

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

**APPLICATION FOR CERTIFICATION
OF THE
CALPEAK ENTERPRISE #7 PEAKER PROJECT
BY CALPEAK POWER ENTERPRISE, LLC**

**DOCKET No. 01-EP-10
APPLICATION COMPLETED
MAY 17, 2001**

DECISION

On June 6, 2001, the Energy Commission approved the Application for Certification for the CalPeak Enterprise #7 Peaker Project under the limitations presented as conditions contained in this Decision and the Staff Assessment as amended and incorporated herein by reference. The proposed project was the subject of a Committee hearing and subsequent analysis by the Energy Commission staff. The proposal meets criteria developed by Energy Commission staff to implement the Governor's Executive Orders expediting the permit process for peaking and renewable energy generating plants. This Decision has been completed in an expedited timeframe as called out in the Executive Orders.

Executive Orders

On January 17, 2001, the Governor proclaimed a State of Emergency due to constraints on electricity supplies in California. As a result, the Governor issued Executive Orders D-22-01, D-24-01, D-25-01, D-26-01, and D-28-01 to expedite the permitting of peaking and renewable power plants that can be on line by September 30, 2001, and provide power to California. Emergency projects are exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080(b)(4). Since the Governor has declared a state of emergency, the Energy Commission may authorize the construction and use of generating facilities under terms and conditions designed to protect the public interest. (Public Resources Code section 25705.)

Project Description and Procedural History

Applicant CalPeak Power, LLC (“Applicant” or “CalPeak”) proposes to construct a nominally rated 49.5 megawatt (MW) natural-gas fired simple-cycle peaking facility consisting of one FT8 Pratt & Whitney Twinpac turbine generator and associated facilities on approximately 2.95 acres located at the southern end of North Enterprise Street in the City of Escondido, in San Diego County, California. Associated facilities to be constructed as part of the project are: approximately 200 feet of overhead transmission line to connect to San Diego Gas & Electric’s (“SDG&E”) transmission lines that run adjacent to the west border of the property, and approximately 1000 feet of new line added to the existing poles which will connect to an existing SDG&E substation at 69 kilovolts; and approximately 1,500 feet of 8-inch natural gas pipeline.

The CalPeak Enterprise #7 project (“the project”) is expected to begin commercial operation by September 30, 2001. The project is designed to operate up to 8,760 hours per year, typically when the demand for electricity is high. The project may operate 24 hours per day, seven days per week, depending on the dispatch requirements of the California Independent System Operator (Cal-ISO). The project will sell a portion of its generation under contract to the California Department of Water Resources (“DWR”). CalPeak has a Memorandum of Understanding with DWR and is negotiating the subject contract. CalPeak expects the contract to be completed by early June 2001.

In order to qualify for the Energy Commission's expedited review, the project must begin commercial operation by September 30, 2001. Project construction will take approximately three months to complete and will begin upon Commission approval of the application. CalPeak submitted an application for an Authority to Construct and has received a Draft Authority to Construct permit from the San Diego Air Pollution Control District (“Air District”). The public comment period closed on April 16, 2001, with no adverse comments received.

Public Hearing

On May 24, 2001, William Keese, the Commissioner designated to conduct proceedings on this proposal, held a public site visit and informational hearing in Escondido to discuss the project with governmental agencies, community organizations, and members of the public. At the hearing, the Applicant described the project and Energy Commission staff explained the Energy Commission's expedited review process. Local residents and other members of the public made comments and had the opportunity to ask questions about the project.

Mayor Lori Holt Pfeiler and Assistant Planning Director Jonathan Brindle represented the City of Escondido at the hearing. Also attending were Gerri Stryker with the California Environmental Protection Agency and Daniel Speer, Senior Engineer with the Air District. Representatives of the local press were present. Members of the community had comments and questions regarding the project. See **Public Comment** section.

Issues of Concern

The Energy Commission Staff Assessment was received into the record on June 1, 2001. The concerns of the City of Escondido identified in the May 17, 2001, letter¹ of Assistant Planning Director Jonathan Brindle were addressed in the Staff Assessment. The following issues were identified at the hearing and during the review and consideration period that followed.

