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DOCKET

08-AFC-1C

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March 5, 2012

VIA E-MAIL JWALTER@ENERGY.CA.GOV

Joan Walter, AICP
Compliance Project Manager
California Energy Commission
1516 Ninth Street, MS 2000
Sacramento, CA 95814

Re: Avenal Energy Project, 2008-AFC-1C

Dear Ms. Walter:

Pursuant to your request via e-mail to Jane Luckhardt, attached is **AVENAL POWER CENTER, LLC'S PETITION FOR POST CERTIFICATION AMENDMENT TO EXTEND THE CONSTRUCTION DEADLINE, ALLOW CONSTRUCTION AND OPERATION AS A MINOR SOURCE AND MAKE MINOR MODIFICATIONS TO AIR QUALITY CONDITIONS** in this matter. This letter confirms that Avenal Power Center, LLC ("APC") withdraws two previously-filed petitions: its May 11, 2011 Petition for Post Certification Amendment to Allow Construction and Operation of the Avenal Energy Project as Minor Source, and its February 29, 2012 Petition for Post Certification Amendment to Extend the Construction Deadline and Make Minor Modifications to Air Quality Conditions. The attached petition will replace APC's two previously-filed petitions in their entirety.

Very truly yours,

DOWNEY BRAND LLP

/S/ NICHOLAS H. RABINOWITSH

Nicholas H. Rabinowitsh

In

cc: Docket Office

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR
THE AVENAL ENERGY PROJECT**

DOCKET NO. 08-AFC-1C

**AVENAL POWER CENTER, LLC'S PETITION FOR POST CERTIFICATION
AMENDMENT TO EXTEND THE CONSTRUCTION DEADLINE, ALLOW
CONSTRUCTION AND OPERATION AS A MINOR SOURCE AND MAKE MINOR
MODIFICATIONS TO AIR QUALITY CONDITIONS**

March 5, 2012

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR
THE AVENAL ENERGY PROJECT**

DOCKET NO. 08-AFC-1C

**AVENAL POWER CENTER, LLC'S PETITION FOR POST CERTIFICATION
AMENDMENT TO EXTEND THE CONSTRUCTION DEADLINE, ALLOW
CONSTRUCTION AND OPERATION AS A MINOR SOURCE AND MAKE MINOR
MODIFICATIONS TO AIR QUALITY CONDITIONS**

Avenal Power Center, LLC ("APC") respectfully requests an amendment to the Final Commission Decision for the Avenal Energy Project (CEC-800-2009-006-CMF [Dec. 2009] "Decision") to extend the deadline for start of construction, allow construction and operation as a minor source and to make minor modifications to four air quality conditions of certification ("COC") and related equipment descriptions ("Amendment"). APC has placed all of the information from Avenal Power Center, LLC's Petition for Post-Certification Amendment to Allow Construction and Operation of the Avenal Energy Project as a Minor Source filed with the Commission on May 11, 2011 into this petition pursuant to specific request by the California Energy Commission ("Commission") Staff ("Staff"). Therefore, this Amendment supersedes APC's May 11, 2011 request.

This Amendment includes three requests: 1) to extend the construction deadline, 2) to allow the option of construction and operation as a minor source, and 3) to make administrative changes to four conditions and associated equipment descriptions. The extension on the time to start construction and the request for an option to operate as a minor source are both necessary to address ongoing opposition to the Prevention of Significant Deterioration Permit to Construct ("PSD Permit"). The U.S. Environmental Protection Agency ("EPA") took over three and a half years to issue a final PSD Permit for the Avenal Energy Project ("Project"). Several parties

petitioned the EPA Environmental Appeals Board (“EAB”) for review of the PSD Permit; the EAB upheld the permit, but these parties have subsequently appealed EPA’s issuance of the PSD Permit to the Ninth Circuit Court of Appeals. Because of the ongoing controversy over the PSD Permit, APC requests the Commission extend the deadline to commence Project construction until five years after the Commission decision on this Amendment petition. Extending the deadline to start construction would simply require the modification of one provision in the Commission Adoption Order. Extending the deadline for construction does not require changes to any other COCs.

Should APC decide to construct and operate the Project as a minor source, the air quality impacts from the Project could decrease slightly depending upon the hours the Project actually operates each year. There would be no other environmental impacts from the proposed change. Operation as a minor source would simply require the addition of one COC that would create facility wide limits on the annual oxides of nitrogen (“NO_x”) emissions and carbon monoxide (“CO”) emissions from the project to less than 100 tons each per year. Adding this limit does not require changes to any other COCs. The proposed additional COC is presented below within this Petition.

APC is also requesting minor administrative changes to AQ-6, AQ-71, AQ-110, AQ-122 and related equipment descriptions. APC’s proposed changes to AQ-6 and AQ-71 reflect the reissued Emissions Reduction Credit (“ERC”) numbers for the certificates used to provide offsets for the project. These new certificate numbers do not change the source of the credits or amounts surrendered to offset the Project’s emissions. APC’s proposed change to AQ-110 will allow the substitution of a new emergency fire water pump engine to meet current federal standards. The proposed change to AQ-110 would require only minor revisions to the COC and related equipment descriptions to ensure consistency and compliance with current standards. APC’s proposed changes to AQ-122 and related equipment descriptions will make the Decision consistent with the equipment analyzed by California Energy Commission (“Commission”) Staff in the proceeding, and these changes address administrative items in the Final Determination of Compliance (“FDOC”) and Alternative FDOC issued by the San Joaquin Valley Air Pollution Control District (“District”), discussed below. There are no environmental impacts from these minor administrative changes.

None of the changes requested in the Amendment would change the scope of the Project as licensed by the Decision. Furthermore, the Amendment would create no new adverse environmental impacts. Finally and as discussed in Section III(G) below, the Project will remain in compliance with all applicable laws, ordinances, regulations and standards (“LORS”) (including the federal hourly NO₂ and SO₂ standards adopted after the date of the Decision).

