



South Coast Air Quality Management District

21865 E. Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • <http://www.aqmd.gov>

**DOCKET
05-AFC-2**

DATE OCT 05 2007

RECD. OCT 05 2007

October 5, 2007

Jackalyne Pfannenstiel
Chairman and Presiding Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Walnut Creek Energy Park AFC (Docket No. 05-AFC-2)

Dear Chairman Pfannenstiel:

This is in reference to the Walnut Creek Energy Park (WCEP) project and the Notice of Commission Hearing on Proposed Decision for this project scheduled for October 10, 2007. As you know, Walnut Creek Energy, LLC (WCE) has filed an Application for Certification (AFC) with the California Energy Commission (CEC) and a Title V Application for Permit to Construct with the South Coast Air Quality Management District (AQMD) in 2005. As part of the AFC process, the CEC requested that AQMD make a Determination of Compliance (DOC) for the WCEP project.

One of the requirements applicable to the WCEP project is the New Source Review (NSR) Rules' requirement to offset the emission increases associated with the project. Due to the scarcity of Emission Reduction Credits (ERCs), the AQMD Governing Board amended its NSR Rules (Rule 1309.1 – Priority Reserve) on September 8, 2006 to allow electrical generating facilities (EGFs) such as WCEP to access AQMD's offset credit account to purchase emission credits and use such credits to offset emission increases from the project in order to comply with the NSR's offset requirements. However, due to comments provided and concerns expressed by the public at the September 8th adoption hearing for this amendment, the AQMD Governing Board directed staff to develop further amendments to Rule 1309.1 for Governing Board's consideration to address public concerns relative to the emissions and public health impacts associated with EGFs.

While AQMD staff was working on development of additional proposed amendments to Rule 1309.1, and as per WCE's request to AQMD to help move the WCEP project further in the process, on February 16, 2007, AQMD issued a Final DOC (FDOC) for the WCEP project with respect to the September 8th version of Rule 1309.1. However, in the

PROOF OF SERVICE (REVISED 6/16/07) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 10/5/07
NJ

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February 16th FDOC, the AQMD informed WCE about the AQMD Governing Board's direction to staff to develop further amendments to Rule 1309.1 and that the WCEP project's eligibility to access Priority Reserve (PR) credits would be subject to such final amendments, if any. Prior to the issuance of the FDOC, on February 15, 2007, WCE signed a letter confirming their understanding of this contingency. In particular item number 5 of the agreement letter states that:

"The conditions under which the project may be eligible for PR credits under Rule 1309.1, or whether it will be eligible at all, will not be determined until the Board adopts amendments to the rule or determines not to adopt any amendments,"

Copies of the February 16th FDOC and February 15th Letter Agreement are attached for your information.

On August 3, 2007, the AQMD Governing Board adopted further amendments to Rule 1309.1 which includes a set of new requirements for EGFs in order to be qualified to access PR credits and another set of additional requirements for EGFs prior to AQMD releasing the PR credits. Subsequently on August 16 and September 14, 2007, AQMD requested WCE to provide information for AQMD's review which can demonstrate whether or not WCEP project is qualified to access PR credits and informed WCE about the additional requirements that WCEP has to meet in order for AQMD to be able to release the PR credits.

The purpose of this letter is to inform CEC Commissioners that AQMD staff has just recently received the requested information from WCE and is in the process of reviewing the information. At this time, the AQMD staff has not yet made any determination of compliance (preliminary or final) on whether or not WCEP project is qualified to access PR credits pursuant to the requirements of Rule 1309.1, as amended on August 3, 2007.

It is AQMD's understanding that the Presiding Member's Proposed Decision (PMPD) does not explicitly address whether the Walnut Creek project meets the requirements to access Priority Reserve Credits set forth in Rule 1309.1 as amended August 3, 2007. These requirements are found in Section (b)(5)(A) of the amended rule.

AQMD realizes that CEC has already noticed a Commission hearing for October 10, 2007, to consider whether the CEC should adopt the PMPD. AQMD submits that given that CEC has already issued a PMPD and the September 2007 Committee-sponsored Revisions to the PMPD, and that CEC has also noticed the Commission hearing for October 10, 2007 to consider adoption of the PMPD, if the CEC determines that it can approve the WCEP project without a revised FDOC from AQMD relative to compliance with the new requirement of Rule 1309.1, as amended on August 3, 2007, CEC may

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choose to do so. However, AQMD does not endorse this approach in the future and recommends that CEC not issue a final PMPD, at least relative to air quality, or consider adoption of PMPD and final certification of EGFs prior to receiving an FDOC from AQMD which demonstrates compliance with the most recent applicable rules and regulations.

Please feel free to contact me at 909.396.2662, if you have any questions.

