

Before The Energy Resources Conservation And Development
Commission Of The State Of California

Application for Certification)	Docket No. 03-AFC-2
for the LOS ESTEROS CRITICAL)	
ENERGY FACILITY 2, PHASE I)	STAFF OPENING BRIEF
(Relicense)	
_____)	

An evidentiary hearing was held for the Los Esteros Critical Energy Facility 2, Phase 1¹ project on December 6, 2004. Staff and Applicant produced witnesses for Air Quality and Power Plant Efficiency, consistent with the Siting Committee hearing order, and pursuant to a request by intervenor Californians for Renewable Energy (“CARE”). CARE produced no witnesses and no testimony of its own. Thus, the testimony from Staff and Applicant is not contradicted by any evidence of record.

The Phase 1 project is to *relicense* an existing facility. The existing facility is a simple-cycle 180 MW power plant licensed in 2002 pursuant to the Energy Commission’s four-month emergency licensing process. Applicable law required the Applicant to either relicense the original facility or to seek a new license to convert the simple-cycle facility to a combined cycle facility; such additional licensing was required to occur within three years. (Former Pub. Resources Code, § 25552 [repealed by its own terms on January 1, 2003].)

Because Phase 1 is for the relicense of a facility already in operation, all impacts of the relicense project had already been thoroughly examined in the prior AFC. These impacts are virtually unchanged. However, because part of the Air Quality mitigation plan for the three-year license did not work as Staff originally expected, Staff requested, and Applicant agreed to provide, additional Air Quality mitigation as a condition in the new license. This additional mitigation reduces impacts on air quality to less than significant in terms of the California Environmental Quality Act (“CEQA”). All other environmental impacts are likewise mitigated to levels less than significant.

As stated above, the testimony from Staff and Applicant is without contradiction. Although CARE cross-examined some witnesses, it is not entirely clear what if any “issues” arise as a result of such cross-examination that require briefing. This brief does not presume to infer CARE’s issues; rather, it briefly

¹ This case is referenced as Los Esteros Critical Energy Facility 2 (“LECEF 2”) because the project was already built and operated under a prior license. The LECEF 2 AFC seeks two new licenses, which are being processed separately as “Phase 1” and “Phase 2.” Phase 1 seeks the relicense of the existing facility, which is currently licensed for only three years. Phase 2 seeks a license for a combined-cycle facility that will generate 320 MW.

summarizes the important evidence with regard to Air Quality, Power Plant Efficiency, and Environmental Justice.

AIR QUALITY

The Bay Area Air Quality Management District (“air district”) did not issue a new Determination of Compliance for Phase 1, as the relicense involves no increase in emissions from that of the previously analyzed project. Instead, the air district re-issued the Los Esteros Authority to Construct (“ATC”), the only change being the removal of a “sunset provision” requiring conversion of the facility to a combined cycle facility within three years. The latter provision had been added to the ATC at the request of Staff during the original four-month AFC.

The only issue that arose with regard to air quality was the adequacy of the previously established mitigation plan. This plan required Applicant to mitigate PM 10 emissions by choosing from a variety of methods. Staff believes that for various reasons the methods chosen by Applicant did not produce mitigation sufficient to fully mitigate future ongoing PM 10 emissions. (RT 28-29.) Applicant believed that its prior mitigation had been sufficient, but agreed to provide banked offsets to satisfy Staff’s concern. Because Applicant agreed to a condition requiring such offsets, the issue was resolved and did not require adjudication. Staff and Applicant agreed that the Phase 1 relicense project is fully mitigated with the conditions proposed. (RT 25, 29.)

BACT for NO_x when the project was originally licensed was 5.0 ppm on a three-hour rolling average and 2.5 ppm on an annual average. (RT 37-38.) Because there is no increase in emissions, air district regulations provide that the BACT requirements do not change. (RT 42.) Moreover, as there is no increase in project emissions, there is no separate authority to require a different NO_x emission level.

Ammonia is used in the catalyst that is part of the equipment for controlling NO_x emissions. A small part of this ammonia is emitted from the facility, called “ammonia slip.” Ammonia is not a “criteria pollutant” under federal law, and there are no state or federal standards for ammonia slip. The air district ATC for the existing license set a 10 ppm limit on ammonia slip emissions, and the Energy Commission incorporated that limit into its conditions. The relicense will not result in any change in ammonia slip emissions, so there is no basis for changing the limit previously prescribed by the air district.

POWER PLANT EFFICIENCY

The testimony at hearing summarized rudimentary aspects of the role of “peaking” and “baseload” power plants. Baseload plants are intended to run most of the year. Because electricity demand is not constant, but varies every moment, peakers provide electric generation to satisfy the more marginal fluctuations in demand. (RT 61-62.) Peakers can be used to adjust more readily to changes in load, and this provides necessary system flexibility. (*Ibid.*) The

current Los Esteros facility has been operated as a peaker (RT 25, 61), with an average capacity factor over the past 19 months of 12 percent. (RT 63.) Fuel costs become a factor if a peaker is required to operate more like a baseload facility, at which point it becomes economically rational to convert the facility to a more-efficient combined cycle plant. (RT 63.)

ENVIRONMENTAL JUSTICE

CARE's pre-hearing conference statement raised, without further elaboration, the issue of environmental justice as it pertains to air quality. Despite the lack of elaboration, environmental justice is not an issue in this proceeding.

The principles of environmental justice derive from a federal executive order and implementing federal regulations that pertain to federal agencies. In essence, such principles require that people of differing ethnic groups and income levels be treated fairly; decision-makers are supposed to give added consideration to decisions that result in impacts that are "high" and "disproportionate" with regard to such groups, with concern for avoiding such impacts. Federal guidelines implementing the environmental justice executive order have equated "high" impacts with what is elsewhere (e.g., NEPA and CEQA) a "significant" impact. (See, e.g., U.S. EPA Final Guidance, April 1998, § 3.2.2 [Environmental Justice and the Determination of Significance].) The impacts of the LECEF facility have already been analyzed by the Energy Commission, which found all impacts, including those regarding air quality, to be fully mitigated to a level that is less than significant. In its FSA, Staff has recommended revisions to the air quality conditions of certification that will safeguard the conclusion that the cumulative air quality impacts of the LECEF facility are less than significant. There is no evidence in the record supporting a contrary conclusion with regard to air quality or any other area of environmental concern. Accordingly, there can be no issue with regard to environmental justice.

Dated: January 7, 2005

Respectfully submitted,

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