

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

DOCKET 98-AFC-1	
DATE	MAY 11 1999
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In the Matter of:

) Docket No. 98-AFC-1
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Application for Certification
Petition for PITTSBURG
DISTRICT ENERGY FACILITY

STAFF BRIEF

May 11, 1999

DICK RATLIFF
Senior Staff Counsel
California Energy Commission
1516 Ninth Street, MS-14
Sacramento, CA 95814
Phone: (916) 653-1653
FAX: (916) 654-3843
e-mail: dratliff@energy.state.ca.us

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STATE OF CALIFORNIA

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INTRODUCTION

The Committee ordered parties to file briefs on their positions related to the licensing of the Pittsburg District Energy Facility (98-AFC-1). No issues were actually adjudicated in the Committee hearings conducted from April 28 to May 4. Staff had no issues to adjudicate with the applicant, and its own testimony was uncontroverted. However, the City of Antioch did cross-examine two Staff witnesses to raise certain issues pertaining to Soil and Water Resources and Public Health, and the Committee itself addressed additional questions to the Staff in the areas of Biological Resources and Traffic and Transportation. This brief attempts a succinct summary of the important evidence in the above-named topic areas.¹

BIOLOGICAL RESOURCES

Testimony from both Staff and the Applicant state that there will be no significant impact from the project to biological resources. In addition, because transmission line Alternative Route 10A is not being proposed for certification, there is no impact to any wetland habitat. (This evidence regarding wetland habitat was stated orally at the April 29 hearing, and will appear in the oral testimony of Marc Sazaki in the Reporter's Transcript (RT)).

The Committee questioned Mr. Sazaki concerning the effect of lowering the transmission lines from 150 feet in height to 75 feet. Mr. Sazaki stated that the lowering of the line would, if anything, be likely to reduce avian mortality that might result from the transmission line. The above-ground portion of the project transmission line is a total of approximately 2/3 of one mile. (See Exh. 39, Map 3.2.1 of AFC [links AF-AG and AH AE].) Mr. Sazaki explained that this reduced impact would result because the setting for the project includes many tall man-made structures surrounding the project facilities that would

¹ The Committee should note that this brief is necessarily prepared without the assistance of Reporter's Transcripts, as these have not yet been provided.

increase the normal height at which birds would be expected to fly in proximity to the transmission line. (Sazaki, 4/29 RT.) The Committee asked whether there are written studies supporting this conclusion regarding setting. The Staff has docketed and provided to the Committee an Energy Commission staff report titled "Avian Collision and Electrocution" (1995) in an attempt to satisfy this request.

SOIL AND WATER RESOURCES

The applicant testified that there would be no impact to soil or water resources. (Ray, 4/29 RT.) Staff's witness testified that water would come from the Delta Diablo Sanitation District (DDSD), and that this would be a reliable source. (O'Hagan, 4/29 RT.) Staff testified that a cumulative impact analysis of the impact of both Applicant's project and the proposed Calpine/Bechtel project had been performed for the Calpine/Bechtel NPDES permit application, and that this analysis had indicated that there would be no impact to biota in the New York Slough and no impact to water taken by the City of Antioch. (*Ibid.*)

Staff sponsored a second witness from DDSC, Greg Baatrup. Mr. Baatrup testified that he agreed with the Staff's testimony, that reclaimed water from DDSD was a reliable source that could satisfy the needs of both power plants, that the use of reclaimed water would comply with state standards in Title 22 that are "health protective," and that there would be no impact on the water supply for the City of Antioch. (Baatrup, 4/29 RT.)

Dr. Faisst testified for the City of Antioch. He expressed concern that the DDSD water may not be a reliable source, and that failure of that supply might result in project reliance on the City of Antioch's potable water supply. (Faisst, RT 4/29.) He testified further regarding his concern that the use of reclaimed water in cooling towers could result in health hazards. (*Ibid.*) Significantly, Dr. Faisst also testified that he had reviewed the cumulative impact study performed by Calpine/Bechtel and had confirmed that there would be no impact on the City of Antioch's water supply as a result of discharges from the two power plant projects. (*Ibid.*)

On cross-examination Dr. Faisst conceded that DDSD has a well-run facility, that he had no specific reason to think that the source would fail, and that waste treatment plant outages are unusual and typically for very short periods of time. (*Ibid.*) He responded also that 50 to 95% (depending on the season) of Antioch's water was the result of contracts with the Bureau of Reclamation, with the rest being from ground pumping and other sources. (*Ibid.*) He could provide no reason for why Antioch's contractual surface water rights would become subordinate to those of the project.

