

**M e m o r a n d u m****DOCKET****08-AFC-9**DATE OCT 14 2009RECD OCT 14 2009

The Resources Agency of California

To: Commissioner Jeffrey Byron, Presiding Member  
 Commissioner Art Rosenfeld, Associate Member

Date: October 14, 2009  
 Telephone: (916) 654-4640

From: **California Energy Commission – Felicia Miller**  
 1516 Ninth Street  
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**Project Manager**

Subject: **Palmdale Hybrid Power Project (08-AFC-9)**

Pursuant to the Committee Order dated October 5, 2009, Requesting Further Comment Regarding Schedule, the following is staff's response to the Committee's questions addressing the feasibility of staff preparing a single Staff Assessment rather than a Preliminary Staff Assessment/Final Staff Assessment (PSA/FSA); and staff's statement of issues that remain to be resolved and a summary of information required from the applicant, or a third party to resolve those issues.

### **Staff Assessment vs. PSA/FSA**

Staff has previously identified a number of items that are needed from the applicant to publish a PSA. As stated in staff's Status Report #6 dated September 28, 2009, staff maintains their position that the requested information from the applicant was provided late, and furthermore, in several instances did not meet staff's need for thorough and verifiable information.

Staff will soon publish a PSA, but further critical information from the applicant is needed for staff to make our final determinations, write our technical analysis and provide appropriate conditions of certification (COC). Until this information is received, staff cannot determine the scope and nature of COCs. Under these circumstances, staff prefers the traditional PSA/FSA process.

Aside from the lack of complete information, the PSA/FSA approach is useful in instances in which the project description changes (i.e. the transmission line route), which could require extensive changes to the analysis. Staff believes that bypassing the PSA/FSA process with a singular analysis would not work well for this project given its circumstances, and would likely result in a subsequent, extensive errata that would erase any scheduling advantage.

### **Unresolved Issues**

**Air Quality** – Air offsets that would satisfy the federal and state Clean Air Act(s) and CEQA have not been identified. All nonattainment pollutants and their precursors need to be mitigated through emission reductions at a minimum ratio of 1:1, with larger ratios required for inter-pollutant, inter-basin and distant Emission Reduction Credits (ERCs) sources. The Mojave Desert Air Basin (MDAB) in the area of the

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project site is classified as nonattainment for the state ozone and PM10 standards and the federal ozone standard. Without proper emission reduction mitigation, this project could contribute to existing violations of the state and federal ambient air quality standards.

The applicant originally proposed to utilize the South Coast Air Quality Management District (SCAQMD) Rule 1309.1 Priority Reserve to obtain offsets (VOCs for their NOx liability) for the PHPP. Due to a court decision in 2008, emission offsets from the SCAQMD Rule 1309.1 Priority Reserve are not currently available for PHPP emission offsets. The PHPP is currently considering obtaining emission offsets from the San Joaquin Valley Air Pollution Control District (SJVAPCD) or from sources in the San Joaquin Air Basin (SJAB).

- Ozone Precursor (NOx and VOC) ERCs from Outside the MDAB - Obtaining ERCs from the SJVAB will place additional requirements on the Antelope Valley Air Quality Management District (AVAQMD) that would not be necessary for ERCs obtained within the MDAB. Specifically, AVAQMD Rule 1305 requires that ERCs obtained from another air district comply with the requirements of Health & Safety Code §40709.6, which states:
  - (1) *Increases in emissions of air pollutants at a stationary source located in a district may be offset by emission reductions credited to a stationary source located in another district if both stationary sources are located in the same air basin or, if not located in the same air basin, if both of the following requirements are met:*
    - (a) *The stationary source to which the emission reductions are credited is located in an upwind district that is classified as being in a worse nonattainment status than the downwind district pursuant to Chapter 10 (commencing with Section §40910).*
    - (b) *The stationary source at which there are emission increases to be offset is located in a downwind district that is overwhelmingly impacted by emissions transported from the upwind district, as determined by the state board pursuant to Section §39610.*
  - (2) *The district, in which the stationary source to which emission reductions are credited is located, shall determine the type and quantity of the emission reductions to be credited.*
  - (3) *The district, in which the stationary source at which there are emission increases to be offset is located, shall do both of the following:*
    - (a) *Determine the impact of those emission reductions in mitigation of the emission increases in the same manner and to the same extent as the district would do so for fully credited emission reductions from sources located within its boundaries.*
    - (b) *Adopt a rule or regulation to discount the emission reductions credited to the stationary source in the other district. The discount shall not be less than the*

