

## DOCKETED

<b>Docket Number:</b>	07-AFC-02
<b>Project Title:</b>	San Gabriel Generating Station
<b>TN #:</b>	206214
<b>Document Title:</b>	Committee Order DENYING Applicant's Request for Additional Suspension and GRANTING Energy Commission Staff's Motion to Terminate
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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
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**APPLICATION FOR CERTIFICATION FOR THE  
SAN GABRIEL GENERATING STATION**

**Docket No. 07-AFC-02**

**COMMITTEE ORDER DENYING APPLICANT'S REQUEST FOR ADDITIONAL  
SUSPENSION AND GRANTING ENERGY COMMISSION STAFF'S MOTION TO  
TERMINATE PROCEEDING**

*The full Energy Commission will consider whether to approve the Order  
terminating this proceeding at its Business Meeting on October 14, 2015.*

**INTRODUCTION**

On June 30, 2015, the Applicant, NRG San Gabriel Power Generation LLC, filed a request that the suspension of its Application for Certification (AFC) be extended for twelve months (TN 205201). On the same day, Energy Commission Staff (Staff) filed a Motion to Terminate Proceeding (TN 205194). The Applicant filed a Response to Staff's Motion to Terminate Proceedings on July 15, 2015 (TN 205357).

On August 26, 2015, the Energy Commission Committee assigned to conduct proceedings in this matter convened a duly noticed hearing to take argument and evidence on the two motions. Based upon the record, evidence and argument presented at the hearing, the Committee **GRANTS** Staff's Motion to Terminate Proceedings, subject to approval by the full Energy Commission, and **DENIES** Applicant's Request for Additional Suspension.

**BACKGROUND**

On April 13, 2007, San Gabriel Power Generation, LLC, a subsidiary of RRI Energy, Inc., filed an AFC for the San Gabriel Generating Station (SGGS). The AFC was deemed data adequate on May 23, 2007. SGGS, as proposed, would be a 696 megawatt (MW) natural-gas-fired combined-cycle power plant consisting of two combustion turbine generators, two supplementally fired heat-recovery steam generators, one steam turbine generator, and ancillary equipment. The SGGS would be sited within the existing 60-acre Etiwanda Generating Station property located on Etiwanda Avenue in Rancho Cucamonga, San Bernardino County, California. The project is located in the South Coast Air Basin (TN 205357).

On June 5, 2009, a Petition to Suspend Proceedings was granted for SGGS and the Applicant has continually requested that the AFC remain suspended without interruption since that date (TNs 51836, 57623, 61030, 64965, 71092, 202459). On December 3, 2010, RRI Energy, Inc. merged with Mirant Corporation to create GenOn Energy, Inc. of which SGGS became a wholly-owned subsidiary (TN 64965). In December 2012, SGGS became a wholly-owned subsidiary of NRG Energy, Inc. (TN 68995) which is the current project owner of record.

## **POSITIONS OF THE PARTIES**

In its most recent Request for Additional Suspension (TN 205201), the Applicant requested an additional twelve month suspension to address permitting difficulties associated with the unavailability of emission offsets and to “look for contracting opportunities that would support development of the San Gabriel Project.” The Applicant offered that it would not oppose a motion to terminate SGGS at the end of the twelve month suspension period. The Applicant’s status reports have consistently cited the lack of available emissions reductions credits (ERC) as the primary reason for its failure to reactivate proceedings over the last six years. The Applicant argues that extending the suspension for another twelve months would allow SGGS to quickly respond in the event that an expedited procurement opportunity arises (TN 205357).

Staff’s Motion to Terminate Proceeding contends that the environmental baseline has substantially changed in the eight years since the AFC was filed and virtually all the information and data relied upon to determine the environmental assessment is stale. Staff argues that applicable laws, ordinances, regulations and standards (LORS) must be reevaluated for consistency, such that supplementing the original application would not be in the interest of staff, agencies and the public. Staff seeks to terminate the AFC to allow NRG to restart an application proceeding if and when all the project details are known and the Applicant is able to diligently pursue project certification. (TN 205194).

