

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

APPLICATION FOR CERTIFICATION FOR
AVENAL ENERGY

DOCKET NO. 08-AFC-1

AVENAL POWER CENTER, LLC'S OBJECTIONS TO
CALIFORNIA UNIONS FOR RELIABLE ENERGY'S
DATA REQUESTS



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Dated: October 16, 2008

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OF THE STATE OF CALIFORNIA**

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Avenal Power Center, LLC ("Avenal") hereby notifies the Committee and California Unions for Reliable Energy ("CURE") of its objection to CURE's Data Requests, numbers 2-5, 6(a), 6(c), 7(a)-(b), 9, 10-30, 35, 41, 42, 44, 47, 48 and 53. This objection is made within the 20-day limit for objections consistent with Title 20, California Code of Regulations Section 1716(f). Avenal will respond to the remaining data requests and will provide responses to many of the requests that are the subject of this objection. Since those responses may not provide the study or specific information asked for in the request, Avenal is objecting to preserve its rights.

I. APPLICABLE LAW

The objections made below are based on the Warren-Alquist Act¹ Siting Regulations and the California Environmental Quality Act ("CEQA"),² both of which specify the type and quantity of information Avenal must provide in response to informational requests of other parties, including CURE.

California Code of Regulations Title 20, Section 1716 (b) states: "Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or

¹ Pub. Resources Code § 25000 et seq.

² Pub. Resources Code § 21000 et seq.

application.”³ This regulation governs the informational requirements for the discovery stage of the Commission’s proceeding on Avenal’s Application for Certification (“AFC”) for the Avenal Energy Project (“Project”).

CEQA provides guidance for determining what information is “reasonably necessary” to make a decision on the AFC. CEQA specifies that an Environmental Impact Report (EIR) be prepared with “a sufficient degree of analysis to provide decision-makers with information which enables them to make decisions which intelligently take account of environmental consequences.”⁴ Specifically, the law requires that “an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.”⁵ The information in an environmental document prepared under a certified regulatory program should be guided by similar principles. Furthermore, CEQA “does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended,”⁶ and it does not require that all experts consulted on the matter agree as to the best methods by which to proceed.⁷

Attached are Avenal’s objections to CURE Data Requests 2-5, 6(a), 6(c), 7(a)-(b), 9, 10-30, 35, 41, 42, 44, 47, 48 and 53 regarding the Project (08-AFC-1). CURE served these data requests to Avenal on October 1, 2008. Consistent with the requirements of Title 20, California Code of Regulations 1716, this objection is being filed within 20 days of receiving the data requests.

II. SPECIFIC OBJECTIONS

A. Objection to Data Request 2

Data Request 2 asks Avenal to discuss the greenhouse gas emissions reductions that could be achieved implementing the following mitigation measures for the Project: (a) reducing greenhouse gas emissions at other Applicant-owned operations worldwide; (b) installing or purchasing renewable energy; (c) financing community projects to reduce greenhouse gas

³ Cal. Code Regs., tit. 20, § 1716 subd. (b).

⁴ Cal. Code Regs., tit. 14, § 15151.

⁵ Cal. Code Regs., tit. 14, § 15151.

⁶ Cal. Code Regs., tit. 14, § 15204 subd. (a).

⁷ Cal. Code Regs., tit. 14, § 15151.

emissions, e.g., installation of photovoltaic panels on local businesses; (d) paying offsets to a qualifying organization.

In light of AB 32 and ARB's Proposed Treatment of the Electric Industry, the Requested Information is Unnecessary to Make a Decision on the AFC

Since Avenal will be reporting emissions and purchasing allowances or offsets for this Project through a comprehensive regulatory scheme developed by the California Air Resources Board (ARB) consistent with Assembly Bill (AB) 32, the Project will be participating in the overall greenhouse gas reduction strategy for California. Furthermore, since projects are dispatched by heat rate, this Project will displace less efficient generation and reduce overall carbon emission for California or the load it serves. In addition, California needs to replace the energy it receives from coal generators located outside of California. This Project is part of the larger greenhouse gas solution, using very efficient technology and clean burning natural gas. Therefore, no project specific mitigation in addition to the ARB program is necessary. Furthermore, Avenal objects to providing data on what is essentially an offset strategy when ARB has not adopted the rules and requirements for such a strategy at this time, or if offsets will be limited geographically or in number, or otherwise restricted.