*emission reduction for offsets from comparable sources located within the district boundaries.*

- (c) *Any offset credited pursuant to subdivision (a) shall be approved by a resolution adopted by the governing board of the upwind district and the governing board of the downwind district, after taking into consideration the impact of the offset on air quality, public health, and the regional economy. Each district governing board may delegate to its air pollution control officer the board's authority to approve offsets credited pursuant to subdivision (a).*

ERCs from SJVAPCD would meet the requirements of §40709.6 in terms of ERC/Source upwind and downwind designations, as required in §40709.6(a). However, §40709.6(c) and (d) require additional rulemaking, as well as AVAQMD and SJVAPCD board approval. The Applicant's responses to Energy Commission data requests and the AVAQMD PDOC do not provide any information on how ERCs obtained from the SJVAPCD will meet the requirements of §40709.6 (and thus Rule 1305), and if the SJVAPCD is amenable to providing ERCs for the PHPP. In addition, the USEPA has noted that the current ozone attainment plan does not include a net air quality benefit demonstration for ERCs obtained from the SJVAPCD. Therefore, it is likely that the AVAQMD will have to revise their ozone attainment plan and receive plan approval from CARB and the USEPA.

The Applicant will also need to provide information on CARB consultation and USEPA approval of the proposed inter-basin offset ratios pursuant to AVAQMD Rule 1305(B). The USEPA is on record as stating that the AVAQMD inter-pollutant offset ratio of 1.6:1 is not technically justified. The applicant did not provide any justification in their response to an Energy Commission data request regarding inter-pollutant and inter-basin offset ratios. Therefore, it is not possible at this time to calculate the PHPP ERC liability in the absence of ERC source identification and the establishment of an acceptable inter-pollutant and/or inter-basin offset ratio. USEPA has requested that the AVAQMD provide additional modeling to support the use of inter-pollutant and inter-basin ERCs from the SJVAPCD, as well as a revised ozone air quality attainment plan. This is a process likely to have a long timeline.

#### PM10 ERCs from Road Paving

The Applicant proposes to obtain PM10 ERCs through a proposed new AVAQMD Rule that would be modeled on the Mojave Desert Air Quality Management District (MDAQMD) Rule 1406. However, this approach is speculative as the air district rulemaking has not been completed and potentially may not be completed. Moreover, staff believes that such mitigation should identify roads that would be paved to determine the efficacy of the mitigation and such information obviously cannot be presently be provided.

The Applicant has not provided any information on the status of this proposed rule and the AVAQMD Rule Development Calendar does not provide any information on proposed Rule 1309.5 (AVAQMD Rule Development Calendar 2009). Even if

the AVAQMD successfully passes a new rule allowing for PM10 offsets from road paving, the ERCs would not be valid until the AVAQMD updates their attainment plan and the State Implementation Plan is revised and approved.

Compliance with AVAQMD Rule 1305 cannot be determined in the absence of approval of proposed Rule 1309.5, and a detailed analysis of how the Applicant would comply with this new, yet to be defined, rule. The Applicant needs to identify the specific roads in the vicinity of the PHPP that will be used to generate the PM10 ERCs, and provide all appropriate calculations including vehicle miles traveled via traffic counts and silt content analysis used to quantify the emission reductions that are expected to be generated.

Based on the AVAQMD "Rule Development Activities and Timing" guidance, the development of a new rule requires at least 90 days for public/agency review and approval once the rule has been developed. Therefore, it would appear that adoption of the final rule would not occur until autumn 2009 at the soonest, with PHPP compliance and ERC approval occurring sometime in late 2009. This represents an optimistic schedule for the development of an enforceable PM10 ERC package.

As presented by the Applicant, the proposed ERC program does not meet any of the requirements of a valid mitigation measure or project condition, and is currently not federally enforceable as required under the Clean Air Act. Therefore, it is nearly impossible to assess the validity and effectiveness of the PHPP ERC mitigation and develop a coherent and defensible Condition of Approval.

In addition, the Final Determination of Compliance (FDOC) has not been issued from AVAQMD. The AVAQMD had indicated it will issue the FDOC on or before August 3, 2009, but to date no FDOC has been issued. Staff does not have the ability to complete a FSA or SA without the issuance of the FDOC.

