

INTRODUCTION

This Decision is based exclusively upon the record established during these certification proceedings and summarized herein. It contains our rationale for concluding that the Tracy Peaker Project complies with all applicable laws, ordinances, regulations and standards, and may therefore be licensed. We have independently evaluated the evidence presented, and in this Decision we explain the rationale for our conclusion and provide references to the record. We also specify the measures required to ensure that the Tracy Peaker Project is, to the greatest extent possible, designed, constructed, and operated in the manner necessary to protect public health and safety, promote the general welfare, and preserve environmental quality.

A. SUMMARY OF THE PROPOSED DECISION

GWF Energy LLC (Applicant) filed an Application for Certification (AFC) with the Energy Commission seeking approval to construct and operate the Tracy Peaker Project, a nominal 169 megawatt simple cycle natural gas fired power plant. The Tracy Peaker Project, as proposed, will be located on a 10.3 acre, fenced site within a 40-acre parcel in an unincorporated portion of San Joaquin County. The site is immediately southwest of the City of Tracy and approximately 20 miles southwest of the City of Stockton. It is bounded by the Delta-Mendota Canal to the southwest, agricultural property to the south and east, and the Union Pacific Railroad to the north. Immediately north of the Railroad are the Owens-Brockway glass container manufacturing plant and the Nutting-Rice warehouse. The Tracy Biomass power plant is approximately 0.6 miles to the northwest.

The Tracy Peaker Project will consist of the power plant, two onsite 115-kilovolt switchyards, an onsite natural gas supply interconnection, an onsite electric transmission line, an approximately 1,470-foot water supply pipeline, and improvements to an existing dirt access road approximately one mile in length.

The Tracy Peaker Project will use two natural gas fired General Electric Model PG7121 (EA) combustion turbine generators (CTG) operating in simple-cycle mode. The combustion turbines will use a dry-low nitrogen oxide (NOx) combustion system to minimize air emissions. An evaporative cooling system will be installed on the inlet air for use at higher ambient temperatures. Pacific Gas & Electric Company will supply natural gas via an outside interconnection with an existing transmission pipeline. Industrial process water and nonpotable domestic water will be supplied from the Delta-Mendota Canal pursuant to an existing contract with the Plain View Water District. Drinking water for the facility will be provided by a local bottled water vendor.

Project construction will commence immediately following certification with an estimated construction payroll of \$107 million. Project construction will create a peak workforce of about 178 workers over an eight-month period; the project will employ two permanent operational personnel. Applicant has signed a 10-year contract with the California Department of Water Resources that provides for the purchase of up to 4,000 hours per year of plant generating capacity. Applicant wishes to retain the flexibility to sell electricity produced by this plant beyond the contracted hours to the California Independent System Operator. The maximum generating capacity of the Tracy Peaker Project is approximately 8,000 hours per year. The project was originally scheduled to be operational in a simple-cycle mode beginning the summer of 2002. This schedule is now unlikely, but Applicant has not provided a revised schedule.

B. SITE CERTIFICATION PROCESS

The Tracy Peaker Project and its related facilities fall within Commission licensing jurisdiction. (Pub. Resources Code, §§ 25500 et seq.). During its licensing proceedings, the Commission acts as the lead state agency under the California Environmental Quality Act [Pub. Resources Code, §§ 25519 (c), 21000

et. seq.]. The Commission's certification process provides a thorough, timely review and analysis of all aspects of a proposed project. During this process, we conduct a comprehensive examination of a project's potential economic, public health and safety, reliability, engineering, and environmental ramifications.

The Commission's process and associated documents are functionally equivalent to the traditional Environmental Impact Report process. (Pub. Resources Code, § 21080.5.) It is designed to allow review of a project to be completed within a limited period of time; a license issued by the Commission is in lieu of other state and local permits.

