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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

***APPLICATION FOR CERTIFICATION FOR
THE PUENTE POWER PROJECT***

DOCKET No. 15-AFC-01

**COMMITTEE ORDER RESPONDING TO
CITY OF OXNARD'S PETITION TO COMPEL PRODUCTION OF DATA**

I. SUMMARY

On November 20, 2015, Intervenor City of Oxnard (City) filed a Petition to Compel NRG Energy (Applicant) to produce information responsive to City Data Requests 1, 78-3, 68, 71, and 77 (Petition, TN 206723). Applicant submitted a response to the Petition on December 7, 2015 (TN 206870). Neither party requested that the Committee conduct public hearings on the Petition.

II. DISCUSSION

Energy Commission Regulation 1716 contains the basic framework for information exchanges (i.e., data requests and responses) for licensing proceedings. A party may request from an applicant "...information reasonably available to the applicant which is relevant to the ... application proceedings or reasonably necessary to make any decision on the ... application." (Cal. Code Regs., tit. 20, § 1716, subd. (b).) An applicant may then answer or object to the request. If an applicant objects, the requesting party may then forego the request, seek alternative means of obtaining the desired information, or petition for an Order directing an applicant to provide the information.

City submitted 46 data requests (Set 1) to the Applicant on August 4, 2015 (TN 205631). Applicant submitted several objections to the requests on August 24, 2015 (TN 205810). Applicant submitted responses to these requests on September 3, 2015 (TN 206009). Applicant withdrew its previously submitted responses to Set 1 on October 30, 2015 (TN 206457). City objected to this withdrawal on October 30, 2015 (TN 206471) and November 5, 2015 (TN 206520).

City submitted a second set of data requests (Set 2) (TN 206019) on September 8, 2015. Applicant filed its responses to Set 2 on October 8, 2015 (TN 206310) and November 6, 2015 (TN 206533).

City submitted further data requests to Applicant (Set 3) (TN 206248) on October 1, 2015. Applicant filed objections to Set 3 on October 21, 2015 (TN 206410). Applicant provided responses to City's Data Requests, Set 3, on October 30, 2015 (TN 206458).

In considering the petition, the Committee considered all information provided by the parties to date, including, but not limited to, the Petition to Compel, Applicant's response thereto, Commission Staff's data requests served on the Applicant on July 17, 2015, and October 14, 2015, and the responses thereto.

III. COMMITTEE RULING

1. ORIGINAL, UNLOCKED SPREADSHEET FILES WITH EMISSION CALCULATIONS

City Data Request 1 (Set 1): *Please provide all Excel spreadsheets used to support the emission estimates in the AFC, Appendices C-2, C-6, and C-8, in their native electronic format and unprotected (i.e., showing formulas), if necessary under confidential cover and/or password protected.*

City Data Request 78-3 (Set 3): *Please provide the unlocked Excel spreadsheet that shows the calculations used to generate NOx emissions for the lookback period 2009 to 2014.*

According to the Applicant:

New information from the turbine vendor and other changes to the Project resulted in the need to completely redo the emissions modeling for the Project. The previously provided emission spreadsheet files are outdated and irrelevant, and have been withdrawn from the CEC by Applicant. See Letter Regarding Withdrawal of Prior Responses to CEC Staff Data Request #2, dated October 30, 2015. Contrary to assertions in the Petition, the outdated emission spreadsheet files are not in any way relevant or reasonably necessary to the environmental review of the Project. As clearly laid out in the Revised Air Quality/Public Health Analysis set forth in Appendix 49-1 of Applicant's Responses to CEC Data Request Set 2, docketed on November 30, 2015, the updated analysis includes: i) new information from the turbine vendor; ii) changes to the modeling procedures; iii) changes in the proposed operating profile of the turbine; and iv) changes to the sequencing of the new turbine coming on line and the shutdown and decommissioning of the existing adjacent Mandalay Generating Station (MGS) Units 1 and 2. (*Citations omitted.*)

(Applicant's Response to Petition to Compel, p. 3, TN 206870.) City has not refuted these claims.

We are informed that City and the Applicant have entered into a nondisclosure agreement (NDA) regarding the information contained in the most recent version of the requested calculation spreadsheets, and that said information, pertaining to the turbines which will actually be used at the Project, was conveyed to City on December 15, 2015 (TN 207053).