Sincerely,



Mohsen Nazemi, P.E.
Assistant Deputy Executive Officer
Engineering and Compliance Office

MN

Enclosures

cc: ✓ Commissioner James D. Boyd, Vice Chair
✓ Commissioner John L. Geesman, Associate Member WCEP AFC Committee
✓ Commissioner Arthur H. Rosenfeld
✓ Commissioner Jeffrey Byron
✓ B. B. Blevins, CEC Executive Director
✓ Melissa Jones, CEC Chief Deputy Director
✓ Garret Shean, CEC Hearing Officer
✓ Lisa DeCarlo, CEC Staff Counsel
✓ Roger Johnson, CEC Siting Office Manager
✓ Jack Caswell, CEC Project Manager
Victor Yamada, WCE
Scott Galati, Galati & Blek, LLP
Mike Carroll, Latham & Watkins, LLP
Barry Wallerstein, AQMD Executive Officer
Kurt Wiese, AQMD District Counsel
Barbara Baird, AQMD Principal District Counsel
Carol Coy, AQMD Deputy Executive Officer
Mike Mills, AQMD Senior Engineering Manager
✓ CEC Docket No. 05-AFC-2



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • <http://www.aqmd.gov>

February 16, 2007

Mr. Lorne Prescott
Project Manager
California Energy Commission
1516 9th Street
Sacramento, CA 95814-5512

Subject: [REDACTED] (05-AFC-2) to be located at 911 Bixby Drive,
City of Industry, CA

Dear Mr. Prescott:

This letter is to inform you that the South Coast Air Quality Management District (AQMD) has completed our analysis of the proposed Walnut Creek Energy Project (05-AFC-2) as of this date. Attached for your review is the [REDACTED] that includes the AQMD's engineering analysis.

The proposed facility will be a new major stationary source, and based on the potential to emit the project is subject to EPA review and public notice requirements. At this time both of these tasks have been completed. However, the applicant will be required to obtain emission reduction credits for CO, PM₁₀, VOC, and SO_x before the final permit to construct can be issued. Please note that the issuance of this FDOC does not mean that the District will issue Priority Reserve (PR) credits under AQMD Rule 1309.1 or the final Permit to Construct for the project. As you know the AQMD Governing Board is currently reviewing the conditions under which PR credits will be issued. The conditions under which the project may or may not be eligible for PR credits will be determined by the version of Rule 1309.1 in effect at the time of issuance of the final Permit to Construct. The applicant is aware and in agreement with this condition as demonstrated in the attached letter. Also, the final Permit to Construct is contingent on the CEC approval of the project. Prior to operation of the proposed project, the applicant will be required to obtain sufficient NO_x RECLAIM Trading Credits to offset the total facility emissions for the first year of operation.

If you have any questions or wish to provide comments regarding this project, please call Mr. Michael D. Mills at (909) 396-2578 or Mr. John Yee at (909) 396-2531.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mohsen Nazemi".

Mohsen Nazemi, P.E.
Assistant Deputy Executive Officer
Engineering and Compliance

MN:MDM:MYL:JTY:kc

Attachments

cc: Tom McCabe, Edison Mission Energy
Mohsen Nazemi, AQMD
Barbara Baird, AQMD


CERTIFIED MAIL
Return Receipt Required

Letter Agreement

The South Coast Air Quality Management District ("District") and the undersigned permit applicant, Walnut Creek Energy, LLC, hereinafter known as "applicant" hereby agree with respect to the proposed power plant known as Walnut Creek Energy Park ("project") as follows:

1. Although the District may issue a Preliminary Determination of Compliance (PDOC) or a Final Determination of Compliance (FDOC) for the project to the California Energy Commission, applicant fully understands that the issuance of the PDOC, FDOC or any other action by the District or the California Energy Commission does not mean that the District will issue Priority Reserve (PR) credits under Rule 1309.1 or the final Permit to Construct for the project; and
2. The project is an Electric Generating Facility (EGF) that would qualify, subject to a due diligence showing and payment of the mitigation fees, for use of PR credits under the current version of Rule 1309.1 adopted by the District's Governing Board on September 8, 2006; and
3. The District's Governing Board is currently reviewing the conditions under which PR credits will be issued, if at all, pursuant to Rule 1309.1; and
4. Although the District Governing Board is presently scheduled to hold a public hearing on potential amendments to Rule 1309.1 on March 2, 2007, the Board's decision on Rule 1309.1 may not occur on that date, and the date of the final decision on the rule cannot be determined with certainty; and
5. The conditions under which the project may be eligible for PR credits under Rule 1309.1, or whether it will be eligible at all, will not be determined until the Board adopts amendments to the rule or determines not to adopt any amendments; and
6. Applicant understands and agrees that the project's eligibility for credits from the Priority Reserve under Rule 1309.1 will be determined by the version of the rule in effect at the time of issuance of the final Permit to Construct.

Understood and agreed to this 15 day of February, 2007, on behalf of Applicant by its duly authorized representative.



Gerard P. Loughman

President

Walnut Creek Energy, LLC

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION
FOR THE WALNUT CREEK ENERGY PARK
(WCEP)**

DOCKET No. 05-AFC-2

(Revised 6/6/07)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION

**Attn: Docket No. 05-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us**

APPLICANT

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INTERESTED AGENCIES

No agencies to date.

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INTERVENORS

California Unions for Reliable Energy
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DECLARATION OF SERVICE

I, Dora Gomez, declare that on October 5, 2007 I deposited copies of the attached Letter from the SCAQMD addressed to J. Pfannenstiel for Walnut Creek Energy (05-AFC-2) in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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



Dora Gomez