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November 4, 2010

VIA FEDEX

File No. 030137-0012

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-3
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

DOCKET	
07-AFC-3	
DATE	NOV 04 2010
RECD.	NOV 04 2010

Re: CPV Sentinel Energy Project: Docket No. 07-AFC-3

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Supplemental Comments on the Presiding Member's Proposed Decision.

Please note that the enclosed submittal was filed today via electronic mail to your attention and served on all parties to the above-referenced project.

Very truly yours,



Paul E. Kihm
Senior Paralegal

Enclosure

cc: CEC 07-AFC-3 Proof of Service List (via email and U.S. Mail)
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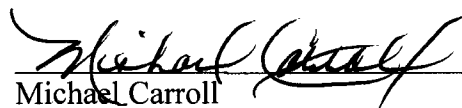
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:) Docket No. 07-AFC-03
)
APPLICATION FOR CERTIFICATION FOR)
THE CPV SENTINEL ENERGY PROJECT) APPLICANT'S SUPPLEMENTAL
BY CPV SENTINEL, LLC) COMMENTS ON THE PRESIDING
) MEMBER'S PROPOSED DECISION
)

During the November 2, 2010 Committee Conference on the Presiding Member's Proposed Decision (PMPD), Applicant agreed to provide proposed revisions to the text of the Traffic and Transportation section of the PMPD consistent with discussions on this topic amongst the Parties and the Committee during the Conference. The proposed revisions to the relevant pages of the PMPD are attached in strike-out/underline format.

DATED: November 4, 2010

Respectfully submitted,



Michael Carroll
LATHAM & WATKINS LLP
Counsel to Applicant

Traffic and Transportation Page 5

period in 2009, it is estimated that the intersection delay at the peak hours will increase to 469 seconds during the morning period and 253 seconds during the evening period. (Ex. 200, p. 4.10–8.)

Project construction traffic is expected to cause a reduction in the LOS during evening peak hours at the intersection of Indian Avenue/Dillon Road from LOS D to LOS F. The Indian Avenue/20th Street intersection will degrade from LOS D to LOS E, and the Indian Avenue/I-10 westbound ramps will degrade from LOS B to LOS C. Motorists will experience increased delay at the intersections. None of the three degraded intersections currently has traffic signals. (Ex. 200, pp. 4.10– 7.)

~~Staff's analysis is silent on the issue of the significance of the impact of these reductions in LOS. However, Applicant indicates that, without mitigation, these impacts will be considered significant by state and local LOS standards (Ex16, pp. 7.10-5 through 7.10-6). The applicant proposes traffic control measures at the intersections at Indian Avenue/Dillon Road, and Indian Avenue/20th Street, and Indian Avenue/I-10 westbound ramps that will take place at the evening peak hour traffic to help address the LOS reduction and the increase in traffic delay introduced by project construction. These measures are contained in Condition of Certification TRANS-3. The applicant also states that the majority of project-added traffic routed via SR-62 and Dillon Road will be re-routed through Indian Avenue and Dillon Road to mitigate the morning and evening peak hour impacts at SR-62 and Dillon Road. (Ex. 16, p. 7.10-15.) As initially proposed, The record indicates that Condition of Certification TRANS-3 would have required monitoring of the affected intersections for an even flow of traffic operation (i.e., no long queues and no excessive delays on all movements) during peak construction. (Ex. 16, p. 7.10-15.) Manual traffic control will would be implemented only when there is was an observed and immediate need to intervene and facilitate traffic flow. If the intersection is was operating efficiently at an even flow (i.e., no long queues and no excessive delays on all movements) no manual intervention should would be necessary. As initially proposed, Condition of Certification TRANS-3 The record is was silent as to who was responsible for monitoring these intersections, and who determined the need for manual intervention. Both Indian Avenue intersections (Dillon Road and 20th Street) will be monitored for efficient traffic operation during peak construction. (Ex. 16, p. 7.10-15.) Again, no mention of who is responsible for monitoring these intersections. Staff testified that it has received no comments regarding the adequacy of the applicant's proposed traffic control measures from Caltrans District 8, the City of Palm Springs~~

~~Department of Public Works, or the County of Riverside Transportation and Land Management Agency.~~

~~We are concerned that the absence of specific performance standards that address the degradation of LOS in Condition of Certification **TRANS-3** and the lack of clear mitigation for the apparent significant construction impacts will result in a lack of specificity and an impermissible deferral of mitigation.~~

~~We were concerned that absent a specific performance standard(s) stating who was responsible for monitoring the intersections, and when manual intervention was going to be required to address the degrading of the LOS at the intersections due to peak level construction related traffic, an impermissible deferral of mitigation would result.~~

