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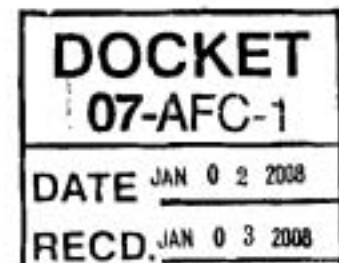
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January 2, 2008

File No. 039610-0001

VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-1
1516 Ninth Street, MS-4
Sacramento, California 95814-5512



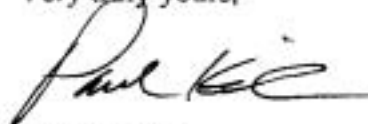
Re: Victorville 2 Hybrid Power Project: Docket No. 07-AFC-1

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find a copy of the City of Victorville's Comments on the Victorville 2 Hybrid Power Project Preliminary Staff Assessment.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the CEC's current electronic proof of service list.

Very truly yours,



Paul E. Kihm
Senior Paralegal

Enclosure

cc: CEC 07-AFC-1 Proof of Service List (w/encl. via e-mail)
Michael J. Carroll, Esq. (w/encl.)

**THE CITY OF VICTORVILLE'S COMMENTS ON THE
VICTORVILLE 2 HYBRID POWER PROJECT PRELIMINARY STAFF ASSESSMENT**

The following pages present the comments of the City of Victorville on the Preliminary Staff Assessment (PSA) issued on November 21, 2007. These comments are provided in two sections: 1) a summary of the Applicant's views concerning the unresolved issues identified in the PSA, and 2) more detailed and specific comments. These comments are provided on a topic-by-topic basis and do not address minor issues (e.g., typographical errors); the comments instead focus on areas where the City disagrees with the Staff's analysis and/or requests that the proposed Conditions of Certification be revised.

I. APPLICANT'S COMMENTS ON UNRESOLVED ISSUES RAISED IN THE PSA

There were five areas where the PSA indicated open issues that did not allow a determination that impacts would be mitigated to insignificance. Following are the Applicant's comments on these issues.

Air Quality

Issue:

Staff believes that the priority reserve and road paving ERCs would reduce impacts to insignificance. However, ongoing legal challenges to the SCAQMD and MDAQMD rules underlying the Project's use of priority reserve and road paving credits might affect the mitigation available to the VV2 Project.

Applicant Response:

Litigation Status

Priority Reserve

Petitioners NRDC et al. filed two separate petitions for writ of mandate under the California Environmental Quality Act (CEQA) challenging the South Coast Air Quality Management District's (SCAQMD) actions to grant certain proposed power plants access to a bank of emission offsets called the Priority Reserve. The first petition challenged the SCAQMD's use of a CEQA exemption for thermal power plants, alleging that the exemption was not applicable and that SCAQMD should have prepared an Environmental Assessment (EA) under their certified regulatory program to evaluate the potential environmental impacts of the SCAQMD's actions. So as not to exacerbate the current energy crisis in Southern California by delaying proposed power plants' access to the Priority Reserve, the SCAQMD prepared an EA. Accordingly, the first petition has since been dismissed as moot (over Petitioners' objection) because the SCAQMD's preparation of the EA granted Petitioners the relief sought in their petition.

The second petition (Superior Court, County of Los Angeles - Central District, Case No. BS110792) challenges the adequacy of the EA. The petition was filed on 8/31/2007 and a trial date has been set for 4/11/2008. Petitioners opening brief is due on 1/22/2008, with briefing expected to be completed by 3/28/2008. Also, Real Parties in Interest Inland Energy, Mojave Desert Air

Quality Management District (MDAQMD), and Antelope Valley Air Quality Management District (AVAQMD) filed a demurrer to the petition based on failure to join indispensable parties. This demurrer could resolve this litigation; the court is scheduled to hear this demurrer on 2/26/2008.

Mojave Desert AQMD Rule 1406

On 10/5/2007, California Unions for Reliable Energy (CURE) et al. filed a petition for writ of mandate under CEQA (Superior Court, County of Riverside - Indio Branch, Case No. INC 071192) challenging the MDAQMD's approval of MDAQMD Rule 1406 -- Generation of Emission Reduction Credits for Paving Unpaved Roads. The petition challenges the MDAQMD's use of a CEQA categorical exemption, alleging that the exemption is not applicable and the MDAQMD should prepare an environmental document analyzing the environmental impacts of Rule 1406. The parties are currently working on preparing the Administrative Record. A case management conference is scheduled for 3/24/2008.

Challenged Rules Remain Valid During Litigation

Even if these cases proceed to trial, we expect them to be resolved in a timeframe compatible with VV2 Project development. In the interim, the challenged rules remain valid. County of Del Norte v. City of Crescent City, 71 Cal.App.4th 965, 973 (1999). The mere filing of a CEQA lawsuit does not automatically enjoin project proponents from proceeding with their projects: "An injunction is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action." Id. If, during the pendency of litigation in the superior court, a petitioner desires to halt project-related activities, the petitioner must seek either a preliminary injunction (traditional mandamus) or a stay (administrative mandamus).

Biology

Issues:

"Outstanding items needed for the FSA" include:

- Likely mitigation details and habitat compensation ratios
- Agency input regarding the needed for desert tortoise exclusion fencing along the areas of Adelanto, Colusa, and Helendale Roads that will be paved to provide access to the Project site
- Details (e.g., locations) on agency-approved desert plant relocation areas and plant adoption centers/programs.

Applicant Response:

Mitigation Details

Project Applicant has been discussing details of a desert tortoise translocation plan and mitigation and compensation measures for impacts to federal and state listed desert tortoise and state listed Mohave ground squirrel. On December 6, 2007, the Project Applicant submitted to the California Department of Fish and Game (CDFG) a draft California Endangered Species Act (CESA) Section 2081 incidental take permit application for desert tortoise and Mohave ground squirrel. The U.S.