We thank Staff for their patience during the past few months as APC has considered the best way to proceed with the Project given the current state of pending appeals of the PSD Permit. Both the extension of the deadline for construction and the option to proceed as a minor source are necessary to ensure the Project has a path forward for construction and operation after the pending appeals are resolved. If the appeals are denied, the Project can proceed as a major source. If the appeals are granted, the Project can proceed as a minor source. The proposed minor changes to the air quality conditions and equipment descriptions proposed in this Amendment are required to conform the COCs to the current analysis and current engine requirements. APC is hereby consolidating its May 11, 2011 amendment request into this Amendment to avoid repetitive analysis by Staff and the Commission.

By way of short review, the Project is located in Kings County near the intersection of Interstate 5 and Avenal Cutoff Road. The Project is a nominal 600-megawatt gas fired power plant configured with two General Electric Model 7241FA gas turbines, each of which exhausts into a fired heat recovery steam generator. The facility will occupy 34 acres of a quarter-section in a predominately agricultural area approximately six miles from the urban center of the City of Avenal.

This Amendment is filed pursuant to Title 20 of the California Code of Regulations Section 1769(a).

I. PROCEDURAL HISTORY

The Commission approved APC’s Application for Certification (“AFC”) of the Project on December 16, 2009. The Commission’s Decision regarding air quality impacts included consideration of the District’s FDOC issued on October 30, 2008. The Decision found the mitigation measures imposed on the Project as a major stationary source were sufficient to

ensure that the Project's emissions met the requirements of applicable LORS. (Decision at 132.) The Decision also found that, with the COCs, the Project would not result in any significant direct, indirect or cumulative impacts to air quality. (Decision at 132.)

APC filed for, and has at all times diligently pursued, a PSD Permit from the EPA for the Project. APC submitted its initial application for a PSD Permit in February 2008, just days after filing the AFC for the Project. EPA confirmed APC's application for a PSD Permit was complete on March 19, 2008. EPA published a draft permit and its Statement of Basis and Ambient Air Quality Impact Report on June 16, 2009 ("Draft PSD Permit"). EPA closed the comment period on the Draft PSD Permit on October 15, 2009 after extending the comment period by three months. Then, EPA did not proceed with the permitting process. Thus and after waiting almost two years for EPA to act on APC's application for a PSD Permit, APC decided to act to compel EPA to make a decision on its application. Therefore, on March 9, 2010, APC filed a lawsuit against the EPA for failure to grant or deny the Project's PSD permit within the statutory one year timeframe after the date of filing a completed application. On May 26, 2011, the court ordered EPA to issue a final, non-appealable agency action, either granting or denying the PSD Permit application, by August 27, 2011. (*Avenal Power Center, LLC v. U.S. Environmental Protection Agency* [D.C. Cir. 2010] 787 F.Supp.2d 1, 2.) In early 2011, EPA issued a supplemental PSD Permit analysis for public comments. (See EPA, Supplemental Statement of Basis, PSD Permit Application for Avenal Energy Project [March 2011] at 8.) The public comment period on the supplemental PSD Permit analysis closed in April 2011.

On May 27, 2011, EPA issued the Project's PSD Permit, but several appeals were filed with the EPA's Environmental Appeals Board. The EAB denied all of these appeals, and on September 9, 2011, the EPA published notice of its final agency action on the Project's PSD Permit in the Federal Register. (76 FR 55799.) In early November 2011, three lawsuits were filed against the Project's PSD Permit in the Ninth Circuit Court of Appeals. (Case Nos. 11-73342, 11-73356, and 11-73404.) Although one of these Ninth Circuit appeals was dismissed as untimely, the remaining two appeals are still in the early stages of litigation and the initial briefing schedules have been vacated and later extended by the court. At this time it is unclear when these appeals will be resolved. We note for comparison purposes that another recent Ninth Circuit case challenging an EPA decision under the Clean Air Act took over three years from the

time the lawsuit was filed until the time the court's judgment went into effect. (See *Natural Resources Defense Council, et al. v. EPA*, Ninth Circuit Court of Appeals Docket #08-72288 [2011].)

Due to extensive delays in obtaining a PSD Permit from EPA, APC obtained an alternative Final Determination of Compliance ("Alternative FDOC") from the District on December 17, 2010, which included limits on annual emissions of nitrogen oxides ("NOx") and carbon monoxide ("CO") to below 100 tons each per year. APC also filed a petition with the Commission on May 11, 2011 to amend the Decision to allow operation of the Project as a minor source. Since EPA's final decision to issue a PSD Permit was noticed in September 2011, APC asked Staff to hold off on processing its May 11, 2011 amendment request in the hopes that the Project could go forward as originally permitted. Unfortunately, several parties have appealed the PSD Permit in court and thus, APC has been forced to advance this Amendment. As noted above, at the request of Staff, APC is consolidating its May 2011 petition for the minor source amendment into the current amendment requests.

II. PETITION FOR EXTENSION OF CONSTRUCTION DEADLINE

Pursuant to Section 1720.3 of the Commission's regulations, APC hereby requests an extension of the deadline to commence construction on the Project. As discussed in detail in the Procedural History section above, APC has at all times been diligent in its permitting and litigation efforts relating to the Project's PSD Permit. Nevertheless, it took over three and a half years to obtain a final PSD Permit from the EPA. Furthermore, the PSD Permit is now being litigated in the Ninth Circuit Court of Appeals, as discussed above.

Due to the uncertainties of litigation, APC cannot predict when the ongoing appeals to the Project's PSD Permit will ultimately be resolved. Therefore, APC respectfully requests the Commission to extend the deadline to commence construction on the Project until five years after the Commission decision on the amendments contained in this Petition. The following is a discussion of the law applicable to such a time extension, and the reasons why the circumstances surrounding the Project warrant such an extension.

A. Applicable Law

Section 1720.3 of the Commission's regulations provides the legal standard applicable to a request to extend the deadline for construction:

Construction Deadline. Unless a shorter deadline is established pursuant to § 25534, the deadline for the commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.

In its decision on the Tesla Power Project's Petition for Extension of the Construction Deadline (September 23, 2009), the Commission listed three main factors to be considered in determining whether good cause exists to grant an extension of time to start construction. These factors are:

1. Whether the project owner was diligent in seeking to begin construction, and in seeking the extension;
2. Whether factors beyond the project owner's control prevented success; and
3. A comparison of (a) the amount of time and resources that would have to be spent by the project owner, the Commission, and interested persons in processing any amendments to the license if the extension is granted; with (b) the amount of time and resources that would have to be spent in processing a new AFC, if the extension is denied.

