

DOCKETED

Docket Number:	13-AFC-01
Project Title:	Alamitos Energy Center
TN #:	202337
Document Title:	AEC Notice of Objections and Need for Additional Time for Staff Data Requests Set 1
Description:	N/A
Filer:	Karen Mitchell
Organization:	Ellison, Schneider & Harris L.L.P.
Submitter Role:	Applicant Representative
Submission Date:	5/15/2014 2:13:33 PM
Docketed Date:	5/15/2014

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

Application for Certification for the Alamitos
Energy Center

Docket No. 13-AFC-01

**NOTICE OF NEED FOR ADDITIONAL TIME AND OBJECTION TO
CALIFORNIA ENERGY COMMISSION STAFF'S
DATA REQUEST SET 1**

Samantha G. Pottenger
Jeffery D. Harris
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
(916) 447-2166 (Phone)
(916) 447-3512 (Fax)

Attorneys for AES Southland
Development, LLC

May 15, 2014

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

Application for Certification for the Alamitos
Energy Center

Docket No. 13-AFC-01

**NOTICE OF NEED FOR ADDITIONAL TIME AND OBJECTION TO CALIFORNIA
ENERGY COMMISSION STAFF'S DATA REQUEST SET 1**

Pursuant to Section 1716(f) of the California Energy Commission's ("Commission") regulations,¹ AES Southland Development, LLC (the "Applicant"), provides this notice of need for additional time and objection to certain data requests issued by Commission Staff on April 25, 2014. The Applicant will provide responses to Data Requests 1- 8, 10-12, 16-17, 20-25, 27, 38-43, 51-54, and 59-62 within the time provided for in Section 1716(f).

Due to the unexpected length of the ongoing licensing proceedings for the Huntington Beach Energy Project (12-AFC-02) and Redondo Beach Energy Project (12-AFC-03), the Applicant has determined that it is necessary to give priority to these proceedings and to focus all available resources on the timely issuance of licenses for these applications. Therefore, for those Staff data requests that require significant resources in order to respond, in addition to further specified reasons described below, the Applicant requests additional time in which to respond. For Staff's Data Requests 9, 13-15, 18-19, 48, 55-58, and 63, the Applicant requests an extension of 90 additional days in which to respond.

The Applicant objects to Staff's Data Requests 26, 28-37, 44-47, and 49-50, in their entirety. As we explain below, these requests are both burdensome and neither relevant nor reasonably necessary for a Commission decision in this proceeding.

I. NEED FOR ADDITIONAL TIME

A. DATA REQUESTS 9, 13-15.

Data Requests 9 and 13-15 request additional air quality emissions information and modeling. Because of the resources required to respond, and the complexity of the analysis and

¹ As set forth in Title 20 of the California Code of Regulations.

modeling requested, the Applicant is requesting an additional 90 days to respond to these data requests. These responses will be provided on or before August 25, 2014.

B. DATA REQUESTS 18-19.

Data Request 18 requests a list of all sources to be considered in the cumulative air quality impact analysis for staff review and approval. Data Request 19 requests a cumulative modeling and impact analysis based on the approved list. The Applicant submitted a public records request to the South Coast Air Quality Management District (“SCAQMD”) on March 26, 2014 (to be included in the response to Data Request 17) to obtain this information, but has not yet received the necessary data. The Applicant is requesting an additional 90 days to respond to these data requests. The Applicant will respond to Data Request 19 within 30 days of Commission Staff approval of the information submitted as part of Data Request 18.

C. DATA REQUEST 48.

Data Request 48 requests that the Applicant conduct the Offsite Consequence Analysis (“OCA”) described in Appendix 5.5A of the Application for Certification (“AFC”), and provide the input variables, the model used, and the results. Because of the resources required to respond, and the information needed to conduct the OCA, the Applicant requests an additional 90 days to respond to this data request.

D. DATA REQUESTS 55-58.

Data Request 55-58 request isopleths and a recalculated Health Risk Assessment (“HRA”) for cancer and cancer burden conducted pursuant to OEHHA 2012 Guidelines. Because of the resources required to respond, and the complexity of the information, mapping, and assessment requested, the Applicant requests an additional 90 days to respond to these data requests.

E. DATA REQUEST 63.

Data Request 63 requests very detailed information regarding the air cooled condensers. Because of the resources required to respond, and the complexity and detail of the information requested, the Applicant requests an additional 90 days to respond to these data requests.

II. SPECIFIC OBJECTIONS

Section 1716 of the Commission’s regulations establishes the basic framework for information exchanges between parties in licensing proceedings:

A party may request from an Applicant ... information which is reasonably available to the Applicant which is relevant to the application proceedings or reasonably necessary to make any decision on the ...application.²

² 20 C.C.R. § 1716(b).

The type of “information” that an applicant is required to provide includes only “the data and other objective information” reasonably available to it.³ “Reasonably available” has been defined by the Commission as “information *that they* [parties] *possess.*”⁴ The Applicant objects to the following data requests as not meeting the requirements of Section 1716.