~~To address our desire for greater specificity, and to further clarify that Condition of Certification **TRANS-3** will mitigate peak construction traffic impacts at the intersections both on a project-level and cumulative basis, the Applicant proposed addition of the following provision to Condition of Certification **TRANS-3**. (Applicant's Comments on the Presiding Member's Proposed Decision, p. 12.)~~

~~The traffic control and implementation plan shall include and describe the following minimum requirements:~~

~~...~~

~~In addition to other traffic control measures, during the peak three (3) months of construction activities, provide manual traffic control intervention for every day of construction at least 30 minutes before and during the 4-6 PM peak hour at the following intersections: Indian Avenue/Dillon Road, Indian Avenue/20th Street, and Indian Avenue/I-10 westbound ramps.~~

~~We have incorporated this additional provision into Condition of Certification **TRANS-3**.~~

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The underground recycled water pipeline will connect to an existing pipeline on the south side of South Murray Canyon Drive in the city of Palm Springs. Although most of the pipeline route is within an existing golf course, a portion of the pipeline will cross underneath South Murray Canyon Drive. The pipeline will be installed at the intersection of South Murray Canyon Drive and Kings Road East. This intersection provides access to residences situated along Kings Road East. The record indicates that access to residences from this intersection may be temporarily disrupted during pipeline installation. ~~Condition of Certification TRANS-3 alludes to ensuring access to residences and commercial property during construction in a general sense. (Ex. 200, p. 4.10-10.) We lack sufficient evidence to conclude that impacts to traffic and transportation associated with installation of the underground recycled water pipeline at the intersection of South Murray Canyon Drive and Kings Road East will be insignificant.~~

~~The construction of the recycled water pipeline under the road will require trenching and could potentially require alternating partial closure of the traveled way while trenching work is conducted on the other half of the roadway. The record reflects that one lane of South Murray Canyon Drive could be kept open to traffic in both directions at all times due to the ample width of the road. Depending on roadway median conditions, construction work on the south half of the roadway could potentially shift at least one lane of eastbound traffic to the north and vice versa to avoid total directional roadway closure. A detour will be available to potentially affected residences. Construction of the portion of the pipeline crossing South Murray Canyon Drive is expected to be completed in one day. The entire recycled water pipeline is expected to be completed within one month. (Ex. 200, pp. 4.10-10 to 4.10-11.)~~

Any disruption of access to residences along South Murray Canyon Drive during pipeline construction will be mitigated by means of an alternative route using Kings Road West (Exhibit 70, p. 13). The Applicant will provide traffic control signage for the alternative route in accordance with applicable state and local regulations.

To further ensure that access impacts are reduced to less than significant levels, we are making the following additions (indicated in **bold text**) to Condition of Certification **TRANS-3**:

The traffic control and implementation plan shall include and describe the following minimum requirements:

- Ensure access to adjacent residential and commercial property during the construction of all linears, including but not limited to ensuring residential and commercial access during the construction of the underground recycled water pipeline by implementing the following measures: (1) during construction affecting South Murray Canyon Drive, route affected residential or commercial traffic to an alternative access route via the intersection of Kings Road West or other more efficient alternative route; (2) use signage and traffic controls required by applicable regulations; and (3) provide load rated steel plates to cover open trenches fronting driveways, as necessary;
- Ensure homeowners and property owners will be notified in advance of construction affecting South Murray Canyon Drive and ensure the construction contractor will be required to prioritize work affecting South Murray Canyon Drive to minimize potential inconveniences to residences and businesses; and

~~The record does not disclose any significant impacts arising from the construction of the linear ancillary facilities and we acknowledge the temporary nature of the construction phase of the CPV Sentinel project. In addition, the project owner is required to obtain an encroachment permit from the Riverside County Department of Public Works and the city of Palm Springs Department of Public Works for work to be performed within the county and city public right-of-way. The encroachment permit will ensure that proper traffic control measures are implemented during installation of the recycled water pipeline. Once we get clarification on the extent of the disruption associated with installation of the underground recycled water pipeline at the intersection of South Murray Canyon Drive and Kings Road East, we will be able to determine whether the~~

~~construction of the linear facilities will have no significant impact on traffic and transportation.~~ Thus, there is ample evidence in the record to support a finding that construction of the recycled water pipeline under South Murray Canyon Drive will not result in a significant traffic impact or disruption to residences (Exhibit 70, p. 13; Exhibit 117, p. 2).

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The City of Desert Hot Springs website states that they have approved 13 residential developments within its jurisdiction. At build out these projects would include 12,000 new homes. In addition, approved commercial developments include the Oasis Development, a project estimated to serve upwards to 60,000 people shopping for everything from groceries to home appliances. The Pierson Professional Center which includes community medical and professional office space, and building area for a restaurant and coffee house, and the Village at Mission Lakes development which would offer 68,000 square feet of rentable space for restaurants, markets, and office space.

