

Memorandum

Date: February 15, 2008
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To: Vice Chair James Boyd, Presiding Member
Chairman Jackalyne Pfannenstiel, Associate Member

From: California Energy Commission – John S. Kessler
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Project Manager

Robert Work For JSK

DOCKET 07-AFC-1	
DATE	FEB 15 2008
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Subject: **VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-1) STATUS REPORT 2**

The following is staff's Status Report 2 for the proposed Victorville 2 Hybrid Power (Victorville 2) Project.

Current Issues and Activities for Resolution

Staff is continuing the analysis phase of the Application for Certification (AFC) process for the proposed Victorville 2 Project. The Preliminary Staff Assessment (PSA) was published on November 21, 2007 and identified issues in Air Quality and Water Resources which have since been resolved. Staff continues working to bring closure to habitat compensation issues related to special-status animal species addressed in the Biological Resources section, and to obtain Federal Aviation Administration (FAA) determination regarding the potential for the project to cause a hazard to air navigation as discussed in Traffic and Transportation. The following is a summary of the status of these issues and staff's resolution efforts since the publication of the PSA.

Air Quality

1. Final Determination of Compliance (FDOC) - The Mojave Desert Air Quality Management District (MDAQMD) issued their Final Determination of Compliance (FDOC) on January 10, 2008. The FDOC finds the project in conformance with all MDAQMD regulations.
2. Interpollutant, Inter-basin Emission Reduction Trading – The project will rely on interpollutant, inter-basin trading of emission reductions from South Coast Air Quality Management District (SCAQMD) to MDAQMD in accordance with both of their regulations and state and federal laws. The applicant proposes to use volatile organic compound (VOC) Priority Reserve Credits (PRCs) from the SCAQMD to mitigate the facility's ozone precursor emissions of oxides of nitrogen (NOx) and VOCs. The basis for this mitigation is that the ozone air quality standard violations in the Mojave Desert area are predominantly caused by ozone precursor emissions from the South Coast Air Basin. Staff previously expressed concerns as to whether the proposed quantity of PRCs was adequate and if the methodology for determining the quantity and trading ratio was appropriate. Staff is currently satisfied with the applicant's proposal for both of these issues.

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3. Offsetting Particulate Matter (PM) Emissions by Paving of Roads – The applicant has proposed, and MDAQMD has approved, offsetting particulate matter (PM) emissions by the paving of roads in accordance with MDAQMD's Rule 1406.
4. Related CEQA Litigation - Legal challenges are currently pending to the California Environmental Quality Act (CEQA) environmental analysis performed by the SCAQMD for its Priority Reserve Rule 1309.1 and to MDAQMD's Rule 1406. Both sets of rules remain in effect unless a court rules that the CEQA analysis was inadequate.

Biological Resources

1. Habitat Compensation for Special-Status Species

1. At the times of the publication of the Issues Identification Report (May 2007) and the PSA (November 2007), staff had incomplete information regarding the California Department of Fish & Game's (CDFG) expectations on the habitat compensation ratio for special status species. Since then, the following issue has emerged which may remain unresolved after publication of the Final Staff Assessment (FSA). The applicant, Commission staff, and CDFG staff are currently discussing the appropriate level of compensation for impacts to desert tortoise, Mohave ground squirrel, and to burrowing owls and their habitat. Staff and the California Department of Fish and Game (CDFG) believe that impacts to these three species should be compensated at a ratio of 3:1. The applicant believes habitat compensation should occur at a ratio of 1:1. The applicant has identified possible sites that could serve as habitat compensation. Although staff, CDFG staff and the applicant continue to share information supporting their respective positions, it is likely that this issue will be contested and addressed in the evidentiary hearing.
2. Inclusion of CDFG Incidental Take Permit Requirements in the FSA – The California Fish and Game Code authorizes the CDFG to issue "incidental take permits" or "ITPs" for projects, which allows project developers to "take" a member of a state-listed species during otherwise lawful activities. However, Public Resources Code section 25500 states that the issuance of a certificate by the Energy Commission certifying a power plant is in lieu of any permit, certificate, or similar document required by any state agency and shall supersede any applicable statute or regulation of any state agency. In this regard, staff is incorporating the requirements for an ITP (were one to be issued for the project) into its FSA for Victorville 2, rather than requiring the applicant to secure an ITP directly from CDFG. This effort involves close and careful coordination with the CDFG staff on mitigation and enforcement measures to be proposed by the two staffs.
3. Desert Tortoise Translocation Plan and U.S. Fish & Wildlife Service Biological Opinion - The applicant's tortoise translocation plan remains outstanding and is needed for the U.S. Fish and Wildlife Service to complete its Biological Opinion for the project. Staff's understanding is that the Biological Opinion would need to be granted in order to move desert tortoises prior to ground disturbance. The timing for the U.S. Fish & Wildlife

Service to issue their Biological Opinion is uncertain at this time. Staff is working with the U.S. Fish and Wildlife Service to encourage them to complete their review in a timely manner.