B. Analysis

The following discussion addresses each of the factors supporting a time extension.

1. APC was diligent in seeking to begin construction, and in seeking the extension.

The Decision prohibits construction until the Project has obtained its PSD Permit. (Decision at 129 ["The project is not allowed to commence construction until the PSD permit is issued"].) The procedural history discussed above regarding APC's PSD Permit demonstrates that APC has been extremely diligent in pursuing its PSD Permit so that it may begin construction. As noted above, APC filed an application for a PSD permit within days of filing its AFC with the Commission. APC responded in a timely manner to EPA's requests for additional analysis and modeling. APC eventually had to resort to filing a lawsuit to compel EPA to act on its PSD Permit application.

Furthermore, APC has been diligent in defending the litigation against the Project's PSD Permit, and has sought expedited briefing schedules with the other parties to the litigation. Unfortunately, those parties were unable to accept an expedited briefing schedule. But for the delays in the Project's PSD Permit process and ensuing litigation, APC anticipates that it would have commenced construction within the original five year timeframe. APC has also been diligent in seeking the requested extension, since it is requesting the extension as early as possible after realizing that construction within the original five year period approved in the Decision will likely be impossible.

2. Factors beyond APC's control prevented success.

Many factors beyond APC's control have prevented APC from commencing Project construction. The Project's PSD Permit took APC over three and a half years to obtain, despite APC's timely application to EPA for a PSD Permit and APC's timely responses to EPA's requests for additional analysis. APC submitted its initial application for a PSD Permit in February 2008. EPA confirmed APC's application for a PSD Permit was complete on March 19, 2008. EPA published the Project's Draft PSD Permit on June 16, 2009. EPA closed the comment period on the Draft PSD Permit on October 15, 2009 after extending the comment period by three months. In early 2011, EPA issued a supplemental Draft PSD Permit analysis for public comments. (See EPA, Supplemental Statement of Basis, PSD Permit Application for Avenal Energy Project [March 2011] at 8.) The supplemental public comment period closed in April 2011.

In light of the EPA's significant delay in issuing the Project's PSD Permit, on March 9, 2010, APC filed a lawsuit against the EPA for failure to grant or deny the Project's PSD permit within the statutory one year timeframe after the date of filing a completed application. On May 26, 2011, the court ordered EPA to issue a final decision on the Project's PSD Permit application by August 27, 2011. (*Avenal Power Center, LLC v. U.S. Environmental Protection Agency* [D.C. Cir. 2010] 787 F.Supp.2d 1, 2.)

On May 27, 2011, EPA issued the Project's PSD Permit, but several appeals were filed with the EPA's Environmental Appeals Board ("EAB"). The EAB denied all of these appeals,

and on September 9, 2011, the EPA published notice of its final agency action on the Project's PSD Permit in the Federal Register. (76 FR 55799.)

In early November 2011, three lawsuits were filed against the Project's PSD Permit in the Ninth Circuit Court of Appeals. (Case Nos. No. 11-73342, 11-73356, and No. 11-73404.) Although one of these Ninth Circuit appeals was dismissed as untimely, the remaining two appeals are still in the early stages of litigation. At this time it is unclear when these appeals will be resolved.

3. The amount of time and resources involved in processing any amendments to the license if the extension is granted are minimal compared to those required to process a new AFC, if the extension is denied.

APC believes that allowing the five year commencement of construction deadline to lapse (thereby requiring APC to file a new AFC) would represent a tremendous waste of time and resources. The original Project AFC licensing proceeding was extremely thorough, and required a great deal of time, resources, and effort from the Siting Committee, Commission Staff, APC, and all interested parties. From start to finish, the process took nearly two years. Replicating the analysis that went into the Decision would likely take a comparable amount of time, particularly since the AFC was filed nearly four years ago. In addition, the Project's Interconnection Agreement with the California Independent System Operator ("CAISO") would be put in jeopardy, placing the Project at risk of starting over in the CAISO interconnection process that also takes several years to complete.

For all of these reasons, APC requests the Commission to approve the requested extension.

III. PETITION TO AMEND THE DECISION TO ALLOW CONSTRUCTION AND OPERATION AS A MINOR SOURCE, AND TO MAKE MINOR MODIFICATIONS TO FOUR AIR QUALITY CONDITIONS OF CERTIFICATION

Pursuant to Section 1769(a) of the Commission's regulations, this section provides the information required to be included in an amendment petition.

A. Description of the Proposed Option to Proceed as a Minor Source

APC requests the Commission include one additional COC to allow APC to build and operate the Project as either a major stationary source (as defined in federal PSD regulations)

once the EPA issues a PSD Permit and that permit is no longer subject to appeal, or as a minor stationary source pursuant to the Alternative FDOC. COC AQ-X will be an alternate condition should APC continue to encounter delays in obtaining a final, non-appealable PSD Permit. Furthermore, the addition of this COC will make the Decision consistent with both the FDOC and the Alternative FDOC. (See 20 C.C.R. §§ 1744.5 and 1752.3.)

AQ-X includes the facility-wide emissions limitations that are not required if the Project operates as a major source pursuant to a PSD Permit. No changes to other COCs are necessary to effect this minor source alternative.

- New Condition **AQ-X**:

AQ-X Annual emissions from the facility, calculated monthly on a 12-month rolling basis, shall not exceed any of the following limits: NOx (as NO₂)- 198,840 lb/year; CO - 197,928 lb/year. [District Rule 2201] AQ-X will become void if and when the Project obtains a PSD permit that is no longer subject to appeal, and construction commences under that PSD permit. AQ-X will also become void if the Project obtains a final, non-appealable PSD permit after initiation of construction and obtains a modified FDOC or equivalent permit from the District.

Verification: A summary of significant operation and maintenance events and required monitoring records shall be included in the quarterly operation report (AQ-SC8), including 12-month rolling totals calculated monthly for NOx (as NO₂) and CO emissions.

