

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

June 16, 2010

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08-AFC-9	
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Mr. Alan J. De Salvio
Supervising Air Quality Engineer
Antelope Valley Air Quality Management District
43301 Division St., Suite 206
Lancaster, California 93535-4649

**Re: Comments on Final Determination of Compliance (FDOC)
Palmdale Hybrid Power Project (08-AFC-9)**

Dear Mr. De Salvio,

Energy Commission staff has reviewed the Antelope Valley Air Quality Management District (AVAQMD, or District) draft FDOC and has the following comments for your consideration for inclusion in a revised Final Determination of Compliance (FDOC). Currently, the draft FDOC does not meet the Energy Commission's requirements to identify and evaluate emission reduction credits (ERCs). We also believe that the FDOC does not meet the District's requirements under Rule 1305 and would not meet United States Environmental Protection Agency (U.S. EPA) requirements that ERCs are real, enforceable, surplus, permanent and quantifiable.

Comments on FDOC

Emission Reduction Credits

In our comments on the Preliminary Determination of Compliance (PDOC) the Energy Commission requested the District to include additional information in the FDOC to demonstrate whether or not the project would comply with AVAQMD Rules and Regulations pertaining to emission offset requirements. The applicant is proposing to obtain emission offsets from a variety of sources and emission control measures that were not clearly defined in the PDOC, and these offsets continue to remain undefined in the draft FDOC. We believe that this approach does not meet emissions offset requirements.

The Mojave Desert Air Basin (MDAB) in the area of the project site is classified as nonattainment for the state ozone and particulate matter less than 10 microns (PM10) standards and federal ozone standard. Without proper emission reduction mitigation, this project could contribute to existing violations of state and federal ambient air quality standards. As currently written, the FDOC only presents a "menu" of potential sources of ERCs. Identification of broad categories of ERCs does not meet the requirement to fully evaluate the validity and effectiveness of ERC mitigation. Specific issues are discussed below.

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Ozone Precursor (Oxides of Nitrogen [NOx] and Volatile Organic Carbon [VOC]) ERCs from Outside the Mojave Desert Air Basin (MDAB)

The FDOC provides a broad overview of potential Oxides of Nitrogen (NOx) and Volatile Organic Carbon (VOC) ozone precursor offsets from a variety of sources. These offsets currently include inter-basin ERCs from the San Joaquin Valley Air Pollution Control District (SJVAPCD), inter-pollutant ERCs from the Mojave Desert Air Quality Management District (MDAQMD) and ERCs from the TXI Riverside Cement upgrade project in the MDAQMD portion of the Mojave Desert Air Basin (MDAB).

Obtaining ERCs from the San Joaquin Valley Air Basin (SJVAB) would place additional requirements on the AVAQMD for ERC approval that would not be necessary for ERCs obtained within the AVAQMD. Specifically, AVAQMD Rule 1305 requires that ERCs obtained from another air district comply with the requirements of Health & Safety Code §40709.6; ERCs from SJVAPCD would meet the requirements of §40709.6 in terms of ERC/source upwind and downwind designations, as required in §40709.6(a). However, §40709.6(c) and (d) require both AVAQMD and SJVAPCD boards to approve this transfer of ERCs. The draft FDOC does not provide any information on how ERCs obtained from the SJVAPCD will meet the requirements of §40709.6 (and thus Rule 1305), and whether or not the SJVAPCD is amenable to providing ERCs for the PHPP.

In addition, the draft FDOC does not contain any information as to whether SJVAPCD ERCs would effectively mitigate PHPP emissions. As shown below, emissions in the SJVAB have differing degrees of impact on adjacent and downwind air basins.

Transport Coupling	Transport Characterization
San Joaquin Valley to Broader Sacramento Area	S, I
San Joaquin Valley to Great Basin Valleys	O
San Joaquin Valley to Mountain Counties	O
San Joaquin Valley to Mojave Desert	O
San Joaquin Valley to North Central Coast	S
San Joaquin Valley to South Central Coast	S, I
O = Overwhelming, S = Significant, I = Inconsequential	
Reference: California Air Resources Board, 2001. Assessment of the Impacts of Transported Pollutants on Ozone Concentrations in California. March, 2001.	

It is likely that ERCs obtained from the northern two thirds of the SJVAB would not be effective in mitigating PHPP emissions unless an offset ratio substantially larger than the ratio of 1.3:1 identified in the draft FDOC is utilized. The draft FDOC does not contain any information about these potential ERCs other than that “a Confidential Term Sheet for Proposed Contingent Forward Purchase and Sale of San Joaquin Emission Reduction Credits with a seller of such ERCs in quantities sufficient to meet the needs

of PHPP” has been conducted. Thus, it is not possible to know the effectiveness of these proposed but unknown and confidential offsets. More specific information must be provided in a revised FDOC, as discussed below under Timing of ERCs.

PM10 offsets are proposed to be obtained from road paving. It is also our understanding that before U.S. EPA would approve a new rule allowing the use of PM10 ERCs from road paving, the AVAQMD must submit to U.S. EPA a PM10 attainment plan, including a detailed PM10 emissions inventory. It appears that the AVAQMD has been working on this requirement for a couple of years, and this issue is the major stumbling block for any future action by U.S. EPA on this proposed rule. A source could not rely on credits generated by this rule until the rule is approved by U.S. EPA and the rule is placed into the State Implementation Plan (SIP). The timing of such approval is uncertain at best.