City asserts that “the nature of the [A]pplicant’s forthcoming changes to the emission calculations cannot be verified without access to the original spreadsheet.” (Decl. of Phyllis Fox in Support of City’s Petition, p. 2, ¶6, TN 206724)

The City does not explain how the calculations for the previously planned turbines would serve to verify the calculations for the new turbines, or how they are otherwise relevant. As Applicant argues, the “detailed emissions calculations for the [Project] have been changed and the original detailed emissions calculations for the [Project] are outdated and no longer relevant for the review of the [P]roject’s environmental impacts.” (Decl. of Gary Rubinstein in Support of Applicant’s Response to City’s Petition, ¶8, TN 206870.) Since Applicant has provided the emissions calculations and data regarding the turbines which will in fact be employed at the Project, the Committee finds that the outdated emissions calculations are both unnecessary and irrelevant. The data therein would not provide any useful information as to the environmental impact of the Project as it is currently planned.

Accordingly, the Petition is DENIED as to Data Requests 1 and 78-3.

2. VENDOR GUARANTEES FOR PROJECT EMISSIONS

City Data Request 68 (Set 3): *Please provide a copy of the formal vendor guarantee, including all of the operating conditions under which the vendor guarantee is valid [regarding the gas turbines and their emissions].*

City Data Request 71 (Set 3): *Please provide the support for these assumed startup and shutdown emissions [for the gas turbines], in the form of startup/shutdown emission curves and any supporting measurement.*

Instead of providing the requested data, the Applicant provided:

[W]ritten statements from the turbine vendor, General Electric (GE), confirming the emission rates of the proposed turbine. As acknowledged in the Petition, the initial emission rates were included in AFC Appendix C-2, Table C-2.3. GE subsequently updated the particulate matter emission rate in a statement not mentioned in the Petition, which was docketed on November 3, 2015. To date, Applicant has not negotiated final commercial guarantees with GE. (*Citations omitted.*)

(Applicant's Response to Petition to Compel, pp. 5-6, TN 206870.) City has not refuted these claims.

CEQA does not require that every conceivable study, research project or test be carried out, or that the analyses be exhaustive. However, if an applicant agrees to conduct a study or is otherwise in possession of data or study results, it is appropriate to require their production. In this case, the request appears to ask for information that is not in the Applicant's possession. The Energy Commission's regulations do not require an applicant to conduct original research or analysis on behalf of, or prepare documents specifically for, an intervenor. (Cal. Code Regs., tit. 20, § 1716, subd. (b).) Nor do they require that the information provided satisfy all expectations of the requesting party. The information provided by Applicant appears to be the type routinely relied upon by applicants and CEC staff to determine and evaluate project emissions.

Accordingly, the Petition is DENIED as to Data Requests 68 and 71.

3. STACK TEST INFORMATION

City Data Request 77 (Set 3): *[W]e request that the applicant obtain and docket more recent and relevant HAP [hazardous air pollutants] stack test information for similar GE Frame 7 turbines that includes normal operation as well as startup and shutdown conditions and use it to revise its HAP emission estimates.*

Applicant explains:

Applicant does not possess the emissions test data requested in the Petition and is not aware that such data exists. Furthermore, such test data is not necessary for the environmental review of the Project. The normal operation and startup/shutdown emission estimates used in the analysis of air quality impacts for the Project are based on emissions levels provided by GE for the exact make and model of turbine proposed for the Project, at the Project location. Emissions test data, such as that requested in the Petition, is not routinely provided by equipment vendors to applicants, or by applicants to the CEC in connection with CEC jurisdictional projects. *Id.* Instead, applicants and CEC staff rely on emissions estimates provided by equipment vendors and generally accepted emission factors. (*Citations omitted.*)

(Applicant's Response to Petition to Compel, p. 7, TN 206870.) City has not refuted these claims.

As with item 2 above, City requests information not reasonably in Applicant's possession. The information requested also appears to be of questionable relevance, as it would relate only to similar turbines at other locations, and would not accurately

reflect the emissions levels produced by the specific turbines to be used at the actual Project location. The information already provided by Applicant in these regards appears to be of the type routinely relied upon by applicants and CEC staff to determine and evaluate project emissions.

Accordingly, the Petition is **DENIED** as to Data Request 77.

It is so ORDERED.

Dated January 29, 2016, at Sacramento, California.

Original signed by

JANEA A. SCOTT
Commissioner and Presiding Member
Puente AFC Committee

Original signed by

KAREN DOUGLAS
Commissioner and Associate Member
Puente AFC Committee