



DATE: September 26, 2003

TO: Interested Parties

FROM: Jeri Scott, Compliance Project Manager

**SUBJECT: Valero Cogeneration Project (01-AFC-05C)
Staff Analysis of Proposed Project Modification
Extend on line date for Phase II**

On November 22, 2002, the California Energy Commission (Energy Commission) received a petition from the Valero Refining Company – California (Valero) seeking approval to extend the on-line date for Phase 2 of the Valero Cogeneration Project (VCP). VCP is a nominal 102 MW gas-fired cogeneration power plant located on the site of the Valero Refinery in the City of Benicia in Solano County.

The proposed modification will allow Valero to extend the on line date for Phase 2 from December 31, 2002 to November 1, 2005. The Energy Commission staff reviewed the proposed petition and assessed the impacts of Valero's proposal on environmental quality and public health and safety, and proposes revisions to Condition of Certification GEN-10.

It is the Energy Commission staff's opinion that with the extension of the on line date for Phase 2 the project will remain in compliance with applicable laws, ordinances, regulations, and standards. Additionally, the proposed project modification will not result in a significant adverse direct or cumulative impact to the environment.

The analysis completed by the Energy Commission staff is attached for your information and review. The Energy Commission staff intends to recommend approval of the petition at the October 22, 2003 Business Meeting of the Energy Commission. If you have comments on the proposed project change, please submit them to me at the above address prior to October 13, 2003. If you have any questions, please call me at (916) 654-4228 or e-mail me at jscott@energy.state.ca.us.

Attachment

**REQUEST TO AMEND VALERO COGENERATION PROJECT
(VALERO COGEN) (O1- AFC-05)
PROJECT OPERATION REQUIREMENT ANALYSIS**

AMENDMENT REQUEST

On November 22, 2002, the Valero Refining Company – California (Valero), filed a petition to modify the language in Condition of Certification GEN-10. Specifically, Valero is seeking approval to extend the on-line date for Phase II of the Valero Cogeneration Project (VCP) from December 31, 2002 to November 1, 2005.

On June 2, 2003, Valero submitted a supplemental filing to provide additional information in order for staff to complete their analysis of this petition.

BACKGROUND

VCP is a nominal 102 MW gas-fired cogeneration power plant located on the site of the Valero Refinery in the City of Benicia in Solano County. The project, certified on October 31, 2001, was designed to be constructed in two 51-MW phases, with both phases scheduled to be on line no later than December 31, 2002.

Phase 1 was proposed to alleviate total dependency on the grid to provide electricity for the refinery. However, Phase 2 would be operated to sell electricity to the grid for distribution. Phase 1 was constructed on schedule and commenced commercial operation on December 31, 2002, Phase 2 was not constructed. However, Valero has completed site grading, retaining walls, building relocations, road relocations, and soil inspections for Phase 2. The following items are also in place to accommodate the construction of Phase 2:

1. water treatment facilities, cooling water capacity and chilled water pumps and the electrical powerhouse are in place;
2. instrument cable is relocated; and
3. the utilities (storm sewers, firewater, steam, water, air, nitrogen, and relief system) and fuel lines.

LAWS, ORDINANCES, REGULATIONS, AND STANDARDS

There are no laws, ordinances, regulations and standards that pertain to this condition.

ANALYSIS

General Condition 10 (GEN-10) of the Valero Decision requires the Energy Commission to conduct a hearing if both phases of the project are not operational by December 31,

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2002 to determine the cause of the delay and consider what actions, if any, are appropriate.

GEN-10 further states that if the Energy Commission finds that the project owner, without good cause, failed to have all portions of the project in operation by December 31, 2002; the Energy Commission may deem that the project owner has forfeited its certification as to the portions of the project not in operation by December 31, 2002.

Valero states in their petition that during the siting process they stated that any commitment to complete Phase 2 was contingent on Valero's funding decisions, electricity market conditions, and resolution of any legislative and/or regulatory uncertainties.