Indian Avenue is a major north-south roadway system that connects the cities of Desert Hot Springs and Palms Springs. A 1.5-mile segment of Indian Avenue from I-10 to Dillon Road will be used for project related activity. Two intersections may be affected by the identified developments. They are the Indian Avenue/Dillon Road and Indian Avenue/20th Street intersections which currently operate at LOS D or worse. The evidence shows that the above identified developments would further contribute to a degrading of existing intersection operations. Without mitigation, Mmotorists will experience increased intersection delay, which would be a ~~The record indicates that this is a cumulatively considerable and significant impact that may not be reduced to a less than significant level without extensive road work and traffic signalization. As discussed above, additional requirements have been added to Condition of Certification~~ **TRANS-3** ~~to mandate manual traffic control intervention at the affected intersections during peak construction periods. These additional requirements will ensure the effectiveness of the proposed mitigation in reducing any project related contribution to cumulative construction impacts associated with traffic at the affected intersections. Staff cites Condition of Certification~~ **TRANS-3** ~~as mitigation to reduce this impact, however, the condition merely requires the project owner to prepare a traffic control and implementation plan without specifying how the preparation of such a plan will supply the "extensive road work and traffic signalization" which staff testified is needed to mitigate the cumulative impacts of the project to insignificance. Although we acknowledge that~~ Even without mitigation, the project's contribution to this cumulative traffic impact will diminish to a less than significant level after completion of project construction, ~~we require the parties to identify exactly what mitigation will reduce the project's contribution to the cumulative traffic impacts to insignificance by specifying the performance standard. (Ex. 200, p. 4.10-17.)~~

~~We seek clarification of Staff's testimony wherein they assert "[e]ven though low income and minority populations exist in the immediate project area, staff has not identified any significant unmitigated adverse traffic and transportation impacts with the project or cumulative impacts; therefore, no significant adverse impacts to minority or low income populations are expected to occur." (Ex. 200, p. 4.10-17.) Two sentences earlier, staff testified that "the project's construction peak workforce will introduce a significant impact to the identified intersections during the peak construction period for the project." In the sentence before that, staff proposes Condition of Certification **TRANS-3** but qualifies, "this cumulatively considerable and significant impact may not be reduced to a less than significant level without extensive road work and traffic signalization." These inconsistencies must be resolved before the Committee could recommend certification of the project.~~

The project's temporary construction traffic impacts and operational impacts are fully evaluated by the analysis provided in the AFC (Exhibit 16, Application for Certification, Section 7.10, Traffic and Transportation, pp. 7.10-7 through 7.10-12, TRA-1 and TRA-2), the FSA (Exhibit 200, pp. 4.10-7 through 4.10-12, TRANS-1 through TRANS-4), and in expert testimony (Exhibit 117, Declaration of N. Casil regarding Traffic and Transportation, dated October 16, 2008). With implementation of Conditions of Certification **TRANS-1** through **TRANS-6**, including the additions that have been made to Staff's proposals in the FSA that are discussed above, the project will not result in any significant project related impacts or cause a cumulatively considerable contribution to a cumulative traffic-related significant impact. (Exhibit 16, p. 7.10-14; Exhibit 200, p. 4.10-16 through 4.10-17.) Project construction traffic will not significantly impact any low income or minority populations. (Exhibit 1, Application for Certification, Section 7.10, Introduction and Project Description, p. 1-7; Exhibit 200, p. 4.10-17.)

**STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:) Docket No. 07-AFC-3
)
Application for Certification,) **PROOF OF SERVICE**
for the CPV SENTINEL ENERGY PROJECT)
) (July 1, 2010]
)
_____)

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CPV SENTINEL ENERGY PROJECT
CEC Docket No. 07-AFC-3

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CPV SENTINEL ENERGY PROJECT
CEC Docket No. 07-AFC-3

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CPV SENTINEL ENERGY PROJECT
CEC Docket No. 07-AFC-3

DECLARATION OF SERVICE

I, Paul Kihm, declare that on November 4, 2010, I served and filed copies of the attached:

Applicant's Supplemental Comments on the Presiding Member's Proposed Decision

to all parties identified on the Proof of Service List above in the following manner:

California Energy Commission Docket Unit

- Transmission by depositing one original paper copy with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:

CALIFORNIA ENERGY COMMISSION

Attn: DOCKET NO. 07-AFC-3

1516 Ninth Street, MS-4

Sacramento, California 95814-5512


docket@energy.state.ca.us

For Service to All Other Parties

- Transmission via electronic mail to all email addresses on the Proof of Service list; and
- by depositing one paper copy with the United States Postal Service via first-class mail at Costa Mesa, California, with postage fees thereon fully prepaid and addressed as provided on the Proof of Service list to all parties.

I further declare that transmission via U.S. Mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 4, 2010, at Costa Mesa, California.



Paul Kihm