The Decision already requires APC to provide quarterly operation reports demonstrating compliance with the COCs. (Decision at 138, COC AQ-SC8.) In addition, APC is required to “specifically note or highlight incidences of noncompliance.” (Decision at 13, COC AQ-SC8.) As specified in the verification to COC AQ-X, the new 12-month rolling total limits for CO and NOx would be included in the quarterly reports should APC construct and operate the Project as a minor stationary source as defined in PSD permitting rules.

APC also requests the Commission revise page 129 of the Decision to allow APC the alternative of constructing and operating the Project as a minor source.

40 CFR 52.21, Prevention of Significant Deterioration

The U.S. EPA ~~has not yet issued a preliminary~~ published notice of its final agency action in issuing the project’s Prevention of Significant

~~Deterioration (PSD) permit for the project on September 9, 2011. The project is not allowed to commence construction until the PSD permit is issued. However, the project's PSD permit has been appealed in court. It remains unclear when the pending litigation will be resolved, and when the PSD permit will be final and no longer subject to appeal. Until the pending litigation is resolved and the PSD permit is final and no longer subject to appeal, the project owner may choose to construct and operate the project pursuant to Condition of Certification AQ-X. The District FDOC would likely serve as the basis for the PSD permit for this project, and to ensure that the Applicant amends the Energy Commission license as necessary to incorporate changes triggered by the PSD permit, if any, we adopt Condition of Certification AQ-SC6.~~

B. Description of the Proposed Minor Modifications to Conditions of Certification AQ-6, AQ-71, AQ-110, and AQ-122

APC is proposing minor revisions to AQ-6 and AQ-71 to reflect the reissued emission reduction credit certificate numbers. Neither the source of the emission reduction credits nor amounts to be surrendered to offset the Project's emissions have changed from those presented and analyzed by Commission Staff or the District.

APC also requests a minor administrative change to COC AQ-110 to allow the use of a different engine model (Cummins Model CFP9E-F40) for the Project's emergency fire water pump engine. This change will ensure that this engine fully complies with the current New Source Performance Standards for Stationary Compression Ignition Internal Combustion Engines. Finally, APC requests a minor administrative change to COC AQ-122 to conform the condition to the equipment actually analyzed by Staff during the proceeding.

1. Condition AQ-6:

AQ-6 ERC certificate numbers (or any splits from these certificates) C-897-1, C-898-1, N-724-1, N-725-1, S-2988-1 (reissued from S-2812-1), S-2951-1 (reissued from S-2813-1), S-2817-1, C-899-2, C-902-2, N-720-2, N-722-2, N-726-2, N-728-2, S-2814-2, S-2321-2, C-896-4, N-721-4, N-723-4, S-2791-5, S-2790-5, S-2789-5, S-2788-5, or N-762-5 shall be used to supply the required offsets, unless a revised offsetting proposal is received and approved by the District, upon which this determination of compliance (DOC) shall be reissued, administratively specifying the new offsetting proposal. Original public noticing requirements, if any, shall be duplicated prior to reissuance of the DOC. [District Rule 2201]

Verification: The project owner shall submit to both the District and CPM records showing that the project's offset requirements have been met prior to initiating operation.

2. Condition AQ-71:

AQ-71 ERC certificate numbers (or any splits from these certificates) C-897-1, C-898-1, N-724-1, N-725-1, S-2988-1 (reissued from S-2812-1), S-2951-1 (reissued from S-2813-1), S-2817-1, C-899-2, C-902-2, N-720-2, N-722-2, N-726-2, N-728-2, S-2814-2, S-2321-2, C-896-4, N-721-4, N-723-4, S-2791-5, S-2790-5, S-2789-5, S-2788-5, or N-762-5 shall be used to supply the required offsets, unless a revised offsetting proposal is received and approved by the District, upon which this determination of compliance (DOC) shall be reissued, administratively specifying the new offsetting proposal. Original public noticing requirements, if any, shall be duplicated prior to reissuance of the DOC. [District Rule 2201]

Verification: The project owner shall submit to both the District and CPM records showing that the project's offset requirements have been met prior to initiating operation.

3. Condition AQ-110 and Associated Equipment Descriptions:

AQ-110 Emissions from this IC engine shall not exceed any of the following limits: 3.4 g-NO_x/bhp-hr, ~~0.447~~ 1.417 g-CO/bhp-hr, or 0.38 g-VOC/bhp-hr. [District Rule 2201 and 13 CCR 2423 and 17 CCR 93115]

Additionally, APC requests the following minor change to the language on page 118 of the Decision to reflect the use of a different engine model:

The Avenal Energy Project would include the following stationary sources of emissions: two stationary natural gas-fired combustion turbine generators (CTGs) in a combined-cycle configuration. Each rated at 180 MW each, consisting of General Electric Model PG7241FA (Frame 7FA) combustion turbine with a heat recovery steam generator (HRSG) and a duct burner of 562 million British thermal units (Btu) per hour (MMBtu/hr) heat input, with duct firing up to 800 hours per year per CTG; one condensing steam turbine generator (STG) rated at 300 MW shared between the two CTGs; one natural gas-fired auxiliary boiler to provide steam that facilitates startup of the combined-cycle turbine system, with a maximum firing rate of 37.4 MMBtu/hr heat input, operating up to 1,248 hours per year; one 288 bhp diesel fuel oil-fired emergency fire water pump engine, Cummins Model ~~CFP83~~ CFP9E-F40 or Clarke Model JW6H-UF40, that would be either U.S. EPA Tier 2 certified or Tier 3, depending on purchase date (Ex. 1, p. 6.2-31 and Appendix 6.2-1.4).

APC also requests a minor revision to the equipment description for this engine on page 162 of the Decision, as follows:

EQUIPMENT DESCRIPTION, UNIT C-3953-13-0:

288 Bhp Clarke Model JW6H-UF40 or Cummins Model CFP9E-F40 Diesel-Fired Emergency IC Engine Powering A Fire Water Pump

4. Condition AQ-122 and Associated Equipment Descriptions:

APC also requests minor administrative changes to conform the equipment descriptions to the equipment analyzed by Commission Staff in the proceeding. (Final Staff Assessment Avenal Energy Project, 08-AFC-1; CEC-700-2009-001-FSA, [FSA] at 4.1-13, [June 2009].) These corrections include the following revisions to AQ-122 and an associated equipment description.