**Biological Resources** – Based on the existing information regarding biological resources, several outstanding issues regarding assessing impacts of the project on vegetation communities, sensitive birds, rare plants, bats, and listed species (i.e. Swainson's hawk and Mohave Ground Squirrel) need to be resolved prior to publishing the FSA. Staff is concerned that the adequacy of the data provided may not be sufficient to ensure staff can assess potential impacts to sensitive species, jurisdictional waters, and the vegetation communities. In addition, these issues relate to how staff will ensure compliance with California Department of Fish and Game (CDFG) requirements for consultation under the California Endangered Species Act (CESA).

After additional review of the biological data provided by the applicant, staff's biologist and the CDFG biologist conducted a reconnaissance level investigation of the power plant site and transmission line route between the power plant site and Highway 138. Staff also did an additional reconnaissance level tour of the

proposed transmission line right of way between Highway 138 and Vincent substation and has identified the following issues which are critical to adequately address impacts to biological resources for the PHPP project:

- The applicant's bio technical report indicated that nesting potential for Swainson's hawk is absent from the project site because of the lack of large trees. However, per CDFG, this species has been observed nesting in Joshua Trees in the Antelope Valley in 2009 approximately 14 miles from the project site. In addition, during a recent site visit, CDFG and staff observed one Swainson's hawk on the power plant site and one Swainson's hawk along the transmission line corridor. Similarly, we noted several large stick nests that do not appear to have been noted by the applicant. Because this species is listed by the CDFG, staff will require further coordination with the applicant in order to prepare the FSA.
- In data response 136 (CEC staff data request number 2) staff noted that a potentially sensitive manzanita was noted in the bio technical report. In the response to staff, the applicant indicated the species was actually not observed but rather a typographical error had occurred and the species was not present. However, during the reconnaissance level survey conducted by staff, a manzanita was observed along one of the proposed access roads. This raises questions regarding the potential for this species to occur along the transmission line route in other areas not anticipated by staff.
- Staff is still working with the applicant to resolve mitigation concerns regarding obtaining lands to compensate for the loss of Mohave ground squirrel (MGS) habitat. CDFG has requested that the applicant verify the location of mitigation lands.
- Staff is concerned that the applicant's information regarding MGS is incomplete. The applicant provided maps of suitable habitat and provided a table totaling anticipated impacts; however the applicant did not provide a detailed analysis or map that depicts the actual acres of habitat impacts. Therefore, staff is unable to complete their analysis for impacts to MGS or make a determination that the mitigation is adequate. For staff and CDFG to analyze the impacts to MGS and determine that the mitigation proposed meets CDFG's "fully mitigated" standard, the applicant must provide detailed description maps of the proposed project impacts to MGS habitat.
- The applicant provided maps of potential burrowing owl habitat, a State species of special concern, for the proposed project and transmission line tie-in. Staff toured these areas and based on the information provided, the maps do not appear to represent the potential habitat accurately.
- Vegetation maps provided by the applicant are very basic and do not accurately reflect the plant communities present in the portions of the project alignment. This appears to be the case for sections of the transmission line route south of highway 138. Based on the accuracy of the maps it will not be possible to accurately quantify the amount of Joshua tree woodland impacted by the proposed project.

- Potential impacts to riparian areas and do not appear to be accurately identified based on a field reconnaissance tour. Areas were not mapped and based on staff's tour, impacts may be understated.
- Presence of bats in the project area is downplayed by the applicant's biological technical report. However, a large population of sensitive Yuma Myotis is known to occur just upstream of the project in Littlerock creek.

These are the primary concerns staff has regarding the existing information provided by the applicant. Based on the discrepancies noted in the biological technical reports, staff is concerned that adequate data to fully and accurately assess project impacts remains to be resolved with the applicant through the PSA process.

**Cultural Resources** – The proposed gen-tie transmission route has not yet been determined to be feasible through a Southern California Edison (SCE) right-of-way (ROW) study, and as a result, the route is subject to change. Until a final gen-tie transmission line route is set, staff cannot be certain that all cultural resources subject to impacts from the proposed project have been identified. If the final route is different from that currently proposed, an additional cultural resources survey and records research may be necessary, and additional data requests may also be necessary to obtain sufficient information to evaluate the California Register of Historical Resources (CRHR) eligibility of any additional cultural resources identified along the changed route.

Staff needs to identify all cultural resources the proposed project could impact, evaluate their eligibility for the CRHR, and provide mitigation for significant impacts to CRHR-eligible cultural resources that cannot be avoided. Such analysis requires a fixed project description. This makes the PSA/FSA approach more workable than a single-stage analysis.