Natural Gas Supply

Both of the turbine generators in the FT8 Pratt & Whitney Twinpac will be designed to burn natural gas. Maximum natural gas requirements are approximately 1000 million British thermal units per hour (MMBtu/hr) higher heating value (HHV) for both units. Natural gas for the project will be delivered by a new 1,500 foot 8-inch gas pipeline currently under construction by SDG&E under an existing Franchise Agreement with the City of Escondido. CalPeak is paying for the construction. The new pipeline will be

¹ Exhibit 4: May 17, 2001, letter by Mr. Brindle.

constructed along Enterprise Street and will interconnect to the existing SDG&E line at Mission Road. When completed, the gas line will serve the project and be available for Sempra Energy's planned business park and proposed 500 MW power plant on property west and south of the project. The natural gas fuel requirements and pipeline interconnections have been reviewed by SDG&E. SDG&E has assured CalPeak that adequate gas transmission capacity exists on their system to supply the fuel for the proposed project. See Application, sections 1.13 and 1.14, and Appendix C.

Air Quality

During the first year of operation the project will operate with an emission rate of 2 ppm NO_x by use of a Selective Catalytic Reduction ("SCR") and oxidation catalyst to reduce NO_x emissions. The SCR unit will utilize aqueous ammonia from a 12,000 gallon ammonia storage facility to be constructed at the facility. The project will not trigger emission offset requirements for NO_x; as a result, no emission reduction credits ("ERCs") need to be purchased for any pollutant. Federal requirements may necessitate the purchase of sufficient SO₂ trading allowances to offset potential SO₂ emissions. CalPeak shall hold allowances in a compliance sub-account with the appropriate regulatory agency to satisfy the applicable SO₂ trading allowance requirements. See Staff Assessment, Air Quality section; and Application, Air Emissions section 5.5.

The analysis of the air quality impacts of emergency permit applications is performed by the California Air Resources Board and the local air pollution control district. Staff has proposed Conditions of Certification which require CalPeak to limit fugitive dust emissions during construction (Condition AQ(Air Quality)-1), to comply with the Authority to Construct ("ATC") issued by the Air District (Condition AQ-2), and to operate in compliance with all Best Available Control Technology ("BACT") standards imposed by the Air District (Condition AQ-3). See Staff Assessment, Air Quality section and Conditions of Certification.

The City Council of Escondido passed a resolution and recommends that the Commission Decision require CalPeak to deposit \$250,000 in trust with the City to assure compliance with all applicable air quality regulations. The Staff Assessment does not require the deposit because Standard Land Use Condition of Certification LAND-1, and Conditions AQ-1, AQ-2 and AQ-3 in the Staff Assessment respond to the City's concerns. The Committee concurred with the Staff Assessment. At the Commission adoption hearing, the Commission agreed that the Conditions of Certification provide sufficient safeguards to ensure compliance. See Staff Assessment, Air Quality section and Conditions of Certification; Exhibit 3, the City Council resolution; and Exhibit 4, the City of Escondido's May 17, 2001 letter.

The City of Escondido and some members of the public expressed concern that certain air quality factors were not adequately considered, such as cumulative air quality impacts and the Applicant's use of meteorological data from Miramar Naval Air Station, which is not in Escondido. The Staff Assessment contains an analysis of these areas and a conclusion that, to the extent possible, appropriate consideration was given to cumulative impacts and the meteorological data used was appropriate and of proven effectiveness. See Staff Assessment, Air Quality section.

Biological Resources

The project will be located on previously disturbed vacant land adjacent to an industrial park surrounded by light industrial and commercial properties. The transmission line will connect to an existing transmission corridor bordering the property, and the natural gas line will parallel existing paved roads and traverse industrial and commercial areas.

