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Sacramento, CA 95814

<b>DOCKET</b> <b>05-AFC-2</b>
DATE <b>JAN 16 2007</b>
RECD. <b>JAN 16 2007</b>

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**

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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 respectfully 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,

A handwritten signature in black ink, appearing to read 'S. Galati', written over a horizontal line.

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

2485 Natomas Park Dr., Suite 600  
Sacramento, CA 95833

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

Copies also sent to:

**APPLICANT**

Lawrence Kostrzewa, Project Director  
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Irvine, CA 92612-1046

**COUNSEL FOR APPLICANT**

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Dereck Benham, Project Manager  
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**INTERESTED AGENCIES**

No agencies to date.

\*Thomas McCabe  
Edison Mission Energy  
18101 Von Karman Avenue  
Irvine, CA 92612

**INTERVENORS**

California Unions for Reliable Energy  
(CURE)  
C/O Marc D. Joseph  
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Douglas M. Davy, Ph.D., Sr. Project  
Manager

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

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

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