

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 01-AFC-5
)	
Application For Certification of the)	ENERGY COMMISSION
VALERO COGENERATION PROJECT)	STAFF'S COMMENTS
)	ON QUALIFICATION
)	FOR 4-MONTH REVIEW
_____)	

In response to the Presiding Member's Proposed Decision (PMPD) dated August 30, 2001, the Energy Commission staff submits the following comments specific to the issue of the appropriate procedure for review of the Valero Cogeneration Project Application for Certification. Staff will be filing additional comments on the remainder of the PMPD in a separate document.

The PMPD, in the proposed adoption order at page 233, finds:

7. The proceedings leading to this Decision have been conducted in conformity with the applicable provisions of Commission regulations governing the consideration of an Application for Certification and thereby meet the requirements of Public Resources Code, sections 21000 et seq., and 25500 et seq. Since the project's submitted configuration has at all times been cogeneration, this Decision is not made pursuant to Public Resources Code, section 25552.

Staff does not find support for that finding in the record or applicable law and respectfully requests that the Committee review and revise that finding and include the Staff's proposed Special Findings for the reasons set forth below.

The Valero AFC was found to be complete and therefore accepted for processing on June 6. Valero requested, and staff recommended to the Commission, that the AFC be processed under the Commission's 4-month review process, established in Public Resources Code Section 25552¹. Subsection 25552(b)(2) requires that "within 25 days of determining that an application is complete, the commission, or a committee of the commission, shall determine whether the application qualifies for an expedited decision

¹ Unless otherwise noted, all subsequent references are to the Public Resources Code.

pursuant to this section." On June 26, Staff filed its Issue Identification Report which, among other things, recommended "that the Committee find that the project continues to qualify for the four-month process." The Committee took no action within the 25 day period or at any time prior to the issuance of the PMPD, either to confirm that the project remained in or was removed from the 4-month process. Absent instruction to the contrary, staff processed the project along the timeline it proposed in the Issue Identification Report, culminating in an evidentiary hearing on August 20 and the release of the PMPD on August 30, 85 days after acceptance of the application as complete. The only mention regarding the project's qualification for the 4-month process in the PMPD is in Finding 7, above.

The hearings before the Committee are not yet complete as hearings on the Air Quality section of the Staff Analysis were postponed until September 28 due to delays in the release of the Preliminary and Final Determinations of Compliance by the Bay Area Air Quality Management District. A hearing before the full Energy Commission on the PMPD has been scheduled on October 3.

Finding 7 concludes that it is possible to bring the application before the full Energy Commission on the current schedule (October 3) under the Commission's general review process without the application of the special 4-month process described in Section 25552. Staff disagrees. First, Section 25521 provides, "No earlier than 90 nor later than 240 days after the date of the filing of an application, the commission shall commence a public hearing or hearings thereon. . . ." Here the initial evidentiary hearing was held only 75 days after filing.² Second, the Commission's regulations require a minimum 30-day period between issuance of a PMPD and action by the full Commission.³ They also specify that a PMPD is to be issued after the conclusion of the hearings and the 30-day

² Pursuant to Section 25522, an application is "filed" when it is found to be complete.

³ (a) At the conclusion of the hearings, the presiding member, in consultation with the other committee members shall prepare a proposed decision on the application based upon evidence presented in the hearings on the application. The proposed decision shall be published and within 15 days distributed to interested agencies, parties, and to any person who requests a copy. The presiding member shall publish notice of the availability of the proposed decision in a newspaper of general circulation in the county where the site is located.

(b) Any person may file written comments on the presiding member's proposed decision. The presiding member shall set a comment period of at least 30 days from the date of distribution.

Cal.Code.Reg., tit. 20, §1749

Adoption hearings on the presiding member's proposed decision or the revised proposed decision, if any, shall be held before the full commission after the comment period on the presiding member's proposed decision. . .

Cal.Code.Reg., tit. 20, §1754(a)

comment period begins at that issuance. Though issued on August 30, the PMPD cannot be said to start the 30 day comment period until it is revised to reflect and respond to the evidence given at the upcoming hearings. As those hearings will conclude no sooner than September 28, the full Commission cannot, under the standard procedures, consider the decision on October 3rd.

Although the Commission's standard review process does not appear to allow consideration of the AFC on the schedule being followed by the Committee,⁴ the 4-month process (Section 25552) proposed by staff at the outset does provide a legally acceptable alternative. Staff believes that the Valero Cogeneration Project does indeed qualify for consideration under Section 25552. In the Executive Summary of the Staff Analysis, staff has proposed seven special findings which address the applicability of the 4-month process. Because the Committee has focused on the question whether the project is a "simple cycle electricity generator," we discuss that question in further detail and refer the Committee to the Executive Summary for the other elements.

The proposed facility consists of two gas turbines, each of which will be connected to a heat recovery steam generator at or shortly after the time they are commissioned. The turbines generate electricity in simple-cycle mode for use in the refinery and elsewhere and the HRSGs generate steam for use in refinery processes. In effect, the turbines immediately satisfy Section 25552's requirement that a simple cycle generator be converted to combined cycle or cogeneration within 3 years of approval. By doing so immediately, it is suggested, they aren't simple cycle in the first place and therefore don't qualify for the expedited review under Section 25552. Staff believes that the prerequisites for qualification for the 4-month process should be liberally interpreted in favor of facilitating the expeditious approval of this project in light of the Legislature's policy statement in Section 25004.2:

The Legislature further finds that cogeneration technology is a potential energy resource and should be an important element of the state's energy supply mix. The Legislature further finds that cogeneration technology can assist meeting the state's energy needs while reducing the long-term use of conventional fuels, is readily available for immediate application, and reduces negative environmental impacts. The Legislature further finds that cogeneration technology is important with respect to the providing of a reliable and clean source of energy within the

⁴ We do not purport that the above impediments are the sole obstacles faced in trying to fit the proposed timetable into the regular siting process.

state and that cogeneration technology should receive immediate support and commitment from state government.

A liberal interpretation of Section 25552 is, moreover, consistent with the Governor's Executive Orders regarding California's energy emergency in which the Commission is authorized to suspend restrictions in that Section "to the extent that they would prevent, hinder, or delay the prompt mitigation of the effects of this [energy] emergency."⁵ To penalize the project for immediately coming into full compliance with the requirements of 25552—operating as a cogeneration facility without adverse effects on the environment or the electrical distribution system—seems shortsighted in this time of energy emergency.

Conclusion. For the reasons cited above, Staff requests that the Committee modify its decision to include the staff proposed special findings which support the conclusion that the application qualifies for the 4-month review process.

DATED: September 20, 2001

Respectfully submitted,

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⁵ Executive Order D-26-01, February 8, 2001.