One sensitive plant species occurs in habitat within the vicinity of the project, small patches of Diegan coastal sage scrub. These areas will not be affected by the construction and operation of the project. For protection, they will be fenced, and a project biologist will be on site to observe construction activities. See Staff Assessment, Biological Resources section and Conditions of Certification BIO-5, BIO-9, BIO-10 and BIO-11; and Application sections 8.0, 8.1 and 8.2 for this and the following two paragraphs.

The Staff Assessment addresses the concern for biological resources relating to the potential for sensitive species such as the California gnatcatcher to use Diegan coastal sage scrub as habitat. Further, non-native grassland at the site may provide a foraging habitat for raptors and other wildlife. Conditions of Certification BIO-7 and BIO-8 require an approved biologist to conduct appropriate surveys to identify the extent, if any, of these species. If needed, mitigation plans are to be submitted under Condition of Certification BIO-10.

The Staff Assessment addresses the concern for biological resources through avoidance of all significant non-mitigatable impacts to species and habitat, restoration of the site and the construction laydown area, and for re-establishing biological resource values upon decommissioning of the site, as provided in Conditions of Certification BIO-1, BIO-2, BIO-3, BIO-6, and BIO-11.

The Conditions of Certification proposed in the Staff Assessment provide appropriate mitigation measures for the affected biological resources. See Staff Assessment, Biological Resources section and Conditions of Certification.

Water Supply and Consumption; Wastewater

The water source for the site is an interconnection from the City of Escondido water system already located on site. The water provided to the project is for evaporative cooling and for water injection in the turbine generators to control NOx emissions and for power augmentation. During normal operations the project will consume 10 gallons per minute (“gpm”) of water, or about 3 acre-feet annually. Fire protection water will be provided by the City of Escondido through an existing connection. Excess water from the cooling unit will be recycled onsite through a water filtration system for reuse in the cooling unit. CalPeak staff generally will not be at the facility. A chemical toilet on site will be emptied periodically. The Conditions of Certification proposed in the Staff Assessment provide appropriate mitigation measures for water and wastewater concerns. See Staff Assessment, Water section; and Application, sections 1.15, 1.16,

1.18, and Soils and Water Resources sections 12.1, 12.2 and 12.4 for this and the following two paragraphs.

CalPeak obtained a water purchase agreement with the Rincon Del Diablo Municipal Water District. The Staff Assessment includes Condition of Certification SOIL & WATER-3, which requires submission of a valid water service agreement prior to site mobilization. Conditions of Certification SOIL & WATER-4 and SOIL & WATER-5 require wastewater discharge to be collected in tanker trucks and transported offsite for disposal.

Soil

Both construction and operation phases of the proposed project present the potential for erosion and sedimentation through ground disturbance and runoff. CalPeak proposed detailed erosion prevention and sediment control measures including grading, compacting, and seeding/mulching exposed soils. Standard Conditions of Certification SOIL & WATER-2 and SOIL & WATER-6 ensure that necessary erosion and storm water plans are finalized. The conditions proposed in the Staff Assessment provide appropriate mitigation measures for the soil and water issues. See Staff Assessment, Soil section; and Application, Soils and Water Resources sections 12.3. and 12.4.

Land Use

CalPeak's 2.95-acre site is currently vacant. The project site has been graded but is otherwise unimproved. The project would be located west of the southern end of North Enterprise Road on a pad located south of Vineyard Avenue. A 1.6-acre area located adjacent to the southern portion of the site, presently an abandoned orchard, will be used for equipment storage and parking during construction. The project site is within the western portion of Escondido, and is designated General Industrial (P/1) by the General Plan, with a Zoning designation of Light Industrial (M-1). The project is consistent with the General Plan Land Use Designation (P/1) and Zoning designation (M-1) for the site.

The properties east and north of the site consist of commercial/light industrial operations, beyond which additional commercial/light industrial operations are located along Vineyard Avenue. The southern site boundary abuts a large area of vacant land and abandoned orchards. The western site boundary abuts open land, upon which is located a 200 foot-wide SDG&E transmission line easement, running north and south, with elevated transmission lines. Beyond the easement is more open land. The project would be consistent with the surrounding existing land uses, as the area is devoted to industrial and commercial purposes. See Staff Assessment, Land Use section; and Application, section 1.3, Site Description sections 2.0 through 2.10, and Land Use sections 9.1, 9.2 and 9.3.

