

DOCKET	
92-AFC-2C	
DATE	FEB 07 2000
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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:)	Docket No. 92-AFC-2C
)	
Petition for Extension of the)	
Certification for the Sacramento)	
Ethanol and Power Cogeneration)	COMMITTEE ORDER
<u>Project (SEPCO)</u>)	

BACKGROUND

The Commission originally certified the SEPCO project on May 11, 1994.¹ and adopted a modification to the certification on January 18, 1995.² However, following certification, project construction did not commence during the five-year time limit required by Commission regulation.³

On August 19, 1999, SPI petitioned the Commission for a three-year extension of the SEPCO certification. The Commission assigned the matter to the Energy Facility Siting Committee,⁴ which held a Procedural Conference on July 1, 1999. Concerned over an apparent lack of activity by Petitioner, the Committee scheduled an evidentiary hearing on January 24, 2000, to review the status of the SEPCO project and of the Petition for Extension.

¹ Docket No. 92-AFC-2; CEC Publication No. P800-94-007.

² Docket No. 92-AFC-2A; CEC Publication No. P800-95-002.

³ Title 20, California Code of Regulations, section 1720.3.

⁴ Commission Order Re: Petition to Extend Start of Construction, Order No. 99-0526-02, May 26, 1999.

Prior to the hearing and pursuant to the Committee Order issued December 17, 1999, Petitioner SPI filed its written response to a Staff Report dated October 26, 1999. At the evidentiary hearing the Committee provided Petitioner an opportunity to argue in support of its response and in support of the Petition for Extension. Commission staff argued in opposition to granting the extension.

After considering the positions of the parties expressed at the hearing, the Committee has determined that Petitioner SPI has **until 5 p.m., March 31, 2000, to file at the Commission Docket Unit, Room 101, the information detailed in this Order.** Petitioner's failure to deliver the required material in a timely manner may prompt the Committee to recommend to the full Commission that the Petition for Extension of the SEPCO project construction deadline be denied.

PETITIONER'S POSITION

In support of its Petition for Extension, SPI argued that the nine months since filing its Petition for Extension have not been wasted. Project Manager Neczy Sumait stated that SPI has spent \$10,000 per month to maintain an option agreement, that it has supported the due diligence investigations of a potential purchaser of the power plant, and that it has signed an initial agreement with Florida Power and Light, a potential partner for the power plant portion of the project. Ms. Sumait also noted various federal permits which SEPCO has maintained and she referred to a letter from Pacific Gas & Electric (PG&E) concerning gas supplies for the SEPCO project, calling it "evidence of progress". (1/24/00 RT 16.)

Ms. Sumait further testified that the potential buyer has met with officials of both the Western Area Power Administration (Western) and the Sacramento Municipal Utility District (SMUD) regarding interconnection transmission studies which she anticipates will be completed by mid March 2000. She asked that the Committee

give SPI until March 31, 2000, to allow Petitioner to receive the interconnection studies and file an affirming or amended project description with the Committee.

Petitioner also sponsored Tim O’Laughlin, who testified on the efforts of the SEPCO project to secure adequate water supplies. Mr. O’Laughlin stated that in his view the “will-serve” letter provided to SEPCO by the Rio Linda/Elverta Community Water District (RL/ECWD or District) constitutes a conditional contract for the District to provide water to the proposed ethanol plant. (1/24/00 RT 61.) He said the District intends to provide water to both the ethanol and the power plants. Petitioner concluded that it regrets that it has taken so long to find a financing partner for the project and to submit project specifics for the Commission staff to analyze. Petitioner restated its request that it be allowed until March 31, 2000 to provide the required information. (1/24/00 RT 88.)

COMMISSION STAFF’S POSITION

Staff Compliance Manager Nancy Tronaas testified that Commission staff members had reviewed Petitioner’s Environmental Evaluation, docketed August 23, 1999, as well as Petitioner’s January 17, 2000, response to staff comments. She stated that based on staff’s analysis the project lacks a financing partner for the power plant, lacks an adequate project description, and has not provided evidence of a gas supply or water supply for the power plant. Robert Hausler, Office Manager for the Power Plant Siting Office, added that the project also failed to provide information concerning impacts to air quality, biological resources, land use, and transmission line engineering. In his view, Petitioner has not provided sufficient information for the staff to conduct even an initial study under the California Environmental Quality Act (CEQA). (1/24/00 RT 35.)⁵

⁵ In its Order of May 26, 1999, the Commission determined that the granting of an extension to start construction of a power plant is a discretionary decision that is subject to CEQA. As a result, the Commission must conduct an environmental review before deciding whether to grant Petitioner’s request for an extension. Commission Order RE: Petition to Extend Start of Construction, Order No. 99-0526-02.