Fish and Wildlife Service (USFWS) issued a draft Biological Opinion for the Project under Section 7 of the Federal Endangered Species Act, for desert tortoise on December 12, 2007. On December 20, 2007, a meeting was held involving the Applicant and the various involved agencies (EPA, USFWS, CDFG and CEC) to discuss and ensure coordination on remaining biology issues. Based on this meeting, the Project Applicant is finalizing a Desert Tortoise Translocation Plan for submittal to USFWS, CDFG and the CEC in January 2007. The Project Applicant has proposed to acquire compensation lands to fully mitigate impacts to desert tortoise and Mohave ground squirrel at a compensation ratio of 1:1, but will be discussing the mitigation ratio further with USFWS, CDFG and the CEC. The Project Applicant also is undertaking analysis and research to identify suitable desert tortoise translocation sites and compensation lands for desert tortoise and Mohave ground squirrel.

Tortoise Fencing along Adelanto Road, Colusa Road and Helendale Road

This issue was discussed at the December 20, 2007 agencies meeting mentioned immediately above. As discussed in the Applicant's detailed PSA comments provided below, a consensus was reached at this meeting that tortoise exclusion fencing would be installed along the roadway segments in question during Project construction, but that no tortoise fencing was needed during VV2 Project operation.

Desert Plant Relocation

Additional information on agency-approved desert plant relocation areas and plant adoption centers/programs is provided in the Applicant's detailed PSA comments (see below).

Cultural Resources

Issue:

Staff needs data from additional surveys of part of Segment 3 of the Project transmission line route and along the potable/back-up process water line route.

Applicant Response:

Portion of Transmission Line Segment 3

The report on the survey of part of Segment 3 of the Project transmission line has been submitted to the CEC. No historic or prehistoric artifacts or features were observed during the survey. No traces were found of a previously recorded historic road that reportedly crossed the survey area.

Potable/Back-up Process Water Line

With respect to the potable water line route, The Project Applicant has identified two past cultural surveys in the area of concern: 1) a survey that covered much of the SCLA Planning Area prepared for the SCLA Specific Plan Amendment and Rail Service Project and 2) a survey of the natural gas supply pipeline route that supplies the High Desert Power Project. The survey for the SCLA Specific Plan covered a large area from the north end of the VV2 Project plant site south to the SCLA fence line, including areas extending approximately 0.5 mile on either side of the water line route. This survey identified no cultural resources of concern and clearly establishes that there

is no need for additional survey work for the northern half of the water line route. The other survey (the HDPP gas pipeline route) is older than five years, and thus, the Applicant has conducted a survey of the potable/backup water line route in the areas south of the SCLA fence line. The survey found no cultural resources in the area of interest and a final report is in preparation. This report will be submitted to the CEC as soon as it is completed in early January 2008.

Soil and Water

Staff identified three issues to resolve, all related to the Project's preliminary Drainage, Erosion, and Sediment Control Plan (DESCP). Following are summaries of the changes that have been made to the DESCP in response to the issues raised. A disk containing the complete revised DESCP has been provided to the CEC.

Issue 1

The assumed precipitation for the 100-year, 24-hour event of 3.0 inches appears too low based on comparison with the 50-year, 24-hour event of 4.7 inches. Intuitively, a less frequently occurring event should have a higher value of precipitation.

Applicant Response to Issue 2

The precipitation of the 100-year, 24 hour- event is correctly stated in DESCP Table 2.1 as 3.0 inches. However, the 50-year, 24-hour value (4.7 inches) was incorrect; the correct value for the 50-year, 24-hour event is 2.8 inches. Please see revised Rainfall Precipitation Table (attached).

Issue 2

The assumed Curve Number (75) for the post-development runoff condition of the solar field should be higher than the pre-development condition because of planned use of a soil bonding agent that has the effect of reducing soil porosity and increasing runoff.

Applicant Response to Issue 2

The Curve Number of the solar field pre-development will stay at 75 as would be expected. However, the post-development Curve Number will change from 75 to 85 to reflect the changed water retention properties of the post-development soil. Please see revised DESCP Table 2.1 (attached).

Issue 3

Higher post-development rates of stormwater runoff in the solar field compared to pre-development rates will create the need for stormwater retention to attenuate the rate of discharge from the site.

Applicant Response to Issue 3

Based on the increased runoff rates resulting from the use of somewhat less permeable soil conditioning agents (see response to Issue 2 above), the Applicant has amended the DESCP as described in the following paragraph.

The solar field stormwater retention and discharge system now includes an enhanced runoff retention plan. This includes installation of a drainage/discharge ditch starting in the northwest corner of the solar field and extending easterly to the northeast corner of the solar field. This ditch will have twelve 18" HDPE pipes extending from its banks; these pipes will pass under an adjacent service road and allow the ditch in an overflow condition to flood approximately 300 feet of the northernmost portion of the solar field. After the precipitation event subsides, because of the slope of the area, the accumulated water will flow back through the HDPE pipes into the ditch and will be discharged from the site at a rate equal to or less than pre-development runoff conditions.

Traffic and Transportation

Issues:

Two issues were raised:

- Staff "continues to investigate" the issue of glare from the solar array and its potential impact on aviation activities.
- Staff has asked that the SCLA Manager work with the U.S. Army to change the helicopter departure or arrival route to avoid overflying the power block of the VV2 power plant"

Applicant Response:

Solar Array Glare

The City of Victorville feels that there is ample evidence to support the finding that there will be no significant glare impacts on aviation from the solar arrays. As agreed at the PSA Workshop held on December 10, 2007, Mr. Scott Frier, representative of Abengoa Solar, Inc. who will be the supplier of the solar equipment for the VV2 Project, will prepare an email documenting his presentation at the PSA Workshop to the effect that no significant glare will occur.

Helicopter Routes

As indicated by Lt. Collins of the U.S. Army Reserve Unit – Victorville Blackhawks at the PSA Workshop, the Army has agreed to modify their helicopter routes to avoid risks associated with thermal plumes from the VV2 Project power block.

Rainfall Precipitation Table (inches)						
Storm Distribution	2-yr**	5-yr***	10-yr***	25-yr***	50-yr***	100-yr**
SCS* 24-hour	1.00	1.60	2.00	2.50	2.80	3.00

* Soil Conservation Service, now called Natural Resources Conservation Service

** 2 and 100-yr rainfall from Isohyetal maps contained in the San Bernardino County Hydrology Manual. According to this manual, only the 2 and 100-yr storms are required for calculations.

