



CALIFORNIA
ENERGY
COMMISSION

1516 Ninth Street
Sacramento, CA 95814
800-822-6228
www.energy.ca.gov

**ORDER ON APPLICANT'S MOTION RE
PREPARATION OF FINAL STAFF
ASSESSMENT**

WALNUT CREEK ENERGY PARK
APPLICATION FOR CERTIFICATION
DOCKET NO. 05-AFC-2

DOCKET

05-AFC-2

DATE JAN 23 2007

RECD. JAN 23 2007

Background

On January 16, 2007, Applicant, Walnut Creek Energy (WCE) filed its *Walnut Creek Energy, LLC's Notice of Motion and Motion for Scheduling Order* requesting the Committee order the Energy Commission Staff to prepare a Final Staff Assessment (FSA) within 30 days of the receipt of the Final Determination of Compliance (FDOC) issued by the South Coast Air Quality Management District (SCAQMD).

In its Motion, WCE referred to page 4.1-50 of the Preliminary Staff Assessment (PSA) which states in part that, prior to the Staff's publishing the FSA, the Applicant should submit additional VOC, SO₂ and PM₁₀/PM_{2.5} offsets. WCE believes that its project will be fully offset in accordance with SCAQMD rules without these additional offsets. WCE interpreted Staff's language in the PSA to mean that without the Applicant's submittal of these additional offsets Staff would withhold the preparation of the FSA, thus preventing the proceeding from moving forward to evidentiary hearings. WCE argues that if the Staff has a substantive disagreement with the Applicant over appropriate offsets Staff should nonetheless proceed with publication of the FSA and adjudicate any differences in the evidentiary hearings before the Committee.

On January 18, 2007, the Staff filed its *Energy Commission Staff's Response to Walnut Creek Energy, LLC's Motion for Scheduling Order*. Staff stated that, barring any unforeseen circumstances, it always intended to issue the FSA within 30 to 45 days of receiving the FDOC from SCAQMD. Staff contends that the language cited by WCE was intended to provide guidance to the Applicant as to what additional information would be required by the Staff to conclude that potential project air quality impacts are mitigated to a level of insignificance. Staff claims that its recommendation that additional information be provided by the Applicant did not imply an intent to withhold timely publication of the FSA.

Committee Discussion

Staff's representation that it will publish its FSA within 30 to 45 days after issuance of the FDOC, whether or not the Applicant submits the offset information Staff suggested in the PSA, obviates the need for a public hearing to allow all parties to address a contested issue. Fundamentally, there is concurrence between WCE and the Staff as to the issuance of the FSA following receipt of the FDOC from SCAQMD. Staff should have sufficient time after its receipt of the FDOC to prepare its FSA; however, Staff should not take more time than necessary to prepare the FSA, since to do so would unnecessarily delay the proceeding. The Committee is aware that there are ongoing, extraordinary rulemaking proceedings at the SCAQMD which suggest that the FDOC may contain new information which would warrant 45 days, instead of the Applicant's requested 30 days, for preparation of the FSA. However, for Staff to extend the 45 days due to unforeseen circumstances, Staff must make a written request stating the supporting grounds for an extension of time.

Order

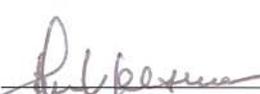
Therefore, based upon the filings of the Applicant and Staff, the Committee orders that the Final Staff Assessment shall be prepared and filed within 45 days of the receipt of the SCAQMD's Final Determination of Compliance.

Dated: January 23, 2007

**ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**



JACKALYNE PFANNENSTIEL
Commissioner and Presiding Member
Walnut Creek AFC Committee



JOHN GEESMAN
Commissioner and Associate Member
Walnut Creek AFC Committee



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docket@energy.state.ca.us	Energy Commission Docket Unit
jpfannen@energy.state.ca.us	Commissioner Pfannenstiel
cgraber@energy.state.ca.us	Commissioner Pfannenstiel's Office
jgeesman@energy.state.ca.us	Commissioner John Geesman
pao@energy.state.ca.us	Margret J. Kim, Public Adviser
gshean@energy.state.ca.us	Garret Shean, Hearing Officer
lprescot@energy.state.ca.us	Lorne Prescott, Staff Project Manager
ldecarlo@energy.state.ca.us	Lisa De Carlo, Staff Attorney
lkostrzewa@edisonmission.com	Lawrence Kostrzewa, Applicant, Edison Mission Energy
dbenham@edisonmission.com	Dereck Benham, Applicant, Edison Mission Energy
tmccabe@edisonmission.com	Thomas McCabe, Applicant, Edison Mission Energy
jenifer@njr.net	Jenifer Morris, NJ Resources
ddavy@ch2m.com	Douglas Davy, CH2M Hill
sgalati@gb-llp.com	Scott Galati, Attorney for Applicant
mdjoseph@adamsbroadwell.com	Marc Joseph, CURE, Intervenor
gsmith@adamsbroadwell.com	Gloria D. Smith, CURE

I declare that I transmitted the foregoing document via e-mail, or as indicated by first class postal mail, to the above named on the date indicated thereby. I declare under penalty of perjury that the foregoing is true and correct.

Garret Shean
Hearing Officer

Distribution List	
double.ii@verizon.net	Dan Horan, Three Valley MWD
kcoats@aqmd.gov	Ken Coats, AQMD
mchu@hsilai.org	Mae Chu, Hsi Lai Temple/B.L.I.A
fdiamond@mail.rowland.k12.ca.us	Fred Diamond, RUSD
rwhittemore@cityofindustry.org	Ronald Whittemore, Industry MFRS Council
dsachs@cityofindustry.org	Donald Sachs, Industry Chamber of Commerce
bjohnston@chemtreat.com	Bruce Johnston, Chemtreat
mconiglio@puretecinc.com	Mike Coniglio, Puretec
dsimmons@lacos.org	Dick Simmons, Los Angeles County
tsmith@wellhead.com	Tim Smith, Wellhead Electric Company
garreola@lapuente.org	Guillermo Arreola, City of Puente
milton.howard@cinergy.com	Milton Howard, Panoche Energy Center
jennifer-wu@urscorp.com	Jennifer Wu, URS Corporation
kdeck@rowlandwater.com	Ken Deck, Rowland Water District