

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 01-AFC-17
)	
Application For Certification of the)	COMMISSION STAFF'S
Inland Empire Energy Center, LLC)	PMPD COMMENTS
)	
_____)	

The Energy Commission staff ("staff") offers the following comments and suggested corrections regarding the Presiding Member's Proposed Decision (PMPD) for the Inland Empire Energy Center Project.

AIR QUALITY

Construction Ambient Air Monitoring Program (Condition AQ-SC5). As proposed by staff, Condition AQ-SC5 provided:

AQ-SC5 The project owner shall prepare and implement an Ambient Air Monitoring Program (AAMP) to measure PM₁₀ emissions during excavation, earthmoving and grading activities. The project owner shall submit the AAMP to the CPM for review and approval. The AAMP shall include, at a minimum, the following:

1. The use of real-time PM₁₀ monitoring instruments;
2. The simultaneous use of upwind and downwind monitors continuously during these activities;
3. Description of how the monitors will be used to assess the effectiveness of the mitigation measures implemented under the construction mitigation plan, including assessing the potential need for monitoring multiple activities on site simultaneously;

Verification: The AAMP shall be included as part of the construction mitigation plan required by condition AQ-SC2. Monitoring records, including monitoring data from all upwind and downwind monitors, and records of dust suppression measures implemented, shall be maintained on-site throughout construction and shall be made available to the CPM upon request. A summary of the monitoring records and the dust suppression activities shall be included in each MCR. Any changes to the AAMP or associated protocols require approval from the CPM.

The PMPD deleted this condition. The totality of its discussion of the issue is contained in the following paragraph:

Staff proposed Condition AQ-SC5 which would require the project owner to implement an Ambient Air Monitoring Program to measure PM₁₀ during construction activities. A similar monitoring program was required in the Los Esteros project (01-AFC-12) as a demonstration. (RT 7/30, p. 141.) Applicant testified that ambient monitoring for PM₁₀ is not needed for the IEEC because fugitive dust impacts are “extremely conservatively overstated”, AQ-SC4 (which controls visible dust) would control invisible dust as well, and that SCAQMD Rule 403 is sufficient to address dust [from] this project. (RT 7/30, 139-141.) Applicant further testified that the Los Esteros demonstration project was a “failure.” (RT 7/30, p. 141.) Although Staff did not agree with Applicant that the demonstration project was a failure, Staff did not offer substantial evidence to rebut Applicant’s testimony or to affirmatively establish the need for, or feasibility of, ambient air monitoring. Therefore, we conclude that implementing aggressive dust control strategies required by Conditions of Certification AQ-SC1 through AQ-SC4 will ensure the greatest feasible measure of dust control, and that the weight of the evidence does not persuade us that AQ-SC5 is necessary. PMPD, p. 108-109.

Staff submits that the weight of the evidence supports the imposition of Condition AQ-SC5. The Applicant’s “testimony” that the Los Esteros effort was a failure was nothing more than hearsay. Mr. Rubenstein simply said the “demonstration project was declared to be a failure by the Commission staff in a subsequent proceeding.” Staff’s witness, Mr. Birdsall, explained that the problems in Los Esteros were caused by calibration errors that could have been avoided with proper operation of the monitors (RT 7/30, p. 254). More recent experience in the Vernon case (01-AFC-25) has shown that such monitoring is feasible and can be effective. In addition, continuous ambient monitoring for PM₁₀ during construction is also required in the Revised Presiding Member’s Proposed Decision for the Morro Bay Power Plant Project.

Regarding the construction modeling, Mr. Birdsall did not agree that the construction emissions were overestimated. In his experience, emissions from other Energy Commission projects were generally estimated to be higher than the applicant has estimated in this case. (RT 7/30, p. 213.)

The PMPD finds that the construction particulate emissions will add to an existing exceedence of state and federal air quality PM₁₀ standards, but appears to decide that this would not be a significant environmental impact because the increase is small in comparison to the existing levels. The models used by the applicant and staff assume the aggressive application of mitigation measures similar to those described in Conditions AQ-SC1 through AQ-SC4. Even with those measures, the PM₁₀ levels at the Romoland school will increase.¹ If the mitigation measures are not applied as

¹ The increase at the school site is predicted to be approximately 8 µg/m³ on a 24-hour average basis. Although that is a small fraction of the 139 µg/m³ background level, the resulting 147µg/m³ level significantly exceeds the state (50 µg/m³) standard and exacerbates the existing air quality problems.

aggressively or are not as effective as the models assume, the amount of the project's contribution to the already unacceptable background levels would be significantly higher.