*** 5, 10, 25, and 50-yr rainfall from NOAA (National Oceanic and Atmospheric Administration) Isohyetal maps

Table 2.1: Hydrologic Analyses for Pre and Post Development Conditions

	Units	Power Block Predevelopment*	Power Block Post development	Solar Field Predevelopment	Solar Field Post Development
Area	Acres	25.85	25.85	250.14**	250.14
Curve Number ³		75	97	75	85
Precipitation: 2- Year Storm	Inches	1.0	1.0	1.0	1.0
Precipitation: 100- Year Storm	Inches	3.0	3.0	3.0	3.0
Discharge: 2- Year Storm,	cfs	0.07	0.31	0.06***	1.22
Discharge: 10- Year Storm	cfs	2.11	1.04	2.30***	5.66
Discharge: 100- Year Storm	cfs	8.58	1.51	8.86***	6.49

*The power block area is comprised of portions of predevelopment watersheds: 4, 6, and 7.

**The solar field area is comprised of portions of predevelopment watersheds: 1, 2, 3, 4, 5, and 7.

***Discharges are from watershed 1, see Table 2.0.

The sediment retention facilities provide the capacity to make up the difference between the pre and post development runoff conditions. The facilities also provide detention time; which allows sediments to settle out of the runoff before it is discharged to the existing drainage features. The designs of the proposed sediment retention facilities were based on the document SE-2, Sediment Basin, of the California Storm Water BMP Handbook-Construction (California Stormwater BMP, 2003)⁴ and the San Bernardino County Hydrology Manual.⁵ The sediment retention facilities will be protected from erosion by placing riprap stone at all runoff entrance points to the facilities. The riprap stone will be placed from the discharge point(s) and continued down the slopes to at least the bottom of the facilities.

The sediment retention facilities will have at least 3 feet of freeboard above the 100- year storm event. The berms of the facilities will be protected against storms greater than the 100- year event by riprap lined emergency overflow spillways. The outlet structures for the sediment retention facilities will consist of a concrete riser with a grated opening on top, one or two small orifices near the bottom and an outlet pipe to direct the flow to the existing ground. The existing ground at the discharge point of the outlet pipe will be protected from erosion using riprap stone.

During project construction, silt fences will be constructed to prevent sediments in the storm water runoff from leaving the site. The silt fence, depicted on the Best Management Plan drawings, will be in place prior to any clearing or grading operations. Since the grading of the site will take place in phases, temporary silt fences will be added around the perimeter of the phase area on the sides not bounded by the project site silt fence. After the silt fences are installed, the power block sediment retention facility and outlet structure will be constructed prior to any other grading in the power block area. The solar field sediment retention facility and outlet structure will be constructed before solar field grading. A temporary swale on the

³ The curve number is a coefficient used in the TR-55 method of the Natural Resources Conservation Service. The number classifies the land use and soil type of the watershed that is being analyzed.

⁴ California Storm Water BMP Handbook -Construction. California, 2003.

⁵ County of San Bernardino, 1986.

II. APPLICANT'S DETAILED COMMENTS ON THE PSA

Air Quality

- Pg. 4.1-2, Air Quality (AQ) Table 1 includes outdated NSPS emission limits from Subpart GG. These should be replaced with the NSPS from Subpart KKKK as discussed in the VV2 AFC (pg. 6.3-5).
- Pg. 4.1-4, AQ Table 2 includes an annual arithmetic mean National Ambient Air Quality Standard (NAAQS) for PM10. As stated in the VV2 AFC (Table 6.3-37), the annual PM10 NAAQS was revoked in September 2006 and should be removed from AQ Table 2.
- Pg. 4.1-9, AQ Table 4 contains daily limits. The GE Rapid Start Process is new technology that has not previously been installed. The MDAQMD allowed for multiple aborted startups and shutdowns to occur in the same day. Therefore, AQ Table 4 should use the same daily emission limits as those provided in the MDAQMD PDOC (see below) for consistency.

Facility¹ Maximum Daily Emissions (lb/day)

NOx	VOC	SOx	CO	PM10
1,306	556	59	4,824	917
1. Facility consists of two turbines and cooling tower				

- Pg. 4.1-11, AQ Table 5, it is unclear what the source of the PM10 24-hour background value of 98 µg/m³ is. The Table references Appendix 8.1D and Table 8.1D-4, but these references do not apply to the VV2 AFC. AQ Table 6 shows the maximum 24-hour background value as being 181 µg/m³, however, as explained in the footnote to VV2 AFC Table 6.3-28, this value in 2003 is considered overly impacted by fires in the area and not representative of normal PM10 background. Furthermore, if the data are updated to include the most recent three years (now that 2006 data are available), the maximum 24-hour PM10 in 2004 – 2006 for comparison to the CAAQS is 57 µg/m³ (per the ARB web site accessed on December 17, 2007), occurring in November 2005. Therefore, the PM10 background value in AQ Table 5 should be replaced with 57 µg/m³ and the Total impacts adjusted accordingly.
- Pg. 4.1-11 – 4.1-12, states that...“the city proposed that it will limit construction activities to the period one hour after sunrise to **one hour** before sunset...” This statement is incorrect. The city proposed to limit construction activities to the period one hour after sunrise to 30 minutes (or **one half hour**) before sunset. This change should also be reflected in AQ-SC6 since the PSA states that the city’s **proposed** mitigation measures have been included (pg. 4.1-13).
- Pg. 4.1-13, under Operational Impacts, states that “The project... would contribute to existing violations ofthe federal 24-hour PM2.5 air quality standard....” This statement is incorrect.

The 24-hour PM_{2.5} NAAQS is not exceeded in Victorville and the area is designated as unclassified (attainment) of the federal PM_{2.5} standards.

