

Memorandum

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To: Commissioner Julia Levin, Presiding Member
Commissioner Jeffrey Byron, Associate Member

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From: California Energy Commission - Craig Hoffman
1516 Ninth Street Siting Project Manager
Sacramento, CA 95814-5512

Subject: **Mariposa Energy Project (09-AFC-3)**
ISSUES IDENTIFICATION REPORT

Attached is staff's Issues Identification Report for the Mariposa Energy Project. This report serves as a preliminary scoping document that identifies issues that Energy Commission staff believes will require careful attention and consideration. Energy Commission staff will present the issues report at the Informational Hearing and Site Visit to be held on October 1, 2009.

This report also provides a proposed schedule pursuant to the 12-month Application for Certification (AFC) process, with a footnote discussion of staff's current workload.

Attachment

cc: Proof of Service List
Docket 09-AFC-3

MARIPOSA ENERGY PROJECT

(09-AFC-3)

ISSUES IDENTIFICATION REPORT

CALIFORNIA ENERGY COMMISSION

Siting, Transmission and Environmental Protection Division

ISSUES IDENTIFICATION REPORT Mariposa Energy Project

(09-AFC-3)

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ISSUES IDENTIFICATION REPORT

Energy Commission Staff Report

PURPOSE OF THE REPORT

This report has been prepared by the California Energy Commission staff to inform the Committee and all interested parties of the potential issues that have been identified in the case thus far. These issues have been identified as a result of our discussions with federal, state, and local agencies, and our review of the Mariposa Energy Project Application for Certification (AFC) and the AFC Supplement. The Issues Identification Report contains a project description, summary of potentially significant environmental and engineering issues, and a discussion of the proposed project schedule. The staff will continue to address the status of issues and progress towards their resolution in periodic status reports to the Committee.

PROJECT DESCRIPTION

The Mariposa Energy Project (MEP) would be a natural-gas fired, simple cycle peaking facility with a generating capacity of 200-megawatts (MW). The project proposes to operate on average, 600 hours per year. The proposed project site is in northeastern Alameda County, in an unincorporated area designated for Large Parcel Agriculture by the East County Area Plan. The site is located approximately 7 miles northwest of Tracy, 7 miles east of Livermore, 6 miles south of Byron, and approximately 2.5 miles west of the community of Mountain House in San Joaquin County.

The facility would be located southeast of the intersection of Bruns Road and Kelso Road on a 10-acre portion of a 158-acre parcel (known as the Lee Property) immediately south of the Pacific Gas and Electric Company (PG&E) Bethany Compressor Station and 230-kilovolt (kV) Kelso Substation. The proposed power plant site is located in the southern portion of the Lee Property. The existing, unrelated 6.5 MW Byron Power Cogen Plant occupies 2 acres of the 158-acre parcel northeast of the MEP site. The remainder of the parcel is non-irrigated grazing land.

Primary equipment for the generating facility would include four General Electric (GE) LM6000 PC-Sprint natural-gas fired combustion turbine generators (CTG) and associated equipment. Power would be transmitted to the grid at 230-kV through a new 0.7-mile transmission line that would connect to the existing Kelso Substation. A new 580-foot natural gas pipeline would connect the project site to PG&E's Line 2, which is an existing high-pressure natural gas pipeline located northeast of the project site. Service and process water would be fresh irrigation water provided from a new connection to the Byron Bethany Irrigation District (BBID) via a new pump station and 1.8-mile pipeline. The MEP is proposing to utilize on average 35 acre feet of water per year. In the event of continuous and maximum permitted operation, the MEP would utilize 187 acre feet of water for 4,000 hours of operation. All domestic wastewater would be routed to an onsite septic system and either discharged to an onsite leach

field or removed via truck for offsite disposal. Stormwater runoff would be detained onsite in an extended detention basin and released according to regulatory standards for stormwater quality control. Air emissions control systems would include a selective catalytic reduction (SCR) system for nitrogen oxides (NOx) control and an oxidation catalyst for carbon monoxide (CO) control.

