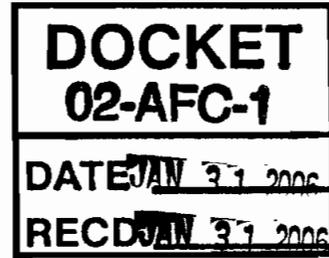


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Mojave Desert Air Quality Management District  
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Victorville, CA 92392

BEFORE THE HEARING BOARD  
OF THE  
MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA

APPEAL

In the Matter of the Appeal of  
Blythe Energy Project, Phase II  
[Blythe II]

DOCKET NO.

On May 3, 2004 the Mojave Desert Air Quality Management District filed its Final Determination of Compliance (FDOC) for the Blythe Energy Project II. The FDOC fails to adopt BACT as required by district rules. The projects NOx limit of 2ppm averaged over three hours is not current BACT for this class of turbine nor was it at the time of the issuance of the FDOC. The Projects CO limits should be 4ppm averaged over three hours not over 24 hours as the FDOC provides. The district failed to publicly notice the PM 10 road paving credits before the issuance of the FDOC as required by the district regulations. This is the issue for the entire recall of the FDOC.

I am currently Intervenor with financial hardship by the CEC in the CEC licensing case 02-AFC-1 for this project. I therefore certify under penalty of perjury that payment of the Appeal fee will cause an unreasonable hardship, and therefore request to be excused from the payment of fees by order of the Hearing Board on that account.

On December 14, 2005 the CEC adopted the Presiding Members Proposed Decision (PMPD) and their erratum which was circulated to the parties one day before the commission rendered its decision on the proposed project. The decision is based on mitigation measures that are to be approved by the US EPA at a later date. As the Lead Agency it is not sufficient for the CEC and District to rely on the EPA to ensure that mitigation is adequately quantified and implemented. Then EPA's responsibility is to assure compliance with Federal Regulations not CEQA compliance. The Energy Commission "may delegate reporting or monitoring responsibilities to another public agency as it has done for the District in the Determination of Compliance; however, until mitigation measures have been identified and quantified the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs." (Cal. Code Regs., tit. 14, §15097(a) (emphasis added).).

These decisions on mitigation measures are the subject of this appeal by the Intervenor to the MDAPCD Hearing Board accordingly and the FDOC should be set aside until such time that the projects air quality mitigation measures have been approved by the EPA. Of particular concern is the road paving credits that will be primarily PM-10 and ineffective in the winter months when PM- 2.5 levels will be the highest. The District not the EPA is responsible for the determination of compliance from the road paving credit decisions. The uncertainty of this mitigation is highlighted by the January 5, 2006 submission of the Mojave Desert Air Quality Management District to the EPA posted to the Commissions website on January 10, 2006.

The remedy that Intervener seeks in bringing this Appeal is a re-issuance of the PDOC and an appropriate public comment period where the district actually carries out its statutory duty to analyze and respond to all issues raised by the public. This is necessary for the District to comply with the following District Rule.

**Mohave Air district Rule 1305 (d) iii**

(d) Area and Indirect Source ERCs may be used as Offsets on a case-by-case basis when:

- (i) Such Area or Indirect Source ERCs have been calculated and banked pursuant to the provisions of District Regulation XIV.
- (ii) The applicant demonstrates sufficient control over the Area or Indirect Sources to ensure the claimed reductions are real, enforceable, surplus, permanent and quantifiable; and
- (iii) The specific Area or Indirect Source ERCs are approved for use prior to the issuance of the New Source Review document and the issuance of any ATCs by the APCO in concurrence with CARB; and**
- (iv) The specific Area or Indirect Source ERCs are approved for use prior to the issuance of the New Source Review document and the issuance of any ATCs by USEPA; and
- (v) Such Area or Indirect Source ERCs comply with the applicable provisions of section (B)(1) above.

**Mohave air district rule 1402 (B)**

- (a) After the APCO has determined to issue ERCs, the APCO shall publish a notice in at least one daily newspaper of general circulation within the District and shall send a copy of the notice to all persons who are included on a list of persons requesting notice, on file with the Clerk of the Board for the District.
- (b) The notice shall provide the following:
  - (i) The name and address of the applicant and the facility generating the emissions reductions, if different;
  - (ii) The amount, type and class of ERCs proposed to be issued;
  - (iii) The name, address and telephone number of a person from whom additional information may be obtained; and
  - (iv) At least a thirty day period in which interested persons may submit written comments to the District regarding the proposed issuance of the ERCs.
- (c) The APCO shall accept all germane and non-frivolous comments which are received during the comment period. The APCO shall consider such comments prior to issuance of the ERCs.

The U.S. EPA also noted that the Applicant must be required to provide public notice of valid ERCs before issuing the FDOC. However, no alternative ERCs have been identified, and the proposed ERCs from 25 CRIT have not been subject to any public notice, as required by Rule 1402(B). The FDOC also fails to identify all possible control alternatives that would reduce environmental impacts to the surrounding minority community offering up only untested and unproven

street paving program in Indian territory beyond the jurisdiction of the District and CEC to insure compliance as mitigation for PM 2.5 impacts.

Respectfully submitted,



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### **Verification**

I am an Intervener in the above captioned proceeding, and I am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Executed on this 31<sup>st</sup> day of January 2006, at Blythe, California.



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