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December 30, 2008

File No. 039610-0003

VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-9
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

DOCKET	
08-AFC-9	
DATE	DEC 30 2008
RECD.	DEC 30 2008

Re: City of Palmdale Hybrid Power Plant Project: Docket No. 08-AFC-9

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find a copy of Applicant's Extension Requests and Objections to Certain Data Requests from the California Energy Commission staff re Data Requests Set 1 (#s 1-88).

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the attached electronic proof of service list.

Very truly yours,



Paul E. Kihm
Senior Paralegal

Enclosure

cc: 08-AFC-9 Proof of Service List (w/encl. via e-mail)
Michael J. Carroll, Esq. (w/encl.)

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 08-AFC-9
)	
APPLICATION FOR CERTIFICATION,)	EXTENSION REQUESTS AND
FOR THE PALMDALE HYBRID POWER)	OBJECTIONS TO CERTAIN DATA
PLANT BY THE CITY OF PALMDALE)	REQUESTS FROM THE CALIFORNIA
)	ENERGY COMMISSION STAFF DATA
)	REQUESTS SET 1 (#s 1-88)

Pursuant to Title 20, California Code of Regulations, Section 1716(f), the City of Palmdale (“Applicant”) hereby requests time extensions to respond to certain data requests from the California Energy Commission (CEC) Staff Data Requests Set 1 (#s 1-88), received on December 10, 2008, for the Palmdale Hybrid Power Plant Project (08-AFC-9) (the “Project”). The Applicant also respectfully objects to certain data requests, as specified below.

I. EXTENSION REQUESTS

The Applicant hereby makes the following extension requests:

A. Data Requests 1 and 17 (Biological Resources)

As Staff noted in its cover letter for the Data Requests Set 1, seasonal limitations impede the Applicant’s ability to respond to these Biological Resources Data Requests until necessary biological surveys are completed in the spring or summer of 2009. Accordingly, the Applicant will complete and submit its responses to these Biological Resources Data Requests once the aforementioned surveys are completed.

B. Data Request 3 (Biological Resources)

Information related to Applicant’s approach for development of the Project Desert Vegetation Preservation Plan will be provided in its responses on January 12, 2009. However, development of the actual plan, which will include an inventory of the specific species, will take several months to complete and is expected to be submitted in April 2009.

C. Data Requests 4 through 7 (Biological Resources)

The Applicant’s responses to these Biological Resources Data Requests depend, in part, on determining the specific location and design of Project-related transmission infrastructure (e.g., the exact location of the towers, spur roads, and pull sites) that cannot be established until Southern California Edison (SCE) provides the Applicant with certain transmission-related information. For more than 18 months, the Applicant has taken all reasonable steps and used its best efforts to obtain this information from SCE.

Much of the requested information will be contained in the Facility Study which the Applicant has already commissioned and expects to receive in January 2009. The Applicant has also submitted information requests to SCE for other data outside the scope of the Facility Study, the delivery of which is also expected in early 2009. Once SCE provides the necessary information, the Applicant anticipates it can complete its responses to these Biological Resources Data Requests within 30 days.

D. Data Request 10 (Biological Resources)

Information related to Applicant's approach for development of the Raven Control Plan will be provided in its responses provided on January 12. However, development of the actual plan will require coordination with the U.S. Fish and Wildlife Service and the California Department of Fish and Game. A proposed plan is expected to be submitted in early 2009.

E. Data Requests 20 and 21 (Cultural Resources)

Similar to the discussion above for Biological Resources, the Applicant's responses to these Cultural Resources Data Requests depend, in part, on the specific location and design of Project-related transmission infrastructure (e.g., the exact location of the towers, spur roads, and pull sites) that cannot be established until SCE provides certain data. Once SCE provides this information, the Applicant anticipates it can complete its responses to these Cultural Resources Data Requests within 30 days.

F. Data Requests 31, 39 through 49 (Land Use)

Although some of these data requests (e.g., 31, 43, 48, 49) are not as sensitive to the exact location of the towers, spur roads, and pull sites that cannot be established until SCE provides certain information, it is possible that the transmission line route may need to be adjusted once the SCE information is provided. Therefore, similar to the discussions above for Biological and Cultural Resources, the Applicant's responses to these Land Use Data Requests will be delayed until the SCE information is received. Once SCE provides this information, the Applicant anticipates it can complete its responses to these Land Use Data Requests within 30 days.