**Land Use** – Although staff has adequate information to prepare the PSA land use section, detailed information is required to complete a FSA. The applicant's proposal of a 37-mile 230 kV transmission line is a major project in itself, but as previously indicated, much of the specificity regarding the transmission line right-of-way (ROW) has not been provided by the applicant. This would require staff to make assumptions in order to prepare the analysis of land use impacts related to the proposed transmission line.

Staff maintains that it is not a good use of staff resources to complete an analysis in this technical area without critical information. Following is a list of specific types of information that require additional specificity, and that staff intends to discuss/resolve with the applicant post publication of a PSA:

- The specifics of the transmission line easement for the 23.7 mile Segment 1 (from the proposed power plant to the Pearblossom substation). The maps provide general locations, but not the specific ROW for the transmission line.

Although utilities often do not conduct final design for transmission lines until final approval/permit, a preliminary design would be required to allow for impact analysis and CEQA clearance to facilitate permit issuance. In addition, the applicant has not secured the ROW for Segment 1. Without a ROW in place, establishment of easements for construction of the transmission line could be problematic. The applicant has indicated in responses to data requests that they would acquire easement for the transmission line through either purchase offers or eminent domain, if affected land owners do not want to negotiate. The Committee should be aware that the applicant has indicated that they would proceed with ROW acquisition post-licensing, which would be inconsistent with a complete CEQA analysis of the project as a whole.

- The transmission line corridor maps provided by the applicant indicate the transmission line traverses adjacent to or within Prime Farmlands for about 2 miles. Staff has asked the applicant for clarification. Despite numerous requests for detailed information from the applicant, staff decided to use maps already submitted, and work out the details in a PSA workshop. The applicant has stated that the transmission corridor would be sited within existing road ROWs. A 50-foot-wide 230-kV transmission line would be difficult to site within an existing road easement, but without specific details from the applicant, staff is forced to make assumptions in order to complete their analysis.
- There are inconsistencies in the information filed by the applicant regarding the route for the natural gas pipeline. Figures dated April 2009, which are consistent with the AFC show the gas pipeline entering the power block from the east boundary of the site. However, an email from the applicant's environmental consultant (Sara Head at AECOM) dated May 2009 shows the gas pipeline following the proposed access road.

**Soil and Water Resources** – A PSA can be completed at this time, but more information must be provided for a FSA level analysis.

- A signed agreement between the applicant and Los Angeles County Waterworks providing details of the quantity and quality of recycled water, length of the contract is required for a FSA. The applicant must demonstrate there is an adequate volume of tertiary-treated water available to supply the project.
- The applicant must demonstrate the tertiary treatment systems at the Palmdale and Lancaster water recycling plants must be completed for timely start-up of the project.
- The applicant must demonstrate that the regional recycled water supply pipeline by Los Angeles County Waterworks will be completed for timely start-up of the project.
- The RWQCB's must provide recommended dredge and fill requirements/waste discharge requirements for the proposed project's construction and industrial storm water discharge and any requirements for recycled water use during construction.

- The applicant must provide the RWQCB's recommended reclamation water waiver requirements for the PHPPs use of secondary-treated water during construction.
- The applicant must provide final visual soil berm design dimensions, soil volume and source, soil compaction criteria, and Best Management Practices that would be used to protect the berm against wind and water erosion.
- The applicant has proposed to use trucks with a 4,000-gallon capacity to deliver water to the project site for dust control during construction. Staff has determined that the large number of water delivery trucks could possibly result in impacts to air quality. A PSA would provide staff an opportunity to discuss some alternatives with the applicant such as soil weighting and bonding agents, which would reduce the demand for project water during construction, also reducing the number of truck trips.

**Transmission System Engineering** – Staff lacks critical information, and is therefore, unable to complete its analysis. The following information is required from the applicant:

- The current Cluster System Impact Study indicated the Vincent Substation will require expansion and modification to interconnect the Palmdale project. A Facilities Study is required to identify specific configuration and equipment required for the interconnection.
- A letter from SCE dated June 29, 2009 clearly states, "Before making a final determination regarding the use of any SCE ROW, SCE requires a thoroughly detailed ROW Study funded by the City and performed by SCE." Staff is currently not in receipt of this study, and still does not know if the proposed gen-tie route is even feasible.
- Relocation of the Vincent-Pearblossom 230 kV line will have a direct impact to the California Department of Water Resources (CDWR) pumping plant . Data requests from the CDWR regarding this impact to the Pearblossom Pumping Plant have not been answered by the applicant and this information is required by CDWR to proceed with its analysis. Staff cannot complete its analysis absent CDWR's analysis and the required conditions of certification from CDWR.

