

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



November 21, 2008

TO: CITY OF PITTSBURG

Mark S. Grisham
City Manager
65 Civic Avenue
Pittsburg, California 94565

DOCKET**08-AFC-6**DATE Nov 21 2008RECD. Nov 21 2008**STAFF RESPONSE TO ITEMIZED BUDGET AND REQUEST FOR REIMBURSEMENT IN REVIEW OF THE WILLOW PASS GENERATING STATION, APPLICATION FOR CERTIFICATION (08-AFC-6)**

On November 7, 2008, the City of Pittsburg (City) sent an Itemized Budget and Request for Reimbursement for the City's review of the Willow Pass Generating Station (WPGS) Application for Certification (AFC). In accordance with Section 1715(c)(3) of Title 20 of the California Code of Regulations,¹ Energy Commission staff must respond within ten working days with a determination of whether the proposed budget is complete. We have determined that the proposed budget is incomplete, primarily because it fails to justify each line item. Accordingly, we are supplementing the original request for review we sent you on October 16, 2008, with a more tailored request, so that you may focus your reviewing efforts and submit a revised itemized budget.

Budget Deficiencies

Section 1715(c)(3)² requires that, if the proposed budget is incomplete, Energy Commission staff shall provide a list of deficiencies to the local agency for correction. The itemized budget is incomplete as follows:

1. **Permit Fees.** The proposal states very generally that, if the City of Pittsburg had jurisdiction over the project, the City would normally collect "permit fees, traffic impact fees, drainage fees, park-in-lieu fees, sewer fees, public facilities fees and the like," without explaining which fees are reasonably related to the WPGS project.
2. **Line by line justification.** Section 1715(c)(2)³ requires that the proposed budget "justify *each* line item amount and explain how *each* line item is reasonably related to the matters which the agency is requested to review." The proposal generally explains the kinds of review without tying different types of reviews to the line items; conversely, the line items exist in a vacuum without explanations.

¹ 20 CCR § 1715(c)(3).

² *Id.*

³ 20 CCR § 1715(c)(2); emphasis added.

Hours. The estimated hours, and their relationship to the identified tasks, are not explained. Review by certain personnel becomes more efficient with time, reviews by other personnel does not, without explaining why. For example, the number of hours for the Planning Director and the City Engineer decrease with the quarter, but not the hours for the City Manager, who presumably would delegate more as review progresses.

Pittsburg Power Company. The proposed budget does not explain why the City administration would incur costs for review by Pittsburg Power Company executives. We recognize that the Pittsburg Power Company represents the City as a municipal utility, but we would like more information about the specific expenses anticipated if multiple City entities will be involved in reviewing the project.

Travel. This line item lacks specifics such as the mileage rate, how many trips are funded, purpose and destination of the trips, etc. It is also not clear that travel costs are "normally charged," as required by Section 1715.⁴ Documents (including the Master Fee Schedule) regarding developer and planning fees posted on the City's web site do not mention travel expenses or mileage as a fee charged to developers.⁵ Please note that we anticipate holding project related events such as Commission staff data response and issue resolution workshops in Pittsburg, so we think the need for City staff travel will be minimal. With respect to the Commission's Evidentiary Hearing(s) on the project, we expect that it also will be held in Pittsburg. We also plan to hold Commission staff workshops on the Marsh Landing Generating Station project proposed in Antioch, in locations close to Pittsburg such as the Delta Diablo Sanitation District's meeting facility at 2500 Pittsburg-Antioch Highway.

3. Contingency fees. There is no explanation as to why a 20% contingency fee is justified.

Supplement to the Request for Review

Section 1714.5 of Title 20 of the California Code of Regulations provides that the scope of the comments on the AFC extend roughly to analysis of *significant* concerns and analysis to satisfy the City's substantive permit requirements that would apply but for the Energy Commission's exclusive jurisdiction; to participation in hearings and comments on aspects of the application such as the design; construction and operation of the facility; to updates of submitted information; and to comments and recommendations regarding conformance with applicable laws, ordinances, regulations, and standards (LORS).⁶ Additionally, the October 16, 2008, letter soliciting comments from the City stressed that the City has the opportunity to assist the Energy Commission in identifying significant issues.