G. Data Requests 73 through 76, 78 and 79 (Transmission System Engineering)

The Applicant's responses to these Transmission System Engineering Data Requests depend on information that must be provided by SCE regarding the Facility Study and other necessary transmission-related information. Once SCE provides this information, the Applicant anticipates it can complete its responses to these Transmission System Engineering Data Requests within 30 days.

H. Data Requests 86 and 87 (Waste Management)

Due to the holidays, Applicant's consultants do not expect to be able to complete the Phase I Environmental Site Assessments (ESAs) of the non-transmission line linear routes in time to be provided with the responses to be submitted on the 12th of January. The Phase I ESAs

for these routes are expected to be provided by January 28, 2009. Please see objection below related to completing a Phase I ESA for the transmission line route.

II. OBJECTIONS

The Applicant hereby makes the following objections:

A. Data Requests 22 through 25 (Cultural Resources)

For Data Requests 22 through 25, Staff requests detailed geospatial information to help “assess the potential presence and locations of buried archaeological sites in the proposed project area and to gauge whether the construction and operation of the proposed project could impact them.” (Data Requests Set 1 (#s 1-88), p. 10.) Staff focuses on the possibility that Project construction activities could adversely impact undiscovered “buried archaeological sites” that potentially are located within construction areas. (*Id.* at p. 9.) The overall purpose of the requested information is “to either reduce the amount of archaeological monitoring that staff recommends in the conditions of certification for the project or focus the recommended monitoring more efficiently and cost effectively than would otherwise be possible.” (*Id.* at p. 10.)

To complete these Data Requests, Staff offers the Applicant two options: either a review of applicable literature if the literature is extensive enough to provide the requested information (Data Request 22) or a comprehensive study and analysis by a qualified geospatialist to generate the requested information (Data Requests 23-25).

The Applicant previously completed an extensive cultural resources analysis that considered in detail (among other issues) the possibility that the Project could adversely impact significant but undiscovered archeological resources within Project construction areas. (*See*, Section 5.4 of the Project’s Application for Certification (AFC) and Appendix I thereto.) All cultural resources investigations for the Project – which included multiple information searches and detailed field surveys – were carried out under the supervision of Dr. Allen Estes of William Self Associates (WSA), a cultural resources specialist.

For the information searches, the staff at the South Central Coastal Information Center, California State University, Fullerton (SCCIC) conducted a record search of the Project vicinity, which included a review of all recorded archaeological sites within a one-mile radius of the plant site and laydown area, and a ¼-mile radius of all linear facilities. In addition, the California Points of Historical Interest, the California Historical Landmarks, the California Register of Historical Resources, the National Register of Historic Places, and the California State Historic Resources Inventory listings were reviewed. Historic maps were also consulted, and applicable public agencies and historical societies were solicited for information. (*See* AFC, pp. 5.4-20 – 5.4.22).

In addition to the literature search, extensive field surveys were performed. The field analysis included intensive pedestrian surveys for archaeological resources on the proposed plant site and laydown area, reclaimed water supply pipeline route, natural gas supply pipeline route, sanitary wastewater pipeline route, and electrical transmission line route, as well as the surrounding buffer zones for each Project component. The survey areas were walked at 20 meter

intervals. A “windshield” survey was conducted for potential historic structures surrounding the Project components. (See AFC, p. 5.4.22).

The AFC did not identify any archaeological resources that would be significantly impacted by Project construction or operations. The AFC acknowledges that “[g]round disturbance from construction has the potential to directly impact archaeological resources at the plant site and along linear routes that remain unidentified at this time. (See AFC, p. 5.4.34 [emphasis added].) Further, the Project “may produce indirect impacts to cultural resources that are not directly related to project construction or co-existence...[such as] increased erosion from vegetation clearing, damage or vandalism to archaeological sites due to increased accessibility.” (*Id.*) However, the AFC proposed a series of well-established, proven, and feasible mitigation measures that would reduce potential impacts to cultural resources to less than significant levels under the California Environmental Quality Act (“CEQA”) and the CEC’s CEQA-equivalent certification process pursuant to the Warren-Alquist Act. (See AFC pp. 5.4.36 – 5.4.38.)

