

Memorandum

Date : July 11, 2000

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To : **Metcalfe Energy Center Siting Committee:**

Robert A. Laurie, Presiding Member

William J. Keese, Second Member

File:

From : **California Energy Commission** - Paul Richins, Jr.
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Sacramento, CA 95814-5512

Subject : **METCALFE STATUS CONFERENCE--JULY 19, 2000**

We appreciate the opportunity to provide the Committee with information pertaining to the Metcalfe schedule pursuant to the Notice of Status Conference and Order. The Notice, issued by the Committee, posed a series of questions regarding key milestones. The discussion below, along with Attachment A, Suggested Schedule; and Attachment B, List of Publicly-Noticed Meetings and Workshops address the Committee's questions.

Additionally, under separate cover, staff filed a response to Coyote Valley Research Park's (CVRP) "Motion for an Order Directing Commission Staff to Prepare a Supplemental Preliminary Staff Assessment and Order to Modify the Case Schedule".

The necessity for further discovery

Calpine/Bechtel has provided comments on the Preliminary Staff Assessment (PSA) along with some of the additional information that staff requested at the PSA workshops. Calpine/Bechtel will provide water resources, biological resources and air quality information requested at the workshops by July 31, 2000.

We suggest that the committee establish a cut-off date to end the discovery phase.

The status and anticipated timing of any required federal actions

The goal of the U.S. Fish and Wildlife Service staff is to complete and issue the draft Biological Opinion by August 9, 2000. Given the amount of information, the nature of the mitigation package, the complexity of the issues associated with NOx deposition on the limestone soils resulting in a potential impact to the checkerspot butterfly habitat, and workload considerations at the U.S. Fish and Wildlife Services, the draft Biological Opinion will probably be delayed several weeks beyond the August 9, 2000 date.

After the U.S. Fish and Wildlife Service completes the Biological Opinion, it is then given to EPA for review. The EPA could not give a specific amount of time it would take for their review of the Biological Opinion but they indicated that it could take up to 45 days pursuant to 50 CFR sec. 402.14, less time if there were not substantive issues to resolve.

Additionally, according to the EPA, the Final Determination of Compliance (FDOC) can not be released by the BAAQMD until the Biological Opinion has been accepted by the EPA. However, the Bay Area Air Quality Management District (BAAQMD) indicates that they plan to release the FDOC on or about July 31, 2000, with a condition requiring EPA approval of Biological Opinion prior to the issuance of the Authority to Construct permit.

The issuance of a Final Determination of Compliance by the Bay Area Air Quality Management District

See the discussion above.

The necessity of re-issuing the Preliminary Staff Assessment (PSA)

We have either conducted and/or participated in 14 publicly-noticed workshops and meetings prior to the release of the PSA. These workshops were held to both inform the public, intervenors and City of San Jose District 2 Metcalf Advisory Committee of the Energy Commission's power plant siting process as well as to identify the issues of importance to the community. After the PSA was released on May 15, 2000, six daytime and four evening PSA workshops were held totaling nearly 50 hours of discussion on the PSA. At these workshops, the public, intervenors and applicant were provided an opportunity to ask questions of technical staff; identify and fully explained their perspective on the critical issues; and provide feedback on, and corrections to, the PSA. The public and intervenors were afforded as much time as they needed to ask questions of Energy Commission staff and comment on the PSA. In fact, an afternoon session that was scheduled for carry-over topics from previous days was cancelled as all parties agreed that they had fully discussed their issues. Attachment B is a listing of the publicly-noticed meetings and workshops staff have attended in the Metcalf case.

The PSA, by its very nature and as evidenced by the document's title, is a draft document subject to further change. This is further highlighted on Page 4 of the PSA's Executive Summary.

"The PSA is a draft document of the Energy Commission staff so, by its very nature, the conclusions and recommendations presented are draft and may change in the FSA".

Furthermore, the very purposes of PSA workshops are to identify errors in the assessment; identify issues of importance to the public and intervenors that may have been overlooked; and resolve outstanding issues where possible. From the information gathered at the PSA workshops, a Final Staff Assessment (FSA) is then produced.

There is no necessity for reissuing the PSA as has been petitioned by Coyote Valley Research Park (CVRP). The Metcalf PSA is as comprehensive, if not more so, than any other PSA staff has filed in past cases. And the recent changes to the project, referenced by CVRP in their petition, were included in docketed filings made by Calpine/Bechtel many months ago. These project changes were reflected in the PSA analysis.

From input received at the PSA workshops on this subject, staff believes the real issue is not whether the PSA should be re-issued, but rather, will there be adequate time after the release of the FSA to allow the intervenors and public to prepare their case(s) for the evidentiary hearings. Allowing adequate time before the beginning of hearings should easily resolve this matter.

The timing of necessary actions by the City of San Jose

The City of San Jose will use the FSA as the environmental document on which to base its decisions on Calpine/Bechtel's request for a General Plan Amendment and a change in the zoning of the Metcalf Energy Center site. San Jose City staff have indicated that a Planning Commission study session could begin within three weeks of the release of the FSA, and that within 6 to 8 weeks from the release of the FSA, the Planning Commission and City Council should be able to complete their respective public hearings.

The staff of the City of San Jose provided comments on the PSA on June 28, 2000, with additional comments on water resources and the use of reclaimed water to follow. All of the City's comments should be addressed in the FSA. Recognizing that these comments are from the city staff and not the City Council, there will be a need to incorporate into the evidentiary record additional comments after the City Council hearings are complete. For example, if approved by the City Council, the Planned Development zoning would contain a series of detailed conditions for the Metcalf Energy Center site. In addition, city staff anticipates the City Council to adopt a resolution containing additional conditions that would be incorporated into a Planned Development permit for this project. If the City Council does not approve the MEC entitlements, city staff expects that the City Council would identify conditions for the California Energy Commissioners to consider should the Commissioners decide to approve the MEC.