The City of Escondido recommended that several requirements pertaining to land use be incorporated in the Commission Decision. The City proposes that the project comply with its ordinances, standards, approvals and permits, and any other applicable regulation or policy; and that CalPeak pay all applicable city fees and obtain all required city permits and approvals. CalPeak has agreed to pay fees under certain conditions. In response to the City's concerns, CalPeak agrees to pay development fees, a public art fee, and fees from the City's Development Fee Inventory, to the extent that the fees are based on square footage or another formula and are required for all projects in the City. CalPeak does not agree to pay fees that are directly associated with the cost of City staff review and processing, as the City will not be incurring those costs.²

The City of Escondido also recommended that the Commission Decision require that CalPeak submit various specified plans and applications to, and obtain various approvals from, the City of Escondido, the City Council, the Planning Commission, the Planning Department, the Planning Division, the Director of Building, the Director of Planning and Building, the Fire Chief, the City Fire Department, the Fire Marshall, the City Attorney, the Engineering Department, and/or the City Engineer.

² CalPeak/TRC (Robert Mason) letter of May 27, 2001 to CEC Project Manager Robert Worl, and attachment, added as Exhibit 8 to these proceedings.

The various concerns of the City of Escondido, as set forth in the May 17, 2001 letter from Jonathan Brindle, fall into the categories of general construction requirements, landscaping, street improvements and traffic, grading, drainage, water supply, sewer and surveying and monumentation. The Staff Assessment notes that the Energy Commission has authority for permitting and monitoring construction and operation of power plants and related facilities. Proper implementation and monitoring of all conditions of approval is the responsibility of the assigned Energy Commission compliance project manager, who makes every effort to coordinate with local jurisdictions regarding construction and operation of power plants. The Staff Assessment notes that Standard Condition of Certification LAND-1 ensures that the project will be in compliance with all applicable laws, ordinances, regulations, and standards (“LORS”). See Staff Assessment, Land Use section; and Exhibit 4, the City of Escondido’s May 17, 2001 letter. At the Commission adoption hearing, the Commission concurred that the Conditions of Certification provide adequate safeguards to ensure compliance with all applicable LORS.

Other Conditions of Certification are tailored to address specific concerns raised by the City of Escondido. Conditions GEN-1 and GEN-2 require compliance with the California Building Code and submission of designs, calculations and specifications. Condition LAND-2 requires plan approval for driveways, and Condition TRANS-5 relates to paving requirements. Condition PUB SER-2 addresses fire hydrants and fire equipment access. Painting and lighting requirements are covered in Conditions VIS-1 and VIS-2.

The concerns raised by the City of Escondido and several residents relating to shielding the project from the proposed business park by use of berms, vegetation, trees and fencing is required in Condition VIS-3. CalPeak has negotiated with the City of Escondido and the developer of the proposed neighboring business park, and has proposed modifications to its original landscaping plan, to meet these concerns. See Application, Visual Resources section 15.1; Staff Assessment, Land Use section; CalPeak (Charles Hinckley) letter of May 29, 2001 to CEC Project Manager Robert

Worl; and Sempra (Joseph Rowley) letter of May 30, 2001 to CEC Project Manager Robert Worl.

Hazardous Materials

CalPeak has established plans and programs for hazard assessment, emergency response, and process management systems at the project. CalPeak plans to use aqueous ammonia and natural gas. Aqueous ammonia will be used for control of NOx emissions and will be held in a 12,000 gallon ammonia storage tank. The use of aqueous ammonia reduces to insignificant levels any potential for adverse impacts at the nearest residences, which are more than 0.5 miles from the project. Conditions of Certification HAZ-1 and HAZ-2 ensure that CalPeak will not use any hazardous material in reportable quantities except those identified in the application. See Staff Assessment, Hazardous Materials Management section; and Application, Hazardous Materials sections 7.1 and 7.2.

