



WILDFLOWER ENERGY

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DOCKET

01-EP-2C

DATE APR 26 2012

RECD. APR 27 2012

April 26, 2012

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Re: Response to CEC Request - Indigo Compliance Issue

Dear Mr. Jiang:

Thank you for your email on April 12, 2012 regarding the CEC Business Meeting which occurred the previous day. It is our understanding that Mr. Sarvey made public statements at the California Energy Committee ("CEC") business meeting held on April 11, 2012 regarding the compliance status of the Indigo Energy Facility located in Palm Springs, California ("Facility") which is owned by Wildflower Energy, LP ("Wildflower"). The comments were made in opposition to the extension of licenses for the Emergency Peaker projects constructed in 2001. Focusing solely on the Indigo Energy Facility, Mr. Sarvey stated in comments that the Facility has been out of compliance with its air permit for eight (8) out of the last twelve (12) quarters, and that the Facility has been fined \$173,000 for air permit violations. This letter is in response to the assertions made by Mr. Sarvey.

In brief, the Facility had received Notices of Violation ("NOVs") issued by the South Coast Air Quality Management District ("District"). There have been three such NOVs during the period in question with settlements totaling \$170,000 between the Facility and the District. However, the violations were administrative in nature and related to the timely filing of reports, proper calibration protocol of Continuous Emissions Monitoring Systems ("CEMS") at the Facility, and source testing of turbines using appropriate testing methodologies. The Facility is and has been in material compliance with air emissions limits since its construction in 2001.

Provided below is a summary of the NOVs and the resolution of the matters. In addition, at the end of this summary is information regarding EPA's ECHO database and the listing of information for the Facility.

1. Notice of Violation No. P-45293

A. Transmittal of Daily Total Emissions and Status Codes

NOV No. P-45293 was issued by the District on July 25, 2008 for violations occurring on or about November 1, 2004. The NOV stated, in part, that the Facility violated District Rule 2012(c)(3)(A) by failing to report certain daily total emissions or status codes.

While the Facility was required to begin transmitting daily total emissions and status codes on November 1, 2004, the Facility found that such transmittals did not begin until December 15, 2004. The missing transmittals were due to the incomplete installation of the Remote Terminal Unit (RTU). Even though no data was transmitted during this period because of the RTU problems, the data was accurately collected and no emissions exceedances occurred.

At the time that the NOV was issued, this was a historical issue for the Facility. Wildflower had already addressed the RTU transmission issue and had recalculated the emissions from November 2004 to December 2004 using the District's missing data procedures pursuant to Rule 2012, Appendix A, Chapter 2(E). The Facility submitted a revised report to the District on January 27, 2005 showing the need to provide 115,886 pounds of NO_x RTCs based on missing data. Wildflower then acquired the NO_x RTCs to account for the substitution of missing data in time to reconcile its quarterly emissions.

The Facility's position in settlement was that the imposition of monetary penalties in settlement was not necessary in this matter. Even though no data was transmitted during this six-week period because of the RTU problems, the emissions data was accurately collected by the Facility CEMs, and no emissions exceedances occurred. Moreover, Wildflower was required to provide 115,886 pounds of NO_x RTCs due to imposition of missing data calculations.

The District was concerned with the Facility's failure to transmit its daily total emissions and status codes as required. Because the violation persisted for a period of six weeks, the District requested a penalty of \$10,000 per week for a total of \$60,000 in settlement of the alleged violation. The Facility agreed to the settlement as proposed by the District.

B. Daily CEMS Calibrations

NOV No. P-45293 also stated in part that the Facility violated Rule 2012, Attachment C, Section B.1 by failing to conduct daily CEMS calibrations on all days in which the Facility was in operation. Based on erroneous advice provided by a former environmental consultant, the Facility reasonably believed that calibrations were required pursuant to EPA Title 40 of the Code of Federal Regulations, Section 75 (i.e., the Acid Rain program), in which a CEMS calibration must be conducted while the turbines are on line, up to temperature and at stable operation.

After researching the issue, the Facility learned that daily CEMS calibrations are required under the RECLAIM program on days in which the turbines combust any amount of fuel. In addition to the EPA Acid Rain Program, a daily District CEMS calibration was required on all days any operating unit had emissions under the District RECLAIM program.

The Facility was required to recalculate its emissions using the District's missing data procedures for each day a turbine operated between November 1, 2004 and January 30, 2007, but for which a daily District CEMS calibration was not completed. The calculations demonstrated that Wildflower had sufficient RTCs in its allocation to cover the newly calculated emissions. As such, there was no shortfall under Rule 2004.

On May 7, 2007, Wildflower submitted updated RECLAIM reports and revised Annual Permit Emissions Program (APEP) forms that reflected the new emissions values. Wildflower updated its Quality Assurance/Quality Control Plan to ensure this issue did not occur again.

The Facility's position in the settlement was that no penalty should be assessed. The violation was administrative in nature and did not result in any actual increases in NOx emissions or adverse environmental impacts. Moreover, the integrity of the RECLAIM program was assured through the implementation of missing data procedures.

