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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

Application for Certification for the
MISSION ROCK ENERGY CENTER.

Docket No. 15-AFC-02

**NOTICE OF OBJECTIONS
TO CALIFORNIA ENERGY COMMISSION STAFF'S
DATA REQUESTS SET 1**

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Pursuant to Section 1716(f) of the California Energy Commission's ("Commission") regulations, Mission Rock Energy Center, LLC ("Applicant") provides this notice that it objects to providing certain information requested by Commission Staff Data Request Set One (Nos. 1-107), dated June 24, 2016, regarding the Mission Rock Energy Center ("MREC").¹

As set forth in further detail below, the Applicant objects to Data Requests 28, 30-32, 35-58, 68-69, 71, 73-75, 80-81, 87, 101-102, and 105.

The Applicant has not yet had an opportunity to discuss these data requests with Commission Staff. The Applicant looks forward to discussing these requests at an Issues Resolution Workshop that will be scheduled in the near future.

I. OBJECTIONS

Section 1716(b) of the Commission's regulations provides that a "party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or

¹ Section 1716(f) provides that the deadlines for responding to data requests, objecting to data requests or requesting additional time to respond to data requests may be extended by mutual agreement of the parties. By mutual agreement of the parties, the deadline for objections to Commission Staff's Data Request Set 1 was extended to August 1, 2016. Please see, the Applicant's *Request for Extension of Time to Respond to California Energy Commission Staff's Data Request Set 1 and Set 1A* (TN# 212294); Commission Staff's Response, *Re: Request for Extension of Time to Respond to California Energy Commission Staff's Data Request Set 1 and Set 1A* (TN# 212295); and Commission Staff's *Mission Rock Energy Center (15-AFC-02) Data Requests Set 1A (Nos. 108-114)* (TN# 212305).

application.” Section 1716 does not require that an applicant “perform research or analysis on behalf of the requesting party.”²

In evaluating whether a data request involves “discoverable information” under Section 1716 or “undiscoverable analysis or research”, the Commission considers four factors: (1) the relevance of the information; (2) whether the information is available to the applicant, or from some other source, or whether the information has been provided in some other form; (3) whether the request is for data, analysis, or research; and (4) the burden on the applicant to provide the data.³ As explained below, the following data requests do not meet the requirements of Section 1716.

A. DATA REQUEST 28

Data Request 28 requests “a completed Notification of a Lake and Streambed Alteration.” A “Notification of a Lake and Streambed Alteration” is not reasonably necessary for the Commission to make a decision on the Application. California Fish and Game Code section 1602(a) provides that an “entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake” without first providing written notification, in addition to other requirements, to the California Department of Fish and Wildlife (“CDFW”). In this case, the MREC will neither “substantially divert or obstruct the natural flow of” nor “substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake.”⁴ Further, the MREC will not “or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.” Any “debris, waste, or other material containing crumbled, flaked, or ground pavement” generated during the construction of the MREC will be disposed of off-site.⁵ Therefore, the notification required under Section 1602

² See Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

³ See Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

⁴ See, *Application for Certification for the Mission Rock Energy Center* (hereinafter, “AFC”), § 5.2.2 and Table 5.2-4.

⁵ See, AFC, p. 5.14-5 through 6.

is inapplicable to the MREC. Because Section 1602 is inapplicable, the information is not reasonably necessary to make a decision on the AFC. Notwithstanding this objection, the Applicant will work with CDFW to provide any necessary clarifications regarding the scope of project activities, and to confirm that a notification is not required for the MREC.

B. GENERAL OBJECTIONS TO DATA REQUESTS 30-32, 35-58

Section 1716 requires that the requested information be “reasonably available” to the Applicant. Section 1716 does not require that the Applicant “perform research or analysis on behalf of the requesting party”⁶. The Applicant objects to the following cultural resources data requests as not meeting the requirements of Section 1716.

The cultural resources data requests collectively request that the Applicant conduct additional research, new fieldwork, new surveys, and new analysis, in addition to the preparation and submission of three new technical reports and five supplemental reports that address the requested research, fieldwork, surveys, and analysis. Requesting the preparation and submittal of not just one, but eight new reports, is burdensome, particularly where, as here, the Applicant has already conducted a detailed cultural resources study in support of the MREC. The information provided by the Applicant in the AFC and in the AFC Data Adequacy Supplement, included extensive literature searches, fieldwork, surveys, and analysis,⁷ provides a comprehensive picture of the cultural resources potentially affected by the MREC. The cultural resources data requests collectively ask for a substantial volume of information that is not reasonably available to the Applicant. Further, the requests specifically require that new undiscoverable analysis and research be performed by the Applicant. Therefore, the information requested does not comply with the requirements of Section 1716.

