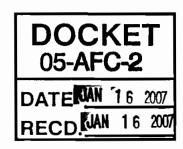
## GALATI & BLEK Counselors & Advocates

Plaza Towers 555 Capitol Mall Suite 600 Sacramento, CA 95814



January 16, 2007

Ms. Raquel Rodriguez
California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: WALNUT CREEK ENERGY, LLC'S NOTICE OF MOTION AND MOTION FOR SCHEDULING ORDER DOCKET NO. (05-AFC-2)

Dear Ms. Rodriguez:

Enclosed for filing with the California Energy Commission are one original and 12 (Twelve) copies of the WALNUT CREEK ENERGY, LLC'S NOTICE OF MOTION AND MOTION FOR SCHEDULING ORDER, for the Walnut Creek Energy Project (05-AFC-2).

Sincerely,

Marguerite Cosens

Scott A. Galati GALATI & BLEK LLP 555 Capitol Mall Suite 600 Sacramento, CA 95814 (916) 441-6575

### STATE OF CALIFORNIA

# Energy Resources Conservation and Development Commission

In the Matter of:

Application for Certification for the Walnut Creek Energy Park

**DOCKET NO. 05-AFC-2** 

WALNUT CREEK ENERGY, LLC'S NOTICE OF MOTION AND MOTION FOR SCHEDULING ORDER

Walnut Creek Energy, LLC (WCE), a wholly-owned subsidiary of Edison Mission Energy (EME) hereby requests the Siting Committee issue a Scheduling Order to require Staff to prepare a Final Staff Assessment (FSA) within 30 days of receipt of the Final Determination of Compliance (FDOC).

On November 8, 2006 the South Coast Air Quality Management District (SCAQMD) issued its Preliminary Determination of Compliance (PDOC). On December 28<sup>th</sup> 2006, Staff published its Preliminary Staff Assessment (PSA) for the Walnut Creek Energy Park (WCEP). In the Air Quality section of the PSA, Staff opines that the emissions from the WCEP are unmitigated essentially discounting WCE's offset strategy, which, for PM10, relies on the SCAQMD Priority Reserve.

Staff states at page 4.1-50 through 4.1-51 of the PSA that the applicant should submit additional evidence of offsets prior to issuance of the FSA including up to 731 pounds per day of PM10/PM2.5 emission reductions. If such additional offsets were obtainable, we believe the SCAQMD would not have undertaken a rulemaking to open the Priority Reserve. Even if such offsets were available, and using the most recent proposed prices for the Priority Reserve credits, the additional cost of Staff's requirement would exceed \$58 million. WCE strongly disagrees with Staff's assessment and believes the WCEP will be fully offset in accordance with SCAQMD Rules and no additional offsets

are legally required or technically justifiable. If Staff continues to hold its opinion, WCE is fully prepared to adjudicate the issue at evidentiary hearing.

Staff has essentially held the project hostage since it will not prepare the FSA until WCE agrees with its assessment and provides these additional offsets. Staff has no independent authority to withhold the FSA because an applicant disagrees with its opinion on impacts and mitigation. Staff should be required to finalize its opinion and defend it at hearing.

Therefore, we respectively request the Siting Committee to adopt a Scheduling Order that would require Staff to produce its FSA within 30 days after the SCAQMD issues its FDOC.

Dated: January 16, 2007

Respectfully Submitted,

Scott A. Galati

Counsel to Edison Mission Energy

#### STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

Docket No. 05-AFC-02

Application for Certification for the WALNUT CREEK ENERGY PARK

PROOF OF SERVICE

I, Marguerite Cosens, declare that on January 16, 2007, I deposited copies of Edison Mission Energy's WALNUT CREEK ENERGY, LLC'S NOTICE OF MOTION AND MOTION FOR SCHEDULING ORDER, for the Walnut Creek Energy Park (05-AFC-02) in the United States mail at Sacramento, California with first class postage thereon fully prepaid and addressed to the following:

Original plus 12 copies delivered to:

#### **DOCKET UNIT**

California Energy Commission Docket Unit, MS-4 Attn: Docket No. 05-AFC-02 1516 Ninth Street Sacramento, CA 95814-5512

Copies also sent to:

## APPLICANT

Lawrence Kostrzewa, Project Director Edison Mission Energy 18101 Von Karman Avenue Irvine, CA 92612-1046

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Jenifer Morris Project Manager NJ Resources, LLC 7240 Heil Ave. Huntington Beach, CA 92647

## COUNSEL FOR APPLICANT

Galati & Blek, LLP Scott Galati Plaza Towers 555 Captiol Mall, Suite 600 Sacramento, CA 95814

## INTERESTED AGENCIES

No agencies to date.

## **INTERVENORS**

California Unions for Reliable Energy (CURE) C/O Marc D. Joseph Gloria D. Smith Adams, Broadwell, Joseph & Cardozo

601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080

I declare under penalty of perjury that the foregoing is true and correct.