Initially, Valero proposed to file separate applications for each phase, a four-month expedited process application for Phase 1 in response to Executive Order Number D-26-01, and a standard 12-month process application for Phase 2. A special requirement under the four-month process was that commercial operation would commence before the end of December 2002. Commission staff encouraged Valero to combine both applications into a single four-month process application and Valero cooperated with staff's request.

Although processed as a four-month application, the VCP was ultimately approved as a regular 12-month application with special waivers of certain minimum time limits that were not met because of the reduced time frame. Nonetheless, the special requirement that operation commence before the end of 2002 was applied as a condition of approval.

Valero further states in the original petition and in the supplemental filing received on June 2, 2003, that:

1. significant financial and regulatory uncertainty has beset the California electricity markets, and making a final business decision to commit Valero's resources to Phase II is imprudent at this time;
2. the project with an extended completion date would continue to meet all applicable laws, ordinances, regulations, and standards;
3. an extension does not impose any new environmental impacts;
4. the extension would have no impact on adjacent property owners, the public or other parties to this proceeding beyond those already considered in the current Commission Decision; and
5. the Bay Area Air Quality Management District (BAAQMD) Application to Construct (ATC) permit currently expires on November 1, 2003, but can be administratively renewed through November 1, 2005. Valero anticipates that upon Energy Commission approval of the extension, the BAAQMD will agree to the two-year extension of the ATC permit.

Valero contends that an extension will allow more time to consider the viability of Phase 2 given the uncertainty of price and opportunity of sales of the surplus energy the project would generate.

PUBLIC COMMENTS

Staff received e-mail comments from Mr. Robert L. Craft, a member of the public, on December 31, 2002, regarding the Valero petition. Following are Mr. Craft's comments with staff's responses:

Comment - "... any approval for extension should not modify or in any way extend the mitigation requirement in the original approval whereby Valero – within 30 months was charged with implementing a wastewater reuse and/or water use reduction program to offset the amount of water used by the project, using either refinery wastewater or City of Benicia's treated wastewater. Moreover, the 30-month timeline should be considered as beginning on the date that phase one of the project began routinely supplying power for refinery operations."

Staff Response – Valero is required by Water Resources Condition 2 (WATER RES-2) of the Commission Decision for the Valero Cogen to implement a wastewater reuse program and/or a water use reduction program. Valero, with the consultation of the City of Benicia, is currently developing the program. WATER RES-2 further requires Valero to submit, to the CPM for review and approval, a draft copy of the plan on or before October 31, 2003. The plan should be ready for implementation by April 2004.

Comment - ".....if this extension (until November 2005) is granted, no further extension should be granted if phase 2 is not then fully operational; project approval for the second phase should expire at that time. Subsequently, any further project work should undergo a full review process."

Staff Response – If the Energy Commission approves this petition and Valero is unable to meet the November 2005 on-line date for Phase 2, our regulations would allow for Valero to file another petition to request an additional extension. However, Valero would have to demonstrate that the petition meets the criteria set down in section 1769 of our regulations (attached). The decision to grant an additional extension would rest with the Energy Commission.

CONCLUSION

Staff believes, based on the following, that Valero has shown good cause for not constructing Phase 2:

1. Phase 1, which comprises one half of the project, was constructed and was operational by the December 31, 2002, deadline.
2. Valero cooperated with staff during the certification process by agreeing to combine the two phases of the project into one application.

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3. there will be no potential for environmental impacts because the site is already prepared;
4. the BAAQMD will likely administratively extend the ATC to November 2005 because there have not been any changes to the applicable regulations nor for the best available control technology (BACT) for this project;
5. electricity market uncertainty has made it difficult for Valero to commit resources to Phase II at this time.

Staff further believes that, per the October 31, 2001 Commission Decision for VCP, Valero will establish construction milestones, with the CPM, for Phase 2, within 30 days following approval of the petition.