Section 1716 also requires that the requested information be relevant or reasonably necessary for a Commission decision in the proceeding. The additional research and analysis requested in the following cultural resources data requests are neither relevant nor reasonably necessary for the Commission to make a decision in this proceeding given the extensive information already provided by the Applicant.

⁶ See Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

⁷ TN #: 211312.

Finally, the sheer volume, scope, and number of the new research, surveys, fieldwork, and technical reports requested are extremely burdensome for the Applicant, particularly because several of the data requests require the Applicant to repeat research, surveys, and fieldwork that has already been conducted in support of the MREC. For the foregoing reasons, the Applicant objects to Data Requests 30-32, 35-58. The Applicant further objects to the cultural resources data requests as specified below.

1. DATA REQUESTS 30-32

As described above, Section 1716 does not require that the Applicant “perform research or analysis on behalf of the requesting party”⁸. Despite this limitation, Data Requests 30-32 collectively request that the Applicant prepare and submit, “under separate covers”, three new technical reports. The Applicant objects to Data Requests 30-32 on the basis that the requests require the Applicant to perform research and analysis on behalf of the requesting party.

The Applicant also objects to Data Requests 30-32 on the basis that the requests are vague and overbroad. Data Request 30 requests a technical report that includes “additional research and fieldwork with the goal of completing the archaeological and built environment survey and documentation of cultural resources in the Mission Rock survey area.” Data Request 31 requests a technical report that includes “additional research and fieldwork focused on documenting and evaluating all newly identified cultural resources within the Mission Rock survey area.” Data Request 32 requests a technical report that includes “additional research and fieldwork focused on the following significant historical themes associated with the Mission Rock survey area: oil industry, transportation systems, cultural institutions (education/social), and agribusiness.” Other than these generalized requirements, the substance and content of the reports are vague and overbroad. Finally, these reports are not relevant or necessary to decide any issue regarding this Application. Therefore, the Applicant objects to Data Requests 30-32.

2. DATA REQUESTS 35-36

Data Request 35 requests that the Applicant complete a pedestrian archaeological survey for unsurveyed portions of certain linear facilities for the MREC. Data Request 35 also requests

⁸ See Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

that the Applicant conduct surveys of a farm located south of the MREC site. The Applicant was previously unable to complete the pedestrian surveys due to access issues. Surveys of the farm were also not conducted because the farm did not constitute a cultural resource of 45 years or older at the time. The Applicant objects to Data Request 35 on the basis that it requests information that is not reasonably available to the Applicant.

Data Request 36 requests a new technical report with extremely detailed requirements, including the completion of a Department of Parks and Recreation (“DPR”) 523 form in a specific manner. The Applicant objects to Data Request 36 on the basis that it requires the Applicant to not only perform research and analysis on behalf of the requesting party, but as requesting information that is not relevant or necessary to decide any issue regarding this Application.

3. DATA REQUESTS 37-41

Data Request 37 that the Applicant conduct “historical research of all Santa Clara River Valley Rural Historic District parcels” within the MREC study area, which is comprised of 180 parcels.⁹ Data Request 38 requests that the Applicant “provide digital copies of the all historic documents, maps and photographs used in the historical research.” Data Request 40 asks the Applicant to “revisit all previously identified resources and resources identified during historical research to collect sufficient photographs and other information to complete a full set of DPR forms, as appropriate.”

All 180 parcels were previously examined during archival research, including review of historical maps and aerials.¹⁰ Digital copies of the historic documents, maps and photographs used in support of the Application have been submitted and provided to Commission Staff. Where feasible, the Applicant has already completed DPR forms for previously identified resources and resources identified during historical research. The requested research has already been conducted, and the information submitted in the AFC, AFC Appendices, and AFC Data Adequacy Supplement.

Therefore, the requested additional research, and any information to be derived therefrom, is neither relevant nor reasonably necessary for the Commission to make a decision in

⁹ See, AFC, p. 5.3-13.

¹⁰ See, AFC, p. 5.3-13.

this proceeding. These data requests are extremely burdensome and would require the Applicant to expend substantial additional time and resources conducting this additional research, and to “revisit” areas that have already been assessed.