AQ-122 This IC engine shall be equipped with a three-way catalyst, combined SCR/oxidation catalyst, or equivalent control system. [District Rule 2201]

Verification: The project owner shall make the site available for inspection by representatives of the District, ARB, and the Commission upon request.

Proposed Changes in Equipment Descriptions:

EQUIPMENT DESCRIPTION, UNIT C-3953-14-0

860 Bhp Caterpillar Model ~~G3456~~ G3512LE Natural Gas-Fired Emergency IC Engine ~~With Non-Selective Catalytic Reduction (Nscr)~~ Powering A ~~500~~ 550 Kw Electrical Generator

C. The Proposed Amendments Are Needed to Construct and Operate the Project

APC proposed, Commission Staff and the District analyzed, and the Decision permitted the Project without facility wide emission limits to cap NOx and CO emissions below 100 tons each per year. APC's application for a PSD Permit was found complete by EPA on March 29, 2008, initiating a one year permitting process. As discussed above, nearly four years later, APC does not yet have a final, non-appealable PSD Permit issued by EPA. Without a final, non-appealable PSD Permit from EPA, in order to construct the Project APC must limit the NOx and CO facility wide emissions from the Project and construct and operate the Project as a minor

stationary source as defined under federal PSD regulations. APC now has both a valid FDOC (for a major stationary source) and a valid Alternative FDOC (for a minor stationary source).

The requested addition of AQ-X would allow APC to construct the Project under the Alternative FDOC if pending appeals of the PSD permit are not timely resolved in a manner that would allow APC to build and operate the source as a major source under the PSD rules. The Alternative FDOC provides the necessary facility wide emissions limits for NO_x and CO to make the Project a minor stationary source. APC continues to diligently defend the PSD Permit issued by EPA, since operating as a major source provides greater operational flexibility, greater ability to provide ancillary services to support the growing demand for renewable energy sources, and ultimately greater revenues as contemplated during the Project planning process. However, the Project is economically viable as a federal minor stationary source operating under the Alternative FDOC.

The minor clarifications to AQ-6 and AQ-71 are needed to correctly identify the ERC certificates that will be used to satisfy the offset requirements for the Project. The new numbers for two of the ERC certificates reflect splits of the previous ERC certificates. APC purchased portions of ERC certificates S-2812-1 and S-2813-1 to meet the offset requirements for the Project. Because the entire ERC certificate was not needed to meet the offset requirements for the Project, the District has split the ERC certificate. The new certificate numbers that correspond to the offsets proposed and accepted by the District and the Decision for the Project are S-2988-1 and S-2951-1. The sources of the ERC certificates and the amounts provided to offset the emissions from the Project have not changed. This requested change is consistent with the language in the COCs that specifically states “or any splits from these certificates”.

APC’s proposed change to AQ-110 and related equipment descriptions are necessary to comply with the requirements of 40 CFR Part 60, Subpart IIII (Compression Ignition New Source Performance Standards). Subpart IIII includes a NMHC+NO_x emission limit of 3.0 g/bhp-hr. The Project’s current 288-hp diesel fuel-fired (compression engine) emergency fire water pump engine (Cummins Model CFP83-F40) may exceed this emission limit. Therefore, APC proposes to substitute the Cummins Model CFP9E-F40, a Tier 3 compliant engine. APC has proposed one small revision to AQ-110 that would allow the use of Cummins Model CFP9E-

F40. This change will ensure compliance with Subpart IIII. These modifications to the permit condition will also be requested of the District at a future date.

APC's proposed changes to COC AQ-122 and the equipment descriptions are needed to make the equipment specifications consistent with the equipment analyzed by Commission Staff in the proceeding. (FSA at 4.1-13.) Furthermore, the revised wording for AQ-122 is needed to allow use of the air pollution control system (combined SCR/oxidation catalyst) that is actually sold for the Caterpillar Model G3512LE emergency engine as compared to the three-way catalyst system identified in the FSA. This change was requested of the District in August 2008, but was not reflected in either the original or Alternative FDOCs due to an oversight. Although this change is not substantive, because the change to AQ-122 involves a change to the language of a condition, APC is requesting this change at this time. These modifications to the permit conditions will also be requested of the District at a future date.

D. The Information Was Not Known by APC During the Certification Proceeding

APC requests the changes in this Amendment based on information obtained after the Decision. With regard to the option to proceed as a minor source, APC expected to obtain a final, non-appealable PSD Permit from EPA. APC did not anticipate the ongoing delay in obtaining a final, non-appealable PSD Permit.

APC requests the minor administrative changes to AQ-6, AQ-71, AQ-110, AQ-122 based on information obtained after the Decision. The need to change AQ-6 and AQ-71 became known post certification as the ERC certificates were split by the District and reissued. The changes to AQ-110 and related equipment descriptions result from post-certification regulatory changes. The change to AQ-122 was requested of the District in August 2008, but was not reflected in either the original or Alternative FDOCs due to an oversight.

E. The Proposed Modifications Would Not Change or Undermine the Assumptions, Rationale, Findings, or Other Bases of the Decision.

The requested modifications do not change or undermine the assumptions, rationale, findings or other bases of the Decision. Air emissions from the Project will not increase as a result of the proposed facility wide limits contained in AQ-X. No other COCs need to be changed to effect the minor source alternative. Thus, no new or increased adverse environmental impacts will result from the proposed change, and none of the requested modifications change or undermine the Decision.

The requested minor administrative changes to AQ-6, AQ-71, AQ-110, and AQ-122 do not change or undermine the assumptions, rationale, findings or other bases of the Decision. The only reason the offset certificate numbers are changing is due to a split of ERC certificates. Neither the underlying equipment generating the offsets nor the quantities of offsets to be surrendered have changed. With the exception of de minimis increase in CO emissions associated with the revised fire pump engine (emissions of other pollutants from the engine will decrease), air emissions from the Project will not increase as a result of Amendment. Thus, no new or increased adverse environmental impacts will result from the proposed changes and none of the requested modifications change or undermine the Decision.