Significantly, the Commission's process allows for and encourages public participation so that members of the public may become involved either informally, or on a more formal level as Intervenor with the same legal rights and duties as the project developers. Public participation is encouraged at every stage, and our process requires substantially more opportunities for public participation and review than does the traditional CEQA process. Moreover, as explained in subsequent portions of this document, we have fully and fairly examined the positions formally espoused by various Intervenor and members of the public. On balance, we believe that the participation of the public has resulted in a painstaking scrutiny of the Applicant's proposal, as well as the development of Conditions of Certification which extensively reduce and safeguard against potential project impacts.

The certification process begins when an Applicant submits the Application for Certification (AFC). Commission staff reviews this submission, and recommends to the Commission whether or not the accompanying information is adequate to permit formal review to commence. Once the Commission determines that an AFC contains sufficient analytic information, it appoints a Committee of two Commissioners to conduct the licensing process.

The initial portion of the certification process is weighted heavily toward ensuring public awareness of the proposed project and obtaining such further technical information as is necessary. The Office of the Public Adviser is available to inform members of the public concerning the certification proceedings, and to assist those interested in participating. During this phase, the Commission staff sponsors numerous public workshops at which Intervenors, agency representatives, and members of the public meet with Staff and Applicant to discuss, clarify, and negotiate pertinent issues. Staff publishes its initial technical evaluation of a proposed project in the Preliminary Staff Assessment (PSA), which is made available for public comment. Staff's responses to public comment on the PSA and its complete analysis are published in the Final Staff Assessment (FSA).

The Committee also conducts various public events, including at least one Prehearing Conference, to assess the adequacy of available information, identify issues, and determine the positions of the various participants. Information gleaned from these events forms the basis for a Hearing Order organizing and scheduling formal Evidentiary Hearings. At these hearings, all formal parties are able to present testimony, under oath or affirmation, which is subject to cross-examination by other parties and to questioning by the Committee. The public may also comment on a proposed project at these hearings. Evidence adduced during these hearings provides the basis for the Committee's analysis.

This analysis, in turn, appears in a Committee recommendation to the full Commission in the form of a Presiding Member's Proposed Decision (PMPD), which is available for a public review period of at least 30 days. This document provides the Committee's recommendation to the full Commission concerning a project's ultimate acceptability. The PMPD also determines a project's conformity with applicable laws, ordinances, regulations, and standards. Depending upon the extent of revisions necessary in reaction to comments received on the PMPD, the Committee may elect to publish a revised version. If

so, this latter document triggers an additional 15-day public comment period. Finally, the full Commission decides whether to accept, reject, or modify the Committee's recommendations at a public hearing.

Throughout the licensing process, the members of the Committee, and ultimately the Commission, serve as fact-finders and decision-makers. Other parties, including the Applicant, Staff, and formal Intervenors function independently and with legal status equal to one another. An "ex-parte" rule prohibits parties from communicating on substantive matters with the decision-makers, their staffs, or assigned hearing officer unless these communications occur on the public record.

C. PROCEDURAL HISTORY

The Public Resources Code (§§ 25500 et seq.) and Commission regulations (20 Cal. Code of Regs., §§ 1701, et seq.) mandate a public process and specify the occurrence of certain necessary events. The key procedural elements occurring during the present case are summarized below.

On August 16, 2001, GWF Energy LLC (Applicant) filed an Application for Certification (AFC) with the Energy Commission to seeking approval to construct and operate the Tracy Peaker Project. Applicant sought review under the four-month expedited review process established by the Governor's Executive Orders D-26-01 and D-28-01 and Public Resources Code section 25552, as amended by Senate Bill 28 (Chap. 12, Stats. 2001). The Commission found the AFC data adequate on October 17, 2001, and appointed a Committee to conduct proceedings on the AFC.

On October 17, 2001, as a necessary prerequisite to accepting Applicant's AFC as data adequate, the Energy Commission also adopted Resolution No. 01-1017-02, which suspended two requirements imposed by Public Resources

Code section 25552. In the absence of the waivers contained in Resolution No. 01-1017-02 the Tracy Peaker Project would not have qualified for the expedited four-month review process. On November 9, 2001, based on the waivers established in the Resolution, the Committee granted Applicant's request for an expedited decision pursuant to Public Resources Code section 25552, subject to timely provision of necessary information and compliance with Air District requirements.

