

DOCKETED

Docket Number:	12-AFC-03
Project Title:	Redondo Beach Energy Project
TN #:	205974
Document Title:	Status Report 17
Description:	N/A
Filer:	Deric Wittenborn
Organization:	Ellison, Schneider & Harris LLP
Submitter Role:	Applicant
Submission Date:	9/1/2015 2:47:55 PM
Docketed Date:	9/1/2015

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for the)
Redondo Beach Energy Project)

Docket No. 12-AFC-03

**REDONDO BEACH ENERGY PROJECT
STATUS REPORT # 17**

Pursuant to the Committee’s *Orders Following the August 5, 2015 Committee Conference (“Orders”)*, issued on August 13, 2015, AES Southland Development, LLC (the “Applicant”) hereby files this status report to inform the Committee on the progress of the Redondo Beach Energy Project (“RBEP” or “Project”) Application for Certification (“AFC”) proceeding and to address the issues raised in the Orders.

1. The Applicant Looks Forward to Issuance of the Final Determination of Compliance.

The Committee’s May 5, 2015 Scheduling Order targeted issuance of the Final Determination of Compliance (“FDOC”) by the South Coast Air Quality Management District (“SCAQMD” or “District”) prior to the publication of the Final Staff Assessment in August 2015.¹ The District’s Status Report, dated August 28, 2015 indicates that “a completion date for the Final Determination of Compliance (FDOC) has not been determined.”²

The District stated that “subsequent to the SCAQMD’s Public Consultation meeting held on June 25, 2015 and SCAQMD’s July 30, 2015 status report... the U.S. EPA promulgated the Clean Power Plan Rule for both New and Modified, as well as existing power plants.”³ The SCAQMD would therefore require more time to evaluate the

¹ TN #204496

² TN #205920

³ TN #205756

compliance of RBEP with the Clean Power Plan Rule and/or revisions to the Greenhouse Gas New Source Performance Standard for new or modified gas turbines.⁴

In an email exchange with the Applicant's consultant on August 25, 2015, the SCAQMD stated that “the EPA issued final emission guidelines for states to use in developing plans (Clean Power Plan) to limit CO₂ emissions from existing fossil fuel-fired Electrical Generating Units. However because the state of California has until September of 2016 to submit its final Clean Power Plan, final applicability and requirements of this rule cannot be determined. . .” SCAQMD further stated that their analysis would instead “focus on the new source performance standards established in the August 3rd final rule determination of the Clean Air Act section 111(b).” The SCAQMD requested information on the applicable design specifications of the proposed RBEP to determine compliance with the August 3, 2015 revisions to the Greenhouse Gas New Source Performance Standard for new or modified gas turbines. The Applicant responded the same day with the information requested.

The District also stated that on “August 7, 2015 AES RBEP submitted new information related to the updated MET data that impacts the Modeling analysis for the proposed project.”⁵ This new information data was requested by SCAQMD via email on July 22, 2015. AES responded to the SCAQMD’s request on August 7, 2015, only twelve business days later.⁶ Since the new information requested was merely an update to previously supplied analyses using the latest SCAQMD provided MET data, the Applicant does not expect that this should be a significant cause of delay.

With submission of the requested data to the SCAQMD, the Applicant looks forward to issuance of the FDOC as soon as reasonably possible.

⁴ Id.

⁵ TN #205756

⁶ TN #205651

2. The Committee Should Direct Bifurcation of the Final Staff Assessment.

Some parties to proceedings believe that it is preferable for the Staff to issue a Final Staff Assessment (“FSA”) and for the Committee to conduct evidentiary hearings on all issues on a consolidated basis. However, there are times, such as this proceeding, where it is necessary for the Commission to conduct the proceeding on a bifurcated basis.

There is abundant precedent for bifurcating the FSA where there is delay in issuance of a FDOC by a local air district, so as not to unduly delay the processing of other aspects of the AFC.

In the case of the Delta Energy Center, for example, the proceeding reached a point where the Staff was prepared to issue an FSA on all issues except Air Quality. Rather than delay the proceeding for all other issues, the Committee directed the Staff to issue the FSA for all issues except Air Quality. The FSA was issued on September 20, 1999, and evidentiary hearings began on October 13, 1999. The FDOC was not received until October 25, 1999, and evidentiary hearings were held on the air issues in November 1999. By bifurcating the case in this manner, the Committee was able to issue the PMPD on December 23, 1999.⁷

Similarly, in the Elk Hills proceeding it was apparent that the issuance of the FDOC would be delayed. Therefore, the Committee directed the Staff to issue the FSA in several parts. On January 6, 2000, Staff issued its first in a series of *Final Staff Analyses* covering 17 technical areas. The Committee subsequently conducted evidentiary hearings on these technical areas in January and February 2000.⁸

On February 18, Staff filed its *FSA, Part II*, covering the technical areas of Biological and Soil and Water Resources. The Committee subsequently scheduled

⁷ Commission Decision, Delta Energy Center, 98-AFC-1,
http://www.energy.ca.gov/sitingcases/delta/documents/2000-02-09_DELTA_DECISION.PDF

⁸ Commission Decision, Elk Hills Power Project, 99-AFC-1,
http://www.energy.ca.gov/sitingcases/elkhills/documents/2000-12-22_DECISION.PDF

and conducted evidentiary hearings on these technical areas on March 9 and May 2, 2000.⁹

