

DOCKETED

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CALIFORNIA ENERGY COMMISSION

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

In the Matter of:)	
AVENAL ENERGY PROJECT)	Docket No. 08-AFC-1C
)	
)	Order No. 14-1210-6
)	
Avenal Power Center, L.L.C.)	ORDER APPROVING a Petition to Extend
)	the Deadline for Commencement of
)	Construction
)	

The proposed Avenal Energy Center (AEC), owned by Avenal Power Center, L.L.C. is a 600-megawatt combined cycle natural gas facility located in the city of Avenal, in Kings County, California. AEC was certified by the California Energy Commission (Energy Commission) on December 16, 2009.

Although AEC's Prevention of Significant Deterioration (PSD) permit request was filed concurrent with the Energy Commission's Application for Certification, the PSD permit was not issued until May 27, 2011, and the PSD decision was appealed to the Ninth Circuit Court of Appeals (Ninth Circuit). In August 2014, the Ninth Circuit issued a decision revoking AEC's PSD permit, sending it back to U.S. Environmental Protection Agency (US EPA) to revise.

On October 22, 2014, based on the timing and outcome of the Ninth Circuit decision, Avenal Power Center, LLC, filed a Petition to Extend the Deadline to Commence Construction for nine (9) months from December 16, 2014 to September 16, 2015.

This matter was heard at the regularly scheduled Business Meeting held on December 10, 2014, at which time staff and petitioner addressed the Energy Commission.

STAFF RECOMMENDATION

Energy Commission technical staff reviewed the petition for potential environmental effects and consistency with applicable laws, ordinances, regulations and standards (LORS). Based on this review of the existing environmental setting, the previous environmental analysis, and the project as currently proposed, staff concludes that there are no substantial changes to the project or to the circumstances under which the project is being undertaken, and no new information was not previously known, justifying a supplemental or subsequent environmental analysis. To assure that when

the project proceeds to construction, the project matches the project setting and analysis, staff proposes a new condition of certification EXTENSION-1.

Energy Commission staff conclude that the petition complies with the requirements of Title 20, Section 1769(a) of the California Code of Regulations and recommends approval of Avenal Power Center's, LLC's petition to extend the deadline for commencement of construction for the AEC project.

ENERGY COMMISSION FINDINGS

Based on the staff's analysis, the Energy Commission finds that the proposed changes will not result in any significant impact to public health and safety, or the environment. The Energy Commission finds that the required findings, mandated by Title 20, California Code of Regulations, section 1720.3, can be made. The Energy Commission also finds:

- The proposed extension would not change the findings in the Energy Commission's Decision pursuant to Title 20, California Code of Regulations, section 1755;
- There would be no new or additional unmitigated, significant environmental impacts associated with the proposed extension;
- The facility would remain in compliance with all applicable laws, ordinances, regulations, and standards;
- The extension proposed in the petition would allow the project owner additional time to reevaluate the facility's configuration, operational profile and permit requirements;
- The proposed extension would be beneficial to the public, because it allows time to reevaluate the project to determine the best suited configuration, operational profile and regulatory path necessary to ensure regulatory compliance, and facilitate the timely completion of the project, and

The proposed extension is justified, and good cause has been shown, because information that was not available to the parties prior to Energy Commission certification is now available, in that the project owner has recently resolved their litigation and must reevaluate the project's configuration, operational profile and regulatory requirements.

CONDITION OF CERTIFICATION

In order

EXTENSION-1 The project owner shall provide to the Compliance Project Manager (CPM) the following:

1. Confirmation that the project description has not changed or, if the project owner intends to modify the project, a description of all changes being proposed, including an evaluation of how the changes comply with laws, ordinances, regulations and standards (LORS) and whether any of the changes would result in a significant, adverse environmental impact (this requirement does not take the place of any petition to amend required under Title 20, California Code of Regulations, section 1769 if changes to the project are being proposed);
2. A review of the existing environmental setting, including all applicable LORS, and a discussion of any changes that have occurred since project certification;
3. The results of recent Burrowing Owl surveys using revised survey guidelines and changes to conditions of certification based on California Department of Fish and Wildlife's (CDFW's) 2012 Staff Report on Burrowing Owl Mitigation, including proposed changes to Conditions of Certification BIO-12 (Burrowing Owl Impact Avoidance and Minimization Measures). These changes shall reflect the revised guidelines including artificial burrows placement, installation and maintenance of artificial burrows, in addition to discouraging temporary or permanent exclusion and closure of burrows as an avoidance and minimization measure especially during the breeding season.
4. An update on any progress made on reinitiation of consultation between US EPA and the United States Fish and Wildlife Service (USFWS) if a new PSD permit is issued necessitating a new biological opinion, If consultation has concluded, please provide proposed modifications to the following conditions of certification, or propose new conditions of certification, incorporating the results of this consultation: Condition of Certification BIO-7 (Impact Avoidance Mitigation Measures), BIO-8 (Mitigation Management to Avoid Harassment or Harm), BIO-9 (Habitat Compensation), and BIO-11 (Pre-construction Surveys).
5. Copies of any revised Determination of Compliance (DOC) permit applications submitted to the San Joaquin Valley Air Pollution Control District (SJVAPCD) and any new permits received for any new approved equipment. Also please provide a discussion of compliance review SJVAPCD undertook with respect to a more restrictive Oxides of Nitrogen (NOx) concentration emission limit for auxiliary boilers than what was previously analyzed in the previous Final Determinations of Compliance (FDOCs), including a discussion of whether the SJVAPCD determined modifications to facility equipment, or conditions of certification, are needed to ensure compliance with LORS requirements.

Verification: The project owner shall submit the above to the CPM for review and approval no later than 90 days prior to license expiration or start of construction, whichever comes first.

CONCLUSION AND ORDER

The California Energy Commission hereby adopts Staff's recommendations and approves the extension of the deadline to commence construction for the Avenal Energy Center from December 16, 2014 to September 16, 2015.

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on December 10, 2014.

AYE: Douglas, McAllister, Hochschild, Scott

NAY: None

ABSENT: Weisenmiller

ABSTAIN: None



Harriet Kallemeyn,
Secretariat