

Memorandum

Date: April 5, 2002
Telephone: (916) 651-8839
File: Inland Empire Energy Center

To: Commissioner Robert Pernel, Presiding Member
Commissioner James Boyd, Associate Member

From: **California Energy Commission** - Jim Bartridge
1516 Ninth Street Siting Project Manager
Sacramento, CA 95814-5512

Subject: **INLAND EMPIRE ENERGY CENTER PROJECT (01-AFC-17) STATUS REPORT #2**

On March 6, 2002, staff published the Inland Empire Energy Center Project Status Report #1, identifying project-related potentially significant environmental issues in the areas of Air Quality, Land Use, Socioeconomics, and Water Resources. The status of those issues is updated within this report. Additionally, potentially significant environmental issues have emerged in the areas of Biology and Visual Resources. These new issues are also discussed within this status report.

Staff's review of the Inland Empire Energy Center Project continues to be on-schedule. Pursuant to the Committee's Scheduling Order of February 14, 2002, the Preliminary Staff Assessment (PSA) for this project should be released in May with PSA Workshops to be held in early June.

DATA REQUESTS AND RESPONSES

On March 15, 2002, the applicant provided its third and final set of data responses to staff's 161 data requests issued on January 14, 2002. Responses were filed in the areas of Air Quality, Cultural Resources, Land Use, Soil and Water Resources, and Visual Resources. Staff reviewed these responses and issued a second round of data requests on April 4, 2002, in the areas of Biological Resources, Cultural Resources, Land Use, Socioeconomics, and Visual Resources - Plume.

ISSUES

AIR QUALITY

Staff previously indicated concern over potentially critical air quality issues that included: 1) potentially significant construction impacts; 2) achieving requirements for the best available control technology (BACT); and, 3) acquisition of emission reduction credits (ERCs or offsets).

Staff is evaluating the project's construction impacts, and is consulting with the South Coast Air Quality Management District (SCAQMD) regarding BACT and ERC issues. No additional data requests are necessary at this time. Also, staff is in the process of gathering more localized meteorological information from March Air Force Base to

specifically respond to intervenor comments raised at the Data Response/Issues Resolution Workshop of February 26, 2002.

BIOLOGY

The Inland Empire Energy Center's Project Manager has indicated that after further review, project linear construction within potential U.S. Army Corps of Engineers (USACE) jurisdictional features and waters of the U.S. within the San Jacinto River 100-year floodplain will not use trenchless construction methods as noted in the Data Adequacy Responses to the AFC, #14 and #15, filed on December 4, 2001. This change in project construction techniques will require the applicant to apply to the USACE and California Department of Fish and Game for disturbance within jurisdictional waters. The applicant's proposed change results in three issues for biological resources.

Compliance with ESA for the vernal pool fairy shrimp

Prior to issuing permits, the USACE is required to have major construction activities reviewed by the U.S. Fish and Wildlife Service (USFWS) for their potential to cause harm to federally-listed species under Section 7 of the Endangered Species Act (ESA). As noted in previous submittals, there is a potential for the federally-listed vernal pool fairy shrimp to exist in the seasonal wetlands found along the linears. The applicant has not yet provided conclusive evidence of the presence or absence of vernal pool fairy shrimp in the seasonal wetlands. The applicant has also not demonstrated avoidance of seasonal wetlands either through submittal of a Clean Water Act Section 404 permit application to the USACE or through separate submittals to staff.

In the event that the vernal pool fairy shrimp survey results are positive or inconclusive (based on USFWS determination through informal consultation) then staff will assume that construction of linear facilities would cause a significant impact. For all impacts to federally-listed species, staff requires a consultation with USFWS be initiated by the federal lead agency or the federal lead agency's designee. Because the applicant has not applied to the USACE, shown avoidance of all potentially occupied areas, or evidence of the presence or absence of vernal pool fairy shrimp, the potential for non-compliance with the Endangered Species Act exists, and staff will have to identify this deficiency in the Preliminary Staff Assessment.

To resolve this issue, staff requires the completion and submittal of all field surveys, an assessment of the results by USFWS, and a complete description of construction techniques at each jurisdictional water. If the survey results are positive or inconclusive per USFWS determination, the completion of a Biological Assessment (as needed), and the acceptance of the Biological Assessment by the USFWS (if required) will also be necessary.

Compliance with ESA for Stephen's kangaroo rat

The action of a federal agency initiating consultation on the vernal pool fairy shrimp also eliminates the possibility of using the permit process created under the Western Riverside County Habitat Conservation Plan (HCP) for the mitigation of impacts to Stephen's kangaroo rat. Thus, if consultation for the vernal pool fairy shrimp is initiated by the USACE under the Section 7 process, then the applicant must also consult for the kangaroo rat and submit mitigation appropriate for off-setting the impacts to this species. A Section 7 consultation process would extend the timelines for receiving a permit from USFWS for incidental take of federally-listed species to over 135 days. It is anticipated that the terms and conditions of the Section 7 Biological Opinion will be similar to the incidental take mitigation measures in the Western Riverside County HCP. Staff will have to identify that mitigation for this species is uncertain in the Preliminary Staff Assessment. The applicant will need to complete the steps outlined above for vernal pool fairy shrimp to resolve this issue.

Compliance with Fish and Game Code §1601

As noted in the first paragraph, the applicant has not applied to the California Department of Fish and Game for a streambed alteration agreement. Until the applicant applies for this permit, they are not in compliance with the Fish and Game Code §1601. Staff will identify this deficiency in the Preliminary Staff Assessment if the applicant does not apply for this permit in the near future.

LAND USE & SOCIOECONOMICS

On March 5, 2002, the Riverside County Board of Supervisors approved a letter to the Energy Commission prepared by the County Planning Department containing an analysis of each project feature, applicable zoning designations, compliance with those designations, the type of County authorization that would be required if the County had jurisdictional authority over the project, and a list of specific conditions the County would apply under such circumstances. The aforementioned letter, signed by Bob Buster, First District Supervisor and Chairman of the Board, was received in the Commission's Docket Unit on March 13, 2002. The County's letter has been distributed to staff for consideration within their analysis.

As noted in Status Report #1 and the Issue Identification Report, staff will address the proximity of the proposed plant to the existing Romoland elementary school, potential health and safety impacts to students, and restrictions on the future siting of additional schools in the project vicinity. The second round of data requests, issued on April 4, 2002, contain additional Land Use and Socioeconomic data requests intended to clarify the extent of potential project impacts to the existing school.

VISUAL RESOURCES

Staff has determined that significant visual impacts would be experienced at four of the six KOPs selected for Inland Empire (KOPs 1, 2, 4, and 5). Three of the four are residential views. However, with effective vegetative screening (Condition of Certification VIS-3), the visual impacts would be reduced to levels that would be adverse but not significant.

Staff currently lacks the necessary data needed to accurately model the potential plume from the proposed project and its potential impact to Visual Resources. Staff, in its April 4, 2002 data requests, has asked the applicant to provide the data needed to perform this analysis.

WATER RESOURCES

Staff has reviewed the first round data responses. We have asked the applicant for additional clarification regarding a number of their responses. Calpine has agreed to submit additional information in order to resolve staff's questions. Staff will consult with the Eastern Municipal Water District (EMWD) to better understand the relationship between the proposed project and EMWD's plans and policies.

cc: Inland Empire Energy Center POS
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