Natural gas will not be stored at the project but will be handled in compliance with all applicable engineering design codes and fire protection codes. The Staff Assessment concludes that compliance with such standards will reduce to insignificant levels the potential for adverse impacts on the public as a result of natural gas handling at the proposed facility. See Staff Assessment, Hazardous Materials Management section.

Noise

CalPeak conducted an ambient noise survey, evaluation, and modeling to assess the expected construction and operation noise levels. Ambient noise levels at the closest sensitive receptor, a residence approximately 1,200 feet northwest of the project, ranges from 44 to 53 dB. Due to the distance from the project, project noise will attenuate to 41 dB at the residence. Estimated composite noise levels at the project property line would be in compliance with the City of Escondido noise limit of 70 dB at the property line. See Staff Assessment, Noise section; and Application, Noise sections 6.0 through 6.4.

Standard Condition of Certification NOISE-1 requires that CalPeak conduct a community noise survey utilizing the same monitoring sites employed in the pre-project survey, and if the results indicate noise levels at the closest sensitive receptor are in excess of 45 dBA between 10 p.m. and 7 a.m. additional mitigation measures will be required. See Staff Assessment, Noise section.

The City of Escondido recommended that the Commission Decision require that project noise levels be measured at the nearest sensitive receptor and the project property line after the facility is in operation to assess compliance with City noise level standards. The Standard Noise Conditions of Certification NOISE-1 through NOISE-4 address the City's concerns, and ensure that project noise impacts are reduced to insignificant levels. See Staff Assessment, Noise section; and Exhibit 4, the City of Escondido's May 17, 2001 letter.

Public Comment

In response to a question from Lisa Gomez, a lawyer with Latham & Watkins representing CalPeak, Energy Commission staff took the position that the emergency 21-day permitting process applies to peaker plants generating less than 50 megawatts and scheduled to be operating by September 30, 2001, assuming there is a contract with Cal-ISO.

Eugene Mitchell, Vice President for Public Policy of the San Diego Regional Chamber of Commerce, spoke in favor of the project and submitted a letter, dated May 24, 2001 from the Chamber of Commerce in favor of the project. The letter was marked as Exhibit 5.

Resident Connie Witt, representing the Chamber of Citizens, expressed a concern about local air quality as a result of this project and other power generating facilities in the local area. In response to another question from Ms. Witt, it was explained that the Applicant has a Memorandum of Understanding with Cal-ISO and is in the process of obtaining a contract with the Department of Water Resources to sell the power

generated by the project. In response to another question from Ms. Witt, it was explained that the authority to approve the application and oversee compliance with applicable laws, ordinances, regulations and statutes regarding the construction and operation of the project rests with the Energy Commission and not the City of Escondido.

Resident Mark Rodriguez expressed concerns about protection from, and monitoring devices for, ammonia slip or particulate matter less than 2.5 microns in diameter (PM 2.5). The Applicant replied that a parametric conditions monitoring system would be used to monitor emissions and the project's selective catalytic reduction system would be used to reduce emissions. This monitoring system will provide an indirect form of continuous monitoring for ammonia slip. With respect to PM 2.5, the Applicant responded that the project is limited to the use of natural gas in a concentration that allows it to follow the guidelines for Best Available Control Technology for particulate matter less than 10 microns in diameter (PM 10), and that natural gas has a very low sulphur content. Mr. Rodriguez also asked about the City's Conditional Use Permit process, and was informed that it does not apply to the project. Finally, he echoed the Mayor's concern about the effect of the project on the planned development of the Quail Hills business park and its ability to draw tenants if the project is next door.