A. DATA REQUEST 26.

Data Request 26 asks the Applicant to “provide a detailed description of how the AEC plans to comply” with the U.S. Environmental Protection Agency’s proposed rule regarding “Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units.” The rule is merely proposed, not yet adopted, and is the EPA’s second iteration of the proposed rule. Any response could be wasteful if this second version is rescinded, like the first proposed version, or if further substantive amendments are made to the current proposal. Therefore, the proposed rule is not a law, ordinance, regulation, or standard (“LORS”) applicable to the Project. Information regarding the compliance with the proposed requirements is neither relevant nor reasonably necessary for a Commission decision in this proceeding. Moreover, responding in detail to a proposed rule that *could potentially* change is an inefficient use of resources that can be directed elsewhere.

B. DATA REQUESTS 28-37.

Data Requests 28-32 request extensive and detailed information and modeling relating to nitrogen deposition. As acknowledged in the Preliminary Staff Assessment for the HBEP, facilities subject to the Regional Clean Air Incentives Market (“RECLAIM”) such as the AEC are required to purchase RECLAIM Trading Credits to offset any annual NOx increase in a 1-to-1 offset ratio. (HBEP PSA Part B, p. 4.1-115.) Therefore, “any new stationary source ... would not result in a net increase in NOx basin wide.” Given that it is uncontested that AEC will not result in a net increase in NOx, a detailed and intensive analysis of potential nitrogen deposition impacts from AEC is neither necessary or relevant to any decision the Commission must make in this proceeding, and the detailed information requested in Data Requests 28-32 is burdensome and simply unnecessary.

Data Requests 33- 37 request that the Applicant conduct additional ambient noise monitoring along the San Gabriel River and in the Los Cerritos Wetlands so that Commission Staff can evaluate potential noise impacts to wildlife. However, substantial noise monitoring and information is provided in the AFC, and it is not clear why the newly requested studies are needed in this particular case, particularly given the expense and burden of the requested monitoring. Moreover, such information is not relevant given that there are no LORS or thresholds of significance related to potential noise impacts to wildlife. The Applicant objects to

³ Committee Ruling On Intervenor Center For Biological Diversity’s Petition To Compel Data Responses, Application For Certification For The Carlsbad Energy Center, Docket No, 07-AFC-6, December 26, 2008.

⁴ Application for Certification of the Tesla Power Project by Midway Power LLC, *Order Denying Intervenor’s Petitions for Reconsideration*, p. 3, Docket 01-AFC-21, Certified June 16, 2004, Order No. 04-0811-02 (filed Aug. 11, 2004).

these data requests as burdensome and the requested information is neither relevant nor reasonably necessary for a decision in this proceeding.

C. DATA REQUESTS 45, 47.

Data Request 45 requests a new, extensive records search relating to the entirety of the San Gabriel River Channel and its associated segments or features, including searches of the California Historical Resources Information System (“CHRIS”), the records of the U.S. Army Corps of Engineers, the Los Angeles County Flood Control District, and “other agencies” that may have related environmental documents. Such a request is overbroad in scope and burdensome to perform, given the numerous miles and locales that constitute the San Gabriel River Channel and its associated segments and features, the number of agencies that the Applicant would be required to consult with in the entire Los Angeles Metropolitan area, and the resources that would be required to conduct the research. The Applicant has provided substantial information and analyses regarding the portion of the San Gabriel River Channel that could potentially be affected by the Project, and found that there are no significant impacts. Therefore, additional information is neither relevant nor reasonably necessary for the Commission to make a decision in this proceeding.

Data Request 46(a) requests Department of Parks and Recreation (“DPR”) forms for the individual retention basins and intake channel at the Alamitos Generating Station. However, these are secondary elements to the overall site, which was documented and evaluated as a historic district and not found eligible for the CRHR. Moreover, there is no potential for the retention basins and intake channels to be individually eligible. Therefore, since the Alamitos Generating Station is not eligible as a historic district, and the retention basins and intake channels are not individually eligible, the information requested in Data Request 46, including the DPR forms, are neither relevant nor reasonably necessary for a Commission decision in this proceeding. The scope of the request is also burdensome.

The Applicant also objects to the information requested in Data Request 47 for Studebaker Road and the Los Cerritos Channel. Data Request 47 is objectionable as overbroad and burdensome, given that the Los Cerritos Channel is an open channel that runs through seven cities and a portion of Los Angeles County, and Studebaker Road is a highly trafficked thoroughfare that runs over five miles. Moreover, the Applicant has already provided a substantial amount of cultural resources data in the AFC and Data Adequacy Supplement. Additional information, particularly that which potentially encompasses a vast area of Southern California not affected by the Project, is neither relevant nor reasonably necessary for a Commission Decision in this proceeding.

D. DATA REQUESTS 49-50.

Data Request 49 requests the most current Hazardous Materials Business Plan and Spill Prevention Control and Countermeasures Plan for the existing Alamitos Generating Station. Because the Commission does not have jurisdiction over the existing Alamitos Generating Station, the plans of the facility are neither relevant nor reasonably necessary for a Commission Decision in this proceeding. Therefore, the Applicant objects to Data Requests 49-50.

Dated: May 15, 2014

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By



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

Attorneys for AES Southland Development, LLC