On November 14, 2001, the full Commission considered a Petition for Reconsideration of Resolution 01-1017-02. On December 5, 2001, the Commission unanimously voted to rescind its Resolution No. 01-1017-02. On December 11, 2001, the Committee ordered that the Tracy Peaker Project AFC be processed under the provisions of Public Resources Code section 25540.6, which governs the 12-month review process.

The Committee scheduled its initial public event, an "Informational Hearing and Site Visit," by notice dated November 2, 2001. This notice was sent to all known or expected to be interested in the proposed project, including the owners of land adjacent to, or in the vicinity of, the Tracy Peaker Project. Notice of the Hearing was also published in the Tracy Press.

The Committee conducted the Informational Hearing in Tracy on November 28, 2001. At this event, the Committee and other participants discussed the proposed Tracy Peaker Project, described the Commission's review process, and explained opportunities for public participation. The parties also toured the site where the Tracy Peaker Project will be situated.

Over the course of the next several months, Staff held various public events to assess the status of the project, including submission of necessary information by Applicant. Staff held the first of its public workshops on November 20, 2001, in Tracy. A second workshop was held on January 9, 2002, in Tracy. The

workshops covered technical areas such as Air Quality, Soil and Water Resources, Biological and Cultural Resources, Socioeconomics, Traffic and Transportation, Visual Resources, Hazardous Materials and Waste Management.

In addition to these workshops, coordination occurred with the local, state, and federal agencies that have an interest in the Tracy Peaker Project, including the City of Tracy, San Joaquin County, the California Independent System Operator, San Joaquin Valley Air Quality Management District, the U.S. Fish and Wildlife Service, the Department of Fish and Game, the Native American Heritage Commission, and the San Joaquin Council of Governments, as well as numerous Intervenors and the interested residents of the community.

On December 11, 2001, the Committee issued an order that contained a schedule for processing the AFC. Pursuant to the Committee schedule Commission Staff released its Preliminary Staff Assessment on December 28, 2001.

On January 7, 2002, the Committee issued a Notice of Prehearing Conference and Revised Committee Schedule. The Prehearing Conference was held on January 24, 2002. The purpose of the conference was to assess the status of the case, determine whether substantive issues required adjudication, and discuss the process and procedures to be utilized during the Evidentiary Hearings.

Staff Assessment Supplement I was filed on January 22, 2002. Staff Assessment Supplement II was filed on February 1, 2002. The Committee conducted Evidentiary Hearings in Tracy on March 6, 7, 8, 13, 14, and 28, 2002. At these publicly noticed hearings all parties were afforded the opportunity to present evidence, cross examine witnesses, and to rebut the testimony of other parties, thereby creating an evidentiary record which forms the basis for the Commission Decision. The hearings before the Committee also allowed all

parties to argue their positions on disputed matters and provided a forum for the Committee to receive comments from the public and other governmental agencies.

During the review process, the Committee issued orders and made rulings on various motions and issues. On March 21, 2002, the Committee issued a ruling denying Intervenor Sarvey's Demand to Correct or Cure Violations of the Bagley-Keene Open Meeting Act. Sarvey alleged that the Committee's Hearing Order and Filing Schedule violated the notice requirements of the Open Meeting Act. The Committee ruled no violations of the Act had occurred.

Intervenors in the Tracy proceeding included the California Unions for Reliable Energy (CURE), Robert Sarvey, Irene Sundberg, Charles Tusso, James M. Hooper, Larry Cheng, Dennis C. Noble, Esq., Ena Aguirre, and the City of Tracy.

After reviewing the evidentiary record, the Committee published its Presiding Member's Proposed Decision (PMPD) on May 31, 2002. The 30-day comment period on the PMPD will end on July 1, 2002.

The Committee will conduct a public conference on, July 2, 2002, in Tracy to receive comments on the PMPD. After considering these comments, the Committee will then recommend Commission consideration of the PMPD.