Traffic and Transportation

1. **Federal Aviation Administration (FAA) Determinations of No Hazard to Air Navigation** – The applicant has filed five Notices of Proposed Construction or Alteration with the FAA. The FAA has responded on two of the five notices, issuing Determinations of No Hazard to Air Navigation applicable to the cooling tower and solar field. Three additional determinations remain for the FAA regarding the height and potential for obstructive hazard of two construction cranes and the exhaust stacks for the Heat Recovery Steam Generators. Until the FAA issues these determinations, staff is unable to conclude that the project will avoid causing a hazard to air navigation. Staff and the applicant are trying to track the status and schedule of FAA's review and their determination, and at this time the FAA's schedule is uncertain.

Water Resources

1. **Reclaimed Water and Groundwater** – The Victorville 2 Project proposes to use reclaimed water for process needs including cooling as produced at the Victor Valley Water Reclamation Authority's (VWRA) Shay Road facility. In the PSA, staff expressed concern that the Mojave Groundwater Basin is in overdraft condition. Staff needed to confirm its preliminary conclusion that the project's use of excess reclaimed water would neither adversely impact the use of reclaimed water to help restore flows to the Mojave River nor compromise attainment of the objectives delineated in the Memorandum of Understanding between the CDFG and VWRA. Staff was able to obtain additional information from the applicant and local water agencies during the December 11, 2007 PSA Workshop, and has since concluded that the project's use of reclaimed water would be in conformance with applicable laws, ordinances, regulations and standards (LORS) and would not cause a significant adverse impact.
2. **Stormwater** – In the PSA, staff identified inconsistencies in the applicant's pre- and post-development runoff calculations, and had identified the need for a sediment/stormwater retention facility in the solar field. The applicant has since revised its plans, and staff is satisfied that the project's management of stormwater will comply with LORS and will not cause a significant adverse impact.

Schedule

Staff plans to complete the FSA on or before March 12, 2008. The publication of the FSA by this date would allow adequate time to meet the proposed hearing date of April 3, 2008, since the Energy Commission's regulations require a minimum of 14 days from the time of FSA publication to when evidentiary hearings are scheduled (Cal. Code Regs., tit. 20, §1747).

The applicant has communicated to staff its need for obtaining certification of the Victorville 2 Project by May 2008 in order to construct the project and to become commercially operational by summer 2010. Without project certification and the applicant's submittal of a translocation plan to complete the Biological Opinion by May 2008, the applicant would be unable to translocate desert tortoise from the proposed project site to either a temporary holding area or a permanent location before climate conditions become lethal to desert tortoise due to high temperatures. The applicant would then need to wait until desert temperatures decrease in late fall, before the desert tortoise could be translocated, a critical step that must precede ground disturbance. The applicant has also entered into a contract with General Electric (GE) to supply the project's turbine-generating equipment and is concerned about potential delays to the project schedule if it were to lose its place in GE's queue for manufacturing this equipment. The applicant has also indicated that they would incur penalties under this contract if there were to be delays in the construction schedule.

The following table summarizes the Committee's initial schedule in comparison to staff's currently-projected schedule. The schedule has been updated to reflect the anticipated completion date of the FSA and in anticipation of the earliest available evidentiary hearing date of April 3, 2008.

**Committee's Initial & Staff's Projected Schedule
 Victorville 2 Hybrid Power Project**

Committee's Initial Schedule	Staff's Projected Schedule	Event
April 11, 2007	April 11, 2007	AFC data adequate
June 8, 2007	June 8, 2007	Informational Hearing and Site Visit
N/A	June 22, 2007	Staff transmits Data Request Set 1
July 12, 2007	July 23, 2007	Applicant provides Data Responses – Set 1
July 27, 2007	July 27, 2007	Parties file Status Report 1
July 25, 2007	August 8, 2007	Data Response and Issue Resolution Workshop 1
August 9, 2007	August 29, 2007	Local, state and federal agency draft determinations and Air District PDOC
September 10, 2007	November 21, 2007	Staff files Preliminary Staff Assessment (PSA)
September 27, 2007	December 11, 2007	PSA Workshop
October 9, 2007	January 10, 2008	Local, state and federal agency final determinations and Air District FDOC
November 9, 2007	March 12, 2008	Staff files Final Staff Assessment (FSA)
N/A	April 3, 2008	Evidentiary Hearings
N/A	To Be Determined	Presiding Member's Proposed Decision
April 11, 2008	To Be Determined	Commission Decision

Proof of Service List
 Dockets

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE
STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION
FOR THE VICTORVILLE 2
HYBRID POWER PROJECT

Docket No. 07-AFC-1
PROOF OF SERVICE
(Revised 9/6/07)

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

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DECLARATION OF SERVICE

I, April Esau, declare that on February 15, 2008, I deposited copies of the attached Victorville 2 Hybrid Power Project (07-AFC-1) Status Report 2 in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.


April Esau