B. Objection to Data Request 3

Data Request 3 asks Avenal to indicate whether it would be willing to implement measures to reduce the Project's greenhouse gas emissions, and if so, to identify greenhouse gas mitigation measures and quantify emissions reductions. If Avenal would be unwilling to implement such measures, Data Request 3 asks Avenal to discuss why it does not deem mitigation of greenhouse gas emissions necessary.

Data Request 3 Is Not A Request for Data

As discussed above regarding Data Request 2, the purpose of a data request is to give access to data which is reasonably available to the Applicant. In accordance with the California

Code of Regulations Title 20, Section 1716(b), a data request must ask for specific data relevant to the AFC, which is reasonably available to the applicant. Data Request 3, however, seeks information that is not data. Instead, it asks for Avenal's willingness to implement specific mitigation. Furthermore and as discussed above, the Project will be subject to ARB's program to reduce greenhouse gas emissions under AB 32 through the purchase of allowances or offsets, if they are allowed. ARB has not yet established the rules for offsets or how many may be used by any one facility.

C. Objection to Data Request 4

Data Request 4 asks Avenal to identify which of the Project's proposed offsets would be subject to discounting under the proposed amendments to Rule 2201.

Data Request 4 Asks For Information That Is Not Relevant to the AFC

As outlined above, Section 1716 of the California Code of Regulations, Title 20, only allows a party to request information that is relevant or reasonably necessary to make a decision on the AFC. With regard to Data Request 4, there is no reasonably foreseeable scenario under which the Final Determination of Compliance (FDOC) would be delayed long enough for the offsets to be subject to any discounting. Therefore, Data Request 4 asks for information that is irrelevant to the AFC.

D. Objection to Data Request 5

Data Request 5 asks Avenal to propose a contingency plan for the Project's offset strategy in case some or all of the proposed offsets would be subject to discounting under Rule 2201.

Data Request 5 Asks For Information That Is Not Relevant to the AFC

As described in the response to Data Request 4, it is not anticipated that any of the Project's proposed offsets will be subject to discounting, since there is no reasonably foreseeable scenario under which the FDOC would be delayed long enough for any discounting to occur. Data Request 5 asks Avenal to speculate regarding a contingency plan in case some or all of the proposed offsets would be subject to discounting under Rule 2201. However, the California Environmental Quality Act (CEQA) does not require the analysis of speculative scenarios in CEQA documentation. Therefore, a contingency plan is not required.

E. Objection to Data Request 6(a)

Data Request 6(a) asks Avenal to provide additional detail regarding application of pesticides at the project site including documentation of types of pesticides used over the past 30 years and quantities applied.

Data Request 6(a) Asks for Information that is Not Necessary to Make a Decision Regarding the AFC

As described in the Phase I Environmental Site Assessment (ESA), pesticide use at the property was in accordance with limitations of the County of Kings Department of the Agricultural Commissioner (the "Agricultural Commissioner").⁸ The Agricultural Commissioner operates under the jurisdiction and direction of the California Department of Pesticide Regulation and enforces pesticide regulation at farms in Kings County, including regulations that provide protection to the environment and human health. These regulations include provisions which provide health protection to field workers performing "hand labor," defined as work "performed by hand or with hand tools that causes substantial contact with surfaces (such as plants or soil) that may have pesticide residues."⁹ Because pesticide use at the

⁸ AFC Appendix § 6.14-1.

⁹ 3 C.C.R. § 6000 et seq.

property was in accordance with local and state regulations, the information requested by Data Request 6(a) is not necessary to make a decision regarding the AFC.

F. Objection to Data Request 6(c)

Data Request 6(c) asks Avenal to conduct a limited soil sampling program to ensure that construction workers will not be exposed to pesticides absorbed to dust particles.

Data Request 6(c) Asks for Information that is Not Necessary to Make a Decision Regarding the AFC

The Phase I ESA for the site did not identify any Recognized Environmental Condition to warrant sampling.¹⁰ The Phase I ESA recommended no further investigation or analysis.¹¹ Furthermore, while pesticides were used in accordance with limitations of the Agricultural Commissioner in the past, the property has been operated as an organic farm since 2005 and was certified organic to the USDA National Organic Program in August 2008.¹² As explained above in the objection to Data Request 6(a), pesticide use at the property was in accordance with local and state regulations. This includes regulations ensuring health protection for field workers performing “hand labor,” defined as work “performed by hand or with hand tools that causes substantial contact with surfaces (such as plants or soil) that may have pesticide residues.”¹³ The Phase I ESA also reported that no storage or mixing of pesticides or herbicides has been conducted at the site.¹⁴ Therefore, conducting a limited soil sampling program is not necessary to make a decision regarding the AFC.