- Pg. 4.1-14, AQ Table 6 provides 1-hour and 8-hour CO impacts that are significantly greater than analyzed in the VV2 AFC, and the VV2 AFC is the Source referenced. Although these impacts are still well under the CO CAAQS, please correct and/or explain their derivation.
- Pg. 4.1-14, AQ Table 6 provides erroneous background values for PM₁₀ and PM_{2.5}, and hence the Total Impacts are overstated. See the comment above regarding AQ Table 5 for the PM₁₀ 24-hour background value. The same ARB web site gives a State Maximum 3-Year (2004 – 2006) Annual Average of 30 µg/m³. Although lower than those provided in AQ Table 6, these PM₁₀ background values are still over the CAAQS, and hence the small project impacts to PM₁₀ require mitigation.

In the case of PM_{2.5}, there is not a 24-hour CAAQS for this pollutant, but there is a 24-hour NAAQS. The NAAQS is only exceeded when the 98th percentile value over three years is greater than the standard. Therefore, for this standard, the 98th percentile value should be used as the background value. The ARB website provides a 98th percentile value of 20 µg/m³ for 2004 and 19 µg/m³ in 2006 (the web site indicates there was insufficient PM_{2.5} data in 2005 to provide the value). The State Annual Averages in these two years are 10.8 µg/m³ and 10.3 µg/m³, respectively. When the maximum project impacts of 5.9 µg/m³ and 0.2 µg/m³ are added to the maximum of these background values, the Total Impacts are 25.9 µg/m³, 24-hour average and 11.0 µg/m³ annual average, which are below the 35 µg/m³ 24-hour NAAQS and 12 µg/m³ annual CAAQS for PM_{2.5}. When these background values are used, the Project does **not** cause or contribute to an exceedance of the PM_{2.5} standards, and hence the Project does **not** have a significant impact on PM_{2.5}.

- Pg. 4.1-16 (and AQ-SC9), under PM_{2.5} and their precursors: indicates staff has incorporated a mitigation requirement for 132.7 tons of PM_{2.5} per year. As stated above, the Project does not have a significant impact on PM_{2.5}, hence the AQ-SC9 should be changed to reflect PM₁₀ only. See also the second bullet on page 4.1-21, i.e., there are no existing violations of the federal or State PM_{2.5} standards in Victorville and hence PM_{2.5} mitigation is not required.
- Conditions AQ-SC3-G and AQ-SC4, Step 3 refer to the District. Although the MDAQMD will enforce Rule 403.2, they do not generally regulate construction. Therefore, should the references to the “District” be changed to “CPM”?
- Condition AQ-SC3-J requires sweeping “at least twice daily”. The need for sweeping will vary depending on the nature of the activities on a particular day during construction and other factors. If there are days when there is minimal vehicular activity, for example, sweeping twice a day might be unnecessary. We suggest changing the language to say “at least twice daily (or less during periods of precipitation *or on other days with the concurrence of the CPM*)” (modified language in italics).

- AQ-SC4, Step 3, requirement that Step 2 must “result in effective mitigation” seems vague. Instead, we suggest that “eliminate visible dust plumes at any location 200 feet or more off the project site” be used instead to be more specific as to what constitutes effective mitigation.
- In AQ-SC6, replace one hour before sunset with “30 minutes before sunset” as proposed by the city (see the 5th AQ comment above).
- In AQ-SC9, replace PM2.5 with PM10 (see comment on page 4.1-16 above). Also, the city hopes to begin construction as soon after licensing as possible, which may be as early as June 2008. Therefore, the requirement should be modified to provide the specific PM10 ERC applications no later than three months prior to construction and then paving to be completed at least 15 days prior to construction as currently indicated.
- Condition AQ-SC11 should be modified to be consistent with the reporting under AB32. As of January 1, 2008, mandatory reporting regulations for electric generating facilities having nameplate generating capacity of 1 MW or greater and emissions greater than or equal to 2,500 tonnes (2,756 tons) CO₂ will be in effect. The first reporting year will be calendar year 2008 with the report submitted in 2009, and hence will be applicable to VV2 once the Project comes on-line in 2011. Although the regulations are not yet published as final and formally adopted by the ARB, the applicable sections of the AB32 reporting requirements, dated 12/5/07, can be found on the ARB website: GHGReportRegUpdate12_05_07.pdf. Until the regulations are finalized, the condition should simply specify compliance with the regulation, rather than provide specific requirements which may become inconsistent and outdated. Recommended modified language for AQ-SC11 based on this regulation is provided below:

***AQ-SC11** The project owner shall comply with the recordkeeping and reporting requirements of Subchapter 10, Article 1, sections 95100 to 95133, Title 17, California Code of Regulations. All CO₂ and CO₂ equivalent (CO₂e) reporting shall be in units of kilograms and tonnes. Quantification of CO₂e emissions, where appropriate, should use the Global Warming Potential (GWP) values from the IPCC Second Assessment Report (IPCC 1996), to be consistent with ARB requirements.*

***Verification:** The project owner shall report the CO₂ and CO₂ equivalent emissions of N₂O, CH₄, SF₆, PFCs, and HFCs as required by the applicable regulation on an annual basis.*

Not, if this revised condition language is not adopted, then we would provide extensive comments on the Staff proposed language, such as that the condition should only refer to the types of sources that will be present, which does not include flares.

- The verification for AQT-3 requires that copies of the federal PSD and Acid Rain permits be provided to the CPM at least 90 days prior to the start of construction. While it's our understanding that the EPA will issue the draft PSD permit soon, the city has no control over its issuance. The city cannot begin construction until it holds a valid PSD permit, but it should not be required to delay construction if it has not been issued more than 90 days from when the construction is due to begin. Secondly, the MDAQMD will issue the Acid Rain permit, not the

EPA, and MDAQMD will issue the Acid Rain permit as part of the Title V permit. The MDAQMD will not issue the Title V permit until at least one year after the Project starts operation. Therefore, the verification of AQT-3 should be modified to reflect that these permits will be provided to the CPM and other applicable agencies within 30 days of their issuance by EPA and MDAQMD, respectively.