Temporary construction facilities would include a 5-acre worker parking and laydown area immediately east of the project site, a 1-acre water supply pipeline parking and laydown area located at the BBID headquarters facility, to serve water pipeline construction needs, and a 0.6 acre laydown area along the transmission line route.

If approved, construction of the project would begin in April 2011 and would last for approximately 12 months. Pre-operational testing of the facility would begin in January of 2012 with full-scale commercial operation commencing July, 2012.

POTENTIAL MAJOR ISSUES

This portion of the report contains a discussion of the potential issues the Energy Commission staff has identified to date. The Committee should be aware that this report might not include all of the significant issues that may arise during the case. Discovery is not yet complete, and other parties have not had an opportunity to identify their concerns. The identification of the potential issues contained in this report is based on comments of other government agencies and on our judgment of whether any of the following circumstances could occur:

- Potential significant impacts which may be difficult to mitigate; and
- Potential areas of noncompliance with applicable laws, ordinances, regulations or standards (LORS); and
- Areas of conflict or potential conflict between the parties; and
- Areas where resolution may be difficult or may affect the schedule.

The following table lists all the subject areas evaluated and notes Air Quality and Biological Resources as areas where potentially significant issues have been identified. Identification of an area as having no potential issues does not mean that an issue will not arise related to the subject area during the course of the AFC process.

This report does not limit the scope of staff's analysis throughout this proceeding, but it acts to aid in the analysis of the potentially significant issues that the Mariposa Energy proposal poses. The following discussion summarizes the potential issues, identifies the parties needed to resolve the issues, and where applicable suggests a process for achieving resolution. At this time, staff does not see these potential issues as non-resolvable.

The table on the following page lists all the subject areas evaluated and notes that only Air Quality and Biological Resources have currently identified potentially significant issues.

| Major Issues | Subject Area | Major Issues | Subject Area |
|--------------|------------------------------|--------------|-------------------------------|
| Yes | Air Quality | No | Project Overview |
| No | Alternatives | No | Public Health |
| Yes | Biological Resources | No | Reliability |
| No | Cultural Resources | No | Socioeconomics |
| No | Efficiency | No | Soils and Water Resources |
| No | Facility Design | No | Traffic and Transportation |
| No | Geological Hazards | No | Trans. Line Safety & Nuisance |
| No | Hazardous Materials Handling | No | Transmission System Design |
| No | Land Use | No | Visual Resources |
| No | Noise | No | Waste Management |
| No | Paleontological Resources | No | Worker Safety |

AIR QUALITY

Staff reviewed the application for the Mariposa Energy Project and found potential air quality issues that could delay the Energy Commission review process. The Mariposa Energy Project would be located in the Bay Area Air Quality Management District (BAAQMD or Air District) where existing ozone and particulate matter concentrations exceed the ambient air quality standards.

Staff reviewed the application for the Mariposa Energy Project and found potentially critical air quality issues that may affect the timing and outcome of the licensing process for the Mariposa Energy Project. They include: 1) mitigating particulate matter impacts along with precursor sulfur dioxide impacts; and 2) The Air District's potential extended review period.

Mitigation of Particulate Matter and Precursor Sulfur Dioxide Impacts

The applicant proposes to provide offsets and mitigate for increased emissions of NO_x and VOCs and comply with BAAQMD LORS by securing emission reduction credits (ERC). BAAQMD regulations do not require offsets for particulate matter or sulfur dioxides emissions because the facility would emit less than 100 tons per year (BAAQMD Rule 2-6-212). Any new particulate matter (PM₁₀ and PM_{2.5}) and particulate matter precursor emissions (such as sulfur dioxides) from the project would contribute to existing concentrations of ozone and particulate matter that exceed the ambient air quality standards, if not mitigated. Because the project will also affect air quality in the San Joaquin Valley Air Basin, the San Joaquin Valley Air Pollution Control District (SJVAPCD) may request, and the Energy Commission staff may require, additional specific mitigation for PM₁₀/PM_{2.5} and SO_x to ensure localized benefits to the area impacted directly by the Mariposa Energy Project. A complete package of proposed mitigation, especially for PM₁₀/PM_{2.5}, has not yet been presented by the applicant. Ultimately, the BAAQMD, SJVAPCD, and the Energy Commission staff must agree on the offsets and mitigation proposed by the

