

December 5, 2007

California Energy Commission
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Subject: VIS-8 Non-Compliance Complaint – Palomar Energy Center (Docket No. 01-AFC-24C)

To: Chief Counsel (CEC) William Chamberlain
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The CEC staff modeling analysis conducted for VIS-8 requirements for the Palomar Energy Center (PEC) has improperly failed to take into account all conditions of operation of the facility and its impacts to the surrounding community and businesses. The failure to take into account all conditions especially those during night or during rain or fog conditions because the CEC staff determination that plume visibility was typically low during those conditions has proven to be the inappropriate path to take. Any analysis based strictly on SDNRNF conditions has left impacts resulting on nearby businesses and will result in impacts to any future business being proposed in the Escondido Research and Development Center (ERTC). The fact that Brewster Birdsall was asked to be removed from this case during the evidentiary hearings because of his inexperience along with the fact that he has yet to conduct any additional modeling shows that the modeling performed was improperly conducted for the licensing of this project. This is especially the case when it relates to the Bimbo Bakery investigation. Failure to continue the investigation based on whether or not Bimbo officially files a complaint with the CEC has nothing to do with the moral and professional obligation that should be recognized by both the CEC and Sempra/SDG&E.

The CEC and Sempra/SDG&E also still continues to defer or ignore evidence submitted in the past and apparently waits to conduct their inspections only after the Palomar Energy Center (PEC) facility is operating properly during those inspections in order to provide favorable conditions to brief the Siting Committee to determine compliance upon its return. See emails between Dale Edwards (CEC), Kelly Hunt (Sempra) and Terry O'Brien (CEC) on April 20th & 25th 2007. The applicant and the CEC have also attempted to lay blame on other businesses such as a nearby brewery or the ICEOPLEX facility even when photographic evidence indicates otherwise. The CEC's own Final Decision indicates that "No existing vapor plume sources have been identified in the immediate project vicinity and no cumulative visual impacts are anticipated to result from the PEP's vapor plumes (Ex. 50, p.4.12-25)" once again this seems to be yet another failure in the staff analysis and/or proper verification/enforcement.

Evidence submitted in the past has clearly indicated time frames of continued improper operation of the facilities which clearly appears to be by choice by the owner not to operate its on-site equipment properly. Evidence submitted also shows that this mode of operation is not a seasonal occurrence and creates a frequency threshold much higher than ten percent for plume occurrences without seasonal restrictions. Condition of Certification VIS-8 ensures that the project owner will implement plume abatement measures to reduce visible plumes to insignificant levels. VIS-8 Conditions of Certification does not explicitly allow the project owner permission "not" to operate the cooling tower abatement system during night, rainy or foggy conditions. Failure by both the facility owner and the CEC to properly implement/enforce these measures has resulted in both a public nuisance and public health and safety issues. Evidence submitted also shows that any automated notification system and sensors is either being ignored or turned off when the project owner deems appropriate to operate in these conditions. The on-site control

room log apparently does not seem to site any plume occurrences (noted by the previous CPM) that raises the issue that there is perhaps a misrepresentation of factual operational data on a continuing basis that is being allowed.



Figure 1



Figure 2



Figures 3 & 4

Absence of any guidance in California and the PEC project to assess whether vertical plumes are likely to have adverse implications from the gas-fired power station fails to point out the fact that very buoyant plumes can readily interact with the overlying inversion and give rise to other problems that may require addressing in environmental impact assessments. This would also include industrial flares or intended releases from pressurized pipelines that occur at this facility on a regular basis that can create significant risk to the nearby community especially dealing with air traffic.

The data supplied per (Government Code Section 6250 est seq.) and the California Constitution, as amended by passage of PROP 59 on November 3, 2004 does not provide data that the CEC analysis of the Palomar Energy Center has been properly evaluated in their independent modeling analysis nor did it provide reason why a more detailed analysis would not be required. Staffs determination that visible plumes would only occur below the threshold of ten percent was improperly used for determination for the ERTC development for any proposed usage especially when dealing with businesses already near the location. Adoption Order No. 03-0806-05 needs to be readdressed for both existing and proposed usage.

Under Section 1237(a)(5) of Title 20, the owner of the PEC at the minimum should be required to implement full time use of on-site equipment associated with the non-abated HRSGs and the plume-abated cooling tower to satisfy VIS-8 conditions during all times of operation.

Under Section 1237(a)(6) of Title 20, the Energy Commission was the lead agency and set these requirements for this project to be built and should have the authority to enforce any action requested unless it has no intention of enforcing its own policies and/or requirements.

Under Section 1237(a)(7) of Title 20, I hereby declare that the comments and evidence submitted are truthful and come directly from the Commission Adoption Order No. 03-0806-05.

Thank you for your time and attention to the matter.

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