Identification of significant issues should enable the City to streamline the reviewing process. Since the October 16, 2008, request for review, Commission staff has compiled an Issues

⁴ 20 CCR § 1715(a)(1)(B).

⁵ E.g. City of Pittsburg, *Master Fee Schedule* (Dec. 6, 2004), <http://www.ci.pittsburg.ca.us/NR/rdonlyres/1F561DFB-8C96-4415-B4F2-CF54057CB7FC/0/masterfees.pdf> [as of Nov. 19, 2008].

⁶ 20 CCR § 1714.5(a), (b); emphasis added.

Identification Report. The Report identifies major issues in the WPGS project as Biological Resources (drilling near wetlands, related permits), Soils and Water Resources (peak demands for water, discharge permits, floodplain concerns), and Waste Management/Hazardous Materials (impact of site containments on worker and public health).⁷ More detailed explanations of the major issues are available in the Report. Although it is possible other significant issues will emerge which may concern the City during the course of the Commission's public review process for the AFC, we suggest that the City base its revised budget on the issues identified by Commission staff when revising the itemized budget. The Issues Identification Report, status of the proposed project, copies of notices, an electronic version of the AFC, and other relevant documents are available on the Energy Commission's Internet web site at <http://www.energy.ca.gov/sitingcases/willowpass>.

If you have any questions on this letter or the City's participation options, please contact Ivor Benci-Woodward, Project Manager, at (916) 654-3911, or by email at IBenciwo@energy.state.ca.us. We look forward to working with the City's staff and its elected representatives.

Sincerely,

Original signed by

TERRENCE O'BRIEN, Deputy Director

Siting, Transmission and Environmental Protection Division

cc: Garret Evans, Pittsburg Power Company
Greggory L. Wheatland, Ellison, Schneider & Harris L.L.P.

⁷ Cal. Energy Com., *Issues Identification Report*, Nov. 5, 2008, http://www.energy.ca.gov/sitingcases/willowpass/documents/2008-11-05_ISSUES_IDENTIFICATION_REPORT_TN-48888.PDF [as of Nov. 19, 2008].



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 *WILLOW PASS*
GENERATING STATION

Docket No. 08-AFC-6
PROOF OF SERVICE
(Revised 10/24/2008)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-6
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

* Chuck Hicklin, Project Manager
Mirant Corporation
P.O. Box 192
Pittsburg, CA 94565
chuck.hicklin@mirant.com

* Jonathan Sacks, Project Director
Steven Nickerson
Mirant Corporation
1155 Perimeter Center West
Atlanta, GA, 30338
jon.sacks@mirant.com
steve.nickerson@mirant.com

APPLICANT CONSULTANT

Kathy Rushmore
URS Corporation
221 Main Street, Suite 600
San Francisco, CA 94105-1917
Kathy.Rushmore@URSCorp.com

COUNSEL FOR APPLICANT

Lisa Cottle
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5802
lcottle@winston.com

INTERESTED AGENCIES

California ISO
P.O. Box 639014
Folsom, CA 95763-9014
e-recipient@caiso.com

Garrett D. Evans
General Manager, Pittsburg Power
Company
65 Civic Avenue
Pittsburg, CA 94565
gevans@ci.pittsburg.ca.us

INTERVENORS

ENERGY COMMISSION

KAREN DOUGLAS
Commissioner & Presiding Member
kldougla@energy.state.ca.us

JAMES D. BOYD
Vice Chair & Associate Member
jboyd@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Ivor Benci-Woodward
Project Manager
lbenciwo@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

Elena Miller
Public Adviser
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Julie Mumme, declare that on November 21, 2008, I deposited copies of the attached Letter to the City of Pittsburg dated November 21, 2008 in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

Original Signature in Dockets
Julie Mumme