Ms. Tronaas noted that in the eight months since the full Commission accepted SPI's Petition for Extension and referred it to this Committee, Petitioner has failed to provide Staff with a complete description of the project. Without such a description, Staff cannot carry out the requisite environmental analysis under the CEQA. Staff stated its concern that the relevancy and validity of its original analysis will continue to diminish with time, and noted the possibility that if granted an extension, the SEPCO project could commence operation as much as ten years after the Commission granted the certification. Staff is also concerned that SPI's plan for "phased construction" could result in the construction of the ethanol plant without constructing the power plant.⁶ Such a result would leave the Commission carrying out its regulatory function over an ethanol and citric acid plant that is not subject to Commission jurisdiction. Staff also questioned the viability of the ethanol plant, noting the U.S. Department of Energy's reduced role in the plant and the Commission's own official assessment of biomass-to-ethanol projects in California.⁷

Commission Staff therefore urged the Committee to recommend that the Commission not grant the extension. Staff recommends that Petitioner determine the nature of its project and at that time file an Application for Certification (AFC) which can be analyzed in the normal course of business, based on present environmental conditions and current laws, ordinances, regulations, and standards (LORS).

⁶ In 1995 the Commission made clear that the certification for the SEPCO project was for a cogeneration project, and not for a stand-alone power plant. Commission Decision on Modifications to the License for the Sacramento Ethanol and Power Cogeneration Project, p. 11, January 1995, CEC Publication No. P800-95-002.

⁷ "In particular, reconsideration of the current federal mandate for oxygenates in gasoline will substantially impact the size and duration of a California ethanol market. Without clear evidence of a significant ethanol market, production plant financing will be difficult to obtain." Evaluation of Biomass-to-Ethanol Fuel Potential in California A Report to the Governor and the Agency Secretary, California Environmental Protection, December 1999, P500-99-022.

DISCUSSION

This Petition for Extension is a matter of first impression. Since 1993, when the Commission adopted section 1720.3 of its regulations, no other project has failed to begin construction within five years of certification and then sought to extend that certification. Therefore, the Committee desires to establish a rational process by which such petitions may be judged.

Unfortunately, in this case, the Petitioner has not merely requested an extension of the time allowed to build the project as it was originally certified. The record demonstrates that this Petitioner has not provided sufficient specificity to determine whether the original project is still environmentally acceptable and complies with applicable laws, ordinances, regulations, and standards (LORS). In addition, Petitioner appears to be in the process of proposing significant modifications to its project even as it seeks to extend the construction deadline on the original project. While Petitioner described the potential sale of SPI's rights to build a 148 megawatt (MW) cogeneration power plant, the record is not clear on whether the prospective purchaser intends to build the power plant originally licensed or will instead seek a change in the project description. (1/24/00 RT 15).

These factors create confusion for the Commission staff which must analyze the project, for the members of the Commission who must consider SPI's petition, and, most significantly, for the members of the public who wish to understand the nature of this project.

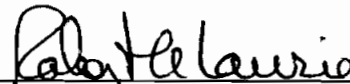
The Committee is willing to grant Petitioner's request to delay any recommendation to the full Commission until after March 31, 2000. Petitioner, however, must file certain items by that date in order to clarify the nature of the project. These include:

1. Confirmation of the capacity and operational mode for the power plant.
2. A description of the water supply delivery system for the power plant and the ethanol plant as well as confirmation of the source of water supply.
3. Complete environmental documentation for the construction and operation of the water supply system.
4. A description of all ways in which the currently-proposed power plant and ethanol plant differ from the facilities certified in 1994 and modified in 1995.
5. Evidence of a final purchase contract with the project's financial partner.
6. A proposed preliminary construction schedule for both the ethanol and the power plant.

SO ORDERED.

Dated: 2/7/00

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION



ROBERT A. LAURIE, Commissioner
Presiding Committee Member
Energy Facility Siting Committee

PROOF OF SERVICE (REVISED JA)
FILED WITH ORIGINAL MAILED FROM
SACRAMENTO ON 2/7/00 JA

STATE OF CALIFORNIA

State Energy Resources
Conservation and Development Commission

In the Matter of:) Docket No. 92-AFC-2C
)
Application for Certification) PROOF OF SERVICE
for the Sacramento Ethanol and Power) (REVISED: 1/12/00)*
Cogeneration Project (SEPCO))

PROOF OF SERVICE

I, **JASON S. ANDERSON**, declare that on **February 7, 2000** I deposited copies of the attached **COMMITTEE ORDER** in **SACRAMENTO, CA** with first class postage thereon fully prepaid and addressed to the following:

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* Revisions to POS List, i.e. updates, additions and/or deletions.
SEPCO Docket No. 92-AFC-2C

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CALIFORNIA ENERGY COMMISSION

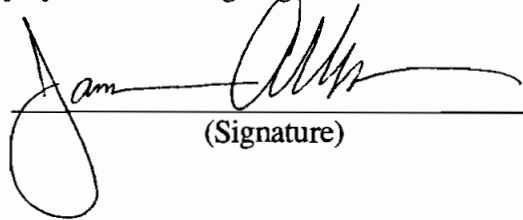
Attn: Docket Unit, MS-4

(Original and 12 copies required)

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



(Signature)

* * * * *

INTERNAL DISTRIBUTION LIST

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