F. The Proposed Amendment Will Not Create Significant Adverse Impacts on the Environment

As discussed above, should the Commission grant the Amendment and APC decide to construct and operate the Project as a minor source, the air quality impacts from the Project could decrease slightly depending upon the hours the Project actually operates each year. The proposed administrative changes could result in small emissions decreases for all but one pollutant, and in that case will not result in more than a de minimis increase in air emissions. Due to the lack of environmental impacts from APC's proposed changes to the Decision, the Amendment would cause no significant adverse environmental impacts. Because there are no significant adverse environmental impacts from the proposed Amendment, no new mitigation measures are needed.

1. Air Quality

APC's proposed changes to air quality COCs and related equipment descriptions are discussed above. The proposed changes would not result in any increase in air emissions, except for a potential, de minimis increase in CO emissions from the diesel fire pump engine. (Emissions of other pollutants from the fire pump will decrease.) The Decision found that, with implementation of the COCs, the Project will not result in any significant direct, indirect or cumulative impacts to air quality. (Decision at 132.) APC's proposed changes would not alter this finding.

2. Biological Resources

The Amendment will not result in biological resource impacts any different than those analyzed by the Commission during licensing of the Project. Therefore, there would be no change to the conclusion reached in the Decision and provided by Commission Staff "that given the soil and plant types in the project area, nitrogen deposition is unlikely to have a negative impact on plant life." (Decision at 229.)

3. Cultural Resources

The Amendment will not result in cultural resource impacts any different than those analyzed by the Commission during licensing of the Project.

4. Greenhouse Gas Emissions

The Decision found "The Avenal Energy Project's operational greenhouse gas ("GHG") emissions will not cause a significant adverse environmental impact." (Decision at 113.) The Amendment will not result in GHG impacts any different than those analyzed by the Commission during licensing of the Project.

The record in this proceeding unequivocally demonstrates that the Project will reduce GHG emissions when viewed across California's electrical sector. The Commission has extensively studied how GHG emissions should be addressed under the California Environmental Quality Act ("CEQA") in the context of power plant siting cases, particularly during an informational proceeding on this issue. (See Energy Commission Docket # 08-GHG OII-01.) This informational proceeding culminated in a CEQA guidance document, as well as an

independent consultant report analyzing the greenhouse gas implications of natural gas-fired power plants in California. (See Siting Committee Guidance on Fulfilling California Environmental Quality Act Responsibilities for Greenhouse Gas Impacts in Power Plant Siting Applications [March 2009] [the “Committee CEQA Guidance”];¹ see also MRW and Associates, Framework for Evaluating Greenhouse Gas Implications of Natural Gas-Fired Power Plants in California [May 2009] [the “MRW Report”, included as Ex. 203 in the Project’s AFC proceeding].)

The Commission evaluated the Project’s GHG impacts in light of the Committee CEQA Guidance and the MRW Report. (Decision at 103-111.) The Decision ultimately found that the Project will displace older less-efficient power plants in the dispatch order and thereby reduce overall GHG emissions from California’s electrical system. (Decision at 112-113.) The Amendment will not change this finding.

5. Land Use

The Amendment will not result in land use impacts any different than those analyzed by the Commission during licensing of the Project.

6. Noise and Vibration

The Amendment will not result in noise or vibration impacts any different than those analyzed by the Commission during licensing of the Project.

7. Public Health

The Amendment will result in public health impacts no greater than those analyzed by the Commission during licensing of the Project. The Decision found the “emissions of criteria pollutants . . . will be mitigated to levels consistent with applicable standards.” (Decision at 172.) The Decision also found, “the Project emissions do not pose a significant direct, indirect, or cumulative adverse public health risk.” (Decision at 173.) The impacts from Amendment II will not cause new or increased public health risks.

¹The Committee took official notice of this report pursuant to section 1213 of Title 20 of the California Code of Regulations on June 15, 2009. (See 7/7/2009 RT 18:5-13.) This report is available at <http://www.energy.ca.gov/2009publications/CEC-700-2009-004/CEC-700-2009-004.PDF> (last visited July 21, 2009).

8. Worker Safety

The Amendment will not result in worker safety impacts any different than those analyzed by the Commission during licensing of the Project.

9. Socioeconomic Resources

The Amendment will not result in socioeconomic resource impacts any different than those analyzed by the Commission during licensing of the Project.

10. Agriculture & Soils

The Amendment will not result in agricultural and soil impacts any different than those analyzed by the Commission during licensing of the Project.

11. Traffic & Transportation

The Amendment will not result in traffic and transport impacts any different than those analyzed by the Commission during licensing of the Project.

12. Visual Resources

The Amendment will not result in visual resource impacts any different than those analyzed by the Commission during licensing of the Project.

13. Hazardous Materials Management

The Amendment will not result in hazardous materials management impacts any different than those analyzed by the Commission during licensing of the Project. The Decision concluded “implementation of the mitigation measures described in the evidentiary record and contained in the COCs, below, ensures that the project will not cause significant impacts to public health and safety as the result of handling, use, storage, or transportation of hazardous materials.” (Decision at 193.) The Amendment would not change the analysis of hazards from material spills or number of deliveries of hazardous materials. Therefore, there are no significant adverse environmental impacts from the Project’s use of hazardous materials due to the Amendment.

14. Waste Management

The Amendment will not result in waste management impacts any different than those analyzed by the Commission during licensing of the Project.

15. Water Resources

The Amendment will not result in water resource impacts any different than those analyzed by the Commission during licensing of the Project.

16. Geologic Hazards and Resources

The Amendment will not result in geologic hazard and resource impacts any different than those analyzed by the Commission during licensing of the Project.

17. Paleontological Resources

The Amendment will not result in paleontological resource impacts any different than those analyzed by the Commission during licensing of the Project.

18. Cumulative Impacts

The Amendment will not result in cumulative impacts any different than those analyzed by the Commission during licensing of the Project. The potential de minimis increase in CO emissions from the diesel fire pump engine would not result in any change to cumulative impacts.

