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| DOCKET | |
| 08-AFC-9 | |
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STATE OF CALIFORNIA
 ENERGY RESOURCES
 CONSERVATION AND DEVELOPMENT COMMISSION

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| In the Matter of: |) | Docket No. 08-AFC-9 |
| |) | |
| APPLICATION FOR CERTIFICATION, FOR THE PALMDALE HYBRID POWER PROJECT BY THE CITY OF PALMDALE |) | APPLICANT’S STATUS REPORT No. 5 |
| |) | |
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On behalf of the City of Palmdale (“Applicant”) and pursuant to the Revised Committee Schedule issued on July 23, 2009, we hereby submit this Status Report No. 5. This submittal constitutes Applicant’s response to Staff’s Status Report No. 5.

I. Scheduling Status – Committee Conference Set PSA Completion Data and Precluded Delaying the PSA Based on New Data Requests

Applicant requested the Committee Conference on July 9, 2009 because of concerns that the PSA had fallen substantially behind schedule. The entire purpose of the Committee Conference was to establish, with certainty, the remaining information Staff needed to complete the PSA. To this end, Staff identified several discrete items of information at the Committee Conference and the Committee subsequently issued a Revised Committee Schedule that required the PSA to be completed “6 – 8 weeks after all necessary information *mentioned at the July 9, 2009 Committee Conference* is received by Staff.” (Emphasis added.)

The Revised Committee Schedule is unambiguous on three points. First, only information mentioned by Staff at the Committee Conference can justify a delay of the PSA. Second, the information must be necessary. This is a very important point because it provides a sound rule of reason. The Committee precludes further delays of the PSA unless outstanding information is critical to the PSA’s issuance. Thus, minor informational gaps or outstanding issues that are almost inevitable in any data exchange should not delay the PSA. Moreover, the PSA should not be delayed merely because there is a dispute over whether a response fully

addresses a request. Again, unless outstanding information is absolutely necessary, the PSA should not be delayed. Applicant fully understands that this could result in some data gaps in the PSA that will have to be resolved in the FSA. Lastly, the Committee made it clear that the 6-8 week completion date is triggered by Applicant's submittal of the data responses (i.e., "received by Staff"), and not by some separate determination of adequacy.

Although a follow-up telephonic workshop was held on July 28, 2009, the purpose of the workshop was only to address details associated with the original data requests raised at the Committee Conference. The telephonic workshop was not an opportunity for Staff to request new data not previously identified at the Committee Conference.

Applicant promptly provided initial responses to the Committee Conference data requests on July 23, 2009. Applicant filed another submittal dated July 31, 2009 following the telephonic workshop. See Appendix A, below, for a complete summary of when Staff's data requests were originally made and when Applicant responded. As shown, Applicant fully responded to the data requests raised during the Committee Conference by July 31, 2009. As discussed below in more detail, Applicant provided additional data responses after an August 20, 2009 conference call with Staff, but these data requests were not tied to the Committee Conference and Applicant was assured they would not delay the PSA.

Because there appears to be some confusion over what information was mentioned at the Committee Conference, we performed a detailed review of the transcripts thereto. The only information mentioned related to: (1) Air Quality; (2) Biological Resources; (3) Soils and Water Resources; and (4) Transmission System Engineering. Thus, information related to any other issue area cannot delay the PSA. Further, Staff informed Applicant at the July 28 telephonic workshop that Applicant's Air Quality responses on July 23, 2009 were adequate and no additional information was needed. Staff provided similar assurances on the August 20 call that Applicant's July 31, 2009 responses for Transmission System Engineering were adequate and no additional information was needed. Thus, the only potentially outstanding issues relate to Biological Resources and Soils and Water Resources.

For Soils and Water Resources, Applicant provided responses on July 23 and July 31, 2009. At the July 28 telephonic workshop, Staff only identified a conceptual site layout plan as outstanding, and this map was provided on July 31, 2009. Thus, no outstanding issues remain for Soils and Water Resources to delay the PSA.

