

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

**APPLICATION FOR CERTIFICATION
OF THE
LARKSPUR ENERGY FACILITY
BY WILDFLOWER ENERGY LP**

DOCKET No. 01-EP-1
APPLICATION FILED
MARCH 16, 2001

DECISION

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. Additionally, projects below 50 megawatts (MW) that have power purchase agreements with the California Independent System Operator (Cal-ISO) may also apply to be permitted by the Energy Commission under the emergency siting process. These 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

Wildflower Energy LP (Applicant), a wholly owned subsidiary of InterGen, proposes to develop the Larkspur Energy Facility (LEF), a nominally rated 90 MW, simple-cycle dual fueled peaking power plant to be located at the corner of Harvest Road and Otay Mesa Road in the Otay Mesa area of the City of San Diego in San Diego County.

The LEF will occupy approximately 3 acres and will consist of two 45 MW GE LM6000 gas turbine engines generating up to 90 MW. The facility will connect to the existing San Diego Gas & Electric (SDG&E) Border Substation adjacent to the site via a new 500 foot 69 kV overhead transmission line. Natural gas will be supplied to the facility via a new 500-foot 12-inch diameter interconnection to the existing SDG&E 36-inch natural gas line adjacent to the site.

During periods of natural gas curtailment, the facility will operate on low sulfur diesel fuel oil. The facility will operate under an umbrella emissions cap of 50 tons per year for oxides of nitrogen (NOx) emissions with the flexibility to operate either turbine within the cap. The project will incorporate selective catalytic reduction (SCR) to reduce project emissions. NOx emissions, when operating with natural gas, are limited to 5 parts per million (ppm). NOx emissions using diesel fuel during natural gas curtailment periods are limited to 13 ppm.

The facility will consume approximately 320 gallons of water per minute at peak use, supplied via an interconnection with the existing Otay Water District line adjacent to the project. Wastewater from the project will be discharged to the existing San Diego Metropolitan Wastewater District system sewer lines adjacent to the site. Hazardous materials required and stored onsite for the project are aqueous ammonia and diesel fuel oil.

LEF is a simple cycle project that will operate during periods of high demand and Applicant requests certification for the life of the project. The project is expected to be in operation by July 5, 2001. Construction will take approximately two to three months and will begin upon issuance of the Authority to Construct (ATC) permit by the San Diego County Air Pollution Control District (Air District). At the April 4, 2001, business meeting Applicant stated that the Air District may authorize construction to begin prior to issuance of the ATC.

Applicant is currently under contract to supply capacity and energy to the Cal-ISO pursuant to a Summer Reliability Agreement (SRA) executed with Cal-ISO on November 28, 2000. The SRA requires the plant to be on-line for Summer 2001 and allows the Cal-ISO to dispatch the facility from June to October for up to 500 hours for years 2001, 2002, and 2003. Through its affiliate, Coral Energy LLC, Applicant is in the process of renegotiating its SRA for a power purchase agreement with the California Department of Water Resources (DWR). Coral Energy LLC is

owned by InterGen (30%) and Shell (70%). The DWR contract will supercede and replace the Cal-ISO SRA.

Public Hearing

On March 22, 2001, Commissioner Robert Pernell, the Commissioner designated to conduct proceedings on this proposal, held a site visit and conducted a public informational hearing in Chula Vista to discuss the project with governmental agencies, community organizations, and members of the public. At the hearing Applicant described the project and Energy Commission staff explained the Energy Commission's expedited review process.

Representatives of the following agencies attended the hearing: Stephen Haas, City of San Diego; Willie Gaters, Environmental Resource Manager, City of Chula Vista City Manager's Office; Michael Lake, Air District; and Gerri Stryker, California Environmental Protection Agency. Local residents and other members of the public presented comments and asked questions about the project.

Issues of Concern

The following issues were identified at the hearing and during the review and consideration period that followed. The Committee, at hearing and by subsequent electronic mail, directed Applicant to provide additional information regarding certain issues identified below. On March 28, 2001, Applicant submitted its letter response via electronic mail.

1. The long-term operation of a permanent facility with NO_x emissions of 5 ppm.

Applicant does not plan to return to the Air District to lower the 5.0 ppm limit on NO_x because such a condition would interfere with obtaining financing for the project. As long as the project operates as a simple cycle facility, Applicant would be subject to the Best Available Control Technology (BACT) standards at the time the project is permitted by the Air District. A change in the nature or operation of the project, as described in this Decision, may require a re-evaluation by the Air District. To the extent that applicable emissions limits for

any project modifications would require lower NOx emissions, the new limits would apply. Applicant responded that if a major modification were proposed, the project would comply with all applicable rules and regulations.

2. The status of the interconnection agreements.

The Applicant has received both System Impact Studies for units 1 and 2. It has requested an expedited service agreement and is in the process of negotiating that agreement with SDG&E. SDG&E advised the Applicant that the gas interconnection will be ready on May 15, 2001, and that construction time will be seven days. The electrical interconnection will be ready on June 4, 2001. SDG&E has procured the substation breaker and disconnects and will have those mobilized on the site on April 1, 2001.

