



South Coast Air Quality Management District

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

April 1, 2009

Mr. Don Vawter
Project Director
AES Highgrove, LLC
690 Studebaker Road
Long Beach, CA 90803

DOCKET

06-AFC-2

DATE MAY 01 2009

RECD. MAY 05 2009

SUBJECT: Proposed AES Highgrove Power Plant Project, to be located at 12700
Taylor Street, Grand Terrace, CA 92313 (Facility ID No. 115666)

Dear Mr. Vawter:

<u>Application No.</u>	<u>Equipment or Application Description</u>
458297	Gas Turbine Generator, Simple Cycle, Unit No. 1
458298	Gas Turbine Generator, Simple Cycle, Unit No. 2
458299	Gas Turbine Generator, Simple Cycle, Unit No. 3
458300	Air Pollution Control System, SCR and Oxidation Catalyst, No. 1
458301	Air Pollution Control System, SCR and Oxidation Catalyst, No. 2
458302	Air Pollution Control System, SCR and Oxidation Catalyst, No. 3
458303	Aqueous Ammonia Storage Tank
458304	Oil/Water Separator
458295	Initial Title V RECLAIM Permit

This is in reference to the AES Highgrove, LLC's (AES's) applications for a Title V Permit to Construct submitted to the South Coast Air Quality Management District (AQMD) on or about June 23, 2006 for construction and operation of the proposed AES Highgrove (Highgrove) project consisting of a 300 Mega Watts (MWs) power plant (including the equipment described above) to be located at 12700 Taylor Street in the City of Grand Terrace.

The AQMD staff has evaluated your applications for a Title V Permit to Construct the proposed Highgrove project and sent a letter, dated February 26, 2009, to AES stating that:

- AQMD has reviewed AES' request and determined that Rule 1304(a)(2) – Electric Utility Steam Boiler Replacement, and Rule 1304(c)(2) – Concurrent Facility Modification offset exemptions do not apply to the proposed Highgrove project; and
- AES must supply Emission Reduction Credits (ERCs) by March 15, 2009, to offset all emission increases from the proposed Highgrove Project.

The AQMD staff has not received a response to our February 26, 2009 letter from AES.

Based on our careful review and evaluation of your applications and other information and correspondences associated with your applications, AQMD staff has determined that AES has not been able to demonstrate that the proposed Highgrove project will comply with the emissions offsets requirements of AQMD Rule 1303(b). As described in AQMD's February 26, 2009 letter, AQMD Rule 1309.1 – Priority Reserve, as amended on August 3, 2007, has been invalidated by the court order issued by Judge Ann I. Jones in July and November 2008 in response to a lawsuit filed by a group of environmental organizations. In the absence of availability of Amended Rule 1309.1 Priority Reserve (PR) credits, and inability to use Rule 1304 offset exemptions, AES is required to provide emission offsets in the form of ERCs in order to demonstrate compliance with the emissions offset requirements of AQMD Rule 1303(b).

As you may know, AQMD has appealed Judge Jones' ruling. In addition, Senator Rod Wright is presently intending to introduce legislation to address the offset issue and AQMD's permit moratorium. However, even if the AQMD is successful in its appeal of Judge Jones' invalidation of Rule 1309.1, or the proposed legislation passes and, in either case, Rule 1309.1 was being implemented as amended on August 3, 2007, AES still must comply with the specific provisions of Rule 1309.1(c)(3), (d)(6) and (d)(14), in addition to the requirements of Rule 1309.1(b)(5)(A)(iv), (c) and (d), and other requirements of AQMD Regulation XIII, in order for AES to be able to demonstrate that the project complies with the offset requirements of AQMD's NSR Rules.

The AQMD staff has determined that AES does not comply with the provisions of Rule 1309.1(c)(3), (d)(6) and (d)(14), as amended on August 3, 2007, in order to qualify to access PR credits and/or to allow AQMD to release the PR credits to AES, for the following reasons:

- In the early part of 2008, AQMD received and processed a change in title of PM10 and SOx ERCs previously held by AES for the Highgrove project.
- AQMD sent AES a letter, dated April 1, 2008, informing AES that as a result of the recent change in the title of these ERCs, AES no longer qualifies to access the PR credits, since Rule 1309.1(c)(3) requires AES to conduct a due diligence to

secure ERCs to qualify to access PR credits, and Rule 1309.1(d)(6) requires AES to use the ERCs it held before access to PR credits is allowed. In the April 1, 2008 letter, AQMD provided AES until April 30, 2008 to provide the necessary offsets for the Highgrove project.

- In response to AQMD's April 1, 2008 letter, AES submitted a letter, dated April 21, 2008, requesting a 60 days extension to allow AES to make an arrangement to show that it still qualifies to access the PR credits.
- AQMD issued a letter to AES, dated May 20, 2008, in response to AES' letter, dated April 21, 2008, and provided AES an extension until June 27, 2008 for AES to re-acquire the ERCs originally held for the Highgrove project in order to qualify to access PR credits, or provide full offsets for the Highgrove project in the form of ERCs.
- AES did not re-acquire the ERCs originally held for the Highgrove project and did not provide full offsets for the project by June 27, 2008.
- Further, AES has not entered into a long-term contract with the SCE, SDG&E or the State of California and had not petitioned the AQMD Governing Board and obtained approval from the Governing Board to waive such requirements.