G. The Proposed Amendment Would Not Impact the Project's Ability to Comply With LORS

Because the Amendment would not result in any increased air emissions or other environmental impacts beyond those already evaluated in the Decision, the Project will remain in compliance with applicable laws, ordinances, regulations and standards ("LORS"). The District has conducted an extensive analysis of the Project's compliance with District Rules and Regulations and the corresponding state and federal requirements in both the original and Alternative FDOC. (At 28-111.) The Alternative FDOC sets forth the same extensive conditions contained in the FDOC to ensure the Project complies with applicable LORS. (Alternative FDOC at 28-111.) In addition, the Alternative FDOC includes enforceable facility

wide emissions limitations required of the Project to be a minor stationary source for federal PSD purposes.

1. Prevention of Significant Deterioration Program

The operation of the Project would be consistent with applicable LORS, including the PSD program. The conditions from the October 30, 2008 FDOC were incorporated into the Decision in full conformity with section 1744.5 of the Commission's regulations. (See Decision, Conditions of Certification AQ-1 through AQ-131 at 132-167.) As discussed in greater detail in the Procedural History section above, APC has diligently pursued its PSD Permit, and is now defending it in federal court.

APC's request for a time extension recognizes that it is unclear when the ongoing litigation against the Project's PSD Permit will be resolved. APC will continue to defend its PSD Permit in court. APC's request for a time extension simply recognizes that it may be a period of years before the litigation is resolved on the Project's PSD Permit and such permit is final and unappealable.

The District issued the Alternative FDOC in full conformance with the applicable regulations. The District completed the FDOC on December 17, 2010. Once incorporated into the Decision, the Alternative FDOC will allow APC to choose to operate the Project as a minor source. (See 20 C.C.R. § 1744.5.)

It is important to note that APC discussed this alternative with both the District and EPA prior to submitting its minor source permit application to the District. AQ-X as included in the Alternative FDOC is both practically and federally enforceable.

Furthermore, APC's request to include AQ-X recognizes that EPA's PSD Permit may not be final and free from appeals anytime in the near future. APC may have to construct and operate the Project as a minor source. This situation exists despite APC's timely application to EPA for a PSD Permit and APC's timely responses to EPA's requests for additional analysis and modeling. APC intends to continue to defend the PSD Permit but is simply recognizing that it may be a period of years before APC's PSD Permit is final and unappealable. (See also Alternative FDOC, Appendix J at 6.)

2. Greenhouse Gas Regulations

As discussed above, the record in this proceeding unequivocally demonstrates that the Project will reduce GHG emissions across California's electrical sector. (Decision at 112-113.) The Amendment will not change that finding. Well after the Commission issued its Decision for the Project, and after the Project's PSD Permit application was determined complete by the EPA, the EPA finalized its PSD and Title V Greenhouse Gas Tailoring Rule. (See 75 F.R. 31514 [June 3, 2010].)

Given that the Project's PSD Permit application was deemed complete over two years prior to implementation of the final Tailoring Rule, both APC and the EPA expected that the Project's PSD Permit would be issued well before the effective date of GHG regulation under the PSD program. However, due to unexpected and ongoing delays in the issuance of the PSD Permit, the EPA supplemented its Statement of Basis for the Project's PSD Permit last year to include a limited exemption for the Project from the PSD requirements for GHGs. (See EPA, Supplemental Statement of Basis, PSD Permit Application for Avenal Energy Project [March 2011] at 8.) Although the Project's GHG emissions are not subject to the PSD requirements, the Decision's finding that the Project will produce net GHG benefits across California's electric system remains valid.

3. Revised National Ambient Air Quality Standards for 1 hour Average NO₂

On April 12, 2010, a new 1-hour average National Ambient Air Quality Standard (NAAQS) for NO₂ went into effect. (See 75 FR 6474.) This new standard is 100 parts per billion (188.68 µg/m³). Since this standard went into effect long after the EPA was statutorily required to issue the Project's PSD Permit, the EPA determined that "it is not appropriate or equitable under the circumstances present here" to require APC to meet this new 1-hour average NO₂ standard. (EPA, Supplemental Statement of Basis, PSD Permit Application for Avenal Energy Project [March 2011] at 2-4.) Although EPA has concluded that an analysis of this new standard is not required for the PSD Permit they have issued, the District has assessed the Project's compliance with this new standard for state purposes and has concluded that the Project would not cause or contribute significantly to a violation of this (or any other) state or federal

ambient air quality standard. (District Final Determination of Compliance, Avenal Power Center, LLC [Dec. 17, 2010] at Attachment G.²)

4. Revised National Ambient Air Quality Standards for 1 hour Average SO₂

On August 23, 2010, a new 1-hour average NAAQS for SO₂ went into effect. (See 75 FR 35,520.) Because of the low SO₂ emissions from the Project, EPA regulations do not require additional analysis to demonstrate that this source will not cause a violation of the hourly SO₂ NAAQS. The Project's SO₂ emissions will be well below the 40 ton per year significant emissions rate for SO₂. (See Decision at 126 [Air Quality Table 6].) Therefore, additional SO₂ analysis is not required for the Project. (See 40 C.F.R. §§ 52.21[m][1] and 52.21[b][23][i]; see also EPA Supplemental Statement of Basis, PSD Permit Application for Avenal Energy Project [March 2011] at 9.)

5. District Rules and Regulations: Rule 4702 (Internal Combustion Engines)

The District adopted updates to Rule 4702 on August 18, 2011. However, this rule does not apply to emergency standby engines (see §4.2), including those proposed for the Project's electric power generation and fire water pumping.

