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05-AFC-2
DATE MAY 15 2007
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PREHEARING CONFERENCE

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

| | | |
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| In the Matter of: | ) | |
| | ) | |
| Application for Certification | ) | Docket No. |
| of the Walnut Creek Energy Park | ) | 05-AFC-2 |
| by Walnut Creek Energy, LLC | ) | |
| | ) | |

ORIGINAL

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, MAY 15, 2007

4:00 p.m.

Reported by:
Peter Petty
Contract No. 170-04-001

COMMITTEE MEMBERS PRESENT

Jackalyne Pfannenstiel, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER, ADVISERS PRESENT

Garret Shean, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Jack Caswell, Project Manager

Dave Flores

Joe Loyer

Steve Baker

APPLICANT

Scott Galati, Attorney
Galati and Beck

Vic Yamada
Edison Mission Energy

Doug Davie
CH2M HILL

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1 P R O C E E D I N G S

2 4:00 p.m.

3 PRESIDING MEMBER PFANNENSTIEL: This is
4 the Energy Commission prehearing conference for
5 Walnut Creek Energy Center Energy Park. I'm
6 Jackie Pfannenstiel; I'm the Presiding
7 Commissioner on the Walnut Creek AFC Committee.
8 To my left is Commissioner John Geesman, who is
9 the Associate Member of that Committee.
10 And to my right is Garret Shean who is
11 our Hearing Officer. So, why don't I turn to it
12 to Garret for the prehearing conference.
13 HEARING OFFICER SHEAN: Good afternoon.
14 Thank you, Commissioner. We'd like to have the
15 parties identify themselves and then we'll go
16 through the materials that were submitted for
17 today; and then proceed to the substance of the
18 prehearing conference.
19 Mr. Galati.
20 MR. GALATI: My name's Scott Galati,
21 representing Walnut Creek Energy, LLC, a wholly
22 owned subsidiary of Edison Mission Energy. On my
23 left is Vic Yamada; he is the Director of
24 Environmental Health and Safety for Edison Mission
25 Energy. And on my right is Doug David, Project

1 Manager from CH2M HILL, who was responsible for
2 all the good documents that you saw on our side.
3 The bad ones were my responsibility.
4 HEARING OFFICER SHEAN: Ms. DeCarlo.
5 MS. DeCARLO: Lisa DeCarlo, Energy
6 Commission Staff Counsel. To my right is Jack
7 Caswell, Project Manager for the Energy Commission
8 Staff. And in the audience we have various staff
9 members, including Dave Flores for land use, Joe
10 Loyer for air quality, and Steve Baker.
11 HEARING OFFICER SHEAN: Thank you. I
12 don't see anyone in the audience representing the
13 Public Adviser's Office; nor do I see any bona
14 fide member of the public. Everyone seems to be
15 either associated with the applicant or the
16 Commission Staff, is that correct? Is there
17 anyone who is here as a member of the public or
18 representing an agency? Yes, sir.
19 UNIDENTIFIED SPEAKER: I'm here on
20 behalf of Ellison, Schneider and Harris.
21 HEARING OFFICER SHEAN: All right. The
22 notice of the prehearing conference requested that
23 the parties submit to us a prehearing conference
24 statement and the Committee has received a
25 prehearing conference statement from the

1 applicant, as well as the staff.
2 Both prehearing conference statements
3 indicated that neither party had an issue that it
4 wished to submit substantive testimony on.
5 The applicant indicated that there were
6 three areas that it had suggestions for changes in
7 the proposed conditions that were to be found in
8 the staff's final assessment. They were in the
9 areas of air quality, land use and visual
10 resources. And we'll probably hear from you as to
11 if there's been any disposition or agreement with
12 respect to those.
13 But let's just deal with the substantive
14 areas, everything from, let's just call it air
15 quality down through worker safety and compliance.
16 Is that a correct characterization of the position
17 of the parties?
18 MR. GALATI: That is correct.
19 MS. DeCARLO: Yes.
20 HEARING OFFICER SHEAN: Okay. Now, what
21 can you tell us with respect to these air quality,
22 land use and visual resource matters?
23 MR. GALATI: With respect to air quality
24 there are two conditions that require the
25 District, because they were lifted directly from

1 the FDOC, so we require the District to agree to
2 these changes.
3 We've been unable to get that at this
4 stage. We hope to by our filing of our testimony
5 or evidentiary hearing. If we are unable to get
6 that evidence for you we will withdraw our
7 request. Those are specifically for AQ-15 and a
8 portion of AQSC-7.
9 So what we intend to do is to provide
10 that evidence so that staff can take a look at it
11 and see that the District has, indeed, agreed to
12 the changes to their condition. And then we hope
13 that they would be able to agree.
14 AQ-7 is a condition that is -- we
15 believe that we may have agreement.
16 HEARING OFFICER SHEAN: Is that in
17 accord to what you understand, Ms. DeCarlo?
18 MS. DeCARLO: Yes. Staff agrees with
19 the change to AQ-7. But with regard to the
20 proposed changes to AQSC-7 and AQ-15, we would not
21 be able to acquiesce until we had indication from
22 the Air District that they were in agreement with
23 those changes.
24 HEARING OFFICER SHEAN: All right.
25 We'll go to the land use and visual resources.