For Biological Resources, Applicant also provided responses on July 23 and July 31, 2009. Applicant learned on the August 20 call that the Department of Fish and Game (DFG) staff requested additional information concerning the mitigation map submitted on July 23, 2009. Although this issue was not specifically raised at the Committee Conference, Applicant provided the revised map on August 20, 2009. It is Applicant's understanding that the original map provided adequate information to begin preparing the PSA and that the revisions to the map were not so extensive that they warrant delaying the entire PSA. Thus, no outstanding issues remain for Biological Resources to delay the PSA.

For these reasons, Applicant respectfully believes that the 6-8 week PSA schedule was triggered on July 31, 2009, making the due date for PSA publication September 11, 2009, or at the latest, September 25, 2009.

II. Staff's Status Report Does Not Comport with Applicant's Understanding of Recent Events or the PSA Schedule

A significant discrepancy between Staff's Status Report and Applicant's understanding involves the August 20, 2009 conference call. This call was not a second "workshop" as suggested by Staff's Status Report. This call was not identified as necessary during the Committee Conference, did not involve public notice, and was not intended in any way to allow new data requests that could delay the PSA. Applicant's counsel participated on the call in an effort to help Staff better understand information previously submitted by Applicant, and Staff's counsel provided assurances that none of the data requests made during the August 20 call would delay the PSA. In a good faith effort to assist Staff, Applicant agreed to provide responses to the new data requests with the understanding that the PSA would not be delayed.

Staff's Status Report suggests that Staff will review Applicant's submittal related to the August 20 call to "determine whether the information is adequate to proceed with the completion of the PSA." This suggestion is inconsistent with the Revised Committee Schedule, which precludes delaying the PSA based on new information not raised at the Committee Conference. It is also inconsistent with the assurances Applicant's counsel received on the August 20 call that the new data requests would not delay the PSA. Staff's Status Report could also be read to suggest that Staff may continue to request new data until "staff determines adequate information has been received" – apparently delaying the PSA until Staff makes such a determination. Again, this suggestion is consistent with the Revised Committee Schedule.

The following represents Applicant response to Staff's Status Report list of "outstanding issues" by subject area:

- *Biological Resources* – As mentioned above, a map demonstrating the potential mitigation areas was submitted confidentially on July 23, 2009. Applicant believed this map was sufficient; however, on the August 20 call, DFG staff requested additional details associated with the map. To assist DFG's review, Applicant provided the map on August 20. It is Applicant's understanding that the original map provided adequate information to begin preparing the PSA and that the revisions to the map were not so extensive that they warrant delaying the entire PSA.
- *Land Use* – The Status Report references a new data request made via email following the August 20 call. Applicant agreed to locate and provide copies of several final land use approvals associated with the project site. The information was filed on August 27, 2009. Based on a review of the Committee Conference transcripts, this information was not requested at the Committee Conference and thus would not delay the PSA. In any instance, Applicant would not expect that Staff's receipt of these final copies of known land use approvals would delay the PSA.