All testimony from the parties indicates that the impact of the project, even when joined with the future Calpine/Bechtel power plant, will not compromise the quality of the Antioch water supply. The testimony establishes that the reclaimed water supply is reliable, and that any disruption would be unusual and of short duration. Thus, the evidence indicates that the project does not threaten the supply of potable water to Antioch. Finally,

the evidence is uncontroverted that that the use of reclaimed water in the cooling towers would meet the state's pertinent health-protective standards.

Accordingly, Staff believes that the evidence is conclusive that there will be no significant impact on water resources and no significant impact to the City of Antioch's potable water supply.

PUBLIC HEALTH

The applicant and Staff testified in accord that the risk assessment for non-criteria (air toxic) pollutants indicates that the calculated increased risk of cancer is 0.5 in one million. (Koehler, Ringer, 5/3 RT.) In answer to clarifying questions Mr. Koehler stated that this assessment is a screening assessment that does not indicate that it is reasonable to expect that one of every two million local residents would actually develop cancer as a result of the project. He explained that the 0.5 in a million estimate is based on several coincident "worst case" assumptions: 1) that the power plant is polluting at its maximum permitted level; 2) that all recipients are exposed to this pollution at the "point of maximum impact," which is in fact several miles from the project in the hills to the south; 3) that the point of maximum impact would constantly receive the maximum pollution level for 70 consecutive years (ignoring actual meteorological conditions); 4) that the recipients of this pollution are those most vulnerable to health risk (i.e., the youngest and most elderly). (Koehler, 5/3 RT.)

The Staff witness testified that the cumulative impact of the new facility, even when considered with the impacts of the proposed Calpine/Bechtel project and the existing Dow Chemical plant, are de minimus in terms of cancer risk, noting that the "point of maximum impact" locations for these three facilities are not coincident. (Staff Supp. Test., p. 3; Ringer, 5/3 RT.) The Staff witness clarified that by "de minimus" he meant what the term is defined to mean in the CEQA Guidelines (ibid.): "A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented." (Calif. Code of Regs., tit.14, Sec. 15064(i)(4).)

Staff testified that the cooling tower would use "disinfected tertiary recycled water" (DTRW) that must meet minimum requirements regarding treatment and residual virus and bacteria levels. (Staff Supp. Test, p.4.) DTRW must meet the standards adopted by the state Department of Health Services; these standards require that the risk level for intestinal infection with virus to not exceed one in ten thousand at the highest conceivable annual probability. (Ibid.) Staff calculated the risk factor for cooling tower drift to be much lower than one in ten thousand even using worst case assumptions including no dilution of exhaust air down wind from the cooling tower. (Ibid.)

The applicant's witness also calculated the amount of virus that would be expected to issue from the cooling tower drift. Like the Staff witness, he concluded that there could be no health-related impact from the use of DRTW. (Koehler, 5/3 RT.)

Regarding the truck bypass route, the Staff witness testified that the amount of heavy truck traffic expected to use the bypass is now much less than that calculated when the City certified the EIR for the project in 1992. (Ringer, 5/3 RT.) Also, since that date the Air Resources Board has adopted fuel formulation standards for diesel fuel that significantly reduce the amount of ambient air emissions from diesel truck engines. (Staff Supp. Test., pp. 5-6.) These factors both greatly reduce the health impact of the truck bypass route on residents near the east side of the Central Addition, where the truck bypass will be routed. In addition, since prevailing winds are from the west, the closure of existing truck routes further west (and through) the Central Addition should actually decrease exposure to diesel exhaust over the longer term. (Supp. Staff Test., p. 6.)

