

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

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 CURE Data Requests

March 7, 2007

Christopher T. Ellison
Jeffery D. Harris
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

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On February 26, 2007, LSP South Bay, LLC ("LSP South Bay" or "Applicant") received Data Requests from the California Unions for Reliable Energy ("CURE") relating to LSP South Bay's South Bay Replacement Project ("SBRP"). The Applicant has worked diligently to prepare a response to as many of these questions as possible. Except as noted below, the Applicant will respond to these requests on or before March 28, 2007. There are however, a few specific requests to which the Applicant is unable to respond because the questions are either vague or otherwise objectionable. LSP South Bay, LLC hereby offers its objections to these questions.

Notice of Objections and Inability to Respond to Specific Data Requests

Set forth below are the questions to which Applicant objects or cannot respond and a statement of the nature of each objection. The text of the request is shown in bold. When Applicant's objection is confined to some, but not all, subparts of a request, the subparts that are not objectionable are omitted.

26. Please compare the relative fuel efficiency of a plant designed for maximum baseload efficiency along with a simple cycle peaker plant to the fuel efficiency of the proposed project.

Applicant objects to this request as irrelevant and burdensome. This data request seeks to have Applicant analyze project configurations that have not been proposed by the Applicant. This request is therefore not relevant to the evaluation of potential impacts of the SBRP. 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 decision-making 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 CURE’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 to the request as burdensome as it would involve expenditure of substantial resources for information that would be irrelevant and which CURE can develop on their own from information publicly available.

27. Please provide an analysis of an unfired alternative to the project including the following elements:

- a) heat balances**
- b) water balances**
- c) noise analysis**
- d) emission estimates and air quality modeling**

Applicant objects to this request as irrelevant and burdensome. This data request seeks to have Applicant analyze project configurations that have not been proposed by the Applicant. This request is therefore not relevant to the evaluation of potential impacts of the SBRP. No applicable LORS require analysis of the range of alternatives which is beyond the reasonable range required by CEQA. (See the objection to Data Request No. 26, above, for further discussion of this issue.)

Applicant further objects to the request as burdensome as it would involve expenditure of substantial resources for information that would be irrelevant.

28. Please discuss the feasibility of optimizing the SBRP for baseload operations without duct firing. If peak capacity is necessary, please discuss the feasibility of constructing a separate peaker plant to satisfy this demand.

Applicant objects to this request as irrelevant and burdensome. This data request seeks to have Applicant analyze project configurations that have not been proposed by the Applicant. This request is therefore not relevant to the evaluation of potential impacts of the SBRP. No

¹ *Id.*

² CEQA Guidelines, 14 CCR 15126.6(c)

³ CEQA Guidelines, 14 CCR 15126.6(f)

applicable LORS require analysis of the range of alternatives which is beyond the reasonable range required by CEQA. (See the objection to Data Request No. 26, above, for further discussion of this issue.)

Applicant further objects to the request as burdensome as it would involve expenditure of substantial resources for information that would be irrelevant and which CURE can develop on its own from information that is publicly available.

30. Please provide vendor guarantees and estimates for the anticipated degradation with time for both baseload operation and duct-firing heat rates and support your estimates with references.

Applicant objects because this request seeks information about vendor “guarantees and estimates” and other commercially protected information. Vendor “guarantees” are strictly commercial arrangements between applicants and their vendors. As wholly commercial issues, vendor guarantees are precisely the type of proprietary information that is protected. Vendor guarantees have no weight whatsoever from a regulatory perspective. Any commercial arrangements between Applicant and its vendors are irrelevant. Without waiving these objections, Applicant will supply commercial vendor data that is not privileged, confidential business information, proprietary or otherwise exempt from production.

36. In addition, please explain why the CEMs data and/or source tests for the following projects do not individually establish BACT or in the aggregate, collectively establish BACT for ammonia slip for the REP. Please provide supporting data for any of the following facilities that you believe do not demonstrate a lower ammonia slip limit than 10 ppm.

- | | |
|---------------------------|----------------------------------------------|
| i. Lake Road, CT | v. ANP Blackstone, MA |
| ii. Milford Power LLC, CT | vi. Cogentrix River Road, WA |
| iii. Wallingford, CT | vii. University of California, San Diego, CA |
| iv. West Springfield, MA | viii. Los Medanos Energy Center, CA |

Applicant objects to this request as irrelevant, burdensome and speculative. This data request seeks an analysis of project configurations that have not been proposed by the Applicant. This request is therefore not relevant to the evaluation of potential impacts of the SBRP. Applicant further objects to the request as burdensome as it would involve expenditure of substantial resources for information that would be irrelevant and which CURE can develop on its own from information that is publicly available. To the extent that such information is not publicly available to CURE, it is not available to the Applicant either as these are not projects owned or operated by the Applicant.

55. Please discuss the potential impacts of the projected sea level rise by mid-century and how the SBRP would be protected.

Applicant objects to this request as vague, irrelevant, burdensome and calling for speculation. The question is vague in that there is no established “projected sea level rise” by

“mid-century” that can be used to answer this question. Moreover, the question is irrelevant as the proposed minimum 30 year life of the project would not likely extend to the vague “mid-century” time period of the question. Applicant further objects because the requested information is not required by any applicable laws, ordinances, regulations or standards (“LORS”). Finally, the request is also burdensome as it would involve expenditure of substantial resources for information that would be irrelevant and speculative.

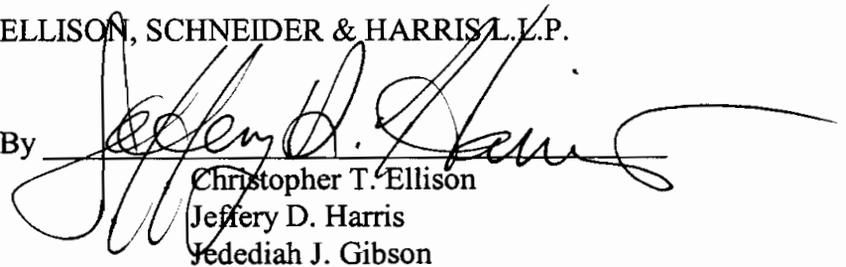
Thank you for your time and consideration.

Respectfully submitted,

Dated: March 7, 2007

ELLISON, SCHNEIDER & HARRIS L.L.P.

By

A large, stylized handwritten signature in black ink, which appears to be "Jeffrey D. Harris", is written over a horizontal line. The signature is cursive and extends to the right of the line.

Christopher T. Ellison
Jeffery D. Harris
Jedediah J. Gibson

Attorneys for LSP South Bay LLC

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 7, 2007, I transmitted the foregoing document titled ***LSP South Bay, LLC's (Applicant's) Notice of Objection to Certain CURE 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 7, 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
peesapati@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