- Water Resources* – At the Committee Conference, Water Resources Staff requested a conceptual site layout showing the drainage facilities associated with the berm along East Avenue M, which was originally described in the revised Project Description in Applicant’s March 2, 2009 submittal. The site layout was provided on July 31, 2009. Subsequently, Water Resources Staff made several new data requests during the August 20 call related to the berm construction, transmission line area, and use of water for hydrostatic testing. Applicant agreed to respond to the new data requests with the understanding that they would not delay the PSA. The information was filed on August 27, 2009. Based on a review of the Committee Conference transcripts, this information was not requested at the Committee Conference and thus would not delay the PSA. Staff’s Status Report also mentions the receipt of the project will-serve letters on August 12, 2009. Applicant provided substantial information about the reliability of the project’s water supply on July 31, 2009 and previously, and Applicant filed the will-serve letters as soon as they were received. It is Applicant’s understanding that its July 23, 2009 was adequate to begin preparing the PSA and that the revised will-serve letters do not warrant a delay of the entire PSA because Staff will have time to include them in its analysis.
- Transmission System Engineering* – During the August 20 call, Staff agreed that its questions had been addressed by the July 31, 2009 submittal. Thus, this issue will not delay the PSA.
- Visual Resources* – Subsequent to the Committee Conference, Staff requested new information related to a new KOP. Based on a review of the Committee Conference transcripts, this information was not requested at the Committee Conference. Staff acknowledged that Applicant had followed Staff’s direction in originally selecting the KOPs. Applicant agreed to provide this information after the July 28, 2009 workshop because Staff provided assurances that the new information would not delay the PSA.
- Worker Safety and Fire Protection* – Based on a review of the Committee Conference transcripts, information related to worker safety and fire protection was not identified at the Committee Conference and thus would not cause a delay in the PSA.
- EPA Comment Letter on PDOC* – Applicant filed a complete response to the EPA comment letter on the PDOC in a submittal dated August 18, 2009. Applicant addressed the comments raised by the EPA, including comments related to EPA’s misunderstanding over examples of past ERC transfers between the SJVAPCD and AVAQMD and the SJVAPCD’s ERC adjustment requirements.

III. Next Steps – Resolving PSA Completion Date

Applicant respectfully believes that the 6-8 week PSA schedule was triggered on July 31, 2009, making the due date for PSA publication September 25, 2009, at the latest. Applicant hopes that Staff concludes this is a reasonable completion date for the reasons described above. If Staff does not believe this is accurate, Applicant hopes that Staff can identify another completion date that Applicant finds acceptable. Otherwise, Applicant will be forced to request another Committee Conference to address the project's persistent scheduling delays.

DATED: September 2, 2009

Respectfully submitted,

/s/ Marc Campopiano

Marc T. Campopiano
LATHAM & WATKINS LLP
Counsel to Applicant

Appendix A

Table 1 summarizes the information requested by Staff at the Committee Conference. As shown, Applicant responded to all the data requests on July 23, 2009. During the July 28, 2009 telephonic workshop, Staff provided additional clarity about the original data requests made at the Committee Conference. To address these additional aspects of the original data requests, Applicant filed an additional submittal on July 31, 2009, as summarized by Table 2. Table 3 represents new data requests that were not raised during the Committee Conference and thus do not impact the completion date of the PSA.

Table 1: Data Requests Made at July 9, 2009 Committee Conference

| Resource Area | Data Requested | Response Date | Comments |
|----------------------------------|--|---------------|--|
| Air Quality | Demonstration of agency acceptability of PM10 ERCs | 7/23/09 | |
| | Evidence of discussion with SJVAPCD ERC holders | 7/23/09 | |
| | Demonstration of sufficient traffic volume for ERCs | 7/23/09 | |
| Biology | Location of potential mitigation lands | 7/23/09 | Map submitted confidentially. Revised map submitted with additional data on 8/20/09. It is Applicant's understanding that the original map provided adequate information to begin preparing the PSA and that the revisions to the map were not so extensive that they warrant delaying the entire PSA. |
| | Streambed Alteration Agreement Notification Form | 7/23/09 | Form initially emailed on 7/17/09, with revised form sent on 7/23/09. |
| Trans-mission System Eng. | Facility Study Agreement | 7/23/09 | Pages were inadvertently missing from the submittal, so it was resubmitted on 7/31/09. |
| | Drawings of transmission line crossings | 7/23/09 | |
| | Evidence that LADWP is aware of the project | 7/23/09 | |
| Water | Will-Serve Letter that matches the PHPP water needs | 7/23/09 | Additional background information demonstrating sufficient water availability provided on 7/17/09. Revised will-serve letters docketed on 8/11/09, as soon as such letters were received by Applicant. It is Applicant's understanding that its July 23, 2009 was adequate to begin preparing the PSA and that the revised will-serve letters do not warrant a delay of the entire PSA because Staff will have time to include them in its analysis. |
| | Documentation and schedule for reclaimed water infrastructure construction | 7/23/09 | |
| | Information describing nature of | 7/23/09 | |

| Resource Area | Data Requested | Response Date | Comments |
|---------------|---|---------------|---|
| | “shared funding agreement” | | |
| | Documentation showing current commitments for the reclaimed water | 7/23/09 | Copy of water agency agreement provided |
| | Information showing current LWRP reclaimed water production | 7/23/09 | |