A revised FDOC will also need to provide information on California Air Resources Board (ARB) consultation and U.S.EPA approval of the proposed inter-basin offset ratios pursuant to AVAQMD Rule 1305(B). This discussion should also consider inclusion of distance ratios that are required by the SJVAPCD when ERCs are used for sources within their jurisdiction.

PM10 ERCs from Road Paving

The Applicant proposes to obtain PM10 ERCs by following the methodology used in MDAQMD Rule 1406. Currently, the AVAQMD does not have a similar rule, and it is questionable that the proposed PM10 ERCs could be generated under the AVAQMD’s existing set of rules. Specifically, as raised in our earlier comments on the PDOC, the PHPP does not have control over most of the roads that have been preliminarily identified for paving as sources of PM10 ERCs. Therefore, these ERCs will not meet AVAQMD Rule 1305, which requires that the applicant demonstrates sufficient control over ERC sources to ensure that claimed reductions are real, enforceable, surplus, permanent and quantifiable.

Contrary to previous declarations, the draft FDOC now notes that a new rule similar to the MDAQMD’s may be required by the U.S. EPA. This rule-making is on the District’s Rule Development Calendar (<http://www.avaqmd.ca.gov/Modules/ShowDocument.aspx?documentid=917>) as Rule 1309.2, but there is no schedule for it.

The PHPP Application for Certification (AFC) had specifically identified the need for the AVAQMD to pass a rule to allow for the use of road paving to provide ERCs. As recently as May 1, 2009, PHPP stated in response to Data Request 102:

To offset the Project’s PM10 emissions, the City intends to generate PM10 ERCs by paving roads in compliance with an expected Antelope Valley AQMD road-paving rule. This rule would be modeled after the Mojave Desert AQMD Rule 1406. Based on our communications with the Antelope Valley AQMD Counsel, the expected road-paving rule will be introduced to the Antelope Valley AQMD Board in the very near future.

At the July 9, 2009 Committee Conference, PHPP counsel Michael Carroll indicated that the AVAQMD did not need to pass a new rule to allow for the banking of ERCs from road paving (p. 27, lines 7-20).

Compliance with AVAQMD Rule 1305 cannot be determined in the absence of approval of proposed Rule 1309.2, and a detailed analysis of how the Applicant would comply with this new rule. The revised FDOC should identify the specific roads in the vicinity of the PHPP that would be used to generate the PM10 ERCs, and provide all appropriate calculations including vehicle miles traveled via traffic counts and silt content analysis used to quantify the emission reductions that are expected to be generated from paving the road(s). Documentation of the equivalent PM2.5 emission reductions should be provided as well.

Finally, staff is concerned that the project may increase fugitive dust emissions resulting from the maintenance of the solar facilities, which would primarily be unpaved road fugitive dust emissions. These should also be included when determining the amount of PM10 ERCs needed for the project.

Timing of ERCs

Previous Commission decisions have clearly stated the need to identify all ERCs prior to issuing a license. In the High Desert Power Project, the Presiding Member's Proposed Decision (PMPD) clearly stated:

As pointed out by Staff and as acknowledged by Applicant, however, under Public Resources Code section 25523 (d)(2) we are prohibited from finding that a proposed facility complies with applicable air quality standards unless the Applicant obtains sufficient offsets prior to licensing. (10/7/99 RT 58, 60-1, 64; see also Staff's 11/5/99 Post-Hearing Brief, pp. 1-2.) In our estimation, this means that Applicant must establish that it has purchased or possesses legally enforceable commitments to sufficient quantities of offsets required to mitigate the air impacts of the project before we may recommend project certification. (PMPD, p.101)

Applicant must provide verification that it has purchased or obtained legally enforceable rights to all required offsets in order to persuade us that air impacts associated with the project will be mitigated to below a level of significance. It has not yet done so. We therefore conclude that we may not now recommend that the Commission certify the High Desert Power Project. (PMPD, p. 103)

Therefore, before the Energy Commission can reach a decision on this project, we need the revised FDOC to specify final offset ratios that apply to PHPP and we also need the FDOC to clearly identify all ERCs that have been obtained by the PHPP applicant.

Mr. Alan J. De Salvio

June 16, 2010

Page 5

Thank you for the opportunity to comment on the Palmdale Hybrid Power Project's draft Final Determination of Compliance. If you have any questions, please contact Steve Radis of my staff at (805) 289-3927.

Sincerely,

MATTHEW LAYTON, Manager
Engineering & Corridor Designation Office
Siting, Transmission and Environmental
Protection Division

cc: Docket



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APPLICATION FOR CERTIFICATION
For the *PALMDALE HYBRID*
POWER PROJECT

Docket No. 08-AFC-9

PROOF OF SERVICE

(Revised 4/15/2010)

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DECLARATION OF SERVICE

I, Hilarie Anderson, declare that on, June 16, 2010, I served and filed copies of the attached Staff Comments on FDOC. 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:

[<http://www.energy.ca.gov/sitingcases/palmdale/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;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date 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-9
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signature in Dockets
Hilarie Anderson