



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

AQMD

June 10, 2009

DOCKET

06-AFC-4

DATE JUN 10 2009

RECD. AUG 24 2009

Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Southeast Region Energy Project (06-AFC-04)

Dear Ms. Jones:

I am writing to correct erroneous statements made in a June 8, 2009 letter addressed to you from Michael J. Carroll of Latham and Watkins on behalf of the City of Vernon's proposed Southeast Region Energy Project.

Mr. Carroll's letter identifies Senate Bill 696 (Wright) as a potential source of emission offsets for the City of Vernon's proposed power plant project. That is totally incorrect. As you know, SB 696 currently is under consideration by the Legislature. Even if the Legislature adopted SB 696 and the Governor signed it into law, SB 696 would not provide emission offsets for the City of Vernon's proposed power plant project. SB 696 creates two paths for a municipally owned power plant to qualify for emission offsets held by the South Coast Air Quality Management District (District). First, SB 696 states that a municipally owned power plant can receive emission offsets if the power plant will not exceed the municipality's native demand-load projections. The City of Vernon's proposed power plant project, however, greatly exceeds the city's projected electricity needs. In fact, one of the key purposes of the city's project is to sell electricity into the grid. Representatives from the City of Vernon have repeatedly stated that the project is not economically viable on a smaller scale and cannot go forward on that basis. Accordingly, the City of Vernon's proposed power plant project does not qualify for emission offsets under this path.

SB 696 allows power plants to obtain emission offsets under a second path if they have contracts with a utility regulated by the California Public Utilities Commission. The City of Vernon does not have such a contract and at this time is unlikely to obtain one. Accordingly, the City of Vernon's proposed power plant does not qualify under this second path either. Therefore, the statement in this letter that the City of Vernon could obtain credits under SB 696 is completely mistaken. There is nothing in SB 696 that would make emission offsets available for the City of Vernon's proposed power plant project.

Mr. Carroll's letter also erroneously suggests that the City of Vernon's proposed project could obtain credits from a road-paving rule under discussion by the District's New Source Review Working Group. At this time, it is highly speculative when a road-paving rule will be presented to the District Governing Board, whether the Governing Board would adopt such a rule, or, if adopted whether a road-paving rule would allow projects such as the City of Vernon's to use the credits. In light of these many uncertainties, it is erroneous for Mr. Carroll to suggest that City of Vernon might be able to satisfy its credit obligations with a road-paving rule.

Mr. Carroll's letter also suggests that clarifications or amendments to the District's SOx RECLAIM rules might allow the city's project to provide SOx RECLAIM Trading Credits in lieu of SOx emission reduction credits. As currently worded, RECLAIM regulations do not allow power plants like the project proposed by the City of Vernon to enter the SOx RECLAIM program. Any changes that might be made to the District rules would take many months. Further, utilizing the RECLAIM program would only address the City of Vernon's need to provide SOx emission reduction credits. Much more critical is the City of Vernon's need to provide PM10 emission reduction credits, which are vastly more scarce and costly.

Nothing in Mr. Carroll's letter identifies a viable means of providing emission credits for the City of Vernon's proposed Southeast Region Energy Project. The City of Vernon has completely failed to identify emission offset credits that are needed for permitting this project. In fact, this very failure to identify emission offset credits was the reason that on March 31, 2009 the District sent the City a letter denying its permit application. I have attached a copy of the denial letter for your information and review.

Please do not hesitate to contact me at 909.396.2662, if you have any questions or comments.

Very truly yours,



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

MN:vmr:am

Attachment

cc: Michael J. Carroll, Latham & Watkins



South Coast Air Quality Management District

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



March 31, 2009

Mr. Donal O'Callaghan
Director of Light & Power
City of Vernon
4305 Santa Fe Avenue
Vernon, CA 90058

SUBJECT: Proposed City of Vernon's Southeast Regional Energy Center (SREC) Power Plant Project, to be located at 3200 Fruitland Avenue, Vernon, CA 90058 (Facility ID No. 148553)

Dear Mr. O'Callaghan:

<u>Application No.</u>	<u>Equipment or Application Description</u>
458389	Gas Turbine Generator, Combined Cycle, HRSG, Unit No. 1
458392	Air Pollution Control System SCR and Oxidation Catalyst, Unit No. 1
458394	Gas Turbine, Generator, Combined Cycle, HRSG, Unit No. 2
458397	Air Pollution Control System SCR and Oxidation Catalyst, Unit No. 2
458398	Gas Turbine Generator, Combined Cycle, HRSG, Unit No. 3
458400	Air Pollution Control System SCR and Oxidation Catalyst, Unit No. 3
458402	Oil/Water Separator No. 1
458403	Oil/Water Separator No. 2
458404	Aqueous Ammonia Storage Tank No. 1
458406	Aqueous Ammonia Storage Tank No. 2
458407	Emergency IC Engine (Fire Water Pump)
458424	RECLAIM Permit
458388	Initial Title V Permit

This is in reference to the City of Vernon's applications for a Title V Permit to Construct submitted to the South Coast Air Quality Management District (AQMD) on or about June 30, 2006 for the proposed Southeast Regional Energy Center (SREC) project consisting of a 943 Mega Watts (MWs) power plant (including the equipment described above) to be located at 3200 Fruitland Avenue in the City of Vernon.

The AQMD staff has evaluated your applications for a Title V Permit to Construct the proposed SREC project and sent a letter, dated February 25, 2009, to the City of Vernon stating that the City of Vernon must supply Emission Reduction Credits (ERCs) by March 15, 2009, to offset all emission increases from the proposed SREC Project. The AQMD staff has also reviewed the March 11, 2009 letter sent by Mr. Michael Carroll of Latham and Watkins on behalf of the City of Vernon in response to AQMD's February 25, 2009 letter.

Based on our careful review and evaluation of your applications and the above described correspondences, AQMD staff 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). As described in AQMD's February 25, 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 Amended Rule 1309.1, the City of Vernon 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 indicated earlier in our February 25, 2009 letter, AQMD has appealed Judge Jones' ruling. In addition, as referenced in Mr. Carroll's March 11, 2009 letter, Senator Rod Wright is 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, the City of Vernon still must comply with the specific provisions of Rule 1309.1(d)(12) and (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 the City of Vernon to be able to demonstrate that the project complies with the offset requirements of AQMD's NSR Rules.

As indicated before, 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, to allow AQMD to release the Priority Reserve (PR) credits, 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 AQMD Executive Officer can only authorize the release of 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.
- Of the three projects which have already entered into long-term contracts with SCE, one (The Walnut Creek) has already received a PDOC and an FDOC from AQMD and Certification from CEC; another (NRG El Segundo) had previously received a PDOC and FDOC from AQMD and Certification from CEC for the original project and has subsequently received an Amended DOC from AQMD for the revised project; and another (CPV Sentinel) has already received a PDOC and FDOC from AQMD.
- As a result, the proposed three EGFs with long-term contracts and PDOCs and FDOCs from AQMD and, in some cases, Certification from CEC are farthest along the permitting and licensing process and will collectively use 1,923 MWs of the 2,700 MWs that the Executive Officer is authorized to release PR credits for. This will leave only 777 MWs for the remaining pending EGF projects, even if we exclude the City of Anaheim and City of Riverside proposed projects.

Since the City of Vernon has not provided the required ERCs to offset the emission increases from the proposed SREC project and even if Rule 1309.1, as amended on August 3, 2007, becomes valid, the City of Vernon's proposed 943 MWs SREC project alone exceeds the remaining 777 MWs available for all pending EGFs which may also wish to use PR credits and which are presently without long-term contracts, and the AQMD's Governing Board has not approved the release of PR credits in excess of 2,700 MWs, nor had the City of Vernon 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, based on our careful evaluation of the City of Vernon's applications and other information and correspondence submitted to AQMD, your applications for a Title V Permit to Construct for the proposed SREC project are hereby denied for the following reasons:

1. The emissions from the proposed equipment for the SREC project are subject to the emission offset requirements of AQMD Rule 1303(b).

2. The City of Vernon has not provided the required ERCs, nor has the City of Vernon demonstrated compliance with the offset requirements of Rule 1303(b).
3. The AQMD staff has determined that the proposed SREC 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



**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 SOUTH EAST REGIONAL ENERGY
CENTER (FORMERLY CITY OF VERNON)**

DOCKET NO. 06-AFC-4

**PROOF OF SERVICE LIST
(REVISED 4/24/09)**

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DECLARATION OF SERVICE

I, April Albright, declare that on August 24, 2009, I served and filed copies of the attached South Coast Air Quality Management Air District's Letter Regarding Determination of Applicability of SB 696, dated June 10, 2009. 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:

[www.energy.ca.gov/sitingcases/cityofvernon]. 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-4
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