- As a result of its review of the PSA and negotiations with GE, the city realized that the time limits for the cold and other startup provided in AQT-5 were incorrect. A cold start should be 110 minutes and an other start should be 80 minutes. This error was caused by rounding the times to 1.8 hours and 1.3 hours in the AFC. A comment letter has been provided to the MDAQMD, and it is expected that this change will be made in the FDOC.
- AQT-13 has a discrepancy in that the condition requires 10 days notice but the verification has 7 days notice (both should be 10 days).
- The verification for AQT-9, AQT-11, AQT-16, AQEG-5, AQEG-7, AQFP-5 and AQFP-7 requires that “approved for construction” drawings be provided at least 120 days prior to construction or installation of the specific unit (turbine stacks, emergency generator, and fire-water pump). As noted above, construction/grading of the facility may begin as early as June and 120 days may not be possible. On the other hand, we believe that these particular units will be straight forward and that 120 days is not needed for review of these drawings. We request that the submittal time be shortened to 60 days.

Biological Resources

The PSA indicates that Staff needed additional information for the FSA in three areas:

1) mitigation details/compensation ratios for desert tortoise and Mohave ground squirrel, 2) agency input on the need for tortoise exclusion fencing along to-be-paved sections of Adelanto, Colusa, and Helendale Road, and 3) details on “Applicant proposed, agency approved” desert plant relocation areas and plant adoption centers/programs. (Also see Summary of Unresolved Issues above.)

Regarding mitigation details/compensation ratios: Mitigation details and equitable habitat compensation ratios are currently being finalized with the California Department of Fish and Game (CDFG) with respect to Project impacts on the desert tortoise and MGS. The U.S. Fish and Wildlife Service (USFWS) has stated that while they cannot specifically require compensation lands (personal communication with R. Bransfield, USFWS, December 2007), USFWS will accept compensation as a valid mitigation measure, at the ratio negotiated between the Applicant and CDFG for desert tortoise habitat impacts. Final details of this compensation ratio negotiation will be incorporated into the incidental take permit issued by CDFG for the Project; this information will be provided to the CEC as soon as it is available.

With respect to the need for tortoise exclusion fencing along the sections of Adelanto, Colusa, and Helendale Roads where paving is planned: The Applicant considers temporary fencing to be appropriate during Project construction, but that this fencing should be removed at the end of the construction phase. This issue was discussed in a meeting held on December 20, 2007

with the resources agencies (USFWS, CDFG) in which other agencies (CEC and EPA) also participated. A consensus was reached at this meeting among the agencies and the Applicant that: 1) temporary tortoise exclusion fencing would be installed, 2) the fencing would be installed in disturbed areas of the road shoulder, 3) a biological monitor should be on-call to deal with issues that emerge during construction (if any), and 4) a 25 mph speed limit should be set on these roadway segments.

With respect to desert plant salvage/relocation: The Project is working with other City agencies (e.g., the Victorville Community Services Department, Parks Division) to address compliance with the Victorville municipal ordinance and other applicable LORS that relate to the protection of desert plants. These desert plant issues will be addressed as part of the Project's BRMIMP, as indicated in proposed Condition BIO-6 that includes the requirement for a restoration and revegetation plan that covers "Joshua trees, cacti, and creosote rings" and BIO-15 that is focused specifically on Joshua tree, cacti, and creosote ring protection.

To comply with the City ordinance will require an inspection of the Joshua trees on the site to identify the plants whose size, condition, etc. make them suitable for transplantation. Relocation of Joshua trees and native cacti will be in terms of the following general priority in terms of location: 1) as indicated in the preliminary landscaping plan submitted to the CEC in July 2007 (and in accordance with the final version of this landscaping plan), placement along the facility's access road and in the parking lot near the facility's administration building, 2) placement elsewhere around the perimeter of the Project site, such as along Helendale Road (if the number of plants to be transplanted is more than is needed to landscape the access road and parking lot), 3) placement on other City-owned property elsewhere in Victorville (if needed with the location(s) to be determined near the time when actual transplantation would need to occur, based on the need for landscaping of City properties at that time), and 4) a public adoption following established City procedures.

The City's Joshua tree adoption procedures include the following requirements: 1) placement of notices in the Victorville Daily Press during the week immediately preceding the adoption date, with the adoption scheduled for a Saturday or Sunday to allow more participation, 2) providing adequate signage so that the public can easily find the adoption site, 3) staffing the adoption site to assist the public, and 4) allowing a full week for the individuals adopting trees to remove the tree themselves or hire a professional. Procedures for conducting adoptions including preparation of liability waiver forms by the property owner and recipient, as well as guidance with respect to identifying and assigning trees to be removed, information on qualified professional landscaping contractors who can perform the relocation, and requirements for documentation of the adoption program and final inspection of the site to ensure full compliance with City ordinance requirements, which is required before issuance of the Project's grading permit.

- Staff requested clarification on the size (length) of the portions of Adelanto, Colusa, and Helendale Roads that need to be paved. The answer is that a total of approximately 4.4 miles of roadway will be paved on the site access route.
- Pg. 4-13 erroneously includes MGS in the list of special-status species whose presence on site was confirmed by protocol-level summaries. It is correct that the MGS survey conducted for the Project was performed in accordance with the CDFG small mammal trapping protocol, with the final trapping grid also approved by a local CDFG representative. However, no MGS were detected in the 2006 survey. The Applicant has elected to assume the presence of MGS in order to forego the repeated trapping surveys that would be required because the MGS surveys are considered valid for only 12 months.
- The PSA (p.4.2-9) says “Applicant did not state whether creosote rings are present or were searched for.” In response, the Applicant notes that although no focused analysis was conducted to address the occurrence of creosote bush (*Larrea tridentata*) clonal “rings” on the VV2 Project site, no clonal creosote bush “ring” growths were identified during biological surveys conducted for the Project and none are expected to occur, although the Creosote Bush Scrub Plant Community is considered the most common vegetation community on the Project site.

