650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

LATHAM&WATKINS LLP

FIRM / AFFILIATE OFFICES
Abu Dhabi, Barcelona, Beijing, Brussels, Chicago, Doha, Dubai, Frankfurt, Hamburg, Hong Kong, Houston, London, Los Angeles, Madrid, Milan, Moscow, Munich, New Jersey, New York, Orange County, Paris, Riyadh, Rome, San Diego, San Francisco, Shanghai, Silicon Valley, Singapore, Tokyo, Washington, D.C.

DOCKET
07-AFC-3
DATE APR 22 2010
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April 22, 2010

File No. 030137-0012

VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-3
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

Re: CPV Sentinel Energy Project: Docket No. 07-AFC-3

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Comments on the Issue Identification Report by Intervenor Communities for a Better Environment.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the attached proof of service list.

Very truly yours,

Paul E. Kihm
Senior Paralegal

Enclosure

cc: CEC 07-AFC-3 Proof of Service List (w/encl., via e-mail and U.S. Mail)
Michael J. Carroll, Esq. (w/ encl.)

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Michael J. Carroll
LATHAM & WATKINS LLP
650 Town Center Drive, Suite 2000
Costa Mesa, CA 92626
(714) 540-1235
Counsel to Applicant

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of: APPLICATION FOR CERTIFICATION, FOR THE CPV SENTINEL ENERGY PROJECT, BY CPV SENTINEL, LLC	)))))))	Docket No. 07-AFC-3 APPLICANT'S COMMENTS ON THE ISSUES IDENTIFICATION REPORT BY INTERVENOR COMMUNITIES FOR A BETTER ENVIRONMENT

On behalf of CPV Sentinel, LLC (Applicant) for the CPV Sentinel Energy Project (07-AFC-03), we provide the following comments on the Issues Identification Report submitted by Intervenor Communities For A Better Environment (CBE) on April 13, 2010.

Comment on Issue 1

In the Final Staff Assessment Air Quality Addendum (FSA AQ Addendum), Energy Commission Staff responds to a very similar comment made by California Communities Against Toxics (CCAT). As indicated in Staff's response to CCAT's Comment 4, "Emission offsets for Sulfur Oxides (SOx) and Particulate Matter-less than 10 micron in diameter-(PM10) will be provided by [the South Coast Air Quality Management District] [SC]AQMD from offset credits pursuant to [Assembly Bill] AB 1318 (Health & Safety Code Section 40440.14(a))." FSA AQ Addendum at 2.1-64. AB 1318 provides a valid state law mechanism that allows this transfer of offset credits to occur.

Energy Commission Staff also addresses compliance with federal law: "The CPV Sentinel offset evaluation for SOx and PM10, which is provided under the SCAQMD Determination of Compliance to the Energy Commission, pursuant to AB 1318 (Health & Safety Code Section 40440.14(c)), will also be submitted to the U.S. Environmental Protection Agency (EPA) for approval and inclusion into the State Implementation Plan (SIP)." *Id.*

As acknowledged in the FSA AQ Addendum, contrary to Intervenor CBE's suggestion, offsets need not be federally enforceable until immediately before CPV Sentinel's commencement of operations. *Id.* at 2.1-41 ("Under federal [New Source Review] NSR, offsets are required prior

to start of operation."); *see also* EPA, Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards to Regional Directors, *Offsets Required Prior to Permit Issuance*, 5-6 (June 14, 1994)("In such circumstances, creditable offsets have been identified, quantified, adopted as a matter of State law, and submitted to EPA, but the EPA administrative process to approve the measure may not be completed by the time the source seeks to commence construction. ... In such cases, it may not be feasible for EPA's administrative process needed to make the offsets federally enforceable to be completed within the ordinary timeframe for issuing a construction permit. Thus, EPA believes it is appropriate in these cases to retain the policy announced in the NOx Supplement that a construction permit may be issued on the basis of a federally-enforceable commitment that the source may not commence operation until the offsets are made federally enforceable by EPA approval of the SIP measure.").

Comment on Issue 2

The mere existence of pending litigation filed by CBE and others is not a basis for halting the Energy Commission's process. To find otherwise would mean that project opponents could halt energy projects simply by filing lawsuits, no matter how frivolous. The Energy Commission should not establish such a precedent. Health & Safety Code Section 40440.14, put in place by AB 1318, is current state law, and will remain so unless and until there is a final judgment to the contrary by a court of competent jurisdiction. Any such final judgment, should it ever be rendered, would not occur for many months, and likely years from now.

Comment on Issue 3

This comment merely reiterates some of the requirements in AB 1318. In the FSA AQ Addendum, Energy Commission Staff responds to a nearly identical comment by CCAT: "The SCAQMD (2010) Addendum to Determination of Compliance (DOC), Appendix N contains a detailed discussion of the [Emission Reduction Credits] ERC's that are proposed for the CPV Sentinel project. Attachment 1 to Appendix N provides an AB 1318 Tracking System to address the specific implementation requirements and demonstrate compliance with the Clean Air Act." FSA AQ Addendum at 2.1-65. We similarly urge Intervenor CBE to review the SCAQMD's March 2, 2010 Addendum to Determination of Compliance.