The only way to assure that the mitigation measures are effective in minimizing particulate emissions is to conduct a monitoring program, such as that described in AQ-SC5. PM₁₀ is not readily detectable by the naked eye; the visible dust prevention measures contained in AQ-SC4 are no substitute for monitoring instruments. The speculative concerns raised during the evidentiary hearing about where to place monitors in relation to other nearby particulate sources can be addressed during the preparation and review of the AAMP. (RT 7/30, p. 245.)

Feedback from the monitoring will enable staff and the applicant to fine-tune the mitigation program to provide the maximum protection for the nearby residents and school students for shifting site construction, soil, and meteorological conditions. Project construction contributions to the already unhealthy ambient PM₁₀ levels must be minimized to the greatest possible extent.²

Staff therefore recommends the restoration of Condition AQ-SC5.

Identification of RECLAIM Trading Credits (Condition AQ-SC9).

Throughout this proceeding, staff has interpreted Public Resources Code Subsection 25523(d)(2) as requiring an applicant to specifically identify emission offsets required for the operation of a power plant and either obtain those offsets outright or obtain options to purchase them at a later time required by the local air district. Staff believes that project proponents should have the necessary elements for their projects in hand at the time of Energy Commission approval so that they are ready to begin construction once approval is given. The state Legislature expressed concern during a recent hearing about whether recently permitted power plants will actually be built.³ Further, the Energy Commission's own Integrated Energy Policy Report, adopted November 12, 2003 states:

Despite the current calm in the state's energy system, California's demand for energy is growing, fueled by an expanding population and growing business sector. State government must act now to promote public policies that secure additional energy supplies and infrastructure improvements to protect California from future supply disruptions and high prices. (IEPR Executive Summary, p. iii.)

The PMPD finds that Subsection 25523(d)(2) is satisfied by including the NOx RECLAIM Trading Credits (RTCs) described in the Cantor Fitzgerald letter (Ex. 2, pp. 5.1-53 to 5.1-54.) in Condition AQ-SC9's table of required offsets. However, the

² We note that the California Environmental Quality Act requires provisions for monitoring the implementation of mitigation measures (Public Resources Code Section 21081.6).

³ Informational Hearing: Subject 1: Overview of Energy Resource Adequacy & Utility Procurement Activities; Subject 2: Report From California Parties On Federal Energy Regulatory Commission Proceedings. State Capitol, California Room (4203), November 19, 2003, 10:00 a.m.

proposed “identification” lacks specificity and does not demonstrate the applicant’s ability to obtain the RTCs. Staff also believes this position deviates from and is inconsistent with the requirement the Commission has imposed in previous applications. As currently written, the PMPD allows the applicant to postpone obtaining the necessary NOx emission offsets. This means there is a greater uncertainty as to when and if the project will proceed to construction.

The Cantor Fitzgerald letter describes the offsets only by pseudonyms (Order #1, Order #2, . . . Order #10); without more specific information (i.e., the identity of the current holder of the offset) it will be impossible to determine if the RTCs ultimately obtained by the applicant are the same RTCs identified in the letter; the condition is therefore impossible to enforce. If project construction for Inland Empire Energy Center is delayed like other Calpine projects have been delayed, other future projects proposed in the air district could identify the same pool of unnamed RTCs to obtain their Energy Commission project approval.⁴ Even if RTCs were identified with sufficient specificity, there is no evidence that the applicant has, by options or other legally enforceable mechanism, assured its ability to obtain the RTCs at a later time. Requiring Calpine, at a minimum, to obtain options for the RTCs for the first year they intend to begin operation would provide the State with important information to determine whether California will have an adequate electricity supply and reserve margin. However, if the Committee goes forward and finds that the Cantor Fitzgerald letter sufficiently identifies the RTCs, the Committee should limit the letter’s specificity to be appropriate only for RTCs in the South Coast Air Quality Management District. The Committee should also plainly state that the SCAQMD has certified that complete offsets have been identified and will be obtained within the district’s required timeframes.