The District noted that RECLAIM requires the Facility to calibrate its CEMS on a daily basis. Initially, the District requested a penalty of \$1,000 per day as a reasonable administrative penalty. Given the high level of cooperation received and the Facility's candor in acknowledging the duration and nature of the alleged violations, the District reduced its request for penalties to \$75,000. The Facility agreed to the settlement as proposed by the District.

The Facility settled NOV No. P-45293 with the District for a total of \$135,000 without an admission of liability. According to the District, the date of disposition was January 13, 2009.

2. Notice of Violation P-45295

NOV No. P-45295 was issued by the District on September 18, 2008 for violations occurring on or about July 1, 2004. The NOV stated that the Facility NOx emissions exceeded its allocations for the final three quarters of the Facility's 2004-2005 compliance year which resulted in violations of District Rules 2004(b)(1), (b)(4), and (d)(1).

As background, InterGen, Inc. ("InterGen") commenced operation of the Facility in 2001. InterGen entered into the Acid Rain Program, installing and certifying an Acid Rain NOx CEMS on each of the Facility's turbines. Despite being located in the Salton Sea Air Basin, InterGen opted the Facility into the RECLAIM program, under Rule 2001(i)(2)(M), on October 31, 2003. To the best of our knowledge, the Facility is the only participant in the NOx RECLAIM program located in the Salton Sea Air Basin.

For the first year, InterGen calculated NOx emissions on an interim basis pursuant to District Rule 2112(h)(6). InterGen sold its interest in Wildflower Energy, LP and the Facility in October 2004. After the acquisition, the Facility discovered that InterGen had not yet completed the initial RATA certifications for each CEMS by October 31, 2004. Wildflower, under its new ownership, had only one month in which to certify the Facility CEMS equipment. The Facility completed the required CEMS RATA tests for turbines in November 2004. But due to an oversight, the final RATA reports were not received at the District until early 2005, which was approximately four days after the deadline.

The root cause of the NOV was the late submittal of the RATA reports for the three turbines. Due to the late RATA submittals, revised emissions calculations were required for the period between November 2004 and January 2005. The recalculated emissions were significantly higher than the Facility's previously reported emissions, causing the Facility to exceed its RTC allocations for the final three quarters of the 2004-2005 compliance year.

The Facility was operating with an Acid Rain certified CEMS during the period. The Acid Rain CEMS operates similarly to the RECLAIM CEMS and is based on the same collected data. Thus, the Acid Rain CEMS provided a clear data history for the Facility's emissions despite the late submittal of the RATA reports. Moreover, the RATA reports showed that the Facility's CEMS were operating properly and that no actual NOx exceedances occurred.

Based on communications with the District, Wildflower recalculated its revised emissions for the November 2004 – January 2005 period. Under the direction provided by the District, the issue resulted in a shortfall of 113,318 pounds of NOx RTCs for the final three quarters of the 2004-2005 compliance year. Wildflower prepared an amendment to the 2004-2005 Annual Emissions Report which was submitted to the District on October 8, 2008.

In accordance with Rule 2010(b)(1)(A), the past allocation exceedance of 113,318 pounds triggered a deduction of RTCs from the Facility's 2009-2010 compliance year holdings. The Facility purchased 113,318 pounds NOx RTCs in October 2008 and paid \$96,166 to the District in fees, of which \$32,055 was a penalty for correcting the AER past the 2004-2005 compliance year deadline date.

Wildflower worked diligently with the District for a speedy resolution of this issue, as demonstrated by numerous communications between the District and Wildflower's consultants. Once the District and Wildflower established the exact shortfall of NOx emissions based on the Acid Rain CEMS, Wildflower then purchased sufficient RTCs to cover the shortfall and paid the applicable late fees. While the delayed RATA reports were submitted in early 2005, the District's audit did not occur until the first quarter of 2007.

The Facility's position was that penalties should not be required. The four day delay in the submittal of the RATA reports did not cause any adverse environmental harm. The RATA reports demonstrated that the Facility's CEMS were operating properly during the subject period. In addition, the surrender of the NOx RTCs due to missing data procedures benefitted air quality.

The District's position was that the Facility exceeded its NOx allocation of the final three quarters of the 2004/05 compliance year. The cause of the violation was the late submittal of the Facility's certifications for each of the three turbines. Since the Facility completed the required RATA tests timely but simply failed to submit the reports until after the deadline has passed, the District requested a modest penalty of \$30,000 in settlement.

The Facility settled NOV No. P-45295 for \$30,000 without an admission of liability. According to the District, the date of disposition was January 13, 2009.

3. Notice of Violation P-55704

NOV No. P-55704 was issued by the District on June 25, 2009 for a violation occurring on or about May 15, 2007. The NOV claimed an exceedance of the 2.0 ppm VOC limit in the Facility air permit following a source test of the turbines. After further review, the District concluded that the Facility was in compliance with the 2.0 ppm VOC limit.

The source test was performed using South Coast Method 25.3 – Determination of Low Concentration of Non-Ethane Non-Methane Organic Compound Emissions from Clean Fueled Combustion Sources (March 2000) (“Method 25.3”). Method 25.3 was designed to measure VOC concentrations below 50 ppm for combustion sources using clean burning natural gas and had an error band of 2.0 ppm which is the VOC limit for each unit.