TRAFFIC AND TRANSPORTATION

The only issue in this area was the truck bypass route. Perhaps the most important fact regarding the bypass route is that the City of Pittsburg certified an EIR on the bypass route project in 1992, and approved the approximate routing that is proposed as part of the project. Alternatives were considered and it is Staff's understanding that a public hearing was held. The City of Pittsburg has also indicated that it still wants the truck bypass route where it is currently proposed.

The truck bypass route is a sub-element of the project that mitigates the power plant's long and short term traffic impacts, but is nevertheless a "stand alone" traffic project that is not essential to the power plant project. The City of Pittsburg could have constructed the bypass earlier, but lacked the fiscal resources to do so. Because the bypass would serve trucks going to the power plant, the city and applicant agreed to include the bypass road as an element of the power plant project application.

CEQA Guideline Section 15162 provides that prior EIRs for projects should be considered determinative, with limited exceptions:

When an EIR has been certified . . . for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR . . . due to the involvement of new significant environmental effects or a

substantial increase in the severity of previously identified significant effects, or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following: (A) [significant impacts not discussed in the prior EIR]; (B) [previous examined impacts will be substantially more severe than had been expected]; (C) [mitigation measures/alternatives previously found infeasible are in fact feasible and would reduce one or more significant effects]; (D)[new mitigation alternatives not previously identified would substantially reduce one or more significant impacts].

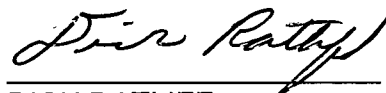
Staff believes none of the exceptions set forth above apply to the EIR for the truck bypass route. There are no substantial changes in the project with significant new environmental effects. Likewise, no circumstances have changed which require major changes of the EIR because of significant new environmental effects.

Nor is there new information that the project will have significant effects not previously discussed, that the effects will be more severe than previously assessed, or that new mitigation measures or alternatives will reduce a significant environmental impact. The prior EIR concluded that the impacts on the Central Addition would be less than significant, and Staff's Assessment does likewise.

In view of the above, Staff believes that there is no reason to undo the local land use decision made by the City of Pittsburgh concerning the truck bypass route. This is particularly true given that the alternatives proposed by private citizens at workshops and the May 4 evidentiary hearing involve rights-of-way across private property, rendering their feasibility at best uncertain. (See Staff Supp. Test., pp. 48-49.)

Dated: May 11, 1999

Submitted by,



DICK RATLIFF
Senior Staff Counsel

TESTIMONY ERRATA

**SUPPLEMENTAL TESTIMONY
PALEONTOLOGIC RESOURCES
PITTSBURG DISTRICT ENERGY FACILITY (98-AFC-1)
May 10, 1999**

During the April 28, 1999 Pittsburg hearing the Committee directed staff to provide an identification of specific repositories which could be used should paleontologic resources be discovered, removed and prepared for curation. Two possible options in the San Francisco Bay Area are the State Museum of Paleontology at the University of California, Berkeley and the San Francisco Hall of Sciences. However, we would still request that the Committee not identify either of these as "the" repository for paleontologic resources.

Staff intends the following to more clearly articulate, than it presented during the hearing, why it has altered its approach regarding the repository identification within the conditions of certification. In brief, whether an organization is willing to be a repository depends to a large degree on the significance of the resource found and to a lesser degree on simply space available to store such resources. Staff has encountered situations in past siting cases in which the most likely repository has not wanted the "burden" of accumulating additional examples of similar resources it already possesses. Therefore, staff created under PAL-2 the requirement to prepare a Paleontological Resources Monitoring and Mitigation Plan. The last bullet under PAL-2 specifies the "...identification of the institution that has agreed to receive any data and fossil materials recovered during project-related monitoring and mitigation work.....". Through this work an agreeable repository will be identified before implementing the curation requirements of PAL-6. We believe this approach provides both sufficient direction and flexibility.

