

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

DOCKET	
09-AFC-3	
DATE	<u>DEC 21 2010</u>
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Application for Certification for the)
 MARIPOSA ENERGY PROJECT (MEP))
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Docket No. 09-AFC-3

**APPLICANT'S RESPONSE
 TO THE MOTION
 OF RAJESH DIGHE
 TO REVISE THE COMMITTEE SCHEDULE**

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December 21, 2010

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**APPLICANT’S RESPONSE
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Mariposa Energy Project, LLC (“Applicant”) submits this Response to the Motion of Rajesh Dighe to Revise the Committee Schedule dated October 29, 2010 (“Motion”).

On November 22, 2010 CalPilots, Robert Sarvey and Rajesh Dighe filed a joint motion to delay the proceeding alleging that the time period for filing their testimony was burdensome. The Committee issued an order on December 8, 2010 denying the joint motion. On December 17, 2010 CalPilots again moved to delay the proceeding and to extend the deadline for intervenors to file their opening testimony. CalPilots’ Motion, not surprisingly, is supported by Mr. Sarvey and Mr. Dighe. However, even before the Committee can rule on the second motion for delay, on December 19, 2010 Mr. Dighe has filed a third motion for delay.

For the very same reasons set forth in the Committee’s December 8, 2010 Order, Mr. Dighe’s motion should be denied.

Mr. Dighe argues that the deadline for the filing of Intervenor testimony should be extended by at least four weeks in order to provide him time to run the AERMOD model, “to validate applicant’s assumptions and cross check derived scientific results published in Air Quality

tables.”

Mr. Dighe implies that he suddenly received the “air dispersion modeling data” on December 17, 2010. In fact, Mr. Dighe has had many months to investigate the model and review relevant data. The Applicant’s use of AERMOD for air dispersion analysis is described in the original AFC, which was deemed data adequate in August 2009:

The HRA modeling was conducted using the ARB *Hotspots Analysis Reporting Program* (HARP, Version 1.4a, July 2008), along with the ARB HARP On-ramp program (Version 1.0, May 2008). The HARP On-ramp tool was used to import the American Meteorological Society/EPA Regulatory Model (AERMOD) air dispersion modeling results into the HARP Risk Module.¹

Although Mr. Dighe has been an intervenor since February 2010 and has submitted data requests to the Applicant in that same month, he did not request from the Applicant information regarding the air dispersion analysis or the AERMOD model. He had ample opportunity over a period of many months to make these requests, to run the models, to consult with Staff and “brainstorm” the AERMOD results. He did not do so.

On September 9, 2010, after the close of discovery, Mr. Dighe had a phone conversation with Commission staff. Mr. Dighe indicated his interest in running the AERMOD air dispersion modeling software. Commission staff explained to Mr. Dighe how to obtain a license for the software so that he could run the model himself. As confirmed in the record of conversation (attached), Mr. Dighe has had since September explicit instructions regarding how to obtain the AERMOD model. Therefore, Mr. Dighe has had ample time to perform the various tasks enumerated in his second motion to revise the Committee schedule.

Mr. Dighe’s tardiness in requesting this AERMOD model and input files and his failure to analyze the model over the past sixteen months cannot be cause for delaying the proceeding. Given that the AERMOD model and Applicant’s output files have been available, upon request of any party for sixteen months, Mr. Dighe has had more than ample opportunity to become informed about the

¹ Application for Certification, Volume I, Chapter 5.9, section 5.9.2.1.

air dispersion model.

As the Committee is aware, the Commission is constrained by the statutory directive to complete the certification review process in a timely manner. The existing schedule attempts to balance the time necessary for the public to become informed about the project with the statutory directive to complete the process in a timely fashion. Mr. Dighe has not shown good cause for delaying the deadline for the submission of intervenor testimony. His motion should be denied.

Dated: December 21, 2010

ELLISON, SCHNEIDER & HARRIS L.L.P.

By



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PROOF OF SERVICE

I, Eric Janssen, declare that on December 21, 2010, I served the attached APPLICANT'S
RESPONSE TO THE MOTION OF RAJESH DIGHE TO REVISE THE COMMITTEE
SCHEDULE via electronic and U.S. mail to all parties on the attached service list.

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



Eric Janssen

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