Public Comment

1. Support for the project.

A representative of the San Diego County Economic Development Council expressed support for the project.

The owner of the leased site property, who also owns 42 acres contiguous to the site, supports the project and believes it would enhance plans for a large manufacturing facility on the contiguous property.

2. Impact on Brown Field Aviation Interests.

A representative of the San Diego Airspace Users Group expressed concern about the impact of the project on aviation interests at nearby Brown Field. Proposals are pending to expand Brown Field and extend the runway 3,000 feet in the direction of the LEF. The group is concerned that the 60-foot air stacks will interfere with new flight patterns and the landing approach. Applicant explained that the stacks are not higher than the existing transmission poles. The Airspace Users Group is concerned that the Federal Aviation Administration (FAA) may not know about the LEF project. Brown Field is a public use airport and if there are any hazardous materials stored on site, the California Department of

Transportation (Caltrans) requires a clear area approach. Applicant was asked to contact the FAA or other appropriate authority to address the concern about the LEF interfering with aviation operations.

Applicant's response to this issue indicates that the planned expansion of Brown Field for a cargo airport has been suspended because of issues raised by the FAA and the City of San Diego. Further, the LEF is not located within the areas designated as Approach Zone or the Flight Activity Subdistrict by the City of San Diego. Applicant has contacted the FAA and a review of the LEF is in progress.

3. Use of inaccurate census data.

A resident is concerned that the Applicant used inaccurate census data and did not consider zip code 92154 in the demographic information. There are 11,500 homes planned for that area, which is about two and one half to three miles from the project.

Applicant was asked to provide information about demographics obtained from any private consulting firm that would provide current information about the area. Applicant's letter response reiterated that it provided the Energy Commission staff with the most current data, which was the 1990 census, and the project is consistent with all plans and policies applicable to the site. The 2000 census data was released on or about March 30, 2001, after Applicant's response, and provides current information about the population and demographics of the South Bay area.

On April 3, 2001, Staff filed Errata to the Staff Assessment to correct the environmental justice discussion. Staff obtained demographic information from the marketing firm of Claritas, which uses data solicited from local, state, and federal government agencies, and private sector sources. According to the data provided by Claritas, the population of the project's affected area includes 83% minorities. No residential areas are within approximately one mile of the project site. Staff concluded that the project does not expose any person within the affected area to a significant adverse impact and, therefore, does not expose a

minority or low-income population community to a disproportionate adverse impact.

4. Notice of the proceedings.

A resident expressed concern that the Notice of Site Visit and Informational Hearing was misleading because the hearing was set in Chula Vista and may not have alerted San Diego residents that the site is really in San Diego and the Otay Mesa area. Also, the Notice was placed in the Daily Transcript, which is a trade paper for attorneys. Most non-lawyers do not read the Daily Transcript, but rely on timely notice in the San Diego Union Tribune. Applicant indicated that the Notice appeared in the Union Tribune as well.

5. The cumulative impact of multiple power plants in the area.

The number of energy plants proposed for the general area is a concern to residents. In addition to LEF, several applications are pending for projects of various sizes, including a 49 MW plant proposed for one mile north of LEF, and additional 57.6 MW and 44 MW projects in Chula Vista. A question was raised about whether any consideration was given to the cumulative effect on air quality of the emissions from all of the existing and proposed power plants in the Otay Mesa area. If there are several plants under 50 MW, the cumulative emissions may affect air quality because there is no requirement for Energy Commission review of such projects.

Applicant was asked to provide information about any consideration it has given to the cumulative impact on air quality of the multiple projects existing and planned in the Otay Mesa area. In its letter response, Applicant reiterated that the project is exempt from the California Environmental Quality Act and no analysis of cumulative impacts is required. Further, Applicant believes that (1) any quantitative analysis would be speculative and (2) based on information it has provided to Energy Commission staff and the Air District, even if the evidence indicated the existence of significant cumulative impacts in the area, LEF would result in a *de minimus* contribution that would be rendered less than cumulatively considerable by the required emission control equipment.

6. City of Chula Vista's concern for balance of impacts and benefits.

The City of Chula Vista is committed to helping resolve the energy challenges facing the San Diego region and the rest of California. The LEF represents the fourth regional power facility proposed for the South Bay. The City is concerned that the Chula Vista and Otay Mesa residents will bear the brunt of the resulting environmental impacts. Chula Vista's demand is about 65 MW while the combined existing and proposed plants generate approximately 1,400 MW. Chula Vista requests that the Energy Commission, the Air District, and the Applicant work vigorously to assure that the LEF take every possible step to minimize any environmental impacts and direct any mitigation benefits for the project directly back to the South Bay community. The City also requests the Energy Commission to balance the location, impacts, and benefits of future facilities throughout the region appropriately.

Applicant was asked to meet with representatives of the City of Chula Vista to discuss its concerns about the impacts. Applicant's response letter indicates it has contacted Mr. Gaters of the Chula Vista City Manager's office to discuss the proposed facility and is assisting him in obtaining copies of the application for certification and the Air District permit application. Applicant will continue to discuss issues of concern with the City of Chula Vista.

