

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

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09-AFC-1	
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In the Matter of:

The Application for Certification for the
Watson Cogeneration Steam & Electric
Reliability Project

Docket No. 09-AFC-1

**CALIFORNIA UNIONS FOR RELIABLE ENERGY
COMMENTS ON REVISED AND EXTENDED SCHEDULE**

November 9, 2009

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The California Unions for Reliable Energy (“CURE”) submit these comments in response to the Committee’s November 2, 2009 order seeking comment on the revised and extended schedule for the Watson Cogeneration Steam and Electric Reliability Project.

We agree that the Commission must establish priorities. It will be impossible for the Commission to review all of the pending applications in the normal 12 month period. The number of applications is far, far greater than normal. We also agree that the projects that have the potential to actually begin construction by the end of 2010 and qualify for ARRA funding should be the highest priority, with special emphasis on the projects that have successfully addressed their substantive issues. This project fails on both counts. It is not eligible for ARRA funding and has not addressed its substantive issues. In fact, the Applicant is refusing to address two core issues.

First, the Applicant has refused to acknowledge the baseline level of emissions from the existing cogeneration unit as required by CEQA. For example, in Staff’s preface to Data Requests 5 through 7, Staff defined “baseline conditions” for air pollutant emissions “as the average emissions over the preceding three year period.” In response, the Applicant disputes Staff’s description of the baseline under CEQA and asks that the Commission rely on a **1986** Final Determination of Compliance (“FDOC”) for the existing four turbines and duct burners describing the **potential** emissions and a **1996** Environmental Impact Report (“EIR”) for ARCO’s Clean Fuel Project, neither of which specifically reviewed the current Project and

neither of which contains the *actual* emissions from the existing cogeneration units. The Applicant is attempting to rely on the potential, permitted emission level rather than the actual emission level as required by the State CEQA Guidelines, section 15125. Thus, the Applicant has not adequately responded to Staff's existing data requests and is refusing to identify appropriate mitigation for PM₁₀ and PM_{2.5} emissions.

The Applicant relies on *Benton v. Board of Supervisors* and *Fairview Neighbors v. County of Ventura* to argue that potential permitted emission levels may be used as the baseline to evaluate significant impacts.¹ However, the Applicant's argument was specifically rejected in *Communities for a Better Environment v. South Coast Air Quality Management Dist.*² A lead agency must analyze potentially significant impacts as compared to the actual, not potential permitted, environmental baseline. Moreover, here, neither the 1986 FDOC nor the 1996 EIR analyzed the proposed Project. In fact, the Applicant's permit request form to the Air District admits that the proposed Project is not a "modification of equipment or process," but "new construction."³ Any impacts from new construction must be evaluated under the actual existing environmental setting.

Second, a prime purpose of this Project is to supply increased steam to the BP Carson Refinery.⁴ Of course, CEQA requires that all of the direct and indirect environmental effects of a Project be analyzed. Increased steam usage by the

¹ Response to Staff Data Request No. 7.

² *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2007) 71 Cal.Rptr.3d 7, review granted and opinion superseded by (2008) 182 P.3d 512.

³ Response to Data Request Set 1, Appendix A-5, SCAQMD Permit Application (September 2009).

⁴ AFC, p. 2-1.

Refinery will likely mean increased processing by several of the Refinery units, each of which may, as a result, have increased air pollutant emissions, wastewater discharges, generation of hazardous waste, among other effects. The AFC provided none of this information. CURE intends to serve data requests to gather information that will help in the evaluation of these impacts.

Thus, this is a project that should be given a lower priority than other projects in the Commission's queue.

Regarding the specific dates in the tentative revised schedule, CURE is currently evaluating the AFC, Staff's data requests, and the Applicant's responses to Staff's data requests. CURE anticipates submitting data requests on hazards and water quality within the next few weeks. Because CURE's air quality and public health expert is currently working to meet deadlines in other Energy Commission proceedings, CURE anticipates submitting data requests on air quality and public health in mid-December.

In order to provide the parties with an opportunity to discuss responses to CURE's data requests, CURE recommends that the Committee schedule the next data response and issue resolution workshop during the third week in January 2010. If the next workshop is scheduled before the Applicant has responded to CURE's air quality and public health data requests, the parties would not have the opportunity to use that workshop to discuss the responses.

In sum, the Applicant has not yet submitted sufficient information to enable an analysis of the Project. Waiting for the Applicant's responses to CURE's air

quality and public health data requests would avoid the potentially unnecessary expenditure of time, money and resources by all parties from holding multiple workshops. Therefore, CURE recommends that the Committee schedule the next data request and issue resolution workshop for the third week in January 2010.

Dated: November 9, 2009

Respectfully submitted,

/s/

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DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on November 9, 2009, I served and filed copies of the attached CALIFORNIA UNIONS FOR RELIABLE ENERGY COMMENTS ON REVISED AND EXTENDED SCHEDULE, dated November 9, 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: <http://www.energy.ca.gov/sitingcases/watson/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 via email and by depositing in the United States mail at South San Francisco, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked "email preferred."

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on November 9, 2009.

_____/s/
Bonnie Heeley

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