1 MR. GALATI: In land use I think what we
2 had was a miscommunication at the PSA workshop.
3 We all had an agreement and I think that we all
4 were talking about the wrong words.
5 We have subsequently -- would like the
6 change warehouse maintenance to change number 6,
7 take out control admin switch gear, because we
8 don't intend to put a loading door in that
9 building. And I think that staff is agreeing with
10 that, as well.
11 MS. DeCARLO: Yes, staff is in agreement
12 with that change.
13 HEARING OFFICER SHEAN: All right.
14 Visual resources.
15 MR. GALATI: The last was visual
16 resources, visual-4. This was a condition that in
17 our PSA comments we asked to be deleted because of
18 some language that was in the condition.
19 At the PSA workshop we worked with staff
20 to come up with an appropriate form of the
21 condition. Staff, in responding to one of our
22 requests, added additional language and made the
23 rest of the changes.
24 We believe that the additional language
25 is not necessary and we've asked that it be

1 removed. We think that it might be a little
2 confusing with the other changes.
3 MS. DeCARLO: Yes, as Mr. Galati said,
4 staff was attempting in that paragraph to
5 accommodate some concerns that the applicant had
6 raised. And since the applicant does not wish
7 that language to remain, and the removal of the
8 language doesn't jeopardize the implementation of
9 the condition, we are fine with removing that
10 paragraph.
11 HEARING OFFICER SHEAN: All right. So,
12 that leaves pending AQSC-7 and AQ-15. Other than
13 that, there's no matter that either party wishes
14 to discuss at the evidentiary hearing with respect
15 to a proposed conditions of certification, is that
16 correct?
17 MR. GALATI: No. We're in agreement
18 with the rest of the conditions in the FSA.
19 HEARING OFFICER SHEAN: All right. Let
20 me just say, for my purposes, in beginning to go
21 through the FSA, as well as re-reviewing the AFC,
22 I noticed that there were some things that
23 appeared both unexplained in a plot map of the
24 proposed project in comparison to the
25 photosimulation of the project. Mostly with

1 regard to the identification of the variable bleed
2 valve stacks.
3 And as I got deeper into this, it was
4 apparent that the LMS100 represents a new and
5 unique technology which is before the Commission
6 for the first time. And has features that make it
7 inherently different from the peaker facilities
8 that we've done before. Such as the second stack,
9 the cooling towers, the inner cooler, et cetera.
10 And I would propose that the applicant
11 provide us with some -- let me say, and then I
12 looked through your project descriptions both in
13 the AFC and the staff's FSA, as well as a
14 discussion in the efficiency section of the FSA.
15 And I think it would be appropriate to
16 expand to some degree the project description;
17 give us an identification in the plot map of the
18 variable bleed valve stack so that we have all
19 that properly in our record.
20 And perhaps if you think it warrants it,
21 and it appears that the technology probably does,
22 some further discussion of the gas savings and the
23 efficiencies and what impact, if any, on the
24 reduced carbon emissions that this facility would
25 have. And I can give you an outline of this.

1 And the last thing is I didn't find a
2 statement in the applicant's AFC or subsequent
3 documentation that indicated that the project, as
4 before the Energy Commission, represents the whole
5 of the project, as that term is used under CEQA.
6 And if we could just have a statement
7 from the applicant witness that the project, as
8 submitted, does represent the whole of the project
9 for the site. Essentially that there's no further
10 development that's intended that's not disclosed,
11 assuming that to be true.
12 MR. GALATI: That is correct.
13 HEARING OFFICER SHEAN: Okay.
14 MR. GALATI: And we'll include that in
15 our testimony, our project description testimony.
16 HEARING OFFICER SHEAN: All right, is
17 there any other matter that either party wishes to
18 bring to the --
19 MS. DeCARLO: Just one minor procedural
20 issue. That applicant had requested that staff be
21 available at the hearing to accede to the proposed
22 changes. We were intending to file errata with
23 the declaration, so staff live testimony wouldn't
24 be necessary.
25 I don't know if the Committee has a

1 preference for having staff available at the
2 hearing for these few matters. Obviously if the
3 air quality issues aren't resolved, if we don't
4 have an indication by the District that they've
5 agreed to, we would need to have live testimony in
6 that area.
7 HEARING OFFICER SHEAN: You know, the
8 ones we're carrying forward into the evidentiary
9 hearings are just the two that I mentioned
10 earlier. These others, by virtue of the comments
11 that we have here now, are not in contest.
12 And if you wish to file an errata --
13 see, an errata, in my opinion, should apply to a
14 fact upon which the decision is to be based, as
15 opposed to a condition that is entirely within the
16 discretion of the Committee to impose and word, et
17 cetera, et cetera.
18 So we understand what represents the
19 agreement of the parties with respect to the
20 language of the proposed conditions. So, --
21 MS. DeCARLO: Well, we would just want
22 to make sure that there's no question that any
23 subsequent changes after the issuance of the FSA
24 would affect the conclusions reached by staff in
25 the FSA.

