Application for Certification for the MARIPOSA ENERGY PROJECT (MEP) Docket No. 09-AFC-3

APPLICANT’S RESPONSE TO THE MOTION OF RAJESH DIGHE TO REVISE THE COMMITTEE SCHEDULE

ELLISON, SCHNEIDER & HARRIS L.L.P.
Greggory L. Wheatland
2600 Capitol Avenue, Suite 400
Sacramento, California 95816
(916) 447-2166 - Phone
(916) 447-3512 - Facsimile

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Attorneys for Mariposa Energy Project, LLC
APPLICANT’S RESPONSE
TO THE MOTION
OF RAJESH DIGHE
TO REVISE THE COMMITTEE SCHEDULE

Mariposa Energy Project, LLC (“Applicant”) submits this Response to the Motion of Rajesh Dighe to Revise the Committee Schedule dated October 29, 2010 (“Motion”).

On November 22, 2010 CalPilots, Robert Sarvey and Rajesh Dighe filed a joint motion to delay the proceeding alleging that the time period for filing their testimony was burdensome. The Committee issued an order on December 8, 2010 denying the joint motion. On December 17, 2010 CalPilots again moved to delay the proceeding and to extend the deadline for intervenors to file their opening testimony. CalPilots’ Motion, not surprisingly, is supported by Mr. Sarvey and Mr. Dighe. However, even before the Committee can rule on the second motion for delay, on December 19, 2010 Mr. Dighe has filed a third motion for delay.

For the very same reasons set forth in the Committee’s December 8, 2010 Order, Mr. Dighe’s motion should be denied.

Mr. Dighe argues that the deadline for the filing of Intervenor testimony should be extended by at least four weeks in order to provide him time to run the AERMOD model, “to validate applicant’s assumptions and cross check derived scientific results published in Air Quality
Mr. Dighe implies that he suddenly received the “air dispersion modeling data” on December 17, 2010. In fact, Mr. Dighe has had many months to investigate the model and review relevant data. The Applicant’s use of AERMOD for air dispersion analysis is described in the original AFC, which was deemed data adequate in August 2009:

The HRA modeling was conducted using the ARB Hotspots Analysis Reporting Program (HARP, Version 1.4a, July 2008), along with the ARB HARP On-ramp program (Version 1.0, May 2008). The HARP On-ramp tool was used to import the American Meteorological Society/EPA Regulatory Model (AERMOD) air dispersion modeling results into the HARP Risk Module.¹

Although Mr. Dighe has been an intervenor since February 2010 and has submitted data requests to the Applicant in that same month, he did not request from the Applicant information regarding the air dispersion analysis or the AERMOD model. He had ample opportunity over a period of many months to make these requests, to run the models, to consult with Staff and “brainstorm” the AERMOD results. He did not do so.

On September 9, 2010, after the close of discovery, Mr. Dighe had a phone conversation with Commission staff. Mr. Dighe indicated his interest in running the AERMOD air dispersion modeling software. Commission staff explained to Mr. Dighe how to obtain a license for the software so that he could run the model himself. As confirmed in the record of conversation (attached), Mr. Dighe has had since September explicit instructions regarding how to obtain the AERMOD model. Therefore, Mr. Dighe has had ample time to perform the various tasks enumerated in his second motion to revise the Committee schedule.

Mr. Dighe’s tardiness in requesting this AERMOD model and input files and his failure to analyze the model over the past sixteen months cannot be cause for delaying the proceeding. Given that the AERMOD model and Applicant’s output files have been available, upon request of any party for sixteen months, Mr. Dighe has had more than ample opportunity to become informed about the

¹ Application for Certification, Volume I, Chapter 5.9, section 5.9.2.1.
As the Committee is aware, the Commission is constrained by the statutory directive to complete the certification review process in a timely manner. The existing schedule attempts to balance the time necessary for the public to become informed about the project with the statutory directive to complete the process in a timely fashion. Mr. Dighe has not shown good cause for delaying the deadline for the submission of intervenor testimony. His motion should be denied.

Dated: December 21, 2010

ELLISON, SCHNEIDER & HARRIS L.L.P.

By

Greggory L. Wheatland
2600 Capitol Avenue, Suite 400
Sacramento, California  95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512

Attorneys for Mariposa Energy Project, LLC
STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

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PROOF OF SERVICE

I, Eric Janssen, declare that on December 21, 2010, I served the attached APPLICANT’S RESPONSE TO THE MOTION OF RAJESH DIGHE TO REVISE THE COMMITTEE SCHEDULE via electronic and U.S. mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.

Eric Janssen
SERVICE LIST
09-AFC-3
APPLICANT
Bo Buchynsky
Diamond Generating Corporation
333 South Grand Avenue, #1570
Los Angeles, California 90071
b.buchynsky@dgc-us.com

APPLICANT’S CONSULTANTS
Doug Urry
2485 Natomas Park Dr #600
Sacramento, CA 95833-2975
Doug.Urry@CH2M.com

COUNSEL FOR APPLICANT
Gregg Wheatland
Ellison, Schneider, and Harris
2600 Capitol Ave., Suite 400
Sacramento, CA 95816-5905
glw@eslawfirm.com

INTERESTED AGENCIES
California ISO
E-mail Service Preferred
e-recipient@caiso.com

INTERVENORS
Mr. Robert Sarvey
501 W. Grantline Road
Tracy, California 95376
Sarveybob@aol.com

California Pilots Association
c/o Andy Wilson
31438 Greenbrier Lane
Hayward, CA 94544
andy_psi@sbcglobal.net

Rajesh Dighe
395 W. Conejo Avenue
Mountain House, California 95391
dighe.rajesh@gmail.com

Morgan K. Groover
Development Director
Mountain House Community Services District
230 S. Sterling Drive, Suite 100
Mountain House, CA 95391
mgroover@sjgov.org

ENERGY COMMISSION
Jeffrey D. Byron
Commissioner and Presiding Member
jbyron@energy.state.ca.us

Robert B. Weisenmiller
Commissioner and Associate Member
rweisenm@energy.state.ca.us

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

Kristy Chew
Advisor to Commissioner Byron
E-mail Service Preferred
kchew@energy.state.ca.us

Craig Hoffman
Siting Project Manager
choffman@energy.state.ca.us

Kerry Willis
Staff Counsel
kwillis@energy.state.ca.us

Jennifer Jennings
Public Adviser
publicadviser@energy.state.ca.us