Since AES' proposed Highgrove project is not exempt from offset requirements of Rule 1303(b) pursuant to Rule 1304; AES has not provided the required ERCs by June 27, 2008 and March 15, 2009, as requested by AQMD in letters to AES, dated April 1, and May 20, 2008, respectively, to offset the emission increases from the proposed Highgrove project; and even if Rule 1309.1, as amended on August 3, 2007, becomes valid, AES does not qualify to access the PR credits pursuant to Rules 1309.1(c)(3) and (d)(6), and even if AES qualified to access PR credits, the AQMD Executive Officer can not release the PR credits pursuant to Rule 1309.1(d)(14), since AES has not acquired a long-term contract with SCE, SDG&E or the State of California and AES had not filed a petition with the AQMD's Governing Board and obtained Governing Board's approval to waive the long-term contract requirements; hence the AQMD staff has determined that the AES' proposed Highgrove project does not comply with the requirements of AQMD Rule 1303(b).

Therefore, based on our careful evaluation of AES's applications and other information and correspondences, your applications for a Title V Permit to Construct for the proposed Highgrove power plant project are hereby denied for the following reasons:

1. The emissions from the proposed equipment for the Highgrove project are subject to the emission offset requirements of AQMD Rule 1303(b).
2. AES has not provided the required ERCs, nor has AES demonstrated compliance with the offset requirements of Rule 1303(b).

3. The AQMD staff has determined that the proposed Highgrove project does not comply with the emission offset requirements of AQMD Rule 1303(b).

Rule 212 provides, in essence, that the Executive Officer shall deny a Permit to Construct or a Permit to Operate unless the applicant shows that the equipment is so designed or controlled that, in use, it may be expected to comply with the Health and Safety Code of the State of California and the Rules and Regulations of the South Coast Air Quality Management District.

Enclosed is a copy of Form 400-D, which briefly describes some important facts you should know regarding these denials. The form also outlines options available to you because of this action. If you have any further questions concerning the denial of your application, please contact me at 909.396.2662.

Sincerely,



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

MN:am
Enclosure

cc: Barry Wallerstein, AQMD
Kurt Wiese, AQMD

CERTIFIED MAIL, Return Receipt Request



South Coast Air Quality Management District

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

IMPORTANT INFORMATION CONCERNING DENIALS

A letter of denial is a form of legal action and is considered as such by the Air Quality Management District.

The information contained herein is provided to emphasize the importance of taking the proper steps without delay after receiving a letter of denial. This information is not intended to take the place of competent legal advice.

You are advised that the Hearing Board of the Air Quality Management District has been established by law to hear appeals of actions of the Executive Officer. Should you elect to file a petition to appeal a denial, it is recommended that you familiarize yourself with the Rules and Regulations of the Air Quality Management District and with the sections of Chapters 4 & 8, Division 26, of the Health & Safety Code of the State of California.

After receiving a letter of denial, you have the following options:

1. File an appeal with the Hearing Board within 30 (thirty) days after the receipt of this denial, OR
2. File a petition with the Hearing Board for a variance to permit operation of the equipment while the air pollution problem is being solved, OR
3. Suspend construction or operation of all equipment involved and file a new application with the Air Quality Management District for authority to make alterations which will comply with the objections stated as the reasons for the denial, OR
4. Abandon construction or operation of all equipment involved in the denial.

In all cases, construction or operation of all equipment involved must be suspended completely until either a valid permit to construct or a permit to operate has been issued by either the Air Quality Management District or the Hearing Board. In no way can the filing of either a new application with the District or a petition with the Hearing Board be construed as permission to continue the construction or operation of the equipment involved.

Existing laws state that every person who builds, erects, alters, uses or operates any source capable of emitting or controlling air contaminants without first obtaining the necessary permits is guilty of a misdemeanor and that every day during which such violation occurs is a separate offense.

Should construction or operation be continued after receipt of a denial, the Executive Officer will take whatever legal action is deemed necessary, as prescribed by existing laws and regulations.



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

APPLICATION FOR CERTIFICATION

**FOR THE AES HIGHGROVE
POWER PLANT PROJECT**

Docket No. 06-AFC-2

**PROOF OF SERVICE
(Revised 2/26/2009)**

APPLICANT

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DECLARATION OF SERVICE

I, April Albright, declare that on May 6, 2009, I served and filed copies of the attached Letter from South Coast Air Quality Management District Denying AES Highgrove, LLC's Application for Permit to Construct. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[<http://www.energy.ca.gov/sitingcases/highgrove/index.html>]. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

- ☒ sent electronically to all email addresses on the Proof of Service list;
- ☐ by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

- ☒ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

- ☐ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 06-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

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

Original signed by _____
April Albright