

## DOCKETED

<b>Docket Number:</b>	08-AFC-06
<b>Project Title:</b>	Willow Pass Generating Station
<b>TN #:</b>	206240
<b>Document Title:</b>	Committee Order DENYING Applicant's Request for Additional Suspension & 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  
WILLOW PASS GENERATING STATION**

**Docket No. 08-AFC-06**

**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 Willow Pass LLC, filed a request that the suspension of Application for Certification (AFC) for the Willow Pass Generating Station (WPGS) be extended for twelve months (TN 205200). On the same day, Energy Commission Staff (Staff) filed a Motion to Terminate Proceeding (TN 205193). The Applicant filed a Response to Staff's Motion to Terminate Proceeding on July 15, 2015 (TN 205356).

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 June 30, 2008, Mirant Willow Pass, LLC, a subsidiary of Mirant Corporation, filed an AFC for the WPGS. The AFC was deemed data adequate on October 8, 2008. WPGS, as proposed, would consist of two power blocks, each containing one Siemens Flex Plant 10 combined-cycle unit located in the City of Pittsburg in Contra Costa County, California. The combined generating capacity of the two power blocks would be approximately 550 megawatts net (TN 46894).

On May 23, 2014, the Applicant filed a Request for Suspension (TN 202375), however, the record indicates that the WPGS application has remained inactive for

several years (TN 205818; 8/26/15 RT<sup>1</sup> 36:10-15; 38:4-9). The project was transferred from Mirant Corporation to GenOn Energy, Inc. on October 3, 2010 and became a wholly owned subsidiary of NRG Energy, Inc. in December 2012 (TN 205818).

## **POSITIONS OF THE PARTIES**

In its most recent Request for Additional Suspension, the Applicant requested an additional twelve month suspension to “allow Willow Pass to quickly respond in the event a procurement opportunity arises, because a pending application for certification can be permitted more quickly than starting a new application for certification” (TN 205200). The Applicant stated that it would not oppose a motion to terminate WPGS at the end of the one-year suspension (TN 205356).

Staff’s Motion to Terminate Proceedings contends that the environmental baseline has substantially changed in the seven 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 205193).

## **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.)

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<sup>1</sup> Reporter’s Transcript, TN 206132. Citations are to page and line number—pg:ln

## **STAFF'S MOTION TO TERMINATE PROCEEDING**

Staff presented evidence at the August 26, 2015 hearing that the WPGS AFC is stale and the Applicant provided no evidence or argument to contradict Staff on this point.

The record indicates that WPGS has no power purchase agreement (PPA) (8/26/15 RT 34:14-35:4). It is unclear whether WPGS has an interconnection agreement (8/26/15 RT 23:1-9; 25:11-24) and evidently nothing has been done in furtherance of the toxics remediation process raised in Staff's preliminary analysis (8/26/15 RT 28:25 - 29:3-12). Indeed, WPGS was "left dangling without any action by anybody for several years" before the Applicant requested a formal suspension. (8/26/15 RT 38:4-9). Staff has shown that there has been "no activity" on the project during its informal and formal suspension (8/26/15 RT 32:18 – 33:1).

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 34:8 – 36:15). The Applicant misreads the Order Extending Suspension of Proceedings (Order) 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 202449).

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.

In this case, we have received no evidence of such productive action from the Applicant.

Staff has also demonstrated that the WPGS has been dormant for so many years that it has significantly diminished the informational value of the underlying application (8/26/15 RT 22:6 – 19). The Applicant admits that any time savings that might be gained from allowing the WPGS to remain suspended instead of starting the AFC process anew is merely speculation (8/26/15 RT 26:23 – 28:9). Staff has shown that in light of the new surveys and studies that would need to be resubmitted to reactivate the WPGS, the project would essentially require a new AFC anyway. (8/26/15 RT 42:24 – 43:11). We find that there would be no prejudice to the Applicant were it required to submit a new AFC rather than supplementing the outdated AFC now before us.

Based on lack of due diligence, we find that the WPGS 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.

**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 30, 2015 at Sacramento, California.

Original signed by \_\_\_\_\_  
KAREN DOUGLAS  
Commissioner and Presiding Member  
Willow Pass Generating Station AFC Committee

Original signed by \_\_\_\_\_  
JANEA A. SCOTT  
Commissioner and Associate Member  
Willow Pass Generating Station AFC Committee