Although this species does exhibit clonal growth patterns in some portions of its range as part of the plant’s general ecology, such clonal vegetative “ring” growths are not protected by any law, ordinance or regulation. Locally, the Bureau of Land Management (BLM) has identified a specific range (“Johnson Valley/Lucerne Valley Creosote (*Larrea*) Clones Unusual Plant Assemblage”) where creosote bush “ring” clonal assemblages occurring on public lands in the California Desert Conservation Area are to be considered in public land actions (Map Number 6, Unusual Plant Assemblages. California Desert Conservation Area Plan U.S. Department of Interior, Bureau of Land Management, California Desert District, Moreno Valley, California. 1980, revised 1999). However, the Project area is located far to the west of this referenced unusual plant assemblage locality and associated Project construction activities will not affect public lands.

- Staff notes (pages 4.2-1 and 4.2-18) that “limited availability of sufficient, suitable, and contiguous mitigation lands is likely to pose significant challenges to mitigating cumulative impacts on biological resources in the region.” Habitat fragmentation is noted as a particular concern for MGS because of the species’ small range.

The Applicant shares the concern about the loss of potentially-suitable MGS habitat and the limited availability of sufficient, suitable and contiguous mitigation land for this species (as well as for other species such as desert tortoise and burrowing owl). The Applicant is working with the involved regulatory agencies to establish appropriate compensation ratios for Project impacts to MGS and desert tortoise habitat. If suitable available property can be located, and subject to involved agency approval, the Applicant hopes that the ultimate mitigation lands arrangements will allow the option of acquisition of contiguous or proximal suitable habitat.

- On p. 4.2-19, the CEC does not identify any Noteworthy Public Benefits (NPB) for biological resources. The increased diversification of energy generation sources and the increase in renewable energy generation can be considered a NPB for biological resources as well as in other environmental resource areas. Further, by providing permanently dedicated suitable habitat for desert tortoise, MGS, and burrowing owl, the Project contributes to the long-term protection of these species.

Cultural Resources

- Staff sees the potential for undiscovered buried prehistoric resources in many areas. Proposed Conditions require archaeological monitoring throughout construction, and to also have a Native American monitor where prehistoric resources may be present. The Applicant agrees that monitoring (including a Native American) is appropriate during construction along the Mojave River where important prehistoric sites have been previously documented and at the plant site, given its proximity to the river.

However, Applicant feels that requiring monitoring on an ongoing basis along the transmission line route portions that are not near the river (i.e., the potable water pipeline route and all of transmission line Segments 2 and 3) would be excessive. The entire area in question has been surveyed, and all the surficial sites have been identified, recorded, and assessed as not significant. These sites all consist of trash dumps and scatters. The potential for buried prehistoric sites or additional historic sites along these portions of the transmission route is considered very low, given the results of recent Project surveys and what is known about the typical locations of previously recorded buried prehistoric sites. Even without monitoring, Project construction personnel will receive cultural resources awareness training as part of the WEAP. Thus, in the unlikely event that buried cultural deposits are identified, the construction crews will be able to identify the deposit, stop work, and notify Project management so that appropriate measures can be taken to evaluate the identified materials.

Condition CUL-6 should be revised as follows (suggested changes in italics):

(Paragraph 1, Sentence 1): The project owner shall ensure that the CRS, alternate CRS, or CRMs monitor full time at the project site and *at portions of the linear facilities that are near the Mojave River (which include all of transmission line Segment 1 and the reclaimed water supply and sanitary wastewater pipelines).*

(Paragraph 2, Sentence 1): Full-time monitoring for this project shall be the archaeological monitoring of all earth-moving activities on the construction site or along the linear facilities routes *near the Mojave River* for as long as the activities are ongoing.

Hazardous Materials

- Condition **HAZ-1** restricts hazardous materials to the list provided in Appendix B of the PSA, which is the same chemical list as the Large Quantity hazardous material list submitted in the AFC. However, this approach does not allow for the use of small quantity materials (janitorial and office supplies, paints, degreasers, herbicides, pesticides, air conditioning fluids (CFC, ODC), gasoline, hydraulic fluid, propane, calibration gases, welding gases, welding rods, ion

exchange resins, SCR catalyst bed, etc.) The Condition appears to apply to construction chemicals, but omits them from the approved Appendix B list. These restrictions are excessive and we request that construction phase chemicals be exempted, and that thresholds for use and reporting during facility operations be applied that coincide with the thresholds required for the Hazardous Materials Business Plan that will be required for the facility. We request the following revisions to HAZ-1:

During project operations, the project owner shall not use any hazardous materials not listed in Appendix B below, or in greater quantities than those identified by chemical name in Appendix B, unless approved in advance by the Compliance Project Manager. This requirement applies to any hazardous material stored or used at the facility in quantities equal to or exceeding 55 gallons for liquids, 500 pounds for solids and 200 cubic feet for gases and any amount of extremely hazardous material.

- Proposed Condition **HAZ-2** requires concurrent submittal of the HMBP and RMP. However, the Verification portion of this Condition allows the RMP and HMBP to be submitted separately, so long as the HMBP is submitted 60 days in advance of bringing any hazardous material onsite, and the RMP submitted 60 days prior to bringing aqueous ammonia onsite. This inconsistency should be resolved by deleting the word “concurrent” from the first sentence of the Condition.
- Condition **HAZ-3** mitigation measure requires that the Project implement a Safety Management Plan but goes on to require that the facility has “provisions for maintaining lockout control by a power plant employee not involved in the delivery or transfer operation”. This is reasonable for aqueous ammonia delivery, but is not practical (or needed) for other bulk chemicals (e.g., sulfuric acid, sodium hypochlorite), and is infeasible for chemicals delivered by drum or tote. We recommend that the Condition language related to lockout control be modified to apply to ammonia deliveries only. Recommended revised text for this Condition (starting with the third sentence with revised text shown in italics):

It shall include a section describing all measures implemented to prevent mixing of incompatible hazardous materials. *This section shall include provisions that apply to the delivery of aqueous ammonia that maintain lockout control by a power plant employee not involved in the delivery or transfer operation.*

- **HAZ-4** requires the ammonia containment structure to be either “subsurface or covered”. The Applicant agrees with the intent of the Condition to restrict the amount of area exposed to the atmosphere. However, we suggest modifying the wording of the Condition slightly because an open sump without a cover (i.e., “subsurface”) would not achieve the goal of restricting evaporative surface area and a fully “covered” sump would not allow ammonia to enter. We suggest presenting the restriction in terms of the amount of allowable surface area exposed to the atmosphere and propose to use the value used in the AFC Offsite Consequence Analysis (four square feet). Proposed revised text starting with the second sentence:

In either case, the storage tank and the tanker truck transfer pad shall include a secondary containment basin capable of holding 125% of the storage volume or the storage volume

associated with 24 hours of rain assuming the 25-year storm. *The secondary containment basin shall drain to a sump with a maximum surface area exposed to the atmosphere of four (4) square feet.*”

- The text discussion of hazardous material delivery routes (PSA pp. 4.4-12/13) is contradictory. It first says that “during construction and prior to the new Perimeter Road extension”, no specific route is recommended”. However, the next sentence says that the “route preferred by staff must be used for the transport of any hazardous material (found in Appendix B of this assessment) during construction or commercial operation.” This is inconsistent (or perhaps a typographical error). On the assumption that it was a typographical error, please correct the wording to say “during *commissioning* or commercial operation.”
- The PSA text and Condition **HAZ-6** identify the route preferred by Staff as involving I-15-D Street -Air Expressway – Phantom East - and Perimeter Road. Although, the Condition allows for exceptions with 10 days prior approval by the CPM, the Condition does not reflect the uncertainty as to when Perimeter Road will be extended that led to the Project’s need to specify the revised site access route using Adelanto, Colusa, and Helendale Roads. Unless a blanket exception can be granted by the CPM until Perimeter Road is available, this Condition would require 10 days notice of an alternative route for every hazmat delivery, which would be an unreasonable burden. We recommend that the language of the Condition be modified as follows starting with the second sentence:

When the planned extension of Perimeter Road is completed by the City, trucks and tankers will travel on I-15 to D Street to National Trails Highway to Air Expressway to Phantom Street east to Perimeter Road and then to the plant site. Until that time, hazardous materials deliveries during commissioning and commercial operations will travel on I-15 to D Street to National Trails Highway to Air Expressway to Adelanto Road to Colusa Road to Helendale and then to the plant site. If these routes must be changed for any reason,.....

- Page 4.4-15 of the PSA section states that the VV2 Project would not be required to conduct its own “vulnerability assessment”; but Condition **HAZ-9** does require a vulnerability assessment. This inconsistency should be corrected.
- **HAZ-9** requires either 24-hour/seven day security guard or 24-hour manned facility operation plus closed circuit TV (CCTV) and perimeter breach detectors or on-site motion detectors of the entire perimeter of the facility, including the solar field. To require CCTV and breach detectors or motion sensors around the power block appears reasonable, but imposing this same requirement around the entire perimeter of the facility including the solar field is excessive. In terms of the potential for security issues that could pose risks for the public outside the facility itself, the potential risks are very small for the solar field in comparison to the power block where the CTGs, HRSGs, and STGs are located. We recommend that the Condition be revised as follows:

10. Additional measures to ensure adequate perimeter security *around the Power Block* consisting of either:

- a. (NO CHANGES REQUESTED)
- b. Power plant personnel on-site 24 hours per day. Seven days per week and all of the following:
 - 1) The CCTV monitoring system required in number 9 above shall include cameras that are able to pan, tilt, and zoom (PTZ), have low-light capability, are recordable, and are able to view 100% of the perimeter fence of the Power Block, the outside entrance to the control room... (NO FURTHER CHANGES REQUESTED)

Land Use

- No comments.

Noise

- CEC staff establishes the following criteria as their threshold for determining significance of noise impacts to residential receptors: an increase of <5 dBA above ambient level is insignificant; an increase between 5 dBA and 10 dBA is generally significant, but could be insignificant depending upon circumstances; and an increase of >10 dBA is significant. Staff specifies factors to consider in determining significance in the >5 but <10 dBA range: (1) resulting combined noise level; (2) duration and frequency; (3) number of people affected; (4) land use designation of receptor site; and (5) public concern or controversy.
- Staff inappropriately uses the L90 metric in PSA Table 7 to average the four quietest consecutive nighttime hours, yielding an ambient background level of 27.2 dBA L90 which is then added to the power plant noise level of 39 dBA Leq to obtain a cumulative noise level of 39 dBA; this is a change from ambient of +12 dBA which is deemed a significant impact in terms of the stated significance criteria. However, this is mixing apples and oranges (Leq and L90). The more appropriate approach would be to use the Leq data from the ambient noise survey together with the Project noise levels (also Leq). The ambient background of the four quietest nighttime hours (Leq) is 34 dBA (not 27 dBA); combining this Leq value with Project noise levels would yield a combined noise level of 40 dBA. This would represent a change of only 6 dBA from ambient, which may or may not be a significant impact under the stated CEC significance scheme. Considering that two of the factors that are used by the CEC to determine impact significance when the change from ambient is >5 dBA but < 10dbA are the number of people affected (only one residence for the VV2 Project) and the level of public concern of controversy (no comments received from local residents, either in writing or at any of the workshops in Victorville), the Project's 6 dBA change from ambient noise levels should be considered an insignificant impact.
- Based on the discussion immediately above, Condition **Noise-4** should be modified to set a maximum allowable with-Project noise level of 44 dBA (ambient of 34 dBA plus 10 dBA, the applicable CEC threshold of impact significance).
- In addition, **Noise-4** also should be revised to limit plant operation noise levels only during nighttime hours, since the CEC staff analysis of significant impacts used the nighttime hours as

the ambient base line. If the 39 dBA noise limits currently proposed were applied to daytime operations, the plant could not operate at all, since all daytime ambient measurements at the location of concern (the single residence) currently exceed 39 dBA Leq, and most of them also exceed 44 dBA (Applicant's suggested limit using the ambient data properly).

- **Noise-8** specifies that if the one resident has a legitimate noise complaint, then the Project is obligated to provide noise attenuating upgrades to the residence. The Condition should be modified to state that if such upgrades are installed, the Project noise limit then would be modified to equal the City of Victorville noise ordinance limits in residential land uses of 60 dBA at night and 70 dBA during the day.
- The PSA sets steam blow noise restrictions in Condition **Noise-7**. Steam Blows are a short-term activity that occurs at the end of construction, and hence should not be considered a significant impact. The Applicant feels that noise restrictions are not warranted for this activity, but is in the process of evaluating the proposed limits and will provide comments to CEC Staff as needed when the evaluation of the limits proposed in Noise-7 has been completed.

