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18-SIT-02 Power Plant Compliance Enforcement

Additional submitted attachment is included below.



June 5, 2018

Via Electronic Docketing

Christine Root
Compliance Office Manager
Siting, Transmission, & Environmental Protection Division
California Energy Commission
1516 Ninth Street, MS 29
Sacramento, CA 95814-5512

Re: Comments Regarding Proposed Power Plant Complaint Enforcement Protocols
High Desert Power Project, LLC (Docket No. 18-SIT-01 and No. 18-SIT-02)

Dear Ms. Root:

Middle River Power (MRP) is the asset manager for both MRP's 830 MW High Desert Power Project ("HDPP") and 270 MW Coso Geothermal ("Coso") as well as other assets across the US. HDPP is located adjacent to Southern California Logistics Airport (formerly George Air Force Base) in Victorville, California. Coso is located on the China Lake Naval Air Weapons Station in Inyo County, California. In addition, MRP is active in developing several hundred MWs of solar and energy storage sites at key location within the State.

MRP has reviewed the proposed compliance enforcement policy tools, Compliance Advice Letters and Notices of Violation, and we respectfully offer the following comments for consideration.

The Public Resources Code sets forth a detailed process for complaint actions and the possible imposition of civil penalties (Public Resources Code Sections 25534-25534.2). Similarly, the California Code of Regulations, Title 20, Chapter 2, Article 5 outlines the process for "filing complaints and investigations for alleged violations of statute, regulation, order, program, or decision adopted, administered, or enforced by the commission."

The hearing and notice procedures set forth in statute and regulation provide the respondent due process to respond to a complainant in front of the Commission. Moreover, existing law unambiguously provides that only the Commission, not its Staff, may impose civil penalties. Those penalties may be imposed only after the filing of a complaint and a hearing before the full Commission. Any rulemaking, or less formal process, suggesting that the Staff may impose penalties is not consistent with existing law.

With respect to the new proposals, the terms "Compliance Advice Letter" and "Notices of Violation" are not referenced in the Commission's regulations concerning power plant enforcement, and the procedures outlined during the workshop held on May 18 of this year indicate that these tools are intended to be used prior to filing a "Complaint" as outlined above. Without a supporting rulemaking or regulation, the purpose and standards which apply to a Compliance Advice Letter or a Notice of Violation proceeding are vague. This uncertainty can stifle communication between projects and staff, creating delays and diverting resources in

preparation for an enforcement action. Efforts to provide clarifying information or correct issues with these processes could be more difficult and time consuming.

Furthermore, receiving a Compliance Advice Letter or Notice of Violation would indicate that a formal proceeding has been initiated, and a noncompliance has been determined, prior to any investigation of the facts. Without clearly articulated standards, procedures, and an appeal mechanism set in rule or regulation, the project's recourse upon receipt is not well defined. It is also unclear whether any action or agreement resulting from a Compliance Advice Letter or Notice of Violation process would preclude a subsequent Complaint filed before the Commission. We are therefore concerned that these new tools could be used by staff to impose civil penalties not authorized by statute without presenting the appropriate level of evidence, investigations, and due process protections currently afforded by statute and regulation.

If you have any questions or concerns regarding this letter, please feel free to contact me at (760) 530-2303.

Respectfully submitted,

By: 

Jeff Malone
Asset Manager