Joseph Rowley, Vice President of Asset Management for Sempra Energy Resources, was more specific in his concern about the compatibility of the project with the proposed Quail Hills business park. Sempra plans to develop the business park in conjunction with JRM Real Estate. He notes that the business park will have its own 500 MW power generation facility, with extensive visual screening such as landscaped berms and natural landforms, and that, to improve their appearance, Sempra will fund a rebuilding of the existing power lines in the 200 foot easement between the proposed business park and the project. His primary concern is that the project is located adjacent to the entrance of the proposed business park and will present a visual image inconsistent with the development, making it difficult to attract the type of tenant expected for the development. He proposes a 10-foot-high berm along the northern and western perimeters of the project, with a 2-foot-wide crest for aesthetic fencing. Mr. Rowley's second concern is that, in the future, if the project is not operating for a continuous period such as 12 months, CalPeak be required to clear the site. Finally, Mr. Rowley notes that the overhead transmission lines, to which CalPeak proposes to connect, are to be placed partially underground, at Sempra's expense, to create a suitable setting for

the proposed business park. Therefore, Sempra proposes that CalPeak place a portion of its connector line underground. Mr. Rowley's concerns were set forth in a letter dated May 17, 2001, marked as Exhibit 6. The Applicant responded, in writing,³ that it would comply with the suggestions stated by Sempra and by the City to provide a ten-foot-high landscaped berm on the north and west boundaries of the site, including steel fencing on top of the berm and around the perimeter of the property. At the Commission adoption hearing, the Commission directed the parties to amend the project description to include the landscaping plans and the plan to underground the interconnection line.

Jim Diluca, a local resident, also raised concern about the compatibility of the project with the proposed Quail Hills business park. His suggestion was that the project be delayed until the business park, with its included 500 MW generator, is completed. Mr. Diluca also commented that there were enough power plants in Escondido, considering the existing power plants in the area, the planned expansions of some of those power plants, and the proposed Sempra power plant.

Resident Robroy Fawcett spoke in favor of the project, suggesting that any conditions that the City of Escondido and SDG&E wanted to place on the project were unnecessary. He believes the additional power generated by the project will lessen the likelihood of blackouts and reduce the cost of power in the state.

David A. Drake, President of The Socorro Group, LLC, commented that the emergency permitting process raised due process concerns and was an example of improper state preemption of the local government process. He also was concerned about the effect of additional NOx emissions in an area that already has high concentrations, as well as the cumulative effect of the emissions from the project and the other planned power plants. Finally, he noted that the size of the project site would not permit the equipment necessary to upgrade the project in the future to operate more efficiently.

Odus E. Ross, Jr., resident of Oceanside and a member of the Boilermakers Union, spoke in favor of the project, in particular making mention of the opportunity provided for employment of local contractors and the added revenue to the city that would result from their spending. He also stated that the type of facility proposed is cleaner and less polluting than older facilities.

³ Applicant's May 29, 2001 letter, addressed to Robert Worl, Energy Commission staff.

Barbara King, a local resident and a representative of the Coalition for Public Power, raised several issues. She inquired about the amount of power Escondido would receive directly, and was informed that the power generated by the project would be added to the state-wide grid and would be available to Escondido and other areas of the state as needed. Ms. King also inquired about the benefits for Escondido residents. The Applicant responded that there were economic benefits from the taxes paid by the business and the construction jobs created by the project, and the additional benefit from the augmented reliability of the state's supply of electricity once the project can contribute to that supply. In response to her question, CalPeak confirmed that it will have access to adequate natural gas to operate the project. Finally, Ms. King was informed that her question of how one defines an "energy crisis" was beyond the jurisdiction of the Committee to address in these proceedings.

James McCann, of JRM Real Estate, which is a business partner of Sempra Energy in the planned development of the Quail Hills business park, spoke of the potential for the business park and the project to coexist as good neighbors, which would be benefited by proper mitigation measures at the project site.

Although he did not speak at the hearing, Arnold Lund of LUND enterprises, inc., submitted a written statement, marked Exhibit 7, criticizing the pollution to be generated by the project and calculating that substantial savings would result if wind power plants were built near Escondido.

Staff Assessment

On June 1, 2001, Energy Commission staff issued its Staff Assessment, which is attached hereto and incorporated herein by reference. Staff conducted a "fatal flaw" analysis and found no areas of major concern related to the project. On June 6, 2001, Staff filed the Staff Assessment Errata, which include a new Condition TSE-2 in response to comments submitted by Cal-ISO, and a new verification to Condition TRANS-4.