Staff recommends that the Commission approve Valero's petition to extend the on-line date of Phase 2 from December 31, 2002 to November 1, 2005 by modifying the language in GEN-10 as follows:

Project Operation Requirement

Phase I (51 MW) of the Valero Project shall be on line by no later than December 31, 2002. Phase II (51 MW) of the Valero Project ~~is planned to~~ **shall** be on line no later than ~~December 31, 2002~~ **November 1, 2005**. ~~If either phase of the project is not fully operational by December 31, 2002, the Energy Commission will conduct a hearing to determine the cause of the delay (unless the project owner waives the right to such a hearing, in which case the certification for the phase or phases not fully operational shall be forfeited) and consider what actions, if any, are appropriate.~~

~~If the Energy Commission finds that the project owner, without good cause, failed to have all portions of the project in operation by December 31, 2002, the Energy Commission may deem that the project owner has forfeited its certification as to the portions of the project not in operation by December 31, 2002.~~

§ 1769. Post Certification Amendments and Changes.

(a) Project Modifications

(1) After the final decision is effective under section 1720.4, the applicant shall file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements. The petition must contain the following information:

(A) A complete description of the proposed modifications, including new language for any conditions that will be affected;

(B) A discussion of the necessity for the proposed modifications;

(C) If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time;

(D) If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted;

(E) An analysis of the impacts the modification may have on the environment and proposed measures to mitigate any significant adverse impacts;

(F) A discussion of the impact of the modification on the facility's ability to comply with applicable laws, ordinances, regulations, and standards;

(G) A discussion of how the modification affects the public;

(H) A list of property owners potentially affected by the modification; and

(I) A discussion of the potential effect on nearby property owners, the public and the parties in the application proceedings.

(2) Within 30 days after the applicant files a petition pursuant to subsection (a)(1) of this section, the staff shall review the petition to determine the extent of the proposed modifications. Where staff determines that there is no possibility that the modifications may have a significant effect on the environment, and if the modifications will not result in a change or deletion of a condition adopted by the commission in the final decision or make changes that would cause the project not to comply with any applicable laws, ordinances, regulations, or standards, no commission approval is required and the staff shall file a statement that it has made such a determination with the commission

docket and mail a copy of the statement to each commissioner and every person on the post-certification mailing list. Any person may file an objection to staff's determination within 14 days of service on the grounds that the modification does not meet the criteria in this subsection.

(3) If staff determines that a modification does not meet the criteria in subsection (a)(2), or if a person objects to a staff determination that a modification does meet the criteria in subsection (a)(2), the petition must be processed as a formal amendment to the decision and must be approved by the full commission at a noticed business meeting or hearing. The commission shall issue an order approving, rejecting, or modifying the petition at the scheduled hearing, unless it decides to assign the matter for further hearing before the full commission or an assigned committee or hearing officer. The commission may approve such modifications only if it can make the following findings:

(A) the findings specified in section 1755 (c), and (d), if applicable;

(B) that the project would remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code section 25525;

(C) that the change will be beneficial to the public, applicant, or intervenors; and

(D) that there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not known and could not have been known with the exercise of reasonable diligence that was not available to the parties prior to Commission certification.

(4) The staff shall compile and periodically publish a list of petitions filed under this section and their status.

(b) Change in Ownership or Operational Control

(1) A petition to transfer ownership or operational control of a facility shall contain the following information:

(A) A discussion of any significant changes in the operational relationship between the owner and operator;

(B) A statement identifying the party responsible for compliance with the commission's conditions of certification; and

(C) A statement verified by the new owner or operator in the same manner as provided in Section 1707 that the new owner or operator understands the conditions of certification and agrees to comply with those conditions.

(2) The commission may approve changes in ownership or operational control after fourteen days notice.

NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25523, 25532 and 25534, Public Resources Code.