¹⁰ AFC Appendix § 6.14-7.2.

¹¹ AFC Appendix § 6.14-7.2.

¹² AFC Appendix § 6.14-6.3.1.

¹³ 3 C.C.R. § 6000.

¹⁴ AFC Appendix § 6.14-6.3.2.

G. Objection to Data Request 7(a)

Data Request 7(a) asks Avenal to describe and map the contaminants at the Pacific Gas and Electric (PG&E) Company Kettleman Compressor Station and the Kochergen Farms Composting Facility. It also requests Avenal include any soil contaminant data that may indicate a risk to construction workers involved in the excavation or grading of soil at PG&E Kettleman Compressor Station and Kochergen Farms Composting for transmission line or pipeline construction.

Data Request 7(a) Asks For Information That is Neither Relevant to the Project Nor Necessary to Make a Decision Regarding the AFC

The Phase I Environmental Site Assessment (ESA) for the pipeline route provided in Exhibit 89-1 of Avenal's response to Data Request 89 found no evidence of past releases of hazardous materials along the pipeline route. Section 6.3.1 of the Phase I ESA indicates that the Kettleman Compressor Station's former ponds, where a past release of hazardous material is known to have occurred, are not located near the pipeline route. The potential distribution of contaminants is located away from the pipeline route and therefore, is not relevant to the Project. There is also no known evidence of contamination at the Kochergen Farms Composting Facility. Therefore, there are no contaminants to map or describe pursuant to Data Request 7(a).

H. Objection to Data Request 7(b)

Data Request 7(b) asks Avenal, in the event no data are available in the areas of soil disturbance, to conduct a limited sampling program to ensure construction workers are not at risk from dermal contact or ingestion of contaminated soil.

Data Request 7(b) Asks for Information that is Neither Relevant to the Project Nor Necessary to Make a Decision Regarding the AFC

As described in the objection to Data Request 7(a) above, the Phase I ESA and other aforementioned information indicate that there are no recognized environmental conditions in the subject areas. Therefore, the requested sampling is neither relevant to the Project nor necessary to make a decision regarding the AFC.

I. Objection to Data Request 9

Data Request 9 asks Avenal to incorporate the requirements of the 2007 California Building Code (CBC) in calculating the design basis ground motion and maximum credible ground motion for the project site to include project site-specific consideration of site class, seismic design category, and site amplification coefficients.

Request 9 Asks for Information that is Not Necessary to Make a Decision Regarding the AFC

The recent changes to the CBC are adequately considered in the AFC in that the AFC specifies that the project will be required to comply with the CBC, without reference to any specific version. The AFC was prepared while taking into consideration that the CBC is subject to change from time to time. The AFC therefore qualifies compliance using terms such as the “current” version of the CBC and the “latest version available” of the CBC.¹⁵ Section 6.3.2.4, Project Design Features, provides:

[A] detailed, site-specific seismic evaluation will be performed as part of detailed Project design. This evaluation will determine the governing design ground acceleration, and will be coordinated with power plant structural design, as needed, to control any potential impacts associated with ground shaking, in accordance with the CBC.

Through this Project Design Measure committed in the AFC, the Applicant has already incorporated the requirements of the 2007 CBC (and/or any subsequent amendments) in calculating the design basis ground motion for the project site, including site-specific consideration of site class, seismic design category, and site amplification coefficients, as requested by the commenter. As evidenced by the above quoted design measure from the AFC, the seismic assessment in the AFC is not intended to be the basis of the project’s seismic design.

The seismic analysis for the basis of project design will be completed as part of the detailed project design work to be completed prior to construction, and will follow the latest version of the CBC. The 0.47g peak horizontal ground acceleration estimated in the AFC was determined using a valid methodology widely accepted in the geologic profession and is intended to note the potential impacts of an earthquake on the proposed project and its implications for the CEQA-level environmental analysis.

Therefore, Avenal objects to Data Request 9 as asking for information that is not necessary to make a decision regarding the AFC, as the project has already incorporated the latest CBC in the project design.

J. Objections to Data Requests 10-30

Data Requests 10-30 ask for information about the independent system impact study and California Independent System Operator (CAISO) and Commission Staff review and acceptance of the study and its results.

