

DOCKETED

Docket Number:	13-AFC-01
Project Title:	Alamitos Energy Center
TN #:	213217
Document Title:	Staff's Motion for Summary Adjudication
Description:	N/A
Filer:	Sabrina Savala
Organization:	California Energy Commission
Submitter Role:	Energy Commission
Submission Date:	8/31/2016 10:06:19 AM
Docketed Date:	8/31/2016



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

***APPLICATION FOR CERTIFICATION FOR THE:
ALAMITOS ENERGY CENTER***

Docket No. 13-AFC-01

ENERGY COMMISSION STAFF'S MOTION FOR SUMMARY ADJUDICATION

Energy Commission Staff (Staff) brings this motion under Title 20, California Code of Regulations, section 1211.5 requesting the Alamos Energy Center (AEC) committee, issue an order adjudicating the following two issues:

- 1) Proper scope of Staff's environmental review under the California Environmental Quality Act (CEQA) and the Commission's certified regulatory program regarding potential decommissioning or demolition of the existing Alamos Generating Station (AGS) units 1-6.
- 2) The scope of any direct or rebuttal testimony offered by the parties at the evidentiary hearing relating to decommissioning or demolition of AGS.

I. Introduction

Title 20, California Code of Regulations, section 1742 requires Staff to prepare a preliminary and final staff environmental assessment which is Staff's independent report that describes and analyzes the significant environmental effects of a project, the completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of additional or alternative mitigation measures. To achieve a complete analysis, any environmental review must include a defined project scope which sets parameters as to what is being evaluated as the project.

In its August 12, 2016 comments on the Preliminary Staff Assessment (PSA), intervener Los Cerritos Wetlands Trust (Wetlands), argued that CEQA requires an analysis of the demolition of AGS as part of Staff's environmental review of the AEC project. (Wetlands Comments, p. 11)

Staff's position is that the legal issue pertaining to the scope of Staff's environmental review, and ultimately the evidentiary hearings, should be adjudicated in advance of the evidentiary hearings to ensure those hearings are appropriately tailored to issues related to AEC. This will allow parties to prepare evidentiary filings and cross examination within the parameters of the proposed project.

II. Discussion

AEC is proposed on an industrial site that also contains the six operating units that make up the AGS. As part of the AEC project, as set forth in detail in the Supplemental Application for Certification, some equipment related to AGS will be demolished, however, the equipment does not affect the operability of units 1 through 6. It is not necessary to stop operation of, or remove, units 1 through 6 to construct AEC as the proposed project is located on a different section of the site. (Supplemental AFC p. 2-2)

Public Resources Code section 21065 defines *project* as "any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." The AEC project is not causing decommissioning or demolition of AGS. Thus, Staff properly excluded analysis of any direct or indirect impacts from any potential future decommissioning or demolition of the AGS facility from its environmental analysis because it is not part of the project before the Energy Commission.

The AGS facility is not specifically obligated to shut down or to undergo demolition due to the AEC facility. The state's once-through-cooling policy is driving decommissioning of AGS, while an agreement, through a Memorandum of Understanding, between the

project applicant, AES, and the City of Long Beach is the driver for eventual demolition of AGS.

In 2010, the State Water Resources Control Board adopted a policy on the use of coastal and estuarine waters for power plant cooling. The policy establishes technology-based standards pursuant to section 316(b) of the Clean Water Act to reduce or eliminate once-through cooling and its impacts on marine ecology. The policy applies to 19 existing power plants in California, including the AGS. The Board's policy was subject to a separate Environmental Impact Report. (*WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL AND ESTUARINE WATERS FOR POWER PLANT COOLING: Final Substitute Environmental Document*, State Water Resources Control Board May, 4 2010) The existing units are being shut down and decommissioned not because of the construction and operation of the proposed AEC facility but because the AGS owner has chosen shutdown as the method it will use for the AGS units to comply with the once-through cooling policy of the State Water Resources Control Board.