Table 2: Clarifications to Original Committee Conference Data Requests Made During the July 28, 2009 Telephonic Workshop

| Resource Area | Data Requested | Applicant's Response Date | Comments |
|---------------------------------|---|---------------------------|---|
| Visual | Conceptual site layout showing berm dimensions | 7/31/09 | |
| | Revised KOP-1 and KOP-3 (optional request). | in progress | Potential photos provided on 8/3/09; revised photos provided on 8/11/09; simulations will be provided in early Sept. This data request was not made at the Committee Conference. Staff assured Applicant it would not delay the PSA. |
| Biology | General description of the types of crossing techniques to be used | 7/31/09 | |
| | Table showing the type of crossing at each of the washes or other waters shown in PHPP's Preliminary Jurisdictional Waters Report | 7/31/09 | |
| Transmission System Eng. | Complete copy of the Facility Study Agreement | 7/31/09 | See Table 1 above, pages were missing from the initial submittal |
| | Scope of the reconductoring | 7/31/09 | |
| | Confirmation of sufficient clearance at transmission line crossings | 7/31/09 | |
| | Additional outreach efforts with LADWP to obtain concurrence with PHPP transmission plans | 7/31/09 | |
| Water | Conceptual site layout showing berm dimensions and drainage facilities | 7/31/09 | |

Table 3: Recent Data Requests Not Mentioned During Committee Conference

| Resource Area | Data Requested | Applicant's Response Date | Comments |
|---------------------------------|---|----------------------------------|--|
| Soil and Water Resources | Confirmation that the berms were accounted for in the drainage and other analyses | 8/27/09 | Applicant was assured during August 20, 2009 call that these new data requests related to Soils and Water Resources would not delay the PSA. These issues were not raised during the Committee Conference. |
| | Verification of transmission line acreage | 8/27/09 | |
| | Information on amount of hydrostatic testing water | 8/27/09 | |
| Land Use | Copies of City Council Resolutions and revised Parcel Map | 8/27/09 | No land use information was mentioned at the Committee Conference. |

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September 2, 2009

File No. 039610-0003

VIA FEDEX

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

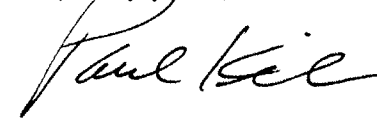
Re: City of Palmdale Hybrid Power Plant Project: Docket No. 08-AFC-9

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, Sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Status Report No. 5 for the above-referenced Project.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the attached 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 and U.S. 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, |) | PROOF OF SERVICE |
| for the CITY OF PALMDALE HYBRID |) | |
| POWER PLANT PROJECT |) | (Revised July 30, 2009) |
| |) | |
| _____ |) | |

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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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CEC Docket No. 08-AFC-09

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on September 2, 2009, I served and filed copies of the attached:

APPLICANT'S STATUS REPORT NO. 5

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

California Energy Commission Docket Unit (with Confidential Submittal and copies via FedEx only)

- Transmission via electronic mail and by depositing an original and five paper copies with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:

CALIFORNIA ENERGY COMMISSION

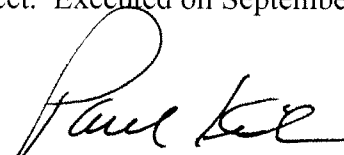
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1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.state.ca.us

For Service to All Other Parties (without Confidential Submittal)

- 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 those addresses **NOT** marked "email preferred."

I further declare that transmission via electronic mail and 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 September 2, 2009, at Costa Mesa, California.



Paul Kihm