7. The Committee requested Applicant and Staff to propose language for a condition that would require re-evaluation by the Air District in the event of any change to the project. Neither party proposed specific language for the condition. However, Air District rules require the project owner to notify the Air District of any proposed modifications to the project and if necessary, the Air District will re-evaluate project emission limits and BACT requirements consistent with the proposed modifications. In addition, the project owner is also required to file a petition with the Energy Commission for any proposals to amend or modify the project.

Staff Assessment

On March 31, 2001, Energy Commission staff issued its Staff Assessment and, on April 3, 2001, Staff filed Errata to the Staff Assessment, both of which are

attached hereto and incorporated herein by reference. Staff conducted a fatal flaw analysis and found no areas of major concern related to the project. The conditions contained in the Staff Assessment are hereby adopted as the Conditions of Certification for the LEF.

The Committee added three conditions included below in Additional Conditions. At the April 4, 2001, business meeting, the Commission also adopted three monitoring conditions to ensure that the project will be on-line no later than September 30, 2001, and to ensure compliance with the Conditions of Certification.

Authority to Construct Permit

On March 8, 2001, Applicant filed an application for an Authority to Construct (ATC) permit from the Air District. The ATC permit is a requirement of the U.S. Environmental Protection Agency (USEPA). The LEF is subject to a 30-day notice and public review and comment period. The 30-day public comment period on the ATC application commenced on March 21, 2001. The ATC shall become effective on the date designated by the Air District, including any modifications approved during the comment period. The conditions and any modifications thereto contained in the ATC permit shall be incorporated herein by reference on the effective date of the permit.

Term of Certification, Permit Verification, and Amendment

The Larkspur Energy Facility shall be certified for the life of the project if at the expiration of its Summer Reliability Agreement (SRA) with the California Independent System Operator (Cal-ISO) or its power purchase agreement with the California Department of Water Resources (DWR), the project owner can verify that the project meets the following continuation criteria. The certification shall expire if the continuation criteria are not met. Within 30 days of executing a power purchase agreement with the DWR, the Applicant shall notify the Energy Commission's Compliance Project Manager (CPM) regarding the duration of the agreement with DWR.

At least six months prior to the expiration of its SRA with Cal-ISO or its power purchase agreement with the DWR, the project owner shall provide verification that the project will meet the following criteria in order to continue the permit through the life of the project:

1. The project is permanent, rather than temporary or mobile in nature.
2. The project demonstrates site control.
3. The project has secured permanent emission reduction credits (ERCs) approved by the San Diego Air Pollution Control District (Air District) and the California Air Resources Control Board (CARB), if necessary, to fully offset project emissions for its projected operating hours.
4. The project is in current compliance with all Energy Commission permit conditions specified in the Decision.
5. The project is in current compliance with all conditions contained in the Authority to Construct permit from the Air District.
6. The project continues to meet all Best Available Control Technology (BACT) requirements under local Air District rules and CARB requirements.

Additional Conditions

SOCIO-1: Within 10 days of the issuance of this Certification, Applicant shall file an amendment to section 9.4 of its application and provide the information according to the 2000 census report.

TSE-2: Within 15 days of the issuance of this certification, the Applicant shall provide the Energy Commission with a schedule for completion of the transmission and fuel interconnection agreements and construction of the natural gas pipeline and electrical transmission line.

Compliance Reporting: Applicant shall submit status reports to the Energy Commission's Compliance Project Manager (CPM) every two weeks beginning on April 18, 2001, indicating its progress in

meeting milestones for procuring necessary project components and all required approvals for construction and operation of the facility by the expected on-line date of July 5, 2001. Progress reports shall be required until Larkspur is on-line.

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 Larkspur Energy Facility (LEF) shall be on-line by the expected date of operation of July 5, 2001 or the earliest possible date thereafter, but no later than September 30, 2001. If the LEF 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 LEF in operation by September 30, 2001, the Energy Commission will set a specific date by which the LEF must be brought on-line as a condition precedent to continue the certification.

BACT Standards: Operation of the LEF shall be in compliance with all Best Available Control Technology (BACT) standards imposed by the Air District in its Authority to Construct permit. Failure to meet these standards will result in a finding that the LEF 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 LEF shall submit to the Energy Commission a report of operations that includes a review of the LEF'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.

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 Larkspur Energy Facility is a simple cycle facility that will operate during periods of high demand.
6. The Larkspur Energy Facility has been processed pursuant to Public Resource Code section 25705 and Executive Orders D-26-01 and D-28-01.
7. Pursuant to the Executive Orders cited above, the Larkspur Energy Facility is expected to be on-line by July 5, 2001, and 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 Larkspur Energy Facility to be on-line by July 5, 2001, and 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.

COMMISSION APPROVAL

Implementation of the Conditions of Certification contained in the Staff Assessment, the Authority to Construct permit, and the additional conditions described above, as well as the mitigation identified in the application and contained in the record ensure that 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 Proposed Decision and certifies the Larkspur Energy Facility as described in this proceeding.