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THRU:

Ernest Johnson

EJS

Director

Utilities Division

Arizona Corporation Commission

DOCKETED

SEP 26 2003

DATE:

September 26, 2003

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RE:

EMERGENCY HEARING REQUEST - COMPLAINT DATED AUGUST 18, 2003 DOCKETED BY JAMES PARRAULT AND SERETTA PARRAULT VS SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT DISTRICT (DOCKET NO. L-00000B-00-0105); CASE NO. 105; DECISION NO.63611.

Salt River Project's Response to Intervener Parraults' Motion for Emergency Hearing, docketed on September 22, 2003.

Milestones - CWG Process, docketed by James Parrault and Seretta Parrault on September 22, 2003.

James Parrault's and Seretta Parrault's Reply to Salt River Project's Response to Emergency Motion and Request for Hearing dated September 24, 2003.

Proceedings Framework

On August 18, 2003, James Parrault and Seretta Parrault filed a formal complaint, hereinafter referred to as the "Complaint", in the matter of non-compliance by SRP of the Certificate of Environmental Compatibility ("CEC") Condition Numbers 9, 28 and 29 for the Santan Expansion Project ("Plant")

At a pre-hearing procedural conference on September 10, 2003, it was decided by the Administrative Law Judge Lyn Farmer ("ALJ") that SRP would file a response to the complaint by noon on September 22, 2003, and the Arizona Corporation Commission Staff ("Staff") would investigate this complaint by conducting an on-site inspection and filing a Staff Report, to be docketed by noon on September 26, 2003. The emergency hearing in this matter was scheduled for September 29, 2003.

Santan Expansion Project Background

Santan Expansion Project is an extension of the existing Santan power plant which is located in the City of Gilbert, close to SRP's load center. The capacity of the additional plant under construction is 825 MW. The existing plant occupies an area of 120 acres, and the new Plant is being constructed on 20 acres of land owned by SRP at the location of the existing plant. The new Plant will be approximately 1100 feet away from the closest residences, which are located on the North side of Warner Road. The CEC for the construction of this Plant was granted by the Arizona Corporation Commission ("Commission") with 41 conditions in Decision No. 63611 on May 1, 2001. SRP has been routinely filing with the Commission quarterly self-certification compliance reports for the Santan Expansion Project.

The Perraults Complaint

The Complaint alleges that SRP is non-compliant with Condition Nos. 9, 28 and 29 of the CEC. The CEC Condition No. 9 requires SRP to plant the trees largely on the East side of the site, and some of the trees on the North side of Warner Road. This condition also requires SRP to install

all of the landscaping before installing any “major plant equipment, such as, but not limited to, exhaust stacks, combustion turbines, and heat recovery steam generators, except where delays are reasonably necessary to facilitate construction activities.”

The CEC Condition No. 28 stipulates that the “Applicant will comply with the provisions of the Intergovernmental Agreement dated April 25, 2000, between Applicant and the Town of Gilbert, as modified pursuant to this Certificate.”

The CEC Condition No. 29 requires that the “Applicant, in conjunction where applicable, with the Town of Gilbert and the plant site neighbors, shall consider and attempt to maximize the positive effects of its activities on the values of the homes in the surrounding neighborhoods.”

The Complaint alleges that Condition No. 9 is being violated because the heat recovery steam generator (“HRSG”) construction is well under way and the landscaping on the periphery of the 25 foot berm has not been completed. The berm was constructed as part of the mitigation plan developed by the Community Working Group (“CWG”) established in Condition No. 7 of the CEC. According to the Complaint, this situation “at the South end of Key Biscayne and Warner Roads in Gilbert is causing extreme financial problems and a gross reduction in home values to the community.”

Plant Site Inspection and Meeting

On September 23, 2003, Staff conducted the on-site inspection of the Plant. Staff, comprising of Steve Olea, Prem Bahl, Jason Gellman, Brian Bozo and John Bulanowski, also met with the SRP officials (Kelly Barr, Garry Barras, Jana Brandt, Randy Dietrich, Scott Harelson, Steve Lucking, Bill Rihs, and Janeen Rohovit). Also present at the inspection and the meeting were Ken Sundlof – JS&S, Leah Manbeck of Ten Eyck Landscape Architects and other citizens who live in close proximity to the Plant, including complainants Seratta and James Perrault, and intervenors Kathy Lopez, Dale Borger and Kathy Latona. The meeting was held at the SRP offices at the Plant. At this meeting, SRP officials described the progress of the Plant construction and the status and implementation of the landscaping mitigation, including

construction of the twenty-five foot berm. Finally, SRP officials discussed reasons for the delay of the implementation of the landscaping, including the extra time taken by the CWG in approving the landscaping plan concepts.

