

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:)	Docket No. 01-AFC-04
)	
Application of Certification for the East Altamont)	
<u>Energy Center</u>)	

**EAST ALTAMONT ENERGY CENTER
STATUS REPORT #5**

East Altamont Energy Center LLC (Applicant) has prepared this Status Report to provide the Committee with an update on the Applicant’s efforts to resolve outstanding permitting issues associated with the East Altamont Energy Center (EAEC) project. This Status Report also sets forth a proposed schedule that will allow the California Energy Commission (“Commission”) to certify the EAEC project within the statutory timeframe.

AIR QUALITY

The Preliminary Determination of Compliance (“PDOC”) was issued on April 12, 2002 by the Bay Area Air Quality Management District (“BAAQMD”). The PDOC contains permit conditions that are typical of those the BAAQMD has recently imposed on other power projects, and thus should be familiar to the Commission Staff. Assuming that the BAAQMD honors its commitment to the Commission to complete its analysis consistent with the Commission’s statutory deadlines, we expect the Final Determination of Compliance (“FDOC”) will be issued on or about May 28, 2002. The Applicant has responded to all data requests in the area of Air Quality. With the issuance of the PDOC and assuming no significant changes in the conditions of the FDOC, Commission Staff has all the information it needs to complete its Air Quality analysis.

BIOLOGICAL/VISUAL RESOURCES

The CEC Biology Staff, U.S. Fish and Wildlife Service (“USFWS”), and California Department of Fish and Game (“CDFG”) representatives were concerned that the tall trees in the originally proposed landscape plan would provide perches for golden eagles to prey on listed species. In early November, the Applicant submitted a revised landscape plan in an effort to address the USFWS, CDFG, and Commission Staff biologists' concerns, yet provide adequate visual screening. On January 22, a public workshop was held to discuss the landscape plan. On April 3, 2002, the Applicant submitted a second revised landscape plan incorporating all of the comments it received from the USFWS, CDFG, and Commission Staff at the January 22

workshop. In addition, the Applicant provided revised visual simulations depicting the visual screening of the plant at 10 years and at 20 years, in both winter and summer conditions. The Applicant believes that the new revised landscape plan fully addresses the biological concerns and mitigates visual impacts to a level of insignificance.

BIOLOGICAL RESOURCES

The Western Area Power Administration (Western) submitted the Biological Assessment (BA) to the USFWS and the National Marine Fisheries Service (NMFS) on February 12, 2002 and thus formally initiated the Section 7 consultation process under the federal Endangered Species Act. As noted in the BA, Western determined that potential adverse impacts to the habitat of the San Joaquin kit fox and California red-legged frog could be mitigated. The project is unlikely to affect other federally listed species. On March 20, the NMFS submitted a letter concurring with Western that “the project is not likely to adversely affect threatened Central Valley steelhead and Central Valley spring-run Chinook salmon, or endangered Sacramento River winter-run Chinook salmon, nor is it anticipated that the proposed project will adversely modify designated critical habitats.” This letter concludes the Section 7 consultation process with NMFS.

On May 8, the Applicant will be meeting with the USFWS, the CDFG and other interested parties to present its mitigation proposal for the EAEC project. The Applicant intends to formally file its mitigation proposal by May 17.

WATER AND SOILS

The EAEC project is located within the Byron Bethany Irrigation District (“BBID”) and will obtain the project’s water from BBID. BBID has provided a will serve letter for the project. Water service to EAEC will initially come from fresh water sources appropriated under pre-1914 water rights, and later from recycled water sources as well. Commission Staff had been concerned that the exercise of those rights would result in diversions of water from the Delta at times and in amounts different from historic agricultural uses. Specifically, there was concern that increased reliance on winter-period diversions could impact sensitive species within the Delta. The March 20 letter from NMFS concludes that the potential nine cubic foot per second increase in winter-period diversions associated with maximized power output from EAEC during winter periods when historic agricultural uses may have been near zero, would be unlikely to cause any measurable impact upon the Delta or listed species.

The Preliminary Staff Assessment (“PSA”) stated that the Commission Staff is awaiting additional information from Department of Water Resources (“DWR”) relative to the relationship of BBID’s water entitlements to those of the State Water Project (SWP) and the Central Valley Project (CVP). (PSA, p. 5.1-17.) The Commission Staff has filed records of conversation between a consultant to the Commission Staff and a DWR staff person who has not been authorized to speak officially on behalf of DWR. As of this date, however, the Commission Staff has not scheduled a workshop to discuss these issues in a public forum in which all interested parties can attend.

After an investigation by Commission Staff that has lasted more than ten months, the Commission Staff has failed to bring forth any credible evidence from DWR that is adverse to the EAEC project. The Applicant respectfully suggests that the deadline for receipt of comments from other interested agencies has long since passed and the issuance of the FSA should not be further delayed in anticipation of further input from DWR.

