



South Coast Air Quality Management District

21865 E. Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • <http://www.aqmd.gov>



March 31, 2009

Mr. Donal O'Callaghan
Director of Light & Power
City of Vernon
4305 Santa Fe Avenue
Vernon, CA 90058

SUBJECT: Proposed City of Vernon's Southeast Regional Energy Center (SREC) Power Plant Project, to be located at 3200 Fruitland Avenue, Vernon, CA 90058 (Facility ID No. 148553)

Dear Mr. O'Callaghan:

<u>Application No.</u>	<u>Equipment or Application Description</u>
458389	Gas Turbine Generator, Combined Cycle, HRSG, Unit No. 1
458392	Air Pollution Control System SCR and Oxidation Catalyst, Unit No. 1
458394	Gas Turbine, Generator, Combined Cycle, HRSG, Unit No. 2
458397	Air Pollution Control System SCR and Oxidation Catalyst, Unit No. 2
458398	Gas Turbine Generator, Combined Cycle, HRSG, Unit No. 3
458400	Air Pollution Control System SCR and Oxidation Catalyst, Unit No. 3
458402	Oil/Water Separator No. 1
458403	Oil/Water Separator No. 2
458404	Aqueous Ammonia Storage Tank No. 1
458406	Aqueous Ammonia Storage Tank No. 2
458407	Emergency IC Engine (Fire Water Pump)
458424	RECLAIM Permit
458388	Initial Title V Permit

This is in reference to the City of Vernon's applications for a Title V Permit to Construct submitted to the South Coast Air Quality Management District (AQMD) on or about June 30, 2006 for the proposed Southeast Regional Energy Center (SREC) project consisting of a 943 Mega Watts (MWs) power plant (including the equipment described above) to be located at 3200 Fruitland Avenue in the City of Vernon.

The AQMD staff has evaluated your applications for a Title V Permit to Construct the proposed SREC project and sent a letter, dated February 25, 2009, to the City of Vernon stating that the City of Vernon must supply Emission Reduction Credits (ERCs) by March 15, 2009, to offset all emission increases from the proposed SREC Project. The AQMD staff has also reviewed the March 11, 2009 letter sent by Mr. Michael Carroll of Latham and Watkins on behalf of the City of Vernon in response to AQMD's February 25, 2009 letter.

Based on our careful review and evaluation of your applications and the above described correspondences, AQMD staff has determined that the City of Vernon has not been able to demonstrate that the proposed SREC project will comply with the emissions offsets requirements of AQMD Rule 1303(b). As described in AQMD's February 25, 2009 letter, AQMD Rule 1309.1 – Priority Reserve, as amended on August 3, 2007, has been invalidated by the court order issued by Judge Ann I. Jones in July and November 2008 in response to a lawsuit filed by a group of environmental organizations. In the absence of Amended Rule 1309.1, the City of Vernon is required to provide emission offsets in the form of ERCs in order to demonstrate compliance with the emissions offset requirements of AQMD Rule 1303(b).

As indicated earlier in our February 25, 2009 letter, AQMD has appealed Judge Jones' ruling. In addition, as referenced in Mr. Carroll's March 11, 2009 letter, Senator Rod Wright is intending to introduce legislation to address the offset issue and AQMD's permit moratorium. However, even if the AQMD is successful in its appeal of Judge Jones' invalidation of Rule 1309.1, or the proposed legislation passes and, in either case, Rule 1309.1 was being implemented as amended on August 3, 2007, the City of Vernon still must comply with the specific provisions of Rule 1309.1(d)(12) and (14), in addition to the requirements of Rule 1309.1(b)(5)(A)(iv), (c) and (d), and other requirements of AQMD Regulation XIII, in order for the City of Vernon to be able to demonstrate that the project complies with the offset requirements of AQMD's NSR Rules.

As indicated before, the AQMD has determined that the City of Vernon does not comply with the provisions of Rule 1309.1(d)(12) and (14), as amended on August 3, 2007, to allow AQMD to release the Priority Reserve (PR) credits, for the following reasons:

- The City of Vernon has not entered into a long-term contract with the SCE, SDG&E or the State of California and had not petitioned the AQMD Governing Board and obtained approval from the Governing Board to waive such requirements.
- Although the City of Vernon is a municipal-owned electric generating facility (EGF), the proposed 943 MWs SREC project exceeds the City's future projected native load.