Finally, after publication of the FDOC on March 30, 2000 Staff issued its *FSA, Part 3*, on April 28, 2000, covering the technical areas of Air Quality and Alternatives. Evidentiary hearings were scheduled, with a single hearing conducted on these technical areas on May 16, 2000.¹⁰

In the La Paloma proceeding, the FDOC was received into the record at an even later stage of the proceeding. The Staff issued the FSA, evidentiary hearings were conducted, and the Committee issued the PMPD prior to the receipt of the FDOC. As described in the La Paloma Decision:

The Committee, after thus establishing the evidentiary record, published its Presiding Member's Proposed Decision (PMPD) on July 20, 1999. The public comment period closed on August 20, 1999..... The Committee reopened the evidentiary record [without convening a further evidentiary hearing] to receive the FDOC in its Order of September 30, 1999. That Order was accompanied by Errata to the PMPD. At the October 6, 1999 full Commission hearing, Staff also proposed one further clarification. These changes are incorporated in this Final Decision."¹¹

The Delta, Elk Hills and La Paloma are among the numerous cases that confirm that there is absolutely no legal or practical reason for the Commission to delay the processing of an Application where a local air district fails to issue the FDOC in a timely manner. The evidentiary record can be reopened at any time to receive an FDOC and related testimony, even after publication of the PMPD. Indeed, an FDOC can be received even after the close of the public comment period on the PMPD. If there are any revisions

⁹ Id.

¹⁰ Commission Revised PMPD, La Paloma Energy Project, 98-AFC-2 at p. 15:
http://www.energy.ca.gov/sitingcases/elkhills/documents/2000-11-21_REVISED_PMPD.PDF

¹¹Id.

between the PDOC and the FDOC, these can be easily incorporated into the final decision in the form of an errata. And if there are any further comments from Applicant, Staff or Intervenors, these can be considered, as in the Paloma proceeding, as late as the final hearing on certification before the full Commission.¹²

Therefore, the Committee should order the bifurcation of the FSA, and thereafter proceed in a timely manner to complete the evidentiary record and receive briefing on all issues except Air Quality.

3. The Committee should revise the schedule to allow evidentiary hearings and briefing of all issues other than Air Quality.

A proposed schedule for processing all aspects of the AFC other than Air Quality is submitted as Attachment A to this status report. The proposed schedule generally follows the time intervals in the Committee's May 5th scheduling order, with slight adjustments to the date for filing the FSA, to provide an additional week for filing of Reply Testimony and to accommodate holidays in the Fall and Winter. Should the SCAQMD issue an FDOC sooner than currently expected, the proposed schedule will allow the Committee to proceed seamlessly, integrating the SCAQMD's work into the proposed schedule rather than letting the lagging item drive the entire schedule for the proceeding.

¹² Id.

4. Update on Noise Issues.

On August 28, 2015, in the interest of advancing the proceeding without waiving any potential objections on timeliness and the merits of the request, the Applicant docketed additional noise information in response to a request for clarification from Commission Staff.¹³

September 1, 2015

ELLISON, SCHNEIDER & HARRIS L.L.P.

By



Greggory L. Wheatland
Samantha G. Pottenger
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
(916) 447-2166 Telephone
(916) 447-3512 Facsimile
Email: glw@eslawfirm.com
Email: sgp@eslawfirm.com

Attorneys for the Applicant

¹³ TN #205909

ATTACHMENT A

**APPLICANT'S PROPOSED SCHEDULE
REDONDO BEACH ENERGY CENTER PROCEEDING**

ACTIVITY	MAY SCHEDULING ORDER DATE	PROPOSED INTERVAL	PROPOSED SCHEDULE
Preliminary Staff Assessment (PSA) Published	July 28, 2014	---	July 28, 2014
Preliminary Staff Assessment Workshop	No later than May 27, 2015	---	May 18, 2015
Comments Due on PSA	June 4, 2015	---	June 4, 2015
Final Staff Assessment Published (FSA)	September 4, 2015	---	October 2, 2015
Last day to file Petition to Intervene	---	30 days before EH	---
All Parties File Opening Testimony	September 25, 2015	4 weeks after the FSA is filed	October 30, 2015
All Parties File Rebuttal Testimony	October 2, 2015	6 weeks after the FSA is filed	November 13, 2015
All Parties File Prehearing Conference Statements with Exhibit Lists	October 9, 2015	7 weeks after the FSA is filed	November 20, 2015
Prehearing Conference (PHC)	Week of October 19, 2015	8 weeks after the FSA is filed	November 30, 2015
Evidentiary Hearings (EH)	Week of November 2, 2015	1 week after PHC	Week of December 7, 2015
All Parties File Opening Briefs	---	2 weeks after EH transcripts are published	
All Parties File Reply Briefs	---	3 weeks after EH transcripts are published	
SCAQMD Issues Final Determination of Compliance (FDOC)	TBD	TBD	TBD
Evidentiary Hearing to accept FDOC	TBD	TBD	TBD
Committee Files Presiding Members Proposed Decision (PMPD)	---		
Committee Conference on PMPD	---		
Close of Public Comment Period on PMPD	---		
Committee Files Errata or Revised PMPD (if necessary)	---		
Energy Commission Final Decision	---		=