STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of: Application for Certification For the Palmdale Hybrid Power Project	Docket No. 08-AFC-9

Energy Commission Staff's Opening Brief

The Committee assigned to the Palmdale Hybrid Power Project (PHPP) Application for Certification conducted an Evidentiary Hearing on March 2, 2010. At the conclusion of the hearing, the Committee instructed the parties to submit opening briefs 14 days after release of the hearing transcripts, which occurred on March 10, 2011, making March 25, 2011 the due date for opening briefs. As indicated at the evidentiary hearings, Energy Commission staff (staff) and the applicant have resolved all previously outstanding issues and are in agreement on all conditions of certification proposed. Intervenors Center for Biological Diversity (CBD) and Desert Citizens Against Pollution (DCAP) disagree with staff's recommendation that the PHPP be granted certification at this time for myriad reasons. Instead of trying to summarize those reasons here and risk mischaracterizing them, staff will await these parties' opening briefs and respond to their assertions in our reply brief. For this brief, staff addresses the only affirmative testimony presented by the intervenors – CBD's air quality witness, Mr. Gregory Tholen, and explains why his testimony fails to provide substantial evidence to contradict staff's conclusion that the PHPP will not result in any unmitigated significant adverse impacts to the environment.

I. Introduction

Mr. Tholen's testimony posits four assertions regarding the applicant's road paving proposal: 1) Road paving does not provide sufficient mitigation for PM2.5 emissions; 2) construction of the paved roads results in additional emissions, which should be evaluated; 3) paving of the roads will lead to increased traffic on those roads, thereby leading to increased emissions from the extra vehicles; and 4) paving of the roads likely will act to induce growth. These assertions are addressed below.

II. The Applicant's Road Paving Proposal Would Sufficiently Mitigate for PHPP's Emissions of PM10.

The proposed project is located within the Antelope Valley Air Quality Management District (AVAQMD), which is classified as non-attainment for the state 24-hour air quality standard for PM10 and unclassified (attainment) for state and federal PM2.5 standards. (Exh. 300, p. 4.1-13.) The proposed project would contribute to existing violations of the state's annual and 24-hour PM10 ambient air quality standards and, therefore, offsets are required for this criteria pollutant. (Exh. 300, p. 4.1-1.) Since there are no existing violations of the state or federal PM2.5 standard, and the project would not cause a violation of either standard, offsets for PM2.5 are not required. (Exh. 300, p.4.1-35; RT 3/2/11 p.151.) Conditions of certification, however, have been proposed to ensure that PM10 and PM2.5 emissions during construction are minimized to the extent possible using best management practices. (Exh. 300, pp. 53-59.)

A large portion of Mr. Tholen's written testimony is devoted to explaining why road paving should not be allowed to mitigate for PM2.5 emissions. As discussed above, PHPP is proposing road paving to mitigate for its PM10 emissions, not its PM2.5 emissions. PM2.5 offsets are not required by the AVAQMD's rules and, because the area is attainment/unclassified for PM2.5, staff has concluded that the project's emission of PM2.5 would not result in a significant, adverse impact to air quality requiring mitigation beyond that which was already identified by staff. (Exh. 300, pp. 53-59.) Therefore, Mr. Tholen's testimony concerning the appropriateness of using road paving to mitigate for a project's PM2.5 emissions is irrelevant here.

III. Construction of the Paved Roads Would Not Result in Any Unmitigated Significant, Adverse Impact to Air Quality.

Mr. Tholen states that the analysis "fails to account for emissions associated with the paving of existing unpaved roads and with the periodic maintenance" of such roads and that "construction- and worker-related fugitive and PM2.5 emissions should have been estimated and evaluated." (Exh. 402, p. 4.) In fact, the applicant and staff did analyze the potential of the paving of the roads to result in impacts and concluded that, with implementation of staff's proposed mitigation measures to address potential emissions from construction equipment used to construct the roads, the impact would be reduced to less than significant. (RT 3/2/11 pp. 55-59, 116.) As for potential emissions resulting from maintaining the roads, the dirt roads currently require periodic maintenance already; any maintenance required for the paved roads would result in similar, if not fewer, such emissions. (RT 3/2/11 p. 118.)

In contrast, Mr. Tholen did not offer any testimony or support for such testimony conclusively stating that the emissions from the proposed road paving would result in a significant, adverse impact to air quality. In fact, Mr. Tholen admitted that he did not conduct any independent analysis of his own in order to quantify the emissions associated with the road paving activity. (RT 3/2/11 pp. 107-109.)

IV. The Road Paving Proposal Will Not Result In Any Significant Increase In Traffic And Would Not Induce Growth.

Mr. Tholen testified that, in general, paving unpaved roads could result in an increase in traffic on those roads, thus leading to increase in emissions from extra vehicles using those roads. (Exh. 402, p. 2.) Mr. Tholen, however, admitted that he did not conduct any independent analysis of his own in order to quantify the emissions associated with paved and unpaved road traffic and is not familiar with the development patterns in the area surrounding the road segments that have been identified for paving. (RT 3/2/11 pp. 107-109.) His testimony is not based on an analysis of the PHPP in particular, but is merely a statement of his general understanding of the difference between dirt roads and paved roads. (RT 3/2/11 pp. 109-110.)

This is in stark contrast to staff's own analysis, which was based on specific review of the proposed road segments. (Exh. 301) The areas surrounding the road segments proposed are predominantly already fully developed residential roads; paving them would not induce growth into the area or significantly increase the amount of traffic utilizing these roads. (RT 3/2/11 pp. 115, 240-241, 247, 268-269.) Therefore, paving these roads does not have the potential to result in a significant, adverse impact as a result of either increased traffic or induced growth.

V. Conclusion.

Mr. Tholen's testimony does not provide substantial evidence to contradict staff's analysis and conclusion that PHPP would not result in any unmitigated, significant adverse impacts. Mr. Tholen admitted that his testimony was based on a general understanding of differences between paved and unpaved roads and was not the result of a detailed review of the proposed project and the specific roads identified for paving. Most importantly, even with this very general analysis, Mr. Tholen does not conclusively state that the proposed project would result in significant, adverse unmitigated impacts to air quality; only that it "may" and that emissions from the construction of the paved roads and their subsequent use should be evaluated. (Exh. 402, p.4.) As discussed above, staff did conduct such an analysis and concluded that impacts would be less than significant.

Dated: March 25, 2011

Respectfully submitted,

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APPLICATION FOR CERTIFICATION
For the *PALMDALE HYBRID POWER PROJECT*

Docket No. 08-AFC-9

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DECLARATION OF SERVICE

I, Rhea Moyer, declare that on, March 25, 2011, I served and filed copies of the attached Energy Commission Staff's Opening Brief dated March 25, 2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/sitingcases/palmdale/index.html]. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

/S/ Rhea Moyer

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RHEA MOYER