**Visual Resources** – The applicant has provided staff with additional, modified Key Observation Points (KOPs), per staff's request. The KOPs staff received from the applicant were the agreed upon KOPs, however staff has determined, they are not accurate. Although staff could proceed with a PSA at this time, staff still needs complete information to complete our analysis and would benefit from a PSA workshop. Once the information agreed to at the PSA workshop is received from the applicant, staff can determine the appropriate COCs for a FSA.

- KOP -1 shows a change in the location of the proposed berm, which was originally proposed to parallel East M Street on the south side of the street. The



most recent KOP-1 also shows the berm heading south along the west side of the access road, adjacent to Air Force Plant 42. The applicant has informed staff that the military, for reasons of natural security, requires a clear, unobstructed view from the facility to the power plant site. This change in the location of the berm partially obstructs the view from the military installation.

- KOP-2 indicates no discernable difference between the existing photo and the simulation. Given the fact that the berm would be eight feet tall and the KOP is between a quarter and a half mile from the project site, it is difficult to understand why the exhaust stacks and other project structures wouldn't be visible given the flat landscape in the fore and mid-ground view, and the foothills and sky in the background. Staff questions the accuracy of the simulation and the impacts on motorists. Based upon this KOP, staff cannot accurately analyze the potential of visual impacts sufficiently and therefore cannot complete our analysis. These issues could be discussed at a PSA workshop, which may raise additional issues with the applicant. However, without verifiable KOPs, it would not be appropriate or compatible for staff to continue with their analysis.

**Waste Resources** – The applicant has not filed a draft Report of Waste Discharge for the management of the proposed heat transfer fluid with the Regional Water Control Quality Control Board (RWCQCB), which would result in the RWCQCB providing staff with permit requirements required for staff analysis and completion of pertinent COCs. Without these permit requirements, staff cannot complete their analysis of the proposed project, and at this time, would not be able to recommend the project for certification.

## **Conclusion**

On December 2, 2008, staff filed an Issues Identification Report. Outlined in this document is a discussion of the potential issues staff identified that may have:

- Potential significant impacts which may be difficult to mitigate;
- Potential areas of noncompliance with applicable, laws, ordinances, regulations or standards (LORS);
- Areas of conflict or potential conflict between the parties, or
- Areas where resolution may be difficult or may affect the schedule.

In the report staff identified several potential major issues; Air Quality, and the availability of emission offsets, Land Use and the potential schedule impacts associated with securing transmission right-of-way, and Traffic and Transportation associated with aviation safety and the close proximity of the project to the Palmdale Regional Airport.

Although issues with Traffic and Transportation associated with aviation safety have been resolved with staff, progress in the areas of Air Quality and Land Use

remain unresolved. Despite several workshops and ongoing discussions with the applicant, CDWR, SCE, and AVAQMD, little or no progress has been made to provide staff with the critical information which will allow staff to proceed with completion of our analysis.

To assure compliance with the procedural and substantive mandates of the Warren-Alquist Act and the CEQA, mitigation measures must be known, specific, feasible, effective and enforceable. Mitigation measures must be known so that they can be analyzed and incorporated as conditions on the proposed project. They must be specific, so that an accurate, quantifiable analysis can be performed. They must be feasible, so that implementation is guaranteed. They must be effective, so that impacts will actually be avoided or substantially lessened, as required by CEQA. Finally, they must be enforceable to ensure the substantive mandate of CEQA.

For these reasons, including those elaborated on above, staff is not presently able to provide a complete analysis that would suffice for a Commission decision with identification of impacts and required mitigation. Thus, staff believes that proceeding with a single stage SA analysis is inadvisable, as the PSA/FSA process would not be available for staff to sort out the information required to complete its analysis.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**APPLICATION FOR CERTIFICATION**  
**For the *PALMDALE HYBRID***  
***POWER PROJECT***

**Docket No. 08-AFC-9**

**PROOF OF SERVICE**

*(Revised 7/30/2009)*

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### **DECLARATION OF SERVICE**

I, Hilarie Anderson, declare that on, October 14, 2009, I served and filed copies of the attached Response to Committee Order. 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/palmdale/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:**

  x   sent electronically to all email addresses on the Proof of Service list;

  x   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:**

  x   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**

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

**Original Signature in Dockets**

**Hilarie Anderson**