Regarding the specific AB 1318 requirements reiterated by Intervenor CBE, such requirements are or will be satisfied as follows (numbering follows CBE's format):

a. To the extent that submissions to the United States Environmental Protection Agency (EPA) are necessary to implement AB 1318, the SCAQMD is in the process of making such submissions. Please refer to the Comment on Issue 1 above, regarding the timing associated with this submission.
b. On March 2, 2010, the SCAQMD submitted the Addendum to Determination of Compliance to the CEC, which reports the emission credits to be credited and transferred to CPV Sentinel.
c. As indicated in the FSA AQ Addendum at 2.1-34: "The CPV Sentinel project meets all three of these requirements regarding Commission and SCAQMD jurisdiction, purchase

agreements dated prior to December 31, 2008 and location outside of the South Coast air basin." (emphasis added).

d. As indicated in the SCAQMD's March 2, 2010 Addendum to Determination of Compliance, "CPV Sentinel will pay AQMD mitigation fees for SOx and PM10 offsets, which in turn AQMD will invest in emission reduction projects pursuant to AB 1318."

e. As indicated in the SCAQMD's March 2, 2010 Addendum to Determination of Compliance, "CPV Sentinel will pay AQMD mitigation fees for SOx and PM10 offsets, which in turn AQMD will invest in emission reduction projects pursuant to AB 1318."

f. Energy Commission Staff has found that "with the adoption of the attached conditions of certification the proposed CPV Sentinel Energy Project (CPV Sentinel) would comply with all applicable laws, ordinances, regulations, and standards (LORS) and would not result in any significant air quality-related impacts." FSA AQ Addendum at 2.1-1. In particular, Energy Commission Staff has found: "These [AB 1318 Tracking System] offsets all meet the integrity criteria for qualifying as offsets, meaning they are all Real, Permanent, Quantifiable, Enforceable and Surplus, as required by federal law." *Id.* at 2.1-39.

DATED: April 22, 2010

Respectfully submitted,

Michael J. Carroll
of LATHAM & WATKINS LLP
Counsel to Applicant

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No. 07-AFC-3
	)	
Application for Certification,	)	**PROOF OF SERVICE**
for the CPV SENTINEL ENERGY PROJECT	)	
	)	(March 24, 2010]
	)	
	)	

APPLICANT

Mark Turner
Project Manager
CPV Sentinel, LLC
55 Second Street, Suite 525
San Francisco, California 94105
mturner@cpv.com

Dale Shileikis
Vice President
URS Corporation
221 Main Street, Suite 600
San Francisco, CA 94105-1917
dale_shileikis@urscorp.com

INTERESTED AGENCIES

California ISO
E-mail preferred
e-recipient@caiso.com

Mohsen Nazemi
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, California 91765-4178
mnazemi@aqmd.gov

INTERVENORS

Angela Johnson Meszaros
CA Communities Against Toxics
1107 Fair Oaks Avenue, #246
South Pasadena, CA 91030
Angela@CleanAirMatters.net

Shana Lazerow
Communities for a Better Environment
1440 Broadway, Suite 701
Oakland, California 94612
slazerow@cbecal.org

ENERGY COMMISSION

James D. Boyd
Vice Chair and Presiding Member
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
jboyd@energy.state.ca.us

Kenneth Celli
Hearing Officer
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
kcelli@energy.state.ca.us

John Kessler
Project Manager
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
jkessler@energy.state.ca.us

Caryn Holmes
Staff Counsel
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
cholmes@energy.state.ca.us

Jennifer Jennings
Public Adviser
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, California 95814-5512
Publicadviser@energy.state.ca.us

CPV SENTINEL ENERGY PROJECT
CEC Docket No. 07-AFC-3

DECLARATION OF SERVICE

I, Paul Kihm, declare that on April 22, 2010, I served and filed copies of the attached:

APPLICANT'S COMMENTS ON THE ISSUE IDENTIFICATION REPORT BY INTERVENOR COMMUNITIES FOR A BETTER ENVIRONMENT

to all parties identified on the Proof of Service List above in the following manner:

California Energy Commission Docket Unit

☒ Transmission by depositing one original paper copy with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:

CALIFORNIA ENERGY COMMISSION
Attn: DOCKET NO. 07-AFC-3
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.state.ca.us

For Service to All Other Parties

☒ Transmission via electronic mail to all email addresses on the Proof of Service list; and

☒ by depositing one paper copy with the United States Postal Service via first-class mail at Costa Mesa, California, with postage fees thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses **NOT** marked "email preferred."

I further declare that transmission via U.S. Mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 22, 2010, at Costa Mesa, California.

Paul Kihm