applicant. In addition, because the applicant is not required by BAAQMD regulations to provide sulfur dioxide (SO₂) offsets, it is staff's position that the SO_x emissions must be mitigated to avoid additional particulate matter air quality impacts.

Bay Area Air Quality Management District Potential Extended Review Period

Currently, the BAAQMD faces several issues that add to the complexity of environmental review of power plants, which are likely to result in an extended review period and delays in the Energy Commission review process. The issues are relating to the implementation of New Source Review (NSR) procedures for PM_{2.5} and the Air District's evaluation of climate change and greenhouse gas emissions (GHG). The PM_{2.5} attainment status of the Bay Area is in the process of changing, which may affect implementation of NSR provisions for PM_{2.5} and for PM_{2.5} precursors. Since the U.S. EPA has not formally designated the District as an attainment or nonattainment area, the procedure for new analyses of major sources remains unclear and may require a special consideration of how the source, or a combination of sources (including mobile sources) impact PM_{2.5} air quality. Regarding the evaluation of GHG, the Air District is emphasizing the thermal efficiency of power plants, which is a new aspect of its' review.

BIOLOGICAL RESOURCES

Two major issues in the Biological Resources section of the AFC are identified. Both are related to the schedule of providing relevant project-related information. To develop the staff assessment and conditions of certification, staff requires a full understanding of the conditions of approval that will be required under the permits the California Department of Fish and Game would usually grant, but for the Commission's jurisdiction. Similarly, staff needs to understand conditions that a federal agency, the U.S. Fish and Wildlife Service, may require. This requires that applications for these permits, including a federal Section 7 biological assessment, be prepared as the Energy Commission staff biological resources assessment is being prepared.

Timing of Information Provided

AFC Section 5.2.2.5 - Coordination with Regional Habitat Conservation Plans, page 5.2-41, states, "If any of the CNPS (California Native Plant Society) species are detected during protocol-level surveys, avoidance, minimization, and/or mitigation to protect the rare plant population will be addressed in an amendment to this AFC."

Submitting an amendment to the AFC that contains project-related impact avoidance, minimization, and mitigation measures for CNPS-listed plants may result in relevant information arriving at the Commission beyond the timeframe of the staff assessment.

Staff expects to see all impact avoidance, minimization, and mitigation measures for CNPS-listed plants in the rare plant report that is promised in the AFC on page 5.2-18, not in an amendment to the AFC.

Application Submittal to Other Agencies

Table 5.2-9 on page 5.2-54 of the AFC provides a schedule for submitting applications to federal, state, and county agencies for project permits. The state and, generally, county permits would be on an 'in lieu basis' with each agency's conditions incorporated, given the Commission's jurisdiction, whereas the federal permit would still be required as a coordinated but separate item. With a projected construction start date of April, 2011, the information provided in this table shows that the first two permit applications, i.e., a biological assessment for the US Fish and Wildlife Service (USFWS) and an "incidental take permit application" for an "MOU" with California Department of Fish and Game (CDFG), will be submitted in April, 2010, one year before construction. The Mariposa Energy Project states that three other applications; for a state Streambed Alteration Agreement, a federal Clean Water Act Section 404 permit, and a state Clean Water Act Section 401 permit, will be submitted 6 months before construction to the U.S. Army Corps of Engineers and Regional Water Quality Control Board, which would be October, 2010, nearly one year from now.