In 2004, the Facility questioned the initial Method 25.3 test results and sought guidance from the Facility’s assigned District Permitting Engineer. The issue presented was whether the blank could be subtracted from the results. The District Permitting Engineer agreed that the blank could be subtracted, and thus the Facility passed its source test.

In 2009, the District Source Test Group reviewed the results of the 2004 source test using Method 25.3. The District Source Test Group disagreed that the blank could be subtracted from the test results under the District methodology. The District Source Test Group found that there had been a VOC exceedance in the 2004 source test and directed the District Inspector assigned to the Facility to issue the NOV.

Upon further review, however, the District concluded that the Facility should not have used Method 25.3 for source testing of the turbines. In fact, the District concluded that the Facility should have used EPA Method TO-12 – Total Non-Methane Organic Compounds (TNMOC) by GC/FID (“Method TO-12”) for the source test conducted in 2004. Beginning in 2003, the District had move away from Method 25.3 in favor of Method TO-12 for source testing of combustion equipment with very low VOC concentrations. The turbines employ oxidation catalysts suggesting that the VOC concentrations in the exhaust should be low.

To resolve the issue, the District allowed the Facility to retest the turbines using Method TO-12. After submitting a revised source test methodology, the Facility source tested the turbines in early October 2009. The turbines easily passed with VOC concentrations of 0.385 ppmv (Unit 300), 0.285 ppmv (Unit 400), and 0.189 ppmv (Unit 500) measured @15% O₂.

Copies of the source test reports, prepared by Delta Air Quality Services, Inc. and dated November 16, 2009, were then submitted to the District for review. The District took time to review the reports. Subsequently, the District concluded that the turbines were in compliance.

The Facility’s position in settlement was that that no penalty should be assessed. When allowed to retest the turbines using Method TO-12, the Facility easily passed. As such, there was no violation of the 2.0 ppm VOC limit in the permit. The environment was not harmed.

The District was hesitant to dismiss the NOV. A significant amount of staff time was required to sort through the data and come to conclusion. To resolve the issue, the District offered to settle the matter for an administrative penalty of \$5,000.

The Facility settled NOV No. P-55704 for \$5,000 without an admission of liability. According to the District, the date of disposition was May 11, 2011.

4. **ECHO Database**

The ECHO webpage for the Facility can be found at <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=110015634642>. Under the "Compliance Summary Data" heading (the fifth heading on the page), in the far right-hand column "Qtrs in NC (of 12)", in the row labeled "CAA," the page lists an 8.

ECHO is an EPA database that provides the public with general information on compliance and enforcement issues for approximately 800,000 facilities. The information for the database comes from EPA's "Integrated Data for Enforcement Analysis" or "IDEA" system. This system copies EPA and non-EPA databases of information monthly and organizes the information so that it can be displayed on the ECHO database. ECHO then reads this information for the various statutory programs tracked, including the Clean Air Act. The data are refreshed on a monthly basis. However, there remains a lag-time attributable to entry of information in the underlying databases that the IDEA system copies.

While ECHO can generally be used by the public and communities to ensure that facilities are complying with environmental laws maintaining required standards of environmental performance, the information set forth in ECHO is not always accurate. In fact, EPA has stated that data for large facilities is more accurate and complete than that for smaller facilities. EPA's "Known Data Problems" page identifies an issue with the CAA data for California. See http://www.epa-echo.gov/echo/known_data_problems.html. EPA states that "Violation data appear to be missing or incomplete in . . . CA ECHO users interested in CAA violation data within a state that infrequently reports CAA violation status to EPA's national database may consider researching other available information (for example, state Web sites or state-published information). (Based on FY2010 data)." Because EPA has recognized that there are errors in some of the data, a facility's ECHO page contains a link to "Report Error."

The information provided in ECHO under Compliance Summary Data should not be used as evidence of noncompliance. ECHO expressly provides the following:

Violation, noncompliance, significant noncompliance, and high priority violation are all terms used by the ECHO site to describe the facility status in regard to compliance with the law. In many cases, these terms reflect determinations made by EPA or states when conducting inspections or reviewing facility self-reports. These determinations assist the government in tracking resolution of violations through the enforcement process and do not necessarily represent a final

adjudication by a judicial or administrative body. In such cases, these characterizations should be considered alleged violations.

Per EPA's disclaimer, the fact that the Compliance Summary Data section of the ECHO page states that there was non-compliance in 8 of the last 12 quarters does not mean that EPA has determined that there was actual non-compliance during this period. On the contrary, the listing suggests that EPA observed information that suggests noncompliance or an alleged violation. EPA is clear that the information provided in the Compliance Summary Data section should be considered only "alleged violations" and not evidence of noncompliance.

Thank you for your time and attention to this matter. Please let me know if you have any questions.

Very truly yours,



Wayne Forsyth
Compliance Manager
Wildflower Energy, LP

cc: Craig Hoffman – CEC
Gerry Bemis – CEC
Bo Buchynsky - WFE
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