6. Federal Rules and Regulations: Reciprocating Internal Combustion Engines ("RICE") Maximum Achievable Control Technology ("MACT") Rules for Stationary RICE at a New or Reconstructed Area Source of Hazardous Air Pollutants ("HAPs")

The requirements of 40 CFR part 60, subpart IIII (Compression Ignition New Source Performance Standards) and subpart JJJJ (Spark Ignition New Source Performance Standards) also apply to certain Project equipment.

a. *Subpart IIII*

Subpart IIII applies to the Project's 288-hp diesel fuel-fired (compression engine) emergency fire water pump engine (Cummins Model CFP83-F40). Subpart IIII includes a NMHC+NO_x emission limit of 3.0 g/bhp-hr. The currently-permitted Model CFP83-F40 engine will not

² Note that although this FDOC is for the minor source project configuration, the maximum hourly emission rates for NO_x, which are determinative with respect to 1-hour average NO₂ impacts, are identical to those from the project configuration licensed by the Commission. Consequently, the District's conclusion applies equally to the major source and minor source project configurations.

comply with this emission limit. Therefore, as discussed above, APC proposes to substitute a Cummins Model CFP9E-F40, a Tier 3 compliant engine. After implementing this change, the Project will be in compliance with Subpart IIII. As discussed above, while the revised fire water pump engine will have lower emissions of most pollutants as compared with the engine approved by the Commission, there is the potential for a de minimis increase in CO emissions with the new engine. This de minimis increase will not result in any new adverse environmental impacts, and will not change the Commission’s conclusions or findings.

b. *Subpart JJJJ (Spark Ignition New Source Performance Standards)*

The Project’s 860 hp natural gas-fired (spark ignition) emergency generator (Caterpillar Model G3512LE) is subject to Subpart JJJJ. Subpart JJJJ requires compliance with the following emission limit:

	<u>FDOC (g/hp-hr)</u>	<u>Subpart JJJJ (g/hp-hr)</u>
NOx:	1.0	2.0
CO:	0.6	4.0
VOC:	0.33	1.0
PM ₁₀ :	0.034	None

As can be seen from this table, the limits imposed by FDOC (incorporated into the Final Decision via COC AQ-124) are within the limits mandated by Subpart JJJJ, and therefore the Project’s Caterpillar G3512LE engine will comply with Subpart JJJJ.

7. Boiler MACT

On March 21, 2011, EPA issued new National Emission Standards for Hazardous Air Pollutants (“NESHAPS”) for industrial, commercial, and institutional boilers located at area sources (Area Source Boiler MACT rule). (76 FR 15554.) This rule was amended by EPA on December 23, 2011. (76 FR 80532.) Under EPA regulations, an area source in this context is a stationary source that is not a major source for HAPs”. (40 CFR 63.2.) As shown in the Project AFC, the Project is not a major source of HAPs. (AFC at 6.2-19 and Tables 6.16-1, 6.16-2, and 6.16-3.) Consequently, it is an area source of HAPs.

Although the Project will use a natural gas-fired auxiliary boiler, the Area Source Boiler MACT rule will not apply to the Project’s natural gas-fired boiler because this rule does not apply to gas-fired boilers at area sources. (40 CFR 63.11195.) Similarly, the Area Source Boiler

MACT rule does not apply to waste heat boilers, such as the heat recovery steam generators used in the combined cycle units. (40 CFR 63.11237; see definition of “boiler”.)

H. The Amendment Will Not Impact the Public

As discussed above, the Amendment will not create any new adverse environmental impacts, and will not result in an increase of air emissions, except for a potential de minimis increase in CO emissions from the diesel fire pump engine. Since there are no impacts to the environment, there are therefore no adverse impacts to the public from the Amendment.

I. The Amendment Will Not Impact Nearby Property Owners

APC has included a list of nearby property owners in Attachment 2. As discussed above, the practical impacts of Amendment are very small.

IV. APC REQUESTS THE COMMISSION STAFF RECOMMEND AND THE COMMISSION APPROVE THE PROPOSED AMENDMENTS

In light of the foregoing, APC respectfully requests that the Commission approve the proposed extension of the construction deadline, the proposed option to proceed as a minor source, and the proposed administrative changes to AQ-6, AQ-71, AQ-110, AQ-122, as discussed above. The requested extension of the construction deadline is warranted given the extreme delays that the Project has been subject to (through no fault of its own) in obtaining a final, unappealable PSD Permit. The proposed minor source amendment is warranted for similar reasons. The proposed administrative changes are necessary to reflect minor corrections and changes to equipment descriptions. The changes requested in this Amendment petition fully comply with the Commission’s requirements, and have no potential to cause significant adverse environmental impacts. Furthermore, the minor administrative changes to the COCs would not cause the Project to be out of compliance with LORS.

APC thanks the Commission in advance for its consideration and the Commission Staff for its analysis of this Amendment petition.

DATED: March 5, 2012

DOWNEY BRAND LLP

By: /s/ Nicholas H. Rabinowitsh
Nicholas H. Rabinowitsh
Downey Brand LLP
Attorney for Avenal Power Center, LLC

ATTACHMENT 1

LIST OF PROPERTY OWNERS WITHIN 1000 FEET OF THE PROJECT SITE

AVENAL ENERGY PROJECT

LIST OF CURRENT TAX ASSESSOR'S PARCEL NUMBERS AND OWNERS
WITHIN 1000 FEET OF PROJECT SITE

APN	Name	Address
036-170-018-000	City of Avenal	919 Skyline Blvd, Avenal CA 93204
036-170-031-000	City of Avenal	919 Skyline Blvd, Avenal CA 93204
036-170-030-000	D & M Farms Inc.	2363 S Cedar Ave, Fresno CA 93725
036-170-033-000	D & M Farms Inc.	2363 S Cedar Ave, Fresno CA 93725
036-170-013-000	Dalena Family Farms PTP	7636 Road 34, Madera CA 93638
036-170-017-000	Dalena Family Farms PTP	7636 Road 34, Madera CA 93638
036-170-025-000	Dalena Family Farms PTP	7636 Road 34, Madera CA 93638
036-170-026-000	Dalena Family Farms PTP	7636 Road 34, Madera CA 93638
036-170-012-000	Donaghy Sales, Inc	2363 S Cedar Ave, Fresno CA 93725
036-170-027-000	Kochergen, John A Properties Inc.	8163 W McKinley Ave, Fresno CA 93722
036-170-036-000	Kochergen, Mike J	P O Box 11006, Fresno CA 93711
036-170-037-000	Kochergen, Mike J	P O Box 11006, Fresno CA 93711
036-170-038-000	Kochergen, Mike J	P O Box 11006, Fresno CA 93711
036-170-002-000	Scott, Richard Farms Inc.	P O Box 10132, Fresno CA 93745
036-170-020-000	Westlands Water District	3130 N Fresno St, Fresno CA 93703