The Information Requested is Outdated, Speculative or Unreasonable Given its Purpose to Identify System Upgrades for a Screening Level Analysis

Data Requests 10 through 30 are not focused upon obtaining information and instead question the value of the independent system impact study filed by Avenal. The importance of this study from the perspective of the Commission's jurisdiction is to identify and analyze on a screening level the potential environmental impacts of any downstream system upgrades. The analysis of these system upgrades is not conducted at the same level of detail in which the Commission analyzes the project itself and the generation tie to the first point of interconnection.

In addition, the requests are focused on the old interconnection process at the CAISO instead of the new Queue Cluster Window process ("Cluster Process"). Unfortunately, the change in processes for evaluating interconnection of power plants and potential downstream impacts is causing significant delays in analysis at the CAISO. For projects caught in the interim, of which Avenal is one of several, project proponents are being required to pay for both

¹⁵ See, e.g., AFC Table 2.5-1, AFC § 6.3.2.4, and AFC Appendix § 2-1.

the analysis conducted as part of the Large Generator Interconnection Procedures (LGIP) at the CAISO and an independent study of the impacts of the project using the traditional analysis methods. Avenal has agreed to pay for both studies and has provided the independent system impact study as a response to a CEC data request in addition to participating in the LGIP process at the CAISO. Therefore, in effect Avenal has already paid for a “fix” to the interconnection process issues, provided additional information in the independent system impact study and should not be required to provide yet a third level of additional information or additional analysis. Data requests 1- through 30 suggests CURE’s focus is on encouraging changes in the rules for permitting power plants by extending the requirements for analysis and studies far beyond those required by California law, rather than simply requesting data in accordance with existing guidelines.

Avenal will provide responses to some of the requests 10 through 30, but they may not directly respond to the question that is asked. Therefore, Avenal is objecting to all requests 10 through 30 so as not to waive its rights. The following provides a brief description of the problems with each individual or group of requests:

- Requests 10 and 11 focus on the older process at the CAISO and are no longer relevant.
- Request 12 does not request information and instead asks for what Avenal believes. What Avenal may or may not believe is clearly not a request for data.
- Requests 13 through 15 ask for CAISO comments and evaluation of the independent system impact study. This study is provided in response to a Commission Staff data request. The study is not intended for use by or approval from the CAISO. Instead, the study is intended to provide a reasonable amount of information upon which to complete a screening level analysis.
- Requests 16 through 21 ask when under an overload condition the project would be required to pay for an upgrade. Many of the questions address existing overloads. Under the California Environmental Quality Act a project is not required to mitigate existing conditions. Existing conditions become the baseline for which a project is analyzed. Further the CAISO and the transmission system owner are required to maintain the transmission system and address system conditions and problems regardless of the addition of new projects. Further, system upgrades provide benefits that go beyond a simple improvement to accommodate an individual project.

The analysis follows existing protocols and assumptions regarding projects before Avenal in the queue of which Avenal has no specific information. Many of the questions in this group call for speculation on the part of Avenal regarding the actions of other parties or the specific mitigation that may be implemented by these parties to address existing

overload conditions. Project specific system impact studies are performed one at a time in a line. Projects earlier in the list take care of impacts caused by those projects. Projects later in the queue fix problems resulting from the addition of their project only. Thus, it is reasonable to assume projects ahead of Avenal would be required to address existing issues. In addition, Avenal does not have specific information on the upgrades agreed upon by preceding projects.

Furthermore, since the process is changing to the Cluster Process, the upgrades identified for any one project may no longer meet the “but for” test. The costs attributed to a project may no longer result from that project alone or be dependent entirely upon the individual project to go forward. Therefore, the detailed questions about whether the existing overloads will be attributed to this Project or to another project are becoming more distantly connected to each individual project and thereby, less relevant to this individual proceeding. At this point the ultimate arbiter of what upgrades and assumptions should be made regarding the independent system impact study is the Commission Staff until such time as the CAISO begins to provide analysis under the Cluster Process and issues a Phase 1 Interconnection Study. The independent system impact study provides a reasonable estimate of the upgrades that may be required to interconnect and deliver the energy from this project. At this time and given the level of analysis conducted for system upgrades, the study already provided is sufficient. As stated above, the independent system impact study is already an additional study. No further analysis makes sense at this time.