CEQA mandates that “environmental considerations do not become submerged by chopping a large project into many little ones—each with minimal potential impact on the environment—which cumulatively may have disastrous consequences.” (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263, 283—284) In order to avoid this piecemealing issue, the California Supreme Court set forth a piecemealing test: an EIR must include an analysis of environmental effects of future expansion/action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future action will be significant in that it will likely change the scope of nature of the initial project or its environmental effects. (*Laurel Heights Improvement Ass’n v. Regents of the University of California*, 47 Cal. 3d 376, 396 (1988))

The piecemealing test set forth in *Laurel Heights* implies that where land use activities are a reasonable foreseeable consequence of the initial project approval, later land use activities must be considered as part of the whole project. (Id. at 398) Similarly, if an

individual project is a “necessary precedent” for a larger project, or commits the lead agency to a larger project with significant environmental impacts, then the scope of the CEQA document must encompass the larger project. (See CEQA Guidelines § 15165; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005), 131 Cal.App.4th 1170, 1208)

For AEC, the facts are different than those found in *Laurel Heights*. The existing units are being shut down and decommissioned, not because of the proposed AEC facility, but because of the once-through cooling policy of the State Water Resources Control Board. Decommissioning AGS is a foreseeable consequence of the once-through-cooling policy because shutting down is one of the methods for policy compliance.

Applicant has committed to demolishing AGS through an agreement with the City of Long Beach after 2020 upon approval by the California Independent System Operator and California Public Utilities Commission. This third party agreement does not make the demolition of the existing units a foreseeable consequence of the construction and operation of the new facility since the new facility is not a necessary precedent for the demolition of the existing facility. Parts of the existing facility can continue to operate with or without the new facility and the entire existing facility, units 1-6, can continue in existence even with the full construction of the new facility. The Commission’s approval of AEC does not commit the lead agency to a larger project, such as demolition of AGS. (See CEQA Guidelines § 15165) Finally, there is no concrete date in which demolition may occur except sometime after 2020.

In addition to the *Laurel Heights* test, the court in *Del Mar Terrace Conservancy, Inc. v. City Council of the City of San Diego* (1992) 10 Cal. App. 4th 712 articulated the concept of “independent utility” as a test for determining piecemealing. In *Del Mar*, the court upheld an EIR that defined the project as one freeway segment within a long term, multi-segment regional plan to expand the freeway system in San Diego County. The key fact was that the one segment would serve a viable purpose even if the later segments were never built; it had independent utility. AEC also has independent utility

as it can be constructed and operated to provide local grid reliability regardless of the future decommissioning or demolition of AGS.

Given that decommissioning and demolition are not a foreseeable consequence of construction and operation of AEC, but are consequences of the once-through-cooling policy and agreement with the City of Long Beach, AGS is not part of the AEC project under the *Laurel Heights* test. AEC also has independent utility, under the *Del Mar Terrace* test, therefore the appropriate environmental assessment for the decommissioning and potential demolition of AGS units 1-6 would fall under cumulative impacts as a probable future project.

Under CEQA Guidelines, “a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.” (14 Cal. Code Regs., § 15130(a)(1)) Cumulative impacts must be addressed if the incremental effect of a project, combined with the effects of other projects is “cumulatively considerable” (14 Cal. Code Regs., § 15130(a)) Such incremental effects are to be “viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects” (14 Cal. Code Regs., § 15164(b)(1)) Together, these projects comprise the cumulative scenario which forms the basis of the cumulative impact analysis.

III. Conclusion

The whole of the AEC project does not include activities such as decommissioning or demolition of AGS. Such activities do not meet the piecemealing test articulated in case law. Therefore, Staff’s environmental review need not consider the direct or indirect environmental effects of future activity at the AGS facility.

IV. Requested Order

Staff requests the committee issue an order making the following findings under its authority to manage proceedings as set forth in Title 20 section 1203:

- 1) The AEC project, for purposes of Staff's environmental analysis under CEQA and the Commission's certified regulatory program does not include the decommissioning or demolition of AGS units 1-6.
- 2) Since decommissioning or demolition of AGS is not part of the AEC project under review by Staff, the direct and indirect effects or impacts, as defined in CEQA, need not be considered in the Final Staff Assessment or Presiding Member's Proposed Decision.
- 3) The subject of the direct or indirect effects of decommissioning or demolition of the AGS units 1-6 will not be a topic of consideration at the evidentiary hearings as such topics are not relevant to Staff's comprehensive environmental review of the AEC.

DATED: August 31, 2016

Respectfully submitted,



Jared Babula
Senior Staff Counsel