LAND USE

The PSA identified three documents that were required in order for the Staff to complete its Final Staff Assessment: the Farmland Mitigation Agreement between Alameda County and the Applicant, the Certificate of Compliance, and Alameda County staff's proposed findings for its Conditional Use Permit, which would be required but for pre-emption by the Commission. All of these documents have been provided to the Commission Staff.

TRANSMISSION SYSTEM ENGINEERING

The Commission Staff has continued to request information in this subject area. At a workshop on December 20, 2001, Commission Staff stated that all of its informational needs have been satisfied. However, on March 20, 2002 the Staff issued a 6th set of Data Requests, with yet additional questions concerning Transmission System Engineering. On April 22, 2002, the Applicant responded to a portion of these questions. The response included a letter from SMUD stating that impacts to the SMUD system resulting from the proposed EAEC interconnection have been adequately addressed. Also included was a December 19, 2001 letter from PG&E that states, “. . . Based upon our analysis of the power flow, short circuit, and dynamic stability study results from the original report, PG&E has concluded that the EAEC project will not create any adverse impacts to PG&E's transmission system.” PG&E also recently copied the CEC Staff on an additional letter of April 15 in which it repeated the same conclusion and provided additional information requested by Staff. It is the Applicant's understanding that the Staff now has the information it needs to complete its analysis.

NOISE

On March 26, 2002 Commission Staff issued a 7th set of Data Requests pertaining to noise issues. The Applicant was compelled to object to certain of these Data Requests as they would have required extensive and burdensome redesigns and reengineering of the facility (and might also have included potential changes to air quality and visual impacts of the facility) absent a determination that the project would have a significant noise impact. Applicant will respond to certain of the Set 7 Data Requests by April 26, 2002.

Applicant is informed that Commission Staff is developing a new policy for addressing potential noise impacts in very quiet environmental settings. Applicant has made numerous requests and inquiries regarding this new Staff policy but has yet to receive a copy of this new

policy. While the Applicant is uncertain where Staff stands on noise issues, the Staff will have by April 26 all the information it needs on this issue to complete the FSA.

SCHEDULE

The Application for Certification of the EAEC project was deemed data adequate on June 27, 2001. In accordance with Public Resources Code section 25540.6(a) the Commission should issue its final decision on the application within 12 months after the filing of the application for certification.

Unfortunately, two significant factors have delayed this proceeding. First, the BAAQMD experienced substantial delay in issuing the PDOC. In a typical AFC proceeding, the AQMD issues the PDOC within 120 to 180 days after the AFC is deemed data adequate. In this case, the BAAQMD issued the PDOC 289 days after acceptance of the AFC. A few weeks of the delay were attributed to the unilateral decision by the Applicant to reduce the project's PM10 emissions by 30%. This required the filing of additional air quality information to the BAAQMD. The balance of the delay was due to factors within the BAAQMD outside of the control of the Applicant.

Because of the delay in issuance of the PDOC, it is critical to the timely processing of this AFC that the BAAQMD give a high priority to the timely issuance of the FDOC. It would be helpful if the Committee requested a specific date for issuance of the FDOC and urged the BAAQMD to give the FDOC a high priority.

The second significant delay in this proceeding has been the delay in issuing the Final Staff Assessment. In a typical AFC, the Preliminary Staff Assessment is issued by Day 165 and the FSA is issued between Day 200 and Day 220. In this case the PSA was issued on December 6, 2001 (Day 162) but the FSA has not yet been issued as of the date of this Status Report (Day 300). The typical interval between the issuance of the PSA and FSA is 35-55 days. In this case, more than four months have elapsed since the issuance of the PSA.

Of the nineteen subject areas discussed in the PSA, seventeen areas are clearly ready for issuance of a Final Staff Assessment. In a few of these 17 areas, there may be differences between the Applicant and the Commission Staff, but the Staff certainly has the information it needs to complete its analysis. Therefore, the Applicant urges the Committee to set a schedule that expedites the issuance of an FSA for all subject areas where Staff's informational needs have been met. We believe that May 7, which is five months after the issuance of the PSA, is a reasonable date for issuance of the FSA. For the two remaining subject areas, Air Quality and Biology, the Committee should require the issuance of a Supplement to the FSA promptly after receipt of the necessary information.

The Applicant proposes the following schedule for the Committee's consideration:

PDOC –	April 12
FDOC -	May 28

FSA -	May 7, Supplement - June 3
Prehearing Conference	June 7
Evidentiary hearings	June 17-21
Proposed Decision	July 26
Final Decision	August 28

State officials have just announced their restructuring of four long-term energy contracts with Calpine, the parent company of Applicant. The restructured agreements include provisions to ensure the construction of four new projects, including the East Altamont Energy Center. By contract Calpine is obliged to use commercially reasonable efforts to complete this project. In light of the importance of this project to the state, the Applicant respectfully requests that the Commission act expeditiously to establish a timely schedule for completion of this AFC proceeding.

Respectfully submitted,

Dated: April 24, 2002

ELLISON, SCHNEIDER & HARRIS

By _____
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