1 So, we'd just like to identify the
2 errata; say these changes do not affect staff's
3 conclusions.
4 HEARING OFFICER SHEAN: If you want to
5 add an errata to each of the topic areas, of the
6 witnesses who represent the authors of your FSA,
7 indicating that they accede to the changes and
8 they don't reflect any changes in the analysis and
9 conclusions of the staff, that's perfectly fine.
10 MS. DeCARLO: Okay, thank you.
11 HEARING OFFICER SHEAN: Anything
12 further?
13 MR. GALATI: Just to be clear. So we
14 will file in our testimony some additional
15 information as you've outlined here, as well as we
16 will also have for you a live witness for project
17 description should you have any questions about
18 that testimony.
19 But other than that we were not
20 intending to bring any other live witnesses.
21 HEARING OFFICER SHEAN: Unless you need
22 someone to reflect the changes in the substantive
23 air quality. Okay, so if you --
24 MR. GALATI: Yeah, that's correct.
25 HEARING OFFICER SHEAN: -- if you get --

1 right.
2 MR. GALATI: That's correct, in --
3 HEARING OFFICER SHEAN: If substantively
4 there's a change in the position of the Air
5 District, we'd at least like in -- if your project
6 manager is here, and has communication from the
7 District, and the staff has been able to
8 independently verify that whatever communication
9 you have from the District, I'm sure they're not
10 going to object, on hearsay grounds, to the
11 introduction of the information coming from the
12 District.
13 MR. GALATI: Okay, thank you.
14 ASSOCIATE MEMBER GEESMAN: I had a
15 question for the staff. I'm not certain that we
16 have the right people here to answer it. If it's
17 unanswerable, I guess that's okay. But I feel the
18 need, though, to ask it.
19 I recognize you're an independent party,
20 and can introduce in any case whatever you feel in
21 your best judgment serves your interests. But
22 these issues only seem to bubble up to the
23 Commissioner level when they're contested.
24 So my question is on air quality. And
25 the methodology that you have used in evaluating

1 this particular case, is it consistent with or
2 does it preclude the use of a different
3 methodology for any other case located in the
4 South Coast Air Quality Management District?
5 MR. CASWELL: We have Joe Loyer here,
6 the author of the air quality section. And Joe
7 would be best to answer that.
8 ASSOCIATE MEMBER GEESMAN: Okay.
9 MR. LOYER: I'd like to know how.
10 You're going to have to give me a little bit more
11 of what you're concerned about here.
12 ASSOCIATE MEMBER GEESMAN: Just the fact
13 that although we don't have any formal policy
14 recognizing past precedent, the reality of how we
15 determine our cases is that precedent carries a
16 certain amount of credibility with it.
17 This case, itself, ought to be
18 determined on the merits in this evidentiary
19 record. And I'm confident it will be. But if we
20 are venturing away from a methodology that the
21 staff intends to use in other cases currently
22 pending before the Commission within the South
23 Coast Air Quality Management District, or which
24 would preclude the development of a different
25 methodology or approach in those other cases, I

1 think that it ought to be flagged here.
2 And you may not know. And, if so,
3 that's fine. And as I indicated, there's probably
4 some value in me posing the question anyway.
5 MR. LOYER: Well, the methodology I used
6 in this case, and I might put forth at this point
7 that so far in all the other cases for South
8 Coast, I am the air quality expert.
9 ASSOCIATE MEMBER GEESMAN: And then you
10 are the right person.
11 MR. LOYER: Yes, I am.
12 (Laughter.)
13 MR. LOYER: So far the methodology I've
14 used at this point has been developing as the
15 case, itself, has been developing. As we find out
16 more information about South Coast and their
17 policy and their rules and their procedures, and
18 most importantly it turns out in South Coast, we
19 have developed a response and I think a good one
20 that allows us to use the District's programs and
21 to rely upon the District's document, such as
22 their SIP and their rules and regulations and
23 policies, in order to license and demonstrate that
24 the project is fully mitigated under CEQA.
25 I hope that answers your question.

1 ASSOCIATE MEMBER GEESMAN: That's
2 satisfactory, thank you.
3 HEARING OFFICER SHEAN: Let me indicate
4 at this point the Committee has, whatever it is, a
5 little bit more than tentatively set June 27th,
6 beginning at 3:00 here, as the date for the
7 evidentiary hearing.
8 And we will get a notice of the
9 evidentiary hearing out to you very soon. And it
10 will indicate that what we expect to see from you
11 on all these uncontested areas are declarations
12 from your witnesses, and their statement of either
13 a résumé or a CV stating their qualifications to
14 testify as experts.
15 What we expect not to see is a refiling
16 of any of the substantive material that you've
17 already filed.
18 If you need to refer to it, just refer
19 to it by the title by which it was submitted and
20 the date. That'll save a lot of administrative
21 headache and space.
22 And these obviously can be filed
23 electronically, as well.
24 So, with that, in the absence of
25 additional questions, we're ready to adjourn the

meeting, and thank you for your attendance.

(Whereupon, at 4:17 p.m., the Prehearing Conference was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of May, 2007.

PETER PETTY