At the Commission adoption hearing, Sempra Energy reiterated its request for additional conditions to address remediation of the laydown area, which will be leased from Sempra, and to include the requirement that Applicant's interconnection line be constructed underground. Staff indicated that the Conditions of Certification already

incorporate compliance provisions to ensure the laydown area is remediated and the interconnection line is underground.

In response to a request by the City of Escondido, Applicant assured the Commission that it would install a 5-foot landscape area along the eastern boundary as requested by the City. This plan will be incorporated into the project description. The City of Escondido also reiterated its request that Applicant provide security bonding to ensure compliance with local LORS. The Commission did not find it necessary to require bonding since enforcement of the Conditions of Certification will ensure compliance with applicable LORS. Further, the general compliance provisions of the Conditions of Certification address potential impacts resulting from closure or abandonment of the site.

Staff will file a revised project description that includes more specific language regarding the laydown area, the underground line, and the landscaping plans.

All conditions contained in the Staff Assessment and the Errata to the Staff Assessment are hereby adopted as the Conditions of Certification for CalPeak Power, LLC's Enterprise #7 Peaker Project.

Authority to Construct Permit

Analysis of the air quality impacts of emergency permit applications is performed by the California Air Resources Board and the local air pollution district, the Air District. CalPeak filed an application for an Authority to Construct (ATC) permit with the Air District on February 23, 2001, and a draft ATC was issued March 16, 2001. See Staff Assessment, Air Quality section; and the Air District's proposed ATC .

The ATC permit is a requirement of the U.S. Environmental Protection Agency (USEPA). The application is subject to a 30-day notice and public review and comment period, which began on March 16, 2001 and concluded April 16, 2001. The ATC permit will become effective on the date designated by the Air District, including any modifications approved following the comment period. All conditions and any modifications thereto contained in the ATC permit shall be incorporated herein by reference on the effective date of the ATC permit.

TERMS OF CERTIFICATION AND PERMIT VERIFICATION

The project is a simple-cycle project that will operate during periods of high demand. Applicant requests certification for the life of the project. Construction will begin upon certification by the Energy Commission and issuance of the Authority to Construct permit by the Air District. Project construction will take approximately three months. The project is expected to begin commercial operation no later than September 30, 2001.

The project shall be certified for the length of CalPeak's power purchase agreement with the California Department of Water Resources. If, at the end of its power purchase agreement with DWR, the project owner can verify that the project complies with the following continuation conditions the Energy Commission shall extend the certification:

Permit Verification: At least six months prior to the expiration of its power purchase agreement with the DWR, the project owner shall provide verification that the project will meet the following criteria:

1. The project is permanently mounted on a foundation, rather than temporary or mobile in nature.
2. The project owner demonstrates site control.
3. The project owner is not required to secure permanent Emission Reduction Credits ("ERCs") approved by the San Diego Air Pollution Control District ("Air District") and the California Air Resources Control Board ("CARB").
4. The project is in current compliance with all Energy Commission permit conditions specified in this Decision.
5. The project is in current compliance with all conditions contained in the ATC permit from the Air District.
6. The project meets all Best Available Control Technology (BACT) requirements under Air District rules, as established in the ATC permit, and all CARB requirements.

The certification shall expire if the project cannot meet the continuation criteria.