Data Request 39 asks that the Applicant “request permission to access all Santa Clara Valley Rural Historic District parcels within the Mission Rock study area” and document all communications with landowners regarding access. This data request is objectionable for several reasons. First, the purpose of Section 1716 is for parties to obtain information that is reasonably available, not to require that a party perform research or analyses on another party’s behalf. The only information requested in Data Request is the documentation of communications with landowners. Such documentation is neither relevant nor reasonably necessary for a Commission decision in this proceeding. Second, there are 180 parcels within the MREC study area. Contacting and requesting permission to access all 180 parcels is extremely burdensome, particularly in light of the fact that there is no justification to request access to so many properties. Therefore, the Applicant objects to Data Requests 37-41.

Data Request 41 requests a new technical report with extremely detailed requirements, and the preparation of several new maps. The Applicant objects to Data Request 41 on the basis that it requires the Applicant to perform burdensome research and analysis on behalf of the requesting party. The Applicant further objects as the requested information is neither relevant nor reasonably necessary to decide any issue regarding this Application.

4. DATA REQUESTS 42-47

Data Request 42 requests “historical research of the project site and the project linear facility routes.” Data Request 44 requests that the Applicant “provide digital copies of the all historic documents, maps and photographs used in the historical research. Again, the Applicant has already conducted a detailed cultural resources study in support of the MREC, which included extensive literature searches, fieldwork, surveys, and analysis of both the project site and the project’s linear facilities. The additional burdensome research and analysis requested in Data Requests 42 and 44 is neither relevant nor reasonably necessary for the Commission to make a decision in this proceeding given the extensive information already provided by the Applicant.

Data Request 43 requests digital copies “of all phases” of the 1996 San Buena Ventura Research Associates Report. Each “phase” of the report corresponds to a different geographical area. The “phase” with the geographical area applicable to the project area, Phase V, has already been provided to Commission Staff. All other phases are neither relevant nor reasonably necessary to a Commission decision in this proceeding as they encompass geographical areas not applicable to the project. Therefore, the Applicant objects to Data Request 43.

Data Requests 45-47 require the Applicant to conduct new research and analysis, including the preparation of a new technical report with extremely detailed requirements, and the preparation of several new maps. The Applicant objects to Data Requests 45-47 on the basis that they require the Applicant to not only perform research and analysis on behalf of the requesting party, but to also prepare and submit a new technical report as well. The Applicant further objects as the requested information is neither relevant nor reasonably necessary to decide any issue regarding this Application.

5. DATA REQUESTS 48-52

Data Request 48 requests that the Applicant conduct historical research relating to 28 newly recorded resources identified in the Applicant’s cultural resources study. Data Request 49 requests the corresponding digital files.

Because historical research has already been conducted for thirteen of those resources, and the digital copies of the historic documents, maps and photographs used in support of the Application have already been submitted and provided to Commission Staff, the Applicant objects to Data Requests 48 and 49 as to those thirteen.¹¹ The Applicant does not object to conducting additional historical research for the remaining fifteen resources for which a DPR and site location form were not completed.

Data Request 50 asks that the Applicant request permission to “access all newly identified resources.” As with Data Request 39, the Applicant objects to any data request that requires the Applicant to request permission to access land owned by a third party. Section 1716 authorizes parties to request information from the Applicant that is reasonably available to the

¹¹ DPR Forms were completed and submitted for 13 of the newly recorded resources as part of the AFC and the AFC Data Adequacy Supplement.

Applicant. Section 1716 does not require the Applicant to perform additional research or analysis, particularly on the private property of third parties.

Data Request 51 requests that the Applicant “revisit” all newly identified resources to determine if any are contributors to the Santa Clara River Valley Rural Historical District and to determine whether any could be considered Ventura County Landmarks. Because historical research and DPR forms have already been completed for thirteen of those resources, the Applicant objects to Data Requests 51 as to those thirteen.¹² The Applicant does not object to evaluating the remaining fifteen resources for which a DPR and site location form were not completed and which are accessible for evaluation.

Data Request 52 requests a new technical report with extremely detailed requirements, including the completion of DPR forms in a specific manner and preparation of new maps. The Applicant objects to Data Request 52 on the basis that it requires the Applicant to perform detailed and burdensome research and analysis on behalf of the requesting party. The Applicant further objects as the requested information is neither relevant nor reasonably necessary to decide any issue regarding this Application.

6. DATA REQUESTS 53-58

Data Requests 53-58 request “additional research focused on the historical themes associated with the Santa Clara River Valley Rural Historic District” (DR 53), along with more “supplementary historical research”, digital files, and bibliography (DR 54); field surveys and even more “historical research” (DR 55); more digital files (DR 56); “revisit[s]” to landscape features; and a new, corresponding technical report with extremely detailed requirements, including the completion of DPR forms in a specific manner and preparation of new maps. The Applicant objects to Data Requests 53-58 as extremely burdensome, as requesting information that is not reasonably available to the Applicant, as requesting the Applicant to perform research not relevant or necessary to decide any issue regarding this Application, and for the other grounds stated in our objections to Data Requests 30-32, and 35-52.