To develop the staff assessment, staff must have meaningful and project-specific communication with the agencies, and the communication should be based on specific application documents filed by the applicant. The schedule provided in the table postpones these submittals to a later time that is beyond the time when staff is completing its analysis and potentially after the Commission Decision.

Staff expects consultation with all wildlife agencies to be initiated immediately and state and federal permit applications filed to facilitate discussions with the USFWS, US Army Corps of Engineers, and CDFG and the development of mitigation measures and completion of staff's analysis

PROJECT SCHEDULE

On the following page is staff's proposed 12-month schedule for the key events of the project. Meeting the proposed schedule will depend on: the applicant's timely response to staff's data requests; the timing of the BAAQMD filing of the Determination of Compliance; determinations by other local, state and federal agencies; and other factors not yet known. The BAAQMD will be required to provide a Preliminary Determination of Compliance (PDOC) and a Final Determination of Compliance (FDOC). Staff generally requires a PDOC from the air district prior to the publication of the Preliminary Staff Assessment and the FDOC is required before publication of the Final Staff Assessment.

STAFF'S PROPOSED SCHEDULE – Mariposa Energy Project - (09-AFC-3)

| | ACTIVITY | DATE | Day |
|----|---|-------------|------------|
| 1 | Applicant files Application for Certification (AFC) | 6/15/09 | |
| 2 | Commission's determination that AFC is complete | 8/26/09 | 0 |
| 3 | Staff files Issues Identification Report | 9/21/09 | 26 |
| 4 | Staff files data requests | 9/30/09 | 35 |
| 5 | Informational Hearing and Site Visit | 10/1/09 | 36 |
| 6 | Applicant provides data responses | 10/21/09 | 56 |
| 7 | Data response and issue resolution workshop | 11/5/09 | 71 |
| 8 | Staff files data request set 2 (if necessary) | 11/24/09 | 90 |
| 9 | Local, state and federal agency draft determinations AQMD files PDOC | 11/25/09 | 91 |
| 10 | Applicant provides data responses set 2 | 12/9/09 | 106 |
| 11 | Staff files Preliminary Staff Assessment (PSA) | 1/25/10 | 152 |
| 12 | PSA workshop | 2/16/10 | 174 |
| 13 | Local, state and federal agency final determinations AQMD files FDOC | 2/22/10 | 180 |
| 14 | Staff files Final Staff Assessment (FSA) | 3/24/10 | 210 |
| 15 | FSA workshop | 4/8/10 | 225 |
| 16 | Prehearing Conference* | TBD | |
| 17 | Evidentiary hearings* | TBD | |
| 18 | Presiding Members Proposed Decision (PMPD)* | TBD | |
| 19 | Committee Hearing on PMPD* | TBD | |
| 20 | Close of public comment period on PMPD | TBD | |
| 21 | Addendum/Revised PMPD | TBD | |
| 22 | Energy Commission Decision* | TBD | |

* The assigned Committee will determine this part of the schedule.

Note: The proposed Mariposa Energy project, qualifies for the 12-month licensing process under Public Resources Code § 25540.6. The applicant and the Commission may mutually agree to extend the schedule as needed. Staff anticipates possible delays due to the heavy workload in the Siting, Transmission and Environmental Protection Division, and also due to the Governor's Executive Order S-13-09, mandating three furlough days a month for the Commission and most other state agencies through June 2010.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION
FOR THE *MARIPOSA ENERGY PROJECT*
(MEP)**

Docket No. 09-AFC-3

PROOF OF SERVICE
(Established 8/26/09)

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DECLARATION OF SERVICE

I, Mineka Foggie, declare that on September 21, 2009, I served and filed copies of the attached Mariposa Energy Project (09-AFC-9) Issues identification Report dated September 21, 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [<http://www.energy.ca.gov/sitingcases/mariposa/index.html>].

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, Californias, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-3
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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

Original signed by: _____
Mineka Foggie