FINDINGS AND CONCLUSIONS

1. There is an energy supply emergency in California.
2. All reasonable conservation, allocation, and service restriction measures may not alleviate the energy supply emergency.
3. Public Resource Code section 21080(b)(4) exempts emergency projects from the requirements of the California Environmental Quality Act.
4. Executive Order D-28-01 states that “[a]ll proposals processed pursuant to Public Resources Code section 25705 and Executive Order D-26-01 or this order [D-28-01] shall be considered emergency projects under Public Resources Code section 21080(b)(4).”
5. The CalPeak Enterprise #7 Peaker Project is a simple-cycle facility that will operate during periods of high demand.
6. The Application for Certification for the CalPeak Enterprise #7 Peaker Project has been processed pursuant to Public Resources Code section 25705 and Executive Orders D-26-01 and D-28-01.
7. Pursuant to the Executive Orders cited above, the CalPeak Enterprise #7 Peaker Project must be on line no later than September 30, 2001, in order to help reduce blackouts and other adverse consequences of the energy supply emergency in the state.
8. In order for the CalPeak Enterprise #7 Peaker Project to be on line by no later than September 30, 2001, it is necessary to substantially reduce the time available to analyze the project.
9. To the greatest extent feasible under the circumstances, the terms and conditions specified in this Decision (1) provide for construction and operation that does not threaten the public health and safety, (2) provide for reliable operation, and (3) reduce and eliminate significant adverse environmental impacts.

APPROVAL

The Energy Commission finds that, with the mitigation identified in (1) the Application as amended, (2) the Conditions of Certification identified in the Staff Assessment and Errata, (3) the Authority to Construct and the Authority to Operate permits, and (4) as otherwise described in the record, the proposed facility will be designed, sited, and operated in a safe and reliable manner to protect the public interest. Therefore, the Energy Commission adopts this Decision and certifies the CalPeak Enterprise #7 Peaker Project as described in this proceeding.

Additional Conditions

TSE-2 The Applicant shall provide the following Notice to the California Independent System Operator (Cal-ISO) prior to synchronizing the facility with the California Transmission System:

1. At least one (1) week prior to first synchronizing the facility with the grid (or as otherwise advised by the Cal-ISO) for testing, provide the Cal-ISO a letter stating the proposed date of synchronization. This letter should also affirm that all the electrical facilities necessary to connect the new facility to the grid have been installed and successfully tested; and
2. At least one (1) business day prior to synchronization of the facility with the grid for testing, or as otherwise advised by the Cal-ISO, provide telephone notification to the ISO Outage Coordination Department, Monday through Friday, between the hours of 0700-1530 at (916) 351-2300.

Verification: The applicant shall provide an electronic copy of the Cal-ISO letter to the CPM when it is sent to the Cal-ISO. The letter should be received by the Cal-ISO at least one (1) week prior to initial synchronization with the grid. A report of conversation with the Cal-ISO shall be provided electronically to the CPM one (1) day before synchronizing the facility with the California transmission system for the first time.

TRANS-4: The condition remains unchanged. Replace the verification with the following:

Verification: Prior to the start of construction, the project owner shall photograph, videotape, or digitally record images of the access roads to be used during the construction process, as directed by the CPM. Within 30 days after completion of project construction, the project owner shall meet with the CPM to determine the actions needed to return all roadways to original or as near original condition as possible.

Monitoring Conditions

The project owner shall comply with the following monitoring conditions in addition to the Permit Verification process contained in this Decision and in addition to the General Compliance Conditions delineated in the Staff Assessment and incorporated herein by reference:

Start of Operations: The CalPeak Enterprise #7 Peaker Project shall be on line by *no later* than September 30, 2001. If the CalPeak Enterprise #7 Peaker Project is not operational by September 30, 2001, the Energy Commission will conduct a hearing to determine the cause of the delay and consider what sanctions, if any, are appropriate. If the Energy Commission finds that the project owner failed to proceed with due diligence to have the CalPeak Enterprise #7 Peaker Project in operation by September 30, 2001, the Applicant shall forfeit its certification.

BACT Standards: Operation of the CalPeak Enterprise #7 Peaker Project shall be in compliance with all Best Available Control Technology (BACT) standards imposed by the San Diego Air Pollution Control District in its Authority to Construct permit. Failure to meet these standards will result in a finding that the CalPeak Enterprise #7 Peaker Project is out of compliance with the certification.

Three-Year Review: No later than 15 days after completion of the first three years in operation, the owner of the CalPeak Enterprise #7 Peaker Project shall submit to the Energy Commission a report of operations that includes a review of the Project's compliance with the terms and conditions of certification, the number of hours in operation, and the demand for power from the facility during the three-year period.

Dated June 6, 2001, at Sacramento, California.