

Memorandum

Date: February 4, 2009
Telephone: (916) 654-3911

To: Commissioner Karen Douglas, Presiding Member
Commissioner James D. Boyd, Associate Member

From: California Energy Commission – Ivor Benci-Woodward
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512

DOCKET
08-AFC-6

DATE	FEB 01 2009
------	-------------

RECD.	FEB 05 2009
-------	-------------

Subject: **WILLOW PASS GENERATING STATION PROJECT (08-AFC-6) STATUS REPORT 1**

Pursuant to the Committee Scheduling Order dated December 31, 2008, the following is staff's Status Report 1 for the proposed Willow Pass Generating Station (WPGS).

Current Issues and Activities for Resolution

Staff has encountered the following issues and information needs during the discovery and analysis phases of the Application for Certification (AFC) for the proposed (WPGS) project:

Staff Data Requests

On December 2, 2008 Mirant Willow Pass, LLC (applicant), filed a notice pursuant to Section 1716(f) of the regulations of the California Energy Commission for an extension of time to answer Data Request #10 (Biological Resources), #31 (Soils and Water), #37-40 (Transmission System Engineering), and #42-44 (Waste Management). It also filed, objections to three Data Requests #39 (Transmission System Engineering), #43 Waste Management and #48 (Visual Resources). On December 4, 2008 the Energy Commission staff filed a Data Request Addendum with questions #49-58 relating to Air Quality with responses to those data requests provided on December 15, 2009.

On December 19, 2008 a Data Response and Issues Resolution Workshop was held in the City of Pittsburg; staff has determined that information requested in the following areas is still incomplete:

- Data Request #56 (Air Quality): Staff needs confirmation from the Bay Area Air Quality Management District (BAAQMD) confirming acceptance of the modeling results submitted by the applicant for the project. BAAQMD staff stated at the December 19, 2008 workshop that they expect the Preliminary Determination of Compliance (PDOC) for the WPGS to be issued for public review in mid-February 2009.
- Data Requests #1-5 & #7-10 (Biological Resources): The applicant is refining the design and exact location for the recycled water supply and wastewater discharge pipelines for the project. Until this work is completed the applicant

will be unable to determine which permits will be required. Potentially permits may be required from the US Army Corps of Engineers (404 permit), California Department of Fish and Game (Streambed Alteration Agreement) and the San Francisco Bay Regional Water Quality Control Board (401 permit). Staff is coordinating with the applicant and the appropriate agencies to determine which permits will be required, and the associated timing and schedule impacts of each.

- Data Request #31 (Soils and Water Resources): Mirant Willow Pass and the Delta Diablo Sanitation District (DDSD) are in discussions regarding the terms of a long range recycled water supply for the WPGS. Staff will need a Will Serve letter from DDSD describing the terms of the agreement prior to completing a Final Staff Assessment (FSA).
- Data Requests #37-#40, (Transmission System Engineering): Staff will review the California Independent System Operator's (California ISO) approved System Impact Study (SIS) when it becomes available. Currently the applicant and staff are working with an SIS prepared by a consultant for the applicant. Staff will need the California ISO's approved document prior to completing the FSA.
- Data Requests #41-#44 (Waste Management): A recent Phase I (2007) Environmental Site Assessment (ESA) provided in the AFC identified Recognized Environmental Conditions (RECs) which indicate some level of soil and groundwater contamination. To protect worker and community health and safety during the construction phase, the actual nature and toxicity associated with the RECs must be clear. Staff will require a new Phase II ESA, which is also strongly recommended by the Department of Toxic Substances Control, for the identified REC areas of the site. Staff is working with the applicant to acquire this information.

Additional Information Needed

Information acquired during the initial staff data request, applicant responses, and information from commenting agencies will require an additional round of data request from staff. The additional data requests will be in Soils and Water Resources, Biological Resources and Waste Management. The time frame required for an additional round of data requests, applicant responses and a subsequent workshop prior to publishing the Preliminary Staff Assessment (PSA) are reflected in the attached draft schedule.

Agency Comments Received

US Army Corps of Engineers - Wetlands Delineation.

As referenced in the wetland delineation of Mirant's property (report dated September 30, 2005) The "Area D" portion of the project site, an apparent wetland north of the railroad bed on Mirant property and adjacent to the WPGS, was not included in the USACE-verified wetland delineation map. Staff is working with the applicant and USACE to understand recent jurisdictional decisions by USACE (File Number 29868S) and their potential impacts on the WPGS. Data requests have been issued and responses requested for these issues.

California Department of Fish and Game (CDFG) Bay Delta Region 3 - Streambed Alteration Agreement.

CDFG is reviewing the application for the Section 1600 Streambed Alteration Agreement. Data requests have been issued requesting information regarding the schedule for the CDFG review.

San Francisco Bay Regional Water Quality Control Board (SFBRWQB) - 401 Water Quality Certification.

Trenching across Kirker Creek for installation of the recycled supply and wastewater return pipelines will require water quality certification. The SFBRWQCB and staff are waiting data responses from the applicant regarding the proposed routes for these lines.

Department of Toxic Substances Control (DTSC) - Oversight of brownfield sites.

The Phase I Environmental Site Assessment for the brownfield site and existing power plant (Appendix R of the Application for Certification) identified RECs in the soil and groundwater which are above DTSC screening levels. A Phase II Environmental Site Assessment is strongly recommended by DTSC.

Schedule

The Energy Commission staff is currently working towards the following proposed schedule:

STAFF PROPOSED SCHEDULE – WILLOW PASS GENERATING STATION (08-AFC-6)

	<u>ACTIVITY</u>	<u>DAY</u>	<u>DATE</u>
1	Commission's determination that AFC is complete	0	10/08/08
2	Staff files data requests	37	11/14/08
3	Applicant provides data responses	66	12/14/08
4	Informational Hearing and Site Visit	70	12/18/08
5	Data response and issue resolution workshop	71	12/19/08
6	Staff and applicant each file Status Report 1	90	2/04/09
7	Staff files 2 nd round of data requests	110	2/24/09
8	Local, state and federal agency draft determinations Preliminary Determination of Compliance Issued	118	3/4/09
9	Applicant files 2nd round of data responses	138	3/24/09
10	Data response and issue resolution workshop	147	4/2/09
11	Staff and applicant each file Status Report 2	155	4/10/09
12	Staff files Preliminary Staff Assessment (PSA)	195	5/15/09
13	PSA workshop	210	5/30/09
14	Local, state and federal agency final determinations	214	6/3/09
15	Staff and applicant each file Status Report 3	221	6/10/09
13	Staff files Final Staff Assessment (FSA)	242	7/01/09
14	Prehearing Conference*		TBD*

15	Evidentiary hearings*		TBD*
16	Presiding Members Proposed Decision (PMPD)*		TBD*
17	Hearing on the PMPD.*		TBD*
18	Committee files revised proposed decision*		TBD
19	Commission Decision		TBD

*The Committee will determine the schedule for these events
Two days per month of furlough days are uncertain at this time and are not added into the cumulative day column.
Shaded items have already occurred.

Proof of Service List /Dockets



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 12/15/2008)

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

***Greggory L. Wheatland**
Ellison, Schneider & Harris
2015 H Street
Sacramento, CA 95811-3109
glw@eslawfirm.com

INTERVENORS

***California Unions for Reliable Energy
("CURE")**
Gloria D. Smith & Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, California 94080
gsmith@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

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, Hilarie Anderson, declare that on February 5, 2009 I deposited copies of the attached Status Report #1 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.

Original Signature in Dockets
Hilarie Anderson