

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

DOCKET	
06-AFC-3	
DATE	MAR 05 2007
RECD.	MAR 05 2007

In the Matter of:) Docket No. 06-AFC-3
)
Application for Certification for LSP SOUTH BAY,)
LLC'S SOUTH BAY REPLACEMENT PROJECT)
_____)

Applicant's Notice of Objection to Certain EHC Data Requests

March 5, 2007

Christopher T. Ellison
Jedediah J. Gibson
Ellison, Schneider & Harris L.L.P.
2015 H Street
Sacramento, CA 95814
(916) 447-2166
(916) 447-3512 (fax)

Attorneys for LSP South Bay, LLC

STATE OF CALIFORNIA

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On or about February 23, 2007, LSP South Bay, LLC ("LSP South Bay" or "Applicant") received Data Requests from the Environmental Health Coalition ("EHC") relating to LSP South Bay's South Bay Replacement Project ("SBRP"). The Applicant has worked and will continue to work diligently to prepare responses as appropriate. Except as noted below, the Applicant will respond to these requests on or before March 26, 2007. There are, however, a few specific requests to which the Applicant is unable to respond because the questions are objectionable. Applicant hereby offers its objections to these requests. In addition, Applicant will require additional time to prepare responses to certain Data Requests, as set forth below.

Notice of Objections and Inability to Respond to Specific Data Requests

Data Requests 1, 2, 3, and 4.

Applicant objects because these requests are irrelevant to any material issue that the Commission must decide in this proceeding. The Warren-Alquist Act (Public Resources Code Section §25000 *et. seq*), the Commission's regulations implementing the Warren-Alquist Act (20 CCR § 1001 *et. seq*), the California Environmental Quality Act ("CEQA", Public Resources Code 21000 *et. seq*) and all other applicable laws, ordinances, regulations and standards (hereinafter "applicable LORS") do not require that a lease or any other form of interest be in place at this juncture. Applicant further objects to these requests as calling for speculation.

Data Requests 6 and 7.

Applicant objects because these requests are irrelevant to any material issue that the Commission must decide in this proceeding. No applicable LORS require analysis of the loading order in the manner described in the requests. Applicant further objects to these requests as calling for speculation.

Data Requests 8, 9, 10 and 11.

Applicant objects to these requests as calling for speculation regarding potential “sea rise.” Applicant further objects because these requests are irrelevant to any material issue that the Commission must decide in this proceeding. No applicable LORS require analysis of the sea rise. The Data Requests are also objectionable because they ask the Applicant to analyze “berms and seawalls” that are not part of the SBRP project and are thus irrelevant. Applicant further objects to these requests as burdensome.

Data Requests 13 and 14.

Applicant objects because these requests are irrelevant to any material issue that the Commission must decide in this proceeding. The Applicant is under no affirmative obligation to review or respond to any report or reports paid for by EHC for their own purposes. No applicable LORS require analysis of the EHC-funded report. Applicant further objects to these requests as burdensome as they would involve expenditure of substantial resources for information that is irrelevant.

Data Requests 15 and 16.

Applicant objects to this request as vague and lacking basis. The request is vague to the extent that it calls for the Applicant to analyze levels of hexavalent chromium without including a basis for the underlying claim that “welding and demolition” of the existing plant will result in the release of hexavalent chromium emissions. Applicant further objects because these requests are irrelevant to any material issue that the Commission must decide in this proceeding. No applicable LORS require analysis in these requests. Further, Applicant will protect its workforce by complying with all applicable LORS during construction, including, but not limited OSHA and other worker safety LORS and related conditions of certification.

Data Requests 26, 27, and 28.

Applicant objects because these requests are irrelevant to any material issue that the Commission must decide in this proceeding. No applicable LORS require analysis of the range of alternatives which is beyond the reasonable range required by CEQA. Specifically, CEQA requires consideration of a reasonable range of “alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.”¹

¹ CEQA Guidelines, 14 CCR 15126.6(a).

Further, CEQA recognizes that “[a]n EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.”¹ The “range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.”² The Lead agency only need consider “in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project...”³ EHC’s requests are contrary to CEQA’s mandates for the examination of alternatives. Thus, Applicant objects because these requests are irrelevant to any material issue that the Commission must decide in this proceeding. Applicant further objects to these requests as burdensome as they would involve expenditure of substantial resources.

Applicant further objects because it is under no affirmative obligation to review or respond to any report or reports paid for by EHC for their own purposes. No applicable LORS require analysis of the EHC-funded report. Applicant further objects to these requests as burdensome as they would involve expenditure of substantial resources for information that is irrelevant.