SUPPLEMENTAL TESTIMONY
NOISE
PITTSBURG DISTRICT ENERGY FACILITY (98-AFC-1)
May 10, 1999

Page 172, under the section entitled "SETTING," after the first paragraph add the following new paragraph:

"The PDEF will include construction of a new two-lane Truck Bypass Road that connects E. 14th Street near its intersection with Columbia Street to Harbor Street near its intersection with Santa Fe Boulevard (PDEF 1998a, AFC §§ 1.3.3, 3.3.4, Figure 3.2-1). The road will be separated from adjacent residences by a sound wall ten to twelve feet high (PDEF 1998a, AFC § 5.12.2.7)."

Page 176, under the section entitled "Proposed Mitigation," second paragraph, fourth line, change " L_{eq} " to " L_{90} ".

Page 176, delete footnote number four.

Page 177, under the section entitled "Linear Facilities," after the existing paragraph, add the following new paragraph:

"The Truck Bypass Road will be similar to the City of Pittsburgh's proposed Waterfront Truck Route, a project that was the subject of an earlier EIR (Pittsburg 1992). While the exact routing of the PDEF road differs slightly from the earlier proposal, the findings of the EIR regarding noise remain valid. While the height of the sound wall was questioned by nearby residents because of its visual impact, it was found to be necessary in order to adequately mitigate noise impacts from traffic on the road. Noise levels experienced at homes along Santa Fe Boulevard will be reduced from current ambient levels, and homes along Columbia Street will see an increase in noise levels less than 3 dBA, while L_{dn} remains less than or equal to the General Plan recommended level of 60 dBA (Pittsburg 1992, Response to Comments #16, 22 & 23). Staff agrees with that EIR that, with the inclusion of the ten- to twelve-foot sound wall, the Truck Bypass Route should cause no significant adverse noise impacts to nearby residential receptors."

Page 179, Condition of Certification NOISE-4:

- Move the word "**Verification**" to the following page, in front of the paragraph at the bottom of the page that begins, "At least 15 days...."
- Third line, change "100 dBA" to "110 dBA".

Page 181, Condition of Certification NOISE-6:

- Line eight, after the sentence ending "...that draws complaints," add the following sentence: "The noise contributed by the operation of the PDEF at the nearest noise-sensitive use, located on Harbor Street at a distance of 1,800 feet from the plant, shall not exceed 47 dBA L_{90} under normal operating conditions."

- Following sentence, line nine, delete the words, "operation of" and "causes". Next line, after the words, "noise levels," add the word, "are". After "47 dBA", change the term " L_{eq} " to " L_{90} ".
- After this paragraph, add the following paragraph:

Protocol: "The measurement of power plant noise for purposes of demonstrating compliance with this Condition of Certification may alternatively be made at a location, acceptable to the CPM, closer to the plant (e.g., 400 feet from the plant boundary) and this measured level then mathematically extrapolated to determine the plant noise contribution at the nearest residence. However, notwithstanding the use of this alternative method for determining the noise level, the character of plant noise shall be evaluated at the nearest residence to determine the presence of pure tones or other dominant sources of plant noise."

Page 183, References, after the entry "Peterson and Gross," add the following reference:

Pittsburg. 1992. Final Environmental Impact Report for the Waterfront Truck Route and Proposed Assessment District.

**SUPPLEMENTAL TESTIMONY
GENERAL CONDITIONS
PITTSBURG DISTRICT ENERGY FACILITY (98-AFC-1)
May 10, 1999**

Page 454, third paragraph, please insert before "California Energy Commission", the following:

"Pittsburg District Energy Facility (98-AFC-1C)"

On page 459, under sub-heading "Unexpected Temporary Closure", delete "Hazardous Material Management" from the second paragraph from the bottom and insert "Facility Design". In the same sentence delete "Waste Management" and insert "Paleontologic Resources".

On page 460, under the sub-heading "Unexpected Permanent Closure", in the third paragraph from the bottom, delete "Hazardous Material Management" and insert "Facility Design". In the same sentence delete "Waste Management" and insert "Paleontologic Resources".

On page 456, please insert the following sentence and make it the second line in the first paragraph under the sub-heading "Annual Compliance Report":

"The reports are for each calendar year of commercial operation and are due to the CEC CPM by February 15th of the year immediately following the reporting year."

