



South Coast Air Quality Management District

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*Office of the Executive Officer
Barry R. Wallerstein, D.Env.
909.396.2100, fax 909.396.3340*

February 25, 2009

Mr. Donal O'Callaghan
Light and Power Department
4305 Santa Fe Avenue
Vernon, CA. 90058

Subject: Proposed Southeast Regional Energy Center Power Plant Project,
06-AFC-4, AQMD Applications Numbers 458388-458407, 458424,
Facility ID 148553

Dear Mr. O'Callaghan:

This is in reference to the City of Vernon's Application for Certification (AFC) and Applications for Permit to Construct submitted on June 30, 2006, to the California Energy Commission (CEC) and the South Coast Air Quality Management District (AQMD), respectively, for construction of the Southeast Regional Energy Center (SREC) project consisting of a 943 net MegaWatts (MWs) power plant to be located at the southeast corner of Fruitland and Boyle Avenues in the City of Vernon.

As you know, while the AQMD has continued to evaluate and process your applications for Permits to Construct, AQMD had not previously made any preliminary or final compliance determinations for your project. However at this time, based on our review of your applications, AQMD has determined that the City of Vernon has not been able to demonstrate that the proposed SREC project will comply with the emissions offsets requirements of AQMD Rule 1303(b). At this point, as you know, 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 Amended Rule 1309.1, the City of Vernon is required to provide emission offsets in the form of Emission Reduction Credits (ERCs) in order to demonstrate compliance with the emissions offset requirements of AQMD Rule 1303(b).

As you may know, the AQMD has appealed Judge Jones' ruling. However, even if the AQMD successfully appealed Judge Jones' denial of Rule 1309.1 and the rule was being implemented as amended on August 3, 2007, the City of Vernon still must comply with the specific requirements of 1309.1(d)(12) and (14), in addition to the requirements of Rule 1309.1(b)(5)(A)(4), (c) and (d), and other requirements of AQMD Regulation XIII, prior to the AQMD being able to make a determination that the project complies with all applicable requirements of AQMD's NSR Rules. The AQMD has determined that the City of Vernon does not comply with the provisions of Rule 1309.1(d)(12) and (14), as amended on August 3, 2007, for the following reasons:

- The City of Vernon 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.
- Although the City of Vernon is a municipal-owned electric generating facility (EGF), the proposed 943 MWs SREC project exceeds the City's future projected native load.
- The Executive Officer can only authorize the release of Priority Reserve (PR) credits for the first 2,700 MW that is requested by EGFs, without further approval by the AQMD's Governing Board. Three of the pending EGF projects have already entered into long-term contracts with SCE, including the Walnut Creek (500 MWs), CPV Sentinel (850 MWs) and NRG El Segundo (573 MWs), for a total of 1,923 MWs. This does not even include the additional 300 MWs for the two municipal-owned EGFs, namely the City of Anaheim (200 MWs) and the City of Riverside (100 MWs), whose proposals do not exceed their municipalities' future projected native loads.
- As a result, the proposed three EGFs with long-term contracts have already reserved 1,923 MWs of the 2,700 MWs that the Executive Officer is authorized to release PR credits for, leaving only 777 MWs for the remaining pending projects, even if we exclude the City of Anaheim and City of Riverside proposed projects.

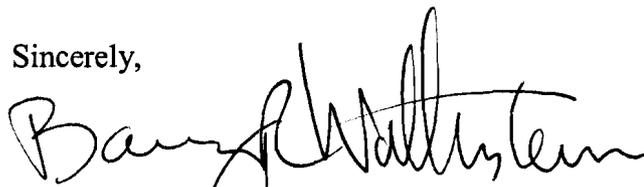
Since the City of Vernon has not provided ERCs to offset the emission increases from the proposed SREC project, and even if Rule 1309.1, as amended on August 3, 2007, was valid, the City's proposed 943 MWs SREC project alone exceeds the remaining available MWs to obtain PR credits for all pending EGFs without long-term contracts. Further, since the AQMD's Governing Board has not approved the release of PR credits in excess of 2,700 MWs, and the City of Vernon has not filed a petition with the AQMD's Governing Board and obtained Governing Board's approval to waive the long-term contract requirements, **the AQMD staff has determined that the City of Vernon's SREC project does not comply with the requirements of AQMD Rule 1303(b).**

Therefore, the City of Vernon is required to provide the necessary ERCs to offset all emission increases from the proposed SREC project by March 15, 2009. If the City of Vernon has not provided the required ERCs by this date, the AQMD will proceed with the denial of your applications for Permits to Construct and issue a

Determination of Non-compliance to CEC relative to the City of Vernon's AFC application for the proposed SREC project.

If you have any questions, please contact me or Mohsen Nazemi, Deputy Executive Officer of Engineering & Compliance at 909.396.2662.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry R. Wallerstein". The signature is fluid and cursive, with the first name "Barry" being the most prominent.

Barry R. Wallerstein, D.Env.
Executive Officer

BRW:MN:am

cc: AQMD Governing Board Members
Kurt Wiese, AQMD
Terry O'Brian, CEC
Mike Carroll, Latham & Watkins