

Memorandum

Date : December 18, 2001

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To : Robert Pernel, Commissioner and Presiding Member
Robert Laurie, Commissioner and Associate Member

From : **California Energy Commission - Cheri Davis**
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Subject : **TRACY PEAKER PROJECT STATUS REPORT**

The Tracy Peaker Project (TPP) Committee released its revised ruling on the project schedule December 12, 2001. Staff files this status report on its own initiative in an effort to communicate its concerns about the revised schedule.

Staff believes that the current schedule does not allow sufficient time for the public to review the Staff Assessment (SA) prior to public workshops to address public concerns and for staff to address potential impacts from the project supplement filed by the Applicant on December 11, 2001. Staff's specific concerns are detailed below.

Sufficient Time for Public Review

Due to concerns in the community, this project has an actively interested public and one member of the public has recently become an intervenor. Staff feels it is important that the public be given sufficient time to read the SA prior to staff workshops. Typically, we allow the public at least 10 days notice of the SA prior to a workshop. Members of the public must request to have a SA mailed to them, and should be given at least a week to review the document in preparation for workshops.

The typical 4-month schedule allowing 15 days between the SA and the addendum assumes there is no active community involvement and the project description is not changed late in the process. As currently ordered, all testimony, including the revised SA, is due on January 11, 2002. This schedule allows only 11 days for workshops, additional analysis, and submittal of staff's final testimony. The public has little time to review the SA even with the usual 10-day minimum notice. It is staff's opinion that to compress this schedule further would be a disservice to the public.

AFC Supplement Filed on December 11, 2001

The Applicant filed a supplement to the AFC on December 11, 2001, containing changes to the project made necessary by the need for a Wet Weather Construction Contingency Plan. Staff will need sufficient time to fully analyze the Applicant's supplement. The best example of the need for additional time is in the area of Biological Resources, where the supplement raised new concerns not only about the project changes, but about the project in general.

The supplement identifies a seasonal wetland to the east of the TPP site that was not mentioned in the original AFC. The Applicant notes that the seasonal wetland may provide breeding habitat for California tiger salamanders and/or western spadefoot toads.

If either species are present, the probability of incidental take will be high because:

1. The Wet Weather Construction Contingency Plan calls for the construction of a temporary access road from the TPP site approximately 4,200 feet east to Lammers Road. California tiger salamander migrate from their aestivation burrows to breeding ponds from up to a mile away; the Applicant's proposed temporary road would fall well within a one-mile radius of the wetland.
2. The evaporation/percolation basin proposed for wastewater discharge may provide attractive habitat for these species.

There are known populations of both species in southern San Joaquin County, but the Applicant has not conducted the appropriate surveys to determine presence or absence of either species at this particular location. Based on the information on hand staff must assume that there is the potential for these species to be using the seasonal wetland and thus potential for significant impacts resulting from construction and operation of the project.

Staff has informally discussed the implications of the wetland with the Applicant, and advised the Applicant that the best course of action would be to have a recognized expert take a look at the data and the site. The expert should be able to determine if there truly is the potential for these species to be present. If surveys are required to make a negative finding, the protocol for these species requires two seasons of surveys.

In the meantime, staff will contact the various local, state, and federal agencies that are party to the San Joaquin County's HCP to ensure coverage under the HCP is appropriate. Staff will also issue formal data requests of the Applicant. Until this additional information is received, staff will be unable to complete a full analysis of the project.

Staff is prepared to meet the Committee's scheduled due date of December 31, 2001 for the SA. However, the SA will not include a full analysis of the project changes filed December 11, 2001 nor a complete analysis of the potential for the evaporation/percolation basin to attract sensitive wetland species.

Outstanding Information

There are other technical areas where there is outstanding information unrelated to the AFC supplement. At the Informational Hearing, members of the public raised concerns about the potential for housing and land prices to be negatively affected by the construction and operation of the TPP. The Applicant informed the Committee that they had, at a meeting with members of the local Redbridge community, already committed to undertaking a property values analysis that would evaluate the effects of power

plants on property values for other projects. On December 14, 2001, staff met with the Applicant to provide assistance with the design of this research. Given the timeframe, the Applicant will not be able to conduct the full analysis originally conceived, but proposes instead to complete a modified study by the end of the year. In past projects, staff has not found an impact to property values from the siting of a natural gas power plant; however, staff look forward to the new information that will be provided by this Applicant.

The Applicant's Stated Contractual Constraints on Schedule

Pertinent to this matter is the Applicant's stated need to begin commercial operation of their project this coming summer. The Applicant stated at the Informational Hearing, and again in their Petition for a Committee Scheduling Order, dated December 5, 2001, that the Tracy Project has signed a contract with the California Department of Water Resources (DWR) to provide peaking generation for a duration of 10 years beginning July 1, 2002. This was used as a basis for requesting that the Energy Commission continue to process this AFC on an expedited schedule.

When considering the tradeoff between expediting the schedule and allowing time for full analysis and public participation, staff believes that it is important for the Committee to understand the following relevant facts:

- In the initial AFC filing, dated August 16, 2001, the Applicant showed a construction schedule lasting eight months, beginning November, 2001 and ending July, 2002 (AFC page 1-3). Even if the AFC had been deemed data adequate at the first eligible business meeting for this project, the earliest date for certification under the four-month process would have occurred at the end of December. An eight-month construction schedule would have resulted in an online date at the end of August or first of September. Although staff's experience with the peaker projects this past summer was that construction schedules could be compressed significantly, this Applicant has indicated that the construction schedule cannot be compressed beyond 7.5 months. Therefore, July 1 is not, and never has been, a realistic date for commercial operation of this project.
- More important, however, is that the Applicant's contract with DWR establishes July 1, 2002 as a goal but not a requirement. According to the contract, the Applicant's deadline for commercial operation is, in fact, **October 31, 2002**, after which DWR has the option to cancel the contract. Please note that there are no financial penalties for beginning commercial operation after July 1. Copies of the relevant pages from this contract are attached.

While beginning commercial operation on July 1, 2002 is a valid business goal for GWF, staff maintains that this goal should not be used as a basis for limiting staff's ability to complete a full analysis of the project, or for limiting the public's opportunity to understand and comment on staff's analysis.

Staff's Proposed Schedule

In summary, staff would prefer a Committee schedule that:

- allows the SA to be available to the public at least 10 days prior to the staff workshop,
- allows staff 10 days following workshops and data responses, for further analysis and production of the revised SA or addendum, and
- gives staff at least one week to review the Applicant's testimony prior to evidentiary hearings.

Based on these constraints, staff proposes the following schedule:

Data requests	December 24, 2001
Staff Assessment	December 31, 2001
Staff workshop	January 10, 2002
Data responses	January 23, 2002
Revised Staff Assessment	February 4, 2002
Applicant and Intervenors file testimony	February 7, 2002
Evidentiary hearings	February 14, 2002

- If the applicant can respond to data requests sooner than the typical 30 days, the schedule could be expedited accordingly.

cc: Tracy Peaker Project Proof of Service