**SUPPLEMENTAL TESTIMONY
WASTE MANAGEMENT
PITTSBURG DISTRICT ENERGY FACILITY (98-AFC-1)
May 10, 1999**

Staff proposes changing Condition of Certification WASTE-1 as follows:

WASTE-1 The project owner shall obtain a hazardous waste generator identification number from the Department of Toxic Substances Control prior to ~~generating any hazardous waste~~ the start of construction.

The verification for Condition of Certification WASTE-2 was inadvertently deleted from staff's **Waste Management** testimony and should be inserted after WASTE-2 at the bottom of page 119 of the Staff Assessment:

Verification: The project owner shall notify the CPM in writing within 10 days of becoming aware of an impending enforcement action.

STATE OF CALIFORNIA

State Energy Resources Conservation
and Development Commission

In the Matter of:)	Docket No. 98-AFC-1
)	
Application for Certification)	PROOF OF SERVICE
for the PITTSBURG DISTRICT)	*[Revised 04/07/99]
ENERGY FACILITY)	
_____)	

I, **Alicia Perez**, declare that on **May 11, 1999**, I deposited copies of the attached **STAFF BRIEF** in the United States mail in **Sacramento, CA** with first class postage thereon fully prepaid and addressed to the following:

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DOCKET UNIT, MS-4
Attn: Docket No. 98-AFC-1
1516 Ninth Street
Sacramento, CA 95814-5512**

* * * * *

In addition to the documents sent to the Commission Docket Unit, also send individual copies of any documents to:

APPLICANT

Samuel L. Wehn, Project Director
Attn: Pittsburg Energy Facility
Enron Capital & Trade Resources Corp.
101 California Street, Suite 1950
San Francisco, CA 94111

Allan J. Thompson, Esq.
21 "C" Orinda Way, No. 314
Orinda, CA 94563

Robert Ray, Project Manager
URS Greiner Woodward Clyde
130 Robin Hill Rd., Ste. 100
Santa Barbara, CA 93117

INTERVENORS

California Unions for Reliable Energy
Mark D. Joseph, Esq.
Katherine S. Poole, Esq.
Adams Broadwell & Joseph
651 Gateway Blvd., Suite 900
South San Francisco, CA 94080

William V. Manheim, Esq.
Kelly M. Morton, Esq.
Law Department
Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120

***Calpine Corporation**
Attn: Maura Hernandez
6700 Koll Center Parkway, Ste.200
Pleasanton, CA 94566

Christopher Ellison, Esq.
Ellison & Schneider
2015 H Street
Sacramento, CA 95814

City of Antioch
Att: William R. Galstan, City Atty.
Third and "H" Streets
P. O. Box 5007
Antioch, CA 93431-5007

CAP-IT
Paulette Lagana
P.O. Box 1128
Pittsburg, CA 94565

LIMITED INTERVENOR

Thomas M. Barnett, VP
High Desert Power Project
3501 Jamboree Rd., S. Tower, Ste. 606
Newport Beach, CA 92660

INTERESTED AGENCIES

Jeffrey C. Kolin, City Manager
City of Pittsburg
2020 Railroad Avenue
Pittsburg, CA 94565

Michael Ramsey, City Manager
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

RESPONSIBLE AGENCIES (FOR NOTICES ONLY)

Ray Menebroker
ARB Stationary Source Div.
Project Assessment
P.O. Box 2815
Sacramento, CA 95815-2815

Paul Causey
Delta Diablo Sanitation District
2500 Pittsburg-Antioch Highway
Antioch, CA 94509-1373

John Waithman
California Department of Fish & Game
7329 Silverado Trail
Napa, CA 94558

Dennis Jang
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

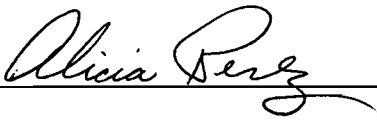
Matt Haber, Chief of Permits Office
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105-3901

Ed Wylie
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105-2197

Richard Corey
ARB Stationary Source Division
Project Assessment
P.O. Box 2815
Sacramento, CA 95815-2815

Jeff Miller
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630

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



[signature]

* * * *

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Chief Counsel
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Roberta Mendonca
Public Adviser
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