

/Original signed /
Robert A. Gladden