## **APPLICABLE LAW**

Section 1720.2 of the California Code of Regulations, Title 20, states:

- (a) The committee or any party may, based upon the applicant’s failure to pursue an application or notice with due diligence, file a motion to terminate the notice or application proceeding. Within 30 days of the filing of such a motion, the committee may hold a hearing and provide an opportunity for all parties to comment on the motion. Following the hearing, the committee shall issue an order granting or denying the motion.
- (b) A committee order terminating a proceeding must be approved by the full commission.  
(Cal. Code Regs., tit. 20, § 1720.2.)

## STAFF'S MOTION TO TERMINATE PROCEEDING

Staff presented evidence at the August 26, 2015 hearing that the SGGS AFC is stale and the Applicant provided no evidence or argument to contradict Staff on this point. We understand that the SGGS relied on the South Coast Air Quality Management District's (SCAQMD) priority reserve credits when the AFC was initially filed and we accept the Applicant's conclusion that the priority reserve credits are no longer available to the project. We are aware that ERCs are difficult to obtain. Yet, according to the Energy Commission's project status website<sup>1</sup>, at least one project (CVP Sentinel Energy Project 07-AFC-03) has been able to acquire sufficient ERCs to obtain certification and construct an 850 MW power plant within the South Coast air district while SGGS has remained in suspension.

An AFC is a complex undertaking with a myriad of moving parts. An applicant is not omnipotent and there are no guarantees that a project will surmount all obstacles to certification. However, in order to survive a motion to terminate for lack of due diligence, an applicant must demonstrate, at the very least, that it has engaged in productive action that could reasonably lead in the direction of the completion of the AFC process and a decision by the Energy Commission within a reasonable timeframe.

Applicant has made tacit and direct admissions that it has not pursued the project with due diligence during the pendency of its suspensions (8/26/15 RT<sup>2</sup> 34:8 – 36:15). The Applicant misreads the Order Extending Suspension of Proceedings as including the Applicant in the cessation of work on the application (8/26/15 RT 35:9 – 13). In fact, the Order relieves only Staff and responsible agencies from working on the AFC, and requires Applicant to provide quarterly status reports to show that it "is making progress in developing the project." (TN 202459).

In this case, we have received no evidence of such productive action from the Applicant, beyond the speculation that the CPUC may need to "rapidly authorize" procurement of new gas-fired generation in the next twelve months if it turns out that there are insufficient preferred resources to meet local reliability requirements in the Los Angeles load pocket.

Staff has also demonstrated that the Applicant has requested and maintained itself in suspended status for so long that it has significantly diminished the informational value of the underlying application. Based on lack of due diligence during six years in suspension, we find that the SGGS AFC should be terminated without prejudice to the Applicant filing a new AFC for this project when and if the circumstances are more favorable to the successful completion of the application.

Our decision to grant Staff's Motion to Terminate the Proceeding renders moot the Applicant's Request for Additional Suspension.

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<sup>1</sup> [http://www.energy.ca.gov/sitingcases/all\\_projects.html](http://www.energy.ca.gov/sitingcases/all_projects.html)

<sup>2</sup> Reporter's Transcript, TN 206133. Citations are to page and line number—pg:ln.

**IT IS THEREFORE ORDERED** that the Motion to Terminate Proceedings is **GRANTED** subject to approval by the full Energy Commission and the request to extend the Suspension in the above-captioned matter is **DENIED**.

Dated: September 25, 2015 at Sacramento, California.

Original signed by  
\_\_\_\_\_  
KAREN DOUGLAS  
Commissioner and Presiding Member  
San Gabriel Generating Station AFC Committee

Original signed by  
\_\_\_\_\_  
JANE A. SCOTT  
Commissioner and Associate Member  
San Gabriel Generating Station AFC Committee