- Request 22 asks for legal citations to CAISO rules and Federal Energy Regulatory Commission approval of those rules. In essence, CURE is requesting that Avenal conduct legal research for CURE. The regulations do not require Avenal to provide legal research for its intervenors.
- Request 23 requests confidential information. The queue numbers and the identity of each project is confidential.
- Request 24 asks which set of interconnection rules were used in performing the study. The study provided to the CEC provides a detailed discussion of the criteria for performing the study. Further, the study notes that the underlying data for the study was provided by the CAISO. Additional information regarding the underlying data provided by the CAISO is confidential and unavailable to Avenal.
- Request 25 requests additional information regarding the special protection schemes (SPS’s) discussed in the study. The basis for selection of the suggested SPS’s discussed in the study is based on customarily accepted methods. Further, they are provided as an estimate of potential reductions in costs and impacts to the transmission system. The decision to implement these SPS’s or others more valuable to the CAISO resides solely with the CAISO. The full impacts of the project to the transmission system are contained within the study as provided. Therefore, additional information regarding SPS selection methodology is unnecessary.
- Request 26 asks for CAISO approval of special protection schemes. Normally, special

protection schemes would not be identified under the old system until the facility study. Avenal accelerated the analysis to provide as much information to this proceeding as possible. As stated above, the independent system impact study has been prepared to inform the Commission siting process while the CAISO works through its transition to the cluster system. Thus, it is unreasonable to request the CAISO to provide comments prior to completing its own study.

- Request 27 asks for information on other projects in the CAISO queue. The identification of projects in the interconnection queue process is confidential. This question calls for speculation on the part of Avenal.
- Request 28 asks for information on other projects in the CAISO queue. The identification of projects in the interconnection queue process is confidential. This question calls for speculation on the part of Avenal.
- Request 29 asks for information about other projects. Avenal does not have any other projects in front of the Commission. Thus, this request asks for speculation on the part of Avenal.
- Request 30 asks for further information about other projects in the queue ahead of Avenal and considered built in accordance with the study protocol. This information is not known to Avenal nor is it publicly available and thereby, asks for speculation on the part of Avenal.

K. Objections to Data Request 35

Data Request 35 asks Avenal to provide level of service (LOS) calculations for PM peak traffic hours in 2012 under both No Project and Project Operating conditions for the intersection of SR 198 east bound ramps and Avenal Cutoff Road. Data Request 35 further asks Avenal to describe what mitigation measures will be taken if a significant traffic impact is found to reduce the impact to a level that is less than significant.

1. Data Request 35 Asks For Information That Is Not Necessary To Make a Decision Regarding the AFC

As stated in AFC section 6.11, the largest routine operating staff will consist of approximately 17 employees. As identified in AFC section 6.10.2.2, this will include a combination of both 8- and 12-hour shift personnel. Even if all employees are assumed to leave the site within the same 10 minute period, this small amount of traffic would average less than

two vehicles per minute. Therefore, there is not likely to be any measurable project-related concentration of traffic at the subject intersection, which is located 15 to 20 minutes away from the site. No measurable impact is anticipated, and therefore no mitigation is required. The LOS calculations are therefore not necessary to make a decision regarding the AFC.

2. Data Request 35 Asks for Information that is Unnecessary

The second part of Data Request 35, requesting a description of possible mitigation measures if a traffic impact is found, is unnecessary. As described above, the Project operation traffic is minimal. Therefore, Project impacts to this intersection, which are unlikely given that the location of the intersection is 15 to 20 minutes away from the project site, are very small. Therefore, no mitigation measures for Project impacts are needed. The Project need not mitigate impacts that are less than significant.

L. Objection to Data Request 41

Data Request 41 asks Avenal to identify specific improvements or controls that would be required to eliminate crossing of the roadway centerline by semi trucks and trailers.

Data Request 41 Asks For Information That Is Not Relevant to the AFC

The geometric constraint is not part of the travel route that will be used by Avenal Energy traffic. Applicant is not proposing any improvement at this location, nor is the existing condition expected to affect public safety.¹⁶ Therefore, since no specific improvements or controls will be required, Data Request 41 is not relevant to the AFC.

M. Objection to Data Request 42

Data Request 42 asks Avenal whether it is willing to correct, at its cost, the condition of semi trucks and trailers crossing the roadway centerline.

¹⁶ AFC § 6.11.6.

Data Request 42 Is Not a Data Request

Request 42 is not an appropriate data request. As described above, the purpose of a data request is to give access to data which is reasonably available to the Applicant. Data Request 42, however, seeks information that is not data. Data Request 42 asks Avenal to indicate its willingness to engage in mitigation measures that are not required because the impacts are less than significant. This question is not a request for data and asks for mitigation that is unnecessary, and therefore, it is not an appropriate data request.

N. Objection to Data Request 44

Data Request 44 asks Avenal whether it is willing to install turning lanes at its cost. Data Request 44 also asks Avenal to provide an estimated schedule for these improvements.