Other Air Quality comments.

Page 109, Paragraph 3: The sentence “The maximum modeled 24-hour and annual average PM10 concentration caused by construction activities will be about 5 µg/m³, or less than ten percent of the existing background conditions” should be revised to delete the mention of an annual average and indicate that the 24-hour concentration is 8 µg/m³. (Ex. 67, p. 5.1-29.)

Page 110, last partial sentence: Modify the sentence to read: “Applicant’s emission calculations conservatively assume 100 percent availability operation of the CTGs and operation of each duct burner 5,100 hours per year.”

Pages 115-116, BACT requirements, should be modified to reflect the final determination of the Air District. The third sentence on this page 115 should read:

With these technologies, Applicant will reduce stack exhaust concentrations of NOx to 2.0 ppmvd (@ 15% O₂) on an ~~annual average basis~~, and 2.5 ppmvd on a 1-hour basis. CO concentrations will be limited to 3.0 ppmvd without duct burning

⁴ Calpine has received Energy Commission approval but not started construction on the 600 MW Russell City Energy Center and the 1,100 MW East Altamont Energy Center.

~~and 4.0 ppmvd with duct burning on a 1-hour basis~~~~1.9 ppmvd CO on a monthly~~
~~and on an annual average.~~

For the same reason, the first bullet on page 116 should read:

- NOx: ~~2.52.0~~ ppmvd, 1-hour rolling average, 15% O₂, dry

Page 119, last full sentence, should be deleted: “~~The latter will ensure that the project will create no adverse impacts from either project phase.~~”

Though the Final Staff Assessment does note that NOx is a potential source of secondary PM₁₀,⁵ there is no support in the record for a conclusion that NOx offsets (RTCs) will mitigate construction PM₁₀ emissions. In any event, the applicant is required to obtain RTCs for the first year of operation, which follows construction. The emission reductions will not, therefore, occur in the same time frame as the construction activities and cannot have any mitigative effect on construction emissions.⁶

Page 122, Finding 13, should be corrected to read as follows:

13. To mitigate the project’s contributions to violations of state and federal PM₁₀ ~~and SOx~~ standards, the project owner will purchase SCAQMD Priority Reserve emission reduction credits (ERCs) for PM₁₀ and SOx in accordance with Rule 1309.1.

The air basin does not violate SOx standards. Nonetheless, SOx is regulated and offsets are required because it is a PM10 precursor.

HAZARDOUS MATERIALS

Page 168, last partial paragraph: Correct to reflect that the two sensitive receptors—Romoland Head Start Daycare and Romoland Elementary School—are approximately 1100 feet from the project site, not 2 km. (6600 feet).⁷

GEOLOGICAL AND PALEONTOLOGY

Page 240, First full paragraph: Modify the last sentence to read, “The evidence of record demonstrates that since the site is underlain by hard sandy silts and very dense silty sands, and the depth to ground water is approximately 78-1/2 feet; therefore the potential for liquefaction and dynamic compaction is negligible.”

⁵ FSA, p. 5.1-12.

⁶ It remains desirable, in the name of improving the likelihood that the project will be built in a timely manner, to require that the offsets be identified and obtained as soon as possible. Though staff would prefer that identification be required prior to certification by the Energy Commission, we find the applicant’s proposal to obtain the offsets prior to construction, accepted by the Committee in Condition AQ-SC9, preferable to waiting until the beginning of operations.

⁷ Ex. 67, p. 5.4-5, citing to an April 15, 2002 data response from the applicant. We note that the Air Quality section of the FSA states this distance as .34 mile (approximately 1800 feet), citing the Application for Certification.

GENERAL COMMENT

On July 28, 2003, staff published an Errata to the Supplemental Testimony and Addendum to the Staff Assessment which contained proposed changes to Conditions BIO-3, Soil & Water 2, Soil & Water 3, Soil & Water 4, VIS-3 and VIS-8 (renumbered and modified version of the former VIS-9). Those proposed changes were agreed upon by staff and the applicant but appear to have been inadvertently omitted from the PMPD.

DATED: November 25, 2003

Respectfully submitted,

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