

May 19 2006

BY HAND DELIVERY

Jackalyne Pfannenstiel, Vice Chair
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Arthur H. Rosenfeld, Commissioner
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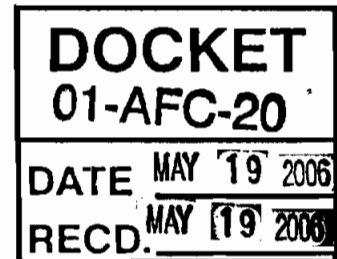
James D. Boyd, Commissioner
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

John L. Geesman, Commissioner
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Federal Power Avenal (Docket No. 01-AFC-20)
Client-Matter No. 36280.00000

Dear Docket Clerk:

Enclosed please find Notice of Intent to Complete Permitting and Opposition to Committee
Proposed Order to Terminate the Application for Certification Proceeding in the above-entitled



STATE OF CALIFORNIA

CALIFORNIA ENERGY RESOURCES AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 01-AFC-20
)	
Federal Power Avenal LLC's Application)	
for Certification of the Avenal Energy)	
Project)	
_____)	

**NOTICE OF INTENT TO COMPLETE PERMITTING AND
OPPOSITION TO COMMITTEE PROPOSED ORDER TO TERMINATE THE
APPLICATION FOR CERTIFICATION PROCEEDING**

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Dated: May 19, 2006

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No.: 01-AFC-17
)	NOTICE OF INTENT TO COMPLETE
Federal Power Avenal, LLC's Application)	PERMITTING AND OPPOSITION TO
for Certification of the Avenal Energy)	COMMITTEE PROPOSED ORDER TO
Project)	TERMINATE THE APPLICATION
)	FOR CERTIFICATION PROCEEDING
_____)	

Pursuant to Title 20 California Code of Regulations Section 1716.5¹ and the Notice of Commission Hearing Re: Committee Order Terminating Proceeding, Federal Power Avenal, LLC ("Avenal") responds to the Committee Order Terminating Proceeding ("Order Terminating Proceeding") and the California Energy Commission Staff's Motion to Terminate the Avenal Energy Project Proceeding ("Staff's Motion"). Based upon the orders, law and regulations governing proceedings, Avenal requests that the California Energy Commission reject the Committee Order Terminating Proceeding and direct the Committee² to complete the Application for Certification proceeding regarding the Avenal Energy Project.

The timing of events and procedural history of this proceeding are important and therefore, are provided in summary fashion below. On April 25, 2005 the Committee granted Avenal's request for a one year suspension of the Application for Certification of the Avenal Energy Project ("Proceeding")³. Pursuant to the Order Suspending AFC Review to May 1, 2006 ("Order Suspending Review"), Avenal could request an additional suspension of the proceeding

¹ All citations are to Title 20 of the California Code of Regulations ("Regulations") unless specified otherwise.

² In this instance the Committee only consists of one member, Commissioner James D. Boyd.

³ Order Suspending AFC Review to May 1, 2006, Docket No. 01-AFC-20 (April 25, 2005).

provided that the request was filed by May 1, 2006⁴. On April 24, 2006, Avenal submitted a request for an additional suspension consistent with the requirements of the Order⁵. On May 5, 2006, California Energy Commission ("Commission") Staff filed an opposition to Avenal's request for suspension and moved to terminate the proceeding. On May 8, 2006, the Committee filed the Committee Order Terminating Proceeding⁶. The Committee further noticed a Commission hearing for May 24, 2006⁷.

I. AVENAL INTENDS TO COMPLETE THE APPLICATION FOR CERTIFICATION PROCEEDING

Avenal hereby withdraws its request for an additional year long suspension of the Application for Certification Proceeding of the Avenal Energy Project ("Proceeding"). Furthermore, Avenal notifies the Committee and the Commission of its intent to complete permitting of the Avenal Energy Project ("Project"). Avenal was proceeding on the mistaken assumption that the Committee and Commission would prefer suspension to completing the permitting of this Project. Since it has become abundantly clear that this is not the case, Avenal is prepared to proceed with licensing of this Project.

Avenal proposes to meet with Staff in a workshop setting to review the record of the proceeding, attempt to reach agreement on the information needed to update the record, and establish a timeline for submitting that information. Avenal is in the process of contacting the original consultants who worked on this Project for Duke Energy North America. Avenal will prepare an assessment of the record no later than July 24, 2006 and would hope to schedule a workshop with Staff shortly thereafter. Avenal would like to receive Staff's comments on the

⁴ *Id.* at 2.

⁵ Letter to James Boyd from Jane Luckhardt requesting extension of existing suspension, dated April 24, 1006.