In response to a question as to why the construction of the berm was not completed early enough to complete the mitigation plan before constructing as the tall HRSG structures as, SRP explained that the berm construction was contingent upon getting the dirt from the retention pond and from the HRSG pit, fifteen feet below ground level. SRP explained that they felt constructing the berm with the dirt from the retention pond and the HRSG pit eliminated the need for hauling dirt on to the property and off of the property and was financially prudent. SRP also explained that HRSG construction had to be started without further delay to comply with Condition No. 2 to complete construction of the Plant by May 1, 2006.

A tour of the plant site was conducted at the conclusion of the onsite meeting. Included in the tour of the plant site was an inspection of the site periphery and berms. With regards to the construction of the berm, numerous features of the CWG approved landscape mitigation plan were pointed out by SRP. SRP stated that in front of the Key Biscayne Road on the south side of Warner Road, an approximately forty to fifty foot length of the berm would be thirty-three (33) feet in height, eight feet higher than the height of the rest of the berm (twenty-five feet). This was designed to provide less visual impact to the residential community in that area. There was also a plan to construct a dry water fall against a backdrop of a veneer wall to improve the aesthetics at the same location on the berm. The gabion wall around the berm was found to be in place, with the final finishing remaining to be completed. The irrigation piping for the trees on the berm was being installed, starting from the Southwest corner and coming toward the North side of the berm. In answer to a question from one of the community members regarding the completion date of the landscaping work, SRP responded that planting of trees would begin in November 2003, and is expected to be completed by the first quarter of 2004.

In addition, Staff noted that SRP had constructed a 10 foot high block wall on the East side of the Plant, as agreed to by the CWG. SRP is developing a trail on the East side and has agreed to build an eight foot wall on its property behind the homes on the East side. This trail, according

to the SRP official, will be in two segments, an equestrian trail and a hard surface trail separated by a low level berm.

Findings

Staff does not believe SRP is in compliance with Condition No. 9 of the CEC. SRP explained that it took the CWG until December of 2002 to approve the landscaping and mitigation plans and that it decided to utilize excavated dirt from the site to construct the berms for the reasons stated above. Staff does not find SRP's explanation convincing because Condition No. 9 clearly states that no major equipment would be installed prior to the completion of the landscaping. This condition does not involve any date specific requirement, but addresses a sequence of events. Staff also notes that in the hearings on this project one of the members of the Line Siting Committee, Steve Olea, clarified the intent of this condition. (See page 4258 of Volume XX of the transcripts.) Also, SRP's contention that the HRSG's construction had to be started to meet the stipulated Plant completion date before completing the landscaping on the berm overlooks the flexibility provided in CEC Condition No. 2 whereby "Applicant shall have the right to apply to the Arizona Corporation Commission for an extension of this time limitation." Staff found that none of the delays in the landscaping were reasonably necessary to facilitate construction activities.

As far as compliance with Condition No.28 is concerned, it is Staff's view that SRP's obligations under the IGA must be fulfilled primarily to the satisfaction of the City of Gilbert. Staff has no indication from the City of Gilbert that SRP has failed to comply with the IGA to its satisfaction. Therefore, Staff concludes that SRP is meeting its obligations under the IGA Agreement.

Based on Staff's Plant site inspection and SRP's response to the complaint, dated September 22, 2003, Staff believes that SRP is complying with Condition No. 29. SRP is providing funds for off-site landscaping mitigation to all the Home Owner Associations ("HOAs") as the town of Gilbert approves their plans. SRP has also committed to provide funds to the HOAs on an annual basis for the next twenty years for off-site landscaping maintenance.

Verification of other Related CEC Conditions

Staff also verified SRP's compliance with Condition Nos. 13, 31, 32 and 41. Staff has not completed review of SRP's compliance with other CEC conditions.

Staff verified SRP's compliance with Condition #13, in that SRP had relocated the gas metering facilities to the interior of the plant site.

The CEC Condition No. 31 relates to the construction of the HRSG approximately 15 feet below the grade, and to the overall height of the HRSG above the natural grade to be no more than 80 feet. In answer to a question from one of the community members, about the ultimate height of the HRSG unit above natural grade, the SRP official stated that it would be in the neighborhood of 80 feet. At this time, the skeleton of the HRSG structure stands approximately 80 feet above ground level, with the foundations going fifteen feet below ground. SRP is in compliance with this condition.

During the site tour, Staff asked a SRP official if Condition No. 32 had been complied with. The answer to Staff's question was in the affirmative. This condition requires SRP to complete the installation of the dry low NOx burners on the existing units prior to the construction of the new units. SRP is in compliance with this condition.

Staff noted that, in compliance with CEC Condition No. 41 and as agreed to by the CWG, SRP had constructed a 10 foot high block wall on the East side of the Plant.

Conclusions

Based on the review of the complaint filed by Mr. & Mrs. Perrault, SRP's response to the complaint, and Plant site inspection, it is Staff's conclusion that SRP is not in compliance with Condition No. 9, but is compliant with CEC Condition Nos. 28 and 29. Staff further concludes that SRP is in compliance with related CEC Condition Nos. 13, 31, 32, and 41.