Data Request 44 Is Not a Data Request

Request 44 is not an appropriate data request. As described above, the purpose of a data request is to give access to data which is reasonably available to the Applicant. Data Request 44, however, seeks information that is not data. Data Request 44 asks Avenal to indicate its willingness to provide funding, and to provide its schedule for doing so. This inquiry is not a request for data, and therefore it is not an appropriate data request.

O. Objection to Data Request 47

Data Request 47 asks Avenal to provide the site-specific field data supporting the conclusion that the closed depression is not a wetland or other jurisdictional water (i.e., field data on soils, hydrology, and any hydrophytic vegetation).

Data Request 47 Asks for Information that is Not Necessary To Make A Decision Regarding the AFC

No potential wetlands or potential jurisdictional waters are present onsite. The site and the immediate surrounding area are active farmland that is regularly disked, planted and harvested with crops suited to the well-drained soils.¹⁷ This land has been intensively disturbed by farming activities and infrastructure development since the early 1950s.¹⁸ No evidence of channelized flow, inundation, drift marks, water marks, sediment deposits, wetland vegetation, or any other evidence of jurisdictional waters or wetlands has been observed. Specific field data forms for evaluation of wetlands and jurisdictional waters have not been completed because there is no indication of the potential for wetlands or jurisdictional waters. Because no potential indicator of jurisdictional waters or wetlands has been observed, Data Request 47 asks for information that is not necessary to make a decision regarding the AFC.

P. Objection to Data Request 48

Data Request 48 asks Avenal to provide the Minimum Mapping Unit (“MMU”) used in classifying habitats, and to discuss the appropriateness of the MMU with respect to any special-status species having potential to reside in the project vicinity.

Data Request 48 Asks For Information That Is Not Necessary To Make A Decision Regarding the AFC

The methodologies used in mapping habitats are described in AFC Section 6.6 and accompanying appendices. As described in the AFC, biological surveys were conducted on multiple occasions (2001, 2006, 2007) in accordance with both CEC survey requirements and accepted professional practices by, or under the direct supervision of, a qualified biologist with more than 20 years of experience.¹⁹ The field survey and mapping methodologies used were suited to specific conditions encountered in the field with focus on identifying sensitive habitats and sensitive species that occur regionally based on the California Natural Diversity Database. Jurisdictional agencies with knowledge of the site area, including the US Fish and Wildlife

¹⁷ AFC Table 6.4-1.

¹⁸ AFC § 6.6.1.1.

¹⁹ Biologist resumes are provided in the appendices accompanying AFC § 6.6.

Service and the California Department of Fish and Game, have reviewed the Avenal biology studies without question to the mapping unit detail, providing further evidence of the professional standard to which this work was performed. Therefore, because the studies already done are sufficient, the information requested by Data Request 48 is not necessary to make a decision regarding the AFC.

Q. Objection to Data Response 53

Data Request 53 asks Avenal to quantify the expected frequency of Project trips during commissioning and initial start-up, and under routine operating conditions.

Data Request 53 Asks For Information That Is Not Reasonably Available to Avenal

As described in AFC Section 6.12.5.3.6, Project “trips” occur from shut-down of a system due to an undesirable condition. These trips are a necessary safeguard mechanism to protect human life and health and plant equipment. Trip events occur primarily in the first few weeks of the initial start-up phase, and are infrequent during routine operations. Furthermore, not all trip events result in a release of steam. The plant equipment will include redundant systems and other safeguards such as steam bypasses to minimize the potential for a pressure relief valve (PRV) activation to occur in the event of a trip, since a PRV steam release is a loss of energy and is not efficient for plant operations. The PRVs are a final line of safety and are an integral part of an overall design for safe and efficient operations. The frequency, duration and magnitude of PRV steam release events, when they occur, are variable, depending on the particular plant

conditions at the time. Because trips are unplanned, and only some trips result in PRV steam releases, there is no “expected frequency” of trip events or related steam releases. Because there is no “expected frequency,” Data Request 53 is an improper request for information that is not reasonably available to Avenal.

Respectfully,



Jane E. Luckhardt
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PROOF OF SERVICE
(Revised 9/22/2008)

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. 08-AFC-1
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DECLARATION OF SERVICE

I, Lois Navarrot, declare that on October 20, 2008, I deposited copies of the attached **AVENAL POWER CENTER, LLC'S OBJECTIONS TO CALIFORNIA UNIONS FOR RELIABLE ENERGY'S DATA REQUESTS** 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.



 Lois Navarrot