⁶ Committee Order Terminating Proceeding, Docket No., 01-AFC-20 (May 8, 2006).

⁷ Notice of Commission Hearing Re: Committee Order Terminating Proceeding, Docket No. 01-AFC-20 (May 8, 2006.)

information that Avenal proposes to provide and develop a schedule for the remainder of the proceeding as much as possible with Staff's concurrence.

Neither the Warren-Alquist State Energy Resources Conservation and Development Act nor the regulations require that a project have a power sales contract to file for an application for certification of a thermal power plant. In fact and as the Commission is aware, many recent projects have been permitted and in some cases constructed without power sales contracts. Thus, the situation presented by this Project is no different than many others permitted by the Commission. Avenal has determined that they would like to proceed with permitting the Project. Avenal is prepared and willing to meet with Staff to discuss the range and scope of information that should be updated and move this project through the permitting process.

II. THE COMMITTEE ACTED PREMATURELY IN ISSUING ITS COMMITTEE ORDER TERMINATING PROCEEDING

This Project has been in suspension consistent with valid and unchallenged orders of the Committee. The most recent of which provided an extension of the suspension through May 1 of this year. Consistent with that Order Suspending Review and prior to the expiration of that suspension, Avenal requested an additional suspension. Commission Staff responded and voiced their opposition to the request for an additional suspension and moved that the proceeding be terminated. The following business day, the Committee issued its Order Terminating Proceeding. The Committee provided no opportunity for Avenal to respond to Commission Staff's motion nor did the Committee provide an opportunity for Avenal to complete the proceeding in accordance with the Commission's regulations.

A. This Project has Been in Suspension Under Valid Orders of the Committee

Commission Staff and the Committee point to Section 1720.2 and accuse Avenal of not pursuing the application with due diligence. This proceeding has been in suspension in accordance with valid orders from the Committee. Avenal has requested such orders and been granted such orders. Avenal understands if Commission Staff or the Committee no longer want to support or grant additional orders for further suspensions of this proceeding. But to claim that Avenal has not diligently pursued this application when it has been operating under valid orders from the Committee has no merit. The time for objecting to the Order Suspending Review was in 2005. Neither Staff nor the Committee can reverse the decision made a year ago now. Consistent with its latest order granting suspension, Avenal should be given the opportunity to complete the permitting of this Project.

B. The Committee's Action Failed to Follow Commission Regulations Giving Parties an Opportunity to Respond to Motions

Regulation 1716.5 provides as standard practice 15 days for parties to respond to motions. In this instance the Committee provided no opportunity for any party to respond to Staff's motion. The Committee acted the following business day without any prior contact with Avenal, who is most impacted by the Committee's Order Terminating Proceeding, and with no opportunity for Avenal to respond in any way prior to the Committee's action. This premature Order Terminating Proceeding by the Committee violates the Commission's Regulations and every conceivable concept of due process. Furthermore, the Committee violated the very provisions it seeks to use to terminate this proceeding, Section 1720.2. Again, the Committee

failed to provide an opportunity for other parties to respond and failed to schedule a hearing on the motion. Based upon the Committee's premature action in this situation, the Commission has no choice but to reject the Committee's Order Terminating Proceeding and direct the Committee to complete this Proceeding.

C. The Transmission Interconnection is a Minor Change to this Project and is Consistent with Changes in Other Proceedings


Commission Staff points to an interconnection change as a reason to terminate this Proceeding. This change resulted from PG&E's interconnection studies and final interconnection agreements. PG&E determined in June of 2003 during the licensing proceeding that the Project would need to interconnect to the Gates substation. This decision occurred shortly after the issuance of the Preliminary Staff Assessment. PG&E's decision is not new nor is it a large factor in the overall permitting of this Project. The land between the Project site and the Gates Substation is actively farmed. This interconnection will not cross park land, natural preserves or large wetland features that cannot be avoided. The total distance between the Project site and the Gates Substation is 6 miles. The route selected by Pacific Gas and Electric Company parallels path 15 from very near the project site to the Gates Substation. This type of minor project change occurs in numerous application proceedings and in no way separates this Project from others proceeding through the licensing process.

III. THE COMMISSION MUST REJECT THE COMMITTEE'S ORDER TERMINATING PROCEEDING

Avenal understands that the Committee is not interested in granting an additional extension for this Project. Nonetheless, Avenal should be given the opportunity to complete permitting consistent with the valid orders suspending review of this Project. In any event, the

procedural violations alone, require that the Commission reject the Committee's Order Terminating Proceeding.

Respectfully,



Jane E. Luckhardt
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Attorneys for Avenal