The scheduling of future prehearing events

Normally the pre-hearing conference is held before the release of the FSA. Staff is often working to resolve outstanding issues right up until the FSA is released. In this case, given the complexity of the issues, it may be beneficial to hold the pre-hearing conference after the FSA has been released so that the staff, applicant and intervenors will have a better understanding which issues will need to be adjudicated.

Other procedurally relevant matters

I have requested that the BAAQMD and the EPA attend the status conference on July 19, but have been unable to secure assurances that they will attend to answer questions regarding the review of the Biological Opinion and the release of the FDOC. The Hearing Office may want to consider calling these parties to ensure their attendance.

We also suggest that the committee establish a cut-off date for petitions to intervene.

We look forward to presenting this material and answering your questions at the July 19, 2000 Status Conference.

Attachments: A, B

cc: Metcalf POS list
Steve Hill, BAAQMD
Matt Haber, U.S. EPA

Attachment A
Suggested Schedule for Metcalf Energy Center (7/11/00)

<u>Event</u>	<u>w/o EPA Approval¹</u>	<u>w/ EPA Approval</u>
Cal-ISO T-line preliminary approval (1) ²	02/04/00	02/04/00
Preliminary Determination of Compliance (2)	04/03/00	04/03/00
Preliminary Staff Assessment (3)	05/15/00	05/15/00
PSA Workshops (4)	6/13-15 & 20-22	6/13-15 & 20-22
Requested data due from Calpine/Bechtel (5)	7/31/00	7/31/00
Final Determination of Compliance (8)	7/31/00	9/22-10/6/00
Biological Opinion issued by USF&WS (6)	8/9-23/00	8/9-23/00 ³
Final Staff Assessment (9)	9/8/00 ⁴	10/30-11/13/00
Pre-hearing Conference (10)	September	November
Biological Opinion accepted by EPA (7)	9/22-10/6/00	9/22-10/6/00 ⁵
Testimony filed (11)	9/29/00	11/22-12/8/00
City Planning Commission Study Session and Hearings (12)	Oct/Nov	Nov/Dec 2000
City Council Hearings (13)	Oct/Nov	Nov/Dec 2000
CEC Evidentiary Hearings (14)	Oct/Nov	Dec/Jan 2001 ⁶

¹ Two suggested schedules are presented. The column labeled, "Without EPA Approval" assumes that the BAAQMD will release the FDOC without waiting for the acceptance of the Biological Opinion by EPA. Under the first set of circumstances, the FSA can be completed without the Biological Opinion, as long as we have a good understanding of the proposed mitigation that it may contain and are confident that the Biological Opinion will be completed by the start of evidentiary hearings. The column titled, "With EPA Approval" assumes that the BAAQMD will not release the FDOC until after EPA acceptance of the Biological Opinion.

² Indicates the order of the event for the second column titled, "With EPA Approval".

³ U.S. Fish and Wildlife Service indicates that the August 9 target date for the release of the Biological Opinion may slip by several weeks (conversation between Cecilia Brown and Paul Richins on 7/10/00).

⁴ Staff requests 30-40 days from the time of the release of the FDOC to complete the FSA.

⁵ U.S.EPA indicates that they have up to 45 days to approve the Biological Opinion. However they state that the review could be done in a shorter period of time provided there are no substantive issues.

⁶ San Jose City Hearings could be held concurrently with the CEC Evidentiary Hearings with the record remaining open for comments and conditions that City Council would identify for the California Energy Commissioners to consider should they decide to approve the MEC.

Attachment B

List of Metcalf Energy Center Publicly-Noticed Meetings and Workshops

June 17, 1999	District 2 MEC Advisory Meeting *	Southside Community Center
July 12, 1999	Informational Hearing & Site Visit (CEC)	Oak Grove High School
August 3, 1999	Data Request Workshop	Grange Hall, Coyote
August 19, 1999	CEC Staff General Staff Analysis Informational Meeting	Martin Murphy Middle School
August 26, 1999	District 2 MEC Advisory Meeting	Martin Murphy Middle School
September 29, 1999	District 2 MEC Advisory Meeting (Air Quality)	Martin Murphy Middle School
October 14, 1999	District 2 MEC Advisory Meeting (Visual)	Martin Murphy Middle School
October 27, 1999	CEC Staff Biological Resources Workshop	Grange Hall, Coyote
December 15, 1999	CEC Staff Alternatives Workshop	Baldwin Elementary School
December 16, 1999	Status Conference (CEC)	Martin Murphy Middle School
January 6, 2000	Meeting with NAACP Representatives	
January 31, 2000	CEC Staff Transmission Systems Engineering Workshop	Grange Hall, Coyote
February 15, 2000	Meeting with community representatives regarding environmental justice	
March 14, 2000	Community Meeting with CEC staff and Public Advisor (Spanish translation)	
March 22, 2000	CEC Staff Water Resources Workshop	Baldwin Elementary School
April 5, 2000	CEC Staff Air Quality Workshop	Southside Community Center
June 13, 14, 15, 20, 21, 22	Preliminary Staff Assessment Workshops**	Grange Hall, Coyote

**Note: CEC Staff representatives participated in all District 2 MEC Advisory Committee meetings.*

***Six days and four evenings of Preliminary Staff Assessment Workshops were held in Coyote totaling nearly 50 hours of PSA discussion.*