- The AQMD Executive Officer can only authorize the release of PR credits for the first 2,700 MW that is requested by EGFs, without further approval by the AQMD's Governing Board. Three of the pending EGF projects have already entered into long-term contracts with SCE, including the Walnut Creek (500 MWs), CPV Sentinel (850 MWs) and NRG El Segundo (573 MWs), for a total of 1,923 MWs. This does not even include the additional 300 MWs for the two municipal-owned EGFs, namely the City of Anaheim (200 MWs) and the City of Riverside (100 MWs), whose proposals do not exceed their municipalities' future projected native loads.
- Of the three projects which have already entered into long-term contracts with SCE, one (The Walnut Creek) has already received a PDOC and an FDOC from AQMD and Certification from CEC; another (NRG El Segundo) had previously received a PDOC and FDOC from AQMD and Certification from CEC for the original project and has subsequently received an Amended DOC from AQMD for the revised project; and another (CPV Sentinel) has already received a PDOC and FDOC from AQMD.
- As a result, the proposed three EGFs with long-term contracts and PDOCs and FDOCs from AQMD and, in some cases, Certification from CEC are farthest along the permitting and licensing process and will collectively use 1,923 MWs of the 2,700 MWs that the Executive Officer is authorized to release PR credits for. This will leave only 777 MWs for the remaining pending EGF projects, even if we exclude the City of Anaheim and City of Riverside proposed projects.

Since the City of Vernon has not provided the required ERCs to offset the emission increases from the proposed SREC project and even if Rule 1309.1, as amended on August 3, 2007, becomes valid, the City of Vernon's proposed 943 MWs SREC project alone exceeds the remaining 777 MWs available for all pending EGFs which may also wish to use PR credits and which are presently without long-term contracts, and the AQMD's Governing Board has not approved the release of PR credits in excess of 2,700 MWs, nor had the City of Vernon filed a petition with the AQMD's Governing Board and obtained Governing Board's approval to waive the long-term contract requirements, the AQMD staff has determined that the City of Vernon's SREC project does not comply with the requirements of AQMD Rule 1303(b).

Therefore, based on our careful evaluation of the City of Vernon's applications and other information and correspondence submitted to AQMD, your applications for a Title V Permit to Construct for the proposed SREC project are hereby denied for the following reasons:


1. The emissions from the proposed equipment for the SREC project are subject to the emission offset requirements of AQMD Rule 1303(b).

2. The City of Vernon has not provided the required ERCs, nor has the City of Vernon demonstrated compliance with the offset requirements of Rule 1303(b).
3. The AQMD staff has determined that the proposed SREC project does not comply with the emission offset requirements of AQMD Rule 1303(b).

Rule 212 provides, in essence, that the Executive Officer shall deny a Permit to Construct or a Permit to Operate unless the applicant shows that the equipment is so designed or controlled that, in use, it may be expected to comply with the Health and Safety Code of the State of California and the Rules and Regulations of the South Coast Air Quality Management District.

Enclosed is a copy of Form 400-D, which briefly describes some important facts you should know regarding these denials. The form also outlines options available to you because of this action. If you have any further questions concerning the denial of your application, please contact me at 909.396.2662.

Sincerely,



Mohsen Nazemi, P.E.
Deputy Executive Officer
Engineering and Compliance

MN:am
Enclosure

cc: Barry Wallerstein, AQMD
Kurt Wiese, AQMD

CERTIFIED MAIL, Return Receipt Request



South Coast Air Quality Management District

21865 E. Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • <http://www.aqmd.gov>

IMPORTANT INFORMATION CONCERNING DENIALS

A letter of denial is a form of legal action and is considered as such by the Air Quality Management District.

The information contained herein is provided to emphasize the importance of taking the proper steps without delay after receiving a letter of denial. This information is not intended to take the place of competent legal advice.

You are advised that the Hearing Board of the Air Quality Management District has been established by law to hear appeals of actions of the Executive Officer. Should you elect to file a petition to appeal a denial, it is recommended that you familiarize yourself with the Rules and Regulations of the Air Quality Management District and with the sections of Chapters 4 & 8, Division 26, of the Health & Safety Code of the State of California.

After receiving a letter of denial, you have the following options:

1. File an appeal with the Hearing Board within 30 (thirty) days after the receipt of this denial, OR
2. File a petition with the Hearing Board for a variance to permit operation of the equipment while the air pollution problem is being solved, OR
3. Suspend construction or operation of all equipment involved and file a new application with the Air Quality Management District for authority to make alterations which will comply with the objections stated as the reasons for the denial, OR
4. Abandon construction or operation of all equipment involved in the denial.

In all cases, construction or operation of all equipment involved must be suspended completely until either a valid permit to construct or a permit to operate has been issued by either the Air Quality Management District or the Hearing Board. In no way can the filing of either a new application with the District or a petition with the Hearing Board be construed as permission to continue the construction or operation of the equipment involved.

Existing laws state that every person who builds, erects, alters, uses or operates any source capable of emitting or controlling air contaminants without first obtaining the necessary permits is guilty of a misdemeanor and that every day during which such violation occurs is a separate offense.

Should construction or operation be continued after receipt of a denial, the Executive Officer will take whatever legal action is deemed necessary, as prescribed by existing laws and regulations.