The Applicant believes the AFC’s proposed mitigation measures represent the most efficient, cost-effective way to ensure the Project’s construction activities would not significantly impact undiscovered archaeological resources. The proposed mitigation measures meet or exceed the industry standard approach, are feasible under CEQA, and have been widely applied in similar form to other construction projects within the Antelope Valley area to reduce cultural resources impacts to less than significant levels under CEQA. The mitigation measures also are substantially similar to Conditions of Certification that have been applied by the CEC to mitigate similar potential impacts for other power plant projects.

In sum, this issue has been properly studied and addressed. There is no evidence to suggest that the Project will have a significant impact to cultural resources under CEQA. The Applicant would bear substantial costs and risks of delay to provide the information described in Data Requests 22 through 25. The marginal benefit of the additional information would not warrant the additional costs and delays because the potential impact (i.e., the potential risks to undiscovered, buried archeological resources) can be mitigated to less-than-significant levels under CEQA following well established, feasible mitigation protocols proposed by the Applicant in the AFC. Nothing unique about the Project would heighten the level of risk to the resources in this case.

Based on the foregoing, the Applicant respectfully objects to Data Requests 22 through 25 from Data Requests Set 1 (#s 1-88).

B. Data Requests 86 and 87 (Waste Management)

Data Request 86 requests, in pertinent part, that the Applicant: “provide a Phase I ESA for the 8.7-mile natural gas pipeline, 7.4-mile reclaimed water pipeline, 1.0-mile potable water pipeline, 1.0-mile sewer connection, and 35.6-mile 230 kV transmission line interconnection route.” Additionally, Data Request 87 requests that the Phase I ESA includes identification of the crops grown and historical use of pesticides along the routes. (Data Request Set 1, pp. 30-31.) Subject to the extension request discussed above, the Applicant will provide a Phase I ESA for the natural gas pipeline, reclaimed water pipeline, potable water pipeline, and sewer connection.

The Applicant respectfully objects to providing a Phase I ESA for the nearly 36-mile transmission line route. The transmission route primarily traverses through remote or undeveloped areas that have little to no potential for hazardous waste contamination. Furthermore, the area of disturbance along the route is limited because the transmission towers are spaced approximately 700 to 800 feet apart. Where the transmission line passes near areas which are or were in agricultural production, it is expected that the poles will be placed in the roadway right of way, where agriculture production (or pesticide mixing) should not have occurred. As a result, there is a very low likelihood that such a Phase I ESA would provide new information about a potentially significant exposure impact due to the disturbance of contaminated soils along the route during construction of the transmission line. For these reasons, the Applicant believes the considerable expense to prepare such a Phase I ESA for the approximately 36-mile transmission line route is not warranted.

Subject to the foregoing, Applicant will provide the requested information in the Data Requests Set 1 on January 12, 2008. If you have any questions or concerns about this letter, please do not hesitate to contact me.

DATED: December 30, 2008

Respectfully submitted,

/S/ MARC T. CAMPOPIANO

Marc T. Campopiano
of LATHAM & WATKINS LLP
Counsel to Applicant

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

In the Matter of:) Docket No. 08-AFC-9
)
Application for Certification,) **ELECTRONIC PROOF OF SERVICE**
for the CITY OF PALMDALE HYBRID) **LIST**
POWER PLANT PROJECT)
) (Revised August 4, 2008]
)
_____)

Transmission via electronic mail and by depositing one original signed document with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION

Attn: DOCKET NO. 08-AFC-9
1516 Ninth Street, MS-15
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docket@energy.state.ca.us

Transmission via electronic mail addressed to the following:

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PALMDALE HYBRID POWER PROJECT
CEC Docket No. 08-AFC-09

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PALMDALE HYBRID POWER PROJECT
CEC Docket No. 08-AFC-09

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on December 30, 2008, I deposited a copy of the attached:

**EXTENSION REQUESTS AND OBJECTIONS TO CERTAIN DATA REQUESTS
FROM THE CALIFORNIA ENERGY COMMISSION STAFF DATA REQUESTS SET 1
(#s 1-88)**

with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the California Energy Commission. I further declare that transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service List above.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 30, 2008, at Costa Mesa, California.



Paul Kihm