¹² DPR Forms were completed and submitted for 13 of the newly recorded resources as part of the AFC and the AFC Data Adequacy Supplement.

C. DATA REQUESTS 68-69

Data Requests 68-69 relate to the official FEMA map for site. Data Request 68 requests a “projected schedule of when the official FEMA map update will be effective and the time anticipated to obtain FEMA approval to proceed with floodplain development.” The Staff in a separate proceeding has docketed information indicating that Preliminary FIRM maps for Ventura County would be released around September 9, 2016.¹³ Apart from the information provided by Staff, no other information is available to the Applicant.

Data Request 69 requests information regarding “how the earthwork design would not change if the official FEMA map update results in a different elevation.” The Applicant does not understand the question and therefore objects to Data Request 69 as vague and ambiguous.

D. DATA REQUESTS 71, 73-75

Data Requests 71, 73-75 request detailed engineering profiles of earthwork, proposed side slopes, and a demonstration that the MREC, when combined with other property uses (in an unspecified area), do not increase the water surface elevation of the base flood more than one foot at any point. This detailed engineering information is determined during the engineering and design stages of the project that will occur only after the Application is approved and a decision is made to proceed with construction of the project. None of this information is reasonably available at this time, nor is such detailed information necessary for the Commission to make a decision on this Application. Therefore, the Applicant objects to Data Requests 71, 73-75 because the information is not reasonably available and is not relevant to a decision the Commission must make on this Application.

E. DATA REQUESTS 80-81

Data Request 80 requests information regarding the “status of consultation with the LARWQCB”, and whether the current permit can be revised to allow use of recycled water. Data Request 81 requests copies of any information submitted to the LARWQCB relating to the permit revisions process. In support of the Application, the Applicant provided information regarding its Water Supply Agreement, and the estimated amount of recycled water that would

¹³ TN #: 212261.

be provided to the project under that agreement.¹⁴ Information regarding a counterparty's permitting process, which is outside the Commission's jurisdiction, is not reasonably available to the Applicant, nor is it relevant or reasonably necessary for a Commission decision in this proceeding. Therefore, the Applicant objects to Data Requests 80-81.

F. DATA REQUEST 87

Data Request 87 requests current traffic volumes, volume to capacity ratios, and LOS data (without and with the proposed project) for Pinkerton, Mission Rock, and Shell roads. First, the Applicant submitted extensive information and analyses regarding Briggs Road at SR-126. This information and analyses is sufficient to analyze the potential traffic and transportation impacts of the project because the road network in that area is essentially a closed system. The requested information is neither relevant nor reasonably necessary for the Commission to make a decision in this proceeding given the extensive information already provided by the Applicant. Second, neither Ventura County nor any other entity collects or maintains a database of the information for these roads. Obtaining such information would be burdensome, requiring multiple traffic recorders and counters to collect the requested information. Therefore, the Applicant objects to Data Request 87 as not meeting the requirements of Section 1716.

G. DATA REQUESTS 101-102

Data Requests 101 and 102 request one-line diagrams of Southern California Edison's ("SCE's") Santa Clara substation both prior to and after the interconnection of the MREC. The requested information regarding the substation after interconnection will not be available until SCE's design phase occurs. This design phase will occur after the Application is approved and the project is ready to proceed to construction. Therefore, the Applicant objects to Data Requests 101 and 102 as the information is not currently available.

H. DATA REQUEST 105

Data Request 105 requests a completed California Independent System Operator ("CAISO") Phase I and/or Phase II Interconnection Study for the MREC. Neither the Phase I nor the Phase II Interconnection Study has been completed; therefore, the requested information

¹⁴ See, AFC, p. 5.15-6; also see, Appendix 2C.

is not available as this time. The studies will be made available when they are completed if they are necessary for the Commission to make a decision on a matter relevant to the Application. As stated in the Applicant's January 5, 2016 letter to the Executive Director, the Applicant believes that the information submitted with the Application are sufficient to assess the potential transmission impacts of the MREC, that transmission improvements will likely be limited to work in the existing substation, and that the new interconnection studies are not necessary for the Commission to make a decision on this Application.¹⁵

Dated: August 1, 2016

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  _____

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¹⁵ See, AFC Appendix 3A; also see, Letter to R. Oglesby, *Re: Mission Rock Energy Center Application for Certification* (Jan. 8, 2016) (TN #: 207234).