Data Request 29.

Applicant objects because this request is irrelevant to any material issue that the Commission must decide in this proceeding. No applicable LORS require analysis of the loading order in the manner described in the requests. Applicant further objects on the basis that the information requested is privileged, proprietary, and/or confidential business information that are not relevant to the Commission’s review of the project.

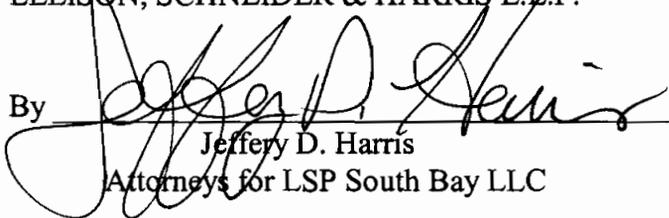
Thank you for your time and consideration.

Respectfully submitted,

Dated: March 5, 2007

ELLISON, SCHNEIDER & HARRIS L.L.P.

By



Jeffery D. Harris
Attorneys for LSP South Bay LLC

¹ *Id.*

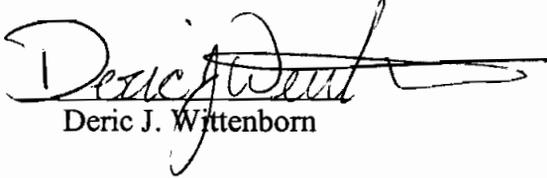
² CEQA Guidelines, 14 CCR 15126.6(c)

³ CEQA Guidelines, 14 CCR 15126.6(f)

DECLARATION OF SERVICE

I, Deric J. Wittenborn, of Ellison, Schneider and Harris, LLP, located at 2015 H Street, Sacramento, CA 95814, declare that on March 5, 2007, I transmitted the foregoing document titled *LSP South Bay, LLC's (Applicant's) Notice of Objection to Certain EHC Data Requests* via e-mail and consistent with the requirements of California Code of Regulations, title 20, Sections 1209, 1209.5, and 1210, or as indicated by first class postal mail, to each individual identified on the attached service list.

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


Deric J. Wittenborn

Poof of Service
Docket No. 06-AFC-3
March 5, 2007

CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
Attn: Docket No.06-AFC-3
1516 Ninth Street
Sacramento, CA 95814-5512
docket@energy.state.ca.us

Kevin Johnson
LS Power Generation, LLC
1735 Technology Drive, Suite 820
San Jose, CA 95110
KJohnson@LSPower.com

Chris Ellison
2015 H Street
Sacramento, CA 95814
cte@eslawfirm.com

Robert Mason
CH2M HILL
3 Hutton Centre Dr., Ste. 200
Santa Ana, CA 92707
Robert.mason@ch2m.com

Sarah Madams
CH2M HILL
2485 Natomas Park Dr., Ste. 600
Sacramento, CA 95833
Sarah.madams@ch2m.com

Electricity Oversight Board
770 I Street, Suite 1250
Sacramento, CA 95814
esaltmarsh@eob.ca.gov

CALIFORNIA UNIONS FOR
RELIABLE ENERGY (CURE)
Marc D. Joseph
Gloria D. Smith
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
mdjoseph@adamsbroadwell.com
gsmith@adamsbroadwell.com

Environmental Health Coalition
Osa L. Wolff
Kevin P. Bundy
Shute, Mihaly & Weinberg, LLP
396 Hayes Street
San Francisco, CA 94102
wolff@smwlaw.com
bundy@smwlaw.com

CALIFORNIA ENERGY COMMISSION
JOHN L. GEESMAN
Presiding Committee Member
jgeesman@energy.state.ca.us

CALIFORNIA ENERGY COMMISSION
Associate Committee Member
pflint@energy.state.ca.us

CALIFORNIA ENERGY COMMISSION
Garret Shean
Hearing Officer
gshean@energy.state.ca.us

CALIFORNIA ENERGY COMMISSION
Bill Pfanner
Project Manager
bpfanner@energy.state.ca.us
CALIFORNIA ENERGY COMMISSION
Kerry Willis
Staff Counsel
kwillis@energy.state.ca.us

CALIFORNIA ENERGY COMMISSION

Margret J. Kim

Public Adviser

pao@energy.state.ca.us

Environmental Health Coalition

Laura Hunter

laurah@environmentalhealth.org

City of Chula Vista

Michael Meacham

mmeacham@ci.chula-vista.ca.us

San Diego Port District

Paul Fanfera

pfanfera@portofsandiego.org

California Coastal Commission

Cassidy Teufel

cteufel@coastal.ca.gov