Public Health

- No comments

Soil and Water

- The PSA identified a few unresolved issues related to storm water management, which have been resolved by the Project through revisions to a number of calculations in the DESCP. This information has been provided to the CEC. The Applicant has no further comments on the Soil and Water section of the PSA.

Socioeconomics

- No comments.

Traffic and Transportation

- **TRANS-4** requires a Plan to monitor parabolic arrays so they track the sun as accurately as possible to minimize glare; this Plan should discuss measures to ensure that arrays out of service or not working well are positioned appropriately to minimize glare. In light of the information provided at the PSA Workshop by the Abengoa Solar representative that Staff indicated at the Workshop provided adequate reassurance that there would be no significant solar glare issue, and because it is in the business interest of the operator of a solar facility to ensure that the arrays were tracking the sun as accurately as possible in order to maximize plant output (and revenues), the Applicant recommends that this Condition be deleted in its entirety.

Visual Resources

- **VIS-1** requires a Surface Treatment Plan addressing the "color and finish of all project structures and buildings visible to the public", including a set of 11 x 17 color simulations of project structures from the KOPs. The Applicant agrees to provide specific information on the

colors/finishes to be used, but feels that this information, combined with the simulations that were provided in the AFC provide sufficient information to evaluate the proposed color/finish scheme. The requirement for additional simulations (Item D in the list of the items to be included in the Surface Treatment Plan) should be deleted from the Condition.

Waste Management

- **Waste-1** requires that a complete Phase I Environmental Site Assessment be redone for the Project, as well as areas that were not previously assessed. Given the lack of substantial findings with the previous ESA, it seems excessive to require that all areas be resurveyed. Additionally, the verification for this condition requires that the ESA Report be provided at least 120 days prior to the start of construction. As noted earlier, construction may start as soon as June 2008. Therefore we request that only previously unsurveyed areas be assessed and that the report be due 60 days prior to construction.
- **Waste-4** requires that the Project owner obtain an EPA hazardous waste generator's ID number prior to generating construction wastes. This is not "normal" practice when dealing with hazardous waste streams generated by contractors. Usually a contractor either will have an ID number or will obtain a temporary ID number for construction wastes. The issue for the owner is the "cradle to grave" liability associated with the waste. Because the owner would not typically be onsite continuously during construction, he would not be in the position of having sufficient knowledge of what was being done under his ID number, thus creating a liability over which he has no control. The Condition should be re-worded to require that the contractor obtain an ID number (temporary or permanent) for wastes generated during construction, and that the owner obtain an ID number for operations.
- **Waste-5** requires that the owner notify the CPM when he becomes aware of any impending waste management-related enforcement action against any waste contractor utilized by the facility. This seems an unreasonable burden for several reasons: 1) many contractors are national organizations – an enforcement action against one division somewhere in the country doesn't necessarily mean a problem at the facility in Victorville; 2) "enforcement action" is not defined and the mere fact of an impending enforcement action cannot appropriately be understood to mean that the "accused" is guilty before the issue is resolved, 3) "when the owner becomes aware" is very vague – how does one establish when and if the owner becomes aware of this type of information. We recommend deleting this Condition – this should not be the responsibility of the owner. .
- **Waste-9** requires that spills be reported in accordance with the applicable federal, state and local requirements, an appropriate requirement. However, there are two problems with this Condition. First, the Verification for the condition requires that ALL spills be reported. This is an unreasonable burden that exceeds the LORS requirements and would mean that every drip or leak from every connector or valve be reported. We request that this Condition to be revised to indicate that all spills in excess of the EPA's "reportable quantity" (RQ) be reported. RQs can be found in the "List of Lists", EPA document number EPA 550-B-01-003 (<http://www.epa.gov/ceppo/pubs/title3.pdf>). Second, the Verification requires that all spills

related to the pipeline or transmission line corridors be reported by the Project owner. This is reasonable during construction activities, but it is not reasonable for the Project's transmission lines because the Project owner would not be the owner or operator of the transmission lines, and would not have knowledge of or control over activities associated with operation and maintenance of the transmission lines. The Verification should be modified to differentiate between the construction and operations phases with respect to spills associated with the transmission lines that interconnect the Project with the regional grid.

Worker Safety and Fire Protection

- **Worker Safety-4** requires the Owner to pay the Chief Building Official (CBO) for the services of a Safety Monitor to verify that Owner's Construction Safety Supervisor is complying with all OSHA and CEC requirements. It is excessive to require the Owner to both fund a Construction Safety Supervisor and also fund another position to monitor the Owner's Safety Supervisor. The requirement for the Owner to fund the Safety Monitor should be deleted.

Alternatives

- Page 6-5 of the PSA says that biological resources impacts "could be mitigated to less than significant levels by the purchase of offsite compensatory credits in San Bernardino County..." There is no regulatory requirement that biological mitigation lands be in the same county as the impacted habitat and the PSA should be reworded to avoid this implication.

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

In the Matter of:)	Docket No. 07-AFC-1
)	
Application for Certification,)	ELECTRONIC PROOF OF SERVICE
for the VICTORVILLE 2)	LIST
HYBRID POWER PROJECT)	
by the City of Victorville)	(revised September 5, 2007)
_____)	

Transmission via electronic mail and by depositing one original signed document with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION

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VICTORVILLE II HYBRID POWER PROJECT
CEC Docket No. 07-AFC-1

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CEC Docket No. 07-AFC-1

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on January 2, 2008, I deposited a copy of the attached:

**THE CITY OF VICTORVILLE'S COMMENTS ON THE VICTORVILLE 2 HYBRID
POWER PROJECT PRELIMINARY STAFF ASSESSMENT**

with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the California Energy Commission. I further declare that transmission via electronic mail was consistent with the requirements of 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. Executed on January 2, 2008, at Costa Mesa, California.


Paul Kihm