Applicant’s Supplemental Comments

On

The Presiding Member’s Proposed Decision

May 13, 2011

ELLISON, SCHNEIDER & HARRIS L.L.P.
Greggory L. Wheatland
Jeffery D. Harris
Samantha G. Pottenger
2600 Capitol Avenue, Suite 400
Sacramento, California 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512

Attorneys for Mariposa Energy Project
INTRODUCTION

Pursuant to the Committee’s request made at the May 5, 2011 Committee Conference on the Presiding Member’s Proposed Decision (“PMPD”), Mariposa Energy Project, LLC (“Applicant”) submits the following supplemental comments on the PMPD.

DISCUSSION

I. Condition of Certification HAZ-7.

Condition of Certification HAZ-7, as set forth in the Staff Assessment reads, in part as follows:

4. a. A statement (refer to sample, Attachment A), signed by the project owner certifying that background investigations have been conducted on all project personnel. Background investigations shall be restricted to determine the accuracy of employee identity and employment history and shall be conducted in accordance with state and federal laws regarding security and privacy;
4.b. A statement(s) (refer to sample, Attachment B), signed by the contractor or authorized representative(s) for any permanent contractors or other technical contractors (as determined by the CPM after consultation with the project owner), that are present at any time on the site to repair, maintain, investigate, or conduct any other technical duties involving critical components (as determined by the CPM after consultation with the project owner) certifying that background investigations have been conducted on contractors who visit the project site;

Section 4.a. requires background investigations of “all project personnel,” which we interpret to mean on-site project personnel. Section 4.b. requires signed statements signed by the contractors certifying that background investigations have been conducted on contractors who visit the project site. As set forth in the Staff Assessment, Section 4.a. contained a limitation on background investigations. However, this limitation was not contained in Section 4.b.
Therefore, to make sections 4.a and 4.b consistent, the Applicant proposed to Staff that the limitation also be included in Section 4.b. Staff agreed, and included this revision in the Supplemental Staff Assessment. When the PMPD did not include this revision, the Applicant suggested in its comments on the PMPD that this limitation be added to Section 4.b. This revision, by the way, would conform these sections to the condition language adopted in the Ivanpah Solar Electric Generating System Final Decision, where the limitation is set forth in HAZ-5, Verification, sections 6.a and 6.b.¹

During the Committee Conference on the PMPD, Hearing Officer Celli asked whether this limitation would prevent the Project Owner from conducting background checks on employees. The answer is that employers can review and consider criminal convictions only if it is relevant to the job. Employers in California can review job applicant arrest records ONLY if (i) the arrest(s) resulted in a conviction, or (ii) if the applicant is out of jail but pending trial. Felonies, misdemeanors and arrests are reportable for 7 years. [Cal. Labor Code §432.7]. The Applicant would consider criminal background checks relevant to the jobs of on-site plant personnel.

To make clear that background checks, including criminal background checks, can be conducted when relevant to the job, we propose that sections 4.a and 4.b read as follows:

4. a. A statement (refer to sample, Attachment A), signed by the project owner certifying that background investigations have been conducted on all project personnel. Background investigations shall be restricted to determine the accuracy of employee identity and employment history and shall be conducted in accordance with state and federal laws regarding security and privacy;

b. A statement(s) (refer to sample, Attachment B), signed by the contractor or authorized representative(s) for any permanent contractors or other technical contractors (as determined by the CPM after consultation with the project owner), that are present at any time on the site to repair, maintain, investigate, or conduct any other technical duties involving critical components (as determined by the CPM after consultation with the project owner) certifying that background investigations have been conducted on contractors who visit the project site.

**Background investigations shall be restricted to determine the accuracy of employee identity and employment history and shall be conducted in accordance with state and federal laws regarding security and privacy.**

Dated: May 13, 2011

ELLISON, SCHNEIDER & HARRIS L.L.P.

By ____________________________

Greggory L. Wheatland
Jeffery D. Harris
Samantha G. Pottenger
2600 Capitol Avenue, Suite 400
Sacramento, California 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512

Attorneys for Mariposa Energy Project
STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

Application for Certification for the Mariposa Energy Project  )  Docket No. 09-AFC-03

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on May 13, 2011, I served the attached Applicant’s Supplemental Comments on the Presiding Member’s Proposed Decision via electronic mail 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.

Karen A. Mitchell
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

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

Edward A. Mainland
Sierra Club California
1017 Bel Marin Keys Blvd.
Novato, CA 94949
emainland@comcast.net

COUNSEL FOR ROB SIMPSON

April Rose Sommer
SBN 257967
P.O. Box 6937
Moranga, CA 94549
AprilSommerlaw@yahoo.com

Mr. Jass Singh
291 N. Altadena Street
Mountain House, California 95391
jass.singh2000@gmail.com

ENERGY COMMISSION

Karen Douglas
Commissioner and Presiding Member
KLdougla@energy.state.ca.us
Kenneth Celli  
Hearing Officer  
kcelli@energy.state.ca.us

Galen Lemei  
Advisor to Commissioner Douglas  
E-Mail Service Preferred  
glemei@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  
E-mail Service Preferred  
publicadviser@energy.state.ca.us